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THIS INDEX is based on a consolidation of contents entries appearing in the January–June issues of the FEDERAL REGISTER together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Mildred L. Isler, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (202–523–5227 or (TDD) 202–523–5229).

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Department of Defense, Department of the Air Force	Numerical index of standard publications (AFR 0–2). April 3, 1989. Lists regulations, manuals, and pamphlets together under each subject series; list visual aids and recurring periodicals separately Numerical index of departmental forms (AFR 0–9). April 3, 1989. Lists forms numerically within each category, including accountable forms, forms requiring storage safeguards, and obsolete forms	National Technical Information, 5285 Port Royal Road, Springfield, VA 22161.	Chief, Central Base Administration at nearest Air Force installation Chief, Central Base Administration nearest Air Force installation
Department of Defense, Department of the Army, Information Systems Command, Army Publications and Printing Command	DA pamphlet 25–30 (Consolidated Index of Army Publications and Blank Forms) June 30, 1988. Printed in microfiche	National Technical Information Service, Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22161	Director, Army Publications and Printing Command, Hoffman Bldg., Alexandria, VA 22331-0302
Department of Education (ED), Office of the Assistant Secretary for Legislation and Public Affairs	ED Index contains those records required by Public Law 90–23 (Freedom of Information Act). The index is a guide to ED policies, instruction memoranda, organization function statements, guidelines, decisions and procedures not published in the Federal Register. Contains records originated since May 4, 1980; updated quarterly	Freedom of Information Officer, Department of Education, Office of Legislation and Public Affairs, 400 Maryland Ave., SW., Washington, DC 20202	Office of Legislation and Public Affairs, Document Review Center, 400 Maryland Ave., SW., Washington, DC 20202 Telephone 245–8907 or 472–3850
Department of Energy, Bonneville Power Administration	BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number	The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585	Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724
Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC)	CDC Freedom of Information Act (FOIA) Index contains those records required by the Freedom of Information Act (P.L. 90-23). This index provides identifying information, by program and subject, for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and not published in the Federal Register. Index is updated quarterly	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333.	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333
Department of Health and Human Services, Public Health Service, Food and Drug Administration (HHS/PHS/FDA)	Analyst Operations Manual: Training information, instructions and procedures for new laboratory personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Accession #PB85-211639: $50.95 for paper copy, $6.50 for microfiche	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857

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	Center for Drugs and Biologics Staff Manual: Primarily concerned with the preparation and review of documents within the Center for Drugs and Biologics	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $82.60. Payable to the Food and Drug Administration	
	Center for Food Safety and Applied Nutrition Daily Operating Guide: Primarily concerned with the preparation and review of documents within the Center for Food Safety and Applied Nutrition	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $33.00. Payable to the Food and Drug Administration	
	Center for Veterinary Medicine Policy and Procedures Manual: Primarily concerned with the preparation and review of documents within the Center for Veterinary Medicine	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $42.70. Payable to the Food and Drug Administration	
	Compliance Policy Guides: Statements of FDA compliance policy, including those statements which contain regulatory action guidance information	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88-915499, $104.95; subscription accession #PB88-915400, $135.00	
	Compliance Program Guidance Manual: Programs, plans and instructions directed to FDA field operations for Program Management System (PMS) project implementation	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Priced by section. Entire Manual Accession #PB88-920499, $146.95; subscription accession #PB86-923-700, $375.00	
	Drug Autoanalysis Manual: A manual of automated methods which provides content uniformity test specifications in USP XVII and NF XII. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all table monographs where the active ingredient is present in low quantities (usually 50 mg. or less)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $56.00. Payable to the Food and Drug Administration	
	EDRO Data Codes Manual: Computer code information for program management system projects used for reporting project information into the program oriented data system (PODS)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $100.00. Payable to the Food and Drug Administration	
	Field Management Directives: FDA field policy in the areas of operations management, planning and budget, program management	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $33.60. Payable to the Food and Drug Administration	
	Inspection Operations Manual: Standard operating inspectional and investigational procedures and instructions used by FDA investigational personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88-913399, $50.95; subscription accession #PB88-913300, $65.00	
	Inspector Training Manual: Basic training manual for food and drug inspectors and inspection techniques	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $22.30. Payable to the Food and Drug Administration	
	Inspector's Manual for State Food and Drug Officials: Two-part manual—(1) operations section contains inspectional and investigational procedures, (2) program section outlines the specific recommended inspectional procedures applicable to a particular problem area, commodity or regulated industry. Similar in contents to the Inspection Operations Manual listed above, except for FDA administrative procedures which are not relevant to State Food and Drug Officials	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $71.00. Payable to the Food and Drug Administration	
	Inspector's Technical Guide: Technical information for FDA inspectors, not previously available on a broad scale	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $18.40. Payable to the Food and Drug Administration	

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	Regulatory Procedures Manual: Guidance on regulatory policy and support processing procedures	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $142.80. Payable to the Food and Drug Administration	
	Staff Manual Guides—Organization and Delegation: Directives issued by FDA to establish policy, organization, procedures or responsibilities in the administrative area	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $241.10. Payable to the Food and Drug Administration	
	Supervisory Investigators Guide: Guidelines to assist supervisory inspectors in managing investigational groups	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $9.00. Payable to the Food and Drug Administration	
	Index to Administrative Staff Manuals: Current listing of all staff manuals with indexes and/or table of contents	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $31.90. Payable to the Food and Drug Administration	
Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index: March 1975 to June 30, 1982. The HSA, FOIA index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR: OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—BUREAU OF MEDICAL SERVICES: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—INDIAN HEALTH SERVICES: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—BUREAU OF HEALTH PERSONNEL DEVELOPMENT AND SERVICE: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16-36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857

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Department of the Interior, Office of the Secretary	Departmental Manual, Table of Contents, Checklist, and Subject Index dated June 24, 1988. Index of directives containing descriptions of central and field organizations of the Department, delegations of authority, internal policies, guidelines, procedures, and other administrative matters	Chief, Division of Directives and Regulatory Management, Office of Improvement Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
	Checklist and Subject Index of Departmental Manual Additions to the FPM dated June 3, 1988. Index of Departmental personnel management directives which supplement the Federal Personnel Manual	Chief, Division of Program Coordination and Evaluation, Office of Personnel, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
	Listing of Secretary's Orders which are considered in effect with respect to current operations of the Department dated January 28, 1988	Chief, Division of Directives and Regulatory Management, Office of Improvement Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
Department of the Interior, Office of the Secretary, Office of Acquisition and Property Management	Departmental Manual Additions to the Federal Acquisition Regulation (FAR)	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-6431
	400 DM - Departmental Manual Addition to the Interior Property Management Regulations (IPMR) Part 114-52	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-3336
Department of the Interior, Office of the Secretary, Office of Aircraft Services	OAS Index of Operational Procedures Memoranda (OPM's) dated March 1, 1989: 89-1, Minimum Rating & Experience Requirements for DOI Professional Pilots, GS-2181; 89-2 Temporary Flight Restrictions; 89-3 Procedures for Utilization of the Aircraft Rental Agreement System within the Conterminous United States; 89-6 Services Provided, Use Rates, and Payment and Collection Policies; 89-8 DOI Use of Cooperator Aircraft; 89-9 U.S. Department of the Interior (DOI) Use of Military Aircraft; 89-10 U.S. Department of the Interior (DOI) Use of Other Government Agencies' Aircraft; 89-12* Aviation Safety Program (*1989 Edition of this OPM will be issued on or about May 1, 1989); 89-13 Aircraft Accident Prevention Program	Director's Office, Office of Aircraft Services, P.O. Box 15428, Boise, ID 83715-9998. No charge	Director's Office, Office of Aircraft Services, 3905 Vista Ave., Boise, ID 83705
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983	Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245 No charge	Division of Management Support, Bureau of Indian Affairs, Room 334–Interior South, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C.(202) 343-3577
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist–July 6, 1976	In accordance with fee schedule in 43 CFR 2, Appendix A	William C. Mackay Chief, Branch of Management Analysis, 2401 E St., NW., Washington, DC 20241 Telephone 634-1336
	Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph	Bureau of Mines	
Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index dated	Bureau of Reclamation, Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007. No charge	Bureau of Reclamation; Attention: D-7920, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-007 Telephone: (303) 236-6730
Department of the Interior, U.S. Geological Survey	Geological Survey Manual, Table of Contents, Checklist, and Subject Index	Paperwork Management Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092 No charge	Paperwork Management Officer; U.S. Geological Survey; 208 National Center, Reston, VA 22092 Telephone 703-648-7309 or FTS 959-7309
Department of the Interior, Minerals Management Service	Basic Minerals Management Service Manual Table of Contents and Checklist–December 30, 1987	In accordance with fee schedule in 43 CFR 2, Appendix A	Dorothy Christopher, Directives Management Officer, 12203 Sunrise Valley Drive, Reston, VA 22091 Telephone 435-6213
	Listed numerically by part, series, chapter, release number, date, and pages Director's appeals decisions and index	In accordance with fee schedule in 43 CFR 2, Appendix A	David Schuenke, Chief, Division of Appeals, Office of Program Review, Minerals Management Service, 1951 Kidwell Drive, Vienna, VA 22180, Telephone 285-2990

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Department of the Interior, Office of Hearings and Appeals	Index-Digest – Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Price: $50 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to Department of the Interior. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior. Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791
	Indian Citator—Index of authorities cited in decisions of the Interior Board of Indian Appeal (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203 Price: $5.00 for Indian Citator. Checks made payable to "Department of the Interior".	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone (703) 235-3791
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks payable to Department of the Interior.	Administrative Officer, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3791
Department of the Interior, Office of Inspector General	Inspector General Manual Index, August 18, 1983. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and sub-section	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 343-4356
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated October 22, 1986	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C. (202) 343-2210
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
Department of Transportation, Federal Highway Administration (FHWA)	CrossReference Index of current directives, The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHPM, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September)	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
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Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1989 incorporates all additions and deletions through November 15, 1988; (b) Current index November 1988-June 1989	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	
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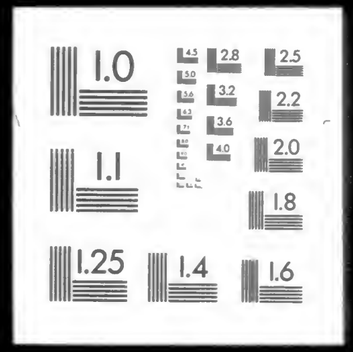
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Federal Register
Vol. 54, No. 1
Tuesday, January 3, 1989

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 681]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 681 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period December 30, 1988, through January 5, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 681 (§ 907.981) is effective for the period December 30, 1988, through January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on December 28, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a ten to one vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for 113's has improved.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.980 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.981 Navel Orange Regulation 681.

The quantity of navel oranges grown in California and Arizona which may be handled during the period December 30, 1988, through January 5, 1989, are established as follows:

(a) District 1: 1,066,000 cartons;
(b) District 2: 117,000 cartons;
(c) District 3: 65,000 cartons;
(d) District 4: 52,000 cartons.

Dated: December 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–30256 Filed 12–29–88; 3:14 pm]
BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 646]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulations 646 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 303,539 cartons during the period January 1 through January 7, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 646 (§ 910.946) is effective for the period January 1 through January 7, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on December 28, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed available to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.946 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.946 Lemon Regulation 646.

The quantity of lemons grown in California and Arizona which may be handled during the period January 1, 1989, through January 7, 1989, is established at 303,539 cartons.

Dated: December 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–30257 Filed 12–29–88; 3:14 pm]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1980

Drought and Disaster Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to provide procedures for guaranteeing loans to rural businesses impacted by drought, hail, excessive moisture, or related conditions in 1988. This action is needed to implement section 331 of the Disaster Assistance Act of 1988. The intended effect of this action is to provide loan guarantees to businesses in rural areas which suffered losses or distress as a result of drought, hail, excessive moisture, or related conditions in 1988.

DATES: *Effective Date:* January 3, 1989. Written comments must be received on or before March 6, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been approved by OMB under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940 Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3105, Subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Discussion of Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The purpose of this rule is to provide assistance to businesses which have been distressed by natural disasters that have occurred in 1988.

Especially as a result of drought across most of the country, an emergency situation exists. This interim rule is a response to an existing situation and, while this Department is reluctant to short circuit prior public comment, it is certain that failure to implement a mandated program at once will result in significant economic harm to the public.

FmHA believes it is essential that this assistance be made available as soon as possible before it is too late for the businesses to recover. The typical drought-impacted business in rural communities was, going in to the 1988 season, only beginning to recover from the serious agricultural and other physical and economic problems of the preceding decade. Forbearing creditors, aware that any business depends on its customers' economic health, can forbear just so long. Rural businesses and their creditors must plan for the immediate economic future. Without immediate implementation of programs of financial assistance, there is no reason to assume the creditors of rural businesses devastated by the blow to the agricultural and other rural business sectors will—or can—continue to forbear.

The Disaster Assistance Act of 1988, moreover, states "(1) the disasterous drought of 1988 is adversely affecting a large number of States, with serious economic consequences for family farmers; (2) the harm caused by the drought is not limited to farmers, but extends to each rural community whose economic viability is being devastated; (3) rural businesses and financial institutions are already experiencing the negative effects of decreased sales, and they anticipate severe problems over the next year, due to crop failures and the unavailability of credit * * *."

Likewise, the Joint Explanatory Statement of the Conference Committee in reporting HR–5015 (now Pub. L. 100–387) is emphatic in treating programs under the Act as emergency matters, and states "the conferees expect the Secretary of Agriculture to carry out the provisions of this bill in as efficient and straightforward manner as possible. Paperwork should be simplified and procedures to receive assistance should be expedited." The Department is now finalizing regulations streamlining the B&I program and this rule further eases requirements applicable to disaster assistance loan guarantees to be processed under the B&I program. The Secretary means to get this assistance in place now to minimize the human and financial tragedy that is the aftermath of the drought and other natural disasters of 1988.

The Department is well aware that an emergency exists because of the natural disasters of 1988. Rapid delivery of economic assistance is essential. A major study by the Chamber of Commerce of the United States in 1985 is helpful in assessing the impact of rural industrial jobs. That study dealt with job creation within a community and concluded that 100 new industrial jobs support 351 people and increase personal incomes by $1,030,000. An added 97 households depend on those 100 jobs, as do $600,000 in retail sales. Those sales would support one additional retailer and 68 retail jobs. Making credit available promptly for drought-impacted rural businesses and industries is, therefore, of importance.

Public comments will be accepted for 60 days and later revisions will be made to this interim rule if justified on the basis of comments received. This procedure will make assistance available now. The usual course of a proposed rule, comment period, comment analysis, and a final rule incorporating changes would inevitably mean a 60 to 90 day delay in getting assistance where it is most needed. Those seeking to comment and make suggestions for improvement should be advised that final action will occur as promptly as possible after the 60 day comment period.

Discussion of the Rule

FmHA is implementing section 331 of the Disaster Assistance Act of 1988 by adding an appendix for this new program at the end of its Business and Industry loan program. The loan guarantees authorized and implemented by this action will be called Drought and Disaster Guaranteed Loans. These loans will be available to generally the same type of entities as Business and Industry loans for generally the same type of loan purposes as Business and Industry loans, through generally the same type of lenders. The major differences between Drought and Disaster loans and Business and Industry loans are as follows:

(1) Drought and Disaster loans must assist in alleviating financial distress caused to rural business entities by drought, hail, excessive moisture, or related conditions in 1988 or assist such entities which refinance or restructure debt as the result of losses incurred because of such natural disasters.

(2) Drought and Disaster loans for refinancing may allow an existing lender to bring that part of its existing unguaranteed debt that has been adversely affected by a disaster under the new guarantee. In no case will the guarantee exceed 90 percent of loan principal.

(3) The maximum amount of Drought and Disaster loans to any one borrower is $500,000.

(4) The requirement for borrower's equity contribution to the business may be somewhat smaller for a Drought and

Disaster guaranteed loan than for a Business and Industry loan, although that equity must be positive and must be such that when considered with other credit factors, repayment of the loan and continued success of the business operation are reasonably assured.

(5) The guarantee on a Drought and Disaster loan will cover principal only and will not cover interest or protective advances.

Generally, except where the Disaster Assistance Act mandates otherwise, FmHA has sought to minimize differences between these loans and Business and Industry loans so that field staff, lenders, and others already familiar with B&I guaranteed loans will be able to handle these loans without any significant training or research. This will expedite the provision of needed assistance.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70; Pub. L. 100-387.

Subpart A—General

2. Section 1980.6(a) is amended by removing all second level paragraph designations and arranging the definitions in alphabetical order, by adding "or 1980-68" after "449-35," "or 1980-69" after "449-34", and "or 1980-70" after "449-36" wherever those form numbers appear, and by adding the following new definition after the paragraph that begins with the words "Contract of Guarantee," to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) • • •

Drought and Disaster Guaranteed loans. Guaranteed loans authorized by § 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See Subpart E of this part and its appendices, especially Appendix I, containing additional instructions for these loans.

• • • • • •

3. Section 1980.6(b) is amended by removing all second level paragraph designations and arranging the abbreviations in alphabetical order, and by adding after the paragraph that begins with the abbreviation, "B&I," the following new definition to read as follows:

§ 1980.6 Definitions and abbreviations.

• • • • • •

(b) • • •

D&D—Drought and Disaster guaranteed loans.

• • • • • •

§ 1980.20 [Amended]

4. Section 1980.20 is amended in the introductory text by adding at the beginning thereof the phrase "Except as regards D&D loans (see Subpart E of this part)," and by replacing the following word "The" with the word "the".

5. Section 1980.83(b) is amended by adding to the end of the list of forms the following to read as follows:

§ 1980.83 FmHA Forms.

• • • • • •

(b) • • •

FmHA Form No.	Title of form	Purpose and code [1]
•	•	•
1980-68	Lender's Agreement—Drought and Disaster Guaranteed Loans.	Used to establish contract between FmHA and lender on a D&D guaranteed loan. (2)
1980-69	Loan Note Guarantee—Drought and Disaster Guaranteed Loans.	Used to express terms of the guarantee of a D&D guaranteed loan. (1)
1980-70	Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan.	Used to express terms of the guarantee and the nature and limits of contractual arrangements when a holder buys a guaranteed loan. (1)

[1] Code: (1) FmHA use only, (2) FmHA and lender use, (3) Lender use only.

Subpart E—Business and Industrial Loan Program

6. Section 1980.401 is amended by redesignating paragraphs (c) and (d) as (d) and (e) and by adding a new paragraph (c) to read as follows:

§ 1980.401 Introduction.

• • • • • •

(c) This subpart and its appendices (especially Appendix I) also contain instructions for Drought and Disaster (D&D) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387). These loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

• • • • • •

7. Section 1980.402 is amended by adding the following new definition after the paragraph beginning with the words "Development cost."

§ 1980.402 Definitions.

Drought and Disaster guaranteed loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100-387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

• • • • • •

§ 1980.495 [Amended]

8. The introductory text of § 1980.495 is amended by adding the phrase "B&I and D&D" between the words "processing" and "loan."

9. Section 1980.495 is amended by adding a new paragraph (i) to read as follows:

§ 1980.495 FmHA forms and guides.

• • • • • •

(i) "Instructions for Loan Guarantees for Drought and Disaster Relief" and Forms FmHA 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," and 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," are referred to as "Appendix I."

10. Appendix C is amended by adding a new paragraph (14) to read as follows:

Appendix C—Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities

• • • • • •

(14) Alcohol Fuel Production Facilities are eligible for assistance under the Drought and Disaster (D&D) Guaranteed Loan program described in this subpart, and especially in Appendix I. Any such loan must meet the requirements for D&D loans.

11. Appendix I of Subpart E of Part 1980 is added to read as follows:

Appendix I—Instructions for Loan Guarantees for Drought and Disaster Relief

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 ("Disaster Assistance for Rural Business Enterprises") of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof, and appear in the **Federal Register** following the body of this appendix as Exhibits A, B, and C in the following order:

(1) Form FmHA 1980-68, "Lender's Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA 449-35, "Lender's Agreement."

(2) Form FmHA 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA 449-34, "Loan Note Guarantee."

(3) Form FmHA 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," will be used instead of Form FmHA 449-36, "Assignment Guarantee Agreement."

B. *Loan purpose.* Except for §§ 1980.411(a)(12), 1980.412, and section C., below, loan procees may be used for purposes described in §1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in § 1980.411(a)(12), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion.

C. *Ineligible loan purposes.* See § 1980.412. In addition to those ineligible loan purposes listed in § 1980.412, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in § 1980.413, FmHA will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed $500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by FmHA on or before September 30, 1991.

E. *Borrower equity requirements.* See § 1980.441. In lieu of the borrower equity requirements in § 1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of § 1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See § 1980.451. All requirements of § 1980.451 remain in effect. But, in addition to the information required as part of a preapplication under § 1980.451(f), and unless previously submitted, as a part of an application under § 1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See § 1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA 1980-69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See § 1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or "insured" loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with "insured" or direct loans do not apply to D&D loans. All D&D loans are FmHA guaranteed loans. FmHA has no authority to make D&D loans directly to borrowers.

Exhibit A to Appendix I—Lender's Agreement; Drought and Disaster Guaranteed Loans (Interest not Guaranteed)[1]

Form FmHA 1980-68 (11-88)

FmHA Loan Ident. No. _____

(Lender) of

has made a loan(s) to

(Borrower)

in the principal amount of $ _____ as evidenced by _____ note(s) (include Bond as appropriate) described as follows:

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee)" (Form FmHA 1980-69) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a

[1] Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, DC 20503.

percentage of any loss on the loan not to exceed ———% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement. The maximum loss guaranteed is governed by 7 CFR Part 1980 Subpart E Appendix I and the Loan Note Guarantee (Drought and Disaster Guaranteed Loans)

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed ——— percent of the principal (Maximum $———).

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement Drought and Disaster Guaranteed Loan (Assignment Guarantee Agreement) attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 1980-70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) therunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 1980-69, "Loan Note Guarantee—Drought and Disaster Guaranteed Loan" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 1980-69, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees—Drought and Disaster Guaranteed Loan to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—Drought and Disaster Guaranteed Loan which will be cancelled by FmHA.

3. *Participations.* a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its portfolio or retain a minimum of 5 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan to the extent of the portion of loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence. It is the Lender's responsibility to maximize the collection of interest due on the loan. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase from the Holder(s) by FmHA if such interest can be collected. If FmHA has repurchased, FmHA is equally so entitled.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $——— without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

———

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default. A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's, Lender's, and the Holders(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA. The lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal, due (no capitalized interest).

The Holder will also inform FmHA of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase by FmHA from the Holder(s) if such interest is or can be collected. If FmHA has purchased, FmHA is equally entitled.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due to the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender

under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation:* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

F. *Maximum amount of interest loss payment.* Interest is not covered by the guarantee.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances will not be covered by the guarantee.

XIII. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery. After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases. Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guarantee portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery).

XVI. Other Requirements. This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII. Execution of Agreements. If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices. All notices and actions will be initiated through FmHA for—————

(State) with mailing address at the date of this instrument ————————

Dated this ——— day of ———, 19—.

Lender:

By ————————

Title ————————

United States of America
Farmers Home Administration

By ————————

Title ————————

Attest: ——— (SEAL)

Exhibit B to Appendix I—Loan Note Guarantee; Drought and Disaster Guaranteed Loans (Interest not Guaranteed)

Form FmHA 1980–69 (11–88)

Borrower ————————
Lender ————————
Lender's Address————————
State ————————
County ————————
Date of Note ————————
FmHA Loan Identification Number————
Lender's IRS ID Tax Number ————
Principal Amount of Loan $ ————

The guaranteed portion of the loan is $——— which is ——— (——— %) percent of loan principal. The principal amount of loan is evidenced by ——— note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note ——— in the face amount of $ ——— and is number ——— of ———.

Lender's Identifying Number ————
Face Amount ————————
Percent of Total Face Amount ————
Amount Guaranteed ————————

Maximum Loss Guaranteed Governed by 7 CFR Part 1980, Subpart E, Appendix I

Total $ ——— 100% $ ———

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Disaster Assistance Act (P.L. 100–387, 7 USC) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including principal indebtedness as evidenced by said note(s) or by assumption agreement(s), or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) (Maximum $). No capitalized interest is guaranteed.

Definition of Holder. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 1980–70, "Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans," is used.

Definition of Lender. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 CFR Part 1980. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. Loan Servicing. Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed

portion of the loan, FmHA would not be required to make.

5. Payments. Lender will receive all payments of principal, or interest, on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances. Protective advances made by Lender will not be guaranteed.

7. Repurchase by Lender. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal due (no capitalized interest).

The Holder will also inform FmHA of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due to the point of repurchase by the Lender or purchase by FmHA from the Holder(s) if such interest is or can be collected. If FmHA has purchased, FmHA is equally entitled.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment of FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.* Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed by any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.* If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans.

a. The lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion.* The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates.* This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. *Settlement.* The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. *Notices.* All notices and actions will be initiated through the FmHA ——— for ——— (State) with mailing address at the date of this instrument:

_____

United States of America
Farmers Home Administration
By: _____
Title: _____
(Date) _____
Assumption Agreement by _____
dated ———, 19—
Assumption Agreement by _____
dated ———, 19—

Exhibit C to Appendix I—Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans (Interest Not Guaranteed) [1]

FmHA Loan Ident. No. _____

Form FmHA 1980–70 (11–88)

_____

of _____
(Lender) has made a loan to _____
in the principal amount of $ _____
as evidenced by a note(s) dated _____
The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee) (Form FmHA 1980–69) with the Lender applicable to such loan to guarantee the loan not to exceed ——— % of the amount of the principal advanced.

_____

of _____

(Holder) desires to purchase from Lender ——— % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof. _____

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is $ ———. Lender hereby assigns to Holder ——— % of the guaranteed portion of the loan representing $ ——— of such loan now outstainding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing.* The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee.* Holder agrees that Lender will retain a servicing fee of ——— percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder.* The guaranteed protion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 CFR Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is inconstestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan attached to or relating to a note which provides for payment of interest on interest is void.

6. *Rights and Liabilities.* The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 1980–70 to effectuate the transfer.

Lender:
Address:
By _____
Title _____
Attest: _____
(SEAL)
Holder:
Address:
By _____
Title _____
Attest: _____
(SEAL)
United States of America
Farmers Home Administration
Address: _____
By _____
Title _____
Dated: October 21, 1988.

Roland R. Vautour,

Under Secretary, Small Community and Rural Development.

[FR Doc. 88-30178 Filed 12-30-88; 8:45 am]

BILLING CODE 3410-07-M

[1] Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

7 CFR Part 2003

Authority to Administer Drought and Disaster Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to designate the Assistant Administrator—Community and Business Programs as the official within the organization of Farmers Home Administration responsible for administration of Drought and Disaster (D&D) Guaranteed Loans made available in section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) and to further designate the Business and Industry Division as the division responsible for overseeing the making and servicing of D&D guaranteed loans. Authority to administer these loan guarantees has been delegated by the Secretary of Agriculture to the Under Secretary for Small Community and Rural Development and redelegated to the Administrator of Farmers Home Administration. FmHA also corrects an error in the description of the functions of the Community Facilities Division.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Farmers Home Administration, USDA, Room 6337–S, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION: Farmers Home Administration responsibility for administration of guarantees of loans to rural business entities to further rural development and to save and create jobs in rural areas has been located in the Assistant Administrator—Community and Business Programs. The Administrator, FmHA, having been delegated responsibility for the guarantee of loans to rural business entities for disaster relief (Drought and Disaster Guaranteed Loans), locates that authority in the Assistant Administrator—Community and Business Programs—and, within his functional area, in the Business and Industry Division. FmHA also corrects an error in the description of functions of the Community Facilities Division, deleting an inference that that division has responsibility for water-related facilities.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments is not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

The Business and Industry program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and the Community Facilities program/activity is listed therein under number 10.423. They are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

List of Subjects in 7 CFR Part 2003

Organization and functions (government agencies).

Accordingly, Part 2003, Title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for Part 2003 is amended to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Exhibit A to Subpart A of Part 2003 is amended by revising paragraph 2 under item "07 02 03 Assistant Administrator—Community and Business Programs" to read as follows:

Exhibit A—U.S. Department of Agriculture, Farmers Home Administration

* * * * *

07 02 03 Assistant Administrator—Community and Business Programs

* * * * *

2. Oversees administration and management of a broad and complex range of Community and Business and Industry type programs, including water and waste disposal loans and grants, technical assistance and training grants, community facility loans, industrial development grants, watershed and flood prevention loans, resource conservation and development loans, recreation loan servicing, energy impact assistance grants, nonprofit National Corporation loans and grants, irrigation and drainage loans, Grazing Association loans, Indian tribal acquisition loans, unincorporated EO cooperative loans, shift in land use loans, Timber Development Organization loans, area development assistance planning grants, rural development loan funds, incorporated EO cooperative loans, drought and disaster guaranteed loans, and business and industrial loans.

* * * * *

3. Exhibit A to Subpart A of Part 2003 is amended by revising paragraph 6 under item "07 02 03 0002 Community Facilities Division" to read as follows:

Exhibit A—Department of Agriculture, Farmers Home Administration

* * * * *

07 02 03 0002 Community Facilities Division

* * * * *

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss community facilities requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes, and to assist with development of interagency agreements.

* * * * *

4. Exhibit A to Subpart A of Part 2003 is amended by revising paragraph 1 under item "07 02 03 0003 Business and Industry Division" to read as follows:

Exhibit A—Department of Agriculture, Farmers Home Administration

* * * * *

07 02 03 0003 Business and Industry Division

* * * * *

1. Implements current and long range plans, policies and procedures necessary for the efficient and orderly management of a nationwide program of business and industry loans and grants, including a program of guaranteed loans to assist rural business entities adversely impacted by certain natural disasters occurring in 1988.

* * * * *

Dated: November 28, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-30179 Filed 12-30-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 214, and 274a

[INS No. 1138-88]

Nonimmigrant Classes Pursuant to United States-Canada Free-Trade Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements provisions of the United States-Canada Free-Trade Agreement (FTA) by establishing procedures for temporary entry of Canadian citizen business persons into the United States. This rule will facilitate temporary entry on a reciprocal basis between the United States and Canada, while recognizing the continued need to ensure border security, and to protect indigenous labor and permanent employment in both countries.

DATES: Effective on the date the United States-Canada Free-Trade Agreement enters into force. The Immigration and Naturalization Service will publish a document in the **Federal Register** announcing the effective date. Written comments must be received on or before February 2, 1989.

ADDRESS: Please submit written comments, in triplicate, to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, U.S. Immigration and Naturalization Service, 425 I Street, NW., Room 7122, Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: On January 2, 1988, the President of the United States and the Prime Minister of Canada entered into the FTA. Implementation of this agreement has been provided for by the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (FTA Implementation Act). The FTA was passed by the United States House of Representatives on August 9, 1988, and by the United States Senate on September 19, 1988. It was signed by the President on September 28, 1988. It is anticipated that the FTA will enter into force on January 1, 1989.

This rule pertains to Canadian citizen temporary visitors for business seeking classification under section 101(a)(15)(B) of the Immigration and Nationality Act (Act), to Canadian citizen treaty traders and investors seeking classification under section 101(a)(15)(E) of the Act, to Canadian citizen temporary workers seeking classification under section 101(a)(15)(L) of the Act, and to Canadian citizens seeking classification for engagement in activities at a professional level under section 214(e) of the Act, as added by section 307 of the FTA Implementation Act.

This rule establishes procedures for the temporary entry of Canadian citizen business persons as provided in Chapter Fifteen of the FTA and section 307 of the FTA Implementation Act. Chapter Fifteen, section 307, and this rule reflect the special trading relationship between the United States and Canada, the desirability of facilitating temporary entry on a reciprocal basis, and the desirability of establishing transparent criteria and procedures for temporary entry, while recognizing the continued need to ensure border security and protect indigenous labor and permanent employment in both countries.

Section 103.7(b) is amended to add a fee for classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act, as added by section 307 of the FTA Implementation Act. Form I-94 (Arrival/Departure Record) and a receipt (Form G-211, Form G-711, or Form I-797) will be given to each citizen of Canada classified under section 214(e) of the Act. Although a petition is not required for this classification, the level of documentation presented to the immigration officer will be on a par with that required for nonimmigrant classifications for which petitions are required. This factor coupled with the reciprocal aspects of the FTA require that a fee be charged. The government of Canada intends to charge an employment authorization fee for citizens of the United States entering Canada under the FTA to engage in business activities at professional level.

Section 212.1(1) sets forth the requirement that a Canadian citizen seeking admission as a treaty trader or investor under the provisions of Chapter 15 of the FTA and pursuant to section 101(a)(15)(E) of the Act shall be in possession of a nonimmigrant visa. Regulations pertaining to the issuance of such visas will be provided by the United States Department of State.

Section 214.2(b)(4) states that various types of Canadian citizen business personnel would be classifiable as visitors for business under section 101(a)(15)(B) of the Act, provided that they are to receive no salary or other remuneration from a United States source other than incidental expenses. This listing has been compiled from the Immigration and Naturalization Service's Operations Instructions, the Department of State's Foreign Affairs Manual, and various policy statements which have been issued by the Service over the years and which pertain specifically to Canadian citizens. This is not an exhaustive list and does not preclude the admission under section 101(a)(15)(B) of the Act of a Canadian citizen business person engaged in an occupation or profession not on the list.

Of special significance is § 214.2(b)(4)(i)(F), pertaining to after-sales service. This paragraph extends the performance of after-sales service and training to the life of the warranty or service agreement and adds computer software to commercial or industrial equipment or machinery. This provision of the FTA and this regulation are not in conflict with the reasoning of *Bricklayers and Allied Craftsmen* v. *Meese*, 616 F. Supp. 1387 (N.D. Cal. 1985).

Section 214.2(l)(17) provides for the adjudication of individual petitions for classification of Canadian citizens under section 101(a)(15)(L) of the Act at certain United States ports of entry and pre-flight inspection stations. This paragraph also provides for determination of eligibility of Canadian citizens seeking L classification under pre-approved blanket petitions at these same locations. Blanket petitions must still be filed in advance at the appropriate Regional Service Centers.

A spouse or minor child holding Canadian citizenship or of a common nationality with Canadians will not be required to obtain a nonimmigrant visa to accompany or follow to join a Canadian citizen principal who is classified as an L-1; however, a non-Canadian citizen spouse or minor child will be required to obtain a nonimmigrant visa and, therefore, will only be able to follow to join.

Section 214.6 sets forth procedures relating to Canadian citizens coming to the United States to engage in activities at a professional level. Admission under this provision of the FTA does not imply that the Canadian citizen would otherwise qualify as a professional under sections 101(a)(15)(H)(i) or 203(a)(3) of the Act.

No prior petition, labor certification, or prior approval shall be required; however, Canadian citizens seeking classification under this provision must pesent documentation sufficient to satisfy the inspecting officer that they are seeking entry to engage in activities at a professional level and that they are so qualified.

This paragraph sets in regulation Schedule 2 to Annex 1502.1 of the FTA which is a listing of occupations agreed upon by both countries. A baccalaureate is the minimum requirement for these professions, unless otherwise specified. In the case of a Canadian citizen whose occupation does not appear on the list or who does not meet the transparent criteria, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

As with the spouse and minor child of L-1 Canadian citizens, a nonimmigrant visa shall not be required of a spouse or minor child who possesses Canadian citizenship or is of a common nationality with Canadians. Visas will be required of all others.

Section 274a.12(b)(16) adds Canadian citizens engaged in business activities at a professional level pursuant to Chapter Fifteen of the FTA to the classes of aliens authorized employment with a specific employer(s) incident to status.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act and are cited under 8 CFR 299.5.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Fees, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedures, Aliens.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedures, Aliens.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

2. Section 103.7(b)(1) is amended by adding a request paragraph as the last entry of this section, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Request. For classification of a citizen of Canada to be engaged in business activities at professional level pursuant to section 214(e) of the Act (Chapter 15 of the United States-Canada Free-Trade Agreement)—$50.00.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for Part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252, 8 CFR Part 2.

(4) In § 212.1, a new paragraph (l) is added to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(l) *Treaty traders and investors.* Notwithstanding any of the provisions of this part, an alien seeking admission as a treaty trader or investor under the provisions of Chapter 15 of the United States-Canada Free-Trade Agreement (FTA) pursuant to section 101(a)(15)(E) of the Act, shall be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under that section.

PART 214—NONIMMIGRANT CLASSES

5. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

BEST COPY AVAILABLE

6. In § 214.2, paragraph (b)(1) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) *Visitors*—(1) *General.* Any B–1 visitor for business or B–2 visitor for pleasure may be admitted for not more than one year and may be granted an extension of a temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of that demonination may be granted an extension of not more than one each year, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations. The B–2 spouse or child of a Canadian citizen admitted under section 214(e) of the Act in accordance with the United States-Canada Free-Trade Agreement may be admitted for a period not to exceed one year and may be granted an extension of temporary stay in increments of not more than one year, providing the principal alien is maintaining status. Those B–1 and B–2 visitors admitted pursuant to the waiver provided at § 212.1(e) of this chapter may be admitted to and stay on Guam for a period not to exceed fifteen days and are not eligible for extension of stay.

* * * * *

7. In § 214.2, paragraph (b)(4) is redesignated as paragraph (b)(5) and a new paragraph (b)(4) is added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(b) * * *

(4) *Admission of aliens pursuant to the United States-Canada Free-Trade Agreement (FTA).* A citizen of Canada seeking temporary entry for purposes set forth in paragraph (b)(4)(i) of this section, who otherwise meets existing requirements under section 101(a)(15)(B) of the Act, including but not limited to requirements regarding the source of remuneration, shall be admitted upon presentation of proof of Canadian citizenship, a description of the purpose of entry, and evidence demonstrating that he or she is engaged in one of the occupations or professions set forth in paragraph (b)(4)(i) of this section, or meets the requirements of paragraph (b)(4)(ii) of this section.

(i) *Occupations and professions set forth in Schedule 1 to Annex 1502.1 of the FTA.*

(A) *Research and design.* Technical, scientific, and statistical researchers conducting independent research for an enterprise located in Canada.

(B) *Growth, manufacture and production.* (*1*) Harvester owner supervising a harvesting crew admitted under applicable law.

(*2*) Purchasing and production management personnel conducting commercial transactions for an enterprise located in Canada.

(C) *Marketing.* (*1*) Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in Canada.

(*2*) Trade fair and promotional personnel attending a trade convention.

(D) *Sales.* (*1*) Sales representatives and agents taking orders or negotiating contracts for goods or services but not delivering goods or providing services.

(*2*) Buyers purchasing for an enterprise located in Canada.

(E) *Distribution.* (*1*) Transportation operators delivering to the United States or loading and transporting back to Canada, with no intermediate loading or delivery within the United States. (This restriction applies only to merchandise or passengers loaded in the United States and delivered in the United States.)

(*2*) Customs brokers performing brokerage duties associated with the export of goods from the United States to or through Canada.

(F) *After-sales service.* Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to the seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the United States, during the life of the warranty or service agreement.

(G) *General service.* (*1*) Professionals who are otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, but receiving no salary or other remuneration from a United States source.

(*2*) Management and supervisory personnel engaging in commercial transactions for an enterprise located in Canada.

(*3*) Computer specialists who are otherwise classifiable under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, but receiving no salary or remuneration from a United States source.

(*4*) Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in Canada.

(*5*) Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

(*6*) Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in Canada. (In certain circumstances the tour may begin in the United States.)

(*7*) Translators or interpreters performing services as employees of an enterprise located in Canada.

(ii) *Occupations and professions not listed in Schedule 1 to Annex 1502.1 of the FTA.* Nothing in this paragraph shall preclude a business person engaged in an occupation or profession other than those listed in Schedule 1 to Annex 1502.1 of the FTA from temporary entry under section 101(a)(15)(B) of the Act, if such person otherwise meets the existing requirements for admission as prescribed by the Attorney General.

* * * * *

8. In § 214.2, a new paragraph (l)(17) is added to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(l) * * *

(17) *Filing of individual petitions and certifications under blanket petitions far citizens of Canada under the United States-Canada Free-Trade Agreement (FTA)*—(i) *Individual Petitions.* Except as provided in paragraph (l)(2)(ii) of this section (filing of blanket petitions), a United States or foreign employer seeking to classify a citizen of Canada as an intracompany transferee may file an individual petition in duplicate on Form I–129L in conjunction with the application for admission of the citizen of Canada. Such filing must be made with an immigration officer at a Class A port of entry, a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. The petitioning employer need not appear, but Form I–129L must bear the authorized signature of the petitioner.

(ii) *Certification of eligibility for intracompany transferee under the blanket petition.* An immigration officer at a location identified in paragraph (l)(17)(i) of this section may determine eligibility of individual citizens of Canada seeking L classification under approved blanket petitions. At these locations, such citizens of Canada shall present the original and two copies of Form I–129S, Intracompany Transferee Certificate of Eligibility, prepared by the approved organization, as well as three copies of Form I–171C, Notice of Approval of Nonimmigrant Visa Petition.

(iii) Nothing in this section shall preclude the advance filing of petitions and certificates in accordance with paragraph (l)(2) of this section.

(iv) *Spouse and dependent minor children accompanying or following to join.* (A) The Canadian citizen spouse and unmarried minor children of a Canadian citizen admitted under this paragraph shall be entitled to the same nonimmigrant classification and same length of stay as the principal alien. The Canadian citizen spouse and children shall be admitted without the requirement of a visa and shall be admitted under the classification symbol L–2.

(B) A non-Canadian citizen spouse or unmarried minor child shall be entitled to the same nonimmigrant classification and the same length of stay as the principal, but shall be required a visa upon application for admission as L–2 unless otherwise exempt under § 212.1 of this chapter.

(C) The Canadian citizen/non-Canadian citizen spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

* * * * *

9. Section 214.6 is added to read as follows:

§ 214.6 Canadian citizen seeking temporary entry to engage in activities at a professional level.

(a) *General.* Under section 214(e) of the Act, a citizen of Canada who seeks temporary entry as a business person to engage in activities at a professional level may be admitted to the United States in accordance with the provisions set forth in paragraphs (c) and (e) of this section, and in the United States-Canada Free-Trade Agreement (FTA).

(b) *Definitions.* (1) The term "Business person" as defined in the FTA, means a citizen of Canada who is engaged in the trade of goods or services or in investment activities.

(2) The term "Activities at a professional level" means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

(3) The term "Temporary entry" as used in the FTA, means entry without the intent to establish permanent residence.

(c) *Application for admission.* A citizen of Canada seeking admission under this section shall make application for admission with an immigration officer at a United States Class A port of entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station. No prior petition, labor certification, or prior approval shall be required.

(d) *Evidence.* A visa shall not be required of a Canadian citizen seeking admission as a nonimmigrant under section 214(e) of the Act. Upon application for admission at a United States port of entry, an applicant under this section shall present the following:

(1) *Proof of Canadian citizenship.* Unless traveling from outside the Western Hemisphere, no passport shall be required; however, an applicant for admission must establish Canadian citizenship.

(2) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualities*—(i) *General.* The applicant must present documentation sufficient to satisfy the immigration officer at the time of application for admission, that the applicant is seeking entry to the United States to engage in a profession or an occupation at a professional level, and that the applicant meets the criteria to perform at such professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the Canadian employer and may be required to be supported by licenses, diplomas, degrees, certificates, or membership in professional organizations. The documentation shall fully affirm:

(A) The professional activity to be engaged in;

(B) The purpose of entry;

(C) The anticipated length of stay;

(D) The educational qualifications or appropriate credentials which demonstrate that the Canadian citizen has professional level status;

(E) That the Canadian citizen complies with all applicable state laws and/or licensing requirements for the occupation to be engaged in; and

(F) The arrangements for remuneration for services to be rendered.

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in Schedule 2 to Annex 1502. Unless otherwise specified below, a baccalaureate degree is the minimum requirement for the following professions as listed in Schedule 2:

Schedule 2 (Annotated)

—Accountant
—Engineer
—Scientist
- Biologist
- Biochemist
- Physicist
- Geneticist
- Zoologist
- Entomologist
- Geophysicist
- Epidemiologist
- Pharmacologist
- Animal scientist
- Agriculturist (agronomist)
- Dairy scientist
- Poultry scientist
- Soil scientist

—Research assistant (working in a post-secondary educational institution)
—Medical/allied professional
- Physician (teaching and/or research only)—M.D., provincial license, or state license
- Dentist—D.D.S., provincial license, or state license
- Registered nurse—provincial license or state license
- Veterinarian—D.V.M., provincial license, or state license
- Medical technologist
- Clinical lab technologist

—Architect
—Lawyer—member of bar in province or state, L.L.B., or J.D.
—Teacher
- College
- University
- Seminary

—Economist
—Social worker
—Vocational counselor
—Mathematician
—Hotel manager—baccalaureate degree and three years experience in hotel management
—Librarian—Master's degree in Library Science
—Animal breeder
—Plant breeder
—Horticulturist
—Sylviculturist (forestry specialist)
—Range manager (range conservationist)
—Forester
—Journalist—baccalaureate degree and three years' experience in journalism
—Nutritionist
—Dietician
—Technical publications writer
—Computer systems analyst
—Psychologist
—Scientific technician/technologist
- Must work in direct support of professionals in the following disciplines: chemistry, geology, geophysics, meteorology, physics, astronomy, agricultural sciences, biology, or forestry
- Must possess theoretical knowledge of the discipline
- Must solve practical problems in the discipline

• Must apply principles of the discipline to basic or applied research
—Disaster relief insurance claims adjuster—baccalaureate degree or three years experience in the field of claims adjustment.
—Management consultant—baccalaureate degree or five years' experience in consulting or related field.

(e) *Procedures for admission.* A Canadian citizen who qualifies for admission under this section shall be provided confirming documentation (Service Form I–94), and shall be admitted under the classification symbol TC for a period not to exceed one year. Form I–94 shall bear the legend "multiple entry." The fee prescribed under § 103.7 of this chapter shall be remitted upon admission to the United States pursuant to the terms and conditions of the FTA. Upon remittance of the prescribed fee, the Canadian citizen applicant shall be provided a Service receipt (Form G–211, Form G–711, or form I–797).

(f) *Readmission.* A Canadian citizen in this classification may be readmitted to the United States for the remainder of the period authorized on Form I–94, without presentation of the letter or supporting documentation described in paragraph (d)(2) of this section, and without remittance of the prescribed fee, providing the original intended business activities and employer(s) have not changed. An alien who seeks readmission to the United States under this section to continue in business activities at a professional level who is no longer in possession of a valid, unexpired Form I–94 and whose period of initial admission has not lapsed, shall present alternate evidence entitling the alien to readmission as TC. This alternate evidence may be in the form of a Service fee receipt for admission as TC or a previously issued admission stamp as TC in a passport, and a confirming letter from the United States employer(s).

(g) *Extension of stay.* A Canadian citizen admitted under this section may apply for an extension of stay, as provided in § 214.1(c) of this chapter. Extensions of stay may be granted in increments of one year. The application shall be accompanied by a letter(s) from the United States employer(s) confirming the continued need for the Canadian citizen's services and stating the length of additional time needed.

(h) *A request for change or addition of United States employer(s).* A Canadian citizen admitted under this paragraph who seeks to change or add a United States employer during the period of admission shall file an application for an extension of stay. The application shall be accompanied by a letter from the new employer describing the services to be performed, the time needed to render such services, and the remuneration for services. Employment with a different or with an additional employer is not authorized prior to Service approval of the request for extension of stay.

(i) *Spouse and unmarried minor children accompanying or following to join.* (1) The terms and conditions set forth under § 214.2(b)(1) of this chapter shall apply to the admission and the extension of temporary stay of the spouse or unmarried minor child of a Canadian citizen admitted under this section.

(2) The spouse or unmarried minor child shall be required to present a valid, unexpired nonimmigrant visa or a valid, unexpired Canadian border crossing identification card unless otherwise exempt under § 212.1 of this chapter.

(3) The spouse and dependent minor children shall be issued confirming documentation (Form I–94). Form I–94 shall bear the legend "multiple entry." There shall be no fee required for admission of the spouse and dependent minor children.

(4) The Canadian citizen/non-Canadian citizen spouse and dependent minor children shall not accept employment in the United States unless otherwise authorized under the Act.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

10. The authority citation for Part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324; 8 CFR Part 2.

11. In § 274a.12, a new paragraph (b)(16) is added to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(16) A nonimmigrant pursuant to section 214(e) of the Act. An alien in this status must be engaged in business activities at a professional level in accordance with the provisions of Chapter 15 of the United States-Canada Free-Trade Agreement (FTA).

* * * * *

Date: December 20, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 88–30255 Filed 12–30–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8236]

Allocation and Apportionment of Deduction for State Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to the **Federal Register** publication on Monday, December 12, 1988, beginning at 53 FR 49873 of the temporary regulations (T.D. 8236). The temporary regulations relate to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of Associate Chief Counsel (International), (202) 634–5404 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1988, temporary regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States were published in the **Federal Register** (53 FR 49873). The text of the temporary regulations served as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of the same issue of the **Federal Register**.

Need for Correction

As published, the temporary rules contain typographical errors and omissions which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the temporary rules (T.D. 8236), which was the subject of FR Doc. 88–28460 (53 FR 49873), is corrected as follows:

1. In the preamble, under the heading "DISCUSSION", in subheading "Section 1.861–8", on page 49873, column 2, line 2, the language "reserving paragraph (e)(b) of § 1.861–8," should read "reserving paragraph (e) of § 1.861–8,".

2. In the preamble, under the subheading "Section 1.861–8T(e)(8)", on page 49873, column 2, line 9, the language "imposed. Paragraph (e)(8)(ii) clarifies" should read "imposed. Paragraph (e)(6)(i) also clarifies".

3. In the preamble, under the same subheading, page and column, line 13, the language "an income tax. This paragraph also cites" should read "an income tax. Paragraph (e)(6)(ii) also cites".

4. In the preamble, under the same subheading and page, column 3, line 9, the language "taxable years, and that the regulations" should read "taxable years beginning after December 31, 1976, and that the regulations".

5. In the preamble, under the subheading "Section 1.861–8T(g)", on page 49873, column 3, second paragraph under that subheading, line 1, the language "Paragraph (g) § 1.861–8T(g) then" should read "Paragraph (g) § 1.861–8T then".

§ 1.861–8T [Corrected]

6. On page 49875, column 1, in § 1.861–8T(e)(6)(iii), lines 2 and 3, which read "§ 1.861(e)(6)(i) are effective for all taxable years. The rules of § 1.861–" should read "§ 1.861–8T(e)(6)(i) are effective for taxable years beginning after December 31, 1976. The rules of § 1.861–".

7. On page 49875, column 1, the next printed line immediately following the conclusion of § 1.861–8T(e)(6)(iii) should read "• • • •".

8. On page 49876, column 2, in § 1.861–8T(g), Example (28)(i)(B), line 4, which reads "X having a total of $1,000,000 of" should read "X having a total of $1,100,000 of".

9. On page 49877, column 1, in § 1.861–8T(g), Example (28)(iii), last line in the table, which reads "tas deduction . . . 64,000" should read "tax deduction . . . . 64,000".

10. On page 49877, column 2, in § 1.861–8T(g), Example (29)(i) line 5, which reads "H. P also has a branch on country Y which" should read "H. P also has a branch in country Y which" and, line 10, which reads "corporation ("CFC") ad defined in section 957" should read "corporation ("CFC") as defined in section 957".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88–30212 Filed 12–30–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation and approval of certain products manufactured for use in underground mines. These fees are based on Fiscal Year 1988 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1989 through December 31, 1989. Approval applications postmarked before January 1, 1989 will be chargeable under the fee schedules as published on May 8, 1987.

FOR FURTHER INFORMATION CONTACT: Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Industrial Park Road; Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

The fee schedules include updated fees resulting from the publication of two final rules: Part 7—Product Testing by Applicant or Third Party (53 FR 23486), and Part 15—Approval of Explosives and Sheathed Explosive Units (53 FR 46748). Under the provisions of Part 5, four approval areas have been converted from hourly rates to flat rates: Field Approval, Mine-Wide Monitoring System (MWMS) Evaluation, MWMS Barrier Classification, and MWMS Sensor Classification. All flat rate approvals require payment at the time of application submittal.

Date: December 27, 1988.

Roy L. Bernard,

Acting Deputy Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1989

30 CFR part and agency tracking code	Hourly rate	Flat rate	Application fee
Part 7—Product Testing by Third Party			
12 Approval evaluation—Battery assemblies	$29		$100
12 Approval evaluation—Brattice and ventilation tubing	33		100
14 Approval extension—Battery assemblies	29		100
14 Approval extension—Brattice and ventilation tubing	32		100
40 Stamped Notification Acceptance Program (SNAP)		$134	
Part 15—Explosives			
The following Part 15 fee charges are applicable to applications postmarked on or after January 17, 1989 (the effective date of revised Part 15):			
12 Approval evaluation: *	33		100
Permissibility tests for explosives:			
Weigh-in		420	
Physical exam: First size		295	
Chemical analysis		1,797	
Air gap—Minimum product firing temperature		418	
Air gap—Room temperature		320	
Pendulum friction test		148	
Detonation rate		320	
Gallery test 7		4,917	
Gallery test 8		3,537	
Toxic gases (large chamber)		732	
Permissibility tests for sheathed explosives:			
Physical examination		128	

FEE SCHEDULE EFFECTIVE JANUARY 1, 1989—Continued

30 CFR part and agency tracking code	Hourly rate	Flat rate	Application fee
Chemical analysis		1,044	
Gallery test 9		1,944	
Gallery test 10		1,944	
Gallery test 11		1,944	
Gallery test 12		1,944	
Drop test		648	
Temperature effects detonation		672	
Toxic gases		580	
14 Approval extension	33		100
The following fee charges are applicable to those applications postmarked prior to November 20, 1989 (one year after the published date of the revised Part 15).			
On or after November 20, 1989, all requests for approval or extension of approval of explosives or sheathed explosive units must be submitted in accordance with Subpart A and applicable subpart of 30 CFR Part 15:			
12 Approval evaluation: *	33		100
Permissibility tests:			
Physical exam:			
First size		92	
Each additional size		41	
Six sizes/complete		295	
Chemical analysis		1,797	
Pendulum friction test		148	
Air gap		320	
Ballistic mortar test		246	
Detonation rate: Each size		160	
Gallery Test 4:			
First shot		299	
Each additional shot		244	
Ten-shot test		2,497	
Gallery test 7		4,917	
Bichel gage: Each shot		231	
Crawshaw-Jones test: Each shot		399	
Toxic fumes analysis		1,141	
Weigh-in and handling:			
First size		92	
Each additional size		41	
14 Approval extension	33		100
43 Fume analysis evaluation: *	33		100
Tests related to permissibility:			
Impact test		136	
Electrostatic spark test		108	
Thermal sensitivity test		130	
Suspension test:			
Gas only; per shot		86	
Gas and dust; per shot		117	
Gaseous products—Oxides of nitrogen analysis		678	
Gaseous products—Complete analysis		1,141	
Weigh-in and handling:			
First size		92	
Each additional size		41	
Part 18—Electric Motor Driven Equipment and Accessories			
12 Approval—Machine evaluation *	35		100
Approval—Machine testing:			
Explosion test		27	
Surface/temperature test		28	
Impact test		26	
Thermal shock test		27	
Product flame test		34	
12 Approval—Instruments (testing included)		31	100
14 Approval extension—Machine evaluation *		31	100
Approval extension—Machine testing:			
Explosion test		27	
Surface/temperature test		28	
Impact test		26	
Thermal shock test		27	
Product flame test		34	
14 Approval extension—Instruments (testing included)		30	100
15 Acceptance evaluation *		31	100
Acceptance testing:			
Explosion test		27	
Surface/temperature test		28	
Impact test		26	
Thermal shock test		27	
Product flame test		34	
Cable/splice test		34	
Cable flame test		33	
Compressibility test (asbestos substitutes)		35	
18 Certification evaluation * [4]		28	100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1989—Continued

30 CFR part and agency tracking code	Hourly rate	Flat rate	Application fee
Certification testing:			
Explosion test	27		
Surface/temperature test	28		
Impact test	26		
Thermal shock test	27		
Product flame test	34		
Product flame test	34		
17 Acceptance extension	32		100
18 Certification extension *	29		100
Certification extension testing:			
Explosion test	27		
Surface/temperature test	28		
Impact test	26		
Thermal shock test	27		
Product flame test	34		
21 Field modification	34		100
23 Field approval		77	
26 Permit—Machines *	33		100
Permit testing:			
Explosion test	27		
Surface/temperature test	28		
Impact test	26		
Thermal shock test	27		
Product flame test	34		
26 Permit—Instruments (testing included)	31		100
30 Intrinsic safety determination (testing included)	34		100
31 Intrinsic safety determination extension (testing included)	34		100
32 Simplified certification *	29		100
Simplified certification testing:			
Explosion test	27		
Surface/temperature test	26		
Impact test	26		
Thermal shock test	27		
Product flame test	34		
34 Simplified certification extension *	29		100
Simplified certification extension testing:			
Explosion test	27		
Surface/temperature test	26		
Impact test	26		
Thermal shock test	27		
Product flame test	34		
40 Stamped Notification Acceptance Program (SNAP)		134	
41 Longwall approval	33		100
42 Longwall approval extension	33		100
Part 19—Electric Cap Lamps			
12 Approval (testing included)	32		100
14 Approval extension (testing included)	31		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 20—Electric Mine Lamps			
12 Approval (testing included)	32		100
14 Approval extension (testing included)	31		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 21—Flame Safety Lamps			
12 Approval (testing included)	31		100
14 Approval extension (testing included)	31		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 22—Portable Methane Detectors			
12 Approval (testing included)	31		100
14 Approval extension (testing included)	31		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 23—Telephones and Signaling Devices			
12 Approval (testing included)	36		100
14 Approval extension (testing included)	32		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 24—Single-Shot Blasting Units			
12 Approval (testing included)	35		100
14 Approval extension (testing included)	35		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 25—Multiple-Shot Blasting Units			
12 Approval (testing included)	35		100
14 Approval extension (testing included)	35		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 26—Lighting Equipment for Illumination			
12 Approval (testing included)	35		100
14 Approval extension (testing included)	35		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 27—Methane Monitoring Systems			
16 Certification (testing included)	35		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1989—Continued

30 CFR part and agency tracking code	Hourly rate	Flat rate	Application fee
18 Certification extension (testing included)	31		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 26—D.C. Current Fuses			
12 Approval (testing included)	36		100
14 Approval extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 29—Portable Dust Analyzers and Methane Monitors			
12 Approval (testing included)	31		100
14 Approval extension (testing included)	32		100
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 31—Diesel Mine Locomotives			
12 Approval	33		100
14 Approval extension	33		100
Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines			
12 Approval	33		100
14 Approval extension	33		100
16 Certification evaluation [a]	34		100
Certification testing:			
Emissions test	35		
Pre/post test preparation	34		
18 Certification extension evaluation [a]	34		100
Certification extension testing:			
Emissions test	35		
Pre/post test preparation	34		
Part 33—Dust Collectors			
12 Approval evaluation without certification of performance [3]	37		100
Approval testing: Dust collector test	40		
14 Approval extension evaluation[4]	37		100
Approval extension testing: Dust collector test	40		
16 Certification evaluation [a]	36		
Certification extension testing: Dust collector test	40		
18 Certification extensions[4]	37		100
Certification extension testing: Dust collector test	40		
21 Field modification	37		100
29 Dust collector approval with certification of performance	36		100
Part 35—Fire-Resistant Hydraulic Fluids			
12 Approval (testing included) [a]	31		100
14 Approval extension (testing included) [a]	31		100
Part 36—Mobile Diesel-Powered Equipment			
12 Approval	35		100
14 Approval extension	34		100
16 Certification—Engine evaluation [a]	34		100
Certification—Engine testing:			
Emissions test	34		
Explosion test	34		
Surface temperature/safety controls test	34		
Pre/post test preparation	34		
18 Certification extension—Engine evaluation [a]	34		100
Certification extension—Engine testing:			
Emissions test	34		
Explosion test	34		
Surface temperature/safety controls test	34		
Pre/post test preparation	34		
21 Field modification	34		100
27 Certification—Diesel components evaluation [a]	34		100
Certification—Diesel components testing:			
Emissions test	34		
Explosion test	34		
Water consumption/cooling efficiency test	35		
Surface temperature/safety controls test	34		
Pre/post test preparation	34		
28 Certification extension—Diesel components evaluation [a]	34		100
Certification extension—Diesel components testing:			
Emissions test	34		
Explosion test	34		
Water consumption/cooling efficiency test	35		
Surface temperature/safety controls test	34		
Pre/post test preparation	34		
40 Stamped Notification Acceptance Program (SNAP)		134	
Part 74—Coal Mine Dust Personal Sampler Units			
12 Approval	32		100
Other A&CC Services			
15 Acceptance—Overcurrent relays (testing included)	32		100
15 Acceptance—Brattice cloth and ventilation tubing [c d]	33		100
Acceptance testing (brattice cloth and ventilation tubing): Product flame test	35		
15 Statement of test and evaluation (ST&E)		33	
15 Acceptance—Ground check monitor/ground wire devices (testing included)	34		100
17 Acceptance extension—Overcurrent relays	32		100
17 Acceptance extension—Brattice cloth, ventilation tubing, and interim criteria [b]	32		100

FEE SCHEDULE EFFECTIVE JANUARY 1, 1989—Continued

30 CFR part and agency tracking code	Hourly rate	Flat rate	Application fee
17 Statement of test and evaluation (ST&E) extension		30	
17 Acceptance extension—Ground check monitor/ground wire device	34		100
20 Stamped Revision Acceptance (SRA) [b]		100	
24 Acceptance—Panic Bar	34		100
33 Generic statement of test and evaluation (ST&E)	32		100
37 Acceptance—Interim criteria [b]	32		100
Interim criteria testing: Product flame test	35		
40 Stamped Notification Acceptance Program (SNAP)/Ground check monitor and ground wire device		134	
41 Approval—Longwall area lighting	31		100
50 Mine Wide Monitoring System (MWMS) evaluation		267	
54 Mine Wide Monitoring System (MWMS) barrier classification		116	
52 Mine Wide Monitoring System (MWMS) sensor classification		154	
00 Retesting for approval as a result of post-approval product audit [c]			

Notes:
[a] Full approval fee consists of evaluation cost plus applicable test costs.
[b] Fee covers SRA application accompanied by up to 5 documents.
[c] Fee based upon the approval schedule in effect at the time of retest.
[d] Applications for battery, brattice cloth and ventilation tubing approvals postmarked after August 22, 1989, must be submitted under 30 CFR Part 7—Third Party Testing. Applicable fees are listed under 30 CFR Part 7 fees schedule.

[FR Doc. 88-30188 Filed 12-30-88; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule.

SUMMARY: This rule reflects a change in U.S. policy to facilitate private citizen travel to the Democratic People's Republic of Korea ("North Korea"). Despite the existing restrictions on providing travel services in conjunction with travel to North Korea contained in the Foreign Assets Control Regulations, 31 CFR Part 500 (the "Regulations"), travel service providers may seek specific licenses for the provision of services in connection with certain types of group and individual travel to North Korea.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/376-0408), or Steven I. Pinter, Chief of Licensing (tel.: 202/376-0392), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Consistent with the current foreign policy of the United States to facilitate unofficial, nongovernmental exchanges with North Korea, the Office of Foreign Assets Control ("FAC") is reviewing the Regulations with regard to the provision of travel services in connection with travel to, from, and within North Korea, particularly for U.S. individuals or groups involved in academic, sports, cultural, and certain other areas. Travel service providers may apply for specific licenses authorizing them to engage in transactions necessary to arrange or facilitate such exchanges and other noncommercial travel beyond the scope of transactions now authorized in § 500.563(d)(1) of the regulations (53 FR 7354, March 8, 1988). The amendment provides that license applications will be reviewed on a case-by-case basis. Licensing procedures are set forth in § 500.801 of the regulations.

A specific license granted under this rule authorizes certain transactions otherwise prohibited under §§ 500.201 and 500.563(d) of the regulations. Those provisions limit the services that travel service providers may offer to persons subject to U.S. jurisdiction to the booking of pasage for transportation to and from North Korea aboard third-country carriers. In the absence of a specific license under this rule, such services may only be provided with respect to unsolicited inquiries from prospective travelers.

Because the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 500

North Korea, Travel restrictions.

For the reasons set out in the preamble, 31 CFR Part 500 is amended as set forth below:

PART 500—[AMENDED]

1. The "Authority" citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. The following section is added to the regulations as § 500.568:

§ 500.568 Transactions with respect to group travel to North Korea.

Notwithstanding the provisions of § 500.563(d)(2), specific licenses may be issued on a case-by-case basis for the provision of services by travel service providers in connection with group and individual travel to North Korea for noncommercial tours and private exchange programs in academic, sports, cultural, and certain other areas.

Dated: December 8, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 20, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-30259 Filed 12-29-88; 4:03 pm]
BILLING CODE 4810-25-M

31 CFR Part 565

Panamanian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On April 8, 1988, the President issued Executive Order No.

12635, declaring a national emergency with respect to Panama, invoking the authority, inter alia, of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), ordering specified measures against the Noriega/Solis regime in Panama. In implementation of that Order, the Treasury Department issued the Panamanian Transactions Regulations, 53 FR 20566 (June 3, 1988), as amended at 53 FR 23620 (June 23, 1988); 53 FR 32221 (August 24, 1988); and 53 FR 37556 (September 27, 1988) (the "Regulations"). The Regulations prohibit, inter alia, transfers and payments to the Noriega/Solis regime from the United States, or by U.S. persons and U.S.-controlled Panamanian entities located in Panama, with certain exceptions, and require that amounts owed to the Government of Panama be paid into an account of the Government of Panama maintained at the Federal Reserve Bank of New York (the "FRBNY"). This rule amends the Regulations to authorize a substitute procedure for payment to the FRBNY. Persons owing amounts to the Government of Panama may apply for a specific license authorizing the blocking of the amounts owed, plus applicable interest, in a reserve account on their books. Any person who has already made payments to the FRBNY and who wishes to transfer the funds to a blocked reserve account, may apply to the Office of Foreign Assets Control for a license authorizing such a transfer.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel, Tel.: (202) 376-0412, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

The collections of information in this regulation are in § 565.509 of Title 31 of the Code of Federal Regulations. The information required under this section is necessary in order for the Office of Foreign Assets Control to evaluate the merits of a license application seeking to establish a reserve account containing funds owed the Government of Panama by U.S. persons, in lieu of transferring those funds into an account at the Federal Reserve Bank of New York as provided in §§ 565.202 and 565.203, and to monitor compliance with the requirements of this part. The likely respondents are individuals and businesses.

The estimated total annual reporting burden is 1000 hours. The estimated average annual burden hours per respondent is five hours. The estimated number of respondents is 200. Comments concerning the collection of information and the accuracy of this burden estimate, and suggestions for reducing this burden should be directed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Office of Foreign Assets Control, U.S. Department of the Treasury, Office of Management and Budget, Washington, DC 20503, with copies of the Office of Information Resources Management, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Transfers of assets, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR Part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

1. The authority citation for Part 565 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12635, 53 FR 12134 (April 12, 1988).

2. Section 565.509 is added to read as follows:

§ 565.509 Reserve accounts.

(a) United States persons and U.S.-controlled Panamanian entities who are required under §§ 565.202 and 565.203 to make payments and transfers of certain funds owed to the Government of Panama into Government of Panama Account No. 2 at the Federal Reserve Bank of New York, may elect instead to apply for a specific license authorizing them to establish a substitute blocked reserve account on their books in the name of the Panamanian governmental entity to whom the amount is owed. Specific licenses may be issued to permit payment into such reserve accounts of amounts due and owing the Government of Panama, which amounts shall include the principal amount of funds due, plus interest thereon, determined pursuant to paragraph (b) of this section, accrued from the later of April 8, 1988, or the date the payment obligation to the Government of Panama first arose, to the date of payment into the reserve account. In the case of funds already credited to Government of Panama Account No. 2, specific licenses may be issued authorizing transfer of such funds (including accrued interest) to such reserve accounts. Such licenses are revocable, and are conditioned upon continued compliance with the requirements of this part. Upon revocation of a license or at the direction of the Director of the Office of Foreign Assets Control, funds held in such reserve accounts must be paid into Government of Panama Account No. 2.

(b) Funds credited to reserve accounts pursuant to this section shall bear interest at a rate not less than the weekly average effective Federal Funds rate, as published by the Federal Reserve Board, applicable to each week of the period in which credit balances are maintained pursuant to this section.

(c) If necessary to assure the availability of funds blocked in reserve accounts pursuant to this section, the Director of the Office of Foreign Assets Control may at any time require the payment of such blocked funds into Government of Panama Account No. 2 at the Federal Reserve Bank of New York, as provided in § 565.404, or the supplying of any form of security deemed necessary.

(d) A person receiving a specific license under paragraph (a) of this section shall certify to the Office of Foreign Assets Control within fifteen business days after receipt of that license that it has established the reserve account on its books as provided in that paragraph. Unless otherwise provided, a person licensed to establish such a reserve account shall file monthly reports with the Office of Foreign Assets Control setting forth all credits to the reserve account, and interest payable in accordance with paragraph (b) of this section on the reserve account, together with the nature of the debt, and the name of the Panamanian governmental entity to which it is owed. The report shall also contain a certification from an authorized official of the entity affirming that the entity submitting the report is in compliance with all other requirements of this part.

Dated: December 23, 1988.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 23, 1988.

Gerald L. Hilsher,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-30261 Filed 12-29-88; 4:50 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-78]

Special Local Regulations for the New Year's Eve Celebration, Elizabeth River, Norfolk/Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of special local regulations.

SUMMARY: This notice implements 33 CFR 100.501 for the New Year's Eve Celebration. The event will be held on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas. The celebration will consist of a fireworks display launched from the Mast Area of Town Point Park, Waterside, Norfolk, Virginia from Midnight, December 31, 1988 to 12:30 a.m., January 1, 1989. The special local regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11:30 p.m., December 31, 1988 to 1:00 a.m., January 1, 1989. In case of inclement weather causing the event to be postponed, the regulations in 33 CFR 100.501 are effective from 6:30 p.m. to 7:30 p.m., January 1, 1989.

FOR FURTHER INFORMATION CONTACT: B. J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: The regulations in 33 CFR 100.501 govern the operation of the marine events held on the Elizabeth River in the vicinity of "Wasterside", downtown Norfolk, Virginia. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa. The regulations in 33 CFR 110.72aa establish the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). These regulations are implemented by publication of this notice in the **Federal Register** and a notice in the Local Notice to Mariners. Norfolk Festevents Ltd. submitted an application that was received by the Commander, Coast Guard Group, Hampton Roads, on December 5, 1988 to hold a fireworks display on December 31, 1988 in the "Waterside" area of the Elizabeth River between downtown Norfolk and Portsmouth, Virginia. The fireworks will be launched from the Mass Area of Town Point Park. Spectator vessels are expected to be in the spectator anchorage areas during the fireworks display.

Since the waterway will not be closed for extended periods, commercial traffic should not be severely disrupted.

The regulations in 33 CFR 100.501 are hereby implemented.

Date: December 21, 1988.

A. D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-30157 Filed 12-30-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-79]

Special Local Regulations for the United States Coast Guard Auxiliary Fiftieth Anniversary Celebration, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the United States Coast Guard Auxiliary Fiftieth Anniversary Celebration. These special local regulations are needed to control vessel traffic within the immediate vicinity of "Waterside", between downtown Norfolk and Portsmouth, Virginia, due to the confined nature of the waterway and the expected vessel congestion during the celebration. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 10:30 a.m. to 3:30 p.m., June 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this notice are Mr. Billy J. Stephenson, Project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations: The regulations in 33 CFR 100.501 govern the operation of marine events held on the Elizabeth River in the vicinity of "Waterside", downtown Norfolk, Virginia. The implementation of 33 CFR 100.501, also implements regulations in 33 CFR 110.72aa and 117.1007. The regulations in 33 CFR 110.72aa establish the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). The regulations in 33 CFR 117.1007 close the draw of the Berkley Bridge to vessels during and within one hour of the effective period under 33 CFR 100.501. These regulations are implemented by publication of this implementing notice in the Federal Register and a notice in the Local Notice to Mariners.

The Coast Guard Auxiliary, Fifth District Southern Region, the sponsor of the event, has submitted an application to hold the United States Coast Guard Auxiliary Fiftieth Anniversary Celebration on June 23, 1989 in the area covered by 33 CFR 100.501. The celebration will consist of a Coast Guard Auxiliary aircraft flyover, a parade made up of Coast Guard and Coast Guard Auxiliary vessels, a Coast Guard helicopter, and Coast Guard buoy tender demonstration.

Since this event is the type of event contemplated by these regulations and the safety of the participants and spectators viewing the event would be enhanced by the implementation of 33 CFR 100.501, those regulations are hereby implemented.

Commercial vessels will be permitted to transit the regulated area between events, so commercial traffic should not be severely disrupted at any given time.

Dated: December 19, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-30156 Filed 12-30-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGDS-87-051]

Drawbridge Operation Regulations; Ship Channel, Great Egg Harbor Bay, Somers Point-Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is amending the regulations governing the Route 52 drawbridge over Ship Channel, Great Egg Harbor Bay, at mile 0.5, between Somers Point and Ocean City, New Jersey, by limiting the number of openings for recreational vessels to the hour and half hour during daylight hours on weekends and Federal holidays during the summer. This amendment is being made to accommodate periods of increased peak marine and vehicular traffic and to synchronize openings with the Route 52 (Ninth Street) drawbridge over Beach Thorofare to minimize vehicular congestion. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation. This rule also makes provisions for opening the bridge on less than 24 hours advance notice between 11 p.m. and 7 a.m. for any public vessel of the United States, state and local vessel used for public safety, vessel in distress, or vessel with another vessel in tow. This action is necessary to handle emergency situations.

EFFECTIVE DATE: These regulations become effective on February 2, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Chief, Bridge Branch, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: On July 7, 1987, the Coast Guard published a notice of proposed rulemaking concerning this amendment in the **Federal Register** (52 FR 25392). The Commander, Fifth Coast Guard District, also published the proposal as Public Notice number 5-641, dated July 10, 1987. In each notice, interested persons were given until September 30, 1987 to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, First Coast Guard District Bridge Branch, and CAPT Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Final Rule and Comments

This amendment is being made in an effort to relieve vehicular traffic from 10 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays between Memorial Day and Labor Day. Vehicular traffic is at its peak during this period. Synchronizing openings of this bridge with the Route 52 drawbridge across Beach Thorofare will help minimize repeat delays to vehicular traffic and improve traffic flow. A temporary rule was published in the **Federal Register** on July 7, 1987 (52 FR 25372) to evaluate the proposed rule for a 60-day period. That temporary rule was in effect from July 2 through August 30, 1987. It limited bridge openings to the hour and half hour for recreational and commercial vessels. A total of 313 bridge openings occurred in July, and 457 openings occurred in August 1987. Of the 313 July openings, 76 occurred between 10 a.m. and 8 p.m., on Saturdays, Sundays, and the 4th of July (24% of the total openings for the month). In August, 101 of the 457 total openings occurred during the same periods (22% of the total openings for the month).

During July 1987, 36 of the 313 openings involved solely commercial vessels (12% of the total openings for the month), with 5 of the 36 occurring between the hours of 10 a.m. and 8 p.m. on Saturdays and Sundays and the 4th of July. Likewise, 51 of the 457 openings during August 1987 involved solely commercial vessels (11% of the total openings for the month). Ten of these openings occurred during the limited opening periods on weekends. Traffic observations by the City of Somers Point Police Department during the trial period showed that vehicular traffic flow improved on Saturdays and Sundays during the limited opening periods. Random observations made of vehicular traffic at bridge openings during the period noted that all traffic cleared within five minutes. Prior to the restriction on openings, traffic took seven to eight minutes to clear. It should be noted that due to environmental problems with the waters in the area, traffic and tourism was down significantly in August 1987.

One comment from a charter boat owner was received in response to the public notice on the proposed change. He stated that his operation would be adversely affected because the opening restrictions would delay his fishing and dinner cruise patrons by thirty minutes if his vessel missed a scheduled opening. Because his business consists of half-day fishing trips and chartered dinner cruises, either his patrons or his business would have to suffer.

As a result of this comment the final rule requires the bridge to open on signal during the limited opening periods for commercial vessels. Because of the limited number of openings that result from the passage of commercial vessels, this change should not have a significant adverse impact on weekend traffic between the hours of 10 a.m. and 8 p.m. The final rule also differs from the proposed rule, which would have required the bridge to open on signal between the hours of 11 p.m. and 7 a.m. for public vessels of the United States, vessels in distress, and vessels with another vessel in tow. The current regulations only require the bridge to open between those hours if 24 hours advance notice is given. The final rule has been modified to give the bridge owner and operator up to 30 minutes to open the bridge for these vessels during the 24 hour advance notice period. Since the bridge is not manned between 11 p.m. and 7 a.m., imposing a requirement for the bridge to open on signal would have imposed an unnecessary financial hardship on the operator, since there is generally insufficient traffic to justify opening the bridge during those hours. However, the operator is willing to make arrangements for expeditious openings of the bridge in emergency situations.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federal Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The change in regulations will permit a more orderly flow of both vehicular and recreational marine traffic and permit each mode of traffic to schedule its transits of the bridge to minimize delay. The final rule also eliminates any new hardships to the limited commercial traffic that might have resulted from adoption of the proposed rule. The final rule preserves the current right to have the bridge open on signal between 7 a.m. and 11 p.m. outside the restricted periods on weekends and Federal holidays during the summer. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.753 is revised to read as follows:

§ 117.753 Ship Channel, Great Egg Harbor Bay.

The draw of the S52 (Ship Channel) bridge, mile 0.5 between Somers Point and Ocean City shall open:

(a) From 11 p.m. to 7 a.m.:

(1) As soon as possible, but no longer than 30 minutes after a request for an opening, for any public vessel of the United States, state and local vessel used for public safety, vessel with another vessel in tow, or vessel in distress.

(2) On signal, if at least 24 hours advance notice is given for any other vessel.

(b) From Memorial Day through Labor Day, from 10 a.m. to 8 p.m., on Saturdays, Sundays, and Federal holidays:

(1) On signal for any public vessel of the United States, state and local vessel used for public safety, vessel with another vessel in tow, vessel in distress, or commercial vessel.

(2) Only on the hour and half-hour, for any recreational vessel.

(c) At all other times, on signal for any vessel.

Dated: November 22, 1988.

A. D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-30154 Filed 12-30-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[FRL-3501-7]

Ore Mining and Dressing Point Source Category; Gold Placer Mine Subcategory; Availability of Information, Comments and Responses, and Decision to Not Modify Final Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of information and response to comments, and decision to not modify final regulation.

SUMMARY: On May 24, 1988, EPA published a final rule promulgating effluent limitations guidelines and new source performance standards limiting effluent discharges to waters of the United States from facilities engaged in gold placer mining operations (53 FR 18764). In the preamble to the final regulation, the Agency requested comment concerning the economic impacts imposed on small placer mines (mines processing between 1,500 and 35,000 cubic yards of ore per year) by this regulation and stated that should significant additional data be presented to the Agency on small placer mines demonstrating that different effluent limitations guidelines and standards are warranted on a national basis, the Agency would modify the rule.

The Agency received 61 submissions containing approximately 163 individual comments on the issue on which EPA requested comment. Copies of these submissions, a summary of the comments with responses by the Agency, copies of other correspondence related to the impacts on small mines of the final rule, and copies of data and information used by the Agency in responding to comments are being made available in the post-promulgation record of the gold placer mine subcategory regulation.

Based on its review of these materials, the Agency has decided not to modify the final rule promulgated May 24, 1988.

DATE: The post-promulgation record will be available for public review not later than February 2, 1989.

ADDRESSES: Address questions on this notice to: Mr. Baldwin M. Jarrett, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: Gold Placer Mine Rules. The post-promulgation record will be available for inspection and copying at the following locations: EPA Public Information Reference Unit, Room 2904 (Rear), 4th and M Streets SW., Washington, DC 20460; EPA Library, 1200 Sixth Avenue, Seattle, WA 98101; EPA Alaska Field Office, Federal Building, Room E-551, 701 C Street, Anchorage, Alaska 99513; EPA Alaska Field Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska 99801; and Alaska Department of Environmental Conservation Field Office, 1001 Noble Street, Fairbanks, Alaska 99701. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 382-7126.

SUPPLEMENTARY INFORMATION: On May 24, 1988, EPA published a final rule promulgating effluent limitations guidelines and new source performance standards limiting effluent discharges to waters of the United States from facilities engaged in gold placer mining operations (53 FR 18764). In the preamble to this final regulation the Agency provided an opportunity for the public to submit significant additional data demonstrating that different limitations were warranted for small gold placer mines (those processing between 1,500 and 35,000 cu yd of ore per year). The Agency provided for a 60-day period, but did not specify the beginning or end of this period. A notice clarifying the period of time during which the Agency would receive comments was published July 1, 1988 (53 FR 24939). The Agency made the administrative record for this rulemaking available to the public on June 17, 1988. In order to provide adequate time for the public to acquaint itself with the administrative record and submit new data and comment, the Agency set the 60-day period to start June 17, 1988 and close on August 16, 1988.

The 61 comments received by EPA were from industry groups, government agencies and individual citizens. Most of the commenters contended that BAT limitations and NSPS based upon recirculation of process wastewater were not economically achievable for small gold placer mines. However, very few commenters provided any additional data as requested by EPA in the preamble to the final rule. Data were provided by the Department of the Interior (DOI). The Agency has carefully reviewed all of the information provided by commenters and determined that the data do not justify a change with respect to the economic methodology used by EPA to project the economic impacts of

the final regulation. The Agency continues to believe that the effluent limitations guidelines and new source performance standards imposed by the rule are economically achievable for all gold placer mine size categories. Therefore, the Agency is not modifying the rule promulgated on May 24, 1988.

Commenters on the final rule contended that EPA had understated several mining and compliance cost parameters, such as reclamation, maintenance, piping and pond construction costs, and that EPA had inappropriately excluded certain costs, such as mine patenting, from its analysis. The DOI also criticized the Agency's database and assumptions regarding the ore grades (i.e., the amount of gold recovered per cubic yard of ore processed by a mine) that are being mined in Alaska, and submitted additinal data to EPA. EPA has fully evaluated these contentions and the data that were submitted by commenters, and concluded that the Agency adequately considered operating and compliance costs when it promulgated the final rule, and that the Agency's ore grade database and assumptions were valid and appropriate for estimating placer mine revenues in its economic impact analysis. Below is a summary of the Agency's evaluation and conclusions regarding the major issues raised by commenters. EPA's complete analysis and discussion of these issues and all other public comments are contained in two support documents that will be included in the record for this decision: "Response to Comments on the Final Rule for the Gold Placer Mining Subcategory" ("Comment-Response Document"), and "Summary Report on Comments and Analysis of Data Submitted after Promulgation of the Gold Placer Mine Effluent Limitations Guidelines and Standards" ("Summary Report").

EPA's conclusion as to the achievability of the regulation is reaffirmed by information collected during site visits conducted by Agency staff during the 1988 mining season. Of the 85 active Alaskan mines that were visited by EPA, approximately half (including mines of all sizes) had already instituted recirculation of process water. This information supports EPA's conclusions that recirculation technology is in widespread use in the gold placer mining industry, and that requiring all mines to meet limitations based on this practice will not cause the significant economic dislocation projected by the industry or the Department of the Interior. In addition, EPA notes that monitoring data submitted by Alaskan miners to EPA from the 1988 mining season also indicate that the limitation of 0.2 ml/1 for settleable solids imposed by the regulation (and which is currently contained in permits issued by EPA) is being achieved by approximately 95% of gold placer mines.

1. Reclamation Costs

With regard to costs of reclamation, EPA's cost estimates at promulgation were based upon information supplied by the Bureau of Land Management and a published report on mining practices and costs. On the basis of the average per acre reclamation cost derived from these sources, EPA estimated that very small and small mines incurred reclamation costs of $2,543 and $2,918. In its comments, the DOI contended that EPA failed to take into account the cost of reclaiming settling ponds, and recommended that EPA assume all very small and small mines incur reclamation costs of $2,000 per site and $1,270 per acre of settling pond to be reclaimed. The DOI also contended that very small and small mines would have to reclaim two acres and four acres of ponds, respectively.

Contrary to DOI's assertion, EPA did consider the costs of reclaiming settling ponds in its analysis. The Agency's reclamation cost estimates were based upon the cost to reclaim the entire mining area, including the area for settling ponds which EPA field observations indicate are generally constructed in mine tailings. The total reclamation costs allocated by EPA in its analysis therefore included the costs of reclaiming the land on which settling ponds are located.

In addition, the Department did not provide data to support its assertion that very small and small mines would have to build and reclaim two and four acres of settling ponds per year. These assumptions result in a significant overestimate of total reclamation costs. EPA has determined, based upon data collected from operating placer mines and other sources, that very small and small mines will be able to treat wastewater for an entire season with ponds that are approximately one-half and one acre, in size, respectively. Indeed, when the DOI's suggested reclamation costs are applied based upon correct pond size dimensions, the resulting total reclamation costs are comparable to those assigned by EPA in its analysis. EPA therefore concludes that much of the information submitted by the DOI supports, rather than calls into question, the reclamation costs assigned by EPA in its analysis.

2. Maintenance Costs

EPA also disagrees with the DOI's contention that EPA should have allocated higher maintenance costs in its analysis. No actual data were provided by the Department in support of its suggested maintenance factors. The maintenance factors used by EPA were based, in large part, upon quotations from equipment suppliers documented in the public record. In addition, the Department apparently misconstrued the factors actually applied by EPA, which varied according to the particular piece of equipment in question. In some cases the factors used by EPA were comparable to those suggested by the DOI. The Comment-Response and Summary Report documents contained in the public record clarify the specific maintenance factors used by EPA in its analysis. Finally, through the application of variance cost factors described in the preamble to the final rule, EPA's analysis took into account the higher operating costs (including costs for maintenance) that would be encountered by mines operating under harsh conditions. EPA therefore concludes that it adequately took into account maintenance costs in its economic impact analysis.

3. Costs of Piping

The Department also contended that EPA had underestimated the length of pipe that very small and small mines would need to recirculate water from settling ponds to the sluice and stated that, in light of topographic conditions and other factors, longer pumping distances "are anticipated." The DOI did not provide data to support this contention. The Department also apparently misunderstood the length of pipe costed by EPA, which, as indicated in the Agency's final costing study supporting the final rule, was actually several times greater than indicated by the DOI. Moreover, EPA took into account the topographical constraints cited by the Department by including in its analysis the costs of building three or four small settling ponds per year if there was not adequate space for a single large pond. Under this scenario, less piping is obviously needed because each new pond is constructed as close as possible to the gold recovery process. Finally, as explained in the final Economic Impact Analysis, EPA applied a cost factor which increased all operating costs for certain representative mines in the analysis to reflect the higher costs of operating under difficult topographic conditions.

4. Settling Pond Construction Costs

The Department also asserted that EPA had underestimated the size of settling ponds needed to comply with the rule because the Agency allegedly overestimated the density of solids that would be collected in the ponds after settling. However, the Agency's estimate of 57% solids in the sludge was based upon laboratory analysis of sludge core samples taken at seven operating settling ponds during the 1986 mining season. The Department cited a Bureau of Mines chemical flocculant study which apparently found a percent solids content of 45%. However, the Bureau of Mines study was a pilot scale examination of the performance of chemically aided settling; the study did not measure the density of solids in settling ponds. Because EPA's analysis was performed under actual, full-scale conditions and was specifically designed to ascertain the percent solids in sludge produced by simple settling, the Agency is confident that it has accurately estimated the percent solids that will be produced under full-scale field conditions.

5. Patenting Costs

Several commenters asserted that EPA should have included in its analysis the cost of mines to patent their claims. They cite in particular the Alaska Native Claims Settlement Act and assert that miners may lose their right to mine if the lands on which their claims are located are conveyed to Native Villages and Regional Corporations under the Act. EPA concludes that it properly excluded this cost from its analysis. It is well-established that a miner does not have to patent his claim in order to maintain his possessory mining rights.

Decisions by the Department of the Interior and the Federal courts have clearly held a miner's right to his unpatented claims is not impaired if lands on which his claims are located are conveyed under the Alaska Native Claims Settlement Act. Since the decision to go to patent is therefore discretionary and not a necessary cost of doing business, EPA appropriately excluded it from its analysis.

6. Lower 48 Analysis

DOI asserted that EPA's economic analysis contains insufficient information on mines located in the Lower 48 States. EPA disagrees with this assertion. EPA made an intensive effort beginning in 1984 to collect data on Lower 48 mining activity. EPA prepared a model mine analysis similar to that developed for Alaska that covers an estimated 265 mines in the Lower 48 States. The database supporting the Lower 48 analysis includes all available data, including data from private sources (e.g., material in comments from miners) and publicly available data (State and Federal publications, correspondence with State and Federal agencies). The information was collected over a period of years and was subject to public review and comment at proposal and in two subsequent notices. EPA believes the Lower 48 analysis is based on sufficient data and correctly states the impact of the regulation on mines in the Lower 48 States.

7. Regional Data

DOI asserted that EPA's analysis contains insufficient ore grade information on two mining regions within Alaska—the Northern and Southeastern regions.

In developing the database for the regulation, EPA undertook an exhaustive investigation of ore grades found at mines throughout Alaska and relied upon information collected in field questionnaires, published literature and land patent reports to derive regional ore grade values. The Northern and Southeastern regions of Alaska had the smallest number of ore grade data points, which is not unexpected, since these two regions have historically had the least mining activity. In 1986, a total of seven mines were active in these two regions according to the State of Alaska *Minerals Industry Yearbook 1986.*

In the Northern region, EPA relied upon two data points to determine a regional average. A data point of .016 ounce per cubic yard was obtained from an EPA questionnaire. The other data point was based on a historic grade of .058 ounce per cubic yard. We reduced this very high value to .04 ounce/yard as a conservative assumption. The two data points thus yielded an average ore grade of .028 ounce per cubic yard, which is the value used for calculating mine revenues in the Northern region. We believe this value, which is higher than the statewide average, is appropriate because any mines that operate under the more difficult conditions of the Northern region (harsh weather, long distance to suppliers, etc.) would require higher than average ore grades and, therefore, higher than average returns in order to cover higher than average costs. EPA notes that, consistent with this approach, the representative model mines in the Agency's analysis for this region were estimated to have higher operating costs due to these difficult conditions.

In the Southeastern region, DOI incorrectly stated that EPA used the 1921 Geological Survey bulletin to obtain a regional average ore grade of .02 ounce per cubic yard. EPA was unable to obtain any ore grade data for this region, so the state-wide weighted average ore grade of .02 was used as a proxy for this region. This value is lower than the ore grade reported in the USGS 1921 bulletin for Alaska. Given the small number of mines in this region, the use of the statewide average ore grade value as a proxy is a reasonable alternative.

In developing this regulation, EPA thoroughly searched for and used all available information to derive ore grade values by mining region. We recognize that the data are limited for two regions, but again point out this is consistent with the scarcity of mines in these two areas of Alaska. The number of ore grade data points is similarly limited in the Alaska Department of Natural Resources database. Given the limited data, we believe that the ore grade estimates used by the Agency are reasonable representations of the grades at mines in these two regions.

8. Ore Grades

The most significant data submitted to EPA related to the ore grade values assumed in the Agency's analysis. Ore grade assumptions form the basis of revenue estimates and are therefore crucial to determining the effect of this regulation on mine profitability. The DOI contended that EPA has included "outdated" historical ore grade information in its database and recommended that EPA use a single, revised ore grade value for all mines (0.015 ounce per cubic yard) that the Department derived from a portion of EPA's data and other data sources.

EPA has reviewed all of the data presented by the Department and has concluded that they do not justify revising the ore grade database relied upon by EPA in promulgating this regulation. A complete analysis of the comments and data presented by the DOI is contained in the document "Summary Report on Comments and Analysis of Data Submitted After Promulgation of the Gold Placer Mining Rule", which is contained in the record for this decision. A summary of EPA's analysis and conclusions is provided below.

EPA's ore grade database was derived from an exhaustive data collection effort and is compiled from several sources. These include observations reported in published studies which reported ore grade or other mining data over time from which ore grade could be reported, and ore grade values collected directly from miners by EPA during site visits in the 1984–1986 mining seasons. While

some of the ore grades obtained from published literature were collected some time ago, the Department has provided no data to substantiate its claim that deposits with such ore grades are no longer found because many miners are currently remining previously worked areas. Indeed, the Agency has reexamined the recent data collected in support of the final rule, and determined that, if the Agency were to rely *only* on the recently collected data and exclude the historical ore grades, the economic impacts would likely be lower than projected at promulgation because the overall statewide average of EPA's recent ore grade data (i.e., collected after 1977), weighted according to the number of mines operating in various regions, is actually higher than the weighted average of the data (recent and historical) relied upon at promulgation. Therefore, the Department's contention that use of the historic ore grades inflated mine revenues and reduced the projected impacts of the rule is without merit.

EPA conducted an analysis evaluating the economic impacts of this rule if the ore grade values were lowered in the manner suggested by the DOI. The analysis indicates that use of lower ore grades suggested by DOI results in baseline closures of most of the gold placer mining industry (i.e., closures prior to the imposition of any costs to comply with this regulation). At the 1986 season average gold price of $377 per ounce, 84% of all mines would close in the baseline; at the 1987 season average gold price of $455, 65% of all mines would close in the baseline. However, since the number of mines in Alaska actually increased between 1986 and 1988, we believe that DOI's recommended ore grade value is unrealistically low, for its projects pre-compliance closures of a significant portion of the industry at a time when the number of mines is expanding.

EPA also evaluated whether some of the data submitted by the DOI were appropriate for use in the Agency's analysis. Two new ore grade data sources were supplied by the DOI: an average ore grade value from nine BLM patent reports, and 151 ore grade values that had been collected by the Alaska Department of Natural Resources (ADNR) from 1982 to 1987. With regard to the patent reports, the DOI did not provide EPA with the individual ore grade values from the nine mines; nor did the Department provide the actual reports. Without this information, EPA was unable to verify the method by which ore grades were calculated, the sizes of the mines or their locations in order to evaluate the accuracy of the data or its representativeness. In addition, the Department informed EPA that it had selected the nine reports from 21 that were available, and EPA does not know the criteria that were used in selecting only the nine reports. For these reasons, EPA does not believe it would be appropriate to incorporate these data into its analysis.

The Agency also evaluated the survey data collected by ADNR for possible use in EPA's analysis. After DOI submitted its comments to the Agency, EPA solicited additional information from the ADNR regarding the mines in the database, such as mine size, location and instances were an individual mine reported ore grade for more than one year. However, because the survey had been conducted under a promise of confidentiality, the actual data could not be obtained by EPA.

For several reasons, the Agency concluded that reliance on the Alaska data would not be appropriate. First, the data are the result of a self-selected survey; several thousand questionnaires had been sent during the six years but only 151 responses were received containing information sufficient to derive ore grade values. This indicates a potential for response bias. Also, the questionnaires did not specifically request the miner's ore grade. The wording of relevant questions was confusing and could have caused errors in the reporting or deriving of ore grade values. Moreover, the data appear overly representative of large mines which, because of economies of scale, may be able to operate profitably with lower ore grades than smaller mines. Thus, the large number of ore grade data points from large mines introduces the possibility of bias in the database towards lower ore grade values. Finally, the questionnaire was designed to get an overall view of the Alaska mineral industry, and not specifically to investigate gold placer mining ore grades.

EPA's data collection effort, by contrast, was specifically designed to be representative of the gold placer mining industry in a variety of respects, including the number of mines in various size categories and locations. Also, since EPA had its raw data in hand, the Agency was able to exercise the quality control that it could not exercise without having the raw data collected by ADNR. EPA therefore concluded that it was appropriate to continue to rely upon the database collected prior to promulgation.

However, EPA also evaluated whether the Alaska data, if it were appropriate for use by the Agency, would indicate economic impacts significantly different from those projected by EPA at promulgation. The Alaska data, when grouped by region and weighted according to the number of mines in each region, yield a statewide weighted average that is approximately 5% lower than the statewide weighted average of EPA's database. EPA, therefore, conducted a sensitivity analysis that reduced the ore grade values in each region by this amount. The most notable result of this adjustment is an increase in the number of baseline closures. While the total number of closures due to compliance increases slightly (from 25 to 27 mines), the Agency does not believe that the results are significantly different from those projected at promulgation. Therefore, the Agency has concluded that, even if it were to rely upon the ADNR data base, EPA would conclude that the final regulation is economically achievable for all mine size categories.

9. Conclusion

On the basis of its analysis of all the comments and data submitted during the comment period, EPA concludes that no changes to its economic impact methodology are warranted. EPA continues to believe that limitations based upon recirculation of process wastewater are economically achievable for all mine size categories.

Dated December 20, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-30182 Filed 12-30-88; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101, Subchapter A

[FPMR Temp. Reg. A-31]

Travel and Transportation Expense Payment System Using Contractor-Issued Charge Cards, Centrally-Billed Accounts, and Travelers Checks

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation prescribes policies and procedures for a travel and transportation expense payment system which provides for the use of General Services Administration (GSA) contractor-issued charge cards, centrally-billed accounts, and travelers checks by Federal agencies for the procurement of passenger transportation services, car rentals, payment to commercial facilities for subsistence (lodging, meals, etc.) and for miscellaneous travel and transportation expenses incurred during official travel. This regulation incorporates the awarded contracts effective November 30, 1988.

DATES: *Effective date*: November 30, 1988

Expiration date: November 29, 1989, unless sooner canceled or superseded.

FOR FURTHER INFORMATION CONTACT: Phyllis Hickman, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557-1264 or commercial (703) 557-1264.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Ch. 101, Subchapter A

Government employees, Travel, Travel allowances, Travel and transportation expenses.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

December 7, 1988.

[Federal Property Management Regulations Temporary Regulation A-31]

TO: Heads of Federal agencies.

SUBJECT: Travel and transportation expense payment system using contractor-issued charge cards, centrally-billed accounts, and travelers checks.

1. *Purpose.* This regulation prescribes policies and procedures for a travel and transportation expense payment system which provides for the use of General Services Administration (GSA) contractor-issued charge cards, centrally-billed accounts, and travelers checks by Federal agencies for the procurement of passenger transportation services, car rentals, payment to commercial facilities for subsistence (lodging, meals, etc.) and for miscellaneous travel and transportation expenses incurred during official travel.

2. *Effective date.* This regulation is effective November 30, 1988.

3. *Expiration date.* This regulation expires November 29, 1989, unless sooner superseded or canceled.

4. *Scope.* This regulation shall be used in conjunction with the Federal Travel Regulation (FTR) and 41 CFR Part 101-41. Except as provided in this temporary regulation, all provisions of the FTR, 41 CFR Part 101-41, and related regulations (e.g., FPMR Temporary Regulation A-30, governing use of airline contract fares) continue in effect.

5. *Applicability.* a. This regulation applies to employees of Federal agencies and departments that participate in GSA's travel and transportation expense payment system using contractor-issued charge cards, centrally-billed accounts, and travelers checks.

b. Except for the use of contractor-issued charge cards, this regulation permits eligible cost-reimbursable contractors working for the Government to participate in GSA's travel and transportation expense payment system.

6. *Background.* a. Under 41 CFR 101-41.203, Federal agencies normally use a U.S. Government Transportation Request (GTR), SF 1169, to purchase passenger transportation services directly from a common carrier or through a commercial travel agent under contract to GSA. Also, under the FTR, travelers are eligible for advances to pay for allowable travel expenses. Upon completion of official travel, the employee submits a travel voucher to the agency finance office, which reimburses the employee for authorized and allowable travel expenses.

b. Authority to deviate from 41 CFR 101-41.203 was granted by the Administrator of General Services on August 4, 1983, thus allowing eligible individuals to participate in the charge card program. (See 48 FR 36893, dated August 15, 1983.)

c. GSA entered into a new contract with Citibank/Dinners Club, Inc., to issue and maintain charge cards and establish centrally-billed accounts. GSA also contracted with Citicorp for the issuance of travelers checks to be used by Federal employees to cover subsistence and other allowable travel and minor transportation expenses. Those contracts are effective November 30, 1988.

d. For more effective cash management, the Office of Management and Budget (OMB) Bulletin 88-17 dated July 22, 1988, prescribes that agencies should advance travel funds in the form of travelers checks, when determined to be in the best interest of the Government.

7. *Definitions.* For the purposes of this regulation, certain terms used herein are defined as follows:

a. "Centrally-billed" means a Government Travel System account established by the contractor at the request of a participating agency.

b. A "charge card" means a Citibank/Diners Club charge card to be used by travelers of a participating agency to pay for passenger transportation services, commercial facilities for subsistence expenses, and other allowable travel and transportation expenses incurred in connection with official travel.

c. "Contractor" means Citibank/Diners Club, Inc.

d. "Cost-reimbursable contractor" means contractors performing work under cost-reimbursable contracts or other eligible contracts as defined in 48 CFR Part 51, including (but not limited to):

(1) Contractors working under cost-reimbursable contracts or other types of contracts involving direct travel costs to the Government; and

(2) Contractors working for the Government at specific sites under special arrangements with the applicable contracting agency, and which are funded at such sites through congressional appropriations (e.g., Government-owned, contractor operated (GOCO), federally funded research and development (FFRDC), or management and operating (M&O) contracts).

e. "FTD" means the Federal Travel Directory, a monthly publication issued by GSA and the Department of Defense to provide up-to-date information on charge cards, contract fares, lodging rates, car rental, per diem rates, travel management centers, and other travel and transportation matters. Government employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. For ordering information, telephone the central order desk on (202) 783-3238 and request the Federal Travel Directory, GPO stock number 722-006-00000-3.

f. "Participating agency" means agencies and departments that participate in GSA's travel and transportation expense payment system.

g. "Travelers checks" are Citicorp travelers checks.

h. "TMC" means a Travel Management Center. A TMC is a commercial travel firm under contract to GSA that provides reservations, ticketing, and related travel management services for official Government travelers.

8. *Travel and transportation expense program.* This GSA travel management program incorporates provisions for the following:

a. Individual employee charge cards used to pay for major travel and transportation expenses; i.e., passenger transportation tickets, vehicle rental charges, lodgings, meals, etc. (see par. 9);

b. Centrally-billed accounts used by designated agency offices primarily for the purchase of passenger transportation services (see par. 12); and

c. Travelers checks (or cash) used for other expenses; i.e., laundry, parking, local transportation, or tips (see par. 14).

9. *Individual employee charge cards.*—a. *Issuing charge cards.* Participating agencies shall determine and name employees who may be issued an individual employee charge card. The employees will be requested to complete an employee card account application for agency approval and submission to the contractor. The charge card is issued directly to the employee in his or her name. Cost-reimbursable contractors are not eligible to use the charge card.

b. *Use of charge cards.*

(1) The employee shall use charge cards issued under this program only for expenses incurred in conjunction with official travel. The employee shall use the charge card to pay for official travel expenses to the maximum extent possible. There is no preset expense limit on the charge cards. Although the employee is liable for payment of all charges incurred, the employee shall be reimbursed by his/her agency for all authorized and allowable travel and transportation expenses. However, employees are cautioned that charges in excess of authorized and allowable travel and transportation expenses, i.e., lodging and meal costs which exceed authorized amounts, are the financial responsibility of the employee and are not reimbursable. Use of the charge card does not relieve the employee of the responsibility to employ prudent travel practices and to observe rules and regulations governing official travel as set forth in the FTR and implementing agency regulations.

(2) The charge card may be used to pay for passenger transportation services (including services under contract fares offered by carriers under contract to GSA) at the transportation carrier's ticket counter, TMC, or agency travel office, as appropriate, under the participating agency's policies and procedures. Agencies may elect to prohibit employees from using the charge card to purchase services directly from a carrier. The charge card shall not be used to procure travel and transportation services from commercial travel agencies that are not under contract to the Government to provide such services to the Government traveler.

c. *Monthly contractor bills and payments.* The terms of the contract with Citibank/Diners Club, Inc., require billing and payment to be performed in the following manner. The contractor bills charges directly to the individual employee each month. Charges billed to the individual employer are due and must be paid in full within 25 calendar days of the billing date. There are no interest or late charges, and extended or partial payment is not permitted. Questions concerning billings and payments should be directed to the contractor at: 800–525–5289 or 303–799–9000.

d. *Travel voucher claims.*—(1) *Preparing and submitting travel vouchers.* Upon completing official travel, the employee must prepare and submit a travel voucher in the usual manner to be reimbursed under the FTR and agency policies and procedures, together with any required receipts, to the appropriate finance or paying office. The employee is reimbursed for authorized and allowable travel and transportation expenses. Participating agencies shall process travel vouchers within the time limits prescribed in OMB Bulletin 88–17 of July 22, 1988.

2. *Unused transportation tickets.* Unused or partially unused tickets purchased with individual charge cards shall be returned to a TMC or carrier and a refund credit receipt obtained. Unused tickets that have been prepaid for pickup at the airport must be refunded by the airline upon whose ticket stock the ticket was issued. The employee may claim reimbursement on the travel voucher only for the cost of the tickets actually used. Refunds for unused tickets will be credited to the employee's account. The unused tickets shall not be submitted with the travel voucher.

(3) *Transportation charges and assignment of rights.* Use of charge cards for purchase of passenger transportation services is considered to be a cash purchase. Travel vouchers submitted for reimbursement of transportation purchase with charge cards must include a statement which assigns to the United States all rights which the traveler has in connection with recovery of overcharges from the carrier(s). This statement is preprinted on the SF 1012, Travel Voucher, and must be initialed by the employee when claiming reimbursement for transportation expenses. Employees using agency travel vouchers under approved exceptions to the SF 1012 must add this statement if it is not preprinted on the voucher.

10. *Charge card cancellation or suspension.* Charge cards may be canceled by the employee, the participating agency, or the contractor. Cancellation may be accomplished by telephone notification with subsequent written confirmation to the contractor. The contractor may cancel an employee's card when the contractor's statement has not been paid in full 120 calendar days after the date the statement was issued. The contractor may suspend an employee's card when the contractor's statement has not been paid in full 60 calendar days after the date the statement was issued. In either event, the contractor will cancel or suspend an employee's card only on notification to and with the concurrence of the participating agency.

11. *Lost or stolen charge cards.* An employee is not responsible for any charges incurred against a lost or stolen charge card provided the employee promptly reports loss of the card to the contractor under the terms of the cardmember agreement signed by the employee when the charge card was issued. Employees may call the following telephone numbers 24 hours a day to report lost or stolen charge cards:

In the continental U.S., Alaska, Hawaii, and Virgin Islands (toll free) 1–800–525–9040
In Canada (call collect) 0–303–779–8235
In Puerto Rico (call collect) 37–800–525–9040
In the Caribbean 0–809–295–7181
In Colorado (except Denver) (toll free) 1–800–332–9340
In metropolitan Denver (dial direct) 779–8235/779–1505

These telephone numbers are also published in the FTD.

12. *Participating agency centrally-billed accounts.*—a. *Establishment.* (1) Participating agencies may establish centrally-billed accounts with the contractor for one or more designated offices within the agency to primarily purchase transportation services, principally for groups or for infrequent travelers; i.e., employees not designated to receive individual cards. Agencies shall ensure that only authorized personnel use the accounts and that all tickets purchased are authorized.

Charge cards are not issued for centrally-billed accounts.

(2) The Federal agency may also allow centrally-billed accounts to be established for use by eligible cost-reimbursable Government contractors. These accounts must be established at the specific request of the agency and are subject to approval by GSA's contracting officer.

b. *Use of centrally-billed accounts.* Centrally-billed accounts may be used only if agencies use a TMC or an agency travel office. They are intended principally to supplement the individual card, rather than as the sole means of purchasing airline tickets for all agency employees.

c. *Contractor billing and payment.* Consolidated contractor airline ticket charges accrued through use of centrally-billed accounts shall be billed monthly to the agency's finance and paying office. Expenses billed monthly against centrally-billed accounts are paid to the contractor. Monthly payment of charges incurred through the use of centrally-billed accounts is subject to the provisions of the Prompt Payment Act of 1982, and charges billed to agency offices are due in full within 30 calendar days of the billing date.

d. *Travel voucher claims.*—(1) *Preparation and submission of travel vouchers.* On completing official travel, the employee shall prepare and submit a travel voucher in the usual manner, together with any required receipts, to the finance and paying office, to be reimbursed.

(2) *Unused transportation tickets.* The employee shall submit to the appropriate agency office all unused transportation tickets (wholly or partially unused) purchased under a centrally-billed account. In turn, the agency shall return the unused tickets to the TMC through use of the SF 1170, Redemption of Unused Tickets, and maintain a copy of the SF 1170 on file until the credit appears as an adjustment to the agency's bill from the TMC. Policies and procedures regarding the use of the SF 1170 are provided in 41 CFR Subpart 101–41.2.

13. *Financial obligations/liability.*—a. *Employee.* Except for charges accrued against promptly reported lost or stolen cards, employees with charge cards are liable for all billed charges (see pars. 9b and 11). Government employees must pay their just financial debts under section 206 of Executive Order 11222 (May 8, 1965) and Office of Personnel Management Regulations, 5 CFR 735.207. At the request of the contractor, Federal agencies and departments, without Government liability, may assist in collecting delinquent employee accounts after 60 calendar days.

b. *Government.* The Government assumes no liability for charges incurred on employee charge cards, nor is the Government liable for lost or stolen charge cards. The Government is liable only for authorized charges incurred in conjunction with official travel on centrally-billed accounts.

14. *Travelers checks.* Travelers checks issued under this program are available to participating agencies in denominations of $20, $50, $100, $500, and $1,000. Specific arrangements for issuing, shipping, and paying for bulk stocks of travelers checks are made during initial discussions between Citicorp and the participating agency.

15. *Lost or stolen travelers checks.* Lost or stolen travelers checks shall be reported promptly by telephone to Citicorp. Employee may call the following numbers 24 hours a day to report lost or stolen travelers checks and to obtain refund information:

In the continental U.S. (Also serves as access to Operations Center) 1–800–645–6556
Outside the continental U.S. (Alaska, Canada) (Also serves as Citicorp Hotline) 813–623–1709
Europe, Middle East and Africa (call London Office collect) 1–438–1414
In Latin America 813–626–4444
United Kingdom Dial 100; ask for FREEFONE Citicorp Travelers Checks
Seoul, Korea (call collect) 2–738–8914
Toyko (call collect) 3–501–1348
Hong Kong (call collect) 5–821–7215
Sydney, Australia 2–239–9533
Within Australia (toll free) 2–008–022272
Singapore 223–1009
Taipei, Taiwan (call collect) 2–713–9739

These telephone numbers are also published in the FTD.

16. *Establishing accounts.* a. The contractor shall issue charge cards and establish centrally-billed accounts only upon the request of authorized representatives of participating agencies. Interested offices within the participating agency shall contact their local administrative or travel office to initiate this program. Only the headquarters agency office, however, can approve participation in the program.

b. The contractor mails charge cards to authorized individuals or to requesting agency offices within 3 workdays of notifying the contractor.

17. *Additional agency guidance and information.*—a. *Purchasing passenger transportation.* (1) Passenger transportation services procured with contractor-issued charge cards under this payment system are exempt from the cash limitation established by the Administrator of General Services at 41 CFR 101–41.203–2. Any credit card other than the contractor-issued charge card, and all travelers checks used to purchase passenger transportation services shall be considered the equivalent of cash and subject to the cash limitation and provisions of 41 CFR 101–41.203–2.

(2) The portion of the charge card application form, Optional Employee Data, Field 2, is to be used to record the standard Federal organization code(s) contained in the Department of Commerce/National Bureau of Standards publication, Codes for the Identification of Federal and Federally-assisted Organizations (FIPS PUB 95), dated December 23, 1982. Specific details concerning this requirement will be communicated by the contractor directly to each participating agency during the initial program implementation phase.

b. *Submitting passenger ticketing information to GSA for audit.* (1) Travel vouchers containing reimbursable transportation charges purchased with contractor-issued charge cards shall not be considered transportation vouchers under 41 CFR 101–41.807.

(2) Passenger ticketing information is furnished directly by the contractor to GSA's Office of Transportation Audits. It is used to identify and collect carrier overcharges.

c. *Examination of payments and collection.* The Transportation Act of 1940, as amended (31 U.S.C. 3726), authorizes the GSA Transportation Audit Division (see 41 CFR 101–41.102) to issue a notice of overcharge when GSA finds that a carrier has been overpaid for the services rendered.

(1) Under the provisions of 41 CFR Subpart 101–41.5, carriers are requested to refund amounts due the United States. Refund checks are to be made payable to the General Services Administration and mailed promptly to General Services Administration, P.O. Box 93746, Chicago, IL 60673. Payment or credit to the contractor is not considered proper payment of overcharge claims due the U.S. Government.

(2) Protests to notices of overcharge are handled and processed in accordance with 41 CFR 101–41.503.

(3) Collection of unrefunded overcharges owed to the U.S. Government are processed in accordance with 41 CFR 101–41.504.

(4) Debts collected by GSA based on audits of transportation accounts are deposited to miscellaneous receipts, U.S. Treasury.

(5) Claims against the United States related to the actions taken above are processed under 41 CFR Subpart 101–41.6.

(6) Reconsideration and review of GSA transportation claim settlements follow the provisions of 41 CFR Subpart 101–41.7.

18. *Employee training.* Participating agencies shall ensure that each of their eligible employees is adequately trained in the use of the contractor-issued charge card or centrally-billed account before allowing them to use either a charge card or a centrally-billed account.

19. *Agency participation.* Agencies or departments desiring to participate in this program should contact the Travel and Transportation Management Division (FBT), General Services Administration, Washington, DC 20406, telephone (703) 557–1264 or FTS 557–1264.

20. *Comments and recommendations.* Comments and recommendations regarding the travel and transportation expense payment system or this regulation may be sent to: General Services Administration, Federal Supply Service, Office of Transportation and Property Management, Travel and Transportation Management Division (FBT), Washington, DC 20406.

21. *Effect on other directives.* This regulation cancels FPMR Temp. Reg. A–25 in its entirety.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–30043 Filed 12–30–88; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 81130–8265]

Pacific Coast Groundfish Fishery; Foreign Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final 1989 fishery specifications.

SUMMARY: NOAA announces the final 1989 specifications for Pacific coast groundfish taken in the ocean off the coasts of Washington, Oregon, and California. The specifications include the acceptable biological catch, the optimum yield, and the distribution of the optimum yield between domestic and foreign fishing operations as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to establish allowable harvests of Pacific coast groundfish from the United States exclusive economic zone and territorial waters in 1989.

EFFECTIVE DATE: January 1, 1989, until modified, superseded, or rescinded.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140, or Rodney R. McInnis (Southwest Region, NMFS), 213–514–6199.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR Part 663 require that management specifications for groundfish be evaluated each calendar year, that preliminary specifications for the upcoming year be published in the **Federal Register** inviting public comment, and that final specifications be published in the **Federal Register** following public comment. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), and the distribution of OY between domestic and foreign fishermen. The ABC is an estimate of the annual catch that can be taken of the more than 80 groundfish species managed by the FMP without jeopardizing the stock's productivity The OY, which is specified for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), is based on socio-economic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be retained or landed each year from the 3–200 nautical mile exclusive economic zone (EEZ) and the territorial sea (0–3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is apportioned into specifications of the amounts available for domestic and foreign fishing. The domestic annual harvest (DAH) consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP) which are verified by surveys of the domestic industry in September and June. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than initially was estimated.

The other groundfish species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been managed by quotas. The fisheries may be regulated by gear, area, and catch restrictions. Full utilization by domestic processors of some species in this multispecies complex preclude joint venture of foreign targeting on underexploited species in the complex because large incidental catches of the fully utilized species are likely to result. Consequently, specifications for DAH, DAP, JVP, and TALFF are not made for species which do not have numerical OYs. However, ABCs are specified for the major species or species groups.

The OYs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22. The estimates of DAP, DAH, JVP, and TALFF also may be modified inseason according to the procedures outlined in the foreign fishing regulations at 50 CFR 611.70.

The Pacific Fishery Management Council (Council) reviewed the recommendations of its Groundfish Management Team (GMT) and Scientific and Statistical Committee, received public comment, and recommended preliminary specifications for the 1989 ABCs, based upon the best available scientific information and surveys of the industry, at its September 1988 meeting. The preliminary 1989 ABCs and OYs recommended by the Council were published in the **Federal Register** at 53 FR 46890 (November 21, 1988). Written public comments on the preliminary specifications were requested through December 1, 1988; none were received.

The Council again received public comment at its November 16–17, 1988 meeting, the last opportunity in 1988 to recommend final specifications for 1989. The Council considered public comments in addition to advice from its Groundfish Advisory Subpanel (industry and consumer representatives) and GMT (state and federal fishery biologists and an economist) in recommending final specifications to NMFS. The Council recommended the following revisions to the preliminary specifications for sablefish, widow rockfish, and Pacific cod in 1989.

Sablefish

The ABC for sablefish in 1989 is 9,000 metric tons (mt). At its November meeting, the Council changed its earlier recommendation for a 1989 sablefish OY from 10,400 mt to an OY range of 10,400 mt–11,000 mt and stated its intent to manage for the low end of the range.

This 600 mt potential increase in landings is intended to provide for uncertainties in landings projections for trawl and nontrawl gears, enable some small fisheries that operate later in the year to land small amounts of sablefish after gear allocations have been achieved, and allow for landings of sablefish caught incidentally while fishing for other species. However, if total landings reach the upper end of the OY range of 11,000 mt, all further landings of sablefish will be prohibited. This strategy, in conjunction with specific management measures designed to slow the rate of landings (published in a separate **Federal Register** notice), is intended to reduce the probability of a fishery closure early in the year, and will thus reduce the waste of incidentally caught sablefish which must be discarded after a quota is reached.

A similar OY range (9,200–10,800 mt) was adopted in 1988. The Council intended to manage for the 10,000 mt ABC (allocated 52 percent for trawl gear and 48 percent for nontrawl gear), and provided an additional 800 mt to be used, if needed, to allow for landings of sablefish caught incidentally in the trawl fishery after the trawl allocation was reached. Although the 800 mt reserve was added to the trawl allocation in August, inseason management measures slowed total landings to a projected 10,000 mt in 1988.

Although the OY range of 10,400–11,000 mt is higher than the 9,000 mt ABC in 1989, it is not expected to result in overfishing because the stock is larger than the biomass level which will produce the estimated 8,200 mt maximum sustainable yield (MSY). If 10,400 mt of sablefish are taken in 1989, then the yield may be reduced in increments of a few hundred metric tons a year over 7 years, at which time the biomass and the yield will have converged to MSY levels. If 11,000 mt of sablefish are taken in 1989, then the convergence to MSY would be achieved in about 5 years.

Because domestic processors intend to process all available sablefish, DAP and DAH are equal to OY. No sablefish are available for joint venture or foreign fishing except for small incidental catches.

Widow Rockfish

The preliminary 1989 ABC and OY for widow rockfish both were proposed to be 9,500 metric tons (mt), 21 percent below the 1988 ABC and OY of 12,100 mt. Because two stock assessment models produced different results and because it was not clear what the current level of the stock was in relation to MSY, the preliminary specifications for ABC and OY were based on the average estimated MSY from the two stock assessment models.

New information, made available after the preliminary specifications were recommended by the Council, indicates that the stock is at or above the MSY levels estimated by the two previous models, and that an ABC of 12,400 mt, the average ABC derived by the two models, may be more appropriate for 1989. Accordingly, the final ABC for widow rockfish in 1989 is 12,400 mt, 300 mt higher than in 1988. As proposed in the preliminary specifications, OY equals ABC. Because domestic processors intend to process all available widow rockfish, DAP and DAH equal OY. No widow rockfish are available for joint venture or foreign fishing except for small incidental catches.

Pacific Cod

Because there is no formal stock assessment for Pacific cod, the ABC for this species has always been determined by the highest catch on record. The most recent information, unavailable at the time the preliminary specifications were proposed, projects 1988 coastwide landings of 3,200 mt. Because landings information now are available coastwide (which was not the case when the previous ABC for Pacific cod was estimated), the GMT recommended that the ABC for Pacific cod be applied coastwide rather than only for the Vancouver and Columbia areas as previously was the case. Accordingly, the ABC for Pacific cod is increased 100 mt, from 3,100 mt to 3,200 mt, and applied coastwide. (Footnotes 2 and 6 of Table 1 therefore are modified to delete reference to Pacific cod.) Pacific cod does not have a numerical OY quota and therefore has no specifications for JVP or TALFF.

All other ABC and OY designations for 1989 remain as proposed in the preliminary specifications at 53 FR 46890 (November 21, 1988). In particular, no changes are made to the specifications for Pacific whiting. The entire 225,000 mt OY for Pacific whiting will be utilized by the domestic industry, 18,000 mt for shore-based processing and 207,000 mt for joint venture operations. Domestic needs will be reevaluated in June, and Pacific whiting surplus to domestic needs could be made available for foreign fishing near August 1, 1989. However, the establishment of a foreign fishery for Pacific whiting in 1989 does not appear likely at this time.

After considering this information, the Secretary of Commerce concurs with the Council's recommendations including the revisions stated above, and in the absence of other public comment announces the final specifications for 1989 as shown in Tables 1 and 2.

TABLE 1.— FINAL SPECIFICATIONS OF ABC FOR 1989 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In Thousands of Metric Tons]

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific Cod						[3]3.2
Pacific Whiting						[3]225.0
Sablefish						[3]9.0
Rockfish:						
Pacific Ocean Perch	0.0	0.0	([2])	([2])	([2])	0.0
Shortbelly						[3]10.0
Widow						[3]12.4
Other Rockfish: [4]						
Bocaccio ([2])	([2])	([2])	4.1	2.0		6.1
Canary	0.8	[5]2.1	0.6	([2])	([2])	3.5
Chilipepper						[3]3.6
Yellowtail	1.1	[5]2.9	0.3	([2])	([2])	4.3

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TABLE 1.— FINAL SPECIFICATIONS OF ABC FOR 1989 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS—Continued

[In Thousands of Metric Tons]

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Remaining Rockfish	0.8	[2]3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover Sole	2.4	11.5	8.0	5.0	1.0	27.9
English Sole						[2]1.9
Petrale Sole	0.6	1.1	0.5	0.8	0.2	3.2
Other Flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish:						
Jack Mackerel [7]						12.0
Others	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion.
[2] These species are not common or important in the areas footnoted. Accordingly, rockfish species are included in the "remaining rockfish" category for the areas footnoted only.
[3] Total all areas.
[4] "Other rockfish" means rockfish species at 50 CFR 663.2, as amended, which do not have a numerical OY.
[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts at Coos Bay, Oregon (43°21'34" N. latitude), and ABCs for the Columbia area are prorated as follows:

Species	Columbia area Total	North of Coos Bay	South of Coos Bay
Canary	2.1	1.7	0.4
Yellowtail	2.9	2.8	0.1
Remaining rockfish	3.7	3.3	0.4

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, and jack mackerel. "Other fish" is part of the "other species" category listed at 50 CFR 663.2.
[7] North of 39° N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1989

[In Thousands of Metric Tons]

	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific Whiting	225.0	18.0	207.0	225.0	0.0	0.0
Sablefish	10.4–11.0	10.4–11.0	0.0	10.4–11.0	0.0	0.0
Pacific Ocean Perch	[2]1.3	[2]1.3	0.0	[2]1.3	0.0	0.0
Shortbelly Rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow Rockfish	12.4	12.4	0.0	12.4	0.0	0.0
Jack Mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other Species	([3])					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.
[2] Of this 1,300 metric tons, 500 metric tons is for the Vancouver area and 800 metric tons is for the Columbia area. Pacific ocean perch from other areas are included in the OY for "other species." See 50 CFR 663.21(a)(3).
[3] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under 50 CFR 611.70 and Part 663. See 50 CFR 663.2 for species listing.

Classification

This action is taken under the authority of 50 CFR 663.24 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Parts 611 and 663

Fish, Fisheries, Fishing, Foreign relations.

Dated: December 27, 1988.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 88–30215 Filed 12–28–88; 4:36 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 1
Tuesday, January 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 882–3135]

Budget Rent A Car Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Budget Rent A Car Corporation ("Budget") from failing to inspect and, if appropriate, repair its rental vehicles within a reasonable period of time (not to exceed 120 days) in response to manufacturers' safety recall notices. The consent would require respondent to generally disclose to prospective renters that the vehicles are subject to safety recall notices and may contain defects, if it chooses not to inspect.

DATE: Comments must be received on or before March 6, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lydia B. Parnes, FTC/H–238, Washington, DC 20580. (202) 326–3126.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobile, Rental cars, Trade practices.

Budget Rent A Car Corp.; Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commiasion having initiated an investigation of certain acts and practices of Budget Rent A Car Corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Budget Rent A Car Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Budget Rent A Car Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 North Michigan Avenue, Chicago, Illinois 60601. Budget Rent A Car Systems, Inc., a wholly owned subsidiary of Budget Rent A Car Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 North Michigan Avenue, Chicago, Illinois 60601. For purposes of this agreement, the term "Proposed respondent" or "respondent" shall mean Budget Rent a Car Corporation and shall include Budget Rent A Car Systems, Inc.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. Proposed respondent retains all rights, including those rights provided by Section 5(b) of the FTC Act, 15 U.S.C. 45(b), and 16 CFR 2.51, 3.71 and 3.72, to petition the Commission to modify or set aside the Order due to changes in conditions of law or fact which may include, but shall not be limited to, recommended changes to an automobile manufacturer's regular vehicle preventative maintenance schedules for its vehicles; provided, however, that this provision shall not be interpreted to require the Commission to modify or set aside the Order on any particular ground.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto. Proposed respondent denies that any law has been violated as alleged in the complaint attached hereto.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered,

modified or set aside in the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

1. "Affected vehicles" means respondent's rental fleet vehicles that are covered by recall notices received by respondent.

2. "Rental fleet vehicles" means those vehicles that respondent's corporate owned locations rent to the public.

3. "Manufacturer" means any person or entity engaged in the manufacturing or assembling of motor vehicles.

4. "Recall notice" means written notification from manufacturers to owners under the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1391 *et seq.*, and the rules and regulations promulgated thereunder, 49 CFR Part 577, that their vehicles may contain safety-related defects.

5. "Reasonable period of time" means a period of time not to exceed 120 days from the date the affected vehicle's notice of safety recall was received by respondent.

I.

It is ordered that respondent Budget Rent A Car Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporate or other device, in connection with respondent's corporate owned locations' advertising, offering for rental, or rental of any rental fleet vehicle in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing within a reasonable period of time after receipt of a recall notice, to inspect or to have inspected each such affected vehicle and to repair or to have repaired each such affected vehicle found to contain the safety defect(s); provided, however, that failure to comply with respect to any specific affected vehicle shall not be deemed to be a violation of this Order if respondent can demonstrate that such failure to comply was due to circumstances beyond its control, including, but not limited to, the unavailability of replacement parts to complete that affected vehicle's safety recall procedures, and if respondent can show that, upon learning of such failure to comply, it complied at the earliest practicable date.

II.

It is further ordered that respondent may elect, in lieu of the obligations set forth in Part I of this Order, to disclose, in a clear and conspicuous manner, to each prospective renter of an affected vehicle, that the affected vehicle is subject to a recall notice and has not been inspected or repaired.

III.

It is further ordered that for a period of two (2) years, respondent shall maintain at the place said documents are routinely kept and upon request make available to the Federal Trade Commission for inspection and copying:

1. Any recall notice received subsequent to the date of this Order and records sufficient to show the date or dates it was received from the manufacturer;

2. Records disclosing the vehicle identification number, make and model of every affected vehicle; and

3. Documents evidencing the inspection and, if required, the repair of affected vehicles.

IV.

It is further ordered that respondent shall:

1. Distribute a copy of this Order to all officers and any employee having responsibilities for recall procedures; and

2. Distribute a copy of this Order to all its existing and future U.S. licensees.

V.

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI.

It is further ordered that respondent shall, within one hundred twenty (120) days after the date of service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to proposed consent order from Budget Rent A Car Corporation, ("Budget") 200 North Michigan Avenue, Chicago, Illinois 60601. Budget is the fourth largest automobile rental firm in the United States. The company primarily offers car and truck rental services to the general public.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges Budget with failing to disclose to renters that it did not inspect, within a reasonable period of time, vehicles that were subject to recall notices.

The proposed consent order would prohibit Budget from failing to inspect and, if appropriate, repair its rental vehicles within a reasonable period of time in response to manufacturers' safety recall notices. Part I of the Order would require Budget to inspect and, if appropriate, repair each vehicle subject to a safety notice within a reasonable period of time, not to exceed 120 days, after receipt of that vehicle's recall notice.

Part II of the proposed consent order would give Budget the option to generally disclose to prospective renters, in a clear and conspicuous manner, that their cars are subject to a safety recall notice and may contain safety-related defects, if it chooses not to inspect.

Part III of the proposed consent order would require Budget to maintain, for a period of two years after each recall, copies of recall notice received from a manufacturer; records showing the vehicle identification, make and model of each affected vehicle; and documents evidencing inspection and, if required, the repair of affected vehicles.

Part IV of the proposed consent order would also require Budget to distribute a copy of the order to each of its officers and any employees who have responsibilities in connection with Budget's recall inspection procedures. It would require Budget also to distribute a copy of the proposed consent order to all its existing and future U.S. licensees. Finally, the proposed order would require Budget to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure and to file a compliance report within 120 days after service of the order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 88-30148 Filed 12-30-88; 8:45 am]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Procedures Relating to Appeals of Denial of Requests for Confidential Treatment, Notification of Intent to Use Certain Equipment at Hearings, and Notification to Submitters of Confidential Business Information of a Request Under the Freedom of Information Act

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. International Trade Commission is considering adopting the following proposed rules relating to (1) the definition of the term "confidential business information; (2) information and argumentation presented in conjunction with appeals to the Commission of denials of requests for confidential treatment; (3) notification of intent to use audio-visual or other equipment at hearings; and (4) notification to submitters of confidential business information of a request for disclosure of such information under the Freedom of Information Act.

The proposed rules, if adopted, would amend § 201.6 (relating to confidential business information), § 201.13 (relating to conduct of nonadjudicative hearings), and §§ 201.18–201.19 (relating to denials of requests for information under the Freedom of Information Act and appeals thereof) of the Commission's Rules of Practice and Procedure (19 CFR 201.6, 201.13, 201.18, and 201.19). Present § 201.19, which relates to appeals from denial of requests for records, would be combined with present § 201.18, which relates to denial of requests for records. New § 201.18 would be entitled "Denial of requests, appeals from denial".

Promulgation of new rules with respect to notification to submitters of confidential business information, the fourth item identified above, is required by Executive Order 12600 of June 23, 1987 (52 FR 23781). The proposed rules largely reflect longstanding Commission practice and parallel final rules issued by the Department of Justice and published in the **Federal Register** of July 19, 1988 (53 FR 27161).

DATES: Comments must be received not later than February 2, 1989.

ADDRESS: Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Assistant General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1091.

SUPPLEMENTARY INFORMATION: The Commission's part 201 rules are of general application. The Commission's rules concerning requests for confidential treatment of business information are set forth in § 201.6, rules concerning conduct of nonadjudicative hearings are set forth in § 201.13, and rules relating to requests for agency records under the Freedom of Information Act are set forth in §§ 201.17–201.20.

None of the proposed amendments constitutes a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

Definition of term "confidential business information". The first of the amendments would make clear the fact that "proprietary information" in section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)) is the equivalent of "confidential business information" in § 201.6(a) of the rules. The term "proprietary" in section 777(b) was substituted for "confidential" by the Tax Reform Act of 1986 to "clarify that the reference always is to sensitive company commercial and financial data rather than national security information at the 'confidential' level." Mudge Rose Guhrie Alexander & Ferdon v. U.S. International Trade Commission (Civil Action No. 87–5312, May 20, 1988, D.C. Cir.). Section 777(b) provides for the submission and nondisclosure (except under limited circumstances) of proprietary information submitted to the Commission in connection with investigations conducted under the antidumping and countervailing duty laws (19 U.S.C. 1671 et seq.). Section 1886(a)(13)(A) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2922) substituted the terms "proprietary", "non-proprietary", and "proprietary status" for the terms "confidential", "nonconfidential", and "confidentiality" in section 777(b) and changed the title of section 777(b) to "proprietary information" from "confidential information".

Appeals of denials of requests for confidential treatment. The second of the amendments would add to the end of § 201.6(e) a new paragraph (3) providing that, (i) in the case of an appeal to the Commission of a denial by the Secretary or Acting Secretary of a request for confidential treatment, that justification for confidential treatment submitted to the Commission by the appealing party with the appeal shall be limited to that submitted to the Secretary; (ii) when the Secretary or Acting Secretary has denied a request for confidential treatment on the ground that the submitter failed to provide adequate justification, the submitter may file any such additional justification with the Secretary as part of an amended request for confidential treatment; and (iii) with respect to the 20-day period for filing an appeal set forth in paragraph (1) of § 201.6(e), that such period be considered to recommence as of the date any amended request had been denied, or approval or denial had not been forthcoming within 10 days of the filing of the amended request.

The Commission's present rules provide that requests for confidential treatment shall be submitted to the Secretary and that appeals shall be filed with the Chairman for consideration by the full Commission. However, present Commission rules are silent on the question of whether an appellant may submit additional justification with his appeal. It is estimated that about half the appeals filed in recent years have contained justification in addition to that submitted to or considered by the Secretary. In many cases it appears that the Secretary would have granted the request if he had considered the additional justification. As a result, the Commission has frequently become, in effect, a first level rather than second level reviewer of requests for confidential treatment. This submitting

of new justification to the Commission unnecessarily adds to the time it takes to dispose of a request (under the rules appeals are decided by the Commissioners in 20 working days, but initial requests are disposed of by the Secretary in 10 working days), unnecessarily adds to the Commissioners' dockets, and deprives submitters of a level of agency review (the second level of review effectively becomes the Federal courts).

Notification of intent to use certain equipment at hearings. Section 201.13 of the rules would be amended by adding at the end thereof a new subsection (l) that would direct parties wishing to use audio-visual equipment, easels, and other equipment in the course of their hearing presentation to advise the Secretary that they intend to use such equipment at least three (3) days in advance of the hearing. Parties in recent years have increasingly used such equipment in their hearing presentations.

Notification to the Secretary would (1) facilitate the conduct of hearings by giving the Secretary advance notice of the number and kinds of equipment to be used in order that he might anticipate and coordinate setups, (2) enable the Secretary to determine in advance whether Commission facilities can accommodate the equipment, and (3) enable the Secretary to advise parties as to the availability of Commission equipment, thus obviating the need in some instances for parties to bring their own equipment.

Notification to submitters of business information of a request for such information under the Freedom of Information Act. Executive Order 12600 of June 23, 1987 (52 FR 23781) requires that agencies publish rules with respect to notification to submitters of confidential business information of requests for such information under the Freedom of Information Act (5 U.S.C. 552). The proposed Commission rules, to be set forth in a revised § 201.19 of the Commission's rules, would provide for such notification, parallel rules issued by the U.S. Department of Justice and published in the **Federal Register** of July 19, 1988 (53 FR 27161), and largely reflect existing agency practice.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Civil rights, Classified information, confidential business information, Equal employment opportunity, Federal buildings and facilities, Freedom of information, Handicapped, Infants and children, Investigations, Lawyers, Postal Service, Privacy, Signs and insignia, Sunshine Act.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 335, 72 Stat. 680, sec. 401, 76 Stat. 902; 19 U.S.C. 1335, 1602, unless otherwise noted.

§ 201.6 [Amended]

2. Section 201.6(a) is amended by removing the designations "(1)" and "(2)" and by adding the following sentence to the end of the paragraph:

The term "confidential business information" includes "proprietary information" within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)).

3. Section 201.6 is amended by adding the following paragraph (e)(3):

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for his consideration as part of an amended request. For purposes of paragraph (1) of this subsection, the twenty (20) day period for filing an appeal shall be tolled on filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

§ 201.13 [Amended]

4. Section 201.13 is amended by adding the following paragraph (l):

(l) To facilitate the conduct of hearings, parties intending to use easels, audio visual, and similar equipment in the course of hearing presentations should advise the Secretary of their intent to use such equipment at least three (3) working days before the hearing.

§§ 201.18 and 201.19 [Amended]

5. Section 201.18 is amended as follows:

(a) The title of § 201.18 is amended to read: "Denial of requests, appeals from denial."

(b) The text of present § 201.18 is redesignated as § 201.18(a).

(c) Paragraphs (a) through (d) of present § 201.19 are redesignated as paragraphs (b) through (e), respectively, of § 201.18.

6. Section 201.19 is revised to read as follows:

§ 201.19 Notification regarding requests for confidential business information.

(a) *In general.* Business information provided to the Commission by a business submitter which the Commission has designated as "confidential business information" will not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

"Confidential business information" means commercial or financial information that has been designated as confidential business information by the Commission under § 201.6 of this part.

"Submitter" means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and foreign governments.

(c) *Notice to submitters.* Except as provided for in paragraph (e) of this section, the Commission will, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice will describe the nature of the confidential business information requested. The requester will also be notified that notice and opportunity to object are being provided to a submitter.

(d) *When notice is required.* Notice will be given to a submitter in writing at submitter's last known address whenever:

(1) The information the subject of the FOIA request or appeal has been designated by the Commission as confidential business information; and

(2) The Commission has reason to believe that the information may not be protected from disclosure under FOIA Exemptions 3 or 4.

(e) *Exceptions to notice requirement.* The notice requirements of paragraph (c) of this section will not apply if:

(1) The Commission determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552.

(f) *Opportunity to object to disclosure.* In general, the Commission has 10 working days in which to respond to a FOIA request. Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed at least one working day before the Commission is required to respond to the FOIA request, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of § 201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized represenatative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to dislclosure under FOIA.

(g) *Notice of intent to dislose.* The Commission will consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the the information. Whenever the Commission decides to disclose such information over the objection of a submitter, the Commission will forward to the submitter a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose will be forwarded to the submitter a reasonable number of days prior to the speficified disclosure date and the requester will be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclsoure of informaation that the Commission has desingated as confidential business information, the Commission will promptly notify the submitter at its last known address. For the purpose of this paragraph, the Secretary may assume such address to be that given on the submission.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 20, 1988.

[FR Doc. 88-29807 Filed 12-30-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-158-86, 160-86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the **Federal Register** publication on Monday, August 8, 1988, beginning at 53 FR 29719 of the notice of proposed rulemaking. The proposed rules relate to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986, and nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code. These changes were made to the Code by the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, proposed rules relating to cash or deferred arrangements and nondiscrimination rules for employee contributions and matching contributions were published in the **Federal Register** (53 FR 29719). The amendments were proposed to conform the regulations to changes in the applicable tax law made by the Tax Reform Act of 1986.

Need for Correction

As published, the proposed rules contain a typographical error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the proposed rules (EE-158-86, 160-86), which was the subject of FR Doc. 88-17721 (53 FR 29719), is corrected as follows:

§ 1.401(k)-1 [Corrected]

On page 29730, in the third column, in § 1.401(k)-1(g)(8)(iii)(C), in the last line, "(g)(8)(ii) (A) and (B) of this section." should read "(g)(8)(iii) (A) and (B) of this section."

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-30213 Filed 12-30-88; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[CC:D-1398-88]

Disclosure of Information

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Income Tax Regulations relating to the disclosure, under section 6103(n) of the Internal Revenue Code, of returns and return information, in connection with the procurement of property and services for purposes of tax administration. These proposed amendments give to the Tax Division, Department of Justice, the authority to make these disclosures under section 6103(n) for federal tax administration purposes. These proposed amendments affect all disclosures by the Tax Division, Department of Justice, made to any person(s) described in section 6103(n). These proposed amendments apply to all disclosures made after the effective date of this amended regulation.

DATES: These proposed amendments to the regulations are proposed to be effective March 6, 1989. Written comments and requests for public hearing must be delivered or mailed by February 2, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R, Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: James N. Beyer of the Disclosure Litigation Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:D:Branch 2,

Room 3564) (202) 566-3074 (Not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations relating to the disclosure of returns and return information under section 6103(n) of the Internal Revenue Code (26 CFR 301.6103(n)-1).

Explanation of Provisions

Section 6103(n) of the Code authorizes the disclosure, pursuant to Treasury Regulations, of returns and return information to the extent necessary and in connection with the processing, storage, transmission, and reproduction of returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration. Section 6103(b)(4) of the Code defines "tax administration" to include litigation arising under the Internal Revenue laws.

Existing § 301.6103(n)-1 of the regulations authorizes disclosures to third parties under section 6103(n) only by officers or employees of the Treasury Department, a State tax agency, or the Social Security Administration, for tax administration purposes. Under the current regulations, the Tax Division, Department of Justice, cannot make disclosures to third parties. These proposed amendments would give disclosure authority to the Tax Division, Department of Justice, in order to allow the Tax Division to disclose tax returns and return information for purposes of obtaining litigation support services during the course of litigation arising under the Code. This authority is deemed necessary to enable the Tax Division to procure services from outside contractors in connection with Tax Division's tax litigation responsibilities.

Special Analyses

The proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. § 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before adopting the proposed amendments to the regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing may be scheduled and held upon written request by any person who submits written comments. If a public hearing is scheduled, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed amendments to the regulations is James N. Beyer of the Disclosure Litigation Division of the Office of Chief Counsel. Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service, the Office of Chief Counsel, and the Treasury Department participated in developing these proposed amendments to the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of Information, Employment taxes, Estate Tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Accordingly, Title 26, Part 301 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * Section 301.6103(n)-1 also issued under 26 U.S.C. 6103(n).

§ 301.6103 [Amended]

Par. 2. Section 301.6103(n)-1(a) is amended as follows:

In § 301.6103(n)-1, the first sentence of paragraph (a) is amended by removing the language "or" immediately following the phrase "State tax agency", and by adding, immediately following the phrase "the Social Security Administration," the language", or the Tax Division. Department of Justice".

Also in paragraph (a), the first full sentence of the flush language following paragraph (a)(2) is amended by removing the language "or" immediately following the phrase "State tax agency", and by adding, immediately following the phrase "the Social Security Administration", the language", or the Tax Division, Department of Justice".

Par. 3. Section 301.6103(n)-1(d) is amended as follows:

In § 301.6103(n)-1, the second sentence of paragraph (d) is amended by removing the language "or" immediately following the phrase "State tax agency", and by adding, immediately following the phrase "the Social Security Administration", the language", or the Tax Division, Department of Justice".

Par. 4. Section 301.6103(n)-1(d) is further amended as follows:

In § 301.6103(n)-1, paragraph (d)(2) is amended by adding, immediately following the phrase "State tax agency,", the language "or to the Tax Division, Department of Justice ".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-30199 Filed 12-30-88; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Service

31 CFR Parts 203 and 214

Treasury Tax and Loan Depositaries, Depositaries for Federal Taxes

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury proposes to (1) amend its regulations on paying fees to financial institutions for maintaining Treasury Tax and Loan (TT&L) accounts and processing Federal Tax deposit (FTD) payments by removing specific references to the FTD fee structure from 31 CFR Parts 203 and 214 and transferring the fee schedule to the Treasury Financial Manual and (2) revise its procedures to reduce the fees paid to depositaries for processing FTD payments. Payment of fees for processing FTD payments is not required by statute. Therefore, Treasury plans to transfer these administrative procedures to the Treasury Financial Manual which may be obtained from any Federal Reserve Bank. In addition, Treasury plans to reduce the current per-item fee structure beginning in March 1989 for (1) all note option B and C depositaries and (2) any remittance option depositary that processes FTD dollar deposit volumes in excess of $10 million annually. However, fee reductions for depositaries that process the smaller FTD dollar deposit volumes and those depositaries that participate in the Federal Government's Minority Bank Deposit Program (MBDP) will not be implemented. This rule shall be effective upon publication as a final rule in the Federal Register.

DATE: Comments on this proposed rule must be received by February 2, 1989.

ADDRESS: Comments may be mailed to the Treasury Programs Branch, Financial Management Service, U.S. Department of the Treasury, Room 420, Liberty Center, 401 14th Street SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Michael Salapka (202) 287-0590.

SUPPLEMENTARY INFORMATION: Treasury currently pays a fee of fifty ($.50) cents to each participating depositary for each FTD coupon processed. As proposed, to achieve budget reductions in Fiscal Year 1989, Treasury plans to reduce fees to thirty ($.30) cents beginning in March 1989 for (1) note option B and C depositaries and (2) any remittance option depositary that processes more than $10 million in FTD deposits annually. *See* S. Rep. No. 387, 100th Cong., 2d Sess. 16 (1988). However, fee reductions for depositaries that process the smaller FTD dollar deposit volumes, as well as for those depositaries that participate in the Federal Government's Minority Bank Deposit Program, are under review. It will be decided at a later date when such fee reductions will be implemented. The new and any subsequent fee schedules will be published in the Treasury Financial Manual which may be obtained from any Federal Reserve Bank.

Nearly 3,400 financial institutions participate as note option depositaries while over 11,600 financial institutions participate under the remittance option. Note option B and C depositaries and those remittance option depositaries that process the largest FTD dollar deposit volumes generally benefit most from overnight use of funds. In Fiscal Year 1988, the note option depositaries processed $498.6 billion in FTD payments which comprised 70% of the total FTD dollar deposit volume received by TT&L depositaries. The remittance option depositaries processed $211.2 billion in FTD payments in FY 1988 which was 30% of the total FTD dollar deposit volume received by TT&L depositaries. Note option B and C depositaries and the large remittance option depositaries would lose proportionately less income from loss of fees relative to the smaller remittance option depositaries. Therefore, Treasury has determined that the initial fee reduction will be limited to (1) note option B and C depositaries and (2) remittance option depositaries that process over $10 million in FTD deposits annually. Fee reductions to depositaries that participate in the Minority Bank Deposit Program, as well as to those depositaries that process the smaller FTD dollar deposit volumes, are under review. It will be decided at a later date when such fee reductions to these depositaries will be implemented.

Distribution of the revised Treasury Financial Manual to the Federal Reserve banks and TT&L depositaries will be coordinated with the regulation revisions.

Treasury has determined that this is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects

31 CFR Part 203

Banks, Banking, Taxes.

31 CFR Part 214

Banks, Banking, Taxes.

For the reasons set out in the preamble, Title 31, Part 203 and Part 214 of the Code of Federal Regulations, is proposed to be amended as set forth below.

PART 203—[AMENDED]

1. The authority citation for Part 203 is revised to read as follows:

Authority: 31 U.S.C. 3122 and 31 U.S.C. 323.

2. Section 203.10(b)(2)(ii) is revised to read as follows:

§ 203.10 [Amended]

* * * * *

(b) * * *

(2) * * *

(ii) *Analysis credit.* All tax and loan balances which are in excess of a current day's credits will be subject to an analysis credit, as explained in the Procedural Instructions for Treasury Tax and Loan Depositaries.

3. Section 203.14 is revised to read as follows:

§ 203.14 Compensation for services rendered.

Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, Depositaries will not be compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

PART 214—[AMENDED]

1. The authority citation for Part 214 is revised to read as follows:

Authority: 12 U.S.C. 265; 12 U.S.C. 391; 31 U.S.C. 3122; 31 U.S.C. 323.

2. Section 214.6 is amended by revising paragraph (b) as follows:

§ 214.6 [Amended]

* * * * *

(b) Compensation for services. Except as provided in the Procedural Instructions for Treasury Tax and Loan Depositaries, Depositaries will not be compensated for servicing the tax and loan account or for the bookkeeping costs of maintaining that account.

W.E. Douglas,

Commissioner.

[FR Doc. 88-30197 Filed 12-30-88; 8:45 am]

BILLING CODE 4810-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3498-1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific State Implementation Plan (SIP) revision to the ozone portion of the Ohio SIP. This SIP revision was submitted as an alternative emission control plan (bubble) with monthly averaging, for its two air cleaner spray booths and a dip tank at the Ford Motor Company (Ford Motor) in Sandusky, Ohio. This facility is located in Erie County, Ohio. USEPA's action is based upon the March 13, 1986, revision request that was submitted by the Ohio Environmental Protection Agency (OEPA).

USEPA has determined that this SIP revision does not meet its policies on bubbles and long-term averaging. However, USEPA is proposing to approve this revision as a relaxation from reasonably available control technology (RACT) because Ford Motor is located in an attainment area for ozone, and approval of this revision will not cause an increase in actual emissions. However, because this revision does not satisfy USEPA's emissions trading policy and monthly averaging policy, and it would allow less than RACT to be required, approval

of this revision would eliminate the accommodative Ozone SIP for Erie County, including the 1 year preconstruction monitoring waiver for new sources.

DATE: Comments on this revision and on the proposed USEPA action must be received by February 2, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886–6031, FTS 886–6031.

SUPPLEMENTARY INFORMATION: On March 13, 1986, the OEPA submitted a site-specific revision to its ozone SIP for Ford Motor. This revision was submitted as a bubble with monthly averaging for two air cleaner spray booths and a Cincinnati type dip tank located at the Ford Motor Plant in Sandusky Erie County, Ohio. Erie County, Ohio was redesignated to attainment on June 12, 1984.

Under the existing federally approved SIP, each spray booth and dip tank is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products, and to the compliance schedule contained in OAC Rule 3745–21–04(C)(28). These rules require the sources to meet a volatile organic compound (VOC) limit of 3.5 pounds of VOC per gallon of coating, excluding water, by December 31, 1982. USEPA approved these rules as meeting the RACT requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).

Bubble Policy

On April 7, 1982 (47 FR 15076), the USEPA issued a proposed Emissions Trading Policy Statement (bubble policy) which sets forth general principles for the creation, banking and use of emission reduction credits. This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards (NAAQS). It describes emissions trading, sets out general principles that USEPA will use to evaluate emissions trades under the Clean Air Act, and expands opportunities for States and industry to use these less costly control approaches. The April 7, 1982, notice noted that until USEPA took final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed statement.

On December 4, 1986 (51 FR 43814), USEPA issued its final bubble policy, which contains the criteria by which emission trades will be evaluated. Under USEPA's final bubble policy, a baseline for determining creditable reductions must be established both on an annual basis and for all other averaging periods consistent with relevant NAAQS and Prevention of Significant Deterioration (PSD) [1] increments.

This approach is necessary to protect the ambient standards and PSD increments on a short-term as well as an annual basis. For VOC sources, the baseline should be established on a daily basis.

Summary of Bubble

VOC emission credits obtained from the shutdown of two miscellaneous metals spray booths and material changes are used to provide credit for use of noncomplying coatings on two air cleaner spray booths and a dip tank. The bubble balances SIP-allowable emissions for all five lines on an annual basis. The revision also allows monthly averaging to determine compliance with a daily cap.

The actual and allowable emissions and the change in emissions from before to after the bubble are summarized in the following table:

EMISSION (TONS PER YEAR)

	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
Air Cleaners Spray booths	177.3	10.8	−166.5	46.3	*84.7	*19.8
Dip tank	37.0	3.4	−33.6	18.6		
Spray booths	36.8	0	−36.8	19.8	0	−19.8
Total	251.1	14.2	−236.9	84.7	84.7	0

* Total for both spray booths and dip tank.

The "before bubble" emissions are based on actual 1982 production levels. The "after bubble" actual emissions are expected 1987 emissions and do not represent a regulatory limit. The actual emissions will not increase above 84.7 tons per year because this is the limit contained in the variance.

USEPA's Analysis of The Bubble

The annual limit of 84.7 tons of VOC proposed by Ford meets the requirements of USEPA's bubble policy, which specifies that for trades in attainment areas the baseline must generally be determined using the lower of actual or allowable emissions, as of the time the source submitted its bubble application to the State. Since Ford submitted this bubble to the OEPA on September 13, 1982, and was using no complying coatings at that time, the use of 1982 allowable emissions is acceptable.

[1] The PSD requirements are contained in Section 160–169 or Part C of the Clean Air Act. USEPA's regulations for implementing these requirements are found in 40 CFR 51.24 and 52.21. The PSD program addresses the emission limits and control technique technologies which are required for the construction of certain new sources or major modifications of existing sources in attainment areas.

The revision does not, however, contain a meaniful rate-based (e.g., lb. VOC/ gal. coating) daily limit. Such a limit should be based on the allowable emissions as discussed above. The daily limit proposed by Ford appears to be based on actual maximum daily emissions. Because none of the sources were in compliance at the time the bubble was submitted to the State, the allowable emissions are lower than the actual emissions, and should be used as the baseline. In addition, the variance allows compliance with the daily cap to be determined as a monthly average.

Because, the OEPA has not provided an acceptable bubble related rate-based daily limit this revision is not approvable as a bubble under the final ETPS. Despite this deficiency, USEPA is proposing to approve the revision as a relaxation from RACT because the source is located in an ozone attainment area. This basis is discussed further later in this notice.

Criteria for Monthly Averaging

USEPA's January 20, 1984, policy memorandum entitled "Averaging Times for Compliance With VOC Emission Limits" contains the criteria for evaluating a VOC request for extended averaging which are as follows:

Criterion 1

Extended averaging can be permitted where the source operations are such that daily VOC emissions cannot be determined, or where the application of RACT for each emission point is not economically or technically feasible on a daily basis.

Criterion 2

The area must not lack an approved SIP and there must not be any measured violations.

Criterion 3

A demonstration must be made that the use of monthly averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP for the area.

Criterion 4

Averaging times must be as short as practicable and in no case longer than 30 days.

The OEPA believes that neither add-on control nor conversion to waterborne or high solids coatings is economically feasible due to the small amount of metal parts that will be painted after the presumed conversion to plastic parts is completed. However, the OEPA has not provided any documentation to support Ford Motor's cost estimates. Therefore, USEPA cannot evaluate the State's determination that add-on controls and low VOC coatings for this facility are not economically feasible. Nevertheless, USEPA is proposing approval of this SIP revision with monthly averaging based on the fundamental criterion that the Clean Air Act does not require the implementation of RACT in this area. This revision could not be approved if the source were located in a nonattainment area. Ford Motor is located in Erie County which has been designated as an attainment area for the pollutant ozone. Approval of this proposed SIP revision will not cause any increase in the historical VOC emission level from this source. Under USEPA's existing policy, however, no demonstration of attainment and maintenance was required in the SIP for this area.

This rulemaking relaxes a stationary source RACT emission limitation in an area that always should have been designated as attainment/unclassifiable for ozone. Erie County was originally designated as nonattainment for the ozone NAAQS. This was based on the assumption that nonattainment of the 0.08 parts per million (ppm) ozone Standard (the level of the standard prior to 1979) was widespread around nearby major urban areas. As requested by OEPA, USEPA designated Erie County as nonattainment although no in-county monitoring data were available. After the ozone standard was changed to 0.12 ppm, OEPA recognized that the assumption of widespread ozone nonattainment was no longer valid and initiated the redesignation of Erie County to attainment of the ozone standard. USEPA approved this redesignation on June 12, 1984 (49 FR 24124). RACT was imposed in this area, by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. The original principal of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/ unclassifiable areas under USEPA's prevention of significant deterioration regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Erie County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

If the State wishes to correct the inconsistencies cited above in order to retain the accommodative SIP for the area, it should also review the following guidance for other potential inconsistencies: (1) Appendix D of the proposed Post-1987 ozone policy titled "Discrepancies and Inconsistencies Found in Current SIPs," (2) a May 25, 1988, clarification of Appendix D titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," and (3) the "SIP Approvability Checklist-Enforceability," which is attached to a September 23, 1987, policy memorandum titled "Review of State Implementation Plan Revisions for Enforceability and Legal Sufficiency." These documents contain USEPA requirements (largely dealing with SIP approvability and enforceability) which must be met for a site-specific SIP revision to be approved in an attainment area without eliminating the accommodative SIP for the area.

USEPA is providing a 30-day comment period on this notice of proposed rule-making. Public comments received on or before February 2, 1989 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291..

Authority: 42 U.S.C. 7401–7642.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–29590 Filed 12–30–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3501–6]

Alternative Emission Control Plan for American Cyanamid Co. Fortier Plant, Westwego, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: On November 18, 1988 (53 FR 46636), EPA invited comment on the proposed disapproval of the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). At the request of American Cyanamid, in a letter dated December 13, 1988, EPA is extending the public comment period until February 1, 1989, to allow additional time to develop comments on the issues presented in the proposed rulemaking.

DATES: Comments may be submitted to EPA at the address below, until February 1, 1989.

ADDRESSES: Comments should be submitted to: Bill Riddle, State Implementation Plan Section (6T–AN), EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle at (214) 655–7214 or FTS 255–7214.

Date: December 22, 1988.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 88–30183 Filed 12–30–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL–3501–5]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located off the Louisiana coast at the mouth of the Mississippi River for the continued disposal of dredged material removed from the Southwest Pass Channel. This proposed site designation is for an indefinite period of time. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material.

DATE: Comments must be received on or before February 17, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations: EPA, Region VI (E–FF), 1445 Ross Avenue, 10th Floor, Dallas, Texas 75202. Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state the ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Southwest Pass-Mississippi River site for the disposal of material dredged from the Southwest Pass Channel. In January 1980, the interim status of the Southwest Pass site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region VI address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

In August 1984 EPA distributed a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Southwest Pass-Mississippi River Ocean Dredged Material Disposal Site Designation" to the public for a 45-day review and comment period. Eight comment letters were received on the Draft EIS. The Agency has responded to the comments in the Final EIS. Editorial or factual corrections required by the comments have been incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated changes have been addressed point by point in the Final EIS. On December 9, 1988, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on the Final EIS will close on January 9, 1989. The EIS is available for review at the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land-based disposal alternatives were examined in a previously published EIS and the analysis was updated in EPA's Final EIS based on information from the COE.

About 1200 acres of marshes have been built on the west side of the Southwest Pass Channel using dredged material. However, use of the dredged material disposed at the Southwest Pass site for marsh creation purposes is not feasible because of technical and cost considerations. Long pipelines would be required to transport the material and the COE has determined that pipeline dredges in this area were impractical and unsafe because of the length of pipe and cable required, concerns over pipe breakage in rough seas and difficulties with currents in the area. Consideration was also given to the use of these materials for beach nourishment. The same difficulties associated with transport of the materials by pipeline for marsh creation would apply. Also the materials consist primarily of fines, which are generally considered unsuitable for beach nourishment. Upland disposal was also evaluated but there are no upland disposal sites located in the vicinity of the Gulf portion of Southwest Pass.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) increased surveillance and monitoring costs due to the greater depths of water and distance from shore; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located northeast or northwest of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the alternate site would be located in more biologically productive waters nearer to estuarine areas.

In accordance with the requirements of the Endangered Species Act, EPA has completed a biological assessment and is currently coordinating a no adverse effect determination with the National Marine Fisheries Service. EPA is also coordinating with the State of Louisiana under requirements of the Coastal Zone Management Act.

C. Proposed Site Designation

The existing disposal site is located on the west side of the Southwest Pass Channel approximately 1.75 nautical miles from shore. Water depths within the site range from 2.7 to 32.3 meters. The boundary coordinates are as follows: 28°54'12" N, 89°27'15" W; 28°54'12" N, 89°26'00" W; 28°51'00" N, 89°27'15" W; 28°51'00" N, 89°26'00" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1).)

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is irregular.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. (40 CFR 228.6(a)(2).)*

The northwestern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottom fish. The Mississippi Delta in the vicinity of Southwest Pass is a highly productive area with a wide variety of plankton and nekton. Due to runoff from the Mississippi River, the Delta area near the mouth of Southwest Pass experiences changing salinity, temperature, turbidity and nutrient conditions over an annual cycle. During periods of active dredged material disposal, there would be short-term interferences with breeding, spawning, feeding and passage of the nekton. However, it would be difficult to differentiate this interference from that resulting from high flows of the Mississippi River. The existing disposal site is seaward of any estuaries or bays.

3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

There are no beaches in the vicinity of the existing disposal site. The area around Southwest Pass is not readily accessible by land. Recreation in the area is limited to boating related activities, primarily sport fishing.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* (40 CFR 228.6(a)(4).)

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping Regulations (40 CFR Part 227). The dredged material to be disposed of consists of about 4 percent sand and 96 percent fines. Historically, an average of 14.5 million cubic yards (mcy) of material is dredged annually, with a range of 1.8 to 32.5 mcy. Similar quantities will continue to be dredged and disposed of annually using either agitation dredging in high river flows or hopper dredges for transport during low flows. The dredged material will not be packaged in any way.

5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5).)

Surveillance and monitoring are both feasible at this site. Surveillance can be accomplished by inspection of logs, observation by ship riders or from aircraft and observation from the light station at the end of Southwest Pass. The shallow depth of the site and its close proximity to the shore facilitate monitoring at the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6).)

The Mississippi River plume passes through the site in a westerly or southwesterly direction and may mask the turbidity plume from dredged material disposal. Prevailing currents at the site are southwest at speeds of 0 to 4 knots. Disposed dredged material fines become mixed with the Mississippi River plume and move generally southwest. Net movement of the heavier dredged materials which settle is to the west. Freshwater discharge from the Mississippi River results in stratification at the mouth of Southwest Pass; seaward of the Pass vertical mixing increases.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7).)

The materials dredged from the Southwest Pass Channel are similar to the materials in the Mississippi River flow. And therefore, the sediments at the disposal site are similar to the sediments in the broad area off the mouth of Southwest Pass. Previous site

surveys have not detected any effects of disposal at the existing site.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8).) Some interference with shipping, recreational and commercial fishing and boating are expected during dredged material disposal operations. Although there is no fish or shellfish culture within the site, there will be some impacts on naturally occurring fish and shellfish within the site. The only mineral extraction within the site is oil and gas; past experience has indicated no interference during dredged material disposal.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9).)

The water quality and ecology at the existing site is generally similar to the nearshore region off the Louisiana coast affected by discharges from the Southwest Pass of the Mississippi River. The water quality varies depending on the amount and mixing of fresh water runoff occurring at the time. Data gathered during the 1980 and 1981 surveys indicated that trace metal concentrations and chlorinated hydrocarbon concentrations were comparable to historic data for the area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).)

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* (40 CFR 228.6(a)(11).)

There are no known features of historical or cultural significance that occur within the site. There are some shipwrecks located about 3.5 miles from the site.

E. Proposed Action

Based on the Draft and Final EISs, EPA proposes to designate the Southwest Pass—Mississippi River ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entites. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 22, 1988.

Robert E. Layton Jr.,

Regional Administrator of Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River, Baton Rouge to the Gulf of Mexico, La.—Southwest Pass and adding paragraph (b)(73) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(73) Southwest Pass—Mississippi River, Louisiana—Region VI Location: 28° 54' 12" N, 89° 27' 15" W; 28° 54' 12" N, 89° 26' 00" W; 28° 51' 00" N, 89° 27' 15" W; 28° 51' 00" N, 89° 26' 00" W.

Size: 3.44 square nautical miles.

Depth: Ranges from 2.7 to 32.2 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of the Southwest Pass Channel.

[FR Doc. 88-30184 Filed 12-30-88; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Funds From Sources Other Than the Corporation

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Part 1610 is proposed to be amended to conform the rule to the changes made by the 1977 amendments to the Legal Services Corporation Act of 1974. The application of the words "any purpose prohibited" in section 1010(c) of the Act is proposed to be amended to include all prohibitions of the LSC Act, whether characterized as procedural or conditional. In addition, a provision is added establishing a presumption that all recipient funds are LSC or private funds received for the provision of legal assistance, unless shown by the recipient to be otherwise by clear and convincing evidence. These changes collectively will redirect private funds toward the purposes intended by the LSC Act.

DATES: Comments must be submitted on or before February 2, 1989.

ADDRESSES: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1823.

SUPPLEMENTARY INFORMATION: Part 1610, concerning the use of non-LSC funds by LSC recipients, implements section 1010(c) of the LSC Act, which restricts the use of private funds received for the provision of legal assistance to purposes not prohibited by the Act, and restricts the use of public funds to the purposes for which they were received. The regulation was originally promulgated in 1976 and has not been revised since. *See* 41 FR 25901, June 23, 1976.

Section 1610.1

Section 1610.1, which identifies specific prohibitions found in the LSC Act pertaining to LSC and private funds, does not reflect the renumbering of portions of the Act or the deletion of a prohibition in the Act made in 1977 when the Act was amended. The 1977 amendments to the Act removed the prohibition on representation of juveniles and renumbered several other provisions listed in § 1610.1. 91 Stat. 1621 (1977). The proposed changes would make the references to the LSC Act in § 1610.1 conform with the 1977 amendments.

Nowhere in the Act is the phrase "any purpose prohibited by this title" defined or explained, nor do the committee reports lend specificity to the provision. When explaining the conference language to the Senate for final approval, however, Senator Cranston stated that "private foundation funds may not be used by a recipient for legal assistance activities that we do not permit that same recipient to engage in with Corporation funds." 120 CONG. REC. S12935 (daily ed. July 19, 1974). Thus, wherever in the Act the use of LSC funds is prohibited for certain legal assistance activities, the use of private funds likewise is prohibited.

When promulgating Part 1610 in 1976, the Corporation applied section 1010(c) to prohibitions on types of legal assistance activities, as opposed to affirmative requirements or procedural limitations. Pursuant to this determination, the Corporation classified those activities covered by this construction of section 1010(c) in § 1610.1 of Part 1610. As there is nothing in the Act limiting application of section 1010(c) to specific types of legal assistance activities, the decision as to which provisions in the Act should be included in § 1610.1 as prohibited purposes properly may be influenced by discretionary policy considerations consistent with the purposes of the Act.

Upon review of these issues, it is now proposed to define "any purpose prohibited by this title" to include four additional categories of activities in § 1610.1. Given the scarcity of funds available for the direct provision of legal assistance to the poor, the use of private funds appropriately should be limited for these four categories in the same manner as LSC funds.

LSC proposes to revise Part 1610 to require recipients to follow the same procedural requirements for the use of private funds for class action cases as the LSC Act presently requires for LSC funds. Requiring project directors to consider the resources necessary for a class action undertaken with private funds will provide a measure of assurance that the competing interests of individual clients who could benefit from the program's services are appropriately weighed. While section 1006(d)(5) does not prohibit all class action suits, it does prohibit any class action not expressly approved by the project director in accordance with board policies. If LSC funds cannot be used for unapproved class actions, then under section 1010(c) regulation of the use of private funds in the same manner serves the purposes of the Act.

While attempting to allow class actions when appropriate and necessary; Congress wanted such cases initiated only after being given careful consideration by the top program managers. Ordinarily, a class action will consume a disporportionate share of a program's staff time and resources. LSC recipients should not, without careful consideration, invest large portions of their resources, whether private or LSC funds, in class actions, because this precludes the use of those resources for needed individual service. The same intent is reinforced by the inclusion of even stricter procedural requirements in LSC's annual appropriations act. *See, e.g.*, Pub. L. No. 99-180, 99 Stat. 1162 (1985); Pub. L. No. 100-102 Stat. 2223 (1988).

LSC also proposes to prohibit the use of private funds to provide assistance to ineligible clients. The centerpiece of the Act is that LSC funds may not be used to represent ineligible clients, that is, those who are not poor by LSC standards. Indeed, the central purpose of the Act is "to provide high quality legal assistance to those who would be otherwide unable to afford adequate legal counsel." 42 U.S.C. 2996, section 1001(2). Once it is determined that a client is ineligible, LSC funds may not be used for legal representation. Pursuant to section 1010(c), if LSC funds may not be used to provide legal assistance to ineligible clients, private funds may be likewise restricted. Because the need for legal assistance to eligible clients is still often unmet, directing private funds—as well as LSC funds—to eligible clients will serve the Act's central mandate of providing equal access to justice for the nation's poor.

The Corporation porposes to include as a prohibited purpose the provision in seciton 1006(a)(3), 42 U.S.C. 2996e(a)(3), which prohibits the Corporation from making grants or contracts for broad general legal or policy research ("general research") unrelated to representation of eligible clients. For the purposes of section 1010(c), which applies to private funds provided for legal assistance activities, general research is legal assistance when done on behalf of a client. If section 1006(a)(3) prohibited general research unrelated to representation of any client, then such research might arguably be interpreted as research that is not legal assistance. Although general research done on behalf of an *eligible* client is allowable, section 1006(a)(3) prohibits general research when done on behalf of an *ineligible* client. Since the Act prohibits the use of LSC funds for general research for ineligible clients, section 1010(c) provides authority for the Corporation to prohibit the use of private funds for such research. Again, the Corporation believes it to be sound policy for LSC recipients to direct all available funds for the provision of legal assistance to eligible clients.

Finally, LSC proposes to include as a prohibited purpose the prohibition in section 1007(b)(5), 42 U.S.C. 2996f(b)(5), which provides that LSC funds must not be used "to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public," *i.e.*, a public interest law firm. Since LSC funds may not be used by recipients to make grants to or enter into contracts with public interest law firms, section 1010(c) requires that recipients may not use their private funds for such grants or contracts. The type of law firm that may not be funded with LSC or private funds is one that receives a majority of its revenue from retainers or fees of private clients, and spends a majority of its time and resources on social or legal reform litigation.

Section 1610.4

A new paragraph (b) is proposed for addition to § 1610.4 to establish a presumption that, absent a clear and convincing demonstration to the contrary by the recipient, all recipient funds are LSC or private funds received for the provision of legal assistance. Not only would recipients have to prove when funds were public, they would also have to prove that the funds are received for a purpose other than the provision of legal assistance.

It is appropriate to place the burden of proving that funds are public funds on the recipient, because the recipient possesses pertinent documents and information, such as applications for grants, award letters, correspondence with the funding entity, and grantor audits and monitoring reports, to which

the corporation may not have ready access. As part of its planning and budgeting process, a recipient must match funds it receives with activities that are consistent with the funding and, therefore, the recipient will have a basic for its determination that readily can be documented. Also, as the Corporation's 1981 and 1986 editions of the *Audit and Accounting Guide for Recipients and Auditors* require that contributions with restrictions be recorded in a restricted fund, a recipient's independent auditors will likely have made an independent determination of the nature of all the recipient's funds, which will be able to substantiate the recipient's assertion. Finally, because § 1630.3 allocates to the recipient the burden of proof in defending a questioned cost to show that funds used are not subject to a restriction, a recipient should be able to determine the existence of any restrictions before allocating expenses.

The proposal also establishes a presumption that all private funds received by a recipient are received for the provision of legal assistance, absent a clear and convincing showing that the funds were received for other than legal assistance activities. Basic field and support recipients deliver services using lawyers and paralegal staff, and so all services provided by a recipient should be for the purpose of legal assistance. Therefore, unless a private funding source specifically restricts the use of its funds to some non-legal purpose, all LSC and private funds would be considered received for legal assistance.

Finally, the authority section is proposed to be amended to add section 1008(e) of the LSC Act, which provides authority for the Corporation to promulgate regulations.

List of Subjects in 45 CFR Part 1610

Legal services.

For reasons set out above, 45 CFR Part 1610 is proposed to be amended as follows:

PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

1. The authority citation for Part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2996g(e) and 2996i(c).

2. Section 1610.1 is revised to read as follows:

§ 1610.1 Definitions.

As used in this part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the regulations promulgated thereunder:

(a) Section 1006(a)(3) (Broad general legal or policy research);

(b) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6) (Political activities);

(c) Section 1006(d)(5) (Class actions);

(d) Section 1007(a)(2)(A) (Ineligible clients);

(e) Section 1007(a)(5) (Legislative and administrative lobbying);

(f) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(g) Section 1007(b)(1)–(10) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions; political activities; grants or contracts with public interest law firms; advocacy training; organizing activities; abortions; school desegregation; and violations of Military Selective Service Act or military desertion).

3. Section 1610.4 is amended by designating the current text as paragraph (a) and adding paragraph (b) to read as follows:

§ 1610.4 Accounting.

* * * * *

(b) All funds received by recipients shall be presumed to be LSC or private funds received for the provision of legal assistance, absent a clear and convincing demonstration to the contrary by the recipient.

December 28, 1988.

Timothy B. Shea,

General Counsel.

[FR Doc. 88-30239 Filed 12-30-88; 8:45 am]

BILLING CODE 7050-01-M

45 CFR Part 1611

Eligibility

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The Legal Services Corporation proposes to amend Part 1611 by revising § 1611.3(e), so that no person whose income exceeds the maximum annual income level established by a recipient would be eligible for legal assistance provided with private funds. This amendment would conform Part 1611 to the changes proposed in an accompanying proposed rule for 45 CFR Part 1610, LSC's regulation governing the use of funds from sources other than the Corporation.

In addition, a technical change is proposed for the authority section to include section 1008(e) of the LSC Act, 42 U.S.C. 2996g, the provision providing the Corporation authority to promulgate regulations.

DATE: Comments must be submitted on or before February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751; (202) 863–1823.

SUPPLEMENTARY INFORMATION:

Section 1010(c) of the LSC Act restricts the use of private funds received for the provision of legal assistance to purposes not prohibited by the Act, 42 U.S.C. section 2996i. In 1976, LSC promulgated 45 CFR Part 1610 to implement section 1010(c). Section 1610.1 listed those activities which the Corporation decided to include as "any purpose prohibited" within the meaning of section 1010(c). No prohibition against providing legal assistance to ineligible clients with private funds was included. Similiarly, when LSC first promulgated Part 1611 in 1976, it included a provision, § 1611.3(e), allowing the use of non-LSC funds for ineligible clients.

Upon review, as set out in the accompanying notice of proposed revisions to 45 CFR Part 1610, it is proposed that private funds should not be used to represent ineligible clients, because program resources should be focused on the client population with the most pressing needs. This proposal would revise § 1611.3(e) to prohibit the representation of ineligible clients with private funds.

List of Subjects in 45 CFR Part 1611

Legal services.

For reasons set out above, 45 CFR Part 1611 is proposed to be amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 is revised to read as follows:

Authority: Sec. 1006(b)(1), 42 U.S.C. 2996e(b)(1); sec. 1007(a)(1), 42 U.S.C. 2996f(a)(1); sec. 1007(a)(2), 42 U.S.C. 2996f(a)(2); sec. 1008(e), 42 U.S.C. 2996g.

2. Section 1611.3(e) is revised to read as follows:

§ 1611.3 Maximum income level.

* * * * *

(e) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance provided with private funds.

December 28, 1988.

Timothy B. Shea,

General Counsel.

[FR Doc. 88-30240 Filed 12-30-88; 8:45 am]

BILLING CODE 7050-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Ch. II

[FRA Docket No. RSCG-3; Notice No. 3]

Grade Crossing Signal System Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking; extension of comment deadline.

SUMMARY: On November 23, 1988, FRA published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) (53 FR 47554) on grade crossing signal system safety and scheduled a public hearing to be held on December 14, 1988. Because all interested parties could not be heard in one day, the public hearing was extended to two days and rescheduled for December 19 and 20, 1988. The deadline for filing written comments in this proceeding remained January 4, 1989.

The Association of American Railroads has requested a two week extension of time in which to file written comments. FRA recognizes the time pressures in commenting on the issues raised in the testimony and the extensive documentation produced at the hearing, therefore, FRA is extending the deadline to January 17, 1989 for receipt of written comments in this proceeding.

DATES: Written comments must be received by January 17, 1989. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

ADDRESSES: Written comments should be addressed to the Docket Clerk, Office of Chief Counsel, RCC-30, Room 8201, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone: (202) 366-0628).

Issued in Washington, DC, on December 28, 1988.

John H. Riley,

Administrator.

[FR Doc. 88-30241 Filed 12-30-88; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Pacific Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) for review by the Secretary of Commerce (Secretary). Written comments are invited from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments will be accepted on or before February 24, 1989.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Copies of the amendment are available upon request for the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140; Rodney R. McInnis (Soughwest Region, NMFS), 213-514-6199; or Lawrence D. Six (Pacific Fishery Management Council), 503-221-6352.

SUPPLEMENTARY INFORMATION: Amendment 9 to the FMP was prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1808 *et seq.* (Magnuson Act) and has been submitted for review, approval, and implementation by the Secretary. The Magnuson Act also requires that the Secretary, upon receipt of a fishery management plan amendment, immediately publish a notice of its availability for public review and comment. The Secretary will consider the comments received from the public in determining whether or not to approve the amendment.

Amendment 9 to the FMP would: (1) Replace the long-term spawning escapement goal and rebuilding schedule for Klamath River fall chinook with fixed annual spawning escapement and harvest rates which will allow a fixed percentage from each year class of natural spawners to escape the fisheries and spawn, subject to a minimum escapement floor for naturally spawning adults; (2) modify the ocean harvest allocation of coho and chinook between non-Indian commercial and recreational fisheries north of Cape Falcon, Oregon; (3) revise the notice procedures for inseason management actions; (4) conform federal and state regulations regarding the incidental harvest of steelhead by recreational fishermen; (5) authorize inseason reporting requirements for commercial fishermen to provide timely accounting of catches from any regulatory area subject to quota management; and (6) increase the Council's flexibility in setting commercial and recreational season beginning and ending dates.

An environmental assessment (required under the National Environmental Policy Act) and a regulatory impact review/initial regulatory flexibility analysis (required under Executive Order 12291 and the Regulatory Flexibility Act) are incorporated in the amendment.

Proposed regulations to implement this amendment are scheduled to be published within 5 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 88-30214 Filed 12-28-88; 3:32 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 1
Tuesday, January 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF THE INTERIOR

Recommendations of the Interagency Policy Review Team Regarding Fire Management in Parks and Wilderness Areas; Public Meetings

AGENCIES: United States Forest Service, Agriculture; National Park Service, Interior; United States Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; Bureau of Indian Affairs, Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces 10 public meetings regarding the policies for fire management in National Park Service areas and Federally designated wilderness areas.

DATES:

February 1, 7:30 p.m.—University Center Ballroom, University of Montana, Missoula, Montana.
February 1, 7:30 p.m.—Ramada Inn North, 2900 N. Monroe Street, Tallahassee, Florida.
February 2, 7:30 p.m.—Red Lion Inn, Redwood Ballroom, 2001 Point West Way, Sacramento, California.
February 2, 10:00 a.m.–2:00 p.m.—USDA South Building, Jefferson Auditorium, 12th and Independence, Washington, DC.
February 6, 1:00 p.m.–4:30 p.m.—Denver Federal Center, Bureau of Reclamation, Auditorium, Building 56, Lakewood, Colorado.
February 7, 7:30 p.m.—Wort Hotel, 50 N. Glenwood, Jackson, Wyoming.
February 7, 7:00 p.m.—NPS Regional Office, Rm 300, 2525 Gambell Street, Anchorage, Alaska.
February 8, 7:30 p.m.—Quality Inn Westbank, 275 River Parkway, Idaho Falls, Idaho.
February 9, 7:00 p.m.—Indian Pueblo Cultural Center, 2401 12th Street NW., Albuquerque, New Mexico.
February 9, 7:00 p.m.—Klondike Goldrush NHP, Visitor Center Auditorium, 117 S. Main Street, Seattle, Washington.
February 14, 7:30 p.m.—Cody Convention Center, 1240 Beck Avenue, Cody, Wyoming.

ADDRESSES: Comments should be directed to:

Chief, Forest Service-USDA, P.O. Box 96090, Washington, DC 20090–6090.
or
Director, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Single copies of the recommendations developed by the interagency Fire Policy Review Team are available from: Director, Public Affairs Office, Forest Service-USDA, P.O. Box 96090, Washington, DC 20090–6090; or Chief, Office of Public Affairs, National Park Service, P.O. Box 37127, Main Interior Building-Mail Stop 3043, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, Forest Service-USDA, P.O. Box 96090, Washington, DC 20090–6090, phone (202) 447–3760; or Ranger Activities Division, National Park Service, P.O. Box 37127, Main Interior Building-Mail Stop 3310, Washington, DC 20013–7127, phone (202) 343–4874.

SUPPLEMENTARY INFORMATION: On September 28, 1988, the Secretaries of the Department of Agriculture and the Department of the Interior appointed the interagency Fire Management Policy Review Team to the investigate and recommend modifications to the agencies' current fire management policies for National Park Service areas and Federally designated wilderness areas. The Team's complete report and recommendations were previously published in the **Federal Register** on December 20, 1988. In establishing the Fire Policy Review Team, the Secretaries called for public review of the resulting policy recommendations. Therefore ten public meetings are scheduled across the country to encourage public comment on the proposed revisions.

Persons who plan to attend the meetings should be aware of the following procedures which will be followed:

(a) The meetings will be informal in nature and will be conducted by an impartial hearings officer.

(b) A member of the interagency Fire Policy Review Team will be present at each of the meetings to answer any questions about the recommendations.

(c) Persons wishing to make a presentation at an individual meeting should contact the hearing officer immediately prior to the start of the meeting. The hearing officer will call the presenters in the order in which the names are received. Time limits may be established for the length of the presentations if necessitated by the number of persons wishing to make a statement.

(d) Persons wishing to make statements are encouraged to provide written copies of their statement for the record.

(e) Statements made by agency representatives should not be taken as expressing a final agency position.

Persons who are unable to attend one of the meetings, but wishing to make comments on the recommendations should send their written comments to the address listed above before February 21, 1989.

Roland Vautour,
Under Secretary, Department of Agriculture.
Earl E. Gjelde,
Under Secretary, Department of the Interior.

[FR Doc. 88–30244 Filed 12–30–88; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88–206]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease Resistant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in the State of Hawaii of genetically engineered tomato plants, modified to contain an extra gene to reduce endopolygalacturonase production. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of introduction or dissemination of a plant pest and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek Staff Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road Hyattsville, MD 20782, (301) 436–6774. For copies of the environmental assessment and finding of no significant impact, call Ms. Mary Petrie at Area Code (301) 436–5874, or write her at this same address. The environmental assessment should be requested under accession number 88–236–01.

SUPPLEMENTARY INFORMATION: On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915), which established a new Part 340 in Title 7 of the Code of Federal Regulations entitled "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (the rule). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The rule sets forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. APHIS has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, for the field testing of genetically engineered tomato plants modified to contain an extra gene to reduce endopolygalacturonase production. One function that the enzyme endopoloygalacturonase performs is to enable tomato fruits to soften during the ripening process.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. An endopolygalacturonase gene from tomato has been modified and inserted into a tomato chromosome in such a way as to produce anti-sense RNA, for the purpose of reducing endopolygalacturonase production in order to delay ripening of the tomato fruit. In nature, the genetic material contained in a plant chromosome can only be transferred to another plant by cross-pollination with a sexually compatible plant. In this field test, none of the introduced genes can spread to sexually compatible plants outside the field test plot because the field test plot is located sufficiently far from any sexually compatible plant.

2. Neither the modified endopolygalacturonase gene nor the derived anti-sense RNA confers on tomato any plant pest characteristics. The tomato cultivar (UC82B) from which the endopolygalacturonase gene was obtained is not a plant pest.

3. The anti-sense endopolygalacturonase gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in the transformed plants' ability to be disseminated or to become established in the environment.

4. The vector used to transfer the anti-sense endopolygalacturonase gene to tomato plants has been evaluated for its use in this experiment, and does not pose a plant pest risk in this experiment. The vector, although derived from a plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the anti-sense endopolygalacturonase gene into a tomato plant cell, was eliminated and is no longer associated with the transformed tomato plants.

6. Horizontal movement of genetic material after insertion into a plant genome (i.e., chromosomal DNA) has not been demonstrated. The vector acts by delivering and inserting the gene into the tomato genome. The vector does not survive in or on a transformed plant. No mechanism in nature to horizontally move an inserted gene from the chromosome of a transformed plant to any other organism has been reported in the scientific literature.

7. The size of the field test plot is small (110 feet by 192 feet). The plot will be located within a 10-acre cotton field on a private farm with restricted access.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 28th day of December, 1988.

James Glosser,
Administrator, Animal and Plant Health Inspection Service.

December 28, 1988.

[FR Doc. 88–30220 Filed 12–30–88; 8:45 am]
BILLING CODE 3410–34–M

Forest Service

Baldy Fire Recovery, Klamath National Forest, Siskiyou County, CA; Intention to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement fire recovery activities on a portion of the Bald-Ten Fire on the Happy Camp Ranger District; this EIS will encompass a portion of the Siskiyou released-roadless area.

A range of alternatives for this area will be considered. One of these will be no recovery activities in the project area. Other alternatives will range from implementing fire recovery activities to recovery in combination with more extensive timber management projects.

Federal and State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

The Forest Supervisor will hold a public meeting at the Forest Supervisors Office, Klamath National Forest, large conference room, 1312 Fairlane Road, Yreka, California, at 1:00 p.m., on Saturday, February 4, 1989. This meeting will be held in conjunction with the Dillon Creek EIS.

Robert Rice, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by January, 1990. The final environmental impact statement is scheduled for completion by April, 1990.

Written comments and suggestions concerning the analysis should be sent to George Harper, District Ranger, Happy Camp Ranger District, Klamath National Forest, Happy Camp, California, CA 96039, by March 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to Terry Chute, Planner, Happy Camp Ranger District, Klamath National Forest, Happy Camp, California, 96039, phone 916–493–2243.

Dated: December 16, 1988.

Robert L. Rice,

Forest Supervisor.

[FR Doc. 88–30246 Filed 12–30–88; 8:45 am]

BILLING CODE 3410–11–M

Dillon Creek, Klamath National Forest, Siskiyou County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commercial timber sales within the Dillon Creek watershed on the Happy Camp and Ukonom Ranger District; this EIS will encompass a portion of the Siskiyou released-roadless area.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal salvage harvesting with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

The Forest Supervisor will hold a public meeting at the Forest Supervisors Office, large conference room, 1312 Fairlane Road, Yreka, California, at 1:00 p.m., on Saturday, February 4, 1989. This meeting will be held in conjunction with the Baldy EIS.

Robert L. Rice, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take about 10 months. The draft environmental impact statement should be available for public review by January, 1990. The final environmental impact statement is scheduled for completion by April, 1990.

Written comments and suggestions concerning the analysis should be sent to George Harper, District Ranger, Happy Camp Ranger District, Klamath National Forest, Happy Camp, California, 96039, by March 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to Terry Chute, Planner, Happy Camp Ranger District, Klamath National Forest, Happy Camp, California, 96039, phone 916–493–2243.

Date: December 16, 1988.

Robert L. Rice,

Forest Supervisor.

[FR Doc. 88–30245 Filed 12–30–88; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 21, 1988, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on barium chloride from the People's Republic of China. The review covers one manufacturer and/or exporter of this merchandise to the United States and the periods April 6, 1984 through September 30, 1984 and October 1, 1985 through September 30, 1986.

We gave interested parties an opportunity to comment on the preliminary results. Based on minor corrections to our analysis, the final results of review are changed from those presented in the preliminary results.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1988, the Department published in the **Federal Register** (53 FR 13140) the preliminary results of its administrative review of the antidumping duty order on barium chloride from the People's Republic of China (49 FR 40635, October 17, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of barium chloride, a chemical compound having the formula BaCl2 or BaCl2–2H2O. These imports are currently classifiable under item number 417.7000 of the *Tariff Schedules of the United States Annotated* and under item number 2827.38.00 of the *Harmonized Tariff Schedule.*

The review covers China National Chemicals Import and Export Corporation (Sinochem) and the periods April 6, 1984 through September 30, 1984 and October 1, 1985 through September 30, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from Cometals, Inc., an importer, and Chemical Products Corporation, the petitioner. At the request of Cometals, we held a public hearing on June 9, 1988.

Comment 1: Cometals argues that the dumping margins found are not reflective of the actual prices at which Cometals purchased barium chloride from China. The price did not change from the last review period to this review period, so the large change in duties is not justified.

Department's Position: Dumping margins are determined by comparing the United States price to foreign market value. Even if U.S. price is unchanged, changes in foreign market value may result in different dumping margins. Both U.S. price and foreign market value are based on information available for this review period, which is independent of facts pertaining to other review periods.

Comment 2: Cometals argues that foreign market value should be based on the factors of production provided for two factories and not on the basis of the highest-cost producer. In the original investigation and the first administrative review, the Department only required information from Sinochem on the two factories exporting barium chloride to the U.S. The third factory producing barium chloride does not export it to the U.S. and therefore information for that factory is irrelevant. Furthermore, Sinochem has no control over this factory and cannot compel it to provide information. The factors is controlled locally rather than by the central government.

The petitioner argues that the Department's action is consistent with its well-established policy of requiring data from all significant manufacturing plants in the country in question and of using the best information available when the respondent fails to submit such information in a timely fashion.

Department's Position: When merchandise covered by an order is produced in more than one plant and those plants are related under section 773(e)(3) of the Tariff Act, the Department uses the average cost of all related producing facilities. In this review we determined there are three plants producing barium chloride, and requested information in order to determine whether the three plants were related. The response to our request was inadequate and did not provide sufficient information for us to conclude that the three plants were not related. Therefore, we have assumed they are related and production information for each is needed. Since Sinochem did not provide information regarding factors of production for all three firms, we used the best information available to determine foreign market value.

This decision is based exclusively on information collected in this administrative review. The facts, insofar as they were presented and known to the Department, and were used by various parties in their arguments, may well have been different in prior reviews or the original investigation. However, those were each separate proceedings, had separate records and were each decided on the basis of those records. The records of those proceedings are not relevant to our current administrative review and have not been used to determine these final results.

We have not altered our basic method of averaging costs from all related producers.

Final Results of the Review

Based on our analysis as presented in the preliminary results of review, with currency conversions corrected to reflect exchange rates on the dates of sale, we determine that the following margins exist:

Manufacturer/exporter	Period	Margin/ (Percent)
Sinochem	04/06/84–09/30/84	27.70
	10/01/85–09/30/86	60.84

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 60.84 percent shall be required for shipments from Sinochem. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after September 30, 1986 and who is unrelated to the reviewed firm, a cash deposit of 60.84 percent shall be required. These cash deposit requirements are effective for all shipments of Chinese barium chloride entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: December 23, 1988.

[FR Doc. 88–30217 Filed 12–30–88; 8:45 am]

BILLING CODE 3510–DS–M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1989

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Date: December 22, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) restitution payments	24.6¢/lb	24.6¢/lb.
Canada	Export assistance on certain types of cheese	28.9¢/lb	28.9¢/lb.
Denmark	EC restitution payments	27.0¢/lb	27.0¢/lb.
Finland	Export subsidy	116.3¢/lb	116.3¢/lb.
	Indirect subsidies	19.7¢/lb.	19.7¢/lb.
		136.0¢/lb	136.0¢/lb.
France	EC restitution payments	23.6¢/lb	23.6¢/lb.
Greece	EC restitution payments	28.1¢/lb	28.1¢/lb.
Ireland	EC restitution payments	76.9¢/lb	76.9¢/lb.
Italy	EC restitution payments	59.3¢/lb	59.3¢/lb.
Luxembourg	EC restitution payments	24.6¢/lb	24.6¢/lb.
Netherlands	EC restitution payments	28.5¢/lb	28.5¢/lb.
Norway	Indirect (Milk) subsidy	17.7¢/lb	17.7¢/lb.
	Consumer subsidy	39.2¢/lb	39.2¢/lb.
		56.9¢/lb	56.9¢/lb.
Portugal	EC restitution payments	24.0¢/lb	24.0¢/lb.
Spain	EC restitution payments	25.7¢/lb	25.7¢/lb.
Switzerland	Deficiency payments	92.5¢/lb	92.5¢/lb.
U.K.	EC restitution payments	25.4¢/lb	25.4¢/lb.
W. Germany	EC restitution payments	36.5¢/lb	36.5¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 88–30216 Filed 12–30–88; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE (DOD)

Department of the Army

Billing Procedures on Selected Traffic by All Methods of Transportation

AGENCY: Military Traffic Management Command (MTMC), Department of the Army (DOD).

ACTION: Rules for billing procedures on selected traffic by all methods of transportation.

SUMMARY: DOD is modifying the billing procedures for carriers handling freight for DOD. These procedures will be published in the Rules Publication, MFTRP Freight Traffic Rules Publication No. 10 (RAIL) and MTMC Freight Traffic Rules Publication No. 1A (MOTOR) as they are issued or reissued. These modified procedures will assist DOD in easy identification of carrier billings and will expedite processing of carriers' vouchers for payment on these selected billings.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Lamm, Headquarters, Military Traffic Management Command, ATTN: MT–INFQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, or telephone (202) 756–1173.

SUPPLEMENTARY INFORMATION: The Prompt Payment Act, as amended in November 1986, allows prepayment audit of transportation Government bills of lading (GBLs) prior to payment. This authority has been delegated to DOD. These modified procedures will assist in this function and will prevent unnecessary delay in payment of the carriers' vouchers.

The following rule is established for all modes of traffic to cover GBLs for which the total charge(s) is $10,000 or more.

Item: Exception to Billing Procedures:

Individual GBLs for which the total charge for services rendered is $10,000 or more will be submitted on a Public Voucher for Transportation Charges (SF 1113) separate from other GBLs for which the charges are less than $10,000. Several GBLs, each having individual charges of $10,000 or more, may be presented on the same voucher.

The following rule is established for movement of "GUARANTEED TRAFFIC" from Defense Depots at Columbus, OH, Memphis, TN, Mechanicsburg, PA, Richmond, VA, Tracy, CA, and Ogden, UT.

Item: Billing Procedures (GUARANTEED TRAFFIC):

1. Charges for services rendered for GUARANTEED TRAFFIC shipments from points identified above are shown in block 28 of the GBL. The actual amount billed when rounded to the nearest dollar will not exceed the amount shown in block 28 of the GBL.

a. If there is a disagreement with the charges shown in block 28, the carrier must contact the shipping activity to resolve the disagreement prior to submitting the bill for payment. If it is determined that the charge(s) shown in block 28 of the GBL is incorrect, the shipper will prepare a GBL Correction Notice (SF 1200) showing the correct charges. A copy of this correction notice must accompany the original bill of lading and voucher when submitted for payment.

b. If an agreement cannot be reached between the shipper and carrier on what the charges should be, the carrier will submit this GBL on a separate voucher to the appropriate finance center which will forward to MTMC for audit prior to payment.

2. Voucher(s) submitted for payment will include only GBLs covering GUARANTEED TRAFFIC moved under the solicitation and applicable tender. All vouchers submitted covering GUARANTEED TRAFFIC shipments must contain the statement "GUARANTEED TRAFFIC" either stamped or printed in bold letters on the face of the voucher.

John O. Roach,

Army Liaison Officer with the Federal Register.

[FR Doc. 88–30253 Filed 12–30–88; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Lower Granite Final Environmental Impact Statement for a Proposed Land Exchange at Wilma Habitat Management Unit on the Snake River Near Clarkston, Washington

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare an FEIS supplement.

SUMMARY: The Walla Walla District Corps of Engineers proposes to provide Wilma Habitat Management Unit (171 acres) to the Port of Wilma in exchange for the Henley Property (742 acres), which will be acquired by the Port for the purpose of exchange. Both of these properties are located along the Snake River in southeastern Washington. The exchange will allow the port to expand its facilities while providing the Corps with land suitable for wildlife habitat development.

FOR FURTHER INFORMATION CONTACT: Comments concerning the project and draft supplemental EIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, Washington 99362–9265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522–6626.

SUPPLEMENTARY INFORMATION: 1. The Port of Wilma has requested to obtain Wilma Habitat Management Unit (HMU) which is Corps of Engineers project land (171 acres) along the north shore of the Snake River, river mile 134–135, in Lower Granite Reservoir. The parcel is currently managed to partially fulfill wildlife compensation requirements for the Lower Snake River project. In exchange, the Port proposes to offer to the Corps the Henley Property (742 acres), which is the land along the north shore of the Snake River, river mile 68–69, in the Lower Monumental Reservoir (Lake Herbert G. West) just downstream from Little Goose Dam. The proposed land exchange would allow the Port to expand its facilities located immediately adjacent to and upstream of Wilma HMU. In exchange the Corps would receive land adjacent to Snake River project lands suitable for wildlife habitat development.

2. Alternatives to be investigated include:

A—No action.

B—Land exchange as proposed (includes filling of shallow water habitat by the Port).

C—Land exchange, but no filling of shallow water habitat by the Port.

D—Land exchange, but the Port acquires property other than Henley Property for exchange.

E—Sale of Wilma HMU to the Port, Port provides money for habitat development on existing Corps property.

G—Sale of Wilma HMU to the Port, no exchange of land or money for habitat development.

3. Significant issues to be addressed in the draft supplement include effects of the alternatives on wildlife, fisheries, endangered species, existing wildlife compensation program, cultural resources, port development, and socioeconomics. The project will be reviewed under all applicable Federal, state, and local statutes.

4. Affected Federal, state, and local agencies, affected Indian tribes, and other interested organizations and parties are invited to participate in scoping for the draft supplement. A formal scoping meeting is not planned, however, comments should be directed to the address given below.

5. The draft supplement should be available on or about March 3, 1989.

Dated: December 8, 1988.

James A. Walter,

LTC, CE Commanding.

[FR Doc. 88–30252 Filed 12–30–88; 8:45 am]
BILLING CODE 3710–GC–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Non-Federal Participation in the Northern Portion of the Third AC Intertie; Intention to Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare an environment impact statement (EIS) and conduct a public scoping meeting.

SUMMARY: BPA plans to prepare and consider an EIS on its proposal to offer non-Federal scheduling utilities in the Pacific Northwest an opportunity to participate in the northern portion of the Third AC Intertie. Allowing Northwest non-Federal utilities to participate in this project could increase their marketing flexibility and provide an additional measure of assurance concerning their ability to gain long-term access to extraregional markets.

DATES: A public meeting will take place in Portland, Oregon, at 1:00 p.m. on January 17, 1989, at the Holiday Inn, Portland Airport, to scope the EIS and to further discuss BPA's non-Federal participation proposal. BPA encourages and will consider written comments and recommendations on the proposal for non-Federal participation and the means for performing an appropriate environmental analysis. Comments on the scope of the EIS should be submitted to the address below by February 10, 1989.

ADDRESS: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony R. Morrell, Assistant to the Administrator for Environment—AJ,

Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, 503–230–5136. Information also may be obtained from Dr. John M. Taves, Coordination and Review Staff, Office of Power Sales, at 503–230–5146, or callers may use the following toll-free numbers to reach the BPA Public Involvement office: Oregon, 800–452–8429; California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming, 800–547–6048. A copy of Bonneville Power Administration's, "Proposal for Non-Federal Participation in the Northern Portion of the Third AC Intertie" is available upon request. Information also may be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109–1030, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225

Mr. Robert N. Laffel, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137

SUPPLEMENTARY INFORMATION:

Background

The Pacific Northwest/Pacific Southwest Intertie presently consists of a 1958-megawatt (MW) direct current (DC) line and a 3,200–MW alternating current (AC) Intertie system. BPA owns the DC line and the majority of the AC Intertie in the Northwest. The remaining Northwest portion of the AC Intertie is owned by Portland General Electric Company and Pacific Power and Light Company. The capacity of the DC line is being expanded to 2986 MW via increasing the capability of converter stations at either end of the DC line. This Terminal Expansion Project is scheduled for energization in February 1989. The Califorina-Oregon Transmission Project/Third AC Intertie Project would add an additional 1,600 MW to the capacity of the AC Intertie. On September 27, 1988, BPA issued a Record of Decision indicating its intent to construct, operate, and maintain the Third AC Intertie in the Pacific Northwest. Should this project proceed as planned, the total capacity of the Intertie would increase to approximately 7800 MW in 1992.

Prior to deciding to proceed with the Third AC Intertie, the BPA Administrator considered three environmental impact statements. The California-Oregon Transmission Project EIS addressed the impacts of line construction in California and substation upgrades in the Northwest needed to develop the Third AC Intertie. The Eugene/Medford EIS addressed the effects of upgrading from 230 kilovolts (kV) to 500 kV a line running between Eugene, Oregon and Medford, Oregon. This upgrade is an integral part of the plan of service for the Third AC Intertie. In addition, BPA prepared and considered the Intertie Development and Use Environmental Impact Statement (IDU EIS).

The IDU EIS addresses the potential environmental effects of changes in resource operations and development occasioned by an expanded Intertie system used in conjunction with BPA's Long-Term Intertie Access Policy (LTIAP). The IDU EIS analysis assumes that all non-Federal access to the Federal portion of the Intertie will be governed by the provisions of the LTIAP. The non-Federal participation EIS will be tiered to the IDU EIS pursuant to 40 CFR 1502.20 of the Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act (NEPA).

In June 1987, several members of the U.S. House of Representatives asked BPA to study the possibility of allowing Pacific Northwest utilities an opportunity to participate in the Third AC Intertie. BPA's "Final Study of Non-Federal Participation in the Northern Portion of the Third AC Intertie" was published in March 1988. BPA is now defining the terms under which it proposes to offer non-Federal participation.

Proposal for Non-Federal Participation

BPA's proposal for non-Federal participation addresses the amount of Intertie to be made available, the financial terms for participation, the rights of participants, and restrictions placed on participants. A maximum of 725 MW of Intertie capacity would be offered to participants. The price would be based on the actual cost of the new Third AC facilities and reinforcements plus the depreciated replacement costs of related existing facilities. BPA's current estimate is $248/kilowatt (kW) in 1991 dollars. Participants also would pay a proportional annual charge for operations and maintenance, replacement, and other related items. In return, participants would receive contractual rights to schedule power over a specified amount of BPA's share of Third AC capacity resulting from increases from 4,000 to 4,800 MW. The contract rights would expire at the end of the year 2016, which is the expiration of the agreements governing BPA's use of Pacific Power and Light's facilities for Intertie purposes. Participants would have a one-time opportunity to choose to wheel for third-parties and arbitrage over their Third AC scheduling right which, if selected, would preclude the participant from obtaining additional access under the LTIAP. Although no restrictions are proposed on new nonhydro resource development, participants would be restricted from developing or acquiring the output of new hydro resources in Protected Areas, as defined in BPA's LTIAP (i.e., designated stream reaches inside the Columbia River Basin). Furthermore, BPA's obligation to serve participants' loads under current power sales contracts would be reduced by the amount of any export energy sales made by participants over the Intertie; however, the reduction in obligation would become effective for nonhydro resources only at such time as BPA reaches energy load/resource balance. Additional terms and conditions will be developed, considered, and analyzed during the processes of negotiation and environmental review.

Scope of Environmental Analysis

The EIS on non-Federal participation will address the potential environmental effects of implementing BPA's proposal for non-Federal participation and of reasonable alternatives to the proposal. It is anticipated that potential environmental effects of the proposal would be the result of changes in the development or operation of generation resouces enabled by the implementation of non-Federal participation in the Third AC Intertie. The EIS will address effects on river operations, downstream juvenile fish passage, upstream adult migration, resident fish propagation in reservoirs, recreation, cultural resources, nonrenewable resource consumption, and air quality.

Alternatives that BPA may analyze, in addition to the proposal, include providing access to the Third AC Intertie only under the terms of the LTIAP as addressed in the IDU EIS. This would represent BPA's "no action" alternative. Another alternative that may be studied is operating under the LTIAP but allowing an increase in the amount of assured delivery with or without additional restrictions. Participation as described in the preferred alternative but with the following variations also may be studied: increased restrictions on the development of new resources for export purposes; extending the protected areas concept regionwide; and eliminating the provision for reduction of BPA's obligation to serve the load of participants in an amount equal to their export sales. BPA also may study alternative amounts of and costs for participation.

Issued in Portland, Oregon, on December 22, 1988.

James J. Jura,

Administrator.

[FR Doc. 88–30202 Filed 12–30–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 4639–006 New York]

Christine Falls Corp., c/o Trafalgar Power; Availability of Environmental Assessment

December 23, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Christine Falls Hydroelectric Project located on the Sacandaga River in Hamilton County, near the Village of Speculator, New York, and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed amendment, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 88–30208 Filed 12–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–5–004]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 23, 1988

On December 16, 1988, CNG Transmission Corporation ("CNG") submitted for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 6, Superseding Original Sheet No. 6

First Revised Sheet No. 7, Superseding Original Sheet No. 7

Original Sheet No. 8

First Revised Sheet No. 114, Superseding Original Sheet No. 114

CNG also submits for filing as part of its FERC Gas Tariff, Original Volume No. 2A, the following tariff sheets:

First Revised Sheet No. 3, Superseding Original Sheet No. 3

First Revised Sheet No. 4, Superseding Original Sheet No. 4

Original Sheet No. 5

Original Sheets No. 294 through 343

CNG states that these tariff sheets are filed in compliance with the Commission order dated July 27, 1988 in Docket No. CP87–5–000 authorizing seasonal sales to the Associated Penn East Customer group.

CNG has requested that the Commission grant all waivers necessary to permit this filing to become effective as of November 15, 1988. CNG states that copies of the filing were served upon all of its Volume No. 1 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before January 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88–30166 Filed 12–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–227–000, RP88–227–002, RP88–227–003, CP88–309–004 and CP88–309–005]

Paiute Pipeline Co.; Informal Settlement Conference

December 23, 1988

Take notice that an informal settlement conference will be convened in the above proceeding on January 17, 1989 at 10:00 a.m. at the office of Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (19 CFR 385.214).

For additional information, contact John C. Walley (202) 357–8458, or Marsha Gransee (202) 357–5738.

Lois D. Cashell,

Secretary.

[FR Doc. 88–30167 Filed 12–30–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–15–025]

Trunkline Gas Co.; Refund Requirement

December 23, 1988

Take notice that on December 16, 1988, Trunkline Gas Company (Trunkline) filed its report of refunds applicable to Docket No. RP87–15 rates that were in effect during the period May 1, 1987 through November 30, 1988.

At the outset, Trunkline calls attention to the fact that in compliance with Order No. 297, but without prejudice to judicial review, it has filed the tariff sheets eliminating the fixed cost minimum bill applicable to its sales customers under Rate Schedules P–1 and P–2, the only services to which such minimum bill had applied, accepted by Commission order issued on June 23, 1988. Trunkline states that all operations and services from June 23, 1988 have been conducted without a fixed cost minimum bill, by reason of the Commission's orders.

Trunkline states that the Docket No. RP87–15 rates were superseded by new rates on December 1, 1988 in Docket No. RP88–180, subject to the outcome of that

proceeding. Hence, the Docket No. RP87-15 period is a locked in period extending from May 1, 1987 to November 30, 1988.

Trunkline states that it has fully refunded the entire rate increase amounts paid by its sales customers for the entire period of the increased rates in this proceeding and that no further refunds are due.

Trunkline states that this report presents new material concerning the magnitude of the refunds that have been paid to sales customers which had previously made minimum bill payments for 1987, and states that this material was not available when Trunkline filed its earlier refund report on June 8, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988). All such motions or protests should be filed on or before January 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30165 Filed 12-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-437-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 16, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas, 79978, filed in Docket No. CP89-437-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade the Humboldt City Gate Meter Station in order to permit the delivery of additional volumes of natural gas to Southern Union Gas Company (SUG) for resale to nearby areas in Yavapai County, Arizona, as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, El Paso proposes to install an additional American 500B positive meter at El Paso's existing 20 inch O.D. Maricopa County Line in Yavapai County. The estimated cost of the installation is reported as $2,500. Peak day and annual deliveries at the proposed delivery point are expected to be 1,087 mcf and 332,226 mcf, respectively. El Paso notes that the ultimate distribution of the requested volumes of natural gas would be used for residential, commercial and industrial usages.

El Paso states that the total volumes delivered would be within the certificated entitlements of that customer.

Any person of the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30168 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-447-000]

Northern Natural Gas Co., Division of Enron Corp.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 16, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-447-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of VenGas Marketing Company, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that, pursuant to a transportation agreement dated November 11, 1988, the total quantities of gas to be transported will be 10,000 MMBtu equivalent of natural gas on a peak day, 7,500 MMBtu equivalent of natural gas on an average day, and 3,650,000 MMBtu equivalent of natural gas on an annual basis. Northern states that construction of facilities will not be required to provide the proposed service. It is stated that the executed transportation agreement, known as Attachment No. 1, Appendix A, Part I, contains the location of the receipt and delivery points. It is further stated that service commenced November 11, 1988, for this shipper under the 120-day automatic authorization pursuant to § 284.223(a) of the Regulations, as reported in Docket No. ST89-1141 (filed December 5, 1988).

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30169 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-426-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 15, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-426-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Mobil Natural Gas Inc. (Mobil) a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 20,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Mobil pursuant to a transportation agreement dated November 3, 1988, between Panhandle and Mobil. Panhandle would receive gas at various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Gas Service Company in Marion, Johnson, Moniteau, Jackson, Cass, Howard, Pettis, Cooper and Henry Counties, Kansas.

Panhandle states that the estimated daily and estimated annual quantities would be 10,000 dkt and 3,650,000 dkt, respectively. Service under § 284.223(a) commenced on November 5, 1988, as reported in Docket No. ST89-1264-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30170 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-451-000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 16, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-88-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Applicant's blanket certificate issued in Docket No. CP87-115-000 for authorization to provide a transportation service for Reliance Gas Marketing Company (Reliance), a marketer, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated October 20, 1988, it proposes to transport natural gas for Reliance from various receipt points located offshore Louisiana and the states of Texas, Louisiana, Mississippi and Alabama. It is maintained that the points of redelivery would be located at various delivery points off Applicant's system.

The Applicant further states that under the contract, the transportation volumes would be as follows:

Maximum daily quantity—50,000 dt.
Average day—50,000 dt.
Annual basis—1,825,000 dt.

It is asserted that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1080.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30172 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000 and RP88-221-000]

Texas Eastern Transmission Co.; Informal Settlement Conference

December 23, 1988.

Take notice that a conference will be convened in this proceeding on January 25, 1988 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-reference dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 357-8076.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30173 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-463-000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 21, 1988, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-463-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport natural gas on an interruptible basis for Texaco Gas Marketing Inc. (Texaco). Texas Gas explains that the service commenced November 10, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1212. Texas Gas proposes to transport on a peak day up to 150,000 MMBtu; on an average day up to 75,000 MMBtu; and on an annual basis up to 54,750,000 MMBtu. Texas Gas proposes to receive the subject gas from various existing points of receipt in Offshore Louisiana and redeliver the volumes for Texaco's account at Eugene Island Area, Block 250, Offshore Louisiana.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30174 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-416-000]

Trunkline Gas Co.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 77251-1642, filed in §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Mobil Natural Gas, Inc. (Mobil) under Trunkline's blanket transportation certificate authorization which was issued by Commission order on April 30, 1987, in Docket No. CP86-586-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline indicates that it will receive the gas at various existing points on its system principally in Louisiana and Texas and redeliver the gas for the account of Mobil to Panhandle Eastern Pipeline Company (Panhandle) in Douglas County, Illinois. Trunkline will transport the gas under its Rate Schedule PT.

Trunkline proposes to transport up to 150,000 Dt (dekatherms) of gas per peak day, approximately 75,000 Dt per average day or 27,375,000 Dt annually. Trunkline states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on November 5, 1988, pursuant to a transportation agreement dated September 20, 1988. Trunkline notified the Commission of the commencement of the transportation service in Docket No. ST89-1268-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30171 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-457-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

December 23, 1988

Take notice that on December 19, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-457-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to provide interruptible transportation service on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP86-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that, pursuant to an interruptible gas transportation agreement dated June 15, 1988, as amended October 14, 1988, it proposes to transport a maximum daily quantity of 41,200 MMBtu of natural gas on behalf of Texaco from various points of receipt located offshore Louisiana, and within the States of Louisiana and Mississippi to various points of delivery located in the States of Florida, Louisiana, Alabama and Mississippi. The average daily quantity transported is expected to equal the maximum daily quantity transported and based thereon, the annual transportation volume is estimated to be 15,038,000 MMBtu. United advises that the transportation service commenced October 14, 1988, as reported in Docket No. ST89-1068-000, pursuant to § 284.223(a) of the Commission's Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30173 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-432-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

December 23, 1988

Take notice that on December 15, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-432-000, a request pursuant to § § 157.205 and 284.222 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, for Arkla Energy Marketing Company, (Arkla), a marketer of natural gas, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum daily quantity of 206,000 MMBtu of natural gas for Arkla from various receipt points in Louisiana, Texas, Mississippi, to various delivery points in Mississippi, Louisiana, Texas, Alabama and Florida. United anticipates transporting up to 206,000 per day and average day, and 75,190,000 MMBtu annually for Arkla. United explains that service commenced December 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1064.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157-205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-30176 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD89-02898T]

Designation of Tight Formation Hidalgo County, Texas, Texas-4; Tight Formation Determination

December 23, 1988.

Take notice that on December 12, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the McAllen Ranch (Guerra, E.) Field located in Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued November 21, 1988, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 88-30207 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-428-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 22, 1988,[1] Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-428-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas and agent for Metamora Community Consolidated Grade School District No. 1 pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Panhandle requests authority to transport up to 60 dt equivalent of natural gas per day on an interruptible basis for Amgas pursuant to a transportation agreement dated October 3, 1988, between Panhandle and Amgas. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various receipt points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Ohio, and Michigan and redeliver the gas, less fuel and unaccounted-for line loss to Central Illinois Light Company in Tazewell County, Illinois.

Panhandle indicates it would provide the service for a primary term of one month from the date of initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least 30 days prior notice to the other. Panhandle states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 60 dt equivalent of natural gas, 30 dt equivalent of natural gas, and 10,950 dt equivalent of natural gas, respectively. Panhandle states it commenced a 120-day transportation service for Amgas on November 21, 1988, as reported in Docket No. ST89-1408-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 88-30204 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-458-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

December 23, 1988.

Take notice that on December 19, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-458-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88-328-000 for authorization to provide gas for Tejas Power Corporation (Shipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 40,000 dt; on an average day would be 25,000 dt; and on an annual basis would be 9,125,000 dt.

Transco also states that it would receive the gas at Brazos Block A-7, Offshore Texas and deliver the gas at an existing point of interconnection between Transco and Tennessee Gas Pipeline Company in Wharton County, Texas. Transco states that it would construct no new facilities in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced November 1, 1988, pursuant to the 120-day automatic authorization in Docket No. ST89-1237.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

[1] Section 381.103 of the Commission's Regulations provides that the filing date is the date on which the required filing fee was paid. Section 381.206 of the Regulations provides that if the fee for the initial report submitted under § 284.223(f)(i) of the Regulations is paid, no fee is required for a blanket certificate request. In this case the initial report and the related fee were not submitted until December 22, 1988. Although Panhandle submitted its request on December 15, 1988, consistent with the above, the filing date of the request should be considered December 22, 1988.

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 88-30205 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-474-000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

December 23, 1988

Take notice that on December 22, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-474-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Bishop Pipeline Corporation (Bishop) under its blanket authorization issued in Docket No. CP88-686-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Bishop, pursuant to an interruptible transportation service agreement dated October 26, 1988. The transportation agreement is effective through the end of October 1988, and shall continue month to month thereafter unless terminated by 30 days prior notice by either party. Texas Gas proposes to transport on a peak day up to 30,000 MMBtu; on an average day up to 10,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Bishop. Texas Gas proposes to receive the subject gas at various points located in the states of Arkansas, Illinois, Indiana, Kentucky, Louisiana (including Offshore Louisiana), Ohio, Tennessee, and Texas. It is stated that the points of delivery are as follows: City of Brownsville, Tennessee, City of Covington, Tennessee, City of Jackson, Tennessee and the Memphis Light, Gas and Water Division. The ultimate consumers are: Brownsville Utility Department, Haywood Company, Lydall Corporation, Materials Division, Charms Company, Florida Steel Corporation, Baptist Hospital, Cargill, Inc., Conley Frog & Switch Co., Celotex Corp., Cleo Wrap Division, Cochran Corporation, Dixico, Kimberly Clark, Lehman-Roberts Company, Memphis State University, QO Chemical Co., St. Joseph Hospital, St. Francis Hospital, Taylor Forge International, Stroh Brewing Co., and Velsicol. Texas Gas avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on November 11, 1988, as reported in Docket No. ST89-1211-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regualtions under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 88-30206 Filed 12-30-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3501-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 12, 1988 through December 16, 1988, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13316).

Draft EISs

ERP No. D-BLM-G65048-NM, Rating LO, White Sands Resource Management Plan, McGregor Range, Implementation, Otero County, NM.

Summary: EPA has no objections to proposed project and concurs with BLM's preferred Alternative C. Specific comments offered for BLM's consideration included: (1) Minimizing vegetation disturbance to arroyo habitats by limiting mineral and livestock activities in these areas, and (2) Developing site specific watershed management plans for review by resource agencies.

ERP No. D-COE-K60018-CA, Rating EO2, Los Angeles Raiders Football Stadium, Parking and Associated Facilities Development, Land Use Change and Implementation, Santa Fe Dam Flood Control Basin and Recreation Area, City of Irwindale, Los Angeles County, CA.

Summary: EPA expressed environmental objections because proposed project features could eliminate or degrade a major portion of an alluvial sage scrub habitat, a scarce regional resource. EPA asked that the Corps of Engineers not lease, sublease or declare as excess property any of the 178 acres of Federal property within the Santa Fe Flood Control Basin.

ERP No. DS-FHW-A41710-NY, Rating LO, Southern Tier Expressway Construction, Corning Area, Painted Post to NY-414, Reevaluation of Alternatives and Updated Information, Funding, Steuben County, NY.

Summary: EPA has no objections to the project as proposed. However, we have requested that the final supplemental EIS contain more specific information concerning mitigation measures to improve and maintain aquatic habitats.

ERP No. D-UMT-K54018-CA, Rating EC2, Colma BART Station Project, Transit Improvements, Funding, San Mateo County, CA.

Summary: EPA expressed environmental concerns that the proposed project would adversely affect the water quality and beneficial uses of the Colma Creek drainage basin without a firm commitment to adopt and implement effective mitigation measures.

Final EISs

ERP No. F-BLM-K61088-CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendations, South Warner Contiguous and Carson Iceberg WSAs, Wilderness Designation Recommendation, Modoc County, CA and Alpine County, NV.

Summary: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No. F1-BLM-K61088-CA, California Section 202 Wilderness Study Areas (WSAs) Wilderness Recommendation, Garcia Mountain, Rockhouse, Domeland, Machesna, Yolla Bolly and Big Butte WSAs', Nonwilderness Designation Recommendations, San Obispo, Tulare, Kern, Tehama, Mendocino and Trinity Counties, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No. F-BLM-L67018-AK, Beaver Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, White Mountain National Recreation Area, Anchorage, AK.

Summary: EPA supports the additional placer mining reclamation components which have been incorporated into the Proposed Action, although the final EIS remains unclear what criteria would be considered in implementing the reclamation measures. Therefore, EPA has remaining concerns regarding the degree of actual improvement in environmental conditions that may result from the Proposed Action. EPA is also concerned that a limited data base, predictive uncertainties, and potential cumulative effects is difficult to determine the significance of conclusions regarding water quality and habitat effects from placer mining discharges.

ERP No. FB-COE-K36014-CA, Santa Ana River Mainstream and Santiago Creek Multipurpose Flood Control Project, Additional Alternatives and Updated Information, Riverside, Orange and San Bernardino Counties, CA.

Summary: EPA expressed its continuing objections concerning adequate mitigation measures for the loss of aquatic and riparian habitats, including the loss of a productive trout fishery, and the project's lack of full compliance with the Clean Water Act section 404(b)(1) Guidelines, which regulate the discharge of dredged or fill materials into waters of the United States.

ERP No. F-FHW-B50006-ME, Fore River Bridge/Million Dollar Bridge/ME-77 Rehabilitation or Replacement, Broadway in South Portland to York Street in Portland, Section 10 and 404 Permits, USCG Bridge Permit and Funding, Fore River, Cumberland County, ME.

Summary: EPA has determined that the final EISs' preferred alternative, the modified Down Stream—Broadway alignment does not comply with the 404(b)(1) Guidelines. EPA requests that FHWA and MDOT reconsider the selection of the rehabilitation, the DS/WO long alignment and the DS/W Low-level long alignment which we believe are environmentally acceptable. EPA will recommend that the U.S. Army Corps of Engineers deny the Section 404 permit for this document's preferred alternative.

ERP No. F-FHW-K40158-CA, I-5/Santa Ana Freeway Widening and Interchanges Reconstruction, CA-22/57 Interchange to CA-55, Funding and 404 Permit, Orange County, CA.

Summary: EPA expressed continuing concerns about the project's potential to exacerbate air quality problems in the South Coast Air Basin, an area which currently experiences serious violations of the National Ambient Air Quality Standards. EPA asked that the Record of Decision contain a commitment to implement applicable transportation control measures found in the Area Quality Management Plan and other measures to improve air quality.

ERP No. F-FRC-A99183-00, Regulations Governing Independent Power Producers (RM88-4-000) and Regulations Governing Bidding Programs (RM88-5-000), Implementation.

Summary: EPA's concerns are that (1) the consequences of "global warming" could have adverse environmental impacts and need to be addressed in EISs that involve shifts in energy sources or consumption and, (2) we continue to recommend that FERC consider methods to link state adoption of bidding programs to load management and conservation.

Dated: December 28, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-30191 Filed 12-30-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-7-1A-3]

Iowa State and Local Offsite Radiological Emergency Response Plans site-specific to the Duane Arnold Energy Center Notice

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: The Federal Emergency Management Agency hereby gives notice that the negative finding on offsite radiological emergency response planning for the Duane Arnold Energy Center, posted in the Federal Register, Vol. 53, No. 71, Wednesday, April 13, 1988, has been withdrawn as of December 13, 1988.

SUMMARY: Withdrawal of the March 30, 1988, negative finding is a result of the State of Iowa's submission of significant offsite plan revisions and a more accurate Evacuation Time Study, as well as the results of the Duane Arnold biennial exercise conducted on November 9, 1988, and a remedial drill on December 1, 1988. Based on these plan submissions and exercise demonstrations, FEMA is withdrawing the finding cited above, which had been issued pursuant to 44 CFR 350.12(c).

For further details with respect to this action refer to Docket File FEMA-REP-7-IA-3, maintained by the Regional Director, FEMA Region VII, 911 Walnut Street, 2nd Floor, Kansas City, Missouri 64106 (816-283-7060).

For the Federal Emergency Management Agency.

Joseph A. Moreland,

Acting Associate Director, State and Local Programs and Support.

[FR Doc. 88-30177 Filed 12-30-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-1390]

Power of Receiver and Conduct of Receiverships; Repos, Financial Contracts, and Special Accounts

Date: December 22, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing earlier resolutions concerning American Savings and Loan Association, Stockton, California ("American") and its successor, American Savings, A Federal Savings and Loan Association ("American Federal"), to provide that the protections afforded to certain persons and entities engaged in certain transactions with American or American Federal will be afforded to such persons or entities engaged in similar transactions with an association (hereinafter designated as "Collecting Association") to which certain of the assets (including mortgage-backed securities) and liabilities of American Federal may be transferred. The Board is also indicating its intention to authorize Collecting Association to enter into certain security agreements with broker-dealers and their affiliates.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377–6428; or Deborah E. Siegel, Attorney, Office of General Counsel, (202) 377–6848; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has previously adopted Resolutions No. 88–149 and 88–463 regarding "Repos" and "Financial Contracts" of American Savings and Loan Association, Stockton, California ("American"), and the Board has supplemented such Resolutions to apply to "Repos" and "Financial Contracts" of American Savings, A Federal Savings and Loan Association ("American Federal") pursuant to Resolution No. 88–947 (as so supplemented, respectively the "Repo Resolutions") and the "Financial Contracts Resolutions"); and

Whereas, The Board has previously adopted Resolution No. 88–29, regarding "special accounts" of insured institutions, the Executive Director of the Federal Savings and Loan Insurance Corporation ("Corporation") has issued certain commitments, in accordance with that Resolution, regarding "special accounts" of American in a letter to Mr. William Popejoy dated June 27, 1988 (including Annex A and Schedule A thereto), ("Commitment Letter"), the Board has supplemented such Resolution and Commitment Letter to apply to "special accounts" of American Federal, and the Executive Director of the Corporation supplemented the Commitment Letter, in accordance with such Resolutions, to apply to "special accounts" of American Federal in a letter, dated September 12, 1988, to William Popejoy (collectively, the "CD Commitment"); and

Whereas, The Board has determined that the extension of the commitment regarding payment of insurance would ensure liquidity for a successor association to American Federal, and that such action would serve to reduce the operating losses and potential cost of liquidation of any such successor association; and

Whereas, The Board desires to supplement the Repo Resolutions, the Financial Contracts Resolutions and the CD Commitment (which supplementation the Board does not consider to be an amendment or rescission of such Resolutions and Commitment) to take into account a transfer of certain assets (including mortgage-backed securities) and liabilities of American Federal to an institution the accounts of which are insured by the Corporation ("Collecting Association"), and to provide the same protections and commitments to counterparties to Repos and Financial Contracts entered into with, or transferred from, American Federal to Collecting Association and to holders of "special accounts" in Collecting Association or in such accounts transferred from American Federal to Collecting Association; and

Whereas, The Executive Director of the Corporation, to implement the policy set forth in Resolution No. 88–29, in letters to William Popejoy dated July 25, 1988, and July 29, 1988, authorized American to enter into a security agreement in a form substantially similar to the security agreement attached to and referenced in such correspondence ("Security Agreement"), and by letter dated October 4, 1988, extended such authorization to apply to American Federal; and

Whereas, Collecting Association may desire to enter into a security agreement with broker-dealers or their affiliates in a form substantially similar to the Security Agreement (a copy of which is in the Minute Exhibit File), and such action would serve to reduce the operating losses and potential cost of liquidation of Collecting Association:

Now, Therefore, the Board resolves as follows:

1. Collecting Association, upon acquisition of assets and liabilities of American Federal, is hereby designated as eligible to receive the benefits of Board Resolution No. 88–29.

2. All references in the Repo Resolutions, the Financial Contracts Resolutions and the CD Commitment to "American", "American Savings" and "American Federal" shall also be references to Collecting Association, and the Repo Resolutions and Financial Contracts Resolutions, as supplemented hereby, shall apply to "Repos" and "Financial Contracts" entered into by Collecting Association or transferred from American Federal to Collecting Association, and the CD Commitment, as supplemented hereby, shall apply to special accounts in Collecting Association or transferred from American Federal to Collecting Association.

3. Collecting Association, upon acquisition of assets and liabilities of American Federal, is hereby authorized to enter into a security agreement with broker-dealers or their affiliates in a form substantially similar to the Security Agreement.

4. There resolutions shall be effective immediately upon their adoption by the Board.

5. The Secretary of the Board shall forward these resolutions for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–30237 Filed 12–30–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–1391]

Brokered Deposits; Receivership of American Savings, A Federal Savings and Loan Association

Date: December 22, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board is supplementing earlier resolutions concerning American Savings and Loan Association, Stockton, California ("American"), and its successor, American Savings, A Federal Savings and Loan Association, Stockton, California ("American Federal") to provide that an authorization of the acceptance of brokered deposits by American Federal would be provided for a successor association to American Federal to which certain of the assets and liabilities of American Federal would be transferred by the Federal Savings and Loan Insurance Corporation as receiver for American Federal.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377–6428; Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445; Deborah E. Siegel, Attorney, Office of General Counsel, (202) 377–6848; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, the Federal Home Loan Bank Board ("Board") had previously adopted Resolution no. 87–616, dated June 3, 1987, regarding the acceptance by American Savings and Loan Association, Stockton, California ("Old American") of brokered deposits up to a maximum limit of $2.5 billion of total deposits ("Brokered Deposit Resolution"); and

Whereas, the Board, by its Resolution No. 88–924, dated September 5, 1988, appointed the Federal Savings and Loan Insurance Corporation ("Corporation") as receiver for Old American, and pursuant to an Acquisition Agreement dated September 6, 1988 between the Corporation and American Savings, A Federal Savings and Loan Assoication ("American Federal"), the Corporation transferred substantially all of the assets and liabilities of Old American to American Federal; and

Whereas, the authorizations granted to Old American pursuant to the Brokered Deposit Resolution were extended to American Federal pursuant to Board Resolution No. 88–959, dated September 12, 1988; and

Whereas, the Board desires to supplement the Brokered Deposit Resolution (which supplementation the Board does not consider to be an amendment or rescission of such resolution or of any supplement thereto) to take into account a transfer of American Federal's brokered deposits to an institution the accounts of which are insured by the Corporation (hereinafter designated as "Collecting Association"), and to provide the same authorizations to Collecting Association as were provided to Old American and American Federal:

Now, Therefore, the Board Resolves as Follows:

1. All rights and authorizations granted to Old American and American Federal pursuant to the Brokered Deposit Resolution (as supplemented by Board Resolution No. 88–959) shall be extended to Collecting Association upon acquisition of certain assets (including mortgage-backed securities) and liabilities (including brokered deposits) of American Federal.

2. All references in the Brokered Deposit Resolution to "American" and "American Savings" shall also be references to Collecting Association.

3. The Secretary of the Board shall forward these resolutions for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88–30238 Filed 12–30–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades and Related Forms FMC–355 and FMC–378

FMC requests an extension of clearance for regulations which establish methodologies to be used in evaluating rates filed by vessel operating common carriers in the domestic offshore trades who are subject to the Intercoastal Shipping Act, 1933. Total estimated annual burden for 13 tug and barge operators and 20 self-propelled operators is 2559.6 manhours. Total estimated annual cost to the Federal Government is approximately $17,050; total estimated annual cost to respondents is approximately $44,000.

46 CFR Part 553—Financial Exhibits and Schedules of Non-Vessel-Operating Common Carriers in the Domestic Offshore Trades and Related Form FMC–379

FMC requests extension of clearance for regulations which will facilitate the orderly acquisition of data required in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes by non-vessel operating common carriers in the domestic offshore trades subject to the Shipping Act, 1933.

Although no reports have been received in the past eight years, potential estimated respondent universe is 60 with an estimated 300 manhours per year. The annual cost to the Federal Government and respondents is nominal because there is no reason to believe that a significant number of reports will be received during the renewal period.

Joseph C. Polking,

Secretary.

[FR Doc. 88–30185 Filed 12–30–88; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010790–006.

Title: Israel Eastbound Conference.

Parties:

Zim Israel Navigation Co., Ltd. (Zim Container Service Division)

Farrell Lines, Inc.

Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed modification would prohibit any party, either individually or jointly with any other carrier or carriers, from entering into an individual loyalty contract in the Agreement trade. It would further prohibit any party from taking independent action with respect to loyalty contracts.

Agreement No.: 217–011224.

Title: Mediterranean/Puerto Rico Space Charter Agreement.

Parties:

Compania Trasatlantica Espanola (Spanish Line)

Nordana Line AS

Sea-Land Service, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space and slots from one another in the trade between and/or via all ports on the Iberian Peninsula and/or in the Mediterranean Sea and ports in Puerto Rico Island. Any chartering will be voluntary.

By Order of the Federal Maritime Commission.

Dated: December 27, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–30147 Filed 12–30–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Colonial Banc Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Colonial Banc Corp.*, Eaton, Ohio; to engage *de novo* through Financial Services, Inc., Eaton, Ohio, in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Matewan BancShares, Inc.*, Matewan, West Virginia; to engage *de novo* through Matewan Venture Fund, Inc., Matewan, West Virginia, in making and servicing commercial loans and other extensions of credit and making equity investments of 5 percent or less, pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30149 Filed 12-30-88; 8:45 am]

BILLING CODE 6210-01-M

Eastchester Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 23, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Eastchester Financial Corporation*, White Plains, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Eastchester Savings Bank, White Plains, New York.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation*, Richmond, Virginia; to acquire 100 percent of the voting shares of Colonial-American Bankshares Corporation, Roanoke, Virginia, and thereby indirectly acquire The Mountain National Bank of Clifton Forge, Clifton Forge, Virginia, and Colonial-American National Bank, Roanoke, Virginia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Coal City Corporation*, Wilmette, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Allied Banc Corporation, Morton Grove, Illinois, and thereby indirectly acquire Allied Bank/Coal City National, Coal City, Illinois.

2. *Farmers Savings Bank*, Trustee of Farmers Savings Bank Employee Stock Ownership Plan and Trust, West Union, Iowa, to become a bank holding company by acquiring 49.1 percent of the voting shares of Farmers Savings Bank, West Union, Iowa.

Board of Governors of the Federal Reserve System, December 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30150 Filed 12-30-88; 8:45 am]

BILLING CODE 6210-01-M

Jason Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section § 225.14 of the board's Regulation Y (12 CFR 225.14) for the board's approval under section 3 of the bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR § 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activites will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jackson Bankshares, Inc.*, Offerle, Kansas; to acquire The Bucklin State Bank, Bucklin, Kansas.

In connection with this application, Applicant has also applied to engage in expanding the scope of its presently authorized general insurance agency to include serving the area within a ten-mile radius of Bucklin, Kansas (population 788).

Board of Governors of the Federal Reserve System, December 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30151 Filed 12-30-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 23, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mr. Alex Patterson*, Mount Sterling, Kentucky; to acquire an additional 1.20 percent of the voting shares of Mount Sterling National Holding Company, Mount Sterling, Kentucky, thereby increasing applicant's ownership to 11.20 percent.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Faye Cargile*, Glenwood, Arkansas; to acquire 100 percent of the voting shares of Caddo Holding Company, Incorporated, Glenwood, Arkansas, and thereby indirectly acquire Caddo First National Bank, Glenwood, Arkansas.

Board of Governors of the Federal Reserve System, December 27, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30152 Filed 12-30-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[IOA-019-N]

Medicare Program; Meeting of the Advisory Committee on Home Health Claims

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces meeting dates of the Advisory Committee on Home Health Claims for the purpose of studying the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of the increase, and the need to reform the process involved in these denials. The meetings will be open to the public.

DATES AND ADDRESSES: The meetings will be held on: January 18, 1989 from 9:30 a.m. to 4:30 p.m., PST, and on January 19, 1989 from 9:30 a.m. to 2:30 p.m., PST, at the Torrance Marriott, 3635 Fashion Way, Torrance, California 90503-4897.

February 23, 1989 from 9:30 a.m. to 4:30 p.m., EST, and on February 24, 1989 from 9:30 a.m. to 2:30 p.m., EST, at the Holiday Inn Oceanside, 2201 Collins Avenue, Miami Beach, Florida 33139.

March 30, 1989 from 9:30 a.m. to 4:30 p.m., EST, and on March 31, 1989 from 9:30 a.m. to 2:30 p.m., EST, at the Bangor Hilton, 308 Godfred Boulevard, Bangor, Maine 04401.

April 27, 1989 from 9:30 a.m. to 4:30 p.m., EDT, and on April 28, 1989 from 9:30 a.m. to 2:30 p.m., EDT, at the International Hotel, 7032 Elm Road, Baltimore, Maryland 21240.

FOR FURTHER INFORMATION CONTACT: Wilhelm Pickens, (301) 966-7476.

SUPPLEMENTARY INFORMATION: On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) was enacted. Section 427 of Pub. L. 100-360 established the Advisory Committee on Medicare Home Health Claims. Additionally, section 427 requires the Advisory Committee to report by July 1, 1989, to the Administrator of the Health Care Financing Administration (HCFA) and to the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, its findings on the denial of claims for home health services in 1986 and 1987. The Advisory Committee must study—

(1) The reasons for the increase in the denial of claims for home health services during 1986 and 1987;

(2) The ramifications of that increase; and

(3) The need to reform the process involved in the denials.

The Advisory Committee will address fully these three specified duties. The recommendations of the Advisory Committee are intended to be used only at the option of HCFA and Congress.

Agenda items for the meeting will include presentations from experts in the field of home health services, and discussions of directions and issues to be addressed at subsequent meetings.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774; Medicare—Supplementary Medical Insurance)

Dated: December 15, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-30210 Filed 12-30-88; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing

Administration (HCFA), **Federal Register**, Vol. 53, No. 45, Tuesday, March 8, 1988, pp. 7402–7403) is amended to reflect revisions to the Management Planning and Analysis Staff functional statement within the Office of Budget and Administration in the Office of the Associate Administrator for Management.

The specific changes to Part F. are as follows:

• Section FH.20.A.4., Management Planning and Analysis Staff (FHA–1) is amended by deleting the functional statement in its entirety and replacing it with the following functional statement:

4. Management Planning and Analysis Staff (FHA–1)

Assists and advises the Director of the Office of Budget and Administration (OBA) and other OBA managers in the management and operation of the Office. Provides Agency-wide services, policy direction, and coordination with respect to HCFA's management planning and control programs; including workplanning, management analysis, management/productivity improvement functions, Privacy Act responsibilities, internal control program, advisory and assistance services, commercial and industrial activities, administrative issuances system, and memoranda of understanding and interagency agreements. Develops HCFA policy in these areas and assures the implementation of these policies throughout HCFA. Conducts special studies and analyses in Agency-wide and cross-cutting OBA functional areas such as personnel management, financial management, and other broad based administrative issues.

Date: December 12, 1988.

Joseph R. Antos,

Acting Associate Administrator for Management.

[FR Doc. 88–30309 Filed 12–30–88; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Marking, Tagging, and Reporting Regulations for Walrus, Polar Bear, and Sea Otter.

OMB Approval Number: 1018–0066.

Abstract: The Marine Mammal Protection Act allows Alaska Natives living along the coast to harvest polar bear, sea otter, and walrus for subsistence and handicraft purposes. Mandatory marking, tagging, and reporting regulations will provide information on the level of harvest and the health of these populations, thus assisting the Service in making management decisions related to these species.

Service Form Number(s): R7–50, R7–51, R7–52.

Frequency: On occasion.

Description of Respondents: Individuals and households and Federal employees.

Estimated Completion Time: The reporting burden is estimated to be 15 minutes per response.

Annual Responses: 6,475.

Annual Burden Hours: 1,619.

Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: November 18, 1988.

Lynn B. Starnes,

Acting Assistant Director—Fisheries.

[FR Doc. 88–30164 Filed 12–30–88; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Fort Hall Indian Irrigation Project, ID

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaiing the Ft. Hall Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone FTS 429–6702; commercial (503) 231–6702.

SUPPLEMENTARY INFORMATION: This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, Subchapter H, Chapter I, of Title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Fort Hall Irrigation Project for Calendar Year 1989 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

The purpose of this notice is to announce the increase in the Fort Hall Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1987 will amount to an increase of $1.00 per acre for the Michaud Unit due to an increase in power rates. The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views and arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, no later than 30 days after publication of this notice in the **Federal Register**.

Administration

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including ceded area south of the Fort Hall Indian Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian Reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employee designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations.

Irrigation System

Water will be available for irrigation purposes from April 15 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

Methods of Irrigation

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the Officer-In-Charge may limit deliveries to this type of irrigation.

Distribution and Apportionment of Water

(a) *Delivery.* Water for irrigation purposes will be delivered throughout the irrigation season by either the continuous flow or rotation method at the discretion of the Officer-in-Charge. If during a time when delivery is by the rotation method, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditch rider who may permit such exchange, if feasible.

(b) *Preparation and submission of water schedule.* If the decision of the Officer-in-Charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right before March 1, the watermaster will prepare the schedule which shall be final for the seasons. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for deliveries of irrigation water.* Requests for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditch rider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Duty of Water

Dependent upon available supplies of water for each unit of the Project, the duty of water is based on the delivery to the farm unit of 3.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the Officer-in-Charge depending on supplies available, but each irrigable acre shall be entitled to its pro-rata share of the total water supply.

Charges

Bills covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the lessee of record.

Basic and Other Water Charges

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1989 and subsequent years until futher notice as follows:

(1) Fort Hall Unit basic rate—$17.00 per acre.

(2) Michaud Unit Basic rate—$23.00 per acre.

Additional rate for sprinkler when pressure is supplied by project—$6.50 per acre.

(3) Minor Units basic rate—$14.00 per acre.

(b) In addition to the foregoing charges there shall be collected a minimum charge of $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any Area will, therefore, be the basic rate per acre plus $5.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessments on Indian Owned Land

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or non-members of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for three years. The three years the land is not subject to assessment need not run consecutively. When land has been leased for a total of three years, the land, when under lease to non-Indians or non-members of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by non-members of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1938, approved September 24, 1938, and instructions of December 1, 1938, approved December 17, 1938).

Ronald Brown,

Acting Area Director.

[FR Doc. 89–30161 Filed 12–30–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[OR–943–09–4214–11; GP9–084; OR–6057]

Termination of Disposal Classification; Oregon; Correction

The acreage and land description in FR Doc. 81–35927, published on pages 61335 and 61336, in the issue of Wednesday, December 16, 1981, are hereby corrected as follows:

On page 61336, in paragraph 1, the land description is hereby corrected to include "T. 5 N., R. 29 E., Sec. 34, NE¼NE¼".

On page 61336, in paragraph 1, the last line reads "aggregate 1,040.00 acres" and

is hereby corrected to read "aggregate 1,080.00 acres."

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: December 21, 1988.

[FR Doc. 88-30192 Filed 12-30-88; 8:45 am]

BILLING CODE 4310-33-M

[CA-027-09-4050-00]

Susanville, California District; Alturas Resource Area; Availability of Environmental Analysis and Planning Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Environmental Analysis and Planning Decision Creating the Ash Valley Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC).

SUMMARY: The Environmental Analysis that analyzes the affects of the Plan Amendment for the Alturas Resource Management Plan (RMP) signed December 15, 1988 is available for public review. This Plan Amendment changes the designation of the Ash Valley Research Natural Area to the Ash Valley Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC). This notice serves as public notice of this ACEC designation.

This decision is protestable under the provisions of 43 CFR 1610.5.2.

FOR FURTHER INFORMATION CONTACT: For copies of the Plan Amendment or more information on the Ash Valley RNA/ACEC, contact Lynda Roush, BLM Alturas Resources Area Manager, 120 S. Main Street, Alturas, CA 96101 or at (916) 233-4666.

Lynda Roush,

Area Manager.

[FR Doc. 88-30195 Filed 12-30-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-010-09-4320-02]

Craig District Grazing Advisory Board Meeting

Time and Date: February 9, 1989, at 10:00 a.m.

Ploce: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public, interested persons may make oral statements between 10:00 a.m. and 11:00 a.m., or may file written statements.

Matters to be Considered:

1. Service award presentations.
2. Riparian presentation.
3. Status report on FY '88 and FY '89 range improvement projects.
4. Area reports including updates on land use and activity planning.
5. Expenditure of Grazing Advisory Board Funds.

Contact Person For More Information: John Denker, Craig District Office, 455 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: December 14, 1988.

David Nylander,

Acting District Manager.

[FR Doc. 88-30194 Filed 12-30-88; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action; Clear Creek County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Classification, C-48634, C-48635, C-48636, Clear Creek County, Colorado.

SUMMARY: The following described public lands are being examined for classification and disposal under the Recreation and Public Purposes (R & PP) Act of June 14, 1926 (43 U.S.C. 869) and the regulations thereunder (43 CFR Part 2740):

Sixth Principal Meridian

T. 3 S., R. 74 W.,
Sec. 33: Lots 21 and 22.
T. 4 S., R. 74 W.,
Sec. 4: all BLM land;
Sec. 5: all BLM land;
Sec. 8: all BLM land;
Sec. 17: all BLM land except that in W½SW¼;
Sec. 18: all BLM land in S½;
Sec. 19: all BLM land in N½;
Sec. 20: all BLM land except that in W½NW¼.
T. 4 S., R. 75 W.,
Sec. 13: all BLM land in S½;
Sec. 14: all BLM land in S½;
Sec. 23: all BLM land in N½;
Sec. 24: all BLM land in W½NW¼.

Containing approximately 2,860 acres.

The Town of Silver Plume, the Town of Georgetown and Clear Creek County have applied for these lands. The proposed uses include recreation, historic preservation, watershed management and water development. Approximately 2,200 acres lie within the existing Georgetown-Silver Plume National Historic Landmark District.

The proposed classification would be consistent with BLM land use plans for the area. A final BLM decision will be made after survey and title problems involving the land are resolved.

Publication of this notice will segregate these lands from all appropriation, including mineral entry, except applications under the R & PP Act. It will not affect any existing, valid claims.

Segregation will terminate upon rejection of any application, upon publication of a notice of termination, or when lease or patent issues.

Any patent issued for these lands, under the R & PP Act will reserve all minerals to the United States, and will contain a clause which would result in the lands reverting back to the United States if the use of the land is altered or if the land is transferred.

DATES: Interested parties may submit comments on this action for a period of 45 days after publication of this notice. Comments should be directed to the District Manager, P.O. Box 311, Canon City, Colorado 81212. Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become final.

FOR FURTHER INFORMATION CONTACT: The Northeast Resource Area Office at (303) 238-4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-30196 Filed 12-30-88; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-09-4214-11; GP9-066; OR-42315]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 800.36 acres of public lands out of Federal ownership. With the exception of 57.09 acres proposed for designation as an outstanding natural area, this action will open the reconveyed lands to surface entry and mining. All of the reconveyed lands will be opened to mineral leasing.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 800.36 acres of lands in Linn and Lane Counties, Oregon, from federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 17 S., R. 2 E.,
Sec. 12, N½NE¼.
T. 17 S., R. 3 E.,
Sec. 10, that portion described as follows: Beginning at the east one quarter corner of said Section 10, thence along the north line of the SE¼ S. 89°16'55" W., 2,592.50 feet to the center of Section 10; thence along the west line of the SE¼ of S. 00°51'27" E., 230.97 feet; thence S. 71°32'28" E., 171.61 feet; thence S. 31°10'49" E., 272.59 feet; thence N. 54°03'58" E., 150.37 feet; thence N. 44°58'06" E., 136.39 feet; thence N. 79°24'46" E., 211.20 feet; thence S. 52°06'02" E., 156.48 feet; thence S. 78°47'26" E., 204.25 feet; thence N. 77°12'21" E., 239.97 feet; thence S. 85°25'02" E., 249.56 feet; thence S. 64°51'38" E., 190.59 feet; thence S. 43°58'06" E., 278.95 feet; thence S. 76°45'59" E., 72.41 feet; thence S. 61°24'24" E., 164.01 feet; thence S. 70°45'40" E., 263.35 feet; thence S. 68°01'23" E., 206.56 feet; thence S. 63°39'19" E., 58.06 feet to the section line; thence along the section line N. 01°10'17" W. 996.84 feet to the point of beginning.
Sec. 11, that portion described as follows: Beginning at the west one quarter corner of said Section 11, thence along the section line S. 01°10'17" E., 996.84 feet; thence S. 63°39'19" E., 111.86 feet; thence N. 66°28'36" E., 206.20 feet; thence N. 39°01'30" E., 199.57 feet; thence N. 82°50'58" E., 175.34 feet; thence S. 72°50'23" E., 265.76 feet; thence N. 66°07'42" E., 298.03 feet; thence N. 79°22'51" E., 94.10 feet; thence N. 47°29'58" E., 124.60 feet to the east line of the NW¼ of the SW¼ of the SW¼ of said Section 11; thence along said east line N. 00°40'06" W., 630.56 feet to the northeast corner of the NW¼ of the SW¼; thence along the north line of the NW¼ of the SW¼ N. 89°01'20" W., 1,318.99 feet to the point of beginning.

Revested Oregon and California Railroad Grant Land

T. 17 S., R. 2 E.,
Sec. 12, S½NE¼ and SE¼.
T. 17 S., R. 3 E.,
Sec. 6, lots 1 to 6, inclusive, SW¼NE¼, and SE¼NW¼;
Sec. 18, that portion of the E½SE¼ lying east of Marten Creek Fork.

The areas described aggregate 740.38 acres in Lane County.

3. The land in Sections 10 and 11, T. 17 S., R. 3 E., will not be opened to operation of the public land laws, including the mining laws because it has been proposed to be designated as an outstanding natural area.

4. At 8:30 a.m., on February 6, 1989, the lands described in paragraph 2, except as provided in paragraph 3, will be open to operation of the public land laws generally or if appropriate, to such Forms of Disposition as may by law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on February 6, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on February 6, 1989, the lands described in paragraph 2, except as provided in paragraph 3, will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts requred to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on February 6, 1989, the lands described in paragraph 2, will be open to applications and offers under the mineral leasing laws.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: December 21, 1988.

[FR Doc. 88-30162 Filed 12-30-88; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations; Arkansas et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 24, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 18, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Lawrence County

Ficklin—Imboden House (Powhatan MPS), Address Restricted, Powhatan, 88003206
Powhatan Jail (Powhatan MPS), Address Restricted, Powhatan, 88003205
Telephone Exchange Building (Powhatan MPS), Address Restricted, Powhatan, 88003207

Miller County

Kiblah School, Rt. 1, Doddridge vicinity, 88003210

CALIFORNIA

Marin County

Station KPH, Marconi Wireless Telegraph Company of America, 18500 CA 1, Marshall, 88003223

COLORADO

Pitkin County

Smith—Elisha House (Aspen MRA), 320 W. Main St., Aspen, 87002121

CONNECTICUT

Fairfield County

Norwalk Island Lighthouse, Sheffield Island, Norwalk, 88003222

Litchfield County

Sanford, Frederick S., House, Hat Shop Hill, Bridgewater, 88003230

New Haven County

Howe, John I., House, 213 Caroline St., Derby, 88003229
Whitney Avenue Historic District, Roughly bounded by Burns St., Livingston St., Cold Spring St., Orange St., Bradley St., and Whitney Ave., New Haven, 88003209

New London County

Chelsea Parade Historic District, Roughly bounded by Crescent, Broad, Grove, McKinley, Perkins, Slater, Buckingham, Maple Grove, Washington, and Lincoln, Norwich, 88003215

Tolland County

Connecticut Agricultural School, Roughly CT-195/Storrs Rd. at Eagleville Rd., Mansfield, 88003202

Windham County

Pomfret Town House, Town House Rd., Pomfret, 88003221
Taylor's Corner, Rt. 171, Woodstock, 88003220

FLORIDA

Dade County

Entrance to Central Miami, W of Red Rd. between S.W. 34th and S.W. 35th Sts., Coral Gables, 88003199

GEORGIA

Jackson County

Commerce Commercial Historic District, Roughly bounded by Line, State, Cherry, Sycamore and Broad Sts., Commerce, 88003226

KENTUCKY

Hopkins County

US Post Office—Madisonville (Hopkins County MPS), 56 N. Main St., Madisonville, 88003196

LOUISIANA

De Soto Parish

Buena Visto, Red Bluff Rd., Stonewall vicinity, 88003197
Kansas City Southern Depot, Polk St. on Kansas City Southern railroad tracks, Mansfield, 88003198
Oaks, The, LA 172, Keachi vicinity, 88003203

Iberville Parish

Schexnoyder House, 1681 Pecan Dr., Iberville, 88003224

Madison Parish

Bloom's Arcade, 102 Depot St., Tallulah, 88003214

Rapides Parish

Alexandria Public Library, Old, 503 Washington St., Alexandria, 88003225

MINNESOTA

Wabasha County

Funk, Johanes and Catherine, House, Off Co Rd. 68, Zumbro Falls vicinity, 88003216
Reads Landing School, Third St. and First Ave., Reads Landing, 88003217

Wadena County

Peterson-Biddick Seed and Feed Company, 102 SE Aldrich Ave., Wadena, 88003227
Wadena Fire and City Hall, 10 SE Bryant Ave., Wadena, 88003228

Wright County

Mountain Grove Bandstand, Main and Second Sts., Mountain Grove, 88003218

SOUTH DAKOTA

Hughes County

Central Block, 321—325 S. Pierre St., Pierre, 88003201

Pennington County

Milwaukee Road Freight House, 306 Seventh St., Rapid City, 88003200

VIRGINIA

Albemarle County

Pine Knot, VA 712, Glendower vicinity, 88003211

King William County

Mount Columbia, Off VA 649, 2.7 mi. W of VA 605, Manquin vicinity, 88003206

Rockbridge County

Rockbridge Alum Springs Historic District, Address Restricted, California vicinity, 88003204

WISCONSIN

Milwaukee County

Kneeland—Walker House, 7406 Hillcrest Dr., Wauwatosa, 88003212

[FR Doc. 88-30243 Filed 12-30-88; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 302X)]

Burlington Northern Railroad—Trackage Rights Termination and Discontinuance of Operations Exemption—In Tulsa, Wagoner, and Muskogee Counties, OK

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the termination of trackage rights and discontinuance of service by Burlington Northern Railraod Company over a 51.76-mile line of railroad in Tulsa, Wagoner, and Muskogee Counties, OK, subject to standard labor protective conditions.

DATE: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 2, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 13, 1989, petitions for reconsideration must be filed by January 30, 1989. Requests for a public use condition must be filed by January 13, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 302X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, Forth Worth, TX 76132.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359 (DC Metropolitan area). (Assistance for the hearing impaired is available through TDD service (202) 275-1721].

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164, (1987), and final rules published in the **Federal Register** on December 22, 1987 [52 FR 48440-48446].

Decided: December 21, 1988.

By the Commission, Chairman Gradison. Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 88-30189 Filed 12-30-88; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 50)]

Southern Railway—Carolina Division and Southern Railway Co.—Abandonment and Discontinuance of Service—In York County, SC

The Commission has issued a certificate and decision authorizing: (1) Southern Railway-Carolina Division (SCD) to abandon its 4.7-mile line of railroad from milepost SB-110.5 near Tirzah, SC, to milepost 115.2 at York, SC; (2) SCD's parent, Southern Railway Company (SOU), to abandon its 3.91-mile connecting line from milepost HG 22.79 to milepost HG 26.70 near York; and (3) SOU to discontinue service over SCD's line. Both lines are located in York County, SC. The abandonment certificate will become effective February 2, 1989, unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than January 13, 1989. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: December 23, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,
Secretary.

[FR Doc. 88-30190 Filed 12-30-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organziations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Occupational Safety and Health Administration

Asbestos General Industry Standard: Excursion Limit Amendment

1218-0133
On occasion
State or local governments; Business or other for-profit; Federal agencies or employees; and Small businesses or organizations
286,607 respondents; 3,725,891 responses; 124,406 total hours; 0 forms
Regulatory Requirements:

1. Exposure Monitoring.	(29 CFR 1910.1001(d)).
(i) Initial Monitoring.	(29 CFR 1910.1001(d)(2)).
(ii) Periodic Monitoring.	(29 CFR 1910.1001(d)(3)).
(iii) Additional Monitoring.	(29 CFR 1910.1001(d)(5)).
(iv) Employee Notification.	(29 CFR 1910.1001(d)(7)).
2. Compliance Program.	(29 CFR 1910.1001(f)(2)).
3. Respiratory Protection.	(29 CFR 1910.1001(g)).
(i) Respiratory Program.	(29 CFR 1910.1001(g)(3)).
(ii) Emergency-Use Respirators.	(29 CFR 1910.1001(g)(3)).
(iii) Respirator Fit Testing.	(29 CFR 1910.1001(g)(4)).
4. Notifying the Laundry.	(29 CFR 1910.1001(h)(3)(iv)).
5. Warning Signs and Labels.	(29 CFR 1910.1001(j)(1)(2)).
6. Material Safety Data Sheets.	(29 CFR 1910.1001(j)(3)).
7. Employee Information and Training.	(29 CFR 1910.1001(j)(5)).
(i) Training Program.	(29 CFR 1910.1001(j)(5)(i)).
(ii) Access	(29 CFR 1910.1001(j)(5)(iv)).
8. Medical Surveillance.	(29 CFR 1910.1001(1)).
(i) Examinations	(29 CFR 1910.1001(1)(2)(3)(4)(
(ii) Information Provided.	(29 CFR 1910.1001(1)(6)).
(iii) Physician's Written Opinion.	(29 CFR 1910.1001(1)(7)).
(iv) Medical Questionnaire.	(29 CFR 1910.1001(1)(2)(3)).
9. Recordkeeping	(29 CFR 1910.1001(m)).
(i) Exposure Monitoring.	(29 CFR 1910.1001(m)(1)).
(ii) Objective Data Records.	(29 CFR 1910.1001(m)(2)).
(iii) Medical Surveillance.	(29 CFR 1910.1001(m)(3)).
(iv) Employee Training.	(29 CFR 1910.1001(m)(4)).
(v) Record Access	(29 CFR 1910.1001(m)(5)).
(vi) Records Transfer.	(29 CFR 1910.1001(m)(6)).

Let a=State or local governments;
b=Businesses or other for-proft;
c=Federal agencies or employees;
d=Small businesses or organizations;

Req. No.	Affected Public	Respondents	Frequency	Average time per response	Total hours
1(i)	a,b,c,d	286,607	On occasion	1 hour	3,251
1(ii)	a,b,c,d	286,607	do	do	7,429
1(iii)	a,b,c,d	286,607	do	do	75
1(iv)	a,b,c,d	286,607	do	5 minutes	591
2	a,b,c,d	286,607	do	30 minutes	292
3(i)	a,b,c,d	286,607	do	0 minutes	0
3(ii)	a,b,c,d	286,607	do	6 minutes	2,280
3(iii)	a,b,c,d	286,607	do	1 hour	6,716
4	a,b,c,d	286,607	do	0 minutes	0
5	a,b,c,d	286,607	do	do	0
6	a,b,c,d	286,607	do	do	0
7(i)	a,b,c,d	286,607	do	30 minutes	1,373
7(ii)	a,b,c,d	286,607	do	10 minutes	28,808
8(i)	a,b,c,d	286,607	do	50 minutes	43,314
8(ii)	a,b,c,d	286,607	do	5 minutes	4,331
8(iii)	a,b,c,d	286,607	do	do	5,192
8(iv)	a,b,c,d	286,607	do	20 minutes	13,075
9(i)	a,b,c,d	286,607	do	5 minutes	622
9(ii)	a,b,c,d	286,607	do	0 minutes	0

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Req. No.	Affected Public	Respondents	Frequency	Average time per response	Total hours
9(iii)	a,b,c,d	286,607	do	5 minutes	5,192
9(iv)	a,b,c,d	286,607	do	15 minutes	610
9(v)	a,b,c,d	286,607	do	10 minutes	1,255
9(vi)	a,b,c,d	286,607	do	0 minutes	0

This regulation requires employers to train employees about the hazards of asbestos, to monitor employee exposure to the Permissible Exposure Limit and the Excursion Limit, to provide medical surveillance and to establish and maintain accurare records of employee exposure to asbestos.

Asbestos Construction Industry Standard: Excursion Limit Amendment

1218–0134
On occasion
State or local governments; Businesses or other for-profit; Federal agencies or employees; and Small businesses or organizations
188,779 respondents; 1,699,011 responses; 397,614 total hours; 0 forms
Regulatory Requirements:

1. Exposure Monitoring. (29 CFR 1926.58(f)).
(i) Initial Monitoring. (29 CFR 1926.58(f)(2)).
(ii) Periodic Monitoring. (29 CFR 1926.58(f)(3)).
(iii) Employee Notification. (29 CFR 1926.58(f)(6)).
2. Respiratory Protection. (29 CFR 1926.58(h)).
(i) Respiratory Program. (29 CFR 1926.58(h)(3)).
(ii) Emergency-Use Respirators. (29 CFR 1926.58(h)(3)).
(iii) Respirator Fit Testing. (29 CFR 1926.58(h)(4)).
3. Notifying the Laundry. (29 CFR 1926.58(i)(2)(ii)).
4. Warning Signs and Labels. (29 CFR 1926.58(k)(1)–(2)).
5. Employee Information and Training. (29 CFR 1926.58(k)(3)).
(i) Training Program. (29 CFR 1926.58(k)(3)(i)–(iii)).
(ii) Access (29 CFR 1926.58(k)(4)(i)–(ii)).
6. Medical Surveillance. (29 CFR 1926.58(m)).
(i) Examinations (29 CFR 1926.58(m)(2)).
(ii) Information Provided. (29 CFR 1926.58(m)(3)).
(iii) Physician's Written Opinion. (29 CFR 1926.58(m)(4)).
(iv) Medical Questionnaire. (29 CFR 1926.58(m)(2)(ii)).
7. Recordkeeping (29 CFR 1926.58(n)).
(i) Objective Data Records. (29 CFR 1926.58(n)(1)).
(ii) Exposure Monitoring. (29 CFR 1926.58(n)(2)).
(iii) Medical Surveillance. (29 CFR 1926.58(n)(3)).
(iv) Employee Training. (29 CFR 1926.58(n)(4)).
(v) Record Access (29 CFR 1926.58(n)(5)).
(vi) Records Transfer. (29 CFR 1926.58(n)(6)).

Let a = State or local governments; b = Businesses or other for-profit; c = Federal agencies or employees; d = Small businesses or organizations

Req. no.	Affected Public	Respondents	Frequency	Average time per response	Total hours
1(i)	a,b,c,d	188,779	On occasion	0	0
1(ii)	a,b,c,d	188,779	do	0	0
1(iii)	a,b,c,d	188,779	do	0	0
2(i)	a,b,c,d	188,779	do	0	0
2(ii)	a,b,c,d	188,770	do	0	0
2(ii)	a,b,c,d	188,779	do	0	0
3	a,b,c,d	188,779	do	0	0
4	a,b,c,d	188,779	do	0	0
5(i)	a,b,c,d	188,779	do	30 minutes	39,984
5(ii)	a,b,c,d	188,779	do	5 minutes	40,196
6(i)	a,b,c,d	188,779	do	50 minutes	127,899
6(ii)	a,b,c,d	188,779	do	5 minutes	12,790
6(iii)	a,b,c,d	188,779	do	do	15,163
6(iv)	a,b,c,d	188,779	do	20 minutes	42,637
7(i)	a,b,c,d	188,779	do	0 minutes	0
7(ii)	a,b,c,d	188,779	do	do	0
7(iii)	a,b,c,d	188,779	do	5 minutes	15,163
7(iv)	a,b,c,d	188,779	do	15 minutes	88,764
7(v)	a,b,c,d	188,779	do	10 minutes	15,018
7(vi)	a,b,c,d	188,779	do	0 minutes	0

This regulation requires employers to train employees about the hazards of asbestos, to monitor employee exposure to the Permissible Exposure Limit and the Excursion Limit, to provide medical surveillance and to establish and maintain accurate records of employee exposure to asbestos.

Extension

Mine Safety and Health Administration

Program to Prevent Smoking in Hazardous Areas

1219–0041
On occasion
Businesses and other for profit; small businesses or organizations
200 respondents; 30 minutes per response; 100 total burden hours
Requires coal mine operators to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as, in or around oil houses, explosives magazines, etc. Mine operators are further required to submit the programs to MSHA for approval.

Certificate of Training, MSHA Form 5000–23

1219–0070
On occasion
Businesses and other for profit; small businesses or organizations
16,998 respondents; 5 minutes per response; 82,553 total burden hours
Requires MSHA Form 5000–23, Certificate of Training, to be used by mine operators to record mandatory training received by miners. The form provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement.

Employment and Training Administration

Domestic Agricultural In-Season Wage Report

1205–0017; ETA 232 & 232A
Annually
Individuals or households, State or local governments, Farms
20,294 respondents; 8,528 total hours; 12 hours per State; 2 hours per employer.
State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Signed at Washington, DC this 27th day of December 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–30146 Filed 12–30–88; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Co., et al., Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–41, issued to Arizona Public Service Company, et al., (the licensees),[1] for operation of the Palo Verde Nuclear Generating Station, Unit 1 located in Maricopa County Arizona. The request for amendment was submitted by letter dated December 23, 1988.

The proposed amendment would revise Technical Specification Surveillance Requirement 4.1.3.1.2 to allow continued operation of Unit 1 until the end of the current cycle (approximately three months), without conducting any further exercise tests of Control Element Assembly (CEA) 64. The proposed change will eliminate a potentially challenging operating condition. The plant may be unnecessarily challenged during performance of testing on CEA No. 64 because this CEA has slipped during previous rod motion testing due to an intermittent ground on the CEA's lower gripper coil.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to this amendment follows:

Criterion 1

The proposed change would not increase the probability or consequences of any accident previously evaluated since the proposed change is still within the bounds of the current safety analyses. The proposed change is intended to reduce the probability of a reactor transient due to a dropped rod. The licensees have provided the following discussion:

The basis for Surveillance Requirement 4.1.3.1.2 is to demonstrate that all applicable CEAs are capable of being inserted into the core when required. All performances of this test to date conclusively show that CEA #64 can be inserted into the core. Additionally, Unit 1 has experienced six reactor trip events during the current cycle of operation. During each reactor trip, CEA #64 fell into the core as required.

It is unlikely that an obstruction would develop between now and the end of the current cycle that would render CEA #64 untrippable. However, even if CEA #64 would not drop into the core when required, this condition is within the bounds of the safety analyses. All analyses in which shutdown CEA reactivity is critical require that the most reactive CEA be assumed to remain stuck outside the core * * *. In addition, shutdown margin * * * would not be adversely affected by this change because it is determined by considering a single malfunction resulting in the highest worth CEA failing to insert.

Criterion 2

The proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since it would not introduce new systems, modes of operation, failure modes or other plant perturbations. The lower gripper coil for CEA–64 would only be energized during CEA inward or outward motion. The coil is not energized when the reactor is tripped nor during steady state operation. Therefore, the requested Technical Specification change will not create the possibility of an accident or malfunction of a different type than those already evaluated in the FSAR.

Criterion 3

The proposed change would not involve a significant reduction in the margin of safety. The license stated:

The requested change for CEA #64 will not reduce the margin of safety as defined in the basis for the Technical Specifications. All performances of the CEA exercise testing to date have conclusively shown that CEA #64 can be inserted into the core. CEA #64 has successfully fallen into the core as required during 6 reactor trip events during the current cycle of operation. Additionally, the safety analyses already address the condition where the single most reactive CEA fails to drop into the core during design basis events.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and

[1] The other licensees are the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

page number of the **Federal Register** notice.

Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 18, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a part in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set fort with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's number and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007, Attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 23, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 23rd day of December 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Directorate V, Division of Reactor Projects III/IV-V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-30200 Filed 12-30-88; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3501 et seq.] this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Mr. Noel McCaman, Office of Recruitment, Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. McCaman may be called at 202-254-6480. Comments on this form should be addressed to Ms. Francine Picoult, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract:

(1) *Title:* Follow-up and Program Evaluation Guide.

(2) *Need for and Use of the Information:* Follow-up calls will be made to selected scarce-skill individuals who have requested information (and given us permission to follow-up). The call will (1) make sure all materials were received, (2) encourage individuals to apply, and (3) evaluate our communication with the public.

(3) *Respondents:* Citizens who requested and were sent information and an application for Peace Corps service.

(4) *Burden on the public:*

a. Annual reporting burden: 775.5 hours

b. Annual recordkeeping burden: 0 hours

c. Estimated average burden hours per response: .05-.07 hours

d. Frequency of response: on occassion

e. Estimated number of likely respondents: 15,000

This notice is issued in Washington, DC on December 23, 1988.

Margaret H. Thome,

Associate Director for Management.

[FR Doc. 88-30193 Filed 12-30-88; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26391; File No. SR-AMEX-88-32]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Change Relating to Increased Supplemental Listing Fees and Annual Fees Imposed on Listed Company Equity Issues

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1988, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is increasing the supplemental listing fee and annual fee imposed on listed company equity issues. The schedule of fee increases is available at the Office of the Secretary, American Stock Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is increasing two fees imposed on listed companies. The fee for supplemental stock listings is being raised from $.015 to $.02 per share, with the minimum fee increasing from $1,000 to $2,000 and the maximum fee increasing from $12,000 to $17,500. The annual fee for stocks, with separate categories based on the number of outstanding shares, is being increased starting in 1989, the minimum fee increasing from $3,500 to $4,500 and the maximum fee increasing from $10,000 to $12,500, with each category increasing by $500 from the minimum level of $4,500 to the maximum of $12,500.

(2) Basis

The Exchange fee increases are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(4) of the Act in particular in that they are intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange fee increases will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the Exchange fee increases.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted January 24, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

December 23, 1988.

[FR Doc. 88-30231 Filed 12-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26397; File No. SR-DTC-88-20]

Self-Regulatory Organizations; Proposed Rule Change by Depository Trust Company Relating to Securities Clearing Group Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by the Depository Trust Company ("DTC") consists of the referenced Agreement [1] underlying the filing, in which the seven registered clearing agencies who are members of the Securities Clearing Group agree to share information about common participants with each other for regulatory purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to formalize DTC's existing practices with regard to information sharing and provide for future developments in this area. The agreement attached to the filing as Exhibit 2 is the first formalization of the efforts of the Securities Clearing Group, which is comprised at the present time of seven registered clearing agency self-regulatory organizations. The goal of the group is to identify and create procedures to minimize risks posed by participants in more than one clearing agency self-regulatory organization. The key method for achieving this goal will be the sharing of appropriate financial, operational and clearing data on common participants among members of the Securities Clearing Group for regulatory purposes.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder because it is designed to contribute to the safeguarding of securities and funds in DTC's custody or control for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR-DTC-88-20 and should be submitted by January 24, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 27, 1988.

[FR Doc. 88-30186 Filed 12-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26398; File No. SR-NSCC-88-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Securities Clearing Corporation Regarding its Rule 39 and Qualified Special Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1988, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rule 39 as follows: italics indicate additions and [Brackets] indicate deletions.

Rule 39. Special Representative

* * * * *

A Special Representative:

(1) Who operates an automated execution system where the Special Representative is always the contra side to each transaction, or

(2) Whose parent corporation or affiliated corporation operates an automated execution system where the Special Representative is always the contra side to each transaction, or

(3) That clears for a broker/dealer who operates an automated execution system where the broker/dealer is always the contra side to each transaction, and the subscribers to the automated execution system enter into an agreement with the broker/dealer and the Special Representative acknowledging the Special Representative's role in the clearance of trades executed on the automated execution system;

[(]hereinafter referred to throughout the Rules as a "Qualified Special Representative"[)], or such other Special Representatives as the corporation may permit in its discretion, may elect to submit in automated form, trade data from such automated execution systems as a locked-in trade which appear on T-contracts.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to increase the availability to NSCC Members of one-sided trade input for transactions executed on an automated execution system. One-sided trade input results in a compared trade as of the close of business on trade date at a reduced cost. Members who use this process are called Qualified Special Representatives. Currently, NSCC defines Qualified Special Representatives as Members who operate an automated execution system where the Member is always the contra side to each transaction. It has come to NSCC's attention that there are other ways in which automated execution systems are operated, which could benefit from earlier trade comparison at a reduced cost. The changes to the rule will allow for the expanded use of this vehicle by such entities.

(b) NSCC believes the proposed rule change will promote the prompt and accurate clearance and settlement of securities and foster cooperation and coordination with other persons engaged in the clearance and settlement of securities transactions.

Thus, the proposal is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("Act"), and the rules and regulations thereunder applicable to NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

(c) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NSCC-88-10 and should be submitted by January 24, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 27, 1988.

[FR Doc. 88-30232 Filed 12-30-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26399; File No. SR-OCC-88-08]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on December 9, 1988, the Options Clearing Corporation ("OCC") filed with the Commission a proposed rule change (File No. SR-OCC-88-08). As described below, the proposal would change in OCC By-laws the location of a provision describing OCC's cross-margining service. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On October 3, 1988, the Commission approved an OCC proposal permitting the cross-margining of securities options cleared by OCC with futures and commodity options cleared by the Intermarket Clearing Corporation

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Release No. 23600 (November 21, 1986); 53 FR 46353 (November 30, 1986).

("ICC").[1] In that proposal, OCC stated that its cross-margining service would be described in Article VI, section 20 of OCC's By-laws. Prior to Commission approval of cross-margining, however, OCC inadvertently placed in Artfcle VI, section 20 a provision concerning the clearance of international transactions. OCC's current proposal would amend OCC's prior reference to Article VI, section 20 as the location of the cross-margining provision and would clarify that the cross-margining service will be described in Article VI, section 23 of OCC's By-laws.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4, because it constitutes a stated policy, practice, or interpretation with respect to the administration of an existing OCC rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–OCC–88–08.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–OCC–88–08) and of any subsequent amendments also will be available for inspection and copying at OCC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] *See* Securities Exchange Act Release No. 26153 October 3 1988), 53 FR 39567.

Dated: December 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–30233 Filed 12–30–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–4397]

Issuer Delisting; Application to Withdraw From Listing and Registration; Matrix Corp.

December 23, 1988.

Matrix Corporation ("Company") has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934, ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons cited by the Company in its applications for withdrawing these securities from listing and registration included the following:

On November 10, 1988, AGI Sub, Inc. ("Sub") was merged with and into the Company. The Company was the surviving corporation in the merger. Sub is a wholly—owned subsidiary of Agfa—Gevaert, Inc. ("AGI"). At the effective time of the merger AGI become the record and beneficial owner of 100% of the issued and outstanding shares of common stock of the Company. Effective on December 31, 1988, AGI presently plans to merge the Company with and into itself, with AGI to be the surviving corporation in the December 31 merger. As part of this December 31 merger, it is contemplated that AGI will assume the obligations of the Company under the 8¼% Debentures and the 7½% Debentures.

The Company has given serious consideration to the question of whether it wishes to continue the listing of the Debenutres on the Exchange after the merger of the Company into AGI. The Company has concluded that (a) there is limited trading activity in the Debentures on the Exchange, (b) the Debentures are no longer convertible into common stock of the Company, but may be converted solely into the amount of cash which each holder of a Debenture would have received if such holder had converted such Debenture into common stock immediately before the effective time of the Merger and (c) the considerable expense and the time of Company personnel required to continue preparing and filing the periodic reports required by the Act is disproportionately high in relation to the number of record holders of each series of Debentures, the principal amount of the Debentures outstanding and the volume of trading activity in the Debentures on the Exchange.[1]

In view of the above factors the Company believes it is no longer appropriate to comply with sections 13, 14 and 15 of its Listing Agreement with the Exchange (*i.e.*, the requirements that it solicit proxies for all meetings of security holders of record, that it maintain at least two independent directors on its Board of Directors and that it not enter into material transactions with officers, directors, principal shareholders, affiliates, or other specified related entities without notifying the Exchange and obtaining approval of a disinterested majority of its Board of Directors) and, accordingly, does not intend to do so. Furthermore, in view of the above factors, after the December 31, 1988, Merger, AGI will not file any substitute listing application with the Exchange for the continued listing of the Debentures on the Exchange.

Any interested person may, on or before January 17, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–30234 Filed 12–30–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–16709; 811–3693]

The Westergaard Fund, Inc.; Application for Deregistration

December 23, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

[1] The Company's November 30, 1988 letter to the Exchange states that the 8¼% Debentures have 59 record holders, with outstanding principal amount of $16,375,000 and the 7½% Debenture have 64 record holders with $12,165,000 outstanding principal amount. [These numbers exclude those debentures owned of record and beneficially by Bayer, USA, Inc., an indirect beneficial owner of the Company.]

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Westergaard Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Dates: The application on Form N–8F was filed on March 1, 1988, and an amendment was filed on September 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 17, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 540 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton (202) 272–3024, or Special Counsel H.R. Hallock, Jr. (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, organized as a Maryland corporation and open-end diversified management investment company under the 1940 Act, filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A, and a registration statement pursuant to section 8(b) on March 22, 1983. Applicant's registration statement became effective on June 10, 1983.

2. On September 21, 1987, Applicant's Board of Directors adopted its proposed Plan of Liquidation and Dissolution ("Plan") and called a Special Meeting of Shareholders to consider Applicant's dissolution and liquidation.

3. As of the date of filing its Application, Applicant had distributed $5,046,502.45 in cash to its securityholders in complete redemption of their shares. Each securityholder received an amount per share representing the net asset value per share on the distribution date, November 30, 1987. As of March 1, 1988, 16,452 shares out of a total of 724,942.017 shares of common stock remained outstanding.

4. Applicant has not within the past eighteen months transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Applicant. Applicant has retained $49,742.80. in cash for the purpose of making distributions to its remaining 26 securityholders, whom it has been unable to locate. Applicant has placed its remaining assets in a bank account out of which liquidation distributions will be paid to such securityholders upon receipt of certificates for a period of three years commencing December 2, 1987. At the end of this period, remaining funds will be paid over to the State of New York under the Abandoned Property Act.

5. As of September 7, 1988, Applicant had no other liabilities or debts outstanding, was not a party to any litigation or administrative proceeding, and was not engaged in, nor intended to engage in, any business activities other than those necessary for the winding up of its affairs. As of that date, Applicant was current on all filings required to be made under the 1940 Act.

6. On January 27, 1988, Articles of Dissolution were filed with the Secretary of State of Maryland pursuant to Maryland general corporate law. Applicant was dissolved effective February 1, 1988.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Security.

[FR Doc. 88–30235 Filed 12–30–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before February 2, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer:

William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416. Telephone: (202) 653–8538.

OMB Reviewer:

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Survey of Commercialization Activities of Awardees.

Frequency: One time.

Description of Respondents: Survey of SBIR awardees to determines the extent of commercial activities undertaken to market the product developed under the program.

Annual Responses: 400.

Annual Burden Hours: 150.

William A. Cline,

Chief, Administrative Information Branch.

[FR Doc. 88–30228 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2320; Declaration of Economic Injury Disaster Loan (EIDL) Areas #6664 & #6683); Amdt. 1]

California; Declaration of Disaster Loan Area

The above-numbered physical disaster declaration (53 FR 40161) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may now wish to take advantage of the opportunity for additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

Economic Injury Disaster Declaration #6664 is amended to include contiguous counties in the State of California. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration.

This amendment adds the contiguous counties of Butte, Contra Costa, Lassen, Modoc, Napa, Placer, Plumas, Sacramento, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, and Yolo, in the State of California, and Washoe County in the State of Nevada to give economic injury disaster victims in those counties the opportunity to request EIDLs. Economic Injury Declaration #6683 is assigned to those contiguous counties in the State of Nevada. The termination date for filing EIDL applications for both States is June 29, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006.

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30221 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2319; Declaration of Economic Injury Disaster Loan (EIDL) Area #6660; Amdt. 1]

Florida; Declaration of Disaster Loan Area

The above-numbered physical disaster declaration (53 FR 38828) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may now wish to take advantage of the opportunity for additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

The above numbered economic injury declaration is amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Kern, Orange, San Bernardino, and Ventura, in the State of California, to give economic injury disaster victims in those counties the opportunity to request EIDLs. The termination date for filing EIDL applications remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006).

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30222 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2316; Declaration of Economic Injury Disaster Loan (EIDL) Area #6640; Amdt. 1]

California; Declaration of Disaster Loan Area

The above-numbered physical disaster declaration (53 FR 32135) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may now wish to take advantage of the opportunity for additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

The above numbered economic injury declaration is amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous county of Hardee, in the State of Florida, to give economic injury disaster victims in that county the opportunity to request EIDLs. The termination date for filing EIDL applications remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006.)

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30223 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2318; Declaration of Economic Injury Disaster Loan (EIDL) Area #6659; Amdt. 1]

Minnesota; Declaration of Disaster Loan Area

The above-numbered physical disaster declaration (53 FR 38826) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may now wish to take advantage of the opportunity for additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

The above numbered economic injury declaration is amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Aitkin, Beltrami, Cass, Koochiching, and St. Louis, in the State of Minnesota, to give economic injury disaster victims in those counties the opportunity to request EIDLs. The termination date for filing EIDL applications remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006.)

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30224 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2317; Declaration of Economic Injury Disaster Loan (EIDL) Areas #6650 & #6682; Amdt 1]

Pennsylvania and Contiguous Counties in the State of New Jersey; Declaration of Disaster Loan Area

The above-numbered physical disaster declarations (53 FR 34188) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may not wish to take advantage of the opportunity for additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

Economic Injury Disaster Declaration #66500 is amended to include contiguous counties in the State of Pennsylvania. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration.

This amendment adds the contiguous counties of Lehigh, Montgomery, Northampton, and Philadelphia, in the State of Pennsylvania, and Burlington, Hunterdon, and Mercer Counties in the State of New Jersey to give economic injury disaster victims in those counties the opportunity to request EIDLs. Economic Injury Declaration #6682 is assigned to those contiguous counties in the State of New Jersey. The termination date for filing EIDL applications for both states is May 24, 1989.

(Catalog of Federal Assistance Program Nos. 59002 and 59006.)

Date: December 22, 1988

James Abdnor,

Administrator.

[FR Doc. 88–30225 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2326]

Pennsylvania; Declaration of Disaster Loan Area

The City of Norristown, Pennsylvania, Montgomery County, constitutes a disaster area as a result of damages from a fire which occurred on December 9, 1988, in the Town and Country Apartment Complex. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on February 21, 1989, and for economic injury as a direct result of this fire until the close of business on September 22, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Randolph McGil Blvd., 14th Fl. Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Berks, Bucks, Chester, Delaware, Lehigh, and Philadelphia, in the State of Pennsylvania, may be filed until the specified date at this location.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 232805 and for economic injury the number is 668400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006).

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30226 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Physical Disaster Loan Area #2321; Declaration of Economic Injury Disaster Loan (EIDL) Area #6667; Amdt. 1]

Texas; Declaration of Disaster Loan Area

The above-numbered physical disaster declaration (53 FR 40618) is hereby amended to reopen the filing period for 30 days. Section 120 of Pub. L. 100–590 (11/88) reduces the interest rate for non-profit organizations without credit available elsewhere to a maximum of 4 percent; Section 121 provides that a physical disaster loan may be increased by up to 20 percent for necessary or appropriate mitigation measures, and Section 122 provides that no physical disaster loan for $10,000 or less shall require collateral. The filing period is reopened to afford an opportunity to those disaster victims who (1) may not have filed because of the high interest rate, (2) may not have requested disaster loans because of the previous requirement for loans over $5,000 of whatever reasonable collateral was available, or (3) may now wish to take advantage of the opportunity for

additional funding for mitigation measures. The termination date for filing physical disaster loan applications is January 31, 1989.

The above numbered economic injury declaration is amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be disaster areas by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Atascosa, Bandera, Brooks, Comal, Guadalupe, Kendall, Kenedy, Medina, Starr, Willacy, and Wilson, in the State of Texas, to give economic injury disaster victims in those counties the opportunity to request EIDLs. The termination date for filing EIDL applications remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: December 22, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–30227 Filed 12–30–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 23, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46025

Date Filed: December 20, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 17, 1989.

Description: Joint Application of Federal Express Corporation and The Flying Tiger Line Inc., pursuant to section 401(h) of the Act and Subpart Q of the Regulations, for approval of the transfer to Federal Express of Flying Tigers' certificated route authority contained in various certificates of public convenience and necessity, and/or authorized by various exemption orders.

Docket No. 46029

Date Filed: December 20, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 17, 1989.

Description: Application of Heritage Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, mail and property.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–30242 Filed 12–30–88; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 88–113]

Towing Safety Advisory Committee; Appointment of Members

AGENCY: Coast Guard, DOT.

ACTION: Notice of appointment of members.

SUMMARY: The Secretary of Transportation has announced the appointment of nine members of the Towing Safety Advisory Committee (TSAC). TSAC advises the Secretary on rulemaking matters related to shallow-draft inland and coastal waterway navigation and towing safety. The notice soliciting applications for the vacancies was published on October 22, 1987 (52 FR 39581).

SUPPLEMENTARY INFORMATION: Persons receiving appointment to the committee are: Lester C. Bedient, Crowley Maritime; Joseph Scott Chotin, Jr., Scott Chotin, Inc.; Richard C. Faust, McDermoltt, Inc.; Douglas R. Halsey, Southern Towing Company; J. Erik Hvide, Hvide Shipping, Inc.; Royal DuBose Joslin, Maritrans GP, Inc.; Edward V. Kelly, Associated Maritime Officers; Jack T. Newbold, Inland Boatmen's Union of the Pacific; Frank T. Stegbauer, Southern Towing Company.

FOR FURTHER INFORMATION CONTACT: Commander R.J. Asaro, Executive Director, Towing Safety Advisory Committee (G–MP–3), Room 2420, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or (202) 267–0449.

Dated: December 20, 1988.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88–30159 Filed 12–30–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88–114]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on 26 January 1989 in Room 4234 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street SW., Washington, DC. The meeting is scheduled to begin at 8:30 a.m. and end at 4:00 p.m. Attendance is open to the public. This will be an "Organizational Meeting"; therefore, there will not be any set agenda to follow.

With advance notice and at the discretion of the Sponsor, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of NOSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than 23 January 1989.

FOR FURTHER INFORMATION CONTACT: CDR R.J. Asaro, Executive Director, National Offshore Safety Advisory Committee, U.S. Coast Guard (G–MP–3), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0449.

Dated: December 20, 1988.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 88–30158 Filed 12–30–88; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0081.

Form Number: FFIEC 031–034.

Type of Review: Revision.

Title: Reports of Condition and Income (Interagency Call Report).

Description: Reports are filed pursuant to 12 U.S.C. 161 and 164. Data are used to monitor the financial condition and earnings performance of individual banks as well as the entire banking industry. Data are also used for research, program planning, and OCC publications.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 5,000.

Estimoted Burden Hours Per Response: 32 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 640,801 hours.

Clearance Officer: John Ference, (202) 447–1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 88–30163 Filed 12–30–88; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

The first meeting of the 1989 Commissioner's Advisory Group will be held on January 18 and 19, 1989 at the IRS Atlanta Service Center. The Service Center is located at 4800 Buford Highway, Atlanta, Georgia. The meeting will begin at 8:00 a.m. on Wednesday, January 18 and 8:00 a.m. on Thursday, January 19. The agenda will include the following topics:

Wednesday, January 18, 1988

Meeting Objectives
Overview of Service Center Operations and Tour of Facility
Discussion of Service Priorities
Commissioner Advisory Group (CAG) Process

Thursday, January 19, 1988

Commissioner Advisory Group (CAG) Process (continued)
Open Discussion and Questions

Due to the Service Center's security requirements and limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, no later than January 10, 1989. Mr. Hilgen may be reached on (202) 566–4143 (not toll-free).

If you would like to have the Advisory Group consider a written statement, please call or write Robert Hilgen, Assistant to the Senior Deputy Commissioner, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Attn: C:SD, Room 3014.

FOR FURTHER INFORMATION CONTACT: Robert Hilgen, Assistant to the Senior Deputy Commissioner, (202) 566–4143 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88–30211 Filed 12–30–88; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 1

Tuesday, January 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 2, 9, 16, and 23, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 2

Thursday, January 5

2:00 p.m.
Briefing on Regulatory Responsibilities and Schedules for the HLW Repository Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, January 6

10:00 a.m.
Briefing on Tech Spec Improvements Including Reduction of Testing at Power (Public Meeting)

Week of January 9—Tentative

Thursday, January 12

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 16—Tentative

Thursday, January 19

10:00 a.m.
Briefing on Medical Use of By-Product Materials (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 23 (Tentative)

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Wednesday, January 25

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Jack Guttmann,

Office of the Secretary.

December 28, 1988.

[FR Doc. 88-30258 Filed 12-29-88; 3:19 pm]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1412]

TIME AND DATE: 10 a.m. (e.s.t.), Wednesday, January 4, 1989.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on November 30, 1988.

Action Items

Old Business

1. Proposed Industrial Service Policy Revisions.

New Business

A—Budget and Financing

A1. Modication of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1989—Complete Modifications to the Makeup Water Treatment Plant.

B—Purchase Awards

B1. Request for Proposal 1S-12246A—Indefinite Quantity Term Agreements to Provide Labor and Equipment for Repair, Modification, and New or Maintenance Construction Work at the National Fertilizer Development Center.

B2. Requisition 68—Long Term Spot Coal For Allen, Colbert, Cumberland, Kingston, and Shawnee Steam Plants.

B3. Contract 79P65-19219-7—Uranium Concentrates—IMC Fertilizer (IMCF), Inc.

B4. Negotiation GB-02045A—Indefinite Quantity Term Agreement for Repair Services of Turbine and Generator Service Engineers, Mechanics, Brazers, Fitters, Balance and Welding Specialists, Generator Winders, and Rental of Necessary Equipment for Any TVA Fossil Plant and Power Service Shop.

C—Power Items

C1. Renewal Power Contract with Tri-State Electric Membership Corporation.

E—Real Property Transactions

[1] E1. Proposed 19-Year Lease Agreement Affecting Approximately 40 Acres of Norris Reservoir Land in Claiborne County, Tennessee.

E2. Request by Big Bear Resort for Deed Modification Affecting Approximately 19.5 Acres of Former Kentucky Reservoir Land in Marshall County, Kentucky.

E3. Sale of Permanent Highway Easement to the State of Tennessee Department of Transportation Affecting 0.25 Acres of TVA's Chandler Substation in Blount County, Tennessee.

F—Unclassified

[1] F1. Award of an Exclusive License to Pursell Industries of Sylacauga, Alabama, for a Period of Eight Years Under TVA's U.S. Patent No. 4,676,821.

[1] F2. Supplement No. 1 to Contract No. TV-75614A with Harza Engineering Company to Perform Tasks for the "Utility Options for Meeting Dissolved Oxygen Limits for Hydroelectric Power Plant Discharges" Report.

F3. Supplement No. 2 to Contract No. TV-74449A with the U.S. Department of the Army, Corps of Engineers, Memphis district, to Perform Laboratory Analysis of Water and Sediment Samples.

F4. Delegation of Approval Authority to Vice President of River Basin Operations to Approve Fiscal Year Commitments Under Contract No. TV-73618A Between TVA and U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

F5. Contract No. TV-75181A Between TVA and Beech River Watershed Development Authority for an Area-wide Comprehensive Resource Development Program.

F6. Supplement No. 3 to Contract No. TV-60000A with Tellico Reservoir Development Agency.

F7. Supplement No. 5 to Contract No. TV-63720A with Bicentennial Volunteers (BVI), Inc., for the TVA Retired Volunteer Assistance Program.

F8. Memorandum of Agreement with the U.S. Army's Toxic and Hazardous Materials Agency and TVA's National Fertilizer Development Center.

F9. Modification No. A002 to TVA/DOE Agreement No. DE-AI01-87CE79010 to Provide Technical Assistance in DOE's Alcohol Fuel Plant Loan Guarantee Program.

F10. Supplement No. 1 to Contract No. TV-73595A Between the Hawaiian Sugar Planters' Association (HSPA) and TVA.

F11. Recommendation for an Increase in the TVA Contribution to the Medical/Dental Insurance Plan for Annual Trades and Labor Employees.

F12. Proposed Revision to TVA Code III LEAVE—Family Leave Policy.

F13. Proposed Designated Agency Ethics Official.

F14. Changes in Certifying Officers.

F15. Supplement No. 19 to Contract No. TV-38655A with NUS Corporation.

F16. Supplement No. 4 to Personal Services Contract No. TV-72125A with Teledyne Engineering Services.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: December 28, 1988.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 88-30251 Filed 12-29-88; 11:29 am]

BILLING CODE 8120-01-M

[1] Items approved by individual Board members. This would give formal ratification to the Board's action.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., January 9, 1989.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—October 17, 1988; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—President USUHS, (a) Second Reading and Amendment to the Procedures and Delegations of the Board of Regents; (6) Report—Dean, Military Medical Education Institute; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: April 10, 1989.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3028.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 28, 1988.

[FR Doc. 88-30247 Filed 12-28-88; 4:54 pm]

BILLING CODE 3810-01-M

Corrections

Federal Register
Vol. 54, No. 1
Tuesday, January 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[WRPA Docket No. 1; FV-88-063]

Procedures for the Conduct of Referenda in Connection With the Watermelon Research and Promotion Plan and for Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Such Plan

Correction

In rule document 88-29203 beginning on page 51069, in the issue of Tuesday, December 20, 1988, make the following correction:

On page 51091, in the first column, the Note. should read "These sections will appear in the Code of Federal Regulations.".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1989; Solicitation of Applications

Correction

In notice document 88-28886 beginning on page 50500 in the issue of Thursday, December 15, 1988, make the following corrections:

1. On page 50500, in the 2nd column, in the 22nd line, "awarded" should read "evaluated".

2. On the same page, in the same column, in the 5th complete paragraph, in the 19th line from the bottom, "or" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Whole Dry Peas

Correction

In rule document 88-29030 appearing on page 50914 in the issue of Monday, December 19, 1988, make the following correction:

In the first column, under **EFFECTIVE DATE**, "January 14, 1989" should read "January 18, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for 3 Types of Consumer Products

Correction

In proposed rule document 88-27595 beginning on page 48796 in the issue of Friday, December 2, 1988, make the following correction:

On page 48809, under the table, in the second column, the last three lines should have appeared at the end of the first column, resulting in the following sequence of text:

* * * defrost and evacuated panel efficiencies. For most classes, standard level 3 corresponds to the most stringent energy conservation standard level at which the additional expense of * * *

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

Correction

In notice document 88-25663 beginning on page 44951 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44951, in the third column, in the third line, "allowed" should read "allocated".

2. On page 44952, in the second column, under *C. Elements of Informed Consent*, in the third line, "36.116" should read "46.116".

3. On page 44954, in the first column, under *B. Format for Application*, the fifth line should read "number, RFA-FDA-OP-89-1. Data included".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0306]

Salt-Cured, Air-Dried, Uneviscerated Fish; Compliance Policy Guide; Availability

Correction

In notice document 88-25665 beginning on page 44949 in the issue of Monday, November 7, 1988, make the following correction:

On page 44949, in the third column, under **SUMMARY**, in the fourth line, "7106/17" should read "7108.17".

BILLING CODE 1505-01-D

federal register

Tuesday
January 3, 1989

Part II

Department of the Interior

Minerals Management Service

Outer Continental Shelf Central California Lease Sale 119; Notice

4310-MR

Minerals Management Service
Outer Continental Shelf Central California
Lease Sale 119

On November 16, 1988, at 53 FR 46422-26, the Call for Information and Nominations for Central California Sale 119 was published in the Federal Register.

The Call stated that,

> Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Central California OCS Lease Sale 119," or "Comments on Proposed Central California OCS Lease Sale 119," as appropriate. The original Call map showing indications of interest and/or comments must be submitted to the Regional Supervisor, Office of Leasing and Environment, MMS, Pacific OCS Region, [1340 West 6th Street, Los Angeles, California 90017, telephone (213) 894-7107] and a copy of the Call map showing indications of interest and a copy of any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230, 18th and C Streets, NW., Washington, D.C. 20240.

In response to a request from the Governor of California, the Department of the Interior has decided that the public comment period on the Call should be extended by 30 days. This Notice extends the closing of the comment period for the Call for Central California Sale 119 from January 3, 1989, to February 2, 1989. Comments on the Call should be addressed to the Regional Supervisor, Office of Leasing and Environment, MMS, Pacific OCS Region, 1340 West 6th Street, Los Angeles, California 90017, telephone (213) 894-7107.

Wm D Bettenberg
Associate Director for Offshore Minerals Management

12/28/88
Date

[FR Doc. 88-30248 Filed 12-29-88; 11:51 am]
BILLING CODE 4310-MR-C

federal register

Tuesday
January 3, 1989

Part III

Committee for the Implementation of Textile Agreements

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation; Notice

BEST COPY AVAILABLE

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

December 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1989 correlation.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation

Textile and Apparel Categories with Harmonized Tariff Schedules of the United States Annotated (1989) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. The attached list includes some Harmonized Tariff Schedule numbers that will be published in the third supplement of the Harmonized Tariff Schedule of the United States. This Correlation should be amended to reflect the changes indicated below:

Category	Changes in the 1989 correlation
200	Add 5509.22.00.10—multiple (folded) or cabled yarn with a final "z" twist.
201	Delete 5605.00.00.00.
	Add 5605.00.00.90—other metalized yarn, etc.
218	Add 5210.49.40.10—woven fabrics of cotton, containing less than 85 percent by weight of cotton, of yarns of different colors, of number 42 or lower number, oxford cloth.
220	Delete 5210.49.40.10.
	Add 5208.49.60.30—woven fabrics of cotton, containing 85 percent, or more by weight of cotton, weighing not more than 200 g/m² of yarns of different color, jacquard woven, of numbers 43 to 68.
226	Delete 5212.15.60.80.
227	Add 5212.15.60.80.
229	Delete 5810.10.00.00.
	Add 5810.10.00.90—other embroidery in the piece, in stripe or in motifs.
	Delete 5810.92.00.10.
	Add 5810.92.00.90—embroidery of man-made fibers, labels and badges other than on a ground fabric weighing less than 100 g/m² and of width of more than 225 cm.
237	Delete 6103.42.10.50.
	Delete 6103.42.10.70.
	Add 6203.42.20.25—boys' size range 2-7 bib and brace overalls of cotton, imported as parts of playsuits.
	Delete 6203.42.20.30.
	Add 6203.42.20.50—boys' size range 2-7 cotton bib and brace overalls.
	Add 6203.43.20.25—bib and brace overalls boys' size range 2-7, imported as parts of playsuits, of synthetic fibers.
	Delete 6203.43.20.30.
	Delete 6203.43.20.40.
	Add 6203.43.20.50—bib and brace overalls, boys' size range 2-7, of synthetic fibers.
	Add 6203.49.10.25—bib and brace overalls of artificial fibers, boys' size range 2-7, imported as parts of playsuits.
	Delete 6203.49.10.30.
	Delete 6203.49.10.40.
	Add 6203.49.10.50—bib and brace overalls of artificial fibers, boys' sizes range 2-7.
	Add 6204.62.20.25—girls' bib and brace overalls of cotton, imported as parts of playsuits.
	Delete 6204.62.20.30.
	Delete 6204.62.20.40.
	Add 6204.62.20.50—girls' bib and brace overalls, of cotton.
	Add 6204.63.15.25—girls' bib and brace overalls, of synthetic fibers, imported as parts of playsuits.
	Delete 6204.63.15.30.
	Delete 6204.63.15.40.
	Add 6204.63.15.50—girls' bib and brace overalls of synthetic fibers.
	Delete 6204.69.10.30.
	Delete 6204.69.10.40.
	Add 6204.69.10.25—girls' bib and brace overalls of artificial fibers, imported as parts of playsuits.
	Add 6204.69.10.50—girls' bib and brace overalls of artificial fibers.
	Add 6211.32.00.15—boys' size range 2-7 coveralls, jumpsuits and similar apparel, of cotton.
	Delete 6211.32.00.20.
	Add 6211.33.00.15—boys' size range 2-7 coveralls, jumpsuits and similar apparel, of man-made fibers.
	Delete 6211.33.00.20.
239	Add 6111.30.50.15—babies' blanket sleepers of synthetic fibers, knitted or crocheted.
331	Delete 6116.10.20.10.
	Delete 6116.10.20.50.
	Add 6116.10.15.20—knitted or crocheted, of vegetable fiber, gloves, mittens and mitts impregnated, coated or covered with plastics or rubber, subject to cotton restraints, without fourchettes.
	Add 6116.10.25.20—gloves, mittens and mitts subject to cotton restraints, without fourchettes, coated with plastic or rubber, cut and sewn from pre-existing machine fabric.
	Add 6116.10.35.10—gloves, mittens and mitts subject to cotton restraints, without fourchettes, coated with plastic or rubber.
	Add 6116.10.45.10—gloves, mittens and mitts with fourchettes, impregnated, coated or covered with plastics or rubber, subject to cotton restraints.
	Add 6216.00.15.20—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, without fourchettes, cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, or vegetable fibers, subject to cotton restraints.
	Add 6216.00.20.20—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber without fourchettes, cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, other than vegetable fibers, subject to cotton restraints.
	Delete 6216.00.25.50.
	Add 6216.00.30.10—gloves, mittens and mitts impregnated, coated or covered with plastics or rubber, with fourchettes, subject to cotton restraints, containing 50 percent or more by weight of cotton, man-made fibers, or any combination thereof.
333	Add 6203.22.30.15—men's or boys' jackets and blazers described in 6203, of cotton.
347	Add 6103.42.10.70—boys' trousers, breeches and shorts of cotton.
359	Delete 6103.43.20.15.
	Delete 6117.10.30.10.
	Add 6117.10.60.10—shawls, scarves and mufflers, knitted or crocheted, of cotton.
	Delete 6203.42.20.15.
	Add 6203.42.20.90—other boys' bib and brace overalls of cotton, not insulated for cold weather protection.
	Add 6204.62.20.05—Other bib and brace overalls insulated for cold weather protection, of cotton.
	Add 6204.62.20.10—other women's bib and brace overalls, of cotton.
	Add 6211.32.00.25—other boys' coveralls, jumpsuits and similar apparel, of cotton.
369	Add 4202.92.30.15—travel, sports and similar bags, of cotton.
	Delete 5701.90.20.10.
	Add 5701.90.20.20—carpets and other textile floor coverings of cotton.
	Delete 5702.49.10.00.
	Add 5702.49.10.10—carpets of cotton, hand-loomed, chenille.
	Add 5702.49.10.90—carpets and other textile floor coverings, of other textile materials, of cotton other than hand-loomed.
	Delete 5702.99.10.00.
	Add 5702.99.10.10—carpets of cotton, woven, but not made on a power driven loom.
	Add 5702.99.10.90—carpets and other textile floor coverings, of cotton.
	Add 6307.10.20.05—shop towels dedicated for use in garages, filling stations and machine shops, of cotton.
	Delete 6307.10.20.10.
	Delete 6307.10.20.25.
	Add . . 6307.10.20.27—dishcloths of cotton.
	Add 6307.90.90.10—surgical towels.
	Delete 6406.10.75.00.
	Add 6406.10.75.60—parts of footwear, of textile materials, of cotton.
433	Add 6103.21.00.20—men's or boys' jackets and blazers described in heading 6103, of wool or fine animal hair.
	Add 6103.23.00.07—men's or boys' suits, ensembles, suit type jackets etc. as described in heading 6103, of synthetic fibers containing 23 percent or more by weight of wool or fine animal hair.
	Add 6203.21.00.15—men's or boys' jackets and blazers described in heading 6203, of wool or fine animal hair.
465	Delete 5701.10.20.00.
	Add 5701.10.20.10—carpets and other textile floor coverings, knotted, whether or not madeup, hand-hooked, that is, in which the tufts were inserted and knotted by hand or by means of a hand tool, of wool or fine animal hair.
	Add 5701.10.20.90—carpets and other textile floor coverings, knotted, whether or not made up of wool or fine animal hair.
604	Delete 5509.22.00.00.
	Add 5509.22.00.90—yarn other than sewing thread of synthetic staple fibers not put up for retail sale, containing 85 percent or more by weight of polyester staple fibers.
606	Add 5402.10.30.40—synthetic filament yarn, not put up for retail sale, multifilament with twist of 5 turns or more per meter, high tenacity yarn of nylon or other polyamides.
	Delete 5402.10.30.60.
	Add 5402.10.30.40—high tenacity yarn of polyesters, multifilament with twist of 5 turns or more per meter.
	Delete 5402.20.30.60.
	Add 5402.20.30.40—high tenacity yarn of polyesters, multifilament with twist of 5 turns or more per meter.
	Add 5402.41.00.40—synthetic filament yarn, multifilament, with twist of 5 turns or more per meter.
	Delete 5402.41.00.60.
	Add 5402.43.00.40—synthetic filament yarn of polyesters, multifilament, with twist of 5 turns or more per meter.
	Delete 5402.43.00.60.
	Add 5402.49.00.40—synthetic filament yarn, not put up for retail sale, multifilament, with twist of 5 turns or more per meter.
	Delete 5402.49.00.60.
	Add 5403.10.30.40—artificial filament yarn, other than sewing thread, not put up for retail sale, high tenacity yarn of viscose rayon, multifilament, with twist of 5 turns or more per meter.
	Delete 5403.10.30.60.
	Add 5403.31.00.40—other single yarn of viscose rayon, untwisted or with a twist not exceeding 120 turns per meter, multifilament, with twist of 5 turns or more per meter.
	Delete 5403.31.00.60.
	Add 5403.33.00.40—other single yarn of cellulose acetate, multifilament, with twist of 5 turns or more per meter.
	Delete 5403.33.00.60.
	Add 5403.39.00.40—other single yarn, multifilament, with twist of 5 turns or more per meter.
	Delete 5403.39.00.60.
631	Add 6116.10.15.30—gloves, mittens and mitts, knitted or crocheted without fourchettes, subject to man-made fiber restraints cut or sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber, of vegetable fiber.
	Deleted 6116.10.20.20.
	Deleted 6116.10.20.60.
	Add 6116.10.25.30—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics or rubber without fourchettes, subject to man-made fiber restraints cut and sewn from pre-existing machine-knit fabric that is covered with plastics or rubber.
	Add 6116.10.35.20—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics or rubber, containing 50 percent or more by weight of cotton, man-made fiber, subject to man-made fiber restraints without fourchettes.
	Add 6116.10.45.20—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics, with fourchettes, containing 50 percent or more by weight of cotton, man-made fiber, subject to man-made fiber restraints.
	Add 6216.00.15.30—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, without fourchettes, cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, of vegetable fibers, subject to man-made fiber restraints.
	Add 6216.00.20.30—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber without fourchettes cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, other than vegetable fibers, subject to man-made fiber restraints.
	Delete 6216.00.25.60.
	Add 6216.00.30.20—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, with fourchettes, containing 50 percent or more by weight of cotton, man-made fiber or any combination, subject to man-made fiber restraints.
651	Add 6107.22.00.15—boys' blanket sleepers of man-made fiber.
	Delete 6107.22.00.20.
	Add 6107.22.00.25—other boys' nightshirts and pajamas.
	Add 6108.32.00.15—girls' blanket sleepers of man-made fibers.
	Delete 6108.32.00.20.
	Add 6108.32.00.25—other girls' nightdresses and pajamas.
659	Add 6103.43.20.15—men's or boys' bib and brace overalls of synthetic fibers, insulated for cold weather protection.
	Add 6203.42.20.05—men's or boys' bib and brace overalls of cotton fibers, insulated for cold weather protection.
	Add 6203.43.20.05—men's or boys' bib and brace overalls of synthetic fibers, insulated for cold weather protection.
	Delete 6203.43.20.15.
	Add 6203.43.20.90—other boys' bib and brace overalls of synthetic fibers.
	Add 6203.49.10.05—men's and boys' bib and brace overalls of artificial fibers, insulated for cold weather protection.
	Delete 6203.49.10.15.
	Add 6203.49.10.90—men's or boys' bib and brace overalls of artificial fibers, insulated for cold weather protection.
	Delete 6204.62.20.15.
	Add 6204.63.15.05—women's or girls' bib and brace overalls of synthetic fibers, insulated for cold weather protection.
	Delete 6204.63.15.15.
	Add 6204.69.10.05—women's or girls' bib and brace overalls of artificial fibers insulated for cold weather protection.
	Delete 6204.69.10.15.
	Add 6211.33.00.17—boys' coveralls, jumpsuits and similar apparel of man-made fibers, other than size range 2-7.
665	Delete 5701.90.20.20.
	Add 5701.90.20.30—carpets and other textile floor coverings, hand hooked of man-made fibers.
	Delete 5702.42.20.00.
	Add 5702.42.20.10—carpets and other textile floor coverings, woven, not tufted or flocked, of man-made textile materials, of hand loomed chenille.
	Add 5702.42.20.90—carpets and other textile floor coverings, woven, not tufted or flocked, of man-made textile materials, other than hand-loomed chenille.
	Delete 5702.92.00.00.
	Add 5702.92.00.10—carpets and other textile floor coverings, woven, not tufted or flocked, not of pile construction, of man-made textile materials, woven but not made on a power-driven loom.
	Add 5702.92.00.90—carpets of other textile floor coverings, woven, not tufted or flocked, not a pile construction, of man-made textile materials.
669	Add 5810.10.00.10—embroidery in the piece, in stripe or in motifs, labels and badges.
	Add 5810.92.00.10—embroidery in the piece, in stripe or in motifs, or man-made fibers.
610	Delete 6002.20.90.00.
	Delete 6002.49.00.00.
	Delete 6002.99.00.00.
831	Add 6116.10.15.40—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics or rubber, without fourchettes, of vegetable fibers cut or sewn from pre-existing machine-knit fabric that is impregnated, coated with plastics or rubber.
	Delete 6116.10.20.30.
	Delete 6116.10.20.70.
	Add 6116.10.25.40—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics or rubber, without fourchettes, cut or sewn from pre-existing machines, knit fabric that is impregnated, coated or covered with plastics or rubber.

Category	Changes in the 1989 correlation
	Add 6116.10.35.30—gloves, mittens, and mitts, knitted or crocheted, impregnated, coated or covered with plastics or rubber, without fourchettes, containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.
	Add 6116.10.45.30—gloves, mittens and mitts, knitted or crocheted, impregnated, coated or covered with plastics, with fourchettes containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers.
	6216.00.15.40—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, without fourchettes, cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, of vegetable fibers.
	6216.00.20.40—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, without fourchettes, cut and sewn from pre-existing machine-woven fabric that is impregnated, coated or covered with plastics or rubber, other than vegetable fibers.
	Delete 6216.00.25.70.
	Add 6216.00.30.30—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, with fourchettes, containing 50 percent or more by weight of cotton, man-made fiber or any combination.
833	Add 6203.29.30.28—men's or boys' jackets and blazers described in heading 6203.
859	Delete 6117.10.30.30.
	Add 6117.10.60.20—shawls, scarves and mufflers, knitted or crocheted.
863	Add 6307.10.20.15—shop towels, dedicated for use in garages, filling stations and machine shops, other than cotton.
	Add 6307.10.20.28—dish cloths other than cotton.
899	Add 6002.20.90.00.
	Add 6002.49.00.00.
	Add 6002.99.00.00.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-30264 Filed 12-30-88; 12:13 pm]

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Federal Register

Vol. 54, No. 1

Tuesday, January 3, 1989

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1-96 3

LIST OF PUBLIC LAWS

Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

Last List November 30, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convenes on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1–699	14.00	Jan. 1, 1988
700–1199	15.00	Jan. 1, 1988
1200–End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0–26	15.00	Jan. 1, 1988
27–45	11.00	Jan. 1, 1988
46–51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53–209	18.00	Jan. 1, 1988
210–299	22.00	Jan. 1, 1988
300–399	11.00	Jan. 1, 1988
400–699	17.00	Jan. 1, 1988
700–899	22.00	Jan. 1, 1988
900–999	26.00	Jan. 1, 1988
1000–1059	15.00	Jan. 1, 1988
1060–1119	12.00	Jan. 1, 1988
1120–1199	11.00	Jan. 1, 1988
1200–1499	17.00	Jan. 1, 1988
1500–1899	9.50	Jan. 1, 1988
1900–1939	11.00	Jan. 1, 1988
1940–1949	21.00	Jan. 1, 1988
1950–1999	18.00	Jan. 1, 1988
2000–End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1–199	19.00	Jan. 1, 1988
200–End	17.00	Jan. 1, 1988
10 Parts:		
0–50	18.00	Jan. 1, 1988
51–199	14.00	Jan. 1, 1988
200–399	13.00	[2] Jan. 1, 1987
400–499	13.00	Jan. 1, 1988
500–End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1–199	11.00	Jan. 1, 1988
200–219	10.00	Jan. 1, 1988
220–299	14.00	Jan. 1, 1988
300–499	13.00	Jan. 1, 1988
500–599	18.00	Jan. 1, 1988
600–End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1–59	21.00	Jan. 1, 1988
60–139	19.00	Jan. 1, 1988
140–199	9.50	Jan. 1, 1988
200–1199	20.00	Jan. 1, 1988
1200–End	12.00	Jan. 1, 1988
15 Parts:		
0–299	10.00	Jan. 1, 1988
300–399	20.00	Jan. 1, 1988
400–End	14.00	Jan. 1, 1988
16 Parts:		
0–149	12.00	Jan. 1, 1988
150–999	13.00	Jan. 1, 1988
1000–End	19.00	Jan. 1, 1988
17 Parts:		
1–199	14.00	Apr. 1, 1988
200–239	14.00	Apr. 1, 1988
240–End	21.00	Apr. 1, 1988
18 Parts:		
1–149	15.00	Apr. 1, 1988
150–279	12.00	Apr. 1, 1988
280–399	13.00	Apr. 1, 1988
400–End	9.00	Apr. 1, 1988
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	12.00	Apr. 1, 1988
400–499	23.00	Apr. 1, 1988
500–End	25.00	Apr. 1, 1988
21 Parts:		
1–99	12.00	Apr. 1, 1988
100–169	14.00	Apr. 1, 1988
170–199	16.00	Apr. 1, 1988
200–299	5.00	Apr. 1, 1988
300–499	26.00	Apr. 1, 1988
500–599	20.00	Apr. 1, 1988
600–799	7.50	Apr. 1, 1988
800–1299	16.00	Apr. 1, 1988
1300–End	6.00	Apr. 1, 1988
22 Parts:		
1–299	20.00	Apr. 1, 1988
300–End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0–199	15.00	Apr. 1, 1988
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500–699	9.50	Apr. 1, 1988
700–1699	19.00	Apr. 1, 1988
1700–End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	23.00	Apr. 1, 1988
§§ 1.170–1.300	17.00	Apr. 1, 1988
§§ 1.301–1.400	14.00	Apr. 1, 1988
§§ 1.401–1.500	24.00	Apr. 1, 1988
§§ 1.501–1.640	15.00	Apr. 1, 1988
§§ 1.641–1.850	17.00	Apr. 1, 1988
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	16.00	Apr. 1, 1988
§§ 1.1401–End	21.00	Apr. 1, 1988
2–29	19.00	Apr. 1, 1988
30–39	14.00	Apr. 1, 1988
40–49	13.00	Apr. 1, 1988
50–299	15.00	Apr. 1, 1988
300–499	15.00	Apr. 1, 1988
500–599	8.00	[3] Apr. 1, 1980
600–End	6.00	Apr. 1, 1988
27 Parts:		
1–199	23.00	Apr. 1, 1988
200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1987
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1988
*800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
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35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
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38 Parts:		
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150–189	18.00	July 1, 1987
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300–399	8.50	July 1, 1988
*400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	23.00	July 1, 1987
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1987
42 Parts:		
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43 Parts:		
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44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
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46 Parts:		
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90–139	12.00	Oct. 1, 1987
140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
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500–End	10.00	Oct. 1, 1987
47 Parts:		
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80–End	20.00	Oct. 1, 1987
48 Chapters:		
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2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	17.00	Oct. 1, 1987
7–14	24.00	Oct. 1, 1987
15–End	23.00	Oct. 1, 1987
49 Parts:		
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100–177	25.00	Oct. 1, 1987
178–199	19.00	Oct. 1, 1987
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400–999	22.00	Oct. 1, 1987
1000–1199	17.00	Oct. 1, 1987
1200–End	18.00	Oct. 1, 1987
50 Parts:		
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600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1988–
Individual copies	3.75	1988

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1989
Complete Listing of 1988 Editions and Projected January, 1989 Editions

This list sets out the CFR issuances for the 1988 editions and projects the publication plans for the **January, 1989** quarter. A projected schedule that will include the **April, 1989** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1988–1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1988:

Title	
CFR Index	1–199
	200–End
1–2	
	10 Parts:
3 (Compilation)	0–199
	200–399 (Cover only)
4	400–499
	500–End
5 Parts:	
1–1199	11
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–299
7 Parts:	300–499
0–45	500–End
46–51	
52	13
53–209	
210–299	14 Parts:
300–399	1–59
400–699	60–139
700–899	140–199
900–999	200–1199
1000–1059	1200–End
1060–1119	
1120–1199	15 Parts:
1200–1499	0–299
1500–1899	300–399
1900–1944	400–End
1945–End	
	16 Parts:
8	0–149
	150–999
9 Parts:	1000–End

Titles revised as of April 1, 1988:

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400–End	700–1699
	1700–End
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	26 Parts:
20 Parts:	1 (§§ 1.0–1–1.60)
1–399	1 (§§ 1.61–1.169)
400–499	1 (§§ 1.170–1.300)
500–End	1 (§§ 1.301–1.400)
	1 (§§ 1.401–1.500)
21 Parts:	1 (§§ 1.501–1.640)
1–99	1 (§§ 1.641–1.850)
100–169	1 (§§ 1.851–1.1000)
170–199	1 (§§ 1.1001–1.1400)
200–299	1 (§ 1.1401–End)
300–499	2–29
500–599	30–39
600–799	40–49
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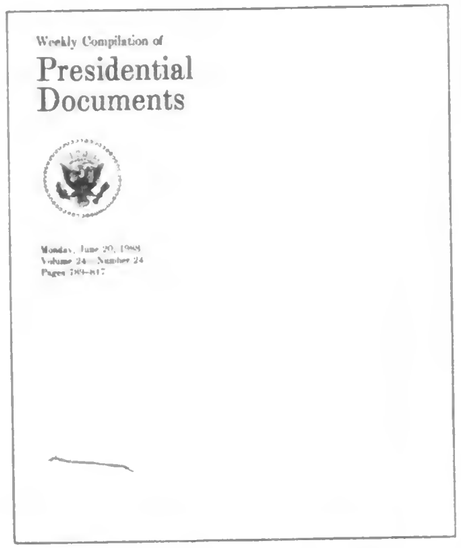
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-212]

Interstate Movement of Citrus Fruit from Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending the citrus canker regulations to allow inspectors to issue certificates for the interstate movement of regulated fruit from certain groves in Florida only if the groves have been found free of citrus canker based on a survey of all trees in the grove. This action requires tree-by-tree inspection of groves that have an increased risk of citrus canker because of exposure to certain personnel, vehicles, or equipment that may have been contaminated with the Asiatic strain of citrus canker. This amendment is necessary to help prevent the interstate spread of citrus canker.

DATES: Interim rule effective December 29, 1988. We will consider written comments postmarked or received on or before February 3, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 88-212. Comments received may be inspected at USDA, 14th and Independence Avenue, SW., Room 1141 South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The citrus canker regulations, contained in 7 CFR 301.75, prohibit or restrict the interstate movement of certain articles to prevent the interstate spread of citrus canker. Section 301.75-7(b) sets forth the requirements that must be met before an inspector may issue a certificate for the interstate movement of regulated fruit. Regulated fruit from any area of Florida where a primary infestation caused by Asiatic strains has occurred is not eligible for interstate movement with a certificate until 2 years after the last infested plant in the area has been destroyed. Regulated fruit produced in other areas of Florida may be moved interstate with a certificate to any area of the United States, including commercial citrus-producing areas, if the conditions of the regulations are met.

Paragraph (b)(3) of § 301.75-7 provides that a certificate will be issued only if the grove producing the fruit has been found free of citrus canker based upon the results of two surveys, conducted in accordance with the regulations. The regulations do not require that either survey include examination of all trees in a grove. When conducting the first survey, all trees on the perimeter of the grove are examined while driving by them at no more than 2 m.p.h., and a limited number of trees from other parts of the grove are examined on foot. When conducting the second survey, all trees in the first two rows of the grove are examined, as well as trees on either side of every fourth middle and at least twelve trees located in high risk areas of the grove.

We believe that certain groves should be subject to examination of every tree in the grove by an inspector travelling on foot, in order to ensure that these surveys effectively detect the Asiatic strain of citrus canker.

The groves for which we are requiring this type of tree-by-tree survey are groves that may have been exposed to the Asiatic strain of citrus canker due to the movement into these groves of personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker, within the previous two years. These groves face a higher risk of infestation with citrus canker compared to other groves, and a more rigorous survey requirement is commensurate with that risk. The previously required types of surveys will continue to be conducted in groves that have not been exposed to personnel, vehicles, or equipment that were used to maintain or harvest a grove infested with the Asiatic strain of citrus canker.

Personnel, vehicles and equipment used in groves moving fruit under a certificate must be treated to destroy citrus canker in accordance with § 301.75-12 of the regulations. There is concern, however, that treatments may not be 100 percent effective in destroying all citrus canker bacteria. Therefore, we are requiring a tree-by-tree examination, by an inspector travelling on foot, of all trees in groves that have received personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker, in recognition of the higher risk presented by these groves and to compensate for possible treatment failures. We are also revising the definition of "exposed" in section 30175-1 to include exposure due to movement into a grove of such personnel, vehicles, or equipment.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this rule without prior opportunity for public comment. Immediate action is necessary so that regulated fruit can continue to be moved interstate from Florida to commercial citrus-producing areas of the United States, with only a negligible risk of spreading citrus canker, despite the possible exposure of some groves to Asiatic strain citrus canker through movement of certain personnel, vehicles, and equipment. The alternatives we have considered are to add more rigorous survey requirements on an emergency basis, or to suspend issuance of certificates for interstate movement of regulated fruit from Florida. Suspending the issuance of certificates for the interstate movement

of all regulated fruit from Florida would unnecessarily cause serious economic losses to those persons affected.

Because prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, we find good cause under 5 U.S.C. 553 for making this rule effective upon signature. We will consider comments postmarked or received on or before February 3, 1989. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in accordance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Groves that have received personnel, vehicles, or equipment that were used to maintain or harvest a grove infested with the Asiatic strain of citrus canker within the previous two years, and which are otherwise eligible to move fruit under a certificate, number approximately 50 and occupy approximately 2000 acres. Only these groves, and any other that are identified as receiving such personnel, vehicles, or equipment, will be affected by this rule. Conducting the more rigorous tree-by-tree survey in lieu of the type of survey previously required will not impose a substantial economic burden on the owners of these groves. Thousands of other groves, the great majority of groves in Florida, will not be affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.75–1, the definition of "Exposed" is revised to read as follows:

§ 301.75–1 Definitions

* * * * *

Exposed. Suspected by an inspector of containing the bacterium that causes citrus canker because of proximity to an infestation, or because of the movement into a grove of personnel, vehicles, or equipment that were used to maintain or harvest a grove infected with the Asiatic strain of citrus canker.

* * * * *

3. In § 301.75–7, paragraph (b)(3)(iii) is redesignated as (b)(3)(iv), and a new paragraph (b)(3)(iii) is added to read as follows:

§ 301.75–7 Issuance and cancellation of certificates and limited permits.

* * * * *

(b) * * *

(3) * * *

(iii) When an inspector has determined that a grove has been exposed to the Asiatic strain of citrus canker due to the movement of personnel, vehicles, or equipment that were used to maintain or harvest a grove that has been infested with the Asiatic strain of citrus canker at any time during the two years previous to such movement, in lieu of the survey required by § 301.75–7(b)(3)(ii), an inspector must, no more than 90 days before harvest begins, walk through the grove and examine each tree; and

* * * * *

Done at Washington, DC, this 29th day of December, 1988.

James Glosser,

Administrator, Animal and Plant Health Inspection Service.

December 29, 1988.

[FR Doc. 89–84 Filed 1–3–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY–89–001]

Egg Research and Promotion Order Amendments

AGENCY: Agricultural Marketing Service.

ACTION: Interim final rule with request for comments.

SUMMARY: This action amends the Egg Research and Promotion Order to eliminate producer refunds and to limit the total costs that may be incurred by the American Egg Board (AEB) in collecting egg producer assessments and having an administrative staff. These changes are required by the Egg Research and Consumer Information Act amendments, which became effective October 31, 1988.

DATES: Interim rule effective January 1, 1989; comments must be received on or before February 3, 1989.

ADDRESS: Written comments may be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944–South, Post Office Box 96456, Washington, DC 20090–6456. Written comments received may be inspected in the Washington, DC, Standardization Branch office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–447–3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action was reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be non-major because it does not meet the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more or in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It also will not have a significant impact on

competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The majority of producers and handlers under the Egg Research and Consumer Information Act may be characterized as small entities.

The Egg Research and Promotion Order authorizes AEB to collect assessments at the rate of 5 cents per 30-dozen case of commercial eggs marketed or the equivalent thereof. However, effective September 1, 1987, the 5-cent rate of assessment was decreased to 2.5 cents by revising the Egg Research and Promotion Rules and Regulations in § 1250.514 [7 CFR 1250.514]. The American Egg Board (AEB) collects approximately $3.7 million annually from the 2.5-cent assessment. The assessment is refundable upon demand and presently is at the rate of 43 percent of assessments collected. According to AEB statistics, 1,967 producers pay assessments under the amended Rules and Regulations. Approximately 79 percent of such producers currently do not request refunds; therefore, the implementation of a mandatory assessment would have no additional impact on these producers.

A mandatory assessment of 2.5 cents per 30-dozen case of eggs would be equivalent to approximately 0.14 percent of the wholesale price of a 1-dozen carton of Large eggs. This is based on the Economic Research Service's latest annual average wholesale price of 60.6 cents per dozen. The amendment to the Order would impose additional costs on approximately 21 percent of the producers and any other producers who might request refunds in the future. It is estimated that the AEB would collect $3.7 million annually from a mandatory 2.5-cent assessment. This would represent an increase of 43 percent over the current amount retained after refunds. It is anticipated that any additional costs will be offset by the benefits derived from strengthened research and promotion programs as a result of participation by all producers.

Paperwork Reduction

There is no change in the reporting or recordkeeping requirements imposed on producers and handlers as a result of this action. The Office of Management and Budget approval of these requirements (No. 0581–0098) was renewed for use through August 31, 1989.

Background

The Egg Research and Promotion Order in § 1250.349 [7 CFR 1250.349] currently provides that any producer, whose eggs are assessed under authority of the Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) and who is not in favor of supporting the programs authorized thereunder, may request refunds of such assessments. The Egg Research and Consumer Information Act Amendments of 1988 (Pub. L. 100–575, effective October 31, 1988) require the Secretary to amend the Egg Research and Promotion Order to eliminate the producer refund provision. Such an amendment would not be subject to a producer referendum until after the end of an 18-month period from the effective date of the amendment, January 1, 1989.

A poll was conducted by the American Egg Board of all commercial egg producers, which disclosed that 69 percent of producers voting, representing 79 percent of egg production voting, were in favor of eliminating refunds of producer assessments.

In the House of Representatives' report on the 1988 amendments to the Act, it was stated that the Act, as enacted in 1974, contains many of the tools needed to address the issues facing the egg industry today. However, there is not sufficient funding for an effective program of research, consumer and producer education, advertising, and promotion. The report states further that the hallmark of an effective and continuous program must be the contribution by all commercial egg producers of their fair share.

The amended Act requires the Secretary to issue an amendment to the Order to eliminate the refund provision. During the period beginning with the effective date of the amendment until approval by referendum of the amendment, the Board is required to place into an escrow account 10 percent of the assessments received from egg producers. If the amendment to the Order is not approved in the referendum, the escrow account will be used to pay refunds to eligible egg producers who requested a refund pursuant to regulations to be promulgated by the Secretary. If the escrow account does not contain sufficient amounts to refund all eligible producers demanding a refund, then the Board will prorate the amount of refunds demanded by eligible producers. If the amendment to the Order is approved, the amount in the escrow account will be used by the Board in accord with the purposes set forth in the Act. Sections 1250.336 and 1250.349 are amended accordingly.

The 1988 amendments also contain a provision limiting the total costs that may be incurred by the Egg Board in collecting producer assessments and for administrative costs to the amount of the projected total assessments to be collected by the AEB as the Secretary determines to be reasonable. Section 1250.336 of the Order is amended to contain such a provision.

It is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Egg Research and Consumer Information Act Amendments of 1988 require that the Secretary make these amendments to the Order eliminating producer refunds and limiting costs incurred by the AEB; (2) it is desirable to implement the amendments at the beginning of the AEB's fiscal period which is the beginning of the calendar year, January 1; (3) interested persons are afforded a 30-day comment period to submit written comments; and (4) producers will be afforded an opportunity to vote in a referendum to be conducted at a future date, in accordance with the provision of the 1988 amendments.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

For the reasons set forth in the preamble, Title 7, CFR Part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718.

§ 1250.336 [Amended]

2. In 7 CFR 1250.336, paragraphs (g) through (k) are redesignated (i) through (m), respectively.

3. 7 CFR 1250.336 is amended by adding new paragraphs (g) and (h) to read as follows:

§ 1250.336 Duties.

* * * * *

(g) To establish, for the period beginning on January 1, 1989, until approval by producer referendum of the amendments to this subpart, as required by the Egg Research and Consumer Information Act Amendments of 1988 [Pub. Law 100–575], and interest-bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent.

(h) To pay refunds pursuant to § 1250.349(b) to producers requesting refunds in a manner consistent with the following conditions:

(1) If the elimination of the refund provision in § 1250.349(a) of this subpart is not approved pursuant to a referendum, any egg producer shall have the right to demand and receive from the Board a one-time refund of assessments collected from such producer and deposited into the escrow account established pursuant to paragraph (g) of this section.

(2) If the amount in the escrow account required to be established by paragraph (g) of this section is not sufficient to refund the total amount of assessments requested by all such egg producers, the Board shall prorate the amount deposited in such account among all such producers who request a refund of assessments paid.

* * * * *

4. 7 CFR 1250.346 is amended by adding a new sentence after the first sentence to read as follows:

§ 1250.346 Expenses.

* * * The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable.

* * *

5. 7 CFR 1250.349, is amended by designating the current paragraph as (a), revising the first sentence, and adding a new paragraph (b) to read as follows:

§ 1250.349 Producer refunds.

(a) Except as provided in paragraph (b) of this section, any egg producer against whose eggs any assessment is made under the authority of the Act and collected from such producer and who is not in favor of supporting the programs in this subpart shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer paid the assessment for which refund is sought.

* * *

(b) Effective January 1, 1989, producer refunds as provided in paragraph (a) of this section are eliminated. If eliminated of the refund provision in paragraph (a) of this section is not approved pursuant to a referendum, any egg producer who is responsible for paying an assessment to the Board, under this subpart, and who is not in favor of supporting the program established under this subpart shall have the right to demand and receive from the Board a refund of such assessment or a prorata share thereof collected from such producer and deposited into an escrow account pursuant to § 1250.336(g) upon submission of proof satisfactory to the Board that the producer paid the assessment for which the refund is sought. Any such demand shall be made by such producer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary.

Done at Washington, DC on December 30, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–30285 Filed 12–30–88; 2:39 pm]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 232, 233, 235, 237, 238, 239, 280, and 299

[INS Number: 1037–88]

Immigration User Fee, Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Pursuant to the Department of Justice Appropriation Act 1987 (Pub. L. 99–591, enacted October 30, 1986), establishing an Immigration User Fee, this final rule amends the regulations to address the change from carrier responsibility to Immigration and Naturalization Service (Service) responsibility for the custody and detention of excludable aliens, and also amends the regulations to conform to statutory deletions and amendments.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, (202) 633–4705.

SUPPLEMENTARY INFORMATION: The Service published a proposed rule on January 22, 1988, at 53 FR 1791, to amend 8 CFR Parts 232, 233, 235, 237, 238, 239, 280, and 299, in order to implement section 206 of Pub. L. 99–591 which places responsibility for physical custody of excludable aliens pursuant to former section 233 of the Immigration and Nationality Act of 1952, as amended (The Act), on the Service. The comment period ended on March 22, 1988. A total of nine comments were received during the comment period and considered before preparing this final rule. The following summary addresses the substantive comments.

1. Numerous commenters requested clarification of the situation when, following a deportation/exclusion order, the carrier's next regularly scheduled flight to the excluded alien's point of embarkation is full or the carrier is a charter operator that may only operate ad hoc flights. Such clarification has been provided to allow the transporting carrier the option of arranging for return transportation on other carriers which service the excluded alien's point of embarkation.

2. Some commenters also requested clarification regarding notice and timing of carrier responsibility for custody and removal of an excluded alien following a deportation/exclusion order. Carriers become liable for detention and transportation expenses immediately upon the issuance of a deportation/exclusion order. It is the carrier's responsibility to track these proceedings as they have already acknowledged by receipt of Form I–259C, Notice to Carrier, executed upon arrival by the examining immigration officer, that an alien passenger may be excludable from the United States, and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in § 237.5. The regulations have been modified to allow the option of having the Service retain custody of the excluded alien for up to seven days following a deportation/exclusion order.

3. Several commenters expressed the concern that the proposed rule did not fully release carriers from custodial and financial responsibility for excludable aliens. Section 206 of Pub. L. 99–591 did not repeal section 237 of the Act, thus, it does not totally release commercial carriers from custodial and financial responsibility for aliens who arrive in the United States aboard commercial aircraft or commercial vessels without proper documentation. Commercial carriers are still liable for detention and transportation expenses of excluded aliens subsequent to a deportation/exclusion order.

4. Certain commenters requested clarification regarding carrier/Service responsibility for detained aliens in immediate and continuous transit (TWOV passengers). Although the issue of carrier responsibility for TWOV passengers may be a thorny one, the rules and regulations are very clear. Pub. L. 99–591 did not repeal section 238 of the Act; thus, contracts entered into pursuant to section 238, and in this particular instance we are concerned with carrier financial responsibility for detained TWOV passengers, are valid and enforceable. In sum, carriers are responsible for the detention expenses of detained TWOV passengers while in Service custody as well as having financial responsibility for return transportation to TWOV passengers point to embarkation following a deportation/exclusion order.

5. One commenter requested more detailed guidance regarding minimum standards that must be met for alien detention in a non-service facility. Such guidance has been included in a revised § 235.3(f).

6. One commenter took issue with the specific minimum conditions that must be met for aliens detained in a non-service facility. This rule addresses the change from carrier responsibility to Service responsibility for the custody and detention of excludable aliens, and also amends the regulations to conform to statutory deletions and amendments, pursuant to section 206 of Pub. L. 99–591; it does not address details of specific alien detention conditions. The conditions under which aliens are held would be a matter for other proceedings.

In compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Parts 232 and 233

Aliens, Immigration, Security measures, Aircraft, Vessels.

8 CFR Part 235

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses.

8 CFR Parts 237 and 238

Aliens, Immigration, Security measures, Aircraft, Vessels, Travel and transportation expenses, Transportation.

8 CFR Part 239

Aliens, Immigration, Security measures, Aircraft.

8 CFR Parts 280 and 299

Aliens, Immigration, Aircraft, Vessels, Accounting, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1–2. Part 232 is revised to read as follows:

PART 232—DETENTION FOR EXAMINATION TO DETERMINE MENTAL OR PHYSICAL DEFECTS

§ 232.1 Detention.

Authority: 8 U.S.C. 1103 and 1222.

§ 232.1 Detention.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he/she shall, after consultation with the United States Public Health Service at the port of entry, notify the master or agent of the arriving vessel or aircraft of his/her intention to effect such detention by serving on the master or agent the Form I–259C in accordance with § 235.3(e) of this chapter.

PART 233—[REMOVED AND RESERVED]

3. Part 233 would be removed and reserved.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

4. The authority citation for Part 235 is revised to read as follows and all other authority citations which appear in Part 235 are removed:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

5. Section 235.3 is amended by revising paragraph (d), and adding a sentence to the end of paragraph (a) and new pragraphs (e) and (f) is read as follows:

§ 235.3 Detection and deferred inspection.

(a) * * * The Service will not be liable for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissability by a Service officer.

* * * * *

(d) *Service custody.* The Service will assume custody of any alien subject to detention under § 235.3 (b) or (c) of this section, except in the case of an alien who is presented as a Transit Without Visa (TWOV) passenger.

(e) *Notice to carriers.* In the opinion of the examining immigration officer, it is not practical to resolve a question of admissability at the time of arrival of an alien passenger on a vessel or aircraft, the officer shall execute a Form I–259C to notify the agent, master, or commanding officer of the vessel or aircraft, if applicable, that the alien passenger may be excludable from the United States and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in § 237.5 of this chapter.

(f) *Detention in Non-Service facility.* Whenever an alien is taken into Service custody and detailed at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are: (1) 24-Hour Supervision, (2) Conference with Safety and Emergency Codes, (3) Food Service and (4) Availability of Emergency Medical Care.

§ 235.5 [Amended]

6. Section 235.5 paragraph (c) is removed.

PART 237—DEPORTATION OF EXCLUDED ALIENS

7. The authority citation for Part 237 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1255, and 1330; 66 Stat. 173, 197, 201, 214, 230.

§ 237.4 [Amended]

8. Section 237.4 Imposition of penalty, is amended by removing the words "sections 233 and", and inserting the word "section." • • •

9. Section 237.5 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 237.5 Notice to transportation line of alien's exclusion.

• • • • •

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Immigration and Nationality Act and this paragraph. The Service will, at the carriers option, retain custody of the excluded alien for an additional seven days beyond the date of the deportation/exclusion order. If, after the third day of this additional seven day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his/her point of embarkation by the end of the additional seven day period, the Service will make the arrangements and bill the carrier for its costs.

10. Section 237.6 is amended by adding a new paragraph (a)(5) to read as follows:

§ 237.6 Deportation

(a) • • •

(5) Next available flight—is to be the carrier's next regularly scheduled departure to the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regularly scheduled departure to the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carriers which service the excluded aliens point of embarkation.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

11. The authority citation for Part 238 continues to read as follows:

Authority: 8 U.S.C. 1103 and 1228.

12. Section 283.3 is amended by adding a new paragraph (c) to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

• • • • •

(c) Carrier responsibility. Nothing contained within the provisons of section 286 of the Act shall be deemed to waive the carrier's liability for detention, transportation, and other expenses incurred in the bringing of aliens to the United States under the terms of this section.

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

13. The authority citation for Part 239 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, and 1229; 66 Stat. 173, 195, 203.

§ 239.2 [Amended]

14. Section 239.2 Landing requirements, is amended by removing paragraph (b) and by redesignating paragraphs (c), (b), and (e) as (b), (c), and (d).

PART 280—IMPOSITION AND COLLECTION OF FINES

15. The authority citation for Part 280 is revised to read as follows and all other authority citations which appear in Part 280 are removed:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 228, 227, 230.

§ 280.6 [Amended]

16. Section 280.6 Bond to obtain clearance; form, is amended by removing the reference to Section "233,".

17. A new § 280.52 is added to read as follows:

§ 280.52 Payment of fines.

(a) *Procedure.* All fines assessed pursuant to section 271(a) of the Act shall be made payable to the Immigration User Fee Account in accordance with the provisions of § 286.6 of this chapter.

(b) *Deposit to the Immigration User Fee Account.* All fines assessed pursuant to section 271(a) of the Act and all penalties paid to the collector of customs pursuant to section 273 of the Act shall be remitted to the Immigration User Fee Account.

PART 299—IMMIGRATION FORMS

18. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 8 CFR Part 2.

19. Section 299.1 is amended by adding, in proper numerical sequence, new Form I–259C as follows:

§ 299.1 Prescribed forms.

• • • • •

I–259C (6–13–88)—Notice to Carrier.

• • • • •

Dated: September 21, 1988.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–5 Filed 1–3–89; 8:45 am]

BILLING CODE 4410–10–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

Display of Office of Management and Budget (OMB Control Numbers for Reporting and Recordkeeping Requirements)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget [OMB] approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: William Cline, Chief, Administrative Information Branch, Small Business Administration, 1441 L Steet, NW., Washington, DC 20416. Telephone No. 653–8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement. This subpart collects and displays current OMB control numbers and expiration dates. Where the Information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 USC 551 et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

PART 133—[AMENDED]

Therefore, 13 CFR Part 133 is amended as follows:

1. The authority for Part 133 is revised to read as follows:

Authority: 44 U.S.C. 3512.

2. The table in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

• • • • •

(c) • • •

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245–0003	SBA 745, SBA 745A	13 CFR 125.9	
3245–0007	SBA 990, SBA 991, SBA 994, SBA 994B, SBA 994C, SBA 994H	13 CFR 115.5	02/28/91
3245–0009	SBA 480		02/28/91
3245–0012	SBA 770	13 CFR 123.9	10/31/90
3245–0013	SBA 74, SBA 74A, 74B, 183	13 CFR 125.5	03/31/89
3245–0015	SBA 1010A–E&I	13 CFR Part 124	09/30/90
3245–0016	SBA 4, SBA 4–I, SBA4 SCHED A	13 CFR 122.309	10/31/90
3245–0017	SBA 5, SBA 739A, SBA 1368 A–C	13 CFR Part 123	10/31/89
3245–0018	SBA 5C, 739	13 CFR 123.1	04/30/90
3245–0019	SBA 1100	13 CFR 101.2–7	08/31/91
3245–0020	SBA 1136, SBA 1136A	13 CFR 111.5	05/30/91
3245–0024	SBA 1167, SBA 1395	13 CFR 125.10	01/31/89
3245–0046	SBA 1174	13 CFR 101.2–7	09/30/89
3245–0062	SBA 415, SBA 415A	13 CFR 107.102	07/31/90
3245–0063	SBA 468	13 CFR 107.1102	08/31/91
3245–0071	SBA 1244	13 CFR 108.503	10/31/91
3245–0073	SBA 1246	13 CFR 108.503	09/30/90
3245–0074	SBA 1253 A&B	13 CFR 108.503	10/31/89
3245–0075	SBA 20	13 CFR 101.2–7	04/30/90
3245–0078	SBA 793	13 CFR 112.113	09/30/91
3245–0077	Reporting and recordkeeping requirements on non-bank lenders	13 CFR 120.5 and 12	10/31/90
3245–0078	SBA 1031	13 CFR 107.1102	04/30/90
3245–0079	SBA 419		10/31/90
3245–0080	SBA 1080	13 CFR 120.4	04/30/90
3245–0081	SBA 25, SBA 26, SBA 27, SBA 28, SBA 33, SBA 34, SBA 444C, SBA 1022, SBA 1022A, SBA 1065.	13 CFR 107.201	04/30/90
3245–0083	SBA 415C	13 CFR 107.1105	09/30/90
3245–0084	SBA 700	13 CFR Part 123	11/30/90
3245–0090	SBA 59	13 CFR 101.2–7	04/30/90
3245–0091	SBA 641	13 CFR 101.2–7	12/31/90
3245–0092	SBA 610	13 CFR 101.2–7c	09/30/91
3245–0095	SBA 1175		07/31/91
3245–0096	SBA 883, SBA 1375	Presidential Proclamation designating Small Business Week.	01/31/90
3245–0101	SBA 355, SBA 1340	13 CFR Part 121	03/31/91
3245–0106	SBA 1062	13 CFR 101.2–7	08/31/91
3245–0109	SBA 857	13 CFR 107.1101	07/31/90
3245–0110	SBA 1366, SBA 1391	13 CFR 123.17	04/30/90
3245–0112	SBA 1301	13 CFR 108.503	07/31/90
3245–0114	SBA 1302	13 CFR 108.503	07/31/90
3245–0116	SBA 860	13 CFR 107.1101	07/31/90
3245–0117	CO 266		06/30/89
3245–0118	SBA 856	13 CFR 107.1101	06/30/89
3245–0121	Governor's request for disaster declaration	13 CFR 123.24	07/31/90
3245–0123	SBA 888	13 CFR 101.2–7	11/30/88
3245–0125	SBA 896	Pub. L. 92–463	07/31/89
3245–0129	SBA 1238A	3245–130	08/31/89
3245–0130	SBA 1238		08/31/89
3245–0131	SBA 172	Agency Participant Handbook	07/31/89
3245–0132	SBA 1149		11/30/90
3245–0133	SBA 2014A	Pub. L. 95–454	09/30/89
3245–0134	SBA 1369	13 CFR 101.2–7	09/30/89
3245–0135	SBA 1202	13 CFR 101.2–7	08/31/89
3245–0136	SBA 967	13 CFh .23.1	08/31/89
3245–0137	SBA contract requirements	OMB Cir. A–110; A.21; A–102; A–122	08/31/89
3245–0140	SBA 122, SBA 1223, SBA 1224	OMB Cir. A–110; A–21; A–102; A–122	09/30/91
3245–0143	Request for eligibility reconsideration	13 CFR Part 124	01/31/90
3245–0144	SBA 1017	13 CFR Part 124	01/31/90
3245–0145	Notice of change of ownership	13 CFR Part 124	01/31/90
3245–0146	Request for approval of joint venture agreement	13 CFR Part 124	01/31/90
3245–0147	Request for fixed program participation term (FPPT) ext	13 CFR Part 124	01/31/90
3245–0148	Request for advance payment and sched of advance payment requirements.	13 CFR Part 124	01/31/90
3245–0147	Request for fixed program participation term (FPPT) ext	13 CFR Part 124	01/31/90
3245–0149	Request for business development expense (BDE)	13 CFR Part 124	01/31/90
3245–0151	Submission of business financial statement	13 CFR Part 124	01/31/90
3245–0157	SBA 1386	Pub. L. 97–219	02/28/91
3245–0158	SBA 1183	SOP 50 50	04/30/90
3245–0159	SBA 712	15 U.S.C. 639	04/30/90
3245–0160	SBA 149	13 CFR 122.15	09/30/90
3245–0164	Liquidation activities	41 CFR Part 5	04/30/90

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0168	Small business institute counseling case report	13 CFR 101.2-7	04/30/90
3245-0169	SBDC quarterly and financial reports	13 CFR 101.2-7	02/28/90
3245-0171	Nominate a small business person or advocate of the year	Pub. L. 94-309	11/30/91
3245-0172	SBA 1405	13 CFR 107.1101	02/28/90
3245-0178	SBA 912	15 U.S.C. 6349(B)	05/31/90
3245-0183	SBA 1419	13 CFR 101.2-7	07/31/90
3245-0185	SBA 1086	13 CFR Part 120	04/30/91
3245-0188	SBA 413	15 U.S.C. 631	10/31/89
3245-0189	Business loan reconsideration req.	13 CFR Part 122	09/30/90
3245-0190	SBA 1347	13 CFR Part 122	11/30/90
3245-0191	Reporting and recordkeeping requirements on lender reports	13 CFR Parts 120 and 122	10/31/90
3245-0192	Development company reporting req	13 CFR Part 108	04/30/90
3245-0193	SBA 1429	13 CFR Part 108	04/30/00
3245-0194	SBA 1434	13 CFR 101.2-7	01/31/91
3245-0196	Other borrower reports, records and requests	13 CFR Part 122	10/31/90
3245-0200	SBA 1050	13 CFR Parts 120 and 122	11/30/90
3245-0201	SBA 147, SBA 148, SBA 159, SBA 160, SBA 160A, SBA 529B, SBA 926, SBA 1059, SBA 928.	13 CFR Parts 120 and 122	11/30/90
3245-0202	SBA 1010H	Pub. L. 95-507	01/31/91
3245-0203	SBA 104A		11/30/90
3245-0204	SBA 1449	Pub. L. 95-89	01/31/91
3245-0205	SBA 1450	Pub. L. 96-481	06/31/90
3245-0212	SBA 1088	Pub. L. 96-352	09/30/90
3245-0213	SBA 1454, SBA 1455	13 CFR Part 122	12/31/91
3245-0221	SBA 1496	13 CFR 101.2-7	01/31/90
3245-0225	SBA 1531	Pub. L. 98-577 and 15 U.S.C. 637B	02/28/90
3245-0226	SBA 1536	Pub. L. 95-507	11/30/91
3245-0226	SBA 1540	Pub. L. 95-507	11/30/91
3245-0229	For profit cosponsored training program		06/31/91
3245-0232	SBA 1547	Pub. L. 85-536	07/31/89
3245-0234	Prebusiness workshop eval	13 CFR 129.2	09/30/91
3245-0235	SBA 1551	13 CFR 129.2	09/30/91
3245-0242	Survey of commercialization activities of SBIR awardees	Pub. L. 97-219	02/28/89
3245-0243	SBA 641A	13 CFR 101.2-7C	12/31/90

James Abdnor,
Administrator.

[FR Doc. 89-65 Filed 1-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-163-AD; Amdt. 39-6099]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes Equipped With Wet Center Wing Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes equipped with wet center wing fuel tanks, which requires removal of insulation blankets currently installed in the center accessory compartment (CAC), inspection for any evidence of fuel leaks, and repair, if necessary. This amendment is prompted by a report of a fire in the CAC supported by fuel of unknown origin. This condition, if not corrected, could lead to additional fuel retention by the insulation blankets and potential in-flight or ground fires.

EFFECTIVE DATE: January 19, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: A McDonnell Douglas Model DC-10 airplane recently experienced a fire in the center accessory compartment (CAC) during taxi after landing. Subsequent investigation identified a loose and/or corroded battery ground stud connection as the ignition source for the fire.

The FAA issued AD 88-15-05, Amendment 39-5980 (53 FR 26765; July 15, 1988), which requires inspections for evidence of arcing and/or corrosion at the CAC battery ground stud, replacement of the battery ground cable bracket, and inspections for proper operation of the two CAC drain valves. Subsequent to issuance of AD 88-15-05, further investigation has confirmed that fuel was present to support combustion, and that possible contamination of insulation blankets in the CAC, or flammable liquid within the CAC lower fuselage area, may have provided the fuel source for the fire. Therefore, the FAA has determined that additional regulatory action is necessary to prevent fuel retention by the insulation blankets in the CAC with associated danger of fires.

The FAA has reviewed and approved McDonnell Douglas Model DC-10 Alert Service Bulletin A25-356, dated October 3, 1988, which describes permanent removal of the insulation blankets currently installed in the CAC area, inspection for any evidence of fuel leaks, and repair, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires removal of the insulation blankets and inspection for fuel leaks in the CAC area in accordance with the service bulletin previously mentioned. If any fuel leaks

are found, repairs must be made prior to fueling the center wing tank for flight.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes equipped with wet center wing fuel tanks, certificated in any category. Compliance required within 30 days after effective date of this AD, unless previously accomplished.

To detect fuel leaks and prevent retention of fuel in the insulation blankets, accomplish the following:

A. Remove insulation blankets from the center accessory compartment (CAC) in accordance with the service bulletins listed below:

1. For Model DC-10 series airplanes: McDonnell Douglas Alert Service Bulletin (S/B) A25-356, dated October 3, 1988.

2. For Model KC-10A (Military) airplanes: McDonnell Douglas Service Bulletin 53-149, Revision 1, dated April 6, 1988.

B. Inspect the entire wing front spar area for evidence of existing or previous fuel leaks, in accordance with DC-10 Alert Service Bulletin A25-356, dated October 3, 1988.

C. If any evidence of fuel leaks is found, conduct a leak check in accordance with DC-10 Alert Service Bulletin A25-356, dated October 3, 1988, to determine if a fuel leak does exist. If a leak is found, repair before fueling the center wing tank for flight.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 19, 1989.

Issued in Seattle, Washington, on December 19, 1988.

Leroy A. Keith,
Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-31 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-43; Amdt. 39-6051]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF helicopters, which supersedes AD 77-15-09, AD 77-19-04, and AD 81-10-08. The new AD requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; the recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and the removal of a hub assembly from service in accordance with more stringent rejection criteria. The AD is prompted by reports of fatigue cracks in a main rotor blade retention straps of the newer strap pack design installed on MDHC Model 369 helicopters, which could result in complete failure of a strap pack, separation of a main rotor blade from the main rotor hub, and consequent loss of control of the helicopter.

EFFECTIVE DATE: February 2, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1989.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797; telephone (602) 891-6484, or may be examined in the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: AD 77-15-09, Amendment 39-2978 (42 FR 37806; July 25, 1977), as amended by AD 77-15-09R1, Amendment 39-3952 (45 FR 70949; October 27, 1980) requires repetitive inspections of main rotor blade retention straps at intervals not to exceed 25 hours' (P/N 369D21210-BSC) or 100 hours' (P/N 369D 21210-501) time in service, depending on design dash numbers, and removal from service of hub assemblies which meet established hub rejection criteria, on MDHC Model 369D helicopters.

AD 77-19-04, Amendment 39-3039 (42 FR 46923; September 19, 1977), as amended by AD 77-19-04R1, Amendment 39-3597 (44 FR 61936; October 29, 1979) requires trimming of

excess teflon strips and repetitive inspections of the retention straps around the lead-lag bolt at intervals not to exceed 25 hours' time in service, and removal from service of hub assemblies with one or more broken laminates, on MDHC Model 369D helicopters.

AD 81–10–08, Amendment 39–4144 (46 FR 33225; June 29, 1981) requires repetitive inspections of the retention straps (P/N 369D21210–501, S/N's 8531 through 9135) for corrosion, cracks or breaks in the laminates at intervals not to exceed 25 hours' time in service, and removal from service of hub assemblies with three or more cracked or broken laminates in the area of the lead-lab legs on MDHC Model 369D helicopters.

After issuing AD 77–15–09, as amended by 77–15–09R1; 77–19–04 as amended by 77–19–04R1; and 81–10–08, the FAA has determined that fatigue cracks have been observed on later serial numbers of the improved strap pack design (P/N 369D21210–501), and that it is necessary to record the locations of observed cracks or fractures on strap pack laminates to insure that unsafe hub assemblies will be removed from service. The AD contains the more stringent hub rejection criteria defined in a recent MDHC Service Information Notice (SIN), and the applicability must be extended to other MDHC Model 369 helicopters, since the same –501 part number main rotor blade retention strap is used on the Model 369E, F, and FF helicopters. The repetitive inspections of main rotor retention strap P/N 369D21210–501 are to be at intervals not to exceed 25 hours' time in service when two laminates have failed, rather than 100 hours' time in service as stated in AD 77–15–09R1.

MDHC has issued revised SIN's DN–154 (Model 369D), EN–44 (Model 369E), and FN–33 (Models 369F and 369FF) which detail the inspection requirements in Part I of the SIN. Part I also includes updated hub rejection criteria based on location/number of laminate cracks/failures, and a new laminate gap failure criterion. During an accident investigation on an MDHC Model 369D helicopter, a previous entry in the log book indicated three cracks in the main rotor blade retention strap pack laminates. The postaccident investigation revealed numerous laminate failures, but it was not possible to determine whether the previously logged cracks were confined to the failed strap pack or located among the four other blades. Therefore, the FAA is superseding AD 77–15–09, as amended by AD 77–15–09R, AD 77–19–04, as amended by AD 77–19–04R1, and Ad 81–10–08 with a new AD with requirements to record locations of observed laminate cracks or fractures or corrosion; to record the number of failed laminates per single strap pack; to extend the applicability to the Model 369E, F, and FF helicopters; to require repetitive inspections, at intervals not to exceed 25 hours' time in service, for all affected strap packs when certain laminate failure criteria are met; and to remove rejected hubs from service on MDHC Model 369D, E, F, and FF helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined preliminarily that this regulation is an emergency regulation and that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39–AIRWORTHINESS DIRECTIVE

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, with main rotor hub retention straps having P/N's 369D21210–BSC or –501 installed. (Docket No. 88–ASW–43)

Compliance is required as indicated, unless already accomplished.

To prevent failure of main rotor blade retention straps which could result in the loss of a main rotor blade, accomplish the following:

(a) Within the next 100 hours' time in service and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, conduct inspections of the main rotor blade retention strap assemblies (P/N 369D21210–BSC, or –501) in accordance with paragraphs a, b, c, d, e, g, i, j, and 1 of Part I—Inspection Procedures in McDonnell Douglas Helicopter Company Service Information Notice (SIN) DN–154 (369D), EN–44 (369E) or FN–33 (369F and 369FF), dated January 15, 1988.

(b) If, as a result of an inspection in paragraph (a) above, two strap pack laminates are determined to have failed in any one leg or tongue area of any strap assembly (failure being defined in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures), conduct the repetitive inspections of all strap packs required in paragraph (a) above and thereafter at intervals not to exceed 25 hours' time in service.

(c) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 77–15–09R1 at intervals of 25 hours because of two strap pack laminate failures, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 77–15–09R1, and thereafter at intervals not to exceed 25 hours' time in service.

(d) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 77–19–04 (retention straps with P/N 369D21200–BSC) at intervals of 25 hours, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 77–19–04, and thereafter at intervals not to exceed 25 hours' time in service.

(e) For Model 369D hub assemblies (P/N 369D21200) which were subject to inspections under AD 81–10–08 (retention straps with P/N 369D21210–501, S/N 8531 through 9135) at intervals of 25 hours' time in service, conduct the inspections required by this AD within 25 hours' time in service from the last inspection made in accordance with AD 81–10–08, and thereafter at intervals not to exceed 25 hours' time in service.

(f) If, as a result of the inspection required by paragraph (a), (b), (c), (d), or (e) above, a strap pack (P/N 369D21210–BSC or –501) is rejected (using the rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures), remove the hub assembly (P/N 369D21200) from service prior to further flight.

(g) At each aforementioned inspection, record the locations of observed cracks, fractures, or corrosion in each strap laminate in a manner which includes blade color, strap serial number, laminate number (top being number 1), lead leg, lag leg, tongue, and outboard end locations. Record the number of laminate failures per single strap pack, and the acceptability of each strap pack for continued flight, in accordance with the definition of laminate failure and the strap pack rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures.

(h) Alternative means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.; 3229 E. Spring Street, Long Beach, California.

The required procedure shall be done in accordance with MDHC SIN HN–214, DN–154, EN–44, and FN–33 (as appropriate to the model), dated January 15, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205–9898; telephone (602) 891–6484. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, or at the office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC.

This amendment supersedes the following:

1. AD 77–15–09, Amendment 39–2978 (42 FR 37806; July 25, 1977) as amended by AD 77–15–09R1, Amendment 39–3952 (45 FR 70648; October 27, 1980).

2. AD 77–19–04, Amendment 39–3039 (42 FR 46923; September 19, 1977), as amended by AD–77–19–04R1, Amendment 39–3597 (44 FR 61936; October 29, 1979).

3. AD 81–10–08, Amendment 39–4144 (46 FR 33225; June 29, 1981).

This amendment becomes effective February 2, 1989.

Issued in Fort Worth, Texas, on October 11, 1988.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–30 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ASW–49; Amdt. 39–6097]

Airworthiness Directive; Sikorsky Aircraft Model S–58 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), which requires repetitive checks, inspections, and replacement, as necessary, of main rotor blades on Sikorsky Model S–58 series helicopters. This amendment is needed to provide for optional alternate methods of compliance and the issuance of special flight permits, which may result in reduced maintenance and the elimination of unnecessary operational costs.

EFFECTIVE DATE: February 2, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601–1381, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Rotorcraft Standards Staff, Forth Worth, Texas 76193–0111, telephone (817) 624–5123.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 191 (25 FR 8026), AD 60–17–03, [as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39–1552 (37 FR 23711), Amendment 39–2212 (40 FR 22249), and Amendment 39–2743 (41 FR 44998)] which currently requires inspections, repetitive checks, and replacement, as necessary, of main rotor blades on Sikorsky Model S–58 series helicopters. After issuing AD 60–17–03, as amended, the FAA has determined that the AD requires a revision to include provisions for the issuance of special flight permits and alternate means of compliance, which correspond to the new paragraphs (g) and (f) respectively. In addition, a note is added to existing paragraph (e) which will allow a pilot to conduct checks of the blade pressure system.

Since the amendment provides a clarification and alternate means of compliance, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days from publication.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is only clarifying in nature; provides for the optional use of alternative methods of compliance; and, imposes no additional regulatory or economic burden on anyone. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By further amending Amendment 191 (25 FR 8026), AD 60–17–03 (as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39–1552 (37 FR 23711), Amendment 39–2212 (40 FR 22249), and Amendment 39–2743 (41 FR 44998)], by adding a note after paragraph (e), and by adding new paragraphs (f) and (g) as follows:

Sikorsky Aircraft: Applies to all Model S–58 series helicopters. (Docket No 88–ASW–49.)

Compliance is required as indicated, unless already accomplished.

* * * * *

(e)* * *

Note—The check for black or red color indication on the pressure indicator for the main rotor blades, as specified in Part IV (items 1 and 2) of the accomplishment instructions of Sikorsky Service Bulletin No. 58B15–4, may be accomplished by a properly trained pilot. Results of the requirements of checks must be recorded in accordance with the requirements of FAR § 43.9.

(f) Upon request an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Rotorcraft Standards Staff, Aircraft Certification Service, ASW–110, FAA, Fort Worth, Texas 76193–0110.

(g) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

This amendment becomes effective February 2, 1989.

This amendment amends Amendment 191 (25 FR 8026), AD 60–17–03, as amended by Amendment 495 (27 FR 10117), Amendment 747 (29 FR 7668), Amendment 199 (31 FR 3064), Amendment 39–1552 (37 FR 23711), Amendment 39–2212 (40 FR 22249), and Amendment 39–2743 (41 FR 44998).

Issued in Fort Worth, Texas, on December 15, 1988.

L. B. Andriesen,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–32 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25764; Amdt. No. 1390]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on December 23, 1988.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

. . . *Effective February 9, 1989*

Huntsville, AL—Huntsville Airport North, VOR/DME–B, Amdt. 5
Huntsville, AL—Huntsville Intl.-Carl T. Jones Field, NDB RWY 18R, Amdt. 13
Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 18R, Amdt. 20
Mobile, AL—Bates Field, VOR or TACAN RWY 9, Amdt. 24, CANCELLED
Springdale, AR—Springdale Muni, VOR RWY 18, Amdt. 11
Springdale, AR—Springdale Muni, VOR/DME RWY 18, Amdt. 1
Springdale, AR—Springdale Muni, ILS RWY 18, Amdt. 1
Lihue, HI—Lihue, VOR/DME or TACAN RWY 21, Amdt. 3
Lihue, HI—Lihue, VOR/DME or TACAN RWY 35, Amdt. 6
Mount Vernon, IL—Mount Vernon/Outland, VOR RWY 5, Amdt. 13
Mount Vernon, IL—Mount Vernon/Outland, VOR RWY 23, Amdt. 13
Mount Vernon, IL—Mount Vernon/Outland, ILS RWY 23, Amdt. 8
Omaha, NE—Eppley Airfield, ILS RWY 17, Amdt. 3
Lebanon, NH—Lebanon Muni, ILS RWY 18, Orig
Toledo, OH—Toledo Express, NDB RWY 7, Amdt. 21
Toledo, OH—Toledo Express, ILS RWY 7, Amdt. 22
Toledo, OH—Toledo Express, RADAR–1, Amdt. 15
Lake City, SC—Lake City Muni CJ Evans Field, NDB–A, Orig
Pelion, SC—Corporate, VOR–A, Amdt. 2
Corpus Christi, TX—Corpus Christi Intl, NDB RWY 13, Amdt. 23

. . . *Effective January 12, 1989*

Kansas City, MO—Kansas City Downtown, LOC RWY 3, Orig., CANCELLED
Kansas City, MO—Kansas City Downtown, ILS RWY 3, Orig
Portland, ME—Portland Intl Jetport, ILS RWY 29, Amdt. 3
Coatesville, PA—Chester County G. O. Carlson, ILS RWY 29, Amdt. 5

. . . *Effective December 21, 1988*

Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 15
Oklahoma City, OK—Wiley Post, VOR–A, Amdt. 1
Oklahoma City, OK—Wiley Post, VOR RWY 17L, Amdt. 10
Oklahoma City, OK—Wiley Post, VOR RWY 35R, Amdt. 1
Oklahoma City, OK—Wiley Post, ILS RWY 17L, Amdt. 8
Oklahoma City, OK—Wiley Post, RADAR–1, Amdt. 2

. . . *Effective December 16, 1988*

Olean, NY—Olean Muni, LOC RWY 22, Amdt. 4
Olean, NY—Olean Muni, NDB RWY 22, Amdt. 11
Olean, NY—Olean Muni, RNAV RWY 22, Amdt. 4

. . . *Effective December 15, 1988*

Cordova, AK—Cordova-Mile 13, ILS/DME RWY 27, Amdt.8
Marianna, FL—Marianna Muni, NDB–C, Amdt. 2
Jefferson City, MO—Jefferson City Meml, ILS RWY 30, Amdt. 1
Nashville, TN—Nashville International, LDA-DME RWY 2R, Amdt. 1
El Paso, TX—El Paso Intl, LOC/DME RWY 4, Amdt. 1

The FAA published an Amendment in Docket No. 25751, Amdt. No. 1389 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 242 Page 50513; dated Friday, December 16, 1988) under § 97.29 effective 12 January 1989, which is hereby amended as follows:

Denver, Co—Stapleton Intl, ILS RWY 36 Amdt. 3 is hereby rescinded, amendment 2 remains in effect.

[FR Doc. 89–33 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by SmithKline Animal Health Products. The NADA provides for the use of a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of SmithKline Animal Health Products' NADA 100–127. The NADA provides for using a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. This document removes the firm's drug labeler code from 21 CFR 558.630(b)(3), which is a required action after approval is withdrawn.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(3) by removing "000007."

Dated: December 28, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89–78 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–01–M

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 234

[Docket No. R-88-1427; FR-2542]

Disclosure of Annual Rate Changes of Adjustable Rate Mortgages (ARMs) and Carryovers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule will shorten the period for advance notice that a holder of an adjustable rate mortgage (ARM) must allow when it makes effective any annual adjustment to a mortgagor's monthly payment on the mortgage. The rule also eliminates the portions of 24 CFR 203.49(e) and 234.79(e) that discuss carryovers in ARM programs. The purpose of the change in the notice period is to conform HUD's practice to existing industry practice. The purpose of eliminating the discussion of carryovers is to eliminate confusion in HUD's rules caused by reference to a feature in the ARM program that has never been adopted in practice since the program was implemented in 1984.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Falkenstein, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6672.

SUPPLEMENTARY INFORMATION: This final rule revises 24 CFR 203.49(g) by changing HUD's disclosure requirement from "at least 30 days" to "at least 25 days" before any annual adjustment to a mortgagor's monthly payment on an adjustable rate mortgage becomes effective. HUD's disclosure change will conform with the existing practice in national banks, as authorized by the Comptroller of the Currency, as well as with a pending requirement of the Board of Governors of the Federal Reserve System.

The Department has determined that both changes covered by this rule should be adopted without the delay occasioned by requiring prior notice and comment. When the interim rule (49 FR 23580) now comprising §§ 203.49 and 234.79 was published on June 6, 1984, HUD received 12 comments, several of which focused on the potential for confusion over carryovers. At the time, the Department decided not to revise the rule in that regard unless, after monitoring the program, it found that the question of carryovers was in fact raising problems for lenders or borrowers. It now seems unlikely that HUD/FHA ARM programs will involve carryovers and offsets in the foreseeable future. Moreover, there have been occasional inquiries from lenders (and from borrowers during periods of declining interest rates) about the use of carryovers in FHA ARMs. The Department has therefore decided to remove the reference to carryovers from §§ 203.49 and 234.79. This decision does not call for further public comment since the issue has been addressed previously in interim rule, and since removal of the reference at this time simply mirrors HUD's policy over the four-year life of the program.

With respect to the change from 30 to 25 days' notice for annual adjustments, HUD observes that the Federal Reserve Board considered imposing a 30-day notice requirement in its November 24, 1986 proposal to amend Regulation Z (51 FR 422451). However, as the preamble to the Board's final rule explained:

> • • • [s]everal commenters addressed the proposed requirement for advance notice of interest rate and payment adjustments. The primary criticism was that the advance notice was required at least 30 days before the effective date of an interest rate adjustment and not before a payment at the new level is due, as is currently required by the OCC. The commenters stated that this proposed requirement would cause problems for lenders offering short-term ARMs that closely track changes in the index values. Some commenters recommended reducing the number of days before an adjustment that notice is required and clarifying that notice should be given before a payment at a new level is due. 51 FR at 48666.

Accordingly, the Board adopted a 25-day requirement. The class of persons affected by HUD's timing change in the present rule is included in the class affected by the Board's decision, and the response of interested persons in the Regulation Z Docket is a matter of public record. It appears that no benefit would inure from an invitation by HUD for further comment. Moreover, the matter should be resolved quickly; HUD's change is intended to coordinate with action by the Board and other Federal agencies in simplifying and unifying both annual and pre-application disclosure requirements for ARMs. Compliance with the Regulation Z changes were required as of October 1, 1988, and optional before that date.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have significant economic impact on a substantial number of small entities, because the change in the notice period is not considered to be a serious burden upon any borrower, and because the carryover provisions affected by the rule have never been, in fact, implemented.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule pertains only to the regulation of lenders insured by the Federal Housing Administration, and presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule has only incidental effect on the procedural details of operation of a HUD insurance program, and no significant relationship to family-related issues is evident.

This rule was listed as item 984 in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 41995) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Relocation Act of 1980 (Pub. L. 46-511) and have been assigned OMB control number 2502-0322.

List of Subjects

24 CFR Part 203

Home improvements, Loan progams: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the Department amends 24 CFR Parts 203 and 234 as follows:

1. The authority citation for 24 CFR 203 continues to read as follows:

Authority: Sec. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d). In addition, Subpart C also is issued under Sec. 230, National Housing Act (12 U.S.C. 1715u).

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

2. Sections 203.49(e)(1), (f)(1), and (g) are revised to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * * *

(e) * * *

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

* * * * * *

(f) * * *

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

* * * * * *

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

* * * * * *

3. The authority citation for 24 CFR 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act, (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Sections 234.79 (e)(1), (f)(1), and (g) are revised to read as follows:

§ 234.79 Eligibility of adjustable rate mortgages.

* * * * * *

(e) * * *

(1) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index charges in excess by one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

* * * * * *

(f) * * *

(1) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(g) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the morgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

* * * * * *

Date: October 27, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-71 Filed 1-3-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 177

San Carlos Irrigation Project, Arizona

September 30, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register**, Volume 52, Number 237, December 10, 1987, a proposed rule to amend the pertinent sections of the regulations governing the charges and costs assessed the power customers for electric power, energy and associated services provided by the San Carlos Irrigation Project (SCIP), Arizona.

This action increases Rate Schedules No. 1 and No. 2 of 25 CFR 177. The new rates reflect the increased operating costs associated with labor, equipment and supplies, as well as costs of project rehabilitation, repayment of the federal investment in the project and payment of operation and maintenance expenses.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Project Engineer or Jim Ong, Jr., Power Manager, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, Telephone: (602) 723-5439.

SUPPLEMENTARY INFORMATION: This action increases the electric power assessment rates for electric power service given under Rate Schedule No. 1—Residential Rate and Rate Schedule No. 2—General Rate at Sections 177.51 and 177.52, respectively, of the Code of Federal Regulations, Title 25—Indians.

The Bureau of Indian Affairs, Phoenix Area Office, has received three (3) written comments in response to the proposed rule. The first letter, in the order of receipt, was from Mr. Don L. Weesner, General Manager for the San Carlos Irrigation and Drainage District (District). The initial area of concern to the District was the possible inability of the SCIP to compete with Arizona Public Service in serving large loads such as the federal facility at Florence, Arizona. The District felt that the proposed general rate schedule that would be applicable to the facility would reduce

the price advantage of electric power service provided by SCIP.

The Bureau realizes that the proposed general rate schedules will decrease the price advantage that SCIP currently provides, but the new rates will still provide a competitive advantage over the rates offered by the neighboring electric utility companies within the service area. Without the proposed increase, SCIP would not be able to generate the revenues needed to upgrade the system required to service its current as well as future industrial and governmental loads.

The District's second concern relates to the impact the proposed rates would have upon customers who operate private irrigation pumps. In order to minimize the possible adverse economic impact upon this class of customers, the District has recommended establishment of a separate rate schedule specifically for private irrigation pumping. The recommendation merits further consideration: however, SCIP is not in a position to establish a separate rate schedule for private irrigation pumping at the present time. The proposed rate schedules were developed from a rate study which considered the proportionate overall economic contribution of all SCIP customers within the schedules No. 1 and No. 2.

The second written comment received by the Bureau of Indian Affairs was from Mr. Thomas R. White, Governor, Gila River Indian Community. His first concern related to the justification for the rate schedules as proposed. As explained in the proposed rules published in the **Federal Register** on December 10, 1987, the last assessment rate increase for the San Carlos Irrigation Project—Power Division was five years ago. Since that time, normal costs for labor, materials and supplies needed to deliver safe, reliable, and efficient power and energy to all of its customers has increased substantially. The revenues generated from the assessment rate increases will enable us to continue the rehabilitation and upgrading program that is currently in progress. For instance, the Lone Butte Substation recently completed and energized on the Gila River Reservation. This substation provides a power and energy delivery point to the Gila River Indian Reservation.

Mr. White recommended that SCIP provide a detailed plan of improvements and rehabilitation to the system so the power customers will be assured of a systematic approach to the rehabilitation program. A rehabilitation and betterment report is available in the Project office.

Further, Mr. White expressed concern related to the assessment rate increase in the midst of H.R. 2060, a bill to direct the Secretary of the Interior to divest of certain utility systems without a plan of improvements. In 1984, the Bureau of Indian Affairs, Phoenix Area Office, prepared for the project Engineer a draft Rehabilitation and Betterment Report for the San Carlos Irrigation Project Power System. The Report (Plan) was presented to both the District and Gila River Indian Community for their review and comment. The Plan provided a construction schedule and cost estimates for the rehabilitation and betterment of the entire power system. Until relieved of its responsibility by enactment of the proposed legislation and actual divestiture of the power system by the United States, SCIP has a continuing obligation to operate, maintain and replace the facilities of the power system.

The third letter received by the Bureau of Indian Affairs was from Mr. Steve Jones, Executive Director of the Gila River Indian Housing Authority. The concern expressed in his letter was the financial hardship the assessment rate increase may have upon the low-income families. The "Electric Rate Study" prepared by the San Carlos Irrigation Project in January 1984 in support of the assessment rate increases recognized the probable impacts upon the low-income families within the whole service area. Exhibit B, page 2 of that Study reads, "The Project's residential customers that have a low KwH usage per month, are characterized by a low fixed income; therefore, it is determined that no increase in the minimum bill will be recommended at this time." Rate Schedule No. 1—Residential, provides the same minimum bill of $10.74 per month which includes the first 50 KwH of energy as is currently in effect. Increases for low and/or fixed income families will occur after consumption of energy in excess of 50 KwH.

Finally, one statement in the Federal Register notice of the proposed rate schedules must be changed as a result of advice received from the Solicitor's Office of the Department of the Interior. In discussing where power revenues will be spent in the future, the Federal Register notice stated that: "The additional revenues will allow the Project to meet its statutory repayment requirements and also enable the Project to apply funds towards the operation and maintenance of the irrigation system."

In a recent opinion, the Phoenix Field Solicitor held that there is no statutory authority which would allow the Project to use power revenues to cover irrigation system operation, maintenance and rehabilitation (OM&R) costs. The Field Solicitor held that under the Act of March 7, 1928 (45 Stat. 210–211), as amended (49 Stat. 1822–1823) power revenues obtained from the sale of project—generated power may be applied to irrigation system OM&R costs only after the total construction debt has been repaid. The Field Solicitor's opinion also stated there is no authority in the Act of August 7, 1946 (60 Stat. 895–896), to use power revenues obtained from the sale of purchased power to cover irrigation system OM&R costs.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary--Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. In monetary terms, the economic effects of the proposed amendment will be below $100 million and do not meet the other tests for a major rule under E.O. 12291. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The expected effect on the approximately 1,500 individual and commercial electric power meters will be small and insignificant; and, in monetary terms, the proposed action involves approximately $750,000 of additional revenue per year for the Project. The anticipated impacts on competition, employment, investment and the general economic environment are minimal and insignificant. Furthermore, the Department has determined that this document does not constitute a major Federal action significantly affecting the human environment which would require preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act. The information collection requirement in Section 177.4 has been approved by the Office of Management and Budget under the Paper Work Reduction Act (44 U.S.C. 3501 et seq.) and assigned clearance number 1076–0021.

The principal authors of this document are Jim Ong, Jr., Power Manager, Bureau of Indian Affairs, San Carlos Irrigation Project, Coolidge, Arizona 85228, Telephone Number (602) 723–5439 and Mort S. Dreamer, Irrigation and Power Engineer, Bureau of Indian Affairs, Office of Trust and Economic Development, Division of Water and Land Resources, MS–4559–MIB, Washington, DC 20240, Telephone Number (202) 343–5696.

List of Subjects in 25 CFR Part 177

Electric power, Indian-lands, Irrigation.

For the reasons set out in the preamble, Part 177 in Chapter I of Title 25 of the Code of Federal Regulations is amended as follows:

PART 177—[AMENDED]

1. The authority citation for Part 177 continues to read as follows:

Authority: Sec. 5, 43 Stat. 476; 45 Stat. 210, 211; 5 U.S.C. 301.

2. Section 177.51 is amended by revising paragraphs (b) and (c) as follows:

§ 177.51 Rate schedule No. 1—Residential rate.

* * * * *

(b) Monthly rate. (1) $10.74 minimum which includes the first 50 Kilowatt-hours.

(2) 11.7 cents per kilowatt-hour for the next 100 kilowatt-hours.

(3) 7.5 cents per kilowatt-hour for the next 350 kilowatt-hours.

(4) 6.3 cents per kilowatt-hour for all additional kilowatt-hours.

(c) Minimum bill. The minimum bill shall be $10.74 per month except when a higher minimum bill is stipulated in the contract.

* * * * *

3. Section 177.52 is amended by revising paragraphs (b) and (c) to read as follows:

§ 177.52 Rate schedule No. 2—General rate.

* * * * *

(b) Monthly rate. (1) $13.87 minimum which includes the first 50 kilowatt-hours.

(2) 16.8 cents per kilowatt-hour for the next 350 kilowatt-hours.

(3) 9.9 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.6 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $843.07.

(6) Additional kilowatt-hours at 6.17 cents per kilowatt-hour, less a credit of 0.9 cents per kilowatt-hour for each kilowatt/hour above 200 times the billing demand (50 kw minimum).

(c) Minimum bill. The minimum bill shall be $3.06 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then, the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billings shall be less than $13.87.

* * * * *

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–18 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 27–88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Civil Division, is amending 28 CFR Part 16 to exempt four systems of records from certain provisions of the Privacy Act, 5 U.S.C. 552a. Specifically, the Division is exempting the Civil Division Case File System/JUSTICE/CIV–001, and the Freedom of Information/Privacy Acts File System, JUSTICE/CIV–005, from subsections (c) (3) and (4), and (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g). These exemptions are necessary to protect the confidentiality of civil investigatory and criminal law enforcement materials and of properly classified information. In addition, the Division is exempting the Consumer Inquiry/Investigatory System, JUSTICE/CIV–006, from subsections (c) (3) and (4), (d), (e)(1) and (e)(5), and the Congressional and Citizen Correspondence File, JUSTICE/CIV–007, from subsection (d). These exemptions are needed to protect the integrity of civil investigatory and criminal law enforcement materials.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark 202–272–6474.

SUPPLEMENTARY INFORMATION: A proposed rule with an invitation to comment was published in the **Federal Register** on January 29, 1988. The public was given 30 days in which to comment. The Office of Management and Budget (OMB) questioned the exemption of the Civil Division Case File System under section (j)(2) of the Privacy Act. The Department has advised OMB that the Consumer Litigation Branch of the Civil Division has responsibility for the prosecution of criminal statutes, such as the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), as well as civil statutes. Accordingly, this system of records is appropriately exempted pursuant to subsection (j)(2). Without the exemption, the criminal law enforcement records in this system could not be legally protected from disclosure.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy and Sunshine Acts.

Authority: The authority for this rule is 5 U.S.C. 552a. Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, the Department is amending 28 CFR Part 16 by adding § 16.89 as set forth below.

Date: December 16, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows.

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483 unless otherwise noted.

2. 28 CFR is amended by adding § 16.89 to read as follows:

§ 16.89 Exemption of Civil Division Systems—limited access.

(a) The following systems of records are exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G) and (H), (e)(5), (e)(8), and (g); in addition, the following systems of records are exempted pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H):

(1) Civil Division Case File System, JUSTICE/CIV–001.

(2) Freedom of Information/Privacy Acts File System, JUSTICE/CIV–005.

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Only that information which relates to the investigation, prosecution, or defense of actual or potential criminal or civil litigation, or which has been properly classified in the interest of national defense and foreign policy is exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual (and others to whom the subject might disclose the records) of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and others to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4), (e)(4) (G) and (H), and (g).* These provisions are inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) *Subsection (d).* To the extent that information contained in these systems has been properly classified, relates to the investigation and/or prosecution of grand jury, civil fraud, and other law enforcement matters, disclosure could compromise matters which should be kept secret in the interest of national security or foreign policy; compromise confidential investigations or proceedings; hamper sensitive civil or criminal investigations; impede affirmative enforcement actions based upon alleged violations of regulations or of civil or criminal laws; reveal the identity of confidential sources; and result in unwarranted invasions of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(2).* To collect information from the subject of a criminal investigation or prosecution would present a serious impediment to law enforcement in that the subject (and others to whom the subject might be in contact) would be informed of the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) *Subsection (e)(3).* To comply with this requirement during the course of a criminal investigation or prosecution could jeopardize the investigation by disclosing the existence of a confidential investigation, revealing the identity of witnesses or confidential informants, or impeding the information gathering process.

(7) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(8) *Subsection (e)(8).* To serve notice would give persons sufficient warning to evade law enforcement efforts.

(c) The following system of records is exempted pursuant to 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e)(1) and (e)(5); in addition, this system is also exempted pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), and (e)(1).

Consumer Inquiry/Investigatory System, JUSTICE/CIV–006.

These exemptions apply only to the extent that information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(d) Only that information compiled for criminal or civil law enforcement purposes is exempted for the reasons set forth from the following subsections:

(1) *Subsections (c)(3).* This system occasionally contains investigatory material based on complaints of actual or alleged criminal or civil violations. To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him/her would inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) *Subsections (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d).* Disclosure of information relating to the investigation of complaints of alleged violation of criminal or civil law could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) *Subsection (e)(1).* In the course of criminal or civil investigations, cases, or matters, the Civil Division may obtain information concerning the actual or potential violation of laws which are not strictly within its statutory authority. In the interest of effective law enforcement, it is necessary to retain such information since it may establish patterns of criminal activity or avoidance of other civil obligations and provide leads for Federal and other law enforcement agencies.

(5) *Subsection (e)(5).* In compiling information for criminal law enforcement purposes, the accuracy, completeness, timeliness and relevancy of the information obtained cannot always be immediately determined. As new details of an investigation come to light, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can often only be determined in a court of law. Compliance with this requirement would therefore restrict the ability of government attorneys in exercising their judgment in developing information necessary for effective law enforcement.

(e) The following system of records is exempt pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) from subsection (d):

Congressional and Citizen Correspondence File, JUSTICE/CIV–007.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C 552a (j)(2) and (k)(2).

(f) Only that portion of the Congressional and Citizen Correspondence File maintained by the Communications Office which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsection:

(1) *Subsection (d).* Disclosure of investigatory information would jeopardize the integrity of the investigative process, disclose the identity of individuals who furnished information to the government under an express or implied promise that their identities would be held in confidence, and result in an unwarranted invasion of the privacy of others. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

[FR Doc. 89–16 Filed 1–3–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska State Plan; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends Subpart R of 29 CFR Part 1952 to reflect a change in the level of Federal enforcement in the State of Alaska. Federal enforcement authority is now being exercised over private sector employers working within the boundaries of Denali (Mount McKinley) National Park.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, U.S. Dept. of Labor, 200 Constitution Ave., NW., Room N3649, Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) announcing initial approval of the Alaska State plan and the adoption of Subpart R to Part 1952 containing the decision. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending Subpart R of Part 1952.

By letter dated September 29, 1986, from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State requested the Federal Occupational Safety and Health Administration (OSHA) to resume jurisdiction and enforcement authority over private sector employers working within the boundaries of Denali (Mount McKinley) National Park.

This action was taken as a result of an inspection the State conducted of a private sector employer at the Park. Because of the employer's questioning of the State's jurisdiction, the Alaska Attorney General reviewed the case and issued an opinion that section 11(a) of the Alaska Statehood Act, by providing for exclusive Federal jurisdiction within Denali National Park, specifically precludes the State from enforcing civil or criminal laws and regulations within the boundaries of the Park. Therefore, private sector employers working within the boundaries of Denali (Mount KcKinley) National Park are under Federal OSHA jurisdiction.

Regulatory Assessment

Amendment of Part 1952 is not a "major" action as defined by Executive Order No. 12291 (46 FR 13193, February 19, 1981) as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. Amendment of Part 1952 will not constitute a "major rule" primarily because no additional requirements will be imposed on employers, since Alaska's occupational safety and health standards are substantially similar to Federal OSHA's.

For the same reason it is certified that pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601) amendment of Part 1952 will not have a significant economic impact on a substantial number of small entities.

Public Participation

The purpose of the present rule is to amend 29 CFR 1952.242 to reflect the change to the level of Federal enforcement described above. The Assistant Secretary has determined that good cause exists for publication of the amendment as a final rule with an immediate effective date because the change is procedural in nature and is the result of a legal interpretation of an existing State statute. Accordingly, public participation would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, this 20th day of December, 1988.

John A. Pendergrass,

Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, 29 CFR Part 1952 is amended as follows:

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

2. Paragraph (b) of § 1952.243 is revised to read as follows:

§ 1952.243 Final approval determination.

* * * * *

(b) The plan which has received final approval covers all activities of employers and all places of employment in Alaska except: The issue of private sector maritime employment, operations of private sector employers within the Metlakatla Indian Community on the Annette Islands, operations of private sector employers within Denali (Mount McKinley) National Park, and worksites located on the navigable waters, including artificial islands.

* * * * *

3. Paragraph (b) of § 1952.244 is revised to read as follows:

§ 1952.244 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National

Park, and with respect to Federal government employers and employees.

* * * * *

[FR Doc. 89-20 Filed 1-3-89; 8:45 am]
BILLING CODE 4310-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Approval of the Abandoned Mine Land Reclamation Plan of the Crow Tribe Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA)

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: In 1982, the Crow Tribe (the Tribe) submitted its proposed Abandoned Mine Land Reclamation Plan entitled "Crow Tribe of Indians Abandoned Mine Lands Reclamation Plan" (the Plan) to OSMRE under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published notice of its receipt and requested public comments on the adequacy of the proposed Plan on May 18, 1982 in the **Federal Register**, (FR) 47 FR 21274–21276. The public comment period remained open since 1982, and no further action was taken at that time due to the lack of authorizing legislation under section 710 of SMCRA.

On July 11, 1987, legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation programs without prior approval of Tribal surface mining regulatory programs. On October 25, 1988 OSMRE published notice of proposed rule and closing of comment period, 53 FR 42976–42977, for consideration of adequacy of the Crow Tribe's Abandoned Mine Land Reclamation (AMLR) Plan. After consideration of the comments received and minor revisions the Tribe made to the Plan, the Assistant Secretary for Land and Minerals Management of the Department of the Interior has determined that the Crow Tribe AMLR Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Crow Tribe AMLR Plan.

This final rule is being made effective January 4, 1989, in order to expedite the granting of abandoned mine land reclamation funds to the Crow Tribe so that it can implement its AMLR Program and undertake Tribal reclamation projects to protect the public health and safety.

EFFECTIVE DATE: January 4, 1989.

ADDRESSES: Copies of the full text of the Crow Tribe AMLR Plan are available for review during regular business hours at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed AMLR Plan
III. Assistant Secretary's Findings
IV. Public Comment
V. Assistant Secretary's Decision
VI. Procedural Matters

I. Background

Title IV of SMCRA, establishes an Abandoned Mine Land Reclamation (AMLR) program for the purpose of reclaiming land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed on coal production. Lands and waters eligible for reclamation under Title IV include those that were mined or were affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing responsibility for reclamation under State, Federal, or Tribal laws.

Title IV provides for State or Tribal submittal to OSMRE of an AMLR program. The Secretary adopted regulations in 30 CFR Part 870 through 888 that implement Title IV of SMCRA. Under those regulations the Secretary is required to review reclamation plans and solicit and consider comments of State and Federal agencies and the public. Based on such comments and review, the Secretary will determine if a State or Tribe has the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary may approve a State or Tribal program and grant the State or Tribe exclusive authority to administer its approved program.

Ordinarily, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR program to OSMRE as required by Section 405 of SMCRA. However, on July 11, 1987, President Reagan signed legislation that authorized the Crow, Hopi, and Navajo Tribes to obtain Abandoned Mine Land Reclamation programs without prior approval of regulatory programs.

States and Indian Tribes are also allowed to request authority to conduct emergency response reclamation activities. Guidelines for AMLR Plan provisions concerning assumption of emergency response authority were published on September 29, 1982, 47 FR 42729 and provide the applicable criteria by which to judge the adequacy of AMLR Plan provisions. Emergency reclamation activities are set forth in Section 410 of SMCRA. The Crow Tribe has not requested emergency response authority.

II. Proposed AMLR Plan

In 1982 the Crow Tribe submitted to OSMRE its proposed Abandoned Mine Land Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 CFR Chapter 7, Subchapter R) as published in the **Federal Register** on June 30, 1982, 47 FR 8574–28604. OSMRE requested public comment on the adequacy of the Tribe's Plan, 47 FR 21274–21276 (May 18, 1982), and left the comment period open pending authorizing legislation.

On July 11, 1987 legislation was enacted authorizing the Crow, Hopi, and Navajo Tribes to obtain abandoned mine land reclamation program without first having to obtain approval of a Tribal surface mining regulatory program. In response to the newly enacted legislation, OSMRE reopened its review of the Crow Tribe's Plan. OSMRE reviewed the Plan in September 1987 and provided the Tribe suggestions for revising and updating the Plan to meet the requirements of SMCRA. The Tribe made a number of revisions to the Plan and on September 9, 1988, resubmitted a revised and updated Abandoned Mine Land Reclamation Plan. On the October 25, 1988 **Federal Register**, 53 FR 42976–42977, OSMRE announced the proposed rule and gave notice for closing the comment period. At the end of the comment period, November 25, 1988, some comments were received but no requests were received for a hearing or meetings. In response to minor internal comments from OSMRE the Crow Tribe revised its Plan in accordance with OSMRE's suggestions.

All of the events described above are documented in the Title IV Administrative Record of the Crow Tribe. The Administrative Record is available for public review at the OSMRE Casper Field Office in Wyoming, whose address is listed above.

The proposed AMLR Plan would provide authority for the Crow Tribe to conduct a reclamation program on Crow (Indian) lands as that term is defined in section 701(9) of SMCRA (see reference to "Indian lands" in 30 CFR 872.11(b)(3)). Indian lands occur within and outside traditional Reservation boundaries. Although there may be certain jurisdictional limitations to the Tribe's authority to undertake certain reclamation actions outside the Reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties.

III. Assistant Secretary's Findings

The Assistant Secretary finds that the Crow Tribe submitted a Plan for the reclamation of abandoned mine lands pursuant to the provisions of Pub. L. 100–71 and SMCRA. Based on a review of that submission, the Assistant Secretary also finds that:

1. Adequate provisions were made for public comment in the development of the Plan;
2. Views of other Federal agencies having an interest in the Plan were solicited and considered;
3. The Tribe has the legal authority, policies, and administrative structure necessary to carry out the proposed Plan;
4. The Plan meets all the requirements of Subchapter R of 30 CFR Chapter VII regulations and of SMCRA;
5. The Plan meets all the requirements of all applicable Tribal and Federal laws and regulations;
6. The Crow Tribe has not requested authority to assume emergency response authority as set forth in Section 410 of SMCRA.
7. The Crow Tribe AMLR Plan, including amendments thereto, addresses all Plan requirements specified in 30 CFR 884.13.

IV. Public Comment

The following comments on the Crow Tribe's Plan were received by OSMRE and considered by the Assistant Secretary in making the determination that the Crow Tribe AMLR Plan will be approved:

1. A comment was received questioning the definition of Crow Tribal lands and inquired to what extent the jurisdiction of the Crow Tribe AMLR Plan affect fee and allotted owners within the reservation boundaries.

OSMRE's responds that the proposed AMLR Plan would provide authority to the Crow Tribe to conduct reclamation activities on Crow lands as defined in the Crow Code at Section 701(a)(4). This AMLR Plan cannot, however, confer to the Tribe jurisdictional rights over lands beyond those encompassed in the definition of Indian Lands as found at Section 701(9) of SMCRA and as interpreted by its regulations.

According to the SMCRA definition, Indian lands may be located either within or outside the exterior boundaries of any Federal Indian reservation. With regard to lands located within the reservation boundaries, the SMCRA definition expressly provides that "* * * all land, including mineral interests, within the exterior boundaries of any Federal Indian reservation * * *" are Indian lands. Therefore, within the reservation boundaries, all lands, including mineral interests whether they represent individual Indian allotments or lands owned in fee, are Indian lands.

With regard to lands located outside the reservation boundaries, the SMCRA definition does not provide clear guidance as to whether individual Indian allotments and Tribal fee lands are to be considered Indian lands. This issue has been and still is a source of continuing litigation. In an effort to clarify some of the controversy surrounding the jurisdictional status under SMCRA of individual Indian allotments and Tribal fee lands, OSMRE is in the process of promulgating a final Indian lands rule which should provide further guidance on this issue.

Although there may be certain jurisdictional limitation to the Tribe's authority to undertake certain reclamation activities outside the reservation, the Tribal AMLR Plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake the reclamation program without violating the jurisdictional rights of other parties.

2. Another comment questioned if the Crow Tribe AMLR Plan defined the nature of experience necessary for staff members who will be administering the program.

OSMRE's and the Crow Tribe response is that experienced management personnel currently exist within the Crow Office of Reclamation (COR) of the Crow Tribe's Abandoned Mine Lands (AML) Program. It is the intention of OSMRE to provide AML funds to be used to provide adequate training to the COR staff members associated with the AML administrative and construction activities. In addition, the AMLR Plan requires that an independent Certified Public Accountant (CPA) participate and oversee all financial management activities to assure that accountability is maintained within the Crow Tribe AML Program.

3. A third comment raised a concern relative to what type of review and audit strategy would be implemented to assure that a competent program is administered.

OSMRE's response is that the Crow Tribe's AML activities will be reviewed periodically by OSMRE's oversight. The oversight activities within the Crow Tribe's financial management area will be complimented by a monthly status report prepared by the independent CPA responsible for reviewing the financial management system. In addition, the Crow Tribe's AML Program will fall within the purview of the Office of Management and Budget (OMB) Circular A–128, *Audits of State and Local Governments*. The Circular requires that annual audits be performed by an independent auditor in accordance with generally accepted auditing standards.

OSMRE presented to the Tribe comments of an editorial nature and for consistency purposes requested minor modifications to the Plan. The Tribe subsequently made all the minor revisions suggested and resubmitted the affected pages of the Plan. The Assistant Secretary has determined that these revisions are insignificant in nature and accordingly require no further public comment.

V. Assistant Secretary's Decision

The Assistant Secretary for Land and Minerals Management, based on the above findings and review and consideration of public comments, is approving the Crow Tribe AMLR Plan under the provisions of 30 CFR 884.14, as submitted in 1982 and revised in September 1988. A new § 756.17 of Part 756 is being added to 30 CFR Chapter VII, Subchapter E—Indian Lands Program—to implement this decision. This approval, however, does not encompass the emergency response authority set forth in section 410 of SMCRA.

VI. Procedural Matters

1. Executive Order No. 12291 and the Regulatory Flexibility Act

OSMRE examined this final rulemaking under Executive Order 12291 and has determined that on November 23, 1987, the OMB granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or

disapproval of State reclamation plans or amendments. Therefore, the action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of Interior determined that this document will not have a significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance With the National Environmental Policy Act

Furthermore, OSMRE determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval from the Office of Management and Budget under 44 U.S.C. 3507.

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) The Crow Tribe is staffed and prepared to administer the abandoned mine land reclamation program, and (2) OSMRE wishes to expedite grant assistance to the Tribe to initiate reclamation work.

List of Subjects in 30 CFR Part 756

Indian lands, Abandoned Mine Land Reclamation Program.

James E. Carson,

Deputy Assistant Secretary—Land and Minerals Management.

Date: December 21, 1988.

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The Authority citation for Part 756 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. A new § 756.17 is added to read as follows:

§ 756.17 Approval of the Crow Tribe's Abandoned Mine Land Reclamation Plan.

The Crow Tribe's Abandoned Mine Land Reclamation Plan as submitted in 1982, and resubmitted in September, 1988 is approved. Copies of the approved Plan are available at the following locations:

Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, Montana 59022.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, Wyoming 82601–1918.

[FR Doc. 89–79 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSMRE is announcing his approval, with certain reservations, of the proposed definition of "valid existing rights" (VER) submitted by the State of Illinois as an amendment to its regulatory program (hereinafter referred to as the Illinois program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Among other changes, the amendment replaces the "good faith all permits" test and judicially determined "takings" test contained in the previous definition with an administratively determined "takings" test. The amendment is intended to expedite the VER determination process and to lessen litigation.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 East Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program.
II. Submission and Review of Amendment.
III. Director's Findings.
IV. Disposition of Comments.
V. Director's Decision.
VI. Procedural Requirements.

I. Background on the Illinois Program

Information concerning the general background on the Illinois program submission and the approval process, as well as the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23858). Subsequent actions taken with regard to the conditions of approval and proposed program amendments can be found at 30 CFR 913.11, 913.15, 913.16 and 913.17.

II. Submission and Review of Amendment

By letter dated March 28, 1986 (Administrative Record No. IL–1028), Illinois proposed extensive revisions to virtually all the regulations contained within its program. OSMRE announced receipt of and solicited public comment on the proposed amendments by notice published in the **Federal Register** on May 9, 1986 (51 FR 23858).

By letter dated July 22, 1986 (Administrative Record No. IL–1038), OSMRE notified Illinois of certain areas in which the proposed amendments appeared to be less effective than the Federal regulations or in conflict with the decisions of the United States District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation (II)* (Civil Action No. 79–1144, D.D.C. 1984 and 1985), hereinafter referred to as *In re: Permanent II.* Illinois subsequently revised and resubmitted the amendments on May 22, 1987 (Administrative Record No. IL–1029A). OSMRE announced the resubmission and reopened the public comment period by notice published in the **Federal Register** on June 26, 1987 (52 FR 24035). Extensive public comments were received in response to both notices; however, since no one requested a public hearing, none was held.

With minor exceptions, OSMRE approved these amendments on October 25, 1988 (53 FR 43112). However, in the **Federal Register** decision notice published on that date, the Director temporarily deferred a decision on the proposed definition of VER in 62 IAC Part 1701 until further public comment could be sought on the additional information resulting from a meeting of Illinois, OSMRE and Interior officials on October 17, 1988. At that meeting the State advanced further arguments for approval of the definition (Administrative Record No. IL–1056). OSMRE simultaneously published a notice reopening the comment period on this definition until November 9, 1988 (53 FR 42973, October 25, 1988).

III. Director's Findings

Background on Definition

Illinois proposed to revise the definition of valid existing rights in 62 IAC 1701. Appendix A (also known as

62 IAC 1701.5) to resemble the language in the corresponding Federal definition at 30 CFR 761.5, as promulgated on September 14, 1983. However, on March 22, 1985, in *In re: Permanent II*, the U.S. District Court for the District of Columbia remanded portions of this definition to the Secretary because he had failed to provide the public with adequate notice and opportunity to comment on the revised provisions. The remanded portions of the definition include those provisions of paragraphs (a) and (d) which would authorize use of the "takings" test to determine whether a person possesses VER. The court also remanded paragraph (c) to the extent that it would expand VER under the "needed for an adjacent" test to include lands for which the claimant had not acquired the necessary property rights prior to August 3, 1977. For further explanation of these terms and the court's decision, see the preamble to the **Federal Register** notice suspending these portions of the Federal definition (51 FR 41954–41955, November 20, 1986).

The Illinois program as approved on June 1, 1982, and reviewed again on April 5, 1984, 49 FR 13494, contained provisions similar to those remanded by the Federal court. The approval of these provisions was subsequently upheld by the U.S. District Court for the Central District of Illinois (*Illinois South Project* v. *Watt*, C.A. 82–2229), based on the September 14, 1983, revisions to the Federal definition. However, the plaintiffs appealed this decision and on March 30, 1988, the U.S. Court of Appeals for the Seventh Circuit ruled that an approval based on a defective (remanded) Federal regulation cannot stand (*Illinois South Project* v. *Hodel*, C.A. 87–2366, hereinafter referred to as *ISP v. Hodel*). The Appeals Court ordered the District Court to remand the approval of the Illinois VER definition to the Secretary for reconsideration under whatever regulation is currently in force. The District Court remanded the issue on June 22, 1988.

Finding 1: Takings Test

Illinois and the National Coal Association originally challenged the March 13, 1979, Federal definition of VER on the grounds that it violated the Congressional intent that VER encompass property rights recognized as valid under State case law. In *In re: Permanent Surface Mining Regulation Litigation I* (Civil Action No. 79–1144, February 26, 1980), the U.S. District Court for the District of Columbia found ample support for this contention and the Secretary conceded the point. The court further noted that the Secretary's action rendered moot Illinois' objection that the Federal rules directed the regulatory authority to determine the existence of VER without reference to applicable State court decisions on property rights. Therefore, by implications, SMCRA requires that VER be determined (and defined) in accordance with State case law.

In the case of Illinois, the Secretary has previously accepted the State's argument that its use of a takings analysis in determining VER is appropriate and necessary under Section 15, Article 1 of the Illinois Constitution as construed by the Illinois courts (Finding 30.2; 47 FR 23866, June 1, 1982, with further discussion at 49 FR 13499, April 5, 1984). Federal case law and the regulatory development of the Federal VER definition on this point have not changed.

For the reasons set forth in this preamble, the Director continues to find that inclusion of a takings test within the Illinois definition of VER is consistent with section 522(e) of SMCRA as interpreted by the U.S. District Court.

When the U.S. District Court in *In re: Permanent II* remanded those portions of the 1983 Federal VER definition authorizing use of the takings test on March 22, 1985, it did so on procedural rather than substantive grounds. Consequently, while the U.S. Court of Appeals for the Seventh Circuit, in *ISP v. Hodel*, remanded OSMRE's approval of the Illinois definition to the extent that the approval was based on the remanded 1983 Federal definition, it did not preclude or prohibit OSMRE from approving the takings test as part of the Illinois definition. Indeed, the court noted in its opinion that "perhaps the Secretary could have approved Illinois' proposal under the 1979 regulation, but he did not" (Mem. op. at 5). The court further specified that any substantive decision would have to be based on those portions of the 1979 Federal definition which regained currency following the remand of the 1983 definition which, for the purpose of this finding, means the good faith all permits test. See 45 FR 51548 (August 4, 1980).

As discussed at 43 FR 14992, March 13, 1979, the legislative history of SMCRA clearly indicates that one intent of Congress in providing the VER exemption from the prohibitions and limitations of section 522(e) of SMCRA was to avoid a regulatory taking of property for which compensation would have to be paid under the Fifth and Fourteenth Amendments to the U.S. Constitution. In 1979, OSMRE's preamble to the definition of VER stated that:

> The legislative history of the Act indicates that Congress wanted to avoid any taking in the implementation of section 522(e) (Congressional Record, April 20, 1977, H–3827). There Congressman Udall opposed an amendment to delete the VER clause from the Act. He stated that if VER were deleted, the Act would not preserve valid legal rights which could not be done without "paying compensation under the Fifth Amendment to the Constitution." Thus, OSM has endeavored to determine the point at which payment would be required because a taking had occurred, then to define "valid existing rights" in those terms, i.e., those rights which cannot be affected without paying compensation. * * * OSM has concluded that VER could be defined in a variety of ways and still avoid an unconstitutional taking. OSM recognizes, however, that in deciding the validity of this definition, the courts will focus on particular fact situations, including how much harm would be caused by the mining operation and whether the property owner still has some reasonable remaining use of the land. (44 FR 14992, March 13, 1979.)

Furthermore, OSMRE explained the 1979 definition of VER as more open-ended than adherence to a rigid "good faith all permits" test:

> OSM believes, however, that VER is a site-specific concept which can be fairly applied only by taking into account the particular circumstances of each permit applicant. OSM considered not defining VER, which would leave questions concerning VER to be answered by the States, the Secretary and the courts at later times. Without a definition, however, many interpretations of VER would be made and no doubt challenged by both operators and citizens; and once valid existing rights determinations are challenged, the permitting process would be delayed. OSM has therefore concluded that VER should be defined in order to achieve a measure of consistency in interpreting this important exemption. Under the final definition, VER must be applied on a case-by-case basis, except that there should be no question about the presence of VER where an applicant had all permits for the area as of August 3, 1977. (*Id.* at 14993.)

OSMRE summarized the 1979 definition by stating:

> In summary, OSM's final definition of VER is designed to avoid a taking which must be compensated and to be consistent with the guidance of the legislative history on this issue. (*Id.* at 14994.)

In determining whether a state regulation is no less effective than the Secretary's rule, the Secretary must first determine what is sought to be achieved by the Secretary's rule.

If the Secretary's rule has but one purpose, then the comparison is relatively straightforward. In such circumstances it involves determining whether the State rule is likely to be as successful as the Federal rule in

accomplishing the singular purpose intended.

When more than one purpose is served by the Secretary's rule and the pertinent provision of the statute, and where the purposes may seemingly conflict, the comparison between the Secretary's rule and the State rule involves balancing the overall effect of the two rules. In such circumstances, one rule may be more effective than the other in achieving one of the purposes, but less effective in achieving the other purpose. On an overall basis, however, one rule may be no less effective than the other in achieving all of the purposes of SMCRA regardless of whether an equivalence exists in achieving each individual purpose.

Section 522(e) of SMCRA is a section with more than one purpose. Although one intent of that section is to protect the areas enumerated in paragraphs (e)(1) through (e)(5) from the adverse effects of surface coal mining operations, a second central theme of that section is to recognize and to preserve valid property rights. A third theme is to avoid takings of property that would require compensation under the Fifth Amendment to the U.S. Constitution. These latter two purposes were expressly acknowledged by the U.S. Court of Appeals for the DC Circuit in a recent opinion concerning the validity of a portion of the Secretary's VER definition not involved in this proceeding. The court emphasized that the mining prohibitions of section 522(e) are not to be applied in a manner that interferes with property rights and stated that:

> Congress, however, limited the application of the surface mining proscriptions to avoid the infringement of existing property rights. (*National Wildlife Federation (NWF) v. Hodel*, 839 F.2d 694, 749 (D.C. Cir. 1988).)

After stating that "[n]either the statutory language nor the legislative history elaborate on the meaning of the phrase 'valid existing rights,' " the Court of Appeals concluded that the legislative history "does suggest that *Congress did not intend to infringe on valid property rights or effect takings through section 522(e).*" (*NWF v. Hodel*, 839 F.2d at 750, emphasis added).

In the same opinion, the Court of Appeals characterized an earlier statement by the U.S. Supreme Court as rejecting the "too-restrictive interpretation of VER" embodied in the all permits test within the Secretary's 1979 VER definition. The Court of Appeals stated:

> In *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264, 101 S. Ct. 2352, 69 L.Ed.2d 1 (1981), the [Supreme] Court found that the contention that VER applies only to mining operations for which all permits were issued by the date of enactment was compelled neither by the statute nor its legislative history. (*Id.* at 296 n. 37, 101 S.Ct. at 2370–71 n. 37. *NWF v. Hodel*, 839 F.2d at 750 n. 86.)

The Director has analyzed the proposed VER standard in light of the purposes of section 522(e) of SMCRA and the VER exception described above. He recognizes that in certain situations the Federal rule and the State rule may not be equivalent. For instance, in a situation involving a non-severed privately held estate (e.g., an inholding in a section 522(e)(1) area or within a section 522(e)(5) buffer zone), VER would likely be denied under the proposed Illinois VER definition even if an operator had applied for all necessary permits by August 3, 1977. Such a denial would likely occur because reasonable remaining use of the surface would continue to be available where mining would not be authorized. In this situation, the takings test would be more environmentally protective than the "good faith all permits" test.

In other circumstances, such as those involving severed mineral estates, the proposed Illinois definition could be more certain than the good faith all permits test to avoid a compensable taking.

Considering all of the purposes to be served by section 522(e), the Director finds that use of a takings test, as proposed by Illinois, is no less effective in meeting the requirements of SMCRA than is the "good faith all permits" test.

Finding 2: Needed for and Adjacent Test

The 1979 Federal definition of VER included a needed for and adjacent test allowing a person to claim VER if, as of August 3, 1977, he or she possessed a legally binding conveyance, lease, deed, contract or other document authorizing the applicant to conduct surface coal mining operations, and he or she could demonstrate that the coal is both needed for and adjacent to an ongoing surface coal mining operation for which all approvals and permits were obtained prior to August 3, 1977. The 1983 definition deleted the first of these requirements (ownership of rights as of August 3, 1977), although as explained in the preamble to that rulemaking (48 FR 41316, September 14, 1983), OSMRE did not intend to do so.

The preamble notwithstanding, on March 22, 1985, the U.S. District Court, in *In re: Permanent II*, remanded the revised needed for and adjacent test as promulgated on September 14, 1983, because it expanded the test to include lands for which the applicant had not obtained the requisite property rights as of August 3, 1977, and the Secretary had not provided adequate public notice and opportunity for comment on this expansion. Accordingly, by notice published in the November 20, 1986, **Federal Register** OSMRE suspended the 1983 needed for and adjacent test and reinstated its 1979 predecessor.

The current Illinois proposal, for which the State has provided adequate public notice and opportunity to comment, mirrors the language of the 1983 Federal needed for and adjacent test. The Director, with the reservation discussed below, finds that the Illinois proposal can be approved. In copying the language of the 1983 Federal rule, Illinois also reproduced the inadvertent error discussed in the first paragraph of this finding, i.e., using the needed for and adjacent test, the definition grants VER to applicants who obtained the requisite property rights after August 3, 1977. As explained in the preamble to the 1983 Federal rule (48 FR 41316, September 14, 1983) persons possess VER in such cases only if the prohibition of surface mining would constitute a taking, which is a different test. Therefore, the Director finds that the Illinois needed for and adjacent test is, in this respect, less effective than the corresponding Federal rule and less stringent than SMCRA in protecting the areas listed in section 522(e) from surface mining.

Finding 3: Remainder of Definition

The remainder of the definition of VER proposed by Illinois is substantively identical to those portions of the September 14, 1983, Federal definition of VER not remanded in *In re: Permanent II*. Therefore, the Director finds that, except for the expanded needed for and adjacent test discussed in the previous finding, the revised Illinois VER definition is no less effective than the corresponding Federal definition in 30 CFR 761.5.

IV. Disposition of Comments

As required under 30 CFR 732.17(h)(4) and (11), the Director solicited the views of the State Historic Preservation Officer and all Federal agencies with an actual or potential interest in the proposed amendment. None elected to comment on the proposed VER definition.

Also, as described in the section of this notice entitled "Submission and Review of Amendment," OSMRE thrice solicited public comment on the proposed amendment. Comments received from the public in response to the May 9, 1986, and June 26, 1987, solicitations are duplicative of those received in response to the most recent solicitation (October 25, 1988).

Therefore, this notice will address only the comments received in response to the last notice.

A summary of the comments received and the Director's disposition of them appears below:

1. *Comment:* Old Ben Coal Company states that OSMRE cannot lawfully review the efficacy of or approve the Illinois definition until a new Federal definition is promulgated.

Response: The Director does not agree. The Federal definition has not been remanded in its entirety, and the November 20, 1986, suspension notice reinstated the 1979 version of the Federal definition as modified by an August 4, 1980, suspension notice (46 FR 51548) to substitute for those provisions of the 1983 definition remanded by the court. Even in the absence of a Federal rule, OSMRE would be able to review and approve or disapprove the proposed State VER definition, using SMCRA alone as a standard.

2. *Comment:* The Illinois South Project, Inc. (ISP) states that the U.S. Court of Appeals for the Seventh Circuit clearly held in *ISP v. Hodel* that the 1979 definition is the only Federal rule in force, and that it must therefore be the standard of review.

Response: Although the Director has, as noted in the response to the previous comment, reinstated portions of the modified 1979 definition, he does not fully agree with the commenter's argument since the unsuspended portions of the 1983 definition remain in effect. Furthermore, in *ISP v. Hodel*, the court stated that "the 1979 regulation regained currency when the 1983 regulation died, but its prospective significance is cloudy" (Mem. op. at 5), thus indicating some uncertainty as to the utility and status of the 1979 definition. In any case, this argument is immaterial since the Director has used the modified 1979 definition as a standard of comparison and has found that the revised Illinois definition is no less effective than the 1979 Federal definition, except as noted in Finding 2.

3. *Comment:* ISP states that OSMRE itself has previously found the takings test to be less protective of the environment than the modified all permits test.

Response: The document upon which ISP bases this statement is still in draft form and may be revised. The statement itself refers to the aggregate of section 522(e) areas in all the coal-producing States and does not specifically address mitigation factors in Illinois, such as the paucity of coal in section 522(e)(1) areas in Illinois.

In any case, the comment is again immaterial, since, as stated in 30 CFR 730.5, the standard of review is whether the State definition is no less effective than the Federal rule in meeting the requirements of SMCRA. As discussed in the findings, Congress included the VER exception in section 522 of SMCRA not to protect the environment, but rather to avoid creating a situation where property rights would be infringed upon or taken to the extent that compensation would be required under the Constitution. See *NWF v. Hodel*, 839 F.2d at 749–750. The courts have, in one instance where its application has been challenged, found that the all permits test as applied by OSMRE would constitute a taking and thus the applicant had VER (*Sunday Creek Coal Co. v. Hodel*, No. C–2–88–0316 (E.D. Ohio), June 2, 1988).

The takings test may seem at first glance less protective of the environment, but if, as may reasonably be anticipated, VER applicants denied the right to mine under the modified all permits test successfully challenge these determinations in the courts as unconstitutional takings, the good faith all permits test ultimately would not be more environmentally protective than the takings test. In other words, eleven years after passage of SMCRA, there would exist no or little difference between the two tests when applied in Illinois by the regulatory authority or the courts.

For these reasons, the takings test is no less effective than the modified all permits test in meeting the requirements of SMCRA.

4. *Comment:* ISP argues that, under the 1979 Federal definition, any mining operation starting after August 3, 1977, would be ineligible for VER unless it met the needed for and adjacent test, and that the Illinois definition errs in allowing VER for other operations beginning after that date.

Response: The Director does not agree that the Illinois definition is in error. As stated in his response to the preceding comment, the proper standard of review is not whether the definition is more or less protective of the environment, but rather whether it is no less effective than the Federal rule in avoiding both takings and the disturbance of protected areas. The needed for and adjacent test for existing mines was only one element of the analysis required under the 1979 VER rule. The preamble to the 1979 rule made clear that, where a VER applicant lacked all necessary permits, a case-by-case analysis must be made in such a way as to avoid a taking. If the applicant had all necessary permits, then that person definitely had VER. ISP misreads the 1979 definition and preamble. If a person had VER on the date of enactment under the case-by-case analysis, that entitlement to VER did not depend on the starting date of the mining operation. Furthermore, the courts, in *In re: Permanent II*, have affirmed the concept of continually created VER. The Director also notes that, contrary to the ISP comment, a mining operation must have been in existence on August 3, 1977, to claim VER under the 1979 Federal needed for an adjacent test.

5. *Comment:* ISP states that Illinois has advanced in compelling arguments on support of its contention that the State definition is no less effective than the Federal rule.

Response: For the reasons cited in the findings and the responses to previous comments, the Director believes the State definition is no less effective than the Federal definition, except as noted in Finding 2. Whether the State has advanced the proper arguments is immaterial.

6. *Comment:* ISP took issue with OSMRE's reopening of the comment period and asserted that the State advanced no new arguments at the October 17, 1988, meeting between Illinois, OSMRE, and Department of the Interior officials.

Response: OSMRE decided to reopen the comment period in the interest of fairness and as appropriate pursuant to the Department's policy on State contacts prior to a decision on the State program. See 44 FR 54444, September 19, 1979. Moreover, at the October 17 meeting, Illinois argued that approved of its VER definition would be consistent with the 1988 decision of the Seventh Circuit.

Clearly ISP would have objected if it did not have the opportunity to respond to the State's contentions.

7. *Comment:* ISP and the National Wildlife Federation (NWF) argue that it is inappropriate and, in some State, illegal for State agency personnel to make deteminations of property rights and constitutional law which should be reserved for the courts.

Response: The Director does not agree with the comment as it applies to Illinois. Because the Illinois proposal has undergone State legal review, the Director has no reason to believe that it would grant agency personnel authority in excess of that provided under State law. Furthermore, it would be equally inappropriate and irresponsible for agency personnel to ignore prior case law when making VER determinations.

Thus, under the Illinois rule, State personnel are not precluded from taking administrative actions; however, persons adversely affected by VER decisions may appeal to the courts. In approving this definition, the Director expects that Illinois will exercise its authority in a responsible manner to avoid surface mining in protected areas, as intended by section 522(e) of SMCRA. The Director recognizes that Illinois has chosen to define VER in a manner the commenters find inappropriate on the national level for various policy, implementation and State-specific reasons. However, the Illinois choice must be reviewed under the "no less effective than" standard, with proper emphasis accorded to Illinois law circumstances.

8. *Comment:* NWF incorporates by reference its brief in Round III of *In re: Permanent II* stating that a full reiteration of its arguments opposing the takings tests is unnecessary. It then summarizes these arguments in opposing the Illinois amendment.

Response: The Director notes that the Secretary has previously responded to the NWF brief filed in the *In re: Permanent II* litigation and, to the extent necessary, incorporates by reference his earlier response to it and the preamble to the 1983 definition (48 FR 41316, September 14, 1983). Set forth below are his responses to NWF's specific comments on the proposed amendment.

9. *Comment:* NWF argues that the takings test is inconsistent with the intent of Congress in that it creates in incentive for the regulatory authority to routinely find that a taking would occur and thus avoid litigation and compensatory awards.

Response: The Director acknowledges that allowing use of the takings test could result in its misapplication as described by the commenter. However, the Director must assume that Illinois will properly apply its VER definition. He does not agree that the theoretical possibility posed by NWF constitutes a basis for disapproval of the amendment. The Illinois definition is no less effective than the Federal definition.

Illinois has historically administered its program in a responsible manner and the Director has no reason to believe that it will act otherwise upon approval of this amendment. As part of his oversight duties, the Director will monitor the State's implementation of this definition, respond to specific citizen complaints and determine whether the regulatory authority's decisions are arbitrary, capricious or an abuse of discretion. See 52 FR 26728, July 14, 1988. Moreover, persons adversely affected by an Illinois VER decision may appeal that decision if the person thinks the decision was made improperly.

As to compensatory awards, Judge Flannery in 1980 declined to address the constitutionality of the Secretary's definition. (*In re: Permanent I*, slip op. at 19–20, February 28, 1980). However, any definition of VER that would result in an unconstitutional taking would be improper. Applying a definition without taking into account the particular circumstances of each permit applicant on a site-specific basis would also be improper. See 44 FR 14993, supra.

10. *Comment:* NWF states that OSMRE cannot consider the takings test to be no less effective than the good faith all permits test because the takings test broadens the scope of the exemption from the limitations and prohibitions of section 522(e) of SMCRA and has been found by the U.S. District Court for the District of Columbia to be a significant departure from the definitions proposed in 1982.

Response: For the reasons stated in Finding 1 and in his response to Comment No. 3, and because the court ruled solely on procedural grounds, the Director does not find this argument to be valid.

11. *Comment:* NWF states that consideration of the takings test would require a new environmental impact statement (EIS) and regulatory impact analysis (RIA) for the Federal VER definition.

Response: Section 702(d) of SMCRA exempts actions related to State program approval from those provisions of the National Environmental Policy Act which would require preparation of an environmental assessment or impact statement. Similarly, for those actions relating to State program approval, the Office of Management and Budget, on July 12, 1984, granted OSMRE an exemption from those portions of Executive Order 12291 which would require preparation of a regulatory impact analysis. States are free to adopt provisions other than those embodied in the Federal regulations as long as those provisions are no less effective than the Federal rules and no less stringent than SMCRA. Since, in this case, the Federal rule itself remains unchanged, OSMRE is not required to complete a new EIS or RIA prior to approving such State provisions.

12. *Comment:* The Illinois Department of Mines and Minerals (IDMM) argues that the reinstatement of the 1979 good faith all permits and needed for and adjacent tests in the November 20, 1986, **Federal Register** is itself an improper promulgation and that the only extant portions of the Federal VER definition—and thus the only portions which may be used when evaluating proposed State program amendments—are those not remanded in *In re: Permanent II*.

Response: These arguments are untimely and therefore irrelevant since the suspension and reinstatement notice has been published, the time allowed for appeal has expired, and the reinstatement has taken effect. Furthermore, in *ISP v. Hodel*, the U.S. Court of Appeals for the Seventh Circuit declared that, with respect to matters concerning the remanded portions of the 1983 Federal definition, "the Secretary would have to use the 1979 rule as the basis of any current substantive decision." Therefore, these arguments no longer retain currency.

13. *Comment:* IDMM argues that its revised needed for and adjacent test more accurately defines when coal in an area adjacent to an ongoing surface coal mining operation in existence on August 3, 1977, is needed for the continued operation of the mine, and that it therefore more fully implements section 522(e) of SMCRA.

Response: As discussed in Finding 2, the Director has determined that the expanded "needed for and adjacent" test included in the Illinois definition is no less effective than the corresponding provisions of the 1979 Federal regulation as reinstated on November 20, 1986, except to the extent that this test would apply to property rights acquired after August 3, 1977. The Director believes that acquisition of such rights after August 3, 1977, does not qualify as an automatic presumption of valid existing rights nor does the 1979 rule so allow. If the coal was indeed critical to the economic viability of the existing operation, the operator would have acquired the right to mine it prior to initiating the existing operation. Thus, under section 522(e) of SMCRA, mining of such adjacent areas would be permitted only if its prohibition would constitute an unconstitutional taking of property rights, which is a different test. Illinois' comments indicate that it intends to limit the applicability of the needed for and adjacent test in the manner prescribed by the 1979 Federal rule; however, the definition as actually proposed contains no such restriction and its language admits of no such interpretation.

Illinois also states that its needed for and adjacent test is clearly no less effective than the good faith all permits test in meeting the requirements of SMCRA. The Director believes that this is an improper comparison since the State test should be compared to the corresponding Federal test, in this case the needed for and adjacent test. However, for the reasons discussed in the preceding paragraph, he finds that even if this comparison were made, the Illinois statement is in error.

14. *Comment:* IDMM states that, since the 1983 Federal definition was remanded on procedural rather than substantive grounds, OSMRE has the authority and obligation to approve a substantively identical State definition if, as in the case of Illinois, the State has complied with all State requirements concerning notice and comment for rulemaking actions.

Response: Although this argument was not specifically addressed in *ISP v. Hodel*, the Director believes it has no currency in the instant proceeding since the U.S. Court of Appeals for the Seventh Circuit ruled that the Secretary's approval of the Illinois proposal under the defective 1983 regulation could not stand even though it had been properly promulgated by the State. The court ordered the Illinois regulation remanded for further proceedings under whatever Federal regulation is in force at the time of the decision (*ISP v. Hodel*, Mem. op. at 6). Therefore, although the Director is, for the most part, approving the Illinois proposal, he is doing so on the grounds ordered by the court, not on the original rationale submitted by the State.

15. *Comment:* IDMM states that the only possible way to fully carry out the Congressional intent to avoid all takings is to equate VER with a taking. IDMM further argues that no mechanical formula will ever perfectly define all circumstances in which the prohibition of mining would constitute a taking, and that the good faith all permits test functions "as a crude sieve to generate a facile VER decision," is "under exclusive," and is "impermissibly vague." IDMM also states that approval of the Illinois amendment using the modified 1979 Federal definition would be consistent with the Seventh Circuit decision in *ISP v. Hodel, supra*.

Response: The Director does not agree that the only way to carry out the Congressional intent to avoid all takings is the way chosen by Illinois. He also does not agree that no mechanical test could be devised that would be consistent with Congressional intent. In light of the Director's findings, it is unnecessary to respond to IDMM's criticisms of the good faith all permits test. The Director does agree that approval of the proposed Illinois VER definition is consistent with the Seventh Circuit decision, and for the reasons stated earlier, he is approving the Illinois proposal to include a takings test within its definition of VER.

V. Director's Decision

Based on the above findings, the Director is approving the revised definition of "valid existing rights" in 62 IAC Part 1701, as submitted by Illinois on March 28, 1986, and revised on May 22, 1987, with the exception of the provision discussed in Finding 2. As explained in that finding, the Director is disapproving the revised "needed for and adjacent" test to the extent that it would grant valid existing rights claims for lands for which the applicant obtained the requisite property rights after August 3, 1988. He is also requiring that Illinois amend this definition to limit its applicability in accordance with this finding. As provided by 30 CFR 732.17 (a) and (g), any provisions that are not approved by the Director may not be implemented as part of the Illinois program.

The Federal rules at 30 CFR Part 913 are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards without undue delay.

VI. Procedural Requirements

Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this rule will not have a significant economic effect on a substantial number of small entities. This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management

Date: December 28, 1988.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of the Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. A new paragraph (j) is added to § 913.15 to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment submitted to OSMRE by Illinois on March 28, 1986, as modified and resubmitted on May 22, 1987, is approved effective January 4, 1989 with the exceptions identified herein and in § 913.17 of this part: Revision of the definition of "valid existing rights" in Part 1701 of Chapter I of Title 62 of the Illinois Administrative Code, except to the extent that the revised definition would allow claims of valid existing rights, under the "needed for and adjacent" test, for lands for which the applicant obtained the requisite property rights after August 3, 1977.

3. A new paragraph (d) is added to § 913.16 to read as follows:

§ 913.16 Required regulatory program amendments.

* * * * *

(d) By June 30, 1989, Illinois shall submit a proposed amendment to the definition of "valid existing rights" in 62 IAC 1701.Appendix A or otherwise propose to amend its program to limit claims for valid existing rights under the "needed for and adjacent" test to those lands for which the applicant had obtained the requisite property rights as of August 3, 1977.

4. A new paragraph (c) is added to § 913.17 to read as follows:

§ 913.17 State regulatory program provisions and amendments disapproved.

(c) The proposed revisions to the definition of "valid existing rights" in 62 IAC 1701.Appendix A, also known as 62

IAC 1701.5, as submitted by Illinois on May 22, 1987, are disapproved to the extent that they expand the "needed for and adjacent" test to allow claims of valid existing rights for lands for which the applicant obtained the requisite property rights after August 3, 1977.

[FR Doc. 89–80 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Public Land Order 6695

[AK–932–09–4214–10; A–030682]

Partial Revocation of Public Land Order No. 1345, as amended, for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 140 acres of public land withdrawn for military purposes. The land is no longer needed for the purpose for which it was withdrawn. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to PLO No. 5187.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–3342.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1345, as amended, is hereby revoked insofar as it affects the following described land:

Seward Meridian, Alaska

T. 15 N., R. 4 W.,
Sec. 1, lot 8;
Sec. 12, NE¼NE¼NE¼,NE¼NW¼NE¼NE¼,S½NW¼NE¼NE¼, S½NE¼NE¼, SE¼SE¼NW¼NE¼, E½E½SW¼NE¼, SE¼NE¼, N½NE¼SE¼,N½SW¼NE¼SE¼, SE¼SW¼NE¼SE¼, SE¼NE¼SE¼, E½NE¼NW¼SE¼, and N½NE¼SE¼SE¼.

The area described contains 140 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 17, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2437–2438; 43 U.S.C. 1635.

3. As provided by Section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO No. 5187, and any other withdrawal of record.

J. Steven Griles,
Assistant Secretary of the Interior.
December 21, 1988.

[FR Doc. 89–15 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–JA–M

43 CFR Public Land Order 6696

[CO–930–09–4214–10; C–48465]

Withdrawal of Public Lands and Reserved Minerals for Protection of Scenic and Recreational Values in the Ruby Canyon of the Colorado River; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 7,658 acres of public lands from surface entry and mining and 244 acres of public minerals from mining for a period of 5 years. This will protect the recreational and scenic values of this segment of the Colorado River pending final decision on a Wild and Scenic River Regulation. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–236–1768.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws for protection of scenic and recreational values:

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 6, lots 6 and 8;
Sec. 7, lots 1, 2, and 6 thru 9;
Sec. 8, lot 3, and S½NE¼SW¼;
Sec. 9, lot 4;
Sec. 17, lot 4, S½NE¼, and SE¼NW¼;
Sec. 18, lot 1, N½NE¼ and NE¼NW¼.

Sixth Principal Meridian

T. 10 S., R. 103 W.,
Sec. 5, S½SW¼ and W½SW¼SE¼;
Sec. 6, SE¼SW¼ and S½SE¼;
Sec. 7, lots 1 thru 4, 7, 8, SE¼NE¼, W½NW¼, W½SE¼, and E½E½SE¼;
Sec. 8, lots 2, 3, 6, 7, and W½W½E½;
Sec. 15, lots 2 thru 9, S½N½NW¼, and E½SW¼SW¼;
Sec. 16, lots 1 thru 4, 6 thru 8, W½NW¼NE¼, SE¼NE¼NE¼, NW¼NE¼, N½NW¼, and N½SW¼SW¼;
Sec. 17, lots 2, 3, 5 thru 7, W½NW¼NE¼, S½NE¼, N½SW¼SW¼, and SE¼SE¼;
Sec. 18, lots 2, 8 thru 11, W½E½, E½E½NE¼, E½NE¼SE¼, and NE¼SE¼SE¼;
Sec. 19, lots 1, 3, 4, NW¼SW¼NE¼, SE¼NW¼, NW¼SW¼, and N½NE¼SW¼;
Sec. 22, lots 5 thru 8, NE¼NW¼, E½SE¼NW¼, and E½NE¼SW¼;
Sec. 27, lot 1.

T. 10 S., 104 W.,
Sec. 12, E½E½E½;
Sec. 13, E½E½E½;
Sec. 23, lots 1 thru 4, E½SW¼NE¼, and E½W½SE¼;
Sec. 24, lots 1 thru 9, NW¼NE¼, N½NW¼, E½SW¼, and N½SE¼;
Sec. 25, lots 1 thru 4, E½W½, and SW¼SW¼;
Sec. 26, lots 1 thru 7, E½NW¼NE¼, SW¼NE¼, and S½NW¼;
Sec. 27, lots 1 thru 9, S½NE¼, and SE¼NW¼;
Sec. 28, lots 1 thru 3, S½SE¼NE¼, and W½SE¼;
Sec. 32, lots 1 thru 7, NE¼SW¼, SE¼NW¼SW¼, and N½SE¼;
Sec. 33, lots 1 thru 12, NW¼NE¼, and E½SE¼NW¼;
Sec. 34, N½N½NE¼, N½NE¼NW¼, W½NW¼, and NW¼SW¼;
Sec. 35, N½NW¼NE¼ and N½N½NW¼.

T. 11 S., R. 104 W.,
Sec. 3, lots 3 and 4;
Sec. 4, lots 1 thru 4, S½NW¼, and SW¼;
Sec. 5, lot 1, SE¼NE¼, E½SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 7, lots 1 thru 4;
Sec. 8, E½NE¼, N½NW¼, SW¼NW¼, and S½;
Sec. 9, NW¼NW¼, W½SW¼NW¼, and W½W½SW¼.

The areas described aggregate approximately 7,657.73 acres of public lands in Mesa County.

2. Subject to valid existing rights, the reserved mineral interests in the following identified privately owned lands are hereby withdrawn from the United States mining laws (30 U.S.C. Ch. 2) but not the mineral leasing laws:

Ute Principal Meridian

T. 1 N., R. 3 W.,
Sec. 7, lots 3, 4 and 5;
Sec. 8, lots 2, 4, 5 and 6;

Sixth Principal Meridian

T. 11 S., R. 104 W.,
Sec. 5, E½SW¼NE¼.

The areas described aggregate approximately 244.04 acres of reserved public domain minerals in Mesa County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,
Assistant Secretary of the Interior.
December 21, 1988.

[FR Doc. 89–14 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–JB–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 1, 10, 12, 15, 26, 30, 31, 35, 151, 157, 175, 185, 186, and 187

[CGD 81–059]
RIN 2115–AA64

Licensing of Maritime Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of maritime personnel and the manning of vessels. This rule modifies the regulations contained in Parts 10, 12, 15, 30, 31, 35, 151, and 185 of Title 46 Code of Federal Regulations (CFR) and Part 155 of Title 33 CFR concerning the licensing of individuals, the registration of staff officers, and the manning of vessels. This final rule combines and modifies the regulations contained in rulemaking dockets CGD 81–059 and CGD 81–059b published as Interim Final Rules on October 16, 1987 (52 FR 38614 and 52 FR 38658, respectively). New limited tonnage licenses are added for Great Lakes and inland service. Provision is made for master and mate licenses with a river route. The renewal requirements are modified to allow license renewal by mariners who are not actively employed under the authority of their licenses. The license renewal requirement for a valid cardiopulmonary resuscitation course certificate has been withdrawn. The authority for masters and mates to act as tankerman, which appears throughout 46 CFR and in 33 CFR Part 155, is modified to reflect the broader use of the terms master and mate. The list of examination subjects for engineering licenses has been completely revised to more clearly indicate the material covered in each examination. Minor modifications to the topics for deck licenses have also been made.

EFFECTIVE DATE: These changes to the regulations are effective February 3, 1989.

FOR FURTHER INFORMATION CONTACT: LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environment Protection, (G–MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION: The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in October of 1981 (46 FR 53624) which outlined the basic philosophy and concepts for this project. The Coast Guard received approximately 75 written comments to the docket on that ANPRM. A Notice of Proposed Rulemaking (NPRM) was published on August 8, 1983 (48 FR 35920). Over 10,000 copies of this notice were mailed out to the public and 19 public meetings were held around the country. This notice elicited over 700 written comments and thousands of telephone inquiries. A Supplemental Notice of Proposed Rulemaking (SNPRM) was published on October 24, 1985 (50 FR 43316), after which the Coast Guard held six public hearings. On October 16, 1987, an Interim Final Rule (IFR) was published (52 FR 38614). Ten thousand reprints of this IFR were distributed to interested parties. While the majority of the regulations became effective December 1, 1987, the IFR provided for an additional 90 day comment period. Since 1981, a total of over 1490 written comments have been received and docketed on this project. Comments received in response to the IFR, and changes reflected in the final rule, are discussed later in this preamble. The Coast Guard also published an Interim Final Rule on October 16, 1987 (52 FR 38658) which reformatted and reorganized the regulatory requirements for pilots' licenses to make them consistent with the remainder of the licensing regulations (CGD 81–059b). Four comments were received and have been addressed in the preamble. No changes have been made to that rulemaking. The comments received in response to the Interim Final Rule on the licensing and manning regulations for mobile offshore drilling units (CGD 81–059a, 52 FR 38660), also published on October 16, 1987, are still being evaluated, and a final rule will be published at a later date.

Drafting Information

The principal drafters of this Final Rule are: LCDR Gerald D. Jenkins, Office of Marine Safety, Security and Environment Protection, and CDR Gerald A. Gallion, Office of Chief Counsel.

Background

This final rule implements the provisions of Pub. L. 96–378 and the Port and Tanker Safety Act of 1978. Pub. L. 96–378 discussed the establishment of career patterns, service and qualifying requirements, and the substitution of training time and courses of instruction for sea service. The Port and Tanker Safety Act of 1978 required improved pilotage standards, standards relating to qualification for licenses by the use of simulators, minimum health and physical fitness criteria, and periodic retraining and special training for upgrading positions.

The structure and basic qualifications for licenses have been designed to conform to the provisions of the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978. While the United States has not yet ratified this Convention, the United States delegation was an active participant in the drafting of the Convention and has participated in ensuing interpretations of the Convention. The Convention has been ratified by a sufficient number of maritime nations, and entered into force internationally in April, 1984. Having the structure and basic qualifications of licenses issued by the Coast Guard in general conformance with the Convention will facilitate their acceptance by the countries that have ratified the STCW.

Public Law 98–89 of August 20, 1983, revised and consolidated certain laws relating to vessels and merchant seamen contained in Title 46, United States Code. These changes also necessitated some amendments to the licensing and manning regulations.

For some time the Coast Guard had planned to revise the licensing and manning regulations due to their complexity. This final rule maintains the high U.S. mariner licensing standards while simplifying the license structure and making the regulations easier to use.

Discussion of Comments

The comments received were generally supportive of the regulations published in the Interim Final Rule. Specific areas which received substantive comments or are modified based on Coast Guard experience under the interim rules are discussed in the same format presented in the preamble to the Supplemental Notice and the Interim Final Rule. This final rule was prepared after considering all comments received.

Specific Comment Areas

1. *Professional requirements for license renewal:* There were 97 comments objecting to the service, training or examination requirements for the renewal of a license. The regulations provide four options whereby a mariner can demonstrate continuing proficiency. The flexibility provided by these options will allow nearly all mariners to renew their licenses. This portion of the regulations is virtually unchanged from the 1985 Supplemental Notice of Proposed Rulemaking.

The requirements for renewal contained in this rulemaking are in keeping with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Although the United States is not signatory to the Convention, it has been ratified by sufficient maritime nations and came into force on April 28, 1984.

Consequently, in order for U.S. licenses to be accepted by nations signatory to STCW and for U.S. vessels to operate in foreign ports without impediment, it is necessary that our regulations substantially comply with the provisions of the Convention. Regulations II/5 and III/5 of the Annex to STCW set the "mandatory minimum requirements to ensure the continued proficiency and up-dating of knowledge" for deck and engineering officers. These provisions in STCW and the renewal requirements in the final rule are essentially the same.

The Final Rule does provide a means by which a mariner can continue to renew a license without satisfying these professional requirements (paragraph 2).

2. *Two-tier license renewal structure:* To satisfy the intent of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) regulations II/5 and III/5, which require administrations to "ensure continued proficiency" of merchant marine officers, the revision to Part 10 placed some additional requirements on applicants for license renewal. Mariners not currently sailing or employed in a related industry have expressed concern about their ability to meet the new requirements listed in 46 CFR 10.209(c). To allay such concerns, and to maintain a large pool of licensed mariners for national security reasons, a two-tier license renewal system is being implemented with the final rule. Under the two-tier structure, applicants that cannot meet, or elect not to meet, the professional requirements of § 10.209(c) may renew their licenses by following the procedure detailed in 46 CFR 10.209(g). Any license renewed under paragraph (g) is endorsed to prohibit service under the authority of the license until all of the renewal requiremetns of § 10.209 are met.

3. *Cardiopulmonory resuscitation training:* There were 39 comments objecting to the requirement for possession of a valid cardiopulmonary resuscitation (CPR) course certificate in order to renew a license. Certification in CPR has been a requirement for original license issuance for a number of years. Until publication in the Interim Final Rule, the requirement for CPR training has been well supported by comments on this rulemaking, with several recommending adoption as a renewal requirement. Since the Interim Rule was published, several comments challenged the wisdom of abandoning the safe navigation of the vessel in order to administer CPR. It is not expected that a licensed mariner will abandon the safe navigation of a vessel in order to administer CPR or other forms of first aid. However, circumstances are likely in which the vessel could be safely moored, or more than one qualified mariner would be onboard and available to provide assistance.

In view of the comments received, the requirements for a valid CPR card for license renewal is withdrawn. However, the requirement for a valid CPR card for an original license will be retained. The Coast Guard considers an awareness of CPR procedures to be a significant portion of overall first aid proficiency.

4. *Great Lakes routes for deck licenses for vessels of 200 gross tons and less:* Three comments suggested the need for an operator of uninspected passenger vessels and master of vessels of not more than 100 gross tons with a Great Lakes route. The Coast Guard agrees, and has made provision in this final rule for the issuance of original licenses as master of vessels of not more than 100 gross tons and operator of uninspected passenger vessels with Great Lakes and inland routes. Both licenses require one year of qualifying service. At the suggestion of the Toledo Regional Examination Center, three months of the qualifying service must have been on the Great Lakes. The Great Lakes service is being required to ensure that individuals obtaining these limited tonnage licenses have the necessary experience to safely operate in that environment. Applicants will take the inland route license examination for the equivalent grade of license. Individuals converting small passenger vessel licenses with "waters other than ocean or coastwise" routes will normally receive inland routes. However, if the license holder can demonstrate any prior Great Lakes service, the license will convert to a Great Lakes and inland route.

The Coast Guard has decided to extend the three month Great Lakes service requirement to licenses as master or mate of vessels of not more than 200 gross tons with a Great Lakes and inland route. This is appropriate because of the similarities in the amount of required qualifying service and the nature of the service authorized by the license. If the Great Lakes service requirement cannot be satisfied, the license will be limited to the inland waters of the United States (excluding the Great Lakes).

The Coast Guard believes that this Great Lakes experience is unnecessary for higher tonnage licenses, because of the greater service and examination requirements.

5. *Addition of licenses for master/mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons:* The Coast Guard regional examination centers (RECs) located in the Pacific Northwest have recommended that provision be made for 500 gross ton master and mate licenses with an inland route. Large numbers of the 500 gross ton licenses for lakes, bays, and sounds (the comparable license under the old licensing system) have been issued at those RECs. Because of the demand for this size tonnage license, this final rule makes provision for master and mate licenses of not more than 500 gross tons with a Great Lakes and inland route.

6. *Master and mate of rivers:* Seventeen comments urged that a license limited to a rivers route be offered which would not require a demonstration of the chart navigation skills necessary for an inland route license. Consequently, the final rule makes provision for master and mate licenses limited to rivers. The periods of required service are the same as required for a Great Lakes and inland license. License applicants will only be required to demonstrate proficiency in navigational instruments and chart skills which are necessary in river service.

7. *Uninspected fishing industry licenses:* The Final Rule makes provision for master and mate licenses of uninspected fishing industry vessels with a near coastal route. Several Coast Guard licensing officers and fishing vessel operators have urged that a fishing vessel license be offered which does not require proficiency in celestial navigation. The qualification requirements for a near coastal route are the same as for an ocean route, except that celestial navigation proficiency is not required.

The tonnage qualification guidelines have been revised to closely correspond with those for licenses authorizing service on inspected vessels of similar size. The system for tonnage computation promulgated in the Interim Final Rule was unreasonably lenient, permitting the qualification for 1,000 gross ton licenses using service on extremely small vessels, a result which the Coast Guard did not intend.

8. *Age limit reduction for limited master's licenses:* Numerous comments urged that the minimum age for a limited master's license be reduced to 18. Historically, the operation of such vessels is summer employment for students. Due to the restricted nature of the service authorized under the limited master's licenses issued to individuals for employment at formal camps, yacht clubs, etc., and the characteristic age of individuals normally employed in that service, the minimum age for these licenses has been lowered from 19 to 18 years.

9. *Exemption of certain limited licenses from first aid and CPR requirements:* Several comments dealt with the experience and training requirements for a license as limited master or limited operator of uninspected passenger vessels issued to individuals for employment at formal camps, yachts clubs, etc. The comments stated that the cumulative requirements of boating experience, first aid course completion, CPR course completion, and boating safety course completion were excessive to the needs of marine safety. The comments also contended that the cumulative requirements discouraged the students, who are normally the source of such seasonal employees, from seeking employment in jobs requiring these licenses. The Coast Guard concurs with these comments. Therefore, applicants for original licenses as limited master or limited operator of uninspected passenger vessels issued to individuals for employment at formal camps, yacht clubs, etc. will not be required to complete first aid and CPR courses, unless required by the Officer in Charge, Marine Inspection (OCMI). The operating areas authorized such license holders do not involve extended voyages or locations far removed from shoreside assistance. Generally, the craft will be in proximity to marinas, yacht clubs or formal camps, where assistance will be readily available if necessary. The OCMI will require this training where the geographic area over which service is authorized precludes obtaining first aid services within a reasonable time.

10. *Conversion of operator uninspected towing vessels licenses with an upon oceans not more than 200 miles offshore route:* The license as operator of uninspected towing vessels upon oceans not more than 200 miles offshore, issued under the regulations in effect prior to December 1, 1987, was not restricted to domestic service. That license authorizes service world wide within 200 miles of any coastline. However, the operator's license does not comply with the requirements of the STCW. To resolve this disparity and avoid the rescinding of any license authority presently granted, a restricted master's license will be issued to these individuals. At the time of renewal, or sooner where a need is demonstrated, that license will be converted to a license as *MASTER OF NEAR COASTAL MOTOR VESSELS OF LESS THAN 200 GROSS TONS (RESTRICTED TO UNINSPECTED TOWING VESSELS); ALSO OPERATOR OF UNINSPECTED TOWING VESSELS GREAT LAKES AND INLAND.* This practice will preserve the currently held license authority when converting the license. The uninspected towing vessel restriction can only be removed by acquiring the qualifying experience and successfully completing an examination for a master's license, e.g., master of not more than 200 or master of not more than 500 gross tons.

11. *Masters and mates serving as tankerman:* Comments identified an undesirable result of the Interim Final Rule in designating as master or mate many individuals previously designated as "operator." Title 46 CFR Part 12 (Certification of Seamen), Subchapter D (Tank Vessels), Subchapter O (Certain Bulk Dangerous Cargoes), and 33 CFR Subchapter O (Pollution), state that an individual holding a valid license as master, mate, pilot or engineer is allowed to serve as a tankerman. Since individuals holding the new license as master or mate of vessels of not more than 200 gross tons have not been required to demonstrate a knowledge of the pollution prevention regulations to the necessary level, and have not obtained the experience in bulk liquid transfer procedures required of a tankerman, this inadvertent increase in authority granted to lower level license holders has the potential for a serious degradation of marine safety.

Consequently, the regulations concerning the authority to serve as tankerman found in 46 CFR Subchapters B, D and O, and 33 CFR Subchapter O are amended in this Final Rule to indicate that only individuals having a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot or engineer may serve as tankerman, in conformity with the intent of this rulemaking. For clearer presentation, these conforming amendments are placed at the end of this rulemaking.

Individuals with a license as master or mate of vessels not more than 200 gross tons may qualify for and receive a merchant mariner's document endorsed as tankerman by complying with the provisions of 46 CFR 12.20.

12. *Tankerman on towing vessels:* While clarifying the absence of authority for licensed masters and mates of not more than 200 gross tons to serve as tankermen, a correction is being made to § 31.15–5 of Title 46 CFR which purports to require a licensed officer or tankerman in the regular complement of a towboat crew towing an unmanned tank barge. This in effect establishes manning requirements for an uninspected vessel without legislative authority. This requirement is being withdrawn, as it has been determined not to be properly founded in the underlying statute.

13. *Service on the Inside Passage between Puget Sound and Cape Spencer, Alaska:* Section 10.430 has been modified to authorize the use of Great Lakes and inland or inland licenses on the sheltered waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska. While these waters are outside the Boundary Line used to determine inland waters for licensing purposes, the Coast Guard has for a number of years classified these waters as lakes, bays and sounds for certain inspection, licensing and manning purposes. Service on these protected waters is creditable as inland service.

14. *Grandfather provision for service toward unlimited deck licenses:* Several comments indicated that the increase in minimum gross tonnage for an unlimited deck license was adversely affecting the career plans for individuals who had been working on vessels between 1,000 and 1,600 gross tons. Prior to December 1, 1987, this service would have been creditable towards an unlimited deck license, while the current regulations require service on vessels over 1,600 gross tons. Therefore, to reduce the impact of the Part 10 revision on mariners who have already obtained sea service toward an original license or upgrade, for applications received prior to July 1, 1989, service on vessels over 1,000 gross tons may be substituted for the required service of over 1,600 gross tons to obtain any gross tonnage endorsement on an unlimited master or mate license. For applications received after July 1, 1989 all service will be evaluated at face value.

15. *Physical examinations:* The preamble of the Interim Final Rule requested comments on the appropriateness of varying the frequency of physical examinations for mariners, depending on their age (preamble item #43). Eight comments were received: One commentor supported the proposal, and seven expressed opposition to a practice they viewed as illegal and discriminatory. The Coast Guard has not revised the physical examination frequency in this Final Rule. The Coast Guard will, however, continue to review the present physical requirements to determine their applicability today's maritime environment.

16. *Conversion of lakes, bays and sounds deck licenses:* The table of corresponding licenses published in the Interim Final Rule indicates that an individual with a deck license for lakes, bays, and sounds will receive a license for an inland route when converting to the new license structure. Comments pointed out that this will cause some individuals to lose the authority to continue their current employment. In keeping with the Coast Guard's stated policy of not removing any authority which a person had prior to the revision of the licensing regulations, the following guidelines will apply to conversion of master or mate lakes, bays and sounds licenses held by those individuals who have been serving upon other than inland waters. Individuals who are:

a. Currently licensed as master or mate lakes, bays and sounds;

b. Authorized service on waters which require the application of the COLREGS; and,

c. Able to show proof of employment under the authority of their license on waters which are not authorized for a master or mate inland;

may receive, at the time of conversion, a license as master or mate of inland steam and motor vessels with an additional endorsement as master or mate of steam and motor vessels upon the specific waters where authority is necessary to continue their employment.

17. *Deck service for engineering licenses:* The Interim Final Rule made provision for crediting some engineering experience towards limited deck licenses. Comments received indicated the reverse should also be allowed, since individuals assigned on deck of small vessels with limited crew size spend a significant number of hours performing work normally assigned to engineers on larger vessels. In recognition of this fact, provision has been made for crediting experience on deck toward a portion of the qualifying service for limited engineering licenses.

18. *Engineering examinations subject table:* For greater clarity, the Subjects for Engineering License table has been revised to use language which, through previous regulatory use, is familiar to the industry.

19. *Fire fighting training:* Comments suggested that the fire fighting training requirements should be tailored to the license title and the class of vessel upon which they will be utilized. The Coast Guard feels this is not practical because of the wide variety of fire fighting systems utilized by similar sized vessels in the same industries and the broad service authority granted by most licenses. The International Maritime Organization (IMO) Resolution A.437(XI), Training of Crews in Fire-Fighting, is being used by the Coast Guard as the guideline for course acceptance review. Only a small portion of the material covered by that resolution would not be applicable to vessels of all types.

20. *Required training for certain increases in the scope of a license:* Under the Interim Final Rule the requirement for certain deck license applicants to obtain a radar observer certificate, firefighting training, and able seaman qualification found in § 10.401(g) is not applicable to those who obtained their licenses prior to the implementation of the Interim Final Rule, unless the individual applied for a raise in grade. The same is true where firefighting training is required for other licenses. As an example, an individual currently holding a master, oceans, 500 gross ton license who applies for an unlimited third mate's license, and subsequently progresses to master, oceans, any gross tons would never be required to obtain this training, since no raise in grade is involved.

The Coast Guard believes that such a policy would adversely impact on marine safety, by permitting large increases in the scope of license authority without obtaining this training. Consequently, in keeping with the intent of this rulemaking, an applicant for a master's or mate's license, whether original, raise in grade, or increase in scope to a higher tonnage category, will, under this Final Rule, be required to obtain this training, if required for that license and not already completed. Likewise, an applicant for a license as an engineer or operator of uninspected towing vessels, oceans (domestic service), whether an original, raise in grade, or increase in scope (other than an increase in horsepower limitation for engineers) must meet the requirement in § 10.205(g) if he or she has not already done so.

21. *International Tonnage Convention:* The effects that the implementation of the International Convention on Tonnage Measurement of Ships, 1969, will have on licensing and manning regulations continues to be of concern to many individuals and organizations. Comments suggested that these regulations state that the domestic tonnage system will be used "forever" for licensing and manning purposes. However the final rule, like the Interim Final Rule, does not address the system of tonnage measurement, but rather presumes that the domestic tonnage system existing at the time of implementation of the regulations will be used. Public Law 99-509 (Oct. 8, 1986, 100 Stat. 1919.), Title V, section 5103(g) requires the Secretary of Transportation to submit to Congress before July 19, 1990, a study regarding the impact of applying the Convention tonnages to U.S. laws, the extent to which tonnage thresholds would have to be raised, and "a recommendation of the levels to which the tonnage thresholds in laws of the United States * * * should be raised if a complete conversion to the International Convention measurement system * * * is made." Until such time as the report is submitted to Congress, and any changes to U.S. laws resulting from that study are enacted, the Coast Guard cannot address the issue of future application of the present tonnage measurement system.

As stated in the preamble to the Interim Final Rule, the Coast Guard will make every attempt to allow merchant mariners to continue service on those vessels on which they are presently employed. The exact mechanism which will be used to accomplish this cannot be determined until regulations are developed pursuant to legislation implementing the International Convention on Tonnage Measurement of Ships, 1969.

22. *Definitions:* One comment objected to the exclusion of deck maintenance persons from the definition of "deck crew." The Coast Guard has consistently held that individuals signed on as maintenance persons and carried in excess of the complement required by a vessel's Certificate of Inspection do not come within the purview of the term "deck crew." No compelling reason has been presented to change this position.

To avoid confusion in interpreting and applying certain sections of Part 15, an explanation of the terms "self-propelled," "propelled by machinery," and "mechanically propelled" has been added to § 15.301 of the Final Rule. Although these terms, which are synonymous for purposes of Part 15, generally conform with the language of the underlying statutes, it is believed that confusion would result if the explanation was not included in the Final Rule. It should be noted that these terms also include vessels fitted with both sails and mechanical propulsion.

A related issue concerns the applicability of § 15.701, Officers' Competency Certificates Convention, 1936, to sail vessels. Although portions of §§ 15.805 and 15.810 reiterate the requirements of the Officers' Competency Certificates Convention, 1936, these sections should not be construed as limiting § 15.701 to self-propelled vessels only. Section 15.701 applies to self-propelled vessels and to sail vessels, unless otherwise excepted by § 15.701(a).

23. *Employment within restrictions of license or document:* One comment noted that § 15.401 would require all individuals serving on vessels subject to any requirement of Part 15 to hold a valid license, certificate of registry, or merchant mariner's document. This was not the intent of the section. Therefore, it has been revised to make it clear that the requirements of this section apply only to positions in which an individual is required by law or regulation to hold such a license, certificate of registry, or merchant mariner's document.

24. *Familiarity with vessel characteristics:* While agreeing with the intent of the requirement for individuals to become familiar with the characteristics of the vessels on which they are engaged, one comment expressed concern with the possible interpretations of this requirement; for example, an able seaman being required to be familiar with the technical aspects of a vessel's machinery space automation systems. The Interim Final Rule required individuals to become familiar with the relevant characteristics of the vessel. Inclusion of the word "relevant" qualifies this requirement to the characteristics of the vessel which are related to duties the individual will perform or be expected to perform. Therefore, this provision has not been changed in the Final Rule.

25. *Certificate of Inspection manning levels:* One comment objected to individual OCMIs determining minimum required crew complements due to the possibility that disparate complements may be required aboard similar vessels of a class. Disparities are often due to reasons such as the owner not pursuing reduced engineroom manning based on automation, nonfunctioning systems or equipment on some vessels in a class, differing operating routes or procedures, etc. The OCMI is the Coast Guard official most familiar with the particulars of each vessel he or she certificates; for this reason, the OCMIs' authority to determine specific manning levels for inspected vessels has been retained. Another comment suggested additions to the list of factors to be considered by the OCMI when determining minimum complements for inspected vessels. Although the factors listed in § 15.501(b) were not intended to be all-inclusive, the suggested additions are worthy of inclusion and the section has been revised accordingly.

26. *Voyage:* One comment suggested defining "voyage" as the period of time necessary to transit from the last port of departure to the next port of arrival. The suggested definition is contrary to the Coast Guard's longstanding interpretation that stops at intermediate ports while enroute to the final port do not break the continuity of the "voyage." For this reason, the suggested change has not been adopted.

27. *Watches:* One comment took exception to the statement in § 15.705 that the establishment of adequate watches is the responsibility of the vessel's master. Circumstances dictate the types of watches required for safe operation of a vessel. Those circumstances include the materiel condition of the vessel, type of propulsion, weather, navigational hazards, number of other vessels in the area, etc. Since many of these factors are variables that change literally from minute to minute, only an individual physically present and "in charge" of the vessel has all the necessary information to make a decision on the proper deployment of shipboard personnel. Therefore, the master is responsible for making these determinations, and the statement has been retained. Another comment construed § 15.705 of the Interim Final Rule as requiring vessels' chief engineers to stand watches. That section does not specify this. In most situations, adequate licensed engineers are carried or circumstances are such that the chief engineer is not required to stand watches. For this reason, the wording of § 15.705 in the final rule has not been changed.

28. *Watches on uninspected towing vessels:* One comment objected to the Coast Guard's interpretation that permits licensed individuals serving as operators of uninspected towing vessels that are not subject to the provisions of the Officers' Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage. The Coast Guard evaluated the issue and concluded that Congress contemplated the two watch system for these vessels. For this reason, no change is being made to the final rule. Another comment advocates extension of the two watch system to masters and mates of seagoing uninspected towing vessels that are subject to the provisions of the Officers' Competency Certificates Convention, 1936. The Coast Guard has consistently maintained that the three watch system of 46 U.S.C. 8104(d) applies to these individuals except when the vessel is engaged on a voyage of less than 600 miles. The final rule reflects this.

29. *Working hours:* One comment urged inclusion of a prohibition against unnecessary work on Sundays and certain holidays when a vessel is at sea. Section 15.710 is a reiteration of portions of 46 U.S.C. 8104 which address this prohibition to vessels in safe harbors. Inasmuch as the statute does not include vessels at sea in this prohibition, the suggestion has not been adopted in the Final Rule.

30. *Sailing short:* One comment suggested that the sailing short requirement include provisions for situations in which a seaman is authorized vacation and a replacement cannot be obtained. This situation does not fall within the statutory requirements of 46 U.S.C. 8101(e). Thus, the sailing short requirement, a reiteration of the statute, has not been revised to authorize departure of the vessel on its voyage in this situation.

31. *Responsibility for proper manning:* One comment noted that not all vessels are commanded by individuals licensed as master, yet the proper manning of vessels in accordance with the applicable laws, regulations, and

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international conventions is the responsibility of the individual in command of the vessel. The Coast Guard concurs and § 15.801 has been revised accordingly.

32. *Master:* Inasmuch as 46 U.S.C. 2101 contains definitions of both "passenger vessel" and "small passenger vessel," § 15.805 has been revised in the Final Rule to clarify the Coast Guard's intent of requiring a master on every passenger and small passenger vessel.

33. *Minimum number of mates:* One comment suggested specifying, in regulation, the minimum number of mates required on inspected, inland vessels. The OCMI who certificates the vessel is the Coast Guard official most familiar with the vessel and its operations, and is, therefore, in the best position to determine the minimum number of mates required for safe vessel operations. Although, § 15.801 requires OCMIs to determine specific manning levels (including mates, first class pilots, etc.), § 15.810 has been revised to clarify the OCMIs' authority for determining the minimum number of mates to be required on inspected vessels, including inland vessels. Another comment concerned the application of the requirement for a mate on vessels of less than 100 gross tons which do not make "voyages" in the traditional sense of the term. The comment was directed to vessels making short transits between two locations, such as a vessel engaged in ferry operations. No change has been made to the Final Rule because in these situations an OCMI can endorse the vessel's Certificate of Inspection to require that alternate crews be provided. This obviates the need for continuously carrying a licensed mate as a second watchstander for operations exceeding 12 hours in any 24 hour period.

34. *Radar observer:* One comment recommended that all commercial vessels, and vessels which carry more than six passengers, be required to be fitted with radar, and that the licensed deck individuals on these vessels be required to possess radar observer qualifications. Vessel equipment requirements are outside the scope of this rulemaking. A regulatory project currently under development (CGD 85–080a) will address the issue of radar observer qualifications for licensed deck individuals on small passenger vessels.

35. *Lookouts:* Three comments recommended modification or deletion of the requirement of § 15.850 that the duties of lookout be performed by a member of the navigational watch. The comments suggested that the requirement could be construed as not allowing other vessel crewmembers to stand a lookout watch in the event that a regular watchstander is not available due to illness or some other reason. The requirement has been retained. The rule does not preclude other qualified individuals from being assigned lookout duties. During such periods, these individuals become part of the navigational watch and are subject to requirements such as the three watch requirements of § 15.705.

36. *Equivalents:* Additional revisions have been made to the Final Rule to clarify certain sections of Subpart H of Part 15, Equivalents. These revisions are the result of comments received and requests for clarification from Coast Guard district and field offices. The revisions are:

(a) The structure of the text of § 15.901 has been revised for consistency with the other sections in Subpart H. Other revisions to § 15.901 are noted below.

(b) Sections 15.901, 15.905, and 15.910 have been revised to clarify the intent that certain of the authorities allowed by these sections apply only to individuals who hold licenses for service on inspected, self-propelled vessels. Without these revisions, these sections could be construed as authorizing individuals licensed for service on uninspected vessels such as fishing industry vessels to serve in licensed capacities on certain inspected vessels, certain passenger carrying vessels, and uninspected towing vessels. This was not the intent of these sections, therefore, the revisions clarify the types of licenses necessary for these authorizations.

(c) Individuals holding licenses as first class pilot are authorized by §§ 15.901, 15.905, and 15.910 of the final rule to serve as master on vessels of not more than 100 gross tons, operator of uninspected passenger vessels, and operator of uninspected towing vessels, respectively, within any restrictions on the individual's license. Section 15.901(a) of the Interim Final Rule authorized pilots to serve as master on vessels of not more than 100 gross tons, therefore, authorization to also serve as operator of uninspected passenger vessels is also considered appropriate. One comment recommended continuance of the authority for pilots to serve as operators of uninspected towing vessels. This authorization is consistent with past Coast Guard policy and with the stated intention of this project to minimize penalties to current license holders whenever possible. It should be noted, however, that service beyond the restrictions on an individual's license, including geographic or route restrictions, is not authorized. It should also be noted that a license as first class pilot does not, by itself, authorize service on uninspected towing vessels which are subject to the Officers' Competency Certificates Convention, 1936. Similarly, licenses as operator or second-class operator of uninspected towing vessels or other licenses which authorize such service do not, by themselves, authorize service on uninspected towing vessels which are subject to the convention.

(d) In addition to other revisions described in this document, § 15.905 of the Final Rule incorporates two additional changes. The first relates to the authority of mates to serve as operators of uninspected passenger vessels. Part 10 of the final rule requires six months service for an individual to qualify for a license as mate of Great Lakes, inland or river vessels of not more than 200 gross tons. To qualify for a license as operator of uninspected passenger vessels, an individual is required to have 12 months service. Two comments objected to the authorization for these mates, with their reduced service requirements, to serve as operator on Great Lakes or inland vessels. The Coast Guard concurs and has, therefore, eliminated the authorization for mates of Great Lakes or inland vessels of not more than 200 gross tons to serve as operators of uninspected passenger vessels. The other change relates to gross tonnage limitations on the licenses of individuals authorized by this section to serve as operator of uninspected passenger vessels, i.e. uninspected vessels of less than 100 gross tons carrying not more than six passengers. Operator of uninspected passenger vessel licenses are not issued with tonnage limitations, therefore, individuals authorized service on these vessels by § 15.905 should not be limited by the gross tonnage limitations of their licenses. Section § 15.905 has been revised accordingly. It should be noted that the operator requirements apply to self-propelled uninspected passenger vessels, therefore, a license authorizing service on self-propelled vessels satisfies the section even though the uninspected passenger vessel might also be equipped with sails.

(e) Section 15.910(b) has been amended to clarify its intent that an operator of uninspected towing vessels be on board when the vessel is being operated by an individual whose license authorizes service as second-class operator only (as opposed to a license which authorizes service as both operator and second-class operator of uninspected towing vessels).

(f) Section 15.915 has been revised to provide consistency with the revision to § 10.501 made by this Final Rule and to incorporate the specific service authorities allowed for designated duty engineers.

37. *Tug and barge limitation on pilot's licenses:* One commenter disagreed with the tug and barge combination limitation on a first class pilot's license or endorsement which is permitted under § 10.711(d). The commenter stated that the pilot license should not be trade/vessel restrictive since a pilot who gains the experience and passes the examination, including the chart sketch, has proven his/her professional competence. The Officer in Charge, Marine Inspection (OCMI) has always had the authority to impose appropriate limitations commensurate with the experience of the applicant, with respect to class or type of vessel, tonnage, route, and waters (46 CFR 10.701(c)). Therefore, § 10.711(d) does not give the OCMI any new or additional authority; he already has it. The discussion in the regulation itself (§ 10.711(d)) regarding a tug and barge combination limitation is intended as clarification and guidance. We agree with the commenter to a certain extent, in that, in the majority of cases we would not expect the limitation to be imposed. However, there are circumstances that, due to the nature of the waters and the overall experience of the applicant, self-propelled vessel experience would be necessary to obtain a first class pilot's license or endorsement that is not restricted to tug and barge combinations.

38. *Authority to "serve as" pilot on tank barges:* One commenter stated that in the § 15.812(e) provision permitting an operator to "serve as" pilot for tank barges, the Coast Guard leaves it up to the operator to determine the geographic limits of the route. This problem stems from the fact that the "serve as" pilot is not issued a pilot license or endorsement that describes the specific waters, including geographic limitations, upon which he is authorized to serve as pilot. The individual master, mate, or operator must self-certify that he or she has become qualified by acquiring the required round trips over the route upon which he or she intends to serve as pilot. Without receiving an endorsement, the individual does not have any documentation to indicate that the Coast Guard concurs in his or her interpretation of the geographic area upon which he or she is qualified to serve. The Coast Guard is in the process of developing a Navigation and Vessel Inspection Circular (NVIC), or other suitable document, which would identify the geographic limits of routes for the "serve as" pilot. Additionally, the commenter stated that the Coast Guard does not make an effort to verify that the required number of round trips has been made. As to verification of the round trips, the Coast Guard intends that this requirement would be self-enforcing due to the consequences of serving as a pilot without a valid license, endorsement or authorization. The same commenter asked how the "serve as" pilot can demonstrate his local knowledge and familiarity with the route if he or she does not have to do a chart sketch. In the case of the "serve as" pilot, the required round trips provide the local knowledge. The commenter also asked why we would permit individuals to "serve as" pilot when they have the opportunity to be licensed pilots. The Coast Guard does not approach licensing requirements based on "the opportunity to be licensed," but rather, on reasonable safety standards and requirements. In the case of the "serve as" pilot, our analysis indicates that safety would not be sacrificed by permitting individuals to serve as pilot, without taking the first class pilot examination, provided they satisfy the other requirements identified in the regulations.

39. *Recency for pilotage:* One commenter stated that recency of service over the specified waters should be required for an individual to serve as a pilot. Section 15.812(d) states that a licensed master or mate qualifying under § 15.812(c)(2) may serve as pilot. In order to qualify under that section, an individual must comply with the recency of knowledge provisions of 46 CFR 10.713 (see § 15.812(c)(2)(ii)). Therefore, recency of service is required before an individual may serve as pilot under the authority of his master or mate's license. One round trip over the route within the past 60 months is required.

40. *Authority to require pilots on Great Lakes vessels:* One comment stated that there is no legal authority to issue a blanket requirement for pilots onboard Great Lakes vessels operating under enrollment.

The Coast Guard originally required a pilot on vessels operating on the Great Lakes under the authority of the old 46 U.S.C. 404 which was amended by Pub. L. 96–378 to replace the word "pilot" with "deck officer." The Coast Guard is authorized under 46 U.S.C. 8101 to determine the complement of licensed individuals, including pilots, considered necessary for a vessel's safe operation. The Coast Guard continues to require pilots on inspected mechanically propelled vessels and tank barges inspected under 46 U.S.C. Chapter 37 operating on the Great Lakes under this authority.

41. *Signaling (flashing light) proficiency:* Aside from the preamble discussion of the signaling requirement for licenses, the only mention of this requirement in the Interim Final Rule is its inclusion in the table of subjects for deck licenses, § 10.910. A strict interpretation of this table would preclude an individual who has successfully completed all the examination requirements, except the signaling requirement, from obtaining a license as third mate, second mate, chief mate, or master. This is an unintended reversal of a longstanding Coast Guard policy to issue the license where flashing light proficiency is deficient, but to limit the tonnage on which service is authorized. The Coast Guard will continue this policy. Therefore, § 10.401 of the final rule has been revised to permit the issuance of a license limited to vessels of not more than 1600 gross tons to those applicants who successfully complete all parts of the examination, except the signaling requirement.

42. *Service Requirements for Endorsement as First Class Pilot:* As indicated in the Interim Final Rule (52 FR 38858), the Coast Guard intended to incorporate the substance of its final rule (50 FR 26106) concerning the professional requirements for pilot licenses by reformatting and reorganizing it to be consistent with the rules for licensing of maritime personnel, published simultaneously (52 FR 38614). Comments from Coast Guard licensing officials pointed out the unintended elimination in the Interim Final Rule of specific service requirements for an endorsement as first class pilot on an individual's license. Section 10.703 has been revised in the final rule to restore these long standing specific service requirements. In addition, § 10.701 is revised in the final rule to make it clear that endorsements as first class pilot for service on vessels of 1600 gross tons or less will not be issued. Such endorsements are unnecessary, as § 15.812 authorizes appropriately licensed individuals to serve as pilots on vessels of not more than 1600 gross tons.

43. *Route Familiarization Requirements:* An individual questioned whether experience as an observer would satisfy the round trip requirements for route familiarization contained in § 10.705(b). Observer experience has been acceptable since 1965, and probably before that. The pre-

June 1985 pilot regulations included the sentence "Experience as an observer, properly certified by the master and/or pilot of the vessel is also acceptable in such cases". That sentence was replaced in the present regulations with the phrase "or in an equivalent capacity". We considered the "equivalent capacity" phrase to be broader and to include the observer, as it was not our intent to eliminate observer experience. Therefore, we are adding the sentence "Evidence of having completed a minimum number of round trips while servicing as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable" to the regulations in order to make it clearer that observer experience is acceptable.

Regulatory Evaluation

The regulatory evaluations published with the Interim Final Rules on October 16, 1987 (52 FR 38614 and 52 FR 38658) are still valid. The revisions included in this final rule do not alter the assumptions or cost estimates previously published.

The agency certifies that these final rules will not have a significant economic impact on a substantial number of small entities. These final rules apply to licenses for individuals only. The residual effects on training schools may be a minor modification in some course structures to reflect exam topics for licenses, course title changes to reflect new license titles, and, possibly, some combining of courses to account for the deletion of most trade restricted licenses.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

These final rules contain no new information collection requirements. The information collection requirements that they do contain have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval numbers are listed in § 10.107.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 155

Oil pollution, Vessels.

46 CFR Parts 10 and 12

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 30

Administrative practice and procedure, Barges, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 35

Barges, Marine safety, Navigation (water), Reporting requirements, Tank vessels.

46 CFR Part 151

Barges, Flammable materials, Hazardous materials transportation, Marine safety, Tank vessels.

46 CFR Part 185

Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

Accordingly, the interim rules amending 46 CFR Parts 1, 10, 15, 28, 35, 157, 175, 185, 186, and 187 which were published at 52 FR 38614 and 38658 on October 16, 1987, are adopted as final rules with the following changes. In addition, 46 CFR Parts 12, 30, 31, and 151 and 33 CFR Part 155 are amended as set forth below.

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 is revised to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7701, 8105; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. The table of contents for Part 10 is amended by revising the section headings for §§ 10.201, 10.202, 10.219, 10.410 and 10.420, adding § 10.421, redesignating § 10.428 as 10.427 and § 10.429 as 10.428, adding a new § 10.429, removing § 10.440, adding §§ 10.448 and 10.448, redesignating § 10.455 as 10.456 and § 10.456 as 10.457, adding new §§ 10.455 and 10.459, removing § 10.460, redesignating § 10.504 as 10.505, adding new § 10.504, and removing § 10.905. The added and revised headings read as follows:

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 10—LICENSING OF MARITIME PERSONNEL

Sec.

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Subpart B—General Requirements for all Licenses and Certificates of Registry

10.201 Eligibility for licenses and certificates of registry, general.
10.202 Issuance of licenses and certificates of registry.

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10.219 Issuance of duplicate license or certificate of registry.

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Subpart D—Professional Requirements for Deck Officers' Licenses

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10.410 Requirements for deck licenses for vessels of not more than 1600 gross tons.

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10.420 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.
10.421 Service requirements for mate of near coastal steam or motor vessels of not more than 500 gross tons.

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10.429 Service requirements for limited master of near coastal steam or motor vessels of not more than 100 gross tons.

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10.448 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.
10.448 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

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10.455 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

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10.459 Service requirements for master or mate of rivers.

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10.504 Application of deck service for limited engineer licenses.

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3. Section 10.103 is amended by revising the definitions of "*Inland waters*" and "*Oceans*", and by adding the definition of "*Rivers*" in alphabetical order:

§ 10.103 Definitions of terms used in this part.

* * * * *

"*Inland Waters*" means the navigable waters of the United States shoreward of the Boundary Lines as described in 46 CFR Part 7, excluding the Great Lakes. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are considered as inland.

* * * * *

"*Oceans*" means the waters seaward of the Boundary Lines as described in 46 CFR Part 7. For the purposes of establishing sea service credit, the waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska, are not considered oceans.

* * * * *

"*Rivers*" means any river, canal, or other similar body of water designated by the Officer in Charge, Marine Inspection.

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4. Section 10.107 is amended by revising paragraphs (b) (1) and (2) and removing (b)(3) through (b)(5) to read as follows:

§ 10.107 Paperwork approval.

* * * * *

(b) * * *

(1) OMB 2115–0514—46 CFR 10.201, 10.202, 10.205, 10.207, 10.209.

(2) OMB 2115–0111—46 CFR 10.302, 10.303, 10.304, 10.480.

5. Section 10.201 is amended by revising the section heading and paragraphs (a), (b), (c), (f)(1) and (f)(2) to read as follows:

§ 10.201 Eligibility for licenses and certificates of registry, general.

(a) The applicant must establish to the satisfaction of the Officer in Charge, Marine Inspection, that he or she possesses all of the qualifications necessary, e.g., age, experience, character references and recommendations, physical examination, citizenship, and training, and pass a professional examination, as appropriate, before a license or certificate of registry is issued.

(b) No person is eligible for a license or certificate of registry who has been convicted by a court of record of a violation of the dangerous drug laws of the United States, the District of Columbia, or any state or territory of the United States, within three years prior to the date of filing the application (this period may be extended up to ten years after conviction, if the gravity of the facts or circumstances of the case warrant) or who, unless he or she furnishes satisfactory evidence of cure, has ever been the user of or addicted to the use of a dangerous drug.

(c) Except as provided in § 10.464(i) of the part, an applicant for a license must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions.

* * * * *

(f) * * *

(1) A license as master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 gross tons, third mate, third assistant engineer, mate of vessels of 200–1600 gross tons, assistant engineer of fishing industry vessels, second-class operator of uninspected towing vessels, radio officer, assistant engineer (limited-oceans), or designated duty engineer of vessels of not more than 4000 horsepower, may be granted to an applicant who has reached the age of 19 years.

(2) A license as limited master of near coastal vessels of not more than 100 gross tons, limited master of Great Lakes and inland vessels of not more than 100 gross tons, mate of Great Lakes and inland vessels of 25–200 gross tons, mate of near coastal vessels of 25–200 gross tons, operator of uninspected passenger vessels, or designated duty engineer of vessels of not more than 1000 horsepower, may be granted to an applicant who has reached the age of 18 years.

* * * * *

6. Section 10.202 is amended by revising the section heading and paragraphs (b), (d), (g), and (h) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

* * * * *

(b) Any person who is found qualified under the requirements set forth in this Part is issued an appropriate license valid for a term of five years from date of issue. A certificate of registry does not expire.

* * * * *

(d) Every person who receives an original license or certificate of registry shall take an oath before a designated Coast Guard official that he or she will faithfully and honestly, according to his or her best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. Such an oath remains binding for all subsequent licenses or certificates of registry issued to that person unless specifically renounced in writing.

* * * * *

(g) If an Officer in Charge, Marine Inspection, refuses to grant an applicant the license or certificate of registry for which applied, the OCMI will furnish the applicant, if requested, a written statement setting forth the cause of denial.

(h) The Officer in Charge, Marine Inspection, may modify the service and examination requirements in this Part to satisfy the unique qualification requirements of an applicant. The Officer in Charge, Marine Inspection, may also lower the age requirement for operator of uninspected passenger vessels license applicants. The authority granted by a license will be restricted on its face to reflect any modifications made under the authority of this paragraph. Such restrictions shall not be removed without the approval of the OCMI issuing the license.

§ 10.203 [Amended]

7. The table in § 10.203, is amended by removing "N/A" in the third column (citizenship requirement), and, in its place, inserting "Yes".

8. Section 10.205 is amended by revising paragraphs (c)(1)(ii), (d)(2) introductory text, (d)(4), (f)(1), and (f)(2), by adding paragraph (f)(4), by revising the introductory text of paragraph (h), and paragraphs (h)(1)(iii), (h)(2)(ii), and (h)(2)(iii), by adding paragraph (h)(2)(iv), and by revising paragraph (i)(1) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(c) * * *

(1) * * *

(ii) Certificate of naturalization (original must be presented; photocopies are unlawful).

* * * * *

(d) * * *

(2) For an original license as master, mate, pilot, or operator, the applicant must have vision correctable to at least 20/40 in each eye and uncorrected vision of at least 20/200 in each eye. The color sense must be determined to be satisfactory when tested by any of the following methods, without the use of color sensing lenses:

* * * * *

(4) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician or physician's assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the OCMI, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government

vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/40 for deck licenses or 20/50 for engineer licenses.

* * * * *

(f) *Character check and references.* (1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as engineer where service was obtained on vessels not carrying a licensed engineer and for a license as operator of uninspected towing vessels, the recommendations may be from recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a license for which no commercial experience may be required, such as: Master or mate 25–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(2) Each applicant's fingerprints are taken during the application process. The fingerprints are checked against the records of law enforcement and other government agencies. The application of any person may be rejected when information has been brought to the attention of the OCMI which indicates that the applicant's habits of life and character are such as to warrant the belief that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry for which application is made. In the event an application is rejected, the applicant is notified in writing of the reason(s) for rejection and advised that the appeal procedures in § 10.204 of this part apply. No examination is given pending decision on appeal.

* * * * *

(4) In the event a license or certificate of registry has already been issued when information about the applicant's habits of life and character is brought to the attention of the OCMI, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license or certificate of registry issued, or if such information indicates that the application for the license or certificate of registry was false or incomplete, the OCMI may notify the holder in writing that the license or certificate of registry is considered null and void, direct the holder to return it to the OCMI, and advise the holder that, upon return of the license or certificate of registry, the appeal procedures of § 10.204 of this part apply.

* * * * *

(h) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original license or certificate of registry, except as provided in §§ 10.429, 10.456, and 10.466 of this part, must present to the OCMI:

(1) * * *

(iii) A course the OCMI determines meets or exceeds the standards of the American Red Cross courses; and,

(2) * * *

(ii) The American Heart Association;

(iii) A Coast Guard approved CPR training course; or,

(iv) A course the OCMI determines meets or exceeds the standards of the American Red Cross or American Heart Association courses.

(i) *Professional examination.* (1) When an applicant's experience and training are found to be satisfactory and the applicant is eligible in all other respects, the OCMI examines the applicant, in writing; except that, if the license is to be limited to uninspected fishing industry vessels, the applicant may request an oral-assisted examination. The alternative of an oral-assisted examination is also available to applicants for deck or engineer licenses limited to 500 gross tons. If there is demonstrated difficulty in reading and understanding the questions, the oral-assisted examination shall be offered. Any license based on oral-assisted examination is limited to the specific route and type of vessel upon which the majority of experience was obtained. The instructions for administration of examinations and the lists of subjects for all licenses are contained in Subpart I of this Part. A record indicating the subjects covered is placed in the applicant's license file.

* * * * *

9. Section 10.207 is amended by revising the last sentence of paragraph (c)(5) to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(c) * * *

(5) * * * An applicant who has obtained the qualifying experience on foreign vessels shall submit satisfactory documentary evidence of such service (including any necessary translations into English) in the forms prescribed by paragraph (c)(2) of this section.

* * * * *

10. Section 10.209 is amended by revising the first sentence of paragraph (a), by removing paragraph (c)(2) and redesignating paragraphs (c)(3) through (c)(5) as paragraphs (c)(2) through (c)(4), respectively, by revising the new paragraph (c)(4), by revising paragraphs (e)(3)(i)(B), (e)(3)(i)(C), and (f), and by adding paragraph (g) to read as follows:

§ 10.209 Requirements for renewal of license.

(a) *General.* Except as provided in paragraph (g) of this section, applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. * * *

* * * * *

(c)(4) An applicant for renewal of a radio officer's license shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license is returned to the applicant.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(B) The license to be renewed, or a photocopy of the license, including the back and all attachments, if it is unexpired;

(C) A certification from a licensed physician or physician's assistant in accordance with paragraph (d) of this section;

* * * * *

(f) *Reissue of expired license.* Whenever an applicant applies for reissuance of a license more than 12 months after expiration, the applicant must complete an approved course or pass the complete examination for that license to demonstrate continued professional knowledge. The examination may be oral-assisted if the license being renewed was awarded on such an oral exam. In the case of an expired radio officer's license, the license may be reissued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(g) *Inactive license renewal.* (1) Applicants for renewal of licenses who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew their licenses, with the following restrictive endorsement placed on the back of the license: "License renewed for continuity purposes only; service under the authority of this license is prohibited." Holders of licenses with this "continuity endorsement" may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a license with the continuity endorsement must include:

(i) The license to be renewed, or a photocopy of the license, including the back and all attachments, if it is unexpired; and,

(ii) A signed statement from the applicant attesting to an awareness of the restrictions to be placed on the renewed license, and of the requirements for rescinding the continuity endorsement.

11. Section 10.211 is amended by revising paragraph (c) to read as follows:

§ 10.211 Creditable service and equivalents for licensing purposes.

* * * * *

(c) Service on mobile offshore drilling units is creditable for raise of grade of license. Evidence of one year's service as mate or equivalent while holding a license as third mate, or as engineering officer of the watch or equivalent while holding a license as third assistant engineer, is acceptable for a raise of grade to second mate or second assistant engineer, respectively; however, any subsequent raises of grade of unlimited, nonrestricted licenses must include a minimum of six months of service on conventional vessels.

* * * * *

12. Section 10.217 is amended by revising paragraph (a)(1) to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are administered at periodic intervals. If the applicant fails three or more sections of the examination, a complete reexamination must be taken, but may be taken during any of the scheduled exam periods. On the subsequent exam, if the applicant again fails three or more sections, at least three months must lapse before another complete examination is attempted. If an applicant fails one or two sections of an examination, he or she may be retested twice on these sections during the next three months. If the applicant does not successfully complete these sections within the three month period, a complete reexamination must be taken, after a lapse of at least three months from the date of the last retest. The three month retest period may be extended by the OCMI if the examinee presents discharges documenting sea time which prevented the taking of a retest during the three month period. The retest period may not be extended beyond seven months from the initial examination.

* * * * *

13. Section 10.219 is revised to read as follows:

§ 10.219 Issuance of duplicate license or certificate of registry.

Whenever a person to whom a license or certificate of registry has been issued loses the license or certificate, that person shall report the loss to any OCMI. A duplicate license or certificate may be issued by an OCMI listed in the note following § 1.05(b) of this Part after receiving an application with an affidavit describing the circumstances of the loss from the applicant and verification of the license or certificate record from the Regional Examination Center where it was issued or from the Commandant. The duplicate will be prepared in the same format and wording as the license or certificate being replaced. A duplicate license is issued for the unexpired term of the lost license. Duplicate licenses and certificates of registry bear the following statement: "This license (or certificate) replaces License (or Certificate) Number ____ issued at ____ on the above date."

14. Section 10.304 is amended by revising paragraph (a) to read as follows:

§ 10.304 Substitution of training for required service.

(a) Satisfactory completion of certain training courses approved by the Commandant may be substituted for a portion of the required service for many deck and engineer licenses and for qualified ratings of unlicensed personnel. The list of all currently approved courses of instruction including the equivalent service and applicable licenses and ratings is maintained by Commandant (G–MVP). Satisfactory completion of an approved training course may be substituted for not more than two-thirds of the required service on deck or in the engine department for deck or engineer licenses, respectively, and for qualified ratings.

* * * * *

15. Section 10.401 is amended by revising paragraph (d) and the introductory text of paragraph (g), and by adding a new paragraph (h) to read as follows:

§ 10.401 Ocean and near coastal licenses.

* * * * *

(d) A licensee having a master or mate near coastal license obtained with ocean service may have the license endorsed for ocean service by completing the appropriate examination deficiencies, provided that the additional service requirements of paragraph (e) of this section do not apply.

* * * * *

(g) In order to obtain a master or mate license with a tonnage limit above 200 gross tons, or a license for 200 gross tons or less with an ocean route, whether an original, raise in grade, or increase in the scope of license authority to a higher tonnage category, the applicant must successfully complete the following training and examination requirements:

* * * * *

(h) Each applicant for a deck license which authorizes service on vessels above 1600 gross tons on ocean or near coastal waters, whether original or raise of grade, must pass a practical signaling examination (flashing light). A license applicant who fails in practical signaling, but passes every other part of the examination, may be issued a license with a 1600 gross ton limitation. The tonnage limitation can be removed upon successful completion of the signaling examination.

16. Section 10.402 is amended by revising paragraphs (a), (b), and (c)(3), and by adding paragraph (d) to read as follows:

§ 10.402 Tonnage requirements for ocean or near coastal licenses for vessels of over 1600 gross tons.

(a) To qualify for an ocean or near coastal license for vessels of any gross tons, all the required experience must be obtained on vessels of over 200 gross tons. At least one-half of the required experience must be obtained on vessels of over 1600 gross tons.

(b) If the applicant for an original or raise of grade of a license as master or mate does not have the service on vessels over 1600 gross tons required by paragraph (a) of this section, or is qualifying for third mate under the provisions of paragraph § 10.407(c) of this subpart, a tonnage limitation is

placed on the license based on the applicant's qualifying experience. * * *

(c) * * *

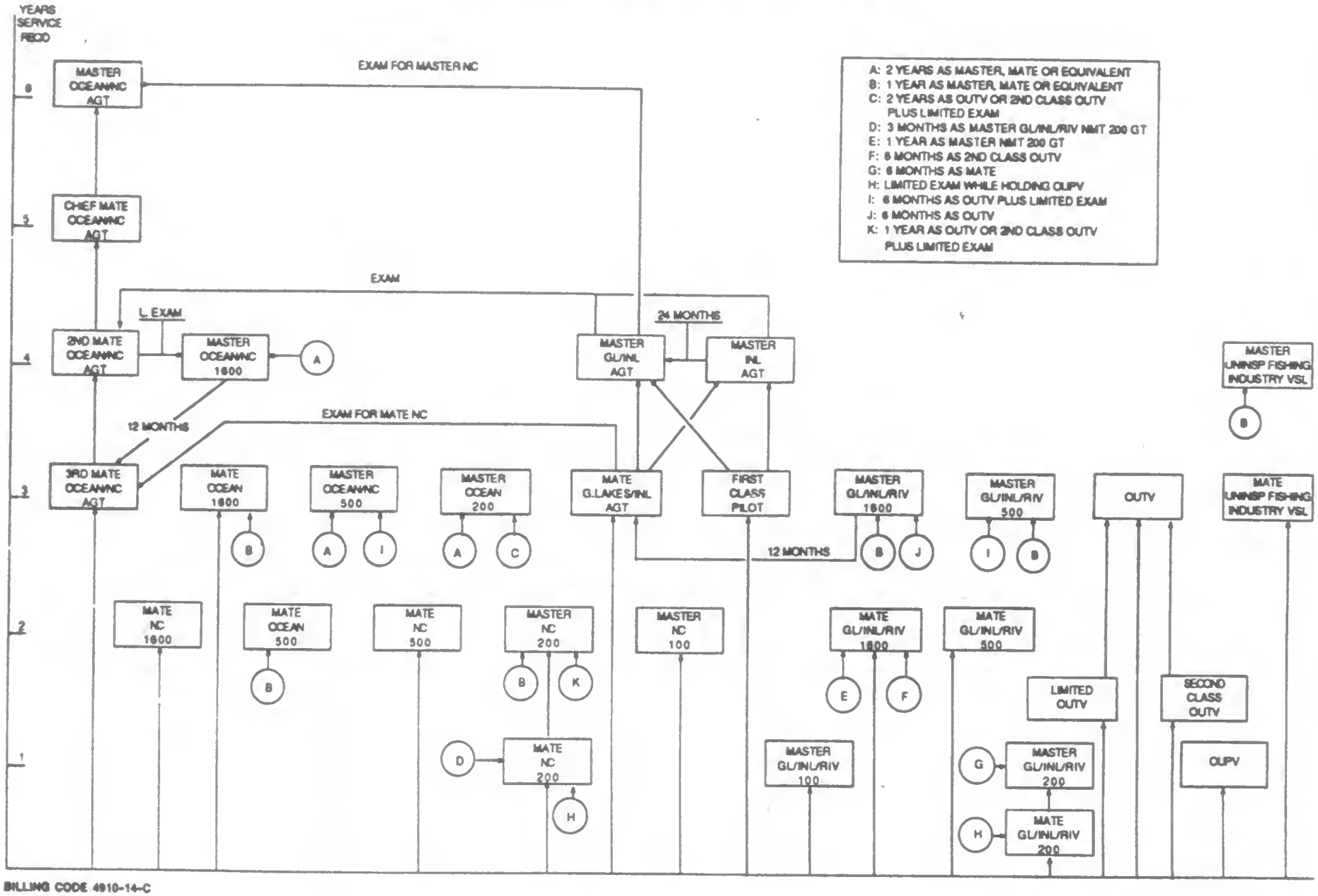
(3) When the applicant has 12 months of service as able seaman on vessels over 1600 gross tons while holding a license as third mate, all tonnage limitations on the third mate's license are removed.

(d) Individuals holding licenses as master or mate of vessels of not more than 1600 gross tons, not more than 500 gross tons, or not more than 25–200 gross tons are prohibited from using the provisions of paragraph (c) of this section to increase the tonnages of their licenses.

17. Section 10.403 is amended by removing Figures 10.403–1 and 10.403–2 and replacing them with Figure 10.403 as follows:

BILLING CODE 4910-14-M

FIGURE 10.403 DECK LICENSE STRUCTURE



BILLING CODE 4910-14-C

18. Section 10.406 is amended by revising paragraph (b)(2) to read as follows:

§ 10.406 Service requirements for second mate of ocean or near coastal steam or motor vessels of any gross tons.

* * * * *

(b) * * *

(2) Service on ocean steam or motor vessels as boatswain, able seaman, or quartermaster while holding a certificate as able seaman, which may be accepted on a two-for-one basis to a maximum allowable substitution of six months (12 months of experience equals 6 months of creditable service); or,

* * * * *

19. Section 10.410 is amended by revising the section heading and paragraph (a) introductory text and by removing paragraph (c) to read as follows:

§ 10.410 Requirements for deck licenses for vessels of not more than 1600 gross tons.

(a) Licenses as master and mate of vessels of not more than 1600 gross tons are issued in the following tonnage categories:

* * * * *

20. Section 10.412 is revised to read as follows:

§ 10.412 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 1600 gross tons is:

(a) Four years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to two years of the required service. Two years of the required service must have been on vessels of over 100 gross tons. Two years of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. One year of the service as master, mate, or equivalent supervisory position must have been on vessels of over 100 gross tons; or,

(b) An applicant holding a license as chief mate or second mate of ocean or near coastal steam or motor vessels of over 1600 gross tons is eligible for this license upon completion of a limited examination.

21. Section 10.414 is revised to read as follows:

§ 10.414 Service requirements for mate of ocean steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as mate of ocean steam or motor vessels of not more than 1600 gross tons is:

(a) Three years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. One year of the required service must have been on vessels of over 100 gross tons. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. Six months of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 100 gross tons; or,

(b) Three years total service in the deck department on ocean or near coastal steam or motor, sail, or auxiliary sail vessels of over 200 gross tons. Six months of the required service must have been as able seaman.

22. Section 10.416 is revised to read as follows:

§ 10.416 Service requirements for mate of near coastal steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as mate of near coastal steam or motor vessels of not more than 1600 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been on vessels of over 100 gross tons. Six months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 100 gross tons while holding a certificate as able seaman.

23. Section 10.418 is revised to read as follows:

§ 10.418 Service requirements for master of ocean or near coastal steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as master of ocean or near coastal steam or motor vessels of not more than 500 gross tons is:

(a) Three years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. Two years of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, or operator of uninspected passenger vessels. One year of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 50 gross tons.

(b) An applicant holding a license as operator of uninspected towing vessels authorizing service on ocean or near coastal waters is eligible for this license after six months of service as operator of uninspected towing vessels on ocean or near coastal waters and completion of a limited examination. This requires three and one-half years of service. Two years of this service must have been served while holding a license as operator, second-class operator, or mate.

24. Section 10.420 is revised to read as follows:

§ 10.420 Service requirements for mate of ocean steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of ocean steam and motor vessels of not more than 500 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels. Six months of the required service as master, mate, or equivalent supervisory position must have been on vessels of over 50 gross tons.

25. Section 10.421 is added to Subpart D to read as follows:

§ 10.421 Service requirements for mate of near coastal steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of near coastal steam or motor vessels of not more than 500 gross tons is two years total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been on vessels of over 50 gross tons. Three months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 50 gross tons while holding a certificate as able seaman.

26. Section 10.422 is amended by revising paragraph (b)(4) to read as follows:

§ 10.422 Tonnage limitations and qualifying requirements for licenses as master or mate of vessels of not more than 200 gross tons.

* * * * *

(b) * * *

(4) Six months additional service in the deck department on vessels within the highest tonnage increment on the license. In this case, the tonnage limitation may be raised one increment.

* * * * *

27. Section 10.424 is revised to read as follows:

§ 10.424 Service requirements for master of ocean steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of ocean steam or motor vessels of not more than 200 gross tons is:

(1) Three years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to 18 months of the required service. Two years of the required service must have been as master, mate, or equivalent supervisory position while holding a license as master, as mate, or as operator of uninspected passenger vessels; or,

(2) Two years total service as a licensed operator or second-class operator of ocean or near coastal uninspected towing vessels. Completion of a limited examination is also required.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

(c) In addition to any required examination, the applicant must comply with the requirements listed in § 10.401(g) of this subpart.

28. Section 10.426 is revised to read as follows:

§ 10.426 Service requirements for master of near coastal steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of near coastal steam or motor vessels of not more than 200 gross tons is:

(1) Two years total service on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to one year of the required service. One year of the required service must have been as a master, mate, or equivalent supervisory position while holding a license as master, as mate, or as operator of uninspected passenger vessels; or,

(2) One year of total service as a licensed operator or second-class operator of ocean or near coastal uninspected towing vessels. Completion of a limited examination is also required.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the master's license.

29. Section 10.428 is redesignated as § 10.427 and paragraphs (a)(1), and (a)(2), and (b) are revised to read as follows:

§ 10.427 Service requirements for mate of near coastal steam or motor vessels of not more than 200 gross tons.

(a) * * *

(1) Twelve months total service in the deck department of ocean or near coastal steam or motor, sail, or auxiliary sail vessels. Service on Great Lakes and inland waters may substitute for up to six months of the required service; or,

(2) Three months of service in the deck department of steam or motor vessels operating on ocean, near coastal, Great Lakes or inland waters while holding a license as master of inland steam or motor, sail or auxiliary sail vessels of not more than 200 gross tons.

(b) The holder of a license as operator of uninspected passenger vessels with a near coastal route endorsement may obtain this license by successfully completing an examination on rules and regulations for small passenger vessels.

* * * * *

30. Section 10.429 is redesignated as § 10.428 and revised to read as follows:

§ 10.428 Service requirements for master of near coastal steam or motor vessels of not more than 100 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of near coastal steam or motor vessels of not more than 100 gross tons is two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels on ocean or near coastal waters. Service on Great Lakes and inland waters may substitute for up to one year of the required service.

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. The required 12 months of service may have been obtained prior to issuance of the license.

31. New § 10.429 is added to Subpart D to read as follows:

§ 10.429 Service requirements for limited master of near coastal steam or motor vessels of not more than 100 gross tons.

(a) Limited masters' licenses for near coastal vessels of not more than 100 gross tons may be issued to applicants to be employed by organizations such as yacht clubs, marinas, formal camps and educational institutions. A license issued under this section is limited to the specific activity and the locality of the yacht club, marina or camp. In order to obtain this restricted license, an applicant must:

(1) Have four months of service on any waters in the operation of the type of vessel for which the license is requested;

(2) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, or a safe boating course conducted by the U.S. Power Squadron or the American Red Cross, or a Coast Guard approved course. This course must have been completed within five years before the date of application; and,

(3) Pass a limited examination appropriate for the activity to be conducted and the route authorized.

(b) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

(c) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of four months of service on sail or auxiliary sail vessels. The required four months of service may have been obtained prior to issuance of the license.

32. Section 10.430 is revised to read as follows:

§ 10.430 Licenses for the Great Lakes and inland waters.

Any license issued for service on the Great Lakes and inland waters is valid on all of the inland waters of the United States as defined in this part. Any license issued for service on inland waters is valid for the inland waters of the United States, excluding the Great Lakes. Licenses with either a Great

Lakes and inland or an inland route are valid for service on the sheltered waters of the Inside Passage between Puget Sound and Cape Spencer, Alaska. As these licenses authorize service on waters seaward of the International Regulations for Preventing Collisions at Sea (COLREGS) demarcation line as defined in 33 CFR Part 80, the applicant must complete an examination on the COLREGS or the license must be endorsed with an exclusion from such waters.

§ 10.440 [Removed]

33. Section 10.440 is removed.

34. Section 10.442 is revised to read as follows:

§ 10.442 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) Three years total service on vessels. Eighteen months of the required service must have been on vessels of over 100 gross tons. One year of the required service must have been as a master, mate, or equivalent supervisory position on vessels of over 100 gross tons while holding a license as master, as mate, or as operator of uninspected towing vessels; or,

(b) Six months of service as operator on vessels of over 100 gross tons while holding a license as operator of uninspected towing vessels.

35. Section 10.444 is revised to read as follows:

§ 10.444 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons.

The minimum service required to qualify an applicant for license as mate of Great Lakes and inland steam or motor vessels of not more than 1600 gross tons is:

(a) Two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels. One year of the required service must have been on vessels of over 100 gross tons. Six months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 100 gross tons while holding a certificate as able seaman; or,

(b) One year total service as master of steam or motor, sail, or auxiliary sail vessels, or operator of uninspected passenger vessels, of over 50 gross tons while holding a license as master steam or motor, sail, or auxiliary sail vessels of not more than 200 gross tons or operator of uninspected passenger vessels; or,

(c) Six months total service as second-class operator of uninspected towing vessels on vessels of over 100 gross tons.

36. New section 10.446 is added to Subpart D to read as follows:

§ 10.446 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 500 gross tons is:

(a) Three years total service on vessels. One year of the required service must have been as a master, mate, or equivalent supervisory position on vessels of over 50 gross tons while holding a license as master, as mate, or as operator of uninspected passenger vessels.

(b) An applicant holding a license as operator of ocean, near coastal, or Great Lakes and inland uninspected towing vessels is eligible for this license after six months of service as operator of uninspected towing vessels and completion of a limited examination. This requires three and one-half years of service. Two years of this service must have been served while holding a license as operator or second-class operator of uninspected towing vessels, or mate.

37. New section 10.448 is added to Subpart D to read as follows:

§ 10.448 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons.

The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 500 gross tons is two years total service in the deck department of steam or motor, sail, or auxiliary sail vessels. One year of the required service must have been on vessels of over 50 gross tons. Three months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of over 50 gross tons while holding a certificate as able seaman.

38. Section 10.452 is revised to read as follows:

§ 10.452 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 200 gross tons is one year of service on vessels. Six months of the required service must have been as master, mate, or equivalent supervisory position while holding a license as master, mate, operator or second-class operator of uninspected towing vessels, or operator of uninspected passenger vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must have six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the master's license.

39. Section 10.454 is amended by revising paragraphs (a) and (d) to read as follows:

§ 10.454 Service requirements for mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons.

(a) The minimum service required to qualify an applicant for a license as mate of Great Lakes and inland steam or motor vessels of not more than 200 gross tons is six months of service in the deck department of steam or motor, sail, or auxiliary sail vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

* * * * *

(d) The holder of a license as operator of inland uninspected passenger vessels may obtain this license by successfully completing an examination on rules and regulations for small passenger vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

* * * * *

40. Section 10.455 is redesignated as § 10.456, paragraph (b) is revised, and a new paragraph (d) is added to read as follows:

§ 10.456 Service requirements for limited master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

* * * * *

(b) Satisfactorily complete a safe boating course approved by the National Association of State Boating Law Administrators, a public education course conducted by the U.S. Power Squadron or the American Red Cross, or a Coast Guard approved course. This course must have been completed within five years before the date of application; and,

* * * * *

(d) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

41. New § 10.455 is added to Subpart D to read as follows:

§ 10.455 Service requirements for master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons.

(a) The minimum service required to qualify an applicant for a license as master of Great Lakes and inland steam or motor vessels of not more than 100 gross tons is one year of total service in the deck department of steam or motor, sail, or auxiliary sail vessels. To obtain authority to serve on the Great Lakes, three months of the required service must have been on Great Lakes waters, otherwise the license will be limited to the inland waters of the United States (excluding the Great Lakes).

(b) In order to obtain an endorsement on this license for sail or auxiliary sail vessels, the applicant must submit evidence of six months of service on sail or auxiliary sail vessels. The required six months of service may have been obtained prior to issuance of the license.

§ 10.456 [Redesignated as § 10.457]

42. Section 10.456 is redesignated as 10.457.

43. Section 10.459 is added to Subpart D to read as follows:

§ 10.459 Service requirements for master or mate of rivers.

(a) An applicant for a license as master of river steam or motor vessels of any gross tons must meet the same service requirements as master of inland steam or motor vessels of any gross tons.

(b) An applicant for a license as master or mate of river steam or motor vessels, with a limitation of 25–1600 gross tons, must meet the same service requirements as those required by this Subpart for the corresponding tonnage Great Lakes and inland steam or motor license. Service on the Great Lakes is not, however, required.

§ 10.460 [Removed]

44. Section 10.460 (including Figure 10.460) is removed.

45. Section 10.462 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 10.462 Licenses for master or mate of uninspected fishing industry vessels.

* * * * *

(b) Licenses as master or mate of uninspected fishing industry vessels are issued for either ocean or near coastal routes, depending on the examination completed. To qualify for an uninspected fishing industry vessel license, the applicant must satisfy the training and examination requirements of § 10.401(g) of this subpart.

(c) An applicant for a license as master of uninspected fishing industry vessels must have four years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to two years of the required service. One year of the required service must have been as licensed master, as unlicensed master, or as licensed mate or equivalent supervisory position while holding a license as master, mate, operator of uninspected towing vessels, or operator of uninspected passenger vessels.

(1) To qualify for a license of not more than 500 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of over 50 gross tons.

(2) To qualify for a license of not more than 1600 gross tons, at least two years of the required service, including the one year as master, mate or equivalent, must have been on vessels of over 100 gross tons.

(3) To qualify for a license of over 1600 gross tons, but not more than 5000 gross tons, the vessel tonnage upon which the four years of required service was obtained will be used to compute the tonnage. The license is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated. A license as master of uninspected fishing industry vessels authorizing service on vessels over 1600 gross tons also requires one year as master, mate or equivalent on vessels over 100 gross tons.

(4) The tonnage limitation on this license may be raised using one of the following methods, but cannot exceed 5000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(i) Three months service as master on a vessel results in a limitation in that capacity equal to the tonnage of that vessel rounded up to the next multiple of 1000 gross tons;

(ii) Six months service as master on a vessel results in a limitation in that capacity equal to 150% of the tonnage of that vessel;

(iii) Six months service as master on vessels over 1600 gross tons results in raising the limitation to 5000 gross tons;

(iv) Six months service as mate on vessels over 1600 gross tons results in raising the limitation for master to the tonnage on which at least 50 percent of the service was obtained;

(v) Two years service as a deckhand on a vessel while holding a license as master results in a limitation on the master's license equal to 150% of the tonnage of that vessel up to 5000 gross tons; or,

(vi) One year of service as deckhand on a vessel while holding a license as master results in a limitation on the master's license equal to the tonnage of that vessel.

(d) An applicant for a license as mate of uninspected fishing industry vessels must have three years of total service on ocean or near coastal routes. Service on Great Lakes or inland waters may substitute for up to 18 months of the required service.

(1) To qualify for a license of not more than 500 gross tons, at least one year of the required service must have been on vessels of over 50 gross tons.

(2) To qualify for a license of not more than 1600 gross tons, at least one year of the required service must have been on vessels of over 100 gross tons.

(3) To qualify for a license of over 1600 gross tons, but not more than 5000 gross tons, the vessel tonnage upon which the three years of required service was obtained will be used to compute the tonnage. The license is limited to the maximum tonnage on which at least 25 percent of the required service was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(4) The tonnage limitation on this license may be raised using one of the following methods, but cannot exceed 5000 gross tons. Limitations are in multiples of 1000 gross tons, using the next higher figure when an intermediate tonnage is calculated.

(i) Three months service as mate on a vessel results in a limitation in that capacity equal to the tonnage of that vessel rounded up to the next multiple of 1000 gross tons;

(ii) Six months service as mate on a vessel results in a limitation in that capacity equal to 150% of the tonnage of that vessel;

(iii) Six months service as mate on vessels over 1600 gross tons results in raising the limitation to 5000 gross tons;

(iv) One year of service as deckhand on vessels over 1600 gross tons while holding a license as mate, results in raising the limitation on the mate's license to 5000 gross tons;

(v) Two years service as a deckhand on a vessel while holding a license as mate results in a limitation on the mate's license equal to 150% of the tonnage of that vessel up to 5000 gross tons; or,

(vi) One year of service as deckhand on a vessel while holding a license as mate results in a limitation on the mate's license equal to the tonnage of that vessel.

* * * * *

46. Section 10.464 is amended by revising the introductory text in paragraph (e) to read as follows:

§ 10.464 Licenses for operator of uninspected towing vessels.

* * * * *

(e) In order to obtain an operator or second-class operator license for ocean (domestic trade) waters, whether an original, raise in grade, or increase in scope, the applicant must complete the following training and examination requirements:

* * * * *

47. Section 10.466 is amended by revising paragraph (a), by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, by redesignating paragraphs (c) and (d) as paragraphs (e) and (c), respectively, by adding a new paragraph (d), and by adding a new paragraph (g)(4) to read as follows:

§ 10.466 Licenses for operator of uninspected passenger vessels.

(a) This section applies to all applicants for the license to operate an uninspected vessel of less than 100 gross tons, equipped with propulsion machinery of any type, carrying six or less passengers.

* * * * *

(d) For a license as operator of an uninspected passenger vessel with a Great Lakes and inland waters endorsement, an applicant must have 12 months service on Great Lakes or inland waters, including at least three months service operating vessels on Great Lakes waters.

(g) * * *

(4) The first aid and cardiopulmonary resuscitation (CPR) course certificates required by § 10.201(h) of this part will only be required when, in the opinion of the OCMI, the geographic area over which service is authorized precludes obtaining medical services within a reasonable time.

48. Section 10.480 is amended by revising paragraph (k) to read as follows:

§ 10.480 Radar observer.

* * * * *

(k) An applicant seeking to raise the grade of a license or increase its scope, where that increased grade or scope requires a radar observer certificate, may use an expired radar observer certificate to fulfill that requirement.

49. Section 10.501 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 10.501 Grade and type of engineer licenses issued.

* * * * *

(b) Engineer licenses issued in the grades of chief engineer (limited) and assistant engineer (limited) of steam and/or motor vessels allow the holder to serve within any horsepower limitations on vessels of any gross tons on inland waters and of not more than 1600 gross tons in ocean, near coastal or Great Lakes service in the following manner:

* * * * *

50. Section 10.502 is amended by revising the introductory text in paragraph (b), and by adding paragraph (c) to read as follows:

§ 10.502 Additional requirements for engineer licenses.

* * * * *

(b) If a licensed applicant desires to obtain an endorsement on an engineer license in the other propulsion mode (steam or motor), the following alternative methods, while holding a license in that grade, are acceptable:

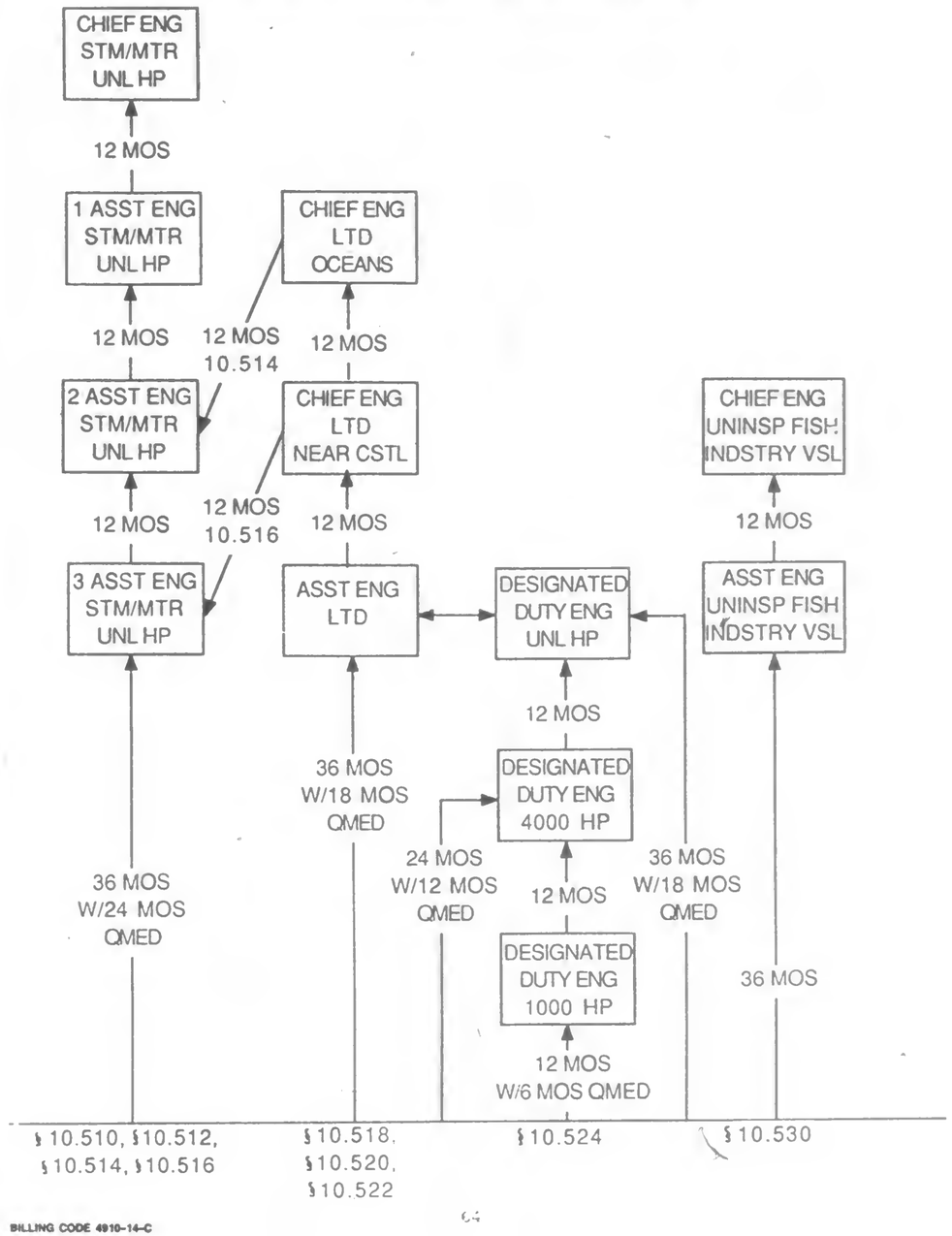
* * *

(c) Applicants for an original, raise in grade, or increase in the scope, of an engineer license, other than an increase in horsepower limitation, who have not previously done so must meet the requirements of § 10.205(g) of this part.

51. Section 10.504 is redesignated as § 10.505 and newly designated Figure 10.505 is revised to read as follows:

BILLING CODE 4910-14-M

FIGURE 10.505 ENGINEER LICENSE STRUCTURE



BILLING CODE 4910-14-C

52. New section 10.504 is added to Subpart E to read as follows:

§ 10.504 Application of deck service for limited engineer licenses.

Service gained in the deck department on vessels of appropriate tonnage may substitute for up to 25 percent or 6 months, whichever is less, of the service requirement for a license as chief engineer (limited), assistant engineer (limited), or designated duty engineer.

53. Section 10.701 is amended by revising paragraph (d) to read as follows:

§ 10.701 Scope of pilot licenses and endorsements.

* * * * *

(d) A license issued for service as a master, mate, or operator of uninspected towing vessels authorizes service as a pilot under the provisions of § 15.812 of this subchapter. Therefore, first class pilot endorsements will not be issued with tonnage limitations of 1600 gross tons or less.

54. Section 10.703 is amended by revising the introductory text of paragraph (a) and adding a new paragraph (d) to read as follows:

§ 10.703 Service requirements.

(a) The minimum service required to qualify an applicant for a license as first class pilot, or for an endorsement as first class pilot on a license as master, mate, or operator of uninspected towing vessels, is predicated upon the nature of the waters for which pilotage is desired.

* * * * *

(d) An individual holding a license as master or mate of inspected steam or motor vessels of over 1,600 gross tons meets the service requirements of this section for an endorsement as first class pilot.

54a. Section 10.705 is amended by revising paragraph (b) to read as follows:

§ 10.705 Route familiarization requirements.

* * * * *

(b) An applicant for an original license as first class pilot shall furnish evidence of having completed a minimum number of round trips, while serving as quartermaster, wheelsman, able seaman, apprentice pilot, or in an equivalent capacity, standing regular watches at the wheel or in the pilot house as part of routine duties, over the route sought. Evidence of having completed a minimum number of round trips while serving as an observer, properly certified by the master and/or pilot of the vessel, is also acceptable. The range of round trips for an initial license is a minimum of 12 round trips and a maximum of 20 round trips. An applicant may have additional routes added to the first class pilot license by meeting the requirements for obtaining an endorsement.

55. Section 10.805 is amended by revising paragraph (d) to read as follows:

§ 10.805 General requirements.

* * * * *

(d) Title 46 U.S.C. 8302 addresses uniforms for staff officers who are members of the Naval Reserve.

* * * * *

§ 10.901 [Amended]

56. Section 10.901, paragraph (c) is removed.

57. Section 10.903 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 10.903 Licenses requiring examinations.

(a) The following licenses require examinations for issuance:

(1) Master ocean/near coastal any gross tons;[1]

(2) Chief mate ocean/near coastal any gross tons;[1]

(3) Second mate ocean/near coastal any gross tons;[1]

(4) Third mate ocean/near coastal any gross tons;[1]

(5) Master ocean/near coastal not more than 500 or 1600 gross tons;[1]

(6) Mate ocean/near coastal not more than 500 or 1600 gross tons;[1]

(7) Mate near coastal not more than 200 gross tons;

(8) Master near coastal not more than 100 gross tons;

(9) Master Great Lakes and inland any gross tons;

(10) Mate Great Lakes and inland any gross tons;

(11) Master inland any gross tons;

(12) Master river any gross tons;

(13) Master Great Lakes and inland/river not more than 500 or 1600 gross tons;[1]

(14) Mate Great Lakes and inland/river not more than 500 or 1600 gross tons;[1]

(15) Mate Great Lakes and inland/inland/river not more than 200 gross tons;[1]

(16) Master Great Lakes and inland/inland/river not more than 100 gross tons;[1]

(17) First class pilot;

(18) Operator or second-class operator uninspected towing vessels;

(19) Operator uninspected passenger vessels;

(20) Master uninspected fishing industry vessels;

(21) Mate uninspected fishing industry vessels;

(22) Chief engineer steam/motor vessels;

(23) First assistant engineer steam/motor vessels;

(24) Second assistant engineer steam/motor vessels;

(25) Third assistant engineer steam/motor vessels;

(26) Chief engineer (limited) steam/motor vessels;

(27) Assistant engineer (limited) steam/motor vessels;

(28) Designated duty engineer steam/motor vessels;

(29) Chief engineer uninspected fishing industry vessels;

(30) Assistant engineer uninspected fishing industry vessels.

* * * * *

(b) * * *

(2) Master Great Lakes and inland, inland, and rivers not more than 200 gross tons when raising license grade from mate of the same route not more than 200 gross tons.

* * * * *

§ 10.905 [Removed]

58. Section 10.905 is removed.

§ 10.910 [Amended]

59. In § 10.910, table 10.910–1 is revised to read as follows:

Table 10.910–1 Codes for Deck Licenses

Deck Licenses:

1. Master, Oceans/near coastal, any gross tons.
2. Chief mate, oceans/near coastal, any gross tons.
3. Master, oceans/near coastal, 500/1,600 gross tons.
4. Second mate, oceans/near coastal, any gross tons.
5. Third mate, oceans/near coastal, any gross tons.
6. Mate, oceans/near coastal, 500/1,600 gross tons.
7. Master, oceans/near coastal, and mate, near coastal, 200 gross tons (includes master, near coastal, 100 gross tons).
8. Operator, uninspected passenger vessels, near coastal.
9. Operator, uninspected passenger vessels, Great Lakes/inland.
10. Operator, uninspected towing vessels, oceans (domestic trade)/near coastal.
11. Operator, uninspected towing vessels, Great Lakes/inland.
12. Operator, uninspected towing vessels, Western rivers.
13. Master, Great Lakes/inland, or master, inland, any gross tons.
14. Mate, Great Lakes/inland, any gross tons.
15. Master, Great Lakes/inland, 500/1,600 gross tons.
16. Mate, Great Lakes/inland, 500/1,600 gross tons.
17. Master or mate, Great Lakes/inland, 200 gross tons (includes master, Great Lakes/inland, 100 gross tons).
18. Master, rivers, any gross tons.
19. Master, rivers, 500/1,600 gross tons.
20. Mate, rivers, 500/1,600 gross tons.
21. Master or mate, rivers, 200 gross tons (includes master, rivers, 100 gross tons).
22. Master, uninspected fishing industry vessels, oceans/near coastal.
23. Mate, uninspected fishing industry vessels, oceans/near coastal.
24. First class pilot.

[1] Examination will vary depending upon route desired.

60. In § 10.910, table 10.910–2 is revised to read as follows:

TABLE 10.910–2—LICENSE CODES

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Navigation and position determination:																								
Ocean Track Plotting:																								
Middle Latitude Sailing	1	1		1	1																			
Mercator Sailing	X	X		1	1																			
Great Circle Sailing	1	1		1																				
Parallel Sailing	1	1		1	1																			
ETA	X	X	1	X	X																			
Piloting:																								
Distance Off		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Bearing Problems		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Fix or Running Fix		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Chart Navigation		X	X	X	X	X	X	X	X	X	X	2	X	X	X	X	X	2	2	2	2	X	X	X
Dead Reckoning		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Celestial Observations:																								
Special Cases (hi/lo Alt., Backsight)	1																							
Latitude by Polaris	1	1	1	1																				
Latitude by Meridian Transit	1																							
Lat. by Meridian Transit (Sun Only)	X	X	1	X	X	1	1			1												1	1	
Fix or Running Fix (Any Body)	X	X	1	X																		1		
Fix or Running Fix (Sun Only)					X	1	1			1													1	
Star Identification	1	1	1	1																				
Star Selection	1	X	1	X																			1	
Times of Celestial Phenomena:																								
Time of Meridian Transit	1																							
Time of Meridian Transit (Sun Only)	X	X	1	X	X	1	1			1												1	1	
Second Estimate Meridian Transit	1																							
Zone Time Sun Rise/Set/Twilight	X	X	1	1	1	1	1			1													1	1
Zone Time Moon Rise/Set	X	X		1																				
Speed by RPM	X	X		X									3											
Fuel Conservation	X	X											3											
Electronic Navigation	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Instruments and Accessories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Aids To Navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Charts, Navigation Publications, and Notices to Mariners	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Naut. Astronomy & Nav. Definitions	X	X		X	X																			
Chart Sketch																								4
Seamanship:																								
Marlinspike Seamanship				X	X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X	X
Purchases, Blocks and Tackle				X	X	X	X			X	X		X		X	X	X	X	X	X	X	X	X	X
Small Boat Handling Under Oars or Sail				X	X								X		X	X	X	X	X	X	X	X	X	X
Watchkeeping:																								
COLREGS	X	X	X	X	X	X	X	5	X	5			5	5	5	5	5					X	X	5
Inland Navigational Rules	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Basic Principles, Watchkeeping	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X			
Navigation Safety Regs. (33 CFR 164)	X	X		X	X								X	X				X				6	6	6
Radar Equipment:																								
Radar Observer Certificate	X	X	X	X	X	X	1			1			X	X				X				X	X	X
Compass-Magnetic and Gyro:																								
Principles of Gyro Compass	X	X	X	X	X	X							X	X	X	X						X	X	
Principles of Magnetic Compass	X	X	X	X	X	X							X	X	X	X						X	X	
Magnetic Compass Adjustment	X	X										X	X	X				X	X	X	X	X	X	X
Gyro Compass Error/Correction	X	X											X	X										
Magnetic Compass Error/Correction	X	X	X	X	X	X	7				X	X	X	X	X	X	7					X	X	X
Determination of Compass Error:								X	X	X	X		X	X	X	X	X					X	X	X
Azimuth (Any Body)	X	X		1																				
Azimuth (Sun Only)			1		X	1	1			1			3									1	1	
Amplitude (Any Body)	X																							
Amplitude (Sun Only)		X	1	X	X	1	1			1			3									1	1	
Deviation Table Construction	X	X	1	X	X								3											
Terrestrial Observation		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Gyro Controlled Systems	X	X	X	X		X																		
Operation & Care of Main Gyro Systems	X	X	X	X		X																		
Meteorology and Oceanography:																								
Characteristics of Weather Systems		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ocean Current Systems		X	X	X																		X	X	
Weather Charts and Reports		X	X	X	X		X			X												X		

TABLE 10.910–2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Tides and Tidal Currents:																								
Extensive Tidal Effects	X	X	X																			X	X	X
Terms and Definitions		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Publications		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Calculations		X	X	X			X	X	X	X	X		X	X	X	X	X							
Ship Maneuvering and Handling:																								
Approaching Pilot Vessel or Station	X	X	X			X																		X
Shiphandling in Rivers, Estuaries	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Maneuvering in Shallow Water	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Interaction with Bank/Passing Ship	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Berthing and Unberthing	X	X	X			X	X	X	X	X	X		X	X	X	X	X	X	X			X	X	X
Anchoring and Mooring		X	X	X	X	X	X	X	X	X			X	X	X	X	X					X		
Dragging, Clearing Fouled Anchors		X	X										X	X	X	X	X							
Drydocking, with & without Prior Damage		X	X																			X	X	
Heavy Weather Operations		X	X				X	X	X								X					X	X	
Maneuvering for Launching of Lifeboats and Liferafts in Heavy Weather		X	X				X			X			X		X									
Receiving Survivors From Lifbts/Lifts		X	X				X			X	X													
General: Turn Circle, Pivot Point, Advance and Transfer				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Determine Maneuvering Characteristics of Major Vessel Types		X		X	X																			
Wake Reduction		X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Ice Operations/Ice Navigation	X	X	X			X				X	X	X	X	3	X	3								
Towing Operations		X	X	X	X	X	X			X	X	X		X		X	X	X	X	X	X			
Ship Stability, Construction, and Damage Control:																								
Principles of Ship Construction		X	X	X	X	X		X					X	3	X	3	X	X	X			X	X	X
Trim and Stability	X	X	X	X	X		X	X		X	X	X	X	3	X	3	X	X	X					
Damage Trim and Stability	X	X	X	X			X	7																
Stability, Trim, and Stress Calculation	X	X	X	X	X			7																
Vessel Structural Members		X	X	X	X	X	X	7						X	X	3	7							
IMO Ship Stability Recommendations	X	X																						
Damage Control	X	X	X	X			X		7								7							
Change in Draft Due to Density	X	X																						
Ship Power Plants:																								
Marine Power Plant Operating Principles			X	X				7						X		X		7	X	X				
Ships' Auxiliary Machinery			X	X								X				X		X	X	X				
Marine Engineering Terms			X	X				7						X		X	7	X	X					
Small Engine Operations and Maintenance								X	X	X							X				X			
Cargo Handling and Stowage:																								
Cargo Stowage and Security, Including Cargo Gear			X	X	X	X	X	7						X	X	X	X	7	X	X	X			
Loading and Discharging Operations			X	X	X	X	X							X	X	X	X		X	X	X			
International Regulations for Cargoes, Especially IMDG	X	X	X											X	X	X	X		X	X	X			
Dangerous/Hazardous Cargo Regulations	X	X	X	X	X	X	X							X	X	X	X		X	X	X			
Tank Vessel Safety			X	X	X	X	X							X	X	X	X		X	X	X			
Cargo Piping and Pumping Systems			X	X	X	X	X							X	X	X	X		X	X	X			
Cargo Oil Terms and Definitions			X	X	X	X	X							X	X	X	X		X	X	X			
Ballasting, Tank Clean., & Gas Free Ops			X	X	X	X	X						X	X	X	X		X	X	X				
Load on Top Procedures			X	X	X	X	X						X	X	X	X		X	X	X				
Barge Regulations (Operations)										X	X	X												
Fire Prevention and Firefighting Appliances:																								
Organization of Fire Drills			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Classes and Chemistry of Fire			X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Firefighting Systems			X	X	X	X	X	7		X	X	X	X	X	X	X	7	X	X	X	X	7	X	X
Firefighting Equip. and Regulations								X																
Firefighting Equip. & Regs. for T-Boats																		X				X		
Basic Firefighting and Prevention			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Procedures:																								
Ship Beaching Precautions			X	X										X		X								
Actions Prior To/After Grounding			X	X										X		X		X	X					
Refloating a Grounded Ship			X	X										X		X		X	X					
Collision			X	X				X	X		X	X	X	X		X		X	X	X	X	X	X	X
Temporary Repairs			X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Passenger/Crew Safety in Emergency			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Fire or Explosion			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Abandon Ship Procedures			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Steering			X	X	X									X		X		X	X	X			X	X
Rescuing Surv. From Ship/Airc. in Dist			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Man Overboard Procedures			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Towing	X	X	X					X																
Medical Care:																								
Knowledge and use of:																								
Int'l. Medical Guide for Ships			X	X																				
Ship Med. Chest and Med. Aid at Sea			X	X																				
Medical Sec., Inter. Code of Signals			X	X	X	X																		
1st Aid Guide: Accidents with Dangerous Goods			X	X																				
First Aid			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Maritime Law:																								
International Maritime Law:																								
Int'l. Convention on Load Lines	X	X	X					7																
SOLAS	X	X	X																					
MARPOL 73/78	X	X	X	X	X																			

TABLE 10.910–2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
International Health Regulations	X	X	X																					
Other International Instruments for Ship/Pass./Crew/Cargo Safety	X	X	X																					
National Maritime Law:																								
Lead Lines	X	X	X			X	X			X	X		3	3	3	3	7							
Cert. and Documentation of Vessels	X	X	X				X	X	X	X	X	X	X		X		X	X	X		X	X		
Rules & Regs. for Inspected Vessels	X	X	X	X	X	X	7						X	X	X	X	7	X	X	X	7			
Rules & Regs. for Inspected T-Boats							X										X				X			
Rules and Regs for Uninsp. Vessels							X	X	X	X	X	X					X				X	X	X	
Pollution Prevention Regulations	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pilotage	X	X	X																					X
Licensing & Certification of Seamen	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Shipment and Discharge, Manning	X		X				X			X			X		X			X	X					
Title 46 U.S. Code	X	X	X										X		X			X	X					
Captain of the Port Regulations, Vessel Traffic Service Procedures for the Route Desired																								X
Shipboard Management and Training:																								
Personnel Management	X	X	X										X		X			X	X					
Shipboard Organization	X	X	X										X		X			X	X					
Required Crew Training	X	X	X										X		X			X	X					
Ship Sanitation	X	X	X										X	X	X	X	X	X	X	X	X	X	X	
Vessel Alteration/Repair—Hot Work	X	X	X										X		X			X	X					
Safety	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Ship's Business:																								
Charters	X	X	X																					
Liens, Salvage	X	X	X																					
Insurance	X	X	X																					
Entry, Clearance	X	X	X																					
Certificates and Documents Required	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Communications:																								
Flashing Light	X	X		X	X																			
Radiotelephone Communications		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Radiotelegraphy Emerg. Dist. Signals		X		X	X																			
Signals: Storm/Wreck/Dist./Special		X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	
International Code of Signals		X	X	X	X																			
Lifesaving:																								
Survival at Sea		X	X	X	X	X			X													X	X	
Lifesaving Appliance Regulations		X	X	X	X	X	7						X	X	X		7	X	X	X	7			
Lifesaving Appliance Regs. for T-Boats							X										X				X			
Lifesaving Appliance Operation		X	X	X	X	X	7	X	X	X	X		X	X	X	X	7	X	X	X	7	X	X	
Lifesaving Appliance Ops. for T-Boats							X										X				X			
Search and Rescue:																								
Search and Rescue Procedures	X	X	X																					
AMVER	X	X	X																					
SAIL/AUXILIARY SAIL VESSELS ADDENDUM (8):																								
Any other subject considered necessary to establish the applicant's proficiency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

1—For ocean routes only.
2—River chart navigation only.
3—Topic covered only on Great Lakes specific module(s) taken for "Great Lakes and inland" routes.
4—Including recommended courses, distances, prominent aids to navigation, depths of waters in channels and over hazardous shoals, other important features of the route, such as character of the bottom. The OCMI may accept chart sketching of only a portion or portions of the route for long or extended routes.
5—Take COLREGS if license not limited to non-COLREG waters.
6—For licenses over 1600 gross tons.
7—For licenses over 100 gross tons.
8—Sail vessel safety precautions, rules of the road, operations, heavy weather procedures, navigation, maneuvering, and sailing terminology. Applicants for sail/auxiliary sail endorsements to master, mate or operator of uninspected passenger vessels licenses are also tested in the subjects contained in this addendum.

§ 10.950 [Amended]

61. In § 10.950, table 10.950 is revised to read as follows:

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unm. ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
General Subjects:																
Prints and Tables	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Pipes, Fittings, Valves	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P
Hydraulics	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P
Bilge Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P
Sanitary/Sewerage Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P
Freshwater Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P–T	P	P	P
Lubricants	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P
Lubrication Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P
Automation Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unin. ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Propellers/Shafting Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Machine Shop	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Distilling Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Pumps	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Compressors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Administration	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P	P	P
Governors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P
Cooling Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Bearings	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Instruments	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Ship Construction and Repair	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	P	T
Steering Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Deck Machinery	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Ventilation Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P	P	P
Thermodynamics	T	T	T	T	T	T	T	T								
Watch Duties	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Refrigeration and Air Conditioning:																
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
Air Conditioning Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Refrigeration Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P
Electricity:																
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
General Maintenance	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Generators	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Motors	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Motor Controllers	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Propulsion Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P-T	P-T	P	P
Distribution Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Electronic Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P	P	P
Batteries	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Communications	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P	P
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Steam Generators:																
Steam	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T		P	P	P	
Main Boilers	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Auxiliary Boilers		P-T		P-T		P-T		P-T		P-T		P-T	P	P		P
Feedwater Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P-T		P	P	P-T	
Condensate Systems	P-T	P-T	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Recovery Systems	P-T	P-T	P-T	P	P-T	P	P-T	P	P-T		P-T		P	P	P-T	
Fuel	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P
Fuel Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P
Boiler Water	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T	P	P	P	P-T	
Control Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P	P	P-T	
Automation Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T		P	P	P-T	
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P	P	P-T	P
Steam Engines:																
Main Turbine	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Auxiliary Turbine	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Reciprocating Machines	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Governor Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Control Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Automation Systems	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Lubrication Systems	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Drive Systems	P-T		P-T		P-T		P-T		P-T		P-T				P-T	
Safety	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Casualty Control	P-T	P	P-T	P	P-T	P	P-T	P	P-T		P-T				P-T	
Motor:																
Main Engines		P-T		P-T		P-T		P-T		P-T		P-T	P-T	P-T		P-T
Auxiliary Engines	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T
Starting Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Lubrication Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fuel	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fuel Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Combustion Systems	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Intake Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Exhaust Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Cooling Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Supercharging Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Drive Systems	P	P-T	P	P-T	P	P-T	P	P-T		P-T		P-T	P-T	P-T		P-T
Control Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

	Unlimited chief engineer		Unlimited 1st asst. engineer		Unlimited 2nd asst. engineer		Unlimited 3rd asst. engineer		Chief engineer limited		A/E Ltd & DDE unlim.		Unin. ind. C/E	Fish. vsl. A/E	DDE Ltd HP	
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR
Automation Systems	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Governors	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Turbines	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P	P-T	P-T	P-T		P-T
Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Casualty Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Safety:																
Fire	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fire Prevention	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Fire Fighting	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Flooding	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T
Dewatering	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Stability and Trim	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Damage Control	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Emergency Equipment and Lifesaving Appliances.	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
General Safety	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
First Aid	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Dangerous Materials	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Pollution	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
Inspections and Surveys	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
U.S. Rules and Regulations	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P
International Rules and Regulations	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P-T	P	P

P=Practical Knowledge.
T=Theoretical Knowledge.

PART 12—CERTIFICATION OF SEAMEN

62. The authority citation for Part 12 continues to read as follows:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

63. Section 12.20–1 is amended by revising paragraph (c) to read as follows:

§ 12.20–1 General requirements.

* * * * *

(c) A currently valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot of inspected, mechanically propelled vessels, or engineer authorizes the holder to serve as tankerman upon inspected vessels of the United States required to have a certificated tankerman without having a separate certificate as tankerman.

* * * * *

PART 15—MANNING REQUIREMENTS

64. The authority citation for Part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

65. In the table of contents for Part 15, the heading of § 15.901 is revised to read as follows:

§ 15.901 Inspected vessels of less than 100 gross tons.

66. Section 15.301(a) is amended by adding the definition of "self-propelled" in alphabetical order to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

"Self-Propelled" has the same meaning as the terms "propelled by machinery" and "mechanically propelled." This term would also include vessels fitted with both sails and mechanical propulsion.

* * * * *

67. Section 15.401 is revised to read as follows:

§ 15.401 Employment and service within restrictions of license or document.

A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, or merchant mariner's document, unless the individual holds a valid license, certificate of registry, or merchant mariner's document, as appropriate, authorizing service in the capacity in which the individual is engaged or employed and the individual serves within any restrictions placed on the license, certificate of registry, or merchant mariner's document.

68. Section 15.501 is amended by revising paragraph (b) to read as follows:

§ 15.501 Certificate of inspection.

* * * * *

(b) The manning requirements for a particular vessel are determined by the OCMI after consideration of the applicable laws, the regulations in this part, and all other factors involved, such as: Emergency situations, size and type of vessel, installed equipment, proposed routes of operation including frequency of port calls, cargo carried, type of service in which employed, degree of automation, use of labor saving devices, and the organizational structure of the vessel.

69. Section 15.801 is revised to read as follows:

§ 15.801 General.

The OCMI will determine the specific manning levels for vessels required to have certificates of inspection by Part B of Subtitle II of Title 46 U.S. Code. The masters or individuals in command of all vessels, whether required to be inspected under 46 U.S.C. 3301 or not, are responsible for properly manning vessels in accordance with the applicable laws, regulations, and international conventions.

70. Section 15.805 is amended by adding a new paragraph (a)(4) to read as follows:

§ 15.805 Master.

(a) * * *

(4) Every inspected small passenger vessel.

* * * * *

71. Section 15.810 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively, by adding a new paragraph (a), and by revising the introductory text of newly designated paragraph (b) and

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revising paragraph (d) to read as follows:

§ 15.810 Mates.

(a) The OCMI determines the minimum number of licensed mates required for the safe operation of inspected vessels.

(b) The minimum number of licensed mates required to be carried on every inspected, self-propelled, seagoing and Great Lakes vessel, and every inspected, seagoing, passenger vessel must not be less than the following, except when reductions are authorized under paragraph (e) of this section:

* * * * *

(d) The OCMI may increase the minimum number of mates indicated in paragraph (b) of this section where he or she determines that the vessel's characteristics, route, or other operating conditions create special circumstances warranting an increase.

* * * * *

72. Section 15.901 is revised to read as follows:

§ 15.901 Inspected vessels of less than 100 gross tons.

(a) An individual holding a license as mate or pilot of inspected, self-propelled vessels of over 200 gross tons is authorized to serve as master on inspected vessels of less than 100 gross tons within any restrictions on the individual's license.

(b) An individual holding a license authorizing service as master or mate of inspected, self-propelled vessels is authorized to serve as master or mate, respectively, of non-self-propelled vessels other than sail vessels, within any restrictions on the individual's license.

(c) An individual holding a license authorizing service as master or mate of inspected, sail vessels is authorized to serve as master or mate, respectively, of other non-self-propelled vessels, within any restrictions on the individual's license.

(d) An individual holding a license authorizing service as master or mate of inspected, auxiliary sail vessels, is authorized to serve as master or mate, respectively, of self-propelled and non-self-propelled vessels, within any restrictions on the individual's license.

73. Section 15.905 is revised to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license as master or pilot of inspected, self-propelled vessels is authorized to serve as operator of uninspected passenger vessels within any restrictions, other than gross tonnage limitations, on the individual's license.

(b) An individual holding a license as mate of inspected, self-propelled vessels, other than Great Lakes, inland, or river vessels of not more than 200 gross tons, is authorized to serve as operator of uninspected passenger vessels, within any restrictions, other than gross tonnage limitations, on the individual's license.

74. Section 15.910 is amended by revising paragraphs (a) and (b) to read as follows:

§ 15.910 Uninspected towing vessels.

(a) An individual of 21 years or more of age holding a license as master of inspected, self-propelled vessels, or a license as mate or pilot of inspected, self-propelled vessels of more than 200 gross tons, is authorized to serve as operator of uninspected towing vessels within any restrictions on the indivdual's license. A licensed mate or pilot authorized by this section to serve as operator of uninspected towing vessels may only be in command of the vessel on domestic routes.

(b) Whenever an uninspected towing vessel is under the direction and control of a person holding a license for service only as second-class operator of uninspected towing vessels, a person holding a license authorizing service as operator of uninspected towing vessels must be on board as a member of the crew.

* * * * *

75. Section 15.915 is revised to read as follows:

§ 15.915 Engineer licenses.

The following licenses authorize the holder to serve as noted, within any restrictions on the license:

(a) A designated duty engineer license authorizes service as chief or assistant engineer on vessels of not more than 500 gross tons in the following manner:

(1) A designated duty engineer limited to vessels of not more than 1000 horsepower or 4000 horsepower may serve only on near coastal, Great Lakes, or inland waters;

(2) A designated duty engineer with no horsepower limitations may serve on any waters.

(b) A chief engineer (limited-oceans) license authorizes service as chief or assistant engineer on vessels of any gross tons on inland waters and of not more than 1600 gross tons on ocean, near coastal, or Great Lakes waters.

(c) A chief engineer (limited-near coastal) license authorizes service as chief or assistant engineer on vessels of any gross tons on inland waters and of not more than 1600 gross tons on near coastal or Great Lakes waters.

(d) An assistant engineer (limited-oceans) license authorizes service on vessels of any gross tons on inland waters and of not more than 1600 gross tons on ocean, near coastal, or Great Lakes waters.

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

76. The authority citation for Part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 1804; 49 CFR 1.45, 1.46; § 30.01–2 also issued under the authority of 46 U.S.C. 3507.

77. Section 30.10–71 is revised to read as follows:

§ 30.10–71 Tankerman—TB/ALL.

The term "tankerman" means any person holding a certificate issued by the Coast Guard attesting to his or her competency in the handling of flammable or combustible liquid cargo in bulk or is any person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons, pilot of inspected, mechanically propelled vessels, or engineer.

PART 31—INSPECTION AND CERTIFICATION

78. The authority citation for Part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

79. Section 31.15–1 is amended by revising paragraph (b) to read as follows:

§ 31.15–1 Licensed officers and crews—TB/ALL.

* * * * *

(b) In all cases where a certificate of inspection does not require at least two licensed individuals authorized to serve as tankerman by § 30.10–71 of this Subchapter, the Officer in Charge, Marine Inspection, shall enter in the certificate of inspection issued to any manned tank vessel subject to the regulations in this Subchapter the number of the crew required to be certificated as tankermen. If the total complement of a tank vessel is either one or two persons, only one such person need be a certificated tankermen. If the total complement exceeds two, only two such persons need be certificated tankermen.

80. Section 31.15–5 is revised to read as follows:

§ 31.15–5 Tank barges—B/ALL.

Tank barges subject to the provisions of this subchapter need not be manned unless, in the judgment of the Officer in Charge, Marine Inspection, such manning is necessary for the protection of life and property and for the safe operation of the vessel.

81. The authority citation for Part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

PART 35—OPERATIONS

82. Section 35.35–1 is amended by revising paragraph (b) to read as follows:

§ 35.35–1 Men on duty—TB/ALL.

* * * * *

(b) In the case of unmanned barges, the owners, masters or persons in charage of such barges shall insure that a person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or a certificated tankerman is on duty to perform transfer operations, which licensed person or certificated tankerman shall be considered as the person in charge of the unmanned tank barge.

* * * * *

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

83. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 46 CFR 1.46.

84. Section 151.03–53 is revised to read as follows:

§ 151.03–53 Tankerman.

A tankerman is a person holding a certificate issued by the Coast Guard attesting to his or her competency in handling flammable or combustible liquid cargo in bulk or any person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer.

85. Section 151.45–4 is amended by revising paragraph (a)(1) to read as follows:

§ 151.45–4 Cargo handling.

(a) * * *

(1) When the product to be transferred has flammable or combustible characteristics as defined in this chapter, the shipper and the owners, charterer, agent, masters, or persons in charge of such barges shall insure that a person holding a valid license as master or mate of inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or a certificated tankerman is on duty to perform transfer operations. This person is considered as the person in charge of the unmanned tank barge. In addition, the Officer in Charge, Marine Inspection, shall be furnished satisfactory, documentary evidence that this person is trained in, and capable of performing competently, the necessary operation which relates to the transfer of the specific cargo.

* * * * *

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 185—OPERATIONS

86. The authority citation for Part 185 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 6105; 49 CFR 1.46.

87. Section 185.25–20 is amended by revising paragraph (b) to read as follows:

§ 185.25–20 Test of emergency position indicating radio beacon (EPIRB).

* * * * *

(b) The EPIRB's battery is replaced after the EPIRB is used and before the date required by FCC regulations in 47 CFR Part 80.

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

SUBCHAPTER O—POLLUTION

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

Subpart C—Oil Transfer Personnel, Procedures, Equipment, and Records

88. The authority citation for Part 155 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b); E.O. 11735; 49 CFR 1.46(m), unless otherwise noted.

89. Section 155.710 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 155.710 Qualifications of person in charge.

(a) * * *

(1) For oil transfer operations on self-propelled tank vessels, that individual holds a valid license as master or mate on inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, except that the person in charge of tank cleaning operations may be a tankerman certificated for the grade of cargo last carried; or,

(2) For tank barges, the individual holds a valid license as master or mate on inspected, mechanically propelled vessels of more than 200 gross tons; pilot of inspected, mechanically propelled vessels; or engineer, or is a tankerman certificated for the grade of cargo carried; or,

* * * * *

Date: December 16, 1988.

Clyde T. Lusk, Jr.,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 89–3 Filed 1–3–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[Gen. Docket 87–505; DA 88–1850]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The following corrections are made in the Federal Communications Commission's (FCC's) preamble and appendix to its rules relating to the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The rules were published in the Federal Register on November 23, 1988 [53 FR 47535].

FOR FURTHER INFORMATION CONTACT: Jim Ferris at (202) 634–1830.

SUPPLEMENTARY INFORMATION: The FCC promulgated rules and regulations which replaced its existing Restoration Priority procedures with a new NSEP TSP System having broader scope and applicability. The revisions thereby updated Part 64 of FCC rules governing priority treatment of provisioning and restoration of common carrier-provided telecommunications services during

emergencies. Conforming amendments were made to certain delegated authorities contained in Part 0 of FCC rules.

. . . . .

The following corrections are made in Gen. Docket 87-505; FCC 88-341, containing the amended FCC rules which replaced the Restoration Priority System with a new NSEP TSP System which modernizes the means by which the nation is assured that essential communications services provided by common carriers receive priority provisioning and restoration. The amended rules were published in the **Federal Register** on November 23, 1988 [53 FR 47535].

1. Page 53 FR 47535:

1st and 3rd columns: change the effective date from December 23, to December 27, 1988.

2. Page 53 FR 47536:

1st column, 26th line, change "System" to "Service" so that the line reads: Telecommunications Service Priority

3. Page 53 FR 47537:

1st column, 26th line, delete the end of quote in the first word services," so that the line reads: services, or "NSEP services," means

3rd column, 10th line, change "and" to "or" so that the line reads: (a) Interstate or foreign

3rd column, 25th and 26th lines, delete the phrase "and components of services" so that the 25th and 26th lines read: restoration of services that the selected vendor is able to

3rd column, 40th line, change "a" to "that" so that the line reads: owned by that service vendor. Such control

4. Page 53 FR 47539:

1st column, 50th line, add the word "requests" so that the line reads: (b) Comply with NSEP service requests by:

1st column, 65th line, delete the phrase "switched (e.g., cellular)" so that the remaining line reads: (2) Restore NSEP

2nd column, 2nd line, delete the designation "E" so that the line reads: priority level assignment (i.e., "1", "2",

3rd column, 9th line from end, add "or restoring" so that the line reads: provisioning or restoring NSEP services.

5. Page 53 FR 47541

2nd column, 43rd line, change first full sentence of para. 12.c.(2) to read: This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government posture before, during, and after crises situations.

. . . . .

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-52 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-254; RM-6219]

Radio Broadcasting Services; La Monte, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allots Channel 246A to La Monte, Missouri, as that community's first FM broadcast service, in response to a petition filed by Johnson County Broadcasters, Inc. Petitioner filed supporting comments. The coordinates for Channel 246A at La Monte are 38-45-36 and 93-20-30 which includes a site restriction 7.4 kilometers east of the community. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will open on February 14, 1989, and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-254, adopted November 18, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM allotments under Missouri is amended by adding La Monte, Channel 246A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division. Mass Media Bureau.

[FR Doc. 89-54 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-78; RM-6185]

Radio Broadcasting Services; Leland, North Carolina

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Leland Broadcasting Group, allots Channel 231A to Leland, North Carolina, as the community's first local FM service. Channel 231A can be allotted to Leland in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) southwest to avoid a short-spacing to unoccupied and unapplied for Channel 229A at Wrightsville Beach, North Carolina, and to Station WZBK, Channel 232A, Wallace, North Carolina. The coordinates for this allotment are North Latitude 34-11-09 and West Longitude 78-05-13. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will open on February 14, 1989; and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-78, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for North Carolina is amended by adding the following entry, Leland, Channel 231A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-55 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-44; RM-6083]

Television Broadcasting Services; Goldfield, Nevada

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: The Commission, at the request of Sarkes Tarzian, Inc., licensee of Station KTVN, Channel 2, Reno, Nevada, substitutes Channel 7- for Channel 2- at Goldfield, Nevada. The substitution of channels eliminates a short-spacing between the Goldfield allotment and petitioner's application seeking to relocate its transmitter from Red Peak to McClellan Peak. Channel 7- can be allotted to Goldfield in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 37-42-24 and West Longitude 117-14-06. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-44, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the TV Table of Allotments for Goldfield, Nevada, is amended by removing Channel 2- and adding Channel 7-.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-57 Filed 1-3-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the Exclusive Economic Zone (EEZ) for Spanish mackerel from the Atlantic migratory group. The Secretary has determined that the commercial allocation for Spanish mackerel from the Atlantic migratory group was reached on December 29, 1988. This closure is necessary to protect the Atlantic Spanish mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 29, 1988, until 12:00 p.m. (midnight), local time, March 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations, at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Atlantic migratory group of Spanish mackerel for the current fishing year (April 1, 1988, through March 31, 1989). Those regulations set the commercial allocation at 3.04 million pounds (53 FR 25611, July 8, 1988).

Under § 642.22(a), the Secretary is required to close any segment of the Spanish mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial allocation for the Atlantic migratory group of Spanish mackerel was reached on December 29, 1988. Hence, the commercial fishery for Spanish mackerel from the Atlantic migratory group is closed effective 12:01 a.m., December 29, 1988, through March 31, 1989, the end of the fishing year. The closure applies in the EEZ from the Virginia/North Carolina border southward to a line extending directly east from the Dade/Monroe County, Florida, boundary (2°20.4' N. latitude).

The Secretary previously determined that the recreational allocation for Spanish mackerel from the Atlantic migratory group had been reached. The bag limits for this group were reduced to zero on October 3, 1988 (53 FR 39097, October 5, 1988). With closure of the commercial fishery, through March 31, 1989, Spanish mackerel from the Atlantic migratory group may not be possessed in the EEZ, regardless of where taken; such Spanish mackerel caught in the EEZ must be returned immediately to the sea. Through March 31, 1989, Spanish mackerel from the Atlantic migratory group taken in the EEZ may not be purchased, bartered, traded or sold. The latter prohibition does not apply to trade, in Atlantic group Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, fishing.

Dated: December 29, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30280 Filed 12-29-88; 3:48 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1124-88]

Judicial Recommendations Against Deportation; Controlled Substance Violations

AGENCY: Immigration and Naturalizations Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule will require additional data to be provided by an alien seeking a judicial recommendation against deportation in order to help identify him/her to the Immigration and Naturalization Service ("Service"). This change is necessary to ensure that the Service will be given sufficient information necessary to identify the alien who is the subject of a motion for a judicial recommendation against deportation. This change will permit the Service sufficient time to obtain any file relating to the alien and to prepare a response, if desired, to the alien's motion for a judicial recommendation against deportation.

DATE: Comments must be received by no later than February 3, 1989.

ADDRESS: Submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Immigration and Naturalization Service, 425 I Street NW., Room 7240, Washington, DC 20536, Telephone: (202) 633-3098.

SUPPLEMENTARY INFORMATION: This proposed rule will place the burden on the alien or his criminal defense counsel to provide the district director receiving notice of the motion with a copy of any order granting a judicial recommendation against deportation, certified as a true copy by the clerk of the court granting said motion. In deportation, exclusion, or rescission proceedings, the burden will be upon the alien to present to an immigration judge a certified copy of the judicial recommendation against deportation when such recommendation will be the basis of denying any charges brought by the Service in proceedings against the alien. This change is necessary to ensure that the granting of a judicial recommendation against deportation is known to the Service and/or the immigration judge to avoid conducting unnecessary hearings. Clearly, the alien is in a better position than the Service to identify if the motion was granted by the sentencing court in his/her particular case, considering the countless number of such motions made by criminal alien defendants in any given year. This proposed rule will cause judicial recommendations that are granted subsequent to this rule becoming final to be negated if the data required by this rule is not substantially provided.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 241

Administrative practice and procedure, Aliens, Deportation.

Accordingly, Chapter I Part 241, of Title 8 of the Code of Federal Regulations is amended as follows:

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION; CONTROLLED SUBSTANCE VIOLATIONS

1. The authority citation for Part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357.

2. Section 241.1 is revised to read as follows:

§ 24.1 Notice; recommendation.

(a) For the purpose of clause 2 of section 241(b) of the Act, notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located shall be regarded as notice to the Service. The notice shall be transmitted by personal service to the district director by the defendant or by counsel for the defense, at least 15 days prior to the court hearing on whether a recommendation against deportation shall be made. When less than 15 days' notice is received an objection shall be interposed to the recommendation against deportation on the ground that due notice was not received. Failure to furnish due notice for any reason, including the foregoing, negates any judicial recommendation against deportation which may have been granted.

(b) The notice to the district director will include the true and complete name of the defendant and the aliases by which he or she has been known or has himself or herself used. Notice will also include the country of which defendant is a citizen, his or her date and place of birth, alien registration number(s), if any, and the date, place and manner by which he or she last entered the United States. If the information required on the notice is unavailable and cannot be reasonably discovered, a declaration under the penalty of perjury shall be attached to the notice stating the particular information that is unavailable, the reason it is unavailable and what steps have been taken to obtain the required information. The notice shall be accompanied by either a copy of defendant's alien registration, if any, or a declaration under the penalty of perjury that no such registration exists. The forms listed in 8 CFR 264.1(b) shall constitute evidence of registration. If the notice fails to include substantially the information required above, then the notice shall be regarded as invalid and whatever Service proceedings are warranted shall be instituted irrespective of the recommendation against deportation.

(c) The district director, or an official acting for him or her, in presenting representations to the court, shall advise the court the effect a favorable recommendation would have upon the alien's present and prospective deportability.

(d) It shall be the duty of the defendant or defense counsel, to forward by personal service, a copy of the recommendation certified by the clerk of the court granting said recommendation to the district director receiving the notice. This shall be regarded as notice to the Attorney General. In any deportation, exclusion, or rescission proceeding, it shall be the duty of the respondent or applicant to present to the immigration judge a certified copy of any judicial recommendation against deportation when such recommendation will be the basis of denying any charges brought by the Service in the proceedings against the respondent or applicant.

Dated: September 30, 1988.

Clarence M. Coster,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 89-39 Filed 1-3-89; 8:45 am]

BILLING CODE 4410-10-M

Federal Home Loan Bank Board

12 CFR Part 563

[No. 88-1393]

Date: December 22, 1988

Equity-Risk Investments

AGENCY: Fedeal Home Loan Bank Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing amendments to 12 CFR 563.9-8, its regulation governing investments by institutions the deposits of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, operating subsidiaries, certain land loans and non-residential construction loans ("equity-risk investments"). The Board anticipates publishing an additional notice of proposed rulemaking to address broader equity investment issues within the next few months.

The proposal would amend the equity-risk investment regulation in two specific areas. First, the Board is proposing to extend its equity-risk investment regulation for 120 days, until August 14, 1989. This reuglation is currently scheduled to sunset on April 16, 1989. *See* 12 CFR 563.9-8(h). The Board believes that the additional 120 days will allow it to evaluate more carefully the empirical evidence resulting from the Board's recent proposal to amend its regulatory capital requirements and the report on equity-risk investment due to the Congress on February 10, 1989, pursuant to the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. No. 100-86, 101 Stat, 552, 661, § 1203 (1987), before deciding the best course to take with respect to the future of the equity-risk investment rule.

Second, it would eliminate the exclusion from the definition of "equity security" in 12 CFR 563.9-8(b)(2) for stock issued by the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") purchased by insured institutions on or after December 14, 1988 or some other appropriate date. Stock issued by these instrumentalities, as well as by other, similar, United States government-sponsored corporations would be expressly authorized for purposes of the equity-risk investment rule, however, pursuant to 12 CFR 563.9-8(d)(1).

DATE: Comments must be received on or before February 3, 1989.

ADDRESSES: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Attorney (202) 377-6897; Deborah Dakin, Regulatory Counsel (202) 377-6445; Karen Solomon, Associate General Counsel (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robert Fishman, Senior Policy Analyst (202) 331-4592; John Robinson, Director, Policy Analysis (202) 331-4587, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On February 27, 1987, the Board significantly modified the equity-risk investment rule. Board Res. No. 87-215 (Feb. 27, 1987), 52 FR 8188 (March 16, 1987). As part of that amendment, the Board placed a sunset date on the then-amended rule of April 16, 1989. *See* 52 FR at 8206. The Board explained the reason for the sunset provision as follows:

> The Board has determined that the direct investment rule will expire on April 16, 1989 unless further action is taken by the Board. The Board continues to believe that it is important to reexamine the issues addressed by this rulemaking in order to determine whether this approach has been effective in controlling risk and whether further regulatory action is required.
>
> *Id.* at 8205.

In CEBA, Congress directed the Board to provide notice to the banking committees not less than 90 days before final approval is given by the Board to any regulation that repeals or modifies any regulation that limits direct investment activities. CEBA 1203(c)(1), 101 Stat. at 662. That notice is to be given in the form of a report describing the proposed regulation and the reasons for the proposed regulation, including the effect of the regualtory change on the FSLIC. *Id.* Today's action is intended to satisfy that requirement.

Since its inception, the equity-risk investment regulation has been an important component of the Board's regulatory oversight of the safe and sound operation of all insured institutions. The Board believes that the regulation has served a useful function in controlling risks. As the sunset date of April 16, 1989, approaches, one alternative available to the Board would be to remove the sunset date without further changes to the rule. For the following reasons, however, the Board is considering whether it should at this time simply defer the sunset date of the current equity-risk investment rule for 120 days in order to allow the Board and its staff additional time to consider the empirical data that will flow from two related Board actions.

First, on December 15, 1988, the Board approved a proposal that would substantially amend the Board's minimum regulatory capital regulation, 12 CFR 563.13 ("capital proposal").[1] A major issue covered in the capital proposal was a discussion of the amount of capital an insured institution must maintain against its assets, including equity-risk investments. Specifically, the Board proposed that each asset be assigned to a risk category based on the degree of credit risk associated with the obligor or nature of the obligation.[2] The Board proposed that all equity-risk investments be placed in a 300 percent risk category (in comparison with a 100 percent risk category for commercial loans). It also discussed the possibility of establishing more than one risk category for equity-risk investments.

[1] Board Res. No. 88-1342 (Dec. 15, 1988), 53 FR 51800 (Dec. 23, 1988).

[2] This proposal uses the risk-weighting approach that was adopted by the international banking regulators in the Basle Agreement and has since been proposed by the federal banking regulators.

As an alternative to this risk-weighting treatment of equity-risk investments, the Board is also considering applying the so-called exclusion method to such investments. Under this alternative, equity-risk investments would not be considered under any risk category. Instead, an institution would exclude the amount of such investments from the calculation of its asset base for risk-weighting. It then would be required to add that amount directly to its capital requirement. This method would, therefore, require the institution to hold capital for its equity-risk investments on a dollar for dollar basis.

As part of the capital proposal, the Board requested comments, with supporting empirical data, on the following issues:

(1) Whether equity-risk investments should be considered in a credit-risk-weighting system at all; (2) whether and at what levels additional credit-risk categories should be assigned for various types of equity-risk investments; (3) how various types of equity-risk investments should be assigned to risk categories * * *.

The Board believes that it is important to correlate its action on the required capital and equity-risk regulations with respect to the viability of the current capital thresholds located at 12 CFR 563.9–8(c) and other related issues, including the relative riskiness of various equity-risk investments. The additional time provided by delaying the sunset of the equity-risk sunset provision would give the Board the benefit of studying the empirical evidence received in response to the proposed minimum capital regulation, as well as in-house studies performed in response to that portion of the capital proposal.

Second, in addition to work performed by Board staff in furtherance of a final capital regulation, the Board must also compile a report discussing several aspects of equity-risk investments as mandated by section 1203 of the CEBA. That report, to be submitted to the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs on or before February 10, 1989, will contain, among other things: (1) Analyses of the effect of direct investment activities on different sized insured institutions, state- and federally-chartered insured institutions, and insured institutions in each of the Supervisory Examinations Rating Classifications; (2) findings concerning the degree to which losses to the FSLIC were the result of direct investment activities; and (3) a comparison of the effects of direct investment activities made both prior to and on or after April 16, 1987.

Clearly, the information contained in this report will provide the Board and its staff additional data needed to make reasoned decisions as to both the viability of many subsections of the current equity-risk regulation and the necessity of limiting or modifying the current regulation. To that end, the Board believes that a short extension of the current equity-risk investment rule sunset date, from April 16, 1989 to August 14, 1989, would provide the Board the necessary time to study the empirical evidence available as a result of the aforementioned activities without a lapse in the Board's oversight in this critical area.

Fannie Mae/Freddie Mac Stock

In the definitional portion of the original equity-risk investment regulation (then referred to as the "direct investment rule"), the Board expressly exempted from the "equity security" definition, among other things, "stock issued by a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, [or] the Federal National Mortgage Association * * *" Board Res. No. 85–79–A (Jan. 31, 1985), 50 FR 6912, 6928 (Feb. 19, 1985) (codified at 12 CFR 563.9–8(b)(2)(i)). The Board is now, through this proposal, seeking comment on the inclusion of preferred stock issued by Freddie Mac and common stock issued by Fannie Mae as equity-risk investments.

On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit the sale of Freddie Mac preferred stock to the general public as of January 1, 1989. Before this time, Freddie Mac preferred stock was—and will continue to be until January 1, 1989—held primarily by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. The Freddie Mac Board of Directors approved a plan implementing the July 13, 1988 vote on August 30, 1988: in exchange for each share of the then-existing class of preferred stock and a cash payment of $7.00 per old share, Freddie Mac offered current holders four shares of a new class of senior participating preferred stock without transfer restrictions.

Freddie Mac's Board of Directors also acted on July 13, 1988, to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989. As a result of the four-for-one stock exchange approved on August 30, 1988, that limit was increased fourfold to 2.4 million shares of the new preferred stock.

Given the fact that the stock may now be publicly traded—with all of the concomitant risks and volatility associated with a publicly traded issue—and the fourfold rise in the amount of such stock any holder could own, the Board is now considering whether Freddie Mac preferred stock is subject to the same risks attending investment in equity securities generally.[3] Therefore, the Board proposes to remove the exclusion in the equity-risk definition of "equity security" for Freddie Mac preferred stock.[4]

Moreover, upon reevaluation, the Board also proposes for comment the removal of the exclusion in the equity-risk definition of "equity security" for Fannie Mae common stock. The Board notes that Fannie Mae stock is also publicly traded on the New York Stock Exchange. In light of a reevaluation of the original decision to exclude the stock from the "equity security" definition and recent stock market fluctuations generally, however, the Board believes that there is no current justification for the exclusion of Fannie Mae common stock, given the fact that the stock is subject to the same risks as other equity securities.

The Board recognizes that a number of thrift institutions may have invested in Fannie Mae and Freddie Mac stock in reliance on the existing provision exempting that stock from the equity-risk investment thresholds. Therefore, today's proposal also amends the definition of "equity security" to provide that Freddie Mac preferred stock and Fannie Mae common stock held by insured institutions prior to December 14, 1988 would continue to be exempt from the "equity security" definition contained in 12 CFR 563.9–8(b)(2).[5] Selection of this date was deemed proper by the Board in order to eliminate any incentive for institutions to increase their holdings in those stocks in anticipation of any final rule. Nevertheless, the Board solicits comment regarding an appropriate grandfathering date.

Despite the fact that the Board today proposes to remove the provision excluding Fannie Mae and Freddie Mac

[3] This treatment would be consistent with the Board's treatment of stock issued by the Student Loan Marketing Association ("Sallie Mae"). *See* 49 FR 48743, 48753 (Dec. 14, 1984).

[4] All 100,000 shares of Freddie Mac common stock are held by Federal Home Loan Banks, entities that are not subject to the equity-risk investment rule.

[5] Shares of the "when-issued" class of Freddie Mac preferred stock held by an institution prior to December 10, 1988, would be considered "held" on that date for purposes of this proposal, even though those shares will not be issued until January 2, 1989.

stock from the equity-risk definition of "equity security," the Board believes firmly that such investments should be expressly authorized investments for equity-risk purposes, pursuant to 12 CFR 563.9–8(d)(1).[6]

At this time, the Board is proposing for comment the issue of whether the Board should, in addition, expressly authorize for equity-risk purposes investments in equity securities issued by all United States government-sponsored corporations.

One additional investment included in the proposed category of United States government-sponsored corporation equity securities would be the Class A common stock recently issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac"). The Board seeks comments on whether the Board should include Farmer Mac common stock specifically or stock issued by any United States government-sponsored corporation generally as authorized equity-risk investments.

The Board anticipates that it will publish for public notice and comment an additional notice of proposed rulemaking addressing broader concerns in the area of equity-risk investment than are within the scope of today's limited proposal.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objections and legal basis underlying the proposed rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). The proposed rule treats all institutions identically regardless of their size for the reasons discussed in the **SUPPLEMENTARY INFORMATION** set forth above.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

[6] By expressly listing such investments in subparagraph (d)(1), the Board would be signifying that an insured institution could invest in Fannie Mae and Freddie Mac stock up to otherwise authorized thresholds, without having to acquire the approval of the institutions's Principal Supervisory Agent.

List of Subjects in 12 CFR 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board proposes to amend Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 State. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. In § 563.9–8 the introductory texts of paragraphs (b), (b)(2) and (d)(1) are republished and paragraphs (b)(2)(i) and (d)(1)(iv) are revised and new paragraph (b)(2)(vi) is added to read as follows:

§ 563.9–8 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

* * * * *

(b) *Definitions.* When used in this section:

* * * * *

(2) "Equity security" means any stock, certificate of interest of participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; or in general, any interest or instrument commonly known as an equity security; or loans having profit-sharing features which would be reclassified as equity instruments under generally accepted accounting principles (or the Corporation's accounting regulations if applicable); or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or any security carrying any warrant or right to subscribe to or purchase such a security; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing; *but does not mean* (1) stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Dvelopment Act of 1968; * * *; (vi) stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association held by an institution prior to December 14, 1988.

* * * * *

(d) *Equity-security investments*—(1) *Permissible investments.* The equity securities in which an institution may invest shall be limited to: * * * (iv) equity securities issued by any United States government-sponsored corporations, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage Corporation;

* * *

§ 563.9–8 [Amended]

3. Paragraph (h) of § 563.9–8 is amended by removing the date "April 16, 1989" and inserting in lieu thereof the date "August 14, 1989."

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–11 Filed 1–3–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[Gen. Docket No. 88–550; FCC 88–388]

Government Next Generation Weather Radars in the 2900–3000 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action is proposing a new United States footnote to permit Government Next Generation Weather Radars (NEXRAD) to operate in the 2900–3000 MHz band on a co-primary

basis. The 2900–3000 MHz band is presently allocated to Government and non-Government Maritime Radionavigation on a primary basis and radiolocation on a secondary basis. The majority of NEXRADs will operate in the 2700–2900 MHz band, which is already allocated to the meteorological aids service. However, due to frequency congestion in certain cases, it will be necessary for NEXRAD to operate in the 2900–3000 MHz band. The new footnote will permit operation in the higher band under certain circumstances.

DATES: Comments are due February 3, 1989. Reply comments are due February 21, 1989.

ADDRESS: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Room 7105, Office of Engineering and Technology. (202) 653–8106.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in General Docket No. 88–550, FCC 88–388, adopted November 29, 1988, and released December 14, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this *Notice* the Commission is considering whether to amend Part 2 of the Rules to permit Government Next Generation Weather Radar (NEXRAD) to utilize the 2900–3000 MHz band. The National Telecommunications and Information Administration (NTIA) has requested that NEXRAD, operating in the meteorological aids service, be allowed to share the 2900–3000 MHz band on a co-primary basis with the maritime radionavigation service. NEXRAD is a pulsed Doppler weather radar system designed to collect data and help predict weather conditions, and will replace aging existing weather radars with state of the art equipment. NEXRAD will principally operate in the 2700–2900 MHz band. However, in certain geographical areas operation in the 2700–2900 MHz band will not be technically feasible. In these instances, access to spectrum in the 2900–3000 MHz band will be required.

2. Adopting the new footnote is dependent upon the compatibility of NEXRAD with existing operations in the 2900–3000 MHz band. The U.S. Coast Guard operates maritime radionavigation stations in this band as part of our national maritime safety system. In addition, the 2900–3100 MHz band is used as the primary ship radionavigation band worldwide. Furthermore, many ships operate transponders to interrogate radiobeacons in this band. However, NTIA has stated that NEXRAD will rarely require assignments in this band. NTIA also indicated that the likelihood of interference between NEXRAD and existing systems will be minimized through proper site selection due to NEXRAD's unique technical characteristics. The Coast Guard concurs to the action proposed herein, given the assurance that coast and ship radionavigation stations will continue to be afforded protection against interference by the proper coordination of NEXRAD systems requiring assignment in the 2900–3000 MHz band. We believe that any potential interference issues can be resolved through the routine frequency coordination process of the Frequency Assignment Subcommittee of the Interdepartment Radio Advisory Committee.

3. We certify that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this proceeding because it will not have a significant economic impact on a substantial number of small entities.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling disclosure, or record retention requirements; and will not increase or decrease burden hours on the public.

5. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1206 of the Commission's Rules, 47 CFR 1.1206 for rules governing permissible *ex parte* contacts.

Ordering Clause

6. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 393(f), 303(g), 303(r) and 332.

List of Subjects in 47 CFR Parts 2 and 80

Radio.

Proposed Rule Changes

Parts 2 and 80 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote US309 in column 4 for the 2900–3100 MHz band and by adding the text of footnote US309 to the list of footnotes at the end of the table as follows:

§2.106 Table of frequency allocations.

Government allocation (MHz)	Non-Government allocation (MHz)
(4)	(5)
• • • • •	
2900–3100	2900–3100
Maritime Radionavigation	Maritime Radionavigation
772 774 775	772 774 775
Meteorological Aids	Radiolocation
US309	US44 US309
Radiolocation	
US44	
• • • • •	

United States (US) Footnotes

• • • • •

US309—The band 2900–3000 MHz is also allocated on a primary basis to the Meteorological Aids Service. Operations in this service are limited to Government Next Generation Weather Radar (NEXRAD) systems where accomodation in the 2700–2900 MHz band is not technically practical and are subject to coordination with existing authorized stations.

• • • • •

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation in Part 80 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In Section 80.375 paragraph (d)(2)(ii) is revised to read as follows:

§ 80.375 Radiodetermination frequencies.

• • • • •

(d) Radiodetermination frequency bands above 2400 MHz.

(2)* * *

(ii) The use of the 2900–3100 MHz, 5470–5650 MHz and 9300–9500 MHz bands for radiolocation must not cause harmful interference to the radionavigation, Government radiolocation services. Additionally, the use of the 2900–3000 MHz band for radiolocation must not cause harmful interference to the Government meteorological aids service.

• • • • •

Federal Communiciations Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–129 Filed 1–3–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–51, RM–6076, RM–6265]

Radio Broadcasting Services; Evans, Martinez and Warrenton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Further Notice and Memorandum Opinion and Order.

SUMMARY: By this document the Commission denies the request of Evans Broadcasters to allot Channel 299A to Evans, Georgia, as its first local FM service. The Commission is unable to determine that Evans is a community for allotment purposes. The Commission is also issuing a Further Notice to provide an opportunity to file competing expressions of interest in the use of Channel 299C2 at Martinez, GA. Columbia County Broadcasters, in its counterproposal to the Evans allotment seeks the substitution of Channel 299C2 for Channel 232A at Martinez, GA, and the modification of its license for Station WMTZ to specify operation on the higher powered channel. We will not accept counterproposals to the use of Channel 299C2 at Martinez since the Commission's Rules do not permit the filing of counterproposals to counterproposals. Channel 299C2 can be allotted to Martinez with a site restriction of 25.3 kilometers (15.7 miles) northwest to avoid a short-spacing to Station WKQB, Channel 298C, St. George, SC, and to the proposed allotment of Channel 296A at Waynesboro, GA (MM Doxket 88–223). The coordinates for this allotment are North Latitude 33–40–30 and West Longitude 82–16–14.

DATES: Comments must be filed on or before February 21, 1989, and reply comments on or before March 8, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence j. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100–17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to Columbia)

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making and Memorandum Opinion and Order, MM Docket No. 88–51, adopted November 18, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–58 Filed 1–3–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–160; RM–6202]

Radio Broadcasting Services; Bayard, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of Charles Ellis, dismisses his request to allot Channel 280C to Bayard, Nebraska, as the community's first local FM service. No other party expressed an interest in the use of the channel at Bayard. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–160, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–56 Filed 1–3–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–37; FCC 88–236]

Broadcast of Telephone Conversations

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; termination.

SUMMARY: This action retains the Commission's existing rules, contained in 47 CFR 73.1206, which require broadcast licensees to notify parties to a telephone conversation of the licensee's intention to broadcast the conversation prior to either broadcasting it live or recording it for subsequent broadcast.

EFFECTIVE DATE: January 4, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bob Ratcliffe, Video Services Division, Mass Media Bureau, at (202) 632–6993.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 85–37, FCC 88–236, adopted July 11, 1988, and released September 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 "M" Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800,

2100 "M" Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this *Report and Order*, the Commission rejects its earlier proposals (50 FR 7931, February 26, 1985) to substantially relax or eliminate the requirements of Section 73.1206 of its rules. Those rules oblige a broadcaster to provide prior notice to all parties of the broadcaster's intent to simultaneously transmit or to record for later broadcast a telephone conversation. The Commission ultimately concluded that its concern for protecting individuals' expectation of privacy in telephone communications outweighed broadcasters' interest in enhancing the spontaneity and unrehearsed nature of telephone conversations that they use on the air. The Commission observed that the burden of the existing notice requirement on broadcasters was not substantial and that the rule neither prevented broadcasters from recording or broadcasting telephone conversations nor precluded them from telephonically gathering information important to their broadcast functions.

2. The Commission also concluded that the one-party consent standard for recording telephone conversations contained in the Ominibus Crime Control and Safe Streets Act of 1968, which the Commission had suggested in the *Notice* in this proceeding might "adequately protect telephone conversations from being recorded and used for broadcast purposes without prior consent" (3 FCC Rcd 5461), did not preclude retention of the Commission's existing all-party, prior consent requirements.

3. This action also denies a Request for Declaratory Ruling filed by Tuscon Wireless, Inc., and Southwestern Wireless, Inc., that directly related to the matters considered in this rulemaking proceeding.

4. The Commission certifies that this action will not have a significant economic impact on a substantial number of small entities.

5. This action has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

6. Accordingly, it is ordered that, the "Request for Declaratory Ruling" filed by Tuscon Wireless, Inc., and Southwestern Wireless, Inc., on October 23, 1987, is denied.

7. It is further ordered that, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcast services.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 151.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-8 Filed 1-3-89; 8:45am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 54, No. 2

Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-164]

Veterinary Biological Products; Genetically Engineered Live Viral Vectored Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document announces that the Animal and Plant Health Inspection Service has received a request for authorization to conduct a limited field trial of a genetically engineered vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein, and that a copy of the sponsor's preliminary safety data and field trial protocol is available from the person designated in this notice. This document also specifies some of the data pertaining to safety and ecological concerns the agency shall consider in determining whether to allow the field testing of the rabies vaccine.

ADDRESS: A copy of the sponsor's preliminary safety data and field trial protocol is available for public inspection at the United States Department of Agriculture, Room 1141 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, and may be obtained from the contact person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Miller, Senior Staff Veterinarian, Veterinary Biologics; Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8674.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1986, the United States Department of Agriculture (USDA) published its "Final Policy Statement for Research and Regulation of Biotechnology Processes and Products" as part of the Office of Science and Technology Policy (OSTP) "Coordinated Framework for the Regulation of Biotechnology." As part of the policy statement, USDA discussed the regulation of veterinary biological products produced through biotechnological processes under the Virus-Serum-Toxin Act, as amended, (21 U.S.C. 151-159). USDA stated that veterinary biological products produced through such processes will be treated similarly to products prepared by conventional techniques and reviewed under its regulations in 9 CFR 101-118.

USDA stated that for purposes of licensing, biologics derived by recombinant DNA techniques or developed from hybridomas may be classified into three broad categories.

The first category includes inactivated recombinant DNA-derived vaccines, bacterins, baterin-toxoids, virus subunits, or bacterial subunits. Monoclonal antibody (hybridoma) products used prophylactically, therapeutically, or as components of diagnostic kits also are included in this category.

The second category includes those products containing live microorganisms that have been modified by the addition or deletion of one or more genes.

The third category of genetically-engineered veterinary biologics includes products using live vectors to carry recombinant-derived foreign genes that code for immunizing antigens and/or other immune stimulants. USDA stated in its policy statement that with respect to products in the third category, characteristics of safety and transmission must be examined before questions and concerns dealing with safety to humans, animals, and release into the environment can be answered and before such products can be considered for licensing. The Animal and Plant Health Inspection Service (APHIS) has determined that the best approach when considering category three products for licensing and release is to analyze each product individually to assure that all questions regarding safety, transmission, and other considerations are properly addressed prior to granting any approval or license.

APHIS, after reviewing its regulations in 9 CFR 101-118 for veterinary biological products, has determined that the requirements of such regulations are sufficient to enable the agency to obtain the types of environmental, safety, purity, potency, and efficacy data needed to properly evaluate category three products, prior to making a decision on the field testing and licensure of such products.

APHIS has received a request under 9 CFR 103.3 for authorization to conduct a limited field trial of a category three product, a live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The field trial protocol calls for orally immunizing raccoons in the wild via a bait containing the vaccine.

A copy of the sponsor's preliminary safety data and field trial protocol is available and may be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT".

In deciding whether authorization will be granted to conduct the limited field trial, APHIS' review of data shall include but will not be limited to the following areas:

I. Human Safety

A. Probability of human exposure.

B. Possible outcomes of human exposure.

C. Pathogenicity of parent virus in man.

D. Effect of gene manipulation on pathogenicity in man.

E. Risk associated with widespread use of the vaccine.

II. Ecological Concerns

A. Extent of release into the environment.

B. Persistence of the vector in the environment.

C. Extent of exposure to nontarget species.

D. Behavior of parent virus and vector in nontarget species.

E. Potential of vector to infect nonvertebrate organisms.

F. Physical and chemical factors which can affect survival, reporduction, and dispersal.

III. Characterization of the Vaccine Virus

A. Characteristics of parent virus.
1. Identification, sources, and strains.
2. Reproduction and capacity for genetic transfer.
B. Source, description, and function of foreign genetic material.
C. Method of accomplishing genetic modification.
D. Genetic stability, expression, and potential for recombination of the vaccine virus.
E. Advantages and disavantages of the modified virus compared to conventional products.
F. Comparison of the modified organisms to parental properties.
G. Route of administration.

IV. Animal Safety

A. Fate of the vaccine in target and nontarget species.
B. Potential of shed and/or spread from vaccinate to contact target and nontarget animals.
C. Reversion to virulence resulting from back passage in animals.
D. Effect of overdose in target and potential nontarget species.
E. Relative safety when compared to conventional vaccines.
F. The extent of the host range and the degree of mobility of the vector.
G. Safety in pregnant animals and to offspring nursing vaccinated animals.

If approval is granted for the sponsor to conduct a limited field trial, APHIS shall publish a notice of availability of an environmental assessment in the **Federal Register** 30 days prior to the commencement of the field testing.

Done at Washington, DC, this 29th day of December 1988.

James Glosser,

Administrator, Animal and Plant Health Inspection Service.

December 29, 1988.

[FR Doc. 89-40 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Science and Education Competitive Research Grants Office Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Cooperative State Research Service announces the following meeting:

Name: Science and Education Competitive Research Grants Office Advisory Committee.

Date: March 7, 1989.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 107-A, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact person for agenda and more information: Dr. William D. Carlson, Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 324-A Administration Building, Washington, DC 20250, Telephone 202-475-5720.

Done at Washington, DC, this 22nd day of December 1988.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89-93 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-22-M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Detroit (MI), Keokuk (IA), and Michigan (MI) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Detroit Grain Inspection Service, Inc. (Detroit), John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk), and Michigan Grain Inspection Services, Inc. (Michigan).

DATE: Comments must be postmarked on or before February 21, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FIGS/USDA] telemail.

Telex users may respond as follows:
TO: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the November 1, 1988, **Federal Register** (53 FR 44052). Applications were to be postmarked by December 1, 1988. Detroit, Keokuk, and Michigan were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants' for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-43 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Enid (OK) and Erie (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie).

DATE: Applications must be postmarked on or before February 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Enid, located at 2205 N. 10th Street, Enid, OK 73701; and Erie, located at 301 North Street, Bellevue, OH 44811; were each designated under the Act as an official agency on July 1, 1986, to provide official inspection functions.

Each official agency's designation terminates on June 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Enid, in the State of Oklahoma, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows: Adair, Atoka, Blaine, Bryan, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garfield, Garvin, Grady, Grant, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, and Washington Counties.

The geographic area presently assigned to Erie, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Ohio: Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State line south to State Route 154;

Bounded on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: Those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Exceptions to Erie's assigned geographic area are the following export port locations inside Erie's are which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested parties, including Enid and Erie, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning July 1, 1989, and ending June 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-44 Filed 1-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Peoria, IL, Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the Peoria, Illinois, geographic area.

DATE: Comments must be postmarked on or before February 21, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:
TO: Lewis Lebakken
TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of the Peoria Grain Inspection Service, Inc., would not be renewed on November 1, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the October 21, 1988, **Federal Register** (53 FR 41392). Applications were to be postmarked by November 21, 1988. There were eleven applicants for designation in the available geographic area. Each applied for the entire geographic area, with several also

applying for subdivisions thereof in the alternative. The eleven applicants were: 1. Gary R. Weirman dba Bloomington Grain Inspection Department, Bloomington, Illinois (entire area, or any geographic subdivision of the area); 2. Donald R. Onken, James H. Onken, and Fred O. Reeves, Mason City, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection, Inc.; 3. Joseph L. Winkler, Peoria, Illinois, proposing to do business as Central Illinois Grain Inspection Service; 4. Michael Fegan and Gary Weirman, Bloomington, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc. (entire area, or any geographic subdivision of the area); 5. Virgil W. Turner, Jr., Bartonville, Illinois, proposing to establish a new corporation, Central Illinois Grain Inspection Service, Inc.; 6. Mark A. Beaupre, St. Anne, Illinois, proposing to do business as Illinois Valley Inspection; 7. Kankakee Grain Inspection, Inc., Bourbonnais, Illinois (entire area, or Hennepin, Henry, and Lacon, Illinois); 8. Keokuk Grain Inspection Service, Keokuk, Iowa; 9. Steven M. Bennett, Ronald W. Curtis, Scott D. Deatherage, and Larry S. Kitchen, Villa Ridge, Missouri, proposing to do business as Mopart Grain Inspection Service; 10. Anthony L. Marquardt and Nancy L. Marquardt, dba Quincy Grain Inspection & Weighing Service, Quincy, Illinois (entire area, or Havana, Illinois, only); and 11. Southern Illinois Grain Inspection Service, Inc., O'Fallon, Illinois. All applicants plan to establish at least one specified service point within the available geographic area to provide official service.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Persons or firms located in the Peoria, Illinois, geographic area requiring official inspection service should contact the Eastern Iowa Grain Inspection and Weighing Service, Inc., at (319) 322–7149 to obtain service, on an interim basis, until such time as an applicant is designated to perform official services.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: December 22, 1988.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–45 Filed 1–3–89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Mt. Ashland Ski Development Plan; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District, Rogue River National Forest, Jackson County, Oregon. Notice of Intent to prepare an EIS was published in the **Federal Register** (Vol. 52, No. 38, 2/26/87). The draft EIS was released for public comment in May 1987. The public comment period was extended and ended on July 6, 1987. The Final EIS was not prepared within the time specified in the Notice of Intent. Public comments on the draft EIS showed a need for additional site specific information and analysis. The public comments also indicated a need for further review of the proposal for cross-country skiing. The final EIS is now scheduled to be completed in the spring, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Smelcer, District Ranger, Ashland Ranger District, Ashland, Oregon 97520; phone (503) 482–3333.

Date: December 20, 1988.

Ron Ketchum,

Deputy Forest Supervisor.

[FR Doc. 89–88 Filed 1–3–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 416]

Resolution and Order Approving the Application of the Regional Industrial Development Corp. of Southwestern Pennsylvania for Subzone Status at the Verosol Plant in Allegheny County, PA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, filed with the Foreign-Trade Zones Board (the Board) on February 22, 1988, requesting special-purpose subzone status for the window shade fabric processing facility (non-manufacturing) of Verosol USA, Inc., in Kennedy Township, Allegheny County, Pennsylvaina, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the estabishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, has made application (filed February 22, 1988, FTZ Docket 11–88, 53 FR 7222), in due and proper form to the Board for authority to establish a special-purpose subzone at the window shade fabric processing (non-manufacturing) plant of Verosol USA, Inc., located in Kennedy Township, Allegheny County, Pennsylvania (Pittsburgh area);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Wheareas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed February 22, 1988, the Board hereby authorizes the establishment of a subzone at the Verosol plant, designated on the records of the Board as Foreign-Trade Subzone No. 33B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternotes.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–81 Filed 1–3–89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 412]

Resolution and Order Approving the Application of the City of Weslaco, TX, for a General-Purpose Zone and Three Subzones in Weslaco, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Weslaco, Texas, filed with the Foreign-Trade Zones Board (the Board) on October 21, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Weslaco, Texas, adjacent to the Progreso Customs port of entry, and requesting special-purpose subzone status for three food product processing facilities of McManus Produce Company, Gulf DeBruyn Produce Company, and Sundor Brands, Inc., located in Weslaco, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to the condition that Sundor be required to elect privileged foreign status (19 CFR 146.41) on all foreign merchandise admitted to the Sundor subzone, including citrus juice products, approves the application subject to the foregoing restriction.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the general-purpose zone or within the McManus of Gulf DeBruyn subzones, and before the commencement of any new manufacturing within the Sundor subzone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Weslaco, Texas (the Grantee) has made application (filed October 21, 1987, FTZ Docket 25–87, 52 FR 42328) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone, and subzones at three food processing plants, in Weslaco, Texas, adjacent to the Progreso Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzones, designated on the records of the Board as Zone No. 156 and Subzone Nos. 156A (McManus site), 156B (Gulf DeBruyn site), and 156C (Sundor site), at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act, the Board's regulations, the resolution accompanying this action, and the following express conditions and limitations:

Operation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzones. The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of December, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Donna Tuttle,

Acting Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-82 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-017]

Bricks From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bricks from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 22 firms, and 5.07 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Randall Edwards or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 38314) the final results of its last administrative review of the countervailing duty order on bricks from Mexico (49 FR 19564, May 8, 1984). On May 27, 1987, the Government of Mexico requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on June 19, 1987 (52 FR 23330). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized System ("HS") item numbers with our product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Imports covered by this review are shipments of bricks from Mexico, including unglazed solid bricks and unglazed hollow bricks. Such merchandise is currently classifiable under items 532.1120 and 532.1140 of the TSUSA and item 6904.10.00-0 of the HS.

The review covers the period January 1, 1986 through December 31, 1986 and 18 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given at preferential rates only on merchandise destined for export. We found that the annual interest rates that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 39.60 to 70.00 percent. The annual interest rates for dollar-denominated FOMEX financing outstanding during the period of review ranged from 5.50 to 7.40 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between November 1985 and November 1986. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicadores Economicos y Monedo* (I.E.). We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1985 and 1986 CPP rates. In this way, we calculated a benchmark of 86.39 percent for pre-export peso loans obtained in 1985, and 135.27 percent for pre-export peso loans obtained in 1986.

To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Register Bulletin*, which was 10.47 percent in 1986.

Five of the 29 known exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie both types of FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from FOMEX during the period of review to be 4.59 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

In May 1986, the Banco de Mexico changed the interest rates on FOMEX peso loans to 66.00 percent and on FOMEX dollars loans to 7.70 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating the assesssment rates. For peso loans we used as our benchmark the sum of the May 1988 CPP rate and the average 1981-1984 spread between the CPP and the I.E. effective rates. For dollar loans we used as our benchmark the May 1988 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 0.58 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(2) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions with different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts benefits to those enterprises located outside of Zone IIIA. Three firms made payments on variable-rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them with the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each company's total sales to all markets. One of these firms had *de minimis* aggregate benefits. For the remaining firms that made interest payments on FONEI loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States of this merchandise during the period of review, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.03 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(3) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Five firms had long-term variable-rate FOGAIN loans on which interest payments were due during the period of review. Because the interest rate on all FOGAIN loans is subject to change and changed during the period of review, we treated each loan as a series of short-term loans and used as our benchmarks the least beneficial FOGAIN interest rates in effect for each loan payment.

We allocated the benefits from each loan over each company's total sales to all markets. We then weight-averaged the resulting benefits by each company's proportion of exports of this merchandise to the United States during the period of review, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.45 percent *ad valorem* for all firms except those with zero or *de minimis* aggregate benefits.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of bricks did not use them during the review period;

(A) State tax incentives;
(B) National Industrial Development Fund ("FOMIN");
(C) NDP preferential discounts;
(D) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");
(E) Bancomext loans;
(F) Delay of payment on loans;
(G) Delay of payments to PEMEX of fuel charges;
(H) PROFIDE loans;
(I) Export credit insurance;
(J) Tax Rebate Certificate ("CEDI");
(K) Accelerated depreciation;
(L) Article 15 loans;
(M) Preferential state investment incentives;
(N) Import duty reductions and exemptions; and
(O) CEPROFI fiscal incentives

Firms Not Receiving Benefits

We preliminarily determine that the following 22 firms received zero or *de minimis* benefits during the period of review:

(1) Blanca Salvidar Gonzalez;
(2) Bloques Ladrillos y Materiales de Piedras Negras;
(3) Elias Martinez Ledezma;
(4) Gregorio Moreno;
(5) Jesus Galvan Mesa;
(6) Joaquin Guerra R.;
(7) Ladrillera Arcoiris;
(8) Ladrillera Azteca;
(9) Ladrillera Cantu;
(10) Ladrillera Guadalupana;
(11) Ladrillera La Joya;
(12) Ladrillera Monterrey;
(13) Ladrillera Reynosa;
(14) Ladrillera Rio Bravo;
(15) Ladrillera San Juan;
(16) Ladrillera San Marcos;
(17) Ladrillera Santa Fe;
(18) Ladrillera Reynosa;
(19) Luis de Hoyos Villareal
(20) Materiales Salinas;
(21) Productos de Barro La Zacatosa; and
(22) Ricardo Francisco Garza Vela.

For purposes of cash deposits of estimated countervailing duties, two additional firms, Barros Mecanizados and Jorge Vasquez Narro, received *de minimis* benefits. Because these firms are not part of the country-wide weighted-average deposit rate, the "all other" deposit rate is slightly different from the sum of individual program rates listed in this notice.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1986 through December 31, 1986 to be zero or *de minimis* for 22 firms, and 5.07 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 22 firms listed above and to assess countervailing duties of 5.07 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption before August 24, 1986, the

date of Mexico's accession to the General Agreement on Tariffs and Trade (GATT).

The merchandise covered by this review is afforded duty-free status under the Generalized System of Preferences. Section 303 of the Tariff Act prohibits the imposition of countervailing duties on duty-free products absent an injury test when the United States has an "international obligation" to provide such a test. Mexico's accession to the GATT imposes such an international obligation on the United States with respect to duty-free merchandise entered into the United States after the date of Mexico's accession.

We are currently pursuing means by which an injury determination could be made concerning imports of Mexican bricks entered on or after August 24, 1986, the date of Mexico's accession to the GATT.

We do not intend to instruct the Customs Service to liquidate shipments of bricks entered, or withdrawn from warehouse, for consumption on or after August 24, 1986, until we resolve this issue.

As provided by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of zero from the 22 firms listed above, as well as Barros Mecanizados and Jorge Vasquez Narro, and to collect 1.08 percent of the f.o.b. invoice price on all shipments of this merchandise from all other firms, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: December 24, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc. 89-83 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-355-001]

Leather Wearing Apparel From Uruguay; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final rule of countervailing duty administrative review.

SUMMARY: On October 31, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We have now completed that review and determine the net subsidy to be 1.27 percent *ad volorem* during the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad volorem* for the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43913) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032, July 16, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated and under item numbers 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90 of the Harmonized Tariff Schedule.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 1.27 percent *ad volorem* for the period January 1, 1984 to December 31, 1984, and 0.93 percent *ad volorem* for the period January 1, 1985 to December 31, 1985.

The Department will instruct the Customs Service to assess countervailing duties of 1.27 percent of the f.o.b. invoice price on all shipments exported on or after January 1, 1984 and on or before December 31, 1984, and 0.93 percent of the f.o.b. invoice price on all shipments exported on or after January 1, 1985 and on or before December 31, 1985.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: December 28, 1988.

[FR Doc. 89-84 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We have now completed that review and determine the net subsidy to be 14.93 percent *ad valorem* for the

period January 1, 1986 through December 31, 1986.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43460) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber, currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under items 5504.10.00-2 and 5504.90.00-2 of the Harmonized Tariff Schedule.

The review covers the period January 1, 1986 through December 31, 1986 and three programs: (1) Loans/Grants for Plant Creation; (2) Elderly Employment Compensation Program; and (3) Grant for Manpower Reduction and a Conditional Loan.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the net subsidy to be 14.93 percent *ad valorem* for the period January 1, 1986 through December 31, 1986.

The Department will instruct the Customs Service to assess countervailing duties of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 14.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: December 27, 1988.

[FR Doc. 89-85 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Manganese Steel; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain flat-rolled manganese steel.

DATE: Comments must be submitted on or before January 17, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain flat-rolled steel, 11-14, percent manganese, fully austenitized, ranging from ⅛ to 3 inches in thickness, 48 to 120 inches in width, 96 to 360 inches in length, which is used in applications where heavy impact and friction are involved.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than January 17, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-86 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Application: Indianapolis, IN

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,116 in non-federal contributions for the budget period July 1, 1989 thru June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Indianapolis, Indiana geographic service area. The award number of this MBDC will be 05-10-89008-01.

The funding instrument for the MBDC will be a cooperative agreement.

BEST COPY AVAILABLE

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following critieria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is February 10, 1989. Applications must be postmarked on or before February 10, 1989. Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: December 28, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 89-27 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

Indian Business Development Center Application: MN

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications for an Indian Business Development Center (IBDC) under its American Indian Program (AIP) to operate an IBDC for a 3-year period, subject to satisfactory performance, Agency priorities and availability of funds. The cost of performance for the first 12 months is estimated at $165,000 for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of Minnesota geographic service area. The award number of this IBDC will be 05-10-89007-01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organization, state and local governments, American Indian tribes and educational institutions.

The IBDC is designed to provide management and technical assistance to the minority business community and, in particular, to American Indian clients for the establishment and operation of businesses. In order to establish this, MBDA supports IBDC firms that can coordinate broker public and private resources on behalf of American Indian and other minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the minority business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC will operate for a 3-year period with periodic review culminating in year-to-date quantitative and qualitative evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is February 10, 1989. Applications must be postmarked on or before February 10, 1989.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 Minority Business Development (Catalog of Federal Domestic Assistance)

Date: December 28, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 89-28 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Application: Milwaukee, WI

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period July 1, 1989 thru June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Milwaukee geographic service area. The award number of this MBDC will be 05-10-89009-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following critieria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is February 10, 1989. Applications must be postmarked on or before February 10, 1989. Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: December 28, 1988.

[FR Doc. 89-29 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to:

Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910

or, send comments to the Fishery Management Council(s) which reviews the application(s), as specified below:

Douglas G. Mashall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Miguel A. Rolon, Acting Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW. First Avenue, Portland, OR 97201, 503/221-6352

Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for

fishing in 1989 have been received from the Governments shown below.

Dated: December 28, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code and fishery	Regional fishery management councils
ABS—Atlantic Billfish and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA—Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA—Gulf of Alaska Groundfish.	North Pacific.
NWA—Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA—Snail (Bering Sea)	North Pacific.
WOC—Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS—Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahimahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) supporting U.S. vessels (Joint Venture).

Denmark (DA)

The Government of Denmark, on behalf of the Home Government of the Faroe Islands, submitted applications for three (3) cargo/transport vessels to operate in the Northwest Atlantic Ocean Fishery (NWA).

Iceland (IC)

The Government of Iceland submitted joint venture requests for the following species: Gulf of Alaska (GOA)—8,000 mt of Pacific cod; Bering Sea and Aleutian Islands (BSA)—Pacific cod—22,000 mt; pollock—1,800 mt; Yellowfin sole—1,800 mt; and Atka mackerel—1,700 mt. Associated Vessel Services, Inc. has been designated as the American partner.

Japan (JA)

The Government of Japan updated requests for four (4) vessels and submitted an application for one (1) cargo/transport vessel.

Netherlands (NL)

This notice corrects an error found at 53 FR 48680, where the *Cornelis Vrolijk FZN* was incorrectly reported as having applied for a 1989 permit for the NWA fishery. The *Cornelis Vrolijk FZD SCH 171*, which did apply but was omitted from the above-referenced notice is listed below.

Government of the Union of Soviet Socialist Republics (UR)

The Government of the Union of Soviet Socialist Republics submitted applications for four (4) additional vessels for the (BSA) joint venture previously referenced at 53 FR 48680. Seventeen (17) new support vessel applications for the BSA, GOA and the Pacific Coast Groundfish fisheries have been received. Two (2) vessel applications are requested for 18,000 mt of directed fishing for Atlantic mackerel and 6,000 mt of JV mackerel in the NWA fishery. A.V.E. Corporation has been designated as the American partner.

The U.S.S.R. also submitted an application to substitute the *Gazgan* for the *Efin Gorbenko* in the NWA fishery.

Spain (SP)

This notice corrects an item included at 53 FR 48680, where it was erroneously reported that the Government of Spain submitted applications to receive 20,000 mt of joint venture groundfish species from U.S. fishermen in the BSA and GOA fisheries. The Government of Spain does not support such applications for its flag vessels to participate in the Alaskan fisheries.

Vessel (vessel type)	Application/permit No.	Fishery-activity (* = Joint venture)
Helgafell (Cargo/transport vessel)	DA-89-0010	NWA-3
Nordlandia (Cargo/transport vessel)	DA-89-0006	NWA-3
Vestlandia (Cargo/transport vessel)	DA-89-0008	NWA-3
Andri (Factory ship)	IC-89-0005	GOA-2* BSA-2*
Hatsue Maru No. 68 (Longline fishing vessel)	JA-89-0562	GOA-1* BSA-1
Koei Maru No. 20 (Small stern trawler)	JA-89-1576	GAO-1* BSA-1*
Tenyo Maru (Large stern trawler)	JA-89-0352	WOC-1* GOA-1* BSA-1*
Tenyo Maru No. 5 (Large stern trawler)	JA-89-0334	WOC-1* GOA-1* BSA-1*
Washington Maru (Cargo/transport vessel)	JA-89-0227	SNA-3 GOA-3 BSA-3
Cornelis Vrolijk FZD SCH 171 (Large stern trawler)	NL-89-0041	NWA-1
Aleksandr Kosarev (Large stern trawler)	UR-89-0634	NWA-1*
Amurski Bereg (Cargo/transport vessel)	UR-89-0750	WOC-3 GOA-3 BSA-3
Bereg Nadezdy (Cargo/transport vessel)	UR-89-0754	WOC-3 GOA-3 BSA-3
Cavany (Cargo/transport vessel)	UD-89-0633	WOC-3 GOA-3 BSA-3
Chukotskyi Bereg (Cargo/transport vessel)	UR-89-0749	WOC-3 GOA-3 BSA-3
Delegat (Tanker fuel/water	UR-89-0762	WOC-3 GOA-3 BSA-3
Dubrava (Cargo/transport vessel)	UD-89-0632	WOC-3 GOA-3 BSA-3
German Matern (Cargo/transport vessel)	UR-89-0805	WOC-3 GOA-3 BSA-3
Kamchatsky Berg (Cargo/transport vessel)	UR-89-0755	WOC-3 GOA-3 BSA-3
Khibiny (Large stern trawler)	UR-89-0324	NWA-1*
Kurilsh (Cargo/transport vessel)	UR-89-0808	WOC-3 GOA-3 BSA-3
Lukomorye (Tanker fuel/water)	UR-89-0763	WOC-3 BSA-3
Ostrov Karaginskiy (Cargo/transport vessel)	UR-89-0255	WOC-3 GOA-3 BSA-3
Ostrov Shmidta (Cargo/transport vessel)	UR-89-0256	WOC-3 GOA-3 BSA-3
Ostrov Shokalskogo (Cargo/transport vessel)	UR-89-0257	WOC-3 GOA-3 DSA-3
Ozyornye Klyuchi (Large stern trawler)	UR-89-0223	BSA-2*
Penjinskiy Zaliv (Cargo/transport vessel)	UR-89-0831	WOC-3 GOA-3 BSA-3
Solnechnyi Bereg (Cargo/transport vessel)	UR-89-0485	WOC-3 GOA-3 BSA-3
Sovetskiye Profsoyuzy (Large stern trawler)	UR-89-0705	BSA-1*
Truskavets (Large stern trawler)	UR-89-0559	BSA-2*
Ulbansky Zaliv (Cargo/transport vessel)	UR-89-0806	WOC-3 GOA-3 BSA-3
Vasilii Polechuk (Cargo/transport vessel)	UR-89-0804	WOC-3 GOA-3 BSA-3
Sovgavanj (Large stern trawler)	UR-89-0234	BSA-1*

[FR Doc. 89-37 Filed 1-3-89; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two workgroup meetings. The Council's newly-appointed Sablefish Management Committee will meet for the first time on January 4, 1989, in Anchorage, AK, at the North Pacific Council's office, 605 W. Fourth Avenue, third floor, Anchorage, AK. The committee will identify areas of concern and options that might accompany individual fishing quota (IFQ) and license limitation systems. The resulting detailed list of concerns and options, along with projected implementation schedules will be reviewed by the Council at its January 16–20, 1989, public meeting where a decision for further analysis will be made.

The North Pacific Council's Plan Amendment Advisory Group is scheduled to convene January 5 at 9 a.m., at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Building 4, Room 2079, Seattle, WA. The group will review proposals submitted to amend the Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fishery management plans. The Council will review the group's recommendations at its January 16–20, 1989, public meeting, and select the proposals they wish to have further analyzed for consideration in April.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30266 Filed 12-30-88; 3:22 pm]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A public meeting of the Alaska Board of Fisheries Crab Subcommittee and the North Pacific Fishery Management Council's Crab Management Committee has been scheduled for January 7, 1989, at 1 p.m., at the Alaska Department of Fish and Game Headquarters conference room in Juneau, AK. The meeting has been scheduled to answer technical questions on the proposed Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab and its accompanying analysis. The Board intends to use the meeting to develop recommendations on the proposed plan.

For further information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-30267 Filed 12-30-88; 3:22 pm]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

December 23, 1988.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

Department of Agriculture

SN 6-25,286 (4,785,009)
Cockroach Repellants

SN 7-247,474
Vertical Wall Mount Insect Trap

SN 7-247,546
Attractants For Dacus Latifrons, The Malaysian Fruit Fly

SN 7-248,744
Improvements in In-Vivo Stimulation, Collection, and Modification of Peritoneal Macrophage

Department of Commerce

SN 6-364,944 (4,471,444)
Rotating Tool Wear Monitoring Apparatus

Department of Health and Human Services

SN 7-195,000
Oligomeric Adhesives
SN 7-197,096
Flexible Holder for a Cystoscope or the like
SN 7-221,982
Peptides with Laminin Activity
SN 7-234,641
Detection of non-A, non-B Hepatitis
SN 7-242,872
Method for Early Detection of HIV Infection
SN 7-261,364
A Two-Gigaflop Computer for Macromolecular Simulations
SN 7-268,157
Vaccine Against Human Parainfluenza Virus Type 3
SN 7-278,601
DNA Clone Encoding a Chimeric Toxin Composed of IL6 and a Portion of Pseudomonas Exotoxin
SN E-127-88
Adhesion to Mycoplasma Pneumoniae and Mycoplasma Hominus to Sulfatide
SN E-217-88
Antimicrobial Peptides and Processes for Making the Same
SN E-221-88
Liquid Chromatographic Chiral Stationary Phase and Method for the Resolution of Racemic Compounds Using the Same
SN E-269-88
Evaluative Means for Detecting Inflammatory Reactivity
SN E-384-88
5-Substituted-2',3'-Dideoxycytidine Compounds with Anti-HTLV-III Activity
SN E-714-88
Tissue Transplantation System
SN E-250-88
Human Neutrophilic Granulocyte End-Stage Maturation Factor and its Preparation and Use
SN 7-196,489
Derivatives of Cyclic Amp as Treatment of Cancer
SN 7-198,537
Process for Synthesizing Macrocylic Chelates
SN 7-210,005
Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection
SN 7-261,627
Use of Resiniferatoxin and Analogues Thereof to Cause Sensory Afferent C-Fiber and Thermoregulatory Desensitization
SN 7-264,041
Quick Color Test to Detect Lead Release From Glazed Ceramic and Enameled Metal Ware
SN 7-267,564
Laminin A Chain Deduced Amino Acid Sequence, Expression Vectors and Active Synthetic Peptides
SN E-241-88
A Method to Measure Contact Stress

Department of the Army

SN 7-243,538
Method of Making an Acceleration Hardened Resonator
SN 7-260,550
Tetrahedral Junction Waveguide Switch
SN 7-263,296
Acoustic Charge Transport Processor
SN 7288,826
Periodic Permanent Magnet Structure
SN 7-268,829
Method of Making a Crystal Oscillator Desensitized to Acceleration Fields

Department of the Interior

SN 7-002,595 (4,768,049)
Stereoscopic Camera Slide Bar
SN 7-229,406
Process for Acid Leaching of Manganese Oxide Ores Aided by Hydrogen Peroxide
SN 7-231,017
Geological Gyrocompass
SN 7-234,766
Ground-Based Transmission Line Conductor Motion Sensor

Environmental Protection Agency

SN 6,930,689 (4,786,465)
Lignosulfonate-Modified Calcium Hydroxide for SO2 Control During Furnace Injection

Library of Congress

SN 5-536,125 (3,969,549)
Method of Deacidifying Paper

[FR Doc. 89-22 Filed 1-3-89; 8:45 am]
BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pan-Data Systems, Inc., having a place of business in Rockville, MD, an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-255,712, entitled "Human B Lymphotropic Virus". Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487-4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associcte Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89-02 Filed 1-3-89; 8:45 am]
BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Approval of Survey of Consumers Who Own or Operate All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted a request to the Office of Management and Budget for approval of a collection of information in the form of a telephone survey of 1,000 consumers who own or operate all-terrain vehicles (hereinafter ATVs). ATVs are three- and four-wheeled motorized vehicles intended for off-road use.

The survey will seek current information about the various kinds of ATVs now in use, characteristics of operators, and frequency and patterns of ATV use.

The Commission will use the information obtained from this survey in conjunction with current information about injuries associated with ATVs to determine what factors contribute to injuries from accidents associated with ATVs.

Additional Information About the Proposed Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: ATV Consumer Exposure Survey.

Type of Request: New collection.

Frequency of Collection: One time.

General Description of Respondents: Consumers who own or use ATVs.

Estimated Number of Respondents: 1,000.

Number of Responses per Respondent: 1

Estimated Average Number of Hours per Response: 0.33.

Estimated Number of Hours for All Respondents: 333.

Comments: Comments about this request for approval of a collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 28, 1988

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 89-41 Filed 1-3-89; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by January 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: December 29, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Expedited

Title: Annual Survey of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected or Delinquent Children Needed to Implement Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, As Amended

Abstract: An annual survey is conducted to collect data on (1) the average daily attendance of children in State-operated or supported schools for neglected or delinquent children and (2) the October caseload of children in local institutions. These data are used in the statutory formula for computing entitlements.

Additional Information: The Neglected or Delinquent Program is requesting an expedited review in order to announce Chapter 1 allocations in March 1989, the date normally expected by Congress. Data must be available in the Department no later than February 15, 1989. The program would like to forward the forms to the SEA's by January 13, 1989.

Frequency: Annually

Affected Public: State or local goverments

Reporting Burden:
Responses: 52
Recordkeeping:
Recordkeepers: 0
Burden Hours: 2,000
Burden Hours: 0

BILLING CODE 4000-01-M

DRAFT

U.S. Department of Education
Office of Elementary and
Secondary Education

Form Approved
OMB No. 1810-0060
Approval Expires:

Annual Survey of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected or Delinquent Children Needed to Implement Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, As Amended

Notice: This report is required by Sections 1005, 1241, and 1242 of the Elementary and Secondary Education Act of 1965, As Amended (ESEA). The completion of this report is voluntary, but failure to submit the report will result in the inability of the Department of Education to carry out legislative requirements and the loss of funds to State and local educational agencies to provide compensatory education services for children in institutions and community day programs for neglected or delinquent children.

SECTION A - FORMULA DATA

State Educational Agency _____
(Name)

	Total
Part I - Number of Neglected or Delinquent Children Ages 5-17 in Local Institutions (October 1988 caseload data) ..... (Attach separate list showing a total for each county. See attached reporting format.)	
Part II - Average Daily Attendance of Neglected or Delinquent Children under 21 years of age in State Operated or Supported Schools (Fiscal Year 1988) ..... (Attach separate list showing a total for each State agency. See attached reporting format.)	

SECTION B - CERTIFICATION BY STATE EDUCATIONAL AGENCY

I certify that the State educational agency has determined that the data provided in Parts I and II meet the eligibility requirements of Chapter 1 of Title I, ESEA. The information provided in this report is, to the best of my knowledge, complete and accurate.

Signature | Date Signed

Type Name and Title

ED 4376,

REPORTING FORMAT
THE ATTACHED INSTRUCTIONS
SHOULD BE READ BEFORE
COMPLETING THIS REPORT.

DRAFT

FORM ED 4376
OMB No. 1810-0060
Approval Expires:

Annual Survey of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected or Delinquent Children Needed to Implement Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, As Amended

PART I - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN AGES 5-17, INCLUSIVE, IN LOCAL INSTITUTIONS

State Code	County Code	Name of County	Total Eligible Caseload Count for October 1988

PART II - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN UNDER 21 YEARS OF AGE IN AVERAGE DAILY ATTENDANCE IN STATE OPERATED OR SUPPORTED SCHOOLS

Name of State Agency	FY 1988 Average Daily Attendance

DRAFT

INSTRUCTIONS FOR FORM ED 4376
ANNUAL SURVEY OF CHILDREN IN INSTITUTIONS FOR
NEGLECTED OR DELINQUENT CHILDREN, ADULT CORRECTIONAL INSTITUTIONS,
AND COMMUNITY DAY PROGRAMS FOR NEGLECTED OR DELINQUENT CHILDREN
NEEDED TO IMPLEMENT CHAPTER 1 OF TITLE I OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED

PURPOSE: The purpose of this annual survey is to provide the Department data required by the statute to be used in the computation of grants to local educational agencies (LEAs) and State agencies directly responsible for providing free public education for children in institutions or community day programs for neglected or delinquent children.

REQUIREMENTS: This report is required annually of all State educational agencies. No sampling or estimating is to be used in preparing this report. Since the data will generate Federal funds, they are subject to audit and must be supportable from documented records.

REPORTING BURDEN: The reporting burden will vary among respondents depending on the number of institutions for neglected or delinquent children in each State.

Public reporting burden for this collection of information is estimated to average 38.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0060*, Washington, D.C. 20503.

INSTRUCTIONS

SECTION A - FORMULA DATA

PART I - NUMBER OF NEGLECTED OR DELINQUENT CHILDREN IN LOCAL INSTITUTIONS

1. State and County Codes

Identify the State code and county code. This information is required for data processing purposes. A list showing these data is attached.

2. October Caseload Data

Enter the total number of children, ages 5-17, inclusive, who resided in local institutions for neglected or delinquent children as defined in 34 CFR 200.6 for at least 30 consecutive days, at least one of which was in October (34 CFR 200.23(a)).

Please furnish a total for each county only. It is not necessary to furnish data for each individual institution or to separate the children according to the neglected or delinquent categories.

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PART II - AVERAGE DAILY ATTENDANCE OF NEGLECTED OR DELINQUENT CHILDREN OR CHILDREN IN ADULT CORRECTIONAL INSTITUTIONS IN STATE OPERATED OR SUPPORTED SCHOOLS

1. State Agency (34 CFR 203.6(c))

Furnish the name of the State agency eligible to receive a Chapter 1 grant. "State agency" means an agency of State government which is directly responsible for free public education of children in institutions for neglected or delinquent children, adult correctional institutions, or community day programs for neglected or delinquent children. (This education may be provided in schools operated or supported by the State agency or in schools under contract or other arrangement with that agency.) (See definition of "State agency" in 34 CFR 203.6.)

2. Average Daily Attendance (34 CFR 203.21(b))

Report the average daily attendance data for the most recently completed school year in the schools operated or supported by each State agency for children in institutions for neglected or delinquent children, adult correctional institutions, or community day programs as defined in 34 CFR 203.6.

Provide a total for each State agency only. It is not necessary to furnish data for each institution or community day program or to separate the data by category of children.

To be eligible to be counted in average daily attendance, a child must be:

(1) under 21 years of age;
(2) one for whom a State agency is providing a free public education; and
(3) enrolled in a regular program of instruction for which daily attendance records are kept, at least ten (10) hours per week.

"A regular program of instruction" means an educational program (not beyond grade 12) in an institution or a community day program for neglected or delinquent children that consists of classroom instruction in basic school subjects, such as reading, mathematics, and vocationally oriented subjects, and that is supported by non-Federal funds. Neither the manufacture of goods within the institution nor activities related to institutional maintenance are considered classroom instruction (34 CFR 203.6).

Determining daily attendance (34 CFR 203.21(b)(2)):

(1) a child is counted as being in a full day of attendance for each day the child attends the regular program of instruction for three (3) or more hours; and

(2) a child is counted as being in one-half (1/2) day of attendance for each day the child attends the regular program of instruction for at least one (1) hour, but less than three (3) hours.

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Computing average daily attendance (34 CFR 203(b)(1)):

Average daily attendance is computed for each institution by: (1) calculating, from daily attendance records, the total number of days of attendance in the regular program of instruction during the most recently completed school year, and (2) dividing the total by 180. The divisor of 180 days must be used regardless of the number of days the school was in session.

NOTE: Neglected or delinquent children under 34 CFR Part 203, who are eligible for programs for handicapped children under 34 CFR Part 302, may be counted for grant determinations under both programs and may be served under both programs. (Authority: 20 U.S.C. 2801(b))

SECTION B - CERTIFICATION BY STATE EDUCATIONAL AGENCY

Please complete the certification page of the report. This report must be signed by the appropriate official in the State educational agency to certify that the information reported is complete and accurate.

SUBMITTAL PROCEDURE

Send an original and one copy of the certification page along with the detailed data required in accordance with the above instructions to:

Mrs. Mary Jean LeTendre, Director
Compensatory Education Programs
U.S. Department of Education
400 Maryland Avenue, SW. (Room 2043)
Washington, D.C. 20202-6132
Attention: Mrs. Carolyn Horner

[FR Doc. 89-101 Filed 1-3-89; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-480-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89-480-000]

December 28, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP89-455-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act for EnTrade Corporation (EnTrade), all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for EnTrade, a marketer. United explains that service commenced October 18, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1236. United further explains that the peak day quantity would be 103,000 MMBtu, the average daily quantity would be 103,000 MMBtu, and the annual quantity would be 37,595,000 MMBtu. United explains that it would receive natural gas for EnTrade's account at various points on its system and would redeliver natural gas for EnTrade's account at various points in the states of Alabama, Mississippi, Louisiana, Florida, and Texas.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP89-436-000]

December 28, 1988.

Take notice that on December 16, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-436-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install and operate two sales meter stations in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale to consumers in the Prescott Valley area in Yavapai County, Arizona, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it presently sells and delivers natural gas to SUG for distribution and resale to consumers situated in various communities and areas in Arizona. It is further stated that SUG has requested natural gas service at locations on El Paso's Maricopa County Line in Yavapai County, Arizona. It is stated that the requested quantities will be utilized to serve an existing residential area presently utilizing propane.

It is explained that in order for El Paso to accommodate SUG's request for natural gas service, El Paso proposes to install two sales meter stations on its Maricopa Line. El Paso states that SUG will install other minor related facilities, as needed, for ultimate distribution of the requested quantities in the Prescott Valley area. It is explained that SUG has projected that the estimated annual and maximum peak day delivery requirements of the Prescott Valley area during the third full year of service is 63,945 Mcf per year and 968 Mcf per day, respectively.

El Paso states that the additional quantities of natural gas will be sold by El Paso to SUG for resale in the Prescott Valley area in order to accommodate projected Priority 1 requirements. It is stated that the anticipated Priority 1 load growth, which has precipitated SUG's request for natural gas service will not alter SUG's entitlements under El Paso's Permanent Allocation Plan. It is also stated that the subject sale of natural gas is consistent with the high-priority load growth provisions set forth in Section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP89-473-000]

December 28, 1988.

Take notice that on December 22, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-473-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Bishop Pipeline Corporation (Bishop), with the ultimate consumers of the gas identified as Snacktime Foods, E.R. Carpenter Co. and Rockwell International, under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 15,000 MMBtu equivalent of natural gas on a peak day for Bishop's account, 2,000 MMBtu equivalent on an average day and 5,475,000 MMBtu equivalent on an annual basis. It is stated that Texas Gas would receive the gas for Bishop's account at various existing receipt points on Texas Gas' system in Louisiana, Texas, Tennessee, Arkansas, Kentucky, Illinois and Ohio, and that Texas Gas would deliver equivalent volumes for Bishop's account at existing interconnections between Texas Gas and Terre Haute Gas Corporation in Indiana and between Texas Gas and Western Kentucky Gas Company in Kentucky. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced November 14, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-1283.

Comment date: February 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Co.

[Docket No. CP89-478-000]

December 29, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-478-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Sonat Marketing Company, (Sonat) a marketer of natural gas, under United's blanket transportation certificate authorization which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas at various existing points in Panola County, Texas, and deliver the gas for the account of Sonat in Mobile County, Alabama, and Escambia County, Florida. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 8,240 MMBtu of gas per peak day and approximately 8,240 MMBtu of gas and 3,007,000 MMBtu of gas on an average day and annually, respectively. United indicates that the transportation service commenced under the 120 day automatic authorization of § 284.223(a) of the Commission's Regulations on November 1, 1988, pursuant to a transportation agreement dated October 17, 1988. United notified the Commission of the commencement of the transportation service in Docket No. ST89-1217-000 on December 9, 1988.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Co. of America.

[Docket No. CP89-466-000]

December 29, 1988.

Take notice that on December 21, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-466-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Texaco Producing Inc. (Texaco), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 30,000 MMBtu of natural gas per day for Texaco from receipt points located in Vermilion and West Cameron Areas, Offshore Louisiana, to a delivery point located in Vermilion Parish, Louisiana. Natural anticipates transporting, on an average day 8,000 MMBtu and an annual volume of 2,920,000 MMBtu.

Natural states that the transportation of natural gas for Texaco commenced November 1, 1988, as reported in Docket No. ST89-1406-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corp.

[Docket No. CP89-304-001]

December 29, 1988.

Take notice that on November 29, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-304-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation on behalf of Williams Gas Marketing (Williams), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 37,000 MMBtu of natural gas per day for Williams, a marketer of natural gas, from existing wells located in La Plata County, Colorado and Rio Arriba and San Juan Counties, New Mexico, to the Ignacio Plant delivery point in La Plata County, Colorado, and the existing interconnections with El Paso Natural Gas Company at La Jara in Rio Arriba County, New Mexico. Northwest anticipates transporting 3,000 MMBtu of natural gas on an average day and an annual volume of 1,100,000 MMBtu.

Northwest states that the transportation of natural gas for Williams commenced October 14, 1988, as reported in Docket No. ST89-678-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

On December 19, 1988, Northwest filed in Docket No. CP89-304-001 a request pursuant to § 157.205 of the Commission's Regulations to revise the requested maximum daily transportation volume from 37,000 MMBtu to 38,500 MMBtu, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Co.

[Docket No. CP89-469-000]

December 29, 1988.

Take notice that on December 21, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-469-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Cornerstone Production Corporation (Cornerstone), a marketer, under Tennessee's blanket transportation certificate authorization which was issued by Commission order on June 18, 1987, in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states it will receive the gas at various existing points on its system located offshore Louisiana and in the states of Texas, Louisiana, Massachusetts, Mississippi, West Virginia and New Jersey, and deliver the gas for the account of Cornerstone in the states of Pennsylvania, West Virginia, Mississippi, New Hampshire, New York, Kentucky, New Jersey, Massachusetts, Tennessee, Louisiana and Alabama. Gas delivered to these points will be transported under Tennessee's Rate Schedule IT.

Tennessee proposes to transport up to 50,000 dekatherms of gas (dt) on a peak day, approximately 50,000 dt of gas per average day and approximately 18,250,000 dt of gas annually. Tennessee states that the transportation service commenced under the 120 day automatic authorization of § 284.223(a) of the Commission's Regulations on November 19, 1988, pursuant to a transportation agreement dated November 18, 1988, as amended. Tennessee notified the Commission of the commencement of the transportation service on December 15, 1988, in Docket No. ST89-1296-000.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-63 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-000, CP85-58-017, RP88-202-000, RP88-185-000, RP88-184-000, CP88-434-000, CP88-333-000, CP88-332-000, CP88-203-000, CP87-553-000, CI87-290-000, TA88-1-33-000, TA88-3-33-000, TA85-1-33-004, and 009, TQ89-1-33-000 and TM89-1-33-000]

El Paso Natural Gas Informal Settlement Conference

Issued: December 28, 1988.

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on January 11, 1989 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426.

The parties and the Commission Staff are invited to attend the informal settlement conference. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information contact Cynthia A. Govan (202) 357-5330 or Hollis J. Alpert (202) 357-5354.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-59 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2842-015]

City of Idaho Falls, Idaho; Notice Extending Deadline

December 27, 1988.

By order issued October 7, 1988,[1] the Commission denied the appeal of the licensee, City of Idaho Falls, Idaho, challenging the order, issued June 24, 1988,[2] by the Director, Division of Project Compliance and Administration, which denied licensee's request to eliminate a requirement for seasonal installation of buoy lines at Project No. 2842. The Commission's order also directed the licensee to file, by November 7, 1988, (after consultation with the Sheriff of Bonneville County, Idaho) either a request to change the location of the buoy lines, with appropriately revised Exhibit R drawings and supporting evidence, or a letter stating that no change in the buoy-line locations is needed. By notice issued November 15, 1988, licensee's request, filed November 1, 1988, to extend the November 7 deadline 45 days to December 22, 1988, was granted.

On December 20, 1988, licensee filed a request for a 30-day extension, to January 23, 1989, of the previously-extended deadline for filing the required information. Licensee contends that it has filed a request for rehearing of the Commission's order, and therefore, the buoy line requirement may be removed. Because the requested extension will not delay the installation of the buoy lines, as required by the Commission's order, licensee's extension request will be granted and notice is hereby given, *nunc pro tunc*, that licensee must file the required information by January 23, 1989.

However, disposition of licensee's rehearing request is not a condition precedent to the filing of the required information. Thus, any further extension requests based on the pendency of licensee's rehearing request will not be viewed favorably, and licensee is hereby admonished to act in good faith to meet the new deadline for filing the required information.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-60 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-93-005 and RP88-40-005]

Questar Pipeline Co.; Extension of Time

December 27, 1988.

On December 16, 1988, Questar Pipeline Company (Questar) filed a motion for an extension of time to file a certificate application as required by the Commission's letter order issued December 1, 1988, in the above-docketed proceeding. In its motion, Questar states that because of the intervening holidays and the unavailability of company personnel, additional time is required for the preparation and filing of a comprehensive certificate application.

Upon consideration, notice is hereby given that an extension of time for the filing of a certificate application is granted to and including January 9, 1989.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-61 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-91-000, and RP88-221-000]

Texas Eastern Transmission Co.; Informal Settlement Conference; Errata

Issued: December 23, 1988.

In first paragraph of notice published in the **Federal Register** on January 3, 1989, change "January 25, 1988" to "January 25, 1989."

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-62 Filed 1-3-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180799; FRL-3500-8]

Receipt of Application for an Emergency Exemption from Nebraska To Use 2-[[[[(4,6-Dimethoxy-2-Pyrimidinyl) Amino Carbonylaminosulfonyl-N,N-Dimethyl-3-Pyridinecarboxamide and 3-[4,6-BIS-(Difluoromethoxy)-Pyrimidin-2-YL]-1-(2-Methoxy Carbonyl-Phenylsulfonyl) Urea; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Nebraska Department of Agriculture (hereafter referred to as "Applicant") to use the postemergent herbicides Accent 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl) amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine carboxamide, and beacon 3-[4,6-Bis-(difluoromethoxy)-pyrimidin-2-YL]-(2-methoxy carbonyl-phenylsulfonyl) urea to treat 500,000 acres of field corn to control shattercane. Accent will be applied on approximately 35,000 acres, and Beacon will be applied on 465,000 acres. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and solicit public comment before making the decision whether to grant these exemptions.

DATE: Comments should be received on or before January 19, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180799" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information."

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[1] The above-referenced proceedings have not been consolidated for purposes of hearing or decision, however, settlement discussions may address issues in each of these proceedings.

[1] 45 FERC ¶ 61,042 (1988).

[2] 43 FERC ¶ 62,366 (1988).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Accent, 2-[[[[(4,6-Dimethoxy-2-pyrimidinyl) amino carbonylaminosulfonyl-N,N-dimethyl-3-pyridine carboxamide, and beacon 3-[4,6-Bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxy carbonyl-phenylsulfonyl) urea.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Accent and Beacon are not currently registered in the United States.

The Applicant states that although preemergent herbicides provide early season weed control, they do not provide season-long weed control. Thiocarbamate herbicides are commonly used in corn for shattercane control. However, the Applicant states that continued use of these herbicides results in a build up of micro-organisms in the soil that break down these herbicides.

Crop rotation is a commonly used practice. However, the applicant states that current government farm programs force farmers in irrigated corn areas to maintain base acres. This restricts the amount of crop rotation that can be used for weed control in irrigated areas. Also corn provides good economic return under irrigated situations thus resulting in continuous corn production in these fields.

Cultivation can only control the weeds between rows, leaving the heaviest concentration of shattercane in the row. The Applicant states that it is normal practice to cultivate the corn once and to furrow it once for irrigation, however, this also leaves the shattercane within the row.

The Applicant proposes to make a single application of approximately 465,000 acres with the product Beacon, and 35,000 acres of Accent. Beacon will be applied at a rate of .57 ounces of active ingredient per acre. Accent will be applied at a rate of .5 ounces of active ingredient per acre. The Applicant estimates that 425,000 acres would be irrigated corn, and 75,000 acres would be dryland corn.

According to the Applicant, an emergency situation exists because there are presently no registered postemergent herbicides available that will control the infestation of shattercane in an efficacious and cost effective manner.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: December 19, 1988.

Anne E. Lindsay,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-4 Filed 1-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010676–031.

Title: South Europe/U.S.A. Freight Conference.

Parties:

Achille Lauro
Compania Trasatlantica Espanola, S.A.
Costa Line
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jogolinija
Jugooceanija
Lykes Lines
A.P. Moller-Maersk Line
Nedlloyd Lines
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would permit the Conference to enter into loyalty contracts in accordance with the antitrust laws of the United States. Also, the modification prohibits any member from entering into a loyalty contract, individually or jointly with another member, in the agreement trade. It would also prohibit members from taking independent action with resepct to loyalty contracts.

Agreement No.: 202–010979–010.

Title: Caribbean Shipowners Association.

Parties:

Tropical Shipping & Construction Co., Ltd.
Sea-Land Services, Inc.
Trailer Marine Transport Corporation
Puerto Rico Maritime Shipping Authority
The Shipping Corporation of Trainidad and Tobago
Tecmarine Lines
Bernuth Line, Ltd.
Interline Connection, Inc.
Sea-Barge Group, Inc.

Synopsis: The proposed modification would allow members to caucus and agree upon matters covered by the Agreement without having a formal Conference meeting. Adherence to any agreement under these circumstances is voluntary.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 29, 1988.

[FR Doc. 89-35 Filed 1-3-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003695–004.

Title: Port Everglades Authority Terminal Agreement.

Parties:

Port Everglades Authority (PEA)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The agreement extends the term of the basic terminal lease agreement between PEA and Sea-Land. The agreement permits the parties to continue in effect the wharfage rates, tonnage levels and crane rental rates under the agreement.

Agreement No.: 224–200017–003.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation
Delaware River Stevedoring, Inc.

Synopsis: The agreement extends the terms of the basic operating agreement (as provided in Article 2.4(b)) for the Packer Avenue Container Terminal from December 31, 1988 through March 3, 1989.

Agreement Nos.: 224–200139–001, 224–200139–002 and 224–200139–003.

Title: The Port Authority of New York and New Jersey.

Parties:

The Port Authority of New York and New Jersey.
Sea Terminals, Inc.

Synopsis: Amendment No. 1 provides for the City of New York to be listed as an additional insured. Amendment No. 2 provides for the occasional use of a container crane while Amendment No. 3 provides for a six month extension of the basic agreements term.

Agreement No.: 224–011033–001.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle
Nippon Yusen Kaisha, Ltd.

Synopsis: The agreement (1) reflects the deletion of Showa Line, Ltd. as a join lessee under the agreement, effective July 31, 1988, (2) enlarges the premises by addition of 4 acres of blacktopped land with improvements thereon, (3) redefines the premises to include the rental charge for the additional area, (4) provides Lessee the right to utilize the premises for serving other than Lessee's owned vessels without prior consent of the Port, and (5) deletes certain paragraphs no longer applicable to the basic Lease and Agreement.

Agreement No.: 224–200205

Title: City of New York Terminal Agreement.

Parties:

City of New York (the City)
Continental Terminals, Inc. (CTI)

Synopsis: The agreement provides for CTI's ten (10) year lease of the City's 23rd Street Pier, including the pier, pier shed and headhouse, Buildings Nos. 6 and 7 and adjoining uplands and lands-under-water located in the former Moore McCormack Marine Terminal, Brooklyn, New York. The lease permits CTI to use the premises for stevedoring and public warehousing. The lease requires the payment of annual rent plus wharfage and dockage fees.

Agreement No.: 224–200204

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority
Shipping Corporation of Trinidad and Tobago

Synopsis: The agreement provides for a consolidated rate for container handling services at Containerport Savannah, Georgia.

Agreement No.: 224–200207

Title: Tampa Port Authority Terminal Agreement

Parties:

Tampa Port Authority (TPA)
Harborside Refrigerated Services, Inc. (HRS)

Synopsis: The agreement provides for TPA to grant HRS wharfage incentive rates between January 1, 1989 and December 31, 1989, on movements of fresh fruit through a cold storage facility leased from TPA.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 28, 1988.

[FR Doc. 89-36 Filed 1-3-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-27]

Ariel Maritime Groups, Inc., et al. v. New York Shipping Association, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ariel Maritime Group, Inc., et al. (see Attachment A, hereinafter "Complainants") against the New York Shipping Association, Inc., et al. (see Attachment B, hereinafter "Respondents") was served December 29, 1988. Complainants allege that Respondents have violated certain sections of the Shipping Act, 1916, 46 U.S.C. app. section 801 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. section 843 et seq., and the Shipping Act of 1984, 46 U.S.C. app. section 1701 et seq., through implementation of the "Rules on Containers" at various East Coast and/or Gulf Coast ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 29, 1989, and the final decision of the Commission shall be issued by April 30, 1990.

Joseph C. Polking,

Secretary.

Attachment A—Names and Addresses of Complainants

Ariel Maritime (USA) Inc. dba Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Interlink Lines, Buccanner Line, Union Exportadora Lines, Canbel Line,

Cedar Star Line, Liberty Lines, 323 West 39th Street, 7th Floor, New York, NY 10018
Dieterle & Victory International Transport Co. Inc., Five World Trade Center, Suite 9267, New York, NY 10048
NATO Container Lines, 156 William Street, New York, NY 10038
Militzer & Muench, USA, Inc. dba Militzer & Muench Intermodal Lines, 40 Rector Street, Suite, 1830, New York, NY 10006
Panalpina, Inc. dba, Pantainer Express Lines, The Harborside Financial Center, Plaza Two, 34 Exchange Place, Jersey City, NJ 07302
Pan American Container Corp., 747 Third Avenue, New York, NY 10017
Unsworth Transport International, Inc. d/b/a UTI Lines, 1831 Pennsylvania Avenue, Linden, NJ 07836
Radix Group International, Inc. dba Union Star Line, 156 William Street, New York, NY 10038

Attachment B—Names and Addresses of Respondents

New York Shipping Association, 25 Broadway, New York, NY 10004
Council of North Atlantic Shipping Associations, 2 Girard Plaza, Philadelphia, PA 19102
West Gulf Maritime Association, 406 Cotton Exchange Building, Houston, Texas 77002
Mobile Steamship Association, Inc., P.O. Box 1077, Mobile, Alabama 36601
Southeast Florida Employers Port Association, Inc., P.O. Box 1693, Miami, FL 33101
ABC Containerline N.V., 38 East 29th Street, New York, NY 10016
ACL Motorships Inc., 900 Sylvan Avenue, Englewood Cliffs, NJ 06732
American Transport Line, 1820 Chapel Avenue, W. Cherry Hill, NJ 08002; P.O. Box 195161, Charlotte, NC 28219
Armada Shipping Inc., Armada House, 14227 Fern Drive, Houston, TX 77079
Associated Container Transportation/ PACE Lines, One World Trade Center, Suite 8101, New York, NY 10048
Atlantic Container Line, 50 Cragwood Road, South Plainfield, NJ 07080
Atlantik Express Line, c/o Norton Lilly Int., Inc., 200 Plaza Drive, Secaucus, NJ 07096
Bank Line Ltd., 99 Wood Avenue South, P.O. Box 4026, Iselin, NJ 08830
Barber Steamship Lines (N.A.) Inc. (Scan Carriers), 17 Battery Place, 9th Floor, New York, NY 10004
Compagnie Generale Maritime, CGM/ French Line, Two World Trade Center, Suite 2164, New York, NY 10048
Columbus Line, Inc., Harborside Financial Center, Plaza 2, Jersey City, NJ 07302
Dart Containerline, c/o Seapac Services Inc., Five World Trade Center, New York, NY 10048
Deppe Line, c/o Ecam Container Services, 1900 North Loop West, Suite 550, Houston, TX 77018
Evergreen Int'l, (U.S.A.) Corp., One Evertrust Plaza, Jersey City, NJ 07032
Farell Lines, Inc., 1 White Hall Street, New York, NY 10004
Gulf Container Line (GCL), 5415 Oats Road, Houston, TX 77013
Hapag-Lloyd (America) Inc., One Edgewater Plaza, Staten Island, NY 10305
Incotrans, c/o Gulf Container Line, 5415 Oats Road, Houston, TX 77013
Interpool, Ltd., 630 Third Avenue, New York, NY 10017
Italian Line, c/o Containership Agency Inc., 96 Morton Street, New York, NY 10014
Lykes Bros. Steamship Co., Inc., 17 Battery Place North, New York, N.Y. 10004–1092; P.O. Box 8744, Houston, TX 77287–744
Mediterranean Shipping Co., c/o Containership Agency Inc., 96 Morton Street, New York, NY 10014
Nedlloyd Lines, Inc., Five World Trade Center, New York, NY 10048; 2 General Square Plaza, Jersey City, NJ 07306
Norton Lilly Intl Inc., 200 Plaza Drive, Secaucus, NJ 07094
National Shipping Company of Saudi Arabia, c/o United States Navigation, Inc., 1 Edgewater Plaza, Staten Island, NY 10305
Ocean Star Container Line, c/o Intercon Shipping, Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07302
OOCL (U.S.A.) Inc., Two World Trade Center, 33rd Floor, New York, NY 10048
Pad Line Inc., c/o Southern Steam, Inc., 6 Commerce Drive, Cranford, N.J. 07016, Attn. Roy Keil
Pakistan National Shipping Corp., c/o East Coast Overseas Corp., 21 West Street, New York, NY 10006
POC Containers (TFL Ltd.) dba TFL Trans Freight Lines, 65 Willow Brook Blvd., Wayne, NJ 07470
Polish Ocean Lines, 39 Broadway, 14th Floor, New York, NY 10006
SAF Bank, Inc. (SAF Bank Line), c/o Gulf and Atlantic Maritime Services, Inc., P.O. Box 4026, 99 Wood Avenue, So. Iselin, NJ 08830
Safmarine, Inc., c/o Gulf and Atlantic Maritime Services, Inc., P.O. Box 4026, 99 Wood Avenue, So. Iselin, NJ 08830
Scott Line/Shipping Corporation of Trinidad and Tobago, Inc., c/o Intercon Shipping Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07032
Sea-land Service, Inc., One World Trade Center, Suite 2711, New York, NY 10048. Corporate HQ: 10 Parsonage Rd., Edison, NJ 08837
Spanish Line, c/o Transatlantica Agency Inc., 99 Hudson Street, New York, NY 10013
Tecomar Line, c/o Care Shipping, Inc., 515 North Belt East, Suite 300, Houston, TX 77060
Trans Freight Lines, 90 West Street, New York, NY 10006
Topgallant Group Inc., 510 Thornal Street, Edison, NJ 08837
Transamerica (ICS) Inc., 711 Westchester Avenue, White Plains, NY 10604
United Arab Shipping Co., c/o Kerr Steamship Co., Two World Trade Center, New York, NY 10048
United States Lines, Inc., 660 Madison Avenue, New York, NY 10021
Zim Container Service, One World Trade Center, Suite 2969, New York, NY 10048

[FR Doc. 89–21 Filed 1–3–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Commercial Security Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 23, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commercial Security Bancshares, Inc.*, Stockton, Missouri; to become a bank holding company by acquiring 93 percent of the voting shares of Sac River Valley Bank, Stockton, Missouri. Bank also engages in the sale of credit-related life insurance only.

Board of Governors of the Federal Reserve System, December 28, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89–7 Filed 1–3–89; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

SmithKline Animal Health Products; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by SmithKline Animal Health Products. The NADA provides for the use of a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine for making Type C medicated swine feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, 1600 Paoli Pike, West Chester, PA 19380, is the sponsor of NADA 100–127 which was originally approved August 18, 1976 (41 FR 34943). The NADA provides for using a Type A medicated article containing 10 grams per pound each of tylosin and sulfamethazine to make Type C medicated swine feeds. The feeds contain 100 grams per ton each of both drugs and are used in accordance with 21 CFR 558.630(f)(2)(ii).

In a letter dated April 6, 1988, the sponsor requested the withdrawal of approval of the NADA and waived opportunity for hearing because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 100–127 and all supplements thereto is hereby withdrawn, effective January 17, 1989.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing the drug labeler code No. "000007" from 21 CFR 558.630(b)(3).

Dated: December 28, 1988.
Richard H. Teske,
Deputy Director, Center for Veterinary Medicine.
[FR Doc. 89–77 Filed 1–3–89; 8:45 am]
BILLING CODE 4160–01–M

[Docket No. 83N–0193]

FDA's First Draft Proposed Standard for the Infant Apnea Monitor; Availability; Public Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," to request public comment. FDA is also announcing that it is holding a public meeting to discuss the draft standard in conjunction with the Seventh Annual Conference on Apnea of Infancy to be held on January 26 to 28, 1989, Rancho Mirage, CA.

DATES: Comments on the "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988" by March 6, 1989. The public meeting will be held on January 25, 1989, from 3 p.m. to 5 p.m., at Embassy Suites, 74–700 Highway 111, Palm Desert, CA 92260.

ADDRESSES: Submit written requests for single copies of the "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988" to the Operations Staff (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist in processing your requests.

Submit written comments on the draft standard to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft standard and any received comments are available for public examination in the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: James McCue, Jr., Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of September 10, 1982 (47 FR 39816), FDA published a final rule under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), classifying the generic type of device, the breathing (ventilatory) frequency monitor (21 CFR 868.2375), into class II (performance standards). This device is intended to measure or monitor a patient's respiratory rate. The device may provide an audible or visible alarm when the respiratory rate is outside predetermined limits. The generic device encompasses breathing frequency monitors intended for use in a hospital or in the home and intended for use on adults or infants (neonates—children of less than 2 years of age).

In the Federal Register of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish for the breathing frequency monitor a performance standard under section 514 of the act (21 U.S.C. 360d). FDA did not receive any requests for a change in the classification of the device.

In a notice published in the Federal Register of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(c) of the act and 21 CFR Part 861. In the notice of February 26, 1986, FDA invited any interested persons, including Federal agencies, to submit, on or before April 28, 1986, an existing standard as a proposed performance standard for the device, or to submit an offer to develop such a proposed standard. In that notice, FDA limited its proceeding to those breathing frequency monitors commonly called neonatal apnea monitors, which are intended for use on infants to detect cessation of breathing. If the infant ceases breathing (apnea) while the device is being used, the device should provide an audible or visible alarm.

In the Federal Register of July 1, 1986 (51 FR 23832), FDA announced that, in accordance with the provisions of section 514(e)(3) of the act and 21 CFR 861.32, FDA may, upon application (which may be made before the

acceptance of the offer), agree to contribute to the accepted offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard that would be developed without such contribution. Support would be provided through the means of a Cooperative Agreement Award to nonfederal institutions and individuals and through an interagency agreement to Federal institutions. Cooperative Agreement Awards would be subject to the cost principles set forth in the Federal Acquisition Regulations System. Cooperative agreements are authorized under Pub. L. 95–224 and interagency agreements, under the Economy Act of 1932 as amended (31 U.S.C. 1535; formerly 31 U.S.C. 686). Subsequently, FDA allocated approximately $250,000 to contribute to the offeror's cost for the first year of effort in developing a proposed standard.

In the **Federal Register** of April 22, 1988 (53 FR 13296), FDA advised that a Notice of Grant Award (cooperative agreement) had been issued to the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. Items to be delivered to FDA by ECRI by the end of the first year were: (1) A draft performance standard document addressing certain specified issues; (2) a final report that includes a description of the work performed under the cooperative agreement, additional rationale for its necessity, and feasibility for each of the requirements of the standard, including an assessment of the degree of risk of illness or injury designed to be eliminated or reduced by the proposed standard, and a list of references used in the development of the standard; (3) hard copies of the references mentioned above; and (4) a mailing list for distribution of the draft proposed standard to interested persons.

The cooperative agreement with ECRI was completed on August 31, 1988, with delivery of the items listed above. Because certain requirements for the infant apnea monitor were unable to be addressed in the draft document delivered to the agency, FDA is now proceeding to develop a proposed standard for the infant apnea monitor, using the information developed during the cooperative agreement with ECRI (21 U.S.C. 360d(f)).

II. First Draft Proposed Standard for the Infant Apnea Monitor—October 1988

FDA is now making available for comment its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988." FDA's first draft standard is somewhat different from the document delivered to the agency by ECRI. FDA has revised the draft to reflect the format used in FDA regulations. Further, FDA has expanded a number of the specific requirements recommended by ECRI, and is suggesting the addition of other requirements.

Footnotes are provided throughout the draft document to indicate FDA's current thoughts on specific requirements. Test methods for many of the performance requirements are under development, and an outline of the agency's current approach is provided for comment. The first draft standard contains both general and specific requirements, and includes an appendix which provides the rationale for including each performance requirement in the standard. FDA welcomes comments on all areas of the document, but particularly requests comments on specific requirements, such as effectiveness, apnea duration, test methods, etc.

Accordingly, under 21 CFR 861.30, FDA is providing interested persons an opportunity to participate in the development of the standard by accepting comments, and where appropriate, holding public meetings on issues relating to development of the standard. Therefore, FDA is announcing that it will hold an open public meeting to discuss the draft standard on January 25, 1989, from 3 p.m. to 5 p.m., at the Embassy Suites (address above). FDA's public meeting will be held in conjunction with the Seventh Annual Conference on Apnea of Infancy, January 26 to 28, 1989, Rancho Mirage, CA 92270.

Data and information submitted voluntarily to FDA during the public meeting to discuss the draft standard will become part of the administrative record and will be available to the public under 21 CFR 20.111. After comments, data, and information submitted at the open public meeting are reviewed, FDA will prepare and make available another draft proposed standard. FDA plans to prepare and make available for comment at least one, if not two, revised draft standards for the device before publishing in the **Federal Register** a proposed mandatory standard under 21 U.S.C. 360d(g) and 21 CFR 10.40.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the "First Draft Proposed Standard for the Infant Apnea Monitor---October 1988." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1988.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–30262 Filed 12–30–88; 9:23 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0438]

Drug Export; Oxaprozin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wyeth-Ayerst Laboratories has filed an application requesting approval for the export of the human drug Oxaprozin to Japan and Portugal.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–1245, has filed an application requesting approval for the export of the drug Oxaprozin, to Japan and Portugal. This drug is to be used as an antiinflammatory agent. The application was received and filed in the Center for Drug Evaluation and Research on December 12, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this documents. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 17, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 21, 1988.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–78 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Preferences, Funding Priorities and Special Consideration for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration announces the final Funding Preferences, Funding Priorities and Special Consideration for Cooperative Agreements for Area Health Education Center Programs.

Section 781 (a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing, and operating new area health education center programs.

Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 57, Subpart MM.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in section 57.3804 of the program regulations;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the proposed area health education centers.

Proposed funding preferences, funding priorities and a special consideration were published in the **Federal Register** of October 7, 1988 (FR 39526), for public comment. No comments were received during the 30-day comment period. Therefore, the funding preferences, funding priorities and special consideration as proposed are retained as follows:

In making awards for Fiscal Year 1989, the following funding preferences, funding priorities and special consideration will be used:

Final Funding Preferences

A funding preference will be given to:

(1) Competing continuation applications;

(2) New applications for planning and developing projects under section 781(a)(1);

(3) New applications for Special Initiatives under section 781(a)(2); and

(4) Supplements to existing awards.

Final Funding Priorities

A funding priority will be given to:

(1) Applications proposing centers in which substantial training exprience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or State designated clinic/center serving an underserved population.

(2) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(3) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer developed guidelines and standards.

Final Special Consideration

Special consideration will be given to those applications proposing centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics.

The program is listed at 13.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–66 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priority for Grants for Departments of Family Medicine

The Health Resources and Services Administration announces the Final Funding Priority for Fiscal Year 1989 for Grants for Establishment of Departments of Family Medicine.

Section 780 of the Public Health Service Act authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII of the PHS Act.

BEST COPY AVAILABLE

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the project requirements in § 57.1704;

2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;

3. The qualifications of the proposed staff and faculty of the unit; and

4. The potential of the project to continue on a self-sustaining basis.

Section 780, as amended by Pub. L. 100–607 requires that the Secretary shall give priority to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Special Consideration

A special consideration will be given to applicants that demonstrate the potential to continue the project on a self-sustaining basis. This special consideration was implemented as a funding preference in Fiscal Year 1988 and the Department is extending it in Fiscal Year 1989.

A proposed funding priority was published in the **Federal Register** of October 7, 1988 (FR 39528) for public comment for Grants for Departments of Family Medicine. No comments were received during the 30-day comment period. Therefore, the funding priority as proposed will be retained as follows:

A funding priority will be given to applications which show a representation of underrepresented minority faculty in a family medicine administrative unit which is at least twice the National average 2.8 percent in U.S. medical schools and can document extent of net increase of underrepresented minority faculty in the unit (i.e., Black, Hispanic, and American Indian/Alaska Native), over average of the past three years.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–67 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priority for Grants for Programs for Physician Assistants

The Health Resource and Services Administration announces the final funding priority for Fiscal Year 1989 for Grants for Programs for Physician Assistants.

Section 788(d), (formerly section 783 (a)), authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act. Pub. L. 100–607, redesignated section 783 to 788(d) of the PHS Act.

To receive support, programs must meet the requirements of sections 701(8) and 788(d) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts, H and L

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;

2. The potential effectiveness of the project in carrying out the purposes of section 788(d) of the PHS Act and 42 CFR, Subparts H–L

3. The capability of the applicant to carry out the proposed project;

4. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

5. The soundness of the fiscal plan for assuring effective use of grant funds;

6. The potential of the project to continue of a self-sustaining basis after the period of grant support; and

7. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Proposed funding priorities were published in the **Federal Register** of October 7, 1988 (FR 39530) for public comment for Grants for Programs for Physician Assistants. No comments were received during the 30-day comment period. Therefore, the funding priorities as proposed will be retained as follows:

In determining the order of funding of approved applications, a funding priority will be given to:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent of demonstrated net increase of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in the training program.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer developed guidelines and standards.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372. Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: December 28, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–68 Filed 1–3–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1916]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 2, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: 203 (K) Maximum Mortgage Worksheet.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This form is used by the HUD Review Appraiser or the Direct Endorsement Lender to determine the maximum insurance mortgage amount on a property.

Form Number: HUD–92700.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden: Maximum mortgage worksheet: Number of respondents 2,500, times frequency of response 1, times hours per response 0.5, equals burden hours 1,250.

Total Estimated Burden Hours: 1,250.

Status: New.

Contact: Kenneth L. Crandall, HUD, (202) 755–6720; John Allison, OMBS, (202) 395–6880.

Date: December 2, 1988.

[FR Doc. 89–73 Filed 1–3–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–88–1915]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: December 28, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Title I Lender Approval Forms and Associated Recordkeeping

Office: Housing

Description of the Need for the Information and its Proposed Use: HUD programs under Title I of the National Housing Act ensure eligible lenders against losses which they may sustain as a result of property improvement and manufactured housing loans. These forms are used to verify lender information in connection with reviewing or monitoring their approval status.

Form Number: HUD–92001–L, 92001–LC, 92001–LD, 92001–LB, and 92001–LK, 92001–LV

Respondents: State or Local Governments, Businesses or Other For-Profit, Federal Agencies or Employees, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: On Occasion and Annually

Reporting Burden:

	No. of respond-ents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92001-L	300		1		1.00		300
HUD-92001-LC	300		1		1.00		300
HUD-92001-LD	300		1		1.00		300
HUD-92001-LB	300		1		1.00		300
HUD-92001-LK	1,400		1		.50		700
HUD-92001-LV	7,000		1		1.00		7,000
Recordkeeping	7,000		1		.25		1,750

Total Estimated Burden Hours: 10,650
Status: Revision
Contact: Sandra L. Allison, HUD, (202) 755–6924; John Allison, OMB, (202) 395–6880.

Date: December 28, 1988.

[FR Doc. 89–74 Filed 1–3–89; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Larry E. Johnson, Phoenix, AZ, PRT–733796.

The applicant requests a permit to purchase one male and two female Diana monkeys (*Cercopithecus diana*) from Monkey Jungle, Miami, Florida, and export the monkeys in foreign commerce to the Guadalajara Zoo, Mexico, for purposes of public display and captive propagation.

Applicant: International Animal Exchange, Inc., Ferndale, MI, PRT–730327.

The applicant requests a permit to purchase one pair of captive-hatched Andean condors (*Vultur gryphus*) from the San Antonio Zoo, San Antonio, Texas, and one female captive-hatched Andean condor from the Buffalo Zoo, Buffalo, New York, and export the birds in foreign commerce to the Nagasaki Biopark, Japan, for purposes of public display and captive propagation.

Applicant: Panaewa Rainforest Zoo, Hilo, HI, PRT–733616.

The applicant requests a permit to take (capture, radio tag and release) fledgeling Hawaiian hawks (*Buteo solitarius*) for surveys of dispersal, eventual courtship and pair bonding to gain data to improve captive-breeding techniques.

Applicant: New York Zoological Society, Bronx, NY, PRT–732522.

The applicant requests a permit to import two pair (2.2) of captive-born Blythe's tragopans (*Tragopan blythii*) from Glenn Howe, Ontario, Canada for the purpose of captive propagation.

Applicant: American Museum of Natural History, New York, New York, PRT–733576.

The applicant requests a permit to import two Bahamian parrot chicks (*Amazona leucocephala*) that were found dead in their nests on Abaco Island, Bahamas, for use in the scientific study of parrot systematics.

Applicant: Alameda Park Zoo, Alamogordo, NM, PRT–733585.

The applicant requests a permit to purchase in interstate commerce one captive-born male ocelot (*Felis pardolis*) from the Woodland Park Zoological Gardens, Seattle, Washington, for educational and breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: December 22, 1988.

R.K. Robinson,
Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–9 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–AN–M

Notice of Receipt of Application for Permit

The public is invited to comment on the following application for permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant's Name: U.S. Fish & Wildlife Service, Alaska Office of Fish & Wildlife Research, 1011 E. Tudor Road, Anchorage, Alaska 99503, File no. PRT–690038.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar bear (*Ursus maritimus*); unlimited.

Summary of Activity to be Authorized: The applicant proposes to import, export, and reexport body parts, including blood samples, tissue samples, teeth and bone samples between the United States, Canada and the Soviet Union for ongoing polar bear research efforts.

Source of Marine Mammals for Display: Samples to be exported will be collected from animals live-captured in Alaska under the Service's current take permit, PRT–690038. Samples will be imported from Canada and the Soviet Union and reexported to same.

Period of Activity: through 1990.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street NW., Washington, DC.

Dated: December 23, 1988.

R.K. Robinson,
Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–10 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–55–M

New York State Department of Environmental Conservation, Division of Fish and Wildlife; Notice of Intent To Prepare a Draft Environmental Impact Statement on the Northern Montezuma Wetland Project, and Notice of Scoping Meeting

CO–LEAD AGENCIES: U.S. Fish and Wildlife Service, Interior N.Y.S. Department of Environmental Conservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation, as co-lead agencies, are gathering information in order to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQR) for a Proposal to protect and manage the natural resource values of the Northern Montezuma Wetlands complex located in Wayne, Seneca and Cayuga counties of western New York.

The project area includes approximately 25,000 acres of wetland and associated uplands lying contiguous with the Montezuma National Wildlife Refuge, and the State-owned Howlands Island, Cayuga Lake and Crusoe Lake Wildlife Management Areas. The purpose and goals of the project are to protect wetland habitats of this major migratory bird staging area, protect and enhance bald eagle nesting habitat, restore depleted agricultural mucklands to their original wetland state, make these lands accessible for compatible recreational and educational uses, and maximize the production of waterfowl and other wetland wildlife on these lands through management.

Notice is also given that a public scoping meeting will be held at the time and place given below to (1) provide a brief description of the proposal for informational purposes, (2) identify alternatives, environmental impacts and issues that should be addressed in the Draft Environmental Impact Statement, (3) identify other environmental review, consultation, coordination, clearance, or permit requirements associated with the proposal, (4) describe the role of the Environmental Impact Statement in the planning and decision-making process, and (5) establish projected time frames for preparing the Draft Environmental Impact Statement.

These Notices are provided as required by the National Environmental Policy Act and implementing regulations (40 CFR Parts 1500–1508) and the New York State Environmental Quality Review Act and implementing regulations (6 NYCRR Part 617).

DATES AND ADDRESSES: The Scoping Meeting will be held on February 22, 1989 at the Montezuma National Wildlife Refuge Visitor Center, Rts. 5 & 20, Seneca Falls, New York, from 12:00 p.m.–10:00 p.m.

Formal presentations will be held at 12:00, 2:00, 4:00 and 7:00 p.m. Prior to this date persons, agencies and organizations who desire to present materials during the scoping meeting are requested to give written notification to one of the contact persons below.

Written comments regarding the above subject may also be submitted to one of the contact persons below prior to the scoping meeting or 30 days after. Such written comments will be considered along with any oral statements made at the scoping meeting.

Contact Persons: Donald Slingerland, NYSDEC, Wildlife Resources Center, Delmar, NY 12054, 518–439–0725, or Walter Quist, USFWS, 1 Gateway Center, Suite 700, Newton Corner, MA 02153, 617–965–5100 ext. 410.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement will present a number of alternative actions which could be implemented to accomplish the goals of the project. The Proposed Action for the U.S. Fish and Wildlife Service and the State of New York is to acquire real property, real property interests and cooperative agreements through landowner negotiations and to implement management plans on the area in support of objectives established for The North American Waterfowl Management Plan's Lower Great Lakes/St. Lawrence Basin Joint Venture. All viable alternatives are open for consideration and no final decision will be made until such time as the public has had additional opportunity to comment on the proposal through the SEQR/NEPA process. The Draft Environmental Impact Statement will include a No Action alternative, the Proposed Action, and primary alternatives which are reasonable courses of action, and secondary alternatives which will include actions considered but determined not to be reasonable in accomplishing goals and objectives, including actions that may be taken by others outside of state and federal governments.

A Draft Environmental Impact Statement will be prepared after comments have been received at the scoping meeting and as a result of this notice. Availability of the Draft Environmental Impact Statement for public review will be announced in the **Federal Register**, Environmental News Bulletin, area newspapers, and direct mailings.

Federal Author: Walter Quist, U.S. Fish and Wildlife Service, 1 Gateway Center, Newton Corner, MA 02158.

Date: December 27, 1988.

James F. Gillett,
Deputy Regional Director.

[FR Doc. 89–26 Filed 1–3–89; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[CA–010–09–4312–13; CA 23982]

Realty Action; Exchange of Public and Private Lands in El Dorado, NV, Placer, San Diego, Tuolumne, Yuba, and Mono Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Realty Action: Exchange of Public and Private Lands (CA 23982).

SUMMARY: The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note.—Not all of the lands identified below will be involved in the exchange: Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

Selected Public Land

El Dorado County, California

T. 11 N., R. 10 E., M.D.M.
Sec. 12, lots 12, 13, 14, 20, 21, 22, 23, 27, 28, 30, 31, 32, 33.
T. 12 N., R. 10 E., M.D.M.,
Sec. 1, lots 1, 2, SW¼NE¼;
Sec. 2, all public land in the E½, all public land in the W½NW¼;
Sec. 3, lot 1;
Sec. 15, all public land;
Sec. 17, lots 11, 19–26 inclusive, E½SW¼ NW¼;
Sec. 21, N½NE¼, SE¼NE¼;
Sec. 22, lots 7, 8.
T. 12 N., R. 11 E., M.D.M.,
Sec. 30, SE¼NW¼.
T. 13 N., R. 10 E., M.D.M.,
Sec. 32, lots 1, 2, NE¼NE¼;

Sec. 34, lots 4, 5, 6, and all public land in the N½, all public land in the N½SW¼.

Nevada County, California

T. 15 N., R. 9 E., M.D.M.,
Sec. 28, NW¼SE¼, SW¼SW¼.
T. 16 N., R. 9 E., M.D.M.,
Sec. 17, lots 29, 30, 31;
Sec. 20, all public land in the N½NW¼;
Sec. 22, SW¼SW¼.
T. 16 N., R. 10 E., M.D.M.,
Sec. 13, lots 3 and 4.
T. 17 N., R. 8 E., M.D.M.,
Sec. 12, lot 2, SE¼NE¼, E½NW¼.
T. 17 N., R. 9 E., M.D.M.,
Sec. 3, lots 3, 11, 12, E½E½SW¼NW¼, SE¼NW¼;
Sec. 4, lot 15, SE¼NE¼;
Sec. 5, lot 8, 9;
Sec. 6, lot 20;
Sec. 7, lots 17–27 inclusive;
Sec. 8, lots 6, 7, 9, 10, 11, 12, 13, SW¼SW¼;
Sec. 9, E½SE¼;
Sec. 10, lots 10, 11, 12, 13, SW¼, N½SE¼, N½S½SE¼;
Sec. 18, NE¼NE¼.
T. 17 N., R. 10 E., M.D.M.,
Sec. 20, SE¼SE¼;
Sec. 21, SW¼NE¼NE¼, S½NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼;
Sec. 28, lots 5, 6, 7.
T. 18 N., R. 9 E., M.D.M.,
Sec. 32, W½NE¼, SE¼NE¼, NW¼SE¼;
Sec. 34, all public land in the S½.

Placer County, California

T. 14 N., R. 10 E., M.D.M.,
Sec. 14, lot 3, NW¼SW¼;
Sec. 15, S½;
Sec. 22, all public land.
T. 15 N., R. 10 E., M.D.M.,
Sec. 14, lots 1, 2, 3, N½NE¼;
Sec. 23, S½S½NE¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 26, lots 1, 2, 8, 9, 11, W½NW¼S W¼.SW¼SW¼, S½SE¼SW¼ (including portion of MS 1926, lot 90), and MS 2339;
Sec. 27, all public land (excluding lots 1, 2, 19, 20, 29, 30);
Sec. 28, lots 18, 23;
Sec. 31, all public land in the SE¼;
Sec. 32, all public land in the S½;
Sec. 33, lots 53, 67, 70, 71, 72, 73, 74, 76, 77;
Sec. 34, all public land;
Sec. 35, W½NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.
T. 16 N., R. 11 E., M.D.M.,
Sec. 32, NW¼NE¼.

San Diego County, California

T. 10 S., R. 3 W., S.B.M.,
Sec. 33, NW¼NW¼.

Tuolumne County, California

T. 2 N., R. 14 E., M.D.M.,
Sec. 9, NW¼SE¼NE¼, SW¼NE¼, W½SE¼, S½NE¼SE¼.

Yuba County, California

T. 17 N., R. 7 E., M.D.M.,
Sec. 2, lot 2, SW¼NE¼, NW¼SE¼.
T. 18 N., R. 7 E., M.D.M.,
Sec. 28, lots 1, 2.
T. 19 N., R. 6 E., M.D.M.,
Sec. 13, lots 1, 2, 3, 4, 5, 6, 7, NW¼NW¼;
Sec. 25, SW¼SW¼;
Sec. 35, NW¼NE¼.

Aggregating approximately 6,700.00 acres, more or less.

In exchange for some of the above parcels, the United States will acquire the following described private lands from the Trust for Public Land, 116 New Montgomery Street, San Francisco, California 94105:

Offered Private Land

Mono County, California

T. 3 N., R. 25 E., M.D.M.,
Sec. 14, SW¼SW¼, SW¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 22, E½E½;
Sec. 23, W½NE¼, SE¼NE¼, W½W½, E½SW¼, N½SE¼, SE¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼, SW¼NE¼, NE¼NW¼;
Sec. 29, NW¼NW¼.

Aggregating 1000.00 acres, more or less

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire the non-Federal lands which have high public values for wildlife habitat and recreation. These lands are an important fawning area for mule deer and nesting area for waterfowl. The area receives heavy use for recreation because of its spectacular scenic vistas. The public interest will be well served by completing the exchange.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945)

(2) Authorized pipelines, power lines, roads, highways, telephone lines, mineral leases and any other authorized land uses will be identified as prior existing rights.

(3) All necessary clearances for archaeology, rare plants and animals shall be granted prior to conveyance of title.

(4) Grazing operators that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

(5) The right to itself, its permittees or licensees, to enter upon, occupy and use, any part or all of that portion of Lot 1 and the W½NW¼, Sec. 13, T. 19 N., R. 6 E., M.D.M., lying within 20 feet of the centerline of the transmission line right-of-way of the Pacific Gas & Electric Company (Power Project No. 1408) for the purposes set forth in and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818).

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing.

DATE: On or before February 21, 1989, interested parties may submit comments to the District Manager at the following address. Any comments submitted need to specify which parcel is being commented on.

ADDRESS: Comments should be sent to the District Manager in care of the Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985–4474, or at the address listed above.

Date: December 23, 1988.

Nancy J. Cotner,

Associate District Manager, Bakersfield.

[FR Doc. 89–91 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Notice and Agenda of Plenary Session Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia 22091 (telephone 703–620–9000), from 8:00 a.m. to 5:00 p.m. on February 23, 1989, and from 8:00 a.m. to 5:00 p.m. on February 24, 1989.

The agenda for the meetings will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program;
- Discussion of the results of the Scientific Committee Fisheries Task Force;
- Report on the "Toxicity of Oil and Chemical Dispersants" study being performed by the Atlantic OCS Region and the Gulf of Mexico OCS Region; and
- A report from the National Academy of Sciences.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, Reston, Virginia 22091; telephone (703) 648–7729.

Date: December 22, 1988.

Wm. D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89–24 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Draft Colorado River Management Plan and Environmental Assessment; Grand Canyon National Park, AZ; Extension of Public Review Period

SUMMARY: The Notice of Availability of the Draft Colorado River Management Plan and Environmental Assessment, Grand Canyon National Park, was announced in the **Federal Register**, Vol. 53, No. 228, Monday, November 28, 1988. The public review period for the Plan and Assessment has now been extended to January 20, 1989.

ADDRESSES: Comments on the Plan and Assessment or requests for copies should be addressed to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Date: December 16, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 89–89 Filed 1–3–89; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

[INT–DES–88–60]

American River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 317,150 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the preparation of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP–750), 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978–5130.

Copies of the DEIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, 18th & C Streets, NW., Room 7455, Washington, DC 20240
Bureau of Reclamation, Mid-Pacific Region Project Offices:
Folsom Office, 7794 Folsom Dam Road, Folsom, CA 95630
Fresno Office, 1130 "O" Street, Fresno, CA 93721
Shasta Dam Office, Shasta Dam, CA 96003
Tracy Office, Kelso Road, Tracy, CA 95378
Trinity River Basin Field Office, Weaverville, CA 96093
Willows Office, 1140 Westwood, Willows, CA 95988
Libraries:
Bureau of Reclamation, Reclamation Library, Room W–1526, 2800 Cottage Way, Sacramento, CA 95825; Telephone: (916) 978–5130
Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225
Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978–5488; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: The water proposed for contracting originates from existing storage facilities in the American River Division and would be used to meet agricultural and municipal and industrial (M&I) needs in the American River Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amount of water available for beneficial use, considering conjunctive use of surface water and groundwater for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the American River Water Contracting DEIS, Reclamation is preparing similar EIS's for the Sacramento River and Delta Export Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assessing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA environmental reviews, of much narrower scope, will be conducted prior to execution of contracts with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I needs within constructed CVP units; giving priority to agricultural and M&I needs in areas of origin; providing water for agriculture and M&I needs in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; groundwater; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

Tuesday, Jan. 31..... Blue Gum Restaurant, Highway 99W, Willows, CA 95988.
Thursday, Feb. 2..... Holiday Inn/ Holidome, Sierra Room, 5321 Date Avenue, Sacramento, CA 95841.
Monday, Feb. 6..... Center Plaza Holiday Inn, Conference Center, 2233 Ventura, Fresno, CA 93721.
Wednesday, Feb. 8.... Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd., Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceedings should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-47 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES-88-61]

Delta Export Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 879,800 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the prepration of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP-750), 2800 Cottagge Way, Sacramento, CA 95825; Telephone (916) 978-5130.

Copies of the DEIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, 18th & C Streets, NW., Room 7455, Washington, DC 20240
Bureau of Reclamation, Mid-Pacific Region Project Offices:
Folsom Office, 7794 Folsom Dam Road, Folsom, CA 95630
Fresno Office, 1130 "O" Street, Fresno, CA 93721
Shasta Dam Office, Shasta Dam, CA 96003
Tracy Office, Kelso Road, Tracy, CA 95378
Trinity River Basin Field Office, Weaverville, CA 96093
Willows Office, 1140 Westwood, Willows, CA 95988
Libraries:
Bureau of Reclamation, Reclamation Library, Room W-1526, 2800 Cottage Way, Sacramento, CA 95825; Telephone: (916) 978-5130
Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225
Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978-5488; or Dr. Wayne O. Deason (Manger, Environmental Services, Denver, CO), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The water proposed for contracting originates from existing storage facilities in the northern CVP area (Shasta, Trinity, and American River Divisions) and would be used to meet agricultural, municipal and industrial (M&I), and refuge water needs in the Delta Export Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amout of water available for beneficial use, considering conjunctive use of surface water and groundwater for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the Delta Export Water Contracting DEIS, Reclamation is preparing similar EIS's for the Sacramento and American River Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assesing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA evironmental reviews, of much narrower scope, will be conducted prior to execution of contracts with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I need within constructed CVP units; giving priority to agricultural and M&I need in areas of origin; providing water for agriculture and M&I need in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; groundwater; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

Tuesday, Jan. 31..... Blue Gum Restaurant, Highway 99W, Willows, CA 95988.

Thursday, Feb. 2..... Holiday Inn/ Holidome, Sierra Room, 5321 Date Avenue, Sacramento, CA 95841.
Monday, Feb. 6..... Center Plaza Holiday Inn, Conference Center, 2233 Ventura, Fresno, CA 93721.
Wednesday, Feb. 8.... Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd, Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceeding should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

Date: December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-48 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-09-M

[INT-DES-88-59]

Sacramento River Service Area Water Contracting Program, California

AGENCY: Bureau of Reclamation (USBR).

ACTION: Notice of availability and notice of public hearing for draft environmental impact statement (DEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) for resumption of long-term contracting of up to 350,900 acre-feet per year (af/yr) of available and uncommitted water from the Central Valley Project (CVP).

DATES: The DEIS is available for public review for 60 days. Written comments should be submitted on or before March 3, 1989, to the Regional Director, at the address below, to be considered in the prepration of the final EIS.

ADDRESSES: Single copies of the DEIS are available on request to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, CA 95825; Telephone (916) 978-5130.

Copies of the DEIS are available for public inspection and review at the following locations:

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Bureau of Reclamation, Mid-Pacific Region Project Offices:
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Central libraries throughout California

FOR FURTHER INFORMATION CONTACT: Mr. Bill Payne (Team Leader, Mid-Pacific Region, Sacramento, CA), (916) 978-5488; or Dr. Wayne O. Deason (Manager, Environmental Services, Denver, CO), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The water proposed for contracting originates from existing storage facilities in the northern CVP area (Shasta and Trinity River Divisions) and would be used to meet agricultural, municipal and industrial (M&I), and refuge water needs in the Sacramento River Service Area.

Program objectives include: (1) Equitably allocating the remaining CVP yield, considering original congressional legislation, other authorized project functions, and California water rights law and area of origin policies; (2) optimizing the amount of water available for beneficial use, considering conjunctive use of surface water and ground water for agricultural, M&I, and refuge use, and offstream storage at wildlife refuges; (3) increasing the amount of water available for beneficial uses within California's Central Valley; and (4) optimizing economic returns at the local, regional, and national levels.

In addition to the Sacramento River Water Contracting DEIS, Reclamation is preparing similar EIS's for the American River and Delta Export Service Areas. In total, the actions proposed in the three EIS's would allocate approximately 1.5 million af/yr. Each EIS focuses on a common set of CVP-wide water allocation alternatives and describes the regional impacts of water contracting within a particular service area. Also, each EIS includes a common cumulative impact assessment which focuses on CVP-wide impacts associated with water contracting in all three service areas. General analyses of site-specific impacts associated with contracting with individual agencies is also included to assist in program decision-making.

The water contracting EIS's will serve as the first tier of environmental review by assessing broad, generic regional and cumulative impacts associated with water contracting. The water contracting EIS's will provide NEPA compliance for Reclamation's proposed water allocations within each of the three service areas. Subsequent site-specific NEPA evironmental reviews, of much narrower scope, will be conducted prior to execution of contractrs with each individual agency included in Reclamation's proposed action.

Alternatives to the proposed action include: contracting on a dependable supply basis to maximize the amount of water which could be contracted to meet CVP needs; giving priority to agricultural and M&I need within constructed CVP units; giving priority to agricultural and M&I needs in areas of origin; providing water for agriculture and M&I needs in the Delta Export service area; giving priority to refuge and instream flow needs; providing for a combination of refuge, M&I, and American River instream needs; giving priority to recreation needs; and No Action. Major environmental issues are related to vegetation and wildlife; fisheries; recreation; ground water; and economics.

Formal public hearings to accept public testimony and comments on the adequacy of the draft environmental impact statements will be conducted during January and February 1989, at the following locations:

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Monday, Feb. 6..... Center Plaza Holiday Inn, Conference Center, 2233 Ventura, Fresno, CA 93721.

Wednesday, Feb. 8.... Concord Hilton, Baldwin & Chabot Rooms, 1970 Diamond Blvd, Concord, CA 94520.

All hearings will begin at 7:00 p.m. A time limit on oral testimony from any individual or organization may be set to assure that all those present have an opportunity to present their comments. Persons wishing to assure that their testimony becomes a part of the permanent record of the proceedings should be prepared to present an oral summary of any written testimony they wish to present. All testimony—written or oral—will be used in preparing the final EIS's.

Date: December 22, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-49 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-05-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights 30 CFR Part 774.

OMB Number: 1029-0068.

Abstract: Sections 511(a)(1), 511(b) and 506(d) of Pub. L. 95-87 provide that persons seeking permit revisions, renewals, transfer, sale or assignment of permit rights for coal mining activities, submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for a permit revision, renewal, transfer, assignment, or sale of permit rights.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators.

Annual responses: 3,660.

Annual Bureau hours: 36,480.

Estimated completion time: 11 hours.

Bureau clearance officer: Nancy Ann Baka (202) 343-5901.

Date: December 8, 1988.

Jim Fulton,

Chief, Division of Regulatory Development.

[FR Doc. 89-89 Filed 1-3-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Housing Development Finance Corporation Limited, of Bombay, India (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to develop a fully functioning private housing finance system in India which will make long-term shelter financing available for low-income families residing in India. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers:

INDIA

Project: 386-HG-002(D)—$35 Million

Attention: (1) Mr. Deepak Satwalekar, General Manager, Housing Development Finance Corporation, Limited (HDFC), c/o Mr. G. C. Kathrani, Senior Vice President, Bank of India, 277 Park Avenue, 36th Floor, New York, NY 10172, Telex No.: 239707 BOI UR, Telefax No.: 212/319-6347, Telephone No.: 212/888-6031

Housing Development Finance Corporation Limited (HDFC), Attention: (2) Mr. Deepak Satwalekar, General Manager, Ramon House 169, Backbay Reclamation, Bombay 400 020, Telex No.: HDFC 6762, Telephone: 220285, 220282, 22098

Interested lenders should telegram their bids to the Borrower's representatives on January 18, 1989, but no later than 4:00 p.m. New York Time. Bids should be open at least 24 hours. Copies of all bids should be simultaneously sent to the following: Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, D.C. 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication)

Mr. David Painter, Assistant Director/Asia, RHUDO/Bangkok, USAID/Bangkok, Box 47, APO San Francisco 96346, (street address: 37 Soi Somprasong 3, Petchburi Road, Bangkok 10400, Thailand, Telephone No.: 66/2/255-3665, Telefax No.: 66/2/255-3730, Telex No.: 87058 RPS TH

For your information the Borrower is currently considering the following terms:

1. *Amount:* U.S. $35 million.
2. *Maturity:* Up to 30 years.
3. *Interest Rate:* Fixed or Floating.
4. *Grace Period on Principal:* Ten years.
5. *Fees:* Payable at closing from proceeds of loan.

Interested lenders are requested to contact the Borrower's representatives promptly to clarify the details of the proposed financing and to place their names on a short list to receive such additional details as to loan terms that may become known prior to the bid opening date.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. would enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The maximum rate of interest shall be a rate which in A.I.D.'s opinion is similar to current borrowing rates for Housing and Urban Development housing mortgage loans.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, D. C. 20523, Telephone: 202/633-2530

Lee D. Roussel,

Acting Assistant Director for Operations, Office of Housing and Urban Programs, Agency for International Development.

Date: December 30, 1988.

[FR Doc. 89-156 Filed 1-3-89; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31381]

Consolidated Rail Corp.—Trackage Rights Exemption—Chicago, Missouri and Western Railway Co.

The Chicago, Missouri and Western Railway Company (CM&W) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over two non-contiguous segments of CM&W's rail line between East St. Louis and Sauget, IL. The first segment extends from the connection with Conrail at Missouri Avenue in East St. Louis to the connection with the line of Terminal Railroad Association of East St. Louis (TRRA). The second segment extends from the connection with TRRA at M&O Jct. in East St. Louis to the tracks of Cahokia Marine Terminal at Sauget, a total distance of approximately 2.3 miles. The trackage rights were to have become effective on or after December 12, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29561 Filed 1-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 255X)]

CSX Transportation, Inc.; Abandonment Exemption; in Citrus County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 18.35 miles of rail line in Citrus County, FL, subject to standard labor protective conditions, and a public use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 7, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 17, 1989, petitions to stay must be filed by January 23, 1989, and petitions for reconsideration must be filed by February 2, 1989. Requests for a public use condition must be filed by January 17, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 255X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Charles M. Rosenberger—J150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

(TDD for hearing impaired (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commisson's decision. To purchase a copy of the full decision, write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: December 22, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-102 Filed 1-3-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

December 28, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Public Law 96-511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission. you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Mr. Larry E. Miesse who can be reached on (202) 633-4312.

Reinstatement of a Previously Approved Collection for which Approval has Expired

(Expedited OMB review requested, copy of form included in this notice.)

(1) Justice Assistance Data—Survey of Civil and Criminal Justice Activities

(2) CJ-6, CJ-23. Bureau of Justice Assistance.

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

(3) Periodic, every three years.

(4) State or local governments. This survey will collect data from state and local governments needed to comply with grant allocation procedures mandated by the Congress under the Justice Assistance Improvement Act of 1984 as amended by the Anti-Drug Abuse Act of 1988. These data will be used to administer the grant program and provide descriptive data for policymakers, planners, and practitioners.

(5) 8,000 respondents at .47 hours each.

(6) 3,750 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Certification of Identity

(2) DOJ–361; Facilities and Administrative Services Staff, Justice Management Division.

(3) On occasion.

(4) Individuals or households. The information is requested to ensure that the records of individuals who are the subjects of Department of Justice systems of records are not wrongfully disseminated.

(5) 2,500 annual respondents at .02 hours each.

(6) 50 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-18-M

OMB No. XXXX-XXXX: Approval Expires XX/XX/XX

Data supplied by	FORM CJ-6 (12-19-88) U.S. DEPARTMENT OF COMMERCE BUREAU OF THE CENSUS
Name	**SURVEY OF EXPENDITURE AND EMPLOYMENT FOR CIVIL AND CRIMINAL JUSTICE ACTIVITIES OF LOCAL GOVERNMENTS**
Title	**In correspondence pertaining to this report, please refer to the identification number above your address**
Official address *(Number and street, city, State, ZIP Code)*	
Telephone: Area code / Number / Extension	*(Please correct any error in name, address, and ZIP Code)*
RETURN THIS COPY TO **Bureau of the Census Attn: Governments Division Washington, DC 20233**	*Important* Please read the definitions on page 2.

FROM THE DIRECTOR
BUREAU OF THE CENSUS

On behalf of the Bureau of Justice Statistics (BJS), Department of Justice, the Bureau of the Census is collecting public expenditure and employment data for the following six civil and criminal justice activities: police protection, judicial, legal services and prosecution, public defense, corrections, and other related justice activities. These data are very similar to data we last collected for the Bureau of Justice Statistics in 1985. The Department of Justice will use the data from this survey to implement and administer the formula grant program of the Justice Assistance Act of 1984, 42 USC 3747, as amended by the Anti-Drug Abuse Act of 1988. The Bureau of Justice Statistics will publish the data in a report entitled **Justice Expenditure and Employment in the United States**.

Please extract the requested data from your financial and payroll records and enter them on the attached questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 3 weeks. The duplicate copy is for your files.

The Justice System Improvement Act of 1979 as amended (42 USC 3732) authorizes this report. Although you are not required legally to respond, we need your participation to make the results of the survey comprehensive, accurate, and timely. If you need further assistance completing the questionnaire, call collect, Richard Meyer on (301) 763–7825.

We estimate that it will take from 15 to 40 minutes to collect this information, with 30 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director , Bureau of Justice Statistics, 633 Indiana Avenue, N.W., Washington, D.C. 20531; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project 1121-0118, Washington, D.C. 20503.

Thank you for your cooperation in this voluntary survey. The Census Bureau appreciates your help.

Enclosures

DEFINITIONS FOR COMPLETING PARTS I AND II, COLUMNS (1) THROUGH (10)

▶Part I — EMPLOYMENT AND PAYROLL

EMPLOYEES — All persons paid by your government for personal services performed, including all paid officials, salaried workers, and other persons in paid leave status. Exclude unpaid officials, persons on unpaid leave, pensioners, contractors and their employees, and persons paid entirely by another government for services performed for your government.

Full-time employees, columns (1) — Persons employed on a full-time basis during the one pay period which included October 12, 1988. Include all full-time temporary employees employed during this pay period.

Part-time employees, columns (3) — Persons employed on a part-time basis during the one pay period which included October 12, 1988. Include here all persons working for your government who are paid by more than one government (e.g., with supplemental checks).

PAYROLL, columns (2) and (4) — Gross payroll before deductions, including salaries, wages, fees, or commissions earned during the one pay period which included October 12, 1988 by employees as defined above. If some employees are paid on a basis different from the predominant pay period, please include amounts for them on an adjusted basis.

Part-time hours paid, column (5) — Total hours paid during pay period for all persons working less than the number of hours that represent full-time employment. Include an estimate of hours worked during pay period for part-time employees and officials not compensated on a hourly basis.

▶Part II — EXPENDITURE

CURRENT OPERATIONS, column (6) — Annual expenditures for salaries and wages of your government's officers and employees, including overtime, termination, and retroactive pay; and for the purchase of supplies, materials, and contractual services from individuals and firms in the private sector, e.g., attorney retainers or fees to court-appointed counsel. Exclude capital outlay and report in column (7). Also exclude expenditures for debt retirement, securities investment, loan extensions, and within-government transactions. **EXCLUDE** employer contributions for employee benefits and report in column (10).

CAPITAL OUTLAY, column (7) — Direct expenditure for contract or force account construction of buildings and other fixed improvements, and for the purchase of equipment, land, and existing structures.

INTERGOVERNMENTAL EXPENDITURE — All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services or care and boarding of prisoners in another government's jail). Exclude money paid to another government for the purchase of commodities, property or utility services, any taxes imposed and paid as such, and contributions for social insurance.

Payments to other general purpose local governments, column (8) — Payments of your government to other counties, cities, or towns. Exclude payments to special purpose governments such as special districts or independent school districts.

Payments to the State government, column (9) — Payments of your government to the State government or any of its departments or agencies.

GOVERNMENT CONTRIBUTIONS FOR EMPLOYEE BENEFITS, column (10) — Any employer contributions, separable by authority, to the Federal Social Security program, State and local retirement systems, commercial or mutual life insurance plans, workmen's compensation funds; and premiums paid by your government for health, hospital, disability, and other insurance programs. Exclude payments made directly to individuals and contributions made by employees to any of the above programs.

SAMPLE

CIVIL AND CRIMINAL JUSTICE ACTIVITIES

(Please review activities listed prior to completing questionnaire.)

Part I EMPLOYMENT AND PAYROLL

Enter employment and payroll data for your government's one pay period which included October 12, 1988.

Do NOT report ANNUAL payroll data.

Count each employee only once — in the activity where that person works the largest part of the time.

STANDARD WEEKLY HOURS

What is the average or standard number of weekly hours of work for the MAJORITY of your government's full time employees? Mark (X) one box only.

1 ☐ 40 hours 3 ☐ 35 hours
2 ☐ 37.5 hours 4 ☐ Other — Specify hours per week 3 ____ Comm Use Only

PAY PERIOD INTERVAL

Mark (X) appropriate box to indicate the pay period interval for which all or most of the employees are paid. Report for both full- and part-time employees.

FULL-TIME EMPLOYEES	PART-TIME EMPLOYEES
1 ☐ Monthly	1 ☐ Monthly
2 ☐ Twice a month	2 ☐ Twice a month
3 ☐ Every 2 weeks	3 ☐ Every 2 weeks
4 ☐ Weekly	4 ☐ Weekly
5 ☐ Other — Specify 3 ____ Comm Use Only	5 ☐ Other — Specify 3 ____ Comm Use Only

Part II EXPENDITURE

Mark (X) appropriate box to indicate your government's fiscal year 112 month accounting periods and report data for this period only, even though a more recent one may be available.

☐ July 1987 – June 1988 ☐ Jan. 1987 - Dec. 1987
☐ June 1987 – May 1988 ☐ Dec. 1986 - Nov. 1987
☐ May 1987 – April 1988 ☐ Nov. 1986 - Oct. 1987
☐ April 1987 – March 1988 ☐ Oct. 1986 - Sept. 1987
☐ March 1987 – Feb. 1988 ☐ Sept. 1986 - Aug. 1987
☐ Feb. 1987 – Jan. 1988 ☐ Aug. 1986 - July 1987

SAMPLE

NOTE — For sheriffs' departments, please provide, if possible, expenditure (including payroll) amounts for Police Protection (patrol, crime investigation, enforcement of the law), Judicial (serving court papers, maintaining order), and Corrections (jailers, matrons, cooks). If personnel are rotated between police, judicial, and corrections duties, distribute their time according to the number usually assigned to each function.

	(1) Number of employees	(2) Gross payroll amount the one pay period which included October 12, 1988 (Omit cents)	(3) Number of employees	(4) Gross payroll amount the one pay period which included October 12, 1988 (Omit cents)	(5) Total of part-time employees hours paid (Omit fractions)	(6) CURRENT OPERATIONS: Annual salaries and all current operating expenses. Exclude employee contributions for employee benefits and items in column (10).	(7) CAPITAL OUTLAY: Annual expenditures for construction, equipment, and land	(8) INTERGOVERNMENTAL EXPENDITURE: Annual payments to cities, counties, and towns	(9) INTERGOVERNMENTAL EXPENDITURE: Annual payments to the State government	(10) GOVERNMENT CONTRIBUTIONS FOR EMPLOYEES: FICA, PERS, insurance, workmen's comp., etc. For lump employer contributions
1. POLICE PROTECTION — All police activities, including special police force units and both sworn and nonsworn police personnel. Include also coroners and medical examiners. Exclude jails holding adults or juveniles beyond arraignment (usually more than 48 hours) and report under "Corrections." Include also armed crossing guards.	031	032	033	034	Hrs	035	036	040	041	042
	0	0	0	0		0	0	0	0	0
2. JUDICIAL — All civil and criminal courts and court-related activities. Include: Judges and staff (law clerks, court reporters, etc.) Clerk of court and staff Other current operating expenditure (e.g., jury fees, law library, etc.) Exclude probation and parole and report under "Corrections."	043	044	045	046	Hrs	047	048	052	053	054
	0	0	0	0		0	0	0	0	0
3. LEGAL SERVICES AND PROSECUTION — Prosecuting attorney's offices, legal departments, and all attorneys providing legal services for your government. Include: Prosecutor and staff Legal Advisor and staff Attorneys on retainer or fees All other legal expenses Include armed robberies and/or fees paid to private attorneys/law firms in column (5) only. Do not include to employees.	055	056	057	058	Hrs	059	060	064	065	066
	0	0	0	0		0	0	0	0	0
4. PUBLIC DEFENSE — Public defenders' offices. Include fees paid to court-appointed counsel and contributions to private legal aid societies in column (5) only. Do not include court-appointed private attorneys as employees.	067	068	069	070	Hrs	071	072	076	077	078
	0	0	0	0		0	0	0	0	0
5. CORRECTIONS	079	080	081	082	Hrs	083	084	088	089	090
	0	0	0	0		0	0	0	0	0
a. Total Items 5 and 6										
b. Jails, prisons, reformatories, detention homes, half-way houses, and the like, holding adults or juveniles beyond arraignment (usually for more than 48 hours). Exclude correctional activity for dependent or neglected children.	091	092	093	094	Hrs	095	096	100	101	102
	0	0	0	0		0	0	0	0	0
c. Probation and parole agencies and programs. Include probation and parole programs administered by the courts.	103	104	105	106	Hrs	107	108	112	113	114
	0	0	0	0		0	0	0	0	0
6. OTHER CRIMINAL JUSTICE — Other criminal justice activities (e.g., neighborhood crime councils, crime commissions) not reported above. Please list each activity separately in the spaces provided on page 2.	127	128	129	130	Hrs	131	132	136	137	138
	0	0	0	0		0	0	0	0	0

SAMPLE

GO TO PART III ⟶

Part III INTERGOVERNMENTAL REVENUE RECEIVED DIRECTLY FROM THE FEDERAL GOVERNMENT FOR CIVIL AND CRIMINAL JUSTICE ACTIVITIES

Enter only revenue received directly from the Federal Government for the above activities during the (fiscal year) marked in part II. Do NOT enter amounts from the Federal Government **received through the State** by any of its departments or agencies.

SAMPLE

1. General revenue used for criminal justice purposes		162 $
2. Dedicated revenues received directly from the Federal Government specifically for criminal justice purposes:		
a. Reimbursement received from the Federal Government for criminal justice services rendered by your government, e.g., boarding of Federal prisoners		$
b. Other "dedicated" revenues used for criminal justice purposes (e.g., Alcohol Safety Action Program, Witness/Victim Assistance Program) — *Specify* 7 ____		$
c. **TOTAL** *(add lines a and b)*		163 $

OTHER CRIMINAL JUSTICE ACTIVITIES — *List activities included at question 6, page 2.*

1. ____
2. ____
3. ____
4. ____
5. ____
6. ____

Remarks

OMB No. XXXX-XXXX: Approval Expires XX/XX/XX

Data supplied by	FORM CJ-23 (12 22 88) U.S. DEPARTMENT OF COMMERCE
Name	**SURVEY OF EXPENDITURE AND EMPLOYMENT FOR CAMPUS POLICE FORCES**
Title	In correspondence pertaining to this report, please refer to the identification number above your address
Official address *(Number and street, city, State, ZIP Code)*	SAMPLE
Telephone: Area code / Number / Extension	*(Please correct any error in name, address, and ZIP Code)*
RETURN THIS COPY TO Bureau of the Census Attn: Governments Division Washington, DC 20233	***Important*** Please read the definitions on page 2.

FROM THE DIRECTOR
BUREAU OF THE CENSUS

On behalf of the Bureau of Justice Statistics, Department of Justice, the Bureau of the Census is collecting public expenditure and employment data for selected campus police forces. These data are very similar to data we last collected for the Bureau of Justice Statistics in 1985. The Department of Justice will use the data from this survey to implement and administer the formula grant program of the Justice Assistance Act of 1984, 42 USC 3747, as amended by the Anti-Drug Abuse Act of 1988.

The Bureau of Justice Statistics will publish the data in a report entitled **Justice Expenditure and Employment in the United States**.

Please extract the requested data from your financial and payroll records and enter them on the attached questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 3 weeks. The duplicate copy is for your files.

The Justice System Improvement Act of 1979 as amended (42 USC 3732) authorizes this report. Although you are not required legally to respond, we need your participation to make the results of the census comprehensive, accurate, and timely. If you need further assistance completing the questionnaire, call collect, Richard Meyer, on (301) 763–7825.

We estimate that it will take from 10 to 20 minutes to collect this information, with 15 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Bureau of Justice Statistics, 633 Indiana Avenue, N.W., Washington, D.C. 20531; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project 1121-0118, Washington, D.C. 20503.

Thank you for your cooperation in this voluntary survey. The Census Bureau appreciates your help.

Enclosures

SAMPLE

Part I CAMPUS POLICE FORCE Page 2

Does your institution (as described in the address box on the front of the questionnaire) employ directly and/or by contract a campus police force, and if so, are you administratively independent from another agency? Mark (X) the "Yes" box below if both these conditions exist. If not, mark (X) the "No" box and return the questionnaire in the preaddressed envelope. A campus police force is defined as a group of law enforcement officers with statutory powers of arrest.

☐ Yes — *Carefully read all definitions and instructions before completing the appropriate questions below.*

☐ No — *Please return the questionnaire in the preaddressed envelope that was enclosed.*

Important

- *If you contract exclusively for police services, and do not employ sworn officers directly, fill out only parts III and IV below.*
- *If you employ sworn police officers directly, fill out parts II, III, and IV below.*
- *If you contract for police services from sworn police officers and also employ sworn police officers directly, fill out parts II, III, and IV. However, do not report payroll for employees under an outside contract; instead, report only the annual expenditure for contractual services under either current operations (if the contract is with a private agency) or under intergovernmental expenditure (if payment for police services is made to another government).*

SAMPLE

DEFINITIONS FOR COMPLETING PARTS II AND III, COLUMNS (1) THROUGH (10)

▶ **Part II — EMPLOYMENT AND PAYROLL**

EMPLOYEES — All persons in your campus police force unit (officers and other employees) paid for personal services performed, including all paid officials, salaried workers, and other persons in paid leave status. Exclude unpaid officials, persons on unpaid leave, pensioners, contractors and their employees, and persons paid entirely by another government for services performed for your unit.

Full-time employees, column (1) — Persons employed on a full-time basis during the one pay period which included October 12, 1988. Include all full time temporary or seasonal workers employed during this pay period.

Part-time employees, column (3) — Persons employed on a part-time basis during the one pay period which included October 12, 1988.

PAYROLL, columns (2) and (4) — Gross payroll before deductions, including salaries, wages, fees, or commissions earned during the one pay period which included October 12, 1988 by employees as defined above. If some employees are paid on a basis different from the predominant pay period, please include amounts for them on an adjusted basis.

Part-time hours paid, column (5) — Total hours paid during pay period for all persons working less than the number of hours that represent full-time employment. Include an estimate of hours worked during pay period for part-time employees and officials not compensated on a hourly basis.

▶ **Part III — EXPENDITURE**

CURRENT OPERATIONS, column (6) — Annual expenditures for salaries and wages of your unit's officers and employees, including overtime, termination, and retroactive pay; and for the purchase of supplies, materials, and contractual services from individuals and firms in the private sector. Exclude all capital outlay and report in column (7). Also exclude expenditures for debt retirement, securities investment, loan extensions, and within-government transactions. EXCLUDE employer contributions for employee benefits and report in column (10).

CAPITAL OUTLAY, column (7) — Direct expenditure for contract or force account construction of buildings and other fixed improvements, and for the purchase of equipment, land, and existing structures.

INTERGOVERNMENTAL EXPENDITURE — All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services). Exclude money paid to another government for the purchase of commodities, property or utility services; any taxes imposed and paid as such; and contributions for social insurance.

Payments to counties, cities, and towns, column (8) — Payments to a county, city, town, or any of their departments or agencies.

Payments to the State government, column (9) — Payments to the State government or any of its departments or agencies. Applies only to universities/colleges operated by a local government.

CONTRIBUTIONS FOR EMPLOYEE BENEFITS, column (10) — Any employer contributions, readily ascertain for your unit, to the Federal Social Security program, State and local retirement systems, commercial or mutual life insurance plans, workmen's compensation funds; and premiums paid for health, hospital, disability, and other insurance programs. Exclude payments made directly to individuals and contributions made by employees to any of the above programs.

Part II EMPLOYMENT AND PAYROLL

Enter employment and payroll data for your government's one pay period which included October 12, 1988.

Do NOT report ANNUAL payroll data.

Count each employee only once — in the activity where that person works the largest part of the time.

STANDARD WEEKLY HOURS

What is the average or standard number of weekly hours of work for the MAJORITY of your government's full-time employees? Mark (X) one box only.

1 ☐ 40 hours 3 ☐ 35 hours 5 ☐ 37.5 hours 6 ☐ Other — Specify hours per week 9 ____ Comment Box Only

PAY PERIOD INTERVAL

Mark (X) appropriate box to indicate the pay period interval for which all or most of the employees are paid. Report for both full- and part-time employees.

	FULL-TIME EMPLOYEES	PART-TIME EMPLOYEES
	1 ☐ Monthly 2 ☐ Twice a month 3 ☐ Every 2 weeks 4 ☐ Weekly 9 ☐ Other — Specify 9 ____ Comment Box Only	1 ☐ Monthly 2 ☐ Twice a month 3 ☐ Every 2 weeks 4 ☐ Weekly 9 ☐ Other — Specify 9 ____ Comment Box Only

Part III EXPENDITURE

Mark (X) appropriate box to indicate your government's fiscal year (12 month accounting periods) and report data for this period only, even though a more recent one may be available.

☐ July 1987 – June 1988 ☐ Jan. 1987 – Dec. 1987
☐ June 1987 – May 1988 ☐ Dec. 1986 – Nov. 1987
☐ May 1987 – April 1988 ☐ Nov. 1986 – Oct. 1987
☐ April 1987 – March 1988 ☐ Oct. 1986 – Sept. 1987
☐ March 1987 – Feb. 1988 ☐ Sept. 1986 – Aug. 1987
☐ Feb. 1987 – Jan. 1988 ☐ Aug. 1986 – July 1987

SAMPLE

CRIMINAL JUSTICE ACTIVITY	Number of employees (1)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (2)	Number of employees (3)	Gross payroll amount (for the one pay period which included October 12, 1988) (Omit cents) (4)	Total part-time employee hours paid (Omit fractions) (5)	CURRENT OPERATIONS: Annual salaries and all current operating expenses. Exclude employer contributions for employee benefits and items in column (9). (6)	CAPITAL OUTLAY: Annual expenditures for construction, equipment, and land (7)	INTERGOVERNMENTAL EXPENDITURE: Annual payments to cities, counties, and towns (8)	INTERGOVERNMENTAL EXPENDITURE: Annual payments to the State government (9)	EMPLOYEE BENEFITS: FICA, PERS, insurance, workmen's comp., etc. Exclude employee contributions. (10)
1. Sworn campus police officers having general power to arrest (Include support personnel who do not have general arrest power.)	021	022	023	024	hrs	025	026	040	041	042
		$		$		$	$	$	$	$

Part IV INTERGOVERNMENTAL REVENUE DIRECT FROM THE FEDERAL GOVERNMENT RECEIVED BY YOUR CAMPUS POLICE FORCE UNIT

Enter only revenue received directly from the Federal Government for the above activity. If your university/college is operated by a local government, exclude any amounts from the Federal Government received through the State or any of its departments or agencies.

1. Nondedicated revenues received directly from the Federal Government and used by your campus police force unit, e.g. Federal General Revenue Sharing/Federal Job Training Partnership Act/etc. (report only that portion used by your campus police force)	101	$
2. Dedicated revenues received directly from the Federal Government specifically for criminal justice purposes (report only that portion used by your campus police force)		
a. Office of Justice Assistance (OJA) discretionary grants		$
b. Juvenile Justice and Delinquency Prevention (JJDP) discretionary grants		$
c. Other "dedicated" revenues used for your campus police force — *Specify* — SAMPLE		$
d. TOTAL *(add lines a through c)*	102	$

Form CJ-23 (12-31-88)

[FR Doc. 89–104 Filed 1–3–89; 8:45 am]

BILLING CODE 4410–18–C

DEPARTMENT OF LABOR

Employment and Training Administration

Waiver of Certain States from Participation in Alien Status Verification System

Section 121(a)(1) of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603), added Sections 1137(d) and (e) to the Social Security Act providing that aliens applying for certain entitlement programs, including unemployment insurance, shall have their immigration status verified through an automated verification system (AVS) developed by the Immigration and Naturalization Service. Section 121(c), IRCA, requries each State to utilize the AVS by October 1, 1988, unless the Secretary has granted a waiver of its participation under provisions of section 121(c)(4)(B), IRCA. The Department of Labor issued the bases on which the Secretary would grant waivers of certain participation in the AVS to all State Employment Security Agencies in Unemployment Insurance Program Letter (UIPL) No. 26-88 (53 FR 14865). The waiver decisions were issued in UIPL No. 59-88 and UIPL No. 59-88, Change 1. UIPL No. 59-88 and UIPL No. 59-88, Change 1 are published below:

Dated: December 27, 1988

Roberta T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUMC
	DATE September 28, 1988

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 59-88

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Secretary's Determinations on Waiver of State Participation in the Systematic Alien Verification for Entitlement (SAVE) Program Effective October 1, 1988

1. Purpose. To announce the Secretary's waiver determinations on State participation in the SAVE program effective on October 1, 1988.

2. References. Sections 121(c)(4)(B) and 121(c)(4)(C) of the Immigration Reform and Control Act of 1986 (IRCA, Public Law 99-603); Sections 302(a), 303(f), 1137(d), and 1137(e) of the Social Security Act (SSA); Secretary's Report to Congress dated July 11, 1988, entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program"; General Accounting Office (GAO) Report entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987; and Unemployment Insurance Program Letter (UIPL) Nos. 26-88 (53 Fed. Reg. 14865), and 40-88.

3. Background. UIPL No. 26-88 announced the conditions on which the Secretary would make waiver decisions of State participation in the SAVE program. UIPL No. 40-88 offered States the opportunity to submit SAVE program waiver requests accompanied by supporting data and information.

As of July 14, 1988, the Department of Labor received waiver requests from nine States. Those States are: Alaska, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, Montana, Virginia, and West Virginia.

Tnese waiver requests were analyzed on the basis of UI alien initial claims workload and cost data submitted by the States in the waiver request, the automated access options offered by the Immigration and Naturalization

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Service (INS), the requirements contained in UIPL No. 26-88, and the cost-effectiveness criteria for waiver contained in Sections 121(c)(4)(B) and 121(c)(4)(C), IRCA. In addition, contacts were made with INS to ascertain the volume of secondary verification (mail) requests that can be timely processed (14-day turnaround) by the INS District Offices.

4. Secretary's Waiver Determinations. The following determinations have been made relating to State participation in the SAVE program, effective October 1, 1988.

a. No State, regardless of alien UI claims volume, will be totally waived from participation in SAVE (automatic and/or mail verification). In the attached report to Congress entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program," page 13, the Secretary announced that the provisions of Sections 1137(d)(1)(A), (2), (4), (5), and (e) SSA, would not be waived. The provisions of Section 1137(d)(4), SSA, are identical to the requirements of the secondary verification component of SAVE, so at a minimum, all States shall participate in at least this component of SAVE.

b. For the nine States who have submitted waiver requests as of July 14, 1988:

(1) Alaska, Delaware, Kentucky, Montana, Virginia, and West Virginia are granted a waiver from participation in the primary (automated) component of SAVE.

(2) Connecticut, Maryland, and Massachusetts are not granted a waiver from participation in the primary (automated) component of SAVE.

c. Waivers for other States from participation in the primary (automated) component of SAVE may be considered if sufficient documentation is provided at the time supplemental budget requests are submitted for Fiscal Year 1988 SAVE program start-up costs.

d. All States not receiving a waiver are required to implement the primary (automated) component of SAVE effective October 1, 1988.

5. Action Required. Administrators are requested to: (a) distribute this information to appropriate staff; and (b) initiate action to implement SAVE by October 1, 1988, in accordance with the waiver decisions contained in this UIPL.

6. Inquiries. Direct inquiries to the appropriate Regional Office.

7. Attachment. "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program."

BEST COPY AVAILABLE

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUMC
	DATE December 8, 1988

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 59-88, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Secretary's Determinations on Waiver of State Participation in the Systematic Alien Verification for Entitlement (SAVE) Program Effective October 1, 1988

1. Purpose. To announce the addition of two States to the list of States affected by the Secretary's waiver determination on State participation in the SAVE program effective October 1, 1988.

2. References. Sections 121(c)(4)(B) and 121(c)(4)(C) of the Immigration Reform and Control Act of 1986 (IRCA, Public Law 99-603); Sections 302(a), 303(f), 1137(d), and 1137(e) of the Social Security Act (SSA); Secretary's Report to Congress dated July 11, 1988, entitled "Report of the Secretary of Labor on the Systematic Alien Verification for Entitlements (SAVE) Program"; General Accounting Office (GAO) Report entitled "Immigration Reform, Verifying the Status of Aliens Applying for Federal Benefits," GAO/HRD-88-7, dated October 1987; and Unemployment Insurance Program Letter (UIPL) Nos. 26-88 (53 Federal Register 14865), 40-88, and 59-88.

3. Background. UIPL No. 26-88 announced the conditions on which the Secretary would make waiver decisions of State participation in the SAVE program. UIPL No. 40-88 offered States the opportunity to submit SAVE program waiver requests accompanied by supporting data and information. UIPL No. 59-88 announced the Secretary's waiver determinations on participation in the SAVE program. Subsequent to the issuance of UIPL No. 59-88, waiver requests were received from Nevada and Wyoming.

All waiver requests were analyzed on the basis of UI alien initial claims workload and cost data submitted by the States in the waiver request, the automated access options offered by the Immigration and Naturalization Service

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DISTRIBUTION

(INS), the requirements contained in UIPL No. 26-88, and the cost-effectiveness criteria for waiver contained in Sections 121(c)(4)(B) and 121(c)(4)(C), IRCA. In addition, contacts were made with INS to ascertain the volume of secondary verification (mail) requests that can be timely processed (14-day turnaround) by the INS District Offices.

4. Secretary's Waiver Determinations. In addition to the States listed in UIPL No. 59-88, the States of Nevada and Wyoming are granted a waiver from participation in the primary (automated) component of SAVE effective October 1, 1988, although they are required to participate in the secondary verification procedures under SAVE.

5. Action Required. SESA Administrators are requested to distribute this information to appropriate staff.

6. Inquiries. Direct inquiries to the appropriate Regional Office.

[FR Doc. 89-97 Filed 1-3-89; 8:45 a.m.]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

[Docket No. M-88-229-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage Mine No. 3 (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to deterioration of roof and rib conditions and an accumulation of water, parts of the 4-east, 7-west, mains and main west returns cannot be safely travelled, and restoration of these areas would expose miners and certified persons to unnecessary hazards.

3. As an alternate method, petitioner proposes to establish checkpoints where tests for methane and the quantity of air would be determined weekly by a certified person.

4. In support of this request, petitioner states that—

(a) All monitoring stations and approaches to such stations would be maintained in a safe condition at all times;

(b) The person making the examination and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-98 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-239-C]

Horizon Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Horizon Mining Company, Inc., P.O. Box 891, Hindman, Kentucky 41822 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.S. No. 15-11152) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies would result in a diminution of safety because they would:

(a) Limit the equipment operator's visibility;

(b) Create cramped condition causing unnecessary fatigue resulting in reduced alertness and safety; and

(c) Create weak roof support.

3. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-99 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-231-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its Virginia Pocahontas No. 1 Mine (I.D. No. 44-00246) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables, and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to use high-voltage cables inby the last open crosscut and within 150 feet of pillar workings with specific conditions and techniques as outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: December 22, 1988.

[FR Doc. 89-100 Filed 1-3-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-105]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Planet Earth Technologies.

DATE AND TIME: January 25, 1989, 9 a.m. to 4:30 p.m., and January 26, 1989, 9 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne R. Hudson, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2740.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Planet Earth Technologies, chaired by Dr. Paul W. Mayhew, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 28 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

January 25, 1989

9 a.m.—Introduction.
9:10 a.m.—Key Questions From the OAST Perspective.
9:20 a.m.—Office of Space Science and Applications, Earth Science and Applications Division Program and Mission Plans—an Update.
10 a.m.—Earth Observing System Technology Requirements.
10:30 a.m.—Global Change Overview.
11 a.m.—Center System Study Updates.
2 p.m.—Technology Working Group Reports.
4 p.m.—Discussion.
4:30 p.m.—Adjourn.

January 26, 1989

9 a.m.—Discussion Continued.
2:30 p.m.—Critical Issues and Actions Summary.
3:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-25 Filed 1-3-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-322-OL-3]

Atomic Safety and Licensing Appeal Board, Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of December 14, 1988, oral argument on the appeals of the intervening Governments (Suffolk County, the State of New York, and the Town of Southampton) from that portion of the Licensing Board's September 23, 1988, decision (LBP-88-24) still before the Appeal Board (pursuant to the Commission's November 9, 1988, order) will be held at 9:30 a.m. on Wednesday, January 25, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For the Appeal Board.

Barbara A. Tompkins

Secretary to the Appeal Board.

Dated: December 29, 1988.

[FR Doc. 89-46 Filed 1-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-390, 50-391]

Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2); Order

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91 and CPPR-92, issued by the Atomic Energy Commission* on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On June 29, 1988, the Tennessee Valley Authority (the applicant) filed a request pursuant to 10 CFR 50.55(b) for an extension of the completion dates. The extension has been requested because construction has been delayed by the following events:

1. Delays resulting from the review and implementation of several key issues/programs, such as the Vertical Slice Program and the Watts Bar Program Plan. These corrective action programs address the outstanding issues and confirm the design and construction of the Watts Bar plant.

2. Delays resulting from the reallocation of certain resources to the restart programs for TVA's Sequoyah and Browns Ferry Nuclear Plants.

The NRC staff has concluded that good cause has been shown for the delays, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the bases for which are set forth in the staff's evaluation of the request for extension dated June 29, 1988.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on December 16, 1988. Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated June 29, 1988, and the NRC staff's letter and Safety Evaluation of the request for extension of the construction permits, dated December 27, 1988 is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-91 is extended from September 1, 1988 to July 1, 1991, and the latest completion date for the Construction Permit No. CPPR-92 is extended from January 1, 1990, to December 31, 1992.

Dated at Rockville, Maryland, this 27th day of December, 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 89-50 Filed 1-3-89; 8:45 am]

BILLING CODE 7590-01

*Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

[Docket No. 50-346]

Toledo Edison Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 128 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the Technical Specifications (TS's) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the TS's to permit increasing the Reactor Coolant System high pressure trip setpoint to 2355 psig from the present value of 2300 psig, to permit increasing the Power Operated Relief Valve (PORV) trip setpoint to 2435 psig from the present value of 2390 psig, and to permit increasing the reactor power level at or below which the Anticipatory Reactor Trip System (ARTS) may be blocked at 45 percent from the present value of 25 percent.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 3, 1988 (53 FR 15758). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated February 1, 1988 as supplemented February 26, 1988, (2) Amendment No. 128 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated December 28, 1988, (4) Technical Evaluation Report EGG-NTA-8152 dated June 1988 and (5) the Environmental Assessment dated December 8, 1988 (53 FR 52529). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of December 1988.

For the Nuclear Regulatory Commission

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-51 Filed 1-3-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Advance Notice of Further Policy Development on Dissemination of Information

December 28, 1988.

SUMMARY: The Office of Management and Budget (OMB) solicits public comment in the development of policy concerning the dissemination of information by executive branch agencies. The proposed policy, which supplements guidance found in OMB Circular No. A-130 and incorporates OMB Circular No. A-3, covers selected aspects of information dissemination, including electronic dissemination of information.

DATE: Comments from the public should be submitted no later than March 6, 1989.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has statutory responsibilities under the Paperwork Reduction Act, as amended, (44 U.S.C. Chapter 35): to establish government-wide policies that reduce the Federal paperwork burden; to enhance the appropriate application of information technology; to develop and implement uniform and consistent information resources management policies; and to oversee the development of information management principles, standards, and guidelines and to promote their use.

In the 1986 amendments to the Paperwork Reduction Act, Congress inserted the term "dissemination" at several places in the law, noting in the legislative history that dissemination is a key information management area not specified in the original Act but increasingly important in recent years. The report of the Senate Committee on Government Affairs stated:

> Management of the Federal Government's information resources includes all stages of information management and all types of information technology. • • • Such management also includes planning and organizing for the efficient and coordinated collection, and use and dissemination of information, and properly training employees to carry out such tasks. (Senate Committee on Governmental Affairs, Report on Federal Management Reorganization and Cost Control Act of 1986, 99th Congress, Report No. 99-347, July 31, 1986.)

In December 1985, OMB issued OMB Circular No. A-130, Management of Federal Information Resources (50 Federal Register 52730-52751, December 24, 1985), which provided a general policy framework for the management of Federal information resources. The Circular contained a number of policy statements concerning the collection and dissemination of information (see OMB Circular No. A-130, Section 8a, and Appendix IV, Section 3).

OMB further addressed information collection issues with the publication, on August 7, 1987, of a Notice of Policy Guidance on Electronic Collection of Information (52 Federal Register 29454-29457). OMB's summary of comments received is available at the address listed above.

In response to interest on the part of Congress, the agencies, and the public, OMB has determined that there is need for additional guidance regarding the collection and dissemination of information by Federal agencies. The present notice solicits public comment on development of proposed further information dissemination policy. This notice will be revised in the light of comments received and, incorporated into OMB Circular No. A-130.

In addition to requesting comment on the substance of the notice's Policy and Analysis of Policy, OMB solicits views on the following questions:

—Are the policy and accompanying analysis sufficiently comprehensive? Are there other major topics pertaining to information dissemination that should be treated?

—Is the procedural guidance provided sufficient to ensure enforcement of the policies? More broadly, how should OMB ensure enforcement of the policies?

Analysis of Policy

Management and Information Dissemination

Agencies manage the dissemination of information in the same sense that they manage any other legitimate agency function: they carry out policies and procedures to ensure that the function is discharged efficiently and effectively in accordance with applicable laws. An integral part of information dissemination management is ensuring that the agency applies modern information technology to the dissemination function.

As OMB Circular No. A-130, Appendix IV, points out, an agency's obligation to disseminate information must be discharged within a responsible management framework of minimizing costs while maximizing the usefulness of the information. Efficient, effective, and economical dissemination does not translate into diminishing or limiting the flow of information from the agency to the public. To the contrary, good management of information resources should result in more useful information flowing with greater facility to the public, at less cost to the taxpayer.

Incorporation of OMB Circular No. A-3

Section 1108 of Title 44 U.S.C. states in part:

> The head of an executive department, independent agency or establishment of the Government, with the approval of the Director of the Office of Management and Budget, may use from the appropriations available for printing and binding such sums as are necessary for the printing of journals, magazines, periodicals, and similar publications he certifies in writing to be necessary in the transaction of the public business required by law of the department, office, or establishment.

OMB Circular No. A-3, Government Publications, implements this provision by requiring that each agency maintain and implement an OMB approved publications control system, and prepare an annual report on periodicals and nonrecurring publications.

Because government publications are a form of information dissemination, and in order to integrate information policy as much as possible, OMB proposes to revise herewith Circular No. A-3, to incorporate the revised Circular into OMB Circular No. A-130, and to rescind Circular No. A-3. Whereas Circular No. A-3 covered only periodicals and nonrecurring publications, i.e., printed products, the proposed policy covers all information dissemination products—printed as well as electronic, with the sole exclusion of audiovisual products. Audiovisual products continue to be covered by OMB Circular No. A-114, Management of Federal Audiovisual Activities. Hence, the proposed policy applies to products such as periodicals and nonrecurring publications whatever their medium of dissemination, whether micrographics, machine-readable data files, software files, CD-ROMs (compact disks—read-only memory), electronic bulletin boards, or online information services.

The definitions of the terms "periodical" and "nonrecurring publication" have been incorporated from OMB Circular No. A-3, with some modifications.

—Circular No. A-3 defines these terms simply as publications issued by an agency; hence, it may include publications strictly internal to an agency. The definition in the proposed policy clarifies that the terms refer to documents disseminated or routinely made available to the public. OMB introduces this change because the focus of dissemination is on information distributed to the public, and because the concept of internal publication is difficult to define in practice.

—The definition of periodical in Circular A-3 excluded "primarily (90 percent or more) statistical materials." The proposed policy drops this exclusion; such materials would now be considered periodicals. The reason is that there is nothing intrinsic to primarily statistical materials that should cause them to be exempt from routine management controls. Historicaliy, statistical materials were excluded with the intent of guarding against tampering with Federal statistics. OMB agrees that agencies must erect safeguards so that Federal statistics will not be tampered with. However, the safeguards ought not to mean omission of statistical publications, from routine management controls such as inventory and reporting.

Many agencies appear not to know what publications or databases they may be issuing, how decisions are made to disseminate information dissemination products, or how much they cost. The policy first requires management control systems, a requirement carried over from Circular No. A-3, and specifies some minimal functions the control systems are to perform. The purpose of the control systems is to ensure that sound management practices are followed in managing dissemination. If an agency's information dissemination responsibilities, as determined by the agency head within the context of the agency's mission and the OMB policy framework, call for an aggressive information dissemination outreach program, then the control system is a management tool for ensuring that the agency achieves and maintains such a program. Similarly, if the agency's information dissemination responsibilities are quite limited, the control system is a tool for ensuring that the agency continues to use public resources only for those activities necessary for the proper performance of agency functions.

One function of the control system is establishing and maintaining comprehensive inventories of the information dissemination products they disseminate. The rationale for requiring inventories is primarily that agenciescannot manage the dissemination function if they do not know what information products they have to disseminate, and that an inventory is an essential tool for managing the function. A corollary is that agencies can better serve their public information needs with current comprehensive inventories that can be used as finders' aids for locating information disseminated by the agencies.

OMB issues an annual bulletin instructing agencies to report on information dissemination products. Agencies should maintain the information sought in the annual OMB bulletin in their inventories. In addition, agencies should make use of their inventories for other management purposes. For example, agencies may wish to add keywords and abstracts in order to make the inventories more useful as finders' aids for locating information they disseminate. While agencies should be responsive to the public's requests for assistance in locating information, the agencies should bear in mind that private firms also provide government information locator services, and avoid offering information services that essentially duplicate services already available.

The proposed policy next states the general policy for periodicals that is based directly on 44 U.S.C. 1108, and is taken verbatim from OMB Circular No. A-3.

The proposed policy also continues the annual reporting and approval provisions found in OMB Circular No. A-3.

Adequate Notice

Circular No. A-130 states that "agencies shall disseminate significant new, or terminate significant existing, information dissemination products only after providing adequate notice to the

public." (Section 8a) The Circular contained no procedural guidance for, nor any provisions for enforcing, the adequate notice policy. It left to the agencies the determinations as to what was a significant information dissemination product and what constitutes adequate notice. Nearly three years' experience with the Circular indicates that most agencies in fact have not made these determinations, nor have they established procedures for ensuring that adequate notice is given. During that period the public has brought to OMB's attention instances in which some form of advance public notice might reasonably have been expected under the policy, but no notice was given. Therefore, OMB is proposing additional guidance concerning adequate notice.

Significant information dissemination products. OMB's intent in Circular No. A–130 was that agencies would designate certain kinds of information dissemination products as significant, meaning that the decision to initiate, terminate, or substantially modify the content, form, or availability of such products should trigger a form of public notice in advance of actual initiation, termination, or modification. Other products deemed not to be significant require no advance notice.

Examples of nonsignificant products might be those that:

—From the outset, were *never intended to be continuing*; hence, most nonrecurring, one-time publications.

—Are *Generally considered ephemeral* such as brochures, handbills, flyers, pamphlets, and the like;

—Receive *Little expression of public interest* as evidenced by the lack of or decline in subscriptions, sales, or requests for copies.

Examples of significant products might be those that:

—are *required by law*; e.g., a statutorily mandated report to Congress;

—Involved expenditure of *substantial funds* for the dissemination; a dollar threshold might be appropriate here;

—By reason of the *nature of the information*, are matters of continuing public interest; e.g., a key economic indicator;

—By reason of the *timeliness of the information*, command public interest; e.g., monthly crop reports on the day of their release;

—Disseminate in a *new medium*; e.g., disseminating a printed product in electronic medium, or disseminating a machine-readable data file via online access;

—Have already received (or will receive) *substantial expression of public interest;* e.g., those that have (or can expect) regular followings or subscribers;

—May reasonably be viewed as *duplicating and/or competing with existing products* disseminated by other agencies or private sector firms; e.g., a value-added electronic database product.

Form of Notice. Similarly, agencies must determine what form a notice should take in a given case. Several forms of notice suggest themselves.

—*Oral public announcements* at meetings, conferences, and conventions attended by users or potential users of the product;

—*Written public announcements* in periodicals and other publications circulated to users or potential users;

—*Letters* to subscribers or potential subscribers;

—*Notices* with or without request for comment in the *Federal Register* or *Commerce Business Daily*; or

—*Public hearings* convened for the purpose of discussing initiation or termination.

These forms of notice involve different levels of effort and expense on the part of the agency, and agencies should choose a level proportional to the significance of the product and the action being proposed.

Determination of significance and adequate notice are matters of agency judgment. The key point is that agencies must make the judgments and act upon them. When initiating or terminating an information dissemination product, the agency has an obligation to assess and take account of the impact of its action upon the public. Where members of the public consider a proposed new agency product unnecessary and duplicative, the agency should find out, in advance of initiating the product, why they think this and whether the agency should reconsider a decision to initiate. Where members of the public consider an existing agency product important and necessary, the agency should find out, in advance of terminating or curtailing the product, why they think this and whether the agency should reconsider its decision.

Moreover, members of the public should be able to seek reconsideration or redress from agencies when they believe agencies have acted capriciously with respect to initiating or terminating information dissemination products. Agency procedures should include mechanisms for responding to the contingency that agency actions may violate the adequate notice policy, and for how the agency will rectify the violation.

In order to ensure that agencies in fact develop the necessary procedures, the proposed policy requries that agencies report the procedures to OMB.

Electronic Dissemination

The range of available information dissemination media expands as technology continues to develop. Yesterday's monthly index to scientific literature is today's online information service; yesterday's newsletter is today's electronic bulletin board; yesterday's magnetic tape is today's floppy disk or online database and tomorrow's CD–ROM. Part of managing the information dissemination function, therefore, is the responsibility to scrutinize regularly the media of dissemination in order to determine whether the medium in use continues to be the most appropriate.

The decision to disseminate information electronically in many respects is identical to the decision to disseminate information in any other medium. Agencies must ask themselves the questions:

—Is dissemination of this information dissemination product required by law?

—Is dissemination of this information dissemination product necessary for the proper performance of agency functions?

At the present time, electronic dissemination more often than not is an agency's secondary issuance of the product, the primary having been in some conventional paper format (press release, report, etc.). Where this is the case, electronic dissemination is more discretionary than the primary issuance, and agencies may wish to consider additional conditions before deciding for electronic dissemination. The policy statement lists conditions favorable to electronic dissemination.

While electronic products are more frequently the secondary mode of information dissemination, agencies must recognize that this condition is changing. Integration of information technology into the workplace is rapidly reaching the point that both internal agency processing and analysis of information as well as the public's use of information often occur primarily in electronic form. Supplying the information on paper is sometimes practically useless, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use. Moreover, the printed product is often a summary or aggregation of the larger body of information which, although useful in its own right, does not satisfy all legitimate user needs as well as the entire body of information in electronic medium. Under these conditions, an agency might reasonably conclude that dissemination in electronic medium is necessary for the proper performance of agency functions.

A basic purpose of the Paperwork Reduction Act is "to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government." (44 U.S.C. 3501) Thus, dissemination in electronic media is often highly desirable because, under certain assumptions, the electronic information dissemination product is substantially more useful. Electronic information dissemination products tend to contain more information—often an exact and complete copy of a government electronic database, and to present the information in a format that is more manipulable by the user, and hence more conducive to tailoring to a wide variety of user needs. Agencies can frequently enhance the value of government information as a national resource and increase its usefulness by disseminating information in electronic media.

At the same time, it bears remembering that electronic dissemination is not applicable in all cases. Everyone in the public likely to be interested in the information may not be computer-literate or have access to information technology. Dissemination in the electronic media alone may render the information inaccessible to such users. Similarly, some government information holdings evoke little or no public interest and are not in demand, even when the public is well informed about what the holdings are. Absent statutory or mission mandates, any dissemination, let alone electronic, is of questionable utility in such cases.

As Circular No. A–130 notes, the fact that an agency has created or collected information is not itself a valid reason for creating a program, product, or service to disseminate the information to the public. By the same token, the fact that an agency is capable of offering an information service is not itself a valid reason for offering the service. Agencies should avoid offering dissemination services they know (or should know) to be available in the marketplace. An agency, for example, may have the capability to offer dial-up online access to its databases, but the same capability may also be available from private firms that purchase the agency's databases. For the agency to offer the service will always entail some cost to the government, and the availability of virtually identical services from private firms is a compelling argument against the need for the government to offer the service.

While electronic dissemination is generally desirable, agencies must observe certain boundaries on such activities. As a rule of thumb, Federal agencies should take it as a rebuttable presumption that they are to concentrate dissemination activities on supplying basic information, the provision of which is unique to the government, and to avoid offering value-added products to end users. That is, given a choice between expending resources on disseminating more government information in forms that are usable for general purposes and expending resources on tailoring fewer information dissemination products to specific user needs, agencies should presume they are to choose the former. In effect, agencies should prefer to "wholesale" government information and leave "retail," value-added functions to the private sector, especially when they know that the private sector is ready and able to perform the value-added functions. Indeed, the existence of a private sector, value-added provider is presumptive evidence that, barring extenuating circumstances such as urgent public policy considerations or distorted market forces, the Federal agency need not expend public funds to provide the value-added service.

For example, many agencies are currently planning to issue large databases on CD–ROMs, suitable for processing on microcomputers, and the question arises as to whether the agencies should include on the CD–ROMs the search-and-retrieval software necessary to access the databases. OMB's view is that the agencies should disseminate CD–ROMs that contain only the databases and should not include the software. The first reason for this view is that, as Circular No. A–130 has already noted and the General Accounting Office has frequently pointed out, the practice of developing and maintaining customized computer software is a source of inefficiency in Federal agencies. While the software may make the CD–ROMs more readily accessible by users, its development and maintenance also represent a costly diversion of agency resources, because software development by and large is not part of agencies' information dissemination mandates. The second reason is that the software development is a value-added feature that can be performed by the private sector, and hence a commercial activity that the government neither needs to nor should perform itself. Agencies might better devote their resources to improving the databases themselves or to preparing other databases for dissemination, for these are tasks that only the agencies can perform.

Circular No. A–130 counsels agencies, when using contractors for carrying out dissemination activities, to ensure that contractors are not permitted to exercise monopolistic controls over government information resources. By the same token, agencies themselves must avoid behaving in a monopolistic fashion with respect to their information dissemination products. For example, an agency that sells online access to its databases but refuses to sell copies of the databases themselves may be presumed to be behaving as a monopolist because its practice precludes the possibility of a competitor selling the same service at a lower price. If an agency is willing to provide public access to a database, the agency should be willing to sell copies of the database itself.

By the same reasoning, agencies should behave in an even-handed manner in disseminating information products. If an agency is willing to sell a database or database services to some members of the public, the agency should in principle be prepared to sell the same products under similar terms to other members of the public, absent a statutory basis for acting otherwise. While an agency may have public policy reasons for offering different terms of sale to different groups in the public, the agency should provide a clear statement as to its reasons and their basis.

User Charges

OMB Circular No. A–25, User Charges, (proposed revision published in 52 **Federal Register** 24890, July 1, 1987) implements Title 5 of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), establishing Federal policy regarding fees assessed for government services and for sale or use of government property or resources. The general policy stated in Circular No. A–25 (Section 6) is that a user charge will be assessed against each identifiable recipient for benefits derived from Federal activities beyond those received by the general public.

As Circular No. A–130 notes, the Federal Government possesses much information of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which identifiable recipients derive special benefits, in which case user charges may be applicable. Many agencies that have substantial information

dissemination programs continue not to have consistent, agency-wide policies and procedures for setting user charges for information dissemination products. The proposed policy provides that agencies must establish user charges for the costs of disseminating these products, and recover such costs, where appropriate.

At present, Chapter 17 of Title 44, U.S. Code, reserves to the Public Printer and the Superintendent of Documents the pricing and sale of printed government documents. In practice, therefore, executive agency discretion in the setting of user charges for information dissemination products is limited to those that are not printed, i.e., principally to electronic products.

Circular No. A–130 stated that agencies shall recover only costs of disseminating information products through user charges, where appropriate, in accordance with Circular No. A–25. Circular No. A–130 also balanced the requirement to establish user charges against the need to ensure that government information dissemination products reach the public for whom they are intended. (Section 8a(11)(a)) "If an agency has a positive obligation to place a given product or service in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some receipients from the charge" (Appendix IV). The Circular gave no further guidance as to how agencies should balance these requirements.

Circular No. A–25 also establishes that user charges should be set at a level sufficient to recover the full cost of providing the service, resource, or property. The proposed policy clarifies the application of Circular No. A–25 to information dissemination products. Absent statutory requirements to the contrary, the standard for user charges for information dissemination products should be to recover no more than the full cost of dissemination.

OMB's proposed revision to Circular No. A–25 makes a distinction (in Section 6a(2)(b)) between user charges when the Government is acting as property owner and when the Government is acting as sovereign. In the former case user charges will be based on market prices, and in the latter on full cost. For all instances in which the Government itself creates or collects information, or causes creation or collection through sponsorship, the Government is acting as sovereign. User charges the Government may assess for products resulting from such creation or collection should be no greater than the full cost of dissemination.

The proposed policy, therefore, treats information products as different from other goods and services with respect to user charges. First, statutes such as the Freedom of Information Act and the Government in the Sunshine Act establish that Federal agencies have a broad and general obligation to make government information available to the public and to avoid erecting barriers that impede public access. Circular No. A–130 continues this tradition with its Basic Considerations and Assumptions (Section 7), and with the policy balancing user charges against reaching the intended public. User charges higher than the cost of dissemination are a barrier to public access. Second, given that the Government has sunk the costs of creating and processing the information for governmental purposes, the economic benefit to society is maximized when the information is publicly disseminated at the cost of dissemination.

The full cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing for public dissemination and actually disseminating to the public. For example, an agency may prepare an information product for its own internal use, and costs associated with such production are not recoverable as user charges. When the agency takes the product, prepares it for public dissemination, and actually disseminates it, costs associated with preparation and actual dissemination are recoverable as user charges.

While the proposed policy generally limits user charges to the cost of dissemination, agencies should take care to set charges at the full cost of dissemination, where appropriate. Some agencies apparently limit user charges for information dissemination products, for example, to the costs of reproducing and distributing computer tapes without enunciating a rationale for such limitations. In fact, recoverable costs may be signficantly higher. For example, for an online database service, recoverable cost elements might include personnel, materials, and services associated with the following: telecommunications between the computer system and user terminals; computer usage, online network management; training of personnel operating online services; preparation and distribution of manuals and training materials; and accounting and billing for online services. Cost elements might also include associated administrative overhead costs such as printing, postage, travel, and indirect costs.

In addition, OMB Circular No. A–25 provides for charges for government goods and services that convey special benefits to recipients beyond those accruing to the general public. Where agencies provide custom tailored information services to specific individuals or groups, full cost recovery for such services is appropriate. For example, if an agency prepares special tabulations or similar services from its databases in answer to a specific request from a member of the public, all costs associated with fulfilling the request would be charged, and the requester would be so informed before work was begun. In a few cases agencies engaging in information collection activities augment the information collection at the request of, and with funds provided by, private sector groups. Since the 1920s, the Bureau of the Census has carried out surveys of certain industries at greater frequency or at a greater level of detail than Federal funding would permit, because industry groups have requested more frequent or detailed government data and have paid the additional information collection and processing costs, and the additional information is consistent with Federal purposes. While results of these surveys are disseminated to the public at cost of dissemination, the existence and availability of the additional government data are special benefits to certain recipients beyond those accruing to the public. It is appropriate that those recipients should bear full costs of information collection and processing, as well as dissemination.

At the same time, as Circular No. A–130 points out, the requirement to establish user charges is not intended to make the ability to pay the sole criterion for determining whether the public receives government information. Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended (see OMB Circular No. A–130, section 8a(11)(a)). If an agency has a positive obligation to place a given product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product, or for exempting some recipients from the charge. Such reductions or eliminations should be the subject of formal agency determinations on a case by case basis and justified in terms of clearcut agency policies.

Small Agencies

The foregoing discussion and proposed policy are written with a view to agencies that have sizable multimedia information dissemination programs. Not all agencies are large, nor have such programs. Formal management control systems, adequate notice procedures, and the administration of electronic information dissemination may be inappropriate for small agencies. The policies themselves, however, are appropriate for all agencies. Smaller agencies should implement the policies with procedures appropriate for their size.

James B. MacRae, Jr.,

Deputy Administrator for Information and Regulatory Affairs.

PROPOSED POLICY

1. *Definitions*

a. The term "periodical" means any publication disseminated or routinely made available to the public by an agency annually or more often with a format, content, and purpose consistent in nature. The term includes internal agency newsletters and annual reports. The term does not include:

—Memoranda, directives, regulations, legal opinions and decisions, proceedings, programs for cermonies, press releases, environmental impact statements and assessments, planning documents, and other purely administrative materials;

—Research and development reports that are the direct result of research contracts and are distributed to Federal Government employees and the contractor involved in the work, and technical books, monographs and journal articles that are published by commercial publishers and professional associations;

—Official instructional/informational documents of a permanent nature, published as a supplement to directive systems of executive branch agencies; and

—Annual update of instructional information publications made available to the public to inform them of laws and regulations and to assist them in complying with reporting requirements.

b. The term "nonrecurring publication" means any publication, including pamphlets, disseminated or routinely made available to the public by an agency on a one-edition basis, or less frequently than annually. The items not included in the term are the same as for the term periodical.

c. The term "information dissemination products" means periodicals, nonrecurring publications, machine-readable data files, software files, online database services, and electronic bulletin boards, issued or disseminated by agencies to the public; the term includes media such as magnetic tape and compact disks but does not include audiovisual activities covered by OMB Circular No. A–114. Dissemination to the public means distributing without restriction as to recipients and entails public announcement of distribution. Distribution restricted to government employees or to agency contractors or grantees is not considered dissemination to the public.

2. *Policy*

a. Agencies shall manage the dissemination of information so as to maximize efficient and effective performance of agency functions, maximize the usefulness of government information, and minimize the cost to the Federal Government.

b. Agencies shall maintain and implement a management control system for all information dissemination products. The management control system shall, at a minimum, perform the following functions:

(1) Monitoring and reviewing information dissemination products to assure that they are certified to be necessary for proper performance of agency functions, or, in the case of periodicals, necessary in the transaction of the public business required by law of the agency;

(2) Establishing and maintaining in electronic format a current and comprehensive inventory of all agency information dissemination products;

(3) Recording actual and proposed spending of funds for information dissemination products;

(4) Providing an annual report to the Director of the Office of Management and Budget according to specifications provided in annual reporting instructions; and

(5) Supporting such other functions as are necessary for effective and efficient management of information dissemination, such as developing aids to locating information disseminated by the agency.

c. Expenditure of funds shall be approved only for periodicals that provide information, the dissemination of which is necessary in the transaction of the public business required by law of the agency.

d. Agencies shall determine which of their existing and proposed information dissemination products are significant for purposes of providing adequate notice, and what constitutes adequate notice for significant information dissemination products; agencies shall disseminate these determinations to the public;

e. Agencies shall establish and implement procedures for providing adequate notice, in accordance with the preceding agency determinations, when initiating or terminating significant information dissemination products: procedures shall include how to determine what information dissemination products are significant, what constitutes adequate notice, and how the public may seek redress for agency violations.

f. Agencies should examine their information dissemination products to determine whether conditions favor the electronic dissemination of information. Conditions favorable to electronic dissemination include:

(1) The agency already maintains the information in electronic medium for its own purposes;

(2) The agency will not incur substantial new costs in disseminating the information electronically;

(3) Existing or potential users of the information have expressed a need for the information in electronic medium: e.g., a documented public demand;

(4) The agency can point to real benefits to the government and/or the public from disseminating the information electronically; e.g., more timely use of information, or the ability for users to manipulate the information in ways not available with other media;

(5) The agency has determined that information dissemination products already available to the public are not so similar that the agency's electronic dissemination would constitute unfair competition with the private sector.

g. Agencies should periodically review their information dissemination products to determine whether the medium of dissemination is appropriate to the product.

h. Agencies shall avoid disseminating information dissemination products that place the Government in unfair competition with the private sector;

i. Agencies shall give perference to disseminating basic electronic information dissemination products, and, absent compelling reasons, avoid disseminating value-added electronic information products;

j. Agencies shall establish consistent, agency-wide policies and procedures, including regulations as necessary, for setting and collecting user charges for information dissemination products.

k. Agencies shall set user charges for information dissemination products at a level sufficient to recover the full cost of dissemination, and exclude from calculation of the charges costs associated with collecting and processing the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects and processes, as well as disseminates, the information for the benefit of a specific identifiable group beyond the benefit to the general public; or

(iii) Where the agency has made a determination that user charges at full cost of dissemination constitute a significant barrier to properly performing the agency's functions and reaching the public whom the agency has an obligation to reach.

3. *Reporting*

a. Within 180 days of the effective date of this policy, the head of each agency shall submit to the Director, Office of Management and Budget:

(1) Copies of policies and procedures for the agency information dissemination management control systems; and

(2) Copies of agency procedures for providing adequate notice when initiating or terminating significant information dissemination products.

(3) Copies of agency policies and procedures for setting and collecting user charges for information dissemination products.

b. Unless otherwise individually directed by OMB, agencies with fewer than 1500 fulltime equivalent employees need only provide certification that the above policies are in effect and that the agency has provided the most recent annual report on information dissemination products.

4. *Approval*

OMB will respond to the agency's annual report on information dissemination products within 45 days of receipt. In its response, OMB will approve or disapprove the periodicals listed for new or continued use, or may request additional information on certain periodicals.

Although new periodicals should be proposed at the annual reporting time whenever possible, periodicals may also be presented to OMB for approval at other times of the year. OMB will respond to these supplemental requests within 45 days of receipt.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16720; 812-6820]

La Caisse centrale Desjardins du Quebec

December 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: La Caisse centrale Desjardins du Quebec.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: La Caisse centrale Desjardins du Quebec (the "Applicant") seeks an order to issue and sell commercial paper notes (the "Commercial Paper Notes") in the United States. In addition, the order would permit the Applicant to issue and sell debt securities other than Commercial Paper Notes ("Other Debt Securities") in the United States. The net proceeds of all offerings made in the United States by the Applicant will be utilized by the Applicant to carry out its function as financial agent for the Desjardins Group, which is a cooperative of savings and credit unions located in Quebec.

Filing Date: The application was filed on August 10, 1987 and amended on December 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. La Caisse centrale Desjardins de Quebec, 1, Complexe Desjardins, South Tower, Suite 2822, Montreal, Quebec H5B1B3.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney at (202) 272-3035 or Stephanie M. Monaco, Branch Chief at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a corporation established by the Quebec Legislature to act as financial agent for the Desjardins Group (the "Group"). The Group is composed of approximately 1,345 savings and credit cooperatives known as caisses populaires and caisses d'economie (collectively the "Caisses") which are located throughout the Province of Quebec. Each Caisse is affiliated with one of eleven regional federations (the "Federations"). The Federations provide technical and financial services to their affiliated Caisses. The Federations together form a confederation, La Confederation des caisses populaire et d'economie Desjardins du Quebec (the "Confederation").

2. The Applicant, as financial agent of the Group, manages a liquidity fund for its members, provides its members with access to financial markets, and offers a range of financial services to large- and medium-size business corporations. Applicant makes loans to (i) members and affiliates of the Group and (ii) business corporations, governmental and paragovernmental entities whose credit needs exceed the capabilities of the individual Caisses. Applicant accepts deposits from the Desjardins Group, from governmental and paragovernmental entities, and from the short-, medium- and long-term Canadian and international capital markets.

3. The Applicant's operations are extensively regulated both by the act under which it was incorporated (the "Incorporating Act") and by other Quebec legislation which is similar to that applicable to Canadian chartered banks governed by the Bank Act (Canada) ("Chartered Banks"), including *inter alia* the Savings and Credit Unions Act of Quebec and the Quebec Deposit Insurance Act. The Caisses and the Federations are governed by the Credit Unions Act. The Confederation is governed by the Credit Unions Act and the Incorporating Act. Under the Quebec Deposit Insurance Act, deposits with the Caisses and with the Applicant are insured to a maximum of $60,000 (all figures contained herein are in Canadian dollars unless otherwise indicated) per depositor.

4. Applicant is subject to the supervision of the Inspector General of Financial Institutions of Quebec (the "Inspector General"). The Inspector General conducts annual inspections of the Applicant's business. The Applicant must provide the Inspector General with the financial statements prescribed by government regulations and any other financial statements and supplemental information that the Inspector General may deem necessary to ensure that Applicant is complying with the provisions of the Incorporating Act and applicable regulations.

5. Pursuant to the Incorporating Act, the Applicant must maintain a reserve, in the form of either cash on hand or deposits in chartered banks or in similar non-affiliated institutions, that on average during any month shall not be less than 5% of its deposit liabilities. The Applicant must also maintain with such institutions a portfolio of cash, deposits, bonds or other evidence of indebtedness which have an average monthly value of not less than 20% of deposit liabilities.

6. Under the Incorporating Act, the paid-in capital of the Applicant must be at least $25 million. The issuance of securities by the Applicant is subject to provincial securities legislation. For example, a prospectus must be prepared prior to the issuance of non-exempted securities. Under the Incorporating Act, Applicant may not declare or pay a dividend if it would become insolvent or its paid-in capital would be impaired. The Applicant may invest in real estate provided its total investment does not exceed 20% of its assets.

7. Under the Incorporating Act and the Credit Unions Act, the Applicant may acquire shares of any Chartered Bank, savings bank, trust company, insurance company or mutual fund company incorporated in Canada, as well as fully paid shares issued by a Canadian corporation. The Applicant may not invest more than 30% of its assets in such shares.

8. Under the Incorporating Act, the Applicant may guarantee the financial liabilities of its members and of its depositors to the extent that the total guaranteed liabilities do not exceed 10% of its unimpaired capital and accumulated reserves.

9. As of December 31, 1987, the Applicant's loan portfolio totalled $1.9 billion, consisting of $818 million in loans to members and Desjardins Group affiliates, $409 million to public organizations and $680 million to private corporations. As of the same date, the Applicant's securities portfolio totalled $853 million of which 57.3% were negotiable government securities.

10. Total deposits as of December 31, 1987 amounted to $2.37 billion, of which $256 million were deposits from the Canadian Government, $36 million from other governmental organizations, $108 million from members and Desjardins Group affiliates, $365 million from banks and $1.6 billion from the short, medium and long term Canadian and international capital markets (*i.e.*, institutional investors).

11. As of December 31, 1987, the Applicant had total assets of $2.84 billion and the combined assets of the Applicant, the Caisses and the Federations totalled $29.57 billion. On a combined basis, the loan portfolio totalled $24.99 billion. As of December 31, 1987, the Applicant's liabilities totalled $2.84 billion and the combined liabilities of the Applicant, the Caisses and the Federations totalled $29.57 billion, of which total deposits represented $2.37 billion and $27.21 billion, respectively.

12. The Applicant proposes to issue and sell short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") by virtue of section 3(a)(3) thereof (the "Commercial Paper Notes"). The Applicant will publicly offer the Commercial Paper Notes in minimum denominations of $100,000 through one or more major dealers to the types of sophisticated and largely institutional investors in the United States who normally purchase commercial paper. The Commercial Paper Notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves, equally with all other unsecured, unsubordinated indebtedness of the Applicant and superior to the rights of the Applicant's shareholders. The Applicant expects that the average amount of Commercial Paper Notes outstanding in the United States market during the first year will not exceed U.S. $400 million. Prior to their issuance, the Commercial Paper Notes will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and the Applicant's United States counsel shall have certified the receipt of such rating.

13. The Applicant may, from time to time, offer other debt securities ("Other Debt Securities") for sale in the United States. The net proceeds of the Commercial Paper Notes and the Other Debt Securities issued by the Applicant will be used to fund the Applicant's normal lending activities.

14. The Applicant undertakes that the offering in the United States of the Commercial Paper Notes will be made pursuant to the exemption from registration under the 1933 Act provided by section 3(a)(3) thereof. The Applicant undertakes not to offer the Commercial Paper Notes in the United States unless the Applicant shall have received an opinion of its United States legal counsel that the Commercial Paper Notes will be entitled to such exemption from the registration requirements of the 1933 Act. The Applicant does not request Commission review or approval of this opinion.

15. The Applicant undertakes that each dealer in the Commercial Paper Notes will furnish to each purchaser thereof, at or prior to the time of purchase, a memorandum describing briefly the business of the Applicant and providing the most recent publicly available fiscal year-end balance sheet and profit and loss statement for the Applicant, accompanied by a description of the material differences between the Canadian accounting principles utilized in the preparation thereof and generally accepted accounting principles as applied in the United States. Such memorandum will be updated promptly to reflect material changes in the financial condition of the Applicant and will be at least as comprehensive as memoranda customarily used by United States issuers in offering commercial paper in the United States. The Applicant undertakes that any offering of Other Debt Securities will be effected on the basis of disclosure documents at least as comprehensive as those used in offerings of similar securities by issuers in the United States. In the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration.

16. The Applicant will select a bank or trust company located in the United States to act as issuing and paying agent for the Commercial Paper Notes. The Applicant will, in connection with the issuance of the Commercial Paper Notes and Other Debt Securities, appoint an agent to accept service of process in any suit, action or proceeding brought against the Applicant in any state or federal court with respect to the Commercial Paper Notes and Other Debt Securities. The Applicant will expressly submit to the jurisdiction of any New York State or federal court located in New York County with respect to any such suit, action or proceeding. Such appointment of an agent for service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due with respect to the Commercial Paper Notes and Other Debt Securities have been paid.

17. Prior to their issuance, the Other Debt Securities will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and the Applicant's United States counsel shall have certified the receipt of such rating; however, such a rating will not be required if, in the opinion of the Applicant's United States counsel, an exemption from the 1933 Act's registration requirements is available for the issuance of the Other Debt Securities pursuant to section 4(2) of the 1933 Act or Regulation D promulgated thereunder. The Applicant does not request Commission review or approval of this opinion.

Applicant's Legal Conclusions

1. The Applicant believes that it is excluded from the definition of investment company under section 3(b)(1) of the Act. Because uncertainty exists, however, as to whether foreign financial institutions which carry out operations similar to the Applicant's are "investment companies," the Applicant is filing this application under section 6(c) of the Act.

2. Applicant's business and operations exhibit many of the characteristics of domestic financial institutions which are excluded from the definition of investment company pursuant to section 3(c)(3) of the Act, which excludes any "savings and loan association, building and loan association, cooperative bank * * * or similar institution."

3. A primary aspect of the Applicant's business is making loans and accepting deposits. The Applicant is subject to regulation and supervision under the Incorporating Act and by various Canadian governmental authorities, such as securities commissions and insurance deposit boards. Furthermore, each depositor of the Applicant is accorded deposit insurance protection similar to that accorded a depositor of a Chartered Bank.

4. The Applicant is different from an investment company in purpose, function and role in the economy and is subject to regulation by Canadian laws sufficient to protect investors.

Conditions to the Applicant's Requested Relief

The Applicant consents to any order granting the requested relief being expressly conditioned upon compliance with the undertakings and representations set forth herein and in the application and upon the Applicant issuing and selling the Commercial Paper Notes and Other Debt Securities in the United States only so long as:

1. Its primary business consists of making loans and accepting deposits;

2. It remains subject to a degree of regulation and supervision at least substantially equivalent to that provided under the Incorporating Act; and

3. It is registered under, and subject to, the Quebec Deposit Insurance Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-90 Filed 1-3-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Pricing of Unpriced Options in Section 8(a) Contracts

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) is announcing that it is engaging in efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

ADDRESSES: Rodney Lewis, Deputy Director, Office of Program Development, Minority Small Business and Capital Ownership and Development Program, 1441 L Street, NW., Rm. 620, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rodney Lewis, (202) 653-6549 or Jean Lovejoy, (202) 653-6766.

SUPPLEMENTARY INFORMATION: Section 303(f) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, effective November 15, 1988, requires SBA to engage in substantial and sustained efforts to negotiate prices on unpriced options contained in contracts awarded under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) within 60 days of the effective date of the Act. A concern performing under a section 8(a) contract is eligible to negotiate prices on unpriced options whether or not it is still in the section 8(a) program and whether or not it has become a large business, providing it is performing such contract on or after November 15, 1988. Negotiations must be initiated by January 14, 1989.

During this 60-day period, the statute requires procuring agencies to refrain from procuring such requirements from alternative sources except that no delay may be incurred that would cause substantial harm to a public interest.

This notice pertains only to unpriced options already contained in section 8(a) contracts. It does not authorize the addition of options (priced or unpriced) to such contracts.

Only the section 8(a) concern which was originally awarded the contract containing the unpriced option is eligible to engage in negotiations to price such option.

Date: December 23, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-87 Filed 1-3-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-51]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before January 23, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 28, 1988.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 22822.
Petitioner: T.B.M., Inc./Butler Aircraft Company.
Regulations Affected: 14 CFR 91.45.
Description of Relief Sought: To allow ferry flights with one engine inoperative on McDonnell Douglas DC-6 and DC-7 aircraft, without obtaining a special permit for each flight.

Docket No.: 23147.
Petitioner: Boeing Commercial Airplane Company.
Sections of the FAR Affected: 14 CFR 91.195(a)(1).
Description of Relief Sought: To extend Exemption No. 4783 that allows petitioner to permit noise measurement tests, Ground Proximity Warning System research and development, and FAA certification flight tests at altitudes lower than 1,000 feet above the surface. Exemption No. 4783 will expire on April 30, 1989.

Docket No.: 25205.
Petitioner: Robert A. Hoover.
Sections of the FAR Affected: 14 CFR 91.213(a)(2).
Description of Relief Sought: To allow certain single-pilot operations during acrobatic flight demonstrations of North American Sabreliner, NA265-40, Serial No. 282-027, N61RH.

Docket No.: 25743.
Petitioner: Sherwood Forrest Myers.
Sections of the FAR Affected: 14 CFR 121.383(d).
Description of Relief Sought: To allow petitioner to serve as a relief pilot in air carrier operations under Part 121.

Docket No.: 24822.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 121.309(c)(2).
Description of Relief Sought/Disposition: A permanent exemption to allow certain of petitioner's member airlines to operate without one hand fire extinguisher being installed in each upper lobe galley. *Partial Grant, December 19, 1988, Exemption No. 5002.*

Docket No.: 25630.
Petitioner: Director of Transportation of the State of Hawaii.
Sections of the FAR Affected: 14 CFR 45.29(h).
Description of Relief Sought/Disposition: To allow persons operating within the State of Hawaii to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the inner boundary of the Hawaiian Coastal Air Defense Identification Zone (ADIZ). *Grant, December 20, 1988, Exemption No. 5003.*

[FR Doc. 89-34 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. P-002]

Eligibility of Vessels to Carry Preference Cargoes

AGENCY: Maritime Administration, DOT.

ACTION: Policy reconsideration.

SUMMARY: The Maritime Administration ("MARAD") has been requested to reconsider its view that foreign-built vessels need not have been documented under the laws of the United States for a period of three years for eligibility to carry the incremental portion of agricultural cargoes reserved to U.S.-flag commercial vessels under provisions of the Food Security Act of 1985 (Pub. L. 99-198).

DATES: Public comment on this issue is invited. Comments must be received by February 3, 1989.

ADDRESS: Send an original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours at the above address. Commentors wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Karl E. Bakke, Chief Counsel, Maritime Administration, Washington, DC 20590. tel. (202)366-5711.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act, 1936 (the "1936 Act"), as amended (46 U.S.C. app. 1241(b)(1)) provides, in pertinent part, that the term "privately owned United States-flag commercial vessels" that are eligible to carry at least 50 percent of the gross tonnage of cargoes subject to the Cargo Preference Act of 1954—

shall not be deemed to include any vessel which * * * shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States, for a period of three years * * *

In 1985, new sections 901a-901k (46 U.S.C. app. 1241f-1241o) were added to the 1936 Act by section 1142 of the Food Security Act of 1985 (7 U.S.C. 1241). New section 901b(a)(1) provided, in part that—

In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 901(b) of this Act, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) shall be transported on United States-flag commercial vessels.

New section 901k provided that—

A United States-flag vessel eligible to carry cargoes under section 901b through 901d means a vessel * * * that is necessary for national security purposes and, if more than 25 years old, is within 5 years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

MARAD has expressed the opinion that eligibility of a foreign-built U.S.-flag commercial vessel to carry agricultural preference cargo under the incremental 25-percent allocation contained in section 901b of the 1936 Act is governed by new section 901k alone.

Counsel for owners of certain U.S.-flag bulk carriers have questioned that opinion, citing new section 901b(c)(1), 46 U.S.C. app. 1241f(c)(1), which provides that–

The requirement for United States-flag transportation imposed by subsection [a] shall be subject to the same terms and conditions as provided in section 901(b) of this Act [quoted above in pertinent part].

They maintain that, in view of this provision, section 901k simply imposes additional age/national defense conditions for vessels to be eligible to carry the incremental portion of agricultural preference cargoes.

The principal issues presented are (a) whether the 3-year waiting period, which appears in section 901(b) as part of the definition of "privately owned United States-flag commercial vessels" as used in that section, is a "term or condition" within the meaning of section 901b(c)(1); and (b) even if it is, whether it has applicability in the context of section 901b since the defined term to which it relates is not used either in that section or in section 901k.

To date, no vessels which would be eligible under MARAD's expressed interpretation of this particular provision have been identified as transporting cargo under the covered

programs, but there have been indications of interest in future carriage.

Accordingly, MARAD will reconsider its interpretation of the Food Security Act provisions as they relate to vessel eligibility and expressly invites comment from interested parties on the issue.

By Order of the Maritime Administrator.

Dated: December 30, 1988.

James E. Saari,

Secretary.

[FR Doc. 89-153 Filed 1-3-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 232]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The Taxpayer Ombudsman, Internal Revenue Service, delegates to Problem Resolution Officers and to certain Service officials, the authority under Subtitle J, the "Omnibus Taxpayer Bill of Rights", to issue and to modify or rescind, Taxpayer Assistance Orders.

The text of the delegation order appears below:

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: James Hughes, C:PRP, Room 1023, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone: (202) 566-4946. (not a toll-free telephone number)

Damon O. Holmes,

Taxpayer Ombudsman.

Delegation of Authority To Issue and Authority To Modify or Rescind, Taxpayer Assistance Orders (TAOs)

Pursuant to the authority of the Taxpayer Ombudsman by Section 7811 of the Internal Revenue Code added by the Technical and Miscellaneous Revenue Act of 1988, under Subtitle J, the "Omnibus Taxpayer Bill of Rights", to issue Taxpayer Assistance Orders and the authority to modify or rescind Taxpayer Assistance Orders, is hereby delegated as follows:

1. The authority to issue Taxpayer Assistance Orders

(a) To release property of a taxpayer levied upon (subject to exception set forth in paragraph 3.) or

(b) To cease any action, or refrain from taking any action, with respect to a taxpayer (subject to exception set forth in paragraph 3.) under—

1 Subchapter F of Chapter 1 (relating to exempt organizations)
2 Chapter 24 (relating to the collection of income tax at source on wages and backup withholding)
3 Chapter 64 (relating to collection)
4 Chapter 66 (relating to the statute of limitations)
5 Chapter 68 (relating to the additions to tax, additional amounts, and assessable penalties)
6 Subchapter B of Chapter 70 (relating to bankruptcy and receiverships)
7 Chapter 78 (relating to discovery of liability and enforcement of title)

is delegated to the officials listed below:

Assistant Commissioner (International)
Regional Commissioners
District Directors and Assistant Directors
Service Center Directors and Assistant Directors
Director, Austin Compliance Center and Assistant Director
Regional Problem Resolution Officers
Problem Resolution Officers

2. The authority in paragraph 1.(a) and (b) may be redelegated by the Assistant Commissioner (International), Regional Commissioners, District Directors, Service Center Directors and Director, Austin Compliance Center only to Assistant Problem Resolution Officers.

3. The authority to issue TAOs to release a principal residence of a taxpayer levied upon or to cease any action regarding a principal residence, is delegated to:

Assistant Commissioner (International) Regional Commissioners.

4. The Authority to Modify or Rescind Any Taxpayer Assistance Order is delegated to the officials listed below:

Assistant Commissioner (International) for the Problem Resolution Officer or Assistant Problem Resolution Officer on his/her staff.

The Regional Commissioner who is the line supervisor of the Regional Problem Resolution Officer or Assistant Regional Problem Resolution Officer who issued the order.

Regional Directors of Appeals for cases in the appeals process in their jurisdiction.

The Director or Assistant Director who is the line supervisor of the Problem Resolution Officer or Assistant Problem Resolution Officer who issued the order.

The Director or Assistant Director, Austing Compliance Center for the Problem Resolution Officer or Assistant Problem Resolution Officer on their staff who issued the order.

5. The authority in paragraphs 3 and 4 may not be redelegated.

Date: December 22, 1988.

Approved:

Damon O. Holmes,

Taxpayer Ombudsman.

[FR Doc. 89-75 Filed 1-3-89; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 13, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Department of Veterans Benefits.
2. Report and Certification of Loan Disbursement.
3. VA Form 26-1820.
4. The form is completed by lenders closing VA Loans under the automatic or prior approval procedure subsequent to issuance of guaranty. This information collection complies with the provisions of the law which require lenders to report to the Administrator on loans guaranteed or insured.
5. On occasion.
6. Individuals or households.
7. 193,000 responses.
8. 96,500 hours.
9. Not applicable.

[FR Doc. 89-12 Filed 1-3-89; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, January 31 and February 1, 1989. The sessions will begin at 9 a.m. The Committee will be discussing issues related to the administration of veterans' rehabilitation programs.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-233-2888) prior to January 24, 1989.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on February 1, 1989.

Dated: December 23, 1988.

By direction of the Administrator

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-13 Filed 1-3-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 9, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-30263 Filed 12-30-88; 11:31 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 2
Wednesday, January 4, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

Marketing Agreement Regulating the Quality of Domestically Produced Peanuts and Implementing Regulations

Correction

In rule document 88-11917 beginning on page 20290 in the issue of Friday, June 3, 1988, make the following correction:

On page 20294, in the second column, immediately preceding the last paragraph, insert:

§ 998.36 Indemnification.

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

Correction

In notice document 88-28759 beginning on page 50276 in the issue of Wednesday, December 14, 1988, make the following corrections:

1. On page 50277, in the fifth column, in the fourth footnote, in the second line, "6103.43.30.30" should read "6103.42.20.20"; and in the fifth line "6211.43.00.10" should read "6211.42.00.10".

2. On page 50278, in the first column, in the 25th footnote, in the first line, "all" should read "only"; and "except" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-410-000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Correction

In notice document 88-29842 beginning on page 52475 in the issue of Wednesday, December 28, 1988, make the following correction:

On page 52475, in the third column, under "**3. Texas Gas Transmission Corporation**", the docket number "DP90-411-000" should read "CP89-411-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP82-114-013]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 88-29044 beginning on page 50998 in the issue of Monday, December 19, 1988, make the following correction:

On page 50998, in the third column, in the headings, the docket number was printed incorrectly and should appear as above.

BILLING CODE 1505-01-D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

Correction

In rule document 88-27423 beginning on page 47929 in the issue of Tuesday, November 29, 1988, make the following corrections:

§ 336.12 [Corrected]

1. On page 47933, in the third column, in § 336.12(c(2), in the first line, "an" should read "any".

§ 336.16 [Corrected]

2. On page 47935, in the second column, in § 336.16(c), in the third line from the bottom of the paragraph, "any" should read "may".

§ 336.17 [Corrected]

3. On page 47936, in § 336.17(b)(1)(i), in the second column, in the second line, "material" should read "martial".

§ 336.24 [Corrected]

On page 47938, in the first column, in the heading for § 336.24, "back" should read "bank".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Til-1]

Truth in Lending; Proposed Update to Offical Staff Commentary

Correction

In proposed rule document 88-27858 beginning on page 48925 in the issue of Monday, December 5, 1988, make the following corrections:

Commentary to Subpart A [Corrected]

1. On page 48927, in the third column, in the paragraph designated 3., in the second line, "changes" should read "charges".

2. On page 48928, in the first column, in the first complete paragraph, in the 12th line, "sole" should read "sold".

3. On the same page , in the second column, in the first complete paragraph, in the 10th line, "single"was misspelled

4. On the same page, in the third column, in the third complete paragraph, in the fifth line, "balloon"was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket Nos. 79N-0141 and 79N-0142]

GRAS Status of Corn Sugar, Corn Syrup, Invert Sugar, and Sucrose

Correction

In rule document 88-25583 beginning on page 44862 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44863, in the first column, in the first complete paragraph, in the sixth line, "prescribed" should read "practiced".

2. On page 44866, in the second column, in the second complete paragraph, in the next to the last line, "stale" should read "stable".

3. On page 44867, in the second column, in the second complete paragraph, in the eighth line, "emergency" should read "emergence".

4. On page 44873, in the 1st column, in the 3rd complete paragraph, in the 14th line, "affects" should read "efforts".

5. On the same page, in the third column, in the second complete paragraph, in the fourth line from the bottom, "168.20 and 168.21" should read "168.120 and 168.121".

§ 184.1854 [Corrected]

6. On page 44878, in the first column, in § 184.1854(b), in the last line, "parity" should read "purity".

§ 184.1859 [Corrected]

7. On the same page, in the second column, in § 184.1859(a), in the fifth line, insert "than" after "more".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 85N-0548]

Proposed Affirmation of GRAS Status of High Fructose Corn Syrup

Correction

In proposed rule document 88-25584 beginning on page 44904 in the issue of Monday, November 7, 1988, make the following corrections:

1. On page 44904, in the first column, under **ADDRESS**, in the last line, the zip code should read "20857".

2. On the same page, in the 2nd column, in the 2nd complete paragraph, in the 9th line, "syrup" should read "starch". In the 10th line, "hydrolysate" was misspelled, and in the 14th line, "§ 184.1374" should read "§ 184.1372".

3. On page 44906, in the 1st column, in the 3rd complete paragraph, in the 10th line, "complete" should read "comparable".

4. On the same page, in the same column, in the last complete paragraph, in the next to last line, after "sucrose," insert "corn sugar,".

BILLING CODE 1505-01-D

federal register

Wednesday
January 4, 1989

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 247, 882, and 888

Section 8 Certificate Program—Project-Based Assistance; Interim Rule

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 247, 882, and 888

[Docket No. R-88-1394; FR-2502]

Section 8 Certificate Program—Project-Based Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the regulations under which a Public Housing Agency (PHA) may provide Section 8 project-based assistance from assistance provided to the PHA for the Section 8 Certificate Program. The rule implements a recent statutory amendment directing the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 existing housing assistance provided by the PHA. The rule requires that the term of the PHA Contract for the structure not extend beyond the term of the HUD funding commitment, and that the owner must agree to do rehabilitation involving a minimum of $1,000 for each project-based unit.

DATES: Effective date: January 4, 1989. The *comment due date* for this rule will be set in a related interim rule amending 24 CFR Part 882 that will be published by February 6, 1989. See the "Background" under **SUPPLEMENTARY INFORMATION** for more details concerning the related interim rule.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0388. Public reporting burden for each collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

A. The Statute. This rule implements that portion of section 8(d)(2) of the United States Housing Act of 1937 (the 1937 Act) that concerns the attachment of Section 8 assistance to existing structures that have been rehabilitated. Section 208 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA) (Pub. L. 98-181, approved November 30, 1983) amended section 8(d)(2) to permit the attachment of assistance to an existing structure only if (1) the owner agrees to rehabilitate the structure other than with assistance under the 1937 Act, and (2) HUD and the PHA approve the attachment. Section 102(a)(6) of the Housing and Community Development Technical Amendments of 1984 (the Technical Amendments Act) (Pub. L. 98-479, approved October 17, 1984) further amended section 8(d)(2) to clarify that the 1983 amendment's "conditions for tying the assistance to a particular structure or project do not apply to the circumstances under which HUD provides Section 8 existing assistance in connection with loan management property disposition, or conversion from other assistance programs to project-based subsidies administered by HUD nor do they apply to the Section 8(e) moderate rehabilitation program." (H.R. Conf. Rep. No. 1103, 98th Cong., 2d Sess. 22-23 (1984)). The activities enumerated in the Conference Report describe situations where the Department was attaching Section 8 existing housing assistance to structures before the HURRA limitations were imposed. To date, the Department has not authorized the attachment of Section 8 existing housing assistance for other purposes, and thus the limitation on attachment of Section 8 assistance added by HURRA has not been triggered.

Section 148 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988 (HCD Act of 1987)) further amended section 8(d)(2) to require the Secretary to permit a PHA to approve attachment of no more than 15 percent of the assistance provided by the PHA, subject to meeting the statutory rehabiliation requirements.

Section 8(d)(2) was further amended by section 1005 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 McKinney Act)). Section 1005(a) directs the Department to issue regulations that take effect not later than 30 days after date of enactment of the 1988 McKinney Act to implement the amendment made by section 148 of the HCD Act of 1987 (redesignated as section 8(d)(2)(A) of the 1937 Act). The Department was unable to meet the December 7th statutory publication deadline, as a result of issues arising out of the collections of information in this rule. In accordance with section 1005(a), however, the Department, pending effectiveness of this rule, has been ready to consider applications received from PHAs to attach Certificate Program assistance to structures, and to approve applications that met the statutory requirements.

Section 1005(b)(1) of the 1988 McKinney Act adds a new subparagraph (B) to section 8(d)(2) of the 1937 Act to permit attachment of assistance to a newly constructed structure (Section 1005(b)). This amendment is not implemented by this rule. The Department intends to implement this provision in a regulation to take effect within 90 days after enactment of the 1988 McKinney amendments, in accordance with section 1005(b)(2).

Section 8(d)(2)(A), as amended by the sections referred to above, reads as follows:

(2)(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. *Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this Act and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met.* (The pertinent text is in italic.)

The 1987 Act amendment is derived from section 149(b) of H.R. 4, 100th Cong., 1st Sess. (1987), which differed from the enacted provision only in the applicable percentage (25 percent rather than 15 percent). The accompanying Report of the Committee on Banking, Finance, and Urban Affairs (H. Rep. No. 122, 100th Cong., 1st Sess. 33 (1987)) describes the purpose of the amendment as follows:

Sec. 149(b) of the bill enables the Secretary to permit public housing agencies to attach up to 25 percent of the Sec. 8 assistance they provide to specific properties, provided that the owners rehabilitate the properties. The Committee has added this authority for the express purpose of facilitating the use of Sec. 8 Certificates in connection with projects which, when matched with the value of Sec. 8 Existing Certificates, would be able to provide decent, affordable housing to very low income people. The Committee is especially interested in seeing this authority used to provide Sec. 8 Certificates for properties which are rehabilitated or constructed using the low-income housing tax credit, and in properties developed as limited-equity, low income cooperatives. In both cases, owners can more easily develop economically feasible projects for very low income occupancy if they can be assured of the availability of Sec. 8 rental assistance for the very low income tenants. The Committee expects HUD to implement this provision as quickly as possible, and to encourage its use by PHAs for these purposes.

B. Justification for Interim Rule. It is Department policy to implement substantive rules by providing notice of proposed rulemaking giving at least 60 days for submission of public comments, unless the Department determines that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest (see 24 CFR 10.1). In addition, section 7(o)(3) of the Department of Housing and Urban Development Act provides that no rule may become effective until after the first period of 30 calendar days of continuous session of Congress following its publication. Under section 7(o)(3), this rule could not take effect until mid-March 1989. The Department cannot comply with section 7(o)(3) and also meet the mandate in section 1005(a) of the McKinney Act to issue regulations that take effect not later than 30 days after the effective date of the Act, *i.e.*, take effect not later than December 7, 1988. The Department is publishing this rule for immediate effect because it interprets the specific mandate in section 1005(a) as implicitly overriding the more general requirements of section 7(o)(3) and the Department's general rulemaking policies.

These regulations, however, are being published as an interim rule in order to permit public comment. The comment due date has been left open, because, as noted above, the Department must publish another rule for effect by February 6, 1989 to implement the new construction component of project-based assistance. That interim rule will announce the comment due date for both interim rules. The Department will then publish a final rule that takes into consideration the public comment received on both interim rules.

C. This Rule. This rule adds a new Subpart G to 24 CFR Part 882 to implement the authority to attach project-based assistance to units. The requirements for project-based assistance have been placed in Subpart G of Part 882 because project-based assistance involves the use of funds derived from the Section 8 Certificate Program, the pertinent rules for which are in Subparts A, B, and F of Part 882. In order to avoid unnecessarily repeating provisions common to both the "finders-keepers" Certificate Program and for project-based assistance, wherever practicable, this Subpart G incorporates by cross-references pertinent provisions in Subparts A and B. Certain provisions in the Section 8 Moderate Rehabilitation Program rules (Subparts D and E of Part 882) are also incorporated by cross-reference.

In general, the modifications of Part 882, Subparts A and B requirements for project-based assistance fall within the following areas: policies needed to determine the 15-percent limit under which the PHA must be permitted to attach assistance to units; policies implementing the statutory rehabilitation requirement; and inapplicability of those Section 8 Certificate Program policies that are unique to a "finders-keepers" program and, therefore, not pertinent to project-based assistance. There follows a section-by-section description of this interim rule.

Section 882.701 Purpose and Applicability

Under the "finders-keepers" policy, a holder of a Certificate of Family Participation is responsible for finding suitable housing and the PHA may not reduce the family's opportunity to choose among available units. In addition, a family assisted under the Section 8 Certificate Program who chooses to move is entitled (subject to certain conditions) to another Certificate. Because under these policies the Section 8 assistance essentially moves with the assisted family, the Certificate Program (as well as the Section 8 Housing Voucher Program) is characterized as providing "tenant-based" assistance. In the Certificate Program, the PHA enters into a HAP Contract and makes assistance payments on behalf of the family after the family locates a suitable unit and an owner willing to execute a HAP Contract with the PHA and a lease with the tenant. By contrast, under project-based assistance, the "finders-keepers" policy does not apply. Certificates are not used. With project-based assistance, the PHA enters a HAP Contract with the owner to make housing assistance payments for a specified term provided the unit is occupied by an eligible family (the unit may be vacant for a limited time). To fill vacant, project-based units, the PHA refers families from its waiting list to the project owner. Because the assistance is tied to the unit, a family that moves from the unit does not have any right to continued assistance. To implement these policies § 882.701(c) expressly makes § 882.103, *"Finders-Keepers" policy;* § 882.208, *Activities to encourage participation by Owners and others;* and § 882.209(m), *Continued participation when Participant Family moves,* inapplicable to project-based assistance provided under this Subpart G.

Section 882.703 Additional Definitions

Subpart G cross-references the definitions in Subpart A of Part 882. It also cross-references the definition of "Agreement to Enter into Housing Assistance Payments Contract", as used in the Moderate Rehabilitation Program. The Agreement is necessary to ensure that the rehabilitation work is performed.

Two new terms are defined: "15-Percent Limit" and "Funding Source."

The former term is defined to mean: Fifteen percent of the total of the number of units for which funding is reserved by HUD for the PHA's Section 8 Certificate Program. This definition uses the number of units reserved for the PHA's Certificate Program in the calculation of the 15-Percent Limit.

Under the ACC, HUD agrees to pay annual contributions for funding

increments (or "projects"), representing successive funding commitments by HUD for the PHA's program. Under the form of ACC used in a PHA's Certificate Program, the ACC terminates on the same day for all funding increments appropriated by Congress before Federal fiscal year 1988. However, for funding increments appropriated in Federal fiscal year 1988 and subsequent Federal fiscal years, there is a separate ACC termination date for each funding increment. The establishment of a separate ACC term for each post-Federal fiscal year 1987 funding increment implements section 8(b)(1) of the 1937 Act, as amended by section 141 of the HCD Act of 1987. A PHA must identify the ACC expiration date for the funding that is the source of the project-based assistance, and must ensure that the HAP Contracts do not extend beyond the applicable ACC expiration date. Because pre-Federal fiscal year 1988 funding increments for the PHA all have the same ACC expiration date, they are treated as one funding source. Accordingly, the definition of "Funding Source" specifies that funding authority provided before Federal fiscal year 1988 constitutes a single funding source.

Section 882.705 Information To Be Submitted to HUD by the PHA

Section 882.705(a) sets out the basic requirements which must be met by a PHA for HUD to approve a PHA's application to attach assistance to units. The requirements are: the number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit; the unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source; and the rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

Section 882.705(b) identifies the information that must be submitted for any PHA request to attach assistance to units. It is limited to the minimum information needed by HUD to ensure that the statutory requirements will be met, in order to permit attachment of assistance to units when the 15-percent limit is not exceeded.

Section 882.707 HUD Review of PHA Plans To Attach Assistance to Units

HUD reviews the information submitted by the PHA under § 882.705(b) and approves the application to attach assistance if the requirements of § 882.705(a) are met. If the requirements have not been met HUD notifies the PHA of the reasons for disapproval.

Section 882.709 Annual Contributions Contract; Schedule of Leasing

This section incorporates by cross-reference § 882.206, but also makes it clear that the schedule of leasing may take into account the time needed to complete the rehabilitation.

Section 882.711 Housing Quality Standards

This section incorporates by cross-reference the housing quality standards in § 882.109. Because rehabilitation is site-specific, this section also incorporates by cross-reference § 882.404(b), the site and neighborhood performance requirements for the Moderate Rehabilitation Program.

Section 882.713 Eligible and Ineligible Properties; Rehabilitation Requirement

This section substitutes for § 882.110, *Types of housing*. A major difference between this section and § 882.110 is that this section implements the rehabilitation requirement in section 8(d)(2) of the 1937 Act. Section 882.713(a) provides that in order for a property to be eligible housing, it must require a minimum expenditure of $1000 per assisted unit, including work on common areas. The rehabilitation must involve:

(1) Upgrading the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repairing or replacing major building systems or components in danger of failure;

(3) Making essential improvements to the property to permit use of the property by handicapped persons; or

(4) Converting or merging units to provide housing for large Families.

Paragraph (b) of § 882.713 identifies specific ineligible housing types that are comparable to the ineligible housing types listed in § 882.401(c) (2)(ii) and (3) for the Moderate Rehabilitation Program. Assistance, however, may be attached to units in subsidized housing projects. Paragraphs (f) and (g) of this section, therefore, contain provisions similar to § 882.111 (e) and (f) to avoid payment of a double subsidy.

Paragraphs (c) and (d), respectively, contain restrictions on when project-based assistance may be attached to a highrise project for families with children and to single room occupancy housing. Again, these requirements are modeled after comparable Moderate Rehabilitation provisions (see § 882.401(c) (5) and (6)).

Section 882.715 Relocation

The relocation requirements are generally modeled on the relocation requirements for the Moderate Rehabilitation Program (§ 882.406), but with a significant difference. Under the Moderate Rehabilitation Program, there may be permanent displacement (and § 882.406 sets out terms under which permanent displacement may occur, including the assistance that must be provided to displacees.) Under this Subpart G, however, permanent displacement is prohibited. The Department believes that a project that cannot be rehabilitated without permanently displacing tenants should not be assisted with project-based assistance, and has prohibited such assistance in § 882.715(a). (Because permanent displacement is prohibited, there is no cross-reference in § 882.715 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.)

Section 882.717 Other Federal Requirements

This section lists the various applicable Federal statutes and other Federal authorities, including civil rights and environmentally-related statutes and authorities.

HUD is reponsible for ensuring compliance with Federal environmental laws and authorities with respect to activities under this Subpart G. Section 882.717(b)(1) encourages PHAs to select projects that will not require, or entail the delay of, compliance with the National Environmental Policy Act or with the authorities listed in 24 CFR 50.4, by setting out the conditions under which a PHA may authorize the rehabilitation of a project in connection with project-based assistance without a prior HUD environmental review. A PHA should contact the environmental officer in the HUD Field Office concerning the type of information a State Historic Preservation Officer may need to respond to a PHA's request about a particular project under § 882.717(b)(1)(ii). A PHA may authorize rehabilitation of a project that exceeds the thresholds in § 882.717(b)(1), but the PHA must first notify HUD so that HUD may carry out the necessary environmental review, as provided in § 882.717(b)(2).

Section 882.719 Initial Contract Rents

This section contains the requirements for establishing the Contract Rents that the PHA must list in the Agreement. The Contract Rents listed on execution of the Agreement, subject to reduction under § 882.731(c), must be the Contract Rents upon execution of the HAP Contract (i.e., the initial Contract Rents). Unlike the Moderate Rehabilitation Program, there is no authority for increases in the initial Contract Rents during rehabilitation (contrast § 882.408(d)).

This section is based on § 882.106, with modifications reflecting the project-based character of the assistance provided under Subpart G and other differences from the Certificate Program. Thus, HUD, under § 882.719(a), will not authorize an initial Contract Rent exceeding the Fair Market Rents based on grounds permitted in the Certificate Program under paragraphs (iv), (v), or (vi) of § 882.106(a)(4). Those paragraphs authorize the use of an exception rent based, in part, on a showing by the PHA that leasing the unit is necessary to meet the unique needs of a particular family. That basis for allowing an exception rent is not appropriate when the assistance is project-based and does not follow the family.

Paragraph (b)(3) conforms to the purpose of a recent statutory amendment to section 8(c)(2)(C) of the 1937 Act, by providing that, for units that are not subject to local rent control while they are assisted, comparable units used to determine rent reasonableness are other units that are exempt from rent control. A similar revision has been made to § 882.106(b)(2). (See section 142(c)(1) of the HCD Act of 1987 and H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess. 177 (1987).) Wherever the concept of comparability is used in this section, it, of course, means comparable to the assisted unit as it will be *after* it is rehabilitated.

There are no provisions similar to paragraph (f) of § 882.106, which concerns shared housing. Under § 882.713(b)(3), shared housing is not eligible for project-based assistance. This rule makes a conforming change to § 882.106(a)(2) to make it clear that the 20 percent limitation on the number of units for which the PHA may approve initial Gross Rents that exceed applicable FMRs is a limit on the combined total number of units so approved under both the Certificate Program and this project-based assistance. This rule also makes a conforming revision to § 888.111, Fair market rents for existing housing and moderate rehabilitation: applicability, to specify that existing housing Fair Market Rents apply to assistance provided under Subpart G.

Section 882.719(a)(1) also contains provisions concerning utility allowances similar to the provisions in § 882.209(f). These provisions are placed in this section because they involve the determination of the initial Contract Rents.

Section 882.721 Contract Rent Adjustments

This section contains the requirements for adjusting the Contract Rents during the term of the HAP Contract after the Contract Rents have been established by execution of the HAP Contract. This section is based on § 882.108.

Section 882.723 PHA Selection and Initial Inspection of Units

This section provides PHAs with broad discretion in establishing procedures for selecting units to which assistance is to be attached. Under paragraph (a), PHAs must establish written policies for selecting units. In addition, paragraph (a) also encourages PHAs to establish preferences for units to be used as limited equity cooperatives. This provision reflects congressional intent (see H.R. Conf. Rep. No. 122, 100th Cong., 1st Sess. 33 (1987)). The Department has not encouraged PHAs to establish preferences for units receiving tax credits, a preference also referred to in the Conference Report, because the Department is conducting an evaluation of the low-income tax credit, including the issue of the extent to which the tax credit requires additional assistance. This rule, however, does not limit the ability of PHAs to utilize Section 8 project-based assistance in conjunction with the tax credit.

The Department also encourages PHAs to establish preferences for HUD-insured subsidized multifamily housing projects that are financially troubled and to work closely with their HUD Field Office in this regard. The use of project-based assistance for this purpose may prove very helpful in maintaining the supply of subsidized housing.

Section 882.725 Prohibition Against Rehabilitation With 1937 Act Assistance; Pledge of Agreement or HAP Contract

Section 8(d)(2) of the 1937 Act provides that the owner may not use any assistance provided under the 1937 Act to rehabilitate the structure to which assistance will be attached. Section 882.725(a) implements this prohibition by prohibiting attaching assistance to units that have been in the five years before execution of the Agreement, or will be, rehabilitated with other assistance under the 1937 Act. It also identifies examples of 1937 Act assistance that may not be used to rehabilitate the structure.

Paragraph (a) also prohibits the use of flexible subsidy under 24 CFR 219 to finance the rehabilitation of the units. Under the Flexible Subsidy Program, HUD may provide financial assistance to owners of troubled projects that are assisted by HUD under the Section 236, Section 221(d)(3) Below Market Interest Rate, or Rent Supplement Programs. The assistance is to be used to induce and assist owners to maintain the financial soundness and the low- and moderate-income character of the projects by, among other means, physically upgrading the project. A PHA could attach project-based assistance under this Subpart G to these types of projects in order to induce the owner to rehabilitate the project. The Department believes, however, that each Program, by itself, is a sufficient inducement for owners to rehabilitate projects and that permitting the Programs to be used in conjunction would result in fewer projects being rehabilitated.

Paragraph (b) of § 882.725 sets out the conditions under which an owner may pledge its Agreement to Enter into a Housing Assistance Payments Contract or its Housing Assistance Payments Contract as security for financing. The financing documents may not purport to pledge or give greater rights to any party against the PHA than the contractual rights of the Owner under the Agreement or HAP Contract. The financing documents may not include any requirements inconsistent with the Agreement or HAP Contract. The PHA may not be a party to any of the financing documents and may undertake no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing. No modification or alteration may be proposed or made to the Agreement or HAP Contract.

Section 882.727 Owner Selection of Contractor.

This section contains similar policies to those stated in § 882.504(g) for the Moderate Rehabilitation Program.

Section 882.729 Work Write-Ups and Agreement to Enter into Housing Assistance Payment Contract

The work write-up provisions and the requirements for the Agreement are based on similar provisions in the Moderate Rehabilitation Program, although their presentation has been reorganized. HUD is prescribing no specific form or format for the work write-ups. The PHA has the flexibility to

determine the appropriate content and documentation for the work write-ups.

Increases in initial Contract Rents during rehabilitation are not permitted under this section. They are permitted in the Moderate Rehabilitation Program (see § 882.408(d)). Increases are not appropriate when project-based assistance is involved because the initial Contract Rents are established on the basis of a rent reasonableness test, not on the cost of rehabilitation.

Section 882.731 Rehabilitation Period, and Section 882.733 Rehabilitation Completion

These provisions are modeled on the Moderate Rehabilitation Program, §§ 882.506 and 882.507, respectively.

Section 882.735 Housing Assistance Payments Contract (Contract)

This section sets out HAP Contract requirements that are specific to assistance provided under this Subpart G. It provides more flexibility to PHAs to set the term of the Contract than is provided under the Moderate Rehabilitation Program (see § 882.403(c)). (All Moderate Rehabilitation Contracts have 15 year terms.) With project-based assistance, PHAs may set the term between 2 and 15 years, but the Contract term may not exceed the ACC expiration date for the Funding Source.

The owner may also terminate the HAP Contract after two years. If the owner "opts out," the remaining funding authority would again be available for Certificates and the families that had been receiving project-based assistance may be issued Certificates (see § 882.745(e)).

Section 882.737 Reduction of Number of Units Covered by Contract, Section 882.739 Responsibilities of the PHA, § 882.741 Responsibilities of the Owner, and Section 882.743 Obligations of the Family

These sections simply incorporate by cross-reference pertinent provisions under the Certificate Program and Moderate Rehabilitation Program, without making substantive changes.

Section 882.745 Family Participation

This section implements the Certificate Program tenant selection policies in § 882.209, as modified to take into account the fact that the assistance is likely to be used in projects with occupied units and families are assisted in a specific project under a HAP Contract. Paragraph (b) is intended to ensure that an eligible tenant residing in a unit to be assisted is afforded the opportunity to lease that unit or another assisted unit of appropriate size, regardless of whether the family qualifies for a Federal preference. The Department does not believe that Congress intended that project-based assistance and the Federal preferences interact in a way that could result in the displacement of eligible families from units with project-based assistance, only to fill the vacancies created with other eligible families. In addition, to avoid permanent displacement, the PHA and Owner may not select a unit if the unit is occupied by persons not eligible for admission to the program.

A family that is leasing a unit, with Certificate Program assistance, in a project that is to be rehabilitated with project-based assistance and which chooses to move has the right to continued participation in the Certificate Program provided by § 882.209(m). If such a family signs a lease for a project-based unit, the family would no longer be a participant in the Certificate Program.

Section 882.747 Maintenance, operation, and inspections, Section 882.749 Reexamination of Family income and composition, Section 882.751 Overcrowded and underoccupied units, Section 882.753 Informal review or hearing, and Section 882.755 Grounds for denial or termination of assistance

These sections, in general, either incorporate by cross-reference or restate comparable policies in the Certificate Program or the Moderate Rehabilitation Program.

Section 882.757 Termination of Tenancy

This section incorporates by cross-reference Subpart A of 24 CFR Part 247, Evictions from Certain Subsidized and HUD-Owned Projects, which applies to other project-based rental assistance programs administered by HUD. The section also adds provisions that limit the grounds for terminating tenancy for good cause during the first year of the lease. Part 247 may be obtained from HUD Field Offices.

This rule also makes a conforming amendment to Part 247 by revising § 247.1 and by adding reference in § 247.2(e) to this Subpart G. This rule also makes a technical revision to § 247.2(e) to distinguish between those forms of subsidy that are project-wide and those that apply to particular units within a project.

D. Recent Proposed Rulemaking on Section 16(b) Limitations. Section 16 of the 1937 Act limits the number of families that are lower income but are not very low-income that may be initially assisted under several of the 1937 Act programs, including the Section 8 Certificate Program and this project-based component of that Program. Under section 16(b), admission of non-very low-income families is limited to not more than 5 percent of the dwelling units that become available for occupancy under the affected programs. Section 103(a) of the HCD Act of 1987 amended section 16 to require HUD to establish, as appropriate, differing percentage limitations on admission of these families in the separate assistance programs. On April 29, 1988, at 53 FR 15412, the Department published a proposed rule to implement section 103(a). HUD also published, on the same date, a notice (53 FR 15466) proposing the respective percentage limitations for each of the affected programs. The notice proposed a one percent limitation for the Section 8 Certificate Program. The notice did not separately address project-based assistance. (Section 1001(a) of the 1988 McKinney Act amended section 16, but maintains the requirement for percentages for each program.) HUD invites comment on whether the proposed one percent limitation for the Certificate Program should be revised as a result of implementing this Subpart G. Readers, in considering this issue, should bear in mind that any change in the percentage limitation for the Certificate Program may necessitate a change in the percentage limitation for one or more of the other assistance programs subject to section 16, because the sum of the number of non-very low-income families, resulting from the use of these program-specific percentage limitations, may not exceed 5 percent nationally.

E. Other Information. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule does not alter the amount of funding a PHA may receive. The rule, in accordance with the statutory mandate, merely permits, but does not require, a PHA to attach a portion of the assistance it provides under the Section 8 Certificate Program to units rather than have the assistance move with the families.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule conforms HUD regulations to a statutory requirement to permit PHAs to provide project-based assistance, for projects that are rehabilitated. To the extent that particular revisions have altered responsibilities, these revisions are in response to statutory changes and have increased the discretion of the non-Federal governmental entities.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule concerns only a PHA's discretion to attach Certificate Program assistance to units. It does not affect the terms and conditions under which a family may qualify for assistance under the Certificate Program. The Certificate Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the OMB Control Number 2502–0388.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

New requirements applicable program ref.	Description of information collection	Form used	No. of respondents + No. of responses per respondent	Hours per response + total annual burden hours	Average cost per PHA or owner per hour	Estimated cost annually
882.707—PHA application for HUD approval to attach assistance to units.	Total No. of units; units proposed for project—based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP contract.	No prescribed form.	200 PHAs	2 hrs. (400 hours)	$13.00 (average cost per hr. for PHA mgmt. staff).	$5,200.00
882.721(a)(2)—Special rent adjustment.	Special adjustments—financial statements submitted by owner to support request for rent increase.	No prescribed form.	10 owners	2 hrs. (20 hrs.)	$13.00 (average cost per hr. for owner property mgmt. staff).	260.00
882.729(a)—Work write-up requirement.	Work write-ups prepared by owners.	No prescribed form.	200 owners	5 hrs. (1,000 hrs.)	$13.00	13,000.00
882.731(d)—Notification of families on waiting list + vacancies.	Notification of families on waiting list of vacant units.	No prescribed form.	50 projects	½ hr. per property (25 hrs.).	$13.00	325.00
882.733(a) + (b)—Owner notification of completion.	Notification and evidence of completion submitted by owner.	Owner certification and certificate of occupancy.	200 owners	5 hrs. (1,000 hrs.)	$13.00	13,000.00
882.723(a)—PHA selection of units.	Adoption of written selection policy.	No prescribed form.	200 PHAs	5 hrs. (1,000 hrs.)	$13.00	13,000.00

New requirements applicable program reference	Description of information collection	Form used	Estimated No. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.715(b)(1)(ii)—relocation.	Relocation notice to family	Letter	10 owners	4 hrs. (40 hrs.)	$13.00	$520.00
882.719(a)(2)—FMR exceptions.	Approval of rents up to 110 percent FMR.	Log or other control mechanism.	40 PHAs	5 mins. or .083 hr. (3.3 hrs.).	13.00	43.00
882.719(a)(3) and (4)—FMR exceptions.	Requests for FMR exception up to 120 percent FMR.	Letter	10 PHAs	8 hrs. (80.00 hrs.)	13.00	1,040.00
882.719(b)—rent reasonableness.	Certification of rent reasonableness (rents are established by projects and not by units.).	No prescribed format for certification.	200 projects	5 mins. or .083 hr.) (16.7 hrs.).	13.00	217.00
882.725—pledging contracts.	Owner submittal of financial documents if pledging agreement or HAP contract as security for financing and PHA review.	Lender documents	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.733 delayed completion.	Written agreement pertaining to items of delayed completion.	No prescribed format	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.735 HAP contract	HAP contract	Prescribed format	200 owners and 200 PHA's.	¼ hr. (50 hrs.) ¼ hr. (50 hrs.)	13.00 13.00	[1] 650.00 [2] 650.00

New requirements applicable program reference	Description of information collection	Form used	Estimated No. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.719(b)(2) HUD approval of rents.	PHA submittal of contract rents for projects of 50 or more units.	Letter	25 PHA's	¼ hr. (6.25 hrs.)	13.00	81.00
882.713(b)(6) eligible properties.	Flood hazards	Record of observation of insurance policy.	25 PHA's	¼ hr. (6.25 hrs.)	13.00	81.00
882.713(c) eligible property.	Highrises ineligibility	Leter request	5 PHA's	¼ hr. (1.25 hrs.)	13.00	16.00
882.717(c)(7) other Federal requirements.	Davis-Bacon	SF308, HUD 4230A, WH Pub 1321, WH-347, WH-348, HUD-11.	150 owners	40 hrs. (6,000 hrs.)	13.00	78,000.00
882.717(b) other Federal requirements.	NEPA and historic preservation.	File documentation	100 PHA's	4 hrs. (400 hrs.)	13.00	5,200.00

[1] Owners.
[2] PHA's.

This rule was listed as Sequence Number 974 in the Department's Semiannual Agenda of Regulations published on October 24, 1988, (53 FR 41974, 41993) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 882

Grant programs—Housing and community development, Housing, Low and moderate income housing, Mobile homes.

24 CFR Part 888

Rent subsidies.

Accordingly, the Department amends 24 CFR Parts 247, 882, and 888, as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR Part 247 continues to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); Secs. 211, 221, and 236 National Housing Act (12 U.S.C. 1715b, 1715*l*, and 1715z–1); Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section. 247.1 is revised to read as follows:

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted with tenant-based assistance under the Section 8 Existing Housing Certificate or Housing Voucher Program is not subject to this part.)

3. Section 247.2(e) is revised to read as follows:

§ 247.2 Definitions.

* * * * *

(e) "Subsidized project" means a multifamily housing project (with the exception of a project owned by a cooperative housing mortgagor corporation or association) that receives the benefit of subsidy in the form of: below-market interest rates under section 221(d) (3) and (5), interest reduction payments under section 236 of the National Housing Act, or below market interest rate direct loans under section 202 of the Housing Act of 1959. For purposes of this Part 247 "subsidized project" also includes those units in a housing project that receive the benefit of rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; or housing assistance payments through: Project-Based Assistance under the Section 8 Certificate Program (24 CFR Part 882, Subpart G), Section 8 in connection with Section 202 Loans for Housing for the Elderly or Handicapped (24 CFR Part 885), the Section 8 Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) or the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

4. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. The table of contents for Part 882 is revised by adding at the end a new table of contents for Subpart G to read as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

* * * * *

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

Sec.
882.701 Purpose and applicability.
882.703 Additional definitions.
882.705 Information to be submitted to HUD by the PHA.
882.707 HUD review of PHA plans to attach assistance to units.
882.709 Annual Contributions Contract; schedule of leasing.
882.711 Housing quality standards.
882.713 Eligible and ineligible properties; rehabilitation requirement.
882.715 Relocation.
882.717 Other Federal requirements.
882.719 Initial Contract Rents.
882.721 Contract Rent adjustments.
882.723 PHA selection and initial inspection of units.
882.725 Prohibition against rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.
882.727 Owner selection of contractor.
882.729 Work write-ups, Agreement to Enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.
882.731 Rehabilitation period.
882.733 Rehabilitation completion.
882.735 Housing Assistance Payments Contract (Contract).
882.737 Reduction of number of units covered by Contract.
882.739 Responsibilities of the PHA.
882.741 Responsibilities of the Owner.
882.743 Obligations of the Family.
882.745 Family participation.
882.747 Maintenance, operations and inspections.
882.749 Reexamination of Family income and composition.
882.751 Overcrowded and underoccupied units.
882.753 Informal review or hearing.
882.755 Grounds for denial or termination of assistance.
882.757 Assisted tenancy and termination of tenancy.

6. In § 882.106, paragraphs (a)(2) and (b)(2) are revised, to read as follows:

§ 882.106 Contract rents.

(a) * * *

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (a)(2) of § 882.719, Initial Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

* * * * *

(b) * * *

(2) For an assisted unit that is subject to local rent control, comparable units are rent controlled units. However, for an assisted unit that is not subject to local rent control while it is assisted (regardless of whether the unit would be subject to such control if it were not assisted), comparable units are units that are not subject to local rent control.

* * * * *

7. In Part 882, a new Subpart G is added to read as follows:

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

§ 882.701 Purpose and applicability.

(a)(1) This Subpart G establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds provided to the PHA for its Section 8 Certificate Program. This Subpart G implements section 8(d)(2)(A) of the 1937 Act which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to rehabilitate the structure *other than* with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to upgrade substandard rental housing stock, and make it available to lower income families at rents within the Section 8 Existing Housing Fair Market Rents.

(2) This Subpart G refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under Subparts A, B, C, and F of this Part and also by the Housing Voucher Program under 24 CFR Part 887. With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted family. If the Family moves out of a unit, the assistance contract terminates. And, the family may may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction.

(b) Except as otherwise expressly modified or excluded by this Subpart G, all provisions of Subparts A and B of this Part 882 apply to project-based assistance under this Subpart G.

(c) The following sections in Subparts A and B of this Part 882, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this Subpart G: § 882.103, *"Finders-Keepers" policy;* § 882.208, *Activities to encourage participation by Owners and others;* and § 882.209(m), *Continued participation when Participant Family moves.* Other sections in this Subpart G identify other tenant-based provisions of Subparts A and B that do not apply to project-based assistance under this Subpart G.

§ 882.703 Additional definitions.

The following definitions apply to assistance subject to this Subpart G, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract (Agreement). As defined in § 882.402.

15-Percent Limit. Fifteen percent of the total of the number of units reserved by HUD for a PHA's Section 8 Certificate Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 constitutes a single pre-Federal fiscal year 1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

§ 882.705 Information to be submitted to HUD by the PHA.

(a) *Requirements.* A PHA may attach assistance to units in accordance with this Subpart G if:

(1) The number of project-based units in the PHA Certificate Program does not exceed the 15-Percent Limit.

(2) The unit sizes for units to which assistance will be attached are consistent with the unit size distribution for the Funding Source.

(3) The rehabilitation period and HAP Contract term are within the ACC term for the Funding Source.

(b) *PHA submission.* Before entering into any Agreements for project-based assistance, the PHA must submit the following information to the HUD Field Office for review. The PHA submission need not specify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently reserved for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated rehabilitation periods and termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.707 HUD review of PHA plans to attach assistance to units.

(a) *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under § 882.705(b) only to determine whether the requirements of § 882.705(a) are satisfied.

(b) *Notice to PHA.* (1) If the requirements of § 882.705(a) are satisfied, the Field Office shall approve the PHA application.

(2) The Field Office shall notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under § 882.705(b) (date

of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the application is approved, the Field Office shall notify the PHA that the PHA may proceed with execution of Agreements for project-based assistance. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of § 882.705(a) are not satisfied, the Field Office shall not approve the PHA application. The Field Office shall notify the PHA by letter of the reasons for disapproval.

§ 882.709 Annual Contributions Contract; schedule of leasing.

Section 882.206, *Annual Contributions Contract; schedule of leasing*. Applies. With respect to units assisted under this Subpart G, the Field Office may authorize the extensions of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the rehabilitation of the units.

§ 882.711 Housing quality standards.

Section 882.404(b), *Site and neighborhood-performance requirements*, applies, in addition to the housing quality standards in § 882.109.

§ 882.713 Eligible and ineligible properties; rehabilitation requirement.

(a) Section 882.110, *Types of housing*, does not apply. Existing structures of various types may be appropriate for attaching assistance to the units under this Subpart G, including single-family housing and multifamily structures. To be an eligible property, the property must require rehabilitation involving a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure;

(3) Make improvements to the property essential to permit use of the property by handicapped persons; or

(4) Convert or merge units to provide housing for large Families.

(b) A PHA may not attach assistance under this Subpart G to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Shared housing, nursing homes, and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care facilities;

(4) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions.

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barrier Resources Act; or

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) A PHA may attach assistance under this Subpart G to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for the PHA's project-based assistance, in whole or in part, and need not review each building on a case-by-case basis.

(d) A PHA may attach assistance to units under this Subpart G for use as single room occupancy (SRO) housing only if—

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

(e) Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this Subpart G.

(f) For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this Subpart G is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this Subpart G).

(g) In no event may any occupant of a unit with project-based assistance under this Subpart G receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.715 Relocation.

(a) *Prohibition against permanent displacement.* Rehabilitation of units to be subsidized with assistance under this Subpart G may not result in the permanent displacement of residential tenants from the structure or complex.

(b) *Temporary relocation.* The following policies apply to temporary relocation of tenants. The policies apply only to lawful tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's proposal to the PHA. The following policies do not apply to tenants who commence occupancy after the Owner's submission of a proposal if, before they commence occupancy, they are provided adequate notice from the Owner of the impending rehabilitation and possible relocation, or whose tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does not include expiration of the lease term or terminations because of Owner participation in the program.)

(1) Tenants may not be required to move temporarily from the property (building or complex) unless:

(i) The Owner has given the tenants adequate, advance written notice and appropriate advisory services;

(ii) Decent, safe, and sanitary temporary housing is available;

(iii) The temporary relocation period will not exceed 12 months; and

(iv) Tenants will receive reimbursement from the Owner for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(2) The PHA is responsible for ensuring that all the relocation requirements are met. Preliminary or ongoing administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under the program.

(3) Tenants who do not believe they have received relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and must be given an informal hearing on this appeal.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.717 Other Federal requirements.

(a) Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

(b) Activities under this Subpart G are subject to HUD environmental regulations at 24 CFR Part 50. PHA's shall assist HUD in ensuring compliance with Part 50 requirements as follows:

(1) A PHA may authorize rehabilitation of a project in connection with project-based assistance approved by HUD under § 882.707 without further HUD approval only if the PHA documents in its file why the rehabilitation activity will not:

(i) Exceed the thresholds in § 50.20 (a) or (c) of this title for categorical exclusion from the NEPA requirements of Part 50 of this title. However, the PHA must notify HUD if it has reason to believe that notwithstanding inclusion in these categorical exclusion thresholds, the project might have a significant environmental effect because of extraordinary circumstances; in that case, HUD shall review the project and the PHA must await approval to proceed under paragraph (b)(2) of this section;

(ii) Based on information from the State Historical Prevention Officer, involve alterations to a property that: is listed on the National Register of Historical Places; is located in an historic district or is immediately adjacent to a property that is listed on the Register; or is deemed by the State Historic Preservation Officer to be eligible for listing on the Register. A PHA is not required to contact the State Historic Preservation Officer if it documents in its file:

(A) For any property that involves only interior rehabilitation, that the property is not on the National Register of Historic Places and is not 50 years old or older; or

(B) For any property that involves exterior rehabilitation, that the property and all immediately adjacent properties are not on the National Register of Historic Places and are not 50 years old or older;

(iii) Take place in any 100-year floodplain designated by map by the Federal Emergency Management Agency; or

(iv) Conflict with HUD environmental standards in 24 CFR Part 51 or with the State's Coastal Zone Management plan.

(2) If further HUD approval is required under paragraph (b)(1) of this section, a PHA may authorize rehabilitation of a project in connection with project-based assistance only if:

(i) The PHA requests HUD to perform an environmental review of the project under Part 50 of this title, including the applicable related laws and authorities under § 50.4, HUD completes the environmental review required by Part 50, and HUD notifies the PHA that it may proceed; or

(ii)(A) The PHA informs HUD that an environmental review of the area in which the proposed rehabilitation is to be located:

(*1*) Was previously completed for the purposes of another HUD program under 24 CFR Part 50 or 58; and

(*2*) Addressed properties, activities, and effects comparable to those proposed for assistance under this part;

(B) HUD finds that the prior review applies to the proposed activities; and

(C) HUD notifies the PHA that it may proceed.

(c) The PHA and Owner must agree to comply with the requirements of the following, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR Part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.719 Initial Contract Rents.

Section 882.106, *Contract Rents*, does not apply.

(a) *Fair Market Rent and Agreement limitation.* (1) The initial Contract Rent plus any applicable Utility Allowance (Gross Rent) for any unit approved under this Subpart G shall not exceed the Section 8 Existing Housing Fair Market Rent applicable to the unit on the date the Agreement is executed, except as provided in this paragraph (a). (See also § 882.729(c), *Contract Rents in Agreement.*)

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (a)(2) of § 882.106, Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in the maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum

Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section, except for the last sentence of that paragraph.

(b) *Rent reasonableness limitation.* Because the Fair Market Rents are established for a geographic area, within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit.

(1) The PHA shall certify for each unit it approves for project-based assistance under this Subpart G that the initial Contract Rent for the rehabilitated unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) If a PHA proposes to project-base assistance for fifty or more units, the PHA must obtain HUD Field Office approval of the Contract Rents before executing the Agreement.

(3) For a rent-controlled unit, comparable units must be units that are rent-controlled; for a unit that is not subject to rent control, comparable units must be units that are not rent-controlled.

(c) *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(d) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(2) A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent, or the Family's income eligibility.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(e) *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraphs (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e. 90 percent) of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(f) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.721 Contract Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a)(1) and (a)(2) of this section, upon request of the Owner. The unit, however, must be in Decent, Safe, and Sanitary condition, and the Owner must otherwise be in compliance with the terms of the Lease and the Contract. Subject to § 882.719(b) (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (Part 888 of this chapter) most recently published by HUD in the **Federal Register.**

(ii) Contract Rents may be adjusted upward or downward, as may be appropriate. In no case, however, shall the adjusted rent be less than the Contract Rent on the effective date of the Contract (subject to post-audit change of Contract Rent in accordance with HUD requirements, including the correction of errors in establishing the initial Contract Rent).

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in actual and necessary expenses of owning and maintaining the unit that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided in paragraph (a)(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.719(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.723 PHA selection and initial inspection of units.

(a) *PHA selection policy.* The PHA must adopt a written policy establishing criteria and procedures for selecting units to which assistance is to be attached under this Subpart G and must make this policy known to interested Owners. A PHA must select units in accordance with its written selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, and for units to be used as limited equity cooperatives.

(b) *Initial inspection and determination of unit eligibility.* (1) Before selecting a unit, the PHA must inspect the property to determine that the property meets the $1000 per assisted unit rehabilitation requirement under § 882.713(a). If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in § 882.711 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement.

(2) In addition to ascertaining whether the property meets the above repair requirement, the PHA must also consider whether the property is eligible housing within the meaning of § 882.713; meets the other Federal requirements in § 882.717 and the site and neighborhood standards cross-referenced in § 882.711; can be repaired without causing permanent displacement (see § 882.715); and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 887.725. The PHA must also determine the number of current tenants that are lower income families.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.725 Prohibition against rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.

(a) Assistance may not be attached to any unit which was in the five years before execution of the agreement, or will be, rehabilitated with other assistance under the U.S. Housing Act of 1937 (e.g., public housing (development or modernization), rental rehabilitation programs under 24 CFR 511, housing development grants under 24 CFR 850, or other Section 8 programs). In addition, a unit to which assistance is to be attached under this Subpart G may not be rehabilitated with flexible subsidy assistance under Part 219 of this chapter. HUD may approve attachment of assistance to a unit rehabilitated with public housing modernization funds before conveyance to a resident management corporation if attachment of project-based assistance would facilitate sale of the public housing project to the corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

(b) If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that:

(1) The financing documents do not purport to pledge or give greater rights or payments to any party against the PHA than are provided to the Owner under the Agreement or HAP Contract and do not contain any requirements inconsistent with the Agreement or HAP Contract;

(2) The PHA is not a party to any of the financing documents and undertakes no obligations (other than those already specified under the Agreement or HAP Contract) in connection with the financing; and

(3) No modification or alteration is proposed or made to the Agreement or HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388.)

§ 882.727 Owner selection of contractor.

The Owner is responsible for selecting a competent contractor to undertake the rehabilitation. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR Part 24 or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5. The PHA must promote opportunities for minority contractors to participate in the program.

§ 882.729 Work write-ups, Agreement to Enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.

(a) *Work write-ups.* The Owner must prepare work write-ups and, where determined necessary by the PHA, specifications and plans. The PHA has flexibility to determine the appropriate documentation to be submitted by the Owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the PHA under § 882.723(b)(1).

(b) *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this Subpart G. The Agreement must be executed before the start of any rehabilitation. Under the Agreement, the Owner agrees to complete rehabilitation of units in accordance with the work write-ups, as approved by the PHA. These work write-ups must be attached to the Agreement as an exhibit.

(c) *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.719. *Initial Contract Rents*) that will apply to the units after they are rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as reduced under § 882.713(c), shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.721).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.731 Rehabilitation period.

(a) *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The PHA must inspect during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the levels of workmanship and materials specified in the work write-ups.

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from the work-specified in the Agreement that would alter the design or the quality of the required rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on a reduction of the initial Contract Rents in the amount determined by the PHA. If the Owner makes any changes without prior PHA approval, the PHA may reduce Contract Rents in the amount determined by the PHA, and may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason.

(d) *Notification of vacancies.* Sixty days before the scheduled completion of

the rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also §§ 882.723 and 882.745).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388)

§ 882.733 Rehabilitation completion.

(a) *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To evidence completion of the work the Owner must furnish the PHA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) The unit(s) is in good and tenantable condition;

(iii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iv) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(v) Any unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(vi) The Owner has complied with any applicable labor standards requirements in the Agreement.

(c) *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality Standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388.)

§ 882.735 Housing Assistance Payments Contract (Contract).

(a) *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this Subpart G.

(b) *Term of Contract.* The Contract term may not be less than two years and may not extend beyond the ACC expiration date for the Funding Source. Within these limitations, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1988, that Contract could have a fixed term of 2 to 15 years. The Contract shall include a provision giving the Owner the right to terminate the Contract at the Owner's sole option after two years.

(c) *Renewal of Contracts.* A Contract that is attached to a structure under this Subpart G shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

(d) *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under § 882.733. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502–0388.)

§ 882.737 Reduction of number of units covered by Contract.

Section 882.512, *Reduction of number of units covered by Contract,* applies.

§ 882.739 Responsibilities of the PHA.

Section 882.116, *Responsibilities of the PHA,* applies, except paragraphs (d), (f), and (j). The PHA must also:

(a) Brief the Family in accordance with § 882.745(d);

(b) Obtain requests for participation from Owners, and select projects;

(c) Establish initial Contract Rents in accordance with § 882.719, approve rent adjustments, and make rent reasonableness determinations;

(d) Inspect the project before, during, and upon completion of, rehabilitation; and

(e) Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 882.741 Responsibilities of the Owner.

Section 882.117, *Responsibilities of the Owner,* applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

§ 882.743 Obligations of the Family.

Section 882.118, *Obligations of the Family,* applies; however, § 882.118(a)(4) and (5), which pertain to shared housing do not apply (because shared housing is not an eligible housing type under this Subpart G).

§ 882.745 Family participation.

Section 882.209, *Selection and participation,* does not apply, except as it is expressly made applicable by this section.

(a) *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (4)(ii), (4)(iii), and (6). For purposes of this Subpart G, a Family becomes a participant when the Family and Owner execute a Lease for a unit with project-based assistance.

(b) *Determining eligibility of in-place Families.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the waiting list. (The PHA is authorized, under § 812.3(b)(1) of this chapter and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of the conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the Owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this Subpart G keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the Owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

(d) *Briefing of Families.* When a Family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and Contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires;

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition;

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under § 882.753), and of the procedure for requesting a hearing.

(e) *Continued assistance for a Family when the Contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unles the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with § 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

(f) *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner,* applies.

(g) *Lease requirements.* The Lease between the Family and the Owner must be in accordance with § 882.757 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

§ 882.747 Maintenance, operation and inspections.

Section 882.211, *Maintenance, operation and inspections,* does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections,* apply.

§ 882.749 Reexamination of Family income and composition.

Section 882.212, *Reexamination of Family income and composition,* does not apply. Instead, § 882.515, *Reexamination of Family income and composition,* applies.

§ 882.751 Overcrowded and underoccupied units.

(a) Section 882.213, *Overcrowded and underoccupied units,* does not apply.

(b) If the PHA determines that a Contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded or that Contract unit is larger than appropriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for this reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA (if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in the PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contract be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that the PHA judges to be acceptable.

§ 882.753 Informal review of hearing.

(a) Section 882.216(a), *Informal review of PHA decision on application for participation,* applies, except §§ 882.216(a)(3)(ii), (iii), and (iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

(b) Section 882.216(b), *Informal hearing on PHA decision affecting participant Family,* applies, except § 882.216(b)(1)(iv) does not apply because there is no right to continued

participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

§ 882.755 Grounds for denial or termination of assistance.

Section 882.210, *Grounds for denial or termination of assistance*, applies, except that for purposes of this Subpart G the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

§ 882.757 Assisted tenancy and termination of tenancy.

(a) Section 882.215, *Assisted tenancy*, does not apply.

(b) *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

(c) *Termination of tenancy.* (1) Subpart A of Part 247 of this title, *Eviction from Certain Subsidized and HUD-Owned Projects*, applies, except § 247.4(d).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good cause" for termination of tenancy (under § 247.3(a)(3)).

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

8. The authority citation for 25 CFR Part 888 continues to read as follows:

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 888.111 is revised to read as follows:

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRS) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program (Part 882, Subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Certificate Program (Part 882, Subpart F), the Section 8 Moderate Rehabilitation Program (Part 882, subparts D and E), Section 8 existing housing project-based assistance (Part 882, Subpart G), and Section 8 existing housing assisted under part 886, Subparts A and C (Section 8 loan management and property disposition programs).

Dated: December 28, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

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Part III

Environmental Protection Agency

40 CFR Parts 122, 123, 124, 125, 130 and 403

National Pollutant Discharge Elimination System Permit Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, 125, 130 and 403

[FRL 3405-2]

National Pollutant Discharge Elimination System Permit Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 4, 1987, Congress enacted the Water Quality Act of 1987 (WQA), which revised the Clean Water Act (CWA). This new statute makes a number of changes to EPA's existing National Pollutant Discharge Elimination System (NPDES) permit and pretreatment programs under section 402 of the CWA, and includes modifications to other CWA provisions as well. Today's rules revise EPA's existing NPDES, pretreatment, and water quality regulations to reflect statutory changes which supplement or supersede existing regulatory requirements.

These rules also change existing NPDES regulations to reflect recent court decisions and contain corrections of typographical errors, incorrect cross-references, and inadvertent omissions or additions of language in previous regulations implementing the NPDES permit program. These earlier regulations were published at 50 FR 6939 (February 19, 1985), 49 FR 37998 (September 26, 1984), 49 FR 31840 (August 8, 1984), 48 FR 39611(September 26, 1983), 48 FR 14146 (April 1, 1983), and 47 FR 53685 (November 26, 1982).

EFFECTIVE DATE: These rules become effective January 4, 1989.

ADDRESSES: Comments should be addressed to: David Greenburg, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The supporting information and all comments on this rulemaking will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Greenburg at (202) 475-9524, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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I. Background

On February 4, 1987, Congress enacted the Water Quality Act of 1987 (WQA), which amends the Clean Water Act (CWA). The Water Quality Act makes a number of adjustments to the NPDES program.

Many of the changes necessitate revisions to the NPDES regulations. This rule contains changes which incorporate specific provisions from the Water Quality Act into existing NPDES regulations. Today's rulemaking also makes revisions to the NPDES regulations in response to recent court decisions by the U.S. Court of Appeals for the District of Columbia Circuit.

In addition to today's final rule, EPA is also preparing companion rulemakings which will propose modifications to existing regulations to implement other provisions of the WQA and court orders. These companion proposals will supplement the new provisions, as well as codify the remaining statutory language. EPA has codified in this rulemaking only those statutory provisions which can stand alone and out of context. In some cases, implementation of specific provisions of the WQA amendments will involve both codification of explicit statutory requirements and notice and comment rulemaking to implement those parts of the statute where the Agency has discretion to act. Where these are inextricably intertwined, EPA has decided to defer codification in favor of a combined notice and comment rulemaking. This will avoid confusion which may arise from a piecemeal approach. Because the principal purpose of today's rule is to codify the new statutory requirements of the WQA, today's rulemaking is properly classified as an interpretive rule, *see, United Technologies Corporation v. EPA*, 821 F. 2d 714, 718 (D.C. Cir. 1987), in that it "simply states what (EPA) thinks the [underlying] statute means and only 'reminds' affected parties of existing duties." quoting *Citizens to Save Spencer County v. EPA*, 600 F. 2d, 844, 876 n. 153 (D.C. Cir. 1979). It does not intend "to create new law, rights or duties." *Id.*

If the rule is based on specific statutory provisions, and its validity stands or falls on the correctness of the agency's interpretation of those provisions, it is an interpretative rule. If, however, the rule is based on an agency's power to exercise its judgment as to how best to implement a general statutory mandate, the rule is likely a legislative one. *United Technologies, supra*, at 719-20.

Today's final rule conforms to the Court's definition of an interpretative rule by revising existing regulations to implement the new statutory provisions. In most instances, EPA has codified the relevant statutory language. EPA recognizes that many of these provisions raise interpretive questions. EPA has avoided adding regulatory language to resolve interpretive questions. This is in keeping with EPA's view that the principal purpose of today's rule is to codify the new statutory requirements. EPA has articulated in the preamble, however, its view of what Congress intended these new requirements to be. Such statements of statutory interpretation are derived from legislative history and EPA's view of Congressional purposes for the new requirements.

The Administrative Procedure Act (APA) specifically excludes "interpretative" rules from its notice and comment procedures. 5 U.S.C. 553(b)(A) (1982). In addition, while EPA recognizes the importance of public comment in its rulemaking activity, the Agency believes that notice and comment is unnecessary because the "good cause" exception to the APA notice and comment requirement is applicable. The Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, specifically recognizes that there will be situations where an administrative agency need not go through a round of public comment before issuing a rule. Under 5 U.S.C. 553(b)(B), a rule is exempt from notice and public comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest."

The Administrative Conference of the United States has summarized the case law on the issue of the "good cause" exemption, saying in relevant part that the exemption is warranted where: "* * * delay in promulgation will cause an injurious inconsistency between an agency rule and a newly enacted statute or judicial decision." ACUS Rec. 83-2: The "Good Cause" Exemption from APA Rulemaking Requirements, 1 CFR Part 305.83-2 (1984).

EPA believes the good cause exemption from the notice and comment requirements of the EPA is properly invoked here for the following reasons. The limited objective of this rule is to assure that the Code of Federal Regulations (CFR) accurately reflects the current requirements of the Water Quality Act. This serves important public policy and regulatory objectives. It eliminates any confusion on the part of the regulated community, which relies on the CFR as an accurate reflection of the controlling statutory requirements. It assures that the regulated community is aware of the new requirements and fully understands the impact of the requirements upon permitted facilities. In addition, many permits include citations to specific provisions of the federal regulations. Many State regulatory programs are modeled after EPA's regulations; some States even incorporate EPA's regulations by reference.

Today's rulemaking will eliminate many questions concerning implementation of the WQA, and will clarify in a number of areas which parts of the existing regulations are superseded by new requirements.

Moreover, it is essential to the Agency's enforcement program that the CFR accurately reflect the statutory requirements imposed on the regulated community by the WQA. Immediate codification of WQA requirements will put regulated parties on notice of their legal responsibilities and potential liabilities, without the potential for confusion that might arise in the event that a conflict is perceived between the requirements of the Act and those contained in the CFR. By reducing confusion about the program and clarifying permittees' responsibilities under the CWA, EPA is ultimately serving the basic purposes of the statute—the protection of human health and the environment. It also promotes certainty and encourages efforts by responsible segments of the regulated community to move ahead to meet their responsibilities. By the same token, it prevents other members of the regulated community from using confusion as an excuse not to comply with the law.

For the reasons discussed above, EPA has concluded that to the extent this rule is deemed a legislative rule rather than an interpretive rule there is good cause to issue it without receiving public comment in accordance with 5 U.S.C. 553(b)(B), because under the circumstances, notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. For the same reasons, EPA believes that it has good cause to make today's rule immediately effective, as provided in 5 U.S.C. 553(d)(3).

II. Analysis of Regulatory Changes

A. Definitions

1. Point Source

Prior to passage of the WQA, the definition of "point source" in the CWA was very broad, encompassing any discharge of pollutants from a "discernible, confined and discrete conveyance." EPA has in practice interpreted this definition to include landfill leachate collection systems, since they channel runoff from landfills. Section 507 of the WQA confirmed EPA's interpretation by amending the statutory definition of point source to explicitly include landfill leachate collection systems. Accordingly, today's rulemaking revises EPA's existing definition of point source in § 122.2 by inserting the phrase "landfill leachate collection system."

2. Agricultural Storm Water Discharges

Section 503 of the WQA amended section 502(14) of the CWA to expressly exclude from the definition of point source agricultural storm water discharges. Thus, these discharges are not subject to NPDES permit requirements. Today's rule amends the existing definition of point source in § 122.2 to incorporate this statutory exclusion.

EPA's regulations had previously excluded certain agricultural and silvicultural discharges, which EPA defined as non-point, from the requirement to obtain an NPDES permit (see § 122.3(e)). This exclusion had been challenged by the Natural Resources Defense Council (NRDC) in *NRDC v. EPA*, No. 80-1607 (filed June 3, 1980) as being beyond EPA's authority. In view of the new statutory exclusion for agricultural storm water discharges, the U.S. Court of Appeals for the District of Columbia Circuit dismissed NRDC's challenge to § 122.3(e) as moot.

Today's revision clarifies that the exclusion in § 122.3(e) includes agricultural and silvicultural storm water discharges. Silvicultural point source discharges under § 122.27 are still required to obtain NPDES permits. For consistency, EPA is also adding a reference to § 122.3(e) in the definition of point source.

3. State

Section 502 of the WQA amends the definition of "State" in § 502(3) of the CWA to include the Commonwealth of the Northern Mariana Islands. The rule promulgated today implements this statutory provision by revising EPA's existing definition in 40 CFR §§ 122.2 and 124.2 to include the Commonwealth of the Northern Mariana Islands. The Northern Marianas will be treated like any State under the Clean Water Act and can apply to administer the NPDES program.

B. Storm Water Permit Requirements

Sections 401 and 405 of the WQA address the NPDES permit program for storm water discharges and amend section 402 of the CWA by modifying paragraph (1) and adding a new paragraph (p). Today's rule incorporates both the statutory language of section 402(1)(2) relating to storm water runoff from oil, gas, and mining operations as well as the provisions of section 402(p)(1)-(p)(3) regarding municipal and industrial storm water discharges. This rulemaking codifies these WQA amendments as new regulatory provisions at § 122.26. The previous storm water provisions at § 122.26 and accompanying deadline provisions at § 122.21(c)(2) were recently withdrawn by the Agency in response to a D.C. Circuit Court of Appeals order in *NRDC v. EPA*, No. 80-1607 (December 4, 1987) (See 53 FR 4157, February 12, 1988). EPA has recently proposed NPDES application and designation requirements for storm water discharges under sections 402(p) (4) and (6) at 53 FR 49416 (December 7, 1988).

1. Section 402(1)(2)

Section 402(1)(2) prohibits EPA from requiring an NPDES permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows

which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and, which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. Today's rule codifies this limitation on NPDES permitting authority at § 122.26(a)(3).

The legislative history accompanying this provision explains that "[w]ith respect to oil or grease or hazardous substances, the determination of whether storm water is contaminated by contact with such materials, as established by the Administrator, shall take into consideration whether these materials are present in such storm water runoff in excess of reportable quantities under section 311 of the Clean Water Act or section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or in the case of mining operations, above natural background levels." (Conference Report, H 10574 *Cong. Rec.*, (daily ed. Oct. 15, 1986). The Agency will address the scope of this provision in future rulemaking.

2. Section 402(p)

Section 402(p) contains a number of important provisions and requirements relating to the issuance of NPDES permits for municipal and industrial storm water discharges. Today's rule codifies subsection 402(p)(1) at § 122.26 and provides that neither federally-administered nor approved State NPDES programs may require a permit for discharges composed entirely of storm water prior to October 1, 1992, unless the discharge falls within a list of five exceptions set forth in subsection 402(p)(2). These exceptions are also codified in today's rule and include the following storm water discharges:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge which the Administrator or the State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

The last exception at 402(p)(2)(E) provides the Administrator or the State, as the case may be, with authority to designate storm water discharges for a permit on a case-by-case basis. This authority can be used to require a designated storm water discharge associated with industrial activity or a discharge from a municipal separate storm sewer system serving a population of greater than 100,000 to obtain a permit prior to the development of permit application requirements for the particular class of storm water discharges in question. In addition, the authority applies to designated storm water discharges that are not otherwise required to obtain a permit prior to October 1, 1992 under section 402(p)(1).

In determining that a storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States for the purpose of a designation under Section 402(p)(2)(E) of the amended CWA, the legislative history for the Water Quality Act provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria [of section 402(p)(2)(E)] are met, and should require additional sampling as necessary to determine whether on not these criteria are met." Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, EPA intends to require designated storm water dischargers to submit permit applications in accordance with the requirements of 40 CFR 122.21. The Agency will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollutants to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. As noted above, EPA has proposed a rulemaking to address NPDES application and designation requirements for storm water discharges. These factors are included in that rulemaking.

Until EPA conducts additional rulemaking under § 405 of the Water Quality Act, case-by-case designations of storm water discharges requiring a permit will be modeled on existing regulatory procedures found at § 124.52 [for permits required on a case-by-case basis]. The procedures at § 124.52 require the Regional Administrator to notify the discharger in writing of the decision that the discharge requires a permit and the reasons for the decision. In addition, an application form is to be sent with the notice. Deadlines for submitting permit applications will be established on a case-by-case basis. Although the 60 day period provided for submitting a permit application under § 124.52 may be appropriate for many designated storm water discharges, additional time may be necessary depending upon site specific factors. For example, due to the complexities associated with determining whether a municipal, separate storm sewer system requires a permit, the Regional Administrator may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

The WQA also adds subsection 402(p)(3)(B)(i) to clarify that permits for municipal storm sewer discharges may be issued on a system or jurisdiction-wide basis. Today's rule codifies this clarification at § 122.26(a)(2).

A number of other provisions of Section 402 are not being codified in today's rule but still warrant discussion.

Section 402(p)(4) requires EPA to promulgate final regulations governing storm water application requirements for storm water discharges associated with industrial activity and discharges from municipal storm sewer systems serving a population of 250,000 or more by "no later than two years" after the date of enactment (i.e., no later than February 4, 1989). This provision also requires EPA to promulgate final regulations governing storm sewer permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (i.e., no later than February 4, 1991).

In addition, section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (i.e., no later than February 4, 1990). Permit applications for discharges from medium-sized municipal systems must be filed "no later than five years" after enactment (i.e., no later than February 4, 1992).

NPDES permits for all other storm water discharges are not required until October 1, 1992, unless a permit for the discharge was issued prior to the date of enactment of the WQA (i.e., February 4, 1987), or the discharge is determined to be a significant contributor of pollutants to waters of the United States or is

contributing to a violation of a water quality standard.

In addition, EPA, in consultation with the States, is required under section 402(p)(5) to conduct two studies on storm water discharges. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992 and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. This study was due by October 1, 1988. The second study will establish procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. This study was due by October 1, 1989. Based on the two studies, EPA, in consultation with State and local officials, is required to issue regulations by no later than October 1, 1992 which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. The program must, at a minimum, (A) establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

C. Deadline Extensions

1. Compliance Dates

Section 301 in the WQA revises the compliance deadlines in § 301 of the CWA for the technology-based requirements of the CWA. The NPDES regulations in § 125.3 currently reflect compliance deadline requirements prior to the WQA. Under the existing rules, the compliance date for limits based on best practicable control technology currently available (BPT) is the date of permit issuance. For conventional pollutants subject to limitations based upon best conventional pollutant control technology (BCT) and for all toxic pollutants identified under CWA section 307(a) (listed at 40 CFR 401.15) and subject to limitations based upon best available technology economically achievable (BAT), compliance was required by July 1, 1984. For all other toxic pollutants subject to effluent limitations based on BAT, compliance was required no later than three years after the date such effluent limitations were incorporated into an NPDES permit. For BAT effluent limitations on other pollutants (i.e. nonconventionals), compliance was required no later than three years after the date such effluent limitations were incorporated into an NPDES permit, or July 1, 1984, whichever was later, but in no case later than July 1, 1987.

The WQA revises certain deadlines for compliance with permits containing effluent limitations based upon BPT, BAT and BCT. Compliance with permit effluent limitations established based on BAT or BCT is required as expeditiously as practicable but in no case later than three years after the date such limitations are instituted, and in no case later than March 31, 1989.

The deadline for BPT effluent limitations continues to be July 1, 1977. However, the WQA sets a later deadline where EPA promulgates an effluent limitation after January 1, 1982 and the revised limitation requires a level of control substantially greater or is based on fundamentally different control technology than required in permits issued for the industrial category prior to January 1, 1982. Compliance for this second category of BPT effluent limitations is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989.

For permits based upon best professional judgment (BPJ) issued after enactment of the WQA (February 4, 1987), compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989. For BPJ permits issued before enactment of the WQA, compliance continues to be required in accordance with the Section 301(b)(1)(A), 301(b)(2)(A) and 301(b)(2)(E) deadlines in effect when the permit was issued.

Today's rule implements the statutory amendment by revising EPA's existing § 125.3(a)(2)(i)–(v) to extend the compliance deadline for each of the above mentioned categories.

2. POTW Application Deadline

Section 304 of the WQA reopens, for 180 days after enactment, the deadline for POTWs to apply under section 301(i)(1) of the CWA for extensions of the 1978 date by which secondary treatment and water quality standards in effect prior to 1977, must be achieved. The Administrator may extend this compliance deadline until no later than July 1, 1988. Many eligible POTWs applied for the 301(i) extension in 1977 and 1978. Congress enacted section 304 of the WQA to allow POTWs that did not apply in a timely manner for a 301(i) extension another chance to submit an application. Treatment works on a compliance schedule established by a court order or final Agency (or State) order prior to February 4, 1987 were not eligible to apply for an extension under WQA section 304.

Even though the deadline for this extension is past, EPA is amending the existing regulations to conform to the statute in Section 301(i). This will assure that the regulations accurately reflect the statute. This statutory provision is implemented in today's rule by revising existing §§ 122.21(n)(2) and 122.21(m)(3). Section 122.21(n)(2) is revised to change the POTW filing deadline for a 301(i)(1) extension, from June 28, 1978 to August 3, 1987. Thus, the change in the application deadline effectively changes § 122.21(m)(3) by reopening the time period in which an industrial facility planning to discharge through a municipal treatment works that has requested an extension under 301(i) can apply for a 301(i)(2) extension. The deadline for these industrial dischargers is extended to January 30, 1988 (180 days after the POTW can request a 301(i) extension for delay in construction under § 122.21(n)(2)).

3. Innovative Technology

This codification incorporates WQA changes with respect to facilities proposing to use innovative technology to meet applicable BAT effluent limitations. Prior to passage of the WQA, the deadline for compliance with such effluent limitations by facilities using innovative technology under § 301(k) of the CWA was July 1, 1987. This date is currently found at 40 CFR 125.21, 125.23, 125.24 and 125.27. Section 305 of the WQA amends section 301(k) of the CWA, to allow the Administrator (or the State with an approved program, in consultation with the Administrator) to establish a date for compliance no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable. This codification changes §§ 125.21, 125.23, 125.24, and 125.27 to reflect the statutory change.

Prior to the 1987 amendments, the 301(k) deadline extension was available only for compliance with BAT limits. Many facilities subject to BAT also were required to meet limits for conventional pollutants based upon best conventional pollutant control technology (BCT) and used the same treatment equipment in meeting both limits. These facilities were essentially barred from obtaining 301(k) extensions because of the requirement to meet BCT. The WQA expands the scope of section 301(k) to allow an extension where the permittee

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is using innovative technology for compliance with BCT. EPA is not, however, revising Subpart C of Part 125 to reflect these changes in today's rulemaking. These revisions will be addressed along with a number of additional issues in connection with section 301(k) in subsequent notice and comment rulemaking. In that rulemaking, EPA plans to define the term "significantly greater effluent reduction" for purposes of BCT. As part of that rulemaking, EPA also plans to propose regulations addressing the amendment to section 307(e) of the CWA (§ 309 WQA) which authorizes a compliance deadline extension for indirect dischargers who install an innovative technology. In addition, EPA will address specific substantive criteria for evaluating 301(k) compliance extensions. EPA proposed these criteria in 1985 pursuant to a remand in *NRDC v. EPA*, No. 84–1500 (D.C. Circuit, April 16, 1985). See 50 FR 49904, December 5, 1985. That earlier proposal was not finalized, however, and will be reproposed as part of the upcoming more general notice and comment rulemaking.

D. Industrial Variances

1. General Note on Fundamentally Different Factors Variances

Regulations establishing Fundamentally Different Factors (FDF) variances for BPT, BAT, BCT, and PSES are found at 40 CFR 125, Subpart D and 40 CFR 403.13. In the WQA, the Congress established an explicit statutory scheme for FDFs, as applied to BAT, BCT and PSES. In a future rulemaking, EPA intends to propose amendments to the substantive criteria for FDF variances consistent with the requirements of section 301(n) of the CWA for direct (40 CFR Part 125, Subpart D) and indirect (40 CFR 403.13) dischargers. The Agency will also address the regulatory authority for granting variances from BPT. However, because the legislative history of the WQA indicated that Congress intended the FDF variance provisions to be self-implementing (Conference Report, 132 H.10567, *Cong. Rec.*, Oct. 15, 1986) EPA is using the new FDF statutory criteria under section 306 of the WQA, when appropriate, on a case-by-case basis in addressing FDF variance requests.

2. Application Requirements for Fundamentally Different Factors Variance Requests

The existing NPDES regulation at § 122.21(m)(1) requires that a Fundamentally Different Factors (FDF) variance request be submitted by the close of the public comment period on the draft permit. The existing filing deadline will continue to be used for FDF variance requests from BPT effluent guidelines. However, where variances are requested from best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT), the WQA establishes a new filing deadline in section 301(n)(2) of the CWA. The statute requires submission of an FDF application within 180 days after the date that the limitation from which the variance is sought is established or revised; EPA considers the date of the establishment of such limitation as the date the guideline or standard is published in the **Federal Register**. This is consistent with the Conference Report (132 H.10566, Oct. 15, 1986) which states that "an application under this section shall be submitted within 180 days after the publication of the initial guideline or standard" and EPA's handling of requests for relief under sections 301(c) and 301(g) of the Act (40 CFR 122.21(m)(2)) within 270 days after promulgation of an effluent guideline.

The statute is not clear when BAT and BCT FDF variance requests are due for those effluent guidelines established or revised before February 4, 1987. Such facilities previously were guided by EPA's regulations which, as stated above, allowed FDF requests to be submitted by the close of the public comment period on the draft permit. EPA will provide a period, not to exceed 180 days after publication of this final rule, to allow such facilities to file a request. (Only facilities for which the previously applicable filing deadline has not passed can make these FDF requests. The previously applicable filing deadline is the close of the draft permit's comment period.) This time period mirrors the time period for filing established by the statute, and will allow those whose time period to file a FDF variance request has not otherwise passed an opportunity to file such a request. EPA has modified the second sentence of the previously applicable provision and designated the sentence as § 122.21(m)(1)(ii), to indicate that FDF variance requests shall explain how applicable regulatory and/or statutory criteria are satisfied.

The general pretreatment regulations at 40 CFR 403.13(g) previously also contained application deadlines for FDF variance requests for indirect dischargers. Therefore, EPA has made changes to these regulations, as well, to reflect the statutory provision. Included in these changes is the provision requiring the submission of an application within 180 days after the date an applicable categorical pretreatment standard is established or revised. As indicated above, EPA considers the date of the establishment as the date the standard is published in the **Federal Register**; this is a change from the previous regulatory requirement which was based upon the effective date of the categorical pretreatment standard.

3. Availability of Section 301(g) Variances

Section 302 of the WQA modified section 301(g) of the CWA to limit section 301(g) variance requests to five specific non-conventional pollutants (ammonia, chlorine, color, iron and total phenols (4AAP) (when the Administrator determines total phenols to be a pollutant covered by CWA section 301(b)(2)(F)). Additional non-conventional pollutants may be added to this group by the Administrator in response to petitions, under a new listing procedure specified in section 301(g)(4) of the CWA. Section 122.21(m)(2) is being revised to reflect this amendment. The current regulation does not list the five specific non-conventional pollutants and allows variances "pursuant to section 301(g) of the CWA, because of certain environmental considerations, when those requirements were based on effluent guidelines." The WQA did not revise application deadlines for section 301(g) applications which are based on section 301(j)(1)(B) of the CWA.

It has been brought to the Agency's attention that Congress did not specify how the time limit for filing the petitions for listing referenced above was to be applied to currently-pending 301(g) variance requests. EPA is only aware of one pending 301(g) variance application which requested relief for a non-conventional pollutant which was not one of the five listed pollutants. EPA will deal with this, and any other dischargers in a similarly situated position, on a case-by-case basis.

The WQA specifies deadlines for EPA decisionmaking. For example, section 301(j)(4) requires EPA to make a final decision on 301(g) applications within 365 days of filing a submission under 301(g). Because an application may be filed without being complete, the deadline for decisionmaking could pass without a complete application ever being filed. It is only logical to imply a deadline for completion of the application before EPA's decision must be made. Therefore, EPA is revising § 122.21(m)(2)(i)(B) to clarify that the complete application must be filed in sufficient time, as determined by the Regional Division Director, to allow compliance with the decision timing requirement contained in section 301(j)(4) of the CWA. Generally, this period will require submission of the complete application no later than 180 days before the deadline for EPA to issue a decision.

EPA notes that it proposed, but has not to date finalized, substantive criteria regulations (40 CFR Part 125, Subpart F) for section 301(g) on August 7, 1984 (49 FR 31462).

4. State Concurrence on Fundamentally Different Factors and Section 301(g) Variances

Sections 301(g) and 301(n) of the CWA require State concurrence on sections 301(g) and 301(n) variance approvals. The NPDES regulations at § 124.62(e) are being revised to indicate that EPA will act on FDF or 301(g) variance requests which have been submitted to the State Director only after approval of the request by the State Director. EPA notes that in the case of a State that does not have the NPDES program, the variance request should be submitted to EPA, which will then forward the request to the appropriate State agency for concurrence; State concurrence must be obtained before EPA can approve either a 301(g) or 301(n) variance.

The general pretreatment regulation at § 403.13(k) does not authorize a State Director to forward a FDF variance request for an indirect discharger without a recommendation of approval, which EPA interprets to be the State's concurrence. Therefore, no change has been made to this provision. EPA again notes that in the case of a State that is not approved to administer the pretreatment program, State concurrence must be obtained before EPA will finally approve the FDF variance request.

E. Penalties

The WQA makes a number of changes to the civil and criminal penalty provisions of the CWA and adds an administrative penalty provision. The WQA adds CWA § 405 to the list of sections for which criminal penalties are applicable, and confirms the availability of civil and criminal penalties for violations of pretreatment requirements. Section 313 of the WQA amends CWA § 309(d) to provide that violators of CWA sections 301, 302, 306, 307, 308, 318 or 405, or any condition or limitation in an NPDES permit, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8), are subject to a maximum civil penalty of "$25,000 per day for each violation," in contrast to the previous maximum of "$10,000 per day of such violation."

Section 312 of the WQA amends section 309(c)(1) of the CWA, increasing the penalty for any person who negligently violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8). Negligent violations of these provisions are subject to criminal penalties of $2,500 to $25,000 per day of violation or up to one year in prison, or both. A second offense under these provisions may be subject to penalties of not more than $50,000 per day of violation or imprisonment of up to two years, or both.

Section 312 of the WQA also amends section 309(c) of the CWA by increasing the criminal penalties for knowing violations of sections 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such section in an NPDES permit, or any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8). Knowing violations of these provisions are subject to criminal penalties of $5,000 to $50,000 per day of violation or up to three years in prison, or both. A second offense under these paragraphs may be subject to penalties of not more than $100,000 per day of violation or imprisonment of up to six years, or both.

The WQA also creates a new class of knowing violations. In the event of a knowing violation placing another person in imminent danger of death or serious bodily injury, individuals are subject to penalties of up to 15 years in prison or fines of up to $250,000, or both. Organizations are subject to fines of up to $1 million. Individuals committing a second offense under this paragraph may be subject to penalties of not more than $500,000 or 30 years in prison, or both. Organizations are subject to fines of up to $2 million. Section 309(c)(3)(B)(iii) of the CWA defines the term "organization" for the purpose of this provision.

Section 314 of the WQA adds section 309(g) to the CWA. This provision allows the Administrator to assess administrative penalties against persons violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any such section in a permit issued under section 402. Section 314 also provides administrative penalty authority for violations of State-issued permits under CWA section 404. Today's rulemaking, however, does not address penalty authority for violations of section 404. Section 314 creates two classes of penalties. Penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount not to exceed $125,000.

EPA is revising § 122.41(a) (2) and (3) to reflect these changes. Section 122.41 sets out standard conditions that must be included in all permits. This language merely puts permittees on notice as to the applicable enforcement provisions of the CWA.

Section 312(c)(4) of the WQA increases the maximum penalty for knowingly making any false statements from six months to two years. The existing fine of not more than $10,000 for first time false statements remains unchanged, but maximum penalties are doubled for second offenses. EPA is revising the language set out in § 122.41(j)(5) to reflect the requirements of the WQA.

F. Anti-Backsliding

EPA regulations in § 122.44(l) have generally prohibited the issuance of a permit with limitations less stringent than those in the previous permit, except in certain circumstances. The primary application of these rules has been to prohibit backsliding from permits written on a case-by-case basis under CWA section 402(a)(1) using best professional judgment (BPJ) to less stringent subsequently promulgated effluent limitations guidelines (see § 122.44(l)(2)).

In section 404 of the WQA, Congress added section 402(o) to the CWA to clarify the Congressional intent that backsliding from BPJ limits to such subsequent guidelines was prohibited. Congress also listed several exceptions to the prohibition. In general, these exceptions tracked the existing NPDES anti-backsliding rules applicable to BPJ permits. However, some of the exceptions have been changed or limited by the amendment and today's rulemaking is revising §§ 122.44(l)(2) and 122.62(a) to reflect these differences. Specifically, § 122.62(a)(15) which allowed a BPJ permit to be modified due to excessive costs is not authorized by the statute and is being deleted. The other exceptions in § 122.44(l)(2) are being conformed to the amendment. In addition, EPA is adding the limitation from CWA section 402(o)(3) prohibiting the issuance of a permit less stringent than existing effluent guidelines or

applicable State water quality standards.

The WQA also adds a prohibition against backsliding from water quality-based permits except in limited circumstances. Today's revision does not implement this prohibition. EPA plans to propose rules to implement the prohibition against backsliding from water quality-based permit limits in the near future. EPA's regulation at § 122.44(l)(1) restricts backsliding in cases not covered by the WQA amendments. EPA is not planning any rulemaking to revise this broader prohibition.

G. Inspection and Entry

In Section 310 of the WQA (amending § 308 of the CWA) Congress confirms EPA's practice of allowing contractors to represent the Administrator for purposes of entering and inspecting permitted facilities. The rule promulgated today revises EPA's existing standard permit conditions on entry and inspection under Section 308 (§ 122.41(i) of the regulations) to insert the statutory language from Section 310.

H. Sewage Sludge

Previously, the CWA regulated sludge through the NPDES program only when the sludge was discharged into surface water from a point source. In the case of publicly owned treatment works, the CWA prohibited disposal of sludge except in accordance with national criteria controlling disposal. Section 406 of the WQA amends section 405 of the CWA to expand the applicability of the sewage sludge criteria promulgated under this section to include sludge from any treatment works that treats domestic sewage, whether publicly or privately owned. Further, the amendments direct that any NPDES permits issued must include the sewage sludge criteria. Today's rulemaking revises existing § 122.44(o) by inserting a phrase to specify all treatment works treating domestic sewage are subject to national regulations controlling its disposal. Two future rulemakings will establish EPA's sludge management program. One rulemaking will propose technical standards for the use and disposal of sewage sludge; the other will establish sludge permitting requirements and requirements for approving state sludge management programs. A proposal for this second rulemaking appeared at 53 FR 7842 (March 9, 1988).

I. Partial NPDES Programs

Section 403 of the WQA amends CWA section 402 to allow States to seek partial NPDES approval in certain circumstances. Partial approval is approval of a program which does not include NPDES, pretreatment and federal facilities authority over all facilities in the State subject to these programs. The amendment provides for two types of partial program approval. The first is intended for circumstances where jurisdiction over all direct and indirect wastewater discharges in the State is split between two or more State agencies. The amendment requires the program to cover at a minimum administration of a major category of discharges into the navigable waters of the State. The partial program must also represent a significant and identifiable part of the State program required by CWA § 402(b), and encompass all discharges under the jurisdiction of the State agency or agencies. The second type of partial program authorized is the "partial and phased" program. This requires initial approval of a major component of a State program (which also must represent a significant and identifiable part of the State program), with the State assuming the remaining program elements in phases. A State choosing this latter approach must submit a plan for assumption of the full program by a specified date not more than 5 years after submission of the partial program. To distinguish between the two types of partial programs authorized by the WQA, EPA will refer to the first as "partial" and the latter as "phased" in this and subsequent rules.

The existing regulation at § 123.1(g) expressly prohibits EPA from approving partial programs. As a first step towards implementing the amendment, today's rule deletes the existing regulatory provision prohibiting partial programs in § 123.1(g) and revises that provision to clarify that EPA will not accept partial or phased program submissions.

EPA will propose additional rules that will explain how a State can apply for and receive partial or phased program authority in a future rulemaking.

J. 304(l) Toxic Control Strategies

Section 308 of the WQA amends CWA section 304 by creating a new section 304(l). This provision requires States to develop lists of impaired waters, identify point sources and amounts of pollutants they discharge that cause violations of water quality standards and develop and implement individual control strategies for each such point source. The Agency is preparing a companion rulemaking that will address more completely the requirements of § 304(l).

1. Identification of Polluted Waters

Paragraph (A) of Section 304(l)(1) requires States to submit to EPA two lists of waters. These lists include those waters within the State which, after application of BAT or BCT, cannot reasonably be anticipated to attain or maintain (i) State water quality standards adopted under section 303(c)(2)(B), due to toxic pollutants; or, (ii) the water quality goals of the CWA.

The list prepared under paragraph (A)(ii) includes all waters affected by toxic, conventional, and non-conventional pollutants from point and non-point sources. It includes all waters whose designated uses are less than the fishable/swimmable goals of the CWA as well as those that are not meeting water quality standards for established, designated uses. The list prepared under paragraph (A)(i) is a subset of the list required by paragraph (A)(ii) and identifies only segments where promulgated State water quality standards are not being met due to toxic pollutants. These two lists must be submitted to EPA not later than February 4, 1989.

Paragraph (B) of section 304(l)(1) requires each State to submit a list of waters for which the State does not expect the "applicable standard" under section 303 of the CWA to be achieved after the requirements of technology-based treatment standards are met due entirely or substantially to the point source discharge of any toxic pollutants listed under section 307(a) of the CWA. This list is also a subset of the (A)(ii) list.

Paragraph (C) of section 304(l)(1) requires States to determine, for each water body on the paragraph (B) list, the specific point source discharges of toxic pollutants believed to be preventing or impairing water quality. The States must also identify the amount of each pollutant discharged by each point source identified in paragraph (C). Like the three lists developed under paragraphs (A) and (B), the point sources identified under paragraph (C) must be submitted to EPA no later than February 4, 1989.

Paragraph (D) of section 304(l)(1) requires States to submit individual control strategies for each segment identified on the list required by paragraph (B) to EPA by February 4, 1989. The amendment requires that these control strategies contain effluent limitations which will result in achievement of the applicable water quality standard as soon as possible, but in no event later than 3 years after establishment of the strategy (June 4, 1992 at the latest). At section 304(l)(2), the amendment requires the Administrator to approve or disapprove

control strategies submitted by States by no later than June 4, 1989.

Today's rulemaking codifies the requirements contained in section 304(l)(1) (A), (B) and (C) at § 130.10 of the regulations. Section 304(l) (1)(D) and (2) is codified by today's rulemaking in a new section of the regulations at § 123.46.

In order to meet the deadline in paragraphs (A), (B) and (C) of section 304(l)(1), a draft final EPA guidance document, "Implementation of Requirements under Section 304(l) of the Clean Water Act As Amended" (Sept. 1987) allows States to use existing and readily available data to develop the required lists of waters. At the same time, States should continue to gather new data under existing programs where important information gaps exist. The toxics control program will continue to address emerging problems and ensure prevention of water quality impairment due to toxicity even after section 304(l) deadlines have been met.

2. EPA Review of Individual Control Strategies

Section 304(l)(3) addresses EPA review of State individual control strategies and is codified at § 123.46(b). Section 304(l)(3) requires EPA to implement the requirements of section 304(l)(1) where a State fails to submit a control strategy or where EPA does not approve a control strategy submitted by the State. The statute requires EPA to perform these tasks within one year and 120 days after the date States are required to submit individual control strategies to EPA. Thus, where EPA action is required under this provision, the Agency must carry out these tasks by June 4, 1990.

Where EPA implements the requirements of section 304(l)(1), EPA must also consider listing those waters for which any person submits a petition for listing. Today's rule adds a new provision at § 123.46 to implement this requirement.

K. New Source—Preconstruction Ban

EPA's existing regulation at § 122.29(c) (4) and (5) addresses requirements for new sources and new dischargers. Section (c)(4)(i) prohibits on-site construction of a new source for which an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) is required prior to final Agency action in issuing an NPDES permit. Section (c)(5) provides that violation of the on-site construction ban is grounds for permit denial.

The United States Court of Appeals for the District of Columbia Circuit recently ruled on the validity of the on-site construction ban for new sources in *Natural Resources Defense Council v. Environmental Protection Agency*, 822 F. 2d 104 (D.C. Cir., 1987). The court held that the construction ban exceeded the agency's authority under either the Clean Water Act or NEPA, and that EPA therefore lacks authority to ban construction of new sources pending permit issuance. Accordingly, the court granted the petition for review of this issue.

In response to the decision of the Court of Appeals for the D.C. Circuit, EPA is removing § 122.29(c) (4) and (5) from the existing NPDES regulations. EPA will address these issues in subsequent rulemaking.

L. Corrections

Today's rulemaking also corrects inadvertent omissions, erroneous internal cross-references, and typographical errors in the regulations.

III. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. The regulation promulgated today is not a major rule, and therefore is not subject to the Regulatory Impact Analysis (RIA) requirement. This rule does not make changes in the existing law, but merely inserts the WQA provisions into the rules. This package does not incur more than $100 million in costs and fails to qualify as a "major" rule under that standard.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a Regulatory Flexibility Analysis (RFA) when it promulgates a final rule. (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulations will have on small entities and examine alternatives that may reduce these effects. EPA has determined the Agency does not have to prepare a RFA to determine the impact of today's regulation on State NPDES programs and the waste-discharging industries because today's rule is merely a technical amendment implementing those provisions in the 1987 WQA that do not require additional interpretation or comments. EPA has concluded that these amendments will not cause a significant impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. There are no information collection requirements triggered by this rule except for the listing requirements for State waters required by CWA section 304(l)(1) and implemented in today's rulemaking at 40 CFR 123.46. The public will have the opportunity to comment on this information collection requirement in a companion rulemaking more fully implementing the requirements of section 304(l).

List of Subjects

40 CFR Part 122

Administrative practice and procedure; Air pollution control; Hazardous materials; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control; Water supply; Confidential business information.

40 CFR Part 123

Hazardous materials; Indians-lands; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control; Water supply; Intergovernmental relations; Penalties; Confidential business information.

40 CFR Part 124

Hazardous materials; Waste treatment and disposal; Water pollution control; Water supply; Indians-lands.

40 CFR Part 125

Water pollution control; Water treatment and disposal.

40 CFR Part 130

Water quality standards.

40 CFR Part 403

Confidential business information; Reporting and recordkeeping requirements; Waste treatment and disposal; Water pollution control.

Date: December 15, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Chapter I of Title 40 of the Code of the Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 is amended by revising the definition of "point source" and "state" to read as follows:

§ 122.2 Definitions.

* * * * *

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

* * * * *

3. Section 122.3 is amended by revising paragraph (e) to read as follows:

§ 122.3 Exclusions.

* * * * *

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

* * * * *

4. Section 122.21 is amended by revising paragraphs (m)(1), (m)(2), (m)(3), (m)(4), (n)(2) and (o) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, § 123.25)

* * * * *

(m) * * *

(1) *Fundamentally different factors.*

(i) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

(A) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under § 124.10.

(B) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(*1*) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(*2*) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

(ii) The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant which the Administrator lists under section 301(g)(4) of the CWA) must be made as follows:

(i) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(A) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(*1*) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(*2*) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(B) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

Notwithstanding this provision, the complete application for a request under section 301(g) shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period).

(ii) For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with paragraph (m)(2)(i)(B) of this section and need not be preceded by an initial request under paragraph (m)(2)(i)(A) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in section 301 (b)(1)(A) or (b)(1)(C) of the CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under paragraph (n)(2) of this section, whichever is later, but in no event may this date have been later than January 30, 1988. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology or 301(b)(2)(E) for best conventional pollutant control technology, based on the use of innovative technology may be reqested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A) or 301(b)(2)(E). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

* * * * *

(n) * * *

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of the statutory deadlines in CWA section 301 (b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before August 3, 1987.

(3) * * *

(o) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (m) and (n) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a timely complete request required under paragraph (m)(2)(i)(B) or (m)(2)(ii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

* * * * *

5. Section 122.26 is added to read:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see Section 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, a permit shall not be required for a discharge composed entirely of storm water, except for:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity;

(iii) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(iv) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000;

(v) A discharge which the Administrator or the State, as the case may be, determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Permits for discharges from municipal separate storm sewers may be issued on a system or jurisdiction-wide basis.

(3) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(b) [Reserved].

§ 122.29 [Amended]

6. Section 122.29 is amended by removing subparagraphs (c) (4) and (5).

7. Section 122.41 is amended by revising paragraphs (a)(2), (i) introductory text, and (j)(5) and by adding paragraph (a)(3) to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25)

* * * * *

(a) * * *

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

* * * * *

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

* * * * *

(j) * * *

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

* * * * *

8. Section 122.44 is amended by revising paragraphs (l)(2) and (o) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(l) * * *

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions—A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if—

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(*1*) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(*2*) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) *Limitations.* In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

* * * * *

(o) *Sewage sludge.* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

* * * * *

§ 122.62 [Amended]

9. Section 122.62 is amended by amending paragraph (a) to remove existing paragraph (15); and redesignating existing paragraphs (16), (17), and (18) as (15), (16), and (17) respectively.

PART 123—STATE PROGRAM REQUIREMENTS

10. The authority citation for Part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

11. Section 123.1 is amended by revising paragraph (g) to read as follows:

§ 123.1 Purpose and scope.

* * * * *

(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the CWA.

* * * * *

12. Section 123.46 is added to read as follows:

§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Administrator for review, approval, and implementation an individual control strategy for each waterbody identified by the State pursuant to section 304(l)(1)(B) of the Act which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

(b) The Administrator shall approve or disapprove the control strategies submitted by any State pursuant to paragraph (a) of this section, not later than June 4, 1989. If a State fails to submit control strategies in accordance with paragraph (a) of this section or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (a), then, not later than June 4, 1990, the Administrator in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of CWA section 304(l)(1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under CWA section 304(l)(1) any navigable waters for which any person submits a petition to the Administrator for listing not later than October 1, 1989.

PART 124—PROCEDURES FOR DECISIONMAKING

13. The portion of the authority citation for Part 124 relating to the Clean Water Act continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 124.62 is amended by revising paragraph (e) introductory text to read as follows:

§ 124.62 Decision on variances.

* * * * *

(e) The State Director may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

* * * * *

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

15. The authority citation for Part 125 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

16. Section 125.3 is amended by revising paragraph (a)(2) to read as follows:

§ 125.3 Technology-based treatment requirements in permits.

* * * * *

(a) * * *

(2) For dischargers other than POTWs except as provided in § 122.29(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—

(A) For effluent limitations promulgated under Section 304(b) after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989;

(B) For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) under Section 402(a)(1)(B) of the Act in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

(C) For all other BPT effluent limitations compliance is required from the date of permit issuance.

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—

(A) For effluent limitations promulgated under Section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For effluent limitations established on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)—

(A) For effluent limitations established under Section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on BAT—

(A) For effluent limitations promulgated under Section 304(b) compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT—

(A) For effluent limitations promulgated under section 304(b), compliance is required as expeditiously as practicable but in no case later than 3 years after the date such limitations are established and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989.

* * * * *

17. Section 125.21 is revised to read as follows:

§ 125.21 Statutory authority.

Section 301(k) provides that the Administrator (or a State with an approved NPDES program, in consultation with the Administrator) may grant a compliance extension for BAT limitations to a discharger which installs an innovative technology. The innovative technology must produce either a significantly greater effluent reduction than that achieved by the best available technology economically achievable (BAT) or the same level of treatment as BAT at a significantly lower cost. The Administrator is authorized to grant compliance extensions to a date no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

18. Section 125.23 is amended by revising the introductory paragraph to read as follows:

§ 125.23 Request for compliance extension.

The Director shall grant a compliance extension to a date no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable, to a discharger that demonstrates:

* * * * *

19. Section 125.24 is amended by revising the introductory paragraph and paragraph (b) to read as follows:

§ 125.24 Permit conditions.

The Director may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:

(a) * * *

(b) Alternative BAT limitations that the discharger must meet as soon as possible and not later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

20. Section 125.27 is amended by revising paragraph (a) to read as follows:

§ 125.27 Procedures.

(a) The procedure for requesting a section 301(k) compliance extension is contained in §§ 124.62 and 124.63. In addition, notwithstanding § 122.21(m)(4), the Director may accept applications for such extensions after the close of the public comment period on the permit if the applicant can show that information necessary to the development of the innovation was not available at the time the permit was written and that the innovative technology can be installed and operated in time to comply no later than 2 years after the date for compliance with the effluent limitation which would otherwise be applicable.

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

21. The authority citation for Part 130 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

22. Section 130.10 is amended by adding paragraph (d) to read as follows:

§ 130.10 State submittals to EPA.

* * * * *

(d) Not later than February 4, 1989, each State shall submit to EPA for review, approval, and implementation—

(1) A list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of the CWA cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of the CWA, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(2) A list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(3) For each segment of navigable waters included on such list, a determination of the specific point source discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

23. The authority citation for Part 403 is revised to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95–217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100–4).

24. Section 403.13 is amended by revising paragraph (g)(2) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) * * *

(2) In order to be considered, a request for a variance must be submitted no later than:

(i) July 3, 1989, for a request based on a categorical Pretreatment Standard promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(ii) 180 days after the date on which a categorical Pretreatment Standard is published in the **Federal Register** for a request based on a categorical Pretreatment Standard promulgated on or after February 4, 1987.

* * * * *

Corrections

§ 122.3 [Amended]

25. Section 122.3(d) is amended by substituting "300" for "1510" and inserting "Contingency" before "Plan".

§ 122.28 [Amended]

26. Section 122.28 is amended by removing paragraph 122.28(b)(2)(i)(A) and redesignating the existing paragraphs (B), (C), (D), (E) and (F) as (A), (B), (C), (D) and (E) respectively.

§ 122.29 [Amended]

27. Section 122.29(c)(4)(i) is amended by revising the word "coditions" to read "conditions".

§ 122.45 [Amended]

28. Section 122.45(a) is amended by revising the reference to "§ 122.44(j)(2)" to read "§ 122.44(k)."

§ 122.62 [Amended]

29. Section 122.62 is amended by revising the reference to "paragraph (c) of this section" contained in the introductory paragraph to read "§ 124.5(c)".

PART 123—[AMENDED]

§ 123.27 [Amended]

30. Section 123.27, second note, is amended by revising the reference to "(a)(3)(iii)(B)" to read "(a)(3)(ii)".

PART 124—[AMENDED]

§ 124.10 [Amended]

31. Section 124.10(c)(2)(i) Note is amended by revising "NPDES of 404" to read "NPDES or Section 404."

§ 124.12 [Amended]

32. Section 124.12(a)(2) is amended by inserting a "," after "whenever".

§ 124.56 [Amended]

33. Section 124.56(a) is amended by revising the reference to "§ 122.4" to read "§ 122.44."

§ 124.59 [Amended]

34. Section 124.59(b) is amended by revising the reference to "§ 122.47" to read "§122.49".

§ 124.62 [Amended]

35. Sections 124.62 (c) and (d), are amended by revising the references to "EPA Deputy Assistant Administrator for Water Enforcement" to read "EPA Office Director for Water Enforcement and Permits", and the reference in (d) to "Deputy Assistant Administrator" is revised to read "Office Director".

§ 124.65 [Amended]

36. Section 124.65 is removed and reserved.

[FR Doc. 89–64 Filed 1–3–89; 8:45 am]
BILLING CODE 6560–50–M

federal register

Wednesday
January 4, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 73

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action establishes warning areas in airspace subject to FAA jurisdiction, in order to reflect recent presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the U.S. coast. The warning areas are established in the same location as non-regulatory warning areas previously designated over international waters. The Department of Defense (DOD) will conduct hazardous military flight activities in these areas. The areas are established for a period of 1 year, to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

A Presidential Proclamation, signed on December 27, 1988, extends the sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast. By final rule issued this date, the FAA has amended Parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast.

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of Part 91 operating rules to this airspace, DOD would be prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An exemption would permit the continuation of military operations, but would not in itself adequately inform the general flying public of the existence of these activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. Accordingly, the FAA is establishing regulatory warning areas, by special rule, to permit the continuation of current military training activities in the same areas where those activities are now being conducted. During the 1-year term of this SFAR, the FAA will consider the need for rulemaking action to meet military training needs in this airspace.

The warning areas established by this special rule are unique airspace designations intended solely to allow the continuation of military training activity *and* maintain the right of nonparticipating aircraft to fly through such areas. Controlled flights will not be affected by this special rule; such flights will continue to be routed around active warning areas. This SFAR will expire 1 year from the effective date.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For **Federal Register** citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR Part 73.

Prior to the expiration of this SFAR, the FAA will consider initiating further rulemaking action as necessary. The public will be given the opportunity to comment on any proposed rules affecting the airspace overlying the waters between 3 and 12 nautical miles from the United States coast.

Effective Date of Final Rule

Extension of the U.S. territorial sea for international purposes necessitates an immediate amendment to Part 73 of the Federal Aviation Regulations. If this action were not taken coincident with the effectiveness of the extension, essential military training operations would be adversely affected. For these reasons, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days to coincide with the effectiveness of the Proclamation.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while maintaining the right of nonparticipating pilots to fly through such areas. Accordingly, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because of the minimal impact on all operators, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983); 14 CFR 11.69.

2. By adding Special Federal Aviation Regulation No. 53 to read as follows:

Special Federal Aviation Regulation No. 53—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. *Applicability.* This rule establishes warning areas, for a period of 1 year from the effective date of this special regulation, in the same location as non-regulatory warning areas previously designated over international waters. This special regulation does not affect the validity of any non-regulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States.

2. *Definition—Warning area.* A warning area established under this special rule is airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. Part 91, Subpart B, is applicable within the airspace designated under this special rule.

Non-regulatory warning area. A non-regulatory warning area is airspace of defined dimensions designated over international waters that contains activity which may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger.

3. *Participating aircraft.* Each person conducting an aircraft operation within a warning area designated under this special rule and operating with the approval of the using agency may deviate from the rules of Part 91, Subpart B, to the extent that the rules are not compatible with approved operations.

4. *Nonparticipating aircraft.* Nonparticipating pilots, while not excluded from the warning areas established by this SFAR, are on notice that military activity, which may be hazardous to nonparticipating aircraft, is conducted in these areas.

Issued in Washington, DC, on December 27, 1988.

Norbert Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 88-30249 Filed 12-29-88; 12:38 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
January 4, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Docket No. 25768; Amdt. Nos. 71-12, 91-207]

Applicability of Federal Aviation Regulations in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action extends controlled airspace and the applicability of certain air traffic rules to coincide with certain limits of territorial jurisdiction adopted by the United States. This action is taken in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the U.S. coast.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Rule

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

A Presidential Proclamation extending the territorial sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast, was signed on December 27, 1988. By its terms, this Proclamation does not extend the jurisdiction of any state or federal law and, therefore, does not alter the geographical boundaries of the United States (i.e., national borders and territorial waters within 3 miles of the U.S. coast) for domestic purposes. As a result, the definition of the United States contined in section 101(41) of the Federal Aviation Act of 1958 (49 U.S.C. 1301) (FAAct) is not changed by the Proclamation and does not encompass the area between 3 and 12 nautical miles from the U.S. coast. Accordingly, the extension of the territorial sea to 12 nautical miles does not automatically extend the application of the FAAct beyond 3 nautical miles.

Article 12 of the Chicago Convention on International Civil Aviation obligates each Contracting State to adopt measures to insure that every person operating an aircraft within its territory shall comply with its air traffic rules and Annex 2, "Rules of the Air," of the Chicago Convention when over the high seas. The article further obligates each Contracting State to enforce the applicable regulations. In the United States, such obligations are reflected in 14 CFR 91.1, which requires that operators of aircraft comply with U.S. operating rules when in the United States and that operators of U.S.-registered aircraft comply with Annex 2 when over the high seas. With the issuance of the Proclamation, the airspace overlying the area between 3 and 12 nautical miles will no longer be part of the high seas. However, since the definition of United States contained in the FAAct has not been expanded to include this area, this airspace would not be considered a part of the United States.

The air traffic control services in the airspace beyond 3 nautical miles from the U.S. coast are currently provided by the FAA pursuant to the International Civil Aviation Organization (ICAO) Regional Supplementary Procedures through Annex 2. These procedures will continue to be applicable in the airspace between 3 and 12 nautical miles from the U.S. coast. However, when the Proclamation is issued, there will be no U.S. regulatory obligation on operators of aircraft to comply with air traffic procedures and regulations in the area between 3 and 12 nautical miles from the coast of the United States, because that area will neither be a part of the United States (for purposes of the FAAct) nor a part of the high seas.

Consequently, in order to continue to fulfill its international obligations and in order to maintain a safe environment in this area, it is necessary for the United States to extend its domestic air traffic control authority, under Title III of the FAAct, over the airspace extending from 3 to 12 nautical miles from the coast of the United States.

Section 1110 of the FAAct makes provision for the extension of the application of the Act, and FAA jurisdiction, to airspace beyond 3 nautical miles from the U.S. coast (49 U.S.C. 1510). By Executive Order 10854 (issued November 27, 1959; 24 FR 9565, as amended by E.O. 11382, 32 FR 16247), the authority in Section 1110 has been exercised with respect to areas in which the U.S. Government has appropriate jurisdiction or control to the extent necessary for the Secretary of Transportation to accomplish the purposes and objectives of Title III of the FAAct (49 U.S.C. 1341-1355) and Title XII of the Act (49 U.S.C. 1521-1523). The Department of Transportation has decided that the extension of the application of the FAAct to 12 nautical miles from the U.S. coast is necessary to accomplish the purposes and objectives of Titles III and XII of the FAAct. The extension will be effective on December 27, 1988. The FAA has issued appropriate Notices to Airmen (NOTAMs) advising the pilots of any changes relating to the extension.

In order for the FAA to exercise immediate jurisdiction over the expanded territorial sea, for purposes of regulations promulgated under Titles III and XII of the FAAct, this rule extends controlled airspace and extends the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. The rule adopted is limited to the amendment of certain sections of FAR Part 71, Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; and FAR Part 91, General Operating and Flight Rules; all of which fall under Title III of the Act.

The FAA will consider the need, in view of the extension of FAAct applicability to 12 nautical miles from the U.S. coast, for additional rulemaking action to amend other Federal Aviation Regulations, including: Part 73, Special Use Airspace; Part 75, Establishment of Jet Routes and Area High Routes; Part 95, IFR Altitudes; Part 99, Security Control of Air Traffic; Part 101, Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Ballons; Part 103, Ultralight Vehicles; and Part 105, Parachute Jumping. Other matters, such as the redesignation of Flight Information Region (FIR) boundaries, will also be considered at a later date.

The Rule

This action amends Parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. Specifically, the Continental Control Area, as described in FAR 71.9, and the Continental and Alaska Positive Control Areas, as described in § 71.193, are extended to 12 nautical miles from the U.S. coast. The existing exclusion of airspace in the Alaska Positive Control Area above the Alaska Peninsula west of longitude 160°00'00" W. is not affected, nor is the exclusion of airspace in the Continental Positive Control area over the Farallon Islands, and the portion south of latitude 25°04'00" N.

The transition area in effect in the vicinity of the Hawaiian Islands is deemed sufficient for air traffic control in that region, and no change in controlled airspace in and around Hawaii is adopted at this time. Within airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast that has not been designated controlled airspace, the FAA will exercise jurisdiction to the same extent as in uncontrolled airspace within the United States.

In Part 91, §§ 91.1 and 91.61 are amended to extend the applicability of (1) Subpart A, §§ 91.1 through 91.43 inclusive and (2) Subpart B in its entirety, to 12 nautical miles from the U.S. Coast.

Effective Date of Final Rule

Extension of the U.S. territorial sea necessitates an immediate amendment to Parts 71 and 91 of the Federal Aviation Regulations. This action must coincide with the effectiveness of the extension in order to ensure the FAA's authority to control air traffic, and to implement the flight rules under which pilots must operate in the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast. This action is necessary to provide for the safe and efficient use of the airspace within the newly designated area. For these reasons, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days to coincide with the effectiveness of the Proclamation.

Regulatory Evaluation

Air Traffic control (ATC) services are currently provided by the FAA in the nine-nautical mile strip of airspace affected by this rule. While the jurisdictional basis for the services is changed, there will be no change in the ATC services, and no impact on ATC system users. In this airspace, operators will be required to comply with FAA flight rules rather than ICAO Rules of the Air. The rules are similar for all effective purposes, and operators will incur no additional cost from compliance. Therefore, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. The rule is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, because the costs of the rule adopted are virtually nonexistent, it is also certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 71

Aviation safety, Continental control area, Positive control areas, Moored balloons, Kites, Unmanned rockets, Unmanned free balloons.

14 CFR Part 91

Aviation safety, General operating and flight rules.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 91 of the Federal Aviation Regulations (14 CFR Parts 71, 91) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.9 is revised to read as follows:

§ 71.9 Continental control area.

The Continental Control Area consists of the airspace at and above 14,500 feet MSL overlying: the 48 contiguous States including the waters within 3 nautical miles of the coast; the waters between 3 and 12 nautical miles from the coast of the 48 contiguous States; the District of Columbia; Alaska including the waters within 3 nautical miles of the coast; and the waters between 3 and 12 nautical miles from the coast of Alaska; excluding the Alaska peninsula west of longitude 160°00'00" W.; but does not include—

(a) The airspace less than 1,500 feet above the surface of the earth; or

(b) Prohibited and restricted areas, other than restricted areas listed in Subpart D of this part.

3. Section 71.193 is revised as follows:

§ 71.193 Designation

The areas of airspace described below are designated as positive control areas.

Alaskan Positive Control Area

That airspace overlying the state of Alaska, including the waters within 3 nautical miles of the coast, and the waters between 3 and 12 nautical miles from the coast of Alaska, from 18,000 feet MSL to and including FL 600 but not including the airspace less than 1,500 feet above the surface of the earth or the Alaska Peninsula west of longitude 160°00'00" W.

Continental Positive Control Area

That airspace within the continental control area from 18,000 feet MSL to and including FL 600 overlying: the 48 contiguous states, including the waters within 3 nautical miles of the coast; the District of Columbia; and the waters between 3 and 12 nautical miles from the coast of the 48 contiguous states; but excluding Santa Barbara Island, the Farallon Islands, and the portion south of latitude 25°04'00"N.

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. No. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. No. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. No. 97-449, January 12, 1983).

5. Section 91.1 is amended by redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part

describes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with Subpart A, §§ 91.1 through 91.43, and Subpart B of this part.

. . . . . .

6. Section 91.61 is revised as follows:

§ 91.61 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States and within 12 nautical miles from the coast of the United States.

Issued in Washington, DC, on December 27, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-30250 Filed 12-29-88; 12:38 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
January 4, 1989

Part VI

Environmental Protection Agency

Biotechnology Science Advisory Committee; Notice of Open Meeting

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00098; FRL-3502-4]

Biotechnology Science Advisory Committee; Subcommittee on Use of Antibiotic Resistance Genes; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee; Subcommittee on Use of Antibiotic Resistance Genes. The meeting will be open to the public. The Subcommitee will review scientific issues relating to the common practice of utilizing introduced antibiotic resistance as a means of enhancing or enabling monitoring of genetically engineered microorganisms, especially under circumstances of field testing or other environmental releases.

DATE: The meeting will be held on Thursday, January 19, 1989, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESS: The meeting will be held at: Crystal Mall #2, Room 1112, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide summaries of the meeting at a later date.

Dated: December 27, 1988.

Victor J. Kimm,

Acting Assistance Administrator, for Pesticides and Toxic Substances.

[FR Doc. 89-190 Filed 1-3-89; 11:07 am]

BILLING CODE 6560-50-M

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Presidential Documents

Title 3—

The President

Presidential Findings of December 31, 1988

United States-Canada Free-Trade Agreement Regarding Certain Alaska Crude Oil and Naval Petroleum Reserves Petroleum

On September 28, 1988, I signed the United States-Canada Free-Trade Agreement Implementation Act of 1988. Section 305 of that Act implements Annex 902.5 of the United States-Canada Free-Trade Agreement that deals with trade in energy goods, including crude oil. Section 305(a) amends section 7(d) of the Export Administration Act of 1979, as amended, to permit the export to Canada of up to 50,000 barrels per day of crude oil that has been transported by pipeline over a right-of-way granted pursuant to Section 203 of the Trans-Alaska Pipeline Authorization Act ("TAPS crude oil").

On June 14, 1985, I made a finding that the exports of certain crude oil to Canada are in the national interest. Before exports of these 50,000 barrels per day of crude oil to Canada can be authorized, I must make certain additional findings and determinations. I have decided to make the necessary findings and determinations under the following statutes: Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212); Section 28(u) of the Mineral Leasing Act, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (30 U.S.C. 185(u)); Section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354); and 10 U.S.C. 7430(e).

To further implement Chapter Nine of the Free-Trade Agreement with regard to trade in energy goods, and as indicated in Chapter Nine of the Statement of Administrative Action that I transmitted to the Congress with the Free-Trade Agreement, I also am making these findings and determinations with regard to exports of petroleum (as defined in 10 U.S.C. § 7420(3)) from the Naval Petroleum Reserves, where proof is lacking that those exports are not derived from or commingled with petroleum from the Naval Petroleum Reserves.

I hereby find and determine that exports of petroleum under these statutes are in the U.S. national interest, and I further find and determine that such U.S. petroleum exports to Canada—

- will not diminish the total quality or quantity of petroleum available to the United States;
- will not increase reliance on imported oil;
- are in accord with provisions of the Export Administration Act of 1979, as amended; and
- are consistent with the purposes of the Energy Policy and Conservation Act.

Therefore, effective upon the entry into force of the Free-Trade Agreement for the United States, such domestic petroleum may be exported to Canada, exports of crude oil to be for consumption or use therein.

These findings and determinations shall be published in the Federal Register. I direct the Secretary of Commerce to take all necessary and proper action to expeditiously implement this decision.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1988.

[FR Doc. 89-281
Filed 1-4-89; 9:36 am]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88-023I]

Imported Canadian Product; Provision for "Streamlined" Inspection Procedures; Exemption From Official Mark of Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions are a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449.

DATE: Interim rule effective December 31, 1988; comments must be received on or before February 6, 1989.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS, Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Patricia Stolfa at (202) 447-3473. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this interim rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. With regard to the reinspection of Canadian product, it provides for special "streamlined" inspection procedures which may result in no FSIS reinspection of some Canadian consignments, and for the exemption of all Canadian product from a products marking requirement.

Effect on Small Entities

The Agency has determined that this interim rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601.)

This rule is expected to positively affect Canadian exporters, United States importers of Canadian product and FSIS. It provides "Streamlined" inspection procedures which may result in no FSIS reinspection of some Canadian consignments and which will not require that vehicles be unloaded. The rule also exempts all Canadian products from a product making requirement. Implementation of these policies will save time and facilitate the transportation of Canadian products to domestic consignees.

Comments

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office and should refer to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Ms. Stolfa so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. Comments submitted will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

On January 2, 1988, President Reagan signed the United States-Canada Free-Trade Agreement (Agreement).[1] Pursuant to Article 2105, the "Agreement shall enter into force on January 1, 1989, upon exchange of diplomatic notes certifying the completion of necessary legal procedures by each party." In order to implement the U.S. obligations of the Agreement, the Congress passed and President Reagan signed into law the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449. One goal of the Agreement is to facilitate commerce between the two countries. Under certain conditions, the Agreement provides that both countries minimize inspection procedures applicable to each other's meat and poultry imports.

In furtherance of that goal, FSIS inspection officials have determined that "streamlined" inspection procedures can be offered and marking requirements can be eliminated without compromising product wholesomeness. Therefore, beginning January 1, 1989, FSIS is exempting all Canadian product imported into the United States from stamping with the official mark of inspection. In addition, FSIS is authorizing new "streamlined" reinspection procedures, on product from those Canadian establishments that wish to participate in the "streamlined" inspection program. Such procedures are consistent with the requirements of the Agreement.

"Streamlined" Inspection Procedures

Implementation of the new "streamlined" inspection procedures applies only to those Canadian establishments that wish to participate. These new procedures are discussed below. At the time that a participating

[1] A copy of the Agreement is available for review in the office of the FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Canadian plant determines that a consignment is destined for the United States, a representative of the Canadian meat inspection system may contact one of three Import Field Offices (IFO) near the border (Tacoma; WA; Boston, MA; or Detroit, MI) and request a reinspection assignment. The IFO official will consult the Agency's Automated Import Information System (AIIS) for a determination as to whether a reinspection of that particular consignment by FSIS is necessary. The AIIS's determinations are based on statistically based random sampling plans developed by FSIS. If no reinspection of the particular consignment is determined, the product is loaded onto the truck, the truck proceeds to the border and through appropriate U.S. Customs controls, and the product may then be delivered to its United States consignee for further distribution in U.S. commerce. If the AIIS determines that reinspection is necessary, the Canadian representative will be informed as to the number of samples needed for reinspection by the FSIS import inspectors, according to established sampling tables.[2] The Canadian representative will select and identify the appropriate samples, and place them in an easily accessible area of the transport vehicle. The loaded vehicle transports the consignment to the import inspection establishment where reinspection by an import inspector will occur.

Samples will be removed from the vehicle, while the remainder of the consignment remains loaded on the vehicle. The consignment is then released into U.S. commerce for further distribution. These procedures will eliminate the necessity of unloading the entire vehicle. In addition, the product or its containers will not be marked with the official mark of inspection because FSIS will recognize the Canadian export inspection mark.

Exempting Canadian product from the marking requirement applies to all Canadian product intended for importation into the United States. This requirement is contained in section 327.10(b) of the Federal meat inspection regulations (9 CFR 327.10(b)) and § 381.199 of the poultry products inspection regulations (9 CFR 381.199). These sections require that inspected and passed imported product be marked with the official mark of inspection.

[2] A copy of these sampling tables is available, upon request, from the Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FSIS is also making conforming changes to the regulations to accommodate the new inspection procedures and to exempt product from the marking requirement. In addition, FSIS is further amending various sections to reflect that only Program import inspectors will carry out the provisions for imported product.

Therefore, for the reasons stated in the preamble, FSIS is amending parts 327 and 381 of the Federal meat and poultry products inspection regulations as set forth below.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 continues to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Paragraph (e) of § 327.4 is revised to read as follows:

§ 327.4 Imported products; foreign certificate required.

* * * * *

(e) Except for product subject to procedures in § 327.5(d)(l), the foreign meat inspection certificate required by this section to accompany each consignment containing any product shall be delivered by the consignee, or his agent, in the United States to the Program import inspector at the place of inspection, and inspection of the product will not be commenced prior to such delivery.

3. Section 327.5 is revised to read as follows:

§ 327.5 Importer to make application for inspection of products for importation; information required; "streamlined" inspection procedures for Canadian product.

(a) Except for importers of Canadian products, each importer shall apply for inspection of any product for importation by contacting the Import Field Office covering the location where import inspection will take place. The Import Field Office will provide specific application instructions (See § 301.2 (yyy)).

(b) The application should be made as long as possible in advance of the anticipated arrival of each consignment, except in case of consignments of products expressly exempted from inspection by §§ 327.16 and 327.17, and in the case of product imported from Canada.

(c) Except in the case of product imported from Canada, each application shall state the approximate date on which the consignment is due to arrive at such port in the United States, the name of the ship or other carrier transporting it, the name of the country from which the product was, or is to be, shipped, the place where inspection is desired in accordance with § 327.6, the quantity and kind of product, and whether it is fresh, cured, canned or otherwise prepared. In case of consignments arriving in the United States by water, the application shall also state the port of first arrival in the United States.

(d) For participating Canadian establishments, an official of the Canadian meat inspection system shall contact the participating Import Field Office for an inspection assignment (See § 301.2 (yyy)).

(1) If the Automated Import Information System (AIIS) does not designate the consignment for reinspection, the consignment may be transported to its consignee for further distribution.

(2) If the AIIS designates the consignment for reinspection, the representative shall:

(i) Select samples in accordance with USDA sampling tables.[3]

(ii) Identify and place samples in the vehicle for easy removal and reinspection by an import inspector.

(3) In the event that any one of the requirements provided in (d)(2) of this section is not met, reinspection of the consignment shall be conducted by a Program import inspector in accordance with established procedures provided in the regulations for other imported products.

4. Section 327.6 is amended by revising paragraphs (a) (1), (2), and (3) to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a) (1) Except as provided in §§ 327.16, 327.17 and 327.5(d)(1) of this paragraph, all products imported from any foreign country shall be inspected by a Program import inspector before they shall be admitted into the United States.

(2) Every lot of product shall routinely be given visual inspection by a Program import inspector for appearance and condition, and checked for certification and label compliance, except as provided in 327.5(d)(1).

(3) The computerized Automated Import Information System (AIIS) shall be consulted for reinspection

[3] A copy of the sampling tables is available, upon request, from the Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

instructions. The AIIS will assign reinspection levels and procedures based on established sampling plans or established sampling plans and established product and plant history.

* * * * *

5. Paragraph (b) of § 327.10 is revised to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(b) Except for product imported from Canada, the outside containers of all products offered for importation from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon reinspection by import inspectors, are found not to be otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this subchapter. Such inspection legend shall be placed upon the containers only after completion of official import inspection and product acceptance. Except for Canadian product, all other products so marked, in compliance with this part, shall be admitted into the United States, insofar as such admittance is regulated under the Act.

* * * * *

6. Paragraph (c) of § 327.15 is revised to read as follows:

§ 327.15 Outside containers of foreign products; marking and labeling; application of official inspection legend.

* * * * *

(c) Except for product imported from Canada, all outside containers of products which have been inspected and passed in accordance with this part shall be marked by a Program import inspector or under a Program import inspector's supervision with the official import meat inspection mark prescribed in § 327.26.

7. Paragraph (a)(2) of § 327.21 is revised to read as follows:

§ 327.21 Inspection procedures for chilled fresh and frozen boneless manufacturing meat.

(a) * * *

(2) Imported frozen boneless manufacturing meat shall be sampled as required by § 327.6(a) of this part, and the samples defrosted for inspection. The Program import inspector, or in the case of Canadian product subject to procedures described in § 327.5(d)(1), the Canadian representative will select from a lot the appropriate number of cartons specified by the table of sampling plans.[4] The total sample for inspection will consist of the necessary number of 12-pound units drawn from these cartons. The 12-pound units selected will be completely defrosted and examined.

* * * * *

8. Paragraph (b) of § 327.26 is revised to read as follows:

§ 327.26 Official import inspection marks and devices.

* * * * *

(b) Except for product imported from Canada, when import inspections are performed in official establishments, the official inspection legend to be applied to imported meat and meat food products shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

9. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*, 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

10. Section 381.198 is revised by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 381.198 Importer to make application for inspection of imported poultry products; special inspection procedures for Canadian product.

* * * * *

(b) For participating Canadian establishments, an official of the Canadian meat inspection system shall contact the Import Field Office for an inspection assignment (see § 301.2(yyy)).

(1) If the Automated Import Information System (AIIS) does not designate the consignment for reinspection, the consignment may be transported to its consignee for further distribution.

(2) If the AIIS designates the consignment for reinspection, the official shall:

(i) Select samples in accordance with USDA sampling tables.[5]

[4] A copy of the sampling plans is available from the Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[5] A copy of the sampling tables is available, upon request, from the Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(ii) Identify and place samples in the vehicle for easy removal and reinspection by a Program import inspector.

(3) In the event that any one of the requirements provided in paragraph (d)(2) of this section is not met, inspection of the consignment shall be conduced by a Program import inspector in accordance with established procedures provided for in the regulations for other imported products.

11. Paragraph (a) of § 381.199 is revised to read as follows:

§ 381.199 Inspection of imported poultry products.

(a) (1) Except as provided in §§ 381.198(b)(1) and 381.209 of this part, and paragraph (c) of this section, all slaughtered poultry and poultry products offered for importation from any foreign country shall be reinspected by a Program import inspector before they shall be allowed entry into the United States.

(2) Every lot of product shall routinely be given visual inspection for appearance and condition, and checked for certification and label compliance, except as provided in § 381.198(b)(1).

(3) The computerized Automated Import Information System (AIIS) shall be consulted for reinspection instructions. The AIIS will assign inspection levels and procedures based on established sampling plans or established product and plant history and established sampling plans.

* * * * *

12. Paragraph (a) of section § 381.204 is revised to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

(a) Except for product imported from Canada, poultry products which upon reinspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

* * * * *

These amendments to the regulations governing the reinspection of Canadian meat and poultry products entering the United States will be effective upon signature of this document. Public comments will not be sought prior to the implementation of these amendments because it has been determined that the administrative actions authorized by these amendments should be taken in conjunction with the implementation of

the United States-Canada Free-Trade Agreement. It is anticipated that the Agreement, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Pub. L. 100–449) that will implement it, will go into effect on January 1, 1989. Since these amendments to the meat and poultry products inspection regulations conform to the requirements of the Agreement, it has been determined that it will be in the best interest of FSIS and the United States that these regulatory amendments should become effective immediately to ensure immediate compliance with the Agreement. Accordingly, pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register**. However, FSIS is soliciting comments in response to this interim rule for 30 days after publication of this document and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Done at Washington, DC, on December 31, 1988.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 89–181 Filed 1–4–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket Nos. 86–17, Notice 4 and 87–16, Notice 3]

RIN 2125–AB56

Design Standards for Highways; Standard Specifications for Highway Signs, Luminaires, and Traffic Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: With a minor modification concerning the allowable change in velocity criterion in the specifications, this rule adopts, for application on Federal-aid highway projects, Section 7 of the American Association of State Highway and Transportation Officials' (AASHTO) "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1985," as amended by the "1988 Interim Revisions." Section 7 of the specifications covers breakaway requirements for sign, luminaire, and traffic signal supports. Previously, FHWA adopted all other sections for the cited 1985 specifications as amended by the "1986 Interim Revisions." This rule also adopts the subsequent amendments to the cited specifications contained in the "1987 and 1988 Interim Revisions."

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Office of Engineering, (202) 366–1329, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1382, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

This rule includes a general updating of the citations in 23 CFR Part 625, and makes the revisions to 23 CFR 625.5, Guides and references, proposed in the NPRM, FHWA Docket 87–16, (53 FR 2041, January 26, 1988). Action on the principal subject of this rulemaking, adoption of breakaway requirements for highway sign, luminaire, and traffic signal supports, began with a notice of proposed rulemaking (NPRM), FHWA Docket 86–17, (51 FR 40817, November 10, 1986), which presented FHWA's proposal to adopt, for application on Federal-aid highway projects, revised specifications for structural supports for highway signs, luminaires, and traffic signals. Subsequently, a final rule, FHWA Docket 86–17, Notice 2, (52 FR 36245, September 28, 1987), adopted, for use on Federal-aid highway projects, the AASHTO "Standard Specifications for Highway Signals, Luminaires and Traffic Signals, 1985", as amended by the "1986 Interim Revisions," except for the requirements of Section 7 of the document, which deal with breakaway supports. At that time FHWA held in abeyance the adoption of Section 7 of the cited 1985 specifications, pending completion and evaluation of capability testing of previously accepted breakaway luminaire supports. In the interim FHWA has continued to accept, for use on Federal-aid highway projects, breakaway supports conforming to the requirements contained in Section 7 of the "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, 1975."

In proceeding with development of a revised rule on breakaway supports, FHWA issued a summary of the results obtained from its capability testing of luminaire supports and announced an extension of the comment period on the proposed adoption of Section 7 of the 1985 AASHTO specifications, FHWA Docket 86–17, Notice 3, (52 FR 47403, December 14, 1987). The extended comment period ended March 14, 1988.

Discussion of Comments

There were 14 commenters on the NPRM prior to publication of the luminaire support test results and extension of the comment period. Eleven of the commenters to the NPRM, including 3 State Highway Agencies (SHA's), 6 manufacturers, a safety advocacy group, and a lighting industry group, specifically addressed the provisions of Section 7.

Three commenters (one SHA and two manufacturers) recommended that FHWA adopt the 1985 revision of Section 7. The safety advocacy group recommended that the standard be revised to include cars smaller than 1800 pounds, to require a lower change in velocity, and to establish a compliance date for retrofit. Six commenters (two SHA's, two manufacturers, the safety advocacy group, and the industry group) recommended that devices that are designed to meet the new breakaway criteria be studied to assure that they meet the needs for strength and durability under field conditions. Three commenters (one SHA and two manufacturers) stressed the need for new hardware to be studied to assure that devices meeting the new criteria are feasible. Two commenters (one manufacturer and the industry group) expressed concern about the test facility that was being used to evaluate the breakaway devices. The industry group and one SHA recommended that Section 7 remain as it was under the 1975 specifications. Three commenters (two manufacturers and the industry group) opposed the four-inch stub height requirement in the 1985 revision of Section 7 as being too restrictive.

There were 24 commenters on the NPRM subsequent to the December 14, 1987, publication of supplemental information and extension of the comment period. Comments were received from twelve SHA's, three safety advocacy groups, seven manufacturers, and two industry groups.

Eight commenters (five SHA's, two manufacturers, and one industry group) recommended that more research be conducted to develop breakaway devices that meet the proposed criteria and still provide adequate structural strength and durability. Six commenters (two SHA's and four manufacturers) noted that none of the aluminum transformer bases tested met the proposed criteria. (The SHA's were concerned that they would be left without an acceptable breakaway device since they had four other reasons for curtailing use of other breakaway devices.) Six commenters (four SHA's, one manufacturer, and one industry group) believed that the four-inch stub height requirement was unnecessarily restrictive, especially when typical roadside grading was considered. Five commenters (two SHA's and three manufacturers) were concerned that hardware that met the proposed criteria would not be able to withstand loadings to be expected during their design lives of 20 to 30 years. Seven commenters (four SHA's and three manufacturers) expressed the opinion that the slip bases that passed the impact tests relied heavily on proper installation and maintenance, including bolt torquing and proper orientation, control of corrosion, and removal of ice and snow accumulations, thus, they questioned the long term performance of slip bases. Four commenters (three manufacturers and one industry group) expressed concern over the reliability of testing performed on breakaway devices. Three commenters (all SHA's) requested that an extended implementation period be granted in order that new hardware could be developed. Three commenters (two manufacturers and one industry group) stated that the good in-service record of aluminum transformer bases should be evidence that the proposed Section 7 revisions are unwarranted. Three commenters (two SHA's and one industry group) are concerned that the proposed standards would expose owners and manufacturers to greater legal liability (no further explanations were given). Three commenters (two manufacturers and one industry group) disputed the statement in the NPRM that, "the manufacturers of structural support materials may be minimally affected by the Revised Specifications." They believe that the costs to design, test, and produce hardware meeting the proposed specification would be significant.

Three commenters (two safety advocacy groups and one manufacturer) recommended that Section 7 be adopted promptly. The third safety advocacy group requested that the breakaway criteria for vehicle size and change in velocity be made more demanding. Five commenters (two industry support groups, two manufacturers, and one SHA) requested that the 1985 Section 7 be withdrawn entirely and the 1975 version retained.

A total of two commenters discussed each of the following topics: vehicle size trends, the criteria for change in velocity during impact tests, the need to redesign transformer base bolt circles, restrictions on proprietary couplings and shear bases, and lack of couplings for bolt sizes other than one inch. (Topics by single commenters are not summarized here. However, some are covered in the responses to comments below.)

Overall, responses on Section 7 were received from 30 different commenters, (13 SHA's 3 safety advocacy groups, 12 manufacturers, and 2 industry groups). The three safety advocacy groups, three manufacturers, and one SHA urged adoption of the 1985 Section 7 as written or favored more restrictive criteria. These commenters believe that the smaller test vehicle is necessary to more accurately represent those small cars that are now becoming a significant portion of the highway traffic.

The SHA's and manufacturers who opposed adoption of the 1985 Section 7 based their opposition on a belief that hardware meeting the new criteria would take a significant investment in time and money to develop and that adoption of the revised Section 7 would result in a significant number of support devices that have not been field tested for fatigue strength, corrosion resistance, reliability of breakaway characteristics, etc. They also suggested that luminaire supports meeting the new requirements may not be suitable for the greater heights and bracket arm lengths currently used, resulting in more luminaires and luminaire supports being needed to provide the same lighting intensity on the roadway.

Acceptance Criteria

Some reviewers suggested that the acceptance criteria are excessivly demanding, citing a lack of documentation of poor performance with breakaway hardware nominally conforming to the 1975 AASHTO requirements. Most of the accident "data" cited to demonstrate that no problem exists are poorly documented. Valid, detailed, and statistically significant accident data on the performance of highway safety hardware are not available. Thus, in order to proceed with improving highway safety, judgments must be made using available information. Considering the number and impact performance of existing breakaway supports, the mix of highway vehicles, and likely distribution of impact conditions, one would not expect to find many fatal accidents involving existing breakaway supports. This is the result intended by using such supports. On the other hand, laboratory experience and analysis strongly suggest that impacts by the smaller automobiles on supports in the upper range of acceptability under the 1975 AASHTO requirements are likley to cause a significant number of injuries, some rather serious. The requirements being adopted with this final rule should appreciably reduce the potential for serious injury under these marginal impact conditions.

Some who responded to the NPRM asked why the 15–fps occupant impact velocity limitation proposed in NCHRP Report 230 and contained in the 1985 AASHTO specification for breakaway supports was so much lower than the 30–fps limit proposed in Report 230 for other safety appurtenances such as crash cushions. Vehicle contact with virtually all roadside obstructions creates some level of risk for vehicle occupants. The goal in designing roadside appurtenances is to reduce this risk to its lowest practicable level. The physical limitations on designs for breakaway supports for roadside signs, luminaires, and traffic signals are vastly different from those on longitudinal barriers and crash cushions, where the systems must stop or redirect a wide range of vehicles. For breakaway supports the principal structural requirement that must be met is resistance to wind loads. For the largest sign and luminaire supports on our highways the shear requirements at their bases would rarely, if ever, exceed 9,000 pounds, and for most supports the requirements will be far less. Thus, theoretically, even the most massive supports likely to be accepted could safely be designed to breakaway under lateral forces much less than those that would produce the maximum allowable occupant impact velocity. While the writers of Report 230 were looking more to the historical acceptance of the requirements in the 1975 AASHTO specifications and the availability of conforming breakaway supports when they made their recommendations, the physical reality is that their recommendations are more than achievable and supports meeting the Report 230 requirements, when tested with 1800-pound vehicles, are available and being used. Thus, the only potential argument against their adoption appears to be cost.

Those respondents to the NPRM, primarily suppliers, who questioned the cost of the new requirements cited development, testing, and retooling costs. In anticipation of adoption of the new requirements several companies

have proceeded with the development and testing of supports to meet the requirements, some have reported development of hardware that meets the new requirements. One of the reported conforming hardware items is an aluminum breakaway transformer base (with three variations) for luminaire supports, an item several respondents indicated would not be available if the new requirements were adopted.

Some hardware types already available at the time the AASHTO adopted its 1985 specifications met its requirements and are sufficient to meet nearly all site requirements. Also, some suppliers have already started investing in development to bring their products in line with the new requirements. Therefore, FHWA does not expect the costs to be nearly as great as estimated by the manufacturers. It seems likely that applying the new requirements to future construction will be justified by the improved benefits to the public.

However, given the relatively good performance experienced with supports meeting the 1975 AASHTO breakaway requirements, it would rarely be cost beneficial to replace or retrofit an existing serviceable support accepted under the 1975 requirements. Nevertheless, the FHWA will continue its long standing policy of encouraging highway agencies to replace damaged supports with those meeting current requirements whenever practicable.

There is a stub height requirements in the 1985 AASHTO specification that is new. Some of the respondents to the NPRM questioned the need for this requirement or suggested that it is too restrictive. The objective of the requirement is to prevent vehicle undercarriage snagging. Without this limiting requirements, designs and support placements have occasionally emerged that are obviously unsafe. Thus, FHWA believes avoidance of undercarriage snagging needs to be addressed by the requirements for breakaway design. Foundations with skid plates or blocks to cause vehicles to pass over base remains could be used to achieve the objective of the stub height requirement. In its interpretation and application of the stub height requirement FHWA will examine the intent of the requirement and will work with the AASHTO to determine whether more objective criteria for defining stub height and alternative means of preventing undercarriage snagging can be incorporated in its specification.

Increased maintenance problems and hazards from unexpected collapse of supports were suggested by some respondents. The FHWA does not see these as likely problems. First of all, there are supports of proven strength to fill nearly all service requirements. Secondly, new designs will be required to meet the structural requirements of the AASHTO specifications, which, if properly applied, will prevent supports of poor performance from entering service.

Testing procedures were questioned by some respondents. The capability testing of luminaire supports undertaken by the FHWA followed an extensive period of development of the FHWA's Federal Outdoor Impact Laboratory (FOIL) at the Federal Highway Research Center in McLean, Virginia. A four-wheel cart (bogie) with a replaceable, crushable aluminum honeycomb nose was developed and used at the FOIL as a surrogate for automobiles in all the luminaire support capability testing. The bogie noses (there are three, one each for 20-, 40-, and 60-mph tests) were configured to approximately replicate the crush characteristics of a 1979 Volkswagen Rabbit when striking, head on, a narrow object at a point 14 inches left of its centerline. These crush characteristics were selected after examining the crush characteristics of several other vehicles and other impact locations. The selected crush characteristics are not those that might be expected to place the most demanding requirements on breakaway hardware. However, FHWA believes them to be representative of the crush charactistics of large portion of today's small automobiles and close to those that would be most demanding. The FHWA has high confidence in the bogie tester and, for 20-mph tests, has high confidence in pendulum testers fitted with an impact nose duplicating the 20-mph nose used on the bogie.

Interpretation, Evaluation, and Implementation

After evaluating all the responses to the NPRM and the results from the capability testing of breakaway luminaire supports and considering the historical and technical bases of requirements for breakaway supports, the FHWA concludes that Section 7 of the AASHTO's Standard Specifications of Strucutural Supports for Highway Signs, Luminaires and Traffic Signals, 1985," contains suitable requirements upon which to base acceptance of breakaway supports for use on Federal-aid highway projects. However, where the AASHTO specification requires that a breakaway support not cause a change in velocity greater than 15 fps in the test device, the FHWA will accept a change in velocity of 16 fps. Additionally, the FHWA will establish a transition period during which breakaway supports previously found acceptable under the AASHTO's 1975 breakaway requirements may continue to be installed on Federal-aid highway projects until July 1, 1990. After this time all new breakaway sign, luminaire, and traffic signals supports installed on Federal-aid highway projects will be required to meet the breakaway requirements in the 1985 AASHTO specifications as amended by the "1988 Interim Revisions", with the modification, as stated above, that the maximum change in velocity allowable will be 16 fps.

Establishing July 1, 1990, as the date for full compliance with the breakaway requirements being adopted with this final rule is intended to allow sufficient time for breakaway support manufacturers to take those steps needed to produce and qualify durable products meeting the new requirements and to allow highway agencies sufficient to to revise their specifications, design practices, and project plans to conform to the new requirements.

The decision by the FHWA to accept an occupant impact velocity of 16 fps rather than the 15 fps suggested in NCHRP Report 230 and specified in the 1985 AASHTO specifications is based on the fact that the 1975 AASHTO specifications had an implicit acceptance level of 15.7 fps, which when rounded the nearest whole number is 16 fps. The FHWA believes this value will result in safe breakaway support designs and that it is consistent with the current state-of-the-art in breakaway support design.

The FHWA has no plans, and does not believe it would be in the public interest, to require that breakaway supports previously found acceptable and installed under the 1975 AASHTO specifications be retrofitted or replaced on any Federal-aid highway projects, unless accident experience dictates such action. However, the FHWA will encourage highway agencies to adopt the new breakaway requirements before the conversion deadline and, to the extent practicable after conversion to the new breakaway requirements, to replace damaged breakaway supports with supports meeting the new requirements.

The FHWA has observed that certain installation and testing practices have an influence on test results. Thus, in testing breakaway supports and interpreting and applying test results it will be strongly recommended that:

- Where standardized testing devices (bogies, pendulums, etc.) are available, they should be used for acceptance testing.

Note.—There are limitations on use of the bogie and the pendulum. Neither is suitable for testing base-bending supports and the pendulum is not suitable for testing breakaway supports that require approximately 12 inches or more of movement to effect complete separation between their upper portions and their foundations. The advantage of testing with a standard bogie or a pendulum, beyond the very considerable savings in testing cost, is the consistent response of the test device.

- All fasteners likely to have an influence on the breakaway performance of a support being tested should be of the type to be used in service installations or a procedure should be established to assure that the effect of the fasteners used in testing will be the same as that of the fasteners actually to be used for in-service installations. (It may be appropriate to use special strain measuring bolts in test installations in order to precisely measure and control clamping forces.)
- Estimates of torque values required in the bolts to be used for in-service installations to achieve the same bolt clamping forces as used in testing should be obtained and made a part of the test report. (If non-service bolts are used in testing there should be instructions for installing service bolts to duplicate, in the service installations, the same bolt effects that were obtained in testing.)
- Where the manufacturer specifies bolt torques to be used with the bolts recommended for use with a breakaway support, the clamping force produced in the recommended bolt under the specified torque should be determined, reported, and the recommended practices followed in the test installation.
- Where the manufacturer or user does not specify a bolt clamping force or bolt torque, state-of-the-practice procedures should be followed and reported. In the absence of such procedures, a clamping force that is equivalent to that which would be achieved by subjecting the bolt specified by the manufacturer to a tightening torque of 200 foot pounds should be used in test installations. (In the absence of a recommendation by the manufacturer or user for a bolt or bolt finish, a bolt of the type and finish most likely to be used should be used and its type and finish reported.)
- Information describing critical clamping forces and/or bolt torques and any other critical installation practices should be supplied with each breakaway support and, preferably, be permanently marked on the support.
- When testing transformer bases, the maximum bolt circle recommended by the manufacturer for use with the base should be used in testing the base.
- The weight of that portion of a breakaway support that might fall on the roof of a vehicle should not exceed 1,000 pounds. (The weight of a sign panel would normally not be included as a part of the weight of a support.)
- The words "* * * maximum change in velocity for a standard 1800-pound (816.5 kg) vehicle * * *" in the AASHTO specifications should be interpreted as also meaning "* * * maximum occupant impact velocity, as determined by the procedures in NCHRP Report 230, in a test with an 1800-pound (816.5 kg) vehicle * * *" (The commentary on Section 7 in the 1985 specifications makes it clear that this is the intent of the specifications.)

This final rule also covers the FHWA's adoption of AASHTO's 1987 and 1988 revisions to its 1985 sign and luminaire support specifications. Only one of those revisions touches on a potential safety issue. That is a change in Section 7 that would reduce from eight feet to seven feet the minimum clear distance supports must be apart in multiple support signs to be considered as acting independently. The FHWA has no evidence that this change will have more than a very minimal impact on safety. All other changes contained in the 1987 and 1988 Interim Revisions are either editorial or are considered by the FHWA to have no potential for adversely impacting the safety, durability, or cost of sign supports. Therefore, it accepts all the changes in the 1985 AASHTO specifications contained in the 1987 and 1988 Interim Revisions.

Additionally, these final amendments are intended to bring Part 625 up to date with versions of the cited publications or new publications already formally or informally recognized by the FHWA as appropriate bases for the design of highways.

Regulatory Evaluation and Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. With due consideration given to: Preliminary Regulatory Evaluation (on file in FHWA Docket 86–17); capability testing of luminaire supports conducted by FHWA (summary report contained in FHWA Docket 86–17, Notice 3 (52 FR 47403) December 14, 1987); comments received in response to the notices of proposed rulemaking; information described in the "Supplementary Information" section of this document; and the information reported below, the FHWA concludes that this rule will sufficiently improve highway safety to justify the relatively small additional cost its implementation may require.

An important factor considered in developing this rule was an implied promise to the public to provide a given level of breakaway performance. The 1975 AASHTO specifications have an implied maximum change in velocity requirement of 15.7 fps for a 2250-pound vehicle. In late 1973, when the 1975 breakaway specification was being developed, automobiles were, on average, considerably larger and heavier than they are today. At that time the 2250-pound automobile was not the smallest automobile on our highways, but the judgment was made that, since vehicles in that weight class were readily available for use as test vehicles and there were very few smaller vehicles on our highways, the 2250-pound automobile was a reasonable choice as a test vehicle. Also, given the relatively low allowable change in velocity value in the specification, there was a high probability that conforming breakaway supports would be broken away in 20-mph frontal impacts by the smallest automobiles than on our highways, albeit at higher changes in velocity than prescribed in the specification.

A very significant reduction in automobile weights has occurred since 1973. FHWA's interest in breakaway requirements relative to the smaller vehicles entering the fleet was made explicit in 1979, when it announced that FHWA sponsored research would consider mini-sized cars (1700 to 1800 pounds). In 1981 the National Cooperative Highway Research Program (NCHRP) issued NCHRP Report 230, "Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances." This report contained guidance for testing breakaway supports with 1800-pound vehicles and suggested a maximum allowable change in velocity of 15 fps in the test vehicle. In March of 1983, AASHTO began the process of examining the test vehicle for breakaway supports. This ultimately led to adoption of the breakaway requirements now found in section 7 of the AASHTO's 1985 specifications, which call for testing with an 1800-pound vehicle.

The 1800-pound vehicle holds about the same relative position in the range of vehicles in the fleet today as the 2250-pound vehicle held in the fleet in 1973—there are few smaller than the 1800-pound vehicle. Additionally, breakaway

supports conforming to the requirements being adopted with this rule are likely to breakaway under 20-mph frontal impacts by the smallest automobiles currently being marketed in this country. Thus, the requirements being adopted with this rule approximately establish the same relative level of safety performance for breakaway supports for signs, luminaires, and traffic signal's for today's traffic as the 1975 AASHTO breakaway requirements did for the traffic at the time they were first proposed.

There are three logical questions to be asked about this rule:

Is it sufficient?

Is it achievable?

Is it worth the cost?

The answer to the first question is, in part, dependent on the answer to the other two questions. Striking any object creates some risk. What measures are appropriate to reduce that risk depend on available technology, cost, and the level of the risk. The 16-fps occupant impact velocity performance criterion for the breakaway supports covered by this notice is essentially the same acceptance criterion relative to an 1800-pound vehicle, as has existed since 1975 relative to a 2250-pound vehicle. An occupant impact velocity of 16 fps is not likely to produce serious injury. However, this criterion is not as conservative as it may appear. The impulse that will produce such an occupant impact velocity in an 1800-pound vehicle in a high speed impact is close to the level that, if applied eccentrically to the vehicle, would cause the vehicle to yaw to the extent rollover would be likely. Additionally, for impact speeds above, and for some level below, the specified maximum and minimum test speeds, respectively, the occupant impact speeds will be higher than those seen at both limits of the test speed range. There is also the possibility that a vehicle interior or an occupant position or condition could lead to serious injury even at the low specified allowable occupant impact velocity. For the few vehicles on our highways that are lighter than the specified test vehicle, there is the probability of occupant impact velocities higher than the specified maximum.

In summary, adoption of the acceptance criterion for breakaway supports for luminaires, signs, and traffic signals that limits the maximum occupant impact velocity to 16 fps in an 1800-pound test vehicle under impacts at speeds between 20 and 60 mph provides the same level of protection for today's traffic that the 1975 AASHTO breakaway requirements provided for traffic of the mid-1970's. It ensures a very low probability of serious injury for occupants of vehicles striking conforming supports, provided the impact conditions are no more demanding than those specified for acceptance testing. It also ensures a very low probability of life-threatening injury for virtually all potential impacts, except for those that result in an occupant striking a support directly.

The principal source of opposition to FHWA's adoption of the new breakaway requirements came from suppliers of aluminum lighting pole products. A cast aluminum transformer base is the breakaway device in most aluminum breakaway luminaire supports. In the capability testing of breakaway luminaire supports conducted by FHWA a large proportion of the transformer base equipped supports failed to meet the new breakaway requirements. Without acceptable transformer bases, the aluminum pole manufacturers face the possibility of losing a large part of their share of the breakaway luminaire support market. However, there are other breakaway mechanisms that can be used with aluminum supports. One aluminum pole manufacturer has presented data from crash tests of a breakaway shoe-base design that show the design meets the proposed FHWA requirements. A fastener manufacturer has an anchor bolt coupling under development that has passed the new breakaway requirements when crash tested. And, theoretically, slip-base technology, which is now available for steel luminaire supports, could be adapted for use with aluminum poles. Thus, the aluminum pole manufacturers are not dependent on transformer bases to provide breakaway supports. On the other hand, there is no theoretical bar to the development of an acceptable breakaway aluminum transformer base. In fact, one manufacturer has developed three transformer base models that meet the new breakaway requirements.

FHWA understands that the aluminum breakaway luminaire supports that are currently available to meet the new requirements probably do not cover the full range of service requirements likely to be encountered. It also understands that further development and tooling costs will be required of the aluminum pole manufacturers to provide conforming breakaway supports that also meet the most demanding service requirements. Nevertheless, there are breakaway support designs meeting the new requirements available to cover the full range of service requirements likely to be encountered. Thus, given the reduction in the sizes of vehicles on our highways, the laboratory evidence that 1800-pound vehicles failed, in 20-mph tests, to breakaway some supports accepted under the old breakaway requirements, and the availability of supports meeting the new breakaway requirements, the FHWA can find no basis for not imposing the new breakaway requirements.

In setting July 1, 1990, as the date for full compliance with the new requirements, FHWA gave consideration to the safety of the motoring public, the time some highway agencies will need to revise their breakaway support designs and specifications, and development work underway by support suppliers that is likely to result in replacement products for those supports rendered unacceptable by the new requirements. Since the supports installed in the transition period will, at a minimum, have to have been found acceptable under the old breakaway requirements and there will be only a limited number of supports not meeting the new requirements installed in the transition period, the FHWA believes any benefits the public might gain from an immediate imposition of the new requirements will be offset by increased costs owing to disruption of highway agencies' current practices and of their possibly unnecessarily having to select designs that are incompatible with their current practices. These costs are likely to be avoided if the support suppliers can finish development of compatible substitutions for their old designs in the time allowed for compliance. The FHWA recognizes that there is no assurance that this will happen. But, given the efforts already expended by the suppliers and the technical feasibility of developing supports to meet the new requirements, the FHWA believes there is a high probability that, when the suppliers are given a definite date when compliance will be required, they will meet the challenge.

The FHWA believes that this action will have a minimal regulatory impact. Title 23, U.S.C. section 109. Standards, requires that:

(a) The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

Part 625 of Title 23, CFR, is the instrument by which the FHWA, acting for the Secretary of Transportation, informs State highway agencies of the bases upon which highway projects will be evaluated for compliance with the statutory design requirements. The principal element of this rule revises FHWA's requirements for the design of breakaway supports for highway signs, luminaires, and traffic signals. The remaining elements of the rule bring the guidance in Part 625 up to date with currently accepted design practices.

Since some breakaway supports meeting the new requirements promulgated by this rule are already being installed by highway agencies, the FHWA does not believe this rule will impose a significant, if any, cost burden on the States. However, individual highway agencies may have to adopt some new designs because certain of their current designs do not meet the new breakaway requirements. To mitigate problems this may cause affected highway agencies, the FHWA is extending the compliance date to July 1, 1990, for highway agencies to meet the new requirments. During this time the FHWA expects that several breakaway support suppliers will redesign and qualify their products to meet the new requirements. The FHWA also expects that most of these new products will be compatible with the ones replaced, thus, further reducing the burden on highway agencies.

Regulatory Flexibility Act and Federalism Assessment

Based on the discussion above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA has carefully considered the federalism implications of this action in light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting requirements.

In consideration of the foregoing, the FHWA is amending Chapter I of title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on: December 5, 1988.

Robert E. Farris,

Federal Highway Administrator.

The FHWA hereby amends 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation of Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

§ 625.2 [Amended]

2. In § 625.2, paragraph (a)(2) is amended by substituting the word "constructed" for the word "contracted."

§ 625.4 [Amended]

3. In § 625.4, an introductory paragraph is added; footnote numbers 1 and 2 located after the heading of paragraph (a) are removed; paragraphs (b)(1), (2), (3), and (5) are revised; a new paragraph (b)(6) is added; and paragraph (c)(2) is revised, as follows:

§ 625.4 Standards, policies, and standard specifications.

The documents listed in this section are incorporated by reference in accordance with 5 U.S.C. 552(a) and are on file at the Office of the Federal Register in Washington, DC. They are available for inspection as noted in footnote numbers 1 and 2 in the Appendix to this Part.

* * * * *

(b) *Bridges and structures.* (1) Standard Specifications for Highway Bridges, Thirteenth Edition, AASHTO 1983, and Interim Specifications, Bridges, AASHTO, issued annually, 1984 through 1988. [3]

(2) Standard Specifications for Movable Highway Bridges, AASHTO 1988. [3]

(3) Bridge Welding Code (D1.5–88), AASHTO/AWS 1988. [3, 4]

* * * * *

(5) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1985, and Interim Specifications, Bridges, AASHTO 1986 through 1988. For use on Federal-aid highway projects, the requirement for maximum change in velocity in Section 7, Breakaway Supports, may be 16 fps in lieu of the 15 fps contained in the AASHTO specifications. [3]

(6) Navigational Clearances for Bridges, FHWA, 23 CFR Part 650, Subpart H.

(c) * * *

(2) Standard Specifications for Transportation Materials and Methods of Sampling and Testing, Parts I and II, AASHTO 1988. [3]

* * * * * *

§ 625.5 [Amended]

4. In § 625.5, paragraphs (a)(7) and (9) are revised; paragraph (a)(12) is added; paragraphs (b)(2), (3), (4), (5), and (6) are revised; a new paragraph (b)(7) is added; paragraph (c) is removed; paragraph (d) is redesignated as a new paragraph (c); and paragraph (c)(5) is added to read as follows:

§ 625.5 Guides and references.

* * * * * *

(a) * * *

(7) Guidelines on Pavement Management, AASHTO 1985. [3]

(8) * * * * *

(9) Skid Accident Reduction Program, T 5040.17, FHWA December 23, 1980. [2]

(10) * * * * *

(11) * * * * *

(12) AASHTO Guide for Design of Pavement Structures, AASHTO 1986. [3]

(b) * * *

(2) Manual for Maintenance Inspection of Bridges, AASHTO 1983, and Interim Specifications, Bridges, AASHTO 1986 through 1988. [3]

(3) Guide Specifications for Fracture Critical Non-Redundant Steel Bridge Members, AASHTO 1978, and amending Interim Specifications, Bridges, AASHTO 1981 through 1987. [3]

(4) Guide Specifications for Horizontally Curved Highway Bridges, AASHTO 1980, and amending Interim Specifications, Bridges, AASHTO 1981 through 1988. [3]

(5) Guide Specifications for Seismic Design of Highway Bridges, AASHTO 1983, and amending Interim Specifications, Bridges, AASHTO 1985 through 1988. [3]

(6) Highway Drainage Guidelines, Volumes I and VIII, AASHTO 1987. [3]

(7) Manual on Subsurface Investigations, AASHTO, 1988. [3]

(c) *Other.* * * *

(5) Guide Specifications for Highway Construction AASHTO 1985. [3]

* * * * *

Appendix A is amended by revising footnotes 2 and 3 as follows:

Appendix A [Amended]

* * * * *

[2] These documents may be reviewed at the Department of Transportation Library, 400 7th Street, SW., Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR Part 7, Appendix D.

[3] American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

[FR Doc. 89-65 Filed 1-4-89; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 5

Preference in Employment

November 1, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is revising its Preference in Employment Regulations by extending the application of Indian preference to persons of the Osage Tribe of Oklahoma, who are at least one-quarter degree Indian ancestry, whose rolls were closed by an act of Congress. This is in the best interest of the individuals employed and those seeking employment, who are descendants of the Osage Tribe.

This revision extends the expired date of September 15, 1988, for one additional year upon publication to allow the tribe one final opportunity to organize and to establish current membership standards. The extended period of time is necessary so as not to deny employment to persons who received preference based on the one-quarter degree standard. The one-quarter degree standard will remain applicable for only one year or until the Osage Tribe has formally organized and established membership standards, whichever comes first.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mercedes C. Lewis, Division of Personnel Management, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20245, telephone number (202) 343-8306.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Indians, as defined in the Indian Reorganization Act of June 18, 1934, receive employment preference in appointments in the Bureau of Indian Affairs. The preference conferred in 25 U.S.C. 472 must be applied in the filling of every vacant position within the Bureau of Indian Affairs, *Freemon* v. *Morton*, 499 F.2d 492 (DC Cir. 1974). The Secretary issued a final rule for the definition of an Indian on January 17, 1978. A fifth criterion applied to the Five Civilized Tribes of Oklahoma and to the Osage Tribe whose rolls were closed by Acts of Congress and who had not as yet reorganized so as to establish current membership standards. Many such persons have received preference based on the one-quarter degree standard previously established by the Secretary. In order that they would not be deprived of that eligibility and made to meet the one-half degree standard, in 1978, the tribes were allowed 3 years, until July 17, 1981, in which to organize. Ten years later the Osage Tribe is the only remaining tribe that has not organized.

The complexities of the Osage's unique history have been described in the litigation surrounding the organization of the tribe and the authority of the Tribal Council. See *Logan* v. *Andrus*, 457 F. Supp. 1318 (D. Okla., 1978). *affirmed* 640 F.2d 269 (10th Cir. 1981). It is apparent that the Osages have a uniquely difficult task in organizing, since they are the only tribe which is excluded from organizing under the provisions of the Indian Reorganization Act and the Oklahoma Indian Welfare Act. Also, the Secretary's regulations under the 1906 Osage Allotment Act permit only Osage headright holders to vote for the tribal council. However, the Osage Tribe has made little progress in the last ten years in its efforts to resolve these complexities. At this point, we can no longer assume that the Osage Tribe plans to formally organize.

On October 4, 1984, the Bureau of Indian Affairs published a final rule (49 FR 39157) to amend 25 CFR Part 5, Preference in Employment. Paragraph (e) of § 5.1 specified the date of October 4, 1985, as the final date for making appointments of persons of one-quarter degree Indian ancestry. On September 15, 1988, the Bureau of Indian Affairs published a final rule (51 FR 32632) to revise 25 CFR Part 5, Preference in Employment. Paragraph (e) of § 5.1 specifies the date of September 15, 1988, as the final date for making appointments of persons of one-quarter degree Indian ancestry. The time limit is hereby extended for one year from the date of publication of this document in the **Federal Register** to permit the Osage Tribal Council one more year in which to organize and to establish current membership standards for purposes of Indian preference employment for their tribal members in the Bureau of Indian Affairs. This extension will not be renewed.

Osage Tribal persons, who are employed by the Bureau of Indian Affairs and who received preference in any previous appointment, will continue to be preference eligibles so long as they are continuously employed.

In accordance with 5 U.S.C. 553(a)(2), because this final rule applies to the Bureau of Indian Affairs' personnel management practices, the rulemaking requirements contained in 5 U.S.C. 553 are not applicable. This rule extends the time limit for employment with the Bureau to persons of the Osage Indian Tribe, only. Accordingly, this regulation is issued as a final rule and will become effective upon the date of the publication in the **Federal Register**.

The primary author of this document is Mercedes Lewis, Supervisory Personnel Staffing Specialist, Division of Personnel Management, Bureau of Indian Affairs, telephone number, (202) 343-8306.

Because the rule relates to Agency management and personnel, prior notice and opportunity for comments are not required, and the rule may be made immediately effective (5 U.S.C. 553(a)(2)). The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rule involves potential Osage Tribal members only, who would be seeking Federal employment in the BIA. There is no other tribe affected. The Office of Management and Budget (O.M.B.) has informed us that the information collections contained in 25 CFR 5 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 96-511.

The Department of the Interior has determined that this document does not have a significant economic effect on a substantial number of small entities. This rule affects only persons of the Osage Tribe of Indians.

This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects in 25 CFR Part 5

Employees, Government employees, Indians.

Accordingly, 25 CFR Part 5 is amended as follows:

PART 5—PREFERENCE IN EMPLOYMENT

1. The authority citation for Part 5 continues to read as follows:

Authority: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

2. Paragraph (e) of § 5.1 is revised to read as follows:

§ 5.1 Definitions.

* * * * *

(e) For one (1) year or until the Osage Tribe has formally organized, whichever comes first, effective January 5, 1989, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

3. Section 5.4 of 25 CFR is revised to read as follows:

§ 5.4 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in Part 5 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-17 Filed 1-4-89; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8238]

Corporate Separations; Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to corporate separations. A corporate separation, typically, is a transaction in which a distributing corporation distributes to its shareholders or security holders stock, or stock and securities, of a controlled corporation and after which the distributing and the controlled corporations conduct businesses previously conducted directly or indirectly by the distributing corporation. These regulations revise existing regulations to reflect administrative and judicial experience under those existing regulations. These regulations apply to the shareholders and security holders of corporations undertaking corporate separations and provide guidance needed to comply with the law. The final regulations do not reflect amendments to section 355 of the Internal Revenue Code of 1986 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988.

EFFECTIVE DATE: These regulations apply to transactions occurring after February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Richard F. McManus of the Corporate Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:Corp:03) (202-566-3422 (Mr. McManus) not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 21, 1977, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 355 and 346 (as in effect prior to its amendment by the Tax Equity and Fiscal Responsibility Act of 1982) of the Internal Revenue Code of 1954 (42 FR 38866). The amendments were proposed to revise the existing regulations to reflect administrative and judicial experience under those existing regulations. Since a public hearing was not requested, none was held. After consideration of all of the comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Section 355 provides that, under certain conditions, a corporation may distribute stock, or stock and securities, of a subsidiary without recognition of gain or loss to its shareholders or security holders. The proposed regulations made two major changes to the existing regulations under section 355. First, the regulations under section 355(a)(1)(B) (requiring that the transaction not be used principally as a device for the distribution of earnings and profits) were revised to specify factors to be taken into account in determining whether a transaction was used principally as such a device. Second, the regulations under section 355 (b) (relating to active businesses) were revised to permit the separation of a single business, thereby conforming them to the holdings of *Commissioner* v. *Coady*, 289 F.2d 490 (6th Cir. 1961), *aff'g* 33 T.C. 771 (1960), and *United States* v. *Marett*, 325 F.2d 28 (5th Cir. 1963). The proposed regulations also proposed to clarify the business purpose requirement under section 355. A discussion of the more important comments received on, and a description of the changes made to, the proposed regulations follow.

Comments On, And Changes To, Proposed Regulations

Business Purpose

(1) *Independent requirement.* Section 1.355-2(b)(1) of the proposed regulations expressed the business purpose requirement as an independent requirement under section 355. Commenters objected to the treatment of the business purpose requirement as a separate requirement and suggested that the existence of a corporate business purpose should be considered only in determining whether a transaction was used principally as a device for the distribution of earnings and profits within the meaning of section 355(a)(1)(B).

Treasury and the Internal Revenue Service acknowledge that there is a very close relationship between the business purpose requirement and the requirement that the transaction not be used principally as a device for the distribution of earnings and profits. Accordingly, the final regulations clarify that the corporate business purpose is evidence that the transaction was not used principally as such a device. See § 1.355-2(d)(3)(ii) in this document. This new provision is discussed below under the heading "Evidence of Nondevice."

However, Treasury and the Internal Revenue Service believe that, as held in *Commissioner v. Wilson*, 353 F.2d 184 (9th Cir. 1965), a transaction that is not carried out for a corporate business purpose should not qualify under section 355, even if it was not used principally as a device for the distribution of earnings and profits. Accordingly, the final regulations retain the independent business purpose requirement. See § 1.355-2(b)(1) in this document.

(2) *Corporate business purpose.* Section 1.355-2(b)(1) of the proposed regulations provided that a distribution qualifies under section 355 only if it is carried out for one or more corporate business purposes. Corporate business purposes were identified as "real and substantial nontax reasons germane to the business of the corporations."

Commenters objected to the "real and substantial" standard on the grounds that it is not useful and is confusing. However, Treasury and the Internal Revenue Service continue to believe that the "real and substantial" standard provides a useful description of the type of corporate business purpose required under section 355. Accordingly, the final regulations retain that standard. See § 1.355–2(b)(2) in this document.

Commenters requested reconsideration of the "nontax" standard. The Internal Revenue Service has ruled that reduction of state and local capital taxes is a corporate business purpose. Rev. Rul. 76–187, 1976–1 C.B. 97. That rule will remain in effect. However, Treasury and the Internal Revenue Service continue to believe that reduction of Federal taxes should not be regarded as a corporate business purpose. Accordingly, the final regulations replace the "nontax" standard with a "non Federal tax" standard.

Commenters wondered whether the potential reduction of Federal taxes will offset or negate the existence of a non-Federal tax business purpose. In response, the final regulations clarify that only a transaction motivated in whole or in substantial part by a corporate business purpose will satisfy the corporate business purpose requirement. Further, the final regulations clarify that the potential reduction of Federal taxes by the distributing or controlled corporations (or a corporation controlled by either) is relevant in determining whether a corporate business purpose motivated the distribution. The final regulations also provide that a purpose of reducing non Federal taxes is not a corporate business purpose if (i) the transaction will effect a reduction in both Federal and non Federal taxes because of similarities between Federal tax law and the tax law of the other jurisdiction and (ii) the reduction of Federal taxes is greater than or substantially coextensive with the reduction of non Federal taxes. See § 1.355–2(b) (1) and (2) in this document. Three examples are also added in § 1.355–2(b)(5). The first illustrates that a distribution which is made to enable the distributing and/or controlled corporation to make an election to be an S corporation does not meet the corporate business purpose requirement. The second example illustrates that the result is the same if the distribution is made to enable the distributing and/or controlled corporation to elect to become an S corporation both for Federal tax purposes and for purposes of a state that has tax law provisions similar to Subchapter S of the Internal Revenue Code of 1986. The third example illustrates that the magnitude of the potential reduction of Federal taxes is relevant to the determination of whether the distribution is motivated by a corporate business purpose.

(3) *Shareholder purpose.* Section 1.355–2(b)(1) of the proposed regulations provided that a distribution qualifies under section 355 only if it is carried out for purposes "germane to the business of the corporations." It further provided that "a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. In such a case, the transaction is carried out for purposes germane to the business of the corporations." Some commenters complained that the proposed regulations did not adequately acknowledge that, in a closely held corporation, the purposes of the shareholders cannot be distinguished from those of the corporation. Other commenters complained that the proposed regulations addressed cases in which the shareholder purposes are totally coextensive with the corporate business purposes, but failed to address the more common cases in which there is only partial overlap.

In response, the final regulations revise example (2) of § 1.355–2(b)(2) of the proposed regulations to present a disproportionate distribution that satisfies the business purpose requirement without a shareholder disagreement. See example (2) of § 1.355–2(b)(5) in this document. The final regulations also provide that a purpose germane to the business of the affiliated group to which a corporation belongs is a corporate business purpose. See § 1.355–2(b)(2) in this document.

As explained above, the final regulations clarify that a transaction that is motivated in substantial part by a corporate business purpose does not fail to satisfy the business purpose requirement merely because it is motivated in part by non-Federal tax shareholder purposes. See § 1.355–2(b)(1) in this document.

(4) *Business purposes for distribution.* The final regulations provide that the distribution of the stock, or stock and securities, of the controlled corporation to the shareholders must be carried out for one or more corporate business purposes. In example (3) of § 1.355–2(b)(2) of the proposed regulations, the distribution is not carried out for a corporate business purpose. The alleged corporate business purpose for the transaction is protection of a business from the risks of another business. Because that purpose is satisfied as soon as the risky business is dropped down to a subsidiary, the distribution of the stock of the subsidiary is not carried out for that purpose. Commenters argued that separate incorporation might not satisfy the alleged corporate business purpose because a court might disregard the separate corporate identity of the subsidiary. Upon reconsideration, Treasury and the Internal Revenue Service continue to believe that example (3) is an appropriate illustration of the requirement that the distribution be carried out for a corporate business purpose. The facts of that example have been clarified, however, to assume that, under applicable law, risk is alleviated by the transfer of assets to the subsidiary. See example (3) of § 1.355–2(b)(5) in this document.

(5) *Availability of alternative arrangement.* Example (4) of § 1.355–2(b)(2) of the proposed regulations involves a transfer by the distributing corporation of one of its two businesses to a new controlled corporation and a distribution of the stock of the controlled corporation where the transfer and the distribution are required by a lender as a condition on additional loans. The example concludes that the distribution was carried out for one or more corporate business purposes. Commenters asked whether the distribution in example (4) would be carried out for one or more corporate business purposes if the lender would have been satisfied to have the distributing corporation transfer its two businesses to two new controlled corporations and continue as a holding company.

Commenters referred to Rev. Rul. 77–22, 1977–1 C.B. 91, in which a distribution by the distributing corporation of the stock of a preexisting controlled corporation is carried out for one or more corporate business purposes, where the distribution is made in response to the concerns of a lender that the proceeds of loans to the controlled corporation not be applied to the business of the distributing corporation. They hypothesized the existence of lenders who would have been satisfied to have the distributing corporation transfer its other business to a new controlled corporation and continue as a holding company. They noted that Rev. Rul. 77–22 could be read to hold that, under these hypothetical facts, a distribution by the distributing corporation of the stock of the preexisting controlled corporation would be carried out for one or more corporate business purposes.

Treasury and the Internal Revenue Service believe that a distribution satisfies the business purpose requirement only if the distributing corporation cannot achieve its corporate business purpose through a nontaxable transaction that does not involve a distribution of the stock of a subsidiary and that is neither impractical nor unduly expensive. Thus, if such an alternative transaction is available, the distribution is not carried out for a corporate business purpose. Accordingly, example (4) is replaced by new examples illustrating this aspect of the business purpose requirement. See examples (4) and (5) of § 1.355–2(b)(5) in this document.

Continuity of Interest

Section 1.355–2(b)(1) of the proposed regulations provided that section 355 contemplates a continuity of interest in all or part of the business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. There was concern it could be argued that the phrase "all or part" meant a transaction could qualify even if none of the owners of the enterprise before the separation had, after the distribution, an interest in the business enterprise of one of the separated corporations. The final regulations make clear that the separation must effect only a readjustment of continuing interests in the property of the distributing and controlled corporations. In this regard, section 355 requires that one or more persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange own, in the aggregate, an amount of stock establishing a continuity of interest in each of the modified corporate forms in which the enterprise is conducted after the separation. These rules have been relocated in a new § 1.355–2(c). Four examples illustrating the continuity of interest requirement are added, the principles of which are based on previously published revenue rulings. See Rev. Rul. 69–293, 1969–1 C.B. 102 and Rev. Rul. 79–293, 1979–2 C.B. 125.

Device for Distribution of Earnings and Profits in General

Section 1.355–2(c) of the proposed regulations interpreted the requirement of section 355(a)(1)(B) that the transaction not be used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both (a "device"). That interpretation consisted of a description of the tax avoidance that could be achieved through the use of a device, a specification of factors ("device factors") whose presence is evidence that the transaction was used principally as a device ("evidence of device"), and a specification of certain transactions that ordinarily would not be considered to be a device for the distribution of earnings and profits. The final regulations generally retain these provisions. At the request of commenters, they also specify factors ("nondevice factors") whose presence is evidence that the transaction was not used principally as a device ("evidence of nondevice"). See § 1.355–2(d) in this document.

Section 1.355–2(c)(1) of the proposed regulations explained that a corporate separation can present potential for the avoidance of the dividend provisions of the Code. The final regulations make clear that avoidance potential is presented by the substitution of stock interests in two or more corporations for a stock interest in a single corporation. In particular, avoidance potential can be presented by distributions in which the distributing corporation liquidates as well as by distributions in which the distributing corporation does not liquidate. The final regulations also replace the reference to sales or liquidations with a reference to sales, exchanges, or transactions that are treated as exchanges under the Code, thus making clear that redemptions as well as liquidations are covered by the rules. They also limit the rules to transactions involving stock on the grounds that sections 355(a)(3) and 356(d)(2)(C) generally render transactions involving securities incapable of use to avoid the dividend provisions of the Code. At the request of commenters, the final regulations clarify that the determination whether a transaction was used principally as a device depends on all of the facts and circumstances, and that the presence of the device factors specified in § 1.355–2(d)(2) is not alone controlling. See § 1.355–2(d)(1) in this document. The final regulations also make clear that a device can include a transaction that effects a recovery of basis.

The provision in § 1.355–2(c)(1) of the proposed regulations regarding pro rata distributions is clarified and made a separate provision in the final regulations. See § 1.355–2(d)(2)(ii) in this document. Certain transactions that are ordinarily considered not to have been used principally as a device are specified in a separate provision in the final regulations. As suggested by commenters, that provision clarifies that these transactions are ordinarily considered not to have been used principally as a device, notwithstanding the presence of any of the device factors specified in § 1.355–2(d)(2). See § 1.355–2(d)(5) in this document.

Subsequent Sale or Exchange of Stock

(1) *Per se rule.* Section 1.355–2(c)(2) of the proposed regulations provided that a subsequent sale or exchange of 20 percent or more of the stock of either the distributing or the controlled corporation, negotiated or agreed upon before the distribution, is conclusive evidence of device. Commenters objected to this rule on the grounds that it is arbitrary, that it has no case law support, and that it is inconsistent with the facts and circumstances standard mandated by the Code and expressed in § 1.355–1(c)(1) of the proposed regulations.

Upon reconsideration, Treasury and the Internal Revenue Service continue to believe that a subsequent sale or exchange of stock of either the distributing or the controlled corporation, negotiated or agreed upon before the distribution, is substantial evidence of device. However, they agree with the commenters that section 355(a)(1)(B) does not require that this evidence be treated as conclusive, and that taxpayers should not be denied the opportunity to prove that, despite the sale or exchange, the transaction was not used principally as a device. Accordingly, the *per se* rule is eliminated in the final regulations.

The final regulations provide that a subsequent sale or exchange of stock of either the distributing or the controlled corporation, negotiated or agreed upon before the distribution, is substantial evidence of device. Generally, the greater the percentage of stock sold or exchanged, the stronger the evidence of of device. See § 1.355–2(d)(2)(iii)(A) in this document. In addition, the shorter the period of time between the distribution and the sale or exchange, the stronger the evidence of device.

(2) *Negotiated or agreed upon before the distribution.* The final regulations retain the rules of the proposed regulations concerning whether a sale or exchange is considered to be negotiated or agreed upon before the distribution. See § 1.355–2(d)(2)(iii)(D) in this document.

(3) *Subsequent reorganizations.* The final regulations retain the provision in § 1.355–2(c)(2) of the proposed regulations that an exchange of stock pursuant to a plan of reorganization in which either no gain or loss or only an

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insubstantial amount of gain is recognized is not evidence of device. The final regulations provide that for this purpose, gain treated as a dividend pursuant to sections 356(a)(2) and 316 shall be disregarded. They also add a provision that any stock received in a reorganization exchange excepted from the subsequent sale rules will be treated, for purposes of those subsequent sale rules, as the stock surrendered. Thus, any sale or exchange of the stock received will be subject to the subsequent sale rules. See § 1.355–2(d)(2)(iii)(E) in this document.

Nature And Use Of Assets

(1) *Assets not used in a qualifying trade or business*

Section 1.355–2(c)(3)(iii) of the proposed regulations provided that the transfer or retention of cash or liquid assets in excess of the reasonable needs of the post-distribution business of the transferee or the retaining corporation ("excess liquid assets") is evidence of device. Some commenters agreed that the transfer of excess liquid assets should be evidence of device, but asserted that the retention of excess liquid assets should be a neutral factor. Other commenters noted that, because liquid assets must either be transferred or retained, the proposed regulations appeared to find evidence of device whenever excess liquid assets are present.

Section 1.355–2(c)(3)(ii) of the proposed regulations provided that, if a substantial portion of the post-distribution assets of the distributing or the controlled corporation consists of a trade or business acquired during the five-year period preceding the distribution in a transaction in which the basis of the assets was not determined in whole or in part by reference to the transferor's basis, this fact is evidence of device (the "new trade or business device factor"). Some commenters objected to this device factor on the grounds that the acquisition of a trade or business should be treated under the active business requirements of section 355(b) instead of the device clause of section 355(a)(1)(B). They pointed out that section 355(b)(2)(C) denies qualification under section 355 to a distribution after which the only trade or business of the distributing or the controlled corporation is a trade or business that was acquired during the five-year period preceding the distribution in a transaction in which the basis of the assets was not determined in whole or in part by reference to the transferor's basis. Other commenters objected to this device factor on the grounds that the presence of operating assets, even if newly acquired, should not be evidence of device. They argued that operating assets are not suitable for use in a device.

Treasury and the Internal Revenue Service believe that the presence of excess liquid assets permits avoidance of the dividend provisions of the Code, regardless of the corporation that holds them. Treasury and the Internal Revenue Service also believe that the active business requirements of section 355(b) do not render unnecessary the principle of the new trade or business device factor of § 1.355–2(c)(3)(ii) of the proposed regulations. Those requirements can be satisfied by a distribution after which the distributing corporation holds a business that it has conducted for five years, while the controlled corporation holds such a business and a business that was acquired during the five-year period preceding the distribution in a transaction in which the basis of the assets was not determined in whole or part by reference to the transferor's basis. Rev. Rul. 73–44, 1973–1 C.B. 182, as clarified in Rev. Rul. 76–54, 1976–1 C.B. 96.

The new trade or business device factor of the proposed regulations was limited to trades or businesses. Thus, it was generally consistent with § 1.355–2(b)(3) of the existing regulations, which provides that, if substantially all of the assets of the distributing and the controlled corporations are and have been used in the active conduct of trades or businesses that meet the requirements of section 355(b), this fact will be evidence of nondevice. On the other hand, the new trade or business device factor of the proposed regulations failed to find evidence of device in the presence of business assets that were not acquired as part of a trade or business and that are not or have not been used in the active conduct of a trade or business that satisfies the requirements of section 355(b). Such assets include excess inventory. The final regulations correct this oversight.

Accordingly, the final regulations provide that the existence of assets that are not used in a trade or business that satisfies the requirements of section 355(b) is evidence of device. For this purpose, assets that are not used in a trade or business that satisfies the requirements of section 355(b) include, but are not limited to, cash and other liquid assets that are not related to the reasonable needs of a business satisfying such section. The strength of the evidence depends on all the facts and circumstances, including, but not limited to, the ratio for each corporation of the value of assets not used in a trade or business that satisfies the requirements of section 355(b) to the value of its business that is so described. A difference in the ratio described in the preceding sentence for the distributing and controlled corporation is ordinarily not evidence of device if the distribution is not pro rata among the shareholders of the distributing corporation and such difference is attributable to a need to equalize the value of the stock distributed and the value of stock or securities exchanged by the distributees. See § 1.355–2(d)(2)(iv)(B).

(2) *Related function.* Section 1.355–2(c)(3)(iv) of the proposed regulations provided that the continued integration of a function with the business from which it has been separated is evidence of device. Commenters objected to this device factor on the grounds that the specified conditions present no compelling evidence of device.

Treasury and the Internal Revenue Service believe that the continued integration of a function with the business from which it has been separated should be evidence of device. This belief is based on the interpretation of section 355(a)(1)(B) expressed in § 1.355–2(c)(1) of the proposed regulations. Under certain circumstances, continued integration indicates a likelihood of avoidance of the dividend provisions of the Code.

Most commenters agreed that the continued integration of a function consisting of real estate with the business from which it has been separated should be evidence of device. However, they questioned whether other cases of continued integration should be evidence of device. The function might be truly integral to the business from which it has been separated, in which case it could not be sold without adversely affecting that business.

Accordingly, the final regulations revise the related function device factor of § 1.355–2(c)(3)(iv) of the proposed regulations. The device factor is restricted to apply to the continued integration of a function with the business from which it has been separated only if the function can be sold without adversely affecting the business from which it has been separated. For example, the function may be capable of sale without an adverse effect on the business from which it has been separated because adequate substitutes are available. See § 1.355–2(d)(2)(iv)(C) in this document.

Evidence of Nondevice

Section 1.355–2(c)(1), (2), and (3) of the proposed regulations specified device factors whose presence is evidence of device. At the request of commenters, the final regulations specify several nondevice factors whose presence is evidence of nondevice. See § 1.355–2(d)(3) in this document.

Commenters suggested that the business purposes for a transaction may indicate that it was not used for tax avoidance purposes and, therefore, was not used principally as a device. Upon reconsidering the device rules, Treasury and the Internal Revenue Service agree that the corporate business purposes for a transaction may be sufficiently compelling to outweigh the evidence of device that the transaction presents. Accordingly, the final regulations reflect this conclusion. See § 1.355–2(d)(3)(ii) in this document.

The final regulations provide that the corporate business purposes for a transaction present evidence of nondevice. In accordance with the facts and circumstances standard of § 1.355–2(c)(1) of the proposed regulations, the strength of this evidence depends on all of the facts and circumstances. The final regulations adopt a sliding scale approach. Thus, the greater the evidence of device, the stronger the corporate business purpose necessary to outweigh that evidence. Evidence of device presented by a disproportionate allocation of assets not used in a trade or business that satisfies the requirements of section 355(b) can be outweighed by the presence of a strong corporate business purpose for that allocation. The final regulations also specify nonexclusive factors to be taken into account in assessing the strength of a corporate business purpose. See § 1.355–2(d)(3)(ii) in this document.

The final regulations specify other nondevice factors. One of these nondevice factors is that the distributing corporation is publicly traded and has no shareholders who hold large blocks of stock. See § 1.355–2(d)(3)(iii) in this document. Another nondevice factor is that all of the distributees are domestic corporations that would be entitled to the deduction under section 243(a)(1) available to corporations meeting the stock ownership requirements of section 243(c), 243(a)(2), 243(a)(3), or 245(b) if the distribution were taxable as a dividend. See § 1.355–2(d)(3)(iv) in this document.

Examples

In light of the changes made to the device rules in the final regulations, the examples in § 1.355–2(c)(4) of the proposed regulations are replaced by new examples. The examples illustrate the application of the facts and circumstances device standard of § 1.355–2(d)(1) and the balancing of the evidence of device presented by the device factors specified in § 1.355(d)(2) against the evidence of nondevice presented by the corporate business purpose nondevice factor specified in § 1.355–2(d)(3)(ii). See § 1.355–2(d)(4) in this document.

Example (1) illustrates that the transaction will be considered to have been used principally as a device if there is a subsequent sale of stock by a shareholder to a key employee that is negotiated or agreed upon before the distribution, even though the employee could have acquired an equivalent amount of stock directly from the corporation.

Example (2) involves the retention of liquid assets in excess of the reasonable needs of the business of the retaining corporation. That example concludes that the transaction was not used principally as a device because of the corporate business purpose for the transaction and the other facts and circumstances, including the facts that the excess liquid assets are not a substantial portion of the postdistribution assets of the retaining corporation and that the assets not used in the trade or business are divided between the two businesses in proportion to their values. In contrast, example (3) presents a case in which there is a strong corporate business purpose for the distribution, but there is also a transfer of cash substantially in excess of the reasonable needs of the business of the transferor and transferee corporations. That example concludes that, based on all of the facts and circumstances, the transaction was used principally as a device. Example (4) illustrates that the result will be the same as in example (3) if, instead of cash being transferred, operating assets unrelated to the business of the transferee corporation are purchased and transferred to it in anticipation of the distribution.

Transactions Ordinarily Not A Device

Section 1.355–2(c)(1) of the proposed regulations specified two transactions that are ordinarily not considered to be a device for the distribution of earnings and profits. The final regulations specify those transactions in a separate provision. As suggested by commenters, that provision clarifies that such a transaction is ordinarily considered not to have been used principally as a device, notwithstanding the presence of any of the device factors specified in § 1.355–2(d)(2). See § 1.355–2(d)(5)(i) in this document.

Section 1.355–2(c)(1) of the proposed regulations accorded a presumption against device to a distribution if, in the absence of section 355, no part of a distribution of money by the distributing corporation, the controlled corporation, or any corporation controlled, directly or indirectly, by either of those corporations would be taxable as a dividend because of the absence of earnings and profits.

Commenters questioned the relevance of the earnings and profits of the corporations other than the distributing corporation. They argued that the dividend avoidance interpretation of section 355(a)(1)(B) expressed in § 1.355–2(c)(1) of the proposed regulations made only the earnings and profits of the distributing corporation relevant. Treasury and the Internal Revenue Service, however, believe that the earnings and profits of both the distributing and controlled corporations must be taken into account, and the final regulations so provide. See § 1.355–2(d)(5)(ii) in this document. Also, the application of the presumption must take into account the possibility that a distribution by the distributing corporation would create earnings and profits if section 355 did not apply.

Section 1.355–2(d)(5)(iii) provides that distributions that would be entitled to sale or exchange treatment under section 303(a) if section 355 did not apply are ordinarily considered not to have been used principally as a device. Section 1.355–2(d)(5)(iv) contains the presumption against device specified in § 1.355–2(c)(1) of the proposed regulations for distributions that would be entitled to sale or exchange treatment under section 302(a) if section 355 did not apply.

The final regulations also clarify that a transaction to which section 302(a) or 303(a) would apply if section 355 did not is not accorded the presumption against device if it involves the distribution of the stock of more than one controlled corporation and facilitates the avoidance of the dividend provisions of the Code through the subsequent sale or exchange of the stock of one corporation and the retention of the stock of another. The final regulations also add an example of a transaction that is not accorded the presumption because it presents such tax avoidance potential. See example (2) of § 1.355–2(d)(5)(v) in this document.

Active Conduct of a Trade or Business

(1) *In general.* Section 1.355–3 of the proposed regulations interpreted the

active business requirements of section 355(b). The final regulations retain those provisions and make clarifying revisions to § 1.355–3(b)(2)(iii) (the "active conduct" requirement of section 355(b)(2)(A)) and § 1.355–3(b)(3) (the "five-year active conduct" requirement of section 355(b)(2)(B)).

Section 1.355–3(b)(2)(iii) of the proposed regulations provided that the active conduct of a trade or business requires the performance of active and substantial management and operational functions. Commenters inquired whether a corporation may satisfy that requirement if some or all of its activities are performed by independent contractors. In response, the final regulations clarify that, in determining whether a corporation is actively conducting a trade or business, the activities performed by persons outside the corporation, including independent contractors, generally will not be taken into account. However, a corporation may satisfy that requirement through the activities that it performs directly, even though other activities are performed by independent contractors. See § 1.355–3(b)(2)(iii) in this document.

The final regulations slightly revise examples (1), (2), and (3) of § 1.355–3(c) of the proposed regulations to explain why the described activities do not satisfy the active business requirements. Example (1) illustrates that the holding of investment securities is not the active conduct of a trade or business. See § 1.355–3(b)(2)(iv)(A) in this document. This example is consistent with Rev. Rul. 66–204, 1966 C.B. 113, which holds that activity generated by trading in stock and securities held for one's own account is an investment function and is not the active conduct of a trade or business within the meaning of section 355. Examples (2) and (3) illustrate that the activities relied upon to satisfy the active business requirements must have been actively conducted throughout the five-year period preceding the distribution. See § 1.355–3(b)(3) in this document.

(2) *Separation of a single business.* The proposed regulations provided for the separation of a single business in § 1.355–1(a). They interpreted the five-year active conduct requirement accordingly in § 1.355–3(b)(3). The final regulations retain these provisions. They redesignate example (10) of § 1.355–3(c) of the proposed regulations, which was based on *Commissioner v. Coady*, 289 F.2d 490 (6th Cir. 1961), *aff'g* 33 T.C. 771 (1960), as example (4). They redesignate example (11) of § 1.355–3(c) of the proposed regulations, which was based on *United States v. Marett*, 325 F.2d 28 (5th Cir. 1963), as example (5) and revise it to conform more closely to the facts of that case. See examples (4) and (5) of § 1.355–3(c) of this document.

(3) *Single or multiple businesses.* In reexamining the active business requirements, Treasury and the Internal Revenue Service recognized that it is often difficult to determine whether a corporation is conducting a single business, which may be separated under section 355 if it has been actively conducted for five years, or multiple businesses, which may be separated from each other under section 355 only if each has been actively conducted for five years. Correlatively, they recognized that it is difficult to determine whether a corporate expenditure for a new activity constitutes the acquisition or creation of a new business or the expansion of an existing business. Accordingly, it is considered to be appropriate to simplify these determinations.

As in *Estate of Lockwood v. Commissioner*, 350 F.2d 712 (8th Cir. 1965), the final regulations provide that, for purposes of the five-year active conduct requirement, a new activity in the same line of business as an activity that has been actively conducted by the distributing corporation for the five-year period preceding the distribution ordinarily will not be considered a separate business. As a result, the distribution of a new activity will more easily satisfy the five-year active conduct requirement. See § 1.355–3(b)(3)(ii) in this document.

In example (12) of § 1.355–3(c) of the proposed regulations, a department store that was constructed within the preceding five years is separated from a department store business that has been actively conducted for nine years. The separation satisfies the five-year active conduct requirement because the newly constructed department store became part of the existing business. The final regulations revise example (12) and redesignate it as example (7). Example (7) illustrates that the five-year active conduct requirement is met, whether or not the new and old stores are operated as a single unit prior to the separation. The final regulations also add a new example (8) to illustrate that the same result obtains, whether the new activity results from internal corporate expansion or is purchased as a going concern. See examples (7) and (8) of § 1.355–3(c) in this document.

(4) *Functional separations.* The proposed regulations provided for the separation of a single business in § 1.355–1(a). They interpreted the five-year active conduct requirement accordingly in § 1.355–3(b)(3). Examples (8), (9), and (14) of § 1.355–3(c) of the proposed regulations presented separations of businesses along functional lines satisfying the active business requirements. These examples are grouped together as examples (9), (10), and (11) in the final regulations. Example (14) of the proposed regulations presented the separation of a research department from a business engaged in the manufacture and sale of household products. The final regulations redesignate example (14) as example (9) and revise it to illustrate that the separation satisfies the active business requirements, whether the research department subsequently provides services only to the business from which it was separated or also to others. See examples (9), (10), and (11) of § 1.355–3(c) in this document. It should be noted that functional separations may present evidence of device under § 1.355–2(d)(2)(iv)(C).

(5) *Owner-occupied real estate.* The proposed regulations interpreted the active business requirements to permit functional separations. Commenters noted that, in appropriate cases, the separation of real estate occupied by its owner prior to the distribution ("owner-occupied real estate") should satisfy those requirements. Treasury and the Internal Revenue Service recognize that the separation of owner-occupied real estate may satisfy the active business requirements, but they also recognize that such a separation presents significant tax avoidance opportunities. Accordingly, the final regulations revise § 1.355–3(b)(2)(iv)(B) of the proposed regulations to provide that the separation of owner-occupied real estate will be subject to careful scrutiny under the active business requirements. Also, such a separation may be subject to close examination under the related function device factor of § 1.355–2(d)(2)(iv)(C).

Examples (4), (5), (6), and (13) of § 1.355–3(c) of the proposed regulations presented separations of owner-occupied real estate. The final regulations delete examples (6) and (13). Example (13) is deleted because it is redundant. Example (6) is deleted because it is misleading. Thus, in determining whether the separation of owner-occupied real estate satisfies the active business requirements, it is immaterial whether, prior to the distribution, the real estate is owned by the distributing corporation or by a wholly owned subsidiary. Examples (4) and (5) presented separations of owner-occupied real estate that do and do not satisfy the active business requirements. The final regulations redesignate them as examples (12) and (13). Whether separations of owner-occupied real estate that differ from those presented in these examples satisfy the active business requirements will be decided on a case-by-case basis.

Use of Section 355(b) Definition of Active Conduct of a Trade or Business for Purposes of Section 346(b)

In 26 CFR 1.346–1(c) (revised as of April 1, 1987), the term "active conduct of a trade or business" is given the same meaning for purposes of section 346(b) (as in effect before its amendment by the Tax Equity and Fiscal Responsibility Act of 1982) as the term is given in § 1.355–1(c) of the existing regulations. In what was intended merely as a conforming change, the proposed amendments substituted in § 1.346–1(c) a reference to the definition of "active conduct of a trade or business" in § 1.355–3(b)(2) of the proposed regulations. Treasury and the Internal Revenue Service have decided not to adopt the conforming change at this time.

General Utilities Repeal

The Internal Revenue Service is developing regulations under section 337(d) of the Code that will relate to the distribution of stock, or stock and securities, of a controlled corporation. New § 1.355–6 is revised for this purpose.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Because the notice of proposed rulemaking for these regulations was filed with the Federal Register on January 19, 1977, no regulatory flexibility analysis is required.

Drafting Information

The principal author of these regulations is Charles W. Culmer, of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1.301–1—1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

PART 1—[AMENDED]

Authority: 26 U.S.C. 7805. * * *

Par. 2. A new § 1.355–0 is added to read as follows:

§ 1.355–0 In order to facilitate the use of §§ 1.355–1 through 1.355–6, this section lists the paragraphs, subparagraphs, and subdivisions in those sections.

§ 1.355–1 Distribution of stock and securities of a controlled corporation.
(a) Effective date of certain sections.
(b) Application of section.

§ 1.355–2 Limitations.
(a) Property distributed.
(b) Independent business purpose.
(1) Independent business purpose requirement.
(2) Corporate business purpose.
(3) Business purpose for distribution.
(4) Business purpose as evidence of nondevice.
(5) Examples.
(c) Continuity of interest requirement.
(1) Requirement.
(2) Examples.
(d) Device for distribution of earnings and profits.
(1) In general.
(2) Device factors.
(i) In general.
(ii) Pro rata distribution.
(iii) Subsequent sale or exchange of stock.
(A) In general.
(B) Sale or exchange negotiated or agreed upon before the distribution.
(C) Sale or exchange not negotiated or agreed upon before the distribution.
(D) Negotiated or agreed upon before the distribution.
(E) Exchange in pursuance of a plan of reorganization.
(iv) Nature and use of assets.
(A) In general.
(B) Assets not used in a trade or business meeting the requirement of section 355(b).
(C) Related function.
(3) Nondevice factors.
(i) In general.
(ii) Corporate business purpose.
(iii) Distributing corporation publicly traded and widely held.
(iv) Distribution to domestic corporate shareholders.
(4) Examples.
(5) Transactions ordinarily not considered as a device.
(i) In general.
(ii) Absence of earnings and profits.
(iii) Section 303(a) transactions.
(iv) Section 302(a) transactions.
(v) Examples.
(e) Stock and securities distributed.
(1) In general.
(2) Additional rules.
(f) Principal amount of securities.
(1) Securities received.
(2) Only stock received.
(g) Period of ownership.
(1) Other property.
(2) Example.
(h) Active conduct of a trade or business.

§ 1.355–3 Active conduct of a trade or business.
(a) General requirements.
(1) Application of section 355.
(2) Examples.
(b) Active conduct of a trade or business defined.
(1) In general.
(2) Active conduct of a trade or business immediately after distribution.
(i) In general.
(ii) Trade or business.
(iii) Active conduct.
(iv) Limitations.
(3) Active conduct for five-year period preceding distribution.
(4) Special rules for acquisition of a trade or business [Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988].
(i) In general.
(ii) Example.
(iii) Gain or loss recognized in certain transactions.
(iv) Affiliated group.
(5) Special rules for acquisition of a trade or business [After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988].
(c) Examples.

§ 1.355–4 Non pro rata distributions, etc.

§ 1.355–5 Records to be kept and information to be filed.

§ 1.355–6 [Reserved.]

Par. 3. Sections 1.355–1 through 1.355–4 are revised to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) *Effective date of certain sections.* Sections 1.355–1 through 1.355–4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355–1 through 1.355–4 (revised as of April 1, 1987). Sections 1.355–1 through 1.355–4 do not reflect the amendments to section 355 made by the Revenue Act of 1987 and the Technical and Miscellaneous Revenue Act of 1988.

(b) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to (or the inclusion in income of) the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation (the "distributing corporation"). It applies only to the separation of existing businesses that have been in active operation for at

least five years (or a business that has been in active operation for at least five years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least five years by the distributing corporation. A separation is achieved through the distribution by the distributing corporation of stock, or stock and securities, of one or more subsidiaries (the "controlled corporations") to its shareholders with respect to its stock or to its security holders in exchange for its securities. The controlled corporations may be preexisting or newly created subsidiaries. Throughout the regulations under section 355, the term "distribution" refers to a distribution by the distributing corporation of stock, or stock and securities, of one or more controlled corporations, unless the context indicates otherwise. Section 355 contemplates the continued operation of the business or businesses existing prior to the separation. See § 1.355–4 for types of distributions that may qualify under section 355, including pro rata distributions and non pro rata distributions. For purposes of section 355, stock rights and stock warrants are not included in the term "stock and securities."

§ 1.355–2 Limitations.

(a) *Property distributed.* Section 355 applies to a distribution only if the property distributed consists solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.

(b) *Independent business purpose*—(1) *Independent business purpose requirement.* Section 355 applies to a transaction only if it is carried out for one or more corporate business purposes. A transaction is carried out for a corporate business purpose if it is motivated, in whole or substantial part, by one or more corporate business purposes. The potential for the avoidance of Federal taxes by the distributing or controlled corporations (or a corporation controlled by either) is relevant in determining the extent to which an existing corporate business purpose motivated the distribution. The principal reason for this business purpose requirement is to provide nonrecognition treatment only to distributions that are incident to readjustments of corporate structures required by business exigencies and that effect only readjustments of continuing interests in property under modified corporate forms. This business purpose requirement is independent of the other requirements under section 355.

(2) *Corporate business purpose.* A corporate business purpose is a real and substantial non Federal tax purpose germane to the business of the distributing corporation, the controlled corporation, or the affiliated group (as defined in § 1.355–3(b)(4)(iv)) to which the distributing corporation belongs. A purpose of reducing non Federal taxes is not a corporate business purpose if (i) the transaction will effect a reduction in both Federal and non Federal taxes because of similarities between Federal tax law and the tax law of the other jurisdiction and (ii) the reduction of Federal taxes is greater than or substantially coextensive with the reduction of non Federal taxes. See examples (7) and (8) of paragraph (b)(5) of this section. A shareholder purpose (for example, the personal planning purposes of a shareholder) is not a corporate business purpose. Depending upon the facts of a particular case, however, a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. In such a case, the transaction is carried out for one or more corporate business purposes. See example (2) of paragraph (b)(5) of this section.

(3) *Business purpose for distribution.* The distribution must be carried out for one or more corporate business purposes. See example (3) of paragraph (b)(5) of this section. If a corporate business purpose can be achieved through a nontaxable transaction that does not involve the distribution of stock of a controlled corporation and which is neither impractical nor unduly expensive, then, for purposes of paragraph (b)(1) of this section, the separation is not carried out for that corporate business purpose. See examples (3) and (4) of paragraph (b)(5) of this section. For rules with respect to the requirement of a business purpose for a transfer of assets to a controlled corporation in connection with a reorganization described in section 368(a)(1)(D), *See* § 1.368–1(b).

(4) *Business purpose as evidence of nondevice.* The corporate business purpose or purposes for a transaction are evidence that the transaction was not used principally as a device for the distribution of earnings and profits within the meaning of section 355(a)(1)(B). *See* paragraph (d)(3)(ii) of this section.

(5) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Corporation X is engaged in the production, transportation, and refining of petroleum products. In 1985, X acquires all of the properties of corporation Z, which is also engaged in the production, transportation, and refining of petroleum products. In 1991, as a result of antitrust litigation, X is ordered to divest itself of all of the properties acquired from Z. X transfers those properties to new corporation Y and distributes the stock of Y pro rata to X's shareholders. In view of the divestiture order, the distribution is carried out for a corporate business purpose. See paragraph (b)(1) of this section.

Example (2). Corporation X is engaged in two businesses: The manufacture and sale of furniture and the sale of jewelry. The businesses are of equal value. The outstanding stock of X is owned equally by unrelated individuals A and B. A is more interested in the furniture business, while B is more interested in the jewelry business. A and B decide to split up the businesses and go their separate ways. A and B anticipate that the operations of each business will be enhanced by the separation because each shareholder will be able to devote his undivided attention to the business in which he is more interested and more proficient. Accordingly, X transfers the jewelry business to new corporation Y and distributes the stock of Y to B in exchange for all of B's stock in X. The distribution is carried out for a corporate business purpose, notwithstanding that it is also carried out in part for shareholder purposes. See paragraph (b)(2) of this section.

Example (3). Corporation X is engaged in the manufacture and sale of toys and the manufacture and sale of candy. The shareholders of X wish to protect the candy business from the risks and vicissitudes of the toy business. Accordingly, X transfers the toy business to new corporation Y and distributes the stock of Y to X's shareholders. Under applicable law, the purpose of protecting the candy business from the risks and vicissitudes of the toy business is achieved as soon as X transfers the toy business to Y. Therefore, the distribution is not carried out for a corporate business purpose. See paragraph (b)(3) of this section.

Example (4). Corporation X is engaged in a regulated business in State T. X owns all of the stock of corporation Y, a profitable corporation that is not engaged in a regulated business. Commission C sets the rates that X may charge its customers, based on its total income. C has recently adopted rules according to which the total income of a corporation includes the income of a business if, and only if, the business is operated, directly or indirectly, by the corporation. Total income, for this purpose, includes the income of a wholly owned subsidiary corporation but does not include the income of a parent or "brother/sister" corporation. Under C's new rule, X's total income includes the income of Y, with the result that X has suffered a reduction of the rates that it may charge its customers. It would not be impractical or unduly expensive to create in a nontaxable transaction (such as a transaction qualifying under section 351) a holding company to hold the stock of X and Y. X distributes the stock of Y to X's shareholders. The distribution is not carried out for the purpose of increasing the rates that X may charge its customers because that purpose could be achieved through a nontaxable transaction, the creation of a holding company, that does not involve the distribution of stock of a controlled corporation and which is neither impractical nor unduly expensive. See paragraph (b)(3) of this section.

Example (5). The facts are the same as in example (4), except that C has recently adopted rules according to which the total income of a corporation includes not only the income included in example (3), but also the income of any member of the affiliated group to which the corporation belongs. In order to avoid a reduction in the rates that it may charge its customers, X distributes the stock of Y to X's shareholders. The distribution is carried out for a corporate business purpose. See paragraph (b)(3) of this section.

Example (6). (i) Corporation X owns all of the one class of stock of corporation Y. X distributes the stock of Y pro rata to its five shareholders, all of whom are individuals, for the sole purpose of enabling X and/or Y to elect to become an S corporation. The distribution does not meet the corporate business purpose requirement. See paragraph (b) (1) and (2) of this section.

(ii) The facts are the same as in Example 6(i), except that the business of Y is operated as a division of X. X transfers this division to new corporation Y and distributes the stock of Y pro rata to its shareholders, all of whom are individuals, for the sole purpose of enabling X and/or Y to elect to become an S corporation. The distribution does not meet the corporate business purpose requirement. See paragraph (b) (1) and (2) of this section.

Example (7). The facts are the same as in example (6)(i), except that the distribution is made to enable X to elect to become an S corporation both for Federal tax purposes and for purposes of the income tax imposed by State M. State M has tax law provisions similar to subchapter S of the Internal Revenue Code of 1986. An election to be an S corporation for Federal tax purposes will effect a substantial reduction in Federal taxes that is greater than the reduction of State M taxes pursuant to an election to be an S corporation for State M purposes. The purpose of reducing State M taxes is not a corporate business purpose. The distribution does not meet the corporate business purpose requirements. See paragraph (b) (1) and (2) of this section.

Example (8). The facts are the same as Example (7), except that the distribution also is made to enable *A*, a key employee of Y, to acquire stock of Y without investing in X. A is considered to be critical to the success of Y and he has indicated that he will seriously consider leaving the company if he is not given the opportunity to purchase a significant amount of stock of Y. As a matter of state law, Y could not issue stock to the employee while it was a subsidiary of X. As in Example (7), the purpose of reducing State M taxes is not a corporate business purpose. In order to determine whether the issuance of stock to the key employee, in fact, motivated the distribution of the Y stock, the potential avoidance of Federal taxes is a relevant factor to take into account. If the facts and circumstances establish that the distribution was substantially motivated by the need to issue stock to the employee, the distribution will meet the corporate business purpose requirement.

(c) *Continuity of interest requirement*—(1) *Requirement.* Section 355 applies to a separation that effects only a readjustment of continuing interests in the property of the distributing and controlled corporations. In this regard section 355 requires that one or more persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange own, in the aggregate, an amount of stock establishing a continuity of interest in each of the modified corporate forms in which the enterprise is conducted after the separation. This continuity of interest requirement is independent of the other requirements under section 355.

(2) *Examples.*

Example (1). For more than five years, corporation X has been engaged directly in one business, and indirectly in a different business through its wholly owned subsidiary, S. The businesses are equal in value. At all times, the outstanding stock of X has been owned equally by unrelated individuals A and B. For valid business reasons, A and B cause X to distribute all of the stock of S to B in exchange for all of B's stock in X. After the transaction, A owns all the stock of X and B owns all the stock of S. The continuity of interest requirement is met because one or more persons who were the owners of X prior to the distribution (A and B) own, in the aggregate, an amount of stock establishing a continuity of interest in each of X and S after the distribution.

Example (2). Assume the same facts as in Example (1), except that pursuant to a plan to acquire a stock interest in X without acquiring, directly or indirectly, an interest in S, C purchased one-half of the X stock owned by A and immediately thereafter X distributed all of the S stock to B in exchange for all of B's stock in X. After the transactions, A owns 50 percent of X and B owns 100 percent of S. The distribution by X of all of the stock of S to B in exchange for all of B's stock in X will satisfy the continuity of interest requirement for section 355 because one or more persons who were the owners of X prior to the distribution (A and B) own, in the aggregate, an amount of stock establishing a continuity of interest in each of X and S after the distribution.

Example (3). Assume the same facts as in Examples (1) and (2), except that C purchased all of the X stock owned by A. After the transactions, neither A nor B own any of the stock of X, and B owns all the stock of S. The continuity of interest requirement is not met because the owners of X prior to the distribution (A and B) do not, in the aggregate, own an amount of stock establishing a continuity of interest in each of X and S after the distribution, *i.e.*, although A and B collectively have retained 50 percent of their equity interest in the former combined enterprise, they have failed to continue to own the minimum stock interest of A in X is less than the minimum equity interest in the distributing corporation, X, that would be required in order to meet the continuity of interest requirement.

Example (4). Assume the same facts as in Examples (1) and (2), except that C purchased 80 percent of the X stock owned by A. After the transactions, A owns 20 percent of the stock of X, B owns no X stock, and B owns 100 percent of the S stock. The continuity of interest requirement is not met because the owners of X prior to the distribution (A and B) do not, in the aggregate, have a continuity of interest in each of X and S after the distribution, *i.e.*, although A and B collectively have retained 60 percent of their equity interest in the former combined enterprise, the 20 percent interest in the distributing corporation, X, that would be required in order to meet the continuity of interest requirement.

(d) *Device for distribution of earnings and profits*—(1) *In general.* Section 355 does not apply to a transaction used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (a "device"). Section 355 recognizes that a tax-free distribution of the stock of a controlled corporation presents a potential for tax avoidance by facilitating the avoidance of the dividend provisions of the Code through the subsequent sale of exchange of stock of one corporation and the retention of the stock of another corporation. A device can include a transaction that effects a recovery of basis. In this paragraph (d), "exchange" includes transactions, such as redemptions, treated as exchanges under the Code. Generally, the determination of whether a transaction was used principally as a device will be made from all of the facts and circumstances, including, but not limited to, the presence of the device factors specified in paragraph (d)(2) of this section ("evidence of device"), and the presence of the nondevice factors specified in paragraph (d)(3) of this section ("evidence of nondevice"). However, if a transaction is specified in paragraph (d)(5) of this section, then it is ordinarily considered not to have been used principally as a device.

(2) *Device factors*—(i) *In general.* The presence of any of the device factors specified in this subparagraph (2) is evidence of device. The strength of this evidence depends on the facts and circumstances.

(ii) *Pro rata distribution.* A distribution that is pro rata or substantially pro rata among the shareholders of the distributing

corporation presents the greatest potential for the avoidance of the dividend provisions of the Code and, in contrast to other types of distributions, is more likely to be used principally as a device. Accordingly, the fact that a distribution is pro rata or substantially pro rata is evidence of device.

(iii) *Subsequent sale or exchange of stock*—(A) *In general.* A sale or exchange of stock of the distributing or the controlled corporation after the distribution (a "subsequent sale or exchange") is evidence of device. Generally, the greater the percentage of the stock sold or exchanged after the distribution, the stronger the evidence of device. In addition, the shorter the period of time between the distribution and the sale or exchange, the stronger the evidence of device.

(B) *Sale or exchange negotiated or agreed upon before the distribution.* A subsequent sale or exchange pursuant to an arrangement negotiated or agreed upon before the distribution is substantial evidence of device.

(C) *Sale or exchange not negotiated or agreed upon before the distribution.* A subsequent sale or exchange not pursuant to an arrangement negotiated or agreed upon before the distribution is evidence of device.

(D) *Negotiated or agreed upon before the distribution.* For purposes of this subparagraph (2), a sale or exchange is always pursuant to an arrangement negotiated or agreed upon before the distribution if enforceable rights to buy or sell existed before the distribution. If a sale or exchange was discussed by the buyer and the seller before the distribution and was reasonably to be anticipated by both parties, then the sale or exchange will ordinarily be considered to be pursuant to an arrangement negotiated or agreed upon before the distribution.

(E) *Exchange in pursuance of a plan of reorganization.* For purposes of this subparagraph (2), if stock is exchanged for stock in pursuance of a plan of reorganization, and either no gain or loss or only an insubstantial amount of gain is recognized on the exchange, then the exchange is not treated as a subsequent sale or exchange, but the stock received in the exchange is treated as the stock surrendered in the exchange. For this purpose, gain treated as a dividend pursuant to sections 356(a)(2) and 316 shall be disregarded.

(iv) *Nature and use of assets*—(A) *In general.* The determination of whether a transaction was used principally as a device will take into account the nature, kind, amount, and use of the assets of the distributing and the controlled corporations (and corporations controlled by them) immediately after the transaction.

(B) *Assets not used in a trade or business meeting the requirement of section 355(b).* The existence of assets that are not used in a trade or business that satisfies the requirements of section 355(b) is evidence of device. For this purpose, assets that are not used in a trade or business that satisfies the requirements of section 355(b) include, but are not limited to, cash and other liquid assets that are not related to the reasonable needs of a business satisfying such section. The strength of the evidence of device depends on all the facts and circumstances, including, but not limited to, the ratio for each corporation of the value of assets not used in a trade or business that satisfies the requirements of section 355(b) to the value of its business that satisfies such requirements. A difference in the ratio described in the preceding sentence for the distributing and controlled corporation is ordinarily not evidence of device if the distribution is not pro rata among the shareholders of the distributing corporation and such difference is attributable to a need to equalize the value of the stock distributed and the value of the stock or securities exchanged by the distributees.

(C) *Related function.* There is evidence of device if a business of either the distributing or controlled corporation (or a corporation controlled by it) is (*1*) a "secondary business" that continues as a secondary business for a significant period after the separation, and (*2*) can be sold without adversely affecting the business of the other corporation (or a corporation controlled by it). A secondary business is a business of either the distributing or controlled corporation, if its principal function is to serve the business of the other corporation (or a corporation controlled by it). A secondary business can include a business transferred to a newly-created subsidiary or a business which serves a business transferred to a newly-created subsidiary. The activities of the secondary business may consist of providing property or performing services. Thus, in example (11) of § 1.355–3(c), evidence of device would be presented if the principal function of the coal mine (satisfying the requirements of the steel business) continued after the separation and the coal mine could be sold without adversely affecting the steel business. Similarly, in example (10) of § 1.355–3(c), evidence of device would be presented if the principal function of the sales operation after the separation is to sell the output from the manufacturing operation and the sales operation could be sold without adversely affecting the manufacturing operation.

(3) *Nondevice factors*—(i) *In general.* The presence of any of the nondevice factors specified in this subparagraph (3) is evidence of nondevice. The strength of this evidence depends on all of the facts and circumstances.

(ii) *Corporate business purpose.* The corporate business purpose for the transaction is evidence of nondevice. The stronger the evidence of device (such as the presence of the device factors specified in paragraph (d)(2) of this section), the stronger the corporate business purpose required to prevent the determination that the transaction was used principally as a device. Evidence of device presented by the transfer or retention of assets not used in a trade or business that satisfies the requirements of section 355(b) can be outweighed by the existence of a corporate business purpose for those transfers or retentions. The assessment of the strength of a corporate business purpose will be based on all of the facts and circumstances, including, but not limited to, the following factors:

(A) The importance of achieving the purpose to the success of the business;

(B) The extent to which the transaction is prompted by a person not having a proprietary interest in either corporation, or by other outside factors beyond the control of the distributing corporation; and

(C) The immediacy of the conditions prompting the transaction.

(iii) *Distributing corporation publicly traded and widely held.* The fact that the distributing corporation is publicly traded and has no shareholder who is directly or indirectly the beneficial owner of more than five percent of any class of stock is evidence of nondevice.

(iv) *Distribution to domestic corporate shareholders.* The fact that the stock of the controlled corporation is distributed to one or more domestic corporations that, if section 355 did not apply, would be entitled to a deduction under section 243(a)(1) available to corporations meeting the stock ownership requirements of section 243(c), or a deduction under section 243(c) (2) or (3) or 245(b) is evidence of nondevice.

(4) *Examples.* The provisions of paragraph (d) (1) through (3) of this section may be illustrated by the following examples:

Example (1). Individual A owns all of the stock of corporation X, which is engaged in the warehousing business. X owns all of the stock of corporation Y, which is engaged in the transportation business. X employs individual B, who is extremely knowledgeable of the warehousing business in general and the operations of X in particular. B has informed A that he will seriously consider leaving the company if he is not given the opportunity to purchase a significant amount of stock of X. Because of his knowledge and experience, the loss of B would seriously damage the business of X. B cannot afford to purchase any significant amount of stock of X as long as X owns Y. Accordingly, X distributes the stock of Y to A and A subsequently sells a portion of his X stock to B. However, X could have issued additional shares to B sufficient to give B an equivalent ownership interest in X. There is no other evidence of device or evidence of nondevice. In light of the fact that X could have issued additional shares to B, the sale of X stock by A is substantial evidence of device. The transaction is considered to have been used principally as a device. See paragraph (d) (1), (2) (ii), (iii) (A) (B) and (D), and (3) (i) and (ii) of this section.

Example (2). Corporation X owns and operates a fast food restaurant in State M and owns all of the stock of corporation Y, which owns and operates a fast food restaurant in State N. X and Y operate their businesses under franchises granted by D and E, respectively. X owns cash and marketable securities that exceed the reasonable needs of its business but whose value is small relative to the value of its business. E has recently changed its franchise policy and will no longer grant or renew franchises to subsidiaries (or other members of the same affiliated group) of corporations operating businesses under franchises granted by its competitors. Thus, Y will lose its franchise if it remains a subsidiary of X. The franchise is about to expire. Accordingly, X distributes the stock of Y pro rata among X's shareholders. X retains its business and transfers cash and marketable securities to Y in an amount proportional to the value of Y's business. There is no other evidence of device or evidence of nondevice. The transfer by X to Y and the retention by X of cash and marketable securities is relatively weak evidence of device because after the transfer X and Y hold cash and marketable securities in amounts proportional to the values of their businesses. The fact that the distribution is pro rata is evidence of device. A strong corporate business purpose is relatively strong evidence of nondevice. Accordingly, the transaction is considered not to have been used principally as a device. See paragraph (d) (1), (2) (ii), (iv) (A), and (B) and (3) (i) and (ii) (A), (B) and (C) of this section.

Example (3). Corporation X is engaged in a regulated business in State M and owns all of the stock of corporation Y, which is not engaged in a regulated business in State M. State M has recently amended its laws to provide that affiliated corporations operating in M may not conduct both regulated and unregulated businesses. X transfers cash not related to the reasonable needs of the business of X or Y to Y and then distributes the stock of Y pro rata among X's shareholders. As a result of the transfer of cash, the ratio of the value of its assets not used in a trade or business that satisfies the requirements of section 355(b) to the value of its business is substantially greater for Y than for X. There is no other evidence of device or evidence of nondevice. The transfer of cash by X to Y is relatively strong evidence of device because after the transfer Y holds disproportionately many assets that are not used in a trade or business that satisfies the requirements of section 355(b). The fact that the distribution is pro rata is evidence of device. The strong business purpose is relatively strong evidence of nondevice, but it does not pertain to the transfer. Accordingly, the transaction is considered to have been used principally as a device. See paragraph (d) (1), (2) (ii), (iv) (A) and (B), and (3) and (i) and (ii) of this section.

Example (4). The facts are the same as in example (3), except that, instead of transferring cash to Y, X purchases operating assets unrelated to the business of Y and transfers them to Y prior to the distribution. There is no other evidence of device or evidence of nondevice. The transaction is considered to have been used principally as a device. See paragraph (d) (1), (2) (ii), (iv) (A) and (B), and (3) (i) and (ii) of this section.

(5) *Transactions ordinarily not considered as a device*—(i) *In general.* This subparagraph (5) specifies three distributions that ordinarily do not present the potential for tax avoidance described in paragraph (d)(1) of this section. Accordingly, such distributions are ordinarily considered not to have been used principally as a device, notwithstanding the presence of any of the device factors described in paragraph (d)(2) of this section. A transaction described in paragraph (d)(5) (iii) or (iv) of this section is not protected by this subparagraph (5) from a determination that it was used principally as a device if it involves the distribution of the stock of more than one controlled corporation and facilitates the avoidance of the dividend provisions of the Code through the subsequent sale or exchange of stock of one corporation and the retention of the stock of another corporation.

(ii) *Absence of earnings and profits.* A distribution is ordinarily considered not to have been used principally as a device if—

(A) The distributing and controlled corporations have no accumulated earnings and profits at the beginning of their respective taxable years,

(B) The distributing and controlled corporations have no current earnings and profits as of the date of the distribution, and

(C) No distribution of property by the distributing corporation immediately before the separation would require recognition of gain resulting in current earnings and profits for the taxable year of the distribution.

(iii) *Section 303(a) transactions.* A distribution is ordinarily considered not to have been used principally as a device if, in the absence of section 355, with respect to each shareholder distributee, the distribution would be a redemption to which section 303(a) applied.

(iv) *Section 302(a) transactions.* A distribution is ordinarily considered not to have been used principally as a device if, in the absence of section 355, with respect to each shareholder distributee, the distribution would be a redemption to which section 302(a) applied. For purposes of the preceding sentence, section 302(c)(2)(A) (ii) and (iii) shall not apply.

(v) *Examples.* The provisions of this subparagraph (5) may be illustrated by the following examples:

Example (1). The facts are the same as in example (3) of paragraph (d)(4) of this section, except that X and Y had no accumulated earnings and profits at the beginning of its taxable year, X and Y have no current earnings and profits as of the date of the distribution, and no distribution of property by X immediately before the separation would require recognition of gain that would result in earnings and profits for the taxable year of the distribution. The transaction is considered not to have been used principally as a device. See paragraph (d)(5) (i) and (ii) of this section.

Example (2). Corporation X is engaged in three businesses: a hotel business, a restaurant business, and a rental real estate business. Individuals A, B, and C own all of the stock of X. X transfers the restaurant business to new corporation Y and transfers the rental real estate business to new corporation Z. X then distributes the stock of Y and Z pro rata between B and C in exchange for all of their stock in X. In the absence of section 355, the distribution would be a redemption to which section 302(a) applied. Since this distribution involves the stock of more than one controlled corporation and facilitates the avoidance of the dividend provisions of the Code through the subsequent sale or exchange of stock in one corporation and the retention of the stock of another corporation, it is not protected by paragraph (d)(5) (i) and (iv) of this section from a determination that it was used principally as a device. Thus, the determination of whether the transaction was used principally as a device must be made from all the facts and circumstances, including the presence of the device factors and nondevice factors specified in paragraph (d) (2) and (3) of this section.

(e) *Stock and securities distributed*—(1) *In general.* Section 355 applies to a distribution only if the distributing corporation distributes—

(i) All of the stock and securities of the controlled corporation that it owns, or

(ii) At least an amount of the stock of the controlled corporation that constitutes control as defined in section 368(c). In such a case, all, or any part, of the securities of the controlled corporation may be distributed, and

paragraph (e)(2) of this section shall apply.

(2) *Additional rules.* Where a part of either the stock or the securities of the controlled corporation is retained under paragraph (e)(1)(ii) of this section, it must be established to the satisfaction of the Commissioner that the retention by the distributing corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Ordinarily, the corporate business purpose or purposes for the distribution will require the distribution of all of the stock and securities of the controlled corporation. If the distribution of all of the stock and securities of a controlled corporation would be treated to any extent as a distribution of "other property" under section 356, this fact tends to establish that the retention of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(f) *Principal amount of securities*—(1) *Securities received.* Section 355 does not apply to a distribution if, with respect to any shareholder or security holder, the principal amount of securities received exceeds the principal amount of securities surrendered, or securities are received but no securities are surrendered. In such cases, see section 356.

(2) *Only stock received.* If only stock is received in a distribution to which section 355(a)(1)(A) applies, the principal amount of the securities surrendered, if any, and the par value or stated value of the stock surrendered, if any, are not relevant to the application of that section.

(g) *Period of ownership*—(1) *Other property.* For purposes of section 355(a)(1)(A), stock of a controlled corporation acquired in a transaction in which gain or loss was recognized in whole or in part (other than a transaction described in § 1.355–3(b)(4)(iii)) within the five-year period ending on the date of the distribution shall not be treated as stock of the controlled corporation but shall be treated as "other property." See section 356. However, for purposes of section 355(a)(1)(D), the stock so acquired is stock of the controlled corporation.

(2) *Example.* Paragraph (g)(1) of this section may be illustrated by the following example:

Example. Corporation X has held 85 of the 100 outstanding shares of the stock of corporation Y for more than five years on the date of the distribution. Six months before that date, X purchased ten more shares. If X distributes all of its 95 shares of the stock of Y, so much of section 356 as relates to section 355 may apply to the transaction and the ten newly acquired shares are treated as other property. On the other hand, if X retains ten of the shares of the stock of Y then the application of paragraph (e) of this section must take into account all of the stock of Y, including the ten shares newly acquired by X and the five shares owned by others. Similarly, if, by the use of any agency, X acquired any of the stock of Y within the five-year period ending on the date of the distribution in a transaction in which gain or loss was recognized in whole or in part (for example, where another subsidiary of X purchased stock of Y), then that stock is treated as other property. If X had held only 75 of the 100 outstanding shares of the stock of Y for more than five years on the date of the distribution and had purchased the remaining 25 shares six months before that date, then neither section 355 nor section 356 would apply to the distribution.

(h) *Active conduct of a trade or business.* Section 355 applies to a distribution only if the requirements of § 1.355–3 (relating to the active conduct of a trade or business) are satisfied.

§ 1.355–3 Active conduct of a trade or business.

(a) *General requirements*—(1) *Application of section 355.* Under section 355(b)(1), a distribution of stock, or stock and securities, of a controlled corporation qualifies under section 355 only if—

(i) The distributing and the controlled corporations are each engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(A)), or

(ii) Immediately before the distribution, the distributing corporation had no assets other than stock or securities of the controlled corporations, and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(B)). A *de minimis* amount of assets held by the distributing corporation shall be disregarded for purposes of this paragraph (a)(1)(ii).

(2) *Examples.* Paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). Prior to the distribution, corporation X is engaged in the active conduct of a trade or business and owns all of the stock of corporation Y, which also is engaged in the active conduct of a trade or business. X distributes all of the stock of Y to X's shareholders, and each corporation continues the active conduct of its trade or business. The active business requirement of section 355(b)(1)(A) is satisfied.

Example (2). The facts are the same as in example (1), except that X transfers all of its assets other than the stock of Y to a new corporation in exchange for all of the stock of the new corporation and then distributes the stock of both controlled corporations to X's shareholders. The active business requirement of section 355(b)(1)(B) is satisfied.

(b) *Active conduct of a trade or business defined*—(1) *In general.* Section 355(b)(2) provides rules for determining whether a corporation is treated as engaged in the active conduct of a trade or business for purposes of section 355(b)(1). Under section 355(b)(2)(A), a corporation is treated as engaged in the active conduct of a trade or business if it is itself engaged in the active conduct of a trade or business or if substantially all of its assets consist of the stock, or stock and securities, of a corporation or corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

(2) *Active conduct of a trade or business immediately after distribution*—(i) *In general.* For purposes of section 355(b), a corporation shall be treated as engaged in the "active conduct of a trade or business" immediately after the distribution if the assets and activities of the corporation satisfy the requirements and limitations described in paragraph (b)(2) (ii), (iii), and (iv) of this section.

(ii) *Trade or business.* A corporation shall be treated as engaged in a trade or business immediately after the distribution if a specific group of activities are being carried on by the corporation for the purpose of earning income or profit, and the activities included in such group include every operation that forms a part of, or a step in, the process of earning income or profit. Such group of activities ordinarily must include the collection of income and the payment of expenses.

(iii) *Active conduct.* For purposes of section 355(b), the determination whether a trade or business is actively conducted will be made from all of the facts and circumstances. Generally, the corporation is required itself to perform active and substantial management and operational functions. Generally, activities performed by the corporation itself do not include activities performed by persons outside the corporation, including independent contractors. A corporation may satisfy the requirements of this subdivision (iii) through the activities that it performs itself, even though some of its activities are performed by others. Separations of real property all or substantially all of which is occupied prior to the distribution by the distributing or the controlled corporation (or by any corporation controlled directly or indirectly by either of those corporations) will be carefully scrutinized with respect to the requirements of section 355(b) and this § 1.355–3.

(iv) *Limitations.* The active conduct of a trade or business does not include—

(A) The holding for investment purposes of stock, securities, land, or other property, or

(B) The ownership and operation (including leasing) of real or personal property used in a trade or business, unless the owner performs significant services with respect to the operation and management of the property.

(3) *Active conduct for five-year period preceding distribution.* Under section 355(b)(2)(B), a trade or business that is relied upon to meet the requirements of section 355(b) must have been actively conducted throughout the five-year period ending on the date of the distribution. For purposes of this subparagraph (3)—

(i) Activities which constitute a trade or business under the tests described in paragraph (b)(2) of this section shall be treated as meeting the requirement of the preceding sentence if such activities were actively conducted throughout the 5-year period ending on the date of distribution, and

(ii) The fact that a trade or business underwent change during the five-year period preceding the distribution (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded, provided that the changes are not of such a character as to constitute the acquisition of a new or different business. In particular, if a corporation engaged in the active conduct of one trade or business during that five-year period purchased, created, or otherwise acquired another trade or business in the same line of business, then the acquisition of that other business is ordinarily treated as an expansion of the original business, all of which is treated as having been actively conducted during that five-year period, unless that purchase, creation, or other acquisition effects a change of such a character as to constitute the acquisition of a new or different business.

(4) *Special rules for acquisition of a trade or business (Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988)*—(i) *In general.* Under section 355(b)(2)(C), a trade or business relied upon to meet the requirements of section 355(b) must not have been acquired by the distributing corporation, the controlled corporation, or another member of the affiliated group during the five-year period ending on the date of the distribution unless it was acquired in a transaction in which no gain or loss was recognized. Similarly, under section 355(b)(2)(D), the trade or business must not have been indirectly acquired by any of those corporations (or a predecessor in interest of any of those corporations) during that five-year period in a transaction in which gain or loss was recognized in whole or in part and which consisted of the acquisition of control of the corporation directly engaged in the trade or business, or the indirect acquisition of control of that corporation through the direct or indirect acquisition of control of one or more other corporations. A trade or business acquired, directly or indirectly, within the five-year period ending on the date of the distribution in a transaction in which the basis of the assets acquired was not determined in whole or in part by reference to the transferor's basis does not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor.

(ii) *Example.* Paragraph (b)(4)(i) of this section may be illustrated by the following example:

Example. In 1985, corporation X, which operates a business and has cash and other liquid assets, purchases all of the stock of corporation Y, which is engaged in the active conduct of a trade or business. Later in the same year, X merges into Y in a "downstream" statutory merger. In 1986, Y transfers the business assets formerly owned by X to a new subsidiary, corporation Z, and then distributes the stock of Z to Y's shareholders. Section 355 does not apply to the distribution of the stock of Z because the trade or business of Y was indirectly acquired by X, a predecessor in interest of Y, during the five-year period preceding the distribution.

(iii) *Gain or loss recognized in certain transactions.* The requirements of section 355(b)(2) (C) and (D) are intended to prevent the direct or indirect acquisition of a trade or business by a corporation in anticipation of a distribution by the corporation of that trade of business in a distribution to which section 355 would otherwise apply. A direct or indirect acquisition of a trade or business by one member of an affiliated group from another member of the group is not the type of transaction to which section 355(b)(2) (C) and (D) is intended to apply. Therefore, in applying section 355(b)(2) (C) or (D), such an acquisition, even though taxable, shall be disregarded.

(iv) *Affiliated group.* For purposes of this subparagraph (4), the term "affiliated group" means an affiliated group as defined in section 1504(a) (without regard to section 1504(b)), except that the term "stock" includes nonvoting stock described in section 1504(a)(4).

(5) *Special rules for acquisition of a trade or business (After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).* [Reserved]

(c) *Examples.* The following examples illustrate section 355(b)(2) (A) and (B) and paragraph (b) (1), (2), and (3) of this section. However, a transaction that satisfies these active business requirements will qualify under section 355 only if it satisfies the other requirements of section 355 (a) and (b).

Example (1). Corporation X is engaged in the manufacture and sale of soap and detergents and also owns investment securities. X transfers the investment securities to new subsidiary Y and distributes the stocks of Y to X's shareholders. Y does not satisfy the requirements of section 355(b) because the holding of investment securities does not constitute the active conduct of a trade or business. See paragraph (b)(2)(iv)(A) of this section.

Example (2). Corporation X owns, manages, and derives rental income from an office building and also owns vacant land. X transfers the land to new subsidiary Y and distributes the stock of Y to X's shareholders. Y will subdivide the land, install streets and utilities, and sell the developed lots to various homebuilders. Y does not satisfy the requirements of section 355(b) because no significant development activities were conducted with respect to the land during the five-year period ending on the date of the distribution. See paragraph (b)(3) of this section.

Example (3). Corporation X owns land on which it conducts a ranching business. Oil has been discovered in the area, and it is apparent that oil may be found under the land on which the ranching business is conducted. X has engaged in no significant activities in connection with its mineral rights. X transfers its mineral rights to new subsidiary Y and distributes the stock of Y to X's shareholders. Y will actively pursue the development of the oil producing potential of the property. Y does not satisfy the requirements of section 355(b) because X engaged in no significant exploitation activities with respect to the mineral rights during the five-year period ending on the date of the distribution. See paragraph (b)(3) of this section.

Example (4). For more than five years, corporation X has conducted a single business of constructing sewage disposal plants and other facilities. X transfers one-half of its assets to new subsidiary Y. These assets include a contract for the construction of a sewage disposal plant in State M, construction equipment, cash, and other tangible assets. X retains a contract for the construction of a sewage disposal plant in State N, construction equipment, cash, and other intangible assets. X then distributes the stock of Y to one of X's shareholders in exchange for all of his stock of X. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3)(i) of this section.

Example (5). For the past six years, corporation X has owned and operated two factories devoted to the production of edible pork skins. The entire output of one factory is sold to one customer, C, while the output of the second factory is sold to C and a number of other customers. To eliminate errors in packaging, X opens a new factory. Thereafter, orders from C are processed and packaged at the two original factories, while the new factory handles only orders from other customers. Eight months after opening the new factory, X transfers it and related business assets to new subsidiary Y and distributes the stock of Y to X's shareholders. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3) (i) and (ii) of this section.

Example (6). Corporation X has owned and operated a men's retail clothing store in the downtown area of the City of G for nine years and has owned and operated another men's retail clothing store in a suburban area of G for seven years. X transfers the store building, fixtures, inventory, and other assets related to the operations of the suburban store to new subsidiary Y. X also transfers to Y the delivery trucks and delivery personnel that formerly served both stores. Henceforth, X will contract with a local public delivery service to make its deliveries. X retains the warehouses that formerly served both stores. Henceforth, Y will lease warehouse space from an unrelated public warehouse company. X then distributes the stock of Y to X's shareholders. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3)(i) of this section.

Example (7). For the past nine years, corporation X has owned and operated a department store in the downtown area of the City of G. Three years ago, X acquired a parcel of land in a suburban area of G and constructed a new department store on it. X transfers the suburban store and related business assets to new subsidiary Y and distributes the stock of Y to X's shareholders. After the distribution, each store has its own manager and is operated independently of the other store. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3) (i) and (ii) of this section.

Example (8). For the past six years, corporation X has owned and operated hardware stores in several states. Two years ago, X purchased all of the assets of a hardware store in State M, where X had not previously conducted business. X transfers the State M store and related business assets to new subsidiary Y and distributes the stock of Y to X's shareholders. After the distribution, the State M store has its own manager and is operated independently of the other stores. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3) (i) and (ii) of this section.

Example (9). For the past eight years, corporation X has engaged in the manufacture and sale of household products. Throughout this period, X has maintained a research department for use in connection with its manufacturing activities. The research department has 30 employees actively engaged in the development of new products. X transfers the research department to new subsidiary Y and distributes the stock of Y to X's shareholders. After the distribution, Y continues its research operations on a contractual basis with several corporations, including X. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3)(i) of this section. The result in this example is the same if, after the distribution, Y continues its research operations but furnishes its services only to X. See paragraph (b)(3)(i) of this section. However, see § 1.355–2 (d)(2)(iv)(C) (related function device factor) for possible evidence of device.

Example (10). For the past six years, corporation X has processed and sold meat products. X derives income from no other source. X separates the sales function from the processing function by transferring the business assets related to the sales function and cash for working capital to new subsidiary Y. X then distributes the stock of Y to X's shareholders. After the distribution, Y purchases for resale the meat products processed by X. X and Y both satisfy the requirements of section 355(b). See paragraph (b)(3)(i) of this section. However, see § 1.355–2(d)(2)(iv)(C) (related function device factor) for possible evidence of device.

Example (11). For the past eight years, corporation X has been engaged in the manufacture and sale of steel and steel products. X owns all of the stock of corporation Y, which, for the past six years, has owned and operated a coal mine for the sole purpose of supplying X's coal requirements in the manufacture of steel. X distributes the stock of Y to X's shareholders. X and Y both satisfy the requirements of section 355 (b). See paragraph (b) (3) (i) of this section. However, see § 1.355–2 (d) (2) (iv) (C) (related function device factor) for possible evidence of device.

Example (12). For the past seven years, corporation X, a bank, has owned an eleven-story office building, the ground floor of which X has occupied in the conduct of its banking business. The remaining ten floors are rented to various tenants. Throughout this seven-year period, the building has been managed and maintained by employees of the bank. X transfers the building to new subsidiary Y and distributes the stock of Y to X's shareholders. Henceforth, Y will manage the building, negotiate leases, seek new tenants, and repair and maintain the building. X and Y both satisfy the requirements of section 355 (b). See paragraph (b) (3) of this section.

Example (13). For the past nine years, corporation X, a bank, has owned a two-story building, the ground floor and one half of the second floor of which X has occupied in the conduct of its banking business. The other half of the second floor has been rented as storage space to a neighboring retail merchant. X transfers the building to new subsidiary Y and distributes the stock of Y to X's shareholders. After the distribution, X leases from Y the space in the building that it formerly occupied. Under the lease, X will repair and maintain its portion of the building, and pay property taxes and insurance. Y does not satisfy the requirements of section 355 (b) because it is not engaged in the active conduct of a trade or business immediately after the distribution. See paragraph (b) (2) (iv) (A) of this section. This example does not address the question of whether the activities of X with respect to the building prior to the separation would constitute the active conduct of a trade or business.

§ 1.355–4 Non pro rata distributions, etc.

Section 355 provides for nonrecognition of gain or loss with respect to a distribution whether or not (a) the distribution is pro rata with respect to all of the shareholders of the distributing corporation, (b) the distribution is pursuant to a plan of reorganization within the meaning of section 368 (a) (1) (D), or (c) the shareholder surrenders stock in the distributing corporation. Under section 355, the stock of a controlled corporation may consist of common stock or preferred stock. (See, however, section 306 and the regulations thereunder.) Section 355 does not apply, however, if the substance of a transaction is merely an exchange between shareholders or security holders of stock or securities in one corporation for stock or securities in another corporation. For example, if two individuals, A and B, each own directly 50 percent of the stock of corporation X and 50 percent of the stock of corporation Y, section 355 would not apply to a transaction in which A and B transfer all of their stock of X and Y to a new corporation Z, for all of the stock of Z, and Z then distributes the stock of X to A and the stock of Y to B.

Par. 4. A new section 1.355–6 is added to read as follows:

§ 1.355–6 Certain distributions qualifying under section 355 made ineligible for nonrecognition of gain to the distributing corporation under § 337(d). [Reserved]

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 15, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 89–119 Filed 1–4–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1310–88]

Delegation of the Authority of the Attorney General To Approve Immunity Requests

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This amends Subpart Z of Part 0, Chapter I of Title 28, Code of Federal Regulations, to delegate to Deputy Assistant Attorneys General the authority of the Attorney General to approve applications to compel testimony of witnesses or the production of other information at judicial, agency and congressional proceedings pursuant to the provisions of the use immunity statute, 18 U.S.C. 6001–6005.

This implements section 7020(e) of the Anti Drug Abuse Act of 1988 amending 18 U.S.C.68003(b) to authorize the Attorney General to delegate to any Deputy Assistant Attorney General authority to approve immunity requests under 18 U.S.C. 6003.

Subpart Z is further amended to delegate to Deputy Assistant Attorneys General the authority of the Attorney General to approve immunity requests in agency proceedings under 18 U.S.C. 6004 and, under the provisions of 18 U.S.C. 6005, to apply to a district court of the United States to defer the issuance of an order to compel testimony or produce evidence in a congressional proceeding. This further amendment continues the practice of delegating to Department officials at the same level the authority to excercise the power of the Attorney General under all provisions of the use immunity statute covering judicial, agency and congressional proceedings.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Frederick D. Hess, Director, Office of Enforcement Operations, Criminal Division, Department of Justice, Washington, DC 20530; 202–633–3684.

SUPPLEMENTARY INFORMATION: Subpart Z currently delegates the authority of the Attorney General to approve immunity requests under provisions of the use immunity statute, 18 U.S.C. 6001–6005, to Assistant Attorneys General. The power of the Attorney General to delegate his authority to Assistant Attorneys General rests upon the provisions of 18 U.S.C. 6003(b) in the case of any proceeding before or ancillary to a court or grand jury of the United States. The power of the Attorney General to delegate his authority to approve immunity requests in agency proceedings under 18 U.S.C. 6004, and, under the provisions of 18 U.S.C. 6005, to apply to a district court to defer the issuance of an immunity order in a congressional proceeding, rests upon the general power of the Attorney General to delegate his functions under 28 U.S.C. 509 and 510.

Sections 0.175 and 0.178, Subpart Z, of Title 28, Code of Federal Regulations, currently authorize Assistant Attorneys General to exercise the power of the Attorney General under all provisions of the use immunity statute. Section 7020(e) of the Anti Drug Abuse Act of 1988 amends 18 U.S.C. 6003(b) to empower the Attorney General to delegate to any Deputy Assistant Attorney General the authority to approve immunity requests in court and grand jury proceedings.

This rule amends § 0.175(a) of Subpart Z to delegate to Deputy Assistant Attorneys General of the Criminal Division the power of the Attorney General to approve immunity requests in court, grand jury and agency proceedings.

This rule amends § 0.175(b) to delegate to Deputy Assistant Attorneys General of the Antitrust Division, the Civil Rights Division, the Land and Natural Resources Division and the Tax Division the authority of the Attorney General to approve immunity requests under 18 U.S.C. 6003 in matters within the cognizance of their respective Divisions.

This rule amends § 0.175(c) to delegate to Deputy Assistant Attorneys General of the Antitrust Division, the Civil Rights Division, the Land and Natural Resources Division and the Tax Division the authority of the Attorney General to approve immunity requests under 18 U.S.C. 6004.

This rule amends § 0.176(c) to delegate to the Deputy Assistant Attorneys General listed in § 0.175 (a) and (b) the authority to excercise the power of the Attorney General under 18 U.S.C. 6005 to apply to a district court to defer the issuance of an immunity order in a congressional proceeding.

This rule amends § 0.178 by removing subsection (a) and redesignating subsection (b) as § 0.178. This change is necessary because § 0.178(a) currently authorizes redelegation to Deputy Assistant Attorneys General to be exercised solely during the absence of Assistant Attorneys General from the City of Washington. Given the purpose and result of the proposed amendments to subpart Z, this redelegation provision becomes unnecessary and is therefore removed.

This regulation is not a major rule within the meaning of Executive Order 12291.

This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 0

Authority delegation (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, and by the authority vested in me by law, including 28 U.S.C. 509, 510 and 18 U.S.C. 6001–6005, Subpart Z of Part O of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3810 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.175 is revised to read as follows:

§ 0.175 Judicial and Administrative proceedings.

(a) The Assistant Attorney General in charge of the Criminal Division, or any Deputy Assistant Attorney General of the Criminal Division is authorized to exercise the authority vested in the Attorney General by 18 U.S.C. 6003, to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States, and the authority vested in the Attorney General by 18 U.S.C. 6004, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency, when the subject matter of the case or proceeding is either within the cognizance of the Criminal Division or is not within the cognizance of the Divisions or Administration designated in paragraphs (b) and (c) of this section.

(b) The Assistant Attorneys General or any Deputy Assistant Attorney General of the Antitrust Division, the Civil Division, the Civil Rights Division, the Land and Natural Resources Division and the Tax Division are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6003 to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before or ancillary to a court or grand jury of the United States when the subject matter of the case or proceeding is within the cognizance of their respective Divisions: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

(c) The Assistant Attorneys General and Deputy Assistant Attorneys General designated in paragraph (b) of this section, and the Administrator of the Drug Enforcement Administration are authorized to exercise the authority vested in the Attorney General by 18 U.S.C. 6004 to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency when the subject matter of the proceeding is within the cognizance of their respective Divisions or the Administration: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

2. Section 0.176(b) is revised to read as follows:

§ 0.176 Congressional proceedings.

* * * * *

(b) The Assistant Attorneys General and Deputy Assistant Attorneys General designated in § 0.175 (a) and (b) are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6005 to apply to a district court of the United States to defer the issuance of an order compelling the testimony of a witness or the production of information in a proceeding before either House of Congress, or any committee or subcommittee of either House, or any joint committee of the two Houses.

§ 0.178 [Amended]

3. Section 0.178 is amended by removing paragraph (a) in its entirety and by removing the "(b)" designation.

Date: December 22, 1988.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-23 Filed 1-4-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 146

[DoD Directive 5525.9]

Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This interim final rule is being issued to implement section 721 of the "National Defense Authorization Act, 1989," Pub. L. No. 100-456. This rule establishes policy and uniform procedures for the return of Service members overseas to the United States, pursuant to 10 U.S.C. 814, when they have been charged with, or convicted of, felonies or contempt in a Federal or State court. This rule also promulgates uniform procedures for other actions regarding overseas civilian personnel of the Department of Defense and family members accompanying civilian and military personnel overseas who have been charged with, or convicted of, felonies or contempt. In covering civilian personnel and family members accompanying DoD personnel overseas, the Department of Defense acts by authority of 5 U.S.C. 301 and 10 U.S.C. 113.

DATES: Effective December 27, 1988. Written comments must be received by February 6, 1989.

ADDRESS: Office of the Assistant General Counsel (Personnel and Health Policy), Department of Defense, the Pentagon, Room 3E999, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Paul S. Koffsky, telephone 202-695-3657.

SUPPLEMENTARY INFORMATION: This interim final rule is issued to comply with a statutory requirement and to permit DoD Components time to issue consistent implementing guidance within the time fixed by statute. The Department of Defense invites public comments on this interim final rule. It shall consider those comments in deciding whether, and, if so, how, to amend this rule.

List of Subjects in 32 CFR Part 146

Courts, Government employees.

32 CFR Part 146 is added to read as follows:

PART 146—COMPLIANCE OF DOD MEMBERS, EMPLOYEES, AND FAMILY MEMBERS OUTSIDE THE UNITED STATES WITH COURT ORDERS

Sec.

146.1 Purpose.
146.2 Applicability.
146.3 Definitions.
146.4 Policy.
146.5 Responsibilities.
146.6 Procedures.

Authority: 5 U.S.C. 301; 10 U.S.C. 113; 10 U.S.C. 814; Pub. L. 100-456 Section 721.

§ 146.1 Purpose.

This part:

(a) Implements section 721 of Pub. L. 100-456.

(b) Establishes policy and procedures for the return to the United States of, or other action affecting, DoD members and employees serving outside the United States, and family members accompanying them.

(c) Prescribes procedures for treating such individuals who have been charged with, or convicted of, a felony in a court, have been held in contempt of a court for failure to obey the court's order, or have been ordered to show cause by a court why they should not be held in contempt for failing to obey the court's order.

§ 146.2 Applicability.

This Part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 146.3 Definitions.

Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a DoD member, employee, or family member.

DoD Employee. A civilian employed by a DoD Component, including an individual paid from nonappropriated funds, who is a citizen or national of the United States.

DoD Member. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

Felony. A criminal offense that is punishable by incarceration for more than 1 year, regardless of the sentence that is imposed for commission of that offense.

United States. The 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

§ 146.4 Policy.

It is DoD policy that:

(a) With due regard for mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial, the Department of Defense shall cooperate with courts and State and local officials in enforcing court orders relating to DoD members and employees stationed outside the United States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in

contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order.

(b) This Part does not affect the authority of DoD Components to cooperate with courts and State and local officials in enforcing orders against DoD members and employees outside the United States on matters not listed in paragraph (a) of this section.

(c) This Part does not create any rights or remedies and may not be relied on by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 146.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* (GC, DoD) shall:

(1) Issue Instructions and other guidance, as necessary, to implement this Part.

(2) Review and approve the implementing documents issued by DoD Components under this Part.

(3) Coordinate on requests for exception to the requirements of this Part under § 146.5(b).

(b) The *Assistant Secretary of Defense (Force Management and Personnel* (ASD(FM&P)), with the concurrence of the GC, DoD, shall grant exceptions on a case-by-case basis to the requirements of § 146.6. In exercising this authority, the ASD(FM&P), on request by the DoD Component concerned, shall give due consideration to the pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial.

(c) The *Heads of DoD Components* shall:

(1) Comply with this Part.

(2) Issue Regulations implementing this Part.

(3) Report promptly to the ASD(FM&P) and GC, DoD, any action taken under paragraphs (a) (1) and (2) of § 146.6.

§ 146.6 Procedures.

(a) On receipt of a request for assistance from a court, or a Federal, State, or local official concerning a court order described in § 146.4(a), the Head of the DoD Component concerned, or designee, shall determine whether the request is based on an order issued by a court of competent jurisdiction. Attempts shall be made to resolve the matter to the satisfaction of the court without the return of, or other action affecting, the member, employee, or family member (subject). Before action is taken under this section, the subject shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If the Head of the DoD Component concerned determines that such efforts warrant a delay in taking action under this section, the DoD Component Head may grant a brief delay (not more than 45 days). All delays promptly shall be reported to the ASD(FM&P) and to the GC, DoD.

(1) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, unless the ASD(FM&P), or designee, grants an exception.

(2) If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, and if the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(b) If a DoD member is the subject of the request, the member shall be ordered, under 10 U.S.C. 814, to return expeditiously to an appropriate port of entry at Government expense, contingent on the party requesting return of the member providing for transportation, and escort, if desired, of the member from such port of entry to the jurisdiction of the party. The party requesting return of the member shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances.

(c) If a DoD employee is the subject of the request concerning the court order, the employee strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and may be the basis for adverse action against the DoD employee, to include removal from the Federal Service. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned, or designee. Such proposals shall be coordinated with the cognizant civilian personnel office and legal counsel.

(d) If the family member of a DoD member or employee is the subject of a request concerning the court order, the family member strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 30, 1988.

[FR Doc. 89-133 Filed 1-4-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions on fishing in 1989 for widow rockfish, the *Sebastes* complex of rockfish (which includes yellowtail rockfish), Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, reduce or prevent biological stress, allow unavoidable incidental catches in other fisheries to be landed, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed in 1988 for these species.

DATES: Effective 0001 hours (Pacific Standard Time) January 1, 1989, until modified, superseded, or rescinded. Comments will be accepted through January 23, 1989.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director,

Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–221–6352.

SUPPLEMENTARY INFORMATION: This action supersedes fishing restrictions imposed in 1988 for widow rockfish, the *Sebastes* complex of rockfish (which includes yellowtail rockfish), Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and also adjusts the management measures at § 663.27(b)(3) for sablefish.

The FMP provides the means for managing over 80 species of groundfish caught in ocean waters off Washington, Oregon, and California. The FMP differentiates between species with numerical and non-numerical optimum yields (OYs). A species that may be harvested fairly selectively has a numerical OY which is the maximum amount of that species that may be retained or landed each year in the fishery management area or relevant subarea, and includes fish caught in the territorial sea (0–3 nautical miles). However, there is an exception for small incidental allowances in the foreign and joint venture fisheries which are not included in the OY. Landings in excess of OY are prohibited. Widow rockfish (*Sebastes entomelas*), Pacific ocean perch (*S. alutus*), and sablefish (*Anoplopoma fimbria*) are three of the six species in the FMP which have numerical OYs. When landing rates for these species have resulted in projections that quotas would be achieved before the end of the year, trip limits have been imposed or adjusted: (1) To extend the fishery as long as possible throughout the year, and (2) to allow catches taken unavoidably while fishing for other species (incidental catches) to be landed to minimize the waste of fish which otherwise must be discarded once an OY quota is reached. A trip limit is the total allowable amount of a groundfish species or species complex, by weight or by percentage of weight of fish on board, which may be landed from a single fishing trip. Limits on the frequency of landings of trip limits (trip frequency limits) also are used to slow the rate of landings. By slowing the fishery and avoiding premature closure which must occur when a quota is reached, the discarding of incidental catches is minimized and the likelihood of biological stress from fishing above the OY is lessened.

Species which are not harvested selectively, or for which there is very little commercial interest or scientific data, are part of the non-numerical OY group and are managed most commonly by gear, area, and landing restrictions (trip limits and trip frequency limits). An estimate of the acceptable biological catch (ABC), the annual catch that could be taken without jeopardizing the resource's productivity, has been made for all species in this group, individually or combined with other species for the 1989 fishing season in a separate notice. An ABC (as defined at § 663.2) is an estimate that is seasonally determined, and may differ from maximum sustainable yield (MSY) for biological reasons. ABC estimates also are made for all species with numerical OYs. If one or more species in the group is biologically stressed, or is expected to become stressed if no limits on fishing are set, the Secretary of Commerce (Secretary) may determine that the harvest of species that are unavoidably caught together should be reduced, even though some of those species are not stressed. Reducing the harvest rate on these aggregated species usually has been accomplished by establishing a "harvest guideline" for the group as a whole and setting trip limits to achieve this harvest level. The harvest guideline may be, but is not necessarily, designated as a quota.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) has endorsed the determination of its Groundfish Management Team (GMT) that if landings of widow rockfish, yellowtail rockfish (included in the *Sebastes* complex of rockfish), Pacific ocean perch, and sablefish are unrestricted, the likelihood or intensity of biological stress on those stocks is increased. Pacific ocean perch is considered to be under long-term stress and is managed under a rebuilding schedule. Landings of widow rockfish, Pacific ocean perch, and sablefish have been limited since the FMP was implemented in 1982 to minimize stress, or its likelihood, on these stocks; similarly, landings of the *Sebastes* complex have been restricted since 1983.

In its deliberations for 1989 management, the Council considered advice from the GMT (state and Federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), the concerned public, and a Select Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Select Group included representatives from the fishing industry, the Council, the Scientific and Statistical Committee, and the GMT.

At its November 16–17, 1988 meeting in Portland, Oregon, the Council reviewed the latest data and developed management measures intended to limit landings of groundfish in 1989, thereby minimizing the likelihood or intensity of biological stress on groundfish stocks, and reducing the chances of having to close a fishery before the end of the year. In each case, the Council recommended a trip limit. As in 1988 the Council also recommended allocation of the sablefish resource between the trawl and nontrawl (predominantly fixed gear) user groups. The Council's recommendations for 1989 and actions taken by the Secretary on those recommendations are presented below.

Because the vast majority of groundfish caught off Washington, Oregon, and California is taken from the Exclusive Economic Zone (EEZ) which extends from 3 to 200 nautical miles offshore, management of the groundfish fishery has been applied from 0–200 nautical miles. All groundfish taken and retained, possessed, or landed in or offshore (0–200 nautical miles) of Washington, Oregon, and California are subject to these restrictions.

Widow Rockfish

Council Recommendation: The Council recommended a coast-wide trip limit of 30,000 pounds of widow rockfish, with only one landing above 3,000 pounds per vessel per week, the same limit imposed in January 1988.

Rationale: The widow rockfish resource is believed to be at or above population levels which produce the MSY, an average over a reasonable length of time of the largest catch which can be taken continuously from a stock. If not curtailed, landings could be at least as high as the highest catch on record, about 27,700 metric tons (mt), above the average MSY of 9,500 mt, and clearly increasing the likelihood of biological stress on the stock.

Trip limits have been used to limit landings of widow rockfish since 1982. In 1988 as in 1987, the year started with a 30,000-pound weekly trip limit and landings less than 3,000 pounds were exempt from the one landing per week provision. At its July 1988 meeting, the Council recommended that a 3,000 pound trip limit (with no frequency restriction) be imposed on the date

necessary to assure that the 12,100 mt OY would not be reached before the end of the year (53 FR 29480, August 5, 1988). The 3,000 pound limit was intended to discourage target fishing while allowing incidental catches to be landed. This incidental limit was implemented on September 21, 1988 (53 FR 36793, September 22, 1988). The best available information at the November Council meeting indicated that the OY for widow rockfish would not be reached in 1988.

The widow rockfish OY in 1989 is 12,400 mt, 2.5 percent higher than the 12,100 mt OY in 1988. As in part years, the rate of landings must be restricted in 1989 to minimize the probability of biological stress on the stock and to extend the fishery longer than otherwise would be possible. If this were not done, the OY quota could be reached early in the year, possibly by mid-summer, resulting in incidental catch and discards which would exceed OY and contribute to the likelihood of biological stress on the resource.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces:

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) Unless retention or landing of widow rockfish has been prohibited, a vessel which has landed a weekly limit may continue to fish on the next week's limit so long as the fish are not landed (offloaded) until the following week.

(3) Only one landing above 3,000 pounds of widow rockfish may be made during the period January 1–3, 1989.

(4) The fishery management area for this species is the exclusive economic zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, all widow rockfish possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sebastes Complex

Council Recommendation: The Council recommended that the harvest guideline for the *Sebastes* complex, the sum of the ABCs of the species in the complex caught north of Coos Bay, Oregon, be increased from 10,200 mt in 1988 to 10,500 mt in 1989, reflecting the 300 mt increase to the ABC for yellowtail rockfish in that area. The Council also recommended that the trip limit for the *Sebastes* complex as a whole remain at 25,000 pounds per week, the same as at the beginning of 1987 and 1988. However, because of difficulties keeping landings of yellowtail rockfish within its ABC, the trip limit for that species would be mantained at 7,500 pounds per week, 25 percent lower than during January–October, 1988. Only one landing above 3,000 pounds of the *Sebastes* complex would be allowed per vessel per week. The Wednesday–Tuesday definition of "week" would remain in effect. Trip limit options wold be continued so that fishermen may choose a biweekly limit (which allows landing up to 50,000 pounds of the *Sebastes* complex, containing no more than 15,000 pounds of yellowtail rockfish, in one trip in a two-week period), or a twice-weekly limit (which allows two landings up to 12,500 pounds each of the *Sebastes* complex, containing no more than 3,750 pounds of yellowtail rockfish each, in a one-week period). These options are available only if proper notification is given to the appropriate State authority. As in the past, the number of landings less than 3,000 pounds for the *Sebastes* complex will not be restricted.

The 40,000-pound trip limit for landings of the *Sebastes* complex caught south of Coos Bay, Oregon is continued, with no limit on the number of landings allowed per week.

Rationale: The harvest guideline for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon (43°21'34" N. latitude) is the sum of the ABCs of the species in the complex, and has been relatively stable since 1984. Landings are not necessarily prohibited when the harvest guideline is reached, although the Council could do so. Yellowtail rockfish, a dominant component in the *Sebastes* complex in the Vancouver and Columbia subareas, was documented as biologically stressed in March 1983 (48 FR 8283, February 28, 1983). Trip limits have been imposed since then in attempts to reduce the likelihood of biological stress on this species. Because yellowtail rockfish frequently are caught with other species in the multispecies *Sebastes* complex, limits were placed on the complex as a whole.

In 1988, weekly trip limits for the *Sebastes* complex caught north of Coos Bay were maintained at 25,000 pounds all year, but landing limits for yellowtail rockfish were reduced from 10,000 pounds in January (53 FR 248, January 6, 1988) to 7,500 pounds in October (53 FR 39606, October 11, 1988). Biweekly and twice-weekly landing options were available. Landings of the *Sebastes* complex in 1988 are expected to exceed the 10,200 mt harvest guideline by about nine percent, an amount which was not considered significant by the Council. However, landings of yellowtail rockfish are projected to exceed the 3,600 mt ABC for the same area by about 60 percent.

The biomass of yellowtail rockfish has been declining for the past two decades although it appears to have stabilized in recent years. A comprehensive assessment of this species was used to establish the ABC for 1989 at 4,300 mt. The assessment also indicates the stock is near, and possibly above, the biomass level which will produce the MSY. As a result of this assessment, the ABC for yellowtail rockfish was increased by 300 mt in the Columbia area. Consequently, the 1989 harvest guideline for the *Sebastes* complex north of Coos Bay also was increased by 300 mt, from 10,200 mt to 10,500 mt, to incorporate the increase in the ABC for yellowtail rockfish.

The GMT believes the likelihood of biological stress on the yellowtail rockfish resource would be greatly increased if management measures were not imposed to slow the fishery in 1989. Record high landings reached 9,742 mt in the Vancouver and Columbia areas in 1983, when restrictions were placed only on the *Sebastes* complex as a whole. If not restricted, landings of yellowtail rockfish could reach this level in 1989, almost 2.5 times the ABC, which would drive the stock below the biomass needed to produce MSY within one year and clearly increase the likelihood of biological stress on yellowtail rockfish. Accordingly, trip limits for yellowtail rockfish imposed at the beginning of 1989 are 25 percent lower than those in effect between January and October 1988, and may be adjusted during the year to keep landings close to the 1989 harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish north of Coos Bay.

As in past years, landings south of Coos Bay are limited to discourage large effort shifts into that area without impeding traditional operations. Accordingly, the 40,000-pound trip limit for the *Sebastes* complex caught south

of Coos Bay is maintained as in 1987 and 1988.

Secretarial Action: The Secretary concurs with the Council's recommendations and herein announces—

(1) Definitions.

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads or idiot rockfish).

(b) "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(d) All weights are round weights of the whole fish.

(2) General.

(a) The fishery management area for this species is the exclusive economic zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, all fish in the *Sebastes* complex possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) Coos Bay means 43°21'34" N. latitude, which is the latitude of the north jetty at Coos Bay, Oregon.

(3) Restrictions on the *Sebastes* Complex Caught North of Coos Bay.

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 7,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

Note.—If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 28, 1988–January 3, 1989.

(b) *Byweekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), up to 50,000 pounds of the *Sebastes* complex, including no more than 15,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period north of Coos Bay. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period.

Note.—If fishing under the biweekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made December 21, 1988–January 3, 1989, or December 28, 1988–January 10, 1989. Biweekly trip limit options in effect on December 28, 1988 will continue until revoked as provided in this paragraph.

As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate state agency, prior to the two-week period in which the rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206–753–6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone 707–445–6499.

(c) *Twice-weekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652) up to 12,500 pounds of the *Sebastes* complex, including no more than 3,750 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip north of Coos Bay. After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period.

Note.—If fishing under the twice-weekly trip limit, only two landings above 3,000 pounds of the *Sebastes* complex may be made during the week of December 28, 1988–January 3, 1989. Twice-weekly trip limit options in effect on December 28, 1988 will continue until revoked as provided in this paragraph.

As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate state agency, prior to the week in which the rescission is to occur. Notification must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(d) Unless retention or landing of the *Sebastes* complex or yellowtail rockfish has been prohibited, a vessel which has landed a weekly (or biweekly or twice-weekly) limit may continue to fish on the limit for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

(4) Restrictions on the *Sebastes* Complex Caught South of Coos Bay.

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed south of Coos Bay per vessel per fishing trip. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip.

(a) Unless the owner or operator of the fishing vessel has notified the State of Oregon as required by paragraph (5)(b), no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Bay, or fish in one area and possess or land fish in the other area, if more than 3,000 pounds of the *Sebastes* complex is landed from that fishing trip. If fishing is conducted both north and south of Coos Bay, or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply. If fishing is conducted south of Coos Bay only, and fish are possessed or landed north of Coos Bay, then the restrictions on the *Sebastes* complex caught south of Coos Bay apply.

(b) Except as provided in paragraph (5)(c), notification must be submitted according to state law to one of the following offices of the Oregon Department of Fish and Wildlife, by telephone or in writing, prior to leaving port on a fishing trip: Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 6:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under paragraph (5)(b) and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radiotelephone. (This radio telephone message must be confirmed in writing by the vessel owner or operator to the address in subparagraph (b) above immediately on return to port; corrections and confirmations must be sent to the same address as the original message.) In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch

Council Recommendation: The Council recommended continuation of the coast-wide management measures in place in 1987 and 1988. If more than 1,000 pounds of Pacific ocean perch are on board, the trip limit for that species is 20 percent (by weight) of all legal fish on board or 5,000 pounds, whichever is less. However, landings of Pacific ocean perch of 1,000 pounds or less per trip are unrestricted, regardless of the percentage on board.

Rationale: Pacific ocean perch is considered to be under long-term stress and has been managed for 9 years under a 20-year rebuilding schedule intended to increase the stock to levels that will produce the MSY. Trip limits have been imposed since the FMP became effective in 1982. The most recent assessment, conducted in 1987, indicated that recruitment is improving but at relatively low levels, and data from the commercial fishery did not indicate any particularly strong year classes entering the fishery. Significant rebuilding of this species probably will not occur until one or more strong year classes recruit to the stock. Even if no Pacific ocean perch were harvested in 1989, the desired 20-year rebuilding rate probably would not be met. However, incidental catches of this species in other fisheries are unavoidable, and the trip limits (and OY estimates) are designed to accommodate only these small incidental catches.

Landings of Pacific ocean perch in 1988 are expected to be below the 500 mt OY for the Vancouver subarea (47°30' N. latitude to the Canadian border) and below the 800 mt OY for the Columbia subarea (43°00' to 47°30' N. latitude). By maintaining the same OYs and trip limits in 1989 as in 1988 (53 FR 248, January 6, 1988) and 1987 (52 FR 790, January 9, 1987), the maximum opportunity for rebuilding will occur, short of prohibiting fishing for all species in the Vancouver and Columbia subareas.

The trip limit is designed to eliminate target fishing for Pacific ocean perch in these two northern subareas, and is applied coast-wide to discourage those who would exceed the limit and allege the fish were caught legally elsewhere. Because Pacific ocean perch are not abundant south of the Columbia subarea, this trip limit is not expected to restrict fisheries there.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces—

(1) For Pacific ocean perch coast-wide (Washington, Oregon, and California), no more than 5,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less, may be taken and retained, possessed, or landed per vessel per fishing trip. This provision applies only when more than 1,000 pounds (round weight) of Pacific ocean perch are onboard.

Note.—Twenty percent of all legal fish on board including Pacific ocean perch is equivalent to 25 percent of all legal fish on board other than Pacific ocean perch.

(2) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(3) The fishery management area for this species is the exclusive economic zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, this restriction applies to all Pacific ocean perch taken and retained between 0 and 200 nautical miles offshore of Washington, Oregon, or California. All Pacific ocean perch possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 0–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sablefish

Council Recommendation: The Council recommended that the 1989 sablefish fishery be managed to achieve a harvest of 10,400 mt, the low end of an OY range of 10,400–11,000 mt. The Council also recommended that 22 mt be subtracted from the 10,400 mt to accommodate the expected harvest of sablefish by the Makah Indian tribe of northern Washington. The remaining 10,378 mt are to be allocated 52 percent (5,397 mt) for trawl gear and 48 percent (4,981 mt) mt for nontrawl gear (predominantly pot and longline fixed gears).

Trip limits were recommended for both trawl and nontrawl fisheries to avoid reaching their respective allocations before the end of the year. The trip limit for trawl-caught sablefish, to be imposed January 1, 1989, is 1,000 pounds or 45 percent (by weight) of the deepwater complex, whichever is greater. The deepwater complex consists of sablefish, Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and arrowtooth flounder (*Atheresthes stomias*). For the nontrawl fleet, a trip limit of 100 pounds will be imposed later in the season, if needed, to extend the nontrawl allocation to the end of the year. All weights are round weights or round weight equivalents. These limits will be applied coast-wide and may be adjusted inseason.

An additional 600 mt of sablefish are available by extending OY to be a range to accommodate uncertainties in landings projections, enable some small fisheries that operate later in the year to land small amounts of sablefish after gear allocations have been reached, and allow for landings of sablefish caught incidentally while fishing for other species. However, if total landings reach 11,000 mt, the upper end of the OY range, all further landings of sablefish will be prohibited.

The Council also recommended continuation of the coast-wide trip limits for sablefish smaller than 22 inches. For the trawl fleet operating under the 1,000 pound landing restriction, all sablefish may be smaller than 22 inches, and under the 45 percent deepwater complex limit, no more than 5,000 pounds may be

sablefish smaller than 22 inches. In the nontrawl fishery, no more than 1,500 pounds or three percent of all sablefish on board, whichever is greater, may be sablefish smaller than 22 inches.

Rationale: Two major gear groups harvest sablefish off Washington, Oregon, and California. The nontrawl or fixed gear fleet generally targets on sablefish with little bycatch. The trawl fleet catches sablefish jointly with other species in its multispecies operations. Sablefish sometimes are the predominant species in a single haul, but the extent of targeting is not known. As catch and effort by both sectors have increased and OY has declined, the Council has tried several allocation schemes to manage this fishery.

Current regulations at 50 CFR 663.27(b)(3) require that the last 10 percent of the sablefish OY be allocated equally between trawl and fixed gears, designate these allocations as quotas beyond which landings are prohibited, and place a percentage trip limit on trawl landings to slow that fishery while enabling incidental catches to be landed. This regulation was not successful in 1985 and has not been applied since 1986. In 1986, an emergency rule was used to allocate a larger proportion of OY, and in 1987 and 1988, pursuant to 663.22(a)(3), the entire OY was allocated between trawl and nontrawl gears.

In 1988, the OY for sablefish was a range of 9,200–10,800 mt, lower than the 12,000 mt OY in 1987. The Council recommended that the fishery be managed for 10,000 mt, allocating 52 percent (5,200 mt) to trawl gear and 48 percent (4,800 mt) to nontrawl gear, as agreed to by industry representatives in 1987. A trip limit was imposed on the trawl fishery of 6,000 pounds or 20 percent of all fish on board, whichever was greater, and only two landings a week above 1,000 pounds were allowed (53 FR 248, January 6, 1988). An 800 mt reserve, to be used in conjunction with even more restrictive trip limits, was available to the trawl fleet if needed to avoid discarding incidental catches in excess of the trawl allocation. On August 3, 1988 (53 FR 29480), the trawl trip limit was lowered to 2,000 pounds once a week and the trawl allocation was increased by 800 mt for a total maximum trawl allocation of 6,000 mt. The trip frequency limit subsequently was removed, resulting in a limit of 2,000 pounds per trip, on October 5, 1988 (53 FR 39606, October 11, 1988) because the once per week landing restriction was increasing discards while not decreasing the catch of sablefish. Projected landings for the trawl fleet in 1988 are about 5,200 mt, the allocation level initially desired by the Council.

In 1988, the nontrawl fishery reached its allocation and was closed on August 26, 1988 (53 FR 32621). Data available in November indicate that landings were about 5,000 mt, about 200 mt higher than the nontrawl allocation. Therefore, total trawl and nontrawl landings of sablefish in 1988 are projected to be about 10,200 mt, well within the OY range of 9,200–10,800 mt.

A new stock assessment for 1989 reveals that the sablefish biomass is higher than that needed to produce MSY. Therefore catches 2,000 mt above the 9,000 mt ABC in 1989, as suggested by the OY range of 10,400 mt–11,000 mt, will not jeopardize the resource but will hasten the rate of achieving the 8,200 mt MSY. If catches are between 10,400 and 11,000 mt in 1989, the GMT projects that the population level that can produce MSY will be reached in about 5–7 years. However, if catches were to exceed 15,400 mt in 1989, the sablefish stock would be driven, in one year, below the biomass that produces MSY. This high rate of landings is not recommended because: (1) It would be very disruptive to the industry to reduce landings from over 15,000 mt to 8,200 mt in one year; and, (2) the estimated MSY is based on a new stock assessment which should be tested by several years' data. If unrestricted, landings in 1989 could equal or exceed the highest on record, 24,500 mt. The GMT believes that catches of this magnitude would greatly increase the likelihood of biological stress on the stock.

In 1989, the Council intends to manage the sablefish fishery for 10,400 mt, the low end of the OY range. On the basis of a request by the Makah Indian tribe to provide for a small tribal sablefish fishery and for the landings of sablefish taken incidentally in the halibut fishery, the Council recommended subtracting 22 mt for the expected harvest by the Makah Indian tribe of northern Washington. Landings of sablefish by the Makah Indian tribe of northern Washington State are not subject to the trip, size, or allocation restrictions announced in this notice. However, if the 11,000 mt OY for sablefish is reached, further landings of sablefish by the Makah tribe will be prohibited.

The remaining 10,378 mt is to be allocated 52 percent (5,397 mt) for trawl gear and 48 percent (4,981 mt) for nontrawl gear. The trawl and nontrawl allocations are based on proportions negotiated by industry representatives for 1987 and used in 1987 and 1988. The Council recommended continuation of these allocation percentages to equitably balance the needs of the two gear groups by providing the nontrawl fishermen an opportunity to plan their harvest for their maximum benefit, and enabling trawl fishermen to conduct their mixed-species fishery with reduced discards of sablefish.

The trip limit on trawl landings of sablefish, 1,000 pounds or 45 percent of the deepwater complex, is intended to manage the trawl fleet so that its allocation will not be exceeded, discards will be minimized, and the fishery will last as long as possible during the year. The 1,000 pound limit is intended to discourage target fishing, while the 45 percent limit was selected to allow landings of most unavoidable catches of sablefish in the deepwater fishery consisting of sablefish, Dover sole, arrowtooth flounder, and thornyheads.

Because the nontrawl fishery is primarily a target fishery for sablefish, incidental catches of that species are not a problem for most fixed gear fishermen. Also, most sablefish caught with nontrawl gear are frozen, and maintenance of a year-long supply can be achieved even if the fishery is not active. However, the commerical vertical hook and line and California set net fisheries rely on small amounts of sablefish and operate later in the year. If the nontrawl allocation is reached, these fisheries must discard their catch of sablefish as was the case in 1988. In 1989, a 100 pound trip limit will be imposed on the date necessary to avoid reaching the nontrawl allocation in order to sustain these small fisheries as long as possible during the year.

The GMT will monitor landings and recommend trip limit changes necessary to meet the trawl and nontrawl allocations. Additional fishing restrictions may be imposed if needed to avoid exceeding these allocations, minimize discards, and provide for equitable use of the resource.

The 600 mt within the OY range (10,400–11,000 mt) are available to accommodate uncertainties in landings projections, enable some small fisheries that operate later in the year to land small amounts of sablefish after gear allocations have been reached, and allow for landings of sablefish caught incidentally while fishing for other species. However, if total landings reach 11,000 mt, the upper end of the OY range, all further landings of sablefish will be prohibited.

Trip limits on sablefish smaller than 22 inches (total length) have been imposed since 1983 to reduce the likelihood of biological stress which is expected if landings of juvenile sablefish are not curtailed. Markets for small sablefish have been strong and the overharvest of juvenile fish which become the future brood stock could occur if no size limit were imposed. These limits are designed to minimize discards and the likelihood of biological stress.

The 5,000 pound trip limit for trawl-caught sablefish smaller than 22 inches, in effect since April 27, 1987 (52 FR 15726), is continued in 1989. This limit is included in the overall trawl trip limit so that, under the 1,000 pound landing restriction, all sablefish may be smaller than 22 inches, and under the 45 percent deepwater complex limit, no more than 5,000 pounds of sablefish may be smaller than 22 inches.

Similarly, the nontrawl trip limit of 1,500 pounds or three percent, whichever is greater, for sablefish smaller than 22 inches, implemented August 3, 1988 (53 FR 29480, August 5, 1988), will remain in effect in 1989. When the 100 pound trip limit is imposed on nontrawl landings later in 1989, the size limit will no longer apply.

Secretarial Action: The Secretary concurs with the Council's recommendations and, pursuant to 663.22(a)(3), herein adjusts the management measures at 663.27(b)(3) as follows:

(1) 1989 Management Goal. The sablefish fishery will be managed to achieve 10,400 mt, the low end of the OY range of 10,400–11,000 mt in 1989. If 11,000 mt (the upper end of the OY range) is reached, further landings of sablefish will be prohibited until January 1, 1990.

(2) Makah Tribal Fishery. Twenty-two metric tons is set aside for the Makah Indian tribe. This amount is not a quota and landings by the Makah tribal fishery will not be prohibited unless 11,000 mt of sablefish have been landed.

(3) Gear Allocations. After 22 mt for the Makah Indian tribe is subtracted for 10,400 mt, the remaining 10,378 mt is allocated to two gear groups, 52 percent (5,397 mt) to trawl and 48 percent (4,981 mt) to nontrawl landings in 1989.

(4) Trip and Size Limits.

(a) *Trawl gear.* (i) For trawl-caught sablefish, no more than 1,000 pounds or 45 percent of all legal fish on board in the deepwater complex (including sablefish), whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip. These limits may be modified in season to achieve the trawl and nontrawl allocations.

Note.—Forty-five percent of the deepwater complex (including sablefish) is equivalent to 82 percent of all legal fish on board in the deepwater complex other than sablefish.

(A) "Deep water complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and arrowtooth flounder (*Atheresthes stomias*).

(B) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) Of those sablefish taken with trawl gear under paragraph (2)(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

(b) *Nontrawl gear.* No more than 1,500 pounds or three percent, whichever is greater, of sablefish smaller than 22 inches (total length) caught with nontrawl gear may be taken and retained, possessed, or landed per vessel per fishing trip.

(c) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(d) For processed ("headed") sablefish, (i) the minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and,

(ii) the product recovery ratio (PRR) established by the state where the fish is or will be landed is used to convert the processed weight to round weight for purposes of applying the trip limit.

Note.—The Federal trip limit for processed ("headed") sablefish is based on the product recovery ratios (PRRs) used by Washington, Oregon, or California, as in the past. It should be noted that the state PRRs may differ and fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.

(e) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(5) The fishery management area for this species is the exclusive economic zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. However, all sablefish possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are persumed to have been taken and retained from 0–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(6) Pursuant to § 663.22(a)(3), the management measures at § 663.27(b)(3) are adjusted until further notice.

(7) Nontrawl (fixed) gear includes set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, troll gear.

(8) Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(9) All weights and percentages of fish on board are based on round weights. If sablefish are processed, refer to paragraph (2)(d) for conversion to round weight.

Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

Retention of widow rockfish, Pacific ocean perch, the *Sebastes* complex, and sablefish by foreign fishing or foreign processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours until the end of the comment period.

BEST COPY AVAILABLE

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of the 1989 Notice of Fishing Restrictions are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed significantly. This action does not contain new collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. This action is covered by the Regulatory Flexibility Analysis (RFA) prepared for the authorizing regulations at 50 CFR 663.22 and 663.23, and therefore fulfills the requirements of Executive Order 12291. A copy of the RFA may be obtained at the addresses listed above.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. Prompt action to limit these fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, Pacific ocean perch, and sablefish stocks and alleviate the necessity for fishery closures before the end of 1989. If unrestricted, landings unquestionably will result in several ABCs being exceeded in 1989, increasing the likelihood of biological stress on those stocks. Consequently, further delay of these actions is impracticable and contrary to the public interest, and there is good cause to take these actions in final form effective January 1, 1989.

The public has had opportunity to comment on these management measures. The public participated in the Groundfish Select Group, GMT, Groundfish Advisory Subpanel, and Council meetings in October and November 1988 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after the date of publication of this notice in the **Federal Register**.

The restrictions in this notice will remain in effect until rescinded, modified, or suspended.

List of Subjects in 50 CFR Parts 663 and 611

Administrative practice and procedure, Fisheries, Fishing, Foreign relations.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 30, 1988.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–30268 Filed 12–30–88 4:54 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 81126–8226]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the Gulf migratory group in the eastern zone. The Secretary has determined that the commercial quota for Gulf group king mackerel from the eastern zone will be reached on December 30, 1988. This closure is necessary to protect the Gulf king mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 31, 1988, until 12:00 p.m. (midnight) local time, June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Regulations effective July 1, 1988, implemented catch limits recommended by the Councils for the Gulf migratory group of king mackerel for the current fishing year (July 1, 1988, through June 30, 1989). Those regulations set the commercial allocation at 1.09 million pounds divided into quotas of 0.75 million pounds for the eastern zone and 0.34 million pounds for the western zone (53 FR 25611, July 8, 1988). From November 1 through March 31, the management area for the Gulf migratory group of king mackerel extends in the EEZ from the Mexico/United States border to a line extending directly east from the Volusia/Flagler County, Florida boundary 29°25'N. latitude). From April 1 through October 31, the management area extends in the EEZ from the Mexico/United States border to a line extending directly west from the Monroe/Collier County, Florida boundary (25°48'N. latitude). The boundary between the eastern and western zones is a line extending directly south from the Florida/Alabama boundary (87°31'06"W. longitude).

Under § 642.22(a), the Secretary is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial quota of 0.75 million pounds for Gulf migratory group of king mackerel in the eastern zone will be reached on December 30, 1988. Hence, the commercial fishery for Gulf group king mackerel from the eastern zone is closed effective 12:01 a.m., on December 31, 1988, through June 30, 1989, the end of the fishing year.

The Secretary previously determined that the commercial quota of 0.34 million pounds of king mackerel for the western zone was reached on December 2, 1988, and closed this segment of the fishery on December 3, 1988 (53 FR 49323, December 7, 1988). He also previously determined that the recreational allocation of 2.31 million pounds for Gulf migratory group king mackerel was reached on December 16, 1988. The recreational bag limit for this group was reduced to zero on December 17, 1988 (53 FR 51280), December 21, 1988).

With closure of the commercial fishery in the eastern zone, all commercial and recreational fisheries in the EEZ for Gulf migratory group king mackerel are closed through June 30, 1989. During the closure, Gulf migratory group king mackerel may not be harvested from or possessed in the EEZ and may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in king mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subject in 50 CFR in Part 642

Fisheries, Fishing.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–30270 Filed 12–30–88; 4:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 3
Thursday, January 5, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Rel. No. 33-6811; File No. S7-4-88]

Regulation D Revisions to Accredited Investor Definition

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is reproposing for comment an amendment to the definition of "accredited investor" for purposes of the section 4(6) and Regulation D exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") to include those plans established and maintained by the governments of the states and their political subdivisions, as well as their agencies and instrumentalities, for the benefit of their employees, that have total assets in excess of $5 million.

DATE: Comments must be received on or before February 6, 1989.

ADDRESSES: All communications on this matter should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-4-88 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On March 3, 1988, the Commission published for comment [1] a number of proposed revisions to Regulation D,[2] the limited offering exemptive provisions from the registration requirements of the Securities Act.[3] Today, the Commission is reproposing an amendment to the definition of "accredited investor" to broaden the number of employee benefit plans subject to that definition.

I. Proposed Amendments to Regulation D

In the March Release, the Commission proposed to amend Rules 215 and 501 to specifically include in the term "accredited investor" certain plans established and maintained by the governments of the states and their political subdivisions, as well as by their agencies and instrumentalities, for the benefit of their employees.[4] As proposed, a plan's eligibility would turn on two factors. First, the trustee of the plan would have to be a bank, savings and loan association, insurance company or registered investment adviser. Second, the plan would have to impose standards of fiduciary responsibility similar to those established by the Employee Retirement Income Security Act of 1974 ("ERISA").[5]

Virtually all of the commenters [6] objected to one or both of the conditions proposed by the Commission as qualifications for eligible governmental plans. The commenters indicated that most plans intended to be covered by the revisions would be unable to satisfy the criteria. The commenters noted that in general none of the proposed permissible fiduciaries currently are trustees of state trust funds, and that local law generally does not permit these entities to be trustees for governmental plans. The commenters stated, however, that governmental plans are managed by highly sophisticated persons whose qualifications would match those of the institutions listed in the Commission's proposal.

With respect to prohibited transactions under ERISA, the commenters noted that their plans are governed by local laws which may insist upon certain local investments which are not permissible under ERISA. In general, the commenters suggested that trying to superimpose ERISA standards on state plans would be troublesome. It also was noted that ERISA was enacted to deal with abuses in the governance of private employee plans and not with governmental plans,[7] leading some commenters to conclude that Congress believed that state and local governments are best able to determine the appropriate method to protect the pension rights of their own employees. This position also protects the federal government from making difficult determinations as to appropriate investment standards, given the myriad of different approaches taken by the states in this area, which include detailed state regulation, legal investment lists and legislative directives.[8]

The Commission has determined to repropose an amendment which would accredit plans established and maintained by the governments of the states or their political subdivisions, as well as their agencies and instrumentalities, for the benefit of their employees if the plan has total assets in excess of $5 million. In using a $5 million total assets standard, the amendment places these governmental plans on an equal footing with plans subject to ERISA.

II. NASAA Cooperation

In the proposing release, the Commission acknowledged the cooperation of the North American Securities Administrators Association, Inc. ("NASAA").[9] Regulation D serves as the basis for the Uniform Limited Offering Exemption ("ULOE"),[10] an official policy guideline of NASAA.[11] The Commission understands that NASAA's Small Business Capital Formation Committee will consider the amendments proposed by the Commission today, if they are adopted, with a view to recommending parallel changes to ULOE. NASAA's continuing cooperation in these matters is appreciated and serves the Congressional design established by section 19(c) of the Securities Act.[12]

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the Regulation D proposal. The analysis notes that the addition of plans with total assets in excess of $5 million established and maintained by the governments of the states and their political subdivisions, as well as their agencies and instrumentalities, for the benefit of their employees to the definition of accredited investor, will increase the number of persons to whom small issuers may sell their securities in reliance on the exemptions from registration provided by Rules 505 and 506 of Regulation D and by section 4(6) of the Securities Act.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information from the public. It appears to the Commission that the proposal, if adopted, would work significant cost savings for issuers using Regulation D without compromising investor protection.

V. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being proposed pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *.

2. Section 230.215 is proposed to be amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of $5,000,000; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

3. Section 230.501 is proposed to be amended by revising paragraph (a)(1) as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of $5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

By the Commission.
December 20, 1988.
Jonathan G. Katz,
Secretary.
[FR Doc. 89-219 Filed 1-4-89; 8:45am]
BILLING CODE 8010-01-M

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17 CFR Part 230

[Release No. 33-6812; File No. S7-4-88]

Regulation D; Independent Exemptions From Registration Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is reproposing for comment revisions to

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[1] Release No. 33-6759 (March 3, 1988) [53 FR 7870] (the "March Release"). Fifty-six comment letters were received. These letters and a summary of the comments (File No. S7-4-88) is available for public inspection and copying at the Commission's Public Reference Room in Washington, DC.

[2] 17 CFR 230.501-230.506.

[3] 15 U.S.C. 77s *et seq.*

[4] The definition of "accredited investor" is the same for both section 4(6) and Regulation D transactions. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215 provide the identical listing of investors as Rule 501(a). Amendments also are being made to Rule 215 to maintain this consistency.

[5] 29 U.S.C. 1104-1107.

[6] These commenters included 15 state representatives, specifically the California Public Employees Retirement System, California State Teachers Retirement System, City of Chicago Policemen's Annuity and Benefit Fund, City of Los Angeles Department of Pensions, Houston Firemen's Relief and Retirement Fund, Illinois State Board of Investment, Kentucky Retirement System, Los Angeles County Employees Retirement Association, Los Angeles Unified School District Annuity Reserve Fund, Public Employees Retirement Association of Colorado, San Francisco City and County Retirement System, Treasurer of the State of Connecticut, Comptroller of the State of New York, Attorney General of the State of Wisconsin, and the State of Wisconsin Investment Board.

[7] H.R. Rep. 93-533, 93d Cong., 1st Sess. (1974). U.S. Code Cong. & Admin. News at 4639.

[8] *See generally* Zorn, *Small Business Barriers: Public Pension Investment Restrictions And Small Business Capital*, ch. II (1985). This report was prepared by the Government Finance Research Center, Government Finance Officers Association, and is contained in File No. S7-4-88.

[9] NASAA is an association of the securities commissioners of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[10] CCH NASAA Rep. ¶ 6201 at 6101.

[11] An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

[12] 15 U.S.C. 77s(c).

certain of the rules comprising Regulation D, a regulation which provides three independent exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") for certain limited offerings of securities. Revisions are being reproposed that would retain the filing of Form D, but eliminate it as a condition to any exemption. Reproposed Rule 507 would disqualify an issuer from the future use of Regulation D if it had been found to have violated such filing obligation. Reproposed Rule 508 would provide that an exemption from the registration requirements will be available for an offer or sale to a particular individual or entity, despite failure to comply with a requirement of Regulation D, if the requirement is not designed to protect specifically the complaining person; the failure to comply is insignificant to the offering as a whole; and there has been a good faith and reasonable attempt to comply with all requirements. Under reproposed Rule 508, certain provisions of the regulation would be deemed significant to every offering. Further, the reproposed rule specifies that every failure to comply is actionable by the Commission. Changes in those requirements designed to reflect the "restricted" character of securities issued in a Regulation D transaction also are being reproposed.

Additional new admendments to Regulation D are being proposed to change a number of the definitional provisions, relating to "aggregate offering price", the calculation of the number of purchasers, and "purchaser representative." Revisions also are proposed for the informational requirements of Regulation D. Another proposal would recognize explicitly that an offering which contains the correct number and sophistication of investors is acceptable even though the issuer did not have a reasonable basis to believe that such would be the case.

DATE: Comments must be received on or before February 21, 1989.

ADDRESSES: All communications on this matter should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7–4–88 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, (202) 272–2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On March 3, 1988, the Commission published for comment [1] a number of proposals to revise Regulation D [2], the limited offering exemptive provision from the registration requirements of the Securities Act. [3] The primary focus of those proposals was to provide for a substantial and good faith standard for compliance with the terms, conditions and requirements of the regulation. [4] Specifically, the Commission proposed to make the steps required to assure the "restricted" status of securities issued in a Regulation D transaction illustrative rather than mandatory. The filing of the Form D [5] was proposed to be eliminated as a condition to the exemption, but would be retained as a requirement under Regulation D. Under proposed new Rule 507, failure to file the Form D in a timely manner could result, in addition to other usual remedies for violating the Commission's rules, in disqualification from the future use of Regulation D by issuers found to have violated the filing requirements. Proposed new Rule 508 provided that isolated and minor deviations from the requirements of the regulations, which occur desipte a good faith and reasonable attempt to comply, would not invalidate an otherwise appropriate exemptions from the registration requirements of the Securities Act under Regulation D [6].

In response to comments received on the proposals, revisions have been made to come of the initial proposal, and additional proposed amendments to Regulation D have been developed. This release requests public comment on all of the new and reproposed amendments.

I. Background

Regulation D and the Uniform Limited Offering Exemption ("ULOE") [7] represent a successful product of a partnership between the Commission and the states to maximize uniformity between the federal and state systems of securities regulation. [8] Regulation D is an important feature of ULOE, which has been adopted in one form or another, or in an exemption substantially similar to Regulation D in 36 of the states. ULOE is an official policy guideline of the North American Securities Administrators Association, Inc. ("NASAA"). [9] It was published in 1983 as a significant step forward in coordinating state and federal exemptions from registration—similar to the coordination permitted by many states with the federal registration of securities process. As a part of the partnership, the Commission staff coordinates its interpretations of Regulation D with NASAA's interpretations of ULOE. All changes in Regulation D to date have been endorsed by NASAA and made a part of ULOE. [10]

In response to the Commission's request for comment, in the March Release, a number of states [11] and NASAA voiced substantial opposition to proposed Rules 507 and 508 and the proposal to eliminate the filing of Form D as a condition to a Regulation D exemption. The states expressed concern over the effect that adoption of the proposals would have on their enforcement efforts with respect to unlawful unregistered distributions of securities and the potential impairment of private rights of action by persons directly affected by failures in compliance with specific Regulation D provisions. Others, including several bar associations, [12] commented in favor of the proposals, commending the Commission for recognizing the inequities which result from a minor, technical deviation which harms no one but may create a total rescission right for all investors. These commenters suggested further changes to the proposals to make them more useful.

The rule proposals published today are intended to address the concerns of the states and, to the extent possible, the suggestions of the other commenters. The proposals are supported by the NASAA membership, which has directed its Small Business Capital Formation Committee to draft amendments to ULOE which would incorporate the amendments, and, where appropriate, would apply the principles of the proposals to the requirements of ULOE which are not also requirements of Regulation D. The Commission very much appreciates the substantial assistance of NASAA in developing these proposals.

II. New Proposals

A. Definitions

A number of revisions are proposed to the definitional provisions of Rule 501. These proposals are intended to clarify the staff's current interpretations of the provisions, or to remove possible ambiguities. As proposed, the definition of "aggregate offering price" would indicate that payments made in a foreign currency are translatable into U.S. dollars at the exchange rate in effect within a reasonable time period prior to or on the date of the sale of securities. The definition also would be revised to indicate that valuations of non-cash consideration must be reasonable when they are made.

The definition of the manner in which the number of purchasers in a rule 505 or Rule 506 offering is calculated would be clarified. Present Rule 501(e)(2) provides that a corporation, partnership or other entity shall be counted as one purchaser. However, if the entity was formed for the specific purpose of acquiring the securities offered, then each stockholder or partner is counted as a separate purchaser. In such cases, the proposed amendment would permit exclusion of certain purchasers from the calculation (e.g. a spouse sharing the same residence) in accord with the provisions of Rule 501(e)(1).

A proposed revision to the definition of a "purchaser representative" would adjust the time at which material conflicts of interest must be disclosed to investors, making it a reasonable time prior to purchase, rather than prior to the purchaser's acknowledgment of the purchaser representative as his agent.

B. Information Requirements

Rule 502(b) currently provides that no specific information need be furnished if the issuer sells securities under Rules 505 and 506 only to accredited investors. However, if securities are sold to any purchaser who is not an accredited investor, the information specified by the rule must be furnished to all purchasers. Under the proposed revisions, the issuer would not be required to provide the specified information to accredited investors even where non-accredited investors are included in the offering. Since the current regulatory scheme requires that the mandated disclosure be provided to each and every investor even where a single unaccredited investor purchases, a planned "all accredited investor" offering may have no exemption, even for the accredited investors, where a non-accredited investor purchases, regardless of the issuer's careful planning. Thus, the possible right of action for the unaccredited investor in this situation is preserved and the accredited investors are in the same position they undoubtedly believed they were in from the start, *i.e.*, not entitled to any mandated disclosure. As always, the anti-fraud provisions of the federal securities laws apply to the transaction with the accredited as well as the unaccredited investor.

As amended, Rule 502(b) would make clear that non-accredited investors must be advised of, and furnished upon request, all material information furnished to accredited investors, rather than all information as presently required. The amended rule would also provide that the required information must be furnished a reasonable time prior to sale. These revisions will remove uncertainties in the present language as to whether non-material information furnished to accredited investors must be given to non-accredited investors or whether information must be furnished at the commencement of the offering, rather than a reasonable time prior to sale.

A new provision would be added to Rule 502(b) to require that written disclosure of any limitations on the resale of the securities being purchased be provided to unaccredited investors. This provision will ensure that all unaccredited investors, who are more likely to be unaware of transfer restrictions, are clearly advised of the "restricted" character of the securities being offered for sale. [13]

C. Revisions to Rules 504, 505, and 506

Rule 504, the exemption available for offerings of up to $1 million by certain companies, [14] is proposed to be amended to require the issuer to deliver written disclosure to all prospective purchasers that the securities cannot be resold unless they are registered or an exemption from registration is available, whenever such a prohibition applies. Many of the states devote substantial efforts in the oversight of the offerings which are made in reliance upon Rule 504. Their representatives have advised that written disclosure of the restrictions on resale would be useful to both investors and to them. Consequently, the Commission is proposing this addition to the provisions of Rule 504. The Commission is aware that the technical definition of a security may occasionally encompass financial arrangements that a small business may not realize pose securities law issues. In such a case, the issuer, not realizing a securities offering is occurring, may not be aware of the need to give the proposed notice of resale restrictions. At the same time, if the manner and amount of the offering were otherwise consistent with Rule 504, exposing such an issuer to public or private actions under Sections 5 or 12(1) might be unduly severe. Therefore, comments are specifically requested as to whether it would be sufficient to provide that written disclosure must be furnished unless there was no reasonable basis to believe that resales would be made. Comments are also requested as to whether, in addition to or in lieu of the above, the written disclosure requirement should not apply for certain de minimis offerings, e.g., offerings of $50,000 or $100,000 or less.

The Commission also proposes to amend Rules 505 and 506 to reflect expressly the staff interpretations that the requirements of the rules are met whether or not the issuer had a reasonable belief as to the number of unaccredited investors, or their sophistication, so long as the number

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[1] Release No. 33–6759 (March 3, 1988) [53 FR 7870] (the "March Release").

[2] 17 CFR 230.501–230.508.

[3] 15 U.S.C. 77a *et seq.*

[4] Commentators have been suggesting that the Commission adopt such a standard for some time. *See*, e.g., Schneider, and Zall, Section 12(1) and the Imperfect Exempt Transaction: The Proposed I & I Defense, 28 Bus. Law. 1011 (1973).

[5] 17 CFR 239.500.

[6] The Commission received 56 comment letters with regard to the proposals published last March. The comment letters, a summary of those comments and summaries of various staff discussions regarding the proposals (File No. S7–4–88) are available for public inspection and copying at the Commission's Public Reference Room in Washington, DC.

[7] CCH NASAA Rep. ¶ 6201 et 6101.

[8] Section 19(c) of the Securities Act, 15 U.S.C. 77s(c).

[9] NASAA is an association of the securities commissioners of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces. An official policy guideline represents endorsement of a principle which NASAA believes to have general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

[10] Release No. 33–6437 (November 19, 1982) (47 FR 54764); Release No. 33–6663 (October 2, 1986) (51 FR 36385); Release No. 33–6758 (March 3, 1988) (53 FR 7866).

[11] Alabama, California, Idaho, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, Ohio, Pennsylvania, South Dakota, Texas, Washington, Wisconsin.

[12] *E.G.*, American Bar Association, Chicago Bar Association.

[13] A conforming amendment also is proposed with regard to Rule 502(b)(2)(i)(D). Last March, the Commission added a new level of disclosure for offerings of less than $2 million, *see* Release No. 33–6758. No change was proposed to be made with respect to certification requirements for foreign issuers under Regulation D. However, due to a failure to make the conforming amendment proposed here, an apparent change in the requirements was made. The action proposed would rectify the error

[14] The exemption is available for companies that are not subject to the reporting provisions of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m, 78o(d), but not investment companies registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.* The exemption places no limitation upon the number of potential purchasers and under certain circumstances permits general solicitations.

and sophistication requirements are in fact met.

III. Reproposals

A. Demonstrating the "Restricted" Nature of Securities

The changes to Rule 502(d), which provide limitations on resale, are reproposed substantially as published in March. Under the proposed amendment, the current listing of actions, required to establish reasonable care to ensure that purchasers are not underwriters (*i.e.*, purchaser inquiries, written notifications to purchasers and the legending of securities) would become non-exclusive. Thus, an issuer would be able to show the necessary reasonable care in another fashion.

B. Removing the Conditions to File Form D and New Rule 507

The proposals to eliminate the Form D filing requirement as a condition to any Regulation D exemption, and the Rule 507 disqualification provisions are being reproposed without change. Therefore, the Rule 503 requirement to file a Form D within 15 days of the first sale of securities would remain, but no longer be a condition to any exemption under Regulation D. Rule 507 would serve as a disqualification to the use of Regulation D for any issuer enjoined by a court of competent jurisdiction for having violated the filing obligation established by Rule 503. As before, the Commission would retain the authority to waive a disqualification upon a showing of good cause.

C. Revised Proposed Rule 508

Rule 508, as reproposed, would provide that failure to comply with a term, condition or requirement of Regulation D would not cause a loss of the exemption for any offer or sale to a particular individual or entity if the person relying on the exemption demonstrates that (1) the term, condition or requirement violated was not intended to protect the particular individual of entity involved,[15] (2) the failure to comply was insignificant to the offering as a whole, and (3) a good faith and reasonable attempt was made by the issuer to comply with all of the regulation's terms, conditions and requirements. A separate provision in reproposed Rule 508 provides that in any case, failure to comply with any term, condition or requirement of Regulation D would be actionable by the Commission [16] regardless of the significance of the deviation. The proposed rule provides that the conditions relating to dollar ceilings, numerical purchaser limits and general solicitation are deemed in every case to be significant to a Regulation D offering as a whole, and therefore, not subject to the Rule 508 defense.

General solicitation or general advertising by the issuer or any person acting on the issuer's behalf is prohibited for most offerings [17] pursuant to Regulation D. Inasmuch as general solicitation is not defined in the rule, the question of whether or not particular activities constitute a general solicitation must always be determined in the context of the particular facts and circumstances of each case. Thus, for example, if an offering is structured so that only persons with whom the issuer and its agents have had a prior relationship [18] are solicited, the fact that one potential investor with whom there is no such prior relationship is called may not necessarily result in a general solicitation.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding these Regulation D proposals.

The analysis notes that the elimination of certain conditions and rewording of certain provisions are proposed as a result of public comment and the Commission's experience. Reproposed Rule 507 complements the elimination of certain filing conditions while serving as an encouragement to comply with Rule 503. Reproposed Rule 508 defends against the loss of an exemption where insignificant failures in compliance occur despite a diligent attempt to comply. The imperative to unify federal and state securities exemptive schemes such as ULOE and Regulation D is noted, with its concomitant benefits to small issuers seeking to raise capital. The proposals add no new reporting, recordkeeping or other compliance requirements and may in fact eliminate certain existing obligations to maintain records.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Cost/Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information from the public. It appears to the Commission that the proposals if adopted would work significant cost savings for issuers using Regulation D without compromising investor protection.

VI. Statutory Basis and Text of the Proposed Amendments

The amendments to the Commission's rules are being proposed pursuant to sections 3(b), 4(2), 19(a), and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

(Arrows ► ◄ indicate proposed additions, brackets [ ] indicate proposed deletions)

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *.

2. Section 230.501 is amended by revising the introductory text, paragraphs (c), (e)(2) and (h)(4) as follows. The introductory text of (e) is republished for the convenience of the reader, and the notes following (h)(4) remain unchanged.

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501–230.50►8◄), the following terms shall have the meaning indicated:

* * * * *

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. ►Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities.◄ If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. ►Such valuations of non-cash consideration must be reasonable at the time made.◄

* * * * *

(e) *Calculation of number of purchasers.* For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply:

* * * * *

(2) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (a)(8) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D (§§ 230.501–230.50►8◄)►, except to the extent provided in paragraph (e)(1) of this section◄.

* * * * *

(h) *Purchaser representative.* "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

* * * * *

(4) Discloses to the purchaser in writing [prior to the acknowledgement specified in paragraph (h)(3) of this section] ► a reasonable time prior to the sale of securities to that purchaser ◄ any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

* * * * *

3. Section 230.502 is amended by revising the introductory text, revising paragraph (b)(1) revising paragraph (b)(2)(i) introductory text and (D), (ii) introductory text, (iii) and (iv), adding a new paragraph (b)(2)(vii), revising paragraph (d) introductory text, and by adding (d) concluding text to read as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§ 230.501–230.50►8◄):

* * * * *

(b) *Information requirements*—(1) *When information must be furnished.* [(i) If the issuer sells securities either under § 230.504 or only to accredited investors, paragraph (b) of this section does not require that specific information be furnished to purchasers.]

[(ii)] If the issuer sells securities under § 230.505 or § 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to [all] ►such◄ purchaser[s during the course of the offering and] ►a reasonable time◄ prior to sale. ►The issuer is not required to furnish the specified information to purchasers when it sells securities under § 230.504, or to any accredited investor.◄

►**Note to (b)(1):** When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws. In addition, specific disclosure requirements regarding limitations on resale are contained in § 230.504(b)(3).◄

(2) *Type of information to be furnished.* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, ►at a reasonable time prior to the sale of securities◄ the issuer shall furnish ►to the purchaser◄ the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

* * * * *

(D) If the issuer is a foreign private issuer eligible to use Form 20–F (§ 249.220f of this chapter) the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i) [(A) or] (B) ►or (C)◄ as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, ►at a reasonable time prior to the sale of securities◄ the issuer shall furnish ►to the purchaser◄ the information specified in paragraph (b)(2)(ii) (A) or (B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

* * * * *

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10–K report, need not be furnished to each purchaser ►that is not an accredited investor◄ if the contents of [the] ►material◄ exhibits are identified and [the] ►such◄ exhibits are made available to [the] ►a◄ purchaser ►,◄ upon his written request, ►a reasonable time◄ prior to his purchase.

(iv) At a resonable time prior to the [purchase] ►sale◄ of securities [by] ►to◄ any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall furnish ►to◄ the purchaser a brief description in writing of any ►material◄ written information concerning the offering that has been provided by the issuer to any accredited investor ►but not previously delivered to such unaccredited purchaser◄. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request ►a reasonable time◄ prior to his purchase.

* * * * *

►(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in paragraph (b)(2) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.◄

* * * * *

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care ►may be

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[15] Examples of a requirement intended to protect an individual would be the requirement to furnish information to that individual or to assure that that individual was sophisticated. A person who had received the required information or who was sophisticated could not argue that the requirement to furnish information to another or to assure that another was sophisticated was intended to protect that person.

[16] *See* section 20 of the Securities Act, 15 U.S.C. 77t.

[17] Under certain circumstances, an offering under Rule 504 may be undertaken with general solicitations. Rule 504(b)(1), 17 CFR 230.504(b)(1).

[18] The Commission's staff has issued a number of interpretive letters concerning the general solicitation requirement which have involved prior relationships, *e.g., In re* Mineral Lands Research and Marketing Corp. (November 4, 1986). The staff has never suggested, and it is not the case, that prior relationship is the only way to show the absence of a general solicitation.

demonstrated by ◄ [shall include, but not be limited to,] the following: * * * ►While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, § 230.502(b)(2)(vii) and § 230.504(b)(3) require the delivery of written disclosure of the limitations on resale to investors in certain instances.◄

4. Section 230.503 is amended by revising paragraph (a) as follows:

§ 230.503 Filing of notice of sales.

(a) [The] ►An◄ issuer ►offering or selling securities in reliance on § 230.504, § 230.505 or § 230.506◄ shall file with the Commission five copies of a notice on Form D (17 CFR 239.500) no later than 15 days after the first sale of securities [in an offering under Regulation D].

* * * * *

5. Section 230.504 is amended by revising paragraph (b)(1) and adding a new paragraph (b)(2)(ii) after Note 3 as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this § 230.504 offers and sales must satisfy the terms and conditions of § 230.501 ►and § 230.502,◄ [through § 230.503,] except that the provisions of § 230.50►2◄ (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made [.]

(i) ►E◄xclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) ►I◄n one or more states which have no provision for the registration of the securities and the delivery of a disclosure before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

(2) *Specific condition►s◄*

* * * * *

►(ii) *Advice about the limitations on resale.* Except where the provision does not apply by virtue of paragraph (b)(1) of this section, the issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of § 230.502.◄

6. Section 230.505 is amended by revising paragraph (b)(1) and (b)(2)(ii) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this section, offers and sales must satisfy the terms and conditions of § 230.501 ►and § 230.502.◄ [through § 230.503.]

(2) *Specific conditions.*

* * * * *

(ii) *Limitotion on number of purchasers.* ►There are no more than or t◄he issuer [shall] reasonably believe►s◄ that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

7. Section 230.506 is amended by revising paragraph (b)(1), (b)(2) (i) and (ii) as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of § 230.501 ► and § 230.502.◄ [through § 230.503.]

(2) *Specific conditions*—(i) *Limitation on number of purchasers.* ►There are no more than or t◄he issuer [shall] reasonably believe►s◄ that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

(ii) *Noture of purchosers.* [The issuer shall reasonably believe immediately prior to making any sale that] ►E◄ach purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment[.] ►, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.◄

8. By adding as new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under § 230.504, § 230.505 and § 230.506.

(a) No exemption under § 230.504, § 230.505 or § 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

9. By adding a new § 230.508 to read as follows:

§ 230.508 Insignificant deviations from a term, condition or requirement of Regulation D.

(a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (b)(2)(i) of § 230.502, paragraph (b)(2)(i) of § 230.504, paragraph (b)(2) (i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.

(b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

By the Commission.

Jonathan G. Katz,

Secretary.

December 20, 1988.

[FR Doc. 89-220 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Rel. No. 34-26402; File No. S7-27-88]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to its net capital rule. The amendments will make the rule applicable to certain specialists who are now exempt from the rule. The amendments, however, will allow specialists one business day to bring in capital or to reduce their positions to meet the appropriate haircuts on positions in their specialty securities. Option market makers, designated as specialists for purposes of the net capital rule, will continue to be exempt under certain conditions.

DATES: Comments should be received by March 1, 1989.

ADDRESSES: Persons wishing to express their views should submit their comments in triplicate addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Mail Stop 6-9, Washington, DC 20549. Reference should be made to File No. S7-27-88.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli (202) 272-2904, Michael P. Jamroz (202) 272-2372, or Jerry W. Carpenter (202) 272-3128, Division of Market Regulation, 450 5th Street, NW., Mail Stop 5-1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's uniform net capital rule, Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934 ("Exchange Act"), sets forth minimum financial standards for broker-dealers. The rule's design is that broker-dealers maintain liquid assets in sufficient amounts to enable them to satisfy promptly their liabilities. The rule accomplishes this by requiring broker-dealers to maintain liquid assets in excess of their liabilities to protect against potential market and credit risks.[1]

The Securities Act Amendments of 1975 ("1975 Amendments") amended section 15(c)(3) of the Exchange Act to require the Commission to establish minimum financial responsibility requirements for all brokers and dealers. The 1975 Amendments also amended section 23(a)(1) of the Exchange Act to authorize the Commission to classify persons and to prescribe greater, lesser, or different requirements for those different classes in the implementation and execution of the Exchange Act.

The present net capital rule requires all brokers-dealers who are registered with the Commission, except for certain narrowly defined classes,[2] to comply with the rule. Subparagraph (b)(1) of the rule classifies "specialist" [3] as a separate class of broker-dealers and exempts certain specialists from the requirements of the rule. The exemption applies to specialists who, among other things, (i) limit their securities activities to trading with only brokers, dealers, or other members of the exchange on which they act as specialists and (ii) are subject to the capital requirements of that exchange. Option market makers are also defined as specialists for purposes of the net capital rule. The Commission expects to issue a separate proposal concerning options market makers in the near future.

When the rule was adopted in 1975 and made applicable to all previously exempt exchange members, the Commission deferred the question of whether specialists should continue to be exempt from the rule. Later that year, the Commission solicited the views of all interested persons with regard to the appropriate net capital requirements for specialists.[4] In that release, the Commission stated that while there were reasons for a separate classification for specialists who had no public customers, the Commission did "not believe that the exemption should be continued indefinitely." Of the comment letters received, most expressed the commentators' concerns that the application of the net capital rule with its haircut [5] and undue

[1] "Net capital", as that term is used in the rule, is computed by adding to a broker-dealer's net worth, as computed under generally accepted accounting principles, certain liabilities subordinated to the claims of customers and by deducting from its net worth certain assets not readily convertible into cash and certain percentages ("haircuts") of the market value of all proprietary positions.

There are two methods for determining the amount of net capital a broker-dealer is required to have and maintain. Under the basic or "aggregate indebtedness" method, a broker-dealer must not permit its aggregate indebtedness (defined by subparagraph (c)(1) of the net capital rule as "the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever . . .") to exceed 800 percent of its net capital for its first twelve months as a broker-dealer and 1500 percent thereafter. Conversely stated, a broker-dealer must maintain net capital equal to at least 6⅔ percent of its aggregate indebtedness. A broker-dealer currently must maintain, regardless of the above net capital to aggregate indebtedness ratio, a minimum net capital of either $25,000 if it conducts a general securities business or $5,000 if it does not carry customer accounts or hold customer funds or securities and otherwise limits its business as described in the rule.

A broker-dealer that elects to use the "alternative method" of computing its net capital requirement currently must maintain net capital equal to the greater of $100,000 or 2 percent of its customer related receivables ("aggregate debit items") computed in accordance with Exhibit A to Rule 15c3-3 (17 CFR 240.15c3-3).

The rule also prescribes special capital requirements for market makers. A market maker (defined by the Exchange Act to mean any specialist permitted to act as a dealer) currently must maintain for each security in which it makes a market net capital of not less than $2,500 for each security with a market value of greater than $5.00 and not less than $500 for each security with a market value of $5.00 or less. This section of the rule currently provides that a market maker shall maintain net capital of at least $25,000 but does not require it to maintain net capital of more than $100,000 unless so required by some other provision of the rule.

[2] Pursuant to paragraph (b) of the net capital rule, there are three classifications of broker-dealers who are granted an exemption. The three classifications include certain specialists, certain floor brokers, and broker-dealers who have been granted a specific exemption by the Commission. Generally, only certain insurance companies, registered as broker-dealers because they sell annuity products which have been deemed to be securities, have been granted an exemption.

[3] An equity specialist is an exchange member who is registered with his exchange as such and who is responsible for making a market in one or more securities assigned to him. Generally, each equity security will be assigned to a single specialist, who, in effect, has a monopolist right to make a market in each of those assigned securities. In return for such a right, the specialist undertakes certain responsibilities. These responsibilities include, among other things, the obligation to assist in the maintenance, so far as practicable, of a fair and orderly market in each of its specialty securities.

[4] Notice of Solicitation of Comments Relating to the Application of Net Capital Requirement to Municipal Securities Brokers and Municipal Securities Dealers and Specialists, Release No. 34-11561, 40 FR 33,747, 7 SEC Docket 11 (1975); *See also* Extension of Comment Period Relating to the Application of Net Capital Requirements to Municipal Securities Dealers and Specialists, Release No. 34-11656, 40 FR 43,743, 7 SEC Docket 18 (1975).

[5] As the Commission stated in Securities Exchange Act Release No. 8024, the purpose of the haircuts, certain percentages of the market value of all proprietary securities positions which a broker-dealer must deduct from its net worth when calculating net capital, "is to provide a margin of safety against losses incurred by a broker or dealer as a result of market fluctuations in the prices of such securities or future commodity contracts."

For a broker-dealer that determines its net capital under the basic method, the current haircut for an equity security is 30% of the market value of the greater of the long or short positions. To the extent that the market value of the lesser of the long or short portion exceeds 25% of the market value of the greater of the long or short positions, there is an additional deduction of 15% of the market value of the excess.

For a broker-dealer that determines its net capital under the alternative method, the current haircut for equity securities is 15% of the market value of the long positions. To the extent that the market value of the short positions exceed 25% of the market value of the long positions, there is an additional deduction of 30% of the market value of the excess.

concentration [6] deductions would have an adverse effect on the specialists' ability to assist in the maintenance of a fair and orderly market and could create a conflict between the specialists' obligation to the market and their net capital rule requirement to maintain sufficient liquidity. No Commission action was taken at that time, and the exemption remained a part of the rule.

II. The Market Break of October 1987

As a result of the October 1987 market break and as a part of its comprehensive market break study,[7] the Division of Market Regulation ("Division") examined the specialist financial responsibility rules and specialist financial surveillance systems of the various exchanges and noted several problems.[8] Among other things, the Division expressed its concern regarding: (1) limitations in the exchanges' systems of monitoring the specialists' securities positions and financial conditions; (2) potential difficulties specialists may experience in obtaining necessary financing during periods of market turbulence; and (3) its belief that the minimum capital requirements imposed by the exchanges do not reflect the actual capital required to ensure the maintenance of fair and orderly markets in different types of securities.

As a result of the concerns regarding the state of the exchanges' specialist surveillance systems and financial responsibility rules, the Commission studied the ramifications of eliminating the exemption for specialists. Although the exchanges, in general, have taken steps to improve their financial surveillance systems [9] and their specialist capital requirement rules,[10] the Commission does not believe there exist sufficient reasons to continue to exempt specialists from the net capital rule and the consequential overall financial responsibility which results from its application.[11]

Specialists are central to the exchange market mechanism. Moreover, the October 1987 market break demonstrated that specialists are exposed to risks of financial failure during periods of extreme market volatility.[12] In light of these facts, the Commission believes it would be desirable to impose on specialists the additional discipline of the net capital rule and provide for improved Commission and exchange monitoring of the financial health of those firms.

The Commission believes that the application of the net capital rule to specialists will help to increase the commitment of all specialists to their functions. Further, the application of the rule, in effect, will require specialists to monitor properly their financial conditions on a continual basis and will provide the Commission with a uniform measure whereby it may review more effectively the liquidity of all specialists. The rule, however, will not require a specialist to assume more securities positions in its specialty securities than its responsibilities require. The rule, thus, will provide a minimum assurance that a specialist can meet its responsibilities to the market.

The specialists and the exchanges previously expressed fears that the specialists' market-making functions could be impaired intra-day because of the haircuts required by the net capital rule. Ordinarily, this fear should not be realized. Indeed, 24 of the New York Stock Exchange's 53 specialist units are currently subject to the net capital rule, and there is no indication that compliance with the rule has had a detrimental effect on their market making abilities. However, in recognition of a specialist's obligation to assist in the maintenance of a fair and orderly market in each of its specialty securities and the consequent necessity to inventory large positions temporarily, the Commission proposes to permit a specialist to defer taking haircuts on his specialty positions until the close of the business day following the trade date on which those positions were acquired.[13]

III. Proposed Changes

A. Subparagraph (b)(1)

The specialist exemption will be amended so that it is available only to those options market makers, designated for purposes of the net capital rule as specialists, who restrict their security business, except for occasional transactions for their own accounts, solely to options market making and who clear their securities transactions through another broker-dealer. This would require, among other things, that all specialists, whether their assigned securities are equities or options, have and maintain net capital of not less than the required amounts and comply with all other applicable provisions of the net capital rule.[14] The Commission is currently studying the exemption as it applies to options market makers.

B. Subparagraph (c)(2)(vi)(N)

Under the proposal, subparagraph (c)(2)(vi)(N) will be added to the net capital rule. This new subparagraph will permit a specialist to defer deducting from its net worth the haircuts, including any undue concentration deduction, specified in subparagraph (c)(2)(vi) or paragraph (f) or Appendix A as to positions in its specialty securities until the end of the business day immediately following the trade date on which those positions were acquired. The one day period will allow a specialist, who because of its obligation to the market had to assume large positions in his specialty securities, time to obtain any additional capital it may require because of the haircuts. It will also allow time for the possible stabilization of the market which could allow the specialist to reduce the size of its positions without violating its obligations as a specialist. Finally, if the specialist is unable to recover, it will provide the exchange sufficient time to arrange for an acquisition or to reallocate that specialist's specialty securities.

The Commission requests comments on whether this one day period should be available to all specialists or only those specialists who limit their securities activities to trading with other brokers or dealers. The Commission also requests comments on whether this one day period should be available to specialists for all haircuts on positions in their specialty securities or for only undue concentration deductions relating to positions in their specialty securities.

IV. Cost and Benefit

The Commission requests comment on the costs and benefits of the proposed amendments to the net capital rule and the effects of those costs and benefits on the specialists. The Commission is especially interested in receiving comments concerning the effects of the proposed amendments on the specialists at the regional exchanges.

The proposed amendments to the net capital rule may require some specialists in meeting the requirements of the net capital rule to increase the amount of capital they maintain. The exact effect the application of the net capital rule will have on specialists cannot be immediately quantified. The application of the rule, though, will not impose any burden on the specialists, large or small, in addition to those the majority of all other broker-dealers, including over-the-counter market makers, have in complying with the net capital rule.

In addition, the Commission believes the benefits that will result from the application of the net capital rule will outweigh any possible burdens. These benefits include, among other things, providing reasonable assurance that specialists are maintaining sufficient levels of net capital, providing the Commission with a uniform measure whereby it may review the liquidity of all specialists, and requiring specialists to monitor their net capital as closely as other broker-dealers are now required.

Comments are solicited on the potential sources of costs and the potential benefits associated with the proposed amendments to the net capital rule. The Commission also seeks quantification of any costs or benefits identified.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 15c3–1. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility rules which are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jerry W. Carpenter, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

VI. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15 (c)(3) and 23 thereof, 15 U.S.C. 780(c)(3) and 78w, the Commission proposes to amend § 240.15c3–1 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * * Section 240.15c3–1 is also issued under sec. 15(c)(3), 15 U.S.C. 78*o*(c)(3).

2. By amending § 240.15c3–1 by revising paragraph (b)(1) and adding paragraph (c)(2)(vi)(N) after the concluding paragraph as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(b) Exemptions:

(1) The provisions of this section shall not apply to any specialist:

(i) Whose securities business, except for an occasional non-specialist related securities transaction for his own account, is limited to that of acting as an options market maker on a national securities exchange;

(ii) Who is a member in good standing and subject to the capital requirements of a national securities exchange;

(iii) Who does not transact a business in securities with other than brokers or dealers registered with the Commission under section 15 of the Securities Exchange Act of 1934; and

(iv) Who is not a clearing member of the Options Clearing Corporation and whose securities transactions are effected through and carried in an account cleared by another broker or dealer registered with the Commission under section 15 of the Securities Exchange Act of 1934.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(N) A specialist shall not be required to reduce its net worth by any deduction provided by paragraph (c)(2)(vi) or paragraph (f) of this section or Appendix A (§ 240.15c3–1a) as to positions in his specialty securities until the end of the business day immediately following the trade date on which the positions were acquired.

* * * * *

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[6] The undue concentration deduction found at (c)(2)(vi)(M) and (f)(3)(iii) of the net capital rule applies to all long or short proprietary positions of a single class or series whose market value exceeds ten percent of the broker-dealer's net capital before haircuts. The deduction is applied in the case of equity securities only on the market value in excess of $10,000 or the market value of 500 shares, whichever is greater.

[7] "The October 1987 Market Break—A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission" ("Market Break Report").

[8] *See* Market Break Report, Chapter 4, at 4–48 to 4–68.

[9] Since March 1988, the New York Stock Exchange ("NYSE") has increased its monitoring of the financial conditions of its specialists by requiring each specialist unit to submit on a daily basis information on that unit's capital and securities positions. The information is required to be filed with the NYSE by 9:00 a.m. Eastern time on the day following trade date. From the information submitted, the NYSE generates several different daily reports which are designed to aid its staff in the financial surveillance of its specialists.

Since September 1988, the American Stock Exchange ("Amex") has increased its monitoring of the financial conditions of its specialists by requiring each self-clearing specialist to submit on a daily basis information on that specialist's capital and securities positions. The information is required to be filed with the Amex by 9:00 a.m. Eastern time on the day following the trade date. Similar information for the introducing specialists is provided to the Amex on a daily basis by the introducing specialists' clearing firm.

See Market Break Report, Chapter, 4, at 4–52 to 4–53, for an overview of the systems, as they existed prior to the October 1987 market break, used by the NYSE and the Amex to monitor the financial conditions of their specialists.

[10] The Commission approved amendments to NYSE Rule 104.20 (Release No. 34–25677, 53 Fed. Reg. 17,286, 40 SEC Docket 18 (1988)) and Amex Rule 171 (Release No. 34–25863, 53 FR 25,225, 41 SEC Docket 5 (1988)) which increased the minimum amount of capital their specialists are required to maintain.

[11] The Commission emphasizes that, notwithstanding this proposal, specific exchange capital requirements on specialists are important. Indeed, the Commission understands that the NYSE is developing a proposal which would vary its specialist capital requirements based on the trading characteristics of the particular specialist's specialty securities. We support this initiative and urge the NYSE to finalize its proposal as soon as practicable.

Furthermore, whether or not the net capital rule is amended to make all specialists subject to its requirements, the Commission encourages the exchanges to continue their efforts towards improving their specialist financial surveillance systems.

[12] During the market break, specialists at the NYSE increased their aggregate securities positions to at least twice that of their normal size with some individual specialist units increasing the size of their positions to four times that of their normal size. This increase in the size of positions resulted in the loss of approximately one-half of the buying power usually available to the specialists.

Specifically, at the end of trading on October 16, only one of the NYSE fifty-five specialist units had no buying power because its margin requirement was in excess of its net liquid assets/equity. By the end of trading on October 19, thirteen units had no buying power. At the end of trading on October 20, five of the thirteen units from the previous day had excess equity and buying power, and one additional unit no longer had buying power; thus a total of nine units had no buying power at the close on October 20. The Division in its Market Break Report evaluated what the likely impact on NYSE specialists would have been had an additional 250 point drop in the market occurred on October 20. Based on its evaluation, the Division believed that an additional 15 to 20 specialists units would have exhausted their buying power.

As a result of the October 1987 market break, one NYSE specialist firm formed a joint book with the specialist affiliate of an upstairs firm and another NYSE specialist firm was purchased by the affiliate of an upstairs firm. At the Amex, two specialist firms were acquired by upstairs firms. *See* Market Break Report, Chapter 4, at 4–58 to 4–65.

[13] The one day period specialist will be allowed in order to meet their haircut deductions will also apply to any undue concentration deduction. This one day period and the provision now in the net capital rule which grants a specialist's designated examining authority the discretionary authority to decrease any undue concentration deduction related to a specialist's specialty security should balance the specialists' obligation to the market and their requirement under the net capital rule to maintain sufficient liquidity.

[14] *E.g.*, paragraph (e) of the net capital rule prohibits a stockholder or partner from withdrawing equity capital of the broker-dealer if the withdrawal would cause its aggregate indebtedness to net capital ratio to exceed 1000% or its net capital to be less than 120% of the minimum dollar amount required or its net capital to be less than 5% of its aggregate debit items.

By the Commission.
December 28, 1988.
Jonathan G. Katz,
Secretary.
(FR Doc. 89-143 Filed 1-4-89; 8:45 am)
BILLING CODE 8010-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 203

Employees Under the Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise Part 203 to reflect recent legal opinions of the Board's Deputy General Counsel defining employee, to reflect the decision in *Railway Labor Executives' Association* v. *Railroad Retirement Board*, 842 F. 2d 466 (D.C. Cir. 1988), and to remove obsolete provisions.

DATES: Comments must be received by February 6, 1989.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611; (312) 751-4945; (FTS) 386-4945.

SUPPLEMENTARY INFORMATION: Part 203 of the Board's regulations has not been revised since its adoption in 1947. Consequently, it contains provisions which are for practical purposes now obsolete and others which have not been updated to reflect more recent legal developments and the changing nature of the railroad industry. Thus, the Board has decided to replace old Part 203 with a new Part 203.

Service for a railroad by an individual is covered under the Railroad Retirement Act only when performed in the capacity of an employee. Service by an independent contractor is not covered. Specifically, the new Part, at § 203.2, delineates factors as to when an individual is performing service for a railroad as an employee as opposed to an independent contractor. In determining whether an individual is an employee or independent contractor, the Board will apply the commonly recognized tests developed under common law. These criteria are essentially the same tests used by the Internal Revenue Service in determining whether an individual is an employee or independent contractor for employment tax purposes.

In addition, the Railroad Retirement Act provides that where an individual is rendering professional or technical services to an employer and is integrated in the staff of the employer or is rendering personal services on the property used in the operations of the employer, that person is an employee of the employer, even if under the common law test such person would be considered an independent contractor. These provisions, with examples, are also set forth at § 203.2.

Service by an employee of a railroad whose principal place of business is the United States is covered service no matter where performed. Thus, an employee working in Japan for a United States railroad is covered under the Railroad Retirement Act. An exception to this rule applies to employees of United States railroads, who are neither citizens nor residents of the United States, when rendering service outside the United States, if the law of the place of service requires that the railroad fill its positions with local citizens or residents.

Recently, the Board held that service for United States railroads operating in Canada by employees who were neither citizens nor residents of the United States was not covered service since the immigration law of that country required the employment of Canadians for most railroad jobs. This decision was upheld in *Railway Labor Executives' Association* v. *Railroad Retirement Board*, 842 F. 2d 466 (D.C. Cir. 1988). Proposed § 203.4 (Service outside the United States—United States employer) incorporates the criteria used by the Board, and approved by the court, to determine when a foreign country's law requires that United States railroads operating in that country are required to hire local citizens rather than United States citizens.

Finally, the provisions of old § 203.5, dealing with when service to a local lodge or division, or general committee of a railway labor organization not conducting the principal part of its business within the United States is covered under the Act, were not included in new Part 203. These old provisions essentially parroted provisions which are still found in the Act, but have very limited application.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) do not apply.

A distribution table is provided to show the distribution of the old Part 203.

Current section and name	New section and name
203.1 Statutory provisions.	Unnecessary.
203.2 General definition of employee.	203.1 General definition of employee.
203.3 When an individual is performing service for an employer.	203.2 When an individual is performing service for an employer.
203.4 When service is compensated.	203.3 When service is compensated.
203.5 Service outside the United States, Paragraph (a).	203.5 Service outside the United States—Foreign employer.
203.5 Service outside the United States, Paragraph (b) through end.	Unnecessary.
203.6 Age, citizenship, and other factors.	203.4 Service outside the United States—United States employer.
203.7 Local lodge employee.	203.6 Local lodge employee.

A derivation table is provided to show the sources of the revised Part 203.

New section	Old section
203.1	203.2
203.2	203.3.
203.3	203.4 (first sentence preceding the words "*Provided, however,*"
203.4	203.6 (that part beginning with the words "except that an individual" and ending before the words "and the laws in force").
203.5	203.5 (paragraph (a)).
203.6	203.7 (second sentence).

List of Subjects in 20 CFR Part 203

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II, Part 203 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 203—EMPLOYEES UNDER THE ACT

Sec.
203.1 General definition of employee.
203.2 When an individual is performing service for an employer.
203.3 When service is compensated.
203.4 Service outside the United States—United States employer.
203.5 Service outside the United States—foreign employer.
203.6 Local lodge employee.

Authority: 45 U.S.C. 231 and 45 U.S.C. 231f.

§ 203.1 General definition of employee.

An individual shall be an employee whenever:

(a) He or she is engaged in performing compensated service for an employer in the capacity of an employee, or

(b) He or she is in an employment relation to an employer (see Part 204 of this chapter), or

(c) He or she is an employee representative (see Part 205 of this chapter), or

(d) He or she is an officer of an employer.

§ 203.2 When an individual is performing service for an employer.

(a) In determining whether an individual is performing service for an employer in the capacity of an employee, the Board will apply the commonly recognized tests of employee-independent contractor status developed under the common law. The Board will consider factors such as, but not necessarily limited to, the following:

(1) The right of the employer to supervise and/or direct the manner in which the work is done;

(2) The right of the employer to dismiss the individual;

(3) The manner of selection and engagement of the individual;

(4) The periodic payment of regular remuneration;

(5) The performance of work on the employer's premises;

(6) The execution of a contract for continuing services over a long or indefinite period;

(7) The devotion of substantially all of the individual's working time to such service;

(8) The performance of duties which are similar in many respects to those previously performed by an employee; and

(9) The factors listed in § 216.8(c) of this chapter.

(b) The Board will apply the criteria listed in paragraph (a) of this section on a case-by-case basis, giving due consideration to the presence or absence of each element with no single element being controlling. The Board will look at the substance of the relationship between the employer and the individual.

(c) *Example.* The use of examples in this Part shall not limit in any way the scope and/or application of the provisions of this Part, but is intended solely to illustrate how these provisions may be applied. The application of paragraphs (a) and (b) may be illustrated by the following example:

Example: X, former railroad employee, signs a contract to perform consulting services for his or her former railroad employer. The contract states that X is an independent contractor. X's services under the contract are very similar to the duties he or she performed as an employee, and he or she reports to the same person. In addition, X works on the premises of the employer, is paid by the hour, and devotes a substantial portion of his or her time to the performance of the contract. X is an employee of the railroad and not an independent contractor.

(d) An individual is also performing services as an employee of an employer if he or she is rendering professional or technical services and is integrated into the staff of the employer.

(e) An individual is also performing services as an employee of an employer if he or she is rendering personal services on the property used in the operations of the employer and the services are integrated into those operations.

(f) *Examples:* The application of paragraphs (d) and (e) may be illustrated by the following examples:

Example 1: A railroad acquires the services of an individual through a temporary employment agency to operate one of its railroad engines. The railroad pays the agency for the services of the individual and the agency then pays the individual. While operating the engine the individual must follow the operating and safety rules applicable to the railroad's employees. The individual is an employee of the railroad.

Example 2: A railroad signs a contract with one of its former employees, Y, to train his or her successor and to teach a series of classes to be attended by employees of the department which the former employee once headed. The contract provides that the former employee is an independent contractor. Y is considered to be an employee of the railroad and not an independent contractor.

(g) The provisions in paragraphs (a), (b), (d), and (e) of this section are controlling irrespective of whether the service is performed on a part-time basis, and, with respect to paragraph (a)(1) of this section, irrespective of whether the right to supervise and/or direct is exercised.

§ 203.3 When service is compensated.

Service shall be "compensated" if it is performed for compensation, as that term is defined in Part 211 of this chapter.

§ 203.4 Service outside the United States—United States employer.

(a) An individual who performs services as an employee of an employer which conducts the principal part of its business in the United States shall be considered to be performing services as an employee, without regard to whether those services are performed within or outside the United States, except as otherwise provided in this section.

(b) An individual who is not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required by the laws of the place where the service is performed to employ, in whole or in part, citizens or residents thereof.

(1) The Board will consider that the laws of a place require the employment, in whole or in part, of citizens or residents thereof if the law, any regulation or rule issued pursuant to the law or any official interpretation of the law or administration of the law:

(i) Provides that all employees must be citizens or residents of the place; or

(ii) Provides that a stipulated percentage or a specific number of employees must be citizens or residents of the place; or

(iii) Provides that certain occupations, skills, or types of work must be performed by citizens or residents of the place, unless such occupations, skills, or types of work are not found in the railroad industry; or

(iv) Creates such barriers to employment of United States citizens so that, in effect, employment of citizens or residents of the place, in whole or in part, is required.

§ 203.5 Service outside the United States—foreign employer.

An individual who performs services as an employee of an employer which does not conduct the principal part of its business in the United States shall be considered to be performing services as an employee only when performing services within the United States.

§ 203.6 Local lodge employee.

An individual who shall have rendered service to a local lodge or division of a railway labor organization considered an employer under Part 202 of these regulations shall be an employee with respect to such service to such local lodge or division only with respect to such service as was preceded by service, or an employment relation, on or after August 29, 1935, to an employer which was a carrier, as defined in Part 202 of these regulations.

Dated: December 23, 1988.

By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 89-127 Filed 1-4-89; 8:45 am]
BILLING CODE 7905-01-M

Notices

Federal Register
Vol. 54, No. 3
Thursday, January 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; First Quarterly Estimate

Pub. L. 88–482, enacted August 22, 1964, as amended by Public Law 96–177 and Pub. L. 100–418 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal other than high quality beef (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 2020.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1989 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1989 is 1,307.1 million pounds.

2. The first quarterly estimate of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1989 is 1,425 million pounds.

Done at Washington, DC, this 29th day of December, 1988.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 89–131 Filed 1–4–89; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), its Advisory Panel (AP), and an ad hoc herring bycatch workgroup will convene public meetings at the Sheraton Hotel, Anchorage, AK. The Council's public meeting will convene on January 16, 1989, at 9 a.m.; the SSC on January 16 at 10:30 a.m.; the AP on Sunday, January 15 at 9 a.m., and the ad hoc workgroup on Sunday, January 15 at 10 a.m.

The Council will consider future development of long-term management alternatives for groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands, and appoint an advisory committee to begin development of those alternatives for future Council consideration. The Council will also receive a report from its newly-appointed Sablefish Management Committee which has been charged with developing two management alternatives, individual fishing quotas and license limitation, for future consideration by the Council.

The Council will also discuss and prepare recommendations for amendments to the Magnuson Fishery Conservation and Management Act, review future fishery research priorities, review current fishery observer programs, and consider recommendations to the National Marine Fisheries Service and the Alaska Department of Fish and Game on reporting and enforcement of the prohibited species reporting requirement in domestic fisheries.

The Council will review proposals for amendments to the groundfish fishery management plans (FMPs) for the Gulf of Alaska and Bering Sea/Aleutian Islands and determine which ones should be further analyzed during their upcoming amendment cycle. The analyses will be reviewed at the April 1989 Council meeting before being sent out for public review.

The Bering Sea/Aleutian Islands King and Tanner Crab FMP will be reviewed and approved for review by the Secretary of Commerce. The Council will also approve a regulatory amendment revising the directed fishing definition for sablefish.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–157 Filed 1–4–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, January 11–12, 1989, at the Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, WA, as follows:

Council—will convene January 12 at 8 a.m., with a closed session (not open to the public), to discuss litigation. At 9 a.m., the Council will convene its open session to address halibut allocation, administrative matters, groundfish management and habitat issues. The Council will adopt an allocation plan for 1989 halibut fisheries in Area 2A (all waters south of British Columbia). Administrative matters include proposed amendments to the Magnuson Fishery Conservation and Management Act (MFCMA), the status of Council funding and other matters. Groundfish agenda items include consideration of a regulatory change to require that all groundfish gear aboard vessels be legal gear, and a status report on the distribution of yellowtail rockfish.

Council Performance Select Group—will convene January 11 at 8 a.m., to review Council performance and procedures.

Legislative Overview Committee—will convene January 1 at 8 a.m., to consider proposed amendments to the MFCMA.

Habitat Committee—will convene January 11 at 1 p.m., to consider relevant and timely habitat issues for fisheries under Council jurisdiction.

Halibut Select Group—will convene January 11 at 1 p.m., to develop final recommendations to the Council on management of the non-Indian halibut fisheries in 1989.

Budget Committee—will convene January 11 at 3 p.m., to review 1989 funding for Council operations.

Detailed agendas for the above meetings will be available to the public after December 23, 1988. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Mangement, National Marine Fisheries Service.

[FR Doc. 89–158 Filed 1–4–89; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will conduct a public meeting of its Executive Committee at the Council's Headquarters (address below), on January 25–26, 1989, to discuss priorities and a schedule of activities for 1989.

A detailed agenda will be available to the public on or about January 6, 1989. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–159 Filed 1–4–89; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Chairmen's Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will host a public meeting of the Chairmen of the eight Regional Fishery Management Councils at the Omni Hotel at Charleston Place, 130 Market Street, Charleston, SC, on January 27–28, 1989, to discuss Magnuson Fishery Conservation and Management Act (MFCMA) amendments, MFCMA reauthorization issues, NOAA Fisheries issues, and other issues of interest to the Councils.

A detailed agenda will be available to the public on or about January 6, 1989. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone (803) 571–4366.

Date: December 30, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–160 Filed 1–4–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: AFR 177–10, Accounting and Finance Customer Survey of Commercial Vendors; AF Form 155; and OMB Control Number 0701–0106.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 minutes.

Frequency of Response: On occasion.

Number of Respondents: 20,000.

Annual Burden Hours: 10,000.

Annual Responses: 20,000.

Needs and Uses: The Air Force uses this survey form to collect information from commercial vendors about the quality of service they receive when they are dealing with Air Force accounting and finance offices. The Air Force needs this information to ensure good customer relations and to maintain the quality of performance of its accounting and finance offices.

Affected Public. Business or other for-profit.

Frequency: Continuing.

Respondent's obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer. Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 29, 1988.

[FR Doc. 89–132 Filed 1–4–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Invitation for Field Readers for Cooperative Education Programs

AGENCY: Department of Education.

ACTION: Invitation for Individual Interested in Serving as Field Readers for the Cooperative Education Program.

SUMMARY: The Assistant Seecretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications for the Cooperative Education Program. The Cooperative Education Program provides administration grants or contracts to institutions of higher education to plan, establish, operate, or expand cooperative education projects, including institution-wide projects; demonstration grants to institutions of

higher education and public and private nonprofit organizations and agencies to demonstrate or determine the feasibility of value of innovative methods of cooperative education; grants or contracts to institutions of higher education and public and private nonprofit organizations and agencies to conduct research related to cooperative education; and training and resource center grants to institutions of higher education and public and private nonprofit organizations and agencies to train and assist individuals who participate in, or are planning to participate in the planning, establishment and administration of cooperative education projects.

Duties and Compensation of Field Readers: Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, DC. Each field reader will serve for a period of approximately 5 days. Each field reader will receive compensation for certain travel expenses, and a honorarium.

Field Reader Qualifications: All field readers should be acknowledged experts in their particular field of study. Field readers are sought who have: (a) Participated, either as a faculty member or as a professional staff member, in the administration of a cooperative education program at a college or a university; (b) participated, as a key administrator of a college or university, in the development of a cooperative education program at an institution of higher education; (c) been employers of cooperative education college students and have a good basic knowledge of the principles of cooperative education; (d) expertise in cooperative education and in research; or (e) expertise in cooperative education and competency in the field of training and human resource development. Each field reader must have the expertise necessary to accurately assess the grant proposals submitted to the Department of Education.

Application Process: Any individual interested in serving as a field reader should mail his/her resume to the address below indicating the program for which he or she is interested in serving as a field reader.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78. The regulations for this program are found at 34 CFR Parts 631–635, published in the **Federal Register** on August 5, 1987 (53 FR 29140).

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth Slany, Division of Higher Education Incentive Programs, U.S. Department of Education, ROB 3, Room 3022, 400 Maryland Avenue SW., Washington, DC 20202–5251.

Program Authority: 20 U.S.C. 1133–1133.

Dated: December 21, 1988.

(Catalog of Federal Domestic Assistance Program Number 84.055)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–172 Filed 1–4–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER89–135–000]

Alabama Power Co.; Filing

December 30, 1988.

Take notice that on December 21, 1988, Alabama Power Company (APCO) tendered for filing Amendment No. 2 to the Interconnection Agreement between APCO and Alabama Electric Cooperative, Inc. (AEC), which amends Service Schedule RP (Reserve Peaking Capacity) from APCO to AEC. Under the amended service schedule, the period during which APCO would make available and AEC would purchase certain reserve peaking capacity is extended through December 31, 1992, at which time the schedule expires and terminates. AEC is entitled to schedule capacity in accordance with its needs, but utilization cannot exceed a ten percent (10%) capacity factor for any calendar year. AEC may increase or decrease the capacity purchased under the schedule subject to certain conditions and notice requirements, while APCO is entitled to recall capacity under the schedule under certain conditions. Service RP provides for a monthly capacity charge, together with an energy charge reflecting the incremental expense incurred by APCO in supplying energy thereunder.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–164 Filed 1–4–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89–136–000]

Baltimore Gas and Electric Co.; Filing

December 30, 1988.

Take notice that on December 21, 1988, Baltimore Gas and Electric Company (BG&E) tendered for filing, as an initial rate schedule, a letter agreement between BG&E and Atlantic City Electric Company (AE) reflecting BG&E's sale to AE of one hundred megawatts or one hundred percent, whichever is lesser, of BG&E's entitlement for the use of the Pennsylvania-New Jersey-Maryland Interconnection's (PJM) transmission system which is used to import energy from systems to the west of PJM at the rate set forth in Schedule 4.02 of the PJM Agreement (currently $5.50 per megawatt hour) each week for the period January 2, 1989–December 31, 1989. A Certificate of Concurrence by AE was included in the filing.

A copy of the initial rate schedule has been mailed to AE, the Public Service Commission of Maryland and the New Jersey Board of Public Utilities. BG&E requests that the Commission waive its customary notice period and allows the rate scheduled to become effective January 2, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–165 Filed 1–4–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89–10–000]

Delmarva Power & Light Co.; Filing

December 30, 1988.

Take notice that on December 21, 1988, Delmarva Power & Light Company (Delmarva), tendered for filing a request for a limited-term waiver of the accounting regulations applicable to costs recovered through its automatic Fuel Adjustment Clause, FERC Electric Service Tariff, Volume No. 11, Section XVIII, Original Leaf No. 31 and First Revised Leaf No. 32. The proposed waiver would provide for the recovery, through its wholesale Fuel Adjustment Clause, from its wholesale for resale electric customers, the allocated costs, plus interest, less tax benefits, of certain coal contract buyouts. Delmarva states that it has incurred these coal contract buyout costs for the sole benefit of its customers, and that timely recognition of its efforts to take advantage of lower cost fuel supplies, through this waiver, would be appropriate, just, reasonable, and in the public interest.

Delmarva has also requested a waiver of the sixty-day notice requirement to permit an effective date of January 1, 1989, for implementation of the requested accounting waiver. The proposed waiver would increase the otherwise applicable Fuel Clause Adjustment rate by approximately $0.000176 (0.176 mills) per kilowatt-hour for two years. Delmarva has, in the alternative, requested authorization to permit the continued recording of the buyout costs, plus interest, less tax benefits, so as to permit their recovery in its next wholesale base rate case.

Copies of this filing have been served upon Delmarva's jurisdictional Customers and upon the Public Service Commissions of Delaware and Maryland and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–166 Filed 1–4–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89–362–000 and CP89–363–000]

Falcon Seaboard Pipeline Co.; Application To Construct, Connect, Operate, and Maintain Certain Natural Gas Facilities at the International Boundary

Issued December 29, 1988.

Take notice that on December 8, 1988, Falcon Seaboard Pipeline Company (Falcon Pipeline), Five Post Oak Park, Suite 1400, Houston, Texas 77027, filed an application pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717(b), and Executive Order No. 10485, as amended by Executive Order No. 12038 and Delegation Order No. 0204–112 of the Secretary of Energy; §§ 153.1 *et seq.* and 153.10 *et seq.* of the Commission's Regulations, respectively. Falcon Pipeline seeks the issuance by the Commission of a Presidential Permit to connect a natural gas facility at a point of entry on the United States-Canadian border near the Town of Champlain, New York. Falcon Pipeline also seeks authorization from the Commission under section 3 of the NGA to construct, operate and maintain such facilities at the point of entry.

The point of entry facilities are part of a project whereby Falcon Pipeline will receive the gas delivered by TransCanada Pipelines Limited ("TransCanada") into the pipeline Falcon Pipeline proposes to construct, own, and operate from the U.S.-Canadian border at the TransCanada delivery point, traversing 26 miles to the City of Plattsburgh, New York. The area to be served by the proposed pipeline is currently without natural gas service. The initial delivery of the Canadian gas to Falcon Pipeline is anticipated to commence on or about November, 1990, through new facilities proposed to be constructed, owned, and operated by to the U.S. border near the Town of Champlain, New York.

The Canadian gas will be purchased at the border by Falcon Seaboard Gas Company ("Falcon Gas"), a Texas Corporation, from a Canadian affiliate of Falcon Pipeline and Falcon Gas. Falcon Gas requests authority to import up to twenty (20) Bcf of natural gas annually, or fifty-four (54) MMcf per day, from Canada for a period of fifteen years, or approximately three hundred (300) Bcf of natural gas during a 15-year period. The Canadian affiliate will purchase its gas from various Canadian producers. Falcon Gas will sell the gas to each of three proposed cogeneration projects which will be owned and operated by affiliates of Falcon Gas in the Plattsburgh, New York area. Falcon Pipeline will transport, but not hold title to, the gas purchased by Falcon Gas at the border for sale to the three cogeneration projects. Each cogeneration project will be 79 MW in size and will consume approximately 16,200–18,200 Mcf per day. Falcon Pipeline is willing to transport approximately 7,500 Mcf per day of additional gas for New York State Electric and Gas Corporation (NYSEG), if NYSEG desires such delivery of gas for resale to residential, commercial and industrial customers in the Plattsburgh area. Additional authorizations would be requested if NYSEG requests service from Falcon Pipeline.

Because the pipeline facilities of Falcon Pipeline will be located exclusively in the State of New York, and will not be connected directly or indirectly to any facilities that receive gas produced in the U.S., the facilities of Falcon Pipeline (and the sales by Falcon Gas) are alleged not to constitute "interstate commerce" as that term is used in the Natural Gas Act of 1938. See *Distrigas Corp.* vs. *Federal Power Commission*, 495 F.2d 1057 (DC Cir. 1974) *cert. denied*, 419 U.S. 834 (1974); *Border Pipe Line Co.* vs. *Federal Power Commission*, 171 F.2d 149 (DC Cir. 1948).

Falcon Pipeline has filed an application pursuant to Article VII of the New York Public Service Law for a Certificate of Environmental Compatibility and Public Need (Article VII Application) with the Public Service Commission of New York for approval to construct the 26-mile pipeline from the Canadian Border near the Town of Champlain to the City of Plattsburgh. The Article VII Application has been attached to Falcon Pipeline's application in its entirety and is made a part of said proceeding as Exhibit E. Pipeline design and construction specifications, the anticipated minimal environmental impacts of the river crossings and other construction activity, archeological and historical site considerations, and other issues are discussed in greater detail in the material contained in the Article VII Application.

Simultaneously with the filing of the application, Falcon Gas if filing an application with the Economic Regulatory Administration for the necessary import authorization. TransCanada will apply for and obtain the appropriate authorizations from Canadian governmental bodies to reinforce and/or to install facilities to transport the natural gas to the U.S.-Canadian border. The Canadian affiliate of Falcon Pipeline and Falcon Gas, supplying the natural gas to Falcon Gas, similarly will apply for and obtain the necessary removal permit(s) and export license(s) from the Canadian authorities for the removal of natural gas from the province of Alberta and exportation of the same from Canada.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 19, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulation under the Natural Gas Act (18 CFR 175.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene if filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-163 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-105-000]

N.B. Partners, Ltd.; Filing

Issued December 14, 1988.

Errata

December 29, 1988.

Take notice that the notice previously issued in this document was erroneous and that it should be disregarded. The following is a correct notice of the filing, as submitted by N.B. Partners, Ltd.

Take notice that N.B. Partners, Ltd. ("NBP"), a Delaware limited partnership, on December 5, 1988, tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed FERC Rate Schedule No. 1, applicable to sales of energy and capacity to Virginia Electric and Power Company ("VEPCO") from a waste coal electric generating facility owned and operated by NBP in Grant Count, West Virginia (the "Facility"). The Facility is certified as a qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder.

The proposed initial rate is set forth in the Power Purchase and Operating Agreement, dated June 30, 1987, between Nortex Management, Inc. and VEPCO. This agreement was later assigned by Nortex Management, Inc. to NBP on May 18, 1988. The Power Purchase and Operating Agreement establishes a purchase price, based on VEPCO's avoided cost, for all electricity delivered by NBP to VEPCO which includes both an energy charge and a capacity charge.

NBP requests waiver of the Commission's notice requirements so that the rate schedule may take effect as of the date of NBP's initial delivery to VEPCO. Additionally, NBP seeks waiver of the Commission's regulations regarding cost-of-service documentation, accounting practices, reporting requirements, property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate.NBP states that copies of the instant filing have been served upon VEPCO and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-167 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-438-000]

Panhandle Eastern Pipe Line Co.; Application

December 29, 1988.

Take notice that on December 16, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-438-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon by sale to Antioch Texas Gathering Company (ATGC) all facilities upstream of Panhandle's Sneed Compressor Station including: (1) 37 compressor station sites with about 64,000 horsepower, (2) approximately 360 total miles of pipeline facilities, and (3) small buildings and related facilities; excluding: (1) The 12-inch loop line and associated liquid terminal from the discharge of Deer Compressor Station to Sneed Compressor Station, (2) Cabot Compressor Station and associated discharge lines, and (3) the Sneed Compressor Station communications tower. Panhandle explains that it will retain 26 compressor units, totalling about 18,000 horsepower, proposed to be abandoned from the Blair-Heydrick, Deer, Armour, Warren, and Tumbleweed Compressor Stations for its own use as the need for the compression may arise. Panhandle further explains that all other facilities to be abandoned would remain in place for ATGC's use.

Panhandle also proposes to abandon 2 irrigation taps, 3 farm taps and 1 direct sales meter, which are located on the Sneed Facilities. Panhandle states that these customers will be able to obtain gas directly from ATGC; therefore, gas service received by these customers should not be interrupted. Panhandle explains that ATGC would execute new sales agreements with each of these parties.

It is explained that for a three year period from the date of the sale and transfer of the Sneed Facilities, ATGC would provide transportation service, to the extent that gas was otherwise dedicated and connected to Panhandle as of July 11, 1988, for Panhandle or the producer(s) whose gas has been released to ATGC.

Panhandle states that ATGC has agreed to purchase the facilities for $5 million. The total cost to abandon the facilities by sale to ATGC is estimated to be $12,000. The cost to abandon the 26 units to be retained by Panhandle is estimated to be $288,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 19, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for *Applicant* to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-168 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-134-000]

Pennsylvania Electric Co., Metropolitan Edison Co., West Penn Power Co., the Potomac Edison Co.; Filing

December 30, 1988.

Take notice that on December 21, 1988, the GPU Service Corporation tendered for filing, on behalf of the above listed utilities, proposed revisions to Schedules 6, 7 and 8 to the 115 kV, 138 kV and 230 kV Interconnection Facilities Agreement, dated June 30, 1968.

These Schedules have been revised to update, in compliance with the Federal Tax Act, the rate of return and tax factors used to calculate the monthly facilities charges under the Agreement. The filing also updates the operation and maintenance, and the Pennsylvania Capital Stock Tax factors to reflect the most recent experience.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-169 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-133-000]

Pennsylvania Power & Light Co.; Filing

December 29, 1988.

Take notice that on December 20, 1988, Pennsylvania Power & Light Company (PP&L) tendered for filing as a Rate Schedule a tariff pursuant to which PP&L, a member of the Pennsylvania-New Jersey-Maryland Interconnection (PJM), a power pool, will sell to any other member of PJM such portion of its entitlement to the PJM transmission capability to import reserved economy energy as PP&L may make available from time to time for weekly or monthly periods. The rate(s) for each sale will be fixed by a competitive bidding auction process in which any member of PJM may participate after first submitting a letter of participation to PP&L in the form contained in the tariff. PP&L reserves the right to set a minimum bid in advance of each such action and to retain any or all of the auctioned entitlement amount during a forthcoming weekly period whenever in PP&L's sole judgment PP&L has a need to use such capability of its own purposes.

PP&L requests an effective date of January 1, 1989, in order that the first auction may take place prior to January 5, 1989, and therefore PP&L also requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-170 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-139-000]

Wisconsin Electric Power Co.; Filing

December 30, 1988

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing on December 23, 1988, tendered for filing a revised Exhibit B to its FERC Rate Schedule No. 57 for service to Wisconsin Public Power Inc. SYSTEM (WPPI) at WPPI's Kaukauna and Menasha delivery points. The Exhibit B revisions reflect the results of: (1) Generation capability tests conducted in 1988; (2) the retirement of two coal-fired units; and (3) the addition of hydroelectric capacity at Kaukauna. The revisions do not affect the rates for service to WPPI.

Wisconsin Electric requests that the Commission waiver the notice requirements of its Regulations in order to allow a proposed effective date of June 1, 1989, coincident with the commencement of the next Contract Year.

BEST COPY AVAILABLE

Copies of the filing have been served on WPPI, the Cities of Kaukauna and Menasha, Wisconsin, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Action Secretary.

[FR Doc. 89-171 Filed 1-4-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3502.2]

Water Quality Act of 1987; Implementation: Guidance Documents Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: EPA announces the availability of guidance for State compliance with the requirements of section 303(c)(2)(B) of the Clean Water Act which deals with requirements for toxic pollutant criteria in State water quality standards.

FOR FURTHER INFORMATION CONTACT: Mr. Kent Ballentine, Standards Branch, Office of Water Regulations and Standards (WH-585), U.S. EPA, 401 M Street, SW., Washington, DC 20460, Telephone 202-475-7315.

SUPPLEMENTARY INFORMATION: The Water Quality Act of 1987 established section 303(c)(2)(B) in the Federal Clean Water Act. Briefly stated, each State is required to adopt numeric criteria in its water quality standards for all listed toxic pollutants, the discharge or presence of which in the affected waters could reasonably be expected to interfere with the designated uses of the State's waters, and for which EPA has published water quality criteria guidance.

EPA distributed a February 1988 draft of this guidance for public comment and review. A public meeting was held on this guidance on March 14, 1988 in the EPA auditorium in Washington, DC. At that meeting EPA discussed the draft guidance and solicited written comments.

The final guidance document announced today includes an appendix which contains a listing of the Section 307(a) toxic pollutants. The written public comments on the February 1988 draft and EPA's response to those comments are available for inspection in the office shown in the heading of this Notice.

A copy of the guidance document and response to public comments already have been sent to all State agencies responsible for water quality standards and to all the commenters on the February 1988 draft. A limited number of copies of the guidance are available for distribution to interested persons by contacting the office shown in the heading to this Notice.

Dated: December 12, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-139 Filed 1-4-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200206.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Authority) Evergreen International (USA) Corp. (EIC).

Synopsis: The agreement provides that the Authority will pay EIC $25.00 per import container with cargo and $50.00 per export container with cargo unloaded from or loaded on EIC's vessels at a marine terminal in the Port of New York/New Jersey. The payment applies only to containers for which EIC is required to pay a railroad for transportation by rail to or from points more than 260 miles from a terminal within the port and have a prior or subsequent move by water through a marine terminal in the Port.

By Order of the Federal Maritime Commission.

Dated: December 29, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 89-112 Filed 1-4-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 88-28]

Guam Kashyu, Inc. v. Port Authority of Guam; Filing of Complaint and Assignment

Notice is given that a complaint filed by Guam Kashyu, Inc. ("Kashyu") against the Port Authority of Guam ("Port") was served December 29, 1988. Kashyu alleges that the Port has violated section 17 of the Shipping Act, 1916, 46 U.S.C. 816 through its policy of requiring that all stevedoring services at terminal facilities operated by the Port be conducted by Port employees, and prohibiting Kashyu from using its own employees.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 29, 1989, and the final decision of the Commission shall be issued by April 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89-128 Filed 1-4-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2922.
Name: Arthur L. Phillips dba Alps International.
Address: 2455 Third Street, San Francisco, CA 94107.
Date Revoked: November 29, 1988.
Reason: Surrendered license voluntarily.

License Number: 139.
Name: The 7 Brothers International, Inc.
Address: Seven Brothers Square, Bronx, NY 10452.
Date Revoked: November 30, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 3156.
Name: Allways Transportation Services, Inc.
Address: 5055 South Central Street, Chicago, IL 60638.
Date Revoked: November 30, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 115-R.
Name: Antonio Manuel Sisto dba Sisto International Shipping.
Address: 924 Lincoln Road, Miami, FL 32199.
Date Revoked: December 1, 1988.
Reason: Surrendered license voluntarily.

License Number: 3138.
Name: Multi-Modal International, Inc.
Address: 148-36 Guy R. Brewer Blvd., Jamaica, NY 11434.
Date Revoked: December 4, 1988.
Reason: Surrendered license voluntarily.

License Number: 965-R.
Name: A&M Custom Brokers Co., Inc. dba A&M Custom Brokers Co.
Address: 126 State Street, Boston, MA 02109.
Date Revoked: December 5, 1988.
Reason: Surrendered license voluntarily

License Number: 2240-R.
Name: American Vanpac Van Lines, Inc. dba Richmond Export Services.
Address: 2114 MacDonald Ave., P.O. Box 4033, Richmond, CA 94801.
Date Revoked: December 5, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 81.
Name: J.B. Wood Shipping Co., Inc.
Address: 365 Thomas Boulevard, Orange, NJ 07050.
Date Revoked: December 5, 1988.
Reason: Surrendered license voluntarily.

License Number: 593.
Name: Jessie Paxton, Inc.
Address: 6755 Customhouse Plaza, Suite G, San Diego, CA 92073.
Date Revoked: December 15, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 1743.
Name: Efrain A. Tubens dba Albens International Forwarders.
Address: P.O. Box 524181, Miami, FL 33152.
Date Revoked: December 31, 1988.
Reason: Surrendered license voluntarily.

License Number: 1501-R.
Name: E.M.P. Ocean Freight Forwarding Co., Inc.
Address: 16 California St., San Francisco, CA 94111.
Date Revoked: December 31, 1988.
Reason: Surrendered license voluntarily.

Robert G. Drew,

Director Bureau of Domestic Regulation.

[FR Doc. 89-113 Filed 1-4-89; 8:45 am]

BILLING CODE 6730-01-M

Reissuance of Ocean Freight Forwarder License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 1169.
Name Address: Beverly Hills Transfer & Storage Co., 221 South Beverly Drive, Beverly Hills, CA 90212.
Date reissued: December 19, 1988.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-114 Filed 1-4-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 29, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before January 23, 1989.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in section 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Fred Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Report

Report title: Report of Commercial Paper Outstanding Placed by Brokers and Dealers; Report of Commercial Paper Outstanding Placed Directly by Issuers; and Daily Report of Offering Rates on Commercial Paper.

Agency form number: FR 2957a, b, and d.

OMB Docket number: 7100–0002.

Frequency: Daily, weekly, and monthly.

Reporters: Securities Brokers and Dealers and Direct Issuers of Commercial Paper.

Annual reporting hours: 1796.

Estimated average hours per response: .2 to .7.

Estimated number of respondents: 67. Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 225a and 353 *et seq.*] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide information on the amount outstanding and selected offering rates on commercial paper, which is used by the Federal Reserve in monitoring developments in the commercial paper market for supervisory, regulatory, and monetary policy purposes.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–106 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

Bank of Tokyo, Ltd.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–29306) published at page 51586 of the issue for Thursday, December 22, 1988.

Under the Federal Reserve Bank of San Francisco, the entry for The Bank of Tokyo, Ltd. is amended to read as follows:

1. *The Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, BOT Futures, Inc., New York, New York, in acting as a futures commission merchant for nonaffiliated persons pursuant to § 225.25(b)(18) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

Comments on this application must be received by January 13, 1989.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–107 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Coleman County State Bank Employee Stock Option Plan

The notificant lsited below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 1989.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Coleman County State Bank Employee Stock Opton Plan*, Coleman, Texas; to retain 11.24 percent of the voting shares of Coleman Bancshares, Inc., Coleman, Texas and thereby indirectly acquire Coleman County State Bank, Coleman, Texas.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–108 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

Interchange Financial Services Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities, Interchange Financial Services Corp. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Interchange Financial Services Corporation*, Saddle Brook, New Jersey; to engage *de novo* through its subsidiary Clover Leaf Mortgage Co., Inc., Saddle Brook, New Jersey, in making, acquiring and servicing loans secured by real property, such as home equity loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FNB Corp.*, Asheboro, North Carolina; to engage *de novo* through its subsidiary Eastchester Recovery Services, Inc., High Point, North Carolina, in providing to others computer capabilities through its computer hardware and data processing facility, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Summerville/Trio Bancshares, Inc.*, Summerville, Georgia; to engage *de novo* in insurance activities, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. Specifically, Applicant will form an insurance agency which will sell to the general public personal lines of property and casualty insurance in a town with a population less than 5,000.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–109 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

Lakeland Bancshares, Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88–29861) published at page 52789 of the issue for Thursday, December 29, 1988.

Under the Federal Reserve Bank of Minneapolis, the entry for Lakeland Bancshares, Inc. is amended to read as follows:

1. *Lakeland Bancshares, Inc.*, Lyle, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Lyle, Lyle, Minnesota, a *de novo* bank.

Comments on this application must be received by January 8, 1989.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–110 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

Somerset Bankshares, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Somerset Bankshares, Inc.*, Somerville, Massachusetts; to acquire 100 percent of the voting shares of Central Co-operative Bank, Somerville, Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Parish National Corporation*, Bogalusa, Louisiana; to acquire 100 percent of the voting shares of Progressive Capital Corporation, Covington, Louisiana, and thereby indirectly acquire Central Progressive Bank of Amite, Amite, Louisiana.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bankshares, Inc.*, Logansport, Indiana; to acquire 100 percent of the voting shares of First Bank of America, Inc., Monticello, Indiana, and thereby indirectly acquire First National Bank of Indiana, Monticello, Indiana.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CNB Bancshares, Inc.*, Evansville, Indiana; to acquire at least 96.78 percent of the voting shares of Bank of St. Helens, Shively, Kentucky.

Board of Governors of the Federal Reserve System, December 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–111 Filed 1–4–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirement of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the OBRA 87 Medicare Payment for Influenza Vaccination Demonstration," HHS/HCFA/ORD No. 09–70–0041. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on December 30, 1988, pursuant to paragraph 4(b) of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730). In accordance with paragraph 4(b)(4) of this same Circular, we are requesting a waiver from OMB of the 60-day advance notice requirement. Therefore, in the absence of a denial of the waiver by OMB, the new system of records including routine uses will become effective January 30, 1989, unless the comments received should lead HCFA to decide otherwise.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Officer of Budget and Administration, Health Care Financing Administration, Room G–M–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Bonnie Edington, Office of Research and Demonstrations, Ambulatory Services Branch, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966–6618.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of Section 4071 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Pub. L. 100–203. The purpose of this system of records is to provide data necessary to evaluate the OBRA 1987 Influenza Vaccination

Demonstration. Section 4071 of OBRA 87 requires that the Secretary of DHHS establish a demonstration project to test the cost-effectiveness of providing influenza vaccination to Medicare beneficiaries. The project is to be conducted for an initial period of 24 months, and by October 1, 1990, the Secretary is to report to Congress on the results of the project. If existing data show that providing influenza vaccination under the Medicare program is cost-effective, the demonstration will terminate, and influenza vaccination will become a covered service under Medicare effective November 1, 1990. If findings are inconclusive, the project will continue for an additional 24 months, and by April 1, 1993, the Secretary will submit a final report to Congress on the results of the project. Coverage under Medicare becomes effective on the first day of the first month after the final report is submitted unless the report shows that the vaccination is not cost-effective.

The system of records will include data collected from the Health Insurance Master Files, the Medicare Part A Hospital Billing Records (MEDPAR File), the Medicare Automated Data Retrieval System (MADRS) File, claims data from Medicare Part B carriers in demonstration States, claims for influenza immunizations processed by separate demonstration carriers, and demonstration surveillance data on reported cases of Medicare beneficiaries hospitalized for influenza in the demonstration areas.

In order to fulfill the objectives and complete tasks in this project, the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria, since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 29, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

SYSTEM NAME:

Evaluation of the OBRA 87 Medicare Payment of Influenza Vaccination Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 02138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries in demonstration areas and in comparison sites. Areas participating in the demonstration are selected through a competitive grant process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; health insurance claim number; address; cost and utilization of health services; diagnosis; previous influenza vaccination status; surveillance and virologic testing of hospitalized cases of influenza.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4071 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87). Pub. L. 100–203.

PURPOSE OF THE SYSTEM:

To provide data necessary to evaluate the impact of the OBRA 1987 Influenza Vaccination Demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To other contractors for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ACP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

2. To a congressional office, form the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for research, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and

(3) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit; or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic tape, and floppy diskettes.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords/numbers are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the HHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape and floppy diskettes of all identifying names and numbers in June 1993. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with DHHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained from HCFA's existing system of records, prescription forms from demonstration providers, and information directly from participants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–105 Filed 1–4–89; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–610–08–44111–16]

Information Collections Submitted for Review

The proposals for the collections of information listed below have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Application for Permit for Drill, Deepen, or Plug Back, 43 CFR 3160
OMB Approval Number: 1004–0136
Abstract: Data submitted by oil and gas operators is used for agency approval of proposed drilling operations through review of technical and environmental factors
Bureau Form Number: 3160–3
Frequency: On occasion
Description of respondents: Oil and gas operators
Estimated Completion time: 30 minutes
Annual Responses: 4,000
Annual Burden Hours: 2,250
Title: Well Completion Report and Log, 43 CFR 3160
OMB Approval Number: 1004–0137
Abstract: Data submitted by oil and gas operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work
Bureau Form Number: 3160–4
Frequency: nonrecurring
Description of respondents: Oil and gas operators
Estimated Completion time: 60 minutes
Annual responses: 2,200
Annual Burden Hours: 2,290
Bureau Clearance Officer: Rick Iovaine 202–653–8853

Date: November 1, 1988.

Jeff Zabler,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 89–119 Filed 1–4–89; 8:45 am]

BILLING CODE 4310–84–M

San Rafael Reef Wilderness Study Area; Environmental Assessment

[UT–060–09–4130–15]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 30-day public comment period.

SUMMARY: A draft environmental assessment will be prepared in response to a plan of operations submitted by a mining claimant for a drilling program in the Straight Wash area of the San Rafael Swell. This area is located within the San Rafael Reef Wilderness Study Area, UT–060–029A. Under the proposed action, BLM would approve a plan of operations to drill four drillholes for glass sand in the Wilderness Study Area. Public review and comment is requested.

FOR FURTHER INFORMATION CONTACT: Neil Simmons, Bureau of Land Management, San Rafael Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584.

EFFECTIVE DATE: Environmental analysis to be available for 30-day public review and comment beginning January 9, 1989.

SUPPLEMENTARY INFORMATION: Address all comments to James Dryden, Bureau of Land Management, San Rafael Resource Area, 900 North 700 East, Price, Utah 84501.

William C. Stringer,

Acting District Manager.

[FR Doc. 89-120 Filed 1-4-89; 8:45 am]

BILLING CODE 4310-DQ-M

DEPARTMENT OF INTERIOR

California State Office; Revocation of the Knoxville Known Geothermal Resources Area

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Revocation of the Knoxville Known Geothermal Resources Area.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, and Secretarial Orders 3071 and 3087, the following described lands in the Knoxville Known Geothermal Resources Area are hereby revoked in its entirely, effective November 15, 1988:

(5) California

Knoxville Known Geothermal Resources Area

Mt. Diablo Meridian, California

T. 11 N., R. 5W.
Sec. 9, N½NE¼, NE¼NW¼.
Sec. 10, Lots 1 through 6, S½SW¼, SE¼.
Sec. 11, Lots 1 through 9, W½NE¼, N½NW¼.
Sec. 15, E½E½, SW¼SE¼.
The described revoked area contains 1,318.79 acres more or less.

The subject lands will be made available to the first qualified applicant under regulation appearing in 43 CFR Part 3210 beginning with the first calendar month following the date of the notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4735.

Dated: November 29, 1988.

Robert M. Anderson,

Deputy State Director, Mineral Resources.

[FR Doc. 89-130 Filed 1-4-89; 8:45 am]

BILLING CODE 4113-12-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Facilities on the Outer Continental Shelf (OCS) Adjacent to California (30 CFR 250.47).

OMB Approval Number: None.

Abstract: Respondents are required to provide the Minerals Management Service (MMS) with information on emissions data and related data from existing and new facilities or modifications to existing and new facilities located on the Federal OCS adjacent to California. The MMS will use this information to identify any potential or existing pollutant emissions and evaluate the potential impact of those operations on the adjacent coastal areas of the State of California.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal OCS oil and gas lessees.

Estimated Completion Time: 29.6 hours.

Annual Responses: 123.

Annual Burden Hours: 3,640.

Bureau Clearance Officer: Dorothy Christopher, (703) 435-6213.

Date: December 21, 1988.

William D. Bettenberg,

Associate Director for Offshore Minerals Management.

[FR Doc. 89-121 Filed 1-4-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document, Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on lease OCS-G 1039, Block 274, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on December 23, 1988. Comments must be received on or before January 23, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday) A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 27, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-122 Filed 1-4-89; 8:45 am]

BILLING CODE 4310-MP-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31374]

Southern Pacific Transportation Company and the Atchison, Topeka and Santa Fe Railway Co.—Joint Project for Relocation of a Line of Railroad

On December 10, 1988, Southern Pacific Transportation Company (SPT) filed a notice of exemption [1] under 49 CFR 1180.2(d)(5) for a joint project with The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) to relocate a portion of SPT's Santa Ana Branch line, located in Orange County, CA. The transaction was expected to be consummated on November 30, 1988.

The joint project involves the following elements: (1) *Trackage Rights.* Pursuant to an agreement with Santa Fe, SPT will acquire trackage rights over Santa Fe's line between milepost 169.856 and milepost 175.370. This will enable SPT to continue uninterrupted service to its shippers whose traffic moves over the Santa Ana Branch. (2) *Portial Abandonment.* SPT will reroute its overhead traffic from a portion of its Santa Ana Branch between milepost 512.302 and milepost 516.407, a distance of 4.105 miles. There are no shippers located on this portion of the Santa Ana Branch. According to SPT, abandonment and relocation of overhead operations by way of the trackage rights acquired from Santa Fe will eliminate an excess SPT facility better suited for other public purposes, while improving its financial viability. Also, it will allow the Orange County Transit District to acquire a 3.73-mile corridor in order to widen Interstate Highway 5 and for the construction of a transit way to be used as an express route for buses.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures,* 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Moreover, in Finance Docket No. 30639, *Louisiona & Ark. Ry. Co.—Trockage Rights Exemption—Illinois C.G. R.R. Co. and New Orleans Term. C.* (not printed), served April 17, 1985 the abandonment of approximately 6 miles of track was exempted under the provisions of § 1180.2(d)(5) as an incident to a line relocation proposal. *See also* Finance Docket No. 30883, *Soo Line Railroad Company and Chicago and North Western Transportation Company—Joint Project for Relocation of a Line of Railroad* (not printed), served September 25, 1987. Similarly, the facts of this case show that the proposed abandonment is incidental to a line relocation and should be exempted under § 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Any employees affected by the proposed abandonment will be protected by the conditions in *Oregon Short Line R. Co.—Abondonment—Goshen,* 360 I.C.C. 91 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Building, Room 846, One Market Plaza, San Francisco, CA 94105.

Decided: December 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-103 Filed 1-4-89; 8:45 am]

BILLING CODE 7035-01-M

[1] The notice was originally filed on December 1, 1988, and was subsequently updated and accepted for filing on December 10, 1988.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Amoco Chemical Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 21, 1988, a total of seven proposed Consent Decrees in *United States v. New Castle County, et al.,* and related litigation, *United States v. Amoco Chemical Corporation, et al.* Civ. Action No. 88-703 (LON), were lodged with the United States District Court for the District of Delaware. The Consent Decrees require numerous defendants and third-party defendants to implement a remedial action at the Tybouts Corner Landfill Site in New Castle County, Delaware, to finance 93¼ percent of the costs incurred in implementing that remedy, to pay $1.5 million in future governmental oversight costs, and to pay a total of $1.73 million to the Hazardous Substances Trust Fund ("Superfund") in connection with costs incurred or to be incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments shall be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. New Castle County, et al.,* DOJ Ref. 90-7-1-143.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Richard Andrews, Federal Building, 844 King Street, Wilmington, Delaware 19801 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $34.40 (10 cents per page

reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-125 Filed 1-4-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Carrabelle General, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 14, 1988, a proposed Consent Decree in *United States v. City of Carrabelle, et al.*, Civil Action No. 88-40346, was lodged with the United States District Court for the Northern District of Florida. The Complaint sought penalties and injunctive relief against the City of Carrabelle ("City") and the State of Florida under section 309 of the Clean Water Act, 33 U.S.C. 1319, for the City's violations of effluent limitation provisions of its National Pollutant Discharge Elimination System (NPDES) permit. The City's violations included discharging in violation of permit limitations and failure to construct sufficient plant improvements to meet the "cease discharge" requirement contained in the permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act, and imposes a court-ordered compliance schedule to require the City to complete the necessary construction and improvements to bring its discharges within the terms and limitations of its NPDES permit. It also imposes a civil penalty of $6,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States v. City of Carrabelle, et al.*, D.J. Ref. 90-5-1-1-3145.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Florida, 100 North Palafox Street, Room 307, Pensacola, Florida 32501 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the "Treasurer of the United States".

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-123 Filed 1-4-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States v. DiversiTech General, Inc.* has been lodged with the United States District Court for the Northern District of Ohio. The Consent Order addresses alleged violations by DiversiTech General, Inc., of the Ohio State Implementation Plan ("SIP") and the Clean Air Act relating to emissions of volatile organic compounds ("VOC") from nine print and finish lines at DiversiTech's Toledo, Ohio vinyl coating facility.

The proposed Consent Order provides that DiversiTech shall achieve, demonstrate and maintain compliance with the 75 percent capture efficiency and 90 percent control efficiency standards for VOC emissions contained in the Ohio SIP, and shall pay a civil penalty of $95,000. In order to achieve the standard, the Consent Order specifically requires DiversiTech to install specified hooding modifications and an additional 8,000 cubic feet per minute of carbon absorption capacity. Additionally, the settlement requires DiversiTech to implement a specified regimen of product drying-oven tests in order to evaluate whether the ovens' drying efficiency can be enhanced.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. DiversiTech General, Inc.* D.J. Ref #90-5-2-1-889.

The proposed Consent Order may be examined at the office of the United States Attorney, Northern District of Ohio, 307 U.S. Courthouse, 1716 Speilbusch Avenue, Toledo, Ohio 43624, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $3.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-124 Filed 1-4-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act in United States v. Uniroyal Goodrich Tire Co. and South Insulation Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 29, 1988, a proposed Consent Decree in *United States v. Uniroyal Goodrich Tire Company and South Insulation Company* ("Uniroyal"), was lodged with the United States District Court for the Middle District of Alabama. The Complaint in this case sought injunctive relief and civil penalties pursuant to section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c). The Complaint was filed on December 14, 1982, against Uniroyal Goodrich Tire Company, the owner and operator of the site in question, and South Insulation Company, a contractor hired by Uniroyal to remove asbestos at a Uniroyal facility.

The site involved in the case is the Uniroyal Goodrich Tire facility located in Opelka, Alabama. The proposed Consent Decree provides that both Defendants shall comply with all the notification provisions contained in the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos as set forth at 40 CFR 61.146. The Consent Decree also provides that Defendants shall pay to the United States a civil penalty of $8,500 within ten (10) days of the date of entry of the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Uniroyal Goodrich Tire Company and South Insulation Company*, DCJ Ref. No. 90-5-2-1-1185.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Alabama, Federal Courthouse, 15 Lee Street, Montgomery, Alabama 36104-0197 and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $7.50 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-126 Filed 1-4-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Employment Service Program Reporting System

1205-0240; ETA 9001, 9002, VETS 200, 300

Quarterly

State or local governments

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9001	State/local Government	25	4	2 hrs.
ETA 9002	State/local Government	54	4	2 hrs.
VETS 200 & 300	State/local Government	54	4	2 hrs. 18 min.
Social/Child Care	State/local Government	25	4	11 hrs.
Recordkeeping	State/local Government	54	1	12 hrs.
2,876 total hours.				

Employment Service Program Reporting System is to provide data on State public employment service agency program activity and expenditures, including services to veterans, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and to provide reports to the President and Congress.

Revision

Bureau of Labor Statistics

National Longitudinal Survey of Work Experience of Mature Women

(Was 1205-0255)

Form No.	Affected public	Respondents	Frequency	Average time per response
LGT-3151	Individuals	3,252	Biennually and annually.	55 minutes.
LGT-3157	Individuals	400	Once	10 minutes.
3,058 total hours.				

The Department of Labor will use this information to determine the employment and training needs and develop labor market policies designed to ease the employment and unemployment problems faced by women 52–66. These women were 30–44 years of age when this longitudinal survey began in 1967.

Signed at Washington, DC this 29th day of December, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–96 Filed 1–4–89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Ad Hoc Advancement Review Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act [Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Advancement Review Committee to the National Council on the Arts will be held on January 27, 1989, from 9:00 a.m. 5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

December 28, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–134 Filed 1–4–89; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Ad Hoc Challenge II Review Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge II Review Committee to the National Council on the Arts will be held on Jan. 25, 1989, from 9:00 a.m.–5:30 p.m. in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

December 28, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–135 Filed 1–4–89; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Pre-Screening II) to the National Council on the Arts will be held on Jan. 25–26, 1989, from 9:15 a.m.–6:30 p.m., and Jan. 27, 1989, from 9:15 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

December 28, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–136 Filed 1–4–89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Exemption

I

Boston Edison Company (the licensee) is the holder of Facility Operating License No. DPR–35 which authorizes operation of Pilgrim Nuclear Power Station (the facility) at steady-state reactor power levels not in excess of 1998 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a boiling-water reactor located at the licensee's site in Plymouth, Massachusetts. The facility is currently shut down for refueling and modifications.

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.3 of Appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

II

By letter dated September 17, 1987, the licensee requested a one-time exemption from the schedule requirements of Section IV.F.3 of Appendix E. The last biennial emergency preparedness exercise was a full-participation exercise conducted at the Pilgrim Nuclear Power Station on September 5, 1985. The licensee requested that an exemption be granted to allow the next biennial exercise to be deferred from 1987 to the second quarter of 1988.

The licensee stated that the Commonwealth of Massachusetts, the local governments within the EPZ, and the two emergency reception center communities were in the process, with the assistance of the licensee, of implementing numerous improvements in their offsite emergency preparedness programs. These improvements included revision of the emergency plans of the local governments and the Commonwealth, the development of associated procedures, the development and implementation of training programs for officials and emergency personnel, and the upgrading of Emergency Operations Centers. The licensee expected the work to continue through early 1988. The licensee informed the NRC that, in view of the extensive ongoing efforts, the Commonwealth and the local governments indicated that they were not able to fully participate in an exercise during calendar year 1987.

On December 16, 1987, the Commission published a **Federal Register** notice approving the exemption, stipulating that the exercise be conducted before June 30, 1988. By letter dated April 14, 1988, the licensee requested an extension of the June 30, 1988, exemption deadline to permit conduct of the exercise before the end of 1988. The licensee stated that, although substantial progress had been made to improve emergency preparedness since the original exemption request, the extensive emergency planning efforts had taken longer than anticipated. The licensee requested an extension of the exemption for the same special circumstances as existed at the time of the original exemption request. On May 18, 1988, the Commission published a **Federal Register** notice approving the exemption, stipulating that the exercise be conducted before the end of 1988.

By letter dated December 8, 1988, Boston Edison requested an additional extension of the exemption. Boston Edison stated that since the previous extension was granted, substantial additional planning progress had been made, including the submission to the Federal Emergency Management Agency (FEMA) for informal technical review the draft plans, the implementing procedures, and associated supporting documentation for five of the seven EPZ and reception center communities; the submission to FEMA of the draft Massachusetts Civil Defense Agency (MCDA) Area-II plan for review; the completion of most of the renovation work for the town Emergency Operations Centers; and the completion of a new set of evacuation time estimates. Boston Edison further stated that efforts are now under way, with the approval of the Commonwealth, to prepare for the conduct of a full-participation offsite exercise.

Boston Edison indicated that the scheduling of both pre-exercise drills and the exercise itself could now be undertaken; however, the Commonwealth, as stated in a letter to the licensee from the Director of the MCDA dated November 21, 1988, believes that "it is inappropriate to discuss an exercise drill schedule at this time." The licensee further indicated that the Commonwealth has agreed to participate in discussions regarding the exercise objectives and scenario but believes that an exercise should not be held until the planning process is completed. As the Commonwealth's participation in pre-exercise drills and its acceptance of the proposed objectives and scenario are exercise prerequisites, Boston Edison requested an extension of the exercise exemption until 120 days after the completion of the power ascension program.

Boston Edison advances several reasons why the requested extension is appropriate. First, the power ascension program represents a highly controlled testing regimen during which NRC pesonnel will maintain an increased monitoring presence at the plant. Second, extension of the exemption until several months after the completion of the power ascension program will enable licensee personnel to devote full attention to the power ascension program and permit such emergency preparedness exercise activities as the conduct of a "dry run" to take place after the power ascension program is complete. Finally, the requested extension provides an opportunity for the completion of those planning tasks deemed to be exercise prerequisites by the Commonwealth.

III

Onsite emergency preparedness has continued to be evaluated by the NRC during inspections and exercises, including the most recent onsite exercise conducted on December 13, 1988. The 1988 exercise included notification of the Commonwealth and local town response organizations via the recently installed Digital Notification Network. The NRC staff's preliminary evaluation of the 1988 exercise indicates that no emergency preparedness weaknesses were identified and Boston Edison's emergency response actions were adequate to provide protective measures for the health and safety of the public. The NRC inspection findings and the licensee's exercise performance provide assurance that the licensee has maintained a satisfactory capability to respond to an emergency at Pilgrim.

Since the last full-participation biennial exercise at Pilgrim (in September 1985), the Commonwealth has participated on a limited basis with the licensee in the annual onsite exercises conducted in 1986, 1987, and 1988. The towns within the EPZ have also cooperated in the full-scale siren test conducted by FEMA in September 1986 and again on December 7, 1988. The Commonwealth has also participated in full-participation exercises at the Yankee-Rowe Nuclear Power Station in April 1988 and at the Vermont Yankee Nuclear Power Station in December 1987, and in a partial-participation exercise at Vermont Yankee in August 1988. The exercises demonstrate the Commonwealth's ability to exercise command and control, to interface with other agencies, and to assess and respond to conditions requiring actions to protect the health and safety of the public.

The requested exemption extension is necessary because ongoing emergency preparedness efforts will not be completed for several months. The licensee has made a good faith effort to comply with the regulation by assisting in the ongoing improvements to the Commonwealth and local offsite emergency response programs. The licensee has expended approximately ten million dollars and expects to spend five million dollars more to improve the offsite response programs. The Commonwealth, whose participation is essential, has stated that it is not prepared to participate in an exercise until the planning process is completed. The exemption is only for a temporary period until the planning approval process is sufficiently complete to permit the Commonwealth to participate. The Commonwealth has not stated when it expects to be ready to participate in an exercise; however, the licensee's request for an exercise to be conducted within 120 days after

completion of the power ascension program (which is expected to take 4–5 months) appears to be a reasonable time estimate. This situation constitutes special circumstances as described in 10 CFR 50.12(a)(2)(v).

In granting the original exemption, the NRC stated its belief that the public health and safety would be better served by the conduct of a full-participation exercise following the completion of efforts to improve the Commonwealth and local government emergency response programs. That rationale is still appropriate, and the staff believes that the required exercise should be carried out at such time as the Commonwealth is prepared to participate.

The staff recommended that the Commission approve restart of the Pilgrim plant, and this approval was granted by the Commission on December 21, 1988. In its discussion with the Commission, the staff informed the Commission that it has reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and that there also was reasonable assurance that the plant could resume operations without undue risk to public health and safety. The following considerations form the basis for these conclusions:

a. There have been a number of significant improvements in facility hardware and a significant improvement in the focus of Boston Edison management on safety issues so that the facility is substantially safer today than it was before it was shut down in April 1986.

b. The emergency planning problems pointed out by FEMA in August 1987 related to certain planning deficiencies rather than to exercise performance. The NRC staff has concluded that the emergency planning deficiencies identified by FEMA have been sufficiently resolved, based on the Staff's review and observations of the current status of the improvements in emergency plans and procedures. There has been general agreement that overall emergency planning for the Pilgrim facility has been substantially upgraded, even though various procedures have not yet been completed.

c. The licensee's capability to respond in an emergency has been demonstrated in full-participation exercises conducted in 1982, 1983, and 1985, and in annual onsite exercises conducted in 1986, 1987, and 1988.

d. The Commonwealth's capability to respond in a nuclear power plant emergency has been recently tested during full-participation exercises at the Yankee-Rowe facility in April 1988 and at the Vermont Yankee facility in December 1987, and during a partial-participation exercise at Vermont Yankee in August 1988.

e. The capability of the local response organizations was satisfactorily demonstrated in the full-participation exercises conducted in 1982, 1983, and 1985, and the infrastructure to respond to emergencies which was demonstrated in these exercises is still largely in place. In addition, the emergency planning improvements at Pilgrim are, by and large, the result of very significant efforts by the local emergency response personnel who are responsible for implementing such plans and procedures in the event of an emergency. These personnel are thoroughly familiar with the improved plans and, although improved emergency response training is still under way, sufficient training has taken placed to assure that emergency response personnel will perform adequately in the event of an emergency.

The staff, therefore, has determined that there is reasonable assurance that adequate protective action can and will be taken in the event of a radiological emergency at the Pilgrim plant even considering the lack of a recent full-participation exercise. Furthermore, the status of emergency preparedness is expected to continue to improve as the Commonwealth of Massachusetts and local officials continue to improve the plans in preparation for a full-participation exercise.

IV

For these reasons, the Commission has thus determined that, pursuant to 10 CFR 50.12, the Exemption extension requested by the licensee's letter of December 8, 1988, as previously discussed, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense security.

Accordingly, the Commission hereby approves the following Exemption:

The Pilgrim Nuclear Power Station is exempt from the requirements of 10 CFR 50, Appendix E, Section IV.F.3, for the conduct of an offsite full-participation emergency preparedness exercise within 2 years of the last such exercise in September 1985, provided that such an exercise be conducted within 120 days after the completion of the power ascension program.

Pursuant to 10 CFR 51.32, the Commission had determined that the granting of this Exemption extension would have no significant effect on the quality of the human environment (53 FR 52528, December 28, 1988). A copy of the licensee's request for Exemption extension, dated December 8, 1988, is available for public inspection at the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street NW., Washington, DC, and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

This Exemption extension is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of December 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-155 Filed 1-4-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-70]

Initiation of Section 302 Investigation and Notice of Public Hearing; Restrictions Maintained by the European Community and the United Kingdom on the Export of Copper Scrap and Copper Alloy Scrap

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302 of the Trade Act of 1974, as amended; request for written comments; and notice of public hearing.

SUMMARY: The United States Trade Representative (USTR) has determined to initiate an investigation under section 302 of the Trade Act with respect to restrictions maintained by the European Community and the United Kingdom on the export of copper scrap and copper alloy scrap. USTR invites written comments and will conduct public hearings on these policies and practices.

DATES: This investigation was initiated on December 29, 1988. The hearing will be held on January 27, 1989. Written comments from interested persons not participating in the hearing are due January 30, 1989.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Don Eiss, Deputy Assistant U.S. Trade Representative for Industry, (202) 395-5656.

SUPPLEMENTARY INFORMATION: On November 14, 1988, the Copper and Brass Fabricators Council, Inc. filed a petition under section 302 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412), regarding restrictions maintained by Brazil and the European Community (EC), and separate restrictions maintained by the United Kingdom (UK), on the export of copper scrap, copper alloy scrap, and zinc scrap. The petitioner subsequently withdrew the petition with regard to zinc scrap and Brazil.

Petitioner asserts that these restrictions are proscribed by the General Agreement on Tariffs and Trade (GATT) and are unreasonable and burden U.S. commerce. Petitioner requests the Trade Representative to pursue this matter under the dispute settlement provisions of the GATT, and to take all other appropriate and feasible steps under the authority of section 301 of the Trade Act to seek the elimination of the export restrictions.

Petitioner asserts that these export restrictions tend to depress the price of EC scrap and elevate the price of non-EC scrap, thereby providing a material cost advantage to EC brass fabricators. Copies of the petition are available at the office of the Section 301 Chairman.

USTR has requested bilateral consulations with representatives of the EC and the UK, in accordance with section 303 of the Act. If the USTR determines that the UK restrictions are not independent of EC-wide export restrictions on the affected products, this investigation will proceed with respect to the EC restrictions only.

Public Hearings

The petitioner has requested a hearing under section 302(a)(4) of the Act. Accordingly, a public hearing will be held at 10:00 a.m. on January 27, 1989 regarding the issued raised in the petition with respect to the EC and the UK. The hearing will be held in Courtroom A, Room 100, at the International Trade Commission, 500 E street SW., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on January 13, 1989, to Ms. Dorothy Balaban, Staff Assistant to the section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a). Remarks at the hearing will be limited to 5 minutes.

In addition, persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on January 17, 1989, to Ms. Balaban at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any party, in accordance with 15 CFR 2006.8(c), by noon on February 6, 1989.

Interested persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by 5:00 p.m. on January 30, 1989 to Ms. Balaban at the address listed above. All written comments must be filed in accordance with 15 CFR 2006.8.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-117 Filed 1-4-89; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Order No. 814; Docket No. A89-4]

McClelland, IA 51548, Mrs. C.O. Stokes, Petitioner; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Patti Birge Tyson, Vice-Chairman; John W. Crutcher; Henry R. Folsom; W.H. "Trey" LeBlanc III

Issued December 28, 1988.

Docket Number: A89-4

Name of Affected Post Office: McClelland, Iowa 51548

Name(s) of Petitioner(s): Mrs. C.O. Stokes

Type of Determination: Consolidation

Date of Filing of Appeal Papers: December 20, 1988.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. sec. 404(b)(20(C)

2. Economic savings (39 U.S.C. sec. 404(b)(2)(D).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. sec. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders: (A) the Record in this appeal shall be filed on or before January 4, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

December 20, 1988—Filing of Petition

December 28, 1988—Notice and Order of Filing of Appeal

January 16, 1989—Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b))

January 24, 1989—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b)

February 13, 1989—Postal Service Answering Brief (*see* 39 CFR 3001.115(c))

February 28, 1989—Petitioner's Reply Brief should petitioner choose to file one (*see* 39 CFR 3001.115(d))

March 7, 1989—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116)

April 19, 1989—Expiration of 120-day decisional schedule (*see* 39 U.S.C. sec. 404(b)(5)

[FR Doc. 89-154 Filed 1-4-89; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Rev., Form D and Regulation D. File No. 270-72

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has

submitted for OMB approval revisions to Regulation D (17 CFR 230.501–506) which will increase the number of offerings eligible for exemption, thus increasing the numbers of Forms D required to be filed. The respondents are issuers who elect to offer and sell securities pursuant to section 4(6) of the Securities Act of 1933 ("the 1933 Act") or pursuant to Regulation D under the 1933 Act. Currently there are 22,275 Forms D filed at 18 burden hours per form for a total of 356,400 burden hours. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0076), Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,
Secretary.
December 20, 1988.
[FR Doc. 89–221 Filed 1–4–89; 8:45 am]
BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street, NW., Washington, DC 20549.

Revision

Rule 15c3–1.
File No. 270—197.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of Rule 15c3–1 under the Securities Exchange Act of 1934 (15 USC 78(a) *et seq.*), which would make the rule applicable to all specialists, except for certain market makers, on national securities exchanges and allow specialists one business day in which to meet the haircuts required by the rule. Seven thousand respondents incur an average burden of 9.86 minutes to comply with the rule.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative summary or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–0200), Room 3228, New Executive Office Building, Washington, DC 20543.

December 29, 1988.
Jonathan G. Katz,
Secretary.
[FR Doc. 89–144 Filed 1–4–88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34–26409; File No. SR–MBS–88–7, MBS–88–9, and MBS–88–11]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Temporarily Approving Proposed Rule Changes

On April 11, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission three proposed rule changes (File Mos. SR–MBS–88–7, MBS–88–9, and MBS–88–11) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would amend various MBSCC Depository Divison rules including those pertaining to participant accounts, transfers of mortgage-backed securities, the MBSCC participant fund, and the MBSCC certificate withdrawal policy. The Commission published notice of the proposals in the **Federal Register** on May 11, 1988.[2]

The Commission preliminarily believes that the proposals are consistent with the Act and is approving the proposals on a temporary basis. The Commission believes that the proposals are designed appropriately to clarify MBSCC's rules and to strengthen MBSCC's procedures, thereby enhancing MBSCC's ability to safeguard securities and funds and promote prompt and accurate clearance and settlement. The Commission, however, intends to continue to analyze the proposals and to discuss the MBSCC the actual operation of the proposals and the need for any refinements or enhancements to the proposals. In that regard, MBSCC has indicated to the Commission that it will file an amendment to the proposals in the near future. For those reasons, the Commission is temporally approving the proposals through February 28, 1989.

It is therefore ordered, Pursuant to section 19(b) of the Act, that MBSCC's proposed rule changes (File Nos. SR–MS–88–7, MBS–88–9, and MBS–88–11) be, and thereby are approved temporarily through February 28, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: December 29, 1988.
Jonathan Katz,
Secretary.
[FR Doc. 89–148 Filed 1–4–89; 8:45 am]
BILLING CODE 8010-01-M

[1] 15 U.S.C. § 78s(b)(1).

[2] Securities Exchange Act Release Nos. 25660 (May 4, 1988) 53 FR 16812; 25662 (May 4, 1988) 53 Fr 16808; 25659 (May 4, 1988) 53 FR 16818.

[Rel. No. 34–26403; File No. SR–MCC–88–09]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Midwest Clearing Corporation Regarding a "Y" Account to Process Correspondent Market Activity

The Midwest Clearing Corporation ("MCC"), on September 30, 1988, filed a proposed rule change with the Commission under the Securities Exchange Act of 1934 ("Act"). The proposal establishes "Y" accounts to process correspondent trades and establishes a fee schedule for such accounts. Notice of the proposal was published in the **Federal Register** on November 3, 1988.[1] No comments were received. This order approves the proposal.

I. MCC's Description of the Proposal

MCC states in its filing that it has established a special secondary account, known as "Y" account, to facilitate additional recording, clearance, and settlement of securities transactions. MCC states that the purpose of the "Y" account will be to process correspondent market activity, *i.e.*, trades that are executed in the account of one MCC participant and sent to the account of another MCC participant for settlement.[2] MCC states that "Y" accounts will improve MCC's operating efficiency by permitting automation of flip trades, which previously have been processed manually.[3] The proposal also will establish a maintenance fee of $125 for the first "Y" account requested by a participant and $10 for each subsequent account. A separate "Y" account will be required for each correspondent customer.

II. MCC's Rationale for the Proposal

MCC states that this secondary account and its maintenance fee schedule are consistent with section 17A of the Act in that: (1) The new accounts will permit automation and thereby promote the prompt and accurate clearance and settlement of securities transactions; and (2) the fee schedules will provide for the equitable allocation of reasonable dues, fees, and other charges among MCC's participants.

III. Discussion

The Commission believes that the rule proposal is consistent with the Act. The proposal would permit MCC to automate its correspondent market activity and to impose service fees. This concept is not a matter of first impression for the Commission inasmuch as the Commisson has approved other rules authorizing special accounts and fee schedules for processing flip trades, and such accounts currently are being used in the securities industry.[4]

The Commission believes that the main benefit of this proposal will be the use of automation by MCC in processing flip trades, which will increase efficiency and reduce costs in an area where transactions previously were processed manually. The Commission believes that other benefits of the proposal will include improvements in: (1) MCC's accounting techniques, in that the proposal requires maintenance of an individual account for each correspondent customer of each participant; and (2) MCC's ability to view activity in MCC member omnibus accounts.[5]

The Commission notes that section 17A of the Act expressly encourages efforts to make securities processing more efficient by the use of automation. Moreover, the Commission believes that MCC's proposed fee schedule for participants using these special secondary accounts is consistent with section 17A(b)(3)(D) of the Act in that it provides for equitable allocation of dues. fees, and other charges among its participants.

IV. Conclusion

For the reasons discused in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–MCC–88–09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 28, 1988.
Jonathan G. Katz,
Secretary.
[FR Doc. 89–149 Filed 1–4–89; 8:45 am]
BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 26223 (October 28, 1988), 53 FR 44544.

[2] Such a trade also is known as a "flip trade" in that the trade: (1) Is executed and compared in the account of one participant, and (2) then "flipped" for settlement to the account of another participant that guarantees the account on behalf of the initial participant. Such trades typically are used by MCC participants that have a correspondent relationship with each other. Telephone conversation between Jeffrey E. Lewis, Associate Counsel, MCC, and Thomas C. Etter, Jr., Attorney, Securities and Exchange Commission, December 6, 1988.

Continued

[3] *Id.*, December 14, 1988. MCC estimated the volume of these trades as small, with less than 20 correspondent accounts and less than 10 participants involved. *Id.*

[4] *See, e.g.*, Securities Exchange Act Release No. 26040 (August 29, 1988), 53 FR 33567, concerning National Securities Clearance Corporation's fees for processing flip trades.

[5] Studies of the October 1987 Market Break recommended that clearing agencies improve their ability to identify their marketplace risks and to see through their participants to the accounts of their customers. *See, e.g.*, Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break* at 10–22 (1988).

[Rel. No. 34–26404; File No. SR–NSCC–88–12]

Proposed Rule Change By National Securities Clearing Corporation Regarding the Establishment of Fees for NSCC's NETWORKING Service

Comments requested within 21 days after the date of this publication.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 23, 1988, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NSCC's Rules as follows: Italics indicate additions; [Brackets] indicate deletions.

National Securities Clearing Corporation

Fee structure

* * * * * *

IV. Other Service Fees

M. NETWORKING	
1. Membership Fee: for each participating Settling Member and Fund Member regardless of activity level.	*$250.00 per month*
2. Monthly Account Base Fee:	
(a) for accounts with Funds paying dividends monthly.	*$.06 per side per NETWORKING sub-account*
(b) for accounts with Funds paying dividends less frequently than monthly.	*$.04 per side per NETWORKING sub-account*
3. Position File Fee:	
(a) for two position files requested by broker/dealer per CUSIP per month.	*No charge*
(b) for more thon two position files requested by broker/dealer per CUSIP per month.	*$100.00 per CUSIP per each request payable only by broker/dealer*

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The purpose of the proposed rule change is to establish fees for the NETWORKING Service.

(b) The proposed rule change provides for the equitable allocation of reasonable fees among NSCC's participants and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Participants were advised of the fees by an Important Notice dated November 21, 1988. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-NSCC-88-12 and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 28, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-150 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26407; File No. SR-NASD-88-53]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filling Vacancies on District Business Conduct Committees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission "(Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Article VIII, section 5 of the NASD By-Laws provides that a vacancy created by the departure of District Business Conduct Committee ("DBCC") members during their terms may be filled by appointment by the remaining DBCC members until the next regularly scheduled election.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The current procedure under sections 5 (a) and (b) of Article VIII of the NASD By-Laws sets forth a two-step mechanism for filling a vacancy on a DBCC. If the unexpired term of the Committee member causing the vacancy is less than 12 months, the vacancy is to be filled by appointment of a representative of a member firm having a place of business in the same district by the remaining member of the DBCC. If the unexpired term of the Committee member causing the vacancy is 12 months or more, the vacancy is to be filled by an interim election conducted in accordance with the provisions of Section 4 of Article VIII.

The NASD believes that the current procedure of holding interim elections is burdensome and unnecessary. The NASD is therefore proposing to amend Article VIII, Section 5 to implement one procedure for situations involving unexpired terms of any length that result in a vacancy on a DBCC. That procedure would involve the appointment, by the remaining members of the DBCC, of a representative of a member firm doing business in the same district to fill the departing Committee member's seat until the next regularly scheduled election. After the next scheduled election, the newly elected Committee member would serve for the duration of the departing Committee member's term.

* * * * *

The proposed rule change is consistent with section 15A(b)(6) of the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanisms of a free and open market, because it will aid in maintaining a full roster of DBCC members to regulate securities violations in their districts by expediting the filling of vacancies created by departing DBCC members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment imposes any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendment was published for comment in NASD Notice to Members 88-48 in July 1988. As a result of this Notice, the NASD received three comment letters.[1] Of these, one comment letter favored the proposed amendment, and two were opposed.

The one favorable comment stated that the rule change would result in more efficient operation of the DBCCs with little or no loss in member representation. The writer also urged that previous DBCC members should be considered first in the selection of replacement members.

Of the two comment letters opposed to the proposed rule change, one expressed the view that elections are not too expensive, and that a cost/benefit analysis should result in retention of the present system which gives more persons a chance to serve on a DBCC. The other negative comment stated that vesting appointment power in sitting DBCC members would result in appointees who are obligated to their Committees and not to their districts. As an alternative, the commentator suggested that the Nominating Committee should select a candidate from the list of candidates who were originally considered at the same time as the vacating party. The commentator further stated that the membership should then have a chance to file written objections, and if many objections are filed, an election should be held.

The NASD considered the substance of these comments and determined, first, that any additional election is by definition a costly process, both monetarily and in terms of disruption of District affairs caused by operating without the resource of a full DBCC membership. Therefore, the suggested alternative of selection of a candidate by the Nominating Committee, with written objections by the membership and a resulting election if a certain number of objections are filed, would be just as disruptive as it would mean additional elections. In addition, the NASD determined that the proposed rule change would allow just as much opportunity, if not more, for different parties to serve on a DBCC as the prior rule. Any appointment made would be effective only until such time as the next regularly scheduled election occurs. Thus, it is conceivable that two different persons could serve in the vacant seat—one by appointment and one by election. Under the old system, if a vacancy was for a term greater than 12 months, an interim election was held thereby allowing only one person a chance for the vacancy. Finally, with respect to the comment that DBCC appointees would feel obligated to their Committees, the NASD has not experienced problems with the ability of interim appointees to a DBCC, or with appointees to its Board of Governors or any of its standing committees, to maintain independent judgment. A DBCC, composed of up to 12 members, has a sufficiently diverse membership making it unlikely that a standard view of any issue will be developed to which an appointed DBCC member must adhere.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

* * * * *

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1989.

[1] The Notice to Members, a list of the commentators, and the comment letters are attached as Exhibit 2 to the rule filing.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-151 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26408; File No. SR-NYSE-88-37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("Exchange" or "NYSE"), on November 15, 1988, submitted to the Securities and Exchange Commission ("Commission") a proposal regarding closing procedures governing trading during monthly expirations of certain stock index products. The proposed rule change was published for comment in Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599. No comments were received on the proposed rule change.

The NYSE's proposed rule change would add auxiliary closing procedures for assisting in handling the order flow associated with the expiration of stock index futures, stock index options, and options on stock index futures (collectively, "index derivative instruments"). The procedures would apply only on the one trading day per month on which the index derivative products expire ("expiration day"). The Exchange's procedures would be implemented on a one-year pilot basis, beginning in November 1988 and running through October 1989.[3]

Since September 1986, the NYSE has implemented auxiliary closing procedures to govern trading on quarterly expiration days, the four days per year on which all index derivative instruments expire. These procedures require specialists to compile and make public before the close of trading large order imbalances in certain widely-held stocks. In addition, the procedures preclude (1) entry after 3:30 p.m. of market-at-the-close orders involving the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] At the same time it published the NYSE's proposal for comment, the Commission granted accelerated approval to implementation of the auxiliary closing procedures to govern the November and December 1988 monthly expirations. Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599.

liquidation of any position that relates to index arbitrage and (2) entry of other market-at-the-close orders after an imbalance publication, unless they offset the imbalance.

The Exchange now proposes to implement its auxiliary closing procedures, with one proposed modification, during all monthly index derivative product expirations (including quarterly expirations). The one proposed modification is to preclude after 3:30 p.m. the entry of market-at-the-close orders to liquidate stock positions relating to *all* trading strategies involving index derivative instruments. Previously, the procedures applied only to market-at-the-close orders relating to the liquidation of index arbitrage positions.

In support of its proposal to extend auxiliary closing procedures to all monthly expiration days, the NYSE has cited the increased end-of-day market volatility during all expiration days. The Exchange believes that this volatility results from market-at-the-close orders entered to liquidate stock positions related to index derivative product trading strategies.[4]

In addition, the NYSE believes that prohibiting entry of market-at-the-close orders to liquide stock positions relating to *all* trading strategies involving index derivative instruments is supported by the fact that there are a number of trading strategies other than index arbitrage which involve index derivative instruments and where the use of market-at-the-close orders could contribute to market volatility. One example cited by the NYSE is portfolio insurance.[5]

Finally, in support of its proposal to implement its auxiliary closing procedures on a monthly basis only for a one-year pilot period, the Exchange has expressed its hope that during that period "all futures and options markets will adopt the use of opening prices for settlement purposes, thus obviating the need for these special closing procedures." [6] In this connection, the NYSE "believes that the appropriate response to market volatility relating to the expirations of derivative products is for futures and options markets to base the settlement prices of derivative products on opening, rather than closing, Exchange prices."[7]

[4] *Id.* at 47599.

[5] *Id.* at 47599–600.

[6] *Id.* at 47600.

[7] *Id.* The NYSE has adopted permanent opening auxiliary procedures to assist in the handling of order flow relating to the expiration of derivative instruments. *See* Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 6 [8] and the rules and regulations thereunder. The market-at-the-close procedures described herein have been utilized on previous quarterly expirations dating back to September 1986. These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index arbitrage. By requiring early submission of market-at-the-close orders and by disseminating imbalances, the NYSE has been able to attract contra-side interest to alleviate imbalances caused by the closing of index arbitrage positions. The procedures have proven to be an operational success, and have contributed significantly to the smooth handling of the increased order flow associated with expirations.

The Commission also finds that the Exchange's proposals to begin implementing its market-at-the-close procedures during all monthly expirations (as opposed to only quarterly expirations) and to apply the procedures to *all* stock trades related to a trading strategy involving index derivative instruments (as opposed to only index arbitrage trading) are consistent with the requirements of the Act and the rules and regulations thereunder. The Commission believes there are trading strategies in addition to index arbitrage that can lead to stock market volatility on expiration days. In addition, these strategies often involve the trading of index derivative index instruments that expire on a monthly basis, rather than only on the quarterly expirations covered currently by the NYSE's market-at-the-close procedures.

The Commission also believes that the NYSE is justified in implementing its proposal only on a one-year pilot basis. The Commission continues to believe that, in light of the successful operation of the NYSE's auxiliary opening procedures, options and futures markets should consider basing settlement of all derivative instruments on opening, as opposed to closing, prices.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–152 Filed 1–4–89, 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16724; 811–5187]

American Capital Limited Maturity Government Fund, Inc.; Application

December 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Capital Limited Maturity Government Fund, Inc.

Relevant 1940 Act Sections: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on November 22, 1988 and amended on December 14, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2800 Post Oak Boulevard, P.O. Box 3121, Houston, Texas 77253–3121.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022 or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant, a Maryland corporation and open-end diversified management company, filed a Registration Statement on Form N–8A on June 2, 1987.

2. Applicant has never made a public offering of its securities and does not propose to make a public offering or to engage in business of any kind. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

3. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which are securityholders of Applicant.

4. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–145 Filed 1–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16726; (812–7161)]

Cigna Funds Group et al.; Application

December 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: CIGNA FUNDS GROUP, consisting of: CIGNA Money Market Fund, CIGNA Government Securities Fund, CIGNA Income Fund, CIGNA Municipal Bond Fund, CIGNA High Yield Fund, CIGNA Utilities Fund, CIGNA Value Fund, CIGNA Growth Fund, CIGNA Aggressive Growth Fund, CIGNA Cash Fund, and CIGNA Tax-Exempt Cash Fund; CIGNA ANNUITY FUNDS GROUP, consisting of: CIGNA Annuity Money Market Fund, CIGNA Annuity Income Fund, CIGNA Annuity Equity Fund, CIGNA Annuity Growth and Income Fund, and CIGNA Annuity Aggressive Equity Fund; CIGNA HIGH INCOME SHARES; CIGNA VARIABLE PRODUCTS GROUP, consisting of the Companion Fund; and INA INVESTMENT SECURITIES, INC., and all future registered investment companies and series which become part of the CIGNA Funds (collectively, the "Funds" or "Applicants").

Relevant 1940 Act Section: Exemption is requested under section 6(c) of the 1940 Act from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an Order exempting them and all future funds, trusts or series which are sponsored by the Cigna Corporation or affiliate thereof (the "Cigna Funds") from the provisions of section 32(a)(1) of the 1940 Act to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a Board of Directors or Trustees meeting held within ninety days after the end of the Applicant's fiscal year.

Filing Dates: The Application was filed on October 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, CIGNA Funds, 1380 Main Street, 4th Floor, Springfield, Massachusetts 01103.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272–2856 or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Applicant is a diversified, open-end management investment company, except for CIGNA High Income Shares and INA Investment Securities, Inc., which are diversified closed-end management investment companies. Each Applicant is registered under the 1940 Act and organized as a Massachusetts business trust, except for INA Investgment Securities, Inc., which is organized as a Delaware Corporation. Each Applicant (other than CIGNA High Income Shares and INA Investment Securities, Inc.) is a "series company", and each Applicant is advised by CIGNA Investments, Inc. The fiscal year-end of each Applicant is currently December 31.

2. Traditionally, the Applicants have held concurrent quarterly meetings of their board of trustees or board of directors (referred to herein for all Applicants as the "Boards"). Each Board selects independent public accountants at their first quarterly meeting. The laws of Massachusetts applicable to business trusts do not require the holding of an annual stockholders meeting. Therefore, unless stockholder action is required for some other reason, it is the intention of the Applicants that annual meetings will not be held.[1]

3. Under the provisions of section 32(a)(1), the Applicants are required to select their independent public accountants within thirty days before or after the beginning of each Applicant's fiscal year. The thirty day period for the selection of independent public accountants mandated by section 32(a)(1) does not provide adequate time for Applicants to select their independent public accountants. The selection of the independent public accountants for each Applicant is predicated on the recommendations of the Audit Committees (the "Committees") of the Applicants, which is composed of "disinterested directors or trustees" (as contemplated in section 2(a)(19) of the 1940 Act) serving on the Board of each Applicant. The Committees normally meet three times a year with the independent public accountants to discuss the audit plan, significant audit procedures to be implemented and projected costs. Upon completing the audits of the Applicants, the Committees review the results and formulate recommendations for consideration by the Boards, which usually is not completed within 30 days after the fiscal year-end. The

[1] CIGNA High Income Shares has agreed to hold annual meetings of its shareholders pursuant to the listing requirements of the New York Stock Exchange. At such time that CIGNA High Income Shares resolves not to hold such annual meetings, it will participate in the exemptive relief. INA Investment Securities, Inc., a Delaware corporation, is required to hold annual meetings of its stockholders pursuant to Delaware corporate law. INA Investment Securities, Inc. has also agreed to hold annual meetings of its stockholders pursuant to the listing requirements of the New York Stock Exchange. At such time the Delaware corporate law changes to permit a registered investment company to discontinue holding stockholders meetings and at such time that INA Investment Securities, Inc. resolves not to hold annual meetings of its stockholders for whatever reason, it will also participate in the exemptive relief.

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Committees' recommendations are based on such criteria as: accountants' qualifications, ability to meet deadlines, suggested changes in accounting practices and principles, and actual fees. Due to the time required to complete the Applicants' annual audit and the time required for the Committees to review the results of the audit and formulate a recommendation for consideration by the Board, it is impractical for the trustees or directors to select the independent public accountants within thirty days before or after the beginning of the Applicants' fiscal year as required by section 32(a)(1) of the Act.

Applicants' Legal Conclusions

1. The Applicants believe that is possible to ensure that the selection of the independent public accountants should occur as proximate as possible to the beginning of a fund's fiscal year while ensuring that each Applicant's Board has the benefit of the Committee's recommendations by expanding the thirty day period in which meetings of directors could consider the selection of the independent public accountants to ninety days after the end of their respective fiscal years.

2. By permitting the scheduling of the selection of the independent public accountants through the expansion of the permitted period from thirty to ninety days, the SEC will allow review procedures that would (i) provide the Committees with a more realistic time frame for a detailed review of the services and results furnished by the independent public accountants to Applicants and (ii) enable each Board to give sufficient consideration to all of the information submitted by their respective Committee prior to making their selection. Further, the process will more accurately reflect the practicalities of doing business in complexes having a substantial number of funds as opposed to funds operated on an individual basis.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-176 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16722; 811-3656]

FS Government Securities Income Fund, Inc.; Notice of Application

December 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: FS Government Securities Income Fund, Inc. ("Applicant"), (formerly YES Fund, Inc).

Relevant 1940 Act Sections: Section 8(f) and Rule 8F-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Date: The application was filed on September 23, 1988, and amended on December 22, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 230 Park Avenue, New York, New York 10169.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272-3022 or H.R. Hallock, Jr., Special Counsel, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a California corporation, registered as an open-end, diversified management investment company and filed a Registration Statement on Form N-1 under Section 8(b) of the 1940 Act on February 4, 1983. Applicant's initial registration statement was declared effective on April 18, 1983 and the initial public offering commenced immediately thereafter.

2. On August 25, 1987, Applicant's Board of Directors approved and adopted an Agreement and Plan of Reorganization (the "Plan") under which all of its assets and liabilities would be transferred to the Government Securities Income Trust series of Fund Source, a Massachusetts business trust registered as an investment company under the 1940 Act. A majority of Applicant's shareholders approved the Plan at a Special Meeting held October 2, 1987.

3. Pursuant to the Plan, Applicant transferred to the Government Securities Income Trust series of Fund Source (the "New Series") all of its assets, including Applicant's portfolio securities on October 13, 1987. In consideration, the New Series assumed all of Applicant's obligations and liabilities and delivered to Applicant shares of beneficial interest in the New Series (the "New Shares"). Applicant distributed the New Shares pro rata to its shareholders at relative net asset value in complete liquidation. Each shareholder of record as of October 13, 1987, received one New Share for each share of Applicant. As of August 14, 1987, Applicant has 14,688,085.152 shares outstanding, having an aggregate net asset values of $101,984,270 and a per share net asset value of $6.94. The voting rights of the New Shares are identical to those of Applicant's shares.

4. The reorganization expenses, consisting of accounting, printing, proxy solicitation, administrative and certain legal expenses, were approximately $143,000. These expenses were allocated equally between Applicant and the New Series.

5. Applicant has retained no assets and has no debts or liabilities. Except for the transaction described, Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant is not a party to any litigation or administrative proceeding. As of the time of filing the application, Applicant had no shareholders.

6. Applicant is not engaged and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

7. All of Applicant's required N-SAR filings have been made, and Applicant represents that all N-SAR filings will continue to be made until an order has been entered declaring that Applicant has ceased to be an investment Company.

8. Applicant has not yet terminated its status as a California corporation. The corporation will be dissolved following the receipt of a tax clearance certificate from the California Franchise Tax Board.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-146 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24796]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 29, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 23, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Fuels, Inc., et al. (70-7574)

System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, and SFI's parent companies, Arkansas Power & Light Company, 425 West Capital; 40th Floor, Little Rock, Arkansas 72201, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70114, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi 39215-1640 and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112 (collectively, "Parents"), all of whom are subsidiaries of Middle South Utilities, Inc., a registered holding company, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

In order to finance its fuel oil inventory and related receivables, SFI proposes to enter into and borrow under a revolving credit agreement ("Credit Agreement") with Bank of America National Trust and Savings Association ("B of A") pursuant to which B of A would make revolving credit loans ("Loans") to SFI in an aggregate principal amount of up to $30 million. The Loans would bear interest from the date thereof at one of three rates, to be specified at SFI's option at the time each Loan is made. All outstanding Loans would be due and payable no later than, and the Credit Agreement would expire on, January 31, 1992 unless otherwise extended. The expiration date may be extended on a year-to-year basis, provided that the terms of any such extension are no less favorable to SFI than those set forth in SFI's declaration.

As security for the Loans, SFI and B of A will enter into a Security Agreement whereby SFI will grant B of A a security interest in SFI's fuel oil inventory in storage at specified locations in the states of Arkansas, Louisiana and Mississippi, together with the proceeds thereof, and in SFI's accounts receivable from the Parents and nonaffiliated third parties. In order to grant a security interest in inventory in storage at specified locations in Louisiana, SFI will deliver in pledge to B of A a Collateral Mortgage Note in the principal amount of up to $50 million secured by an Act of Collateral Chattel Mortgage on such inventory. As further inducement to B of A, the Parents will execute an agreement, acknowledging and consenting to the granting to B of A of a security interest in SFI's accounts receivable arising from fuel oil sales by SFI to the Parents.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-147 Filed 1-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16725; (812-7159)]

Scudder California Tax Free Trust et al.; Application

December 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Scudder California Tax Free Trust (including each series thereof), Scudder Cash Investment Trust, Scudder Development Fund, Scudder Equity Trust (including each series thereof), Scudder Global Fund, Inc. (including each series thereof), Scudder GNMA Fund, Scudder Government Money Fund, Scudder Growth and Income Fund, Scudder Income Fund, Scudder International Fund, Inc., Scudder Municipal Trust (including each series thereof), Scudder Mutual Fund, Inc. (including each series thereof), Scudder State Tax Free Trust (including each series thereof), Scudder Target Fund (including each series thereof), Scudder Tax Free Money Fund, Scudder Tax Free Target Fund (including each series thereof), Scudder Treasurers Trust (including each series thereof), Scudder Variable Life Investment Fund (including each series thereof), AARP Cash Investment Funds (including each series thereof), AARP Growth Trust (including each series thereof), AARP income Trust (including each series thereof), and AARP Insured Tax Free Income Trust (including each series thereof) (collectively, the "Funds").

Relevant 1940 Act Sections: Exemption is requested under section 6(c) of the 1940 Act from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an order to permit them and any future funds advised by Scudder, Stevens & Clark, Inc. or distributed by Scudder Fund Distributors, Inc., or their affiliates to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of trustees or directors meeting held within 90 days before or after the beginning of their respective fiscal years.

Filing Dates: The Application was filed on October 25, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 20, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request with proof of service by affidavit or, for attorneys, by certificate. Request

notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Scudder, Stevens & Clark, Inc., 175 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272–2856 or Karen L. Skidmore, Branch Chief (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Funds are open-end management investment companies with different objectives and policies. Scudder International Fund, Inc., Scudder Mutual Funds, Inc., and Scudder Global Fund, Inc. are organized as corporations under the law of the State of Maryland. Each of the other Funds is organized as a business trust under the laws of the Commonwealth of Massachusetts. Scudder, Stevens, & Clark, Inc. serves as investment adviser or subadviser to all of the Applicants. Scudder Fund Distributors, Inc. serves as principal underwriter to all of the Applicants.

2. Each of the Applicants is governed by a Board of Directors or Trustees (hereinafter "Board of Trustees" or "Trustees"), of which at least forty percent (40%) of the members are not "interested persons" within the meaning of section 2(a)(19) of the 1940 Act.

3. No Fund is required to hold annual shareholders' meetings. Each Fund holds regularly scheduled Board of Trustees meetings four times each year, generally once a quarter. The Funds have various fiscal years and have Boards of Trustees of differing sizes and composition, although most Board members are Trustees of more than one Fund.

4. The selection of an independent public accountant is based on the recommendation of the Audit Committee of each Board, which is comprised entirely of the non-interested Trustees and often meet on a different day than its respective Board.

5. The Applicant's respective fiscal year end dates are staggered as follows: *March 31* (Scudder California Tax Free Fund, Scudder GNMA Fund. Scudder International Fund, Inc. and Scudder State Tax Free Trust); *June 30* (Scudder Cash Investment Trust, Scudder Development Fund, Scudder Global Fund, Inc., Scudder Government Money Fund, and Scudder Mutual Funds, Inc.); *September 30* (Scudder Equity Trust, AARP Cash Investment Funds, AARP Growth Trust, AARP Income Trust, and AARP Insured Tax Free Income Trust); and *December 31* (Scudder Growth and Income Fund, Scudder Income Fund, Scudder Municipal Trust, Scudder Target Fund, Scudder Tax Free Money Fund, Scudder Tax Free Target Fund, Scudder Treasurers Trust, and Scudder Variable Life Investment Fund).

6. Each Fund prefers to hold one of its quarterly Board meetings promptly after substantial completion of the annual audit, which is normally 30 to 60 days following the fiscal year-end. The audit committees review the results of the annual audit, in addition to recommending to the full Boards the selection of an independent public accountant concurrently. Regularly scheduled in-person Board meetings for each Fund are held once a quarter.

Applicant's Legal Conclusions

1. Because of the timing of the Board meetings that follow completion of the annual audits and the desire to have Board meetings relatively evenly spaced out, it is not always practicable for each of the Funds to have its Board of Trustees meeting within 30 days before or after the beginning of each Fund's fiscal year. Because Funds with different fiscal year-ends but with the same Boards of trustee typically have meetings on the same day, scheduling problems can arise when the Board of a Fund which has just reached its fiscal year-end must meet within the next 30 days to select an independent public accountant whereas the Board of a different Fund, comprised of the same members, is not so constrained. It would be unnecessarily expensive to hold special meetings of Trustees each year for the sole purpose of selecting an independent pubic accountant. Instead, economies of scale and the best interest of each Fund's shareholders suggest that the non-interested Trustees of each Fund select an independent public accountant at a regularly scheduled Board meeting each year.

2. Expanding the 30-day window to 90 days would (1) allow each Applicant to consider the selection of an independent public acountant at a regularly scheduled Board meeting, (2) provide time for detailed review by each Fund of the services provided by the independent accountant, including an enhanced consideration of all information developed by each Fund's Audit committee regarding the independent public accountants. The Applicants submit that it is preferable to avoid the extra expense and inconvenience of holding additional Board meetings solely for the purpose of selecting independent public accountants, as would be required if the 30-day window were not expanded.

3. The Applicants submit that the requested exemption is consistent with the logistics of efficiently operating a complex consisting of many funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–177 Filed 1–4–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1089]

Master Plan Presented for the National Foreign Affairs Training Center; Meeting

The Department of State will present its Master Plan for the National Foreign Affairs Training Center to be built at Arlington Hall Station, Route 50 and George Mason Drive, Arlington, Virginia. The meeting will be held at The Foreign Service Institute, 1400 Key Boulevard, Arlington, Virginia, on Tuesday, January 10, 1989, from 7:00 to 9:00 p.m.

The purpose of the meeting is to provide an update on Master Plan revisions and to obtain public views and comments. The Department of State encourages the attendance of citizens, community associations, historic presevation organiztions, and other interested members of the public.

The Master Plan documents are available for review prior to this public presentation at the following locations:

Arlington County Central Library, Virginia Room, 1015 N. Quincy Street, Arlington, VA 22201, Tel: 703–284–8181

Arlington County, Department of Community Planning, Housing and Development, Mr. William Thomas, 6th Floor Comprehensive Planning Office, #1 Courthouse Plaza, 2100 North Clarendon Boulevard, Arlington, VA 22201, Tel: 703–358–3563

VVKR Inc. (Architects), Mr. Peter Widmer, 901 N. Pitt Street, Arlington, VA 22314, Tel: 703–549–9200

Department of State, Office of Real Property, Mr. Mark Butowsky or Mr. Robert Mack, Room 1415, 2401 E Street, Washington, DC 20520, Tel: 202–663–1723, Tel: 202–663–1354

National Capital Planning Commission.

Mr. Lee Feldman, 1325 G Street, NW. 10th Floor, Washington, DC, Tel: 202–724–0174.

Any further questions about the meeting should be directed to Mr. Mark Butowsky, Project Manager (Telephone 202–663–1723), or Mr. Robert Mack, Director, Office of Real Property, Department of State, 2401 E Street NW., Room 1415, Washington, DC 20520 (Telephone 202–663–1354).

December 23, 1988.

William L. Camp

Associate Director for Management.

[FR Doc. 89–282 Filed 1–4–89; 10:15 am]

BILLING CODE 4710–34–M

DEPARTMENT OF THE TREASURY

Customs Service

Notice That Entry/Entry Summary Required For Importation of Hong Kong Textiles; Guam Kashyu, Inc., et al.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Effective February 1, 1989, Customs will require the filing for an entry/entry summary ("live" entry) for all textiles and textile articles of Hong Kong origin which have a textile category number.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Trade Operations, (202) 566–9443.

SUPPLEMENTARY INFORMATION: U.S. Customs does not monitor a quota for textiles and textile articles from Hong Kong. However, quota levels have been established and are administered by the Department of Commerce, Current quota limits were published in the **Federal Register** (53 FR 46911) on November 21, 1988.

Section 142.13(c)(2), Customs Regulations (19 CFR 142.13(c)(2)), provides that entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, shall be filed at the time of entry before release of any merchandise of a class designated by Customs. Based on this authority, Customs is requiring, as of February 1, 1989, that an entry/entry summary (a "live" entry) be filed for all imported textiles and textile articles of Hong Kong origin which have a textile category number. The Departments of Commerce and Treasury have concurred that "live" entries be required for the importation of these textiles and textile articles. This procedure is necessary to assure timely and accurate reporting of textile shipments of Hong Kong origin.

Dated: December 30, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 89–142 Filed 1–4–89; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Vista International Hotel, 1400 M Street NW., Washington, DC, on January 11, 12 and 13, 1989. The meetings will convene at 8 a.m. on January 11, 12 and 13 and adjourn at 5 p.m. on January 11 and 12, 1989. The meeting will adjourn at 3:30 p.m. on January 13, 1989. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 11th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b (c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue NW., Washington, DC, 20420, (phone: 202/233–5365) at least 5 days before the meeting.

Dated: December 12, 1988.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–115 Filed 1–4–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 3
Thursday, January 5, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 10, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 12, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Status of Presidential Audits
Advisory Opinion 1987-31
Reconsideration
Terry Classen on behalf of the Chicago Board Options Exchange
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-245 Filed 1-3-89; 2:19 pm]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—January 10, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Fact Finding Investigation No. 15 Report.
2. United States/People's Republic of China Trade Developments.
3. Agreement No. 203-011223—Transpacific Stabilization Agreement.
4. Docket No. 87-6—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 89-256 Filed 1-3-89; 3:27 pm]
BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 54, No. 3
Thursday, January 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 81015-8215]

Proposed Revision of Federal Information Processing Standard

Correction

In notice document 88-28837 beginning on page 50435 in the issue of Thursday, December 15, 1988, make the following correction:

On page 50437, in the second column, under "11.1", in the third line, "June 15, 1989" should read "(six months after date of publication of final document in the **Federal Register**)".

BILLING CODE 1505-01-D

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Existing System of Records

Correction

In notice document 88-27422 beginning on page 48038 in the issue of Tuesday, November 29, 1988, make the following correction:

On page 48040, in the first column, under "storage", "orders" should read "folders".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

Johnson Heritage Bancorp, Ltd., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

Correction

In notice document 88-28546 beginning on page 50095 in the issue of Tuesday, December, 13, 1988, make the following correction:

On page 50095, in the third column, in the last paragraph, in the first line,"Johnston" should read "Johnson".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-364-000 et al.]

Columbia Gulf Transmission Co. et al.; Natural Gas Certificate Fillings

Correction

In notice document 88-29535 beginning on page 51898 in the issue of Friday, December 23, 1988, make the following correction:

On page 51902, in the first column, in the third line, the docket number should read "CP89-368-000".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 15

Requirements for Approval of Explosives and Sheathed Explosive Units

Correction

In rule document 88-26410 beginning on page 46746 in the issue of Friday, November 18, 1988, make the following corrections:

1. On page 46748, in the first column, under **EFFECTIVE DATES**, in the seventh line, "November 20, 1989" should read "January 17, 1990".

2. On the same page, in the second column, in the fifth complete paragraph, in the first line, "explosive" should read "explosives".

3. On page 46750, in the 2nd column, in the 5th complete paragraph, in the 17th line, "sheathed" was misspelled.

4. On page 46751, In the second column, in the first paragraph, the 16th line should read "approval of a similar product or an".

5. On the same page, in the third column, in the second complete paragraph, in the second line, "explosive" was misspelled.

6. On page 46752, in the 2nd column, in the 1st complete paragraph, in the 11th line, "designed" should read "design".

7. On the same page, in the same column, in the third complete paragraph, the eighth line should read "includes an impact test for sensitivity.".

8. On the same page, in the third column, in the first complete paragraph, in the first line, "and" should read "an".

9. On page 46753, in the 1st column, in the 1st complete paragraph, in the 13th line, "MSHAS" should read "MSHA".

20. On the same page, in the same column, in the second complete paragraph, in the eighth line, "us" should read "use".

21. On the same page, in the same column, in the third complete paragraph, in the first line, "established" should read "establish".

22. On page 46755, in the second column, under Section 15.11, in the second paragraph, in the seventh line from the bottom, "A" should read "a".

23. On page 46756, in the second column, in the third complete paragraph, in the seventh line, "85°F" should read "88°F".

§ 15.1 [Corrected]

24. On page 46761, in the second column, in § 15.1, in the first paragraph, in the first line, "requirements" was misspelled.

25. On the same page, in the third column, in the fifth and sixth lines from the top, the date "November 20, 1989" should read "January 17, 1990".

§ 15.2 [Corrected]

26. On the same page, in the same column, in § 15.2, in the first line from the bottom, "designated" should read "designed".

§ 15.4 [Corrected]

27. On page 46762, in the second column, in § 15.4(e)(3), in the first line, "change" should read "changes".

§ 15.7 [Corrected]

28. On page 46763, in the first column, in § 15.7(c), in the first line, "other" should read "outer".

§ 15.30 [Corrected]

29. On page 46764, in the 3rd column, in § 15.30(d)(1), in the 13th and 14th lines, the effective date should read "January 17, 1989".

30. On page 46765, in the second column, in § 15.30(f), in the seventh and

eighth lines the effective date should read "January 17, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S-047]

Safety Standards for Scaffolds Used in Shipyard Employment

Correction

In proposed rule document 88-27003 beginning on page 48182 in the issue of Tuesday, November 29, 1988, make the following correction:

On page 48211, in the second column, in the 10th line from the bottom, "(1)" should read "(l)".

BILLING CODE 1505-01-D

federal register

Thursday
January 5, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 202, 206, 210, and 212
Revision of Geothermal Resources Valuation Regulations and Related Topics; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, 210, and 212

Revision of Geothermal Resources Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend and clarify existing regulations to define the value, for royalty purposes, of geothermal resources produced from Federal lands administered by the Departments of the Interior and Agriculture. Geothermal resources on Indian (Tribal and allotted) lands are excluded from this proposed rulemaking. Existing regulations provide only general guidance for the valuation of geothermal production. The amended rule will provide industry and the public with a comprehensive and consistent geothermal valuation policy and standards for valuing geothermal resources and geothermal byproducts.

DATES: Written comments must be received on or before March 6, 1989.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

A public hearing may be held at a future date. The time and location will be announced in a future notice published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Charles Brook and Michael Throckmorton, Royalty Valuation and Standards Division, Royalty Management Program, MMS.

I. Introduction

The Geothermal Steam Act of 1970, 30 U.S.C. 1001–1025 (the Act), established the statutory framework for the leasing and management of geothermal resources on public, withdrawn, and acquired lands administered by the Departments of the Interior and Agriculture. The Act mandates that geothermal leases will provide for a royalty on the amount or value of steam, or any other form of heat or energy, and byproducts derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee. The Geothermal Resources Lease (the lease instrument) expands on the royalty provisions of the Act by adding that royalties must be paid on the amount or value of geothermal resources produced, processed, removed, sold, or utilized from the lease or reasonably susceptible to sale or utilization by the lessee. However, the lease instrument provides that unused geothermal resources may be reinjected into the subsurface without payment of royalties if such reinjection is approved by the proper authority.

The Act delegates to the Secretary of the Department of the Interior all authority for the administration of Federal geothermal leases, including issuance of rules and regulations as appropriate to implement the Act. The lease instrument expressly authorizes the Secretary to establish minimum values for the purpose of computing royalties in accordance with applicable regulations. Geothermal valuation regulations currently appear at 30 CFR 206.350 and 206.351, which were redesignated from §§ 206.300 and 206.301 in a **Federal Register** Notice published on January 15, 1988 (53 FR 1184).

The foremost use of geothermal resources is the generation of electricity. The development of the geothermal industry in the United States received a significant boost with passage of the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601 (PURPA). The act provided both an avenue for the ownership of small power generation facilities by entities other than utilities and price incentives for the sale of electricity. The implementation of PURPA was particularly beneficial for geothermal development because lessees could commercially exploit more resources, particularly the smaller, moderate-temperature geothermal resources in remote areas.

As a primary source of thermal energy, or heat, geothermal resources have a variety of uses, which was recognized by the Act. However, unlike oil, gas, coal, and other energy commodities, geothermal resources can neither be transported long distances nor stored; they must be utilized immediately after production and in close proximity to the production well. The temperature of the resource by-and-large dictates the type of utilization of the resource. Higher-temperature geothermal resources are predominantly used to generate electricity, which, consistent with the First Law of Thermodynamics, is essentially a form of energy converted from the thermal energy of the resource. Lower-temperature geothermal resources are suitable for direct utilization processes; that is, space heating and agricultural and manufacturing operations requiring process heat. The recovery of byproducts (sulfur, lead, zinc, potassium compounds, etc.) and demineralized water is feasible, but has not yet been accomplished on a commercial scale.

The existing regulations provide only general guidance for the valuation of geothermal production. This is particularly true with respect to those resources that are utilized by the lessee and are not involved in a sales transaction. This proposed rulemaking is designed to provide greater clarity to geothermal valuation regulations. Currently, this greater clarity is provided by policy interpretation.

To take advantage of electricity price incentives offered under PURPA, an increasing number of lessees are utilizing geothermal resources directly in their own powerplants for the generation and sale of electricity. In these situations, there are no sales of the resource on which to base value. Consequently, MMS established a geothermal netback procedure to value these "no sales" resources, relying primarily on the existing regulations at 30 CFR 206.350(a)(2) and (b)(2). The netback valuation procedure was first applied in 1985. In addition, MMS developed guidelines for the valuation of geothermal resources that were sold prior to power generation, also relying on the existing regulations at 30 CFR 206.350. The netback procedure and other guidelines for valuing Federal geothermal resources used to generate electricity were made available to the public in October 1987 with the issuance of a report entitled "Valuation of Federal Geothermal Resources—Electrical Generation." The netback procedure was revised in June 1988 to reflect changes effective March 1, 1988, regarding MMS's policy on computing transmission and generating deductions, including changes concerning the rates used to compute returns on investments.

The guidelines appearing in the June 1988 report "Valuation of Federal Geothermal Resources—Electrical Generation" (and its October 1987 predecessor) represent MMS's official valuation policy and are to remain in effect until new valuation regulations are published as a final rulemaking. Copies of the revised report may be obtained by contacting the person identified in the "Address" section of this preamble.

II. Purpose and Background

The MMS is proposing to revise the current regulations regarding the valuation of geothermal resources to accomplish the following:

(a) Clarify and expand on existing valuation policy and standards as they apply to geothermal resources used for electrical generation.

(b) Provide clear standards for valuing geothermal resources used in direct utilization processes.

(c) Provide clear standards for valuing geothermal byproducts.

(d) Place the geothermal royalty valuation in a format compatible with the valuation regulations for other leasable minerals.

(e) Provide industry and the public with a comprehensive and consistent geothermal valuation policy.

Structurally, these rules would modify the existing provisions and add new sections to Subpart H of 30 CFR Parts 202, 206, 210, and 212. These proposed rules would be applied prospectively and would supersede all currently effective geothermal resource valuation directives issued by MMS or its predecessor agency, the U.S. Geological Survey. The MMS anticipates that specific guidelines governing reporting requirements consistent with the geothermal valuation regulations will be incorporated into an MMS Geothermal Payor Handbook subsequent to the publication of the final rule in the **Federal Register.**

The purpose of the regulations is to define the value, for royalty purposes, of geothermal resources produced from Federal lands. Indian lands were excluded by the Geothermal Steam Act. Value can be determined in different ways, and these proposed rules explain how value would be established under various circumstances. Valuation standards are grouped according to how the geothermal resource is utilized: Electrical generation, direct utilization, and/or recovery of byproducts. Within each group, valuation standards are described according to the type of transaction: arm's-length or non-arm's-length and dispositions of the resource not subject to a sales transaction (the so-called "no sales" transactions). Valuation procedures are different for each group.

The term "gross proceeds" is introduced into the valuation standards to replace the "total consideration" language at paragraph (a)(2) of § 206.350. The concept, however, remains the same: Value cannot be less than the gross proceeds (total consideration) accruing to the lessee for any disposition of the geothermal resource.

Valuation standards for geothermal resources used to generate electricity follow the criteria and procedures, with certain modifications, established in the June 1988 report "Valuation of Federal Geothermal Resources—Electrical Generation." The proposed rulemaking codifies the netback procedure used for valuing geothermal resources under "no sales" situations. Valuation procedures for geothermal resources used in direct utilization processes follow the internal procedures and practice used by MMS.

The proposed rule is a departure from the existing regulations. The chief difference is the elimination of the list of factors given at existing 30 CFR 206.350(a) that were to be considered in establishing the value of geothermal resources. That list does not give priority to any particular factor. By contrast, the proposed rule establishes specific conditions and procedures for valuing the resource.

III. Requested Comments on Selected Issues

The public is invited to comment on all aspects of the proposed rulemaking. Comments on specific sections should identify the section number and paragraph being addressed. In addition, MMS is requesting comments on the specific issues described below.

Section 202.353 Measurement standards for reporting and paying royalties

This proposed section establishes for the first time consistent units of measurement for reporting geothermal production for royalty purposes. In the past, geothermal production has been reported in a multitude of units, including kilowatthours and megawatthours of electricity, pounds and thousands of pounds of steam, and gallons of water. The MMS proposes to standardize the reporting units by specifying that valuations in terms of electricity would be reported as kilowatthours, valuations in terms of weight would be reported as thousands of pounds, and valuations in terms of thermal energy would be reported as millions of Btu's.

The MMS is proposing that direct utilization resources and commercially demineralized water be reported in units of hundreds of gallons to the nearest hundred gallons. However, MMS is unsure whether such a requirement is appropriate, or whether the reporting units should be in gallons or thousands of gallons. Accordingly, MMS is requesting comments and recommendations on the proper reporting units when measurements are on a volume (gallonage) basis.

Section 206.352 Valuation standards for electrical generation

This proposed section establishes procedures for valuing geothermal resources (steam and hot water) used to generate electricity. Values are determined in accordance with the type of transaction under which the resource is disposed: Arm's-length sales, or non-arm's-length and "no sales" transactions.

For geothermal resources sold under an arm's-length contract, proposed § 206.352(b) would provide that the lessee's gross proceeds (revenue plus any other consideration directly or indirectly received for the disposition of the resource) accruing from the arm's-length sales transaction would establish the value of the resource for royalty purposes. This is a general rule that essentially follows the existing arm's-length valuation guidelines given in the June 1988 report "Valuation of Federal Geothermal Resources—Electrical Generation." However, MMS reserves the right under the proposed regulations to establish a different value if it determines that the contract does not reflect the total consideration passing between buyer and seller or discovers that the value is unreasonable owing to impropriety between the contracting parties.

For geothermal resources used to generate electricity and not sold under an arm's-length contract—that is, those resources sold to the lessee's power-generating affiliate under a non-arm's-length contract or resources utilized by the lessee in its own powerplant and thus not subject to a sales contract—proposed § 206.352(c) would provide a sequence of benchmarks to value the resource. The value would be established in accordance with the first applicable of the following procedures:

(1) The weighted average of the gross proceeds paid or received by the lessee under its own arm's-length contracts for the purchase or sale of similar quantities of like-quality resources in the same field;

(2) The value determined by the netback method taking into account the lessee's costs of generating and transmitting electricity; or any other reasonable valuation method approved by MMS.

(The word "lessee" also refers to the lessee's power-generating affiliate. See proposed definition of lessee in proposed section 206.351.) Under no circumstances, however, will MMS accept a value that is less than the gross

proceeds received by the lessee under its non-arm's-length contract for the sale of geothermal resources from the lease. Gross proceeds always establishes a minimum value against which other values are compared.

The MMS believes that the first valuation benchmark—the weighted average method—would be infrequently employed; there are likely few instances where the lessee, or the lessee's power-generating affiliate, will purchase additional geothermal resources to supply the powerplant or where the lessee will have excess production to sell to other operators. However, it introduces two concepts that depart from valuation criteria commonly used for other leasable minerals, notably oil and gas: (1) MMS is proposing that purchases or sales of geothermal resources in other fields (the "area" concept) would not be considered in establishing geothermal values, and (2) the prices established in the contracts of other lessees in the same field would not be considered in establishing geothermal values. The physical and chemical characteristics of geothermal resources vary widely from field to field, primarily because of differences in temperature, salinity, phase, and producibility of the geothermal fluid. Even in geothermal provinces, such as the Salton Trough of Southern California and adjacent Mexico, the physical and chemical characteristics of the geothermal fluids from each of the many fields are different. Geothermal fluid characteristics dictate the type of conversion technology and design of the powerplant for utilization of a particular geothermal resources. For these reasons, MMS believes that a valuation based on comparison to contract sales outside of any given field is inappropriate. Accordingly, the "area" concept no longer would be used for geothermal resource valuation. Comments are invited regarding this concept.

With respect to the second concept, several factors can influence the value or price of geothermal resources even within the same filed. A major factor is the variety of methods used to establish geothermal price in arm's-length contracts. For example, at the Geysers steam field in California, the sales prices of the steam resource vary by a factor of more than two, owing to the multiple methods of computing those prices. Some of the stem is priced in terms of net kilowatthours generated based on the purchaser's avoided costs of fossil and nuclear fuels used in conventional powerplants. Other steam is priced in terms of thousands of pounds delivered based on a variety of economic indexes. Another factor that can influence geothermal values is powerplant efficiencies. Because of design and age differences, each powerplant has a different efficiency for converting heat into electricity. As a general rule, operators of the more efficient powerplants are willing to pay higher prices for the geothermal resource because of cheaper conversion costs. Powerplant efficiencies thus can significantly affect the unit price of the resource. Considering the complexity of the factors involved, MMS believes that a geothermal valuation based on prices established in the contracts of other lessees in the field in not appropriate. This concept also would eliminate from consideration any valuation based on a majority price as currently provided for at 30 CFR 206.350(a)(1). The MMS has found that the establishment of a majority price is impracticable for geothermal resource valuation and is proposing to abandon this procedure. Comments are requested on this concept of not using prices established in other lessee's contracts to determine value.

The use of the first "other than arm's-length" valuation benchmark would be predicated on the lessee's sale, purchase, or other disposition of a "similar quantity" of like-quality resource. The intent of this limiting condition is to avoid a valuation based on sales or purchases of small volumes that would unduly affect the value of the majority of the lessee's production.

The MMS anticipates that the procedure prescribed in the second benchmark will be the predominant valuation method used to value geothermal resources that are used to generated electricity and disposed under non-arm's-length and no sales situations. When geothermal resources are used to generate electricity—that is, the thermal energy of the resource is converted into higher priced electical energy—MMS believes that the value of the resource is effectively enhanced by the conversion process. The netback procedure compensates for this enhancement of value by subtracting the costs of electrical generation and transmission—the transmission and generating deductions described in proposed §§ 206.343 and 206.354, respectively—from the sales price of the electricity. However, several in the geothermal industry believe that the netback procedure yields values that are unrealistically high and thus do not reflect a "market value" on which royalties should be based. Accordingly, MMS is seeking comments on whether the netback procedure should be modified and, if so, how.

One of industry's more serious concerns regarding the netback calculation is the rate of return allowed on invested capital used in the determinations of the transmission and generating deductions. A return on investment is provided to reimburse the lessee for the cost of capital necessary to fund construction of the powerplant and transmission facilities. The rate of return specified in the proposed regulations for determining transmission and generating deductions is 1.5 times the Standard and Poor's BBB industrial bond rate. The MMS is seeking comments on whether this rate of return is appropriate for geothermal power projects, or whether some other rate of return should be used. Respondents should explain the rationale for their proposed rates of return and include citations of publicly available references supporting or clarifying their proposal.

A "proportion-of-profits" method has been proposed as an alternative to the netback valuation procedure. Instead of a standard rate used to compute the return on invested capital under the netback procedure, the proportion-of-profits method provides for a return on invested capital by allowing each aspect of the project (resource development and production, power generation, and transmission) to earn the actual return earned by the project as a whole. The proportion-of-profits method is premised on the theory that each dollar of invested capital earns the same percentage of project profits. Accordingly, the value of the resource upon which royalty is based would be determined by the proportional share of the geothermal project's net operating income attributable to the geothermal field. The unit value of the geothermal resource (in dollars per kilowatthour) is determined by the equation

$$\text{Unit value} = \frac{GE + (NOI \times FI/TI),}{EO}$$

where GE is the geothermal field

operating expenses plus royalties, NOI is the net operating income of the entire project (electricity sales revenue less transmission, generating, and field expenses), FI is the investment in the field (acquisition and development costs), TI is the total investment in the geothermal project (field, powerplant, and transmission line investments), and EO is the amount of delivered electricity. The MMS is requesting comments on the applicability and feasibility of using the proportion-of-profits method for determining geothermal values.

An "alternative-fuels" approach has also been proposed as a substitute for to the netback procedure. The alternative-fuels approach is currently used to value geothermal resources used in direct utilization processes. Under this method, the value of the geothermal resource would be based on the Btu-equivalent value of conventional fossil fuels (coal, oil, or gas) used to generate electricity. (See discussion of proposed § 206.355, valuation standards for direct utilization, for suggested equation to compute thermal energy utilized.) This method would assign a value based on the price of fossil fuels compared to the amount of thermal energy consumed in the powerplant. Because powerplants using conventional fuels operate at much higher temperatures and pressures than do geothermal powerplants, other factors (such as combustion and boiler efficiencies) may have to be considered under this valuation method. The MMS requests comments and analyses on the feasibility of using the alternative-fuels method for valuing geothermal resources in all cases. The MMS also requests suggestions on how the Btu-equivalent value of alternative conventional fuels should be determined.

The MMS is contemplating whether the valuation of electricity should be addressed in connection with the netback procedure. Under most current situations, the powerplants that are owned and operated by geothermal lessees are certified as "small power production facilities" under PURPA. Accordingly, electric utilities are required to purchase the electricity from these powerplants at rates based on the purchasing utility's avoided costs, pursuant to rules implementing PURPA as delegated to State regulatory authorities. In these instances, the geothermal lessee/powerplant owner usually receives both an energy payment and a capacity payment for the delivery of electricity. The energy payment represents the purchasing utility's avoided costs of fuels used to operate conventional powerplants. The capacity payment represents the utility's avoided costs associated with capital investments in powerplants and transmission systems to meet customer delivery demands or utility loan requirements. Capacity payments are generally set amounts based on minimum delivery requirements. They are often made in equal monthly installments for making available to the utility a certain amount of electricity.

Under the netback procedure, the value of the electricity forms the basis for deriving the value of the geothermal resource. The MMS has historically considered the value of the electricity as including both the energy payment and the capacity payment, pursuant to the "total consideration" concept at existing 30 CFR 206.350(a)(2) and the "value of the end product" concept at existing § 206.350(b)(2). This philosophy has been carried over into the proposed regulations in the definition of "gross proceeds." However, some geothermal lessees have argued that the capacity payment should not be included as part of the value of electricity because the capacity payment reflects the powerplant's ability to deliver electricity and thus depends on the attributes of the powerplant itself and not on the geothermal resource. (This viewpoint can be argued from the opposite perspective in that a powerplant cannot operate, especially at peak efficiency, without a sufficient supply of quality fuel—that is, geothermal resource.) The MMS is aware that all or some portion of capacity payments may continue in certain cases, such as forced outages, without delivery of electricity. Although these instances of nondelivery are usually temporary, they do raise the possibility of the lessee receiving a payment when geothermal resources are not produced or utilized. However, MMS is also aware that geothermal production is seldom completely shut in during periods of powerplant downtime or outages. Rather, production is generally either vented or flowed through powerplant bypasses during downtime to maintain the working condition of wells and gathering lines, or continues to generate electricity to maintain internal powerplant operations during forced outages. On the premise that a capacity payment may trigger a royalty obligation without there being any geothermal production, MMS is requesting comments on whether capacity payments should be included as part of the value of electricity. The MMS would also like to know to what extent geothermal production is shut in when no electricity is delivered but capacity payments are still received. If capacity payments are not included as part of the value of electricity, MMS would likely consider them as reducing the lessee's powerplant operating costs; the generating deduction would then be reduced accordingly.

Another concern regarding the valuation of electricity for application of the netback procedure is when the geothermal lessee/powerplant operator is also an electric utility company; in other words, when there are no third-party sales of the electricity on which to base value. One possibility of establishing the value of the electricity at the powerplant tailgate would be a weighted average of the utility's customer rates less transmission costs. The MMS requests comments on this and on alternative electricity valuation methods when the geothermal lessee is also the power-generating utility company.

The MMS is also contemplating whether or not to address the valuation of the resource when the lessee has an arm's-length generating agreement with a third party but receives revenue from the sale of electricity. Such a situation would arise where a lessee has an electricity sales contract but, for whatever reason, has a third party generate the electricity. The MMS believes that the chances of this situation occurring are remote and, therefore, has not addressed this situation in the proposed regulations. Nevertheless, MMS is requesting comments on whether such a situation is likely, whether it should be addressed in the rulemaking, and, if so, what methods should be used to value the resource.

If MMS finds that value cannot be determined by either the weighted average method or the netback procedure, the second valuation benchmark would provide MMS with regulatory flexibility to develop or approve different valuation methods and procedures.

Sections 206.353 and 206.354 Determination of transmission and generating deductions

These sections establish the procedures for computing transmission and generating deductions used in the netback valuation method. In addition to the question of the appropriate rate of return on capital investment discussed above, MMS is requesting comments on the following issues common to the determination of both deductions.

(1) The proposed regulations provide that transmission-line costs and generating costs can be computed using either a straight-line depreciation with a return on undepreciated capital

investment, or a return on capital investment without depreciation. The return on capital investment method would be applicable only to those facilities first placed into service on or after March 1, 1988. March 1, 1988, is the effective date of new oil and gas valuation regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and 1230), which first provided for the use of the return-on-capital investment method. This method, as well as the effective date, was adopted for geothermal resource valuation. The adoption of this method is not precluded by current regulations. The MMS requests comments on whether there should be a one-time election to use the return-on-capital investment method for those facilities placed into service before March 1, 1988.

(2) The proposed regulations limit depreciation to the life of the geothermal project, with the caveat that this usually means the term of the electricity sales contract unless the lessee can show otherwise. The MMS must be protected from situations in which an electricity sales contract may expire and the lessee is unable to negotiate a new contract, even though the lease is still capable of production and the powerplant remains operable. Accordingly, MMS requests comments on whether depreciation should be based on a fixed time period commensurate with the first sales agreement or some other reasonable period of time, and what conditions or considerations might extend or decrease a depreciation period.

(3) The proposed regulations prescribe that a powerplant or transmission line would be depreciated only once; that is, the depreciation schedule established by the original owner would not be altered with a change in ownership. Because the Government does not participate in the profit or losses that could result from a sale of a powerplant or transmission line, MMS takes the position that it should share in the depreciation of those facilities only once. Comments are invited on the issue of recapitalization and the justification of redepreciating a powerplant or transmission line with a change in ownership.

The proposed regulations also provide that if the transmission and/or generating deduction, as determined at the end of the annual reporting period, results in a netback value that is less than that on which the lessee paid royalties the lessee is due a credit. Refunds are not encouraged by the MMS because of undue administrative burdens. Rather, any credit for royalty overpayments would be taken against future royalty payments until the credit is depleted. Instructions on taking credits would be addressed in the Geothermal Payor Handbook to be prepared sometime after final rulemaking.

Section 206.355 Valuation standards for direct utilization

This proposed section establishes the procedures for valuing geothermal resources (hot water) that are used for purposes other than electrical generation (for example, space heating, greenhouse operations, and industrial processes). As with geothermal resources used to generate electricity, the proposed regulations for direct utilization resources prescribe that value will be based on either the lessee's gross proceeds received under an arm's-length sales contract, or the first applicable benchmark for dispositions under non-arm's-length or "no sales" situations. The benchmark valuation system for direct utilization resources differs from that for geothermal resources used to generate electricity in that the second benchmark prescribes a value based on the least expensive, reasonable alternative fuel source.

Most direct utilization geothermal resources will likely to be used by lessees in their own facilities and thus not subject to either arm's-length or non-arm's-length sales. Accordingly, MMS anticipates that the second benchmark—the least expensive, reasonable alternative fuel approach—will be the predominant method used to value direct utilization resources. This is essentially the same method currently used by MMS, except for the proposed inclusion of an efficiency factor in the equation used to calculate the amount of thermal energy displaced by the geothermal resource. The efficiency factors corrects for the fact that not all of the heat derived from combustion of an alternative fuel can be converted to an equal amount of utilized geothermal heat. It takes more heat from the combustion of alternative fuels to create an equal amount of geothermal resource heat directly utilized because of boiler losses and stack emissions. The equations for determining the amount of fuel (in terms of Btu's) displaced by the geothermal resource under the proposed rule is

$$\text{Thermal energy displaced} = \frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume,}}{\text{efficiency factor}}$$

where h_{in} is the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. "Thermal energy displaced" is then in Btu's. Assuming a geothermal efficiency factor of 1.0, MMS proposed to use an efficiency factor of 0.7 for coal and 0.8 for oil, natural gas, and related fuels (butane, propane, diesel, etc.). (Efficiency factors from Ball, Vic, 1983, Generating greenhouse heat: Grower Talks, v. 46, no. 12, p. 20–28.) The value of the geothermal resource is then determined by multiplying the amount of thermal energy displaced by the unit value (dollars per Btu) of the alternative energy source. The MMS requests comments on whether this method correctly reflects the value of geothermal resources used in direct utilization processes, on what alternative methods may be used, and on the applicability of using the efficiency factors.

In addition to the efficiency factor, the proposed alternative fuel approach differs from that currently used by specifying the least expensive, reasonable alternative fuel. This qualification essentially restricts the alternative fuel chosen to one that would normally be used in a given direct utilization process at the location of utilization. For example, coal may not be a reasonable alternative fuel for some processes or in some locations because of environmental considerations. The MMS would like comments on whether this qualification is warranted and, if so, what criteria should be used to determine the most reasonable alternative fuel.

The MMS has not addressed in the proposed rulemaking how the reasonable alternative fuel would be valued, preferring at this time to consider individual circumstances. Spot prices for oil and gas, as published in trade journals, local market prices for the alternative fuels, and average regional prices for coal as published by the U.S. Government's Energy Information Agency have been used or considered in the past. The MMS would like comments on whether the valuation of alternative fuels should be addressed in the final rulemaking and, if so, what criteria should be used to value the alternative fuel.

Section 206.358 Valuation standards for byproducts.

This proposed section describes the methods that would be used to value byproducts, including commercially demineralized water, recovered from geothermal production. As contemplated by the definition of "byproduct" in the Geothermal Steam Act, byproducts are recovered after a geothermal resource has been used in a geothermal utilization facility (a powerplant or direct utilization facility). Although byproducts are not being recovered on a commercial scale—to MMS's knowledge—at this time, some sulfur is currently being recovered by hydrogen sulfide abatement facilities in connection with power generation. However, the sulfur apparently is not being commercially sold. Other byproducts that could potentially be recovered include sodium and potassium compounds and, if economics should prove feasible, perhaps lead, zinc, and other metallic elements.

As with geothermal resources used to generate electricity or used in direct utilization processes, the value of the byproduct would be established either by the lessee's arms-length contract or by the first applicable criteria under a non-arm's-length or "no sales" benchmark system. Briefly summarized, the benchmark criteria are ordered as follows:

(1) The lessee's gross proceeds accruing under its non-arm's-length contract if those gross proceeds are equivalent to the gross proceeds derived under comparable arm's-length contracts for like-quality products *in* the field;

(2) The lessee's gross proceeds accruing under its non-arm's-length contract if those gross proceeds are equivalent to the gross proceeds derived under comparable arm's-length contracts for like-quality products *outside* the field;

(3) Other relevant matters, such as spot-market prices; or

(4) A netback method or other reasonable valuation method.

Unlike fluid geothermal resources used to generate electricty or used in direct utilization processes, byproducts can be stockpiled for future sales; thus, they can be considered more in terms of conventional marketable commodities. Accordingly, MMS is proposing to look at sales prices outside the field to establish value as necessary. The MMS is requesting comments on the proposed byproduct valuation procedure and whether there are any alternative methods of valuing byproducts.

The proposed regulations provide for a "byproduct transportation allowance," addressed at proposed §§ 206.357 and 206.358. The MMS considers transportation costs borne by the lessee as an added-value service that should be deducted from the sales price to determine value of the byproduct at the lease. The transportation allowance would be applicable only for movement of the byproduct to a point of sale or delivery off the lease, unit, or participating area. The determination of the allowance follows the same general principles as that for oil and gas transportation allowances. The MMS will not address specific transportation issues in this preamble, but invites comments on the procedure used to determine the allowance, including the costs allowed.

The MMS does not propose to provide a processing allowance for byproduct recovery at this time, owing to the lack of both byproduct recovery projects and experience regarding byproduct recovery technology. However, MMS is requesting comments on whether a processing allowance for byproducts should be included as a deduction in the valuation regulations. If so, how should it be computed, and what limitations or conditions should be placed on the allowance.

IV. Miscellaneous Issues

The MMS is requesting comments on three issues concerning geothermal resources used to generate electricity or used in direct utilization processes not addressed in previous discussions: (1) Should MMS grant transportation allowances for the lessee's costs of delivering the resource to a point of utilization (powerplant or direct utilization facility) off the lease, unit, or participating area; (2) should MMS allow costs associated with hydrogen sulfide abatement facilities (and other facilities to mitigate environmental hazards) as part of the determination for generating deductions under the netback procedure; and (3) should any processing allowances be granted for geothermal resources used in direct utilization processes.

With regard to transportation of geothermal production, MMS has taken the position that it is the lessee's responsibility under the lease and the operating regulations at 43 CFR 3260.5(c) to transport the resource from the wellhead to the point of utilization (powerplant or direct utilization facility) in an efficient manner. As a general rule, geothermal utilization facilities are located close to the production well, usually within a mile. However, it is possible to transport hot water several miles, or even tens of miles, for space-heating purposes. The MMS currently considers all pipelines connecting wellheads and powerplants or direct utilization facilities as a field gathering system, and all costs of gathering are regarded as production-related costs that are not shared by the Government. Nevertheless, to consider possible futher long distance transportation, MMS is requesting comments on whether transportation allowances are justified to transport the resource off the lease, unit, or participating area. If transportation allowances are granted, they would require that the lessee follow a strict reporting procedure; the reporting requirements would likely include the submittal of detailed documents supporting the lessee's allowance.

With regard to inclusion of the costs of hydrogen sulfide abatement facilities and other facilities to mitigate environmental hazards as part of the generating deduction under the netback procedure, MMS has taken the position that the lessee is solely responsible for all activities related to operation of the lease and management of the resource in an environmentally sound manner, pursuant to 43 CFR 3262.1(b). This is particularly appropriate when the powerplant or direct utilization facility is located on the lease. The MMS is aware that geothermal emissions, particularly hydrogen sulfide, are restricted in many areas by local environmental authorities, and thus the geothermal resource can only be utilized when the environmetal restrictions are mitigated. Accordingly, MMS is requesting comments on whether the costs of hydrogen sulfide abatement facilities and other facilities to mitigate environmental hazards can be justifiably included in the generating deduction.

With regard to the granting of processing allowances for geothermal resources used in direct utilization

processes, MMS at this time cannot conceive of any circumstances that would warrant a direct utilization processing allowance. Direct utilization normally involves the use of a heat exchanger, which would be required whether a geothermal resource is used as the heat source or whether some other fuel is used as a heat source. Nevertheless, MMS is requesting comments on what direct utilization technologies would justify a processing allowance and, accordingly, on whether a processing allowance should be provided in the valuation regulations.

V. Procedural Matters

Executive Order 12291

The Department of the Interior (Department) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking will establish regulations to reflect current policy and practices with respect to the valuation of geothermal resources used for electrical generation and provide standards for valuing geothermal byproducts and resources used in direct utilization processes.

Regulatory Flexibilty Act

Because this rule primarily clarifies existing regulations, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5. U.S.C. 601 et seq.)

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 202.353, 210.352, and 210.354 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010–0033 and 1010–0022.

The public reporting burden for this collection of information is estimated to vary from ½ to 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 632, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-Mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 212

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: October 7, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 206, 210, and 212 are proposed to be amended as follows:

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; 43 U.S.C. 1801 et seq.

2. Subpart H consisting of §§ 202.350 through 202.353, is added to read as follows:

Subpart H—Geothermal Resources

Sec.
- 202.350 Scope and definitions.
- 202.351 Royalties on geothermal resources.
- 202.352 Minimum royalty.
- 202.353 Measurement standards for reporting and paying royalties.

Subpart H—Geothermal Resources

§ 202.350 Scope and definitions.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 et seq.).

(b) The definitions in Subpart H of 30 CFR Part 206 are applicable to this subpart.

§ 202.351 Royalties on geothermal resources.

(a) Royalties on geothermal resources, including byproduct minerals and commercially demineralized water, shall be at the royalty rates specified in the lease, unless the Secretary temporarily waives, suspends, or reduces the royalty rate(s) set forth in the lease. Royalties shall be paid in value. The royalty due shall be the value determined pursuant to 30 CFR Part 206 multiplied by the royalty rate in the lease.

(b)(1) Royalties are due on all geothermal resources, except those specified in paragraph (b)(2) of this section, that are produced from a lease and are sold or utilized by the lessee or are reasonably susceptible to sale or utilization by the lessee.

(2) Geothermal resources that are unavoidably lost, as determined by BLM, and geothermal resources that are reinjected prior to use on or off the lease, as approved by BLM, are royalty free. The MMS will allow free of royalty a reasonable amount of geothermal energy necessary to generate electricity for internal powerplant operations or to generate electricity returned to the lease for lease operations. If a powerplant uses geothermal production from more than one lease, or uses unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the powerplant may be used royalty free. The MMS will also allow free of royalty a reasonable amount of commercially demineralized water necessary for powerplant operations or otherwise used on or for the benefit of the lease.

(3) Royalties on byproducts are due at the time the recovered byproduct is used, sold, or otherwise finally disposed of. Byproducts produced and added to stockpiles or inventory do not require payment of royalty until the byproducts are sold, utilized, or otherwise finally disposed of. The MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventories become excessive.

(c) If BLM determines that geothermal resources (including byproducts) were avoidably lost or wasted from the lease, or that geothermal resources (including byproducts) were drained from the lease for which compensatory royalty is due, the value of those geothermal resources shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance or other compensation for unavoidably lost geothermal resources (including byproducts), royalties at the rates specified in the lease are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

§ 202.352 Minimum royalty.

In no event shall the lessee's annual royalty payments for any producing lease be less than the minimum royalty established by the lease.

§ 202.353 Measurement standards for reporting and paying royalties.

(a) For geothermal resources used to generate electricity, the quantity on which royalty is due shall be reported on Form MMS–2014 in accordance with the following paragraphs:

(1) For geothermal resources valued under arm's-length or non-arm's-length contracts, quantities shall be reported in (i) kilowatthours to the nearest whole kilowatthour if the contract specifies payment in terms of generated electricity, (ii) thousands of pounds to the nearest whole thousand pounds if the contract specifies payment in terms of weight, or (iii) millions of Btu's to the nearest whole million Btu if the contract specifies payment in terms of heat or thermal energy.

(2) For geothermal resources valued by the netback procedure pursuant to 30 CFR 206.352(d), the quantities shall be reported in kilowatthours to the nearest whole kilowatthour.

(b) For geothermal resources used in direct utilization processes, the quantity on which royalty is due shall be reported on Form MMS–2014 in hundreds of gallons to the nearest hundred gallons of geothermal fluid produced.

(c) For byproduct minerals, the quantity on which royalty is due shall be reported on Form MMS–2014 consistent with reporting requirements standards established by MMS.

(d) For commercially demineralized water, the quantity on which royalty is due shall be reported on Form MMS–2014 in hundreds of gallons to the nearest hundred gallons.

(e) Lessees are not required to report the quality of geothermal resources, including byproducts, to MMS. The lessee must maintain quality measurements for audit and valuation purposes. Quality measurements include, but are not limited to, temperatures and chemical analyses for fluid geothermal resources and chemical analyses, weight percent, or other purity measurements for byproducts.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subpart H, consisting of §§ 206.350 through 206.358, is revised to read as follows:

Subpart H—Geothermal Resources

Sec.
- 206.350 Purpose and scope.
- 206.351 Definitions.
- 206.352 Valuation standards for electrical generation.
- 206.353 Determination of transmission deductions.
- 206.354 Determination of generating deductions.
- 206.355 Valuation standards for direct utilization.
- 206.356 Valuation standards for byproducts.
- 206.357 Byproduct transportation allowances—general.
- 206.358 Determination of byproduct transportation allowances.

Subpart H—Geothermal Resources

§ 206.350 Purpose and scope.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001, et seq.). The purpose of this subpart is to establish the value of geothermal production for royalty purposes.

(b) All royalty payments made to MMS are subject to audit and adjustment.

§ 206.351 Definitions.

For purposes of this subpart:

"Arm's-length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify the claimed nature of ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for the production month as well as when the contract was executed. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with, another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 10 through 50 percent creates a rebuttable presumption of control; and

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal geothermal leases.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Byproduct" means (1) any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or developed in association with geothermal fluids and which have a value of less than 75 per centum of the value of the geothermal energy or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and (2) commercially demineralized water.

"Byproduct recovery facility" means the facility or facilities at which byproducts are placed in marketable condition.

"Byproduct transportation allowance" means an approved allowance for the lessee's reasonable, actual costs, excluding gathering, incurred for moving byproducts, including commercially demineralized water, to a point of sale

or point of delivery off the lease, unit area, or communitized area.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Deduction" means a subtraction used in the geothermal netback procedure for determining the value of geothermal resources utilized by the lessee to generate electricity. "Transmission deduction" means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's powerplant to the purchaser's delivery point. "Generating deduction" means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

"Delivered electricity" means the amount of electricity in kilowatthours delivered to the purchaser.

"Direct utilization" means any process other than electrical generation in which the thermal energy of the geothermal resource is utilized, including, but not limited to, space heating, greenhouse operations, and industrial or agricultural process heat.

"Field" means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all geothermal accumulations know to be within that reservoir. Geothermal fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

"Gathering" means the efficient movement of lease production from the wellhead to the point of utilization.

"Generated electricity" means the total electricity—plant tailgate electricity, plant parasitic electricity, and electricity returned to the geothermal lease for lease operations—in kilowatthours generated by the powerplant and attributable to the geothermal resource. Generated electricity is measured at the generator(s).

"Geothermal netback procedure" means the method of determining the value of geothermal resources that are utilized in a lessee-owned powerplant for the generation and sale of electricity, for which there are no sales of the geothermal resource on which to base value. The method involves the deduction of the lessee's reasonable, actual transmission and generating costs from the sales price or value of the electricity to derive the value of the geothermal resource at the powerplant inlet; the inlet value is equivalent to the value of production.

"Geothermal resources" means (1) all products of geothermal processes, including indigenous steam, hot water, and hot brines; (2) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (3) heat or other associated energy found in geothermal formations; and (4) any byproducts derived from them.

"Geothermal utilization facility" means a powerplant or direct utilization facility that utilizes the heat or other energy of the geothermal resource.

"Gross proceeds" (for royalty purposes) means the total monies and other consideration accruing to a geothermal lessee for any disposition of geothermal resources, including total payments for the sale of electricity generated by the lessee from lease-produced geothermal resources. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as wheeling, effluent injection, hydrogen sulfide abatement, field operation and maintenance, drilling or workover of wells, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds also includes, but is not limited to, reimbursements for production taxes and other taxes. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Lease" means a geothermal lease issued under authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 et seq.), unless the context indicates otherwise.

"Lessee" means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility. This also includes any affiliate of the lessee that utilizes the geothermal resource to generate electricity, in a direct utilization process, or to recover byproducts, or any affiliate that transports lease production.

"Like-quality lease products" means lease products that have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field.

"Minimum royalty" means the minimum amount of annual royalty as specified in the lease or in applicable leasing regulations that the lessee must pay after commencement of geothermal production in commercial quantities.

"No sales" means the utilization or disposal of geothermal resources without the benefit of a sale.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

"Plant tailgate electricity" means the amount of electricity in kilowatthours generated by the powerplant exclusive of plant parasitic electricity and electricity returned to the lease for lease operations. Plant tailgate electricity should be measured on, or calculated for, the high voltage side of the transformer in the plant switchyard.

"Point of utilization" means the powerplant or direct utilization facility in which the geothermal resource (steam or hot water) is utilized.

"Reasonable alternative fuel" means a conventional fuel (coal, oil, or gas) that would normally be used as a source of heat in direct utilization operations.

"Secretary" means the Secretary of the Department of the Interior or any person duly authorized to exercise the powers vested in that officer.

"Selling arrangement" means the individually contracted arrangements under which sales or disposition of geothermal resources, including byproducts and electricity sales where the lessee generates electricity from lease geothermal production, are made.

"Spot market price" means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding 1 year.

"Wheeling" means the transmission of electricity from a powerplant to the point of delivery.

§ 206.352 Valuation standards for electrical generation.

(a) The value of geothermal resources produced from leases subject to this subpart and used to generate electricity shall be determined pursuant to this section.

(b)(1)(i) The value of geothermal resources that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to the seller for the geothermal resource. If the contract does not reflect the total consideration, MMS may require that the geothermal resource sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require the geothermal resource to be valued pursuant to paragraph (c) of this section, and notification provided to MMS in accordance with paragraph (d)(3) of this section. If MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) The MMS may require a lessee to certify that the provisions in its arm's-length contract include all of the consideration to be paid by the buyer, either directly or indirectly, for the geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract or that are not subject to a sales transaction but are instead utilized directly by the lessee in its own powerplant for the generation and sale of electricity shall be determined in accordance with the first applicable paragraph of the following paragraphs.

(i) The weighted average of the gross proceeds paid or received by the lessee under its own arm's-length contracts for the purchase or sale of similar quantities of like-quality geothermal resources in the same field;

(ii) The value determined by the netback procedure described in paragraph (c)(2) of this section; or any other reasonable valuation method approved by MMS.

(2) Under the geothermal netback procedure, the lessee's reasonable actual costs for the generation and transmission of electricity shall be deducted from the lessee's gross proceeds received for the sale of electricity to determine the value of the geothermal resource. Transmission deductions shall be determined pursuant to § 206.353 of this subpart. Generating deductions shall be determined pursuant to § 206.354 of this subpart.

(3) Value determinations made pursuant to this paragraph are subject to the notification requirements of paragraph (d) of this section.

(d)(1) The lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) of this section and 30 CFR Part 212. Such data shall be subject to review and audit and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or to other authorized persons any and all contracts for the sale or other disposition of the lease production; contracts for the sale, generation, and/or transmission of electricity attributable to lease production; and arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee where geothermal resources are sold pursuant to arm's-length or non-arm's-length contracts.

(h) The lessee is required to place geothermal resources in marketable condition and to deliver geothermal resources to the powerplant at no cost to the Federal lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the geothermal resource in marketable condition or deliver it to the powerplant.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to the contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This

paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

§ 206.353 Determination of transmission deductions.

(a) Where the value of geothermal energy is determined by the geothermal netback procedure pursuant to § 206.352(c)(1)(ii) of this subpart, a transmission deduction shall be subtracted from the lessee's gross proceeds received for the sale of electricity to determine the plant tailgate value of the electricity. The transmission deduction consists of either or both of two components: Transmission-line costs as determined pursuant to paragraph (b) of this section and wheeling costs if the electricity is transmitted across a third-party's transmission line under an arm's-length wheeling agreement. Transmission deductions are subject to the limitation prescribed in paragraph (c) of this section.

(b)(1) Transmission-line costs are based on the lessee's actual costs associated with the construction and operation of a transmission line. The monthly transmission-line cost component of the transmission deduction is determined by multiplying the annual transmission-line cost rate (in dollars per kilowatthour) by the amount of electricity delivered for the reporting month. The transmission-line cost rate is redetermined annually at the beginning of the month marking the anniversary in which the transmission line was placed into service, or, at the lessee's option, at a time concurrent with the beginning of the lessee's annual corporate accounting period. After a deduction period is chosen, the lessee may not later elect to use a different deduction period without MMS approval; transmission deduction periods must coincide with generating deduction periods.

(2) Allowable transmission-line costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the transmission line multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for fixed assets, including costs of delivery and installation of capital equipment (but excluding real estate purchases) that are an integral part of the transmission line.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expenses that the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transmission line; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transmission line is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee must use a straight-line depreciation method based on the expected life of the geothermal project, usually the term of the electricity sales contract unless the lessee can show otherwise. A change in ownership of a transmission line shall not alter the depreciation schedule established by the original lessee-owner for purposes of computing transmission-line costs. With or without a change in ownership, a transmission line shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value. The rate of return used to compute the return on undepreciated capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the transmission line multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transmission lines first placed in service on or after March 1, 1988.

(v) The rate of return shall be 1.5 times the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be 1.5 times the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the annual operating period for which the deduction is applicable and shall be effective during the following operating year. The rate shall be redetermined annually at the beginning of the month marking the service anniversary of the transmission line or the beginning of the lessee's annual corporate accounting period, whichever is chosen for determination of the transmission deduction.

(3) Transmission-line cost rates, determined annually, are computed by dividing the sum of the operating, maintenance, overhead, and capital costs by the annual amount of delivered electricity.

(4) For new transmission lines, the lessee's costs for the first year of operation shall be based on estimated expenses (including overhead) for operating and maintaining the transmission line. For subsequent years of operations, the transmission-line costs shall be based on the lessee's actual operating and maintenance expenses for the previous year plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the deduction.

(c)(1) Except as provided in paragraph (c)(2) of this section, transmission deductions (transmission-line costs and/or wheeling costs) shall not exceed 50 percent of the lessee's gross proceeds received for the sale of electricity.

(2) Upon request by the lessee, MMS may approve a transmission deduction in excess of the limit prescribed by paragraph (c)(1) of this section. The lessee must demonstrate that the transmission-line and/or wheeling costs in excess of the limit are reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances shall the value of the geothermal resource be reduced to zero.

(d)(1) If the actual transmission deduction, as determined at the end of the annual reporting period, is less than the amount the lessee estimated and used in the netback procedure during the reporting period, the lessee shall be required to pay additional royalties retroactive to the first month of the reporting period, plus interest computed pursuant to 30 CFR 218.302. If the actual transmission deduction is greater than the amount applied in the netback calculation, the lessee shall be entitled to a credit.

(2) Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments in accordance with instructions provided by MMS.

(e)(1) All transmission deductions are subject to review, audit, and adjustment. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transmission deduction and adjust royalty values accordingly.

(2) The lessee must maintain all data and records, including wheeling and other transmission-related agreements, supporting its transmission deduction pursuant to 30 CFR Part 212. These data and records must be made available to MMS and other authorized personnel upon request, and shall be maintained in a confidential manner in accordance with applicable laws and regulations pursuant to § 206.352 of this subpart.

§ 206.354 Determination of generating deductions.

(a) Where the value of geothermal energy is determined by the geothermal netback procedure pursuant to § 206.352(c)(1)(ii) of this subpart, that value shall be determined by deducting the lessee's reasonable actual costs incurred to generate electricity from the plant tailgate value of the electricity (usually the transmission-reduced value of the delivered electricity). Generating deductions are subject to the limitation prescribed in paragraph (c) of this section.

(b)(1) Generating costs are based on the lessee's actual annual costs associated with the construction and operation of a geothermal powerplant. The monthly generating deduction is determined by multiplying the annual generating cost rate (in dollars per kilowatthour) by the amount of plant tailgate electricity measured (or computed) for the reporting month. The generating cost rate is determined from the annual amount of generated electricity and is redetermined annually at the beginning of the month marking the anniversary in which the powerplant was placed into service or, at the lessee's option, at a time concurrent with the beginning of the lessee's annual corporate accounting period. After a deduction period is chosen, the lessee may not later elect to use a different deduction period without MMS approval; generating deduction periods must coincide with transmission deduction periods.

(2) Allowable generating costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the powerplant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for fixed assets, including costs of delivery and installation of capital equipment (but excluding real estate purchases) that are an integral part of the powerplant. The costs of hydrogen sulfide abatement facilities and other facilities to mitigate environmental hazards and the costs of gathering systems and other production-related facilities are not allowed.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; materials; ad valorem property taxes; rent; supplies; auxiliary fuel and/or utilities used to operate the powerplant during down time; and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the powerplant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the powerplant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract. A change in ownership of a powerplant shall not alter the depreciation schedule established by the original lessee-owner for computing the generating costs. With or without a change in ownership, a powerplant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value. The rate of return used to compute the return on undepreciated capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the powerplant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to powerplants first placed in service on or after March 1, 1988.

(v) The rate of return shall be 1.5 times the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be 1.5 times the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the annual operating period for which the deduction is applicable and shall be effective during the following operating year. The rate shall be redetermined annually at the beginning of the month marking the service anniversary of the powerplant or the beginning of the lessee's annual corporate accounting period, whichever is chosen for determination of the generating deduction.

(3) Generating cost rates, determined annually, are computed by dividing the sum of the operating, maintenance, overhead, and capital costs by the annual amount of generated electricity.

(4) For new powerplants, the lessee's generating costs for the first year of operation shall be based on estimated expenses (including overhead) for operating and maintaining the powerplant. For subsequent years of operations, the generating costs shall be based on the lessee's actual operating and maintenance expenses for the previous year plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the deduction.

(c)(1) Except as provided in paragraph (c)(2) of this section, generating deductions shall not exceed 66⅔ percent of the plant tailgate value of electricity.

(2) Upon request by the lessee, MMS may approve a generating deduction in excess of the limit prescribed by

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paragraph (c)(1) of this section. The lessee must demonstrate that the generating costs in excess of the limit are reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for MMS to make a decision. Under no circumstances shall the value of the geothermal resource be reduced to zero.

(d)(1) If the actual generating deduction, as determined at the end of the annual reporting period, is less than the amount of the lessee estimated and used in the netback procedure during the reporting period, the lessee shall be required to pay additional royalties due, retroactive to the first month of the reporting period, plus interest computed pursuant to 30 CFR 218.302. If the actual generating deduction is greater than the amount applied in the netback calculation, the lessee shall be entitled to a credit.

(2) Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments in accordance with instructions provided by MMS.

(e)(1) All generating deductions are subject to review, audit, and adjustment. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual generating deduction and adjust royalty values accordingly.

(2) The lessee must maintain all data and records supporting its generating deduction pursuant to 30 CFR Part 212. These data and records must be made available to MMS and other authorized personnel upon request, and shall be maintained in a confidential manner in accordance with applicable law and regulations, pursuant to § 206.352 of this subpart.

§ 206.355 Valuation standards for direct utilization.

(a) The value of geothermal resources produced from leases subject to this subpart and used in direct utilization processes shall be determined pursuant to this section.

(b)(1)(i) The value of geothermal resources that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the geothermal resource. If the contract does not reflect the total consideration, the MMS may require that the geothermal resource sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the geothermal resource because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require the geothermal resource to be valued pursuant to paragraph (c)(ii) or (c)(iii) of this section and in accordance with the notification requirements of paragraph (d) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract or that are not subject to a sales transaction but are instead used directly by the lessee in its own utilization facility shall be determined in accordance with the first applicable paragraph of the following paragraphs:

(i) The weighted average of the gross proceeds paid or received by the lessee under its own arm's-length contracts for the purchase or sale of similar quantities of like-quality geothermal resources in the same field;

(ii) The equivalent value of the least expensive, reasonable alternative energy source (fuel) as determined pursuant to paragraph (c)(2) of this section; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) The equivalent value of the least expensive, reasonable alternative energy source shall be based on the amount of thermal energy that would otherwise be used by the direct utilization process in place of the geothermal resource. That amount of thermal energy (in Btu's) displaced by the geothermal resource shall be determined by the equation

$$\text{thermal energy displaced} = \frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume,}}{\text{efficiency factor}}$$

where h_{in} shall be the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} shall be the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density shall be in lbs/cu ft based on inlet temperature, the factor 0.133681 (cu ft/gal) converts gallons to cubic feet, and volume shall be the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency of the alternative energy source shall be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by MMS.

(3) Valuations made pursuant to this paragraph are subject to the notification requirements of paragraph (d) of this section.

(d)(1) The lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) of this section, pursuant to 30 CFR Part 212. Such data shall be subject to review and audit and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or to other authorized persons any and all contracts for the sale of other disposition of the lease production, and any arm's-length and/or non-arm's length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) of this section. The notification shall be by letter to MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed on that difference pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee where geothermal energy is sold pursuant to arm's-length or non-arm's-length contracts.

(h) The lessee is required to place geothermal resources in maketable condition and to deliver geothermal resources to the direct utilization facility at no cost to the Federal lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the geothermal resource in marketable condition or to deliver it to the direct utilization facility.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or on part or timely, for a quantity of geothermal resources.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

§ 206.356 Valuation standards for byproducts.

(a) The value of geothermal byproducts, including commercially demineralized water, shall be determined pursuant to this section, less applicable byproducts transportation allowances determined pursuant to §§ 206.357 and 206.358 of this subpart.

(b)(1)(i) The value of byproducts that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The values which the lessee reports, for royalty purposes, are subject to monitoring, review, and audit.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the byproducts. If the contract does not reflect the total consideration, MMS may require that the byproducts sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including any consideration additionally received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require that the byproduct production be valued pursuant to paragraph (c)(2), (c)(3), or (c)(4) of this section, and in accordance with the notification requirements of paragraph (d) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported byproduct value.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the byproduct.

(c) The value of byproducts that are sold pursuant to a non-arm's-length contract or that are utilized by the lessee (no sales), except demineralized water used for the benefit of the lease pursuant to § 202.351(b)(2) of this subpart, shall be determined in accordance with the first applicable paragraph of the following paragraphs:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for sales, purchases, or other dispositions of like-quality byproducts

in the field. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets serviced, terms, quality of byproduct, quantity, and such other factors as may be appropriate to reflect the value of the byproduct;

(2) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for sale, purchases, or other dispositions of like-quality byproducts outside the field. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets serviced, terms, quality of byproduct, quantity, and such other factors as may be appropriate to reflect the value of the byproduct;

(3) Other relevant matters including, but not limited to, published or publicly available spot-market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain byproducts;

(4) A netback method or any other reasonable method used to determine value.

(d)(1) The lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) of this section and 30 CFR Part 212. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS or State representatives, to the Office of the Inspector General of the Department of the Interior, or to other authorized persons any and all contracts and/or invoices for the sale or other disposition of the byproducts, and any arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or other area as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) of this section, and each time there is a change in a method under paragraph (c) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value, for royalty purposes, be less than the gross proceeds accruing to the lessee, less applicable byproduct transportation allowances determined pursuant to §§ 206.357 and 206.358 of this subpart.

(h) The lessee is required to place the byproducts in marketable condition at no cost to the Federal Government. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the byproducts in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value byproducts, for royalty purposes, for a period not to exceed 2 years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of byproducts.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including byproduct transportation allowances pursuant to §§ 206.357 and 206.358 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

§ 206.357 Byproduct transportation allowances—general.

(a) Where the value of byproducts has been determined at a point off the geothermal lease, MMS shall allow a deduction in determining value, for royalty purposes, for the lessee's reasonable, actual costs incurred to:

(1) Transport the byproducts from a Federal lease to a sales point or point of delivery that is off the lease; or

(2) Transport the byproducts from a Federal lease or from a geothermal utilization facility to a recovery facility when that recovery facility is off the lease and, if applicable, from the recovery facility to a sales point or point of delivery off the lease. Costs for transportation between the lease and the geothermal utilization facility, whether on or off the lease, shall not be included in the transportation allowance.

(b) Under no circumstances shall the byproduct transportation allowance authorized by paragraph (a) of this section reduce the value of the byproducts under any selling arrangement to zero.

(c)(1) When byproducts are transported from a lease or geothermal utilization facility to a byproduct recovery facility, the lessee is not required to allocate transportation costs between the quantity of marketable byproduct and the rejected waste material. The byproduct transportation allowance shall be authorized for the total production that is transported. Byproduct transportation allowances shall be expressed as a cost per unit of marketable byproduct transported.

(2) For byproducts that are extracted on lease or at the geothermal utilization facility, the byproduct transportation allowance shall be authorized for the total production that is transported to a point of sale off the lease. Byproduct transportation allowances shall be expressed as a cost per unit of byproduct transported.

(3) Transportation costs shall only be recognized as allowances when the transported byproduct is sold, delivered, or otherwise utilized by the lessee and royalties are reported and paid.

(d) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review and/or audit, MMS determines that a lessee has improperly determined a byproduct transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.302, or shall be entitled to a credit, without interest.

(e) If byproducts produced from Federal and non-Federal leases are commingled for transportation, lessees shall not disproportionately allocate transportation costs to Federal leases.

(f) Upon request, the lessee shall make available to authorized MMS and State representatives, to the Office of the Inspector General of the Department of the Interior, or to other authorized persons all transportation contracts and all other information as may be necessary to support a byproduct transportation allowance.

(g) Byproduct transportation allowances are to be reported as separate lines on Form MMS–2014.

§ 206.358 Determination of byproduct transportation allowances.

(a) *Arm's-length contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the byproducts under that contract, subject to monitoring, review, audit, and possible future adjustments. The MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length transportation contract.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, MMS may require that the byproduct transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If MMS determines that the consideration paid pursuant to an arm's-length byproduct transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require that the byproduct transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the byproduct transportation allowance will be based upon the lessee's reasonable actual costs. All byproduct transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of byproduct transportation alowances is not required for non-arm's-length or no-contract situations.

(2) The byproduct transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for fixed assets, including costs of delivery and installation of capital equipment (but excluding real estate purchases), that are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expenses that the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative.

(A) To compute depreciation, the lessee must use a straight-line depreciation method based on, as appropriate, either the life of equipment or the life of the geothermal project that the transportation system services. After an election is made, the lessee may not change methods. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value. The rate of return used to

compute the return on undepreciated capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation.

(v) The rate of return shall be 1.5 times the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be 1.5 times the monthly average as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period.

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Subpart H, consisting of §§ 210.350 through 210.355, is revised to read as follows:

Subpart H—Geothermal Resources

Sec.
210.350 Definitions.
210.351 Required recordkeeping.
210.352 Payor information forms.
210.353 Special forms and reports.
210.354 Monthly report of sales and royalty.
210.355 Reporting instructions.

Subpart H—Geothermal Resources

§ 210.350 Definitions.

Terms used in this subpart shall have the same meaning as in 30 CFR 206.351.

§ 210.351 Required recordkeeping.

Information required by the MMS shall be filed using the forms prescribed in this subpart, which are available from MMS. Records may be maintained on microfilm, microfiche, or other recorded media that are easily reproducible and readable. See Subpart H of 30 CFR Part 212.

§ 210.352 Payor information forms.

The Payor Information Form (Form MMS–4025) must be filed for each Federal lease on which geothermal royalties (including byproduct royalties) are paid. Where specifically determined by MMS, Form MMS–4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS–4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease that changes the paying responsibility on the lease. The Form MMS–4025 shall identify the payor of production royalty, and identify revenue sources and selling arrangements for all leased geothermal resources (including byproducts). After filing the initial form, a new Form MMS–4025 must be filed no later than 30 days after the occurrence of any of the following:

(a) Assignment of all or any part of the lease;
(b) Production of a new product;
(c) A change in a selling arrangement;
(d) Change in royalty rate;
(e) Change of payor; or
(f) Abandonment of a lease.

§ 210.353 Special forms and reports.

The MMS may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this subpart are necessary, instructions for the filing of such forms or reports will be given by MMS. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

§ 210.354 Monthly report of sales and royalty.

A report of sales and royalty for each productive lease must be reported on Form MMS–2014, Report of Sales and Royalty Remittance, each month once sales or utilization of production occur, even though sales may be intermittent, unless otherwise authorized by the MMS. This report is due on or before the last day of the month following the month in which production was sold or utilized, together with the royalties due the United States.

§ 210.355 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an *Auditing and Financial System (AFS) Oil and Gas Payor Handbook* which is available from: Minerals Management Service, Attention: Lessee Contact Branch, P.O. Box 5760, TA, Denver, CO 80217.

(b) Royalty payors should refer to this handbook for specific guidance with respect to geothermal resources reporting requirements. If additional information is required, the payor should contact the MMS Lessee Contact Branch at the above address. The appropriate telephone numbers are listed in the handbook.

PART 212—RECORDS AND FILES MAINTENANCE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 35 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Part 212 is amended by revising the titles of Subparts B, C, D, F, and G to read as follows:

Subpart B—Oil, and OCS Sulfur—General

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. A new Subpart H consisting of §§ 212.350 through 212.352, is added to Part 212 to read as follows:

Subpart H—Geothermal Resources

Sec.
212.350 Definitions.
212.351 Required recordkeeping and reports.
212.352 Records and files maintenance.

Subpart H—Geothermal Resources

§ 212.350 Definitions.

Terms used in this subpart shall have the same meaning as in 30 CFR 206.351.

§ 212.351 Required recordkeeping and reports.

(a) All records pertaining to Federal geothermal leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

(b) The Associate Director for Royalty Management shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all products extracted, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of extraction, power generation, electrical transmission, wheeling, and byproduct transportation.

§ 212.352 Records and files maintenance.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, and other payments related to Federal geothermal leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this Chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to MMS for use in its Auditing and Financial System (AFS), or in its Production Accounting and Auditing System (PAAS).

(b) *Period for keeping records.* Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction record occurred unless the Secretary notifies the recordholder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until MMS releases the recordholder, in writing, from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records (generated during the period for which they have paying or operating responsibility on the lease) for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be made available at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce historical records.

4. A heading for Subpart I is added to Part 212 entitled:

Subpart I—OCS Sulfur [Reserved]

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federal register

Thursday
January 5, 1989

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Proposed Funding Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Proposed Funding Priority

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority.

SUMMARY: The Secretary proposes to establish this annual funding priority for the Educational Media Research, Production, Distribution, and Training Program to ensure effective use of program funds and to direct funds to the area identified during Fiscal Year 1989.

DATE: Comments must be received on or before February 6, 1989.

ADDRESS: Comments should be addressed to Joseph Clair, Division of Educational Services, Office of Special Educational Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4622—M/S 2644), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 732–4503.

SUPPLEMENTARY INFORMATION: The Educational Media Research, Production, Distribution and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) Conducting research on the use of educational media and technology for persons with handicaps; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual and potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instruction of handicapped persons.

Proposed Priority

Government Subsidization for the Manufacture and Distribution of a Line 21 Decoder (CFDA 84.026)

This priority supports a cooperative agreement to produce and distribute a decoder nationally. The applicant must submit a plan which, in addition to describing the specific features of the decoder, details how at least 33,000 Line 21 decoders will be produced and distributed nationally. The applicant must provide evidence of quality assurance in decoder design. The applicant must provide evidence of product reliability, and must provide a plan for warranty and repair service. The timeline for production of at least 33,000 Line 21 decoder units must be detailed enough to assure that a continuing supply of decoders will be nationally available to consumers who are hearing impaired no later than 30 days following the award. The projected timelines must be supported by commitments of full production and distribution from one or more manufacturers and retailers to assure production and sale of these units nationally. The applicant shall provide a projected retail price including any dealer markups and, to the extent possible, should relate cost factors to specific features of the decoder.

Finally, applicants shall describe an evaluation plan that allows monthly tracking and reporting of the number of subsidized decoders produced, the number of decoders distributed but unsold, the number (if any) of decoders on backorder, the number (if any) and type of complaints received relating to the decoder, and the number and type of service requests received.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority to the address in this notice.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 4622, Switzer Building, 330 C Street SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 1451(a)(2)

Dated: November 30, 1988.

(Catalog of Federal Domestic Assistance No. 84.026: Educational Media Research, Production, Distribution, and Training)

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–173 Filed 1–4–89; 8:45 am]

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federal register

Thursday
January 5, 1989

Part IV

Department of Education

National Institute of Disability and Rehabilitation Research; Proposed Funding Priority for Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Proposed Funding Priority for Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal year 1989.

SUMMARY: The Secretary of Education proposes a funding priority for a research activity to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1989.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priority on or before February 6, 1989.

ADDRESS: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Room 3422, Switzer Building, Washington, DC 20202–2601.

FOR FURTTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the Rehabilitation Research and Training Centers program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, that are affiliated with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

In the 1989 Appropriations for the Departments of Health and Human Services, Labor, and Education Act, (Pub. L. 100–436), Congress provided funds for an RRTC in pediatric rehabilitation. NIDRR invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority. The publication of this proposed priority does not bind the Federal Government to fund projects in these areas, except as otherwise directed by statute.

A program of Rehabilitation Research and Training Centers has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be accessible to individuals with a range of handicapping conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdiciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Priority

Rehabilitation of Infants, Children, and Youth With Disabilities or Chronic Illnesses

One of the landmark studies of children with special needs, the Project on the Classification of Exceptional Children sponsored by the Department of Health, Education, and Welfare, led to the publication in 1975 of *The Futures of Children* by the late Nicholas Hobbs and colleagues. There are still many priority areas set forth in that report that have not been addressed adequately. In addition, new research issues concerning psychosocial development, service delivery, and policy have emerged from the integration of infants, children, and adolescents with disabilities and chronic illnesses into their communities.

Policy issues include alternatives to institutionalization or long-term hospitalization for children whose families cannot care for them physically or financially, and age-appropriate, integrated models of child care that will enable parents of children with disabilities or chronic illnesses to continue employment or to have respite services. At an individual level, there is a need for studies on the impact of a disability or chronic illness on a child's social and emotional development and on the efforts of schools and other institutions to prevent the development of secondary adjustment problems in these children.

NIDRR expects to fund a Center that will focus on the full age range from birth to fifteen years and will conduct all research activities in integrated community settings. Such a Center must involve older children with disabilities or chronic illnesses and parents of such children in planning and evaluating the research. The Center must provide for collaborative research and training among at least three geographically distributed sites, and must coordinate activities with other relevant RRTCs, Parent Networks, national organizations representing disability concerns, and University Affiliated Facilities. An absolute priority is proposed for an RRTC to:

- Investigate alternatives to long-term hospitalization and institutionalization for children in families that are physically and financially limited in their abilities to provide care, and develop and test strategies for use by State and other agencies to implement alternative solutions that will promote the psychosocial development of children with disabilities and chronic illnesses;
- Identify and evaluate integrated, age-appropriate models of child care that will facilitate normalized psychosocial development for children and youth with disabilities and chronic illnesses;
- Investigate the patterns of social and emotional development in children and youth with different chronic illness or disabilities;
- Develop and evaluate appropriate interventions to promote social and psychological development in these children;
- Investigate the impact of disability and chronic illness on minority children, particularly as they affect family attitudes toward, and relationships with, these children and the types of services these children receive, and develop culturally sensitive interventions to enhance the psychosocial development of minority children with disabilities and chronic illnesses;
- Develop and evaluate strategies to enable older children and adolescents with disabilities or chronic illnesses to participate effectively in goal-setting and service planning decisions, and develop training programs for service providers as well as for youth themselves that will enhance the role of youth in these processes; and
- Identify, develop, and evaluate curricula, practices, and materials used with educators, service providers, and parents to enhance the psychosocial development of children and youth who have disabilities of chronic illnesses.

Authority: 29 U.S.C. 762(b)(1)

Dated: November 22, 1988.

(Catalog of Federal Domestic Assistance No. 84.133B, National Institute on Disability and Rehabilitation Research)

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–174 Filed 1–4–89; 8:45 am]

BILLING CODE 4001-01-M

federal register

Thursday
January 5, 1989

Part V

Environmental Protection Agency

40 CFR Part 180
Interim Policy for Sulfiting Agents on Grapes; Extension of Policy Statement

Pesticide Tolerance for Sulfur Dioxide; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-36145D; FRL 3502-6]

Interim Policy for Sulfiting Agents on Grapes; Extension of Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of policy statement.

SUMMARY: This document announces that EPA is extending its interim policy regarding the use of sulfiting agents on grapes until a tolerance for sulfur dioxide residues in or on grapes is established. Elsewhere in this issue of the **Federal Register**, EPA is concurrently proposing that a tolerance of 10 parts per million (ppm) be established for sulfur dioxide residues on grapes. This extension will allow the continued marketing of sulfite-treated grapes until a final rule is issued.

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT:
By mail:
Walter C. Francis, Antimicrobial Program Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-6909.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 31, 1986 (51 FR 47240), EPA announced an interim policy requiring that each domestic or foreign shipper have an acceptable certification program to ensure that residues of sulfites (determined as sulfur dioxide) on grapes be below the current level of detection under the modified Monier-Williams procedure (i.e., less than 10 ppm) when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce.

EPA's action was prompted by an announcement by the Food and Drug Administration (FDA) in the **Federal Register** of July 9, 1986 (51 FR 25021), that the use of sulfiting agents as preservatives on raw fruits and vegetables served or sold to consumers was no longer deemed to be generally recognized as safe (GRAS) because some individuals experience severe allergic reactions to sulfite residues on food. FDA's action did not affect the use of sulfiting agents as pesticides on grapes because the pesticidal use is within EPA's jurisdiction.

In light of FDA's action, and because EPA no longer regarded the use of sulfiting agents on grapes as if it were GRAS (for the reasons set forth by FDA with regard to preservative uses), and had not established a tolerance for sulfite residues in or on grapes, EPA adopted the measures specified in the December 31, 1986 notice to protect sulfite-sensitive individuals until a tolerance or some other appropriate clearance could be established. The interim measures were effective December 31, 1986, and were intended to permit shipment of sulfite-treated grapes for 1 year.

The interim policy was amended in the **Federal Register** of August 26, 1987 (52 FR 32128), to permit tagging of individual bunches of grapes or placarding at the retail point of sale of sulfite-treated grapes in lieu of certification that grapes do not contain detectable sulfite residues.

This action was taken because information developed by the California table grape industry indicates significant cost and logistical difficulties associated with the California certification program. Furthermore, evidence developed by the California table grape industry at that time indicates that repeated sulfite treatment during long-term storage of grapes might result in detectable sulfur dioxide residues in or on the grapes (10 ppm or higher).

In its August 26, 1987 notice, EPA requested comments on the interim policy and a proposed extension of this policy until May 1989. Comments were due October 26, 1987. On October 26, 1987, EPA extended the comment period until November 9, 1987 (52 FR 39917). By the closing date, EPA had received 271 comments.

No commenter supported the placarding option, which was utilized sparingly, if at all, during the 1987 growing season. Reaction to the tagging option was diverse, drawing the largest number of comments. While no commenter favored tagging as a long-term solution, many believed it was an appropriate short-term measure until alternatives to current sulfiting practices could be evaluated and implemented. Other commenters were opposed to the tagging of fresh fruits and vegetables in general.

Many commenters argued that tagging only 40 percent of bunches was insufficient, misleading, and confusing to grape consumers. Specifically, they believed that the tags were too small, that the label statement did not contain strong enough language to alert sulfite-sensitive consumers, and that the statement should be placed on both sides of the tag.

Most of the commenters favored retention of the certification option as a short-term measure until a permanent tolerance for sulfur dioxide residues in or on grapes can be established. Some commenters suggested that certification be the only available option and that placarding and tagging not be considered as part of any interim or permanent policy established for sulfiting agents on grapes.

As a result of these comments and in consideration of the difficulties associated with the enforcement of a multiple option policy, EPA extended its interim policy from January 1, 1989 to December 31, 1988, requiring that all sulfite-treated grapes shipped during this period be covered by an approved certification program (52 FR 49411; Dec. 31, 1987).

II. Extension of Policy

Sulfiting agents have been used for many years as a fungicide on grapes. Their use is essential to the domestic and import grape industry to ensure a year-round grape supply for the American public. At the same time, the use of sulfites on grapes presents a risk to sulfite-sensitive individuals, a small segment of the American population. However, EPA believes that the use of sulfiting agents with appropriate controls will not present an unreasonable risk to this sensitive population.

During the past year, EPA has evaluated much of the data generated by Chilean exporters and California growers through their certification programs. These data indicate that a majority of shippers can maintain sulfur dioxide residues in or on grapes below the current level of detection, i.e., less than 10 ppm. However, data provided by FDA indicate that if sulfur dioxide-releasing pads are allowed to remain in the shipping container after the containers are removed from the retail store refrigeration facilities, sulfur dioxide residues on grapes may rise to levels greater than 10 ppm.

Pending the establishment of a permanent tolerance for sulfur dioxide residues in or on grapes, EPA believes that a continuation of its interim policy, amended to include labeling requirements for shipping containers of all grapes treated with sulfur dioxide-releasing pads, is appropriate to protect consumers and allow the continued use of sulfites on grapes.

Until a tolerance for sulfur dioxide residues in or on grapes is established, importers and domestic producers who ship sulfite-treated grapes must certify that the grapes do not contain detectable residues of sulfite (determined as sulfur dioxide). Sulfite residues on grapes must be below the current level of detection under the modified Monier-Williams procedure, i.e., less than 10 ppm, when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce. Grapes that are not covered by an approved certification program or that bear detectable sulfite residues will be considered adulterated and subject to legal action.

Shipping containers of both foreign and domestic grapes must be labeled in accordance with the provisions of section 403(l) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(l), which require shipping containers to be labeled when a raw agricultural commodity has received postharvest pesticide treatment.

Shipping containers of grapes treated with sulfur dioxide-releasing pads must be labeled as follows:

> Remove pad from the container at least 2 hours before display of the grapes or after removal of container from retail store refrigeration facilities.
>
> If the pad is torn, remove pad and damaged grapes or any grapes with visable powder of the SO_2 agent, and hold remainder of contents 24 hours before displaying.

Because of the inherent difficulties in enforcing a multiple option policy and because of a lack of interest by the grower community, placarding is not considered a viable alternative to certification. Similar enforcement problems are associated with a tagging option. Moreover, no evidence has been submitted to EPA which would indicate that the certification requirements cannot be met by foreign and domestic grape shippers. Therefore, tagging grapes that exceed 10 ppm is not an option under the policy, as extended.

These measures are a continuation of EPA's December 1986 policy to permit shipment of sulfite-treated grapes, and this policy extension is effective January 1, 1989 until a permanent tolerance for sulfur dioxide residues in or on grapes is established. EPA and FDA will work jointly to assure that domestic and foreign grape shippers adhere to this policy.

Cross Reference

Published elsewhere in this issue of the **Federal Register** is a proposed rule (see [PP 7E3473/P476]) to establish a permanent tolerance for residues of sulfur dioxide on grapes.

Dated: December 29, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-191 Filed 1-4-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[PP 7E3473/P476; FRL 3502-5]

Pesticide Tolerance for Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the fungicide sulfur dioxide in or on grapes. Uvas Quality Packaging, Inc., Snowden Enterprises, Inc., Frupac International Corp., and Quimica Osku, Ltda., requested the establishment of maximum permissible levels for residues of the fungicide.

DATE: Comments must be submitted by February 6, 1989.

ADDRESS: Comments should be identified by the document control number (PP 7E3473/P476) and sent, in triplicate if possible, by mail to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Walter C. Francis, Product Manager (PM) 32, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-3964.

SUPPLEMENTARY INFORMATION: On October 30, 1986, EPA received a pesticide petition (7E3473) from Uvas Quality Packaging, Inc., P.O. Box 369, Antioch, CA 94509, Snowden Enterprises, Inc., P.O. Box 751, Fresno, CA 93712, Frupac International Corp., 400 Market St., Suite 500, Philadelphia, PA 19106, and Quimica Osku, Ltda., 853 Agustinas St., Office No. 831, Santiago, Chile proposing to amend 40 CFR Part 180 by establishing a tolerance to permit residues of the fungicide sulfur dioxide in or on grapes at 20 parts per million (ppm).

The petitioners subsequently amended this petition proposing to establish a tolerance to permit residues of sulfur dioxide in or on grapes at 10 ppm, the current level of detection determined by the modified Monier-Williams method used by the Food and Drug Administration (FDA) for its enforcement procedures.

Submission of this petition was prompted by an announcement by FDA in the **Federal Register** of July 9, 1986 (51 FR 25021) that the use of sulfiting agents as preservatives on raw fruits and vegetables served or sold to consumers was no longer deemed to be generally recognized as safe (GRAS) because some individuals experience severe allergic reactions to sulfite residues on food. FDA's action did not affect the use of sulfiting agents as a fungicide on grapes because this pesticidal use is under EPA's jurisdiction.

In light of FDA's action, and because EPA no longer regarded the use of sulfiting agents on grapes as it it were GRAS (for the reasons set forth by FDA with regard to preservative uses) and had not established a tolerance for sulfite residues in or on grapes, EPA announced in the **Federal Register** of December 31, 1986 (51 FR 47240) an interim policy requiring that each foreign or domestic shipper have an acceptable certification program to ensure that residues of sulfites (determined as sulfur dioxide) on treated grapes were below the current level of detection under the modified Monier-Williams procedure, i.e., less than 10 ppm when the grapes were offered for entry into the United States or were otherwise introduced into interstate commerce. This policy was intended to allow for the continued marketing of sulfite-treated grapes while the residue data necessary to support the tolerance petition were being submitted.

This policy was subsequently amended by documents published in the **Federal Register** of August 26, 1987 (52 FR 32128) to allow for short-term tagging of individual bunches of grapes and of December 31, 1987 (52 FR 49411) to allow the continuation of the certification provisions of EPA's December 31, 1986 notice for the 1987-1988 grape shipping season. These certification provisions will remain in effect through the 1988-1989 grape-shipping season until a permanent tolerance for sulfur dioxide residues in or on grapes is established.

In its July 9, 1986 Notice, FDA concluded that the use of sulfites as preservatives on fruits and vegetables intended to be served raw or sold raw to consumers poses a risk to that discrete and relatively small segment of the population which is sulfite sensitive. EPA has reviewed the data evaluated by FDA pertaining to sulfite sensitivity that were cited in the **Federal Register** of August 14, 1985 (50 FR 32834), and additional information set forth in the **Federal Register** of July 9, 1986 (51 FR 25012 and 25021), and agrees with the conclusions reached by FDA with respect to this potential adverse effect to individuals who are sulfite sensitive.

Since the health effect of concern is sulfite sensitivity, no additional animal toxicity data are required under 40 CFR 158.135 to support a sulfur dioxide tolerance. If EPA receives information indicating health concerns other than sulfite sensitivity, a reevaluation of the toxicological data base for sulfites will be undertaken.

EPA is aware that there may be some risks to sulfite-sensitive individuals from the presence of low levels of sulfites in grapes; however, EPA believes that establishing a tolerance at the current level of detection, 10 ppm, will minimize this risk.

During the past year, EPA has evaluated much of the data generated by Chilean exporters and California growers through their certification programs. These data indicate that a majority of shippers can maintain sulfur dioxide residues at or below 10 ppm. Therefore, the Agency is establishing a tolerance at the 10 ppm limit of detection.

The pesticide is useful for the purposes of this tolerance rule. Adequate analytical methodology (modified Monier-Williams) is available for enforcement purposes. EPA does not anticipate that sulfite residues in grapes pomace resulting from this use will cause secondary residues in meat and milk. Sulfite residues in other commercially available feeds, with residue levels significantly higher than in grape pomace, have produced no secondary residues in meat and milk.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Elsewhere in this issue of the **Federal Register**, in the rules and regulations section, EPA is extending its interim policy for sulfiting agents on grapes (see [OPP-36145D]).

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation: All written comments filed in response to this proposed rule will be available in the Product Manager's office, Registration Division, at the address given above from 9 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agriculture commodities, Pesticides and pests.

Dated: December 29, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By adding new § 180.444, to read as follows:

§ 180.444 Sulfur dioxide; tolerances for residues.

A tolerance is established as follows for sulfite residues of the fungicide sulfur dioxide (determined as SO_2) in or on the following raw agricultural commodity(ies):

Commodities	Parts per million
Grapes, post-H	10.0

[FR Doc. 89-192 Filed 1-4-89; 8:45 am]

BILLING CODE 6560-50-M

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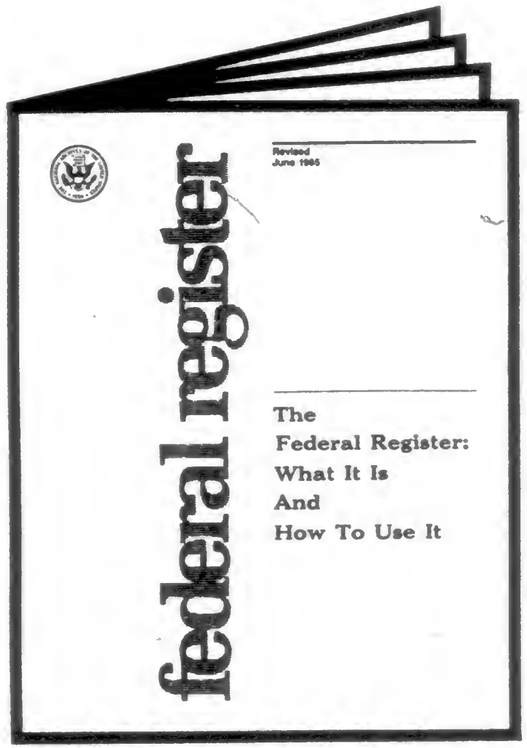
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 87-040]

Use of Irradiation as a Quarantine Treatment for Fresh Fruits of Papaya [1] From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to authorize irradiation as a quarantine treatment for papayas intended for movement from the State of Hawaii to the continental United States, Guam, Puerto Rico, and the Virgin Islands of the United States. We have determined that treating papaya fruit with low dose gamma radiation is an effective quarantine method that will help prevent introduction of the oriental fruit fly [*Dacus dorsalis* (Hendel)], Mediterranean fruit fly [*Ceratitis capitata* (Wiedemann)], and melon fly [*Dacus cucurbitae* (Coquillett)] into the above-named areas. This rule is warranted to provide an additional treatment method to Hawaiian papaya growers who ship their fruit to these areas.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Fons, Acting Chief, Plant Protection Methods Development, APHIS, USDA, Room 228, Federal Building, Hyattsville, Maryland 20782, (301) 436-6472.

SUPPLEMENTARY INFORMATION:

[1] Carica papaya L., also known as papaw or pawpaw.

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR Part 318 and referred to below as the regulations) include treatments we have approved for papayas intended for shipment from Hawaii to the continental United States, Guam, Puerto Rico, and the Virgin Islands of the United States. These treatments are necessary because of infestations in Hawaii of the oriental fruit fly [*Dacus dorsalis* (Hendel)], Mediterranean fruit fly [*Ceratitis capitata* (Wiedemann)], and melon fly [*Dacus cucurbitae* (Coquillett)]. The three flies together are sometimes referred to as the "Tri-fly complex."

On January 5, 1987, we published a proposal in the **Federal Register** (52 FR 292-296, Docket No. 85-395) to allow gamma irradiation of papayas as an additional quarantine treatment option, and to establish a protocol for carrying out the irradiation.

We solicited comments concerning the proposal for 60 days ending March 6, 1987, and received 43 comments. These comments were from the United Fresh Fruits and Vegetable Association, the State of Hawaii Department of Agriculture, the Papaya Administrative Committee, organizations commercially involved in product irradiation, faculty members of universities in Hawaii, citizens groups, and private individuals. The comments fell into three categories: those entirely opposed to the proposal (31 comments); those entirely in favor of the proposal (seven comments); and those in favor of the proposal with some changes (five comments).

A number of comments that were opposed to the proposal did not include arguments to support their opposition. The remainder of the comments in opposition addressed the following issues:

(1) *Concern over cumulative effect of radiation from eating irradiated food.* The Food and Drug Administration (FDA) is responsible for ensuring that irradiated foods are safe and wholesome for human consumption. The Animal and Plant Health Inspection Service (APHIS), on the other hand, is responsible for ensuring that irradiating papayas as a quarantine treatment and allowing their shipment does not pose a significant risk to agriculture in the United States.

In the **Federal Register** dated February 14, 1984 (49 FR 5713, Docket No. 81N-0004), FDA published a proposed rule that included provisions for irradiation of certain foods, if the irradiation doses would not exceed 100 kilorads (krad) [150 Gray (Gy)]. In the **Federal Register** dated April 18, 1986 (51 FR 13376, Docket No. 81N-0004), FDA published a final rule regarding irradiation. In each of the documents, FDA discussed the effect on human health of eating irradiated food. In its proposed rule, FDA presented findings to show that irradiated food does not become radioactive. In the final rule, FDA indicated that no commenter on the proposed rule presented any evidence to refute those findings.

(2) *Concern that irradiating papayas could create in the fruit dangerous radiolytic products.* In its proposed rule, FDA demonstrated that chemical differences between irradiated foods processed at less than 100 krad and nonirradiated food are too small to affect the safety of the food.

(3) *Concern that the maximum level of irradiation FDA has approved for irradiating food would be fatal if directed at a human.* In its final rule, FDA acknowledged that human exposure to doses of gamma radiation much lower than those approved for irradiating food would be lethal. At issue, however, is not the effect of human exposure to this level of radiation, but whether irradiating foods causes those foods to become unhealthful. Under this final rule, papayas, not humans, will be exposed to specified levels of radiation.

(4) *Concern that certain studies seem to show that animals fed irradiated food have abnormally high rates of testicular tumors, kidney disease, death in offspring, lessened life spans, and an abnormal increase in white blood cells.* FDA, in its final rule, addressed each of the above concerns, except the one concerning an abnormal increase in white blood cells. Commenters on the FDA proposed rule cited specific studies that the commenters said showed links between irradiation and each of the above conditions. In its final rule, FDA cited extensive reviews it had made of each of the studies cited. In each case, FDA found either that the study was flawed or that the commenter had misinterpreted the results of the study. In each case, FDA concluded that concern over the adverse effects was not substantiated. The commenter on

our proposed rule who was concerned that irradiated food might cause an abnormal increase in white blood cells cited no studies or evidence to support that concern, and we are not aware of any studies that have reached that conclusion.

(5) *Concern that irradiation of food can produce aflatoxin contamination in food.* Several commenters on the FDA proposed rule cited a series of studies that they said showed that irradiation of certain foods can produce aflatoxin contamination of those foods. In its final rule, FDA indicated that, upon review, it had found that the studies referred to did not replicate actual food handling practices and that it has no evidence to conclude that food irradiated and stored under normal handling practices would show increased aflatoxin production.

(6) *Concern that pesticide residues in irradiated fruit could become altered.* Based on its own studies, FDA concluded in its final rule document that the sum of all radiolytic products produced by irradiation at 100 krad would be no more than 30 parts per million in food. Therefore, the cumulative concentration of all radiolytic products from a pesticide residue would correspond to a concentration of less than 30,000 times smaller than the pesticide residue itself. Because low levels of pesticide residues are expected in food, FDA believes that the total amount of radiolytic products from a pesticide chemical that might be consumed with irradiated foods would be virtually nil. FDA therefore concluded that the potential toxicity of each radiolytic product from a pesticide chemical residue on foods would be negligible and that the pesticide residues do not pose a hazard to health.

(7) *Request that more testing be done concerning the long-term effects on humans of eating irradiated food.* In 21 U.S.C. 321(s), a source of radiation is considered to be a "food additive." In its final rule, FDA indicated that one of its responsibilities is to reduce uncertainty about the safety of an additive to the point where the agency can reasonably conclude that no harm will result from the additive's proposed use. In its final rule, FDA indicates that it "believes that the substantial amount of available toxicological information supports the conclusion that the irradiation of food [as set forth in the FDA final rule] is safe." FDA therefore concluded that "there is no basis for delaying for decades a decision to regulate food irradiation to conduct the type of study suggested by [commenters on the FDA proposed rule.]"

(8) *Concern that irradiated food may suffer a reduction in vitamins and minerals.* In its proposed rule, FDA discussed the possible destruction of nutrients in irradiated food. The agency concluded that the available literature indicates no nutritional differences between unirradiated food and food irradiated at levels below 100 krad.

(9) *Concern that insects and bacteria in or on food subjected to irradiation could mutate and become resistant to irradiation.* In response to a comment on its proposed rule, FDA addressed the concern that irradiation could cause mutant bacteria. Because both bacteria and insects are highly evolved organisms, we believe FDA's response can be extended to address also the potential mutation of insects. In its final rule, FDA writes:

> Mutants produced during the irradiation of food are essentially the same as those that occur naturally—the only real difference is in the rate at which mutations occur. Radiation may increase the frequency of mutations and thereby increase the bacteria or viruses that would occur otherwise through natural evolutionary processes. However, there is no reason to expect that the resulting mutant would be different or more virulent than those created in nature.
>
> Because bacteria are highly evolved organisms, well adapted to their environment, the vast majority of mutations would tend to be detrimental for the organisms. Mutant organisms that are more radiant resistant than their parents may survive and be present in an environment exposed to frequent sublethal doses of radiation. Such radiation-resistant bacteria, however, would be a problem only if irradiation were essential to produce a safe food. This is not the case, and not permitting the use of food irradiation would not prevent such a problem from occurring.
>
> Furthermore, the agency does not believe that such radiation-resistant bacteria or viruses, if they were produced, would be more resistant to other antibacterial agents. Although it is possible that specific conditions and indiscriminate irradiation might produce mutants, the agency concludes that the possibility that such mutants would be more virulent or more harmful is remote.

(10) *Concern that irradiation reduces the quality of citrus and other foods subjected to irradiation.* One commenter on our proposed rule cited three research sources that indicated (1) reduction in product quality in irradiated citrus fruit; (2) a need for more data on thiamine loss in irradiated cereal crops; (3) stimulation of ripening in some fruits, with an accompanying stimulation in ethylene production; and (4) irradiation induced changes in the beta-carotene content of papaya.

Because the first two quality loss issues cited here concern foods other than papayas, we will not respond to them in this document. With regard to the third issue, while some studies indicate a stimulation of ripening in some fruits, studies conducted at the University of Hawaii and elsewhere [2] indicate that irradiation of papayas actually delays senescene (aging) of that fruit. The study cited regarding beta-carotene showed no change in beta-carotene content in papayas that were irradiated at the levels prescribed in the proposed rule.

(11) *Concern that the irradiation of fruit is not economically feasible.* This final rule is intended to expand the number of treatment methods available to Hawaiian papaya growers who ship their fruit to the United States mainland and territories. Each grower has the option of determining whether the irradiation treatment is economically feasible, and has the option of using other approved treatment methods.

(12) *Concern that the transport of nuclear materials and the operation of irradiation facilities would pose environmental dangers.* The Nuclear Regulatory Commission (NRC) is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. We must assume that any facility approved for operation by NRC will meet all necessary safety standards.

(13) *Request that papayas subjected to irradiation be labeled as such at the retail level.* Recognizing consumer interest in whether food has been irradiated, FDA in its final rule requires that the wholesale label of irradiated food bear either the statement "Treated with radiation, do not irradiate again," or the statement "Treated by irradiation, do not irradiate again." FDA further requires that a retail label bear a specified logo and either the statement "treated with radiation," or the statement "treated by irradiation."

No Changes Based on Above Comments

No arguments were raised in the comments discussed above that warrant abandonment of our proposal to allow irradiation of papayas as a quarantine treatment. Therefore, we are making no changes as a result of those comments.

Comments in Favor with Suggested Modifications

Five commenters were in favor of our proposed rule with some modifications.

In our document of January 5, 1987, we proposed to require that an indicator (label dosimeter) that undergoes a physical or chemical change when exposed to radiation would have to be permanently attached to each carton of papayas and remain attached while in interstate commerce. One commenter objected to that proposed requirement on the grounds (1) that a dosimeter that visibly changes at the 10–15 krad dosage range may not be commercially available, and may be prohibitively expensive if it does become available; (2) that a user of a Hawaii papaya irradiator who elects to use a 50–100 krad dose to extend the market life of papayas would be able to guarantee that a 15 krad dose was delivered to the papayas, even without a dosimeter; (3) that a dosimeter as proposed would add nothing of value over and above established dose-mapping procedures plus constant source geometry, and product loading configuration, such as are already being carried out for medical devices; and (4) that visual or instrumental observations of dosimeters on exterior individual cartons irradiated and handled as full pallet-loads would probably add significant handling and labor costs, with no real gain in information value.

We do not agree with the suggestion that it is not necessary to require the use of a dosimeter to indicate that papayas have received the required irradiation. There is no evidence to suggest that a dosimeter as required will not be commercially available to all users of Hawaii papaya irradiators. While standard industry procedures may help ensure that papayas have been irradiated, there is no way to visually or chemically analyze a papaya to guarantee that it has been irradiated. Similary, while increased dosages to extend market life may implicitly ensure dosages of at least 15 krad in some cases, the only guarantee that irradiated papayas have received a 15 krad dosage in all cases is to require a device that indicates the dosage received. Any expense to a marketer related to purchasing, applying, and reading the dosimeters would have to be factored into a marketer's analysis of whether the irradiation treatment option is preferable to other treatments currently allowed. However, we agree that if a pallet-load of papayas remains intact from the time it is irradiated until it leaves Hawaii, with no cartons added or removed from the pallet-load during that time, it would not be necessary to attach a dosimeter to each carton. A minimum of two dosimeters attached to the pallet-load, on opposite sides of the pallet-load, would be sufficient to indicate whether the product has received the required radiation. Therefore, we are including such a provision in this final rule. To ensure that the pallet-loads remain intact, we are requiring that they be wrapped in one of the following ways and remain so wrapped until they leave Hawaii: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet-load is constrained by a metal or plastic wrap.

A second commenter objected to our specifying a "label dosimeter" on the grounds that it implied the required use of a specific type of dosimeter, when other dosimeters may work as well or better in the food irradiation arena and may have a longer history of use. We do not intend to limit a marketer to using any specified type of dosimeter, as long as the one chosen can be affixed to a carton or pallet-load of cartons and can reliably indicate that the carton or pallet load has been irradiated at 15 krad. For this reason, we are deleting our reference to the term "label dosimeter" in the final rule and are referring instead to "a dose indicator that can demonstrate irradiation of a minimum of 15 krad."

One commenter objected to the wording of our requirement that an irradiation treatment facility be constructed so as to provide physically separate locations for treated and untreated fruit. The commenter suggested that a barrier should provide physical separation to prevent inadvertent mixing of treated and untreated fruit only during storage periods at the facility. The commenter reasoned that cartons that travel on a conveying mechanism conveyor could pass through areas that would otherwise be separated, provided that the conveying mechanism could receive the product only from the incoming area of the warehouse and that the product could leave the conveying mechanism only on the outgoing area of the warehouse. We recognize that it is likely that some irradiation facilities will be constructed to allow for multiple trips of the same cartons through the irradiation chamber. In those cases, treated cartons might transit areas where untreated cartons are present in order to reenter the irradiation chamber. If the conveyor system is set up to ensure that treated and untreated cartons cannot be commingled in a transit area, there would be virtually no risk of untreated papayas inadvertently being shipped from the warehouse. Therefore, we are providing in this final rule that an irradiation facility must be constructed to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated.

Two commenters agreed with our proposal to allow irradiation as a quarantine treatment of papayas from Hawaii, but suggested that irradiation treatment be extended to apply as well to other specified fruits and vegetables. Although it is our intent to expand irradiation as an allowable quarantine treatment to other fruits and vegetables, we are limiting the use of irradiation to papayas at this time. APHIS's responsibility is to implement treatments as recommended to us by the Agricultural Research Service (ARS) of the United States Department of Agriculture. Currently, ARS is examining the feasibility of using irradiation as a quarantine treatment for fruits and vegetables other than papayas, but has not yet recommended the treatment for anything other than papayas.

One commenter suggested that we raise the minimum dosage of radiation for papayas from 15 krad to 26 krad. At 15 krad, any fruit fly larvae that emerge as adults would have crumpled wings and be incapable of flight, and therefore be incapable of spreading. The commenter suggested that a dosage of 26 krad would ensure that no fruit fly larvae would even emerge from eggs, and the percentage of marketable fruit would thus be increased. We are making no changes based on this comment. Our responsibility is to prevent the spread of pests, and our policy has been to do so with treatments using the minimum dosage necessary. By requiring a minimum dosage of 15 krad, we are preventing emergence of fruit flies capable of reproduction, and are thus satisfying the quarantine requirements. Requiring a level of irradiation higher than 15 krad would demand that papayas be irradiated for longer periods of time. This would involve greater expense to the industry, with no increase in protection against pests. If members of the industry decide that irradiation at 26 krad is commercially more desirable than irradiation at 15 krad, they are free to use the higher levels.

Comments That Addressed Supplementary Information

The above comments addressed provisions we specifically included in the regulation portion of our proposed rule document. Additionally, several commenters addressed items that we did not specifically include in the proposed regulations, but that were included in the supplementary information in the preamble of our

[2] For additional information, contact Technology Analysis and Development Staff, PPQ, APHIS, USDA, Federal Building, Hyattsville, Maryland 20782.

document. Because the preamble embodies our intent with regard to the proposed regulations, it is appropriate for us to address comments concerning that preamble material, and to make changes as necessary in the final rule to reflect comments on the preamble material. Additionally, we are including certain material in the final rule that was specified in the proposed rule preamble but not in the proposed rule itself.

In our preamble material, we specified that, to be approved, an irradiation facility must provide an automatic system, such as a conveyor system, to move papayas through the irradiation chamber. We indicated that the automatic system must be failsafe in the sense that once the commodity enters the irradiation chamber, it will pass through at a predicted speed, will not be able to exit without receiving the required treatment, and will not be able to return to the incoming area.

Two commenters suggested that alternative methods of moving papayas into and out of the irradiation chamber, such as a "batch" system, would work just as well as an automatic conveyor system. Upon review of the comments, we believe that it is not necessary to specify an automatic conveyor system to ensure the prescribed irradiation of papayas. Because we are requiring either that a dosimeter be attached to each carton or that two dosimeters be attached to each intact-pallet load of cartons, we can accurately determine whether the fruit has received the necessary dosage.

One commenter objected to the provision specified in the summary to our proposed rule that irradiation be applied so that the absorbed dose is no less than 15 krad in a single treatment. This commenter suggested that the term "single treatment" should not preclude product repositioning or transfer operations in between sequential trips through the irradiator. The commenter stated that some irradiation conveyance systems that are currently in use in the medical products industry operate so that (1) the carrier makes one complete trip through the irradiator, (2) some of the product is removed and held for shipping, (3) the remaining product is either automatically or manually repositioned in the same or different carrier, (4) some new product is placed in the carrier, and (5) the process is repeated.

We recognize that some irradiation facilities may choose to apply the prescribed irradiation by means of sequential passes through an irradiation chamber. Such a system is an effective method of exposing papayas to the required minimum of 15 krad. Consequently, we are not including the phrase "in a single treatment" in the final rule.

One commenter objected to the provision in the supplementary information that one of our inspectors must be notified before such treatment. The commenter said (1) that the term "each treatment" is vague; and (2) that any notification of our inspectors would be unnecessary. The commenter indicated that some medical product irradiation facilities have the authority to start up or close down a facility at their discretion, without relying on permission from the FDA.

Because we agree that the term "each treatment" could be interpreted several ways, we are amending the final rule to clarify our intent. In the case of a facility that operates continuously, we are requiring that the operator of the facility notify us at least 24 hours before each day the facility will operate. The operator of a facility that operates only periodically must notify us, at least 24 hours before irradiation treatment is to be started, of the hours during which it will take place. A footnote (footnote 3) has been added to indicate where information can be obtained for contacting local APHIS offices. In noting that facilities for irradiation of medical products do not rely on FDA approval for each start-up, the commenter erroneously concluded that we were proposing to require APHIS approval each time irradiation treatment commences. We will leave the scheduling of treatments to the operators of facilities, and we are requiring notification to allow us to be present to monitor these treatments.

Several commenters expressed concern regarding our proposal that each carton of papayas be stamped "Treated USDA. APHIS." In our proposal, we specified that this stamp would have to be applied after treatment. The commenters stated that requiring each carton to be stamped would require either that all pallet-loads of cartons be broken down, or that some new configuration of stacking on pallets be devised to allow a stamper access to each carton.

One commenter suggested, as a way of solving the palletization problem, that each carton earmarked for irradiation be stamped as it comes off the packing line, before irradiation. The commenter suggested that the carton then be followed with appropriate quality control and documentation to ensure that it was actually irradiated. We are making no changes based on the suggestion that cartons be stamped before irradiation. We do not believe that stamping cartons of papayas before irradiation would ensure that the cartons actually received the treatment indicated by the stamp. However, with regard to the problem of palletization, as we stated above, we are establishing dosimeter requirements for pallet-loads of papayas that remain intact from the time they are irradiated until they leave Hawaii. If those pallet-loads are wrapped as specified above in our discussion of dosimeters, we will allow them to move from Hawaii without each carton being stamped, as long as a label bearing the impression, "Treated USDA, APHIS," is affixed to the pallet-load and remains attached until the pallet-load leaves Hawaii. The impression on the label will have to measure at least 4 x 11 inches to ensure ready visibility.

Approval of Facilities

We are including in this final rule procedures regarding approval of a papaya irradiation facility, and procedures regarding denial or withdrawal of approval. We are adding these provisions to make clear to the public internal agency policy regarding these areas.

Miscellaneous

We are making several nonsubstantive editorial and paragraph designation changes in the final rule for purposes of clarity, including the placement of all requirements regarding recordkeeping into § 318.13–4g(b)(10). We are also redesignating current § 318.13–4g as § 318.13–4h.

Additionally, we are adding language to clarify that "normal business hours," as referred to in § 318.13–4g(a)(10), constitute the period between 8:00 a.m. and 4:30 p.m., Monday through Saturday, except holidays. We are also adding an address in a footnote to indicate where to send requests for approval of cartons for use in shipping irradiated papayas.

Additionally, we have replaced the term "Deputy Administrator" wherever it appeared in the proposal with the term "Administrator," and have replaced the term "Plant Protection and Quarantine" wherever it appeared in the proposal with the term "Animal and Plant Health Inspection Service." We have made these changes to reflect internal agency policy. We have also added a definition of the term "Administrator," and have placed the definitions in § 318.13–1 in alphabetical order.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this action will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule expands the number of quarantine treatment methods available to Hawaiian papaya growers who ship their fruit to other parts of the United States. It places no new restrictions on these growers.

Until this rule becomes effective, there are only two approved treatments available for Hawaiian papayas. These treatments are normally applied by the exporter or packer at his or her premises under compliance agreement or under APHIS supervision.

Because of the anticipated construction costs of an irradiation facility, as well as high operating costs, an independently operated facility is likely to be constructed. This facility could provide service to any or all papaya exporters. Also, because of the high costs of building and operating the facility, the final cost of treating the papayas will likely be higher than with the treatments currently being used. We cannot determine with certainty whether the quality of the irradiated papayas or any increase in shelf life will offset the increased treatment costs. However, exporters will still have the option of using the less expensive double dip treatment of vapor heat treatment if they choose.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

While this rule requires records to be made available for inspection, this imposes no new recordkeeping requirements on papaya shippers who would use irradiation treatment. The FDA's final rule requires that records of irradiation treatments be kept and made available to FDA. This is necessary because no chemical or physical method now exists for assaying how much radiation a food has received. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this rule under § 318.13–4g have already been approved for the FDA final rule by the Office of Management and Budget (OMB) and have been given the OMB control number 0910–0186.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we have submitted the information collection provisions in this rule to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to Helene R. Wright, Director, Regulatory Analysis and Development, Policy and Program Development, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

National Environmental Policy Act

We have completed an environmental assessment regarding this rule. A notice regarding the conclusions of the environmental assessment appears in the "Notices" section of this issue of the **Federal Register**, under the heading "Availability of Environmental Assessment and Finding of No Significant Impact Relative to Low Dosage Gamma Radiation of Papayas."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 318

Agricultural commodities, Fruit, Guam, Hawaii, Papayas, Plant diseases, Plant pests, Plants (agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, 7 CFR Part 318 is amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for Part 318 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, 371.2(c).

2. In § 318.13–1, the paragraph designations are removed; the definitions are placed in alphabetical order; and the following definition is added in alphabetical order to read as follows:

§ 318.13–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the Animal and Plant Health Inspection Service to whom authority has been or may be delegated to act in the Administrator's stead.

* * * * *

§ 318.13–4g [Redesignated as § 318.13–4h]

3. Section 318.13–4g is redesignated as § 318.13–4h.

§ 318.13–13 [Amended]

4. In § 318.13–13, footnotes "4" and "5", and the references to those footnotes, are redesignated as "7" and "8" respectively.

§ 318.13–5 [Amended]

5. In § 318.13–5, footnote "3", and the reference to that footnote, is redesignated as "6".

§ 318.13–4h [Amended]

6. In newly redesignated § 318.13–4h, footnote "2", and the reference to that footnote, is redesignated as "5".

7. A new § 318.13–4g is added to read as follows:

§ 318.13–4g Administrative instructions approving an irradiation treatment as a condition for certification of papayas for movement from Hawaii.

(a) *Approved irradiation treatment.* The Administrator hereby approves irradiation, carried out in accordance with the provisions of this section, as a treatment for papayas. Papayas treated and handled as provided in this section may be certified for movement from Hawaii.

(b) *Conditions for certification.* Irradiated papayas may be certified for movement from Hawaii only if the following conditions are met:

(1) *Location.* The irradiation treatment is carried out in Hawaii.

(2) *Approved facility.* The irradiation treatment facility and treatment protocol are approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must meet the following conditions:

(i) Be capable of administering a minimum absorbed ionizing radiation

dose of 15 kilorads (150 Gray) to the papayas.[2]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence six or more feet high to prevent transfer of cartons.

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 318.13–4(d) of this subpart.

(3) *Treatment monitoring.* Treatment is carried out under the monitoring of an inspector. This monitoring will include inspection of treatment records and unannounced inspectional visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations.[3] Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[3]

(4) *Packaging.* Papayas are packaged in cartons approved by the Administrator.[4] The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.

(5) *Dosage.* Papayas receive a minimum absorbed ionizing radiation dose of 15 kilorads (150 Gray).[2]

(6) *Dose Indicator.* One of the following conditions is met:

(i) A dose indicator that can demonstrate irradiation of a minimum of 15 krad and that undergoes a physical or chemical change during irradiation is attached to each carton of papayas before treatment and remains attached while in interstate commerce; or

(ii) A minimum of two dose indicators as described in paragraph (b)(6)(i) of this section are attached to opposite sides of a pallet-load of cartons of papayas before treatment and remain attached while in interstate commerce. The pallet-load must be wrapped, from the time it leaves the irradiation facility until it leaves Hawaii, in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(7) *Treated stamp.* Each container of irradiated papayas that is not part of a pallet-load as specified in paragraph (b)(6)(ii) of this section is identified with the stamped impression "Treated—USDA, APHIS". The impression must measure at least 1.5 x 2.5 inches and must be applied after treatment and before the carton leaves the irradiation facility.

(8) *Labeling of pallet loads.* Each pallet-load of irradiated papayas that is wrapped according to paragraph (b)(6)(ii) of this section is identified with a label bearing the impression "Treated—USDA, APHIS." The impression must measure at least 4 x 11 inches and must be affixed to the product after irradiation and before the pallet-load leaves the irradiation facility.

(9) *Certification for movement.* Papayas treated in accordance with this subpart are certified for movement from Hawaii in accordance with § 318.13–4(b) of this part.

(10) *Records.* Records or invoices for each treated lot are made available for inspection by an inspector during normal business hours. (8:00 a.m. to 4:30 p.m., Monday through Saturday, except holidays.) A papaya irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(c) *Request for approval and inspection of facility.* Persons requesting approval of a papaya irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Administrator, c/o Science and Technology, APHIS, USDA, Room 228, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Before the Administrator determines whether a papaya irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility, to determine whether it complies with the standards of paragraph (b)(2) of this section.

(d) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any papaya irradiation treatment facility when the papaya irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of a papaya irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the papaya irradiation processor in writing of the reasons for the proposed action and provide the papaya irradiation processor with an opportunity to respond. The Administrator will give the papaya irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the papaya irradiation processor. In the event of oral notification, written confirmation will be given to the papaya irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(e) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the Tri-fly complex. From the literature available, papayas are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for insuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible to insure that irradiated foods are safe and wholesome for human consumption.

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR Part 179.

[3] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories. The addresses and phone numbers of local offices may also be obtained from Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

[4] Send requests for approval of cartons, together with a sample carton, to Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

Done in Washington, DC, this 3rd of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–267 Filed 1–5–89; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88–1524]

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a final regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 20, 1988 the Board issued a temporary regulation that placed certain restrictions on actions that insured institutions that did not currently meet their minimum or fully phased-in regulatory capital requirements may take regarding such stock. This temporary regulation expires on December 31, 1988.

Today, the Board is adopting a final rule concerning the purchase and sale of Freddie Mac stock by insured institutions that fail to meet either their minimum or fully phased-in regulatory capital requirements. The final regulation provides that any insured institution failing to meet its minimum regulatory capital requirement may not buy or sell Freddie Mac preferred stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office Regulatory Activities ("ORA"). It also sets general factors to be contained in an institution's written application for approval that the PSA will consider in determining whether to grant such approval. Additionally, the final regulation restricts any insured institution not meeting its fully phased-in capital requirements from taking certain actions as a result of any purchase or sale of Freddie Mac stock that might adversely affect its ability to meet its fully phased-in capital requirement, without first receiving prior approval from its PSA.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377–6445; or Richard A. Katz, Staff Attorney, (202) 377–7037, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Michael P. Scott, Policy Analyst (202) 331–4590, Office of Regulatory Activities, 801 17th Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank in connection with the collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange. Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000, subject to certain grandfathering provisions. Freddie Mac's Board of Directors also acted on July 13, 1988, to increase the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989. The Freddie Mac Board of Directors issued a resolution on August 30, 1988, ratifying its decision of July 13, 1988.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. However, on July 22, 1988 the Board adopted a temporary regulation affecting the purchase and sale of, and use of proceeds from the sale of, Freddie Mac stock by certain insured institutions based upon two specific concerns.

First, the Board believes that institutions not currently meeting their minimum regulatory capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14 require closer supervision as a result of their impaired capital position. The volatility accompanying the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock may particularly affect those insured institutions.

Second, the Board believes that any gains from the sale of Freddie Mac stock should generally be applied to improve the capital position of insured institutions not yet meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14. As the Board has indicated in the past, it is important that insured institutions raise their capital levels as rapidly as possible in order to provide adequate protection to insured institutions, their depositors, and the FSLIC fund. *See* Board Res. No. 88–1342, 53 FR 51800, 51814 (December 23, 1988); Board Res. No. 88–583, 53 FR 27814 (July 22, 1988); Board Res. No. 87–661, 52 FR 23845 (June 25, 1987); Board Res. No. 86–857, 51 FR 33571–73 (September 22, 1986); Board Res. No. 86–426, 51 FR 16550, 16552 (May 5, 1986).

To address these specific concerns without impairing the ability of the majority of insured institutions who are meeting their capital requirements, the Board determined to adopt a temporary rule affecting only institutions not meeting their capital requirements. The temporary rule was intended to ensure that supevisory review occurred before these institutions took certain actions in regard to Freddie Mac stock that might affect their portfolios or capital. The Board requested comments on the temporary rule, which is scheduled to expire on December 31, 1988. *See* Board Res. No. 88–583, 53 FR 27814 (July 22, 1988).

A. Discussion of the Comments

The Board received a total of eight comments. Four of these letters were from insured institutions, three were received from industry trade associations, and one from a law firm representing several insured institutions. Although all but one of these comment letters were supportive, several criticisms and suggestions were offered, which are discussed in greater detail below.

1. The need for a Final Rule

One commenter opposed replacing the temporary regulation with a final rule. This commenter asserted that a "permanent" rule was unnecessary because Freddie Mac preferred stock would no longer be volatile once it could be publicly traded.

The Board concludes, however, that a final rule is necessary because there is no certainty whether or not the market

for Freddie Mac preferred stock will be volatile once the stock can be publicly traded. For this reason, the Board believes that a final rule addressing the same concerns as the temporary regulation remains necessary for the same reasons as prompted the temporary regulation. As discussed more fully in Part B below, however, in 1989 the Board will be examining issues affecting Freddie Mac stock and its possible volatility in its review of its equity-risk investment and capital regulations. As a result of such review it may revisit the necessity for this rule and take any appropriate action in the final equity-risk investment regulation to modify or terminate any unnecessary provisions.

2. Restrictions on the Sale of Stock

Three commenters opposed the restrictions on the sale of Freddie Mac preferred stock by insured institutions that fail to meet their minimum regulatory capital requirements. These three commenters did, however, see merit in placing restrictions on the use of the proceeds from such sales by insured institutions whose capital structure is impaired. These commenters asserted that the sale of Freddie Mac preferred stock would bolster the capital of such institutions. They doubted that the unrestricted sale of such stock by insured institutions that fail to meet their minimum capital requirements would harm either depositors or the FSLIC fund. All three of these commenters indicated their belief that Freddie Mac preferred stock was a sound and conservative asset and that restrictions on its sale would distort its optimal market value.

The Board declines to remove from the final rule the restriction on the sale of Freddie Mac preferred stock by insured institutions failing to meet their minimum regulatory capital requirements. The Board continues to believe that the impaired capital status of such insured institutions warrants supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an insured institution's decision to sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board rejects the contention that the sale of Freddie Mac preferred stock would never have an adverse effect on insured institutions that fail to meet their minimum regulatory capital requirements. A decision to sell the stock in a widely fluctuating market may have a significant negative impact on the capital position of such an institution. By retaining this restriction in the final regulation, determinations can be made on a case-by-case basis whether the sale of Freddie Mac preferred stock by such institutions enhances the capital position of such institutions while simultaneously safeguarding the positions of the depositors and FSLIC. The Board does not believe that this requirement of supervisory review distorts the market value of Freddie Mac stock in any appreciable manner. The PSA can approve applications by insured institutions failing to meet their minimum regulatory capital requirements to sell their Freddie Mac preferred stock if such sale is determined to be in the overall best interests of the institution.

3. Restrictions on the Purchase of Stock

One of the commenters opposed the general requirement that insured institutions that fail to meet their minimum capital requirements must obtain PSA approval before purchasing Freddie Mac preferred stock. This commenter believed that Board has ample authority under other regulations to restrict the purchase of Freddie Mac preferred stock on a case-by-case basis. This commenter also thought that the regulation's restriction on the sale of Freddie Mac preferred stock or the use of proceeds therefrom makes a restriction on the purchase of such stock unnecessary.

The Board declines to remove from the final rule the restriction on the purchase of Freddie Mac preferred stock by institutions that fail to meet their minimum regulatory capital requirements. The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holding of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can substantially increase their holdings of Freddie Mac preferred stock. At the same time, the value of this stock may be subject to unprecedented volatility. The capital position of institutions that are not currently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board continues to believe that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's PSA to evaluate the potential impact resulting from a change in the level of this type of investment.

4. Restrictions on the Use of Sale Proceeds

Several commenters expressed various opinions about the restrictions that the regulation imposed on the use of the proceeds from the sale of Freddie Mac preferred stock by insured institutions that fail to meet their phased-in regulatory capital requirements. None of the commenters opposed the concept of restricting the use of sale proceeds by such institutions. These commenters, however, suggested various changes to this provision of the regulation.

One commenter suggested that restrictions on the use of capital gains from the sale of Freddie Mac preferred stock should apply only to originally distributed stock and not to stock that was acquired as a result of subsequent purchases. Other commenters requested that the Board either define or remove the term "equivalent action" from the final rule.

The Board believes that the final regulation should apply to the proceeds of all sales of Freddie Mac preferred stock. The suggestion that 12 CFR 565.13(c) should be limited to capital gains from the sale of original stock is inconsistent with the purpose of the regulation. The rule is designed to compel insured institutions that fail to meet their phased-in regulatory capital requirements to apply the sale proceeds to capital reserves. The Board also rejects the contention that the term "equivalent action" is too ambiguous. The term is intended to cover any actions that would result in funds, which would otherwise be applied to capital, being removed from the institution. These actions include dividends, stock repurchases, or other "equivalent actions" that could have similar effect. The Board believes that supervisory review before such action takes effect is important to ensuring that the industry's capital, as well as that of a particular insured institution is increased as rapidly as possible.

5. Procedures for Obtaining PSA Approval

Several commenters expressed concerns that the procedure by which such institutions obtain PSA approval was too cumbersome. These concerns arise in the context both of institutions that do not meet their minimum regulatory capital requirements and of institutions that fail to meet their phased-in regulatory capital requirements. Some of the commenters expressed their belief that institutions failing to meet their minimum regulatory capital requirements will be unable to obtain either the optimal sale or purchase price in a fast moving market.

The Board received various suggestions for expediting the process by which the PSA considers such applications. One commenter proposed that the final regulation require the PSA to approve or deny an application within ten days of its receipt. Another commenter suggested that the Board carve out a special exception for well-run institutions that fail to meet their regulatory capital requirements. Another commenter suggested that the Board include in the final rule a blanket approval for Freddie Mac transactions of a certain specified size by institutions within certain parameters of meeting their capital requirements. The same commenter also encouraged the Board to add a provision to the final rule to enable the PSA to approve a plan by which a capitally impaired institution intends to sell or purchase Freddie Mac preferred stock over a period of time, so that the institution would not be required to obtain separate approvals for each transaction.

The Board has determined not to amend these pre-approval requirements. As discussed above, the Board believes that such pre-approval is an important tool in the effective supervision of any insured institution not meeting its minimum capital requirements, regardless of its size or recent performance. These factors, among others, may be taken into account by the PSA in its review.

Additionally, experience with the temporary rule has not indicated that substantial delays in approval have, in fact, occurred for approvals or disapprovals of purchases, sales, or use of proceeds. The Office of Regulatory Activities has promulgated guidelines to the PSAs indicating the circumstances under which it will give its prior concurrence to an application regarding a Freddie Mac stock-related transaction. This has streamlined the process, while providing the opportunity for effective supervisory review, providing the PSA with needed flexibility, and simultaneously providing the applicant with the expedient consideration of its application. In this regard, nothing in the regulation prohibits an applicant from structuring its application to indicate a plan to purchase or sell such stock or to issue dividends or take other equivalent action tied to the sale of Freddie Mac stock in a series of transactions over time. The PSA may then make any appropriate decision on such a plan, or any of its constituent parts.

6. Forbearance

Two of the commenters requested the Board to clarify its position on forbearance. The temporary rule provided that an institution that fails to meet its minimum regulatory capital requirements must obtain approval from its PSA, subject to the concurrence of ORA, before selling or purchasing Freddie Mac preferred stock, notwithstanding any previously granted capital forbearances. Additionally, the temporary rule prohibits, except as approved by the PSA, subject to the concurrence of ORA, an insured institution which fails to meet its fully phased-in capital regulatory requirements from declaring a dividend, repurchasing its own stock, or taking equivalent actions, notwithstanding any previously granted forbearance.

One of the commenters requested that the Board distinguish, in its final rule, between capital forbearances that are granted to insured institutions, pursuant to Section 404 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552, and its implementing regulation, 12 CFR 563.47 (1988), and those capital forbearances that are granted in the context of a supervisory acquisition pursuant to 12 U.S.C. 1730a(m). In many supervisory acquisitions, FSLIC granted capital forbearances to the acquirer. Generally, the Board recognized in such supervisory cases that the insured institution's failure to comply with capital reserve requirements was attributable to the supervisory transaction, and therefore, the acquirer was granted a forbearance from regulations enforcing the capital or reserve requirements for a specified number of years.

After considering these comments, the Board has decided not to change the provisions in the regulation on capital forbearance. The same rationale applies for requiring a supervisory review before the purchase or sale of Freddie Mac preferred stock or the subsequent use of sale proceeds by any insured institution whose capital structure is impaired for whatever reason. The Board remains concerned with the overall capital position and health of all such institutions, in order to protect both the depositors and FSLIC. The Board believes that the limited, but critical, supervisory review provided in the temporary regulation does not itself forbid any insured institution from taking actions, but merely provides the opportunity for effective supervision of these institutions. The PSA may certainly take the circumstances surrounding forbearances into account in its decision.

B. Description of the Final Rule

For the reasons discussed above, the Board today adopts in final form its temporary rule. The regulation requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth general factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, such institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect the proposed transactions will have on an institution's future growth, its risk exposure, and its portfolio diversification. The PSA may require an institution to include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA.

In separate but related actions, the Board is currently in the process of reviewing both its regulatory capital and equity-risk investment regulations. *See* Board Res. No. 88–1342, 53 FR 51800 (December 23, 1988) (regulatory capital); Board Res. No. 88–1393 (December 22, 1988) (equity-risk investments). In both proposals, the Board is specifically requesting comment on whether the recent changes affecting Freddie Mac preferred stock should affect the treatment of the stock under such regulations. Under the current equity-risk regulation, for example, Freddie Mac stock is exempted from the definition of "equity security" for purposes of calculating an institution's aggregate equity-risk investments. *See* 12 CFR 563.9–8 (b)(2)(1988). The Board is seeking comment on whether the removal of the restrictions on the ownership and transferability of such

stock now makes it substantially similar to other equity securities and whether it should now be treated as such for purposes of the equity-risk investment regulation. The treatment of such stock under that regulation may also affect the amount of capital that insured institutions must hold against such stock holdings. The Board anticipates that it will complete final action in both of these critical areas before the end of 1989. These actions may provide protection against the problems addressed by the purchase and sale restrictions on Freddie Mac stock. If the final regulations adopted in those areas fully address the Board's concerns about the effects of the potential volatility of Freddie Mac stock on institutions that fail to meet minimum regulatory capital requirements, the Board may take action at that time to modify or terminate the provisions regarding purchase and sale of such stock contained in the final regulation adopted today.

Separate and apart from the restrictions applying to those insured institutions not meeting their minimum capital requirements, the Board believes that certain restrictions may be appropriate for institutions not currently meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 563.14. The Board believes that the opportunity for effective supervisory input is important before such institutions declare dividends or take other similar actions as a result of any gains on any sale of Freddie Mac stock because such actions may potentially delay the date institutions attain their fully phased-in capital requirements. As noted above, the Board continues to believe that it is in the best interests of insured institutions, their depositors, and the FSLIC fund that all insured institutions move as quickly as is reasonable to reach their fully phased-in capital levels. Furthermore, given that the gains on the sale of Freddie Mac preferred stock are not likely to be recurring income, the Board believes that such gains should be used to augment capital.

Therefore, the Board has decided to retain the requirement that institutions not meeting their fully phased-in capital requirement that sell shares of Freddie Mac preferred stock must exclude the gain on the sale of these shares from earnings in calculating allowable dividends under the Board's regulations without prior approval by their PSA. Additionally, because certain other actions in connection with gains from the sale of Freddie Mac preferred stock, such as implementation of a stock repurchase program, may have identical adverse consequences on or for an institution's financial condition and may delay the institution's attainment of its fully phased-in capital requirement, the same prior approval is required for any such action. *Cf.* Board Res. No. 88-331, 53 FR 2477 (January 28, 1988) (restriction on repurchase of stock of recently converted insured institutions). The Board contemplates that among the factors the PSA will take into account in determining whether to approve a dividend, stock repurchase plan, or any equivalent action based upon proceeds from the sale of Freddie Mac stock is whether such proceeds reflect the one-time-only restrictions on originally distributed Freddie Mac stock or from gains in the ordinary course of business on the sale of subsequently purchased stock.

The Board has therefore determined that the final regulation adopted today will help to ensure that institutions that are failing their regulatory capital requirement buy and sell Freddie Mac preferred stock in a manner consistent with principles of safety and soundness and that adequate supervisory input is provided before institutions take certain actions as a result of gains from any sale of Freddie Mac stock that might adversely affect their ability to attain their fully phased-in capital requirements as expeditiously as possible.

Pursuant to 5 U.S.C. 553(b) and 12 CFR 508.14, the Board hereby finds that good cause exists for making this final rule effective January 1, 1989, rather than the usual thirty days following publication in the **Federal Register**. The temporary rule it replaces expires December 31, 1988. If the rule were not made effective as of January 1, 1989, there would be a lapse in the Board's ability to supervise institutions with impaired capital. Because the final rule is identical to the temporary rule that has been in effect since July 22, 1988, no delay is necessary to allow institutions to become familiar with the rule's provisions. Therefore, good cause exists for dispensing with the thirty-day delay of effective date.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in "**SUPPLEMENTARY INFORMATION**".

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board has drafted the final rule to affect only those insured institutions, regardless of size, that because of their levels of regulatory capital are a matter of particular regulatory and supervisory concern. The final rule will not have a disproportionate impact on small institutions.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 47 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 406, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13-3 to read as follows:

§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forebearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities. The Principal Supervisory Agent or his designee, may impose any conditions he deems appropriate in granting such approval, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and 563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities, an insured institution that fails to satisfy its fully phased-in regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forebearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-232 Filed 1-5-89; 8:45 am]

BILLING CODE 6720-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 366

Collection of Debts by Federal Tax Refund Offset

AGENCY: Railroad Retirement Board.

ACTION: Temporary rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations by adding Part 366 to establish a procedure whereby delinquent debts owed to the Board will be referred to the Internal Revenue Service for collection by offset against Federal income tax refunds. These regulations are being issued pursuant to 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These regulations affect taxpayers who made an overpayment of taxes and who owe a past-due legally enforceable debt to the Board resulting from erroneous benefit or annuity payments made under statutes administered by the Board. These regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1988, and on or before January 10, 1994.

EFFECTIVE DATE: These regulations are effective January 6, 1989, and expire January 11, 1994.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: Title 31 U.S.C. 3720A authorizes the Internal Revenue Service to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal agency and is at least three months overdue. Section 3720A also requires the agency to give taxpayer-debtors at least 60 days notice of the agency's intention to use the provisions of this section. Under this authority, the Board may refer to the Internal Revenue Service for collection by tax refund offset, from refunds otherwise payable, past-due legally enforceable debts owed to the Board if:

(i) The debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T, and the agreement between the Board, the Internal Revenue Service, and the Financial Management Service, and

(ii) The Board provides the information required by the agreement for each debt. This temporary rule and the agreement set forth terms under which the Board is identified by the Commissioner of Internal Revenue as eligible to participate in the tax refund offset program for each calendar year.

In order to participate in the Federal Tax Refund Offset Program in calendar year 1989, the Board must promulgate regulations that are effective upon publication.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 366

Income taxes, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20, Chapter II, Subchapter F of the Code of Federal Regulations, is amended by adding thereto a new Part 366 to read as follows (This regulation will expire January 11, 1994):

PART 366—COLLECTION OF DEBTS BY FEDERAL TAX REFUND OFFSET

Sec.

366.1 Notification to Internal Revenue Service.
366.2 Past-due legally enforceable debt.
366.3 Reasonable attempt to notify.
366.4 Notification to debtor.
366.5 Consideration of evidence.
366.6 Change in notification to Internal Revenue Service.
366.7 Sunset provision.

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3720A.

§ 366.1 Notification to Internal Revenue Service.

Upon entering into an agreement with the Internal Revenue Service and the Financial Management Service with regard to its participation in the tax refund offset program, the Board may notify the Internal Revenue Service, pursuant to the terms of such agreement, of past-due legally enforceable debts owed to the Board that are to be collected by tax refund offset. The Board's notification to the Internal Revenue Service will be as prescribed by the Internal Revenue Service in regard to information included and format, and will be made by such dates as prescribed by the Internal Revenue Service. The Board will provide the Internal Revenue Service with a toll-free or collect telephone number which the Internal Revenue Service may furnish to individuals whose refunds have been offset for use in obtaining information from the Board concerning the offset.

§ 366.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to the Internal Revenue Service is a debt:

(a) Which resulted from erroneous benefit or annuity payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act or any other statute administered by the Board;

(b) Which is an obligation of a debtor who is a natural person;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least $25.00;

(e) With respect to which the individual's rights described in Part 260 or Part 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, have been exhausted;

(f) With respect to which either:

(1) The Board's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under Title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which is not eligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) by the Board against amounts payable to the debtor by the Board;

(i) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(j) With respect to which the Board has notified, or has made a reasonable attempt to notify, the individual that the debt is past due, and that unless the debtor repays the debt within 60 days, will be referred to the Internal Revenue Service for offset against any overpayment of tax; and

(k) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (j) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by such individual, and has determined that an amount of such debt is past due and legally enforceable.

§ 366.3 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor the Board must have used a mailing address for the debtor obtained from the Internal Revenue Service pursuant to section 6103 (m)(2) or (m)(4) of the Internal Revenue Code within a period of one year preceding the attempt to notify the debtor, whether or not the Board has used any other address maintained by the Board for the debtor.

§ 366.4 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 366.5 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board and a determination that an amount of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 366.6 Change in notification to Internal Revenue Service.

If, after submitting to the Internal Revenue Service notification of liability for a debt, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification,

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the Internal Revenue Service for offset, or

(c) Receives notification that the individual owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged, the Board will promptly notify the Internal Revenue Service. However, the Board will make no notification to the Internal Revenue Service to increase the amount of a debt owed by a debtor named in the Board's original notification to the Internal Revenue Service. If the amount of a debt is reduced after referral by the Board and offset by the Internal Revenue Service, the Board will refund to the debtor any excess amount and will promptly notify the Internal Revenue Service of any refund made by the Board.

§ 366.7 Sunset provision.

This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1988, and on or before January 10, 1994.

Dated: December 28, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-206 Filed 1-5-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103 and 165

[Docket No. 82N-0319]

Nonalcoholic Beverages: Repeal of Soda Water Standard of Identity; Amendment of Bottled Water Quality Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is repealing the standard of identity for soda water and amending the standard of quality for bottled water to delete the reference to the soda water standard. The standard of identity is being repealed because some provisions of the standard are being adequately dealt with by other regulations, while other provisions are no longer necessary.

DATES: Effective February 7, 1989. Compliance may begin March 7, 1989. Written objections and requests for a hearing by February 6, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of May 20, 1987 (52 FR 18922), FDA published a proposal to repeal the standard of identity for soda water (21 CFR 165.175) and to amend the standard of quality for bottled water (21 CFR 103.35) by deleting the reference to the soda water standard.

Interested persons were given until July 20, 1987, to comment on the proposal. Four letters, each containing one or more comments, were received in response to the proposal. One comment from the National Soft Drink Association supported the proposal, and the other comments, from the International Bottled Water Association (IBWA), from a consumer group, and from a company representative, either opposed the proposal or suggested changes to the proposal. A discussion of the comments and the agency's responses follow.

II. Comments

1. IBWA initially opposed the proposed change in § 103.35 to exclude any form of carbonated water from the definition of bottled water. IBWA maintained that the proposed change would eliminate any guidance for distinguishing between carbonated soda beverages and carbonated bottled water. In an addendum to their comment, IBWA suggested that § 103.35 be amended to include definitions for carbonated spring water, artesian water, and mineral water as a means of distinguishing various bottled waters. IBWA stated that inclusion of these definitions in the standard of quality would respond to IBWA's concern about the repeal of the standard for soda water. IBWA also filed a citizen petition (Docket No. 88P-0030/CP) to amend the standard of quality for bottled water (§ 103.35) and the current good manufacturing practice (CGMP) regulations for bottled water in Part 129 (21 CFR Part 129) to, among other things, include these and other definitions for types of bottled waters.

The agency does not believe it necessary to include definitions for bottled waters from various water sources and produced by different treatments in the standard of quality for bottled water at this time. Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) provides that a food will be deemed to be misbranded if its labeling is false or misleading in any particular. Accordingly, if a manufacturer decides to provide information in the labeling regarding the source of the water or special treatment that the water has received, such information must be truthful, factual, and not misleading in any respect. For example, a product labeled "carbonated spring water" would have to have been obtained from a spring and had carbonation added in some form. FDA concludes that existing statutory authority is sufficient to provide for regulatory action in instances where false and misleading statements concerning the source or treatment of the bottled water are made, and that it is not necessary to include specific statements to this effect in § 103.35.

With respect to IBWA's suggested definition for mineral water, FDA believes that it would be more appropriate to consider the merits of this suggested definition and definitions for other bottled water products when FDA acts on the IBWA petition to amend the standard of quality and the CGMP regulations for bottled water. In particular, the agency believes that the minimum levels for minerals in mineral water that are suggested by the IBWA petition should be offered for comment before adoption.

To clarify the intent of the changes that the agency is making in § 103.35, FDA has revised the language amending 21 CFR 103.35(a)(1) to state that the standard does not include "any type of soft drink commonly known as soda water, which is made by absorbing carbon dioxide in potable water." The agency believes that this revised language will minimize confusion concerning carbonated bottled waters that are exempt from the provisions of the standard of quality for bottled water (21 CFR 103.35).

2. One comment supporting retention of the soda water standard suggested that the description of soda water in the standard is outdated and needs to be either deleted or modified because it fails to define terms such as "seltzer," "sparkling mineral water," "carbonated mineral water," and "club soda." The comment expressed the opinion that, in the absence of such definitions, consumers will not be able to distinguish among product types.

The agency agrees that the various types of carbonated beverages may be confusing to some consumers. However, the agency does not believe that it is necessary to have a standard of identity to eliminate this confusion. The repeal of the soda water standard makes soda water products nonstandardized food that may contain any safe and suitable ingredient. All ingredients used in these beverages will have to be declared on the label in accordance with 21 CFR 101.4. Thus, consumers will be able to differentiate among various products on the basis of product composition.

3. One comment suggested that, if FDA establishes a prior sanction for caffeine in soft drinks (proposal—May 20, 1987; 52 FR 18923), the agency should retain the soda water standard and make caffeine an optional ingredient to encourage the soft drink industry to continue providing caffeine-free colas and other carbonated beverages.

FDA believes that retention of the soda water standard is unnecessary to continued marketing of caffeine-free beverages, and that agency action regarding the prior sanction of caffeine will not affect a manufacturer's ability to market such products.

The agency points out that, with the repeal of the standard of identity for soda water, manufacturers will be free to produce any cola or pepper beverage without added caffeine, irrespective of agency action regarding the prior sanction of caffeine. The agency believes that, as long as there is a market for caffeine-free carbonated beverages, the soft drink industry will produce such products. When soda water beverages are made with added caffeine, manufacturers will be required to declare the presence of the added caffeine in accordance with the labeling regulations in 21 CFR Part 101, as well as the presence of other ingredients used in these products in accordance with the law.

Accordingly, after review of all comments received, FDA concludes that the soda water standard is no longer needed and is repealing 21 CFR Part 165.

III. Related Action

On October 21, 1980 (45 FR 69816), FDA proposed to amend the standard of identity for soda water to: (1) Designate kola nut extract, rather than caffeine, as the mandatory ingredient in "cola" and "pepper" beverages; (2) provide for caffeine-free "cola" or "pepper" soda water beverages under the standard of identity; and (3) continue to permit the use of added caffeine in these beverages as an optional ingredient. Because FDA is repealing the soda water standard (21 CFR Part 165), the October 21, 1980, proposed amendment of the soda water standard is hereby withdrawn.

IV. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 6, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 103

Beverages, Bottled water, Food grades and standards.

21 CFR Part 165

Beverages, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 103 and 165 are amended as follows:

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR Part 103 is revised to read as follows:

Authority: Secs. 401, 403, 701, 52 Stat. 1046–1048 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 343, 371); 21 CFR 5.10.

2. Section 103.35 is amended in paragraph (a)(1) by revising the second sentence to read as follows:

§ 103.35 Bottled water.

(a) * * *

(1) * * * Bottled water does not include mineral water or any type of soft drink commonly known as soda water, which is made by absorbing carbon dioxide in potable water.

* * * * *

PART 165—[REMOVED]

3. Part 165—Nonalcoholic Beverages, consisting of Subpart A which is reserved and Subpart B which consists of § 165.175 *Soda water*, is removed.

Dated: December 19, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-183 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Fenprostalene Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for use of fenprostalene solution in sows and gilts for the induction of parturition.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, has filed NADA 138-903, providing for subcutaneous use of Porcilene® (fenprostalene) solution for the induction of parturition in sows and gilts pregnant at least 112 days. The firm currently has approval for use of fenprostalene solution in feedlot heifers to induce abortion when pregnant 150 days or less and in beef or nonlactating dairy cattle for estrus synchronization. The NADA is approved and 21 CFR 522.914 (a) and (e) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.914 is amended by revising paragraph (a), by redesignating existing paragraphs (e) (1), (2), and (3) as paragraphs (e)(1) (i), (ii), and (iii), respectively, by revising the headings for redesignated paragraph (e)(1)(i) and by adding paragraph (e)(2) to read as follows:

§ 522.914 Fenprostalene solution.

(a) *Specifications*—(1) *Cattle.* Each milliliter of sterile solution contains 0.5 milligram of fenprostalene.

(2) *Swine.* Each milliliter of sterile solution contains 0.25 milligram of fenprostalene.

* * * * *

(e) *Conditions of use*—(1) *Cattle*—(i) *Amount.* * * *

* * * * *

(2) *Swine*—(i) *Amount.* 0.25 milligram (1 milliliter) subcutaneously once per animal.

(ii) *Indications for use.* For sows and gilts pregnant at least 112 days for the induction of parturition.

(iii) *Limitations.* Subcutaneous use in swine only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 23, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-182 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8239]

Procedure and Administration; Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations which further amend temporary regulations that were published in the **Federal Register** on September 30, 1985, and were amended on May 13, 1987, relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.** The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

EFFECTIVE DATES: The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985 and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, the regulations apply to refunds payable through the date to which such legislation extends the program. In such a case, the Service will publish notice confirming the extension of these regulations.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall, 202-566-4811 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1985, temporary regulations under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of Title 31, United States Code were published in the **Federal Register** (50 FR 39713, Sept. 30, 1985). Those regulations were amended on May 13, 1987 (52 FR 17949, May 13, 1987). The effective date of section 6402(d) was extended by section 9402 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, 101 Stat. 1330-376) and further extended by section 701 of the Family Support Act of 1988 (Pub. L. 100-485, 102 Stat. 2425). This document amends those temporary regulations, which provided guidance concerning which debts qualify for referral to the Service for the Federal tax refund offset program and concerning procedures relating to operation of the program.

In General

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (a) to reduce the amount of any overpayment (*i.e.*, tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a Federal agency of which the Service has been notified, (b) to pay the amount of the reduction to the agency to which the debt is owed, and (c) to notify the taxpayer that the overpayment has been reduced.

The temporary regulations require that a Federal agency submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by December 1 of each year. The regulations are amended to require the notification to be submitted to the Service by a date specified in a revenue procedure. Since the date by which notification must be submitted each year is subject to change, it was determined that providing the date by revenue procedure would allow greater flexibility in administering the program.

The regulations are amended to provide that the amount that is transmitted to each Federal agency is reduced by a fee for each offset.

The effective date of the regulations is amended to provide that the regulations are effective for refunds payable after December 31, 1985, and on or before January 10, 1994. However, if legislation extending the tax refund offset program beyond January 10, 1994, is enacted, the regulations are effective for refunds payable through the date to which such legislation extends the program.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankrupicy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 301.6402-6T also issued under 31 U.S.C. 3720A.

Par. 2. Section 301.6402-6T is amended as follows:

1. In paragraph (b), the first sentence of the concluding language that follows paragraph (b)(8) is revised to read as set forth below.

2. In paragraph (c) (1), the introductory language that precedes paragraph (c)(1)(i) is revised to read as set forth below.

3. Paragraphs (i) and (k) are revised to read as set forth below.

§ 301.6402-6T Offset of past-due legally enforceable debt against overpayment. (Temporary)

* * * * *

(b) * * *

For purposes of this paragraph, in order to make a reasonable attempt to notify the taxpayer the agency must use such address information as may be obtainable from the Service pursuant to section 6103 (m)(2), (m)(4) or (m)(5) of the Code. * * *

(c) *Time and content of notification of liability for past-due legally enforceable debt.* (1) A Federal agency must submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by such date as shall be specified in a Revenue Procedure each year. Such notification must contain—

* * * * *

(i) *Fees.* Refund offset fees in amounts determined to be sufficient to reimburse the Department of the Treasury for the full cost of the refund offset procedure prescribed by this section shall be deducted from amounts collected prior to disposition of such amounts as described in paragraph (h) of this section. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts which bore all or part of the costs involved in

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administering the refund offset procedures.

* * * * *

(k) *Effective date.* This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1985, and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, this section applies to refunds payable through the date to which such legislation extends the program.

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 22, 1988.

Dennis E. Ross,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-243 Filed 1-3-89; 2:39 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6698

[U-942-09-4214-10; U-57025]

Withdrawal of Public Land for Tabernacle Hill Lava Field, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 3,512.03 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Tabernacle Hill Lava Field. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, Lands and Mining Claims Adjudication Section, Utah State Office, 324 South State, Suite 301, Salt Lake City, UT 84111, 801-524-4036.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2) but not from leasing under the mineral leasing laws, to protect the volcanic features:

Salt Lake Meridian

T. 22 S., R. 6 W.,
Sec. 3, lots 4 and 15, SW¼NW¼, W½SE¼ NW¼, SW¼, and SW¼SE¼;
Sec. 4, lots 1 and 2, S½N½, and S½;
Sec. 5, S½S½SW¼, E½SE¼, E½W½ SE¼, and SW¼SW¼SE¼;
Sec. 7, E½E½E¼;
Sec. 8, All;
Sec. 9, All;
Sec. 10, W½NE¼, W½, NW¼NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, and W½W½SW¼SE¼;
Sec. 15, W½NE¼NW¼, W½NW¼, and SE¼NW¼;
Sec. 17, N½, E½SE¼, E½NW¼SE¼, and NE¼SW¼SE¼;
Sec. 20, E½NE¼NE¼;
Sec. 21, NW¼NW¼.

The area described contains 3,512.03 acres in Millard County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than those under the mining law.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

December 22, 1988.

[FR Doc. 89-201 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-DQ-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 87-570; FCC 88-350]

Administrative Practice and Procedure; Federal Claims Collection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted specific procedures implementing the Debt Collection Act of 1982 and related statutory provisions. These procedures will be used for expediting the collection of debts owed to the United States Government. Specifically, the rules address the use of administrative and salary offsets; the reporting of delinquent individual debtors to consumer reporting agencies; the assessment of interest, penalties, administrative charges, and other sanctions against delinquent debtors; the issuance of contracts to private collection services for the recovery of money owed to the United States; and the procedures to be followed in referring delinquent debts to the Department of Treasury for collection by offsets against tax refunds owed to the particular debtor. Delinquent monetary forfeitures will not be collected under these adopted procedures until all the procedures for the enforcement and collection of forfeitures specified in the Communications Act are exhausted.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Salas, (202) 254-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 88-350, adopted October 28, 1988, and released December 23, 1988. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On December 24, 1987, the Commission published in the **Federal Register** a notice of proposed rulemaking requesting comments on its proposed rules to implement the Debt Collection Act of 1982 and section 2653(a)(1) of the Deficit Reduction Act of 1984 (52 FR 48725). The only comments received in this proceeding were filed by Northwestern Indiana Telephone Company (NITCO).

NITCO suggested that the proposed rules be clarified to indicate that, with respect to the collection of monetary forfeitures imposed by the Commission, the proposed debt collection procedures will be invoked only after the judicial review proceedings prescribed in sections 503 and 504 of the Communications Act have become final.

2. The *Report and Order* clarifies that the Commission must adhere to the statutory procedures for forfeitures in the Communications Act before invoking debt collection procedures under the adopted rules. While it is clear that the Debt Collection Act was designed for the collection of monetary forfeitures, the related uniform standards issued by the Department of Justice and the General Accounting Office prescribe that laws and regulations that are specifically applicable to claims collection activities of a particular agency take precedence over the procedures set forth by the Debt Collection Act. Thus, because sections 503 and 504 of the Communications Act delineate specific procedures for the collection of forfeitures imposed by the Commission, those procedures must be followed before considering other procedures adopted in this proceeding. Proposed rule 1.1905 has been clarified in order to address this matter.

3. The final rules adopted herein have been analyzed pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). In this connection, we find that the rules prescribe no new modified forms to be submitted by the public.

4. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated attached to this Order. These rules will become effective February 6, 1989.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 1

Collection of claims owed the United States.

Final Rules

Part 1 [Practice and Procedure] of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new Subpart O as follows:

PART 1—[AMENDED]

1. Subpart O is added to read as follows:

Subpart O—Collection of Claims Owed the United States

General Provisions

Sec.

1.1901 Definitions.
1.1902 Exceptions.
1.1903 Use of procedures.
1.1904 Conformance to law and regulations.
1.1905 Other procedures; collection of forfeiture penalties.
1.1906 Informal action.
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Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

1.1911 Demand for payment.
1.1912 Collection by administrative offset.
1.1913 Administrative offset against amounts payable from Civil Retirement and Disability Fund.
1.1914 Collection in installments.
1.1915 Exploration of compromise.
1.1916 Suspending or terminating collection action.
1.1917 Referrals to the Department of Justice or the General Accounting Office.
1.1918 Use of consumer reporting agencies.
1.1919 Contracting for collection services.

Salary Offset

1.1925 Purpose.
1.1926 Scope.
1.1927 Notification.
1.1928 Hearing.
1.1929 Deduction from pay.
1.1930 Liquidation from final check or recovery from other payment.
1.1931 Non-waiver of rights by payments.
1.1932 Refunds.
1.1933 Interest, penalties and administrative costs.
1.1934 Recovery when paying agency is not creditor agency.
1.1935 Obtaining the services of a hearing official.

Interest, Penalties, Administrative Costs and Other Sanctions.

1.1940 Assessment.
1.1941 Exemptions.
1.1942 Other sanctions.

Cooperation With the Internal Revenue Service

1.1950 Reporting discharged debts to the Internal Revenue Service.
1.1951 Offset against tax refunds.

General Provisions Concerning Interagency Requests

1.1952 Interagency requests.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550.

Subpart O—Collection of Claims Owed the United States

General Provisions

§ 1.1901 Definitions.

(a) The term "administrative offset" means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) The term "agency" means the Federal Communications Commission (Commission) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term "agency head" means the Chairman of the Federal Communications Commission.

(d) The terms "appropriate agency official" or "designee" means the Managing Director of the Commission or such other official as may be named by the Managing Director.

(e) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another federal agency. They include amounts owing to the United States on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, and forfeitures (except those arising under the Uniform Code of Military Justice), and other similar sources.

(f) The term "creditor agency" means the agency to which the debt is owed.

(g) The term "delinquent" means a claim or debt which has not been paid by the date specified in the agency's written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement with the agency.

(h) The term "disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(i) The term "employee" means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(j) The term "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR Parts 101-105.

(k) The term "paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(l) The term "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(m) The term "salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at

one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) The term "waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C 710, 5 U.S.C. 8346(b), or any other law.

§ 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR Part 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR Part 32). If not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.

(d) Tax claims are also excluded from the coverage of this regulation.

§ 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Pub. L. 97–365, 96 Stat. 1749) have been implemented in government wide standards:

(a) The Regulations of the Office of Personnel Management (5 CFR Part 550) and

(b) The Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105).

Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Commission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

§ 1.1905 Other procedures; collection of forfeiture penalties.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures required by other statutes or regulations. In particular, the assessment and collection of monetary forfeiture penalties imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings.

§ 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available.

§ 1.1907 Return of property.

Nothing contained in this regulation is intended to deter the Commission from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 1.1908 Omissions not a defense.

The failure of the Commission to comply with any provision in this regulation shall not serve as a defense to the debt.

Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

§ 1.1911 Demand for payment.

(a) Written demands for payment shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not not require rebuttal. In determining the timing of demand letters, the Commission will give due regard to the need to act promptly so that, as a general rule, if it becomes necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interest (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of:

(1) The basis for the indebtedness and the right of the debtor to request review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this subpart) and;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered.

(c) As appropriate to the circumstances, the Commission may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, the Commission determines to pursue administrative offset, then the procedures specified in §§ 1.1912 and 1.1913 as applicable, will be followed. The availability of funds for offset and the agency's determination to pursue that remedy, release the agency from the necessity of further compliance with paragraphs (a), (b) and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§ 1.1912 and 1.1913 as applicable.

§ 1.1912 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. The Commission will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interest. In appropriate circumstances, the Commission may give due consideration to the debtor's financial condition and is not required to use offset in every instance in which there is an available source of funds. The Commission may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: Written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt.

(1) The Commission will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission will normally accept a repayment agreeement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or pursuant to 47 U.S.C. 503, 504 and 47 CFR 1.80, the agency is not required to duplicate those requirements before taking administrative offset.

(3) The Commission may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) The Commission is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(i) Debts owed by any State or local Government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) Any case in which collection of the claim or type of claim by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if:

(i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) The Commission will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review. (1) For purposes of this section, whenever the Commission is required to provide a hearing or review within the agency, it shall provide the debtor with a reasonable opportunity for an oral hearing when:

(i) Any applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(ii) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the Commission will carefully document all significant matters discussed at the hearing.

(2) The section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on the request for waiver or reconsideration based upon a "paper hearing," that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in affecting collection by administrative offset. Generally, the Commission will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the

applicable provisions of these standards or the offset otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and full compliance with the provisions of this section has taken place.

(g) When collecting multiple debts by administrative offset, the Commission will apply the recovered amounts to those debts in accordance with the best interest of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation.

§ 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owned to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of § 1.1912 of this subpart, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory payment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, it shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the Commission's determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§ 1.1914 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this subpart should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. If the Commission agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debtor and debtor's ability to pay. If possible, the installment payments should be of sufficient size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month will be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(b) If the debtor owes more than one debt and designates how a voluntary installment is to be applied among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Commission will apply payments to various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1.1915 Exploration of compromise.

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103).

§ 1.1916 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1.1917 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 CFR Part 105).

§ 1.1918 Use of consumer reporting agencies.

(a) The term "individual" means a natural person, and the term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act, as amended, at 31 U.S.C. 3701(a)(3) or the Fair Credit Reporting Act, at 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, from a system of records, information that an individual is responsible for a claim if—

(1) Notice required by section 5 U.S.C. 552a(e)(4) indicates that information in the system may be disclosed to a consumer reporting agency;

(2) The claim has been reviewed and it is decided that the claim is valid and overdue;

(3) The Commission has notified the individual in writing—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days after sending the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) Of the specific information to be disclosed to the consumer reporting agency; and

(iv) Of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to adminstrative appeal or review of the claim; and

(4) The individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the agency has agreed to; or

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall—

(1) Disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Before disclosing information to a consumer reporting agency, the Commission shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice.

(g) Before disclosing information to a consumer reporting agency, the Commission shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(h) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act.

§ 1.1919 Contracting for collection services.

(a) The Commission has authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable the Commission to determine whether to pursue collection through litigation or to terminate collection efforts; and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a)(1), (2), and (3) of § 105.2 of the Federal Claims Collection Standards (4 CFR Part 105) upon returning an account to the Commission for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts. (1) The Commission may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) The Commission may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) The Commission may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, the Commission must deposit all amounts recovered under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(c) The Commission will consider the use of collection agencies at any time after the account is 61 days past due. In any case where an account is six months or more past due, the Commission may turn it over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure or the Commission has exercised its authority to write off the debt pursuant to § 1.1916.

(d) The Commission will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Salary Offset

§ 1.1925 Purpose.

This section provides the standards to be followed by FCC in implementing 5 U.S.C. 5514 to recover a debt from the pay account of an FCC employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage.* This section applies to agencies and employees as defined by § 1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 CFR Parts 101–105).

(1) Excluded debts or claims. The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Waiver requests and claims to the General Accounting Office. This section does not preclude an employee from

requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

(c) *Time Limit.* Under 4 CFR 102.3(b)(3) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 102.3(b)(3).

§ 1.1927 Notification.

(a) Salary offset deductions shall not be made unless the Managing Director of the Commission, or such other official as may be named in the future by the Managing Director of the Commission, provides the employee at least 30 days before any deduction written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in agency files (4 CFR 102.2(e)).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1.1928 Hearing.

(a) *Petition for Hearing.* (1) A hearing may be requested by filing a written petition with the Managing Director of the Commission, or such other official as may be named by the Managing Director of the Commission, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to above, the Commission will nevertheless accept the petition if the employee can show that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (3) above, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of Hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

§ 1.1929 Deduction from pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States should be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum, or, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will normally be made in installments.

(2) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited, to, final salary payment or lump-sum leave due the employee as the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913 of this regulation.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with § § 1.1940 and 1.1941 of this regulation.

§ 1.1934 Recovery when paying agency is not creditor agency.

(a) Responsibilities of creditor agency. Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the paying agency, the creditor agency also must advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the employee's paying agency.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the employee's paying agency for collection pursuant to § 1.1930. The paying agency must certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) Responsibilities of paying agency—

(1) *Complete claim.* When the paying agency receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officials established pay interval. The employee must receive written notice that the paying agency has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the paying agency receives an incomplete debt claim from a creditor agency, the paying agency must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another.

(1) If, after the creditor agency has submitted the debt claim to the employee's paying agency, the employee transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates must certify the total amount of the

collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of 5 CFR Part 581 for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

Interest, Penalties, Administrative Costs and Other Sanctions

§ 1.1940 Assessment.

(a) Except as provided in paragraph (h) of this section, or § 1.1941, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, the Commission will mail or hand-deliver a written notice to the debtor explaining the agency's requirements concerning these charges.

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If the Commission should use an "advance billing" procedure—that is, if it mails a bill before a debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury Tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The Commission may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, the Commission may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on accrued interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment schedule.

(d) The Commission shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent. Calculation of administrative costs shall be based upon actual costs incurred or upon costs analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(e) The Commission shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. It may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the Commission may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103) relating to the compromise of claims (without regard to the amount of the debt), or if it determines that collection of these charges would be against equity and good conscience, or not in the best interest of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised under appropriate circumstances. Examples of appropriate circumstances include:

(1) Waiver of interest pending the agency's disposition of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where the Commission has accepted an installment plan under § 1.1914, and there is no indication of fault or lack of good faith on the part of the debtor.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 104.2(c)(1) of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1.1941 Exemptions.

(a) The provisions concerning interest and penalty on claims contained in 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on (*i.e.*, were not completed as of), October 25, 1982;

(3) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

Cooperation with the Internal Revenue Service

§ 1.1950 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is $600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

§ 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

General Provisions Concerning Interagency Requests

§ 1.1952 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Services Branch, FCC, 1919 M Street NW., Washington, DC 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

[FR Doc. 89–53 Filed 1–5–89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 81273–82731]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NOAA issues this interim final rule to (1) require that in purse seine sets involving marine mammals, U.S. tuna fishing vessels must have completed the backdown maneuver and begun rolling the net to sack-up no later than 30 minutes after sundown, unless an operator qualifies for a waiver; (2) establish a procedure for permitting fishing operations to experiment with new equipment and procedures to reduce marine mammal mortality; and (3) prohibit the use of explosive devices, other than Class C devices, in tuna purse seine fishing involving marine mammals. This rule implements certain measures contained in the Marine Mammal Protection Act Amendments of 1988, which were signed into law on November 23, 1988.

EFFECTIVE DATE: This rule is effective on January 1, 1989, except for the amendments to 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), and (viii), which contain information-collection requirements and will not be effective until approved by the Office of Management and Budget. When approval is obtained, NOAA will publish notice of the effective date of the amendments to 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), and (viii) in the **Federal Register**. The rule will remain effective until superceded. Comments are invited and must be received on or before February 21, 1989.

ADDRESSES: Comments may be mailed to E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service (213) 514–6196.

SUPPLEMENTARY INFORMATION:

Background

Purse seine fishing for yellowfin tuna in the Eastern Tropical Pacific (ETP) Ocean is conducted mainly in association with porpoise. Schools of large yellowfin tuna tend to swim beneath schools of porpoise. During the fishing operation, porpoise are searched for, herded by speedboats, surrounded by the seine, and released over the net while tuna remain captured through a process called backdown. Porpoise may become entangled in the net and drown before they are released. This type of fishing operation is prohibited by the Marine Mammal Protection Act (MMPA), except when conducted under the General Permit issued to the American Tunaboat Association (ATA) and in compliance with the applicable regulations.

Although only about ten percent of the sets on marine mammals extend into darkness, the average rate of marine mammal mortality in those purse seine sets is substantially higher than in sets completed during daylight. To reduce that mortality rate, NOAA required, effective July 1, 1986, that high intensity lighting systems be installed on all certificated tuna vessels and those lights be used to illuminate the net to help in the release of entrapped marine mammals. Despite a reduction in mortality with the use of these lights, the kill rate in sets extending into darkness remains significantly higher than in daylight sets. Between July 1, 1986 and June 30, 1988, the marine mammal mortality rate in sets that extend into darkness was 0.568 animals per short ton of yellowfin tuna caught compared to 0.154 mammals killed per short ton of yellowfin tuna caught in daylight sets.

In reauthorizing the MMPA in 1988, the Congress has acted to prevent the higher mortality rate found in "sundown sets" by directing the Secretary to Prescribe regulations to ensure that the backdown procedure is completed and rolling of the net to sack-up has begun

no later than thirty minutes after sundown. The backdown maneuver involves moving the vessel backward in a shallow arc to form the pursed net into an elongated narrow channel, which is lined with the required fine mesh webbing to prevent marine mammal entanglement. During this maneuver, marine mammals are herded to the apex of the net channel where they can escape over the cork lines. Skillful and careful performance of the backdown procedure is the best and safest means of releasing mammals from the net once they are encircled. If this part of a purse seine set takes place in darkness, the effectiveness of the release is compromised because of the reduced visibility.

Records from NOAA and Inter-American Tropical Tuna Commission observers aboard U.S.-flag tuna vessels indicate that, during the past ten years, approximately 30 percent of the marine mammals killed in tuna fishing by U.S.-flag purse seine vessels were killed in sets that extended into darkness. Those sets represent only 10 percent of the total sets on marine mammals and are estimated to produce 10 percent of the yellowfin tuna caught in association with marine mammals. An environmental assessment prepared by NOAA for this rulemaking estimates that a prohibition of sundown sets would reduce marine mammal mortality by approximately 25 percent, and would also extend the average fishing trip by five days. This conclusion is based on the expectation that vessels would replace the catch foregone in sundown sets by extending their fishing trips and making more daylight sets on marine mammals.

The 1988 MMPA amendments provide that the Secretary of Commerce may exempt a certificate holder from the sundown set restriction on trips carrying an observer, if the holder's marine mammal mortality rate in sundown sets has been consistently no greater than the average of the U.S.-flag fleet during daylight sets. This rule provides for such an exemption and for the continuing monitoring of exempted operators' performances to ensure that their exemptions continue only if their mammal mortality rate in sundown sets remains as low as the United States fleet's average during daylight sets for the same period of time.

The 1988 MMPA amendments also provide that the Secretary may exempt the entire fleet if it is determined that all the vessels and operators in the fleet are using equipment and procedures that reduce the mammal mortality in sundown sets to that of the average for daylight sets. Based on observer records, the fleet average marine mammal mortality in sundown sets is greater than the average in daylight sets. During the period when high intensity lights have been required for use on sets in which the backdown occurs in darkness, the mortality rate in sundown sets has been 0.57 marine mammals killed per ton of yellowfin tuna caught. This rate is 3.7 times the mortality rate in daylight sets during the same period based upon using the data available, from July 1, 1986 through June 30, 1988. Expressed as kill per set, the mortality rate in sundown sets was 10.57 animals per set which is 3.6 times the average of 2.90 animals in daylight sets. These data indicate that the high intensity lighting system, while a useful tool, has not reduced the average mortality rate in sundown sets to equal that of daylight sets. Therefore, an exemption for the fleet as a whole is not warranted at this time.

The 1988 amendments also require NOAA to establish a system to provide vessel owners and operators an opportunity to experiment with new equipment and procedures for the purpose of reducing mammal mortality and the serious injury rate. In experimental fishing operations under a permit, the Secretary may waive or modify restrictions that would otherwise apply under the marine mammal regulations or the terms and conditions of the ATA general permit. The Secretary, however, may not waive marine mammal quotas or the prohibition against setting nets around pure schools of certain marine mammals.

The 1988 amendments further direct the Secretary to prohibit immediately the use of explosive devices, other than Class C explosive devices, in purse seine fishing operations involving marine mammals. Further, the Secretary was instructed to study the effects of Class C devices on marine mammals and to restrict or prohibit their use by April 1, 1990, unless the Secretary, based upon the study, determines that the devices do not result in physical impairment or increased mortality of marine mammals.

Commercial fishermen along the Pacific coast of the United States are allowed to use Class C explosive devices under the general permit covering their take of marine mammals in fishing operations. These devices are known as seal control devices and are for the purpose of driving off marine mammals, usually pinnipeds, that threaten the catch or fishing gear. Some tuna purse seine fishermen have adopted these devices for use in their operations to help herd and concentrate marine mammals and to keep the tuna from escaping the net as it is pursed. Research funded by NOAA found that the energy released by these devices in the ocean was below the threshold level known to cause auditory damage in bottlenose dolphin (Awbry, F.T. and J.A. Thomas, 1984. National Marine Fisheries Service Contract Number 84–JFA–00062). Congress directed that NOAA conduct new research to examine more directly the effect of seal control devices on porpoise in the tuna fishery. Therefore, the Secretary will restrict or prohibit the use of the Class C explosive devices in tuna fishing by April 1, 1990, unless the Secretary determines from this study that such explosive devices do not injure or physically impair marine mammals.

Description of Measures Contained in This Rule

Sundown Set Restriction and Exemption Procedure: This rule places the burden on the vessel operator to determine how much time must be allowed in order to complete a set through backdown to the start of rolling net to sack-up before one-half hour after sundown. Congress allowed NOAA the option to establish a time before sundown after which the sets could not be initiated to ensure that substantially all the fishing operations involving marine mammals would be completed before one-half hour after sundown. However, the variety of equipment, skill level of the crew, ocean conditions, and the number of tuna and dolphins in the set, among other factors, influence the time required for a set. The vessel operator best knows his vessel and crew capabilities and, therefore, is best qualified to determine if a particular set can reasonably be completed in the available time. In deciding how late a set may be initiated, a vessel operator should consult the time of local sunset calculated by the U.S. Naval Observatory and reprinted in "Tide Tables—West Coast of North and South America" published annually by NOAA. The operator also should review the vessel's recent performance records regarding the length of time required to complete a set.

Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system in order to keep marine mammal mortality to as low a level as possible. If the sundown set prohibition is violated, the amount of the penalty assessed will be set at a level sufficiently high to deter intentional violations and will include consideration of a variety of factors, including the amount of time the vessel operator allowed to complete the set, the nature of any problems that developed, the efforts put into rescuing marine mammals to prevent mortality and injury, and the extent of mortality and serious injury in the set.

NOAA has calculated that the average mortality rate (marine mammals killed per ton of yellowfin tuna caught in sets on marine mammals) for observed daylight sets by the United States fleet between July 1, 1986 and June 30, 1988 was 0.154. The kill-per-ton rate was chosen because it is a meaningful performance measure within the fishing industry, was used in deriving the overall mortality quota, and is less variable than other performance measurements, such as kill-per-set or kill-per-day. This period was selected because the requirement for high intensity lights became effective on July 1, 1986, and the trips that were at sea on June 30, 1988 have returned and the observer data have been entered into the data base. Because observers accompanied nearly 100 percent of the fishing trips during 1987, a sufficiently large sample is available for this period. Therefore, the average mortality rate against which applicants for an initial exemption from the sundown set restriction will be compared is 0.154 marine mammals per ton of yellowfin tuna caught in sets involving marine mammals.

To apply for an exemption from the restriction on sundown sets while on observed trips certificated operators must submit a completed application to the Southwest Regional Director, NOAA. The Regional Director will authenticate the operator's mortality rate performance using observer records. If requested in the application, the Regional Director will determine whether the exclusion of any set (only one set per twelve month period can qualify for exclusion) is warranted because of an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel. This determination may rely on records available to NOAA as well as the operator's submission, but it is the operator's responsibility to provide reasonable proof that the malfunction during the set meets the criteria and caused the mortality in the set.

After the determination regarding the petition to exclude a set or sets, the average mortality rate in sundown sets after July 1, 1986 will be calculated for the individual operator and compared to the standard. If fewer than five sundown sets by an operator were observed since July 1, 1986, trips prior to that date will be considered starting with the most recent observed trip and reviewing as many trips as necessary to include at least five sundown sets. Entire trips will be reviewed if any set in the trip is needed to make up the minimum five sundown sets. For example, assume an operator did not have any observed sundown sets since July 1, 1986, but did have three observed sundown sets on a trip in 1985 and five observed sundown sets on a trip in 1984. All five of the sundown sets in the 1984 trip, unless one set were excluded due to mechanical failure, would be considered in calculating that operator's average mortality because two sets from that trip was needed to make up the minimum of three sundown sets. If the operator's mortality rate in sundown sets is no higher than the fleet average for daylight sets, the Regional Director will issue a letter of exemption valid for one calendar year, which will allow the individual operator to make sets on marine mammals that continue beyond one-half hour after sundown while on trips with IATTC or NOAA observers.

An operator with an exemption must follow the marine mammal release requirements. If the set continues beyond one-half hour after sundown, the high intensity lights must be used to illuminate the backdown channel to aid in marine mammal release.

Exemptions from the sundown set restriction will be reviewed annually using all observed trips completed in the previous twelve months for which the data are available to NOAA by November 1 each year. If the operator has continued to have a mortality rate no greater than the fleet's daylight set average mortality rate for the same time period, the exemption will continue in effect. If the operator's sundown set mortality rate averaged over the previous twelve-month period exceeds the fleet daylight set average for the same period, that operator's exemption will not be renewed.

NOAA considered including in this interim final rule a system to revoke the sundown set exemption from an operator earlier than the end of the year, if the operator's sundown set performance was obviously not meeting the standard. In the time available to complete this rule, NOAA was not able to design an administratively practical and fair system. During the comment period, we are soliciting comments particularly on the desirability of being able to revoke an exemption early and recommendations for identifying an operator whose exemption should be revoked, based on one or two trips.

An operator who is notified, or anticipates, that his exemption will not be renewed may petition the Regional Director in writing to reinstate the exemption based upon a claim that a set should be excluded from the calculations of the operator's performance due to an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel.

Under the provisions of the 1988 amendments, newly certificated operators and those operators whose exemptions have been revoked permanently have no means of obtaining an exemption from the sundown set restriction other than by successfully testing new equipment or procedures in sundown sets under an experimental fishing operation permit.

Vessels at sea when this rule becomes effective will be subject to the sundown set restriction on the next fishing trip. Due to the complexity of this rule and the need to have it implemented rapidly, it is not possible to adequately inform those operators at sea how the rule applies to them individually.

If the Secretary determines, based on research or experimental fishing operations, that vessel equipment or fishing procedures exist which can be applied to all vessels in the fleet to reduce the fleet average mortality rate in sundown sets to that of the fleet's average mortality rate in daylight sets, the restriction on sundown sets may be rescinded through a rulemaking.

Use of Explosive Devices

This rule prohibits the use of explosive devices in tuna purse seine operations that involve marine mammals with one exception. The exception from this prohibition is that Class C explosive devices, approved by the U.S. Department of Transportation, may be used when marine mammals are present. The use of these devices is limited to influencing the movements of marine mammals and tuna. Their use to injure marine mammals is not permitted. This rule does not relieve the vessel owner or operator from any other laws or regulations, Federal, State, or local, that may govern the possession or use of these explosive devices.

NOAA will study the effect of Class C explosives on marine mammals as they are used in the tuna fishery. If from the results of that study the Secretary cannot determine that these devices are not injurious to marine mammals, the

Secretary will promulgate regulations either restricting or prohibiting the use of Class C explosives in tuna fishing operations that involve marine mammals by April 1, 1990. The NOAA Southwest Fisheries Center will consult with the Marine Mammal Commission and other interested parties in designing and carrying out this study.

Experimental Fishing Operations

This rule establishes in regulations a permitting process for experimental fishing operations that is similar to the procedures previously followed by the Southwest Regional Director in considering requests for variances in the porpoise safety gear requirements. The scope of potential experiments and the duration of those experiments is broadened under this rule, but the primary purpose of the experiment must be to test gear or methods that might reasonably be expected to reduce the number of marine mammals killed or seriously injured in purse seining operations. With two exceptions, NOAA can waive requirements under the regulations and the terms and conditions under the General Permit held by the ATA in order to allow the conduct of an experimental fishing operation. The two exceptions are that marine mammal quotas and the prohibition on setting nets on pure schools of certain dolphin species may not be waived.

Applications for experimental permits are required to be submitted by the vessel certificate holder sufficiently far in advance of the proposed beginning of the intended operation to allow for publication of a summary of the application for comment in the **Federal Register** and for review by the NOAA scientific staff and the Marine Mammal Commission Scientific Advisors. The Regional Director may require modifications to the experimental design and such reporting as he deems necessary as conditions for approval of the application. An observer from NOAA must accompany all trips conducted under the experimental permit. The Regional Director may terminate the experiment by written notice to the vessel certificate holder if higher than expected marine mammal mortalities occur, if any conditions of the permit are not met, or if any regulations are not followed.

The existing provision for waiver of specific gear requirements to experiment with new gear to improve marine mammal safety is deleted. This new system governing experimental fishing operations includes the potential for gear requirement waivers as well as other experiments.

Classification

This rule is being promulgated as interim final without opportunity for prior public comment and without a delayed effectiveness period in order to meet a schedule required in the statute. The Marine Mammal Protection Act Amendments of 1988, signed into law on November 23, 1988, require that the sundown set rule must be effective by January 1, 1989 and the prohibition on explosives other than Class C devices must be effective immediately. The portion of this rule that establishes a procedure permitting experimental fishing operations has been included because NOAA wants to be able to receive and act promptly on all reasonable new means of reducing incidental mortality. It would be contrary to the public interest to delay effectiveness of the experimental fishing permit procedure (beyond that time necessary for obtaining approval from the Office of Management and Budget for the collection-of-information requirements). Public comment is solicited while the rule is in effect, and comments received will be considered in preparing a final rule.

The Assistant Administrator has determined, based on an environmental assessment prepared by NOAA, that the modifications to the regulations being made at 50 CFR 216.24(d) will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see **ADDRESS**).

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. NMFS prepared a regulatory impact review as part of its EA which concluded that this rule will not result in: (1) An annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The estimated economic impact of this rule on the U.S. tuna fishery in the ETP ranges from $15,000 to $40,000 per vessel annually, which represents 0.7 to 1.8 percent of the total operating cost for a typical vessel. For a 34 vessel fleet, the total increased costs would range from $510,000 to $1,360,000 annually. A copy of the review is available upon request (see **ADDRESS**).

Because this rule is being published as an interim final rule rather than a proposed rule, the requirements of the Regulatory Flexibility Act do not apply. However, modification of the regulations will not have a significant economic effect on a substantial number of small entities. In recent years, 34 vessels, which is about half of the U.S.-flag tuna purse seiners larger than 400 tons carrying capacity, fish in the ETP Ocean for yellowfin tuna associated with marine mammals, and will be subject to the rule. These vessels all have essentially the same capabilities and would be affected similarly. The expected operating cost increase of between 0.7 and 1.8 percent is not a significant increase for the U.S. tuna fishermen.

This rule contains collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collections, which are subject to the Act, are found at 50 CFR 216.24(d)(2)(vii)(C) (*1*) and (*5*), which is the application for an exemption from the sundown set prohibition, and (viii), which is the application for an experimental fishing operation permit. These information collections will be submitted to the Office of Management and Budget (OMB) with a request for expedited review. The sections containing the collection-of-information requirements will take effect after approval by OMB, while the other sections will take effect January 1, 1989, in order to comply with the statute. NOAA will issue a notice of the effective date on obtaining approval from OMB.

Public reporting burden for this collection of information is estimated to average 1.5 hours per application for an exemption from the sundown set prohibition including the time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. This is a one-time collection and approximately 35 responses are expected. The total reporting burden on tuna vessel operators will be 52.5 hours to apply for sundown set exemptions. Public reporting burden related to application for an experimental fishing operation will vary widely with the complexity of the proposed experiment. The average burden is estimated to be three hours. Based on recent experience, applications to test new gear or procedures will be infrequent. The maximum number of responses is expected to be two per year, resulting in a total reporting burden of six hours for tuna vessel owners. Send comments

regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR1), Washington, DC 20235, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons stated above, 50 CFR Part 216 is amended as follows:

PART 216—[AMENDED]

1. The authority for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise stated.

§ 216.24 [Amended]

2. Section 216.24 is amended by revising paragraph (d)(2)(vii)(C) and adding new paragraph (d)(2)(vii)(E) to read as follows:

* * * * *

(d) * * *
(2) * * *
(vii) * * *

(C) *Sundown sets prohibited.* On every set encircling porpoise, the backdown procedure must be completed and rolling of the net to sack-up must be begun before one-half hour after sundown, except as provided below. For the purpose of this section, "sundown" is defined as the time at which the upper edge of the sun disappears below the horizon or, if view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory. A "sundown set" is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system.

(*1*) A certificated operator may obtain an initial waiver from this prohibition, for trips with an observer, by establishing to the satisfaction of the National Marine Fisheries Service (NMFS) Southwest Regional Director, based upon NMFS and Inter-American Tropical Tuna Commission (IATTC) observer records, that the operator's average kill of marine mammals per ton of yellowfin tuna caught in sundown sets involving marine mammals was 0.154 mammals or fewer.

(*i*) The application must include the following:

(*A*) Name of the operator as it appears on the certificate of inclusion;

(*B*) The dates of all observed trips any part of which occurred since July 1, 1986 and observed trips before that date, if necessary to include a minimum of three observed sundown sets;

(*C*) Names of the vessels operated during those trips;

(*D*) The number of marine mammals killed and the number of tons of yellowfin tuna caught in sundown sets involving marine mammals;

(*E*) Detailed description of the circumstances that support any request that the mortality associated with a particular sundown set be excluded from consideration; and

(*F*) The operator's signature or the signature of an individual authorized by the operator to make the application in the operator's absence.

(*ii*) All sundown sets since July 1, 1986 will be considered for this determination, except that the Regional Director will exclude one sundown set from each twelve month period from the calculations of average kill if the operator establishes to the satisfaction of the Regional Director that the kill in that sundown set was due to an unforeseeable equipment malfunction that could not have been avoided by reasonable diligence in operating or maintaining the vessel.

(*iii*) An operator must have a minimum of five observed sundown sets for the Regional Director to consider in determining whether or not the operator qualifies for an exemption. If an operator does not have five observed sundown sets since July 1, 1986, the NMFS Southwest Regional Director will consider records from observed trips before that date, starting with the most recent observed trip during which a sundown set was made and reviewing as many trips as necessary to obtain at least five sundown sets for consideration.

(*2*) An operator fishing under an exemption from the sundown set prohibition must follow the marine mammal release requirements, including the use of high intensity lights for sets that continue one-half hour past sundown.

(*3*) An operator exemption is valid for one calendar year only on trips carrying a NMFS or IATTC observer and expires on December 31, unless renewed by the Regional Director.

(*4*) An exemption will be reviewed annually between November 1 and December 15 and the exemption will not be renewed if the operator's average mortality in sundown sets during trips completed in the previous twelve month period ending November 1 exceeds the United States fleet's average mortality rate in daylight sets for all of the observed trips completed in the same period.

(5) An operator who is notified that his or her exemption will not be renewed, or who anticipates not getting renewed, may petition the Regional Director in writing to reinstate the exemption based on excluding from the calculations one set where an unforeseeable equipment malfunction caused mortality in a sundown set that could not have been avoided by reasonable diligence in operating or maintaining the vessel. The Regional Director will reinstate the exemption if the evidence supports excluding the set and if the resulting recalculation of the operator's performance meets the standard required by these regulations.

* * * * *

(E) *Use of explosive devices:* The use of explosive devices, other than Class C explosives as defined in 49 CFR 173.100 and approved by the Department of Transportation, is prohibited in marine mammal sets. Use of Class C explosive devices to injure marine mammals is prohibited.

3. In § 216.24, paragraph (d)(2)(iv)(J) is removed.

4. In § 216.24, a new paragraph (d)(2)(viii) is added to read as follows:

* * * * *

(d) * * *
(2) * * *

(viii) *Experimental fishing operations:* The Regional Director, Southwest Region, may authorize experimental fishing operations and may waive, as appropriate, any requirements within § 216.24(d)(2), except quotas on the incidental kill of marine mammals and the prohibition on setting nets on pure schools of certain porpoise species.

(A) A vessel certificate holder may apply for an experimental fishing operation waiver by submitting the following information to the Southwest Regional Director no less than 90 days before the intended date the proposed operation is intended to begin:

(*1*) Name(s) of the vessel(s) and the vessel certificate holder(s) to participate;

(*2*) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(3) A description of how the proposed modification to the gear or procedures is expected to reduce incidental mortalities or serious injury of marine mammals;

(4) A description of the applicability of this modification to other purse seine vessels;

(5) Planned design, time, duration, and general area of the experimental operation;

(6) Name(s) of the certificated operator(s) of the vessel(s) during the experiment;

(7) A statement of the qualifications of the individual or company doing the analysis of the research.

(B) The Regional Director will acknowledge receipt of the application and, upon determining that it is complete, publish notice in the **Federal Register** summarizing the application, making the full application available for inspection and inviting comments for a minimum period of thirty days from the date of publication.

(C) The Regional Director, after considering the information identified in paragraph (d)(2)(viii)(A) of this section and the comments received, will deny the application giving the reasons for denial or issue a permit to conduct the experiment including restrictions and conditions as deemed appropriate.

(D) The permit for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer assigned by the NMFS, and when all the terms and conditions of the permit are met.

(E) The Regional Director may suspend or revoke an experimental fishing permit by written notice to the permit holder if the terms and conditions of the permit or the provisions of the regulations are not followed, after providing an opportunity for the permit holder to discuss the proposed suspension or revocation.

December 29, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA.

[FR Doc. 89–137 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 81264–8264]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the Bering Sea and Aleutian Islands Area pollock joint venture fishery, because the fishing season dates that control this fishery will impose unacceptable costs on the joint venture fishing industry. The Secretary, therefore, is changing the fishing season dates. This action is necessary to prevent burdensome operating costs on joint venture fishermen. This is a conservation and management measure intended to promote the fishery management objectives of the fishery management plan for the groundfish fishery of the Bering Sea and Aleutian Islands Area.

EFFECTIVE DATE: January 15, 1989

ADDRESS: Copies of the environmental assessment may be obtained from James W. Brooks, Acting Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3–200 miles offshore) of the Bering Sea and Aleutian Islands area are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 675.

One of the groundfish species managed under the FMP is pollock, which U.S. fishermen have been catching and delivering to foreign processing vessels for joint venture processing (JVP). The current season for the JVP pollock fishery is divided into two parts as a result of Amendment 11 to the FMP (52 FR 45966, December 3, 1987) and is referred to as the pollock "split season." The first part of the split season starts January 15 and is allowed to continue until JVP fishermen have harvested the sum of 40 percent of the JVP specification for pollock plus 15 percent of the initial pollock total allowable catch (TAC). The second part of the split season starts April 15 and is allowed to continue until the JVP pollock specification has been reached. The regulation implementing the split season will expire after 1989, having been in effect for two years.

The split season served two purposes. One, since pollock spawn during February through early April, the resulting hiatus from the interim season closure afforded a conservation benefit to the pollock stock to the extent that future reproductive success might have been enhanced. Second, the domestic processing (DAP) industry benefited to the extent that vessels delivering to domestic processors were able to harvest pollock on fishing grounds free from JVP competition during the interim closure.

During 1988, the first year of the regulation implementing the split season, TACs for pollock were set at 1,300,000 metric tons (mt) and 45,000 mt in the Bering Sea and Aleutian Islands subareas, respectively, (53 FR 894, January 14, 1988). The initial JVP specifications for pollock in the Bering Sea and Aleutian Islands subareas were set at 490,838 mt and 34,090 mt, respectively. The permissible amounts allowed for JVP fishing in these subareas during the first part of the split season were 274,335 mt and 16,336 mt, respectively.

After the 1988 season started on January 15, as many as 90 U.S. catcher vessels operating in the Bering Sea subarea delivered pollock to about 70 foreign processing vessels in the directed fishery. The first part of the split season was closed on February 9, 1988 (53 FR 4178, February 12, 1988). The catch limit during the first part was harvested at an average rate of about 91,000 mt per week.

The Council's preliminary recommendation for the 1989 pollock TAC in the Bering Sea subarea again is 1,300,000 mt, but the JVP proposed apportionment of this amount is only 205,000 mt (53 FR 47998, November 29, 1988). In the Aleutian Islands subarea, the Council's preliminary recommendation for the 1989 pollock TAC is 45,000 mt and the JVP apportionment is 34,090 mt. Under the "split season" amendment, only 160,000 mt in the Bering Sea subarea and 16,336 mt in the Aleutian Islands subarea would be available during the first part of the split season. A total of 176,336 mt would be available, therefore, for harvest during the first part of the 1989 split season. At the rate of harvest of 91,000 mt per week that was experienced during the first part of the split season during the 1988 fishery, the 176,336 mt initially available could be harvested by joint venture fishermen within about two weeks.

Joint venture fishing representatives testified at the Council's September 28–November 1, 1988 meeting that at this level of fishing the split season in the pollock fishery would impose unnecessary and unacceptable economic costs. Since the season would be brief, JVP fishermen would likely depart the Bering Sea and foreign processors would also disperse. Most of the JVP vessels would be idle until the April 15 starting date of the second part of the split season and then return to the Bering Sea to participate again in a very short season. The Council concurred with this analysis, recognizing that the split season was effective in the 1988 fishery, but would have no useful purpose in the 1989 fishery. Spawning pollock would escape the joint venture fishery during the interim closure but would likely be caught in the DAP fishery. Because the DAP apportionment is so large, DAP should have a competitive fishing advantage over JVP without the split season. Any disadvantage to DAP as a result of JVP receiving part of the apportionment would occur even without the split season. The Council, therefore, voted to recommend that the Secretary implement an emergency rule under section 305(e) of the Magnuson Act to substitute the split season regulation with a single JVP pollock fishing season beginning January 15.

Joint venture representatives have provided the Alaska Regional Director, NMFS, examples of operating costs that JVP fishermen would incur if the split season were effective in 1989. Each Seattle-based catcher vessel would spend about $13,000 in fuel to make the round trip to the Bering Sea and back to Seattle. While not every vessel would return to Seattle following the first pollock season, a conservative estimate of the number of vessels that would return is about 50. Since daily fuel consumption is about 800 gallons per day and a round trip takes 16 days, about $13,000 in fuel costs are required per vessel. Under the split season regulation, a vessel operator would spend this amount to return for the second part of the season. Fifty vessels, then, would spend $650,000.

Other factors contributing to increased operating costs are those related to increased maintenance and repair of vessels as a result of longer running time, and reduced labor productivity as a result of lost time on the part of crew members by having to make two round trips. These factors are difficult to quantify, given variation in vessel condition and other employment opportunities for crew members, but would add additional costs on joint venture fishermen.

The Secretary has reviewed this issue and concurs with the Council's recommendations. He finds that continuation of the JVP split season for pollock fishing serves no worthwhile purpose and imposes burdensome and unnecessary costs on the industry that are not acceptable. He is implementing an emergency rule under section 305(e) of the Magnuson Act that authorizes the pollock season to start on January 15 as scheduled, and continues through December 31, 1989, subject to other management measures authorized under 50 CFR Part 675.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Administrator also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented as soon as possible if it is to accomplish its intended effect.

The National Marine Fisheries Service prepared an environmental assessment for this action and concluded that no significant impact on the human environment would result from this rule. A copy of this document may be obtained from the address above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

This emergency interim rule is exempt from the requirements of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 675

Fisheries.

Dated: December 30, 1988.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 675 is amended as follows:

PART 675—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.20 [Suspended in part]

2. From January 15, 1989 through April 15, 1989, paragraph (b)(3) in § 675.20 is suspended and a new § 675.23 is added to read as follows:

§ 675.23 Seasons.

Directed fishing for pollock in the Bering Sea and Aleutian Islands Management Area is authorized from January 15 through December 31, subject to other provisions of this Part.

[FR Doc. 89–230 Filed 1–3–89; 2:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 145 and 147

[Docket No. 86-110]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The National Poultry Improvement Plan (referred to below as the Plan) is a federal-state-industry voluntary program for the improvement of poultry breeding stock and hatchery products. This goal is achieved primarily through the prevention and control of certain poultry diseases. We propose to expand the Plan to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products. We also propose to amend certain provisions of Parts 145 and 147 in order to increase effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology.

DATE: Consideration will be given only to comments postmarked or received on or before February 6, 1989.

ADDRESS: Send an original and two copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Rd., Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-110. Comments received may be inspected at USDA, 14th and Independence Ave., SW., Room 1141-South Bldg., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building, 6505 Belcrest Rd., Hyattsville; MD 20782; 301-436-5140.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative federal-state-industry mechanism for controlling poultry diseases by identifying states, flocks, hatcheries, and dealers that meet certain disease control standards. Customers then have the opportunity to purchase stock that are tested "clean" of certain diseases, or that are produced under disease-prevention requirements.

The Plan currently consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases. Participation in all Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program.

The regulations for this voluntary program are contained in 9 CFR Parts 145 and 147 (referred to below as "the regulations"). These provisions are amended from time to time to incorporate new scientific information and technologies within the Plan. The amendments that we are currently proposing include provisions to:

1. Establish a new "U.S. Sanitation Monitored, Turkeys" program and emblem for turkey flocks and products.
2. Require annual examination, by State Inspectors, of all records pertaining to flocks maintained primarily for production of hatching eggs.
3. Lower the minimum age at which turkeys can be blood tested.
4. Change certain procedures for blood testing flocks and individual birds for pullorum-typhoid.
5. Expand and improve the sanitation and flock management requirements of the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks.
6. Authorize egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean."
7. Expand procedures used to determine if a flock is infected with the Mycoplasma organism for which it was tested.
8. Disclaim liability for failure, on the part of users, to adhere to Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation.

Our proposed amendments are consistent with recommendations approved by the voting delegates to the June 1986 and 1988 meetings of the Biennial National Plan Conferences. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating states.

Definitions

We propose to add definitions for the following terms to § 145.1: Exposed, fluff sample, infected flock, medley, reactor, program, and succeeding flock.

Section 145.10

Section 145.10 lists the terminology and illustrative designs used to designate flocks, products, and states that have qualified for certain official Plan programs under requirements specified in Subparts B through E. We propose to add a new paragraph (k) to § 145.10, containing an illustrative design and terminology for the proposed "U.S. Sanitation Monitored, Turkeys" program (see the discussion under subhead *Section 145.43(f)* for details regarding the qualification procedures and requirements for this proposed new Plan program).

Section 145.12

Section 145.12 contains criteria for the inspection of participating hatcheries and flocks. As now written, this section's paragraph (b) requires that at least 15 percent of the independent and affiliated flocks of each hatchery be inspected annually. We have found, however, that many of the flocks that are inspected are determined to be disease-free. These unnecessary inspections waste state resources. Further, any unwarranted visit to a flock endangers the owner's biosecurity program.

As a means of eliminating unnecessary inspections, we propose to require that State Inspectors conduct an annual examination of all records pertaining to all independent and affiliated flocks maintained primarily for production of hatching eggs. An on-site inspection would be conducted only if a State Inspector found, during his/her examination of records, that a breach of sanitation, blood testing, or other Plan

requirements had occurred at a premises or within a flock.

Section 145.14 Blood Tests

Minimum ages for the taking of blood samples from various types of poultry are currently specified in §§ 145.14(a)(4); 145.23(c)(1)(i), (c)(1)(ii), (e)(1)(i), and (3)(1)(ii); 145.33(c)(1)(i), (c)(1)(ii), (e)(1)(i), and (e)(1)(ii); 145.43(c)(1), (d)(1)(i), (e)(1), and (e)(3); and 145.53(c)(1)(i) and (ii). For purposes of clarity, we propose to delete all of these references and, instead, place minimum age requirements for blood testing within the introductory paragraph to § 145.14.

A minimum age limit is necessary because newly hatched poultry does not have sufficient antibodies for reliable detection, through blood testing, of the diseases covered by the Plan. Chickens develop sufficient antibodies when they are more than 4 months of age; game birds develop them upon reaching sexual maturity or more than 4 months of age, whichever comes first.

When the minimum age limit was established, it was thought that blood testing of turkeys would be more reliable if the birds were 4 months of age or older. However, after consulting with turkey industry experts, we have concluded that turkeys that are more than 12 weeks old will have built up sufficient antibodies for reliable blood testing. We propose, therefore, to change the minimum age for taking blood samples from turkeys, from the current "more than 4 months of age," to "more than 12 weeks of age."

Section 145.14 Minimum Representative Testing Sample

The introductory paragraph to § 145.14 currently closes with the sentence:

> For those programs where a sample of the poultry may be tested in lieu of the entire flock, the poultry tested shall be a representative sample drawn from all pens or units of the flock.

The term "representative sample" is currently not defined in the regulations. Thus, a 60-bird representative sample could be two houses containing the flock and yielding 30 birds each, or ten houses yielding just 6 birds each. In the latter instance, a limited infection might easily be missed. A similar problem exists with respect to the terms "pens" and "units," which are also vague and lack nationally recognized industry definitions.

We propose to require a minimum representative sample of 30 birds per house, with at least 1 bird taken from all pens and units in the house. (The term "house," is used throughout the poultry industry to denote a structure, enclosed by walls and a roof, in which poultry are raised.) All the birds would be tested in houses containing fewer than 30 birds.

Experimental statistical survey studies have established that samples of 30 birds per house will provide a high probability of detecting low levels of infection in poultry flocks. For instance, probability studies reported by Dr. V. Beal, Jr.[1], showed that sampling at this level will provide a 95-percent probability of detecting a 10-percent infection (e.g. 100 infected birds in a 1,000-bird flock).

Section 145.14 Salmonella

Current § 145.1 defines the term "Salmonella" as "any bacteria belonging to the genus Salmonella, including the arizona group" (which causes serious illness in turkeys and which was, until recently, considered to be distinct from Salmonella). Thus, the current use of "Salmonella" throughout most of § 145.14(a) implies that blood testing is carried out under the Plan for all diseases casued by all species of Salmonella. In actuality, however, the only Salmonella classification under the Plan is pullorum-typhoid.

We are, therefore, proposing to substitute the term "pullorum-typhoid" for "Salmonella"—in the current heading and in paragraphs (3), (7), and (9) of § 145.14(a)—where the latter is used to refer to diseases caused by Salmonella. The term "pullorum-typhoid" is used throughout the poultry industry since pullorum and typhoid diseases share common antigens (e.g.-any substance capable of including a specific immune response), which are used for disease testing and identification. Current § 147.5 contains pullorum-typhoid testing procedures, while provisions of the "U.S. Pullorum-Typhoid Clean" classification are specified in current §§ 145.10(b), 145.23(b), 145.33(b), 145.43(b), and 145.53(b).

We are not proposing to change "Salmonella organisms" in current paragraphs (9) and (10) of § 145.14(a), because the use of the term in these paragraphs is scientifically accurate.

Section 145.14(a)(1)

Official blood tests, approved for use in detecting pullorum-typhoid in various classes of poultry, are listed in § 145.14(a)(1). This list currently consists of the standard tube agglutination, microagglutination, rapid serum, and stained antigen, rapid whole-blood tests.

Research conducted at the Animal and Plant Health Inspection Service's Diagnostic Bacteriology Laboratory at Ames, IA,[2] demonstrated that the enzyme-labeled immunosorbent assay (ELISA) test also serves as an effective means of detecting pullorum-typhoid diseases in poultry flocks. We propose, therefore, to add the ELISA test to the list of official blood tests for all classes of poultry. We also propose to reference current footnote 1 of this section (renumbered as footnote 3 under our proposal), which provides information on publications containing accepted ELISA test procedures.

Section 145.14(a)(5)

The last three sentences in current § 145.14(a)(5) state:

> When reactors are found in any flock, or S. pullorum or S. gallinarum isolations are made from baby poultry or fluff samples, the flock may qualify for participation with two consecutive official negative tests. Qualification of this flock, or any other flock on the same premises during the next 12 months, shall be based on the testing of all birds. Such testing shall be conducted by or directly supervised by a State Inspector.

Under our proposal, these sentences would be deleted from § 145.14(a)(5) and the requirements they contain transferred to a proposed new paragraph to be numbered § 145.14(a)(6). Current paragraphs (6) through (10) of § 145.14(a) would then be renumbered as (7) through (11), respectively. In addition to this restructuring our proposal would:

1. Replace the phrase "any other flock on the same premises," as used in the three sentences shown above, with "succeeding flocks." The latter is defined in this proposal as flocks brought onto a premises during the 12 months following the removal of an infected flock. This amendment is proposed for the purpose of clarity and does not change the meaning of the provision.
2. Replace vague references to required "tests" and "testing" in the three sentences shown above, with a specific requirement for an official blood test named in paragraph (a)(1) of § 145.14. This amendment is also proposed for the purpose of clarity and does not change the meaning of the provision.
3. Authorize qualification of a succeeding flock for participation in the Plan with a single negative result to an

[1] Documents concerning these probability studies may be obtained from Dr. V. Beal, Jr., Animal Health & Depredation Management Systems; PPD; APHIS; USDA; Room 843; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[2] Documents concerning the ELISA research at Ames may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

official blood test named in paragraph (a)(1) of § 145.14. Current provisions require two consecutive negative tests to qualify a flock in which a reactor has been found. Since the succeeding flock should not contain any reactors (if it does, the two test rule would apply), we believe that a single negative test would be sufficient.

4. Add a provision requiring Official State Agencies to test all birds on premises exposed to birds, equipment, supplies, or personnel from a primary breeding flock during a period when the primary breeding flock was exposed to *S. pullorum* or *S. gallinarum*. In determining exposure, Official State Agencies would evaluate the probability of contacts between the primary breeding flock and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with *S. pullorum* or *Gallinarum*.

We believe that this new provision is necessary because primary breeding flocks are the source of breeding stock for multiplier breeding flocks, which in turn supply replacements for meat and egg flocks. Thus, an infection in a primary breeding flock has the capability to quickly spread into all facets of the poultry industry.

Section 145.14(a)(9)

All flocks participating in Plan programs are blood tested for pullorum-typhoid. Since false reactions are common, positive blood tests must be validated. Under current § 145.14(a)(8), validation is by autopsy and bacteriological examination of reactors at a laboratory "designated by the Official State Agency for bacteriological examination." This provision has been redesignated as § 145.14(a)(9) in our proposal. For purposes of simplicity, our proposal requires submission to an "authorized laboratory" (defined in § 145.1 as "a laboratory designated by an Official State Agency, subject to review by the Service, to perform the blood testing and bacteriological examinations provided for in this part").

Our proposal also establishes a maximum time limit—within 10 days from the date of reading an official blood test—for submission of these reactors to the authorized laboratory. Pullorum-typhoid organisms may not remain viable and, therefore, not be detectable, if too much time passes between the initial blood test and the subsequent bacteriological examination. We are not aware of any research that would establish a timeframe for bacteriological examination or retesting. However, based on the experiences of U.S. Department of Agriculture laboratory scientists, we believe that the proposed 10-day-period would assure recovery of the pullorum-typhoid organisms.

We further proposed to provide two additional options for validating positive pullorum-typhoid blood tests: (1) Retesting the serum specimen that produced the positive reaction, and (2) retesting reactors using an official supplemental blood test. These options will allow initial blood test results to be either validated or identified as false reactions without necessitating the slaughter of reactors.

Serum testing would utilize a sample that has been diluted 40 or 50 times from the original specimen. A false reaction to the full-strength specimen will differ significantly from the result produced when the diluted specimen is tested. If the reaction to the retest is positive at the specified dilutions, the reactor and flock would be bacteriologically examined or retested using an official blood test.

The most time consuming option would be to conduct new blood tests. To prevent disease spread during the testing period, the flock would have to be maintained under a security system specified or approved by the Official State Agency.[3] If the retest is positive, the reactors and flock would be bacteriologically examined.

Under our proposal, the Official State Agency would select the option to be used in each circumstance, based on a cost-benefits analysis involving evaluation of such factors as: Ratio of reactors-to-total birds, the value of the reactors and flocks at risk, the necessity for preserving birds from scarce genetic lines, the frequency and ratio of false reactions during recent blood testing, the need for a quick determination of disease existence, and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies).

Paragraph (b)(2)(iii) of Sections 145.23, 145.33, 145.43, and 145.53

Participants in the "U.S. Pullorum-Typhoid Clean" program have flocks that have tested negative, or that are derived from flocks that have tested negative, for pullorum-typhoid. The program's procedures for qualifying multiplier breeding flocks, composed of progeny of a primary breeding flock that is intended solely for the production of multiplier breeding flocks, are contained in current paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53. This paragraph requires that all flocks, for which qualification is sought, either be blood tested or bacteriologically examined and monitored.

The current bacteriological examination/monitoring program involves bacteriological examinations of 10-day chick mortality and down shed by chicks in the hatcher. The current blood testing requirements are: (a) A sample comprised of at least 25 percent of the birds in the flock has been officially blood tested with no reactors; (b) the percentage of the flock included in the sample may be reduced by 5 percentage points following each year in which there is no evidence of infection on the premises until the required percentage is reduced to zero; and (c) the sample shall include at least 500 birds the first year, 400 the second year, 300 the third year, 200 the fourth year, and 100 the fifth year.

During the nearly two decades since these provisions were added to the regulations, conditions have changed significantly within the poultry industry. Today, virtually all new multiplier breeding flocks, and breeding flocks composed of progeny of a primary breeding flock that is intended solely for the production of multiplier breeding flocks, originate from "U.S. Pullorum-Typhoid Clean" breeding flocks, or from flocks that meet equivalent requirements under the supervision of an Official State Agency. Our experience, compiled during years of monitoring qualified and unqualified flocks, is that flocks that originate from "U.S. Pullorum-Typhoid Clean" or equivalent flocks can be safely qualified for participation in the "U.S. Pullorum-Typhoid Clean" program, without blood testing or bacteriological examination/monitoring, provided no exposure to pullorum-typhoid has occurred.

Under our proposal, the bacteriological monitoring requirement would be deleted. Poultrymen seeking program qualification would not have to blood test a flock located on premises where either no poultry or a flock not classified as "U.S. Pullorum-Typhoid Clean" was located during the previous 12 months, unless the Official State Agency determines that exposure to pullorum-typhoid occurred. When a candidate flock has been exposed, an Authorized Agent would blood test up to 300 birds. In making determinations of exposure—and of how may birds would be blood tested—the Official State Agency would evaluate: (a) The results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year, (b) the origins of the unclassified flock, and (c) the probability of contacts between the flock for which qualification is being sought and infected wild birds, contaminated feed or waste, or birds, equipment, supplies, or persons from or exposed to flocks infected with pullorum-typhoid.

Section 145.23(d)

Section 145.23 contains qualification procedures and requirements for various official Plan programs for egg-type chicken breeding flocks and products. Paragraph (d) of this section contains provisions for the "U.S. Sanitation Monitored" program, which is designed to prevent and control Salmonellosis in the egg-type chicken breeding-hatching industry. We are proposing to amend paragraph (d) as follows:

1. Paragraph (d)(1)(i) currently requires that flocks originate from a source where "sanitation and management practices, as outlined in § 145.23(d)(1)" are conducted. In fact, a source flock that meets this requirement is a "U.S. Sanitation Monitored" flock. Therefore, for purposes of simplification and clarity, we propose to replace the current language with a specific requirement that the flock originate from a "U.S. Sanitation Monitored" flock.

Many flock owners, who are not Plan participants, utilize good sanitation and management practices. Under our proposal, a flock that did not originate from a "U.S. Sanitation Monitored" flock would be eligible to qualify for the program if:

> • • • the meconium from the chick boxes and a sample of the chicks that died within 7 days after birth [4] are examined bacteriologically for Salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

"Meconium" is the fecal matter collected by sexors or initially voided by newly hatched poultry. Any Salmonella that were present in the egg should also be in the meconium. "Serotyping" is the process of determining the exact antigenic identity of a specific organism from the roughly 2,000 Salmonella known to exist.

2. In the recent past, contaminated feed has been a significant source of Salmonella outbreaks. Current paragraph (d) recommends that flock owners should only use feed that has been produced by a certain manufacturing process, under temperatures that will destroy Salmonella. To further reduce the incidence of Salmonella organisms in feed, we propose to change this recommendation to a requirement, and to add additional provisions to further minimize post-manufacture recontamination.

Current paragraph (d) recommends using only feed manufactured in pellet form, or in pellets that are then crumbled into smaller pieces. Our proposal specifies that the pellets shall either be devoid of animal protein, or contain animal protein products produced under the Animal Protein Products Industry (APPI)/Education Salmonella Reduction Program. Salmonella organisms are much less prevalent in feed that does not contain animal protein, and the APPI program includes manufacturing safeguards to prevent post-manufacture recontamination.[5]

Current paragraph (d) recommends subjecting feed to temperatures of 190 degrees F. or above during the pellet manufacturing process. However, either time or pressure can be factored in to destroy Salmonella at lower temperatures. Under our proposal, feed would be subjected to a temperature of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the pellet manufacturing process.[6]

Salmonella organisms are not destroyed during the manufacture of mash (a combination of grain and protein/vitamin supplements ground into small particles) feeds. But, although not as safe as pellet or crumbled feed, mash is substantially less expensive. Our proposal allows use of mash feeds because many flock owners could not afford to participate in the voluntary "U.S. Sanitation Monitored" program if use of mash feeds were prohibited. This is because feed expenditures account for as much as 70 percent of a flock owner's production costs. If a flock owner uses mash feed, we prefer for him/her to remain a participant in the "U.S. Sanitation Monitored" program, since the program's other required sanitation and management practices may compensate for the failure to use only pellet feeds. We are, however, proposing to minimize the hazard from mash by restricting use of mash feeds to only mash that is either devoid of animal protein, or that contains only animal protein products processed in a pelleting mill to destroy Salmonella.

3. The illustrative "U.S. Sanitation Monitored" design (see current § 145.10(d), figure 5) is used by the breeding-hatching industry as proof that hatching eggs and newly hatched chicks were produced by a flock maintained under certain sanitation and management practices to reduce the incidence of Salmonella. We believe, however, that the current "U.S. Sanitation Monitored" program is flawed in that it does not contain provisions for detecting group D Salmonella in flocks that have qualified, or are qualifying, for this classification. At least one of the Salmonella organisms belonging to this group can be transmitted from an infected bird to its egg, and then on to the resulting chick.

Under our proposal, blood and environmental samples would be collected from the flock and examined for group D salmonella at an authorized laboratory, using bacteriological and serological procedures described in current §§ 147.11 and 147.12 of this chapter. Cultures from positive samples would be serotyped to determine the antigenic identity of the specific organism involved (roughly 2,000 different Salmonella are known to esist).

Chickens are blood tested when the flock is more than 4 months of age (see the discussion under subhead *Section 145.14; Blood Tests*). Environmental samples should be collected at the same time because blood tests will not reveal if a Salmonella organism, which has not yet infected any birds within the flock, is nevertheless in the flock's environment. Also, a bird may be infected, but not producing serologic reactions when a blood test is conducted.

We are proposing that 300 of the birds in the flock would be blood sampled and that all birds with positive or inconclusive reactions, up to a maximum of 25 birds would be submitted to an authorized laboratory for examination. We are not aware of any research establishing a sample size

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[3] The security system would consist of procedures for: (a) Isolating the flock to prevent cross-contamination with other birds, equipment, or supplies on the premises; (b) sanitizing equipment and workers coming in contact with the flock; (c) restricting the movement of live birds, products, equipment, and supplies from the premises; and (d) restricting access to the flock. Individual security systems will differ slightly depending upon such factors as the proximity of other, disease-free flocks and the physical layout of the premises.

[4] The number of dead chicks to be sampled would be determined by the Official State Agency, based on the size of the flock, the rate of mortality within the flock, and the total number of dead chicks. We are not aware of any research establishing timeframes for bacteriological examination of dead chicks for Salmonella. To be effective, however, the examinations must be performed while Salmonella organisms are viable. The 7-day limitation is used by United States Department of Agriculture laboratory scientists and had proved successful in this regard.

[5] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson: Sheep, Goat, Equine, and Poulty Diseases Staff; VA; APHIS; USDA, Room 848, Federal Building; 6505 Belcrest Road; Hyattsville, MD 20782.

[6] Documents concerning time, temperature, and pressure requirements for the pellet manufacturing process may be obtained by writing Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

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for chickens blood tested, or reactors examined, for group D Salmonella. Our proposed limits of 300 birds and 25 reactors have proven effective when used by United States Department of Agriculture scientists conducting similar tests for other salmonellas. For this reason, we believe that this sampling pattern would also prove effective in testing for group D Salmonella.

4. Paragraph (d) currently recommends that Official State Agencies apply two monitoring procedures to determine the status and effectiveness of each flock's sanitation practices. We believe that monitoring is important enough to be made a requirement, but also believe that the currently recommended monitoring procedures should be amended.

The first of the current procedures involves culturing the surface of cased eggs for fecal contaminating organisms. This procedure is unnecessary, and we propose to delete it, because current regulations already provide for the sanitizing of hatching eggs.

The second procedure involves periodic culturing of dead-in-shell eggs, a large category that includes: (a) Eggs in which a recognizable chick was formed, but did not hatch; (b) eggs that were cracked, allowing entry of outside organisms; and (c) eggs, known as dead germ eggs, in which the yolk has not been completely brought into the embryo's body. We propose to require a monthly bacteriological examination of a minimum of 30 dead germ eggs,[7] since these eggs are easier and more reliable to culture than cracked eggs or those with more developed embryos.

5. Several university and industry studies [8] have revealed that at least one strain of *Salmonella enteritidis* can be transmitted from an infected bird to its egg, and then on to the resulting chick. To ensure that products sold under the "U.S. Sanitation Monitored" classification are free of *Salmonella enteritidis* safe and wholesome, we propose to amend paragraph (d) to prohibit classification of a flock if any *Salmonella enteritidis* organism is isolated from a bird in a breeding flock or dead-germ egg culture.

On the other hand, our proposal will permit classification when a *Salmonella enteritidis* organism is isolated from an environmental sample collected from the flock—if certain egg and flock retesting procedures are followed and no further positive results are found. This is because environmental contamination can result from sources other than the birds in the flock, such as an infected mouse.

Section 145.43(c)

Section 145.43 contains qualification procedures and requirements for Plan programs for turkey flocks and products, including "U.S. M. Gallisepticum Clean." Currently, flocks qualify for participation in this program on the basis of negative blood tests, and no subsequent retesting is required. We believe that retesting is necessary to ensure the continued negative status of classified flocks.

Under our proposal, a minimum of 30 samples from male flocks and 60 samples from female flocks [9] must be retested to retain a "M. Gallisepticum Clean" classification. Retesting would be conducted when the flock is 28–30 weeks of age in order to reconfirm its disease-free status shortly before the start of its first egg-laying cycle.

Section 145.43(f)

Section 145.43 contains qualification procedures and requirements for the official Plan programs for turkey flocks and products. Under our proposal, a new paragraph (f) would be added to § 145.43, containing proposed provisions for a new "U.S. Sanitation Monitored, Turkeys" program.

Our proposal is based on an actual program that has been in effect in Minnesota for seven years. According to Minnesota poultry health officials, their program has proven to be a practical and effective program for reducing the Salmonella level in Minnesota turkeys.

The proposed monitoring, testing, and management requirements for the new Plan program include:

Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both would be: (a) Examined bacteriologically at an authorized laboratory for Salmonella as part of the qualification requirements for breeding flocks produced by primary breeders, and (b) cultured from poults produced by hatching eggs from each flock as a means of evaluating the effectiveness of the proposed control procedures. The number of dead poults to be sampled would be determined by the Official State Agency, based on the size of the flock, the rate of mortality within the flock, and the total number of dead poults. We are not aware of any research establishing timeframes for bacteriological examination of dead poults for Salmonella. To be effective, however, the examinations must be performed while Salmonella organisms are viable. The 10-day limitation used by United States Department of Agriculture laboratory scientists has proven successful in this regard.

Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must have been subjected to temperatures of 190 degrees F. or above, 185 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poults to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein Products Industry/Education Salmonella Reduction Program.6

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (ii) above, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

During its initial 2 weeks of life, a young turkey is especially vulnerable to Salmonella infection and should only be fed pellets produced under the prescribed conditions, because Salmonella organisms are destroyed during the manufacture of this type of feed. By the third week of its life, the young turkey's natural immune system should be fully developed and capable of resisting colonization by the low levels of Salmonella that may be found in a mash feed. (See paragraph No. 2, subhead *Section 145.23(d)* for a more detailed discussion of pellet and mash feeds.)

Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.

This provision would permit use of a vaccine that contains a killed Salmonella and an agent that produces a slow, sustained release to stimulate increased immunity. This type of vaccine is cultured from Salmonella already present in the flock, with lab work and preparation often performed entirely intra-state. We propose, therefore, to footnote this provision to inform flock owners that preparation and use of this type of vaccine may be regulated by State and Federal statutes.

Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 * * * * and examined bacteriologically at an authorized laboratory for Salmonella.

Flock owners participating in the "U.S. Sanitation Monitored, Turkeys" program are required to comply with good sanitation and management practices. However, Salmonella organisms may be brought into a flock's environment by wild birds, infected mice, unauthorized visitors, and other means that are beyond the flock owner's control. Under our proposal, therefore, environmental sampling would be conducted:

1. At 12–20 weeks of age, when candidate flocks are blood tested for qualification in the Plan's various voluntary programs.

2. At 35–50 weeks of age and from each molted flock at midlay, to ensure that the flock's environment continues to be Salmonella-free.

3. After the flock is removed, to ensure that Salmonella-free birds will not be placed in a contaminated laying house. This is necessary because we know that at least one Salmonella organism can be transmitted from an infected bird through its egg to the new poult.

Section 145.53(c)(1)(ii)(A)

Current § 145.53(c)(1)(ii)(A) describes one of two alternate testing procedures used for retention of the "U.S. M. Gallisepticum Clean" classification for waterfowl, exhibition poultry, and game bird multiplier breeding flocks. This requirement is for a random sample of serum from at least 2 percent of the birds in the flock to be tested.

We propose to revise the paragraph to allow use of a random sample of either serum or egg yolk obtained from at least 2 percent of the birds. Egg yolk testing is currently listed—in §§ 145.23(c)(1)(ii)(C) and 145.33(c)(1)(ii)(C)—as an approved procedure for retention of the "U.S. M. Gallisepticum Clean" classification for egg-type and meat-type multiplier chicken breeding flocks. Egg yolk testing should have also been authorized for waterfowl, exhibition poultry, and game birds, but was inadvertently overlooked when the chicken flock uses were approved. We now propose to correct this lapse.

This change should encourage greater participation from the gamebird segment of the poultry industry, since it would provide another method for monitoring and testing game bird flocks, which are often difficult to test serologically. Greater participation should, in turn, lead to reduced levels of *M. gallisepticum* exposure, infection, and spread.

Section 147.6

Paragraph (b) to § 147.6 contains supplemental procedures to be used when a flock tests "suspicious" for *Mycoplasma gallisepticum, M. synoviae,* and *M. meleagridis.* Current § 147.6(b)(5) specifies that flocks shall be considered infected by the Official State Agency if HI (hemagglutination inhibition) titers of 1:80 or SPD (serum plate dilution) titers of 1:10 are found. A "titer of 1:80" is a positive reaction to a solution that is 1 part serum and 80 parts saline.

We believe, however, that culturing techniques should be used when a positive test is not supported by clinical evidence. Thus, under our proposal, culturing would be required if the supplemental tests are positive, but active air sac lesions, sinusitis, synovitis, or other clinical signs of a respiratory disease are not evident.

We also propose to add the enzyme-labeled immunosorbent assay (ELISA) test to § 147.6(b)(5) as an authorized supplemental test for mycoplasma. The manufacturer has included recommended titers for *Mycoplasma gallisepticum, M. synoviae,* and *M. meleagridis* in the instructions that accompany every test. We are not aware of any research establishing more effective titers for these diseases, therefore we are proposing to adopt the manufacturer's recommendations.

Section 147.25

Section 147.25 describes authorized methods of fumigating hatching eggs and hatchery equipment, including the use of formaldehyde as a fumigant. Due to concerns over possible health hazards, the Occupational Safety and Health Administration (OSHA) has published safety standards for formaldehyde use. Our proposed amendment to the introductory paragraph of § 147.25 would:

1. Inform readers of the regulations of the existence of the OSHA standards and of their publication in the Dec. 4, 1987 **Federal Register** (52 FR 46168, Docket Nos. H–225, 225A, and 225B).

2. Disclaim any liability for failure on the part of the user to adhere to the OSHA standards.

Miscellaneous

We also propose to make certain nonsubstantive changes in the regulations for the purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Plan is a cooperative federal-state program. Participation is voluntary. Proposals to change provisions of this program are based on recommendations of the Biennial National Plan Conference, which included representatives of member states, hatcheries, dealers, flock owners, and breeders. Plan participants requested that we propose amendments to the regulations to incorporate new technology and information within the Plan.

The amendments proposed in this document should not have a significant economic impact on the large number of small entities in the poultry industry, and should not cause significant changes in the cost of producing or buying poultry and poultry products, or in the amount of poultry and poultry products marketed because:

1. The proposed annual examination of all records pertaining to flocks maintained primarily for production of hatching eggs should enable official State Agencies to identify more of the flocks that have incurred a possible disease exposure. This should increase the effectiveness of the annual on-site inspection program, but will neither increase nor disease the number of inspections conducted.

2. Changing the minimum age of blood testing turkeys would permit testing one month earlier than under current rules, but will neither increase nor decrease the number of birds tested annually.

3. Amendments to certain of the Plan's testing and monitoring procedures are proposed to incorporate new technology and research findings. These changes would increase effectiveness and permit use of alternative tests and montoring procedures for disease prevented and controlled by Plan programs.

[7] Statistics demonstrating the effectiveness of testing 30-egg cultures may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[8] Documents concerning these research studies may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

[9] This has proven to be an effective sample size when retesting for retention of "U.S. M. Meleagridis Clean" classifications. The minimum sampling pattern of 30 samples from male flocks and 60 from female flocks has proven effective when used by United States Department of Agriculture laboratory scientists conducting similar tests for similar diseases. For this reason, we believe that this sampling pattern would also prove effective in testing for M. Gallisepticum.

4. Proposed amendments to the provisions of the "U.S. Sanitation Monitored" program would result in slight increase in producer costs for additional testing. However, these same amendments should result in a slight reduction in the egg and chick mortality for participating flocks. It is difficult to project the degree to which these new producer costs and savings would be offset under our proposal, because the regulations would allow flock owners to choose among testing and feed alternatives. Nevertheless, we are certain that net costs or savings resulting from the changes we are proposing would be insignificant, in terms of overall productions costs, and would not affect the wholesale or retail cost of poultry or poultry products.

5. Cost-benefits to producers who decide to participate in the proposed new "U.S. Sanitation Monitored, Turkey" program would also roughly balance out. Producers would incur a small additional cost for required sanitation measures (although many producers are already engaging in some or all of these sanitation practices). The primary purpose of these measures is to reduce the incidence of Salmonella in the flock, but reduced Salmonella levels would, in turn, result in a slight increase in the number of surviving eggs and poults. The experience of the turkey industry in Minnesota—where a "U.S. Sanitation Monitored, Turkeys" program has been underway for seven years—is that profits from the sale of the additional eggs and poults roughly equals the cost of the additional sanitation measures.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Services has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, National Poultry Improvement Plan, Poultry and poultry products.

Accordingly, we propose to amend regulations contained in 9 CFR Parts 145 and 147 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for Part 145 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d)

§ 145.1 [Amended]

2. The definitions in § 145.1 would be placed in alphabetical order and the paragraph designations would be removed.

3. Section 145.1 would be amended by adding new definitions in alphabetical order to read as follows:

§ 145.1 Definitions.

* * * * *

Exposed (Exposure). Threatened by infection resulting from contact with birds, equipment, personnel, supplies, or any article infected with, or contaminated by, communicable poultry disease organisms.

* * * * *

Fluff sample. Feathers, shell membrane, and other debris resulting from the hatching of poultry.

* * * * *

Infected flock. A flock in which an authorized laboratory has discovered one or more birds infected with a communicable poultry disease for which a program has been established under the Plan.

* * * * *

Midlay. Approximately 2–3 months after a flock begins to lay or after a molted flock is put back into production.

* * * * *

Program. Management, sanitation, testing, and monitoring procedures which, if complied with, will qualify, and maintain qualification for, designation of a flock, products produced from the flock, or a state by an official Plan classification and illustrative design, as described in § 145.10.

* * * * *

Reactor. A bird that has a positive reaction to a test, required or recommended in Parts 145 or 147 of this chapter, for any poultry disease for which a program has been established under the plan.

* * * * *

Succeeding flock. A flock brought onto a premises during the 12 months following removal of an infected flock.

* * * * *

4. In § 145.10, a new paragraph (k) would be added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

* * * * *

(k) *U.S. Sanitation Monitored, Turkeys.* (See § 145.43(f).)



* * * * *

5. Paragraph (b) of § 145.12 would be revised to read as follows:

§ 145.12 Inspections.

* * * * *

(b) The records of all flocks maintained primarily for production of hatching eggs shall be examined annually by a State Inspector. On-site inspections of flocks and premises will be conducted if the State Inspector determines that a breach of sanitation, blood testing, or other provisions has occurred for Plan programs for which the flocks have or are being qualified.

6. Section 145.14 would be amended as follows:

a. The introductory paragraph would be revised.

b. Paragraph (a)(1) would be revised and a new footnote number "1" would be added.

c. Paragraph (a)(3) would be amended by removing "Salmonella" and inserting "pullorum-typhoid".

d. Paragraph (a)(4) would be removed and marked as [Reserved].

e. Paragraph (a)(5) would be amended by removing the last three sentences.

f. Paragraphs (a) (6) through (10) would be redesignated as paragraphs (a) (7) through (11) respectively and a new paragraph (a)(6) and footnote 2 would be added.

g. Newly redesignated paragraph (a)(8) would be amended by removing "with Salmonella antigens of" and inserting "for pullorum-typhoid in".

h. Newly redesignated paragraph (9) would be revised.

i. Newly redesignated paragraph (10) would be amended by removing "upon which a Salmonella classification is based" and inserting "for pullorum-typhoid".

j. Footnote number "1" and the reference in paragraph (b)(1) would be renumbered "3".

As amended § 145.14 would read as follows:

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official classification: *Provided*, That turkeys may be blood tested at more than 12 weeks of age under Subpart D, while game birds may be blood tested under Subpart E when more than 4 months of age or upon reaching sexual maturity, whichever comes first. Blood samples for official tests shall be drawn by an Authorized Agent or State Inspector and tested by an authorized laboratory, except that the stained antigen, rapid whole-blood test for pullorum-typhoid may be conducted by an Authorized Agent or State Inspector. For Plan programs in which a representative sample may be tested in lieu of an entire flock, the minimum number tested shall be 30 birds per house, with at least 1 bird taken from each pen and unit in the house. All birds must be tested in houses containing fewer than 30 birds.

(a) *For Pullorum-Typhoid.* (1) The official blood tests for pullorum-typhoid shall be the standard tube agglutination test, the microagglutination test, the enzyme-labeled immunosorbent assay test (ELISA), or the rapid serum test for all poultry; and the stained antigen, rapid whole-blood test for all poultry except turkeys. The procedures for conducting official blood tests are set forth in §§ 147.1, 147.2, 147.3, and 147.5 of this chapter and referenced in footnote 3 of this section. Only antigens approved by the Department and of the polyvalent type shall be used for the rapid whole-blood test. All microtest antigens and enzyme-labeled immunosorbent assay reagents shall also be approved by the Department.[1]

* * * * *

(8) When reactors are found in any flock, or *S. pullorum* or *S. gallinarum* organisms are isolated by an authorized laboratory from serum or blood from baby poultry, or from fluff samples produced by hatching eggs, the infected flock shall qualify for participation in the Plan with two consecutive negative results to an official blood test named in paragraph (a)(1) of this section. A succeeding flock must be qualified for participation in the Plan's pullorum-typhoid program with a negative result to an official blood test named in paragraph (a)(1) of this section. Testing to qualify flocks for Plan participation must include the testing of all birds in infected and succeeding flocks, and shall be performed or physically supervised by a State Inspector. If the State Inspector determines that a primary breeding flock has been exposed to *S. pullorum* or *S.*

[1] The criteria and procedures for Department approval of antigens and reagents may be obtained from Veterinary Biologics, BBEP, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

gallinarum,[2] the Official State Agency shall require:

(i) The taking of blood samples—performed by or in the presence of a State Inspector—from all birds on premises exposed to birds, equipment, supplies, or personnel from the primary breeding flock during the period when the State Inspector determined that exposure to *S. pullorum* or *S. gallinarum* occurred.[2]

(ii) The banding of all birds of these premises—performed or physically supervised by a State Inspector—in order to identify any bird that tests positive; and

(iii) The testing of blood samples at an authorized laboratory using an official blood test named in paragraph (a)(1) of this section.

* * * * *

(9) Poultry from flocks undergoing qualification testing for participation in the Plan, that have a positive reaction to an official blood test named in paragraph (a)(1) of this section, shall be evaluated for pullorum-typhoid infection. The Official State Agency shall select one or more of the following procedures to be used in each circumstances, based on a cost-benefits analysis involving evaluation of such factors as: The value of the reactors and flocks at risk; the necessity for preserving birds from scarce genetic lines; the need for a quick determination of disease existence; and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies):

(i) Reactors shall be submitted to an authorized laboratory for bacteriological examination. If there are more than 4 reactors in a flock, a minimum of 4 reactors shall be submitted to the authorized laboratory; if the flock has 4 or fewer reactors, all of the reactors must be submitted. The approved procedure for bacteriological examination is set forth in § 147.11 of this chapter. When reactors are submitted to the authorized laboratory within 10 days from the date of reading an official blood test named in paragraph (a)(1) of this section, and the bacteriological examination fails to demonstrate pullorum-typhoid infection, the Official State Agency shall presume that the flock has no pullorum-typhoid reactors.

[2] In making determinations of exposure, the State Inspector shall evaluate both evidence proving that exposure occurred and circumstances indicating a high probability of contacts with: infected wild birds; contaminated feed or waste; or birds, equipment, supplies, or persons from or exposed to flocks infected with *S. pullorum* or *S. gallinarum*.

(ii) The serum specimen that produced the positive reaction shall be retested at an authorized laboratory in accordance with procedures set forth in § 147.1 of this chapter for the standard tube agglutination test, or in § 147.5 of this chapter for the microagglutination test for pullorum-typhoid. If the reaction to this retest is positive in dilutions of 1:50 or greater for the standard tube agglutination test, or 1:40 or greater for the microagglutination test, additional examination of the bird and flock will be performed in accordance with paragraph (a)(9)(i) or (a)(9)(iii) of this section.

(iii) The reactors shall be retested within 30 days using an official blood test named in paragraph (a)(1) of this section. If this retest is positive, additional examination of the reactors and flock will be performed in accordance with paragraph (a)(9)(i) of this section.

During the 30-day period, the flock must be maintained under a security system, specified or approved by the Official State Agency, that will prevent physical contact with other birds and assure that personnel, equipment, and supplies that could be a source of pullorum-typhoid spread are sanitized.

7. Paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53 would be revised as follows:

§§ 145.23, 145.33, 145.43, 145.53 Terminology and classification; flocks and products.

* * * * *

(b) * * *

(2) * * *

(iii) The flock is located on a premises where either no poultry or a flock not classified as U.S. Pullorum-Typhoid Clean were located during the previous 12 months: *Provided*, That an Authorized Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1), that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

* * * * *

8. Section 145.23 would be amended as follows:

a. Paragraph (d)(1)(i) would be revised.

b. Paragraph (d)(1)(ii) would be redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(ii) and footnote 4 would be added.

c. Paragraph (d)(1)(iii) would be removed.

d. Paragraph (d)(1)(iv) would be redesignated as paragraph (d)(1)(iii).

e. Paragraph (d)(1)(v) would be redesignated as paragraph (d)(1)(vii) and a new paragraph (d)(1)(v) would be added.

f. Paragraph (d)(1)(vi) would be revised and redesignated as paragraph (d)(1)(viii), and a new paragraph (d)(1)(vi) would be added.

g. A new paragraph (d)(1)(ix) would be added.

h. Paragraph (d)(2) would be removed, and paragraphs (d)(3) and (4) would be redesignated as paragraphs (d)(4) and (5), respectively.

i. New paragraphs (d)(2) and (3) would be added.

As amended § 145.23 would read as follows:

§ 145.23 Terminology and classification; flocks and products.

* * * * *

(d) *U.S. Sanitation Monitored.*

(1) * * *

(i) The flock originated from a U.S. Sanitation Monitored flock, or meconium from the chick boxes and a sample of chicks that died within 7 days after birth are examined bacteriologically for salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(ii) All feed fed to the flock shall meet the following requirements:

(*A*) Pelletized feed shall contain either no animal protein or only animal protein products produced under the Animal Protein Products Industry (APPI)/Education Salmonella Reduction Program [4], and must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process;

(*B*) Mash feed shall contain either no animal protein or only animal protein products supplement manufactured in pellet form and crumbled.

* * * * *

[4] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

(v) Environmental samples shall be collected from the flock by an Authorized Agent, as described in § 147.12 of this chapter, when the flock is more than 4 months of age. The samples shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(vi) Blood samples from 300 birds shall be officially tested with pullorum-typhoid antigen when the flock is a minimum of more than 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D salmonella, as described in § 147.11 of this chapter. Cultures from positive samples shall be serotyped.

* * * * *

(viii) Hatching eggs produced by the flock are incubated in a hatchery that is in compliance with the recommendations in §§ 147.23 and 147.24(b) of this chapter, and either § 147.25 or a sanitization procedure approved by the Official State Agency.

(ix) A minimum of 30 dead-germ eggs, taken monthly from randomly selected hatches from the flock, shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from a sample collected from the flock in accordance with paragraph (d)(1)(vi) or (d)(1)(ix) of this section.

(3) A flock shall be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from an environmental sample collected from the flock in accordance with paragraph (d)(v) of this section: *Provided*, That testing is conducted in accordance with paragraphs (d)(1)(vi) and (d)(1)(ix) of this section 30 days and no positive samples are found.

§§ 145.24, 145.34, 145.44, and 145.54 [Amended]

9. Paragraph (a)(1)(ii) of §§ 145.24, 145.34, 145.44, and 145.54 would be amended by removing "found in waterfowl" and inserting "found within the preceding 24 months in waterfowl", and by removing the phrase "for a period of two years".

10. Section 145.43 would be amended as follows:

a. Paragraph 145.43(c)(1) would be amended by removing "§ 145.14(b)." and inserting "§ 145.14(b): *Provided*, That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28–30 weeks of age.".

b. Paragraphs (c)(1), (d)(1)(i), and (e)(1) and (3) of § 145.43 would be amended by removing the phrase "4 months of age" and inserting the phrase "12 weeks of age".

c. Footnote number "2" would be revised, and the footnote and the reference in paragraph (d)(2) of § 145.43 would be renumbered "5".

d. A new paragraph (f) and footnote 6 would be added.

As amended § 145.43 would read as follows:

§ 145.43 Terminology and classification; flocks and products.

* * * * *

(d) * * *

(2) * * *

[5] See footnote 3 to § 145.14(b)(1) of this chapter.

§ 145.43 Terminology and classification; flocks and products

* * * * *

(f) *U.S. Sanitation Monitored, Turkeys.* A flock or hatchery whose owner is controlling or reducing the level of salmonella through compliance with sanitation and management practices as described in Subpart C of Part 147 of this chapter, and where the following monitoring, testing, and management practices are conducted:

(1) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both, from each candidate breeding flock produced by a primary breeder, are examined bacteriologically at an authorized laboratory for Salmonella.

(2) The poults for the candidate breeding flock are placed in a building that has been cleaned, disinfected, and examined bacteriologically for the presence of Salmonella by an Authorized Agent, as described in § 147.12.

(3) Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poults to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein Products Industry/Education Salmonella Reduction Program.[5]

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (f)(3) (ii) of this section, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

(4) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12, from each flock at 12–20 weeks of age and examined bacteriologically at an authorized laboratory for Salmonella.

(5) Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.[6]

(6) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12, from each flock at 35–50 weeks of age and from each molted flock at midlay, and examined bacteriologically at an authorized laboratory for Salmonella.

(7) Environmental samples shall be taken, by an Authorized Agent using the procedures described in § 147.12, from the laying house after the flock is removed, and examined bacteriologically at an authorized laboratory for Salmonella.

(6) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poults that died within 10 days after birth, or both shall be cultured from poults produced from hatching eggs from each flock, as a means of evaluating the effectiveness of the control procedures.

§ 145.53 [Amended]

11. Paragraph (c)(1)(ii)(A) of § 145.53 would be amended by revising the phrase "a random sample of at least" to read "a random sample of serum or egg yolk from at least".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

12. The authority citation for Part 147 would continue to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

[5] Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I.L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA, Room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[6] Preparation and use of this type of vaccine may be regulated by state and federal statutes.

§ 147.6 [Amended]

13. Paragraph (b) of § 147.6 would be amended by removing the phrase "additional agglutination" and inserting "additional culturing procedures, and agglutination".

14. Paragraph (6)(5) of § 147.6 would be revised as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for Mycoplasma gallisepticum, Mycoplasma synoviae, and Mycoplasma meleagridis.

* * * * *

(b) * * *

(5) If HI titers of 1:80, positive enzyme-labeled immunosorbent assay (ELISA) titers, or SPD titers of 1:10 or higher are found, in conjunction with any of the criteria described in (a)(1) of this section, the Official State Agency shall presume the flock to be infected. If the indicated titers are found, but none of the criteria described in (a)(1) of this section are evident, tracheal swabs from 30 randomly selected birds shall be taken promptly and cultured individually for Mycoplasma, and additional tests conducted in accordance with (b)(6) of this section before final determination of the flock status is made.

15. Section 147.25 would be amended by adding a sentence to the end of the introductory paragraph to read as follows:

§ 147.25 Fumigation.

* * * APHIS disclaims any liability in the use of formaldehyde for failure on the part of the user to adhere to the Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation, published in the Dec. 4, 1987 Federal Register (52 FR 46168, Docket Nos. H–225, 225A, and 225B).

* * * * *

Done Washington, DC, this 3rd day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–268 Filed 1–5–89; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

Sequestration of Witnesses Interviewed Under Subpoena

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 8, 1988 (53 FR 45768) the Commission published for public comment a rule which provides that all persons compelled to appear before NRC representatives under subpoena in connection with an agency investigation (and their counsel, if any) shall, unless otherwise authorized by the NRC official conducting the investigation, be sequestered from other interviewees in the same investigation. The comment period for this proposed rule was to have expired on January 10, 1989. Counsel, on behalf of Nuclear Management and Resources Council (NUMARC) and others, has requested a thirty-day extension of the comment period in order to provide meaningful comments on the proposed rule. The Commission has decided to extend the comment period for an additional thirty days. The extended comment period now expires on February 9, 1989.

DATE: The comment period has been extended and now expires February 9, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Carolyn Evans, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–1632.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–242 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 88–1511]

Regulatory Capital Requirements for Insured Institutions

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of public hearing.

SUMMARY: The Federal Home Loan Bank Board (the "Board") will hold a public hearing on its proposed regulation establishing new minimum regulatory capital requirements for insured institutions. The hearing is intended to allow the Board to benefit from the views of the public on the important issues raised in this proposal.

DATES: The public hearing will be held on Thursday, February 9, and Friday, February 10, 1989 from 9:00 a.m. to 5:00 p.m. Written requests to participate must be received no later than 5:00 p.m. on January 23, 1989.

ADDRESSES: Written requests to participate in the public hearing must be mailed to: Secretary, Federal Home Loan Bank Board, 1700 G St. NW., Washington, DC 20552 or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

Hearing Location: The Federal Home Loan Bank Board's Amphitheater, 2nd Floor, 1700 G St. NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331–4592; Carol Larson, Accounting Fellow, (202) 331–4577; John Robinson, Director, Policy Analysis, (202) 331–4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 377–6759, Office of Policy and Economic Research; Deborah Dakin, Regulatory Counsel, (202) 377–6445; Theresa Stark, Attorney, (202) 377–7054; Karen Solomon, Associate General Counsel, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Board proposed to amend its regulations on the amount and composition of regulatory capital required for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions"). Board Res. No. 88–1342, 53 FR 51800 (December 23, 1988). The 90-day comment period on this proposal will expire on March 23, 1989. This proposal would significantly affect the capital requirements for all insured institutions. The Board believes that a public hearing to allow interested members of the public to express their views is an appropriate supplement to the opportunity for written comments during the comment period. It has therefore scheduled a public hearing for February 9 and 10, 1989.

Participants in the hearing are invited to address all aspects of the proposed rule and are referred to the proposal for the issues on which the Board particularly desires public comment. Persons wishing to participate in the hearings should send a written request to participate to the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, to be received no later than close of business on January 23, 1989. Requests may be hand-delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday during the same period.

The request to participate in the hearing must include the following information:

(1) The name, address, and business telephone number of the participant; (2) the entity that the participant will be representing; (3) a brief summary of the participant's remarks; and (4) the preference, if any, for the date and time at which the participant wishes to testify. While the Board will attempt to accommodate the participants as to time, it cannot guarantee that it will be able to honor all such expressed preferences. Moreover, the Board may allocate the available time according to the various issues raised in the proposals. Participants should, therefore, be selective in identifying the topics they wish to address.

Depending on the number of requests received, participants may be limited in the length of their oral presentations; they will be advised in writing of the time scheduled for their presentation. The Board reserves the right to limit the number of participants and to select, in its discretion, those persons who may make oral presentations if it receives more requests for participation than may be accommodated in the time available. Additionally, the Board anticipates establishing panels of participants for presentations. It will take steps to ensure that the designated witnesses or panels constitute a representative sample of the types of participants and of the views of those who wish to participate.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–233 Filed 1–5–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA–41–88]

Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations amending temporary regulations which were published in the **Federal Register** on September 30, 1985, and were amended May 13, 1987, relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency by the taxpayer and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1989. The regulations are proposed to apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985, and on or before January 10, 1994. However, if legislation is enacted extending the tax refund offset program beyond January 10, 1994, the regulations are proposed to apply to refunds payable through the date to which such legislation extends the program.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (IA–41–88), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall, 202–566–4811 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend temporary Procedure and Administration Regulations (26 CFR Part 301) under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of Title 31, United States Code. This document proposes to adopt the amendments to those temporary regulations as amendments to the final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary amendments. For the text of the temporary regulations, see FR Doc. (T.D. 8239) published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89–244 Filed 1–3–89; 2:39 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore; Off-Road Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule modifies the vehicle routes and travel restrictions at Cape Cod National Seashore established by the existing Cape Cod Off-Road Vehicle Regulations, which were adopted on September 3, 1985.

The proposed rule is a result of the Department of the Interior's review of the existing Cape Cod National Seashore Off-Road Vehicle Management Plan.

DATES: Written comments will be accepted through February 21, 1989.

ADDRESS: Comments should be addressed to: Herbert S. Cables, Jr., Regional Director, North Atlantic Region, 15 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Tony Bonanno, Chief, Ranger, Cape Cod National Seasshore, South Wellfleet, MA 02663, Telephone: (508) 349–3785.

SUPPLEMENTARY INFORMATION:

Background

Off-road vehicle (ORV) use on the beaches, primarily for fishing, predates the establishment of Cape Cod National Seashore (the Seashore) in 1961. The National Park Service (NPS) managed and regulated ORV use under local restrictions for a number of years after the establishment of the Seashore. However, in 1974, concerns about the impact of ORV use at the Seashore led the NPS to initiate a comprehensive 5-year study of those impacts. The study, Impacts of Off-Road Vehicles on Cape Cod National Seashore, was completed by the University of Massachusetts in 1979. Based upon a review of these research findings, legal mandates, local laws and regulations, and after extensive public review and comment the NPS developed an ORV Management Plan which eventually became effective on April 15, 1981.

For the convenience of the reader, the most significant provisions of the 1981 ORV Management Plan are outlined below: See figure (1).

1981 ORV Management Plan

1. Head of the Meadow Beach in Truro to Coast Guard Beach in Eastham, a distance of 16 miles, was open to ORV traffic year-round except for protected beaches which were closed to ORV traffic from June 15 through September 15.

2. The 1.5 mile stretch of beach from Head of the Meadow Beach north to High Head was open to ORV traffic year-round.

3. High Head to the opening of Hatches, Harbor, a distance of 8 miles, was open to ORV traffic year-round except for the Race Point protected beach which was closed from June 15 through September 15.

4. The emergency dune route between Race Point Ranger Station and High Head was open to ORV traffic ONLY when tern nesting closures or high tides prevented continuous travel on the beach.

5. North of Head of the Meadow Beach, ORV traffic was restricted to a corridor defined as extending lateally from the berm crest to the spring high tide drift line; south of Head of the Meadow Beach, ORV traffic was confined to a corridor defined as extending laterally from the berm crest to the base of the bluffs or the toe of the dunes.

On April 15, 1981, the Conservation Law Foundation of New England (CLF) and other organizations filed suit against the Department of the Interior (Department) and the NPS to terminate all ORV use at the Seashore. On May 25, 1984, the U.S. District Court for the District of Massachusetts ruled that the 1981 ORV Management Plan had appropriately established zones for ORV use in accordance with the University of Massachusetts study so as not to "adversely affect" the Seashore's ecology. The Court then remanded issues of appropriateness of ORV use, fair allocation of space, and visitor conflict to the agency for further consideration. On August 1, 1985, the Department promulgated a rulemaking (50 FR 31177) that implemented an amended ORV Management Plan. This amended plan and its regulations, which went into effect on September 3, 1985, were developed by the NPS and were based on a number of factors and considerations, including: legislative mandates, existing local laws and

regulations, the results of a 1985 beach user survey conducted by the City University of New York, over 4 years of experience under the provisions of the 1981 ORV Management Plan, geographical considerations, visitor use statistics, scenic and aesthetic impacts, and management feasibility. Since then, the NPS has managed ORV use at the Seashore under the provisions of the 1985 ORV Management Plan and regulations codified at 36 CFR 7.67(a).

For the convenience of the reader, the most significant provisions of the 1985 ORV Management Plan, which is the existing plan, are outlined below: See figure (2).

1985 ORV Management Plan (existing plan)

1. Head of the Meadow Beach in Truro to Coast Guard Beach in Eastham is closed to ORV traffic year-round.

2. The 1.5 mile stretch of beach from Head of the Meadow Beach north to High Head is closed to ORV traffic year-round.

3. High Head to the opening of Hatches Harbor is open to ORV traffic from April 15 through November 15 except when tides, beach configuration, or nesting birds make the route impassable.

4. The emergency dune route is closed to ORV traffic.

5. A limited access ORV pass is available during the period from November 16 through April 14 for beach access between High Head and Hatches Harbor under certain conditions.

6. ORV traffic is confined to a corridor extending laterally from a point 10 feet seaward of the spring high tide drift line to the berm crest.

The 1985 ORV Management Plan closed 17.5 miles of beach from High Head in Truro to Coast Guard Beach in Eastham. This area had been open to ORV traffic during all but the summer months under the 1981 plan. The Service maintains that this area had limited ORV use prior to 1985, and the closure under the current management plan recognized the need to avoid unnecessary user conflicts. In this section, there are 12 Seashore and town beaches and parking areas which provide pedestrian access to fishing and other uses throughout the year.

The section of beach which is open to ORV use from Hatches Harbor around Race Point to High Head, a distance of 8 miles, provides beach access to prime fishing grounds and, due to limited access points, minimizes pedestrian and other user conflicts. Certain special uses (winter access to shellfishing beds, maintenance of dune cottages, etc.) are accommodated through the use of Limited Access Passes. Dune cottage residents have access to their individual cottages at any time that the route is passable.

Vehicle operators, other than cottage owners, who use the designated ORV routes must obtain an annual ORV permit. (2394 ORV permits were issued in 1987. 2529 ORV permits were issued between January 1 and October 31, 1988, which represents the latest figures for 1988 at the time of this notice.) The actual number of vehicles on the beach on a given day varies with season, weather, fishing conditions, and other factors. A daily maximum of approximately 250 off-road vehicles used Seashore beaches during the busiest days in 1988.

Total annual visitation to Cape Cod National Seashore during the 1988 calendar year is estimated to be 5.2 million visitors.

In March 1986, in response to controversy over the use of ORV's at the Seashore, the Assistant Secretary of the Interior for Fish and Wildlife and Parks assembled a study team to review the ORV issue. The study team's report recommended several changes to the 1985 ORV Management Plan including re-opening the beach year-round from Hatches Harbor to Coast Guard Beach in Eastham.

On June 28, 1988, the U.S. District Court issued its decision concerning the 1985 ORV Management Plan and its implementing regulations. The Court held among other things that, under the provisions of the 1985 ORV Management Plan and regulations:

1. ORV use at the Seashore is not inappropriate;

2. User conflicts within the ORV zone are minimized and that the Government has properly exercised its discretion in accommodating a variety of recreational uses within the ORV corridor with minimum conflict;

3. The Government has properly accorded other recreational users adequate use of the Seashore;

4. The Government properly surveyed the sentiments of Seashore users; and

5. ORV use does not adversely affect the Seashore's values as managed.

The Court also reaffirmed its 1984 decision that the Seashore's ecology was adequately protected from the impacts of ORV use under the 1981 Plan.

As a result of a review of the administrative record supporting the 1981 and 1985 ORV Management Plans and new information, including the final decision of the district court, the report of the 1986 Study Team, and the 1986 and 1988 recommendations of the Cape Cod Advisory Commission, the NPS proposes to modify the 1985 ORV Management Plan as follows:

The 6.75 mile section of beach from High Head in Truro south to Ballston Beach in Truro will be open, during night-time hours only, to ORV traffic during the period from April 15 through May 31 and from September 15 through November 15.

This section of beach is closed year-round under the existing 1985 ORV Management Plan. This revision will provide additional ORV use and access for fishing. Restricting the ORV use to night-time hours and to the Spring and Fall calendar periods will help minimize pedestrian and other user conflicts. The 6.75 miles includes one protected Seashore beach and three town beaches. Much of the beach in this area is bounded by high bluffs and large dunes.

Generally, a greater degree of caution and awareness of tide information will be needed by ORV users on the High Head to Ballston section of beach.

The Seashore will modify its ORV permit orientation program to emphasize the hazards associated with the tides and beach configuration on this 6.75 mile section. Ranger patrols will be utilized to monitor and enforce the route designations, time and travel restrictions, and to assist in preventing violations of the ORV regulations. Patrols will also be scheduled during the summer months to monitor the beach conditions, assist visitors, and enforce the June 1 through September 14 closure. Existing regulations will be utilized to close the beach to ORV traffic whenever tides, nesting birds, or the beach configuration prevents travel in the designated corridor.

For the convenience of the reader, the most significant provisions of the proposed revision to the 1985 ORV Management Plan are outlined below: See figure (3).

Proposed Revision to ORV Management Plan

1. Ballston Beach in Truro to Coast Guard Beach in Eastham, a 10.75 mile section of beach, is closed to ORV traffic year-round.

2. Ballston Beach in Truro to High Head in Truro, a 6.75 mile section of beach, is open, during night-time hours only, to ORV traffic from April 15 through May 31 and from September 15 through November 15, except when tides, beach configuration, or nesting birds make the route impassable.

3. High Head to the opening of Hatches Harbor is open to ORV traffic from April 15 through November 15 except when tides, beach configuration, or nesting birds make the route impassable.

4. The emergency dune route is closed to ORV traffic.

5. A limited access ORV pass is available during the period from November 16 through April 14 for beach access between High Head and Hatches Harbor under certain conditions.

6. ORV traffic is confined to a corridor extending from a point 10 feet seaward of the Spring high tide drift line to the berm crest, except in areas where a drift line is not distinguishable due to cliffs or existing dunes, in which case travel will be restricted to the beach below the cliffs or toe of the dune.

Restrictions imposed under the Seashore's ORV Management Plan are applicable only on lands administered, by the NPS; ORV access to privately owned land is subject to permission of the landowner. In addition, because the United States exercises concurrent legislative jurisdiction with the Commonwealth of Massachusetts over lands and water within the Seashore boundary, ORV restrictions imposed by State and local governments also apply to land administered by the NPS. For instance, on October 18, 1988, the town of Wellfleet enacted a by-law that prohibits vehicle travel below the high tide line year-round on beaches within that town. This restriction now applies to approximately 8 miles of beaches administered by the NPS. (This by-law does not conflict with the existing rules or proposed revisions). The effects of this by-law and other local government restrictions should be considered by persons submitting suggestions in response to this notice, but should also be considered as being beyond the control of the Department or the NPS to change.

Public Participation

The National Park Service (NPS) welcomes and encourages comment on the management of ORV's at Cape Cod National Seashore. Two basic issues are involved: Regulation to protect the resources and regulation to minimize conflicts between visitors and ORV users.

The Court found that the Plan and Amended Plan, as implemented and enforced, effectively protect the ecology of the Seashore from the impact of ORVs.

The 1985 ORV Plan emphasized the minimization or ORV/non-ORV user conflict. The visitor conflict study revealed that under the 1981 ORV Plan "* * * ORV uses wer extremely unlikely to be mentioned as a reason why visitors' enjoyment of the Seashore may have decreased," and that 86 percent of the non-ORV using visitors did not believe additional ORV restrictions beyond those incorporated in the 1981 plan were needed.

Because the scope and nature of any regulatory scheme reflects a "balancing" of diverse visitor uses and expectations, we are encouraging comments that focus on whether this proposal would increase user conflicts in a manner that would be inconsistent with the use and enjoyment of the Cape Code National Seashore.

In addition we would like to comment on specific aspects of this proposal. Should the amount of beach proposed to be reopened to ORV's be enlarged or reduced? How should any changes be made? Should the restriction on use to night-time hours only be relaxed or made more stringent? How should any changes be made? Should proposed periods of reopening be expanded or contracted? How should any changes be made?

Drafting Information.

The following individual wrote this regulation: Tony Bonanno, Chief Ranger, Cape Cod National Seashore, South Wellfleet, MA 02663.

Paperwork Reduction Act

The information collection requirements contained in § 7.67(a)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Public reporting burden for this information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Russell K. Olsen, Administrative Services Division, National Park Service, Washington, DC 20013–7127; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This conclusion is based on the finding that no costs should result for any small entity.

As required by the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the National Park Service prepared an Analysis of Management Alternatives including an environmental assessment and a Record of Decision on Off-Road Vehicle Use in 1981 and an amended Record of Decision in March 1985 on the substantive portions of the 1985 rules. Copies of these documents are available for review at the address noted at the beginning of the rule.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.67, by re-designating paragraphs (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) to (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) respectively, and by adding a new paragraph (a)(1)(ii) and revising paragraphs (a)(1)(v) and (a)(2)(i)(A) to read as follows:

§ 7.67 Off-road operation of motor vehicles.

(a)(1) * * *

(i) * * *

(ii) From April 15 through May 31 and from September 15 through November 15, during the hours from one half hour after sunset to one half hour before sunrise, local time, on the outer reach between High Head and Ballston Beach in Truro, including the designated beach across routes at High Head, Head of the Meadow Beach, Coast Guard Beach (Truro), and Ballston Beach.

(iii) * * *

(iv) * * *

(v) Except as described in paragraph (a)(1)(iii) of this section, from November 16 through April 14 oversand travel is restricted to uses and routes approved in writing or by permit by the Superintendent.

(2) * * *

(i)(A) On the beach, a vehicle operator shall drive in a corridor extending from a point 10 feet seaward of the Spring high tide drift line to the berm crest. An operator may drive below the berm crest only to pass a temporary cut in the beach but shall regain the crest immediately following the cut. In areas where the drift line is not distinguishable due to cliffs or existing dunes, travel will be restricted to the beach below the cliffs or toe of the dune. Delineator posts may mark the landward side of the corridor in critical areas.

* * * * *

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

Date: December 21, 1988.

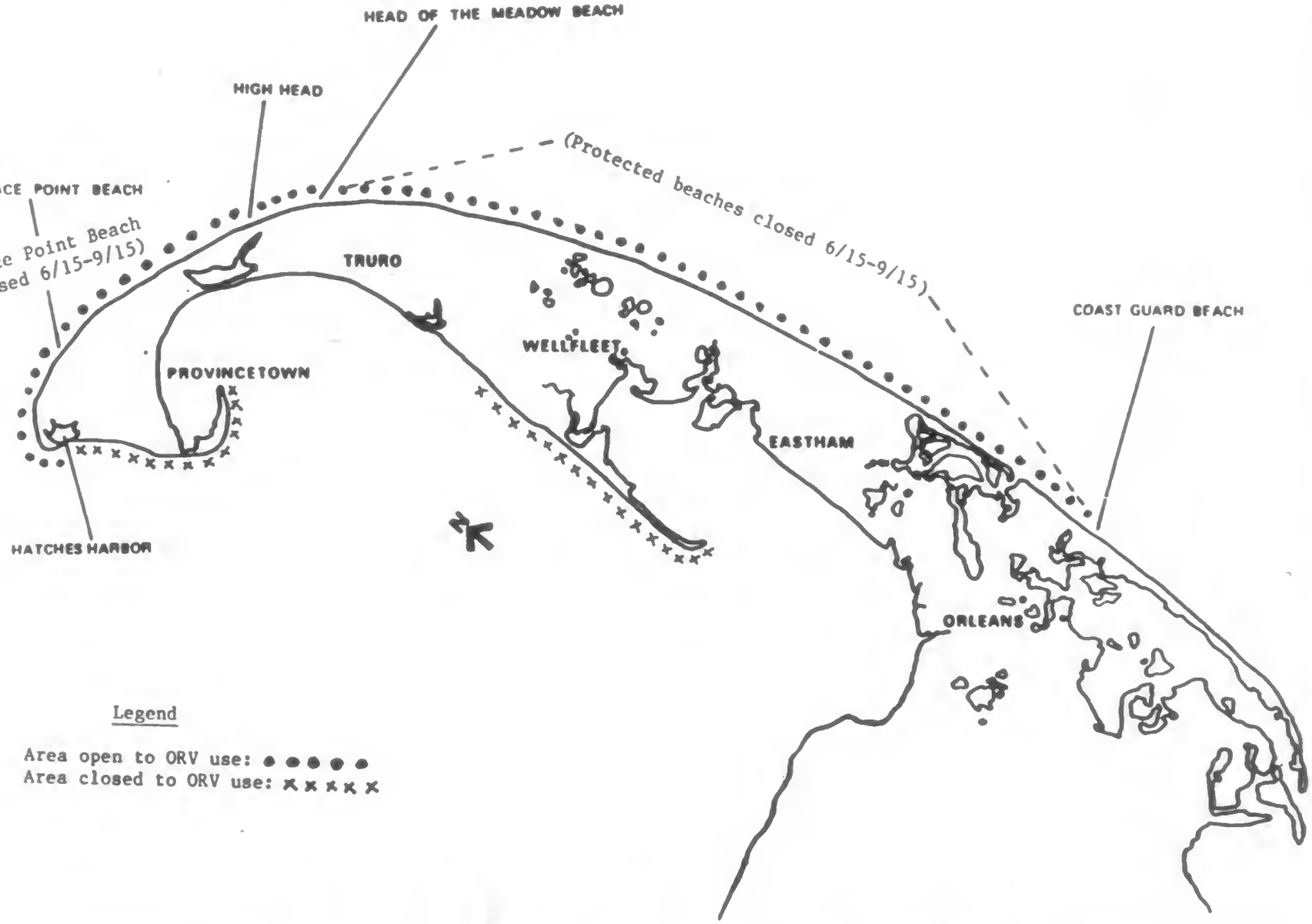
[**Editorial Note.**—The following figures will not appear in the Code of Federal Regulations.]

BILLING CODE 4310-70-M

CAPE COD NATIONAL SEASHORE

(figure 1)

1981 ORV Management Plan
ORV Closures

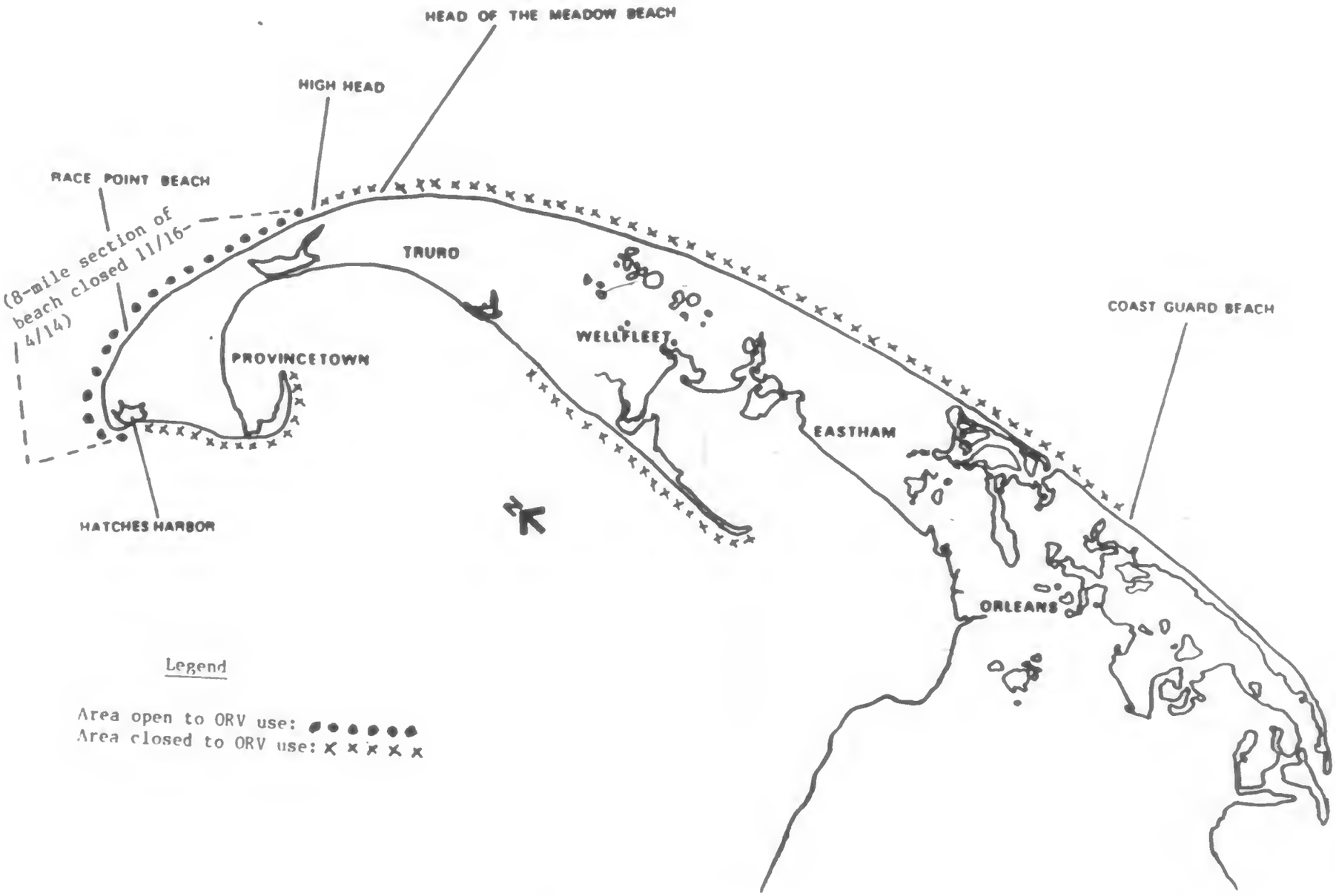


Legend

Area open to ORV use: ● ● ● ● ●
Area closed to ORV use: × × × × ×

CAPE COD NATIONAL SEASHORE (figure 2)

1985 ORV Management Plan
ORV Closures

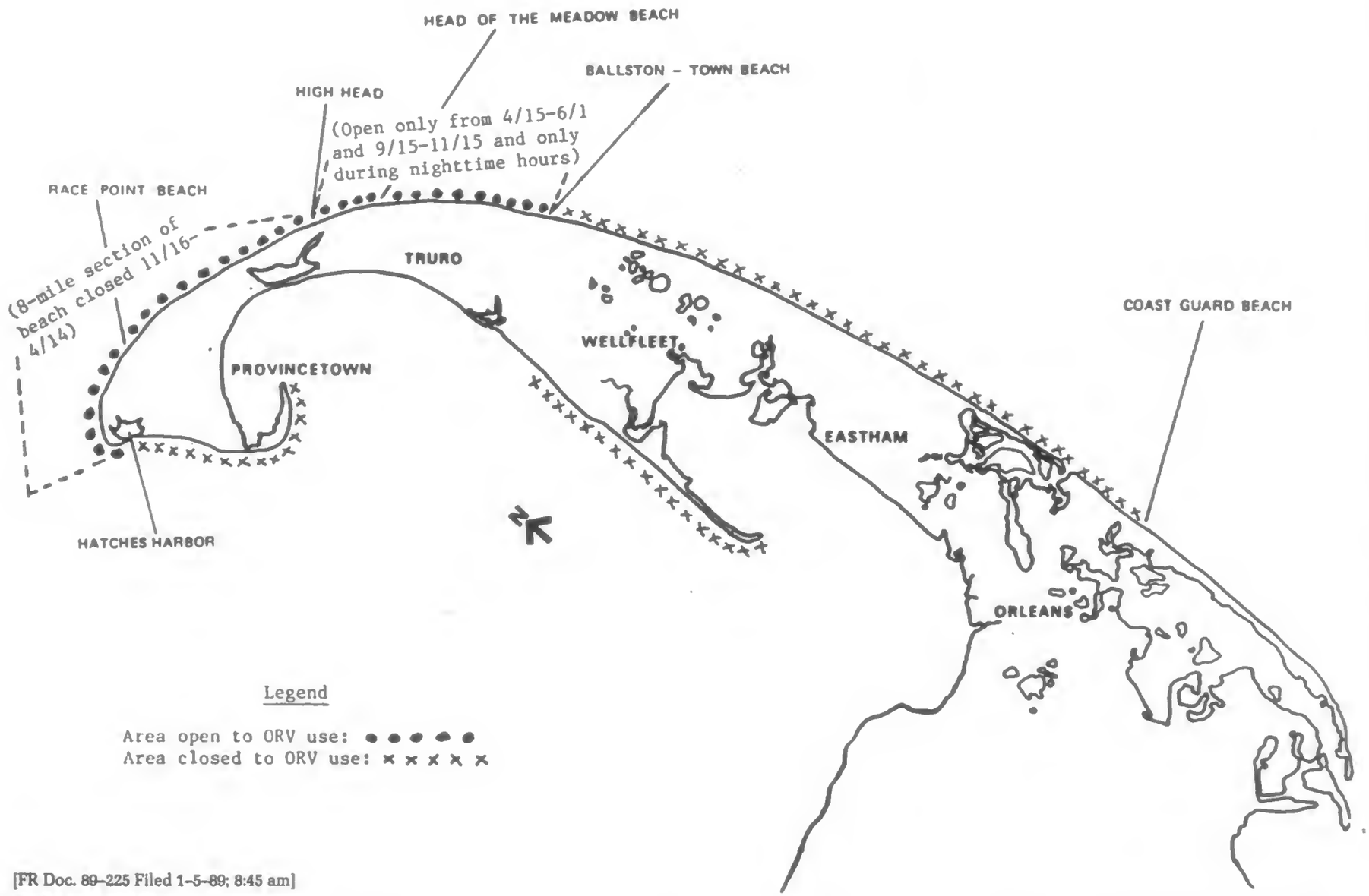


Legend

Area open to ORV use:
Area closed to ORV use:

CAPE COD NATIONAL SEASHORE (figure 3)

Proposal - ORV Closures



Legend

Area open to ORV use: ● ● ● ● ●
Area closed to ORV use: × × × × ×

[FR Doc. 89-225 Filed 1-5-89; 8:45 am]
BILLING CODE 4310-70-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-88-03; Notice 1]

Light Truck Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Dot.

ACTION: Request for comments.

SUMMARY: This notice requests comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for light trucks. Section 502(b) of the Motor Vehicle Information and Cost Savings Act requires NHTSA to issue light truck average fuel economy standards at least 18 months before the beginning of each model year. The agency has established standards through model year (MY) 1991. NHSTSA now is in the process of beginning a rulemaking analysis to determine the level of light truck average fuel economy standards for model years after 1991. This notice requests information to assist the agency in developing that analysis.

DATE: Written comments on this notice must be submitted in time to be received by the agency no later than March 7, 1989.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SE., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron E. Kee, Chief, Motor Vehicle Requirements Division, Officer of Market Incentives, National Highway Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0846.

SUPPLEMENTARY INFORMATION: The appendix to this notice consists of a number of questions directed toward light truck manufacturers, regarding fuel economy data for model years 1990 through 1994. The agency recognizes that the manufacturer product plans may not be approved formally through model year 1994 and that questions such as those on the cost of fuel economy related actions are difficult ones. The agency would appreciate responsive answers to these questions, however, so that appropriate weight can be given to the many factors whose magnitude at this time can only be roughly estimated. Although the agency may propose standards only for MY 1992 as a result of the responses to this questionnaire, the agency would prefer to provide manufacturers with more advance notice of future standards by proposing standards for more than one year at a time.

While the questions in the appendix are directed toward manufacturers, the agency invites comments from all interested persons concerning the questions asked and how information provided in response to the questions should be used by the agency.

NHTSA is providing a 60-day comment period. It is requested that 10 copies of each response be submitted. In review of the number of questions and the detail of information requested, the agency is waiving its usual requirement that comments be limited not to exceed 15 pages in length.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with the comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

Authority: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 (FR 501.8)

Issued December 29, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

Appendix

I. Definitions

As used in this appendix:

1. The terms "automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in section 501 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001.

2. The term "basic engine" has the meaning given in 40 CFR 600.002-85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in cubic inches).
(ii) Number of cylinders or rotors.
(iii) Number of valves per cylinder.
(iv) Cylinder configuration (V, in-line, etc.).
(v) Number of carburetor barrels, if applicable.
(vi) Other engine characteristics, abbreviated as follows:
DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multiport Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System, carbureted

3. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

4. "Light truck" means an automobile of the type described in 49 CFR 523.5.

5. "Percent fuel economy improvement" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology.

Projections of percent fuel economy improvement shoud be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 1989 model year light trucks in the equivalent class.

6. "Percent production implementation rate" means that percentage which corresponds to the maximum number of light trucks of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

7. "Possession" means ownership, custody or control.

8. "Production percentage" means the percent of respondent's light trucks of a specified model projected to be manufactured in a specified model year.

9. "Project" or "Projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

10. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

11. "Respondent" means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

12. "Test weight" is used as defined in 40 CFR 86.082-2.

13. "Transmission class" is used as defined in 40 CFR 600.002-05(22)(a). When identifying a transmission class, respondent also must indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears.

14. The term "van" is used as defined in 40 CFR 86.082-2.

15. The term "cargo-carrying volume," "gross vehicle weight rating" (GVWR), and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

16. For the purposes of this appendix the term "utility vehicle" means a form of light truck, either two-wheel drive (4x2) or four-wheel drive (4x4), which as a wheelbase of 110 inches or less and is exemplified by a Jeep Wrangler or Cherokee, a Chevrolet Blazer, a Dodge Ramcharger, Ford Bronco, or a Toyota Land Cruiser.

17. "Redesign" means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

18. "Domestically manufactured" is used as defined in section 503(b)(2)(E) of the act.

19. For the purposes of this appendix, a "class" of light trucks means a group (e.g., domestically produced 4x2 light trucks) for which average fuel economy standards are set.

20. For the purposes of this appendix, a "model" of light truck is a line, such as the Chevrolet C-10 or Astro, Ford F150 or E100, Jeep Wrangler, etc., which exists within a class. "Model type" is used as defined in 40 CFR 600.002-85(a)(19).

21. "Truckline" means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 1989 model year truck, van (cargo vans and passenger vans are considered separate truck lines) and special vehicle criteria.

II. Assumptions

All assumptions concerning emission standards, noise and damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications

1. Identify all light truck models currently offered for sale in MY 1989 whose production you project discontinuing before or during MY 1994 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 1989 light trucks which respondent projects ceasing to offer for sale in light trucks before or during MY 1994, inclusive, and identify the last model year in which each will be offered.

3. Does the respondent currently project offering for sale any new or redesigned light trucks, including vehicles smaller than those now produced during any model year 1990-1994? If so, provide the following information for each model (e.g., Chevrolet C-10, Ford F150). Model types which are essentially identical except for their nameplates (e.g., Dodge Caravan/Plymouth Voyager) may be combined into one item. See Table A for a sample format; 4x2 and 4x4 light trucks are different models.

a. Body types to be offered for sale (e.g., regular cab, super cab). Provide passenger-carrying volume, number of seating positions, and cargo-carrying volume.

b. Description of basic engines, including optional horsepower and torque ratings, if any; displacement; number and configuration of cylinders; type of carburetor or fuel injection system; and number of valves per cylinder.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, and driveline configuration.

d. (i) The range of GVW ratings to be offered for each body type.

(ii) The range of test weights offered for each body type.

e. All wheelbases.

f. Estimated power absorption unit (PAU) setting, in hp.

g. External dimensions (total length, width, and height).

h. The range of projected EPA composite fuel economics for each body type in the initial model year of production.

i. Projected introduction date (model year).

j. Projected sales for each model year from the projected year of introduction through MY 1994, expressed both as an absolute number of units sold and as a percentage of all light trucks sold by respondent.

k. If other than domestically manufactured, so state.

l. Projections of:

(i) Existing models replaced by new models.

(ii) Reduced sales of respondent's existing models as a result of the sale of each of the new models.

(iii) New sales not captured from any of the respondent's existing models.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in model years 1990-1994? If so, for each basic engine or variant indicate:

a. The projected year of introduction.

b. Type (e.g., spark ignition, direct injection diesel),

c. Displacement,

d. Type of induction system (e.g., fuel injection with turbocharger, naturally aspirated, 2-barrel carburetor),

e. Cylinder configuration (e.g., V-8, V-6, I-4),

f. Number of valves per cylinder (e.g., 2, 3, 4),

g. Horsepower and torque ratings,

h. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. For each of the model years 1990-1994, and for each light truck model projected to be manufactured by

respondent (if answers differ for the various models), provide the requested information for each of items "a" through "m" listed below:

(i) Description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model, if answers vary within the model;

(iii) The basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons limiting the implementation rate;

(v) A description of the 1989 baseline technologies and the 1989 implementation rate; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table B.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percent of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratio. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcane lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1989 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power-steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling loses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1989 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearings, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of spark ignition engines including: (a) Increased compression ratio; (b) leaner air-to-fuel ratio; (c) revised combustion chamber configuration; (d) fuel injection; (e) electronic fuel metering; (f) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (g) variable valve timing or valve lift; (h) multiple valves per cylinder; (i) friction reduction by means such as low tension piston rings and roller cam followers; and (j) other methods (specify).

k. Naturally aspirated diesel engines, with direct or indirect fuel injection.

l. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

m. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

6. For each model of respondent's light truck fleet projected to be manufactured in each of model years 1990–1994, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x4 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, i.e., the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provide reduced weight for approximately the same payload and cargo volume.

7. For each model year 1992, 1993, and 1994, list all projected light truck model types and provide the information specified in "a" through "k" below for each model type.

The information should be in tabular form, with a separate table for each model year. Domestic and non-domestic model types are to be listed separately. Each of the two groupings is to be subdivided into separate listings for models with 4x2 and 4x4 drive systems. Engines having the same displacement but belonging to different engine families are to be grouped separately.

The vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. For these groupings, the average test weights are to be placed in ascending order. List the categories of information in terms "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for imported and domestic light trucks for each truckline and for all of the respondent's light trucks.

a. Truckline, e.g., C–10, F–150, B–150. Model types which are essentially identical except for their nameplates (e.g., Chevrolet S–10/GMC S–15 and Dodge Caravan/Plymouth Voyager) may be combined into one line item.

b. Light truck vehicle type, e.g., compact pickup, cargo van, passenger van, utility, truck-based station wagon, and chassis cab. Other light truck designations, which are adequately defined, can be used if these are not suitable.

c. Basic engine: Include the engine characteristics used in Definition 2.

d. Transmission class (e.g., A3, A4, A40D, M5, CVT): Include the characteristics used in Definition 13.

e. Average ratio of engine speed to vehicle speed in top gear (N/V), rounded to one decimal place.

f. Average test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Air conditioning: Y-air conditioning installations are projected to exceed 33 percent of the vehicles described in the line item; N-air conditioning installations are projected to be less than 33 percent of the vehicles described in the line item.

i. Average air conditioner refrigerant capacity for *all* vehicles in fleet, for purposes of estimating ultimate clorofluorocarbon emission capacity.

j. Composite fuel economy (sales weighted, harmonically averaged over the specified vehicles, rounded to the nearest 0.1 mpg).

k. Projected sales for the vehicles described in each line item.

8. For each transmission identified in response to 7(d) above, provide a listing showing whether the transmission is manual or automatic, the gear ratios for the transmission, and the models which use the transmission.

9. Indicate any MY 1990–1994 light truck model types which have higher average test weights than comparable MY 1989 model types. Describe the reasons for any weight increases (i.e., increased option content, less use of premium materials) and provide supporting justification.

10. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 4, and 5, provide your best estimate of the following in terms of constant 1989 dollars.

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that will be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing the methodology used to determine the equivalent retail price increase.

(f) Total research and development costs associated with the new/redesigned model or improvement.

(g) Total fixed costs (other than those identified in (a) above) associated with each new/redesigned model or improvement, based on production volumes specified in (b) above.

11. Please provide respondent's actual and projected U.S. light truck sales, 4x2 and 4x4, 0–8,500 lbs. GVWR and 8501–10,000 lbs. GVWR for each model year from 1989 through 1994, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (e.g., C–20/30, F–250/350, D–250/350)
ii. Standard Pickup Light (e.g., C–10, F–150, D–100)
iii. Compact Pickup (e.g., S–10, Ranger)
iv. Standard Cargo Vans Heavy (e.g., G–30, E–250/350, B–350)
v. Standard Cargo Vans Light (e.g., G–10/20, E–150, B–150/250)
vi. Standard Passenger Vans Heavy (e.g., G–30, E–250/350, B–350)
vii. Standard Passenger Vans Light (e.g., G–10/20, E–120, E–150, B–150/250)
viii. Compact Cargo Vans (e.g., Astro, Aerostar, Mini Ram Van)
ix. Compact Passenger Vans (e.g., Astro, Aerostar, Voyager)
x. Standard Utilities (e.g., V–10 Blazer, Bronco, Ramcharger)
xi. Compact Utilities (e.g., S–10 Blazer, Bonco II, Wrangler)
xii. Other (e.g., Suburban, El Camino, Justy)

Provide separate tables for domestic and captive imports or vehicles with less than 75 percent domestic content. See Table C for a sample format.

12. Please provide (a) historical and (b) your estimates of projected *total industry* U.S. light (0–10,000 lbs, GVWR) truck sales for each model year from 1988 through 1994, inclusive. Please subdivide the data into 4x2 and 4x4 sales and into the vehicle categories listed in the sample format in Table D.

13. For domestic manufacturers only: In previous rulemakings, the agency has used manufacturers' estimates of future capital spending to estimate the financial impact of alternative fuel economy standards. To permit similar comparisons in this rulemaking, please provide an estimate of your capital spending in North America for each year from 1988 through 1994. In addition, please provide an estimate of your total corporate capital spending and depreciation and amortization for each year from 1988 through 1994.

14. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1988 through 1994.

15. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during model years 1988–1994.

TABLE A

[Model: LT–1B Driveline Configuration: Conventional 4x2: Front engine/rear drive]

	Pass. volume	No. seating pos.	Cargo vol.	e. Wheel base	f. power absor. Unit setting hp	g. External dimensions		
						L	W	H
a. Body Types:								
Regular Cab, Short Bed	XFt[2]	3	Yft[3]	115	8.0			
Regular Cab, Long Bed	XFt[2]	3	Zft[3]	133	8.5			
Extended Cab, Long Bed	X1ft[2]	4	Zft[3]	151	8.5			
Crew Cab, Long Bed	X2ft[2]	6	Zft[3]	170	9.0			

CID	Conf/No. Cyl.	Carb	Hp/rpm	Torque/rpm
b. Basic Engines:				
235 [1]	V6	2V	x/3600	Y/1800
310	V8	2V		
340 [2]	V8	4V		
340 [3]	V8	MP		

[1] Not available with crew cab.
[2] Available only with HD 4-speed manual transmission or automatic transmission.

Manual 3-speed [1]	Manual Overdrive [1]	Automatic	HD Manual 4-Speed
c. Transmission Types:			
1 3.00	1 3.00	1 2.50	1 6.50
2 1.75	2 1.75	2 1.50	2 3.60
3 1.00	3 1.00	3 1.00	3 1.80
R 3.15	4 .80	R 1.90	4 1.00
	R 3.15	TC 2.1	R 6.10
RAR 3.23/3.54/3.73	3.54/3.73	3.23/3.54	3.23/3.54/3.73

[1] Not available with 340 CID V8 engines.

	Body Type	Range of Test Weights
d. Range of GVWR:		
6,050 to 7,000	Reg. Cab, Short Bed	4,250–4,500
6,050 to 7,200	Reg. Cab, Long Bed	4,250–4,500
6,300 to 7,400	Extended Cab, Long Bed	4,500–5,000
6,300 to 7,400	Crew Cab, Long Bed	4,500–5,000

Body	Range of Composite Fuel Economy Ratings for Introduction Year
h. Fuel Economy Values:	
Reg. Cab, Short Bed	14.0–16.0
Reg. Cab, Long Bed	13.8–15.8
Extended Cab, Long Bed	13.5–15.4
Crew Cab, Long Bed	13.0–15.1
i. and j. Projected Introduction and Sales Through MY 1994:	
1992 (I) [2]	36,000
1993 [3]	78,000
1994	110,000
k. To be completed only if domestically manufactured.	
l. (i) Redesigned; replaced LT-1A.	
(ii) The extended cab introduced in MY 1993 is expected to capture 15,000 passenger car-station wagon sales.	
(iii) The extended cab in (ii), above, is expected to capture a like amount of sales from, competitors in each model year.	

[2] Mid-year introduction.
[3] Extended cab introduced.

TABLE B.—TECHNOLOGICAL IMPROVEMENTS

Technological Improvement	Percent Fuel Economy Improvement	Percent production penetration					
		1989	1990	1991	1992	1993	1994
5 (a) Improved Auto Transmissions:							
LT-1	10.0	0	0	0	14	15	15
LT-2	6.0	0	0	0	14	15	15
LT-3	7.5	0	0	0	6	10	10
LT-1	10.0	0	0	0	20	20	20
LT-2	9.0	0	0	0	20	20	20
LT-3	7.5	0	0	0	10	12	12
U-1	10.0	0	0	0	14	15	15
5 (b) Improved Manual Transmissions:							
LT-1	4.0	0	0	0	35	35	35
LV-1	4.0	0	0	0	30	30	30
LV-2	4.0	0	0	0	30	30	30
U-1	4.0	0	0	0	35	35	35
5 (c) Overdrive Transmissions:							
LT-1	6.0	0	0	0	6	8	8
LV-1	6.0	0	0	0	5	6	6
LV-2	6.0	0	0	0	5	6	6
U-1	6.0	0	0	0	6	10	10

TABLE C.—AJAX 4X2 DOMESTIC LIGHT TRUCK SALES

	Model Year						
	1988	1989	1990	1991	1992	1993	1994
0–8,500 lbs. GVWR	509,379						
Standard Pickup Heavy	43,500						
Standard Pickup Light	120,000						
Compact Pickup	60,000						
Standard Cargo Van Heavy	20,000						
Standard Passenger Van Heavy	29,310						
Standard Passenger Van Light	54,196						
Compact Cargo Van	38,900						
Compact Passenger Van	30,000						
Standard Utilities	53,800						
Compact Utilities	44,000						
Other	5,673						
8,501–10,000 lbs. GVWR	5,500						
Standard Pickup Heavy	4,000						
Standard Utilities	1,000						
Other	500						
Grand total	514,879						

TABLE D.—Total U.S. Truck Sales

	1988		1989		1990		1991		1992		1993		1994	
	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.
1. Light Trucks (4×2)														
a. Pickup:														
1. Compact														
2. Small Car Based														
3. Large Car Based														
4. Standard														
b. Passenger Vans (Bus):														
1. Compact														
2. Standard														
c. Cargo Vans:														
1. Compact Standard														
2. Standard														
d. Utilities:														
1. Compact														
2. Standard														
3. Car Based														
e. Truck Based Station Wagons														
f. Other														
2. Light Trucks (4×4) (Same breakout as 4×2)														
3. Total Light Trucks (4×2+4×4)														

[FR Doc. 89-189 Filed 1-5-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Rhus michauxii (Michaux's Sumac)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Rhus michauxii* (Michaux's sumac), a dioecious shrub limited to 16 populations in North Carolina and Georgia, as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Rhus michauxii* is endangered by suppression of fire, conversion of habitat for silviculture and agriculture, industrial and residential development, highway construction and improvements, hybridization with other species, and geographic isolation of small, single-sex populations. This proposal, if made final, would implement Federal protection provided by the Act for *Rhus michauxii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 7, 1989. Public hearing requests must be received by February 21, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Rhus michauxii, described by C. S. Sargent (1895) from material collected in North Carolina, is a rhizomatous shrub. It is sometimes called "false poison sumac" because of its superficial resemblance to *Rhus vernix*. The erect stems grow from 0.3 to 1 meter in height, and the entire plant is densely pubescent. The narrowly winged or wingless rachis supports 9 to 13 sessile,

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oblong to oblong-lanceolate leaflets that are each 4 to 9 centimeters long, 2 to 5 centimeters wide, and acute to acuminate. The bases of the leaflets are rounded, and their edges are simply or doubly serrate. Flowering in this dioecious species occurs in June. The small flowers are borne in a terminal, erect, dense cluster, with each one being four- to five-parted and greenish-yellow to white. The fruit, which is a red, densely short-pubescent drupe, 5 to 6 millimeters broad, is borne on female plants form August to September (Radford *et al.* 1964, Cooper *et al.* 1977, Sargent 1895). *Rhus michauxii* differs from other similar species of the genus by its short stature, dense overall pubescence, and evenly serrate leaflets.

Rhus michauxii is a species endemic to the inner coastal plain and lower piedmont of North Carolina, South Carolina, and Georgia, where it is currently known form 15 locations in North Carolina and 1 location in Georgia. The species occurs in sandy or rocky open woods, perhaps in association with basic soils (Cooper *et al.* 1977), and appears to be dependent upon some form of disturbance to maintain the open quality of its habitat. Artificial disturbances, such as railroad and highway right-of-way maintenance, are maintaining some of the openings historically provided by naturally occurring periodic fires. Thirty populations of *Rhus michauxii* have been reported historically from 21 counties in North Carolina, South Carolina, and Georgia. Sixteen of these populations remain in existence in North Carolina and Georgia. The following is a summary of the most current information for this species.

Georgia: Four populations were reported historically in the State from the counties of Newton, Rabun, Columbia, and Elbert. Only the Elbert County population is known to remain, with just four plants surviving. This site is on land owned by the U.S. Army Corps of Engineers, leased to the Georgia Department of Natural Resources as part of the Broad River Wildlife Management Area (T. Patrick, Georgia Heritage Inventory, personal communication, 1988.) The Newton County population is believed to have been destroyed during the construction of a water tower. Causes for the disappearance of the populations in Rabun and Columbia Counties are not known.

South Carolina: One population was reported historically from Kershaw County. Although extensive searches have been conducted in that area and others of potentially suitable habitat, the species is believed to have been extirpated from the State.

North Carolina: Rhus michauxii was once known to occur at 25 sites in this State. The species has been extirpated at 10 of these localities, with the causes for extirpation being largely unknown. One population is believed to have been extirpated in each of the following counties: Orange, Wake, Wilson, Robeson, Moore, Lincoln, Franklin, Durham, Mecklenberg, and Hoke. The distribution of the 15 extant populations by county is as follows.

Three populations remain in Hoke County. One of these sites, with several hundred female plants, is privately owned; another, with 23 plants, is located on Ft. Bragg Military Reservation and is owned by the U.S. Department of Defense; and the third, a severely disturbed site where only four plants remain, is partially in private ownership and partially owned by The Nature Conservancy.

Six populations occur in Richmond County. One of these (consisting of 2 plants) is privately owned, and 4 (3 with less than 50 plants each and one with 137 plants) are located on land owned by the U.S. Department of Defense that is leased and managed by the North Carolina Wildlife Resources Commission as part of the Sandhills Gamelands. The sixth population, with only eight plants, is on Ft. Bragg Military Reservation, owned by the U.S. Department of Defense.

Two populations occur in Scotland County on the Sandhills Gamelands, which are managed by the North Carolina Wildlife Resources Commission and owned by the U.S. Department of Defense. Both of these populations are large, with 1 covering an area of 76 meters by 137 meters, but contain only female plants. The other consists of 300 to 400 male plants.

One population survives in each of the following counties: Franklin, Davie, Robeson, and Wake. The Franklin County population is privately owned and contains over 250 plants of both sexes. The Davie County population, also in private ownership, consists of about 30 plants covering a 0.9-meter square area. The Robeson County population, in private ownership, consists of several hundred male plants. The Wake County population, owned by the City of Raleigh, consists of 279 plants of both sexes.

Many of these populations are in vulnerable locations, such as highway rights-of-way or on the edges of plowed fields. Those which are not adjacent to some maintained opening or exposed to periodic disturbance are endangered by natural succession.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the **Federal Register** (45 FR 82480); *Rhus michauxii* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information on hand to support the biological appropriateness of their being listed as endangered or threatened species. Subsequent revisions of the 1980 notice have maintained *Rhus michauxii* in category 1.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Rhus michauxii* Sargent (Michaux's sumac) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Rhus michauxii* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, 47 percent of the known populations have been extirpated, partly as a result of conversion of habitat for silvicultural and agricultural purposes and for industrial and residential development. Fire suppression appears to be a problem for this species and will be discussed in detail under Factor E below. Of the 14 populations that have been extirpated, 1 is known to have been eliminated by industrial development and one by conversion of the site to pine plantation. Causes for the extirpation of the others are unknown. Many of the remaining populations are on the edges of highway or railroad rights-of-way or cultivated fields. Fourteen of the 16 remaining populations are currently threatened by habitat alteration.

In addition to the major threats listed above, those populations on military land are potentially threatened by mechanized military training activities. Although this has not been a documented problem for this species thus far, some of the small sites occupied by the species could easily be destroyed by heavy, tracked vehicles such as tanks. Nonetheless, populations probably persist on military lands and

State gamelands where they have not survived on adjacent privately owned land because of the prescribed burning programs of the Defense Department and the North Carolina Wildlife Resources Commission, and periodic fires incidental to military training (J. Carter, North Carolina State University, personal communication, 1987; J. Moore, North Carolina Natural Heritage Program, personal communication, 1987). Activities associated with intensive timber management on publicly owned land, such as timber harvesting, road building, and conversion of habitat to pine plantation, if done in a manner not consistent with the protection of *Rhus michauxii* populations, could adversely affect the species, as has been the case on private lands in the past.

B. *Overutilization for commercial, recreational scientific, or educational purposes. Rhus michauxii* is not currently a significant component of the commercial trade in native plants. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Rhus michauxii* is afforded legal protection in North Carolina by North Carolina General Statutes, sections 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species and which prohibit taking of plants without written permission of landowners. *Rhus michauxii* is listed in North Carolina as endangered and of special concern (Sutter *et al.* 1983). The species is recognized in South Carolina as extirpated in the State and of national concern by the South Carolina Advisory Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. The species is not listed by the State of Georgia where it was thought to have been extirpated until very recently. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as exclusion of fire. The Endangered Species Act would provide additional protection and encouragement of active management for *Rhus michauxii.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in area covered by the plants. Of the 16 remaining populations, 9 have less than 100 plants, with 3 of these containing less than a dozen plants each. The rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate. In addition, only two of the remaining populations contain both male and female plants. The dioecious nature of the species further increases the vulnerability of extremely small populations where plants of only one sex remain. Existing conditions at most of the occupied sites are indicative of low genetic variability within populations, which makes it more important to maintain as much habitat and as many of the remaining colonies, particularly those containing both sexes, as possible.

Another potential threat to this species, particularly in populations where only a few plants remain, is hybridization with sympatric species such as *Rhus galbra* and *Rhus copallina.* Hardin and Phillips (1985) documented the existence of an intermediate form between *Rhus galbra* and *Rhus michauxii* in at least two sites from which *Rhus michauxii* had been reported. Much remains unknown about the demographics and reproductive requirements of this species. Fire or some other suitable form of disturbance, such as mowing or careful clearing, is essential for maintaining the open habitat preferred by *Rhus michauxii.* Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by the shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop the *Rhus michauxii,* which is shade-intolerant. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 16 remaining populations, 11 are on roadsides or in the edges of artificially maintained clearings. Two others are in areas that have been exposed to periodic fire, another is in a natural opening on the rim of a Carolina bay (shallow, elliptical depression of unknown origin); the remaining two are in wooded sites and are declining in vigor (J. Moore, personal communication, 1988; T. Patrick, personal communication, 1988).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Rhus michauxii* as endangered. With almost half of the species' populations already having been eliminated and only 16 remaining in existence (with most of these being very small in size and containing plants of only one sex), and based upon its dependence on some form of active management, it warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing most populations. As stated by Hardin and Phillips (1985), "*Rhus michauxii* is apparently on the verge of extinction * * *" Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Rhus michauxii* at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Rhus michauxii* is vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal, reduction to possession from lands under Federal jurisdiction, or malicious damage or destruction; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions would make *Rhus michauxii* more vulnerable and would increase enforcement problems for the U.S. Department of Defense. The populations on private lands would be vulnerable to collection and vandalism. Increased visits to population locations stimulated by critical habitat designation could adversely affect the species. The Federal and State agencies and landowners involved in protecting and managing the habitat of the species have been informed of the plant's locations and the importance of protection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Department of Defense has jurisdiction over portions of this species' habitat. Federal activities that could impact *Rhus michauxii* and its habitat in the future include, but are not limited to, the following: Silvicultural activities, including timber harvesting and conversion of sites to pine plantations by means of mechanical site preparation; mechanized military training operations; recreational development; power line construction and certain types of maintenance/improvements; highway construction and certain types of maintenance/improvements; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Rhus michauxii* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Rhus michauxii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export the species, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction, on Federal lands and their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is expected that few trade permits would ever be sought or issued, since *Rhus michauxii* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Rhus michauxii*;

(2) The location of any additional populations of *Rhus michauxii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Rhus michauxii*.

Final promulgation of any regulation on *Rhus michauxii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see "**ADDRESSES**" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cooper, J., S. Robinson, and J. Funderburg. 1977. Endangered and threatened plants and animals of North Carolina: proceedings of the symposium on endangered and threatened biota of North Carolina. North Carolina State Museum of Natural History, Raleigh, North Carolina. P. 61.

Hardin, J., and L. Phillips. 1985. Hybridization in eastern North American Rhus (Anacardieceae). Association of Southeastern Biologists Bulletin 32(3):99-106.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. University of North Carolina Press, Chapel Hill. p. 678.

Sargent, C.S. 1895. New or little-known plants; *Rhus michauxii*. Garden and Forest 398:404-405.

Sutter, R., L. Mansberg, and J. Moore. 1983. Endangered, threatened, and rare plant species of North Carolina: a revised list. Association of Southeastern Biologists Bulletin 30:153-163.

Author

The primary author of this proposed rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Anacardiaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Anacardiaceae—Cashew family:						
Rhus michauxii	Michaux's sumac	U.S.A. (NC, SC, GA)	E		NA	NA

Dated: December 21, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-259 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 30, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118. Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

REVISION

- Rural Electrification Administration
Electric Loan Application Packet
REA Forms 7, 7a, 325a–k, 341, 345, 346, 740c, 740g
On Occasion
Small Businesses or organizations; 934 responses; 137,662 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382–1900

EXTENSION

- Food and Nutrition Service
Distribution of Donated Food to Family Units
FNS–152
Monthly
State or Local Governments; 1,260 responses; 2,520 hours; not applicable under 3504(h)
Bessie Bradford, (703) 756–3660
- Agricultural Marketing Service
Apricots Grown in Designated Counties in Washington—Marketing Order 922
None
On Occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 123 responses; 17 hours; not applicable under 3504(h)
Virginia M. Olson, (202) 475–3930
- Agricultural Marketing Service
Peaches Grown in Designated Counties in Washington, Marketing Order 921
None
On Occasion
Farms; Businesses or other for-profit; Small Businesses or organizations; 334 responses; 54 hours; not applicable under 3504(h)
Virginia M. Olsen, (202) 475–3930
- Animal Plant Health Inspection Service
National Poultry Improvement Plan (NPIP)
VS Forms 9–2, 9–3, 9–4, 9–5, 9–6, 9–7, 10–3
Recordkeeping; On Occasion; Annually
State or local governments; Businesses or other for-profit; Small businesses or organizations; 27,000 responses; 3,276 hours; not applicable under 3504(h)
Irvin L. Peterson, (301) 436–5140.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89–200 Filed 1–5–89; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 88–145]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Low Dosage Gamma Radiation of Papayas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that we have prepared a finding of no significant impact regarding the potential effects on the human environment of disinsection of papayas through gamma irradiation. In this issue of the **Federal Register**, we are publishing a final rule that authorizes irradiation as a quarantine treatment for papayas intended for movement from Hawaii to the rest of the United States and its territories. In that final rule, we require that if irradiation treatment for papayas is used, the absorbed dosage must be at least 15 kilorads (krads). In assessing the potential environmental impact of the irradiation of papayas, we reviewed an environmental assessment, finding of no significant impact, and final rule concerning irradiation in the production, processing, and handling of food, that were prepared by the Food and Drug Administration with regard to gamma irradiation treatment not exceeding 100 kilorads for fresh foods. Our review indicates that the irradiation of papayas at levels of 100 kilorads will not have any significant impact on the quality of the human environment. Based on this finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the APHIS finding of no significant impact, and of the Food and Drug Administration environmental assessment and final rule, are available for public inspection at APHIS, USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Environmental Specialist, BBEP, APHIS, USDA, Room 403, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7602. For copies of the APHIS finding of no significant impact, or the Food and Drug Administration environmental assessment or final rule, call Michael T. Werner at this same phone number or write him at this same address.

SUPPLEMENTARY INFORMATION:

Background

We have prepared a finding of no significant impact regarding the potential effects on the human environment of carrying out the disinsection of papayas through gamma irradiation. In this issue of the **Federal Register**, we are publishing a final rule, titled "Use of Irradiation as a Quarantine Treatment for Fresh Fruits of Papaya from Hawaii," Docket No. 87–040, that authorizes irradiation as a quarantine treatment for papayas intended for movement from Hawaii to the rest of the United States and its territories. The minimum required absorbed dosage of radiation for this treatment is 15 kilorads (krads). We have determined that this minimum dosage will prevent introduction of the oriental fruit fly, the Mediterranean fruit fly, and the melon fly into the continental United States and into uninfested off-shore areas of the United States.

In evaluating the potential environmental impact of this irradiation, we have reviewed documents prepared by the Food and Drug Administration (FDA) regarding the treatment of food products by irradiation. The FDA has prepared an environmental assessment (EA), finding of no significant impact (FONSI), and final rule [51 FR 13376, Docket No. 81N–0004) concerning irradiation in the production, processing, and handling of food. The FDA regulations permit use of irradiation at doses not to exceed 1 kGY (100 krad) to inhibit the growth and maturation of fresh foods and to disinfest food of arthropod pests, and permit use of irradiation at doses not to exceed 30 kGY (3,000 krad) to disinfect dry or dehydrated aromatic vegetable substances (spices and herbs) of microorganisms. They additionally require that irradiated foods be labeled at both the wholesale and retail level to show that they have been treated, and require that irradiation treatment records be maintained and be available for FDA inspection. We have reviewed these FDA documents to determine their applicability to gamma irradiation treatment for papaya, as allowed by our final rule, published in this issue of the **Federal Register**. For the purpose of the treatment of papayas, we have determined that potential environmental effects have been adequately considered by the FDA, and we concur with the conclusions of that agency's EA, FONSI, and final rule. We have documented this concurrence in our FONSI.

The FDA documents, and the FONSI that we issued based on our review of those documents, provide the public with analysis of environmental effects that may be associated with the irradiation of papayas at levels not exceeding 100 krad.

The following is a summary of the facts supporting our FONSI:

1. No adverse environmental effects are anticipated at food processing facilities using a radioactive source to sterilize food. Similarly, no adverse environmental effects are anticipated from the transportation of radioactive sources for the irradiation treatment.

2. Machine-generated radiation sources are subject to the Radiation Control for Health and Safety Act of 1968 and must comply with appropriate reporting requirements (21 CFR Part 1002) established by the Bureau of Radiological Health, FDA.

3. No cumulative effects of radiation are expected from eating irradiated fruit. The process would treat papayas only for disinsection, and would not expose humans to gamma radiation. The process does not make the fruit radioactive (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

4. The FDA has determined that chemical differences between irradiated foods processed at less than 100 kilorads and nonirradiated food are too small to affect the safety of the food (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

5. There is no evidence that insects or microorganisms surviving irradiation give rise to mutants with undue resistance to radiation or of abnormal virulence (21 CFR Part 179, 51 FR 13376, Docket No. 81N–004).

6. The FDA has determined that concerns over potential adverse human health effects (abnormally high rates of testicular tumors, kidney disease, death in offspring, lessened life spans, and abnormal increase in white blood cells) were not substantiated (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

7. The FDA has determined that there was no evidence to conclude that food irradiated and stored under normal handling practices would show increased production of aflatoxin (a toxic fungal metabolite implicated in the causation of liver cell carcinomas, produced by some strains of *Aspergillus flavus* and *Aspergillus parasiticus* in stored products) (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

8. To the extent that irradiation replaces fumigation by toxic chemicals (ethylene trioxide and ethylene bromohydrin), there is a reduction in the amount of toxic residues of these substances in the environment. (21 CFR Part 179, 51 FR 13376, Docket No. 81N–0004).

9. No reduction in vitamin, mineral, nutritional content, or quality of fruit is expected. A delayed senescence (aging) of the papayas may be expected.

Based on the foregoing, we have determined that the irradiation of papayas at levels not exceeding 100 krad will have no significant impact on the human environment.

The FDA environmental assessment, our review of that document and the FDA final rule, and our finding of no significant impact have been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council of Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done in Washington, DC, this 3rd day of January 1989.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 89–266 Filed 1–5–89; 8:45 am]
BILLING CODE 3410–34–M

[Docket No. 88–205]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public that one application for a permit to release a genetically engineered organism into the environment is being reviewed by the

Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5874.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received the following application for a permit to release a genetically engineered organism into the environment, which is being reviewed by the Agency:

Accession No.	Date Received	Organism	Field Test Location
88–333–02	11–28–88	Genetically engineered insect-resistant tobacco.	North Carolina.

Done at Washington, DC, this 3rd day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–285 Filed 1–5–89; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Whitewater Creek Watershed, AL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Whitewater Creek Watershed, Pike and Coffee Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, telephone (205) 821–8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing excessive erosion (20 tons per acre annually) on sloping cropland and reducing land voiding and depreciation. The planned works of improvement include land use conversation on 180 acres of marginal cropland, accelerated conservation land treatment on 8,070 acres of cropland, and installation of 14 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Ernest V. Todd,

State Conservationist.

Dated: December 29, 1988.

[FR Doc. 89–207 Filed 1–5–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Monterey Bay, CA As An Active Candidate for National Marine Sanctuary Designation; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Intent To Hold Public Scoping Meetings on the Proposal To Designate Monterey Bay as a National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: By direction of Congress (Pub. L. 100–627, section 205), NOAA is naming Monterey Bay, off the Coast of California, an Active Candidate for designation as a National Marine Sanctuary and will proceed with the subsequent steps in the evaluation process. The study area under consideration for Sanctuary designation includes the coastal waters between Pigeon Point in San Mateo County and Point Sur in Monterey County and extending from the mean high tide line from these sites seaward, 14.5 nautical miles on a southwesterly heading of 240°.

Selection of a site as an Active Candidate formally begins the National Environmental Policy Act (NEPA) process; NOAA will prepare an environmental impact statement and management plan to examine the management and regulatory alternatives associated with Sanctuary designation. To initiate this process NOAA will hold scoping meetings in the Monterey Bay area of California to solicit information and comments from individuals, organizations and government agencies on the range and significance of issues related to Sanctuary designation and management.

A scoping meeting will be held on January 25, 1989 from 6:30 to 10:00 p.m. in the Monterey Conference Center, 1 Portola Drive, Monterey, CA 93940. A second scoping meeting will be held on January 26, 1989 from 6:30 to 10:00 p.m. in the Chambers of the Santa Cruz County Board of Supervisors, Room 500, 701 Ocean Street, Santa Cruz, CA 95060–4069. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, or Franklin Christhilf, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Suite 714, Washington, DC 20235, (202/673–5126).

SUPPLEMENTARY INFORMATION:

Selection Procedures

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate ocean waters as National Marine Sanctuaries to protect their distinctive conservation, recreational ecological, historical, research, educational or esthetic qualities. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Marine and Estuarine Management Division (MEMD). Selection of a site as an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process.

On November 7, 1988, Pub. L. 100–627, the reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) ("the Act"), was signed into law. Section 205 of Pub. L. 100–627 directs that the Secretary of Commerce designate the Monterey Bay National Marine Sanctuary no later than December 31, 1989. This directive by Congress automatically advances Monterey Bay to Active Candidate status.

Subsequent steps include a public hearing, preparation of a final environmental impact statement and management plan and a recommendation of approval to the Secretary of Commerce. Opportunities for comment exist throughout this process and will be announced in the **Federal Register**, the local media, and other appropriate channels.

Section 303 of the Act (16 U.S.C. 1433) and regulations for the National Marine Sanctuary Program (at 15 CFR 922.33) establish procedures for the evaluation of the suitability of Active Candidates as National Marine Sanctuaries. In developing the Sanctuary proposal, NOAA will determine to what extent designation will fulfill the purposes and policies of section 303(a) of the Act; and whether:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research and public education; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management. Further, based on section 303(b) of the Act (16 U.S.C. 1433), NOAA will consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in the consideration listed above;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from Sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and non-living resources development;

(9) The socioeconomic effects of Sanctuary designation; and

(10) The fiscal capability of NOAA to manage the area as a National Marine Sanctuary.

In preparing the environmental impact statement and management plan (EIS/MP) to examine the management and regulatory alternatives associated with Sanctuary designation, NOAA will solicit comments from interested persons, groups and organizations, heads of interested Federal agencies, and responsible officials of State and local governments. This will be done during scoping meetings to be held in the Monterey Bay area, prior to preparation of the EIS/MP, and during public hearings to receive comments on the draft EIS/MP.

Past History

The State of California nominated the Monterey Bay area in 1977, along with nine other marine areas offshore for consideration as National Marine Sanctuaries. In response to these nominations, NOAA selected three sites for further consideration: Channel Islands, Point Reyes-Farallon Islands, and the Monterey Bay area. In December 1978, NOAA released an Issue Paper on these three sites, presenting several boundary and regulatory options for each proposal. Public hearings on the Issue Paper were held and, based on the responses, NOAA declared all three sites as Active Candidates on August 10, 1979.

This process led to the designation of the Channel Islands National Marine Sanctuary on September 21, 1980, and the Point Reyes-Farallons Islands National Marine Sanctuary (later renamed Gulf of the Farallones National Marine Sanctuary) on January 16, 1981. In 1980, NOAA determined that work on the proposed Monterey Bay Sanctuary would be delayed due to the complex analyses and corresponding staff time required for the other two California sites.

On December 14, 1983, NOAA removed Monterey Bay from the list of active candidates for three reasons: (1) The existence of two other National Marine Sanctuaries in California (Channel Islands and Gulf of the Farallones) which protect similar marine resources and the Program's policy, established in 1980, to consider a diverse array of sites and resources; (2) the proposed area's relatively large size and the surveillance and enforcement burdens this would impose on NOAA; and (3) the wealth of existing marine conservation programs already in place in the Monterey Bay area.

In 1988, when Congress reauthorized and amended Title III of the Act, it specified in section 205 of Pub. L. 100–627, that NOAA designate Monterey Bay as a National Marine Sanctuary by

December 31, 1989. This statutory requirement has therefore reinstated Monterey Bay as an Active Candidate for Sanctuary status.

Natural Resources

Monterey Bay is located within the Eastern Pacific Boreal Region which incorporates a vast area of the North Pacific, and more specifically, within the Oregonian biogeographical province encompassing the North American coast from Point Conception to the Canadian border. The Sanctuary study area includes the coastal waters between Pigeon Point, San Mateo County (37°11'N, 122°24'W) and Point Sur in Monterey County (36°18'N, 121°52'W) and extending from the mean high tide line from these sites seaward 14.5 nautical miles on a heading of 240°.

Oceanographic Characteristics

Typical of the Oregonian province, the Bay is strongly influenced by cool, relatively clear waters dominated by the California current. The Monterey Submarine Canyon results in a strong upwelling of nutrient-rich water. Consequently, the nearshore waters are highly productive, supporting diverse floral and faunal assemblages.

Circulation within the Bay is influenced by a variety of factors: offshore currents, seasonal periods of upwelling, winds, the Monterey Submarine Canyon, and river discharges.

Geological Features and Habitat

The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The underlying rock types range from pre-Tertiary granites with some intrusions south of Monterey Bay to softer sedimentary rocks underlying Monterey Bay and areas to the north. Covering these rocks in most areas are three sedimentary types: rocky substrate dominate in nearshore areas north and south of Monterey Bay; fine sand and coarser sand are found in the Bay's nearshore areas; and mud which predominates offshore except for a large sandy shelf extending off Point Sur. The Monterey Submarine Canyon has a mixture of mud and sand with some rock outcrops. Fringing the waters of the area, the shoreline ranges from rocky and mountainous south of the Bay to sand dunes from Seaside north to Moss Landing and to sand bluffs to the north. There are also numerous small and some large rivers that empty into the Bay with one large estuary, Elkhorn Slough, and several smaller ones.

While there are submarine canyons elsewhere in the Oregonian province, the Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon, along with adjacent submarine canyons, enriches local water through strong seasonal upwellings, modifies currents and provides habitat for pelagic communities. Monterey Bay itself is a rare geological feature along the Pacific coast as it is one of the few large bays. This fact lends additional importance to this area as a resting and staging area for migrating birds.

The diversity of rock types, sediment types and shoreline characteristics in combination with the nutrient rich waters and substantial underwater relief all combine to form several habitat assemblages. This variety of assemblages is one of the major determinants of the rich intertidal and subtidal communities and represents the range of habitats to be found in the Oregonian province.

Flora and Fauna

Monterey Bay has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds and some seabirds is outstanding. The fish stock, particularly in Monterey Bay, is rich and the variety of crustaceans is high.

The Bay has the most diverse algal community in North America, with about 450 to 500 species of west coast algae represented. The diversity of habitat assemblages, rich nutrients close to shore, the high quality waters and the location of the Bay quite close to the overlap of the Californian and Oregonian biogeographic provinces, account for this diversity.

The habitats created by the variety of substrate, kelp beds, the canyon complex and the nutrient rich waters support rich fish stocks and substantial invertebrate populations. The various environments within the study area support different fish communities, with Monterey Bay and the granitic substrate just to the south supporting the highest diversity. The invertebrate diversity also reflects the variety of habitat types. Over 300 species of invertebrates have been reported off Point Año Nuevo.

The area also supports one of the greatest diversities of marine mammals in the world. Among these are several endangered species, including the California gray whale (*Eschrichtius robustus*), finback whale (*Balaenoptera physalus*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter catodon*), and the threatened California sea otter (*Enhydra lutris*).

All species of pinnipeds commonly found off the central and northern California coast are found in the Monterey Bay area. Año Nuevo is one of the most important sites and has been cited as the most important pinniped rookery and resting area in central and northern California.

The area also encompasses approximately one-third of the entire sea otter range in California. The majority of otters are found south of the Monterey Peninsula (females and pups) with the northern peripheral group of the entire population found between Soquel Point and Elkhorn Slough.

Most of the cetacean species known to frequent the central and northern California coast have been sighted in the area. Many, such as the gray whale, pass through the area while on a northerly or southerly migratory route. However, the edge of the canyon complex does serve as an excellent feeding area due to strong nutrient upwellings.

Monterey Bay plays a major role for avifauna as a staging habitat during both migrations and as wintering and summer habitat. Bird species diversity is very high. The area is attractive due to the nutrient waters and resulting rich food resources, the protected bay environment, and location along the Pacific flyway. Breeding populations are generally small and scattered. The entire world population of the Ashy Storm-Petrel (*Oceanodroma homochroa*) (5000–10,000) can be found feeding in the area immediately above the Monterey Submarine Canyon from August to November.

Critical Habitat

Critical habitats are areas that are essential for spawning and breeding and are crucial to the survival of particular species. Because of the highly productive waters of the Bay area, several critical habitats have been identified in Monterey Bay and its surrounding waters.

The California sea otter is an endangered species whose females and pups are found primarily in the sheltered coves south of Monterey Peninsula. The highest densities of otters occur in rocky nearshore areas within the 20 meter isobath in the dense kelp canopy. These areas have been identified as critical breeding and feeding locations essential to existence of current and future populations of sea otters.

Earth's entire population of Ashy Storm-Petrels feed over the Monterey Canyon from August to November. Waters over the canyon are a critical feeding area that is important to survival of the species.

Point Año Nuevo is a critical breeding habitat for elephant seals (*Migrounga anguestirostris*), Stellar sea lions (*Eumatopias jubata*) and harbor seals (*Phoca vitulina*). Año Nuevo Island, with its small surface area, is the focus of virtually all pinniped breeding activity taking place in the area, and may be the key to the continued survival of these populations in central and northern California.

Año Nuevo Island is also a critical habitat for breeding elephant seals as well as the mainland Point Año Nuevo. The marine environment immediately around the island and mainland point may also be critical. However, the extent of feeding activity taking place in the waters near the island is unknown.

There are other very important sites, including the spawning grounds of the market squid (*Loligo opalescens*) in Monterey Bay and the nesting sites for seabirds along the shoreline and on small offshore rocks.

Human Uses

Research Opportunities

The biological and physical characteristics of Monterey Bay combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers.

Six major research facilities are found in the area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources.

The Hopkins Marine Station is located in Pacific Grove. As part of Stanford University, its primary research efforts focus on cellular and developmental biology, immunology, and neurobiology of intertidal organisms. Other research is focused on the ecology of the rocky intertidal zone of the Hopkins Marine Life Refuge offshore of the laboratory grounds.

The Moss Landing Marine Laboratory of San Jose State University is located along the central coast of Monterey Bay. Its researchers conduct a variety of research including oceanography, ichthyology, marine algae, invertebrates, and marine mammal and seabird behavior. The Laboratory operates the R/V *Point Sur* for its oceanographic research.

The Long Marine Laboratories and the Center for Coastal and Marine Studies of the University of California at Santa Cruz also conduct a variety of research projects on topics such as cetaceans, pinnipeds (especially at Año Nuevo), sea otters, invertebrates, and plankton.

The Naval Postgraduate School is located near downtown Monterey and is operated by the United States Navy. The research focus at this institution is exclusively on physical oceanography. The school shares access to the oceanographic research vessel maintained by the Moss Landing Marine Laboratory.

The Granite Canyon Marine Laboratory, located along the Big Sur coastline just south of Carmel, is operated by the California Department of Fish and Game. Its primary research emphasis is on aquaculture and water quality monitoring.

The Monterey Bay Aquarium is a privately owned institution with a variety of research interests focused on the Bay and the Monterey Canyon. The recent establishment of the Monterey Bay Research Institute, the Monterey Bay Aquarium's research arm, will enable the Aquarium to devote resources to studying several aspects of the Bay's ecosystems. Extensive research is planned to examine the Monterey Canyon via a remote-operated unmanned submersible. Other research efforts will be wide-ranging and include biological, chemical, physical, and geological oceanography and studies on the canyon's benthic and pelagic habitats.

Tourism and Recreational Uses

The diverse resources of Monterey Bay are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz countries was 544,000 in 1985 and is projected to increase to 755,000 by 2005. The projected growth is based in large part on the attractiveness of the area's natural beauty.

Since the late 1800's, Monterey Bay has served as a major tourist destination. The most recent estimate of visitors to the area by the Association of Monterey Bay Area Governments was approximately 18 million annually, indicating the important role tourism plays in supporting the local economy.

The 18 State beaches along the Bay's shoreline attracted over 3.5 million visitors during the last six months of 1986. The Monterey Bay Aquarium, opened in 1984, attracts nearly 2 million visitors annually. The Elkhorn Slough National Estuarine Research Reserve operates an interpretive center which serves 30,000 to 40,000 visitors per year. The Año Neuvo State Reserve has an interpretive center and offers guided tours around the Reserve to observe the elephant seal breeding colonies established on the mainland. Annual visitors to this area number approximately 150,000. The Point Lobos State Reserve just south of Carmel receives approximately 300,000 visitors per year.

Commercial and Industrial Uses

The area also supports several economic activities. The most important activity directly dependent on the resources is commerical fishing, which played an important role in the history of Monterey Bay and continues to be an important activity. Landings in excess of 10 million dollars are made yearly and account for approximately five percent of the total California harvest. Fishing takes place throughout the Bay and its offshore waters. The major commercial finfish species are the northern anchovy (*Eugraulis Mordax*), rockfish (*Sebastes sps*), mackerel (*Trachurus symmetricus*), albacore tuna (*Thunnus alalunga*), salmon (*Salmonidae*), and sablefish (*Anoplopoma timbria*). Squid are primarily in the southern half of the Bay and along the Big Sur coast. The commerical fisheries catch of 1986 accounted for 8.9 million dollars in wholesale value.

Related to fisheries are the several aquaculture operations within the Monterey Bay area. Dependent in large part on a clean source of ocean waters, some operations collect organisms directly from the Bay while others grow and produce their own supplies through captive breeding. Algae, abalone, otters, salmon, and sea hares are being raised in the various aquaculture ventures.

Making a more interest use of the area are the commercial ships which regularly traverse the outer reaches of the area as part of the route from San Francisco to Los Angeles, with infrequent vessel traffic to Moss Landing, Santa Cruz, or Monterey. Although this traffic is not yet a major concern, contingency plans designed to react to oil spills resulting from tanker accidents are being formulated.

Oil and gas exploration in the Bay area is being considered. On November 16, 1988, the Department of Interior's Minerals Management Service issued a Call for Information and Nomination for Oil and Gas Lease Sale #119, an area which overlaps a portion of the proposed Sanctuary study area.

Another use of the Bay area is for dredge and waste disposal. A site off Moss Landing is used for discharged dredge spoils. Municipal and industrial wastes are dumped into the waters at various outfalls. Non-point agricultural runoff is also entering the Bay.

Military uses of the area are rare, but onshore target practice necessitates prohibiting boats within a designated

area offshore of Fort Ord on an occasional basis.

Existing Protection of Marine Resources

Several agencies operate programs to protect significant resources within the Monterey Bay area and to provide recreational and interpretive opportunities. California Parks and Recreation and the California Department of Fish and Game manage 15 state beaches, 2 state reserves, 2 state parks, 1 wildlife area and ecological Reserve, Pacific Grove Marine Life Refuge, Point Lobos State Reserve, Carmel Bay Ecological Reserve, and the California Sea Otter Game Refuge. Elkhorn Slough National Estuarine Research Reserve provides resource management and protection to one of the most important estuaries in central California. Los Padres National Forest protects coastal resources where it borders the sea.

These programs have placed considerable emphasis on the protection of coastal resources but have not given the same attention to marine resources. Some critical marine areas, such as the waters around Año Nuevo Island and over the Monterey Submarine Canyon, receive no special attention by resource managers. Other areas, such as the waters of the Big Sur coastline, receive limited protection. A limiting factor that may hamper resource management is the lack of a mechanism to establish research priorities and coordination, and develop contingency plans for potential accidents.

With current resources of existing programs being limited, the coordination of resource protection and management programs is essential. The Monterey Bay Sanctuary could provide an important role in such coordination.

The Designation Process

The management plan to be prepared for the proposed Sanctuary will specify the goals and objectives of Sanctuary designation and describe programs for resource protection, research and interpretation. The various administrative and regulatory alternatives to Sanctuary management will be analyzed in the environmental impact statement.

Opportunities for public participation in NOAA's development of an environmental impact statement and management plan will be provided through the January scoping meetings, solicitation of comments on the draft environmental impact statement and management plan, and formal public hearings.

The January scoping meetings will attempt to identify issues in establishing a Monterey Bay National Marine Sanctuary and generate suggestions for resolving them. Topics for discussion will include the following: (1) Boundary alternatives, (2) Management alternatives, (3) Resource protection, (4) Research opportunities and (5) Interpretive opportunities.

Dated: January 2, 1989.

Thomas J. Maginnis,

Assistant Administator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-278 Filed 1-5-89; 8:45 am]

BILLING CODE 3510-08-M

1987 Survey of Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1987. The report of survey results is required by the Atlantic Striped Bass Conservation Act. The intent is to provide information on the status of the striped bass fisheries.

ADDRESS: Copies of the survey results are available from David G. Deuel, NOAA/NMFS, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301 427-2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1987

Section 6 of the Atlantic Striped Bass Conservation Act (Pub. L. No. 98-613, 16 U.S.C. 1851) required the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal states during the period considered in the survey. The results of each annual survey were to be published in the **Federal Register.** This report presents data for calendar year 1987 as required by section 6 of the Atlantic Striped Bass Conservation Act (The Act).

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 and 1987, funds were authorized but not appropriated. Thus, for calendar years 1985 and 1986, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service, of the U.S. Department of Commerce, routinely collects data on all U.S. commercial fisheries and on marine recreational fishing on the Atlantic, Gulf, and Pacific coasts. Data from these surveys are used in this report to satisfy the requirements of section 6 of the Act.

A description of the statistical survey procedures for the commercial landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1986" (U.S. Department of Commerce, 1987).

The Act addresses striped bass from Maine through North Carolina; the data presented here are for the same area. Commercial landings of striped bass in 1987 were 0.4 million pounds, an increase of 0.1 million pounds over the 1986 landings of 0.3 million pounds. The 1986 landings were the lowest on record. Maximum landings of 14.7 million pounds were recorded in 1973, and since then landings have steadily declined. Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Average landings for the 20 year period from 1968 to 1987 were 6.3 million pounds. However, from 1968 to 1987, landings averaged 9.9 million pounds, while from 1978 to 1987, landings averaged only 2.6 million pounds. For the last 5 years, an average of 1.3 million pounds was landed. Commercial landings by state from 1980 through 1987 are shown in Table 1. Figure 1 shows annual commercial landings from 1962 through 1987.

Estimates of catch and harvest of striped bass by recreational fishermen are available from the marine recreational fishery statistics surveys from 1979 through 1987. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish which are removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently in the catch. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass

catch estimates by state from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct.

In 1987, recreational fishermen caught an estimated 886,000 striped bass, of which 50,000 were harvested. The remaining 836,000 were released alive. The estimated weight of the 1987 striped bass recreational harvest was 0.9 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by state from 1980 through 1987.

The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish in 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch in 1986 likely reflects the increased abundance of the 1982 and subsequent year classes, resulting from management measures providing nearly total protection to these year classes. The number of striped bass harvested has declined from about 1.3 million fish in 1979 to 50,000 in 1986, while the number released alive has increased as a percentage of the total catch. From 1979–1981, an average of 24 percent was released alive; from 1982–1987, an average of 75 percent was released alive; and in 1987, 94 percent of the fish were released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the level of the recreational harvest and of the commercial landings. Most new management regulations were put in place between 1982 and 1986, with those having the most impact being implemented during 1984, 1985, and 1986. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in marine waters of New York, Connecticut, and Rhode Island. Several other states prohibit sale of striped bass and have implemented a 33-inch minimum size limit. Bag limits range from 1 to 5 fish in states which allow recreational fishing.

Appropriate data from which to calculate estimates of striped bass population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly impacted by management regulations. Thus, caution should be used in interpreting the landings data in recent years.

Dated: December 30, 1988.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1980–1987.

State	1980	1981	1982	1983	1984	1985	1986	1987
Maine	**	1	—	—	—	1	---	—
New Hampshire	—	—	—	—	—	---	—	—
Massachusetts	886	708	643	224	107	119	96	78
Rhode Island	20	235	270	196	54	61	11	1
Connecticut	29	5	6	2	2	6	---	---
New York	598	822	471	310	595	469	---	—
New Jersey	24	14	10	20	9	12	10	—
Delaware	17	23	26	7	37	—	—	—
Maryland	2,101	1,641	518	446	1,108	43	8	33
Virginia	503	395	147	151	508	241	23	57
North Carolina	472	417	338	361	513	280	189	262
Total	4,650	4,261	2,429	1,717	2,933	1,232	337	431

Source: National Marine Fisheries Service, F/RE1, unpublished data.
Dash denotes none reported; ** denotes less than 500 pounds.
NOTE.—Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1980–1987.

State	1980	1981	1982	1983	1984	1985	1986	1987
Maine	—	—	—	—	---	77	—	—
New Hampshire	0	—	0	—	0	—	0	—
Massachusetts	—	—	129	68	132	123	655	138
Rhode Island	—	—	—	—	72	50	—	107
Connecticut	42	—	555	45	41	41	—	95
New York	59	37	—	36	101	95	149	227
New Jersey	—	40	151	210	84	—	43	89
Delaware	0	0	0	---	---	—	0	—
Maryland	377	174	40	155	148	102	502	181
Virginia	0	0	0	—	—	—	---	---
North Carolina	—	576	0	—	—	—	---	0
Total	548	892	911	568	626	618	1,399	886

Estimates include both fish harvested and those released.
— = less than 30,000 reported.

0 = none reported.
Sources:
1979–1980: USDOC, 1984. Current Fishery Statistics No. 8322.
1981–1982: USDOC, 1985. Current Fishery Statistics No. 8324.
1983–1984: USDOC, 1985. Current Fishery Statistics No. 8326.
1985: USDOC, 1986. Current Fishery Statistics No. 8327.
1986: USDOC, 1987. Current Fishery Statistics No. 8392.
1987: National Marine Fisheries Service, F/RE1, unpublished data.
NOTE:—Restrictive regulations on the recreational fishery contributed to decreased catches since 1982.

BILLING CODE 3510-22-M

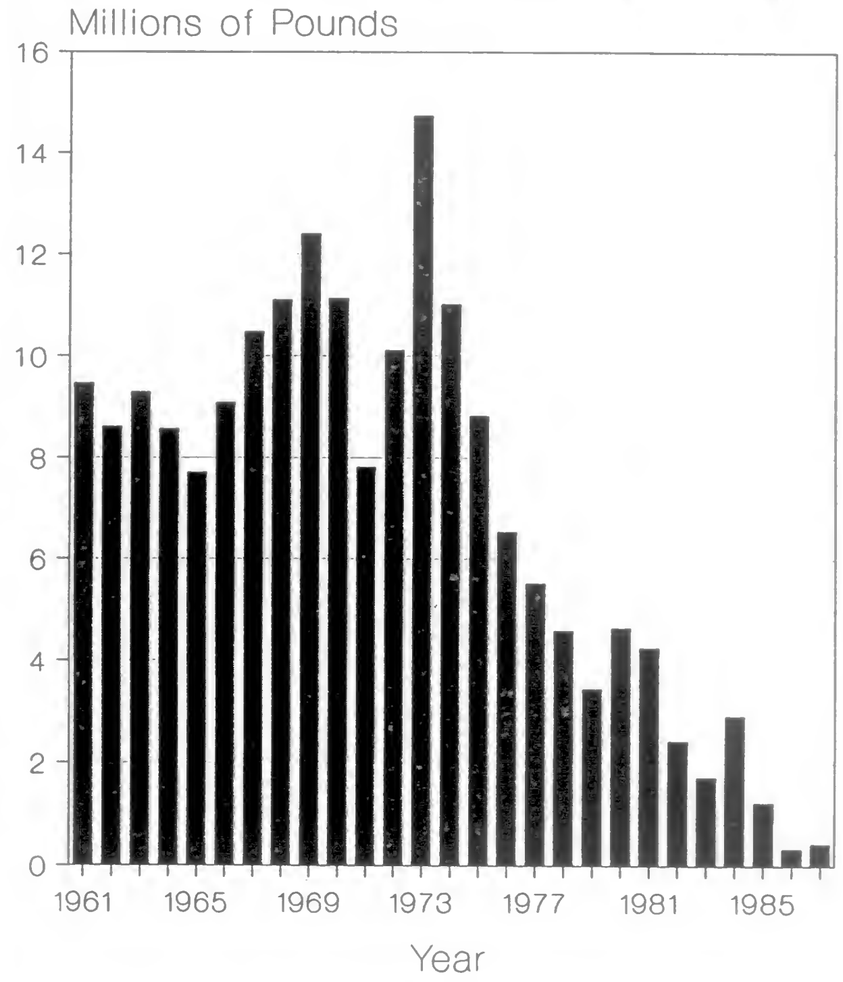


Figure 1. Reported Commercial landings of Striped Bass Along the Atlantic Coast, 1961-1987.

Note: Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

[FR Doc. 89-231 Filed 1-5-89; 8:45 am]
BILLING CODE 3510-22-C

Issuance of Letter of Authorization; Geophysical Service, Inc.

Notice is given that on December 30, 1988, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities, to the following: Geophysical Service Inc., 5801 Silverado Way, Anchorage, Alaska 99502.

This Letter of Authorization is valid for 1989 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subpart A and B).

Issuance of this letter is based on a finding that the total taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 30, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–223 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; Karen W. Pryor (P438)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Applicant: Karen W. Pryor, 44811 South East 166th Street, North Bend, WA 98045.

Type of Permit: Scientific Research.

Name and Number of Animals: One (1) Skeleton of a Commerson's dolphin (*Cephalorhynchus commersonii*).

Type of Take: The applicant proposes to bring into the United States the skeleton of a beachwashed Commerson's dolphin collected from Chile at the Straits of Magellan in 1986.

Location and Duration of Activity: The skeleton was presented to the applicant by an American scientist in Tierra del Fuego who has a collection of several hundred museum-prepared whole skeletons from Argentine and Chilean beaches. The applicant proposes to use the skeleton for a hands-on-study of the behavior patterns and social structure of like specimens. The study proposes to encourage young researchers in Chile and Argentina to undertake their own studies of the cetacean fauna of the southern oceans.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910; and

Director, Northwest Region, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way, Seattle, Washington 99815.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: December 20, 1988.

[FR Doc. 89–280 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Textiles and Textile Products Produced or Manufactured in the Federative Republic of Brazil

January 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a new export visa arrangement.

EFFECTIVE DATE: February 1, 1989.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: During recent negotiations, the Governments of the United States and the Federative Republic of Brazil agreed to establish a new export visa arrangement under the terms of the new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988.

A copy of the visa arrangement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedules of the United States (see **Federal Register** notice 53 FR 44937, published November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 3, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool and man-made fibers in Categore 200–239, 300–369, 400–469 and 600–670, including part and merged categories (see enclosure A), produced or manufactured in Brazil and exported on and after February 1, 1989 from Brazil for which the Government of the Federative Republic of Brazil has not issued an appropriate visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in the coverage of the visa arrangement. Merchandise exported on or after the date the category(s) is added to the agreemeent or becomes subject to import quotas shall require a visa. Notification will be provided when additions or changes are made.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be the standard nine diget, letter format, beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and a six digit numerical serial number identifying the shipment; e.g., 9BR123456.

2. The data of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce CORRELATION and in the U.S. Tariff Schedule(s) of the United States Annotated (e.g., "Cat. 340–510 DZ").

Quantities must be stated in whole number. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Categories 347/348 may be visaed as 347/348, or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable to the U.S. Customs Service, a new visa must be obtained from the Brazilian Government or a visa waiver requested by the Brazilian Government, issued by the U.S. Department of Commerce and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any applicable quota requirements.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Brazil has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of the Federative Republic of Brazil authorizes the entry and any charges to the agreement levels through the visa waiver process.

Merchandise imported for the personal use of the importer and not for resale, regardless or value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry and shall not be charged to the agreement levels.

A facsimile of the visa stamp is enclosed with this letter.

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of textiles and textile articles of cotton, wool and man-made fibers have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exceptions to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Enclosure A
Merged Categories: 300/301, 317/326, 334/335, 338/339/638/639, 342/642, 347/348, 410/624, 445/446, 647/648.
Part Categories:
369–D—Only HTS numbers 6302.60.0010 and 6302.91.0020.
369–O—All HTS numbers in Category 369 except 6302.60.0010 and 6302.91.0020 in Category 369–D.
604–A—Only HTS number 5509.32.0000.
604–O—All HTS numbers in Category 604 except 5509.32.0000 in Category 604–A.
669–P—Only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.
669–O—All HTS numbers in Category 669 except 6305.31.0010, 6305.31.0020 and 6305.39.0000.



[FR Doc. 89–237 Filed 1–5–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 14 and October 21, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 40252 and

41397) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to poduce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Cover, Telescope Mounting
1430–00–773–2030
Bag, Cargo
1670–01–065–3748
Stamp, Rubber
7520–00–NSH–0001
7520–00–NSH–0002
7520–00–NSH–0003
7520–00–NSH–0004
7520–00–NSH–0005
7520–00–NSH–0006
7520–00–NSH–0007
7520–00–NSH–0008
7520–00–NSH–0009
7520–00–NSH–0010
7520–00–NSH–0011
7520–00–NSH–0012
7520–00–NSH–0013
7520–00–NSH–0014
7520–00–NSH–0015
7520–00–NSH–0016
7520–00–NSH–0017
(Requirements for McClellan Air Force Base, California only)

Service

Janitorial/Custodial, FAA Facility, Williamsport Lycoming Airport, Montoursville, Pennsylvania.

Beverly L. Milkman,
Executive Director.
[FR Doc. 89–235 Filed 1–5–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodities

Trap, Roach, Monitor
3740–01–096–1632
Cover, Mattress
7210–00–715–9130

Services

Janitorial/Custodial, U.S. Customhouse, 423 Canal Street, New Orleans, Louisiana.

Janitorial/Custodial, James M. Hanley Federal Building and U.S. Courthouse, 100 South Clinton Street, Syracuse, New York.

Janitorial/Custodial, U.S. Army Reserve Center, 2997 North 2nd Street, Harrisburg, Pennsylvania.

Deletions

It is proposed to delete the following commodities from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Pencil, Mechanical
7520–00–285–5818
Pin, Tent, Wood
8340–00–261–9752

Beverly L. Milkman,
Executive Director.
[FR Doc. 89–236 Filed 1–5–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Honor Code and Honor System at the U.S. Military Academy Special Commission; Meeting

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

Name of Subcommittee to Meet: Panel on Wider Perspective of Professional and Public Service.

Date of Meeting: 21 January 1989

Time: 1300–1600

Place: I.T.T. Main Conference Room, 5th floor, New National Geographic Building, 1600 M Street, NW., Washington, DC.

Proposed Agency:

1. Review of plenary commission meeting.

2. Discussion of professional and public service as it applies to graduates of the U.S. Military Academy

Point of Contact: Executive Secretary to the Commission, LTC James O. Younts III, 695–1983.

[FR Doc. 89–260 Filed 1–5–89; 8:45 am]
BILLING CODE 3710–08–M

Billing Procedures for Carriers Handling DoD Freight

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DoD.

ACTION: Rules for billing procedures on selected traffic by all methods of transportation.

SUMMARY: DoD is modifying the billing procedures for carriers handling freight for DoD. These procedures will be published in the Rules Publication, MFTRP Freight Traffic Rules Publication No. 10 (RAIL) and MTMC Freight Traffic Rules Publication No. 1A (MOTOR) as they are issued or reissued. These modified procedures will assist DoD in easy identification of carrier billings and will expedite processing of carriers' vouchers for payment on these selected billings.

EFFECTIVE DATE: January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Lamm, Headquarters, Military Traffic Management Command, ATTN: MT–INFQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, or telephone (202) 756–1173.

SUPPLEMENTARY INFORMATION: The Prompt Payment Act, as amended in November 1986, allows prepayment audit of transportation Government bills of lading (GBLs) prior to payment. This authority has been delegated to DoD. These modified procedures will assist in this function and will prevent unnecessary delay in payment of the carriers' vouchers.

The following rule is established for all modes of traffic to cover GBLs for which the total charge(s) is $10,000 or more.

Item: Exception to Billing Procedures

Individual GBLs for which the total charge for services rendered is $10,000 or more will be submitted on a Public Voucher for Transportation Charges (SF 1113) separate from other GBLs for which the charges are less than $10,000. Several GBLs, each having individual charges of $10,000 or more, may be presented on the same voucher.

The following rule is established for movement of "Guaranteed Traffic" from Defense Depots at Columbus, OH, Memphis, TN, Mechanicsburg, PA, Richmond, VA, Tracy, CA, and Ogden, UT.

Item: Billing Procedures (Guaranteed Traffic)

1. Charges for services rendered for Guaranteed Traffic shipments from points identified abvove are shown in block 28 of the GBL. The actual amount billed when rounded to the nearest dollar will not exceed the amount shown in block 28 of the GBL.

a. If there is a disagreement with the charges shown in block 28, the carrier must contact the shipping activity to resolve the disagreement prior to submitting the bill for payment. If it is determined that the charge(s) shown in block 28 of the GBL is incorrect, the shipper will prepare a GBL Correction Notice (SF 1200) showing the correct charges. A copy of this correction notice must accompany the original bill of lading and voucher when submitted for payment.

b. If an agreement cannot be reached between the shipper and carrier on what the charges should be, the carrier will submit this GBL on a separate voucher to the appropriate finance center which will forward to MTMC for audit prior to payment.

2. Voucher(s) submitted for payment will include only GBLs covering Guaranteed Traffic moved under the solicitation and applicable tender. All vouchers submitted covering Guaranteed Traffic shipments must contain the statement "Guaranteed Traffic" either stamped or printed in bold letters on the face of the voucher.

Kenneth L. Denton,
Department of the Army, Alternate Liaison Officer with the Federal Register.
[FR Doc. 89–277 Filed 1–5–89; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 3, 1989.

Carlos U. Rice,
Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Program of Special Projects and Demonstrations.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 49
Burden Hours: 1,372
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by public and non-profit rehabilitation facilities, designated State units, and other public and private agencies and organizations to apply for funding under the Special Projects and Demonstrations Program. The Department will use the information to make grant awards and to prepare the annual report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: State Agency Project Reporting.
Frequency: Triennially.
Affected Public: State or local governments.
Reporting Burden:
Responses: 4,053
Burden Hours: 1,487
Recordkeeping:
Recordkeepers: 0

Burden Hours: 0

Abstract: State agencies and local educational agencies must submit an application for a grant to the State educational agency. The State educational agency will use the information to distribute grant awards.

[FR Doc. 89-272 Filed 1-5-89; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Survey of Nonutility Electric Power Procedures

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request for comments. Proposed Energy Information Administration survey of nonutility electric power producers.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is proposing to collect annual data from nunutility electric power producers, including cogeneration, small power, and independent power production facilities. The Form EIA-867 "Nonutility Power Producer Report," has been designed by the EIA for this purpose. The survey is designed to collect data on nonutility electricity production, fuel consumption, and installed capacity. The survey will be of nonutility entities who currently own, operate, or plan to own or operate within 5 years of the reporting year, electric generating facilities of 1 megawatt or more, that are interconnected to an electric utility with the capability to provide power to the utility. Based on the results of this collection, consideration will be given to a statistical sample for future collections with periodic frame evaluation. The purpose of this notice is to solicit comments on the proposed form, a copy of which is included in the notice. Provisions for confidentiality of the data are included in the form and instructions.

DATE: Written comments must be submitted on or before February 21, 1989.

ADDRESS: Send written comments to Ms. Mary Kimbrough (EI-541), Energy Information Administration, Department of Energy, Mail Stop: 2G-090, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-8749.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or additional copies of the form and instructions should be directed to Ms. Kimbrough at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Requests for Comments

I. Background

In order to fullfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration (EIA) is obliged to publish, and otherwise make available to the public, high-quality statistical data that reflect current and prospective national and regional electric power supply and demand activity as accurately as possible. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA is tasked to conduct surveys that encompass every major electric power supply and demand activity in the United States. With the exception of power generated by nonutility power producers, all major sources of supply are currently covered. Nonutility power supply data in terms of generating capacity, actual generation, and fuel consumption are needed by the EIA to support its data collection program. These data were collected on a monthly basis prior to 1979 and the collection was discontinued due to the low electrical growth in the industries. Since growth in nonutility electrical generation is now large, the need to fill the gap in these data series has become critical.

The EIA will also use the information collected on this form for its forecasting and analysis responsibilities to estimate generating capacity requirements beyond announced plans. Analytical studies include the role of nonutility generation under increased deregulation of the generating system; in supporting emergency or brownout conditions due to droughts, stroms, and other weather conditions; overload of the generating system due to extremely high demand, etc.

Under section 210 of Public Utility Regulatory Policies Act of 1978 (PURPA), the Federal Energy Regulatory Commission (FERC) was directed to develop rules to encourage cogeneration and small power production. As of September 30, 1988, over 4,000 facilities had filed with the FERC for status as qualifying cogenerators and/or small power producers under PURPA, representing 72 gigawatts of capacity. Another objective of the proposed survey is to collect data that will evaluate PURPA implementation.

II. Request for Comments

Prospective respondents (see page 1 of the instructions) and other interested parties should comment on the proposed survey within 45 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will you require to complete and submit the form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If yes, specify the agency, data elements and means of collection.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data? What are their deficiencies and/or strengths? How do you use them?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the proposed survey.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the survey. These comments will become a matter of public record. Depending on the magnitude and substance of comments received, formal meetings may be held to review their incorporation in this data collection. If meetings are held, commentators will be notified of the dates, times, and locations.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a), 764(b), 772(b) and 790(a).

Issued in Washington, DC, December 27, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

BEST COPY AVAILABLE

U.S. Department of Energy
Energy Information Administration

FORM EIA-867
NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Form Approved
OMB Number: xxxx-xxxx
(Expires 12-31-xx)

This report is mandatory under Public Law 93-275, the Federal Energy Administration Act of 1974. The Energy Information Administration (EIA) requires this information from nonutility power producers (cogenerators, small power producers, and independent power producers) that own, operate, or plan to own or operate within 5 years of the end of the reporting year electric generating facilities with a total capacity of 1 megawatt or more that are interconnected to an electric utility and have the capability to provide power to the utility. The data collected will augment the EIA's data on electric power production and consumption. See confidentiality provisions in Section F of the instructions. Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards (EI-73), Forrestal Building, Washington, D.C., 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C., 20503. If you have additional questions, contact Mary Kimbrough of the EIA at (202) 586-8749. Return completed form to:

U.S. Department of Energy
Energy Information Administration
Mail Stop: BG-094 (EIA-867)
1000 Independence Avenue, S.W.
Washington, D.C. 20585

SCHEDULE I. IDENTIFICATION AND CERTIFICATION

Each entity is required to complete Schedule I. If you do not own, operate, or plan to own or operate a nonutility generating facility with a capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, complete Schedule I only and return the form to the EIA.

For EIA Use Only
EIA Entity Code _____

1. Legal Name of Entity: _____

2. Principal business office mailing address at end of the reporting year:
_____
_____
_____

3. Mailing address for this form, if different from Item 2:
_____
_____
_____

4. Contact Person:
Name _____
Title _____
Telephone (_____) ____ - _____ Extension _____

5. If you do not own, operate, or plan to own or operate a nonutility generator facility with a capacity of 1 megawatt or more, or are not capable of providing electric power to a utility, check this box |_|. If you checked the box and have filed previously with the Federal Energy Regulatory Commission (FERC) for status as a qualifying facility (QF) under the Public Utility Regulatory Policies Act (PURPA), please provide the FERC QF docket number(s) and an explanation of why your plans have changed: _____
_____.

6. Certifying Official for the company (may be contact person): I certify that the information provided herein, including preprinted data, is accurate to the best of my knowledge.
Name _____
Title _____
Telephone (_____) ____ - _____ Extension _____
Signature _____ Date _____

II

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

For EIA Use Only
EIA Entity Code _____
EIA Facility Code _____

Legal Name of Entity: _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION

Complete Schedule II for each existing facility of 1 megawatt or more and for each planned facility of 1 megawatt or more that would generate electricity within 5 years of the end of the reporting year. Complete only Items 1 through 7 and 12 for each planned facility. A separate sheet is required for each facility. Make photocopies of this schedule, as necessary. If the facility is jointly owned and/or operated, a single owner or operator should complete the entire form. If the facility was sold during the reporting year, complete the form for the portion of the year you owned the facility.

1. Facility Name (that houses electric generating equipment):

   _____

2. Facility Street Address: _____

   _____

   City _____

   State (2-letter postal abbreviation) ____ ZIP _____

3. Does an electric utility or any of its corporate entities own part of the facility? |_| Yes |_| No

   If Yes, enter the utility name(s): _____

   _____

   _____

4. If facility was sold during the reporting year, enter the name and address of the purchaser and the sale date:

   Purchaser _____

   Address _____

   Sale Date (MM/YY) _____

5. Does the facility meet the requirements of a qualifying facility (QF) under PURPA?

   |_| Yes |_| No |_| Unknown

6. Has application been made to FERC for QF status?

   |_| Yes |_| No

   If Yes, enter the FERC docket number(s): _____

7. List the names of all electric utilities to which you are interconnected. If electricity is provided to the utility under contract, report the capacity in kilowatts under contract as of the end of the reporting year:

Name	Kilowatts
_____	_____
_____	_____
_____	_____
_____	_____

8. Enter the total kilowatthours for the reporting year:

   A. Generated at the facility ..... _____

   B. Received from electric utilities and nonutilities..... _____

   C. Delivered to electric utilities for resale... _____

   D. Delivered to other end users..... _____

   E. Used at the facility (A + B - C - D)..... _____

Form EIA-867 (12-15-88)

Page 2

II

II

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

Legal Name of Entity: _____

For EIA Use Only
EIA Entity Code _____
EIA Facility Code _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION (Continued)

9. For a topping cycle cogenerator:

A. Enter the net useful thermal energy output for reporting year: _____ million Btu

B. How was the useful thermal energy used (check all that apply):

☐ Direct Heating
Process Steam

☐ Machine Drive
Space Heating and Cooling

☐ Other, Specify _____

10. Enter the total quantity of fuel (in physical units and million Btu) consumed by generating units during the reporting year. Do not report data for water, wind, solar, and geothermal facilities.

	Quantity	Units	Quantity	Units
Coal.....	_____	thousand tons	_____	million Btu
Oil.....	_____	thousand barrels	_____	million Btu
Gas.....	_____	thousand cubic feet	_____	million Btu
Wood.....	_____	_____	_____	million Btu
Waste or Sludge...	_____	_____	_____	million Btu
Other, Specify....	_____	_____	_____	million Btu

11. For a generating facility with a capacity of 25 megawatts or more, report:

A. Quality of fuel consumed (to nearest 0.01 percent by weight) for:

	Sulfur	Ash
Coal.....	_____	_____
Oil.....	_____	XXXXXXXXXXXXXXX

B. The estimated removal efficiency for sulfur dioxide (to nearest 1 percent removed by weight) for flue gas desulfurization (FGD) equipment at 100 percent load. If no FGD equipment, enter "No FGD."

_____

C. The estimated removal efficiency for particulate matter (to nearest 1 percent removed by weight) for flue gas particulate collectors at 100 percent load. If no particulate collectors, enter "No Collectors."

_____

D. The equipment or process used to reduce nitrogen oxide (NOx) emissions (check all that apply):

☐ Low NOx burners
☐ Low Excess Air
☐ Flue Gas Recirculation
☐ Overfire Air
☐ Other, Specify _____

NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

For EIA Use Only	
EIA Entity Code	
EIA Facility Code	

Legal Name of Entity: _____

SCHEDULE II. ELECTRIC FACILITY INFORMATION (Continued)

12. Check the Standard Industrial Classification code or category (see Standard Industrial Classification Manual, Office of Management and Budget, 1987) of the primary business activity of the facility. If the entity's primary business activity is the generation, transmission, or distribution of electricity for sale, check code 49:

AGRICULTURE, FORESTRY, AND FISHING
- |_| 01 Agricultural production - crops
- |_| 02 Agricultural production - livestock and animal specialities
- |_| 07 Agricultural services
- |_| 08 Forestry
- |_| 09 Fishing, hunting, and trapping

MINING
- |_| 10 Metal mining
- |_| 12 Coal mining
- |_| 13 Oil and gas extraction
- |_| 14 Mining and quarrying of nonmetallic minerals, except fuels

|_| (15 to 17) CONSTRUCTION

MANUFACTURING
- |_| 20 Food and kindred products
- |_| 21 Tobacco products
- |_| 22 Textile mill products
- |_| 23 Apparel and other finished products made from fabrics or similar materials
- |_| 24 Lumber and wood products, except furniture
- |_| 25 Furniture and fixtures
- |_| 26 Paper and allied products
- |_| 27 Printing, publishing, and allied industries
- |_| 28 Chemicals and allied products
- |_| 29 Petroleum refining and related industries
- |_| 30 Rubber and miscellaneous plastics products
- |_| 31 Leather and leather products
- |_| 32 Stone, clay, glass, and concrete products
- |_| 33 Primary metal industries
- |_| 34 Fabricated metal products, except machinery and transportation equipment
- |_| 35 Industrial and commercial machinery and computer equipment
- |_| 36 Electronic and other electrical equipment and components, except computer equipment
- |_| 37 Transportation equipment
- |_| 38 Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
- |_| 39 miscellaneous manufacturing industries

TRANSPORTATION AND PUBLIC UTILITIES
- |_| 40 Railroad transportation
- |_| 41 Local and suburban transit and interurban highway passenger transportation
- |_| 42 Motor freight transportation and warehousing
- |_| 43 United States Postal Service
- |_| 44 Water transportation
- |_| 45 Transportation by air
- |_| 46 Pipelines, except natural gas
- |_| 47 Transportation services
- |_| 48 Communications
- |_| 49 Electric, gas, and sanitary services

|_| (50 to 51) WHOLESALE TRADE

|_| (52 to 59) RETAIL TRADE

FINANCE, INSURANCE, AND REAL ESTATE
- |_| 60 Depository institutions
- |_| 61 Nondepository credit institutions
- |_| 62 Security and commodity brokers, dealers, exchanges, and services
- |_| 63 Insurance carriers
- |_| 64 Insurance agents, brokers, and service
- |_| 65 Real estate
- |_| 67 Holding and other investment offices

SERVICES
- |_| 70 Hotels, rooming houses, camps, and other lodging places
- |_| 72 Personal services
- |_| 73 Business services
- |_| 75 Automotive repair, services, and parking
- |_| 76 Miscellaneous repair services
- |_| 78 Motion pictures
- |_| 79 Amusement and recreation services
- |_| 80 Health services
- |_| 81 Legal services
- |_| 82 Educetion services
- |_| 83 Social services
- |_| 84 Museums, art gelleries, and botanical and zoological gardens
- |_| 86 Membership organizations
- |_| 87 Engineering, accounting, research, management, & related services
- |_| 88 Private households
- |_| 89 Miscellaneous services

|_| (91 to 97) PUBLIC ADMINISTRATION

|_| NONCLASSIFIABLE ESTABLISHMENTS, explain _____

Form EIA-867 (12-15-88)

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NONUTILITY POWER PRODUCER REPORT--1988
(for facilities with a capacity of 1 megawatt or more)

Sheet ____ of ____

Legal Name of Entity: _____

For EIA Use Only
EIA Entity Code _____

SCHEDULE III. ELECTRIC GENERATING UNIT INFORMATION

Complete one box for each generating unit located at the facilities reported on Schedule II. Make photocopies of Schedule III, as necessary. Provide information on generating units that are operating, out of service, retired, sold, under construction, canceled during the reporting year, or proposed to operate within 5 years of the reporting year. Combine all wind turbines at the same facility and report as a single generating unit.

1. FACILITY NAME (from Schedule II, Item 1): _____

2. GENERATING UNIT IDENTIFICATION (4 characters or less,e.g.,GEN1, GEN2): _____

3. NAMEPLATE RATING (kilowatts): _____

4. STATUS (check one):
- |_| Operating
- |_| Out of Service
- |_| Retired
- |_| Sold
- |_| Under Construction
- |_| Planned
- |_| Indefinitely Postponed
- |_| Canceled
- |_| Other, Specify _____

5. GENERATION START DATE (MM/YY): ___/___

6. FACILITY TYPE (check one):
- |_| Cogenerator
- |_| Small Power Producer
- |_| Cogenerator and Small Power Producer
- |_| Other, Specify _____

7. PRIME MOVER (check one):
- |_| Combined Cycle/Gas Turbine
- |_| Combined Cycle/Steam Turbine
- |_| Gas (combustion) Turbine
- |_| Internal Combustion Engine
- |_| Steam Turbine
- |_| Wind Turbine
- |_| Solar (photovoltaic)
- |_| Hydro Turbine
- |_| Fuel Cell
- |_| Other, Specify _____

8. ENERGY SOURCES:

Primary	Other	
|_|	|_|	Coal
|_|	|_|	Oil
|_|	|_|	Gas
|_|	|_|	Wood
|_|	|_|	Waste or Sludge
|_|	|_|	Geothermal
|_|	|_|	Wind
|_|	|_|	Solar
|_|	|_|	Hydro
|_|	|_|	Nuclear
|_|	|_|	Other, Specify

_____

For EIA Use Only
EIA Facility Code _____

1. FACILITY NAME (from Schedule II, Item 1): _____

2. GENERATING UNIT IDENTIFICATION (4 characters or less,e.g.,GEN1, GEN2): _____

3. NAMEPLATE RATING (kilowatts): _____

4. STATUS (check one):
- |_| Operating
- |_| Out of Service
- |_| Retired
- |_| Sold
- |_| Under Construction
- |_| Planned
- |_| Indefinitely Postponed
- |_| Canceled
- |_| Other, Specify _____

5. GENERATION START DATE (MM/YY): ___/___

6. FACILITY TYPE (check one):
- |_| Cogenerator
- |_| Small Power Producer
- |_| Cogenerator and Small Power Producer
- |_| Other, Specify _____

7. PRIME MOVER (check one):
- |_| Combined Cycle/Gas Turbine
- |_| Combined Cycle/Steam Turbine
- |_| Gas (combustion) Turbine
- |_| Internal Combustion Engine
- |_| Steam Turbine
- |_| Wind Turbine
- |_| Solar (photovoltaic)
- |_| Hydro Turbine
- |_| Fuel Cell
- |_| Other, Specify _____

8. ENERGY SOURCES:

Primary	Other	
|_|	|_|	Coal
|_|	|_|	Oil
|_|	|_|	Gas
|_|	|_|	Wood
|_|	|_|	Waste or Sludge
|_|	|_|	Geothermal
|_|	|_|	Wind
|_|	|_|	Solar
|_|	|_|	Hydro
|_|	|_|	Nuclear
|_|	|_|	Other, Specify

_____

For EIA Use Only
EIA Facility Code _____

U.S. Department of Energy
Energy Information Administration

INSTRUCTIONS FOR FORM EIA-867 NONUTILITY POWER PRODUCER REPORT -- 1988 (for facilities with a capacity of 1 megawatt or more)

Form Approved
OMB Number: xxxx-xxxx
(Expires 12-31-xx)

A. PURPOSE

Form EIA-867 collects information annually from U.S. nonutility power producers that are interconnected to an electric utility and have the capability to provide power to the utility. Generating units for emergency purposes (e.g., hospital backup electricity), at temporary sites (e.g., logging camps), or offshore on oil rigs or ships are excluded for the purposes of this report. The information is required by the Energy Information Administration (EIA) to augment data on U.S. electricity production and consumption. The data will be used for statistical and analytical purposes.

B. WHO MUST REPORT

Nonutility power producers in the United States that operate, or plan to operate within 5 years of the end of the reporting year one or more electric generating facilities with a capacity of 1 megawatt or more that are interconnected to an electric utility and have the capability to provide power to the utility (see "reporting entity" under definitions) are required to complete this form. For reporting purposes, a planned facility is defined as a facility with generating equipment under construction, on order, or proposed and expected to produce electricity within 5 years of the end of the reporting year.

C. WHERE AND WHEN TO REPORT

The signed original and one copy of Form EIA-867 must be submitted to the EIA on or before April 1 following the reporting year. Typed submissions are preferred; legible, hand-printed forms are acceptable. Retain one copy of the completed form for your files. For additional information, contact Mary Kimbrough, (202) 586-8749. Return completed form to:

U.S. Department of Energy
Energy Information Administration
Mail Stop: BG-094 (EIA-867)
1000 Independence Avenue, S.W.
Washington, D.C. 20585

D. DEFINITIONS

Capacity (Installed Nameplate): The full-load continuous rating of a generator, prime mover, or other electric power production equipment under specified conditions as designated by the manufacturer. Installed nameplate capacity is usually indicated on a nameplate attached physically to the equipment.

GENERAL INFORMATION

Cogenerator: A generating facility that produces electric power and another form of useful energy (such as heat or steam) through the use of one energy source. Also see topping cycle cogenerator.

Facility: A location at which prime movers, electric generators, and/or equipment for converting mechanical, chemical, and/or nuclear energy into electric energy are situated. A facility may contain more than one type of prime mover.

Generating Unit: Any combination of physically connected generator(s), reactor(s), boiler(s), combustion turbine(s), or other prime mover(s) operated together to produce electric power.

Independent Power Producer (IPP's): IPP's are wholesale electricity producers, other than qualifying facilities (QF's) under the Public Utility Regulatory Policies Act (PURPA), that are unaffiliated with franchised utilities in the area in which the IPP's are selling power, and that lack significant market power. Unlike traditional utilities, IPP's do not possess transmission facilities that are essential to their customers and do not sell power in any retail service territory where they have a franchise.

Interconnection: A connection between two electric systems permitting the transfer of electric energy in either direction.

Net Thermal Output: The thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application.

Nonutility Power Producer: An entity that is a corporation, person, agency, authority, or other instrumentality that generates electricity to: (1) satisfy all or part of the entity's electricity demand, and/or (2) sell electricity to electric utilities. The entity's primary purpose in generating electricity is not to sell the electricity at retail. Cogenerators, small power producers, and IPP's are examples of nonutility power producers.

Prime Mover: The engine, turbine, water wheel, or similar machine that drives an electric generator; or a device that converts energy to electricity directly (e.g., photovoltaic solar and fuel cells).

Qualifying Facility (QF): A cogenerator or small power producer that meets certain ownership, operating, and efficiency criteria established by the Federal Energy Regulatory Commission (FERC) (FERC) pursuant to PURPA, and has filed with the FERC for QF status or has self-certified (see the Code of Federal Regulations, Title 18, Part 292).

Reporting Entity: A nonutility power producer that owns or operates a generating facility, or plans to operate a generating facility within 5 years of the end of the reporting year. The nonutility power producer can be: (1) a qualifying cogeneration and/or small power production facility with an installed generating capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, or (2) an IPP whose facility installed generating capacity is 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility. If a reporting entity operates electric generating facilities in several locations, each location is considered a facility.

Small Power Producer (SPP): A generating facility that produces electric power using renewable resources such as water power, solar energy, wind, geothermal, biomass or waste, or any combination thereof as a primary energy source, and has an installed generating capacity that is not more than 80 megawatts. Fossil fuels can be used; however, the renewable resources must provide at least 75 percent of the total energy input.

Topping Cycle Cogenerator: A cogenerator in which the energy output is first used to produce electric power and at least some of the reject heat from the power production is used to provide useful thermal energy. Also see cogenerator.

E. GENERAL INSTRUCTIONS

1. The Form EIA-867 has three schedule. Schedule I, "Identification and Certification," requests information about the reporting entity. Schedule II, "Electric Facility Information," requests information about the facility, e.g., plant. Schedule III, "Electric Generating Unit Information," requests information about each generating unit at each facility.

2. The EIA will complete the EIA entity and facility codes.

3. All information on the form, including preprinted information, must be accurate. If preprinted information is incorrect, draw a line through the incorrect entry and provide the correct information.

4. Information provided should be actual data to the extent possible. Estimates should be provided and so noted when actual data are not available. Quantitative data should be reported to the nearest whole number.

5. If more than one sheet is required to complete Schedules II or III, photocopy the schedule.

F. SANCTIONS AND CONFIDENTIALITY STATEMENTS

This report is mandatory under Public Law 93-275, the Federal Energy Administration Act of 1974. Failure to comply may result in criminal fines, civil penalties, and other sanctions as provided by law. Information on Form EIA-867 is collected for statistical purposes and will not be published by the Department of Energy (DOE) in individually identifiable form. The information contained on this form will be kept confidential to the extent that it satisfies the criteria for exemption in the Freedom of Information Act (FOIA), the DOE regulations implementing the FOIA, and the Trade Secrets Act, 18 U.S.C., Section 1905. Upon receipt of a request for this information under the FOIA, the DOE shall, in accordance with the procedures and criteria provided in 10 C.F.R. Section 1004.11, make a final determination whether the information is exempt from disclosure. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantiel harm to their company's competitive position. A letter accompanying the submission that explains (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. A new justification does not need to be provided each time information is submitted on the form, if your company has previously submitted a justification for that information and the justification has not changed. Except as otherwise provided by law, the information may be made available in response to an order of a Court of competent jurisdiction, or, upon request, to other components of the Department of Energy, to any committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information. Detailed provisions of the restrictions on the disclosure of this information can be found in the Policy on the Disclosure of Individually Identifiable Energy Information in the Possession of the Energy Information Administration (45 Federal Register 59812(1980)).

G. SPECIFIC INSTRUCTIONS

SCHEDULE I. IDENTIFICATION AND CERTIFICATION

Each entity is required to complete Schedule I. If you do not own, operate, or plan to own or operate a nonutility generating facility with a capacity of 1 megawatt or more that is interconnected to an electric utility and has the capability to provide power to the utility, complete Schedule I only and return the form to the EIA.

Item

1. Enter the legal name of the organization, company, corporation, individual, or the nonutility power producer to whom the form applies.

2-6. Self-explanatory.

SCHEDULE II. ELECTRIC FACILITY INFORMATION

Complete Schedule II for each existing facility of 1 megawatt or more and each planned facility of 1 megawatt or more that would generate electricity within 5 years of the end of the reporting year. A separate sheet is required for each facility. Make photocopies of the schedule as necessary. Item 11 is to be completed only by facilities of 25 megawatts or more. Enter the sheet number and the total number of sheets in the upper right hand corner. Items 1 to 12 are self-explanatory.

SCHEDULE III. ELECTRIC GENERATING UNIT INFORMATION

Complete one box for each generating unit located at the facilities reported on Schedule II. Make photocopies of Schedule III as necessary. Provide information on generating units that are operating, out of service, retired, sold, under construction, cancelled during the reporting year, or proposed to operate within 5 years of the end of the reporting year. Combine all wind turbines at the same facility and report as a single generating unit. Enter the sheet number and the total number of sheets in the upper right hand corner. Items 1 to 8 are self-explanatory.

Form EIA-867 Instructions (12-15-88)

[FR Doc 89-269 Filed 1-5-89; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket Nos. ER89-140-000 et al.]

Mississippi Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 3, 1989.

Take notice that the following filings have been made with the Commission:

1. Mississippi Power & Light Company

[Docket No. ER89-140-000]

Take notice that on December 23, 1988, Mississippi Power & Light Company (MP&L) tendered for filing a notice of cancellation of two letter agreements between MP&L and Tennessee Valley Authority (TVA). Supplement Nos. 25 and 26 to MP&L's Rate Schedule FERC No. 35 are canceled in accordance with the terms of each Supplement.

Copies of this filing have been mailed to the Mississippi Public Service Commission and to TVA.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER88-525-000]

Take notice that on November 25, 1988, Commonwealth Edison Company (Edison), in response to a request from Commission Staff, submitted additional cost and operational data to support a proposed rate for Limited Term Capacity reflected in a revised Interconnection Agreement between Edison and Central Illinois Light Company.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Hydro-Electric Company and New England Power Company

[Docket No. ER89-12-000]

Take notice that on December 5, 1988, Bangor Hydro-Electric Company (Bangor) tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to New England of 20,000 KW of electric generating capability during November 1, 1988 through October 31, 1989 and the total output associated therewith.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER89-141-000]

Take notice that on December 23, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Wholesale Firm Power Contract, between KCPL and the City of Pomona, Kansas dated December 15, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of the date of filing, and therefore requests waiver of the Commission's notice requirements.

Comment date: January 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER89-142-000]

Take notice that on December 23, 1988, Public Service Company of New Mexico (PNM) tendered for filing Amendment No. 4 to the Contract for Electric Service between PNM and the City of Gallup, New Mexico (City). Amendment No. 4 provides for PNM to furnish certain services to City such that City can utilize its allocation of long-term firm power and energy from the Salt Lake City Area Integrated Projects. For these services, in lieu of the demand, energy, and service charges set forth in the Contract for Electric Service, City will pay a service charge of $4.33/kW-month which reflects the non-generation related costs of providing such services, as well as a $1000/month fee for dispatch and administrative services.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that Amendment No. 4 be accepted for filing to be effective as of October 1, 1989.

Copies of the filing have been served upon City and the New Mexico Public Service Commission.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-254 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-496-000 et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP89-496-000]

December 29, 1988.

Take notice that on December 28, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-496-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under the blanket certificate issued in Docket No. CP86-589-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated September 1, 1988, under its Rate Schedule TI-1, it proposes to transport up to 50,000 Mcf per day of natural gas for Union Pacific from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at existing points on its system located in Kansas and Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, to Williams Natural Gas Company for the account of Union Pacific in Wyoming.

CIG advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-56-000. CIG further advises that it would transport 45,000 Mcf on an average day and 16,425 MMcf annually.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP89-495-000]

December 29, 1988.

Take notice that on December 28, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-495-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Union Pacific Resources Company (Union Pacific), a producer, under the blanket certificate issued in Docket No. CP86-589-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated September 1, 1988, under its Rate Schedule TI-1, it proposes to transport up to 50,000 Mcf per day of natural gas for Union Pacific from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at existing points on its system located in Kansas and Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, to Panhandle Eastern Pipe Line Company for the account of Union Pacific in Kansas.

CIG advises that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89-30-000. CIG further advises that it would transport 45,000 Mcf on an average day and 16,425 MMcf annually.

Comment date: February 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-440-000]

December 30, 1988.

Take notice that on December 16, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-367-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation, a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 10,000 MMBtu/day for Centran Corporation. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 10,800 MMBtu, 7,500 MMBtu and 3,650,000 MMBtu, respectively.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-446-000]

December 30, 1988.

Take notice that on December 16, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-369-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco, Inc., a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 20,000 MMBtu/day for Conoco, Inc. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 20,000 MMBtu, 15,000 MMBtu and 7,300,000 MMBtu, respectively.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89-475-000]

December 30, 1988.

Take notice that on December 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-475-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Marketing Company (American Central), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport up to 200,000 MMBtu/day for American Central. Natural states that construction of facilities would not be required to provide the proposed service.

Natural further states that the maximum day, average day, and annual transportation volumes would be approximately 200,000 MMBtu, 35,000 MMBtu and 12,775,000 MMBtu, respectively.

Natural advises that service under § 284.223(a) commenced October 20, 1988, as reported in Docket No. ST89-1409.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Corporation

[Docket No. CP89-481-000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-481-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texaco Gas Marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 206,000 MMBtu equivalent of natural gas on a peak day for Texaco's account, 206,000 MMBtu equivalent on an average day and 75,190,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Texaco's account at various existing points on United's system in Louisiana, offshore Louisiana, and Mississippi, and that United would deliver equivalent volumes for Texaco's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 31, 1988, under the automatic authorization provisions of § 284.223 of

the Commission's Regulations, as reported in Docket No. ST89–1215.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Corporation

[Docket No. CP89–477–000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–477–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 312,090 MMBtu equivalent of natural gas on a peak day for Amoco's account, 312,090 MMBtu equivalent on an average day and 113,912,850 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Amoco's account at various existing points on United's system in Louisiana, and that United would deliver equivalent volumes for Amoco's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 18, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1129.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Corporation

[Docket No. CP89–479–000]

December 30, 1988.

Take notice that on December 22, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–479–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Louisiana State Gas Corporation (Louisiana State), an intrastate pipeline, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 309,000 MMBtu equivalent of natural gas on a peak day for Amoco's account, 309,000 MMBtu equivalent on an average day and 112,785,000 MMBtu equivalent on an annual basis. It is stated that United would receive the gas for Louisiana State's account at various existing points on United's system in Louisiana, Texas, and Mississippi, and that United would deliver equivalent volumes for Louisiana State's account at existing points on United's system in Louisiana, Mississippi, Alabama and Florida. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced October 20, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–1063.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–486–000]

December 30, 1988.

Take notice that on December 23, 1988, Transcontinental Gas Pipeline Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–486–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas on an interruptible basis for Catamount Natural Gas, Inc. (Catamount). Transco explains that service commenced November 2, 1988, under § 284.23(a) of the Commission's Regulations, as reported in Docket No. ST 89–1166. Transco explains that the peak day quantity would be 250,000 dt, the average daily quantity would be 50,000 dt, and that the annual quantity would be 18,250,000 dt. Transco explains that it would receive natural gas for Catamount's account at Vermilion Block 310–A, Offshore Louisiana and deliver the gas at an existing point of interconnection between Transco and Pennsylvania Gas and Water Company in Luzerne County, Pennsylvania.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–487–000]

December 30, 1988.

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP89–487–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act for Catamount Natural Gas Company (Catamount), all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco proposes to transport natural gas on an interruptible basis for Catamount pursuant to a transportation agreement dated September 15, 1988. Transco explains that service commenced November 2, 1988, under §284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1139–000. Transco further explains that the peak day quantity would be 743,200 dekatherms, the average daily quantity would be 50,000 dekatherms, and that the annual quantity would be 18,250,000 dekatherms. Transco explains that it would receive natural gas for Catamount's account at Vermilion Block 310–A, offshore Louisiana and would redeliver natural gas for Catamount's account to Philadelphia Electric Company at Philadelphia, Pennsylvania.

Comment date: February 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–252 Filed 1–5–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–483–000 et al.]

EL Paso Natural Gas Company et al; Natural Gas Certificate Filings

January 3, 1989.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP89–483–000]

Take notice that on December 23, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–483–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon from interstate service certain existing compression, pipeline and plant facilities, with appurtenances, hereinafter referred to as the "Terrell Facilities," being located in Terrell, Val Verde and Crockett Counties, Texas, and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that the facilities and service were authorized as follows: by order issued December 15, 1960, at Docket No. G–19966, authorization was granted to construct and operate, *inter alio*, the Brown Bassett Gathering System and the Terrell Purification and Dehydration Plant ("Terrell Plant"); by order issued November 6, 1980, at Docket No. CP66–306, authorization was granted to construct and operate, *inter alio*, the 15-mile J. M. Field to Terrell Plant 24-inch pipeline, the J. M. Field Gathering System, a 24-inch O.D. orifice-type check meter, and additional purification and dehydration facilities; and by authority of the order issued April 17, 1972, at Docket No. CP72–113, El Paso constructed the 13,500-horsepower Terrell Field Compressor.

El Paso states that the Terrell Facilities have high operating costs. Moreover, it is indicated that El Paso's gas reserves from the Brown Bassett and J. M. Fields have declined by eighty percent. El Paso states that the costs associated with the operation of the Terrell Facilities result in an extremely high unit cost because the facilities are now processing only a fraction of the originally designed plant throughput. Additionally, El Paso states that the decline in reserves has forced all wells located in the Brown Bassett and J. M. Fields to be periodically shut-in or to free-flow gas because the Terrell Field Compressor did not have sufficient volumes to operate. El Paso states that to facilitate the production and transportation efforts of Shell Western E&P Inc. (Shell) in the proximity of the Terrell Facilities and to resolve El Paso's existing and future take-or-pay exposure, El Paso and Shell entered into a sales agreement dated October 21, 1988, permitting Shell to acquire El Paso's Terrell Facilities.

Accordingly, El Paso proposes to abandon by conveyance to Shell: (i) The Terrell Field Compressor; (ii) the J. M. Field to Terrell Plant pipeline; (iii) the Brown Bassett Gathering System; and (iv) the Terrell Plant. The application states that Shell intends to operate the Terrell Facilities as an integrated, non-jurisdictional gathering system. It is indicated that Shell has agreed to provide a gathering service (including metering, dehydration and delivery of such gas to El Paso) for El Paso's remaining gas purchase agreements and for others with supplies behind the Terrell Plant.

El Paso states that the abandonment of the Terrell Facilities would have a *de minimis* effect upon El Paso's system gas supply activities and would have no significant effect upon El Paso's ability to render existing natural gas service to its customers. Finally, El Paso maintains that there would be no adverse environmental effects upon the effectuation of the abandonment proposed herein.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89–430–000]

Take notice that on December 15, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–430–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon Natural's firm sales delivery obligation to a Beatrice, Nebraska, fertilizer plant, owned by CEPEX, Inc. (CEPEX), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural and CEPEX restructured their service relationship to convert the firm sales services to firm transportation service. Specifically, Natural seeks permission and approval to abandon the firm sales delivery obligation of 27,741 Mcf of natural gas per day to the Beatrice fertilizer plant, in conjunction with the termination of the gas sales contract.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89–470–000]

Take notice that on December 21, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket Nos. CP89–470–000 and CP88–522–002 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to restructure its sales and transportation services and to be compensated for maintaining the gas supply needed to provide firm sales service to customers which choose such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the service restructuring proposal will allow its firm sales customers to revise their current entitlements to sales service from Tennessee by electing service from among Tennessee's existing and proposed new sales and transportation services and to know in advance the price for Tennessee to acquire and maintain long-term firm gas supply for their benefit. Tennessee contends that the restructuring is necessary to restore balance between Tennessee's responsibility to provide merchant service and the customers' responsibility to pay for the gas supply required to provide that service. To accomplish the service restructuring, Tennessee proposes to establish a two-part gas pricing formula under which firm sales customers will pay a gas demand charge and a gas commodity charge based on an index of published spot prices.

Tennessee states that the key features of its restructuring proposal are as follows.

(1) Tennessee proposes to maintain its existing CD and GS rate schedules. Customers which elect to continue service under those rate schedules would retain their conversion rights under § 284.10 of the Commission's Regulations.

(2) Tennessee proposes to establish new Rate Schedules CDS and SGS for customers that want to restructure their service entitlement by electing any combination of daily and monthly firm sales entitlements within their current entitlements.

(3) CDS and SGS customers could elect standby sales service for up to 50 percent of their firm sales entitlements. In this regard, Tennessee, indicates that the subject application would amend Tennessee's application pending in Docket No. CP88–522–000 wherein it had proposed a standby service.

(4) A customer electing a zero firm sales entitlement would convert all of its prior firm sales entitlement to firm transportation.

(5) Tennessee requests authority to automatically abandon any firm sales entitlements relinquished by its customers in favor of the transportation service.

(6) Tennessee proposes a two-part gas pricing structure for its CD, CDS, SGS and partial requirements GS customers. The customer would pay a Gas Demand Rate of $7.00 per month per dekatherm of firm sales entitlement and a Gas Commodity Rate no higher than the average of an index of reported spot prices adjusted for fuel and losses. Full requirements customers purchasing under Rate Schedule GS would pay a one-part rate comprised of demand and commodity components derived from the CDS demand and commodity rates. If Tennessee increases the Gas Demand Rate or establishes a higher ceiling on the Gas Commodity Rate, the customers could renominate their firm entitlements.

(7) Tennessee proposes to eliminate the Purchased Gas Adjustment provision of its tariff and to direct bill the balance. In Account No. 191 as well as any future billing adjustments pertaining to periods prior to the effective date of its gas restructuring plan. Tennessee also proposes to directly reimburse the customers for any supplier refunds related to the prior periods.

(8) Tennessee would continue to provide firm and interruptible transportation under its Rate Schedules FT and IT, respectively, but proposes to eliminate the five receipt point limit on the number of receipt points a customer can include in its firm transportation contract. Tennessee proposes to establish limits on the capacity that a converting customer can obtain through each of Tennessee's supply area mainlines to reflect the design capacity of its system and Tennessee's firm capacity requirements. There would be no limits proposed on firm entitlements for conversion customers to transport through Tennessee's market area mainline.

(9) (a) Tennessee proposes to eliminate Rate Schedule G and to grandfather most G customers as eligible for service under Rate Schedule GS or SGS.

(b) Tennessee proposes to eliminate Rate Schedule E for emergency service and states that emergency service can be provided under its sales rate schedules, including Rate Schedule R.

(c) Tennessee proposes to revise the rate for service under Rate Schedule R to reflect the 100 percent load factor rate design recently required by the Commission and to eliminate any rate discount for an AQL-restricted customer that elects a monthly firm sales entitlement under Rate Schedule CDS or SGS which is below the monthly component of its AQL.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–484–000]

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–484–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of Delivery Point Entitlements (DPEs) on Transco's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authority to establish DPEs applicable to each delivery point and Facility Group on its pipeline system for all firm service customers other than customers under Transco's Rate Schedules G and OG. Transco states that over the past several significant changes in the pattern of customers' takes have occurred and have resulted in shifts of deliveries among delivery points, as well as in increased peak hourly rates of delivery relative to the total daily deliveries on Transco's system. As a result, Transco asserts that the flexibility which has been designed into Transco's pipeline facilities to accommodate fluctuating delivery rates and load shifting among delivery points is being taxed to the limit, and further shifts could threaten the integrity of firm deliveries to customers. Transco states that it is proposing to implement its DPE procedures which formalize the basis upon which the pipeline system was designed and is capable of operating.

To determine the individual delivery point and Facility Group DPEs, Transco states that it has reviewed the design capacity of its facilities and analyzed actual daily deliveries for each delivery point and Facility Group for five summer and winter periods. For purposes of the study, Transco states that it utilized a five-year period commencing May 1, 1982 and extending through April 30, 1987. In conducting the analysis, Transco states that the goal was to compare the design capability of Transco's facilities with actual maximum deliveries that Transco had historically delivered to each individual delivery point during the five summer and winter periods described above. In addition, Transco states that actual maximum deliveries were measured against the contracts and service obligations Transco has with its customers. As a result, Transco states that it has determined that the actual maximum volumes (firm and interruptible) delivered to the various delivery points and Facility Groups under normal design operating conditions were consistent with customers' firm contract entitlements and the design of Transco's facilities. Therefore, based on its analysis, Transco states that the maximum deliveries, the customers' contractual entitlements and the design of the pipeline facilities were compatible and consequently, each of these criteria were utilized to determine the applicable DPEs.

Transco asserts that its DPE proposal would not change its current operating practices, but will continue to provide customers with requested deliveries which are in excess of the DPEs to the extent physical operating conditions permit such deliveries and Transco is able reasonably to determine that such deliveries will not impair Transco's ability to provide firm service to other customers. Transco states that under its DPE proposal, customers will continue to nominate deliveries as they always have and, to the extent capacity exists, Transco will continue to schedule and deliver the requested volumes even in excess of the applicable DPEs. However, Transco notes that the proposed DPEs provide for some measure of deterrence (i.e. a penalty) to better assure that customer takes—over which Transco has no control—will not cause operational problems that will threaten the integrity of Transco's ability to maintain firm deliveries. Therefore, Transco proposes that to the extent a customer, without Transco's consent, unilaterally takes or refuses to cut-break its takes of gas at levels in excess of the DPEs, a penalty may be imposed pursuant to the provisions of the proposed DPE tariff sheets. Transco states that the proposed DPE procedures and the specific DPEs proposed for each delivery point and customer are set forth in detail in the pro-forma tariff sheets contained in the application.

Comment date: January 24, 1989, in accordance with Standard Paragraph F at the end of the notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89–488–000]

Take notice that on December 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–488–000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88–328–000 for authorization to provide gas for Amoco Production Company (Skipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 380,000 dt; on an average day would be 40,000 dt; and on an annual basis would be 14,600,000 dt.

Transco also states that it would receive the gas offshore and onshore Louisiana and deliver the gas at an existing point of interconnection between Transco and Florida Gas Transmission Company in St. Helena Parish, Louisiana. Transco states that it would construct no new facilities in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced November 2, 1988, pursuant to the 120-day automatic authorization in Docket No. ST89–1115.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP89–452–000]

Take notice that on December 23, 1988,[1] Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–452–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of G.A.S. Orange Development, Inc. (GAS) and to construct, prior to commencement of the transportation service, a sales tap to accommodate the delivery of natural gas under its blanket authorization issued in Docket Nos. CP82–413–000 and CP87–115–000 pursuant to section 6 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for GAS, an end-user, pursuant to a gas transportation agreement dated November 19, 1987. The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of two years; provided, however that either Tennessee or GAS may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 24,000 dekatherms; on an average day up to 24,000 dekatherms; and on an annual basis 8,760,000 dekatherms of natural gas for GAS. It is stated that GAS would pay Tennessee for all natural gas delivered pursuant to the transportation agreement in accordance with Tennessee's Rate Schedule IT–1. Tennessee states that it would transport natural gas for GAS from a receipt point located in Niagara Country, New York and deliver the gas to a meter to be built in the town of Lafayette, Onondaga County, New Year near Tennessee's M.P. 241–2+.01. It is alleged that the projected cost of the facilities to be constructed is $219,000. It is asserted that Tennessee would construct, own, operate and maintain a 6 inch hot tap and 2–6 inch tube measurement facility and DAC equipment and appurtenenant facilities. It is stated that GAS would reimburse Tennessee one-hundred percent of the construction costs.

It is explained that the Tennessee will not transport for GAS under the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations, but under the requested authorization.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] The request under blanket authorization was tendered for filing on December 16, 1988; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until December 23, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

7. Columbia Gas Transmission Corporation

[Docket No. CP89–453–000]

Take notice that on December 19, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89–453–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate for public convenience and necessity authorizing new and additional firm sales service to an existing resale customer and the construction and operation of facilities to implement the services, all as more fully set forth in the application on file and open to public inspection.

Applicant requests authorization to initiate winter service to South Jersey Gas Company (South Jersey) of 10,000 dekatherms per day (dk/d) under Applicant's Rate Schedule WS with a winter contract quantity of 500,000 dth and to increase South Jersey's contract demand under Applicant's Rate Schedule CDS from 25,000 dt/d to 35,000 dt/d. Further, Applicant requests authorization to increase South Jersey's seasonal entitlement under Rate Schedule CDS from 4,562,000 dth per year to 5,062,500 dth per year to be effective on July 1, 1989, and to additionally increase South Jersey's seasonal entitlement from 5,062,500 dth per year to 6,887,500 per year to be effective on November 1, 1990.

In order to implement the above services, Applicant proposes to construct approximately 8.1 miles of 24-inch loop pipeline in Adams and York Counties, Pennsylvania. Applicant estimates that the cost of construction for these mainline facilities to be $5,610,000, which Applicant proposes to finance from internally generated funds.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Algonquin Gas Transmission Company

[Docket No. CP89–489–000]

Take notice that on December 27, 1988, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish a new delivery point for Pequot Gas Company (Pequot) under Algonquin's blanket certificate issued in Docket No. CP87–317–000, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Algonquin proposed to construct a new measuring and regulating station for Pequot on land owned by Algonquin adjacent to Algonquin's existing pipeline facilities in Stonington, Connecticut. Algonquin states the estimated cost of these facilities is $388,000. Algonquin states that it seeks to transfer the maximum daily delivery obligation under firm service agreements that currently exist between Algonquin and Pequot at the Westerly, Rhode Island delivery point to the new Stonington, Connecticut delivery point. The Westerly delivery point would remain as an alternate delivery point for Pequot with zero delivery obligation. Accordingly, Algonquin states that its peak day or annual commitments under firm service agreements would not be affected by construction of the new station.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP89-423-000]

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline), P. O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-423-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for TXG Gas Marketing Company (TXG), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport up to 30,000 Dt. equivalent of natural gas per day on behalf of TXG pursuant to a transportation agreement dated October 28, 1988 between Trunkline and TXG. The transportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt on its system. it is said that Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Southern Natural Gas Company in St. Mary Parish, Louisiana.

Trunkline further states that the estimated daily and annual quantities would be 7,000 Dt. and 2,555,000 Dt., respectively. Service under § 284.223(a) commenced on November 5, 1988, as reported in Docket No. ST89-1267.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP89-429-000]

Take notice that on December 15, 1988, Trunkline Gas Company (Trunkline), P. O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-429-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for V.H.C Gas Systems, L.P. (V.H.C), a shipper and marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport up to 30,000 Dt. equivalent of natural gas per day on behalf of V.H.C. pursuant to a transportation agreement dated June 3, 1988 between Trunkline and V.H.C. The tranportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt and on its system. It is said that Trunkline would then transport and redeliver the subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipe Line Company in Douglas County, Illinois.

Trunkline further states that the estimated daily and annual quantities would be 25,000 Dt. and 9,125,000 Dt., respectively. Service under § 284.223(a) commenced on November 1, 1988, as reported in Docket No. ST89-1295.

Comment date: February 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Interstate Power Company

[Docket No. CP86-679-010]

Take notice that on December 22, 1988, Interstate Power Company (Interstate), 1000 Main Street, Dubuque, Iowa 52001, filed in Docket No. CP86-679-010 a petition pursuant to section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP86-679-000 so as to authorize the continuation of transportation of natural gas on a firm basis for USI Chemicals Company, Inc. (USI) for a one-year period, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Interstate avers that in Docket No. CP86-679-006, it was authorized to transport up to a maximum of 18,000 MMBtu per day for USI for a term ending on March 4, 1989. It is stated that Interstate and USI seek to extend such transportation service until March 4, 1990. According to Interstate, Article 12 of the transportation agreement dated April 10, 1987, provides for a term which shall continue until cancelled with 120 days written notice. Therefore Interstate requests that the term of the certificate authorizing service be extended until March 4, 1990.

Comment date: January 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commisson's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-253 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-496-000]

Natural Gas Pipeline Company of America; Request Under Blanket Authorization

December 30, 1988.

Take notice that on December 29, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-496-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Associated Intrastate Pipeline Company (Associated), an intrastate pipeline, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated June 9, 1988, under its Rate Schedule ITS, it proposes to transport for Associated up to 200,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at various existing points in Oklahoma, Texas, offshore Texas, Louisiana, offshore Louisiana, Illinois, New Mexico, Kansas, Iowa and Arkansas, and that it would transport and redeliver the gas at various delivery points in New Mexico.

Natural advises that service under § 284.223(a) commenced October 19, 1988, as reported in Docket No. ST89-1467 (filed on December 29, 1988). Natural further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-255 Filed 1-5-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3502-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 19, 1988 through December 23, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-AFS-L82008-00, Rating LO, Pacific Northwest Region Western Spruce Budworm Management Plan, Implementation, WA and OR.

Summary: EPA has not identified any potential environmental impacts that would require any changes to the preferred alternative.

Final EISs

ERP No.: F-COE-E32068-AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL.

Summary: EPA finds the initial comments to the proposal were satisfactorily addressed and has no objections to the proposed project.

ERP No.: F-FHW-E40708-NC, NC-90 Replacement, NC-90 at Taylorsville to I-40 at Statesville, Funding, and Possible 404 Permit, Tredell and Alexander Counties, NC.

Summary: EPA recommended that additional consideration should be given to the replacement of the small wetland losses. Also, nonstructural noise mitigation measures should be examined for those residences experiencing significant impacts.

ERP No.: F-IBR-G28012-TX, San Jacinto River Basin Water Supply Project, Municipal and Industrial Water Use, Implementation, Montgomery, Harris, Grimes, Walker, San Jacinto, Fort Bend, Liberty and Waller Counties, TX.

Summary: EPA has no objections to the proposed action.

ERP No.: F-SCS-H36102-00, Pony Creek Watershed Protection and Flood Prevention Plan, Funding and 404 Permits, Missouri River Basin, Brown and Nemaha Counties, KS and Richardson County, NB.

Summary: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No.: F-UAF-E11020-NC, Seymour Johnson AFB, F-4 to F-15E Aircraft Conversion Program, Site Selection and Implementation, Wayne County, NC, Alternative Sites are Cannon AFB, NM; Holloman AFB, NM; Mountain Home AFB, ID and Nellis AFB, NV.

Summary: EPA continues to have serious concerns with noise impact problems associated with the implementation of this action. EPA recommends that the USAF addresses and resolve concerns.

Regulations

ERP No.: R-AFS-A61316-00, 36 CFR Part 251; Ski Area Permits—Proposed Rule (53 FR 40739).

Summary: EPA is concerned that the criteria established for granting ski area permits appear to rely on the presumption of a detailed analysis of ski area proposals at the Land Management Planning stage. EPA believes the rule should contain a provision whereby proposals that do not undergo full NEPA analysis at the management planning stage be subject to further NEPA analysis at the site-specific stage.

Dated: January 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-276 Filed 1-5-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3502-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 26, 1988 Through December 30, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880425, DSuppl, COE, NJ, Great Egg Harbor Inlet and Peck Beach Erosion Control and Flood Protection, Implementation, Updated Information and Detailed Analysis, Ocean City, Cape May County, NJ, Due: February 21, 1989, Contact: Dr. Teruo Sugihara (215) 597-4833

EIS No. 880426, Final, FHW, KY, US 31E/150 (Bradstown-Louisville Road) Improvement, Brentlinger Road to US 31E/150, Funding and Corp of Engineer Permits, Jefferson, Bullitt, Spencer and Nelson Counties, NJ, Due: February 6, 1989, Contact: Robert E. Johnson (502) 227-7321

EIS No. 880427, Draft, NAS, PRO, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2), Due: February 21, 1989, Contact: Dr. Dudley G. McConnell (202) 453-1287

EIS No. 880428, Final, SCS, MO, East Yellow Creek Watershed, Soil Erosion and Flood Damage Reduction Plan, Funding and Implementation, Sullivan, Linn and Chariton Counties, MO, Due: February 6, 1989, Contact: Russell C. Mills (314) 875-5214

EIS No. 880429, Final, COE, TX, Brooke Army Medical Center Replacement Facility Construction, Implementation, Fort Sam Houston, Bexar County, TX, Due: February 10, 1989, Contact: LCDR K. Hiatt (703) 756-0904

EIS No. 880430, Draft, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978-5488

EIS No. 880431, Draft, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Rufuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Colusa and Solano Counties, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978-5488

EIS No. 880432, Draft, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Rufuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Countries, CA, Due: March 3, 1989, Contact: Bill Payne (916) 978-5488

EIS No. 880433, Final, COE, WA, Lummi Bay Navigation Channel Improvements and Marina Construction, Implementation, Lummi Indian Reservation, Whatcom County, WA, Due: February 6, 1989, Contact: Richard Makinen (202) 272-0166

Amended Notices

EIS No. 880420, Draft, NAS, MS, FL, LA, Advance Solid Rocket Motor Program, Design, Construction and Operation, Site Selection, John C. Stennis Space Center, Hancock Co., MS; Yellow Creek Site, Tishomingo Co., MS; John F. Kennedy Space Center, Brevard Co., FL; Michoud Assembly Facility, New Orleans Parrish, LA and Slidell Computer Center, St. Tammany Parish LA, Due: February 6, 1989, Contact: Rebecca C. McCaleb (601) 688-3155. Published FR 12-23-88—Incorrect phone number

Dated: January 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-275 Filed 1-5-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 86-9; FCC 88-352]

Policies Governing the Provision of Shared Telecommunications Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Termination of inquiry.

SUMMARY: This action terminates an inquiry into the appropriate federal role with regard to Shared Telecommunications Services.

DATE: This termination is effective January 6, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, (202) 632-6342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in Common Carrier Docket 86-9, FCC 88-352, Adopted October 31, 1988, and Released December 6, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

I. Introduction

1. On January 14, 1986 we adopted a Notice of Inquiry in this docket to examine regulatory issues involved in the development of Shared Telecommunications Service (STS) systems and the associated effects on the potential resale of local services, local exchange rates, and state regulation of STS implementation (51 FR 4536, Feb. 5, 1986). We adopted the Notice of Inquiry to examine issues identified in prior proceedings on STS.

A. Prior Proceedings

2. On May 16, 1985, International Business Machines (IBM) filed a request for declaratory ruling asking this Commission to declare that state laws and regulations precluding the competitive provision of STS systems are inconsistent with, and have been preempted by, existing Commission decisions and policies. In January 1986, we adopted the STS Order partially granting the IBM Petition. In the STS Order, we concluded that our existing interconnection policies require local exchange companies to interconnect partitioned STS switches that are either shared among multiple entities or used by third-party operators to provide PBX services to multiple users. However, we held that this interconnection right does not give customer premises equipment users or STS providers the right to resell local service, in violation of state restrictions, through an interconnected unpartitioned switch. We also found that our existing interconnection policies do not support a declaration that this Commission has preempted state regulations that prevent the resale of local exchange service by an STS operator. Since we concluded that our existing policies did not address the majority of issues raised in this proceeding, in the Notice of Inquiry we presented a wide range of issues to be decided before reaching any final conclusion on an appropriate federal role.

B. STS System Description

3. In an STS system, the occupants of a multitenant building or building complex use voice and data equipment

located on their premises to connect with a shared private branch exchange (PBX) or other customer premises equipment (CPE) (the STS switch) typically provided by the building owner, a user association, or an outside contractor. STS systems use communication and computer technologies to provide their users with local and interexchange basic service, and, in some cases, enhanced services. As we noted in the *NOI*, the STS switch permits users to call each other directly without using local exchange carrier (LEC) facilities and to call anywhere on the switched network through trunks that connect the STS switch with a subtending LEC central office. In addition, by aggregating their customers' demand for interexchange services, STS operators can purchase such services at bulk discounts and resell them to those customers at more favorable rates. Furthermore, the STS operator can use the least cost routing features included in most STS switches to resell interexchange services purchased from a variety of carriers.

4. There are two types of STS systems—those that use "partitioned" switches and those that use "unpartitioned" switches. In a partitioned switch, which does not involve the resale of local service, although lines from the central office are connected with the switch, software and special hardware treat these lines as if they directly connected to each tenant. A partitioned switch does not allow aggregation of user demand for local service, thus requiring the same number of access lines as if each user of the STS system was separately connected to the network. Moreover, each user of the partitioned switch receives a bill from the LEC. In contrast, an unpartitioned switch is connected to the LEC's central office using the minimum number of shared lines, determined through traffic engineering, required to meet overall system needs. By aggregating the requirements of all the users of the unpartitioned STS system, the lines to the central office can be more efficiently employed. Unpartitioned switches are often used by their operators to offer a form of local service resale to users because of the savings possible from their efficient engineering.

II. The Benefits and Costs of Unpartitioned STS

A. Benefits

5. Proponents of preemption of state STS restrictions argue that the provision of STS through unpartitioned systems benefits STS users, providers, LECs and society at large and promotes the federal interest in increasing the efficiency and availability of telecommunication-related services through competition. Such parties argue that the unrestricted provision of unpartitioned STS will save societal resources and reduce costs to end users while providing additional services and benefits to consumers. These commenters emphasize that the unpartitioned switch provides local and interstate service more efficiently and at a lower cost through the concentration of fewer central office trunks. While the LECs generally view STS providers as potential competitors and argue that there is little, if any, benefit from STS *per se*, some LECs and states indicate that STS could potentially benefit small users by enabling them to obtain PBX features that otherwise may not be available.

B. Costs

6. Most LECs emphasize that the unrestricted provision of unpartitioned STS systems will produce losses in LEC revenues and a consequent erosion of universal service. Some LECs also claim that unfettered STS development would lead to an increased likelihood of stranded LEC investment and increased difficulty in network planning. In addition, several commenters express concern that unpartitioned STS will lead to deaveraged rates because STS providers will "cream-skim" local exchange service by capturing businesses that provide the greatest contribution to network costs, leaving residential customers to pay significantly higher bills.

7. While opponents of unpartitioned STS emphasize the societal costs of using systems, most parties acknowledge that partitioning adds some costs to STS systems, although estimates of these costs vary widely. Some parties argue that a partitioning requirement makes STS economically unfeasible.

III. Legal Issues

8. In the Notice of Inquiry, we tentatively concluded that we had the authority to preempt state regulation of STS systems if we determine that important federal interests are jeopardized and no other methods exist to protect these interests. Parties opposed to federal preemption argue that sections 2(b) and 221(b) of the Communications Act proscribe federal jurisdiction over "charges, classification, practices, services, facilities, or regulations for or in connection with" intrastate communications. Supporters of preemption for STS, however, claim that widespread availability of efficient service is an area of longstanding federal interest and jurisdiction.

IV. State Regulation of STS

9. Although, as shown in the record leading to the STS Order, partitioning requirements remain the most significant restriction for STS providers, the record before us indicates that other state regulatory requirements also limit the development of STS. For example, some states regulate entry of STS systems into local exchange company service areas, while other states require that "joint use" or shared service only be provided on a nonprofit basis. Other states prohibit STS systems from permitting calling "behind the STS switch," *i.e.*, from one station in an STS system to another. Parties also extensively address state rate structures for STS systems and state limitations on the physical configuration, site, and ownership of STS systems.

10. On February 25, 1987, the Committee on Communications of NARUC adopted an STS Model State Policy (the State Model). The State Model says in part that "STS systems are in the public interest because they provide tenants with innovative and cost-effective communications, information processing and other building services that would otherwise not be economically available." The State Model asserts that partitioning should not be required, "in order to enhance the efficient use of the network." The State Model definition of STS requires "continuous premises under common ownership or management, except that the premises may be intersected by public or private rights-of-way." Moreover, the State Model recommends reduced regulation of entry, rates, and services.

V. Discussion

11. The record in this proceeding indicates that real savings are attainable from the use of STS systems, and that those savings may, to some degree, be reduced through partitioning and other regulatory restrictions imposed by state commissions. There are significant federal interests in realizing such savings and in the effects of state regulation of STS on such savings. An STS system provides interstate, as well as intrastate, access to its end users. Thus, state regulations that restrain the growth of STS technology can adversely affect this Commission's interests in increasing the efficiency of the local network in originating and terminating interstate communications. For example, by reducing the number of lines or trunks between STS subscribers and the

LEC network, an unpartititoned STS system enables subscribers to avoid unnecessary interstate subscriber line charges. We conclude, however, that these federal interests must be weighed against the concerns expressed by the states about the potential effect of STS systems on state policies governing the resale of basic local exchange service, as well as other intrastate services. As noted above, STS systems can be used for the resale of local basic service, a practice of traditional concern to state commissions. We have preempted state regulations regarding local resale only in very limited circumstances. Partitioning of STS systems, the regulatory requirement that is the principal focus of most of the commenters in this proceeding, is one way that states enforce restrictions on local resale. Weighing our federal interests in STS development against state concerns about the potential effects of STS on state policies regarding the resale of intrastate services, we conclude that we should not take any preemptive action on the issues presented in the Notice of Inquiry at this time. There may however, be individual factual circumstances where the federal interest is so significant that federal preemption would be warranted and the complaint process pursuant to section 206 of the Communications Act is available in these instances.

12. Furthermore, our review of the record in this proceeding presents additional reasons supporting this decision. As we stated in the Notice of Inquiry, we are concerned that the replacement of diverse state regulations with a single federal policy for STS may create significant problems, since the problems with STS systems may be different from state to state. Thus, varying state responses may be appropriate. We suggested that states could act as laboratories to test various means of regulating STS that may in the long run result in the most efficient STS policies. Since the release of the Notice of Inquiry, states have been exploring a variety of regulations involving STS that are tailored to their specific LEC and business environments. Most of the states do not require partitioning. With more experience, states may develop regulations that do not impede STS development, but do protect LEC revenues. The State Model, which reflects sensitivity to efficiency issues in STS regulation, may influence states to adopt regulatory approaches that promote STS development. In light of this progress and our sensitivity to state interests in this area, we conclude that the appropriate federal role at this time is to observe the progress of state regulation of STS, and STS development and not assert a broad based federal preemption of state regulations in this proceeding. If we become aware of additional problems that potentially impede our interests in this area, we will revisit these issues in the future. Accordingly, we terminate this inquiry.

VI. Ordering Clause

13. *It is Ordered*, that pursuant to sections 1, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 201–205, this *docket is hereby terminated.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89–234 Filed 1–5–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–071.

Title: American West African Freight Conference.

Parties:

America-Africa Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed modification makes changes to the Service Contract rule.

Agreement No.: 217–011203–001.

Title: Wallenius-NOSAC Space Charter and Cooperative Working Agreement.

Parties:

Wallenius Lines AB
Norwegian Specialized Autocarriers—NOSAC

Synopsis: The proposed modification substitutes Den norske Amerikalinje A/S as manager of the Norwegian Specialized Autocarriers—NOSAC for the existing manager Oivind Lorentzen A/S. Parties have requested shortened review.

Agreement No.: 212–011213–003.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

Synopsis: The proposed modification provides that a member's security bond may be retained for at least 270 days after its withdrawal from the Pool to ensure that all of its outstanding obligations are met.

By Order of the Federal Maritime Commission.

Dated: January 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–273 Filed 1–5–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Parish National Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 23, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Parish National Corporation*, Bogalusa, Louisiana; to acquire 100 percent of the voting shares of Parish National Bank of St. Tammany Parish, Covington, Louisiana.

Board of Governors of the Federal Reserve System, December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–178 Filed 1–5–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Security Bank Holding Co.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 1989.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Bank Holding Company Employee Stock Ownership Trust*, Coos Bay, Oregon; to acquire up to 24.9 percent of the voting shares of Security Bank Holding Company, Coos Bay, Oregon, and thereby indirectly acquire Security Bank, Coos Bay, Oregon.

Board of Governors of the Federal Reserve System, December 30, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–179 Filed 1–5–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 30, 1988.

Public Health Service

(Call Reports Clearance Office on 202–245–2100 for copies of package)

1. Cardiovascular Health Study (CHS)—NEW—A random sample of 5,336 men and women aged 65 and older will be selected from four communities. They will provide medical, social and demographic information and will participate in two clinical examinations to study risk factors for the onset and progression of clinical coronary heart disease and stroke, and related preclinical conditions. Individuals or households, Businesses or other for-profit, Small businesses or organizations.

	1st information collection	2d information collection
	Title—Cardiovascular Health	Physician Questionnaire
Number of Resondents	3,018	184
Number of Responses: Per Respondent	5.1	1
Average Burden: Per Response	.98	10

Total Burden Hours: 15,388

2. Common or Usual Name: Labeling of Peanut Spreads (21 CFR Part 102)—0910–0222—This regulation sets forth the nutritional requirements to be met if a non-standardized peanut spread is not to be labeled as "imitation" peanut butter. Respondents: Businesses or other for-profit: Number of Respondents: 40; Number of Responses per Respondent: 5; Average burden per Response: 107.4; Estimated Annual Burden: 2,148. This Burden is included in Nutritional Labeling, OMB NO. 0910–0177.

3. Application to Participate in the Public Health Capitation Program—0915–0089—The information collected from schools of public health is needed in order for the Public Health Service to determine the amount of the grants based on the number students reported and to audit grantee expenditures.

Respondents: Non-profit Institutions.

	1st information collection	2d information collection
	Title—Student Counts and Assurance on Non-Federal Funding—57.3504	Audits—57.3504(a)
Number of Resondents	26	26
Number of Responses: Per Respondent	1	1
Average Burden: Per Response	6 hours	1 hour

Total Burden Hours: 182

4. Identity Labeling of Food in Package Form—21 CFR 101.3—0910–0223—These regulations define what constitutes an imitation food product. Firms that manufacture substitute foods use the information to determine whether the term "imitation" is required on product labels. In addition these regulations specify when "imitation" cannot be used on the label.

Respondents: Businesses or other for-profit.

	1st Information Collection	2nd Information Collection
	Title: 21 CFR 101.3(e)(1)—Disclosure—Labeling (Approval of Language)*	21 CFR 101.3(e)(2) Disclosure Labeling (Approval of Language)*
Number of Respondents	0	0
Number of Responses Per Respondent	0	0
Average Burden Per Response	0	0

Total Burden hours: 1

* This burden is included in Nutritional Labeling, OMB No. 0910–01777

OMB Desk Officer: Shannah Koss-McCallum

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package)

1. Certificate of Support—0960–0001—This form collects information which is used by the Social Security Administration to determine if the responder meets the one-half support requirement which is a requirement for entitlement to parents benefits, and is

BEST COPY AVAILABLE

required to meet the exception to Government Pension Offset (applicable in claims for spouse's benefits). Respondents: Individuals or households; Number of Respondents: 18,000; Frequency of Response: 15 minutes; Estimated Annual Burden: 4,500 hours.

2. Request for Earnings and Benefit Estimate Statement—0960–7004—The information will be used to provide a statement of earnings, quarters of coverage and future benefit estimates to individuals in response to requests. Respondents: Individuals or households; Number of Respondents: 6,000,000; Frequency of Response: 1; Average Burden Per Response: 5 minutes; Estimated Annual Burden: 500,000 hours.

OMB Desk Officer: Justin Kopca

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:
PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 3, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Business Management.

[FR Doc. 89–283 Filed 1–5–89; 8:45 am]

BILLING CODE 4150–04–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 30, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–966–2088 for copies of package)

1. Request for Termination of Premium Hospital and/or Supplementary Medical Insurance—0938–0025—The HCFA–1763 is the form an individual completes when he/she wishes to terminate Medicare coverage. This form is the vehicle by which the SSA Program Services Center is made aware of the beneficiary's desire to withdraw from Medicare. Respondents: Individuals or households; Number of Respondents: 30,000; Frequency of Response: 1; Average Burden Per Response: .166; Estimated Annual Burden: 5,000 hours.

2. Application for Health Insurance Benefits under Medicare for Individuals with Chronic Renal Disease—0938–0080—The law requires the filing of an application to establish Medicare entitlement based on end-stage renal disease. The HCFA–43 is the application form used to obtain information needed to determine Medicare eligibility. It guides district office personnel in securing the required development and becomes a permanent part of the claims. Respondent: Individuals or households; Number of Respondents: 13,500; Frequency of Response: 1; Average Burden Per Response: .43; Estimated Annual Burden: 5,850.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. Registration of Cosmetic Product Establishment—0910–0027—The registration of cosmetic manufacturers and repackers supplies FDA with current locations for onsite inspection, addresses for information and regulatory mailings, business trading names supplying product distribution sources, and aids FDA in responding to Freedom of Information requests. Respondents: Small businesses; Number of Respondents: 50; Number of Responses Per Respondent: 1; Average Burden Per Response: 0.4; Estimated Annual Burden: 20 hours.

2. Notice of Discontinuance of Commercial Distribution or Cosmetic Product or Cosmetic Raw Material—0910–0029—The purpose of Form FDA 2514 is to notify the FDA of removal from commercial distribution of a cosmetic product or raw material previously filed with the FDA under 21 CFR 730 thereby allowing that data to be maintained in a current state. Respondents: Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 850; Number of Responses Per Respondent: 3; Average Burden Per Response: 0.2; Estimated Annual Burden: 510 hours.

3. Cosmetic Product Ingredient Statement (21 CFR 720)—0910–0030—This information collection assists FDA in evaluating alleged injuries and adverse reactions from use of cosmetic products. It is also utilized in defining and planning analytical and toxicological studies. Data on ingredients and formulations is also available to other government agencies such as GAO, NCI, NIOSH, and the public and industry may access it through FOI. Respondents: Businesses or other for-profit, and small businesses or organizations.

	1st Information Collection	2nd Information Collection
	Title: Registration/ Amended product brand name/ ingredient change	Request for Confidentiality
Number of Respondents	280	12.5
Number of Responses Per Respondent	10	1
Average Burden Per Response	0.5	
Burden Hours	1,400	

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:
PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 3, 1989.

James E. Larson,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 89–284 Filed 1–5–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88F–0381]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Betz Laboratories, Inc., proposing that the food additive regulations be amended to provide for the safe use of poly(isopropenylphosphonic acid), sodium salt in the manufacture of paper and paperboard for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4114) has been filed by Betz Laboratories, Inc., Somerton Rd., Trevose, PA 19047, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of poly(isopropenylphosphonic acid), sodium salt in the manufacture of paper and paperboard for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 22, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–188 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0427]

Cryovac Division of W.R. Grace & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cryovac Division, W.R. Grace & Co., has filed a petition proposing that the food additive regulations be amended by raising the limitation on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Cryovac Division of W.R. Grace & Co., P.O. Box 464, Duncan, SC 29334, has filed a petition (FAP 9M4117) proposing that § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) of the food additive regulations be amended by raising the limitation, in paragraph (d)(1) and (d)(3), on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 27, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–184 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0404]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene/1,3-phenyleneoxyethylene isophthalate/terephthalate copolymer as a nonfood contact layer of food packaging laminates intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that Mitsui Petrochemical Industries, Ltd., Kasumigaseki Bldg., P.O. Box 90, 2–5 Kasumigaseki 3-chrome, Chiyoda-Ku, Tokyo 100, Japan, has filed a petition (FAP 8B4107), proposing that § 177.1395 *Laminate structures for use at temperatures between 120 °F and 250 °F* (21 CFR 177.1395) be amended to provide for the safe use of ethylene/1,3-phenyleneoxyethylene isophthalate/terephthalate copolymer as a nonfood contact layer of food packaging laminates intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 27, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–185 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0309]

Monsanto Chemical Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of food additive petition 2B3655 proposing that the food additive regulations be amended to provide for the safe use of a mixture of partially hydrogenated terphenyl and quaterphenyl as components of adhesives for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 19, 1982 (47 FR 46576), FDA published a notice that it had filed a petition (FAP 2B3655) submitted by Monsanto Industrial Chemicals Co. (later named Monsanto Chemical Co.), 800 North Lindberg Blvd., St. Louis, MO 63167, proposing to amend § 175.105 *Adhesives* (21 CFR 175.105) of the food additive regulations to provide for the safe use of a mixture of partially hydrogenated terphenyl and quarterphenyl as components of adhesives for food-contact use. Monsanto Chemical Co. has now

withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 28, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-187 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88F-0382]

Springborn Testing Institute, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Springborn Testing Institute, Inc., on behalf of Enka bv, proposing that the food additive regulations be amended to provide for the safe use of carbethoxymethly-diethyl phosphonate as a stabilizer in polyethylene terephthalate and related polyesters for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4087) has been filed by Springborn Testing Institute, Inc., 20 Springborn Center, Enfield, CT 06082, on behalf of Enka bv, proposing that § 178.2010. *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of carbethoxymethyl-diethyl phosphonate as a stabilizer in polyethylene terephthalate and related polyesters for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 22, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-186 Filed 1-5-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing to Reconsider Disapproval of a Colorado State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 22, 1989, in Denver, Colorado to reconsider our decision to disapprove Colorado State Plan Amendment 88-11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Colorado State Plan Amendment 88-11 (SPA 88-11).

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Colorado SPA 88-11 consists of three separate attachment pages containing methods and standards for establishing payment rates for crossover situations involving institutional services, noninstitutional services and nursing home care. Crossover situations occur when a Medicaid recipient is also eligible for Medicare.

The issue in this matter is whether the methods and standards in the amendment violate sections 1902(a)(13)(A) and 1902(a)(30) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts B, C and D, which require that payments for services be consistent with efficiency, economy, and quality of care.

HCFA has determined that the methods and standards for inpatient and outpatient hospital claims cannot be approved because of the State's proposal to make no Medicaid payment where Medicare makes a payment. Section 3909 of the State Medicaid Manual provides that the minimum amount for which a State is responsible in crossover claims is the rate established in the State plan that is paid when a recipient is not also a Medicare beneficiary. In the case of a Medicaid recipient who is also entitled to Medicare, this amount may be satisfied, in whole or in part, by the Medicare payment. The provision in SPA 88-11 dealing with Medicaid payments on Part A inpatient and outpatient hospital service crossover claims limits reimbursement to the Medicare reimbursement. The State would have that option as long as Medicaid rates for these services, applicable to all recipients, including those who have Medicare, are established at equal to or below Medicare's reimbursement amount. The plan amendment does not provide for this and therefore, HCFA has determined that it is not consistent with 42 CFR Part 447, Subpart B. Under the amendment, reimbursement would be limited to the Medicare reimbursement even in cases where the Medicaid rate for the services exceeds the Medicare reimbursement.

HCFA has determined the methods and standards for other institutional services, non-institutional services and nursing home care cannot be approved. HCFA believes it is not clear from the language in these provisions that the Medicaid rate for services proposed for dual eligibles is at or above the established Medicaid rate for Medicaid eligibles who do not also have Medicare. The ambiguity arises from the use of the term Medicare maximum allowable "*reimbursement limit*" rather than payment rate (prior to application of deductibles and copayments). Therefore, HCFA has determined that the amendment does not establish the Medicaid rate as required by section 1902(a)(13)(A) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts C and D.

The notice to Colorado announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Irene Ibarra
Executive Director
Department of Social Services
1575 Sherman Street
Denver, Colorado 80203-1714

Dear Ms. Ibarra:

I am advising you that your request for reconsideration of the decision to disapprove Colorado State plan amendment 88-11 (SPA 88-11) was received on December 2, 1988.

Colorado SPA 88-11 consists of three separate attachment pages containing methods and standards for establishing payment rates for crossover situations involving institutional services, non-institutional services and nursing home care.

The issues in this matter are whether the methods and standards in the amendment violate sections 1902(a)(13)(A) and 1902(a)(30) of the Social Security Act and the implementing regulations at 42 CFR Part 447, Subparts B, C and D which require that payments for services be consistent with efficiency, economy and quality care. In addition, HCFA will respond to your request for discovery in accordance with 42 CFR 430.86.

I am scheduling a hearing on your request to be held on February 22, 1989, at 10:00 a.m. in the 10th Floor Conference Room, Federal Office Building, 1961 Stout Street, Room 574, Denver Colorado 80294. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

William L. Roper, M.D.

Administrator

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89-251 Filed 1-5-89; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement, Special Consideration and Funding Priorities for Advanced Nurse Education Grants

The Health Resources and Services Administration announces that applications for Advanced Nurse Education Grants will be accepted in Fiscal Year 1989, and invites comments on the proposed funding priorities set forth below:

Section 821 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Z, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary of Health Human Services to require advanced education.

Eligible applicants are public and nonprofit private collegiate schools of nursing.

Approximately $4.8 million is being made available for competing awards for Fiscal Year 1989. It is estimated that approximately 27 competing projects averaging $182,172 will be supported.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education;

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided and to promote their return to these States following educaiton;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

In addition, the following mechanisms as defined below may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For this program, the following Departmental special consideration and statutory funding priority will be applied and the following Departmental funding priorities are proposed:

Special Consideration

Special consideration will be given to: applicant institutions that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available. This special consideration was established and implemented in Fiscal Year 1988 and the Department is extending this special consideration for Fiscal Year 1989.

Funding Priority

Seciton 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

Proposed Funding Priorities for FY 1989

In addition, it is proposed to give a funding priority to the following:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average. This proposed priority was implemented as a special consideration in Fiscal Year 1988; and

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases. Health professionals are increasingly required to provide a wide range of services to HIV-infected persons. However, widespread organized formal curricula offerings for

these trainees are not in place. The proposed priority is designed to encourage new offerings.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 6, 1989, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the funding priorities will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–23), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6915.

Application materials should also be mailed to the Grants Management Officer at the above address.

Should additional progammatic information be required, please contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C–14, Rockville, Maryland 20857, Telephone (301) 443–6333.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915–0060.

Multiple review cycles are held annually. The application deadline dates during Fiscal Year 1989 are March 1 and July 1.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Any application not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline.

This program is listed at 13.299 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: December 6, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–246 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement, Special Considerations and Funding Priority for Grants for Nurse Practitioner and Nurse Midwifery Programs

The Health Resources and Services Administration announces that applications for Fiscal Year 1989, Grants for Nurse Practitioner and Nurse Midwifery Programs are being accepted under the authority of section 822(a) of the Public Health Service Act, as amended and invites comments on the proposed funding priority set forth below.

Section 822(a) of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Y, authorizes assistance to meet the costs of projects to (a) plan, develop and operate, (b) expand, or (c) maintain programs for the education of nurse practitioners and/or nurse midwives.

Eligible applicants are public or nonprofit private schools of nursing and public health, public or nonprofit hospitals, and other public or nonprofit private entities. Also eligible are public or nonprofit private schools of medicine which received grants or contracts under section 822(a) prior to October 1, 1985.

Approximately $4.4 million is being made available for new awards for Fiscal Year 1989. It is estimated that approximately 23 competing projects averaging $185,000 will be supported.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in Section 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act;

3. The capability of the applicant to carry out the proposed project;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the project period.

In addition, the following mechanisms as defined below may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

For Fiscal Year 1989, the following statutory and Departmental special considerations will be applied and the following funding priority is proposed.

Special Considerations

In accordance with the statute, Section 822, the Secretary will give special consideration to applications for grants for programs for the education of nurse practitioners and nurse midwives who will practice in health manpower shortage areas (designated under section 332 of the PHS Act) and for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients (particularly problems in the delivery of preventive care, acute care and long term care—including home health care and institutional care to such patients) and education to meet the particular needs of nursing home patients and patients confined to their homes.

Special consideration will also be given to applicants that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available. This special consideration was implemented in Fiscal Year 1988 and the Department is extending this special consideration for Fiscal Year 1989.

Proposed Funding Priority

For Fiscal Year 1989 it is proposed to give a funding priority to applicant institutions which demonstrate an increase in minority enrollment in the program which exceeds the program's prior 3-year average. This funding priority was implemented as a special consideration in Fiscal Year 1988.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 6, 1989, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for grant application materials, questions regarding grants policy and completed application materials should be directed to: Grants Management Officer (D–24), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6960.

Should additional programmatic information be required, please contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C–26, Rockville, Maryland 20857, Telephone (301) 443–6333.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Multiple review cycles are held annually. The application deadline dates during FY 1989 are March 1 and July 1.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Any applications not meeting a particular deadline will be reviewed with applications meeting the subsequent deadline.

This program is listed at 13.298 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: December 6, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–247 Filed 1–5–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 25, 1989, at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on January 25, 1989, from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public January 25 from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–209 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 27–28, 1989, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 6, C Wing.

The entire meeting will be open to the public from 9 a.m. to recess February 27, 1989, and 9 a.m. to adjournment February 28, 1989, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-213 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council and its Research Subcommittee and Training Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 9-10, 1989, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet on February 8; the Research Subcommittee at 1 p.m. in Building 31, Conference Room 9 and the Training Subcommittee at 8 p.m. in Building 31, Conference Room 9.

The Council meeting will be open to the public on February 9 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., sec. 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 3:30 p.m. on February 9 to adjournment on February 10 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 9, will be closed from 1 p.m. and 8 p.m., respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Ms. Arlene Zimmerman, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A-15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-215 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 23-24, 1989, at the National Institutes of Health, Building 31, A Wing, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on February 23, to adjournment on February 24, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1990. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: December 27, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-214 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on February 2, 1989, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 2, from 8:00 a.m. until 2:00 p.m. for a status report by the Director, National Institute on Aging, a report on the Biomedical Research and Clinical Medicine Program, a report on the Epidemiology, Demography, and Biometry Program, a report on the Advisory Committee to the Director, NIH, meeting and for discussions of program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on February 2 from 2:00 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C02, Bethesda, Maryland 20892, (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-216 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 23-24, 1989, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on January 23 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on January 24 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2039, Bethesda, Maryland 20892, (telephone 301-496-0489) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institute; National Institutes of Health.)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-210 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of the National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 26-27, 1989, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 26 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public January 26, from approximately 1 p.m. to adjournment on January 27, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892, (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-211 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 26 and 27, 1989, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 26, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 26 from 11:30 a.m. to 6:00 p.m., and on January 27 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496-7301 will provide a summary of the meeting, roster of council members. Dr. David Wolff, Acting Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496-7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; and 13-880, Minority Access to Research Careers (MARC)).

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-212 Filed 1-5-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Board of Regents and Subcommittees; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 26-27, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville, Pike, Bethesda, Maryland. The Subcommittees will meet on January 25 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, from 1 to 3 p.m., and the Planning Subcommittee, Conference Room A, Mezzanine, National Library of Medicine, from 3 to 4 p.m.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on January 26 and from 9 to approximately 10:45 a.m. on

January 27 for administrative reports and program discussions. The entire meeting of the Planning Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on January 25 will be closed to the public, and the regular Board meeting on January 27 will be closed from approximately 10:45 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–218 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Literature Selection Technical Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 2–3, 1989, convening each day at 9:00 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 2 will be open to the public from 9:00 a.m. to 12:00 noon for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on February 2 from approximately 12:00 noon to 5:00 p.m. and on February 3 from 9:00 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: December 19, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc 89–217 Filed 1–5–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Billings Area Irrigation Projects Annual Operation and Maintenance Charges; Blackfeet Agency, et al.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Billings Area Irrigation Projects annual operation and maintenance charges.

SUMMARY: The annual operation and maintenance charges for the following Billings Area Irrigation Projects are:

Blackfeet Irrigation Project, Blackfeet Agency	$7.50
Fort Belknap Irrigation Project, Fort Belknap Agency:	
Trust Lands	$6.25
Fee Lands	$12.50
Fort Peck Irrigation Project, Fort Peck Agency	$13.30

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. These operation and maintenance charges will remain in effect until the Billings Area Director has replaced these rates with another announcement in the Federal Register.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all [Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Browning, Mt. 59417
Cut Bank, Mt. 59427
Valier, Mt. 59486
Harlem, Mt. 59526
Poplar, Mt. 59255
Wolf Point, Mt. 59201

Bureau of Indian Affairs

Blackfeet Agency, Browning, Mt. 59417
Crow Agency, Crow Agency, Mt. 59022

Newspapers

Glacier Reporter, Browning, Mt. 59417
Harlem News, Harlem, Mt. 59526
Wolf Point Herald, Wolf Point, Mt. 59201

Bureau of Indian Affairs

Fort Belknap Agency, Harlem, Mt. 59526
Fort Peck Agency, Poplar, Mt. 59255

Comments: All comments concerning the operating and maintenance charges for the above mentioned irrigation projects must be in writing and addressed to their respective Superintendent of the irrigation project in question before the close of business on February 10, 1989.

Appeal Process: Chapter 25, Part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by the Billings Area Director before the close of business on February 10, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, by the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual Chapter 3, Part 230, (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 89–262 Filed 1–5–89; 8:45 am]

BILLING CODE 4310–02–M

Increase to the Operation and Maintenance Charges to the Crow Irrigation Project; Crow Agency, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Increase to the operation and maintenance charges at the Crow Irrigation Project.

SUMMARY: With the exception of Two Leggin Water Users Association Operation and Maintenance (O&M); Two Leggin Drainage Association O&M; and Bozeman Trail Ditch O&M, this notice sets forth that the Crow Irrigation Project is increasing the annual O&M charges from $10.50 to $10.80 per assessable acre beginning CALENDAR YEAR 1989.

All irrigation units within the Little Big Horn Drainage System [Reno, Lodge Grass #1, Lodge Grass #2, Upper Little Horn & Forty Mile] will be assessed the annual operation and maintenance charges plus an additional 30 cents for Willow Creek Reservoir storage fees.

Annual Operation and Maintenance charges for:

Two Leggins Water Users Association O&M	$5.50/acre
Two Leggins Drainage Association O&M	$2.00/acre
Bozeman Trail Ditch O&M	$2.20/acre

Public Meetings: On March 29, 1988, and April 4, 1988, public meetings were held with the Big Horn, Lower Little Horn and Upper Little Horn Irrigation Districts to discuss the operation and maintenence rate increase.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. These operation and maintenance charges will remain in effect until the Billings Area Director has replaced these rates with another announcement in the Federal Register.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessable lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Crow Agency, Mt. 59002, Hardin, Mt. 59034, Lodge Grass, Mt. 59050

Newspapers

Hardin Herald, Hardin, Mt. 59034

U.S. Post Offices

St. Xavier, Mt. 59057
Fort Smith, Mt. 59035
Wyola, Mt. 59089
Pryor, Mt. 59066

Bureau of Indian Affairs

Crow Agency, Crow Agency, Montana

Comments: All comments concerning this increase must be in writing and received by the Superintendent of the Crow Agency, Crow Agency, Montana 59022 before the close of business on February 10, 1989.

Appeal Process: Chapter 25, Part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by Billings Area Director before the close of business of February 10, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, by the Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual Chapter 3, Part 230 (3.1 & 3.2)).

Norris M. Cole,

Acting Billings Area Director.

[FR Doc. 89–261 Filed 1–5–89; 8:45 am]

BILLING CODE 4310–02–M

Final Notice of Operation and Maintenance Rates; Flathead Indian Irrigation Project, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment ratea for operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: This public notice will become effective January 6, 1989, and remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone FTS 429–6702; commercial (503) 231–6702.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1(e) of Part 171, Subchapter H, Chapter I, Title 25 of the Code of Federal Regulations, which provides for the area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Indian Irrigation Project for calendar year 1989 and subsequent years.

SUPPLEMENTARY INFORMATION: On October 5, 1988, the Bureau published notice of proposed operation and maintenance rates for 1989. 53 FR 39153. The notice provided opportunity to comment before a final rate is published. Instead of filing comments on the proposed rates the Flathead Joint Board of Control (JBC) filed a "notice of appeal" dated November 3, 1989, from the proposed rate under 25 CFR Part 2. By letter dated November 23, 1988, the Bureau notified the JBC that the arguments and objections set forth in the JBC's "appeal" would be considered as comments for the purpose of determining a final rate. No other comments were received.

The proposed operation and maintenance charges of 1988 were published in the Federal Register on June 11, 1987. As a result of comments from the Flathead Joint Board of Control objecting to the proposed rate of $14.07 per/acre, the rates were reviewed by a special review committee appointed by the Area Director. The rate of $13.60 recommended by the Review Committee was established by the Area Director on July 27, 1987, but never published as a final notice in the Federal Register. The $13.60 rate was appealed by the JBC to the Assistant Secretary for Indian Affairs. The matter has been referred to the Interior Board of Indian Appeals, and at the present time no decision has been rendered.

The JBC raised four issues in its comments on the proposed 1989 operation and maintenance assessment. These comments were considered in arriving at the final rate.

First, the JBC argued that the operation and maintenance rate should be set at $13.89. The Board stated that under Montana state law it is required to transmit a list of landowners in the irrigation districts, along with the assesment rate, to the County Treasurer no later than the third Monday in August. Because the BIA proposed assessment was not published until after that time, the Board set a recommended rate of $13.89 based on its assessment of the BIA draft budget proposals. Because of the delay in publishing the assessment proposal beyond the date at which the JBC filed the assessment with the County Treasurer, the BIA agrees to reduce the final rate to the JBC recommendation of $13.89 per acre. The project budget will be adjusted accordingly. However, the Bureau does not agree that the assessment should be expended in accordance with the budget priorities recommended by the JBC.

Second, the JBC objects to the proposed 1.5% per month penalty on unpaid bills. That provision has been deleted from the Final notice. Instead, the notice refers generally to the assessment provisions in federal regulations.

The JBC also commented that the BIA should be "encouraged" to publish notice of proposed assessments locally. The notice is published pursuant to the Department's regulations, 25 CFR 171.1(e). Annual budgets and proposed assessments are also reviewed with the JBC, which is organized under state law to represent the irrigation districts and the irrigators. Therefore, notice and opportunity to comment on the 1989 rate comply with applicable provisions of the regulations.

Finally, the JBC comments generally incorporate the comments made in its appeal of the 1988 rate. Those comments were considered in the revelw and determination of the 1988 rate, which is now on appeal before the Interior Board of Indian Appeals. No additional response or modification of the 1989 rate is warranted based on those comments.

Due to the extremely dry weather and a shortage of water in the Mission Valley Reservoirs, a special levy of $0.64 per acre for the Mission Valley was proposed by the project management and agreed to by the irrigators for extended operation of the Flathead River irrigation pumps during the 1968 irrigation season.

Flathead Indian Irrigation Project. Annual operation and maintenance assessments.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. Pursuant to 25 CFR 171.1(e), the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1989 and subsequent years until further notice, and hereby fixed as follows:

Basic Assessment. Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $13.89 per acre for the season of 1989 and subsequent years.

Additional Assessment. Due to drought conditions and water shortages, an additional $.64 per acre will be assessed against the Mission Valley Divisions (Mission, Post and Pablo) for pumping costs of operating the Flathead pumps to deliver the .7 acre/feet quota set for the 1988 season.

Payment. The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. The supplemental charges on the trust and non-District lands become due on April 1, 1989 along with the 1989 regular operation and maintenance bill. On lands within an Irrigation District, the supplemental charges will be billed immediately.

Interest and Penalty Fees. Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Period Covered. Assessment rates are set for the year 1989 and subsequent years until further notice.

Stanley Speaks,

Portland Area Director.

[FR Doc. 89-202 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-02-M

Proposed Operation and Maintenance Rates; Wapato Indian Irrigation Project, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Wapato Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments no later than February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, telephone FTS 429-6702; commercial (503) 231-6702.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1989 amount to approximately 6% on the Wapato-Satus Unit, and the Additional Works unit.

Wapato Irrigation Project—General

Administration. The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season. Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes. Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges. The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date shall be considered delinquent.

No delivery of water will be made without payment or without satisfactory arrangements being made with the Project Engineer. If arrangements are made for delivery of water prior to payment, there will be an interest charge.

Interest and Penalty Fees. Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1984 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report..... $15.00
(2) Requests for Verification of Account Delinquency Status, Per Report..... $10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill..... $10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill..... $10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report..... $10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee..... ($10.00).
(7) Review of subdivision plats..... $10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1989 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1989 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1989 and subsequent years until further notice as follows:

(1) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands..... $27.50
(2) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre..... $3.00
(3) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands..... $28.60

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Stanley Speaks,

Area Director.

[FR Doc. 89-203 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-040-09-4320-02]

Safford District Grazing Advisory Board Meeting; Arizona

AGENCY: Safford District, Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, February 3, 1989, 9:00 a.m..

ADDRESS: BLM Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Update on Bureau Vegetative Treatment EIS.
2. District Resource Management Plan (RMP) Update.
3. BLM management update.
4. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:000 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 p.m., Thursday, February 2, 1989.

Summary minutes of the Board meeting will be maintained in the

District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: December 22, 1988.

Frank Rowley,

Acting District Manager.

[FR Doc. 89-206 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-33-M

[CA-065-09-3110-10-OTNA]

Realty Action; Exchange of Public and Private Lands in Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of public and private lands in Kern County, CA 23082.

SUMMARY: The following public lands in Kern County have been examined and determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Selected lands:

Mount Diablo Meridian, California

T. 32 S., R. 38 E.,
Section 12, all;
Section 14, all;
Section 22, all;
Section 24, all.

San Bernardino Meridian, California

T. 11 N., R. 10W.,
Section 8, S½;
Section 22, all.

In exchange for these lands, the United States will acquire private land within the designated Desert Tortoise Natural Area in Kern County from landowners of record. As exchange agreements are developed, separate Notices of Realty Action will be published, specifically describing the parcels to be exchanged and the parties involved.

SUPPLEMENTARY INFORMATION: The purpose of the exchanges is to acquire portions of the non-Federal lands within the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoises within its range. Continued declines may lead to state or Federal listing of the species as threatened or endangered. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchanges will be on an equal value basis. Full equalization of value will be achieved by acreage adjustments or by cash payments in amounts not to exceed 25 percent of the fair market value of the selected lands.

Lands transferred out of Federal ownership will be subject to the following reservations, terms and conditions:

1. A reservation of right-of-way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. Rights of way of record.
3. Public easements for ingress and egress.

FOR FURTHER INFORMATION CONTACT: Tom Gey, Ridgecrest Resource Area, (619) 375-7125. Information relating to these exchanges is available for review at Ridgecrest, California 93555.

DATES: For a period of 45 days from the date of the first publication of this notice interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 29, 1988.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-204 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 20, 1989.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

Unfinished Business
Superintendent's Report
Bicycle Plan Comments
Status of South Hollow Wellfield
Off-road Vehicle Regulations

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Steven H. Lewis,

Deputy Regional Director.

Date: December 28, 1988.

[FR Doc. 89-222 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Upper Delaware Citizens Advisory Council

AGENCY: National Park Service, Interior.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: January 27, 1989, 7:00 p.m.[1]

Inclement Weather Reschedule Date: February 10, 1988.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159; 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 97-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround Administrative business, including bylaws revision, Charter review, and membership.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated:

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-224 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-70-M

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project (1029-0035) Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR Part 779 Surface Mining Permit Applications—Minimum Requirements for Environmental Resources

OMB Number: 1029-0035

Abstract: Section 507 and 508 of Pub. L. 95-87 require applicants for surface coal mining permits to provide adequate descriptions of the premining environmental resources and cultural, historic, and archeological values existing within the proposed permit area and adjacent areas. This information is used by the regulatory authority to determine whether the applicant can comply with the environmental protection performance standards for surface mining

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Coal Mine Operators

Annual Responses: 2,000

Annual Bureau Hours: 1,230,420

Estimated Completion Time: 615 hours

Bureau clearance officer: Nancy Ann Baka (202) 343—5981.

Date: December 8, 1988.

Jim Fulton,

Chief Division of Regulatory Development.

[FR Doc. 89-263 Filed 1-5-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[TA-131(b)-13, TA-503(a)-17, and 332-266]

Probable Economic Effect of Providing Duty-Free Treatment for Watches Under the Generalized System of Preferences

AGENCY: International Trade Commission.

ACTION: Amendment to hearing notice and investigation schedule.

SUMMARY: The following changes have been made to the schedule for Inv. Nos. TA-131(b)-13, TA-503(a)-17, and 332-266:

Activity	New scheduled date
Pre-hearing briefs due to the Commission.	Jan. 17, 1989 (COB).
Hearing	Jan. 23, 1989.
Posthearing briefs due to the Commission.	Jan. 30, 1989 (COB).

The original notice of investigation and hearing schedule was published in the **Federal Register** on November 16, 1988 (53 FR 46126). All other schedule dates listed in the original notice remain the same.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Linkins, (202-252-1499), Office of Industries.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.
Issued: December 30, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-193 Filed 1-5-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-426-428 (Preliminary)]

Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations No. 731-TA-426-428 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Korea, and Taiwan of small business telephone systems and subassemblies thereof,[1] provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.90.10, 8517.90.15, 8517.81.00, 8517.90.30, and 8517.90.40 of the Harmonized Tariff Schedule of the United States (items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 13, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 28, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter

[1] For the purposes of these investigations, the term "small business telephone systems and subassemblies thereof" means telephone systems with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, units of such systems, and subassemblies for use principally in such units, including control and switching equipment, circuit cards and modules, and proprietary corded telephone sets and consoles, whether complete or incomplete, assembled or unassembled.

can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on December 28, 1988, by American Telephone & Telegraph Company, Parsippany, NJ, and Comdial Corporation, Charlottesville, VA.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended by 51 FR (Aug. 1988)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on January 18, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202–252–1192) not later than January 13, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before January 23, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than January 26, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.
Issued: December 30, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 89–194 Filed 1–5–89; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent to Perform-Interstate Transportation For Certain Nonmembers, Agway, Inc. et al.

January 3, 1989.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Agway, Inc., 333 Butternut Drive, DeWitt, NY 13214.
(2)
(3) 333 Butternut Drive, DeWitt, NY 13214.
(4) Vincent M. Spadaro, Box 4853, Syracuse, NY 13221.

B. (1) Dairymen, Inc., 10140 Linn Station Road, Louisville, KY 40223.
(2)
(3) Motor Transportation Records Locations: Dairymen, Inc.—Georgia Division, Recreation Road, Box 910, Eatonton, GA 31024; Dairymen, Inc.—Gulf Division, PO Box 667, Route 7, Enon Highway, Franklin, LA 70438; Dairymen, Inc.—Kyana Divison, PO Box 18610, 3942 Buechel Bank Road, Louisville, KY 40218; Dairymen, Inc.—Southeast Division, 283 Bonham Road, PO Box 1359, Bristol, VA 24203.
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223.

C. (1) Tennessee Farmers Cooperative.
(2)P.O. Box 3003, LaVergne, TN 37086.
(3) P.O. Box 3003, LaVergne, TN 37086.
(4) Mr. Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086.

Noreta R. McGee,
Secretary.

[FR Doc. 89–250 Filed 1–5–89; 8:45 am]
BILLING CODE 7035–01–M

[Section 5a Application No. 48 (Amendment No. 9)]

Eastern Central Motor Carriers Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Eastern Central Motor Carriers Association, Inc. (ECMCA) has filed a minor amendment to its ratemaking agreement approved under 49 U.S.C. 10706(b). The Commission has issued a decision proposing to approve the amendment. The amendment would add a new section 5 to Article X ("Publication of Tariffs") of its bylaws to permit ECMCA to enter into joint agency agreements with similar organizations or with motor common carriers of property, including joint tariff publishing arrangements with other publishing agents or common carriers of property.

Copies of ECMCA's approved agreement and the amendment are available for public inspection and copying at the Public Docket Room (Room 1227) of the Commission in Washington, DC, and from ECMCA's representatives: Joseph E. Durbin, P.O. Box 4540, Akron, OH 44310, and John W. McFadden, Jr., Suite 1001, 1600 Wilson Boulevard, Arlington, VA 22209.

DATES: Comments from interested persons are due February 6, 1989. Replies are due 15 days thereafter. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 48 should be sent to: Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission must also be served on applicant's representatives.

FOR FURTHER INFORMATION CONTACT: Jane Udovic (202) 275–7982 or Richard Felder (202) 275–7271 (TDD for hearing impaired: (202) 275–1729.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359 [Assistance for the impaired is available through TDD services (202) 275–1721.]

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553. Decided: December 28, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89–249 Filed 1–5–89; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 262X)]

CSX Transportation, Inc.; Abandonment Exemption at Park, in Polk County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 2.46 miles of rail line in Polk County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 5, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27.( )(2) must be filed by January 17, 1989, petitions to stay must be filed by January 23, 1989, and petitions for reconsideration must be filed by January 31, 1989. Requests for a public use condition must be filed by January 17, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 262X) to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired, (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: December 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89–248 Filed 1–5–89; 8:45 am]
BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation For Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1989

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This announcement (1) gives notice of a future Solicitation for Grant Application (SGA) to be issued on or about February 3, 1989 for Job Training Partnership Act Title IV, Part C (JTPA IVC) funds and, (2) describes changes in the requirements of this SGA for Program Year 1989 (PY 1989), including a discussion of the role State Employment Security Agencies will play in the program.

DATE: An application package and instructions for completion will be available for issuance on or about February 3, 1989. The closing date for receipt of a completed application in response to the SGA to be issued will be no earlier than April 14, 1989.

ADDRESS: When available during the first week of February, a copy of the application package and instructions will be mailed to all State entities which presently administer JTPA Title IVC grants. Other parties may obain a copy of the SGA by written request only, including two self-addressed mailing labels from: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Melvin Goldberg.

FOR FURTHER INFORMATION CONTACT: James Rude, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Avenue, NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor announces new provisions to be included in an SGA for JTPA Title IVC funding for PY 1989.

Publication of the SGA For JTPA Title IVC

The SGA for PY 1989, to be published during or before the first week of February 1989, will provide new and significant changes in the programmatic design of Title IVC. This announcement serves to provide applicants with a description of the new features so that they have adequate opportunity to consider and plan effective program designs by the submittal deadline.

Emphasis To Be Placed On The Hardest-To-Employ Target Groups

During Program Year 1989, JTPA Title IVC will place an emphasis on providing employment and training services to special disabled, Vietnam theater and minority veterans. Among veterans, these groups have both the highest incidence of unemployment and experience long periods of unemployment between jobs.

Role of the Disabled Veterans Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) Program

Staff as a result of new legislation established in Public Laws 100-323 and 100-689, greater coordination is now required between State Employment Security Agency staff and Title IVC programs. The duties of DVOP staff have been revised accordingly to require that followup activities and case management services be provided to veterans who participate in Federally-funded programs. Furthermore, because Title IVC monies are relatively small vis-a-vis other JTPC funds, it is necessary to maximize the use of these modest resources and not duplicate other veteran employment and training services such as those provided by DVOP and LVER personnel. DVOP and LVER functions will be linked to all IVC programs in PY 1989. A copy of a memorandum of understanding (MOU) between the applicant and the State Employment Security Agency (SESA) must accompany all applications for funding except in cases where the SESA will administer the program. The MOU must provide that DVOP specialists and LVERs will be responsible for the intake and placement activities and also provide case management and followup services to JTPA IVC participants after they have become employed. In cases where the SESA will administer the program, DVOPs and LVERs will be required to perform the services outlined above for JTPA IVC applicants.

Emphasis On Training Activities

Veterans can only be enrolled in JTPA Title IVC programs after they have been assessed by a DVOP or LVER and have been determined to be "not job ready." "Not job ready" means that the veteran applicants are encumbered with barriers which prevent their access to the kind of employment they may require in order to become economically self-sufficient. Before enrolling a veteran in a Title IVC activity, it must be determined that there are no other available JTPA activities which may be better suited to serve the applicant. For example, if the veteran is recently dislocated from the work force, the staff and resources of a JTPA Title III activity may be more appropriate to meet the veteran's immediate needs.

Program designs which promote classroom and on-the-job training are encouraged. Although the costs incurred to train and place participants are higher, classroom training has traditionally provided unemployed veterans with the highest average placement wages. Stand alone job search assistance activities provide, on average, the lowest average starting wages and retention rates and, therefore, are not encouraged. Direct placement activities will be funded only in exceptional instances where a DVOP specialist or a LVER is not available to provide such assistance. Assessment of the veteran's barriers as well as his/her vocational interests and abilities is encouraged. Prior to prescribing specific training, program providers should undertake adequate assessment to ensure that the participant has the ability to successfully complete training and that the vocational training being provided:

- Is appropriate to the veteran's vocational interests and/or work history;
- Pays, on average, a wage which is adequate to meet the veteran's acknowledged economic needs; and
- Is an occupation in demand in the local labor market.

Programmatic Goals

Each grant application must target services to special disabled, Vietnam theater, and minority veterans to the extent that at least 75 percent of the participants served will be in one or more of these three categories. It is anticipated that the cost per participant and cost per placement averages will be higher in order to provide the interventions required to successfully serve these veterans. In training the hard-to-place or "not job ready" veteran, quality service and outcome, and not large numbers, will be emphasized.

Match

As in previous program years, applicants are required to augment the amount of requested Title IVC funds with a 100 percent match from other resources. It has been found the exemplary IVC programs commonly provide "hard", or real dollar, matches in their programs. This type of match will be strongly encouraged.

Administrative Issues

Efforts are being made to simplify application procedures over those of previous years. Length of application and budget information are two areas under review for possible simplification.

Presently JTPA IVC grants are awarded on a staggered schedule with only a few starting at the beginning of the normal Program Year cycle, i.e., July 1. So that program providers can better coordinate with the activities of their local Private Industry Councils and with vocational education services which traditionally begin classes in September, consideration will be given to negotiating different start dates from those that are currently in place.

Signed at Washington, DC, this 23rd day of December 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-258 Filed 1-5-89; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions superseded and their date of notice in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decision being superseded.

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GA88-26 (GA89-26)	Jan. 6, 1989
GA88-27 (GA89-27)	Jan. 6, 1989
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South Dakota:	
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TX88–40 (TX89–40)	Jan. 6, 1989
TX88–41 (TX89–41)	Jan. 6, 1989
TX88–42 (TX89–42)	Jan. 6, 1989
TX88–43 (TX89–43)	Jan. 6, 1989
TX88–44 (TX89–44)	Jan. 6, 1989
TX88–45 (TX89–45)	Jan. 6, 1989
TX88–46 (TX89–46)	Jan. 6, 1989
TX88–47 (TX89–47)	Jan. 6, 1989
TX88–48 (TX89–48)	Jan. 6, 1989
TX88–49 (TX89–49)	Jan. 6, 1989
Utah:	
UT88–1 (UT89–1)	Jan. 6, 1989
UT88–2 (UT89–2)	Jan. 6, 1989
UT88–3 (UT89–3)	Jan. 6, 1989
Vermont:	
VT88–1 (VT89–1)	Jan. 6, 1989
VT88–2 (VT89–2)	Jan. 6, 1989
Virginia:	
VA88–1 (VA89–1)	Jan. 6, 1989
VA88–2 (VA89–2)	Jan. 6, 1989
VA88–3 (VA89–3)	Jan. 6, 1989
VA88–4 (VA89–4)	Jan. 6, 1989
VA88–5 (VA89–5)	Jan. 6, 1989
VA88–6 (VA89–6)	Jan. 6, 1989
VA88–7 (VA89–7)	Jan. 6, 1989
VA88–8 (VA89–8)	Jan. 6, 1989
VA88–9 (VA89–9)	Jan. 6, 1989
VA88–10 (VA89–10)	Jan. 6, 1989
VA88–11 (VA89–11)	Jan. 6, 1989
VA88–12 (VA89–12)	Jan. 6, 1989
VA88–13 (VA89–13)	Jan. 6, 1989
VA88–14 (VA89–14)	Jan. 6, 1989
VA88–15 (VA89–15)	Jan. 6, 1989
VA88–16 (VA89–16)	Jan. 6, 1989
VA88–17 (VA89–17)	Jan. 6, 1989
VA88–18 (VA89–18)	Jan. 6, 1989
VA88–19 (VA89–19)	Jan. 6, 1989
VA88–20 (VA89–20)	Jan. 6, 1989
VA88–21 (VA89–21)	Jan. 6, 1989
VA88–22 (VA89–22)	Jan. 6, 1989
VA88–23 (VA89–23)	Jan. 6, 1989
VA88–24 (VA89–24)	Jan. 6, 1989
Virgin Islands:	
VI88–1 (VI89–1)	Jan. 6, 1989
VI88–2 (VI89–2)	Jan. 6, 1989
Washington:	
WA88–1 (WA89–1)	Jan. 6, 1989
WA88–2 (WA89–2)	Jan. 6, 1989
WA88–3 (WA89–3)	Jan. 6, 1989
WA88–4 (WA89–4)	Jan. 6, 1989
WA88–5 (WA89–5)	Jan. 6, 1989
WA88–6 (WA89–6)	Jan. 6, 1989
WA88–7 (WA89–7)	Jan. 6, 1989
WA88–8 (WA89–8)	Jan. 6, 1989
WA88–9 (WA89–9)	Jan. 6, 1989
West Virginia:	
WV88–1 (WV89–1)	Jan. 6, 1989
WV88–2 (WV89–2)	Jan. 6, 1989
WV88–3 (WV89–3)	Jan. 6, 1989
Wisconsin:	
WI88–1 (WI89–1)	Jan. 6, 1989
WI88–2 (WI89–2)	Jan. 6, 1989
WI88–3 (WI89–3)	Jan. 6, 1989
WI88–4 (WI89–4)	Jan. 6, 1989
WI88–5 (WI89–5)	Jan. 6, 1989
WI88–6 (WI89–6)	Jan. 6, 1989
WI88–7 (WI89–7)	Jan. 6, 1989
WI88–8 (WI89–8)	Jan. 6, 1989
WI88–9 (WI89–9)	Jan. 6, 1989
WI88–10 (WI89–10)	Jan. 6, 1989
WI88–11 (WI89–11)	Jan. 6, 1989
WI88–12 (WI89–12)	Jan. 6, 1989
WI88–13 (WI89–13)	Jan. 6, 1989
WI88–14 (WI89–14)	Jan. 6, 1989
WI88–15 (WI89–15)	Jan. 6, 1989
WI88–16 (WI89–16)	Jan. 6, 1989
Wyoming:	
WY88–1 (WY89–1)	Jan. 6, 1989
WY88–2 (WY89–2)	Jan. 6, 1989

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 3rd day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89–274 Filed 1–5–89; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Trade Adjustment Assistance for Workers; Supplemental Operation Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program; Correction

Change 1 to GAL 7–88 and Change 1 to TEIN 6–88 were published in the **Federal Register** on December 21, 1988, at 53 FR 51522. The dates on both Changes were omitted in the publication, and that omission is corrected with this notice. The date for both Changes 1 is December 9, 1988.

Dated: December 30, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89–257 Filed 1–5–89; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ECONOMIC COMMISSION

Meeting

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission ("the Commission") will hold meetings on January 17, 18, 19, 31, and February 1 and 2, 1989. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987.

DATE, TIME AND PLACE: January 17, 1989: 9:00 a.m.—2:30 p.m.; January 18, 1989: 9:00 a.m.—5:30 p.m.; January 19, 1989: 9:00–4:00 p.m.; January 31, 1989: 11:00 a.m.–5:30 p.m.; February 1, 1989: 9:00 a.m.–5:30 p.m.; and February 2, 1989: 9:00 a.m. to 4:30 p.m. All meetings will be held in Room 562, Dirksen Senate Office Building, Washington, DC.

Agenda: The agenda for these meetings will be announced as soon as practicable before the meetings.

Closed Meeting: These meetings will be closed in order to avoid disclosure of information the premature disclosure of which would be likely to significantly frustrate the implementation of the Commission's mandate within section 552b(c)(9), United States Code.

FOR ADDITIONAL INFORMATION: Contact Jim Hildreth at 703/425–8986, National Economic Commission, 734 Jackson Place NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89–338 Filed 1–5–89; 8:45 am]

BILLING CODE 6820–45–M

NATIONAL SCIENCE FOUNDATION

DOE NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: January 27–28, 1989.

Place: National Science Foundation, Room 540, 1800 "G" St., NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357–7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

Friday, Jan 2

9:00–12:30

—NSF Budgets and Programs
—DOE Budgets and Programs
—NSF and DOE Responses to NSAC Theory Report
—Report on HEPAP Planning Meeting
—Report on KAON Subcommittee

2:00–6:00 p.m.

—Report from Instrumentation Subcommittee
—New Long Range Planning Preparations

Saturday, Jan 28

8:30–3:30

—Discussion of Long Range Planning
—Presentation and Discussion of Major Instrumentation Proposals
—Women and Minorities in Nuclear Science
—Other Business

3:30

—Adjourn

M. Rebecca Winkler,

Committee Management Officer.

January 3, 1989.

[FR Doc. 89–198 Filed 1–5–89; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunites in Science and Engineering; Meeting

Name: Committee on Equal Opportunities in Science and Engineering.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dates: January 25, 26, 27, 1989.

Times/Rooms:

January 25: Subcommittee on Women 9:00 a.m.–12:00 p.m., Room 540

January 22: Full Committee Meeting 1:30 p.m.–420 p.m., Room 540

January 26: Full Committee Meeting 9:00 a.m.–12:00 p.m., Room 540

January 26: Subcommitte on the Disabled 1:30 p.m.–4:30 p.m., Room 540

January 27: Subcommittee on Minorities 9:00 a.m.–12:00 p.m., Room 540

Type of Meeting: Open.

Contact: Mary M. Kohlerman. Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone Number: 202–357–7066.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, profesisonal and technical fields.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Agenda:: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the director and other NSF staff.

January 3, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–199 Filed 1–5–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 12–14, 1989, in Room P–114, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on December 1, 1988.

Thursday, January 12, 1989

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:45 a.m.: Standard Design Certification and combined Licenses for Nuclear Power Plants (Open)—Review and report on proposed 10 CFR Part 52 regarding Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants.

11:00 a.m.–12:00 Noon: NRC Quantitative Safety Goals (Open)—Discuss Proposed ACRS report to NRC regarding the proposed implementation plan for the NRC Quantitative Safety Goals.

1:00 p.m.–2:00 p.m.: Meeting with NRC Commissioner James R. Curtiss (Open)—Discuss matters of interest regarding NRC/ACRS activities.

2:15 p.m.–4:15 p.m.: Generic Issue 43, Air Systems Reliability (Open)—Review and report on proposed resolution of Generic Issue 43, Air Systems Reliability.

4:15 p.m.–5:15 p.m.: Preparation of ACRS report to NRC (Open)—Discuss proposed ACRS report to NRC regarding proposed NRC Code Scaling Application and Uncertainty Evaluation Methodology for application to ECCS evaluation.

5:15 p.m.–5:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

5:45 p.m.–6:00 p.m.: Nuclear Safety Research Program (Open)—Discuss scope and nature of ACRS annual report

to Congress on the NRC Research Program.

6:00 p.m.–6:30 p.m.: Appointment of ACRS Members (Open/Closed)—Discuss qualifications of candidates proposed for consideration as ACRS members and areas of expertise needed to conduct Committee business.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, January 13, 1989

8:30 a.m.–9:30 a.m.: Fitness for Duty (Open)—Briefing by NRC staff regarding status of proposed fitness for duty rule.

9:30 a.m.–12:00 Noon: Containment Systems (Open)—Review and comment regarding proposed BWR Mark I containment performance and improvements.

1:00 p.m.–2:00 p.m.: Accident Management (Open)—Briefing by NRC staff regarding proposed generic letter on accident management.

2:00 p.m.–3:00 p.m.: NRC Quantitative Safety Goals (Open)—Discuss proposed ACRS report to NRC regarding the NRC staff proposed implementation plan for the NRC quantitative safety goals.

3:15 p.m.–6:00 p.m.: Preparation of ACRS Reports to NRC (Open)—Discuss proposed reports to NRC regarding the preapplication review and approval for the Sodium Advanced Fast Reactor, Standard Design Certification and Combined Licenses for Nuclear Power Plants, and Emergency Core Cooling Systems CSAU methodolgy.

Saturday, January 14, 1989

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to NRC (Open)—Discuss proposed reports to NRC regarding items considered during this meeting.

1:00 p.m.–2:30 p.m.: ACRS Subcommittee Activities (Open/Closed)—Hear and discuss status of assigned ACRS subcommittees regarding safety-related issues, including nuclear power plant valve testing and reliability, safeguards and security at nuclear power plants, and regional programs (Region IV).

Portions of this session will be closed as required to discuss physical security information applicable to the matters being considered and information provided in confidence by a foreign source.

2:30 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), to discuss physical security information applicable to the matters being considered (5 U.S.C. 552b(c)(3)) and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allowed can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Date: December 30, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–240 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Final Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Final Decision concerning a request filed pursuant to 10 CFR 2.206 by Massachusetts Governor Michael S. Dukakis and Attorney General James M. Shannon that requested that the Director of the Office of Nuclear Reactor Regulation (NRR) institute a proceeding to modify, suspend, or revoke the operating license held by Boston Edison Company (BECo, the licensee) for its Pilgrim Nuclear Power Station (Pilgrim).

On May 27, 1988, the Director of the Office of Nuclear Reactor Regulation issued an "Interim Director's Decision under 10 CFR 2.206" concluding that a portion of the request concerning the need for a probabilistic risk assessment was denied. In that decision, the Director stated the portion of the Petition covering management and emergency preparedness would be addressed in a subsequent response.

The second response on October 6, 1988, culminated in a "Second Interim Decision under 10 CFR 2.206" concerning numerous deficiencies in licensee management, and for reasons explained in the Decision, that portion of the Petition was denied.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with respect to the remaining issue, deficiencies in emergency preparedness, should be denied. The reasons for this Decision are explained in the "Final Director's Decision Under 10 CFR 2.206, DD–88–21," which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 20360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 29th day of December 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 89–239 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

[NUREG–0800]

Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability

The U.S. Nuclear Regulatory Commission (NRC) has published Revision 2 to SRP Section 5.2.2, "Overpressure Protection" and Revision 1 to Branch Technical Position RSB 5–2, "Overpressure Protection of Pressurized Water Reactors While Operating At Low Temperatures," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP).

Revision 2 to SRP Section 5.2.2 and Revision 1 to its associated Branch Technical Position RSB 5–2 incorporate a definition of the phrase "at low temperatures" that is used in the requirement for a low temperature overpressure protection (LTOP) system. The phrase is defined by adding a new Branch Position B.2, which specifies the enable temperature below which the LTOP system must be operable. Fracture considerations are the basis for establishing the enable temperature. This revision provides relief for those plants whose licensees are interpreting the phrase "at low temperatures" in an overconservative way. They protect the pressure-temperature (P-T) limits over the entire temperature range from startup to the temperature corresponding to the safety valve setpoint pressure (about 2400 psig). When this is done with a fixed LTOP setpoint, the operating window between the LTOP setpoint pressure and saturation pressure at the LTOP enable temperature becomes narrow, and heatup and cooldown become painstakingly slow.

Constraint on operating flexibility will be worse when licensees implement Regulatory Guide 1.99, Revision 2, as the basis for calculating the effects of radiation embrittlement on P-T limits, because the effects are greater than predicted by Revision 1 to R.G. 1.99. This situation was recognized when the Regulatory Analysis for Revision 2 was prepared, and the proposed revision of SRP 5.2.2 and Branch Technical Position RSB 5–2 was included in the CRGR package to provide relief to the extent possible consistent with fracture-prevention requirements.

The revised SRP sections are effective immediately. A copy is expected to be available in the Public Document Room within two weeks. Copies of the revised SRP Sections or of the complete Standard Review Plan, NUREG–0800, Accession No. PD–81–920199, are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487–4650.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Chief Inspection and Licensing Program Branch, Program Management, Policy Development and Analysis Staff, Office of Reactor Regulation.

[FR Doc. 89–238 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL–1 & 50–444–OL–1]

Onsite Emergency Planning and Safety Issues; Public Service Co. of New Hampshire, et al., (Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for the onsite emergency planning and safety issues phase of this operating license proceeding. As reconstituted, the Appeal Board will consist of the following members:

Alan S. Rosenthal, Chairman
Thomas S. Moore
Howard A. Wilber

Barbara A. Tompkins,

Secretary to the Appeal Board.

Dated: December 30, 1988.

[FR Doc. 89–241 Filed 1–5–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-Canada Free-Trade Agreement; Confirmation of Date of Entry into Force

AGENCY: Office of the United States Trade Representative.

ACTION: Confirmation of date of entry into force of the United States-Canada Free-Trade Agreement.

The United States-Canada Free-Trade Agreement ("the Agreement"), which was approved and implemented in the Pub. L. 100–449, the "United States—Canada Free-Trade Implementation Act," 102 Stat. 1851 ("the Act"), entered into force on January 1, 1989.

SUPPLEMENTARY INFORMATION: Over the past several weeks, a number of federal agencies have published notices in the **Federal Register** of regulations implementing the Agreement and the Act. The **Federal Register** notices stated that the regulations would take effect upon the date of entry into force of the Agreement and that the United States Trade Representative would provide confirmation in the **Federal Register** of that date.

FOR FURTHER INFORMATION CONTACT: Charles E. Roh, Associate General Counsel, or Kenneth P. Freiberg, Associate General Counsel, Office of the General Counsel, at (202) 395–3432.

Judith H. Bellow,

General Counsel.

[FR Doc. 89–294 Filed 1–5–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 30, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46040

Date Filed: December 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 24, 1989.

Description: Application of American Pacific Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket No.: 46047

Date Filed: December 30, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 27, 1989.

Description: Application of JayHawk Air, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests authority to

engage in interstate and overseas scheduled air transportation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-270 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[RS&I-Ap-No. 1051]

Long Island Rail Road; Public Hearing

The Long Island Rail Road has petitioned the Federal Railroad Administration (FRA) for relief from certain requirements of § 236.587 of the Rules, Standards and Instructions (RS&I) (49 CFR 236.587). This proceeding is identified as FRA's RS&I Application Number 1051.

In this proceeding, the LIRR is seeking a temporary exemption at certain locations from the requirement of § 236.587(b) that prescribes that if the locomotive cab signal devices are cut out between the initial terminal and equipped territory, a departure test shall be made prior to entering equipped territory, a temporary exemption at certain locations from the requirement of § 236.587(d)(1) that prescribes that whoever performs the departure test shall certify in writing that such test was properly performed; and a temporary exemption from the requirement of § 236.587 to the extent that where test equipment fails, a departure test not be required.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on February 14, 1989, in Room 305-C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA's Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 27, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-226 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket No. LI-88-5]

Long Island Rail Road; Public Hearing

The Long Island Rail Road (LIRR) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with certain requirements of § 229.9(d) of the Railroad Locomotive Safety Standards (49 CFR Part 229) for its fleet of M-1 and M-3 self-propelled transit cars defined as MU locomotives in the standards. This proceeding is identified as FRA's Waiver Petition Docket No. LI-88-5.

In this proceeding, the LIRR is seeking a permanent waiver of compliance with § 229.9(d), which requires that, "A dead locomotive may not continue in use following a calendar day inspection as a controlling locomotive or at the head of a train or locomotive consist." The LIRR requests that it be permitted to operate dead locomotives as controlling locomotives or at the head of a train or locomotive consist, provided they meet the following conditions:

1. Number of dead cars (MU locomotives) in an MU train shall be limited to:

a. 3 dead cars for 12- and 10-car trains.

b. 2 dead cars for 8-car trains.

c. 1 dead car for 6- and 4-car trains.

d. No dead cars for 2-car trains.

2. Cars operated dead will have all tread brake units operative.

3. Cars operated dead will not continue in service beyond the next periodic inspection.

4. Cars operated dead will be operated in compliance with the following conditions:

a. All systems and components on an MU locomotive shall be free of conditions that endanger the safety of the passengers, crew, locomotive or train.

b. A motor or a generator on an MU locomotive may not have any of the following conditions:

i. Be shorted or grounded unless completely isolated from the power supply

ii. Throw solder excessively

iii. Show evidence of coming apart

iv. Have an overheated support bearing.

The LIRR believes that operation of a limited number of dead MU locomotives in an MU train is safe, including the lead car, for the following stated reasons:

1. The trainline control functions which command the train from the controlling locomotive are independent of the traction system. These safety-related trainline functions are confirmed as operational through various tests and inspections.

2. No electrical stress is imposed on a car with the traction system inoperative because it is automatically electrically disconnected.

3. No additional stress is placed on the cars with traction systems operating as the current delivered to the traction system is limited independently on each car, which results only in a reduced rate of acceleration.

4. Analysis shows that under worst-case operating conditions, 70 percent of the cars in a train with operating traction systems will assure that the train can be moved up a grade without stalling. Stalling on a grade could cause abnormal electrical stress on the traction system.

5. Wheel slide control is operative even when the traction system is inoperative.

6. The M-1 and M-3 cars are designed to utilize blended friction and dynamic braking (traction motors switched to operate as generators) in stopping. However, the friction brake system is designed to provide approximately equal braking to that provided by the blended dynamic brake and friction brake. The test data shows that friction brake alone provides stopping distances within specification requirements.

The FRA finds that the LIRR's request for a waiver from § 229.9(d) must also be considered in relationship to other regulations in Part 229; for instance, § 229.9(b) allows a locomotive that develops a non-complying condition en route to continue in service only until either (i) it arrives at the next forward point at which necessary repairs can be made to bring it into compliance, or (ii) the next calendar day inspection. Further, § 229.21(b) (Daily Inspection) requires that any condition that fails to meet any requirement of Part 229 shall be repaired before the locomotive is used.

After examining the carrier's proposals, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly, a public hearing is hearby set for 10 a.m. on February 15, 1989, in Room 305-C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The issuance of this notice of a public hearing in no way alleviates the LIRR from compliance of the requirements of the Railroad Locomotive Safety Standards as they apply to its M-1 and M-3 MU locomotives.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been considered, those persons wishing to make a brief rebuttal statement will be given an opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Interested persons are also invited to participate in this proceeding by submitting written views and comments. Communications concerning this proceeding should refer to FRA Waiver Petition Docket No. LI-88-5 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received on or before February 15, 1989, will be considered by the FRA before final action is taken. All comments received will be available for examination both before and after the closing date for comments, during regular working hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC

Issued in Washington, DC on December 22, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-227 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket No. LI-88-6]

Port Authority Trans-Hudson Corp.; Public Hearing

The Port Authority Trans-Hudson Corporation (PATH) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with certain requirements of § 229.141(a) of the Railroad Locomotive Safety Standards (49 CFR Part 229). This proceeding is identified as FRA Waiver Petition Docket No. LI-88-6.

In this proceeding, PATH, is seeking a permanent waiver of compliance with § 229.141(a), which requires that MU locomotives in trains having a total empty weight of more than 600,000 pounds shall resist a minimum static end load of 800,000 pounds without developing any permanent deformation in any member of the body structure.

The entire fleet of more than 300 MU locomotives owned and operated by PATH are all built to conform to the requirements of § 229.141(b), which requires that MU locomotives in trains having a total empty weight of less than 600,000 pounds shall resist a minimum static end load of 400,000 pounds without developing any permanent deformation in any member of the body structure.

At the present time, PATH is operating trains of seven and eight MU locomotives which have a total empty weight of less than 600,000 pounds, and the MU locomotives in those configurations are in compliance with § 229.141(b). However, PATH proposes to operate nine and ten MU locomotives in trains which will exceed a total empty weight of 600,000 pounds, and the MU locomotives in the proposed configurations will not meet FRA's requirements. It is for this reason that PATH has petitioned the FRA for a waiver of compliance with § 229.141(a).

After examining the carrier's proposals, documentation, and all other available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this petition.

Accordingly, a public hearing is hereby set for 10 a.m. on February 16, 1989, in 305-C, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been considered, those persons wishing to make a brief rebuttal statement will be given an opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on December 22, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-228 Filed 1-5-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 30, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0229.

Form Number: 6406.

Type of Review: Revision.

Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.

Description: This form is used by certain employee plans that request a determination letter on an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).

Respondents: Businesses or other for-profit, Small Businesses or organizations.

Estimated Number of Respondents: 70,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—18 hours 39 minutes

Learning about the law or the form—2 hours 40 minutes

Preparing the form—6 hours 49 minutes

Copying, assembling, and sending the form to IRS—1 hours 4 minutes

Estimated Total Recordkeeping/Reporting Burden: 2,044,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 89-195 Filed 1-5-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 30, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Opinion Survey of Taxpayers Contacted by the IRS Collection Function.
Description: Information gathering for operation and program evaluation: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS Collection Function, to identify possible areas of program improvement, and thereby improve the effectiveness of Collection activities.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,000.
Estimated Burden Hours Per Response: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 89–196 Filed 1–5–89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

DATE: December 30, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0197.
Form Number: 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description: IRS needs certain information on the financing and operating of employee benefit plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a) for the related trust as tax exempt.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—31 hours 34 minutes
Learning about the law or the form—3 hours 23 minutes
Preparing the form—6 hours 50 minutes
Copying, assembling, and sending the form to IRS—46 minutes
Estimated Total Recordkeeping/Reporting Burden: 9,315,990 hours
OMB Number: 1545–0260.
Form Number: 706–CE.
Type of Review: Revision.
Title: Certificate of Payment of Foreign Death Tax.
Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—46 minutes
Learning about the law or the form—4 minutes
Preparing the form—25 minutes
Copying, assembling, and sending the form to IRS—28 minutes.
Estimated Total Recordkeeping/Reporting Burden: 3,420 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.

[FR Doc. 89–197 Filed 1–5–89; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, January 12, 1989, at 2:30 p.m.
Thursday, January 26, 1989, at 2:30 p.m.
Thursday, February 9, 1989, at 2:30 p.m.
Thursday, February 23, 1989, at 2:30 p.m.
Thursday, March 9, 1989, at 2:30 p.m.
Thursday, March 23, 1989, at 2:30 p.m.

The meetings will be held in Room 300, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 28, 1988.
By Direction Of The Administrator.

Donald R. Smith,
Acting ADA/Public Affairs.

[FR Doc. 89–180 Filed 1–5–89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for January 6, 1989.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 6, 1989, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administriaton, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approval Items
2. Implementaton of the Agricultural Credit Act of 1987
   —Final Regulations on Receiverships
   —Final Regulations on Secondary Market
   —Final Regulations on Funding and Assistance Corporation Collateral Issues
   —Final Regulations on Borrower Rights, Effective Interest Rates
3. Proposed Regulations Concerning Prior Approvals and Human Resources Management
4. CEO Compensation Guidelines

Closed Session [1]

5. Institution Requests Concerning CEO Compensation
6. Salary Ranges for the Sixth District
7. Examination and Enforcement Matters
8. Farm Credit Administration Operations
9. Jackson FLB/FLBA, in Receivership

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (2), (4), (6), (8), and (9).

Dated: January 3, 1989.
David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 89–311 Filed 1–4–89; 12:24 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Tuesday, January 3, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the possible closing of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: January 4, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89–331 Filed 1–4–89; 12:24 pm]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 11, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) implementing the Home Equity Loan Consumer Protection Act to require additional disclosures for home equity lines of credit and to place limitations on home equity plans.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: January 4, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89–356 Filed 1–4–89; 3:51 pm]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 11 a.m., Wednesday, January 11, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 4, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89–357 Filed 1–4–89; 3:51 pm]
BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, January 12, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Charter for Mid-Bronx Community Development Federal Credit Union, Bronx, New York.

RECESS: 11:00 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 12, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. ADP USERS Guide. Closed pursuant to exemption (2).
3. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 89–373 Filed 1–4–89; 3:51 pm]
BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 54, No. 4
Friday, January 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-8211]

Guidelines for Fishery Management Plans

Correction

In the proposed rule document beginning on page 53031 in the issue of Friday, December 30, 1988, make the following correction:

On page 53036, in the third column, in the file line at the end of the document, "FR Doc. 88-30007" should read "FR Doc. 88-30007a".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke; Meeting

Correction

In notice document 88-28347 beginning on page 49794 in the issue of Friday, December 9, 1988, make the following correction:

On page 49794, in the third column, in the third line from the bottom, "Review B" should read "Review A".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Modifications in Speciality Steel Import Relief

Correction

In notice document 88-29943 beginning on page 52897 in the issue of Thursday, December 29, 1988, make the following corrections:

1. On page 52897, in the second column, in the seventh line, "the" should read "to".

2. On the same page, in the same column, in the 33rd line from the bottom, "or" should read "of".

3. On the same page, in the same column, in the fifth line from the bottom, "chromium" was misspelled.

4. On the same page, in the third column, in the paragraph designated "4(s)(xvi)", at the end of the last line, the period should be a semicolon.

5. On page 52898, in the second column, in the 11th line, "7220.20" should read "7222.20".

6. On the same page, in the third column, in the 14th line, "7220.10" should read "7222.10".

7. On page 52899, in the table, in the third column, the 15th entry, which now reads, "355,620" should read "202,304".

8. On the same page, below the table, in the third column, at the end of the first line, "7117.22.50" should read "7217.22.50".

BILLING CODE 1505-01-D

federal register

Friday
January 6, 1989

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

Deep Seabed Mining; Final Regulations for Commercial Recovery and Revision of Regulations for Exploration; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 970 and 971

[Docket No. 50712-9052]

Deep Seabed Mining; Final Regulations for Commercial Recovery and Revision of Regulations for Exploration

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: Pub. L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act) authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue, to eligible United States citizen applicants, licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits. These rules set forth the procedures and substantive requirements according to the terms of the Act pursuant to which U.S. citizens may apply for and NOAA will issue commercial recovery permits. Through the Act and these rules the United States exercises a freedom of the high seas under accepted principles of international law.

DATES: These rules will become effective February 6, 1989.

ADDRESSES: Inquiries and submissions should be mailed to:
Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: James P. Lawless, Chief, Ocean Minerals and Energy Division (202) 673-5121, or John W. Padan, Program Manager, Deep Seabed Mining (202) 673-5117, at the above address.

SUPPLEMENTARY INFORMATION: During 1980 and 1981, NOAA engaged in its first rulemaking to implement the Act and issued regulations on September 15, 1981, pertaining to exploration by U.S. citizens for deep seabed hard mineral resources (15 CFR Part 970).

NOAA now issues regulations to implement the Act with respect to commercial recovery. These regulations are intended to complete the next phase of implementation and thus provide a basis for major long-term planning and decisions by current and potential operators.

NOAA recognizes that developments such as changes in technology, the availability of new environmental data and results of monitoring, and the potential future national need for manganese, may necessitate future changes in the regulations adopted pursuant to this rulemaking. Consequently, the regulations are designed to encourage the development of technology necessary to recover deep seabed manganese nodules by providing a clear regime now, for corporate planning purposes, while allowing for changes in regulations, if needed, and deferring detailed decisions on permit-specific terms, conditions and restrictions (TCRs) until the time of permit issuance. This two stage process will facilitate planning, by enabling planners to know now the general levels of efforts that will be required, and their approximate costs, without precluding the opportunity for future research results and improvements in state of the art to be reflected in the TCRs. The regulations also recognize the need for flexibility in order to promote the development of deep seabed mining techniques and systems in a manner compatible with the requirements of the Act and regulations.

Structure of the Regulations

The regulations are structured to present procedures and requirements in the approximate chronological order in which they will be encountered in the application process. The regulations begin by setting out their underlying purpose and the basic legal premises established by the Act, as well as the definitions applicable to the rules. The steps that the applicant and NOAA will follow are set forth mostly in Subparts B through D while the more substantive discussion of major issues that arise during the course of issuing and operating under a permit are found primarily in Subparts E-G. Miscellaneous, procedural and enforcement provisions are in Subparts H-J.

Public Comment Opportunities

NOAA published an Advance Notice of Proposed Rulemaking (ANPR) on commercial recovery regulations on December 28, 1982, 47 FR 57903, soliciting early participation by interested parties in the rulemaking. After receiving comments from the public, NOAA held workshops in June 1983 for Federal officials interested in manganese retention and in July 1983 on coordination of Federal responsibilities affecting onshore activities. NOAA produced an issue paper and held a public workshop on marine environmental issues in September 1983 to gather further input and technical expertise to assist in the development of these regulations. Another discussion paper on other deep seabed mining issues, taking into account comments received in response to the ANPR, was also circulated for public comment during the same period.

In developing these regulations NOAA has made a continuing effort to provide for and encourage public participation.

On July 25, 1986, NOAA published in the Federal Register and distributed for public comment a Notice of Proposed Rulemaking (51 FR 26794). Copies of the proposed rules were mailed to a wide variety of interested groups and individuals on the NOAA deep seabed mining mailing list. Notices of public hearings held in conjunction with this rulemaking were also published in local newspapers serving the public in the regions where the hearings were located. Five public hearings were held relating to this rulemaking: one each on August 26 in Washington, DC and September 9 in San Francisco, and two in Honolulu and one in Hilo, Hawaii, on September 11. The original 90 day public comment period was extended an additional 30 days through November 24, 1986, in response to a request from several concerned parties. Comments on the proposed regulations were received from twenty-six sources, including industry, State representatives, environmental groups, other Federal agencies and interested citizens. Copies of the comments and transcripts of the public hearings are available for review at the above address.

Comments on several of the issues led NOAA to recognize that the best approach might be to propose regulations different than originally proposed. Accordingly, on September 14, 1987, NOAA published in the Federal Register and distributed for public comment a supplemental proposed rule (52 FR 34748). Again, copies of the supplement were mailed to a wide variety of interested groups and individuals on the NOAA deep seabed mining mailing list. In order to provide additional time for potential commenters, the original 45 day comment period was extended an additional 15 days to November 13, 1987.

The supplemental proposal consisted of three environmental issues and one issue involving the appropriate mechanism for handling antitrust information. First, several comments on the original proposal revealed a concern over what was perceived to be a dearth of environmental guidelines, particularly given the infancy of the industry and technology and a relative lack of knowledge of the deep sea environment. Accordingly, NOAA proposed to establish criteria to be considered for the determination of significant adverse environmental effects, patterning the approach after the Ocean Discharge Criteria of the Clean Water Act regulations (40 CFR Part 125, Subpart M). Second, in lieu of specifying what would be Best Available Technologies (BAT), NOAA proposed to require an applicant to demonstrate his use of BAT and to submit a mitigation plan for a potential need to deal with an environmental problem triggered by the discharge of mining wastes onto the ocean's surface. Third, the at-sea monitoring requirements were slightly refined to require the monitoring of benthic impact through the study of two types of areas: An Impact Reference Area; and an interim Preservational Reference Area.

The Antitrust issue involved the identification of the Department of Justice [DOJ] comments on the original issue of whether or not NOAA should require applicants to submit to NOAA information for subsequent review by DOJ and the Federal Trade Commission.

All four issues are discussed further, below.

Comments on the supplemental proposed rule were received from eighteen sources, including industry, State representatives, environmental groups, a trade organization, interested citizens, and other Federal agencies.

Summary of Comments and Responses

The comments submitted in response to the Notice of Proposed Rulemaking and supplemental proposed rule were useful in assisting NOAA in its consideration of the issues raised in implementing its responsibilities under the Act. A number of the comments provided improvements and refinements to the general approach proposed by NOAA, while others were the basis for clarification of specific provisions. The following summarizes the major comments and NOAA's responses.

General Comments

Timing.—The issue of NOAA's early promulgation of commercial regulations was the subject of many comments. Most commenters were in favor of the early establishment of a regulatory regime that contains sufficient flexibility to accommodate conditions and unforeseen problems that may occur when commercial mining actually begins. One specific comment stated that knowing the rules in advance is useful to industry for planning purposes in preparing to make the transition from the exploration phase to commercial recovery. One commenter that was against early promulgation felt that the regulations were premature and unnecessary at this time because of industry's diminished interest in mining brought about by the depressed metals market. Another felt that there may be changes in technology, mine sites, consortia composition, Law of the Sea structure and international interests which may affect the regulations in the future. NOAA feels that promulgation of the basic commercial regulations is the best course of action. This decision takes account of the comments received and recognizes the usefulness of early notice to operators of the information required for permit evaluation and issuance, so that they can continue with their orderly planning for the development of these resources. It also takes account of long-range national interests of the United States in access to deep seabed hard minerals. In deciding to issue these regulations now, NOAA recognizes that the regulations can be revised as future technological or other needs arise, and that the structure under the Act allows for addressing key issues in more detail as appropriate in TCRs at the time of issuing each permit.

Approach.—Five commenters, representing a wide spectrum of interest groups, were supportive of NOAA's approach to the implementation of the commercial recovery aspects of the Act. Three of the commenters went on to specify aspects of the NOAA approach they believed to be especially appropriate. One dealt with the manner in which Coastal Zone Management Act Federal consistency requirements were reflected in the proposed rules. A second commenter thought the proposed rules were derived from the Act, in a clear and specific manner. Finally, one commenter opined that the proposed rules generally meet the need for encouraging development (of the resource) consistent with the Act.

Subpart A—General

Definitions.—The two commenters who addressed the definitions supported NOAA's adding the definition of "significant adverse environmental effect," "irreparable harm" and "environment." One, however, suggested that "environment" should be expanded to include the coastal zone. While the present definition might conceivably include portions of the coastal zone (i.e., affected transportation corridors), NOAA believes that including the entire coastal zone is too broad. The Act as implemented through these regulations applies only to commercial recovery activities, and such a broad definition of "environment" would extend beyond the statutory definition of "commercial recovery." Although the National Environmental Policy Act (NEPA) requires NOAA to consider other effects in its EIS, NOAA's authority under the Act to regulate activities in the coastal zone is limited. Rather, regulatory authority there rests essentially with the States or with other Federal agencies such as EPA and the Corps of Engineers.

This commenter also pointed out that including the limiting term "discharge" in the definitions of "irreparable harm" and "significant adverse environmental effect" is too narrow. NOAA agrees. NOAA's approach was based on the conclusion that the environmental perturbations from commercial recovery activities would be consistent with "discharges" as covered by EPA's NPDES permits, although they may fall outside that term as defined by EPA and should not be so limited. The term "discharge" therefore has been dropped from NOAA's definitions.

Another commenter noted that the proposed definition of "significant adverse environmental effect" itself included the term "significant," and recommended that this term be defined in accordance with the NOAA Directives Manual for implementing NEPA. NOAA believes it is inappropriate in this case to use a definition from its NEPA procedures, since those are intended to provide a standard as to when the agency should prepare an EIS. The Act already includes the policy determination that an EIS should be prepared on the issuance of each permit. The term "significant" as used in the Act and the above definition is intended for a different standard, i.e., on whether to issue or require changes to a permit. The purpose for including a qualifying term was to clarify that the effect had to be important, but NOAA acknowledges the potential redundancy in using a term within its own definition. Therefore, the intent of the definition is now expressed by the word "important."

One commenter suggested that the clause "which is unreasonable in relation to the benefit derived from the discharge" be deleted from the third part of the definition of "significant adverse environmental effect," because she believed the level of impact should be determined before, not after, project benefits are weighed. NOAA is willing to delete the specified phrase. However, we believe that the third part of the

definition needs qualifying language to make it compatible with the overall definition, which is intended to address "significant" effects. The term "important" thus is used here as well.

Subpart B—Applications

Recognition of Previous Activities.—Several commenters submitted views relating to the need for an applicant to receive proper credit for previous activities in the context of an application for a commercial recovery permit. NOAA acknowledges this as a valid concept. NOAA had, in fact, previously realized that information originally submitted with an operator's exploration license application was likely also to relate to the Act's information requirements for a commercial recovery permit. NOAA noted this point in the proposed rules and so provided in proposed § 971.200(e). It also is clear that information submitted in a licensee's annual reports to NOAA would be relevant to subsequent permit application requirements.

These considerations mean that an operator under an exploration license, who applies for a commercial recovery permit, is likely to have to submit less new information than a transferee who is a new entity. Although, in accordance with the Act, each applicant must meet a single set of standards, in practical terms the prior operator will have more information and a "track record" on file with NOAA that could be relied upon for certain determinations required for issuing a commercial recovery permit. NOAA has further emphasized the above concept by expanding §§ 971.200 (c) and (e).

Statement of Financial Resources.—One commenter proposed that the regulations contain the added requirement that issuance of a permit is contingent upon the applicant actually obtaining the financial resources. NOAA has determined that this requirement would be inappropriate for this particular portion of the regulations. Rather, NOAA believes that the provisions on diligence after permit issuance adequately address the issue raised by this comment, i.e., that the operator proceed with his proposed activities.

A commenter also proposed that the regulations call for an applicant to demonstrate adequate financial resources to compensate injured parties or to cover the cost of clean up or restoration of natural resources. NOAA has concluded that its authority under the Act pertaining to an applicant's financial resources does not go so far as requiring resources for such compensation payments. However, should NOAA in the future determine that a reclamation TCR would be appropriate, then the financial implications of such a requirement could be included in NOAA's analysis of an applicant's financial capability.

A commenter also suggested that more detailed information be provided by the applicant, including a statement of financing feasibility from financing entities. On the other hand, several commenters indicated that, at the time of an application, an applicant cannot obtain a commitment of funds. They pointed out that the issue of financial resources can be addressed only in general terms prior to obtaining a commercial recovery permit, and at that stage an applicant could be expected only to demonstrate reasonable likelihood of access to funding. They proposed that any further detail or justification would be unreasonable at that time in their operations planning. NOAA agrees that available financial information likely would be more limited prior to issuance of a permit. NOAA also has concluded that more general information is sufficient to establish an applicant's financial responsibility, and generally had intended such an approach to this issue. Section 971.201(b) has been revised to clarify the nature of information which should be included in an application.

Statement of Technological Experience and Capabilities.—This subject is a prime example of where pre-existing information which NOAA has from a permit applicant's earlier application for an exploration license, or from his subsequent reports of exploration activities conducted under a license, may be referenced in the context of the commercial recovery permit application. This was the major thrust of several comments on proposed § 971.202, and NOAA agrees. NOAA has highlighted this approach by inserting a reference to the clarified § 971.200(e).

A commenter also proposed that, in view of first generation miners presenting plans for prototype technology, applicants should have freedom in the form by which their technical data and information are presented. NOAA believes this is appropriate, and the regulations were modified to enhance such flexibility.

One commenter suggested that the regulations require the testing of a mining system prior to applying for a commercial recovery permit; in the absence of such tests, the regulations and TCRs should specify the very preliminary, tentative nature of relevant determinations. Each of the existing licensees has in fact conducted at-sea testing of mining equipment, and testing may be conducted under an exploration license. Even considering this and the fact that NOAA is sympathetic with one comment that testing and monitoring should be encouraged, NOAA does not believe that such activities are absolutely necessary to demonstrate technological capability. At the time of NOAA's making final determinations on a permit application, however, TCRs would take account of any future information or verification requirements.

One commenter also suggested that the "best available technologies" requirement of the Act should be addressed in this section of the regulations. NOAA acknowledges this requirement in section 109(b) of the Act. It is addressed in §§ 971.423, 971.203(b)(3), 971.604 (a) and (c) and 971.602(f). Therefore, NOAA believes it is inappropriate to address the issue in § 971.202.

One commenter suggested that the regulations require training and certification, and expressed its particular interest in health and safety standards in this regard. NOAA has specifically addressed health and safety aspects elsewhere in the regulations—in §§ 971.205, 971.407 and 971.422, and in Subpart G—relying on Coast Guard vessel safety and inspection requirements. NOAA believes that this aspect is adequately addressed in those sections.

Commercial Recovery Plan.—Several commenters expressed concern that NOAA was requesting unrealistic detail in a commercial recovery plan, given the 20-year duration of a permit. NOAA had intended to take this consideration into account, as reflected in the terms of proposed § 971.203(a), wherein more detail was requested for the period leading up to commercial recovery. This subsection has been further clarified to say that the plan would project anticipated 20-year activities in a general way, and to acknowledge that a plan in advance of commercial operations would be preliminary and subject to change.

The comments also indicate some question as to whether NOAA's regulations conformed to the elements of a commercial recovery plan as set forth in section 103(a)(2)(C) of the Act. To confirm this conformance to the Act, § 971.203(b) has been revised to repeat more accurately these elements as they are set forth in the Act, while retaining cross references specifying requirements or determinations to which each element relates. NOAA finds such cross references helpful for its own purposes, and believes they would be helpful also for others. In the course of revising § 971.203(b), a provision for characterizing the proposed mining system, in terms of environmental effects, has been moved to § 971.603(b), as part of the monitoring plan.

Several commenters focussed specifically on the issue of the "logical mining unit" (LMU), in one case seeking more restriction, and in others proposing more discretion by applicants. One commenter suggested that NOAA establish the LMU size; another recommended that the LMU be as small as possible. Both suggestions appear to be motivated by a concern for benthic impact. This concern drives several of the proposed rules but the Act does not allow LMU size to be subject to its influence. This raises the question of what is the applicant's role versus NOAA's role in determining an appropriate commercial recovery area. The Act and regulations reflect that the applicant will select the size and location of the area, which area will be approved unless the Administrator finds that, among other considerations, the area is not a logical mining unit. Section 103(a)(2)(E) of the Act and § 971.501 define an LMU, on which definition NOAA will rely in making its determination. As a basis for making this determination, NOAA must have certain information on resource assessment from the applicant. The regulations identify this element of the commercial recovery plan as the one primarily relevant to the required LMU determination.

One commenter suggested that environmental consequences of onshore processing should be included in the commercial recovery plan. NOAA believes this subject is addressed in the statutory elements which are listed in § 971.203(b)(3), (6), and (7).

Environmental Baseline Data.—Many comments were received concerning the need for a requirement for the applicant to submit environmental baseline information with the permit application. Several comments also mentioned that NOAA should list the required baseline environmental information necessary for EIS and TCR preparation. The regulations have been revised in § 971.204 to reflect these comments. Specifically, a list of environmental baseline parameters was added from NOAA's Deep Seabed Mining Technical Guidance Document pertaining to the upper and lower water column. These parameters should be included in the EIS prepared on a permit issued for an area that lies within the area of NOAA's earlier Deep Ocean Mining Environmental Study (DOMES). For a permit area outside the DOMES area, the applicant is encouraged to consult early with NOAA in order to determine the specific parameters that will be required to be measured. The regulations now contain a provision that the Administrator may require the submission of additional data if he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available. They also clarify that the EIS must characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm to the environment.

It was also suggested by one commenter than NOAA should assure that it has the means to measure the adequacy of the existing environmental information and to assess the need for the applicant to collect additional baseline information before the permit application can be processed. This commenter had in mind that NOAA should consult with experts in specific fields, including affected States, as appropriate. NOAA concurs with this recommendation. The procedures in the regulations allow for such consultations in general, and they also contain specific reference to consultation with States, as summarized below.

State Involvement.—Four commenters expressed concern that the proposed regulations did not provide for sufficient State agency consultation in decision-making. Two commenters specifically requested that States be consulted by NOAA in making its determination as to whether permit applications are complete for processing and that NOAA notify the applicant, or at a minimum consult with any affected State, regarding the need for a Federal consistency certification which may be required in compliance with the Coastal Zone Management Act, as amended. Three commenters expressed a need for formal inclusion of State interests in the public hearing and comment process, and another commenter expressed a desire for an "open channel" for State input to NOAA at times other than specifically designated comment periods. Two commenters stated that States would not begin the Federal consistency determination process until the final EIS and TCRs were in hand.

Due to the absence of any special provisions in the Act relating to States, NOAA believes the overriding applicable law and procedures are those under the Federal consistency provisions of the Coastal Zone Management Act. Section 971.101 contains new definitions, "Affected State" and "State agency," which are compatible with that statute. However, NOAA has considered the views of the commenters and has incorporated more specific opportunities for State agency consultation into the final regulations, which are compatible with the Federal consistency procedures. Sections 971.200(g), 971.212, 971.213, 971.401, 971.402, 971.419(b), 971.430, 971.606(b) and 971.802(g) now contain language which will encourage applicants to consult with affected States and local agencies as early as is practicable in the development of a permit application, and which clarifies formal opportunities for comments by affected States. In this way applicants can be aware of the Federal, State and other requirements and concerns which may help to shape the mineral mining and processing stages of commercial recovery. Other sections—§§ 971.200(h) and 971.412(f)—explicitly state the need for an applicant for a commercial recovery permit to meet the substantive and procedural requirements of the Coastal Zone Management Act and 15 CFR Part 930, Subpart D, where applicable. Under these provisions the State agency shall be responsible for coordinating comments with other State, regional and local agencies.

Although other agencies will be involved in the formal review and comment process preceding a final decision on certification of an application and issuance of a commercial recovery permit, the Administrator will determine whether an application for a commercial recovery permit is complete for formal processing under the Act. NOAA will make a concerted effort to work with other Federal and State agencies to satisfy mutual requirements for information where possible; however, due to the possible lead time involved in applying for a commercial recovery permit authorizing the offshore operations for deep seabed mining, it may not be possible to incorporate all the information requirements of those other permits needed for later stages of mineral recovery and waste disposal. However, NOAA does require applicants to supply sufficient information with the commercial recovery permit application to give full disclosure of these other commerical activities in the EIS as an indirect impact associated with issuance of the commercial recovery permit.

Comments received from other Federal agencies, affected State agencies, and the public in response to the draft EIS and proposed TCRs will be considered in issuance of a commercial recovery permit. Permittees will also be

put on notice in a TCR attached to the permit, that receipt of the NOAA permit does not alleviate the need to satisfy all other necessary statutory and regulatory requirements for proposed activities contained in the commercial recovery plan. Statutory and regulatory requirements other than those under the Act are not considered to be satisfied through issuance of the commercial recovery permit.

U.S. Vessel Requirements.—One commenter suggested it might be appropriate to define U.S. citizen for the purposes of the mining vessel—to be 100 percent American ownership with no foreign fiduciary obligation—in order to shield against foreign investments or construction dilating long range national interests of the United States. U.S. vessel requirements are specifically addressed in section 102(c) of the Act, which provisions are incorporated into these regulations (e.g. §§ 971.205(e) and 971.422 and Subpart G). NOAA does not have authority to establish U.S. vessel requirements beyond those in the Act, such as the suggested definition.

Antitrust Information.—NOAA requested comments on whether information related to the antitrust review, referenced in section 103(d) of the Act, should be specified in NOAA regulations as part of a commercial recovery permit application, or whether NOAA should play a role of advising a potential applicant informally as to what information the applicant should be prepared to provide to the Department of Justice [DOJ] and Federal Trade Commission [FTC], should those agencies request information under their own authorities. NOAA also set forth the antitrust information needs which generally had been identified by DOJ and FTC.

Two commenters' responses supported having NOAA's regulations require specified antitrust information as part of a commercial recovery permit application, with the specified ability of DOJ and FTC to obtain additional information if necessary for antitrust review. They also highlighted the need for adequate information in the first place before the time period for antitrust review should be allowed to run.

Three other commenters stated that they would prefer to submit all information in one application and through a single process—NOAA's permitting process—indicating that under the rules NOAA should maintain a "lead agency" function or serve as the single source of control and deadlines with this information as well as other permitting information. However, two of them said they would not want NOAA to include the details on antitrust information in the regulation; rather, the rule should make reference only to information which is relevant for the particular applicant with respect to antitrust review.

On the basis of these comments, NOAA has retained in § 971.211 the provisions for antitrust review, which reflect the statutory provisions on this subject. In order to assure that adequate information is available for the prescribed review, the rule clarifies that the review period follows receipt of an application that NOAA has determined pursuant to § 971.210 to be complete. As for setting forth actual information requirements, § 971.207 only specifies that antitrust information with an application must be sufficient, in the view of the applicant and based on pre-application consultations, to identify the application and describe any significant existing market share it has with respect to the mining or marketing of the metals to be recovered under the permit.

Subpart D—Issuance/Transfer/Terms, Conditions and Restrictions

Processing Outside U.S.—One commenter proposed dropping all restrictions on foreign processing, failing to realize that the restriction is a provision of the Act.

Two commenters recommended that the applicant submit an environmental assessment. Section 971.606(c) incorporates provisions for relevant onshore information outside the United States, when such processing is proposed, and has been referenced in § 971.406(d) for clarity.

One commenter stated that NOAA should not allow a permittee to operate under a lesser environmental standard, outside the U.S., than would be the case in the U.S. Imposition of environmental requirements on processing abroad is beyond the authority of the Act, however Executive Order 12114, requiring the environmental review of major Federal actions abroad, is applicable.

Duration of Permit.—Two commenters believed the 20-year duration of a permit to be too long given the infancy of the industry and the relative lack of environmental information on the deep sea environment, particularly the deep sea benthos. It was suggested that the length of permit be limited to time periods on the order of 5 years, with renewal contingent upon a finding of no significant adverse effect, diligence in exploration, and compliance with the TCRs.

The provision for a 20-year permit, "and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies," comes directly from the Act and therefore remains unchanged in the permit regulations. However, as discussed under environmental effects (§ 971.406 and §971.601), the regulations have been modified to account for the situation where there is insufficient information to adequately address the issue as to whether the commercial recovery proposed in a permit application can be expected to result in significant adverse effects on the environment. Now, if there is insufficient information to reasonably make a determination on this issue, a permit may still be issued if there is enough information to reasonably conclude that "irreparable harm" will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse effects issue. It is further noted that a permit is subject to modification or suspension, or ultimately revocation, prior to the end of a 20-year permit term if significant adverse environmental effects are revealed by such monitoring. As noted above, "significant adverse environmental effect" and "irreparable harm" are new additions to the definition list.

Subpart E—Resource Development

All of the comments on this subpart dealt with one or more aspects of *conservation*, as outlined below:

Mining Efficiency.—Two commenters opined that there would be little incentive to mine if a permittee were required to recover "nearly all the nodules" in an area, statements that indicated that the proposed rule was not drafted as clearly as it might have been. The ambiguous phrase has been removed from § 971.502(b).

Several commenters agreed with the proposed rule which allows market forces to effect a realistic efficiency of mining. One commenter recommended that NOAA establish a threshold, but NOAA believes such a requirement would be premature in view of the embryonic state of industrial development. NOAA is deleting the requirement of §971.501(c), which requested a discussion of prior test mining in relation to mining efficiency, to provide a more consistent approach to the notion of allowing market prices to prevail.

Chronology of Mining Sub-areas.—Two commenters questioned NOAA's authority to request a plan of the sequence in which a mine site's mineable sub-areas will be mined. One asserted that this would place an unnecessary and difficult burden on pre-enactment explorers. Another stated that the chronology will only be generally known at the time of application. Another commenter offered the notion that NOAA's prime concern in this regard should be to prevent waste from intentionally poor mining practices aimed at high profits by "gutting" a site. This is precisely the motive behind the proposed §§ 971.501(b) and 971.502(b); NOAA is required to address this issue by section 110 of the Act. In consideration of the comments, proposed § 971.501(b), which called for a chronology of areas as part of a logical mining unit description, has been deleted. Subsection 971.502(b) has been clarified to provide that the description of the sequence of mining is expected to be preliminary and subject to change.

Mining Patterns.—Two commenters recommended that NOAA specify patterns; two others opined that NOAA should allow operators to develop their own patterns. NOAA is in sympathy with the latter view because patterns, efficiency, and chronology all are interrelated in the sense that they should comprise a mining strategy that takes into account the requirements of the Act's conservation requirement. This strategy is to be discussed in the permit application, pursuant to § 971.502(b).

Conservation of Unprocessed Manganese.—Comments from several parties indicated an inference not intended by NOAA in the proposal in § 971.502(c), " * * * not to render the magganese unavailable to future users, * * *" by stating that forced recovery and storage would not be economic. NOAA's rule requires neither present recovery nor storage.

One commenter approved of the proposed rule but asserted that the waiver (potentially allowing dispersal of tailings if necessary for the economic practicability of the operation) would defeat the purpose. NOAA does not intend to grant waivers, if requested, automatically, but rather will balance the need to encourage nodule mining against the potential future need for manganese, recognizing that the need is not likely to extend to all of the manganese generated by all of the operators.

Another commenter stated that the authority of the Administrator to cancel this waiver, as well as to amend the regulations in the event of a national need for manganese, introduces an uncertainty which affects the economic decisionmaking ability to permittees. NOAA agrees, but believes that the private sector is accustomed to caveats related to national emergencies.

General.—Two commenters disagreed with the wisdom of the exception in § 971.804 whereby amended regulations dealing with conservation would apply to then-existing permits only if they would not impose serious or irreparable economic hardship on the permittee. This exception is required by the Act.

Subpart F—Environmental Effects

General.—Several comments were received on the adequacy of the environmental parts of the July 1986 proposed permit regulations. For instance one coastal State agency noted that the broad general guidelines and principles regarding environmental protection, "* * * seems reasonable to us and we believe that NOAA's research program concerning the deep seabed environment can yield information important to identifying and mitigating any adverse effects which may be important to this State." Another coastal State noted: "We feel the two stage process of general regulations then permit specific terms, conditions and restrictions, (is) a safe route to take given the uncertainty of technologies and environmental concerns to be applied."

In contrast to the above reactions, there were a number of comments expressing concern over what was perceived to be a dearth of environmental guidelines, particularly given the infancy of the industry and technology and a relative lack of environmental knowledge of the deep sea environment. Highlights of these comments are: (1) Considering the lack of information of the deep sea environment, NOAA should undertake an expanded program of environmental assessment, that focuses on information needed to develop responsible regulatory requirements; (2) the regulatory process relies on after-the-fact monitoring to develop the information needed to assess adverse impacts, and then fails to provide assurance that this information will be used to modify permits so that harmful practices are stopped or mitigated; (3) there is a presumption that there will be no significant adverse environmental effects; (4) the environmental information available from monitoring will be available only after adverse effects have already occurred; and (5) the 20-year duration of a permit is too long, given the relative lack of information on the deep sea environment.

As explained below, certain changes have been made in these final regulations to clarify the environmental requirements. All the changes were proposed in the September 1987 supplemental proposed rule.

NOAA full well realizes the relative lack of information on the deep sea environment and has continued to pursue a research program to fill the major gaps. Presently, this research is focussed on the benthic impacts due to the sedimentation of particulate material suspended by a mining collector device or discharged as a benthic plume. NOAA is also investigating the possibility of conducting some environmental studies during the test of mining equipment in the next several years involving cooperation with other nations. Given the present state of the metals market and the negative influence this has had on commercial deep seabed mining plans, some of the results of these research efforts should be available before NOAA receives a permit application.

Criteria for Determination of Significant Adverse Effects.—The permit regulations have a new § 971.601—Environmental requirements, that was set forth in NOAA's supplemental proposed rule and that explicitly notes the environmental requirements which the Administrator must address in issuing a permit. These requirements are based on there being sufficient environmental information to make a determination that either: (1) The issuance of a permit cannot reasonably be expected to result in a "significant adverse environmental effect"; or (2) If there is insufficient information to make a determination on this question, no "irreparable harm" will come to the environment during a period when monitoring of commercial recovery is undertaken to further examine the significant adverse effects issue. This part of § 971.601 is patterned after the Ocean Discharge Criteria of the Clean Water Act regulations. However, NOAA will examine any perturbation to the environment caused by the issuance of a permit regardless of whether or not a particular mining system creates a discharge. Subsection 971.601(b) requires the applicant to have an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it (as required in §§ 971.201 and 971.202(b)(1)). As part of this structure, in the regulations, § 971.101—Definitions, new terms "significant adverse environmental effect" as well as "irreparable harm" have been defined, again using the pattern of the Ocean Discharge Criteria. New § 971.602—Significant adverse environmental effects, includes in

subsection (b) a cross-reference to the criteria in § 971.601(a).

The above changes will reasonably negate the possibility of "irreparable harm" occurring to the environment in the event of there being insufficient information to decide on the question of "significant adverse environmental effect," and monitoring is used to further examine this issue. Furthermore, § 971.406 has been modified to note that if a permit is granted under this scenario, it will be subject to modification, suspension or revocation if a significant adverse environmental effect is revealed by such monitoring. Also, § 971.417(h) specifies, as authorized in the Act, that such suspension or modification may be required immediately if necessary to prevent a significant adverse environmental effect. Thus, although a permit under such a scenario would still be issued for 20 years (a statutory requirement, see earlier discussion on duration of a permit), the effective period could be less in the event of the appearance of a significant adverse environmental effect that cannot be mitigated.

NOAA believes that adequate protection is being provided to the environment with the above noted changes and with the definitions of "significant adverse environmental effect" and "irreparable harm" (§ 971.101).

Environmental Requirements.—One commenter, while generally agreeing with the approach in the supplemental proposal, suggested that new § 971.601(a) be revised to clarify that ongoing monitoring is intended to gather sufficient information "in order to determine the potential for or occurrence of any significant adverse environmental effect." This suggestion has been incorporated.

Another commenter, while agreeing with modelling these provisions after EPA's Ocean Discharge Criteria, expressed the opinion that the EPA criteria should not be considered an ideal model, in that using such criteria for general NPDES permits can result in inadequate information with respect to site-specific effects. However, this concern should not affect NOAA's approach for its own permits. A NOAA permit is not general but is only site-specific. NOAA believes that the articulated criteria in § 971.601 are adequate for judging case-by-case, site-specific effects. Also, NOAA's initial determinations will continue to be checked for verification after permit issuance—not only through prescribed monitoring by the permittee but also by continuing research.

A commenter suggested that NOAA emphasize more the results of environmental study it has already accomplished in considering environmental criteria. NOAA intended that the factors or criteria set forth in the regulations be addressed within the context of accomplished studies, since they already have been addressed at the programmatic level in NOAA's programmatic EIS. In addition, a related section (§ 971.204(b)) highlights that, in preparing the EIS for assessing the environmental effects relating to each permit, the Administrator will utilize existing information.

Another commenter expressed a preference for a "'go-slow' and monitor approach" in lieu of the proposed irreparable harm procedure, since it was unclear to him how NOAA could make a reasoned "irreparable harm" determination. This commenter's approach in essence would be the same as originally proposed by NOAA. However, other commenters have stressed that greater specificity in the form of criteria was needed—which led to the latest approach that NOAA believes is responsive to earlier comments, is responsible and is manageable. Virtually all other commenters either explicitly support the current approach or have not objected to it.

Significant Adverse Environmental Effects.—One commenter suggested that § 971.602(b) should cross reference § 971.601(a) to clarify that environmental effects determinations will consider information reflected in the criteria listed in the previous section. A cross reference to § 971.601(a) has been added.

At-sea Monitoring.—Even though the proposed regulations on which comments were taken pertained solely to the issuance of permits, one commenter noted that NOAA's regulations for exploration licenses do not require companies to conduct monitoring unless they engage in at-sea mining tests. This commenter felt that, "while pre-systems test activities should not require extensive monitoring, some specified level of effort by the licensee would provide evolving information on deep ocean processes and the benthic community and thereby enhance the prospects of effective monitoring during commercial recovery phases when such data become even more crucial."

Although the exploration regulations distinguish between activities with no significant impact (not requiring monitoring) and activities, such as mining system tests, with potential impact (requiring monitoring), NOAA license TCRs are more detailed and recognize an intermediate spectrum of activities which could require monitoring. As a result, there is at least the potential for the gathering of additional environmental data, on the part of exploration licensees, even if no mining system tests are conducted.

The above commenter did note that, with respect to the proposed rule, they support NOAA's monitoring requirements. However, they further note that such monitoring is intended to assist NOAA in determining the existence of or potential for "significant adverse impacts" on the environment and that without a definition of such, the value of monitoring would be diminished. This concern has now been addressed with the new provisions explained above.

One commenter requested that NOAA produce a public field report on results of the monitoring program and observations. It is expected that full-scale monitoring will provide NOAA with much useful information in order to evaluate the TCRs, and develop possible mitigation measures. NOAA also recognizes that an observer, in performance of his duties on-board a mining vessel, will have access to information which the licensee/permittee considers to be proprietary. NOAA will protect such information in accordance with applicable law. There are no provisions or resources for publication of monitoring reports in entirety; however, the environmental aspects will be made public. With the exception of proprietary data, materials relevant to any of these actions will be available for public inspection in the Ocean Minerals and Energy Division office.

Another commenter noted that the costs of the monitoring requirements should be borne by the government. However, the Act requires licensees and permittees to monitor the environmental effects of their activities in accordance with guidelines issued by the Administrator.

Another commenter noted that "perhaps additional emphasis could be placed on fisheries issues." In response to this, under § 971.603(e)(2), the phrase "including commercially and recreationally valuable fish" has been added after "behavior of biota".

The EPA, as a commenter, noted that they "will have to address environmental impacts and monitoring of the surface and subsurface discharges in issuing any NPDES permit, including any necessary requirements under section 403(c) of the Clean Water Act (CWA)." In this context, EPA further noted that they will have to make determinations related to "no unreasonable degradation" and "irreparable harm." They also suggested a revision to § 971.602(a), now § 971.603(a), to reflect "that monitoring requirements are to ensure early and accurate detection of environmental changes so as to prevent the occurrence of significant adverse effects from commercial recovery activities." In response to this latter point, NOAA did modify the section in question so as to state (§ 971.603(a)):

> An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to ensure compliance with the environmental protection requirements of this part.

In response to EPA's other comments concerning unreasonable degradation and irreparable harm, the new definitions and the new § 971.601—Environmental requirements, are quite compatible with the needs of EPA under the NPDES system and the Ocean Discharge Criteria. In addition, NOAA has refined the monitoring parameters listed in § 971.603(e), in order to provide greater compatibility with NPDES monitoring and to provide greater precision to the parameters.

One commenter recommended that miners should be called on to monitor the physical, local effects of mining, while further long term studies should be undertaken by NOAA. This commenter also observed that the monitoring proposed seems to be unlimited. NOAA believes that although § 971.603 calls for monitoring to include biological effects, that section also clarifies that the scope of such monitoring is focused or limited. The overall purposes of monitoring initially set out in the section provide this focus, e.g., monitoring should provide enough information to validate assessments made in the EIS.

Another commenter suggested that a third party, similar to the National Academy of Sciences, could provide monitors and develop a technical guidance document that could be available for public comment. The Act and NOAA's regulations specify that Federal observers be Federal officers or employees, but this would allow the discretion to include any persons in this category, including personnel other than NOAA employees. With respect to public review of guidance documents, NOAA's regulations and EIS's have always been the subject of and have benefited from public contribution. Public review would continue under the rules for such purposes as review of future applications and monitoring plans. The same commenter also proposed a one-year moratorium on mining operations to allow additional environmental assessment. This would be unnecessary, however, since no commercial recovery under the Act is planned or possible for over one year.

With respect to NOAA's proposal for selection of impact and preservational reference areas as part of a monitoring plan, two commenters, while supporting this approach, went on to suggest that NOAA should proceed with establishing criteria for such areas. NOAA has concluded that it is possible and appropriate to clarify the criteria in these rules, *i.e.*, that each area should be representative of characteristics of the permittee's site—and has added this to § 971.603(c).

One of these commenters also proposed that designation of reference areas should be prior to issuance of a commercial recovery permit. NOAA believes that selection of such areas could precede a permit application, but that the designation would be provisional and would not become permanent until the permit and the approved monitoring plan associated with it have been issued. The regulations now clarify that this may be done.

One commenter urged that the regulations not allow the use of joint impact reference areas, since it could be difficult to trace an impact to a specific recovery process. However, another commenter suggested there may be a strong case, based on factors of efficiency, effectiveness and economy, for consolidating reference areas. NOAA has concluded that, although some situations may be inappropriate for joint impact reference areas, other situations may be appropriate and even advantageous (e.g., by coincidence of mine site characteristics, or for benefits from more efficient monitoring efforts that produce more information). Thus, the regulations should not unduly limit flexibility by prohibiting the possibility of joint areas.

A commenter expressed concern over environmental reference areas involving areas outside permit areas. Another commenter urged that any monitoring outside a permittee's mine site be qualified to cover only areas, and only such period of time, for which the Administrator determines that the permit activity has the potential to cause significant adverse environmental effect or irreparable harm in the outside area. Still another commenter suggested that reasonable limits should be placed on any external monitoring, and that such limits should be weighed against reasonable expectations regarding potential adverse environmental effects. With respect to monitoring outside specific reference areas, § 971.603(c) is explicitly limited to prescribe such reference areas only within permit areas. This reflects a limitation on the comparable but separate concept in section 109(f) of the Act which provides for international negotiations to establish international areas in the deep seabed as stable reference areas. As for monitoring outside a permit area generally, if this were deemed necessary, NOAA believes it is appropriate to set reasonable limits on such monitoring. Therefore, § 971.603(f) has been refined to clarify that such external monitoring would occur where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

One commenter stressed the need for minimizing if not eliminating the subjective element in assessing the activities under a monitoring program, and therefore suggested that whenever a work plan is approved subject to a monitoring requirement, the Administrator should define, to the maximum extent practicable, objective criteria which would trigger any requirement either to suspend operations or to take appropriate mitigating measures. NOAA believes this is a reasonable point and has refined § 971.603(f) to call for TCRs to include the identification of activities which could trigger suspension or modification requirements, or if necessary permit revocation.

Best Available Technologies (BAT) and Mitigation.—Although, as stated in proposed rule § 971.603(b) [now § 971.604(a)], NOAA is unable to define a specific technology(ies) as being the best available technologies (BAT), several commenters urged NOAA to reconsider its position. For those mining systems requiring an NPDES permit, it was pointed out that EPA will have to require the use of Best Conventional Pollutant Control Technology, assuming the mining discharge(s) are considered conventional rather than toxic pollutants. Therefore, the applicant must address the matter in terms of the Clean Water Act. One commenter suggested that applicants might explain their use of BAT in the context of how other alternatives were considered and rejected. Although NOAA continues to believe it is inappropriate to specify particular technologies as BAT, NOAA acknowledges the validity of some of the comments, and that the use of BAT

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is required by section 109(b) of the Act. Therefore, NOAA is clarifying this provision in the regulations by adopting the approach utilized in implementation of the OCS Lands Act. Until NOAA is in a position to define performance standards or specify particular equipment or procedures comprising BAT, interim process will be adopted. An applicant will have to submit the information necessary to demonstrate that the requirements of section 109(b) of the Act will be met. The information must include the alternatives considered and the rationale supporting the selection process, including a discussion of the relative costs and benefits of the technologies considered.

Closely related to the use of BAT is the concept of mitigation, a particular approach to the avoidance of a potential problem. Three commenters recommended that mitigation measures be required. Another suggested the need for a plan that would describe how activities would be modified in the face of a perceived adverse impact. NOAA believes it is premature to require mitigation but agrees with the desirability of an applicant having to think about a potential need to deal with a problem triggered by the surface discharge of mining wastes. Accordingly, a requirement for a mitigation plan has been added to § 971.604(b).

One commenter suggested that the proposal in § 971.604(b) for an applicant to have a mitigation plan, only for surface vessel "discharges" that cause a significant adverse environmental effect, is too narrowly focused; that the mitigation plan provision should instead refer to "activities authorized under the permit." However, such a broadening in this instance would expand the provision beyond the particular potential problem that NOAA and others had identified, and which this provision was intended to address. At this point, NOAA has concluded there is insufficient justification for inserting any additional mitigation provision.

The same commenter also supported the provision in § 971.604(a) calling for an applicant to report on best available technologies and alternatives considered, and recommended that a similar analysis be included with subsequent reports, pursuant to § 971.604(c), on those technological or operational changes that will increase or have unknown environmental effects. NOAA believes this is a useful point consistent with its obligations pertaining to best available technologies, and has incorporated such a provision in § 971.604(c).

Conditional Standards for Onshore Activities.—While NOAA functions as lead agency in preparation of the EIS, it is not within this agency's purview to "govern" onshore activities nor to set "conditional standards" for any State to issue a license or permit, as requested by one commenter. As standards and restrictions vary widely from State to State, NOAA has emphasized the need for early consultation between the applicant and State and local governments, when more is known about processing techniques and the location of processing facilities. While the final regulations have substantially highlighted State involvement in permitting, it should be recognized that setting (and meeting) the conditions of any State permit is a responsibility between applicant and State.

Stable Reference Areas.—Comments received on the stable reference area (SRA) concept were mainly concerned with urging NOAA to designate some Impact Reference Areas (IRAs) and Preservational Reference Areas (PRAs) no later than the issuance of permits. One comment suggested that this be accomplished by NOAA stating in the regulations that the issuance of a permit is contingent upon the simultaneous designation of IRAs and PRAs. Another comment urged NOAA to make a mandatory designation of interim PRAs, which could be eliminated once international reference areas were established, and to designate areas within the mine sites for impact reference. As discussed above, a requirement has been added to new § 971.603—At-sea monitoring, which requires the monitoring of benthic impact through the study of two types of area, each selected by the permittee in consultation with NOAA: (1) An IRA which will be located in a portion of a permit area tentatively scheduled to be mined early; and (2) an interim PRA located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan. Although the SRA provisions in the Act propose areas outside those licensed or permitted, NOAA believes that the above approach, which falls within NOAA's authority, is compatible with the purpose of the SRA concept.

It was also recommended by one of the above commenters that instead of just reserving a subsection of the commercial regulations for SRAs, NOAA should establish the framework for establishing criteria for identifying both IRAs and PRAs. Setting the framework in the final rules, it was thought, would encourage the international consultations with other nations which are required by the Act. NOAA, however, feels that it is more appropriate to continue to reserve the subsection and delay establishing criteria until the completion of the NOAA-sponsored research which was recommended in the 1984 National Research Council's report on deep seabed SRAs.

Reclamation and Compensation.—One commenter suggested that permittees be required to reclaim the seafloor following mining and that, further, permittees should compensate for environmental losses. The seafloor perturbation entails a scraping of the surface followed by a rain of fine sediment kicked up by the scraping action. Until more is learned about the nature and extent of impact on the benthic fauna, and their repopulation, NOAA believes that a reclamation requirement would be premature and could lead to as much or more damage to the benthic fauna than from mining.

The Act does not provide authority for compensation for the types of impacts characterized in NOAA's PEIS.

Subpart H—Miscellaneous

Records To Be Maintained by Licensees and Permittees.—In accordance with the Act, NOAA requires that records be maintained by each licensee and permittee, which will fully disclose expenditures in the area under license or permit, and provide any other information to facilitate an effective audit of these expenditures. The proposed regulations also incorporated provisions from the Act allowing Federal Government access to such records (§ 971.801(a)(2)). One commenter requested the specification that such access be only upon a finding by the Administrator of good cause, in order to protect the licensee or permittee from unnecessary audits. NOAA had retained the statutory language, because it has concluded that the prescribed access provides for routine inspections carried out in a neutral fashion. These are a regular part of implementing a licensing program. Furthermore, NOAA believes the language itself limits the potential for abuse by requiring access to records which are "necessary and directly pertinent" to expenditure verification.

Disclosure of Confidential and Proprietary Information.—Two commenters requested that NOAA make some provision in its regulations for release of confidential/proprietary data into the public domain. Under the provisions of the Trade Secrets Act (18 U.S.C. 1905), NOAA is prohibited from unilateral disclosure of any information or data that is commercially confidential, unless the applicant waives or withdraws the request for confidentiality, or specifies an expiration date at the time of submission of the data. NOAA's procedure for handling requests for disclosure of privileged information from an applicant is outlined in § 971.802 of these regulations. Certain time limits in § 971.802(d) have been modified to conform to the Department of Commerce regulations implementing the Freedom of Information Act (53 FR 6972).

One commenter requested that procedures be defined so that affected States may receive confidential information. While NOAA recognizes that affected States may require certain proprietary information from an applicant for purposes of Federal consistency decisions under the Coastal Zone Management Act, these transactions are primarily between the applicant and the affected State, and have been addressed in the regulations for Federal consistency, 15 CFR Part 930. This perspective is reiterated in § 971.802(g) of these regulations.

Amendment to Regulations.—One commenter proposed that NOAA should state in the regulations that revision of the regulations will be accomplished through formal rulemaking three years from their effective date in order to take into account new information on environmental impact, technological development, conservation, etc. For the same reasons, the commenter also proposed subsequent periodic revisions, at least every three years, until commerical recovery is underway. Under the provisions of § 971.804, NOAA may amend its regulations through formal rulemaking at any time the Administrator determines it to be appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. NOAA may periodically modify these rules for nonsubstantive purposes as well, such as conforming them to governing procedures on public information. For example, these rules include technical amendments to and consolidation with portions of 15 CFR Part 970, to which no objections were made. In addition to referring to information submitted by licensees in their annual reports, NOAA has a continuing program of environmental research and assessment in order to ensure that relevant data are reflected in the TCRs of a license or permit. Any significant new development which may affect the quality of the environment, conservation, or safety at sea, or new data resulting from mining activities under the license/permit may be the subject of amendment to the regulations or modification to the TCRs. In addition, NOAA has a statutory requirement to submit a biennial report to Congress containing an evaluation of exploration and commercial recovery activities, resource recovery and disposition, and an assessment of the environmental impacts, including any damage caused by any adverse effects, on the quality of the environment resulting from mining activities. In view of the extensive avenues for oversight of regulatory effectiveness and license/permit compliance, the initiation of additional rulemaking, for which no requirement for revision may exist, appears excessive to NOAA.

Subpart J—Enforcement

Observers.—Several commenters were concerned with the effectiveness, frequency and authority of Federal observers. One commenter favored minimizing interference with mining activities. NOAA has already drafted § 971.1005 to assure this purpose. Another commenter favored expansion of observer authority to enforce immediate suspension of activities. Under section 114 of the Act, the function of the Federal observer is to monitor and assess the effectiveness of the TCRs of the license or permit, and to report to the Administrator any infraction as appropriate. Licensees and permittees are required to monitor environmental effects of their activities under NOAA's guidelines. As discussed in the Notice of Proposed Rulemaking, NOAA will place Federal observers onboard mining ships to observe operations, collect additional data to improve estimates of environmental effects, test new or alternative methodologies or equipment for monitoring, and evaluate possible mitigation techniques. However, NOAA believes that to provide for unilateral suspension of mining activities by a Federal observer would constitute an unjustified expansion of an observer's authority. NOAA wishes to assure broader consideration prior to any suspension.

In response to comment, language has been added to § 971.1005 of the regulations for emplacement of an observer on each permittee's mining vessel(s) at least once during the initial year of commercial recovery activities. Such a requirement will ensure that NOAA is in a position to judge the effectiveness of an operator's monitoring program. If problems are observed in the technical ability to carry out an approved monitoring plan, NOAA will be able to take corrective measures. While NOAA intends to observe operations on a random schedule during the life of a permit, this new requirement should increase public confidence in the ability of operators to monitor properly their activities.

A commenter suggested that the regulations provide for appropriate State observers if operations are taking place adjacent to a State EEZ. This commenter also suggested strengthening the channel for State input to the Administrator. As the State observers, it has been noted that section 114 of the Act provides only for Federal officers or employees as observers. It should also be noted, however, that these regulations, like the Act, apply to minerals beyond any national jurisiction; these minerals thus could not really be considered adjacent to any State of the United States. Nevertheless, NOAA would be prepared to cooperate with States on monitoring if a clear State interest were identified with respect to any particular activities under a permit. As for strengthening channels for States' input, other sections of the regulations have been clarified to highlight opportunities for consultation with States (e.g., §§ 971.200(g), 971.212 (b) and (d), 971.401 and 971.402).

Other Comments

Exploration.—One commenter urged NOAA to amend the exploration license regulations to require applicants to provide information necessary for the Administrator to make findings relating to commercial recovery. NOAA believes that mineral exploration efforts so seldom involve any aspect of commercial operations that a requirement of this sort would place a burden on applicants that would generally never be used and, at best, would be premature.

Applicable Minerals.—One question dealt with the categories of minerals covered by the proposed regulations. The Act limits NOAA's authority to nodules occuring on or just below the surface of the deep seabed and including one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper. The nodules are most commonly termed, "manganese nodules."

Geographic Coverage of the Regulations.—One commenter wondered whether the proposed regulations were intended to be restricted to the Deep Ocean Mining Environmental Study (DOMES) area or

to additional areas. The area of jurisdiction of the Act, as set forth in section 4(4), is that area lying seaward of and outside—(A) the continental shelf of any nation; and (B) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the continental shelf of such nation and such jurisdiction is recognized by the United States. Therefore, the regulations are applicable to, but are not restricted to, the DOMES area.

Uniform Regulatory Regime.—Two commenters pointed out that while NOAA regulates U.S. citizens engaged in exploration and commercial recovery in the deep seabed, the U.S. Department of the Interior regulates similar activities occuring on the U.S. continental shelf. They opined that a uniform regulatory regime would provide for uniform protection for other marine resources and would entail less duplication of services. NOAA believes that it is not necessarily desirable for resources in international waters to be developed under regulations which are the same as for sovereign U.S. resources. However, many aspects of development are similar and, to that extent, NOAA and the U.S. Department of the Interior will continue to share information and ideas.

Classification Under Executive Order 12291

The NOAA Administrator considers these regulations to be major with respect to the criteria of Executive Order 12291 (E.O. 12291) of February 17, 1981, because they will foster and govern development of the United States deep seabed mining industry. As explained under "Structure of the Regulations," several provisions of the Act require identical or nearly identical responses in each of two phases of deep seabed mining activity (exploration and commercial recovery). As a result, NOAA is consolidating these portions of the regulations. Accordingly, these regulations will supercede Subparts, I, J, and K of 15 CFR Part 970. NOAA has prepared and transmitted to the Office of Management and Budget a regulatory impact analysis as specified by section 3 of E.O. 12291.

The Administrator of NOAA has determined that these rules are within the authority delegated by law and consistent with Congressional intent. These regulations are promulgated pursuant to section 308 of the Act. Section 308 requires the Administrator to issue regulations necessary and appropriate to implement the first three Titles of the Act. These Titles generally require establishment by the Administrator, in accordance with the requirements of the Act, of a regulatory program governing: application for, and issuance of, deep seabed hard mineral resource exploration licenses and commercial recovery permits (see, *e.g.*, section 102 of the Act); establishment of license and permit TCRs (section 105(b) and sections 108–112 of the Act); agency supervision of conduct of activities authorized under licenses and permits (see, *e.g.*, sections 105(c), 106, 113, 114 and 308(c)); and enforcement (Title III).

In 1981, NOAA issued regulations pertaining to exploration (15 CFR Part 970). At that time NOAA also issued a Programmatic Environmental Impact Statement (September 1981) which contemplated subsequent issuance of commercial recovery regulations. These final regulations complete the process of establishing the regulatory regime by which U.S. citizens may apply for permits and conduct commercial recovery under the Act, and are clearly authorized by the Act.

The regulations are also consistent with Congressional intent. The major Congressional objective in enacting the Act was to encourage potential investment in deep seabed mining by establishing a regulatory regime under which U.S. citizens, could, with reasonable certainty and security, exercise the high seas freedom to engage in exploration for, and commercial recovery of, these hard mineral resources. (Sections 2(a)(11–14), 2(a)(16) and 2(b)(3).) Congress was also concerned that the regime be consistent with international law and encourage resource conservation, protect the environment and promote safety to life and property at sea. (Section 2(b)(4).) The Act contains detailed permit application and issuance provisions designed to accommodates and balance these objectives, and also provisions which authorize agency action to provide for future contingencies with regard to the concerns above. (See, *e.g.*, Sections 105(c) and 308 regarding post-permit issuance TCR and regulation revision, and section 106 regarding modification, suspension and revocation.) The final regulations adhere closely to the provisions of the Act. The regulations also recognize, as did Congress, that mining technology, environmental assessment information and other factors relevant to commercial recovery under the Act would develop and change over time. The regulations are therefore generally designed to give permit applicants flexibility in the manner in which they meet the requirements of the Act, subject to the Act's specific requirements and to NOAA's continuing authority to act in the event that subsequent developments affect environmental, international or other concerns of the Act. As indicated in the "Public Comment Opportunities" section of the preamble and in the responses to specific comments, there have been many opportunities for public comment on these regulations, and most commenters generally support the basic approach taken in the regulations to implementation of the Act. Specific issues have been addressed with reference to the Congressional objectives outlined and those expressed in the provisions of the Act itself. Consequently, the Administrator has determined that the requirements of E.O. 12291(4)(a) have been met.

Regulatory Impact Analysis

NOAA has prepared a regulatory impact analysis on these regulations. This analysis, which examines the potential impact of the proposed regulations, is available to all interested parties. The analysis examines the various alternatives NOAA considered as it addressed the major issues in the regulations, including alternatives advocated by interest groups; considers benefit and cost implications of the alternatives; and explains NOAA's reasons for making the choices reflected in these regulations. The analysis includes discussion of regulatory flexibility in compliance with the Regulatory Flexibility Act, Pub. L. 96–354.

Summary of Discussion Related to Regulatory Flexibility

Because of the large scale and costs of deep seabed mining operations, the primary involvement of small business concerns in this industry is expected to be as contractors or subcontractors, rather than as sole owners or operators. Only one permit, obtained by the overall operator, is required. The general regulatory approach selected by NOAA for these regulations was designed to provide the greatest flexibility for, and to minimize any adverse economic impact on any entity—large or small—which may be involved in deep seabed mining development. The regulations do not impose any reporting, recordkeeping, or other compliance requirements on small governmental jurisdictions or small organizations. Copies of the regulatory impact analysis, which contains a discussion related to regulatory flexibility, may be obtained by writing to NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking.

Paperwork Reduction Act, Public Law 96–511

Pursuant to the requirements of the Paperwork Reduction Act NOAA has evaluated the paperwork requirements incurred through compliance with the regulations for the issuance and maintenance of commercial recovery permits. The paperwork resulting from most of the regulatory provisions, especially those dealing with the application process, consists largely of information generated by industry in the pursuit of financial assistance and general management and entails little or no additional paperwork than would otherwise be necessary in conducting deep seabed operations. The balance of paperwork results from environmental monitoring which will be the direct result of implementation of the Act through regulatory measures. The data gathered are only those necessary for compliance with the statutory mandate.

Since application for commercial permitting has not occurred and is not likely to occur until the end of the exploration phase—in 1994—NOAA, in consultation with representatives of industry and OMB, initially has projected one burden hour for the collection, which number would be used until experience indicates a better estimate. Subsequent to the above initial consultations, in the July 1986 proposed rules, industry as well as the rest of the public were specifically invited to comment on the information collection requirements of the rule. No further comments on this particular issue were received. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under Control No. 0648–0170.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Padan, NOAA, 1825 Connecticut Avenue, NW., Suite 710, Washington, DC 20235; and to the Office of Information and Regulatory Affairs, ATTN: Desk Officer for NOAA, Office of Management and Budget, Washington, DC 20503.

Environmental Assessment

Pursuant to section 109(c) of the Act and the National Environmental Policy Act of 1969, NOAA has prepared a final programmatic environmental impact statement (PEIS) assessing the environmental impacts of commercial recovery in the area of the oceans in which such activities by any United States citizen will likely first occur under the authority of the Act. The PEIS was filed with the Environmental Protection Agency in September 1981. Copies may be obtained by writing NOAA, Chief, Ocean Minerals and Energy Division, at the address specified in the ADDRESSES section of this rulemaking. NOAA has also prepared an environmental assessment (EA) which updates the PEIS and which confirms a finding of no significant impact on the quality of the human environment from the promulgation of these regulations. The EA is available at the above location for review upon request.

List of Subjects in 15 CFR Parts 970 and 971

Administrative practice and procedures, Environmental protection, Marine resources, Marine safety, Reporting requirements, Seabed mining.

Accordingly, it is proposed to add new Part 971 and amend Part 970 to 15 CFR Chapter IX, Subchapter D, as follows.

Dated: December 6, 1988.

William E. Evans,

Under Secretary, NOAA.

PART 971—DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY PERMITS

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Authority: 30 U.S.C. 1401 *et seq.*

Subpart A—General

§ 971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Pub. L. 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§ 971.101 Definitions.

For purposes of this part, the term

(a) "Act" means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, or the Administrator's designee;

(c) "Affected State" means any State with a coastal zone management program approved under Section 306 of the Coastal Zone Management Act, as amended, where coastal zone land and water uses are affected by the issuance of a commercial recovery permit under the provisions of the Act or this part;

(d) "Applicant" means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, "applicant" also means an applicant for an exploration license pursuant to the Act and Part 970 of the title. "Applicant" also means a proposed permit transferee;

(e) "Commercial recovery" means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) "Continental Shelf" means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) "Controlling interest", for purposes of paragraph (v)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) "Environment" or "environmental" as used in the definitions of "irreparable harm" and "significant adverse environmental effect" means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected by the commercial recovery activities, and the living and non-living resources of those areas;

(j) "Exploration" means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(k) "Hard mineral resource" means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which is manganese, nickel, cobalt, or copper;

(l) "Irreparable harm" means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the activities authorized under the permit;

(m) "Licensee" means the holder of a license issued under NOAA regulations to engage in exploration;

(n) "NOAA" means the National Oceanic and Atmospheric Administration;

(o) "Permittee" means the holder of a permit issued or transferred under this part to engage in commercial recovery;

(p) "Person" means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) "Reciprocating state" means any foreign nation designated as such by the Administrator under section 118 of the Act;

(r) "Recovery plan" or "commercial recovery plan" means the plan submitted by an applicant for a commercial recovery permit pursuant to § 971.203;

(s) "Significant adverse environmental effect" means: (1) important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values;

(t) "State agency" means the agency responsible for implementing the responsibilities of Section 306(c)(5) under the Coastal Zone Management Act, as amended, and 15 CFR Part 930;

(u) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(v) "United States citizen" means—

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (v)(1) or (v)(2).

§ 971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provisions of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license under 15 CFR Part 970 will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected from within the license area. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, tranport, use, and sell hard mineral resources recovered under the permit and in accordance with the requirements of the Act and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.*

(1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) A permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section do not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted onshore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or any relevant international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any permittee which is authorized to be undertaken under a permit issued by the Administrator to a permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license or permit issued pursuant thereto; the filing of a specious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement.

(2) The recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under 15 CFR Part 970 or this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) An equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) Authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefore holds a valid exploration license under part 970 of this title.

§ 971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part were approved by the Office of Management and Budget under control number 0648-0170.

Subpart B—Applications

§ 971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner described in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commerical recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to:

Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commerical recovery plan and the financial, technical, environmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part. Although the ultimate standards for determinations under these rules are identical for both transferees and original preexisting licensees, NOAA anticipates that applicants who are transferees will have to supply more information with the application than licensees will [see subsection (e) in this section].

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license.* Information previously submitted as part of an exploration license application, as well as information submitted during the course of license activities (such as data included in annual reports to NOAA), may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations. Such consultation is required for the purpose of § 971.207. The applicant is encouraged to consult with affected States as early as is practicable [see also §§ 971.213 and 971.606(b)].

(h) *Compliance with Federal consistency requirements.* An applicant for a commercial recovery permit must comply with all necessary requirements, including procedures, pursuant to 15 CFR Part 930, Subpart D. Applications and other necessary data and information must be transmitted to the designated State agency as prescribed under 15 CFR 930.50.

Contents

§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources is expected to be general in nature but must include the likely sources and timing of funds to meet the applicant's scheduled expenditures in the recovery plan. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access [see § 971.200(e)]. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the types of technical persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities, in a general way, for the twenty year period to be covered by the proposed permit. Although preliminary and subject to change, the plan must be more detailed for that portion of the permit term leading up to the initiation of commercial recovery. The plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a permit and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of the activities proposed to be carried out during the period of the permit;

(2) The intended schedule of commercial recovery (see "Diligent commercial recovery," § 971.503);

(3) Environmental safeguards and monitoring systems, which must take into account requirements under Subpart F of this part, including best available technologies (BAT) (§ 971.604) and monitoring (§ 971.603);

(4) Details of the area or areas proposed for commercial recovery, which meet requirements for diligence (§ 971.503) and conservation of resources pursuant to Subpart E (especially § 971.502);

(5) A resource assessment of the area or areas proposed for commercial recovery which meets the requirements for resource assessment and logical mining unit (§ 971.501);

(6) A description of the methods and technology to be used for commercial recovery and processing (see § 971.202(b)(1)); and

(7) The methods to be used for disposal of wastes from recovery and processing, including the areas for disposal and identification of any toxic substances in wastes.

§ 971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite. The Administrator may require the submission of additional data, in the event he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available.

(b)(1) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm triggered by commercial mining (see Subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(2) The EIS must present adequate physical, chemical, and biological information for the permit area. If the permit area lies within the area of NOAA's Deep Ocean Mining Environmental Study (DOMES), the parameters listed in NOAA's Technical Guidance Document pertaining to the upper and lower water column should be included. Specifically, these parameters include:

(i) Upper water column—
Nutrients
Endangered species
Salinity, temperature, density
Currents.

(ii) Lower water column and seafloor—
Currents
Suspended particulate matter dispersion
Sediment characteristics (mineralogy, particle size, shape and density, and water content)
Topography
Benthos.

(3) For a permit area outside the DOMES area, the applicant is encouraged to consult with NOAA at the earliest opportunity in order to determine the specific parameters to be measured based on the location and specific environmental characteristics of the permit area. The Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, may determine that a programmatic EIS is required for any new area.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities which meets the objectives and requirements of § 971.603.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator's determination regarding potential use conflicts between commercial mining activities and those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.606.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessels.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation or state in which the partnership or other business entity is registered;

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(v) The name of each member of the association, partnership, or joint venture, including information about the participation and/or ownership of stock of each partner or joint venturer.

§ 971.207 Antitrust information.

In order to support the antitrust review referenced in § 971.211, the application must contain information sufficient, in the applicant's view and based on preapplication consultations pursuant to § 971.200(g), to identify the applicant and describe any significant existing market share it has with respect to the mining or marketing of the metals proposed to be recovered under the permit.

§ 971.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of a permit will be certified unless the applicant pays to NOAA an administrative fee which reflects the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* A fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of $100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to, or for a significant change to a permit held by, an entity which has previously been found qualified for a permit, the Administrator may reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

§ 971.209 Processing outside the United States.

(a) Except as provided in this section and § 971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interests of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to § 971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

Procedures

§ 971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in § 971.201 through § 971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has determined pursuant to § 971.210 is complete, the Administrator will distribute a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

(c) In any case in which a Federal agency or department recommends a denial, it must set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and how the application may be amended, or how TCRs might be added to the permit, to assure compliance with such law or regulation.

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§ 971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each complete application for issuance or transfer of a commercial recovery permit, notice that the application has been received. Subject to § 971.802, interested persons will be allowed to examine the materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon. A hearing will be conducted in any State in which a processing plant or any of its ancillary facilities (such as a marine terminal or a waste disposal facility) are proposed to be located.

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(d) Hearings held pursuant to this section and other procedures will be consolidated, if practicable, with hearings held and procedures employed by other Federal and State agencies.

§ 971.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a permit, the applicant must submit an amendment to the application if there is a significant change in the circumstances represented in the original application which affects the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, the Administrator will provide a copy of that amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to § 971.413. Any amendment or modification which would cause coastal zone effects substantially different than those originally reviewed by the state agency would be subject to Federal consistency review as prescribed in 15 CFR Part 930.

§ 971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§ 971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a permit, the Administrator must determine that issuance of the permit would not violate any of the restrictions in § 971.103(b). The Administrator also must make written determinations with respect to the requirements with respect to the requirements set forth in § 971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of certification has not occurred within 100 days after receipt of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the efforts to resolve them, and an estimate of the time required to do so.

§ 971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (1) the area is not a logical mining unit under § 971.501, or (2) commercial recovery activities in the proposed area would result in a significant adverse environmental effect which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(1) Has demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(2) Has demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(3) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(4) Has a commercial recovery plan which meets the requirements of § 971.203; and

(5) Has paid the permit fee specified in § 971.208.

§ 971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under § 971.403 through § 971.406, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, via certified mail, return receipt requested, and publish in the **Federal Register**, written notice of intention to deny certification. The notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is received by the applicant, under paragraph (b) of the section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the

applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commercial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer: Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to Subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms conditions and restrictions.* (1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in § 971.416 through § 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

(2) If the Administrator does not propose TCRs within 180 days after certification, the Administrator will notify the applicant in writing of the reasons for delay and of the approximate date on which the proposed TCRs will be completed.

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of § 971.403 through § 971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

Issuance/Transfer, Modification/Revision; Suspension/Revocation

§ 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the **Federal Register** notice of each proposal to issue or transfer, including notice of a draft EIS, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit that will be included with the draft EIS [see § 971.400(b)]. Subject to § 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons and affected States will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold the public hearing(s) required by § 971.212(b) in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon. A copy of the notice and draft EIS will be provided to the affected State agency. Information provided by NOAA may be used to supplement information provided by the applicant, however it will not affect schedules for State agency review and decisions with respect to consistency determinations as required in 15 CFR Part 930, Subpart D.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and on TCRs for, the permit.

§ 971.402 Consultation and cooperation with Federal and State agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal and State agencies which were initiated pursuant to §§ 971.211 and 971.200(g). These consultations will be held to assure compliance with, as applicable and among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Coordination Act, and the Coastal Zone Management Act of 1972, as amended. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone (now known as the Exclusive Economic Zone), or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§ 971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the commercial recovery program of an applicant or permittee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place such that neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the recovery plan, the Administrator will decide whether to issue or transfer the permit.

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect, taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in Subpart F. However, as also noted in Subpart F, if a determination on this question cannot be made on the basis of available information, and it is found that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension and, if necessary and appropriate, revocation pursuant to § 971.417(a), or subject to emergency suspension pursuant to § 971.417(h).

§ 971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not pose an inordiante threat to the safety of life and property at sea. This finding will be based on the requirements in § 971.205 and Subpart G.

§ 971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after the opportunity for an agency hearing required by § 971.212(b), that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

(d) Environmental considerations of the proposed activity will be addressed in accordance with § 971.606(c).

§ 971.409 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a permit if he finds that the applicant or the proposed commercial recovery activities do not meet the rquirements of this part for the issuance or transfer of a permit.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, via certified mail, return receipt requested, and publish in the **Federal Register**, written notice of his intention to deny issuance or transfer. The notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is received by the applicant under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, the Administrator will send to the applicant written notice of final denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance or transfer of a permit is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the **Federal Register**.

§ 971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's reciept of the notice of issuance or transfer under § 971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the **Federal Register**, as well as provide to the permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

§ 971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to § 971.301;

(2) The bases for issuing or transferring the permit pursuant to § 971.403 through § 971.408;

(3) The TCRs issued as part of the permit pursuant to § 971.418 through § 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in paragraphs (c)(1) and (2) of this section;

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittee's corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

(f) A proposed significant or major change, as defined in paragraphs (b) and (c) of this section, may trigger the need for additional review, under the Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended.

§ 971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in § 971.201 through § 971.209 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a permit which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in § 971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in § 971.412(c) (See also § 971.425 of this part), will be acted on after notice thereof is published by the Administrator in the **Federal Register** with a 60-day opportunity for public comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the **Federal Register**.

(e) A permittee may notify the Administrator of minor changes, as defined in § 971.412(d), subsequently in the annual report (See § 971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with § 971.412(e) is required.

§ 971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the considerations listed in § 971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in § 971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(1) Written notice of the proposal to the permittee; and

(2) Publication of this proposal in the **Federal Register** with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee an amended permit including the modified TCRs, and shall publish notice of issuance in the **Federal Register**.

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under § 971.411 of this part.

§ 971.415 Duration of a permit.

(a) Unless suspended or revoked pursuant to §§ 971.406 and 971.417, each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§ 971.416 Approval of permit transfers.

(a) The Administrator may transfer a permit after a written request by the permittee. After a permittee submits a transfer request to the Administrator, the proposed transferee will be deemed an applicant for a commercial recovery permit, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a permittee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§ 971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of this part, or in addition to the imposition of any fine under Subpart J, suspend or revoke any permit issued under this part, or suspend or modify any particular activities under such a permit, if the permittee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the permit; and

(2) Suspend or modify particular activities under any permit, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situtation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in § 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the **Federal Register**, and send to the permittee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the permittee can correct:

(i) The action necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the permittee, and publish in the **Federal Register**, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of commercial recovery activities by a permittee. The provisions of paragraphs (c), (d), (e) and the first sentence of this paragraph (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse environmental effect or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

(i) The Administrator will immediately rescind the suspension order as soon as he has determined that the cause for suspension has been removed.

Terms, Conditions and Restrictions

§ 971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with § 971.503, including a requirement that recovery at commercial scale be underway within ten years from the date of permit issuance unless that deadline is extended by the Administrator for good cause.

§ 971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to Subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment. Factors to be taken into account regarding the potential for significant adverse environmental effects are discussed in §§ 971.601 and 971.602.

(b) Before establishing the TCRs pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. The Administrator also will take into account and give due consideration to formal comments received from the public, including those from the State agency, and to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§ 971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the recovery area. The Administrator will establish these requirements pursuant to § 971.502.

§ 971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions to ensure that commercial recovery activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. The Administrator will consider the factors in § 971.403 in establishing these restrictions.

§ 971.422 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any permit issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the permit comply with conditions regarding design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to Subpart G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, (see §§ 971.203(b)(3), 971.602(f), and 971.604(a)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the permittee in commercial recovery activities to:

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

(b) To cooperate with Federal officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a monitoring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in significant adverse environmental effects.

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.406.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other necessary Federal, State, and local permits.

§ 971.429 Special terms, conditions and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in § 971.418 through § 971.428, the Administrator may impose special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 971.430 Other Federal requirements.

Pursuant to § 971.211, another Federal agency, or a State acting under Federal authority, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator will include appropriate TCRs in a permit.

Subpart E—Resource Development

§ 971.500 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, section 103(a)(2)(C) requires a resource assessment to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select the size and location of the area of a recovery plan, which will be approved unless the Administrator finds that the area is not a "logical mining unit" or the commercial recovery activities in the proposed site would result in a significant adverse environmental effect which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to section 108 of the Act, the applicant's recovery plan and the TCRs of each permit must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each permit is to contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant shall select the size and location of the area of the recovery plan, which area shall be approved unless the Administrator finds that, among other considerations (see § 971.301(a)), the area is not a logical mining unit. In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(2) Which is not larger than necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(c) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. The area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit.

(d) In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources in the proposed permit area. Although preliminary and subject to change, the discussion must include a plan for the chronology of areas to be mined. This is needed in order for the Administrator to determine if selective mining, expected to be carried out in the early years to improve cash flow, is part of a long range recovery plan.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, e.g., in case of national emergency, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(2). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commerical quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the

permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with § 971.413.

Subpart F—Environmental Effects

§ 971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator of any TCR if relevant data and information indicate that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section 106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse environmental effect. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§ 971.601 Environmental requirements.

Before issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commerical recovery is undertaken to gather sufficient information in order to determine the potential for or occurrence of any significant adverse environmental effect. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR Part 125, Subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it.

§ 971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect or impact (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case-by-case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data, monitoring results, and other data provided by the applicant or permittee, as well as consideration of the criteria in § 971.601(a).

(c) *Related considerations.* In making a determination the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea testing of recovery equipment, the recovery of manganese nodules in commercial quantities from the deep seabed, and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse envirnomental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to assure compliance with the environmental protection requirements of this part.

(b) The monitoring plan shall include a characterization of the proposed mining system in terms of collector contact, benthic discharge and surface discharge.

(c) The monitoring plan shall include determination of (1) the spatial and temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(d) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA, which areas shall be representative of the environmental characteristics of the permittee's site:

(1) An impact reference area, located in a portion of a permit area tentatively scheduled to be mined early in a commercial recovery plan; and

(2) An interim preservational reference area, located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan.

Reference areas may be selected provisionally prior to application for a commercial recovery permit.

(e) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

(1) Discharges—

(i) Salinity, temperature, density.

(ii) Suspended particulates concentration and density.

(iii) Particulate and dissolved nutrients and metals.

(iv) Size, configuration, and velocities of discharge.

(2) Upper water column—

(i) Nutrients.

(ii) Endangered species (observations).

(iii) Salinity, temperature, density.

(iv) Currents and direct current shear.

(v) Vertical distribution of light.

(vi) Suspended particulate material advection and diffusion.

(vii) In-situ settling velocities of suspended particulates.

(viii) Zooplankton and trace metals uptake.

(ix) Fish larvae.

(x) Behavior of biota, including commercially and recreationally valuable fish.

(3) Lower water column and seafloor—

(i) Currents.

(ii) Suspended particulate material advection and diffusion.

(iii) In-situ settling velocities of suspended particulates.

(iv) Benthic scraping and blanketing, and their impacts and recovery.

(f) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite, where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

(g) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will include, to the maximum extent practicable, identification of those activities or events that could cause suspension or modification due to environmental effects under § 971.417, or permit revocation in the event that these effects cannot be adequately mitigated. The TCR also will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(h) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(i) The monitoring plan shall include a sampling strategy that assures: that it is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(j) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See § 971.1005), and if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required above, the use of BAT, the alternatives considered to the specific equipment or procedures proposed, and the rationale as to why one alternative technology was selected in place of another. This analysis shall include a discussion of the relative costs and benefits of the technologies considered.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a problem, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharges, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. In reporting any such change, the permittee shall submit information to indicate the use of BAT, alternatives considered, and rationale for selecting one technology in place of another, in a manner comparable to and to the extent required in paragraph (a) of this section. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator

may disapprove or require modification of the changes.

§ 971.605 Stable Reference Areas. [Reserved]

§ 971.606 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other environmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with the federally approved State coastal management program, where applicable, and evidence of the status of compliance with other State or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to NOAA to prepare an adequate environmental impact statement. The applicant is encouraged to consult with potentially affected States as early as is practicable [see also § § 971.200(g) and 971.213].

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G–Safety of Life and Property at Sea

§ 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§ 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to § 971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in § 971.205(b) apply.

Subpart H—Miscellaneous

§ 971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§ 971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR Part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR Part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in Section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

§ 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR Part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR Part 970, which information is considered by that person to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possesses, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) agruments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

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(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under Chapter 7 of Title 5, United States Code; and

(iv) That on the seventh working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

§ 971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR Part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR Part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in Subpart I of this part.

§ 971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR Part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart 1—Uniform Procedures

§ 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR Part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where the licensee or permittee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee or permittee for review of:

(1) A proposed denial of issuance or transfer of a license or permit; or

(2) A proposed suspension or modification of particular activities under a license or permit after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR Part 970, Subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by Subpart C of 15 CFR Part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR Part 904, Subpart C, to the extent there is a conflict.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(3) For the purposes of this subpart, "involved applicant, licensee or permittee" means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR Part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the Federal Register at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR Part 970.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing and the name of the presiding judge, as determined under paragraph (b) of this section;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR Part 904, Subpart C, judges will have the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation; and

(3) Require at or prior to any hearing, the submission and exchange of evidence.

(e) *Argument.* At the close of the formal hearing, each party will be given the opportunity to submit written arguments on the issues before the judge.

(f) *Hearing Participation.*

(1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant, licensee or permittee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within ten days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the ten days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within ten days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten days, the formal hearing, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) below.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* (1) Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of certification, issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit in accordance with section 105(b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not previously raised in the administrative proceedings on the action pursuant to any such section, unless the judge determines that good cause is shown for the failure to raise them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *Decisions.* (1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* (i) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material issues of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(ii) Within thirty days after the date the recommended decision is served, any party may file with the Administrator exceptions to the recommended decision. The exceptions must refer to all portions of the record and to all authorities relied on in support of the exceptions.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision. The Administrator shall assure that the record shows the ruling on each exception presented.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins at the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certficate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

Subpart J—Enforcement

§ 971.1000 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license or permit, or suspend or modify activities under a license or permit, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§ 971.1001–§ 971.1002), and license and permit sanctions (§ 971.1003); the remission or mitigation of forfeitures (§ 971.1004); observers (§ 971.1005); protection of certain information related to enforcement (§ 971.1006); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§ 971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with § 971.901(i). The method for computing time periods set forth in § 971.901(i) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within ten days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 971.1001 Assessment procedure.

Subpart B of 15 CFR Part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§ 971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR Part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§ 971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or activities under a license or permit, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license or permit.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license or permit issued under the Act:

(1) Revoke the license or permit;

(2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify any activity under the license or permit, as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NoS) setting forth the sanction to be imposed and the basis therefore. The NoS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license or permit, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee or permittee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NoS will be served personally or by registered or certified mail, return receipt requested, on the licensee or permittee. The Administrator will also publish in the **Federal Register** a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NoS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse environmental effect; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NoS will be accompanied by a copy of this subpart and the applicable provisions of 15 CFR Part 904 and 15 CFR Part 971 Subpart I.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NoS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee or permittee can correct. Such determination, and the basis therefor, will be set forth in the NoS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee or permittee can correct, the Administrator will allow the licensee or permittee a reasonable period of time, up to 180 days from the date of the NoS, to correct the deficiency. The NoS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee or permittee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of the section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, the request will be considered denied.

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee or permittee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee or permittee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee or permittee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee has 30 days from receipt of the NoS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NoS. The request shall either attach a copy of the relevant NoS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR Part 904 Subpart C apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

(4) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with § 971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with § 971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§ 971.1004 Remission or mitigation of forfeitures.

(a) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license or permit issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources.

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term "observer" means "one or more observers") duly authorized by the Administrator to board and accompany any vessel used by the licensee or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a "vessel"), for the purpose of observing, evaluating and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license or permit;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license or permit terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's or permittee's activities under the license or permit.

(b) *Notice to licensee or permittee.* (1) If the Administrator plans to place an observer aboard a vessel, the Administrator will so notify the affected licensee or permittee.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator will include, among other things:

(i) The name of the observer, if known at the time notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel;

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring;

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Initial monitoring period.* The Administrator shall require the placement of an observer on each permittee's mining vessel(s) at least once during the initial year of the permittee's commercial recovery activities.

(d) *Licensee's and permittee's responsibilities for observer placement.* (1) Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

(2) In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such changes are made, or 90 days prior to the previously scheduled departure.

(e) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(f) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew, or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee or permittee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(g) *Non-interference with observer.* Licensees, permittees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(h) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee or permittee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee or permittee an opportunity:

(1) To review those parts of the observer's report which may contain proprietary information; and

(2) To request confidential treatment of such information under § 971.802.

§ 971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under 15 CFR Part 904 Subpart C, or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purpose of the Act.

§ 971.1007 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license or permit allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under Section 117 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or permit believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

The authority citation for 15 CFR Part 970 continues to read as follows:

Authority: 30 U.S.C. 1401 *et seq.*

1. In the table of contents for 15 CFR Part 970, the entry for Subpart I is revised and Subparts J and K are removed and reserved to read as follows:

Subpart I—Miscellaneous

Sec.
970.900 Other applicable regulations

Subparts J and K—[Reserved]

§ 970.200 [Amended]

2. In § 970.200, paragraph (f) is revised to read as follows:

* * * * *

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

3. In § 970.212, paragraphs (a) and (b)(2) are revised to read as follows:

§ 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the **Federal Register**, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of 15 CFR Part 971. The record

developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

* * * * *

4. In § 970.302, paragraph (j) is amended by revising paragraph (j)(1)(i) introductory text, and paragraph (j)(1)(i)(A) to read as follows:

§ 970.302 Procedures and criteria for resolving conflicts.

* * * * *

(j) *Unresolved domestic conflict* (1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart I of 15 CFR Part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

* * * * *

§ 970.407 [Amended]

In § 970.407, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

6. In § 970.501, paragraphs (a) and (b)(2) are revised to read as follows:

§ 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the **Federal Register** notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) * * *

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of 15 CFR Part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

* * * * *

§ 970.506 [Amended]

7. In § 970.506, paragraph (d) is revised to read as follows:

* * * * *

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

§ 970.510 [Amended]

8. In § 970.510, paragraph (d) is revised to read as follows:

* * * * *

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of 15 CFR Part 971.

9. In § 970.511, paragraphs (a)(1), (b), (e) and (i)(2) are revised to read as follows:

§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under Subpart J of 15 CFR Part 971, or in addition to the imposition of any fine under Subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

* * * * *

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

* * * * *

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

* * * * *

(i) * * *

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

* * * * *

10. In Subpart I, § 970.900 is revised and §§ 970.901 through 970.906 are removed, to read as follows:

§ 970.900 Other applicable regulations.

The regulations in Subparts H, I and J of 15 CFR Part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR Part 971. The regulations in Subparts H, I and J of Part 971 govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, competition of time, uniform hearing procedures, and enforcement under the Act.

Subparts J and K—[Removed and Reserved]

11. Subparts J and K (§§ 970.1000–970.1107) are removed and reserved.

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federal register

Friday
January 6, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 866 et al.

Medical Devices; Intent To Initiate Proceedings To Establish the Effective Date of the Requirement for Premarket Approval for 31 Class III Preamendments Devices; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, and 890

[Docket No. 88N-0244]

Medical Devices; Intent To Initiate Proceedings To Establish the Effective Dates of the Requirement for Premarket Approval for 31 Class III Preamendments Devices

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to initiate proceedings to establish the effective dates of the requirement for premarket approval for 31 class III preamendments devices. The devices subject to this notice were distributed commercially before May 28, 1976, or are devices that FDA has determined to be substantially equivalent to such devices. This notice of intent identifies the 31 class III preamendments devices to which FDA has assigned a high priority for the application of premarket approval requirements. FDA is taking this action under the Medical Device Amendments of 1976.

DATE: Comments may be submitted at any time. FDA will consider any comments received during its implementation of the premarket approval requirements with respect to class III preamendments devices.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305). Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 28, 1976, the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) became law. Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three classes of devices depending upon the level of regulatory control needed to provide reasonable assurance of the device's safety and effectiveness. A class I device is a device for which the general controls authorized by or under various sections of the act are sufficient to provide reasonable assurance of the safety and effectiveness of the device. A class II device is a device for which general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device and for which there is sufficient information to establish a performance standard to provide such assurance. A class III device is a device that cannot be classified into class I or class II and that is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health or that presents a potential unreasonable risk of illness or injury. For a device in class III, premarket approval is required in accordance with section 515 of the act (21 U.S.C. 360e) and 21 CFR Part 814 to provide reasonable assurance of the safety and effectiveness of the device.

This notice refers to both devices that were marketed before May 28, 1976, and devices that were not marketed before then, but that are substantially equivalent to devices marketed before then, as preamendments devices. A preamendments device that has been classified into class III requires premarket approval only after FDA requires such approval under a final regulation promulgated under section 515(b) of the act. Under procedures in section 513 of the act (21 U.S.C. 360c), FDA has classified about 1,550 preamendments devices into class I, class II, or class III. These classifications are codified in 21 CFR Parts 862 through 892. FDA's classifications of preamendments devices are based on recommendations of advisory committees (panels) (see 21 CFR Part 14). A listing of the device panels is in 21 CFR 14.100.

Of these 1,550 codified classifications, FDA placed 135 devices into class III. In each of the codified regulations for devices classified into class III, FDA: (1) Declares the effective date of the requirement for premarket approval of the device, if any, and (2) provides a cross-reference to a regulation in Subpart A of that part that provides a summary description of FDA's procedures for establishing the effective date of the requirement for premarket approval for a device. For convenience of readers of this notice, FDA is providing the procedures codified at 21 CFR 888.3 as an example.

§ 888.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(l) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

As noted in paragraph (c) of § 888.3 above, a preamendments device subject to the transitional provisions of section 520(l) of the act (21 U.S.C. 360j(l)) is classified into class III without any grace period by action of the statute, and it is unnecessary for FDA to promulgate a rule under section 515(b) of the act for preamendments class III transitional devices.

Priorities for Requiring Premarket Approval of Class III Devices

FDA has classified 135 preamendments devices into class III under section 513(d) of the act (21 U.S.C. 360c(d)). The issuance of regulations under section 515(b) of the act for all of these devices will take many years, given the existing agency resources available for this activity. Recognizing that FDA could not issue regulations under section 515(b) of the act for all preamendments class III devices simultaneously, Congress, in section 513(d)(3) of the act, expressly authorized FDA to establish priorities which, in its discretion, are to be used in applying section 515 of the act to such devices. Furthermore, in section 513(c)(2)(A) of the act, Congress directed that where a panel has recommended classification of a device into class III, the panel shall, to the extent practicable, recommend the assignment of a priority for applying the requirements of section 515 of the act to the device. The panels recommended that a high priority be assigned to 63 of the 135 devices classified into class III.

In exercising its statutory authority to establish priorities for the issuance of regulations under section 515(b), FDA takes into account the following factors:

1. The recommendations on priority of the agency's advisory panels.
2. The present and projected use of the device.
3. The significance of the device to the public health.
4. The demonstrated, potential, or foreseeable risks of illness or injury associated with use of the device.
5. The seriousness of questions concerning the effectiveness of the device.
6. The extent to which valid scientific evidence developed since classification of the device and submitted to or otherwise brought to the agency's attention tends to support or undermine the basis for the classification.
7. The existence of a petition for reclassification of the device provided the agency tentatively concludes that the device should be reclassified.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA issued a notice of intent to require premarket approval for 13 preamendments class III devices. FDA has published final rules requiring premarket approval of 7 of these devices and published a proposed rule for 1 more device. Three of these devices are the subject of reclassification petitions and FDA is considering reclassifying these devices. FDA has not yet taken any action on 2 of the 13 devices, the pacemaker programmer and the implantable pacemaker pulse generator, because it does not have the resources necessary to review PMA's for these devices. FDA, however, has taken other steps to assure the safety and effectiveness of pacemakers such as issuance of the pacemaker registry regulation (52 FR 27756; July 23, 1987).

Final classification regulations for preamendments class III devices in 16 medical specialties have been issued. Using the factors set out above, FDA has reviewed the class III preamendments devices in each of the 16 specialties to determine which of those devices warrant immediate consideration for development of proposed regulations under section 515(b) of the act to require premarket approval. The devices that FDA has determined to have a high priority for regulations under section 515(b) of the act are listed below under the medical specialty in which they are classified.

Section or FR cite	Classification name of device
Part 866—Immunology and Microbiology Devices	
1. § 866.3305	Herpes simplex virus serological reagents.
2. § 866.3510	Rubella virus serological reagents.
Part 868—Anesthesiology Devices	
3. § 868.5400	Electroanesthesia apparatus.
4. § 868.5610	Membrane lung for long-term pulmonary support.
Part 870—Cardiovascular Devices	
5. § 870.3450	Vascular graft prosthesis of less than 8 millimeters diameter.
6. § 870.3535	Intra-aortic balloon and control system.
Part 872—Dental Devices	
7. § 872.3640	Endosseous implant.
8. § 872.6730	Endodontic dry heat sterilizer.
Part 874—Ear, Nose, and Throat Devices	
9. § 874.3850	Endolymphatic shunt tube with valve.
Part 876—Gastroenterology-Urology Devices	
10. § 876.3750	Testicular prosthesis.
11. § 876.4480	Electrohydraulic lithotripter.
Part 878—General and Plastic Surgery Devices	
12. § 878.3530	Silicone inflatable breast prosthesis.
13. § 878.3540	Silicone gel-filled breast prosthesis.
Part 880—General Hospital and Personal Use Devices	
14. § 880.5760	Chemical cold pack snakebite kit.
Part 882—Neurological Devices	
15. § 882.5800	Cranial electrotherapy stimulator.
Part 884—Obstetrical and Gynecological Devices	
16. § 884.1185	Endometrial washer.
17. § 884.4100	Endoscopic electrocautery and accessories.
18. § 884.5940	Powered vaginal muscle stimulator for therapeutic use.
Part 886—Ophthalmic Devices	
19. § 886.3400	Keratoprosthesis.
20. § 886.3920	Eye valve implant.
Part 888—Orthopedic Devices	
21. § 888.3480	Knee joint femorotibial metallic constrained cemented prothesis.
22. § 888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.
23. § 888.3550	Knee joint patellofemorotibial polymer/metal/metal constrained cemented prosthesis.
24. § 888.3570	Knee joint femoral (hemi-knee) metallic uncemented prosthesis.
25. § 888.3580	Knee joint patellar (hemi-knee) metallic resurfacing uncemented prosthesis when intended for uses other than treatment of degenerative and posttraumatic patellar arthritis.
26. § 888.3640	Shoulder joint metal/metal or metal/polymer constrained cemented prosthesis.
27. § 888.3650	Shoulder joint metal/polymer, non-constrained cemented prosthesis.
28. § 888.3660	Shoulder joint metal/polymer, semi-constrained cemented prosthesis.
29. § 888.3680	Shoulder joint glenoid (hemi-shoulder), metallic cemented prosthesis.
Part 890—Physical Medicine Devices	
30. § 890.3610	Rigid pneumatic structure orthoses.
31. § 890.3890	Stair-climbing wheelchair.

As soon as practicable, FDA intends to publish proposed and final regulations under section 515(b) of the act for each of these 31 devices. FDA has examined the economic impact of these regulations. The analysis has been placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Ramifications for Manufacturers and Importers

The act does not include a provision for an extension of the 90-day period after promulgation of a final regulation under secton 515(d) within which a PMA or a notice of completion of a PDP is

required to be filed. The House report on the amendments stated that "the thirty month grace period afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. No. 94–853. 94th Cong. 2d Sess. 42 (1976). Thus, "(i)f manufacturers and importers of class III devices initiate investigations only upon promulgation of the regulation requiring premarket approval, they risk having inadequate time to submit an approvable application of PDP. In such cases, there devices would be required to be removed from the market." Id. In addition, section 515(d)(1)(B)(i) of the act provides that FDA may not enter into an agreement to extend the 180-day period in which to take action with respect to a PMA submitted for a device subject to a final regulation under section 515(b) unless the agency finds that "the continued availability of the device is necessary for the public health."

Interested persons may submit written comments regarding this notice to the Document Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–116 Filed 1–5–89; 8:45 am]

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federal register

Friday
January 6, 1989

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Notice of Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Notice of Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service issues a revised notice identifying vertebrate and invertebrate animal taxa, native to the U.S., being considered for possible addition to the List of Endangered and Threatened Wildlife. The Service emphasizes that this notice is not a proposal for such addition and that the involved taxa do not receive substantive or procedural protection pursuant to the Endangered Species Act of 1973, as amended, as a result of this action. The Service does, however, encourage Federal agencies and other appropriate parties to take these taxa into account in environmental planning. Also identified in this notice (in "category 3") are animal taxa that were previously under consideration for listing, but that are currently presumed either to be extinct, to not be valid species or subspecies, or to be more abundant and/or widespread than previously thought, and not subject to substantial threats to their continued existence.

DATES: Comments may be submitted until further notice.

ADDRESSES: Interested parties are requested to submit comments to the appropriate Regional Director(s) listed below or to: Director (AFWE), U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials relating to this notice will be available for public inspection, by appointment, in the Regional Offices listed below and in the Division of Endangered Species and Habitat Conservation, 1000 North Glebe Road, Arlington, Virginia. Information relating to particular taxa may be obtained from the Endangered Species Coordinator(s) in the appropriate Regional Offices, as listed below:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and Trust Territory of the Pacific Islands.

Regional Director (FWE-SE), U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6150 or FTS 429–6150).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (FWE/SE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–2321 or FTS 474–2321).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (AE/SE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725–3276 or FTS 725–3276).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.

Regional Director (FWE), U.S. Fish and Wildlife Service, The Richard B. Russell Federal Building, Suite 1276, 75 Spring Street SW., Atlanta, Georgia 30303 (404/221–3583 or FTS 242–3583).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (FWE), U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316 or FTS 829–9316).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (FWE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236–7398 or FTS 776–7398).

Region 7. Alaska.

Regional Director (FWE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503 (907/786–3505 or FTS 786–3505).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator(s) in the appropriate Regional Office(s), or Mr. William Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires determination of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. For many years, the U.S. Fish and Wildlife Service has been gathering data on taxa of animals (fishes, amphibians, reptiles, birds, mammals, sponges, crustaceans, arachnids, insects, snails, and bivalve mollusks), native to the United States, that have appeared, at least at times, to merit consideration for addition to the List of Endangered and Threatened Wildlife. The accompanying table identifies many of these taxa (including, by definition, biological subspecies and certain populations of vertebrate animals) and assigns each to one of the three categories described below. Unless it is the subject of a current published proposed or final rule determining endangered or threatened status, none of these taxa receives substantive or procedural protection pursuant to the Act (those species that are the subject of a proposed or final rule are removed from this list at each periodic updating).

Category 1 in this list comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. Proposed rules have not yet been issued because they have been precluded at present by other listing activity. Development and publication of proposed rules on these taxa are anticipated, however, and the Service encourages Federal agencies and other appropriate parties to give consideration to such taxa in environmental planning.

Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The Service emphasizes that these taxa are not being proposed for listing by this notice, and that there are not specific plans for such proposals unless additional information becomes available. Further biological research and field study may be needed to ascertain the status of taxa in this category, and it is likely that many will be found not to warrant listing. The Service hopes that this notice will encourage investigation of the status and vulnerability of these taxa, and consideration of them in the course of environmental planning.

Category 3 comprises taxa that were once being considered for listing as endangered or threatened, but are not currently receiving such consideration. These taxa are included in one of the following three subcategories.

Subcategory 3A comprises taxa for which the Service has persuasive evidence of extinction. If rediscovered, however, such taxa might warrant high priority for addition to the List of Endangered and Threatened Wildlife.

Subcategory 3B comprises names that, on the basis of current taxonomic understanding, usually as represented in published revisions and monographs, do not represent taxa meeting the Endangered Species Act's legal definition of species; it also includes vertebrate populations that do not meet this definition. Future investigation could lead to reevaluation of the listing qualifications of such entities.

Subcategory 3C comprises taxa that are now considered to be more abundant and/or widespread than previously thought. Should new information suggest that any such taxon is experiencing a numerical or distributional decline, or is under a substantial threat, it may be considered for transfer to category 1 or 2.

Many of the taxa in the accompanying table were also covered by the Service's previous reviews: For vertebrates the preceding review was published in the **Federal Register** of September 18, 1985 (50 FR 37958–37967), and for invertebrates the preceding review was published May 22, 1984 (49 FR 21664–21675). Certain of the taxa covered by the previous notices, however, have already had emergency, proposed, and/or final determinations of endangered or threatened status, and therefore these taxa are not included in this notice of review (for the complete U.S. Lists of Endangered and Threatened Wildlife and Plants contact any of the offices in the above "**ADDRESSES**" section).

The Service hereby solicits data concerning the taxa in the accompanying table. Especially sought is information:

(1) Indicating that a taxon would more properly be assigned to a category other than the one in which it appears;

(2) Nominating a taxon not included in the table;

(3) Recommending critical habitat for a taxon, or indicating why critical habitat may not be prudent or determinable for a taxon;

(4) Documenting threats to any included taxon;

(5) Pointing out taxonomic changes for any taxon;

(6) Suggesting new or more appropriate names; or

(7) Noting errors, such as in the indicated distributions.

The Service intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions. Substantive changes in status may be announced by periodic notices in the **Federal Register**.

Vertebrates are listed first in the accompanying table, followed by invertebrates. Each of these is arranged in a general systematic order, from fishes to mammals in the vertebrates and from sponges to mollusks in the invertebrates. Classes of vertebrates have separate headings, invertebrates headings reflect recognizable or convenient groups at the level of Order or above. For each taxon, the assigned category appears on the left, followed by the common (or vernacular) name, the scientific name, the family name, and the known historic range. Range is indicated by abbreviations of State names (also AS-American Samoa, CM-Commonwealth of the Northern Mariana Islands, GU-Guam, PR-Puerto Rico, TT-Trust Territory of the Pacific Islands, and VI-Virgin Islands) and by the full names of foreign regions and Navassa Island (a U.S. possession in the Caribbean). The species may no longer occur in some of the areas shown. The authority and date for the scientific name of mollusks is also given, because of unusual instability in systematics of the group. Some animals have been included that have not yet been formally described in the scientific literature. Such entities are indicated by the abbreviation "sp." after the generic name, or "ssp." after the generic and specific names. In the sections on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species is a regular visitor. In the sections on insects, an asterisk on the category number or State signifies a lack of reports, to the Service's knowledge, since 1963 for the taxon or for the State, respectively.

A common or provisional vernacular name in English, Spanish, or Hawaiian is listed for most species. Some are vernacular names actually in common use; some have been standardized by professional committees of specialists. In some groups whose systematics most need revision the vernacular names are about as informative as the current scientific name. Many taxa are obscure, which almost guarantees that no name has much history of use. Group names such as snail, amphipod, or dragonfly have been appended to common names to clarify distinctions from other invertebrates or plants with similar or confusing names; such extra qualifiers would probably be dropped from any name that came into truly common usage. Some changes or simplifications will be noted from names used in previous versions of these tables. Continuity in the scientific name should make such changes evident. The earlier common name may also be given in parentheses.

Author

This notice was compiled by the endangered species staff in the Regional and Field Offices of the Service and in the Division of Endangered Species and Habitat Conservation in Washington, DC. Dr. George Drewry served as editor.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended:

Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
	VERTEBRATES		
	FISHES		
2 Kern Brook lamprey	*Lampetra hubbsi*	Petromyzontidae	CA.
3A Miller Lake lamprey	*Lampetra minima*	Petromyzontidae	OR.
2 Lake sturgeon	*Acipenser fulvescens*	Acipenseridae	AL,AR,GA,IA,IL,IN,KS,KY,LA,MI,MN,MO,MS, ME,NY,OH,PA,SD,TN,VT,WI,WV, Canada.
2 Gulf sturgeon	*Acipenser oxyrhynchus desotoi*	Acipenseridae	AL,FL,GA,LA,MS.
1 Pallid sturgeon	*Scaphirhynchus albus*	Acipenseridae	AR,IA,IL,KS,KY,LA,MO,MS,MT,ND,NE,SD,TN.
1 Alabama shovelnose sturgeon	*Scaphirhynchus platorynchus* ssp.	Acipenseridae	AL,MS.
3C Paddlefish	*Polyodon spathula*	Polyodontidae	AL,AR,IA,IL,IN,KS,KY,LA,MN,MO,MS,MT,ND, NE,OH,OK,PA,SD,TN,TX,WI.
3A Longjaw cisco	*Coregonus alpenae*	Salmonidae	IL,IN,MI,MT,OH,PA,WI, Canada.
3A Deepwater cisco	*Coregonus johannae*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2 Kiyi	*Coregonus kiyi*	Salmonidae	IL,IN,MI,MN,MT,WI, Canada.
3A Blackfin cisco	*Coregonus nigripinnis nigripinnis*	Salmonidae	IL,IN,MI,WI, Canada.
1 Shortnose cisco	*Coregonus reighardi*	Salmonidae	IL,IN,MI,MT,WI, Canada.
2 Shortjaw cisco	*Coregonus zenithicus*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2 Colorado cutthroat trout	*Salmo clarki pleuriticus*	Salmonidae	CO,UT,WY.
2 Bonneville cutthroat trout	*Salmo clarki utah*	Salmonidae	ID,UT,WY,NV.
3C Rio Grande cutthroat trout	*Salmo clarki virginalis*	Salmonidae	CO,NM.
3A Alvord cutthroat trout	*Salmo clarki* ssp	Salmonidae	NV,OR.
2 Snake River fine-spotted cutthroat trout	*Salmo clarki* ssp.	Salmonidae	ID.
2 Willow/Whitehorse cutthroat trout	*Salmo clarki* ssp.	Salmonidae	OR.
2 Kern River rainbow trout	*Salmo gairdneri gilberti*	Salmonidae	CA.
2 Redband trout	*Salmo* sp.	Salmonidae	CA,OR,ID,NV.
2 Bull trout	*Salvelinus confluentus*	Salmonidae	CA,ID,MT,NV,OR,WA.
2 Montana Arctic grayling	*Thymallus arcticus montanus*	Salmonidae	MT.
1 Delta smelt	*Hypomesus transpacificus*	Osmeridae	CA.
2 Pygmy smelt	*Osmerus spectrum*	Osmeridae	ME
2 Olympic mudminnow	*Novumbra hubbsi*	Umbridae	WA.
2 Mexican stoneroller	*Campostoma ornatum*	Cyprinidae	AZ,TX, Mexico.
2 Devil's River minnow	*Dionda diabolo*	Cyprinidae	TX.
2 Alvord chub	*Gila alvordensis*	Cyprinidae	NV,OR.
2 Sheldon tui chub	*Gila bicolor eurysoma*	Cyprinidae	NV,OR.
3A Independence Valley tui chub	*Gila bicolor isolata*	Cyprinidae	NV.
2 Newark Valley tui chub	*Gila bicolor newarkensis*	Cyprinidae	NV.
2 Lahontan tui chub	*Gila bicolor obesa*	Cyprinidae	NV.
2 Oregon Lakes tui chub	*Gila bicolor oregonensis*	Cyprinidae	OR.
1 Cui-ui Lake tui chub	*Gila bicolor vaccaceps*	Cyprinidae	CA.
2 Big Smoky Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Catlow tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2 Dixie Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Fish Creek Springs tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Fish Lake Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Hot Creek Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Pleasant Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2 Railroad Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
1 Summer Basin tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2 Leatherside chub	*Gila copei*	Cyprinidae	ID,UT,WY.
3A Thicktail chub	*Gila crassicauda*	Cyprinidae	CA.
2 Gila chub	*Gila intermedia*	Cyprinidae	AZ,NM.
2 Gila roundtail chub	*Gila robusta grahami*	Cyprinidae	AZ,NM.
2 Moapa roundtail chub	*Gila robusta* ssp.	Cyprinidae	NV.
2 Oregon chub	*Oregonichthys* (=*Hybopsis*) *crameri*	Cyprinidae	OR.
2 Sturgeon chub	*Hybopsis gelida*	Cyprinidae	AR,IA,IL,KY,KS,LA,MO,MS,MT,NE,ND,SD,WY, TN.
2 Sicklefin chub	*Hybopsis meeki*	Cyprinidae	AR,IA,IL,KS,KY,LA,MO,MS,NE,ND,SD,TN.
1 Least chub	*Iotichthys phlegethontis*	Cyprinidae	UT.
2 Virgin spinedace	*Lepidomeda mollispinis mollispinis*	Cyprinidae	AZ,NV,UT.
2 Smalleye shiner	*Notropis buccula*	Cyprinidae	TX.
2 Blue shiner	*Notropis caeruleus*	Cyprinidae	AL,GA,TN.
2 Bluestripe shiner	*Notropis callitaenia*	Cyprinidae	AL,FL,GA.
2 Chihuahua shiner	*Notropis chihuahua*	Cyprinidae	TX.
2 Arkansas River shiner	*Notropis girardi*	Cyprinidae	AR,KS,NM,OK,TX.
2 Rio Grande shiner	*Notropis jemezanus*	Cyprinidae	NM.
3A Phantom shiner	*Notropis orca*	Cyprinidae	TX, Mexico.
2 Sharpnose shiner	*Notropis oxyrhynchus*	Cyprinidae	TX.
3C Peppered shiner	*Notropis perpallidus*	Cyprinidae	AR,OK.
2 Proserpine shiner	*Notropis proserpinus*	Cyprinidae	TX.
3A Rio Grande bluntnose shiner	*Notropis simus simus*	Cyprinidae	NM.
2 Ouachita Mountain shiner	*Notropis snelsoni*	Cyprinidae	AR,OK.
2 Altamaha shiner	*Notropis xaenurus*	Cyprinidae	GA.
2 Swamp shiner	*Notropis* sp.	Cyprinidae	FL.
1 Cahaba shiner	*Notropis* sp.	Cyprinidae	AL.
2 Palezone shiner	*Notropis* sp.	Cyprinidae	AL,KY,TN.
2 Kanawha minnow	*Phenacobius teretulus*	Cyprinidae	NC,VA,WV.
2 Sacramento splittail	*Pogonichthys macrolepidotus*	Cyprinidae	CA.
2 Relict dace	*Relictus solitarius*	Cyprinidae	NV.
2 Cheat minnow	*Rhinichthys bowersi*	Cyprinidae	PA,WV.
2 Moapa speckled dace	*Rhinichthys osculus moapae*	Cyprinidae	NV.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories)

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Pahrumagat speckled dace	*Rhinichthys osculus velifer*	Cyprinidae	NV.
2 Amargosa Canyon speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	CA.
2 Diamond Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2 Meadow Valley Wash speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2 White River speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV
2 Monitor Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2 Oasis Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV
2 Sandhills chub	*Semotilus lumbee*	Cyprinidae	NC,SC.
2 White River desert sucker	*Catostomus clarki intermedius*	Catostomidae	NV.
2 Meadow Valley Wash desert sucker	*Catostomus clarki* ssp.	Catostomidae	NV
2 Zuni Mountain sucker	*Catostomus discobolus yarrowi*	Catostomidae	AZ,NM.
3B Webug sucker	*Catostomus fecundus*	Catostomidae	UT.
2 Goose Lake sucker	*Catostomus occidentalis lacusanserinus*	Catostomidae	CA,OR.
2 Jenny Creek sucker	*Catostomus rimiculus* ssp.	Catostomidae	CA,OR.
2 Klamath largescale sucker	*Catostomus snyderi*	Catostomidae	CA,OR.
2 Wall Canyon sucker	*Catostomus* sp.	Catostomidae	NV.
2 Blue sucker	*Cycleptus elongatus*	Catostomidae	AL,AR,IA,IL,IN,KS,KY,LA,MN,MO,MS,MT,ND, NE,NM,OK,OK,PA,SD,TN,TX,WI,WV, Mexico.
3C Rustyside sucker	*Moxostoma hamiltoni*	Catostomidae	VA.
2 Bighead (=Savannah) redhorse	*Moxostoma* sp.	Catostomidae	GA,SC.
1 Razorback sucker	*Xyrauchen texanus*	Catostomidae	AZ,CA,CO,NV,UT,WY.
3C Headwater catfish	*Ictalurus lupus*	Ictaluridae	NM,TX.
3C Carolina madtom	*Noturus furiosus*	Ictaluridae	NC.
2 Orangefin madtom	*Noturus gilberti*	Ictaluridae	NC,VA.
2 Ouachita madtom	*Noturus lachneri*	Ictaluridae	AR.
2 Frecklebelly madtom	*Noturus munitus*	Ictaluridae	AL,GA,LA,MS,TN.
1 Neosho madtom	*Noturus placidus*	Ictaluridae	KS,MO,OK.
2 Pygmy madtom	*Noturus stanauli*	Ictaluridae	TN.
2 Caddo madtom	*Noturus taylori*	Ictaluridae	AR.
2 Widemouth blindcat	*Satan eurystomus*	Ictaluridae	TX.
2 Toothless blindcat	*Trogloglanis pattersoni*	Ictaluridae	TX.
2 Northern cavefish	*Amblyopsis spelaea*	Amblyopsidae	IN,KY.
2 Preston White River springfish	*Crenichthys baileyi albivallis*	Cyprinodontidae	NV.
2 Hoapa White River springfish	*Crenichthys baileyi moapa*	Cyprinodontidae	NV.
2 Conchos pupfish	*Cyprinodon eximius*	Cyprinodontidae	TX, Mexico.
3A Tecopa pupfish	*Cyprinodon nevadensis calidae*	Cyprinodontidae	CA.
1 Shoshone pupfish	*Cyprinodon nevadensis shoshone*	Cyprinodontidae	CA.
1 Pecos pupfish	*Cyprinodon pecosensis*	Cyprinodontidae	NM,TX.
2 White Sands pupfish	*Cyprinodon tularosa*	Cyprinodontidae	NM.
3A Monkey Springs pupfish	*Cyprinodon* sp.	Cyprinodontidae	AZ.
2 Palomas pupfish	*Cyprinodon* sp.	Cyprinodontidae	NM, Mexico.
3A Whiteline topminnow	*Fundulus albolineatus*	Cyprinodontidae	AL.
3C Barrens topminnow	*Fundulus julisia*	Cyprinodontidae	TN.
2 Waccamaw killifish	*Fundulus waccamensis*	Cyprinodontidae	NC.
2 Blotched gambusia	*Gambusia senilis*	Poeciliidae	TX, Mexico.
2 Sacramento perch (native population)	*Archoplites interruptus*	Centrarchidae	CA.
2 Carolina (=barred) pygmy sunfish	*Elassoma boehlkei*	Centrarchidae	NC,SC.
2 Blue-barred pygmy sunfish	*Elassoma okatie*	Centrarchidae	SC
1 Spring pygmy sunfish	*Elassoma* sp.	Centrarchidae	AL.
2 Guadalupe bass	*Micropterus treculi*	Centrarchidae	TX.
2 Crystal darter	*Amocrypta asprella*	Percidae	AL,AR,FL,IA,IL,IN,KY,LA,MS,MO,MS,OH,OK, TN,WI,WV.
2 Eastern sand darter	*Ammocrypta pellucida*	Percidae	IL,IN,KY,MI,MY,OH,PA,VT,WV.
3C Sharphead darter	*Etheostoma acuticeps*	Percidae	NC,TN,VA.
2 Coppercheek darter	*Etheostoma aquali*	Percidae	TN.
2 Arkansas darter	*Etheostoma cragini*	Percidae	AR,CO,KS,MO,OK.
2 Coldwater darter	*Etheostoma ditrema*	Percidae	AL,GA,TN.
2 Rio Grande darter	*Etheostoma grahami*	Percidae	TX, Mexico.
3C Greenthroat darter	*Etheostoma lepidum*	Percidae	NM,TX.
2 Pinewoods darter	*Etheostoma mariae*	Percidae	NC,SC.
2 Yellowcheek darter	*Etheostoma moorei*	Percidae	AR.
2 Cumberland Johnny darter	*Etheostoma nigrum susanae*	Percidae	KY.
2 Finescale saddled darter	*Etheostoma osburni*	Percidae	VA,WV.
3C Paleback darter	*Etheostoma pallididorsum*	Percidae	AR.
3B Waccamaw darter	*Etheostoma perlongum*	Percidae	NC.
2 Striated darter	*Etheostoma striatulum*	Percidae	TN.
2 Tuscumbia darter	*Etheostoma tuscumbia*	Percidae	AL,TN.
2 Jewel darter	*Etheostoma (Doration)* sp.	Percidae	TN.
2 Cherokee darter	*Etheostoma (Ulocentra)* sp.	Percidae	GA.
3C Yazoo darter	*Etheostoma (Ulocentra)* sp.	Percidae	MS.
2 Goldline darter	*Percina aurolineata*	Percidae	AL,GA.
2 Bluestripe darter	*Percina cymatotaenia*	Percidae	MO.
2 Freckled darter	*Percina lenticula*	Percidae	AL,GA,LA,MS.
2 Longhead darter	*Percina macrocephala*	Percidae	KY,NC,NY,OH,PA,TN,VA,WV.
2 Longnose darter	*Percina nasuta*	Percidae	AR,MO,OK.
2 Olive darter	*Percina squamata*	Percidae	GA,KY,TN.
2 Stargazing darter	*Percina uranidea*	Percidae	AR,IL,IN,LA,MO.
3A Blue pike	*Stizostedion vitreum glaucum*	Percidae	MI,NY,OH,PA, Canada.
2 Tidewater goby	*Eucyclogobius newberryi*	Gobiidae	CA.
1 O'ops alamo'o	*Lentipes concolor*	Gobiidae	HI.
2 Rough sculpin	*Cottus asperrimus*	Cottidae	OR.
2 Malheur mottled sculpin	*Cottus bairdi* ssp.	Cottidae	OR.
3C Shoshone sculpin	*Cottus greenei*	Cottidae	ID.
2 Wood River sculpin.	*Cottus leiopomus*	Cottidae	ID.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
1	Pygmy sculpin	*Cottus pygmaeus*	Cottidae	AL.
2	Slender sculpin	*Cottus tenuis*	Cottidae	OR.
2	Bluestone sculpin	*Cottus* sp.	Cottidae	VA,WV.
	AMPHIBIANS			
2	Flatwoods salamander	*Ambystoma cingulatum*	Ambystomatidae	AL,FL,GA,MS,SC.
2	California tiger salamander	*Ambystoma tigrinum californiense*	Ambystomatidae	CA.
2	Sonoran tiger salamander	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	AZ, Mexico.
2	Hellbender	*Cryptobranchus alleganiensis*	Cryptobranchidae	AL,AR,GA,IA,IL,IN,KY,KS,MD,MN,MO,MS,NC, NY,OH,PA,SC,TN,VA,WV.
3C	Green salamander (Appalachian population)	*Aneides aeneus*	Plethodontidae	AL,KY,MD,MS,OH,PA,TN,VA,WV.
2	Green salamander (Southern Blue Ridge population)	*Aneides aeneus*	Plethodontidae	GA,NC,SC.
2	Sacramento Mountains salamander	*Aneides hardii*	Plethodontidae	NM.
1	Inyo Mountains slender salamander	*Batrachoseps campi*	Plethodontidae	CA.
2	Channel Islands slender salamander	*Batrachoseps pacificus pacificus*	Plethodontidae	CA.
2	Kern Canyon slender salamander	*Batrachoseps simatus*	Plethodontidae	CA.
2	Tehachapi slender salamander	*Batrachoseps stebbinsi*	Plethodontidae	CA.
2	Yellow-blotched ensatina	*Ensatina eschscholtzi croceator*	Plethodontidae	CA.
2	Large-blotched ensatina	*Ensatina eschscholtzi klauberi*	Plethodontidae	CA.
2	Barton Springs salamander	*Eurycea* sp.	Plethodontidae	TX.
2	Dark-sided salamander	*Eurycea aquatica*	Plethodontidae	AL, TN.
2	Junaluska salamander	*Eurycea junaluska*	Plethodontidae	NC.
3B	Cascade Caverns salamander	*Eurycea latitans*	Plethodontidae	TX.
2	Texas salamander	*Eurycea neotenes*	Plethodontidae	TX.
2	Comal blind salamander	*Eurycea tridentifera*	Plethodontidae	TX.
3B	Valdina Farms salamander	*Eurycea troglodytes*	Plethodontidae	TX.
2	Oklahoma salamander	*Eurycea tynerensis*	Plethodontidae	AR,OK,MO.
2	Tennessee cave salamander	*Gyrinophilus palleucus*	Plethodontidae	AL,GA,TN.
1	Berry cave salamander	*Gyrinophilus palleucus gulolineatus*	Plethodontidae	TN
2	West Virginia spring salamander	*Gyrinophilus subterraneus*	Plethodontidae	WV.
2	Georgia blind salamander	*Haideotriton wallacei*	Plethodontidae	GA,FL.
2	Limestone salamander	*Hydromantes brunus*	Plethodontidae	CA.
2	Mount Lyell salamander	*Hydromantes platycephalus*	Plethodontidae	CA.
2	Shasta salamander	*Hydromantes shastae*	Plethodontidae	CA.
2	Caddo Mountain salamander	*Plethodon caddoensis*	Plethodontidae	AR.
2	Del Norte salamander	*Plethodon elongatus*	Plethodontidae	CA,OR.
2	Fourche Mountain salamander	*Plethodon fourchensis*	Plethodontidae	AR.
2	Peaks of Otter salamander	*Plethodon hubrichti*	Plethodontidae	VA.
3C	Coeur d'Alene salamander	*Plethodon idahoensis*	Plethodontidae	ID,MT.
2	Larch Mountain salamander	*Plethodon larselli*	Plethodontidae	OR,WA.
1	Jemez Mountain salamander	*Plethodon neomexicanus*	Plethodontidae	NM.
3C	Rich Mountain (=Ouachita) salamander	*Plethodon ouachitae*	Plethodontidae	AR,OK.
2	Cow Knob (=White-spotted) salamander	*Plethodon punctatus*	Plethodontidae	VA,WV.
2	Siskiyou Mountains salamander	*Plethodon stormi* (=*P. elongatus s.*)	Plethodontidae	CA,OR.
2	Robust (=Blanco) blind salamander	*Typhlomolge robusta*	Plethodontidae	TX.
3C	Neuse River (=Carolina) waterdog	*Necturus lewisi*	Proteidae	NC.
2	Sipsey Fork mudpuppy (=waterdog)	*Necturus maculosus* ssp.	Proteidae	AL.
2	Black-spotted newt	*Notophthalmus meridionalis*	Salamandridae	TX, Mexico.
2	Gulf Hammock dwarf siren	*Pseudobranchus striatus lustricolus*	Sirenidae	FL.
2	Rio Grande lesser siren	*Siren intermedia texana*	Sirenidae	TX, Mexico.
2	Boreal western toad (Rocky Mountains population)	*Bufo boreas boreas*	Bufonidae	CO,NM,WY.
2	Black toad	*Bufo exsul*	Bufonidae	CA.
2	Arroyo southwestern toad	*Bufo microscaphus californicus*	Bufonidae	CA, Mexico.
2	Arizona southwestern toad	*Bufo microscaphus microscaphus*	Bufonidae	AZ,CA,NM,NV,UT, Mexico.
2	Amargosa toad	*Bufo nelsoni*	Bufonidae	NV.
3C	Sonoran green toad	*Bufo retiformis*	Bufonidae	AZ, Mexico.
3C	Pine Barrens treefrog	*Hyla andersonii*	Hylidae	AL,FL,NC,NJ,SC.
2	Illinois Strecker's chorus frog	*Pseudacris streckeri illinoensis*	Hylidae	AR,IL,MO.
2	Guajon, rock frog	*Eleutherodactylus cooki*	Leptodactylidae	PR.
2	mottled coqui (Rhenda's coqui)	*Eleutherodactylus eneidae*	Leptodactylidae	PR.
2	Web-footed coqui	*Eleutherodactylus karlschmidti*	Leptodactylidae	PR.
3B	Ramos bromeliad frog	*Eleutherodactylus ramosi*	Leptodactylidae	PR.
3B	Duckwater frog	*Rana* sp.	Ranidae	NV.
3A	San Felipe leopard frog	*Rana* sp.	Ranidae	CA.
2	Florida crawfish (=gopher) frog	*Rana areolata aesopus*	Ranidae	FL,GA.
2	Carolina crawfish (=gopher) frog	*Rana areolata capito*	Ranidae	GA,NC,SC.
2	Dusky crawfish (=gopher) frog	*Rana areolata sevosa*	Ranidae	AL,FL,LA,MS.
2	California red-legged frog	*Rana aurora draytoni*	Ranidae	CA. Mexico.
3B	Vegas Valley leopard frog	*Rana (pipiens) fisheri*	Ranidae	NV.
2	Florida bog frog	*Rana okaloosae*	Ranidae	FL
3A	Relict leopard frog	*Rana onca*	Ranidae	AZ,NV,UT
1	Tarahumara frog	*Rana tarahumarae*	Ranidae	AZ, Mexico.
2	Yavapai (=lowland) leopard frog	*Rana yavapaiensis*	Ranidae	AZ,CA,NM, Mexico
	REPTILES			
2	Alligator snapping turtle	*Macroclemys temminckii*	Chelydridae	AR,AL,FL,GA,IL,IN,KY,KS,LA,MO,MS,OK,TN, TX.
3C	Northwestern pond turtle (California population)	*Clemmys marmorata marmorata*	Emydidae	CA.
2	Northwestern pond turtle	*Clemmys marmorata marmorata*	Emydidae	OR,WA. Canada.
2	Southwestern pond turtle	*Clemmys marmorata pallida*	Emydidae	CA.
2	Bog turtle	*Clemmys muhlenbergii*	Emydidae	CT,DE,GA,MA,MD,NC,NY,NJ,PA,RI,SC,VA.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Barbour's map turtle	*Graptemys barbouri*	Emydidae	AL,FL,GA
3C	Cagle's map turtle	*Graptemys caglei*	Emydidae	TX.
2	Yellow-blotched map turtle (=sawback)	*Graptemys flavimaculata*	Emydidae	MS.
3C	Black-knobbed map turtle (=sawback)	*Graptemys nigrinoda*	Emydidae	AL,MS.
3C	Sabine Ouachita map turtle	*Graptemys ouachitensis sabinensis*	Emydidae	LA,TX.
3C	Texas map turtle	*Graptemys versa*	Emydidae	TX.
2	Northern diamondback terrapin	*Malaclemys terrapin terrapin*	Emydidae	CT,DE,MD,NC,NJ,NY,PA,RI,VA.
3C	Suwannee cooter	*Pseudemys concinna suwanniensis*	Emydidae	FL,GA.
2	Jicotea	*Pseudemys (decussata) stejnegeri*	Emydidae	PR.
3C	Big Bend slider	*Pseudemys scripta gaigeae*	Emydidae	TX, Mexico.
3B	Key striped mud turtle	*Kinosternon baurii baurii*	Kinosternidae	FL.
3C	Arizona yellow mud turtle	*Kinosternon flavescens arizonense*	Kinosternidae	AZ, Mexico.
2	Yellow mud turtle (northern populations)	*Kinosternon flavescens flavescens*	Kinosternidae	IA,IL,MO,NE.
3B	Illinois mud turtle	*Kinosternon flavescens spooneri*	Kinosternidae	IA,IL,MO.
2	Big Bend mud turtle	*Kinosternon hirtipes murrayi*	Kinosternidae	TX, Mexico.
2	Desert tortoise (Mojave Desert population)	*Gopherus* (=*Xerobates*) *agassizii*	Testudinidae	CA,NV, Mexico.
2	Desert tortoise (Sonora Desert population)	*Gopherus* (=*Xerobates*) *agassizii*	Testudinidae	AZ, Mexico.
2	Gopher tortoise (eastern populations)	*Gopherus polyphemus*	Testudinidae	FL,GA,SC.
3C	Baker's worm (=legless) lizard	*Amphisbaena bakeri*	Amphisbaenidae	PR.
2	Island glass lizard	*Ophisaurus compressus*	Anguidae	FL,GA,SC.
2	Panamint alligator lizard	*Elgaria panamintinus*	Anguidae	CA.
2	Black California legless lizard	*Anniella pulchra nigra*	Anniellidae	CA.
2	Beraford's gecko	*Coleonyx* (=*Anarbylus*) *switaki*	Gekkonidae	CA, Mexico.
3C	Reticulated (=Big Bend) gecko	*Coleonyx reticulatus*	Gekkonidae	TX, Mexico.
3C	Gila monster	*Heloderma suspectum*	Helodermatidae	AZ,CA,NM,NV,UT, Mexico.
2	Cook's anole	*Anolis cooki*	Iguanidae	PR
2	Puerto Rican puppy anole	*Anolis occultis*	Iguanidae	PR.
2	Reticulate collared lizard	*Crotaphytus reticulatus*	Iguanidae	TX, Mexico.
1A	Navassa Island iguana	*Cyclura cornuta nigerrima*	Iguanidae	Navassa Island
1A	Navassa ctenley-tailed lizard	*Leiocephalus eremitus*	Iguanidae	Navassa Island
2	Texas horned lizard	*Phrynosoma cornutum*	Iguanidae	AZ,AR,CO,KS,LA,MO,NM,OK,TX, Mexico.
2	San Diego horned lizard	*Phrynosoma coronatum blainvillei*	Iguanidae	CA, Mexico.
1	Flat-tailed horned lizard	*Phrynosoma mcalli*	Iguanidae	CA,AZ, Mexico.
3C	Sand dune sagebrush lizard	*Sceloporus graciosus arenicolous*	Iguanidae	TX,NM.
2	Florida scrub lizard	*Sceloporus woodi*	Iguanidae	FL.
2	Colorado Desert fringed-toed lizard	*Uma notata notata*	Iguanidae	CA, Mexico.
2	Cowles fringe-toed lizard	*Uma notata rufopunctata*	Iguanidae	AZ, Mexico.
3C	Pandanus skink	*Mulcoglaz leptosoma*	Scincidae	TT.
2	Florida Keys mole skink	*Eumeces egregius egregius*	Scincidae	FL.
2	Cedar Key mole skink	*Eumeces egregius insularis*	Scincidae	FL.
2	Arizona Gilbert's skink	*Eumeces gilberti arizonensis*	Scincidae	AZ.
2	Blue-tailed ground lizard	*Ameiva vetancuri*	Teiidae	PR.
2	Gray-checkered whiptail	*Cnemidophorus dixoni*	Teiidae	NM,TX.
2	Orange-throated whiptail	*Cnemidophorus hyperythrus*	Teiidae	CA, Mexico.
2	Southern rubber boa	*Charina bottae umbratica*	Boidae	CA.
3A	St. Croix racer (=ground snake)	*Alsophis sanctricucis*	Colubridae	VI.
2	Culebra garden snake	*Arrhyton exiguum exiguum*	Colubridae	PR.
2	Kirtland's snake	*Clonophis kirtlandi*	Colubridae	IL,IN,KY,MI,OH,PA.
2	Key ring-necked snake	*Diadophis punctatus acricus*	Colubridae	FL.
3C	Desert king snake	*Lampropeltis getulus splendida*	Colubridae	AZ,NM,OK,TX.
3C	Gray-banded king snake	*Lampropeltis mericana alterna*	Colubridae	TX.
2	San Diego Mountain king snake	*Lampropeltis zonata pulchra*	Colubridae	CA.
2	Alameda striped racer	*Masticophis lateralis euryxanthus*	Colubridae	CA.
2	Copperbelly water snake	*Nerodia erythrogaster neglecta*	Colubridae	IL,IN,KY,MI,OH.
2	Brazos water snake	*Nerodia harteri harteri*	Colubridae	TX.
2	Lake Erie water snake	*Nerodia sipedon insularum*	Colubridae	OH, Canada.
2	Black pine snake	*Pituophis melanoleucus lodingi*	Colubridae	AL,LA,MS.
2	Northern pine snake	*Pituophis melanoleucus melanoleucus*	Colubridae	AL,GA,NC,NJ,SC,TN,VA,WV.
2	Florida pine snake	*Pituophis melanoleucus mugitus*	Colubridae	AL,FL,GA,SC.
2	Santa Cruz Island gopher snake	*Pituophis melanoleucus pumilis*	Colubridae	CA.
2	Louisiana pine snake	*Pituophis melanoleucus ruthveni*	Colubridae	LA,TX.
2	Short-tailed snake	*Stilosoma extenuatum*	Colubridae	FL.
2	Rimrock crowned snake	*Tantilla oolitica*	Colubridae	FL.
2	Short-headed garter snake	*Thamnophis brachystoma*	Colubridae	NY,PA.
2	Giant Sierra garter snake	*Thamnophis couchi gigas*	Colubridae	CA.
2	Mexican garter snake	*Thamnophis eques*	Colubridae	AZ,NM, Mexico.
2	Narrow-headed garter snake	*Thamnophis rufipunctatus*	Colubridae	AZ,NM, Mexico
2	Texas garter snake	*Thamnophis sirtalis annectans*	Colubridae	KS,TX.
2	Navassa dusky dwarf boa	*Tropidophis melanurus bucculentus*	Colubridae	Navassa Island.
3C	Arizona ridge-nosed rattlesnake	*Crotalus willardi willardi*	Viperidae	AZ, Mexico.
2	Eastern massasauga	*Sistrurus catenatus catenatus*	Viperidae	IA,IL,IN,MI,MO,MN,NY,OH,PA,WI, Canada.
	BIRDS			
2	Reddish egret	*Egretta rufescens*	Ardeidae	N=FL,TX, Mexico, West Indies; W=AL,CA,LA,MS.
2	White-faced ibis	*Plegadis chihi*	Threskiornithidae	N=AZ,CA,CO,NM,NV,OK,OR,TX,UT; W=ID,WY, Mexico.
3C	Tule white-fronted goose	*Anser albifrons elgasi*	Anatidae	N=AK; W=CA,OR.
2	West Indian whistling duck	*Dendrocygna arborea*	Anatidae	PR,VI, West Indies.
2	Fulvous whistling duck (SW U.S. population)	*Dendrocygna bicolor*	Anatidae	N=AZ,CA; W=Mexico.
2	Lesser white-cheeked pintail	*Anas bahamensis bahamensis*	Anatidae	PR,VI, West Indies, South America
2	West Indian ruddy duck	*Oxyura jamaicensis jamaicensis*	Anatidae	PR,VI, West Indies

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3C	American swallow-tailed kite	*Elanoides forficatus forficatus*	Accipitridae	U=AL,AR,FL,GA,IA,IL,KS,LA,MN,MO,MS,NC, NE,OK,SC,TN,TX,WI; V=Central America.
2	Apache northern goshawk	*Accipiter gentilis apache*	Accipitridae	U=AZ,NM, Mexico.
3C	Puerto Rican sharp-shinned hawk	*Accipiter striatus venator*	Accipitridae	PR.
2	Northern gray hawk	*Buteo nitidus maximus*	Accipitridae	U=AZ,NM,TX, Mexico.
2	Puerto Rican broad-winged hawk	*Buteo platypterus brunnescens*	Accipitridae	PR.
2	Ferruginous hawk	*Buteo regalis*	Accipitridae	U=CO,ID,KS,MT,ND,NE,NM,NV,OK,OR,SD,TX, UT,WA,WY, Canada; V=AZ,CA, Mexico.
3C	Swainson's hawk	*Buteo swainsoni*	Accipitridae	U=AK,AZ,CA,CO,IA,ID,KS,MN,MO,MT,ND,NE, NM,NV,OR,OK,SD,TX,UT,WA,WY, Canada; V=FL, Mexico, Central and South America.
2	Southeastern American kestrel	*Falco sparverius paulus*	Falconidae	AL,FL,GA,LA,MS.
2	Western sage grouse	*Centrocercus urophasianus phaios*	Phasianidae	OR,WA,Canada.
2	Columbian sharptailed grouse	*Tympanuchus phasianellus columbianus*	Phasianidae	CA,CO,ID,OR,MT,NV,UT,WA,WY, Canada.
2	Mangrove clapper rail	*Rallus longirostris insularum*	Rallidae	FL.
1	California black rail	*Laterallus jamaicensis coturniculus*	Rallidae	AZ,CA,Mexico.
2	Caribbean coot	*Fulica caribaea*	Rallidae	PR,VI, West Indies.
2	Western snowy plover	*Charadrius alexandrinus nivosus*	Charadriidae	U=CA,CO,KS,MN,NV,OK,OR,TX,UT,WA; V=AZ, Mexico.
2	Southeastern snowy plover	*Charadrius alexandrinus tenuirostris*	Charadriidae	AL,FL,LA,MS,PR, Greater Antilles.
2	Mountain plover	*Charadrius montanus*	Charadriidae	U=CO,KS,MT,ND,NE,NM,OK,SD,TX,WY; V=AZ,CA,NV,UT, Mexico.
2	Elegant tern	*Sterna elegans*	Laridae	CA, Mexico.
2	Long-billed curlew	*Numenius americanus*	Scolopacidae	U=CA,CO,IA,ID,KS,MT,ND,NE,NM,NV,OK,OR, SD,TX,UT,WA,WI,WY, Canada; V=AZ,LA,MS, Mexico.
2	Bristle-thighed curlew	*Numenius tahitiensis*	Scolopacidae	U=AK; V=HI, Central Pacific Islands
2	Marbled murrelet	*Brachyramphus marmoratus*	Alcidae	AK,CA,OR,WA, Canada, North Pacific rim to Japan.
2	White-crowned pigeon	*Columba leucocephala*	Columbidae	FL, West Indies, Central America.
2	Radak Micronesian pigeon	*Ducula oceanica ratakensis*	Columbidae	TT (Marshall Islands).
2	Truk Micronesian pigeon	*Ducula oceanica teraoki*	Columbidae	TT (Caroline Islands).
3A	Mariana fruit dove	*Ptilinopus roseicapillus*	Columbidae	GU,CM.
3C	Palau ground dove	*Gallicolumba canifrons*	Columbidae	Palau IS., West Pacific Ocean.
3A	Guam white-throated ground-dove	*Gallicolumba xanthonura xanthonura*	Columbidae	GU,CM.
3C	Palau Micronesian pigeon	*Caloenas nicobarica pelewensis*	Columbidae	TT (Caroline Islands).
3B	Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Cuculidae	U=AZ,CA,CO,ID,NM,NV,OR,TX,UT,WA, Canada, Mexico; V=Central and South America.
2	Virgin Islands screech owl	*Otus nudipes newtoni*	Strigidae	PR,VI.
3C	Palau owl	*Pyroglaux (=Otus) podargina*	Strigidae	Palau IS., West Pacific Ocean.
2	Cactus ferruginous pygmy-owl	*Glaucidium brasilianum cactorum*	Strigidae	AZ,TX, Mexico
2	Spotted owl	*Strix occidentalis*	Strigidae	AZ,CA,CO,NM,OR,TX,UT,WA, Mexico.
1	Ponape short-eared owl	*Asio flammeus ponapensis*	Strigidae	TT (Caroline Islands).
2	Southwestern willow flycatcher	*Empidonax traillii extimus*	Tyrannidae	AZ,CO,NM, Mexico.
1	Appalachian Bewick's wren	*Thryomanes bewickii altus*	Troglodytidae	AL,GA,KY,MD,NC,OH,PA,SC,TN,VA,WV, Canada.
3A	San Clemente Bewick's wren	*Thryomanes bewickii leucophrys*	Troglodytidae	CA.
2	Coastal black-tailed gnatcatcher	*Polioptila melanura californica*	Muscicapidae	CA, Mexico.
3C	Palau fantail flycatcher	*Rhipidura lepida*	Muscicapidae	Palau IS., West Pacific Ocean.
3C	Truk monarch	*Metabolus rugensis*	Muscicapidae	TT (Caroline Islands).
3A	Guam rufous-fronted fantail	*Rhipidura rufifrons uraniae*	Muscicapidae	GU.
1	Palau white-breasted wood-swallow	*Artamus leucorhynchus pelewensis*	Artamidae	TT (Caroline Islands).
2	Migrant loggerhead shrike	*Lanius ludovicianus migrans*	Laniidae	U=AR,CT,DE,DC,IA,IL,IN,KS,KY,MA,MD,ME, MI,MN,MO,NC,NE,NH,NJ,NY,OH,OK,PA,RI, TN,TX,VA,VT,WI,WV, Canada; V=AL,FL,GA,LA,MS,SC.
3A	Cardinal honey-eater	*Myzomela cardinalis saffordi*	Meliphagidae	GU,CM.
2	Bishop's o'o	*Moho bishopi*	Meliphagidae	HI.
2	Rota bridled white-eye	*Zosterops conspicillata rotensis*	Zosteropidae	CM.
1	Truk greater white-eye	*Rukia ruki*	Zosteropidae	TT (Caroline Islands).
3C	Arizona Bell's vireo	*Vireo bellii arizonae*	Vireonidae	U=AZ,CA,NV,UT; V=Mexico.
3C	Colima warbler	*Vermivora crissalis*	Emberizidae	U=TX, V=Mexico.
2	Tropical parula (=Olive-backed warbler)	*Parula pitiayumi nigrilora*	Emberizidae	TX, Mexico.
2	Golden-cheeked warbler	*Dendroica chrysoparia*	Emberizidae	U=TX; V=Mexico, Central America.
2	Stoddard's yellow-throated warbler	*Dendroica dominica stoddardi*	Emberizidae	AL,FL.
2	Elfin woods warbler	*Dendroica angelae*	Emberizidae	PR.
2	Brownsville common yellowthroat	*Geothlypis trichas insperata*	Emberizidae	TX, Mexico.
2	Saltmarsh common yellowthroat	*Geothlypis trichas sinuosa*	Emberizidae	CA.
2	Texas (=Bennett's) olive sparrow	*Arremonops rufivirgatus rufivirgatus*	Emberizidae	TX, Mexico.
3C	Yuma brown towhee	*Pipilo fuscus relictus*	Emberizidae	AZ.
2	Bachman's sparrow	*Aimophila aestivalis*	Emberizidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MO,MS,NC,OH, OK,PA,SC,TN,TX,VA,WV.
2	Texas Botteri's sparrow	*Aimophila botterii texana*	Emberizidae	TX, Mexico.
3C	Yuma rufous-crowned sparrow	*Aimophila ruficeps rupicola*	Emberizidae	AZ.
2	Belding's savannah sparrow	*Passerculus sandwichensis beldingi*	Emberizidae	CA, Mexico.
2	Large-billed savannah sparrow	*Passerculus sandwichensis rostratus*	Emberizidae	U=Mexico; V=AZ,CA.
3A	Texas Henslow's sparrow	*Ammodramus henslowii houstonensis*	Emberizidae	TX.
2	Wakulla seaside sparrow	*Ammodramus maritima juncicola*	Emberizidae	FL.
2	Smyrna seaside sparrow	*Ammodramus maritima pelonota*	Emberizidae	FL.
2	Amak song sparrow	*Melospiza melodia amaka*	Emberizidae	AK.

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3A	Santa Barbara song sparrow	*Melospiza melodia graminea*	Emberizidae	CA.
2	Suisun song sparrow	*Melospiza melodia maxillaris*	Emberizidae	CA.
2	San Pablo song sparrow	*Melospiza melodia samuelis*	Emberizidae	CA.
2	Alameda (South Bay) song sparrow	*Melospiza melodia pusillula*	Emberizidae	CA
2	Tricolored blackbird	*Agelaius tricolor*	Emberizidae	CA,OR, Mexico.
2	Mexican hooded oriole	*Icterus cucullatus cucullatus*	Emberizidae	TX, Mexico.
2	Sennett's hooded oriole	*Icterus cucullatus sennettii*	Emberizidae	TX, Mexico.
2	Audubon's oriole	*Icterus graduacauda audubonii*	Emberizidae	TX, Mexico.
3C	Palau blue-faced parrotfinch	*Erythrura trichroa pelewensis*	Estrildidae	TT (Caroline Islands).
	MAMMALS			
2	Tuckahoe marsh shrew	*Sorex cinereus nigriculus*	Soricidae	NJ.
2	Pribilof Islands shrew	*Sorex hydrodromus*	Soricidae	AK.
2	Mt. Lyell shrew	*Sorex lyelli*	Soricidae	CA.
2	Preble's shrew	*Sorex preblei*	Soricidae	ID,MT,OR,WA,WY.
2	Homosassa shrew	*Sorex longirostris eionis*	Soricidae	FL.
1	Salt marsh vagrant shrew	*Sorex vagrans halicoetes*	Soricidae	CA.
3B	San Bernardino dusky shrew	*Sorex monticolus parvidens*	Soricidae	CA.
2	Buena Vista Lake shrew	*Sorex ornatus relictus*	Soricidae	CA.
2	Monterey ornate shrew	*Sorex ornatus salarius*	Soricidae	CA.
2	Ornate salt marsh shrew	*Sorex ornatus salicornicus*	Soricidae	CA.
1	Suisun ornate shrew	*Sorex ornatus sinuosus*	Soricidae	CA.
2	Santa Catalina shrew	*Sorex ornatus willetti*	Soricidae	CA.
3B	Ashland shrew	*Sorex trigonirostris*	Soricidae	OR.
2	Southern water shrew	*Sorex palustris punctulatus*	Soricidae	MD,NC,PA,TN,VA,WV.
2	Glacier bay water shrew	*Sorex alaskanus*	Soricidae	AK.
2	Arizona shrew	*Sorex arizonae*	Soricidae	AZ,NM.
2	Long-tailed shrew	*Sorex dispar*	Soricidae	MA,MD,ME,NC,NH,NJ,NY,PA,TN,VA,VT,WV.
2	Destruction Island shrew	*Sorex trowbridgii destructioni*	Soricidae	WA.
3C	Northeastern pygmy shrew	*Microsorex hoyi thompsoni*	Soricidae	MA,ME,MI,MN,NY,OH,PA,VT,WI,WV.
2	Southern pygmy shrew	*Microsorex hoyi winnemana*	Soricidae	IL,IN,KY,MD,NC,OH,TN,VA
2	Martha's Vineyard short-tailed shrew	*Blarina brevicauda aloga*	Soricidae	MA.
2	Nantucket short-tailed shrew	*Blarina brevicauda compacta*	Soricidae	MA.
2	Aransas short-tailed shrew	*Blarina brevicauda plumbea*	Soricidae	TX.
2	Sherman's short-tailed shrew	*Blarina brevicauda shermani*	Soricidae	FL.
3C	Dismal Swamp short-tailed shrew	*Blarina brevicauda telmalestes*	Soricidae	NC,VA
3C	Anastasia Island mole	*Scalopus aquaticus anastasae*	Talpidae	FL.
2	Englewood mole	*Scalopus aquaticus banci*	Talpidae	FL.
2	Presidio mole	*Scalopus aquaticus texanus*	Talpidae	TX.
3C	Star-nosed mole	*Condylura cristata parva*	Talpidae	GA,MD,NC,SC,TN,VA,WV.
2	Mariana flying fox (Rota, northern island populations)	*Pteropus mariannus mariannus*	Pteropodidae	CM.
1	Mariana flying fox (Agiguan, Tinian, Saipan populations)	*Pteropus mariannus mariannus*	Pteropidae	CM.
2	Pagan Mariana flying fox (=Pagan fruit bat)	*Pteropus mariannus paganensis*	Pteropodidae	CM.
2	Samoan flying fox (=Samoan fruit bat)	*Pteropus samoensis samoensis*	Pteropodidae	AS, Western Samoa.
2	Sheath-tailed bat	*Emballonura semicaudata*	Emballonuridae	CM,GU,TT (Caroline Islands).
2	Mexican long-tongued bat	*Choeronycteris mexicana*	Phyllostomidae	AZ,CA,NM, Mexico, Central & South America.
2	California leaf-nosed bat	*Macrotus californicus*	Phyllostomidae	AZ,CA,NM, Mexico.
3A	Insular long-tongued bat	*Monophyllus plethodon frater*	Phyllostomidae	PR.
2	Desmarest's fig-eating bat	*Stenoderma rufum*	Phyllostomidae	PR.
2	Eastern small-footed bat	*Myotis subulatus leibii*	Vespertilionidae	AR,CT,DE,GA,IL,IN,KY,MA,MD,ME,MO,MC,NJ, NY,OH,OK,PA,RI,TN,VA,VT,WV, Canada.
2	Occult little brown bat	*Myotis lucifugus occultus*	Vespertilionidae	AZ,CA,NM,TX, Mexico.
2	Southeastern myotis (bat)	*Myotis austroriparius*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MO,MS,NC,OK,SC, TN,TX.
2	Southwestern cave myotis (bat)	*Myotis velifer brevis*	Vespertilionidae	AZ,CA,NM.
2	Spotted bat	*Euderma maculatum*	Vespertilionidae	AZ,CA,CO,ID,NV,NM,NV,OR,UT,VT,TX. Canada, Mexico.
2	Pacific western big-eared bat	*Plecotus townsendii townsendii*	Vespertilionidae	CA,ID,OR,WA, Canada.
2	Rafinesque's (=southeastern) big-eared bat	*Plecotus rafinesquii*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MO,MS,NC,OK,OR, SC,TN,TX,VA.
2	Greater western mastiff-bat	*Eumops perotis californicus*	Molossidae	AZ,CA,NM,TX, Mexico.
2	Underwood's mastiff-bat	*Eumops underwoodi*	Molossidae	AZ, Mexico, Central America.
2	Florida mastiff-bat	*Eumops glaucinus floridanus*	Molossidae	FL.
2	Barnes' pika	*Ochotona princeps barnesi*	Ochotonidae	UT.
2	Cinnamon pika	*Ochotona princeps cinnamomea*	Ochotonidae	UT.
3C	Copenhagen Basin pika	*Ochotona princeps clamosa*	Ochotonidae	ID.
2	Lasal pika	*Ochotona princeps lasalensis*	Ochotonidae	UT.
2	Heliotrope pika	*Ochotona princeps saxorei*	Ochotonidae	UT.
2	Goat Peak pika	*Ochotona princeps nigrescens*	Ochotonidae	NV.
2	Wasatch pika	*Ochotona princeps wasatchensis*	Ochotonidae	UT.
1	Riparian brush rabbit	*Sylvilagus bachmani riparius*	Leporidae	CA.
1	Lower Keys marsh rabbit	*Sylvilagus palustris hefneri*	Leporidae	FL.
3C	Micco cottontail rabbit	*Sylvilagus floridanus mmicophilus*	Leporidae	FL.
2	Smiths Island cottontail rabbit	*Sylvilagus floridanus hitchensi*	Leporidae	VA.
2	Davis Mountains cottontail rabbit	*Sylvilagus floridanus robustus*	Leporidae	TX.
2	New England cottontail rabbit	*Sylvilagus transitionalis*	Leporidae	AL,GA,KY,MA,MD,ME,NC,NH,NJ,NY,PA,TN,VA, VT,WV,
2	Sierra Nevada snowshoe hare	*Lepus americanus tahoensis*	Leporidae	CA.
2	White-sided jack rabbit	*Lepus callotis gaillardi*	Leporidae	NM, Mexico.
2	Mountain beaver (Mono Basin population)	*Aplodontia rufa californica*	Aplodontidae	CA.

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BEST COPY AVAILABLE

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
1	Point Arena mountain beaver	*Aplodontia rufa nigra*	Aplodontidae	CA.
2	Point Reyes mountain beaver	*Aplodontia rufa phaea*	Aplodontidae	CA.
1A	Penasco least chipmunk	*Eutamias minimus atristriatus*	Sciuridae	NM.
2	Organ Mountains Colorado chipmunk	*Eutamias quadrivittatus australis*	Sciuridae	NM.
2	Hidden Forest Uinta chipmunk	*Eutamias umbrinus nevadensis*	Sciuridae	NV.
2	Mount Ellen Uinta chipmunk	*Eutamias umbrinus sedulus*	Sciuridae	UT.
2	Palmer's chipmunk	*Eutamias palmeri*	Sciuridae	NV.
2	Wet Mountains yellow-bellied marmot	*Marmota flaviventris notiocra*	Sciuridae	CO.
2	Nelson's antelope ground squirrel	*Ammospermophilus nelsoni*	Sciuridae	CA.
1	Northern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2	Southern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
3C	Richardson's ground squirrel	*Spermophilus richardsoni nevadensis*	Sciuridae	ID,NV,OR.
2	Allen's 13-lined ground squirrel	*Spermophilus tridecemlineatus alleni*	Sciuridae	WY.
3C	White Mountains ground squirrel	*Spermophilus tridecemlineatus monticola*	Sciuridae	AZ.
2	Mohave ground squirrel	*Spermophilus mohavensis*	Sciuridae	CA.
2	Palm Springs ground squirrel	*Spermophilus tereticaudus chlorus*	Sciuridae	CA.
2	Arizona black-tailed prairie dog	*Cynomys ludovicianus arizonensis*	Sciuridae	AZ,NM,TX, Mexico.
2	Mangrove fox squirrel	*Sciurus niger avicennia*	Sciuridae	FL.
2	Sherman's fox squirrel	*Sciurus niger shermani*	Sciuridae	FL.
2	Chiricahua Mexarit squirrel	*Sciurus nayaritensis chiricahuae*	Sciuridae	AZ.
2	Santa Catalina Mountains squirrel	*Sciurus arizonensis catalinae*	Sciuridae	AZ.
2	San Bernardino flying squirrel	*Glaucomys sabrinus californicus*	Sciuridae	CA.
3C	Prince of Wales flying squirrel	*Glaucomys sabrinus griseifrons*	Sciuridae	AK.
2	Roy Prairie pocket gopher	*Thomomys mazama glacialis*	Geomyidae	WA.
2	Goldbeach western pocket gopher	*Thomomys mazama helleri*	Geomyidae	OR.
2	Louie's western pocket gopher	*Thomomys mazama louiei*	Geomyidae	WA.
2	Tacoma western pocket gopher	*Thomomys mazama tacomensis*	Geomyidae	WA.
2	Fish Spring pocket gopher	*Thomomys umbrinus abstrusus*	Geomyidae	NV.
2	Amargosa southern pocket gopher	*Thomomys umbrinus amargosae*	Geomyidae	CA.
2	Bonneville southern pocket gopher	*Thomomys umbrinus bonnevillei*	Geomyidae	UT.
2	Clear Lake pocket gopher	*Thomomys umbrinus convexus*	Geomyidae	UT.
2	San Antonio pocket gopher	*Thomomys umbrinus curtatus*	Geomyidae	NV.
2	Pistol River pocket gopher	*Thomomys umbrinus detumidus*	Geomyidae	OR.
2	Mount Ellen pocket gopher	*Thomomys umbrinus dissimilis*	Geomyidae	UT.
3C	Animas southern pocket gopher	*Thomomys umbrinus emotus*	Geomyidae	NM.
3C	Graham Mountains pocket gopher	*Thomomys umbrinus grahamensis*	Geomyidae	AZ.
2	Guadalupe southern pocket gopher	*Thomomys umbrinus guadalupensis*	Geomyidae	NM,TX.
2	Hualapai southern pocket gopher	*Thomomys umbrinus hualpaiensis*	Geomyidae	AZ.
2	Limpia southern pocket gopher	*Thomomys umbrinus limpiae*	Geomyidae	TX.
2	Mearns' southern pocket gopher	*Thomomys umbrinus mearnsi*	Geomyidae	NM.
2	Stansbury Island pocket gopher	*Thomomys umbrinus minimus*	Geomyidae	UT.
2	Prospect Valley pocket gopher	*Thomomys umbrinus muralis*	Geomyidae	AZ.
2	Antelope Island pocket gopher	*Thomomys umbrinus nasophilus*	Geomyidae	UT.
2	Cabolleta southern pocket gopher	*Thomomys umbrinus paguatae*	Geomyidae	NM.
2	Salt Gulch pocket gopher	*Thomomys umbrinus powelli*	Geomyidae	UT.
2	Pajarito southern pocket gopher	*Thomomys umbrinus quercinus*	Geomyidae	AZ.
2	Skull Valley pocket gopher	*Thomomys umbrinus robustus*	Geomyidae	UT.
2	Sweasey Spring pocket gopher	*Thomomys umbrinus seviori*	Geomyidae	UT.
2	Searchlight southern pocket gopher	*Thomomys umbrinus suboles*	Geomyidae	AZ.
2	Harquahala southern pocket gopher	*Thomomys umbrinus submissilis*	Geomyidae	AZ.
2	Limpia Creek pocket gopher	*Thomomys umbrinus tenensis*	Geomyidae	TX.
2	Mer Rouge pocket gopher	*Geomys bursarius breviceps*	Geomyidae	LA.
3C	White Sands pocket gopher	*Geomys arenarius brevirostris*	Geomyidae	NM.
2	Texas maritime pocket gopher	*Geomys personatus maritimus*	Geomyidae	TX.
2	Carrizo Springs pocket gopher	*Geomys personatus strecheri*	Geomyidae	TX.
3A	Sherman's southeastern pocket gopher	*Geomys pinetis fontanelus*	Geomyidae	GA.
3A	Goff's southeastern pocket gopher	*Geomys pinetis goffi*	Geomyidae	FL.
3B	Colonial pocket gopher	*Geomys colonus*	Geomyidae	GA.
2	Cumberland pocket gopher	*Geomys cumberlandius*	Geomyidae	GA.
2	White-eared pocket mouse	*Perognathus alticola alticola*	Heteromyidae	CA.
2	Tehachapi white-eared pocket mouse	*Perognathus alticola inexpectatus*	Heteromyidae	CA.
2	Silky pocket mouse	*Perognathus flavus goodpasteri*	Heteromyidae	AZ.
2	Los Angeles pocket mouse	*Perognathus longimembris brevinasus*	Heteromyidae	CA.
2	Pacific little pocket mouse	*Perognathus longimembris pacificus*	Heteromyidae	CA.
2	Coconino Arizona pocket mouse	*Perognathus amplus ammodytes*	Heteromyidae	AZ.
2	Yavapai Arizona pocket mouse	*Perognathus amplus amplus*	Heteromyidae	AZ.
2	Wupatki Arizona pocket mouse	*Perognathus amplus cineris*	Heteromyidae	AZ.
2	San Joaquin pocket mouse	*Perognathus inornatus inornatus*	Heteromyidae	CA.
2	Salinas pocket mouse	*Perognathus inornatus psammophilus*	Heteromyidae	CA.
2	Black Mountain pocket mouse	*Perognathus intermedius nigrescentis*	Heteromyidae	AZ.
2	Fletcher dark kangaroo mouse	*Microdipodops megacephalus nasutus*	Heteromyidae	NV.
2	Desert Valley kangaroo mouse	*Microdipodops megacephalus albiventer*	Heteromyidae	NV.
2	Dolphin Island awl-toothed kangaroo rat	*Dipodomys ordii cinereaceus*	Heteromyidae	UT.
2	Gunnison Island kangaroo rat	*Dipodomys microps alfredi*	Heteromyidae	UT.
2	Marble Canyon kangaroo rat	*Dipodomys microps leucotis*	Heteromyidae	AZ.
2	Dolphin Island chisel-toothed kangaroo rat	*Dipodomys microps russeolus*	Heteromyidae	UT.
2	Marysville Heerman's kangaroo rat	*Dipodomys heermanni exsuus*	Heteromyidae	CA.
2	Big-eared kangaroo rat	*Dipodomys elephantinus*	Heteromyidae	CA.
2	Texas kangaroo rat	*Dipodomys elator*	Heteromyidae	OK,TX.
2	Merriam's kangaroo rat	*Dipodomys merriami frenatus*	Heteromyidae	UT.
2	Short-nosed kangaroo rat	*Dipodomys nitratoides brevinasus*	Heteromyidae	CA.
2	Pine Island rice rat	*Oryzomys palustris planirostris*	Muridae	FL.
2	Sanibel Island rice rat	*Oryzomys palustris sanibeli*	Muridae	FL.
3B	Silver rice rat	*Oryzomys argentatus*	Muridae	FL.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Chiricahua western harvest mouse	*Reithrodontomys megalotis arizonensis*	Muridae	AZ.
2	Southern marsh harvest mouse	*Reithrodontomys megalotis limicola*	Muridae	CA.
2	Stansbury Island harvest mouse	*Reithrodontomys megalotis ravus*	Muridae	UT.
2	Santa Cruz harvest mouse	*Reithrodontomys megalotis santacruzae*	Muridae	CA.
2	Pinacate cactus mouse	*Peromyscus eremicus papagensis*	Muridae	AZ, Mexico.
2	Black Mountain cactus mouse	*Peromyscus eremicus pullus*	Muridae	AZ.
3A	Pallid oldfield beach mouse	*Peromyscus polionotus decoloratus*	Muridae	FL.
2	Santa Rosa beach mouse	*Peromyscus polionotus leucocephalus*	Muridae	FL.
2	St. Andrews beach mouse	*Peromyscus polionotus peninsularis*	Muridae	FL.
2	Anacapa deer mouse	*Peromyscus maniculatus anacapae*	Muridae	CA.
2	San Clemente deer mouse	*Peromyscus maniculatus clementis*	Muridae	CA.
2	Monomoy white-footed mouse	*Peromyscus leucopus ammodytes*	Muridae	MA.
2	Pungo white-footed mouse	*Peromyscus leucopus easti*	Muridae	VA.
2	Martha's Vineyard white-footed mouse	*Peromyscus leucopus fuscus*	Muridae	MA.
3A	Anastasia Island cotton mouse	*Peromyscus gossypinus anastasae*	Muridae	FL,GA.
3A	Chadwick Beach cotton mouse	*Peromyscus gossypinus restrictus*	Muridae	FL.
2	Palo Duro mouse	*Peromyscus comanche*	Muridae	TX.
2	Florida mouse	*Peromyscus floridanus*	Muridae	FL.
2	Yuma hispid cotton rat	*Sigmodon hispidus eremicus*	Muridae	CA,AZ, Mexico.
3C	Lower Keys cotton rat	*Sigmodon hispidus exsputus*	Muridae	FL.
2	Insular hispid cotton rat	*Sigmodon hispidus insulicola*	Muridae	FL.
3C	Micco hispid cotton rat	*Sigmodon hispidus littoralis*	Muridae	FL.
2	Yavapai Arizona cotton rat	*Sigmodon arizonae jacksoni*	Muridae	AZ.
2	Colorado River cotton rat	*Sigmodon arizonae plenus*	Muridae	CA.
2	Hot Springs cotton rat	*Sigmodon fulviventer goldmani*	Muridae	NM.
2	Southern Appalachian eastern woodrat	*Neotoma floridana haematoreis*	Muridae	GA,NC,SC.
2	Eastern woodrat	*Neotoma floridana magister*	Muridae	AL,CT,IL,IN,KY,MD,NC,NJ,NY,OH,PA,TN,VA, WV.
2	White Sands woodrat	*Neotoma micropus leucophaea*	Muridae	NM.
2	Santa Catalina Mountains woodrat	*Neotoma mexicana bullata*	Muridae	AZ.
2	San Joaquin Valley woodrat	*Neotoma fuscipes riparia*	Muridae	CA.
2	Kentucky red-backed vole	*Clethrionomys gapperi maurus*	Muridae	KY.
3B	Pymatuning red-backed vole	*Clethrionomys gapperi paludicola*	Muridae	OH,PA.
3B	Kittatiny red-backed vole	*Clethrionomys gapperi rupicola*	Muridae	PA.
2	White-footed vole	*Arborimus albipes*	Muridae	CA,OR.
2	Duke's salt marsh vole	*Microtus pennsylvanicus dukecampbelli*	Muridae	FL.
2	Potholes meadow vole	*Microtus pennsylvanicus kincaidi*	Muridae	WA.
2	Block Island meadow vole	*Microtus pennsylvanicus provectus*	Muridae	RI.
2	Penobscot meadow vole	*Microtus pennsylvanicus shattucki*	Muridae	ME.
2	Beach vole	*Microtus breweri*	Muridae	MA.
3C	Arizona montane vole	*Microtus montanus arizonensis*	Muridae	AZ,NM.
2	Pahranagat Valley montane vole	*Microtus montanus fucosus*	Muridae	NV
2	Ash Meadows montane vole	*Microtus montanus nevadensis*	Muridae	NV.
2	Virgin River montane vole	*Microtus montanus rivularis*	Muridae	UT.
2	San Pablo California vole	*Microtus californicus sanpabloensis*	Muridae	CA.
2	Owens Valley California vole	*Microtus californicus vallicola*	Muridae	CA.
2	Shaw Island Townsend's vole	*Microtus townsendii pugeti*	Muridae	WA.
2	Amak tundra vole	*Microtus oeconomus amakensis*	Muridae	AK.
2	Montague tundra vole	*Microtus oeconomus elymocetes*	Muridae	AK.
3C	Graham Mountains long-tailed vole	*Microtus longicaudus leucophaeus*	Muridae	AZ.
2	Southern rock vole	*Microtus chrotorrhinus carolinensis*	Muridae	NC,TN,VA,WV.
2	Navaho Mountain Mexican vole	*Microtus mexicanus navaho*	Muridae	AZ,UT.
3A	Louisiana prairie vole	*Microtus ochrogaster ludovicianus*	Muridae	LA,TX.
2	Round-tailed muskrat	*Neofiber alleni*	Muridae	FL,GA.
3C	Dismal Swamp bog lemming	*Synaptomys cooperi helaletes*	Muridae	NC,VA.
2	Nebraska bog lemming	*Synaptomys cooperi relictus*	Muridae	NE.
2	Kansas bog lemming	*Synaptomys cooperi paludis*	Muridae	KS.
2	Northern bog lemming	*Synaptomys borealis sphagnicola*	Muridae	ME,NH, Canada.
2	New Mexican jumping mouse	*Zapus hudsonius luteus*	Zapodidae	AZ,NM.
2	Preble's meadow jumping mouse	*Zapus hudsonius preblei*	Zapodidae	CO,WY.
2	Point Reyes jumping mouse	*Zapus trinotatus orarius*	Zapodidae	CA.
2	Sierra Nevada red fox	*Vulpes vulpes necator*	Canidae	CA,NV.
2	Swift fox	*Vulpes velox*	Canidae	CO,KS,MT,ND,NE,NM,OK,SD,TX,WY, Canada.
2	Santa Catalina Island fox	*Urocyon littoralis catalinae*	Canidae	CA.
2	San Clemente Island fox	*Urocyon littoralis clementae*	Canidae	CA.
2	San Nicolas Island fox	*Urocyon littoralis dickeyi*	Canidae	CA.
2	San Miguel Island fox	*Urocyon littoralis littoralis*	Canidae	CA.
2	Santa Cruz Island fox	*Urocyon littoralis santacruzae*	Canidae	CA.
2	Santa Rosa Island fox	*Urocyon littoralis santarosae*	Canidae	CA.
3C	Glacier (black) bear	*Ursus americanus emmonsii*	Ursidae	AK.
2	Florida black bear	*Ursus americanus floridanus*	Ursidae	FL,GA.
2	Louisiana black bear	*Ursus americanus luteolus*	Ursidae	LA,MS,TX.
2	Key Vaca raccoon	*Procyon lotor auspicatus*	Procyonidae	FL.
2	Key West raccoon	*Procyon lotor incautus*	Procyonidae	FL.
3C	Eastern marten	*Martes americana americana*	Mustelidae	MA,ME,MI,MD,NH,NY,OH,PA,VT,WI, Canada.
2	Florida long-tailed weasel	*Mustela frenata peninsulae*	Mustelidae	FL.
2	Everglades mink	*Mustela vison evergladensis*	Mustelidae	FL.
2	Florida mink	*Mustela vison lutensis*	Mustelidae	FL.
2	North American wolverine	*Gulo gulo luscus*	Mustelidae	CO,ID,MM,MT,ND,NV,UT,WY.
2	California wolverine	*Gulo gulo luteus*	Mustelidae	CA,OR,WA.
2	Channel Islands spotted skunk	*Spilogale putorius asphiala*	Mustelidae	CA.
2	Eastern hog-nosed skunk	*Conepatus leuconotus texensis*	Mustelidae	TX, Mexico.
2	Colorado hog-nosed skunk	*Conepatus mesoleucus figginsi*	Mustelidae	CO.
2	Big Thicket hog-nosed skunk	*Conepatus mesoleucus telesilestes*	Mustelidae	TX.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Southeastern otter	*Lutra canadensis sonorae*	Mustelidae	AZ,CA,CO,NM,UT.
2	North American lynx	*Felis lynx canadensis*	Felidae	AK,CO,ID,ME,MI,MN,MT,ND,NH,NY,WY,OR,UT VT,WA,WI,WY, Canada.
2	Texas margay	*Felis wiedii cooperi*	Felidae	TX, Mexico.
2	Yuma puma	*Felis concolor browni*	Felidae	AZ,CA, Mexico.
2	Wisconsin puma	*Felis concolor schorgeri*	Felidae	IA,IL,KS,MN,MO,WI, Canada.
2	Hilton Head white-tailed deer	*Odocoileus virginianus hiltonensis*	Cervidae	SC.
2	Blackbeard Island white-tailed deer	*Odocoileus virginianus nigribarbis*	Cervidae	GA.
2	Bulls Island white-tailed deer	*Odocoileus virginianus taurinsulae*	Cervidae	SC.
2	Hunting Island white-tailed deer	*Odocoileus virginianus venatoria*	Cervidae	SC.
3A	Woodland caribou (Montana population)	*Rangifer tarandus caribou*	Cervidae	MT.
2	California bighorn sheep	*Ovis canadensis californiana*	Bovidae	CA,OR,WA, Canada.
2	Peninsular bighorn sheep	*Ovis canadensis cremnobates*	Bovidae	CA, Mexico

INVERTEBRATES

SPONGES (Porifera)

3B	Muscular sponge	*Amphecromyia biceps*	Spongillidae	MI
2	Carolina sponge	*Carvospongenia carolinensis*	Spongillidae	SC.
2	Okaseeha sponge	*Ezcilia palmeri*	Spongillidae	FL, Mexico.
2	Kissimmee sponge	*Ephydatia subtilis*	Spongillidae	FL.
2	Pennsylvania sponge	*Heteromeyenia longistylis*	Spongillidae	PA.
2	Oneida sponge	*Spongilla heteroscleris*	Spongillidae	NY.
3B	Spongy sponge	*Spongilla spongincea*	Spongillidae	SC.

HYDROIDS (Cnidaria)

2	(No common name)	*Gastromovia hcrii*		HI

FLATWORMS (Turbellaria)

2	(Planarian, no common name)	*Hankia rhynchida*	Kenkiidae	OR.
2	(Planarian, no common name)	*Hankia (=Macrocotyla) glandulosa*	Kenkiidae	MO,IA.
2	Culver's planarian	*Sphalloplana culveri*	Kenkiidae	WV.
3A	Holsinger's groundwater planarian	*Sphalloplana holsingeri*	Kenkiidae	VA.
2	Reeton Cave planarian	*Sphalloplana pricei*	Kenkiidae	PA.
3A	Bigger's groundwater planarian	*Sphalloplana subtilis*	Kenkiidae	VA.
2	(Planarian, no common name)	*Sphalloplana virginiana*	Kenkiidae	VA.
2	(Planarian, no common name)	*Procotyla typhlops*	Kenkiidae	MD,VA.

EARTHWORMS (Annelids, Class Oligochseta)

2	Oregon giant earthworm	*Megascolides macelfreshi*	Megascolecidae	OR.

BRANCHIOPODS (Crustaceans, Subclass Branchiopoda)

3B	Mono Lake brine shrimp	*Artemia monica*	Artemiidae	CA.

ISOPODS (Crustaceans, Order Isopoda)

2	Clifton Cave isopod	*Caecidotes barri*	Asellidae	KY.
2	(Isopod, no common name)	*Caecidotes filicispeluncae*	Asellidae	OH.
2	(Isopod, no common name)	*Caecidotes cannulus*	Asellidae	WV.
2	Franz's isopod	*Caecidotes franzi*	Asellidae	MD.
2	(Isopod, no common name)	*Caecidotes simonsi*	Asellidae	WV.
2	(Isopod, no common name)	*Caecidotes sinuncus*	Asellidae	WV.
2	Bat Cave isopod	*Caecidotes macropoda*	Asellidae	OK.
2	Buckajack Cave isopod	*Caecidotes tuckajachensis*	Asellidae	TN.
2	Rye Cove Cave isopod	*Lirceus culveri*	Asellidae	VA.
2	Lee County Cave isopod	*Lirceus usdagulun*	Asellidae	VA.

AMPHIPODS (Crustaceans, Order Amphipoda)

2	(Amphipod, no common name)	*Metabetaeus lohena*	Alpheidae	HI.
2	Central Missouri cave amphipod	*Allocrangonyx hubrichti*	Gammaridae	MO.
2	Oklahoma cave amphipod	*Allocrangonyx pellucidus*	Gammaridae	OK.
2	Illinois cave amphipod	*Gammarus acherondytes*	Gammaridae	IL.
2	Hounsfield's amphipod	*Gammarus hounsfieldi*	Gammaridae	KY.
2	Noel's amphipod	*Gammarus desperatus*	Gammaridae	NM.
2	Diminutive amphipod	*Gammarus hyalleloides*	Gammaridae	TX.
2	Pecos amphipod	*Gammarus pecos*	Gammaridae	TX.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3C	Kansas well amphipod	*Bactrurus hubrichti*	Crangonyctidae	KS,MO,OK.
3C	Anomalous spring amphipod	*Crangonyx anomalus*	Crangonyctidae	IN,KY,OH.
2	Dearolf's (=Pennsylvania) cave amphipod	*Crangonyx dearolfi*	Crangonyctidae	MD,PA.
3C	Appalachian Valley cave amphipod	*Crangonyx antennatus*	Crangonyctidae	AL,IL,TN,VA.
2	Florida cave amphipod	*Crangonyx grandimanus*	Crangonyctidae	FL.
2	Hobb's cave amphipod	*Crangonyx hobbsi*	Crangonyctidae	FL.
3C	Minor cave amphipod	*Crangonyx minor*	Crangonyctidae	IA,IL,IN,MI, Canada.
3C	Packard's cave amphipod	*Crangonyx packardi*	Crangonyctidae	IN,KY.
3C	Allegheny cave amphipod	*Stygobromus (=Stygonectes) allegheniensis*	Crangonyctidae	MD,NY,PA.
2	Tidewater interstitial amphipod	*Stygobromus (=Apocrangonyx) araeus*	Crangonyctidae	VA.
2	Arizona cave amphipod	*Stygobromus (=Stygonectes) arizonensis*	Crangonyctidae	AZ.
2	Balcones cave amphipod	*Stygobromus (=Stygonectes) balconis*	Crangonyctidae	TX.
2	Barr's cave amphipod	*Stygobromus (=Stygonectes) barri*	Crangonyctidae	MO.
2	Bifurcated cave amphipod	*Stygobromus (=Stygonectes) bifurcatus*	Crangonyctidae	TX.
2	Bowman's cave amphipod	*Stygobromus (=Stygonectes) bowmani*	Crangonyctidae	OK.
2	Clanton's cave amphipod	*Stygobromus (=Stygonectes) clantoni*	Crangonyctidae	KS,MO.
2	Burnsville Cove cave amphipod	*Stygobromus (=Stygonectes) conradi*	Crangonyctidae	VA.
2	Cooper's cave amphipod	*Stygobromus (=Stygonectes) cooperi*	Crangonyctidae	WV.
2	Culver's cave amphipod	*Stygobromus culveri*	Crangonyctidae	WV.
2	Cascade Cave amphipod	*Stygobromus (=Stygonectes) dejectus*	Crangonyctidae	TX.
2	Elevated Spring amphipod	*Stygobromus (=Stygonectes) elatus*	Crangonyctidae	AR.
3C	Greenbrier Cave amphipod	*Stygobromus (=Stygonectes) emarginatus*	Crangonyctidae	MD,WV.
3C	Ephemeral cave amphipod	*Stygobromus (=Stygonectes) ephemerus*	Crangonyctidae	VA.
3C	Central Kentucky cave amphipod	*Stygobromus (=Stygonectes) exilis*	Crangonyctidae	AL,KY,TN.
2	Ezell's Cave amphipod	*Stygobromus (=Stygonectes) flagellatus*	Crangonyctidae	TX.
2	Franz's amphipod	*Stygobromus franzi*	Crangonyctidae	MD.
3C	Shenandoah Valley cave amphipod	*Stygobromus (=Stygonectes) gracilipes*	Crangonyctidae	MD,PA,VA,WV.
2	Grady's cave amphipod	*Stygobromus gradyi*	Crangonyctidae	CA.
2	Devil's Sinkhole amphipod	*Stygobromus (=Stygonectes) hadenoecus*	Crangonyctidae	TX.
2	Hara's cave amphipod	*Stygobromus harai*	Crangonyctidae	CA.
2	Pickle Springs amphipod	*Stygobromus heteropodus*	Crangonyctidae	MO.
2	Malheur Cave amphipod	*Stygobromus hubbsi*	Crangonyctidae	OR.
2	Tidewater amphipod	*Stygobromus (=Stygonectes) indentatus*	Crangonyctidae	VA.
3C	Iowa amphipod	*Stygobromus iowae*	Crangonyctidae	IA.
2	Long-legged cave amphipod	*Stygobromus (=Stygonectes) longipes*	Crangonyctidae	TX.
3A	Rubicus Cave amphipod	*Stygobromus (=Apocrangonyx) lucifugus*	Crangonyctidae	IL.
2	MacKenzie's cave amphipod	*Stygobromus mackenziei*	Crangonyctidae	CA.
3C	Southwestern Virginia cave amphipod	*Stygobromus mackini*	Crangonyctidae	TN,VA.
2	Mountain cave amphipod	*Stygobromus (=Stygonectes) montanus*	Crangonyctidae	AR.
2	Morrison's cave amphipod	*Stygobromus (=Stygonectes) morrisoni*	Crangonyctidae	VA,WV.
2	Bath County cave amphipod	*Stygobromus (=Stygonectes) mundus*	Crangonyctidae	VA.
2	Morton's cave amphipod	*Stygobromus (=Apocrangonyx) mortoni*	Crangonyctidae	TN.
2	Pocahontas cave amphipod	*Stygobromus nanus*	Crangonyctidae	WV.
2	Onondaga Cave amphipod	*Stygobromus onondagaensis*	Crangonyctidae	MO.
3C	Oregon cave amphipod	*Stygobromus oregonensis*	Crangonyctidae	OR.
2	Ozark cave amphipod	*Stygobromus (=Stygonectes) ozarkensis*	Crangonyctidae	AR,MO,OK.
2	Minute cave amphipod	*Stygobromus (=Apocrangonyx) parvus*	Crangonyctidae	WV.
2	Peck's cave amphipod	*Stygobromus (=Stygonectes) pecki*	Crangonyctidae	TX.
2	Pizzini's amphipod	*Stygobromus (=Stygonectes) pizzinii*	Crangonyctidae	DC,MD,PA,VA.
2	Wisconsin well amphipod	*Stygobromus puteanus*	Crangonyctidae	WI.
2	Redacted cave amphipod	*Stygobromus redactus*	Crangonyctidae	WV.
2	Redell's cave amphipod	*Stygobromus (=Stygonectes) redelli*	Crangonyctidae	TX.
2	Alabama well amphipod	*Stygobromus smithi*	Crangonyctidae	AL.
2	Spring cave amphipod	*Stygobromus (=Stygonectes) spinatus*	Crangonyctidae	WV.
2	Stellmack's cave amphipod	*Stygobromus (=Stygonectes) stellmacki*	Crangonyctidae	PA.
2	Subtle cave amphipod	*Stygobromus (=Apocrangonyx) subtilis*	Crangonyctidae	IL,MO.
3C	Potomac groundwater amphipod	*Stygobromus (=Stygonectes) tenuis potomacus*	Crangonyctidae	DC,MD,PA,VA.
2	Wengerors' cave amphipod	*Stygobromus wengerorum*	Crangonyctidae	CA
1	Kauai cave amphipod	*Spelaeorchestia koloana*	Talitridae	HI.

CRAYFISHES & SHRIMPS (Crustaceans, Order Decapoda)

2	(Shrimp, no common name)	*Antecaridina lauensis*	Atyidae	HI.
2	(Shrimp, no common name)	*Halocaridina palahemo*	Atyidae	HI.
2	Mona cave shrimp	*Typhlatya monae*	Atyidae	PR, West Indies
2	(Crayfish, no common name)	*Cambarus batchi*	Cambaridae	KY.
3C	Big South Fork crayfish	*Cambarus beuchardi*	Cambaridae	KY,TN.
2	Greensboro burrowing crayfish	*Cambarus catagnus*	Cambaridae	NC.
2	New River riffle crayfish	*Cambarus chasmodactylus*	Cambaridae	NC,VA,WV.
2	Chickamauga crayfish	*Cambarus extraneus*	Cambaridae	GA,TN.
2	(Crayfish, no common name)	*Cambarus miltus*	Cambaridae	AL.
2	Obey crayfish	*Cambarus obeyensis*	Cambaridae	TN.
2	(Crayfish, no common name)	*Cambarus spicatus*	Cambaridae	SC.
2	(Crayfish, no common name)	*Cambarus tartarus*	Cambaridae	OK.
2	(Crayfish, no common name)	*Distocambarus youngineri*	Cambaridae	SC.
2	(Crayfish, no common name)	*Fallicambarus jeanae*	Cambaridae	AR.
2	Okaibbeha rivulet crayfish	*Hobbseus orconectoides*	Cambaridae	MS.
3C	Conchas crayfish	*Orconectes deanae*	Cambaridae	NM.
2	Louisville crayfish	*Orconectes jeffersoni*	Cambaridae	KY.
2	(Crayfish, no common name)	*Orconectes williamsi*	Cambaridae	AL.
2	Palm Springs Cave crayfish	*Procambarus acherontis*	Cambaridae	FL.
2	Jackson Prairie crayfish	*Procambarus barbaer*	Cambaridae	MS.
2	Mississippi flatwoods crayfish	*Procambarus cercis*	Cambaridae	MS.
2	Carrollton crayfish	*Procambarus curvis*	Cambaridae	MS.

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CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 (Crayfish, no common name)	*Procambarus echinatus*	Cambaridae	SC.
2 Pee Dee lotic crayfish	*Procambarus lepidodactylus*	Cambaridae	NC,SC.
2 (Crayfish, no common name)	*Procambarus liberorum*	Cambaridae	MS.
2 Shatinspear crayfish	*Procambarus lylei*	Cambaridae	MS.
2 Bearded red crayfish	*Procambarus pogus*	Cambaridae	MS.
2 (Shrimp, no common name)	*Calliasmata pholidota*	Hippolytidae	HI.
2 (Shrimp, no common name)	*Palaemonella burnsi*	Palaemonidae	HI.
2 Tunas cave shrimp	*Palaemonetes antrorum*	Palaemonidae	TX.
1 Squirrel Chimney cave shrimp	*Palaemonetes cummingi*	Palaemonidae	FL.
2 (Shrimp, no common name)	*Procaris hawaiana*	Procarididae	HI.
2 (Shrimp, no common name)	*Vetericaris chaceorum*	Procaridae	HI.

SPIDERS (Arachnids, Order Arsnea)

2 Dolloff Cave spider	*Meta dolloff*	Araneidae	CA.
2 Torreya trap-door spider	*Cyclocosmia torreya*	Ctenizidae	FL.
2 Key gnaphosid spider	*Cesonia irvingi*	Gnaphosidae	FL.
2 Cavern sheet-web spider	*Islandiana spaophila*	Lymphiidae	WV.
1 Kauai cave wolf spider (pe'e pe'e maka 'ole)	*Adelocosa anops*	Lycosidae	HI.
3C Rosemary wolf spider	*Lycosa ericeticola*	Lycosidae	FL.
2 Lake Placid funnel wolf spider	*Sosippus placidus*	Lycosidae	FL.
2 Lost Mantahala Cave spider	*Nesticus cooperi*	Nesticidae	NC.
2 Grassy Creek Cave spider	*Nesticus dilutus*	Nesticidae	TN.
2 Crystal Caverns cave spider	*Nesticus furtivus*	Nesticidae	TN.
2 Cave Spring Cave spider	*Nesticus jonesi*	Nesticidae	AL.
2 Valdosine's cave spider	*Nesticus valentinei*	Nesticidae	TN.
2 Santa Cruz telemid spider	*Telema sp.*	Telemidae	CA.

PSEUDOSCORPIONS (Arachnids, Order Pseudoscorpiones)

2 Dry Fork Valley cave pseudoscorpion	*Apochthonius paucispinosus*	Chthoniidae	WV.
2 Malheur pseudoscorpion	*Apochthonius malheuri*	Chthoniidae	OR.
2 Grubbs' cave pseudoscorpion	*Aphrastochthonius grubbsi*	Chthoniidae	CA.
2 Carlow's Cave pseudoscorpion	*Aphrastochthonius simulis*	Chthoniidae	CA.
2 Greenbriar Valley cave pseudoscorpion	*Kleptochthonius benroti*	Chthoniidae	WV.
2 Organ Cave pseudoscorpion	*Kleptochthonius hatrickii*	Chthoniidae	WV.
2 Orpheus cave pseudoscorpion	*Kleptochthonius orpheus*	Chthoniidae	WV.
2 Proserpina cave pseudoscorpion	*Kleptochthonius proserpinae*	Chthoniidae	WV.
2 Aalbu's cave pseudoscorpion	*Archeolarca aalbui*	Garypidae	CA.
2 Grand Canyon cave pseudoscorpion	*Archeolarca cavicola*	Garypidae	AZ.
2 Guadalupe cave pseudoscorpion	*Archeolarca guadalupensis*	Garypidae	TX.
2 Lacey's cave pseudoscorpion	*Larca laceyi*	Garypidae	CA.
2 Empire Cave pseudoscorpion	*Microcreagris imperialis*	Neobisiidae	CA.
2 Music Hall Cave pseudoscorpion	*Pseudogarypus orpheus*	Pseudogarypidae	CA.
2 Royal syarinid pseudoscorpion	*Chitrella regina*	Syarinidae	WV.

HARVESTMEN (Arachnids, Order Opiliones)

2 Edgewood blind harvestman	*Sitalcina minor*		CA.

ROCKHOPPERS & BRISTLETAILS (Insects, Order Archeognaths)

2 Hawaiian long-palp bristletail	*Machiloides heteropus*	Machilidae	HI.
2 Perkin's club-palp bristletail	*Machiloides perkinsi*	Machilidae	HI.

SPRINGTAILS (Insects, Order Collembola)

2 Gandy Creek cave springtail	*Pseudosinella certa*	Entomobryidae	WV.
2 Shelled cave springtail	*Pseudosinella testa*	Entomobryidae	WV.

MAYFLIES (Insects, Order Ephemeroptera)

2 Berner's two-winged mayfly	*Heterocloeon berneri*	Baetidae	GA.
2 American sandburrowing mayfly	*Dolania americana*	Behningiidae	FL,GA,SC,NC.
2* Yellow brachycercus mayfly	*Brachycercus flavus*	Caenidae	LA*.
2 Argo ephemerellan mayfly	*Ephemerella argo*	Ephemerellidae	GA,IL,IN,SC.
2* Prison's serratellan mayfly	*Serratella frisoni*	Ephemerellidae	AL*,IL*,MD*.
2* Spiculose serratellan mayfly	*Serratella spiculosa*	Ephemerellidae	TN*,NC*.
2* Colorado burrowing mayfly	*Ephemera compar*	Ephemeridae	CO*.
2* West Virginia burrowing mayfly	*Ephemera triplex*	Ephemeridae	WV*.
3A Robust pentagenian burrowing mayfly	*Pentagenia robusta*	Ephemeridae	OH*.
3B Meridion blackwater mayfly	*Pseudirion meridionalis* (synonym of *P. centralis*)	Heptageniidae	FL,GA.
2 Cahaba sandfiltering mayfly	*Homoeoneuria cahabensis*	Oligoneuriidae	AL,MS.
2 Blackwater sandfiltering mayfly	*Homoeoneuria dolani*	Oligoneuriidae	FL,GA,SC.
3A Diverse isonychian mayfly	*Isonychia diversa*	Oligoneuriidae	TN*.
2 Pecatonica River mayfly	*Acanthometropus pecatonica*	Siphlonuridae	IL,WI.
2 False ameletus mayfly	*Ameletus falsus*	Siphlonuridae	AZ.

DRAGONFLIES & DAMSELFLIES (Insects, Order Odonata)

2 Balmorhea damselfly	*Argia sp.*	Coenagrionidae	TX.
2 Sabino Canyon damselfly	*Argia sp.*	Coenagrionidae	AZ.
3C Berrens bluet damselfly	*Enallagma recurvatum*	Coenagrionidae	MA,NY,NJ.
2 San Francisco forktail damselfly	*Ischnura gemina*	Coenagrionidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Adytum megalagrion damselfly	*Megalagrion adytum*	Coenagrionidae	HI.
2* Fallax megalagrion damselfly	*Megalagrion amaurodytum fallax*	Coenagrionidae	HI*.
2* Pele megalagrion damselfly	*Megalagrion amaurodytum peles*	Coenagrionidae	HI*.
2* Waianae megalagrion damselfly	*Megalagrion amaurodytum waianaense*	Coenagrionidae	HI*.
3A Jugorum megalagrion damselfly	*Megalagrion jugorum*	Coenagrionidae	HI*.
2 Leptodemas megalagrion damselfly	*Megalagrion leptodemas*	Coenagrionidae	HI.
2 Molokai megalagrion damselfly	*Megalagrion molokaiense*	Coenagrionidae	HI.
3A Nesiotes megalagrion damselfly	*Megalagrion nesiotes*	Coenagrionidae	HI*.
2 Nigrohamatum megalagrion damselfly	*Megalagrion nigrohamatum*	Coenagrionidae	HI.
2 Blachline megalagrion damselfly	*Megalagrion nigrolineatum*	Coenagrionidae	HI.
2 Oahu megalagrion damselfly	*Megalagrion oahuensis*	Coenagrionidae	HI.
2 Oceanic megalagrion damselfly	*Megalagrion oceanicum*	Coenagrionidae	HI.
1 Pacific megalagrion damselfly	*Megalagrion pacificum*	Coenagrionidae	HI.
2 Orangeblack megalagrion damselfly	*Megalagrion xanthomelas*	Coenagrionidae	HI.
2 Say's spiketail dragonfly	*Cordulegaster sayi*	Cordulegastridae	FL,GA.
2 Apalachicola twilight skimmer dragonfly	*Neurocordulia clara*	Corduliidae	AL,FL.
2 Ohio emerald dragonfly	*Somatochlora hineana*	Corduliidae	IL,OH*,IN*.
2 Big Thicket emerald dragonfly	*Somatochlora margarita*	Corduliidae	TX.
2 Banded hog skimmer dragonfly	*Williamsonia lintneri*	Corduliidae	WV,NJ,MA,KY,ME.
2 Cherokee clubtail dragonfly	*Gomphus (Gomphurus) consanguis*	Gomphidae	SC,AL,NC,TN,VA.
2 Tennessee clubtail dragonfly	*Gomphus (Gomphurus) sandrius*	Gomphidae	TN.
2 Septima's clubtail dragonfly	*Gomphus (Gomphurus) septima*	Gomphidae	AL,NC.
3B Hudson clubtail dragonfly	*Gomphus (Hylogomphus) adelphus* (synonym of *G. brevis*)	Gomphidae	MA,NY (as name originally used).
2 Sandhills clubtail dragonfly	*Gomphus (Hylogomphus) parvidens carolinus*	Gomphidae	NC,SC.
2 Elusive clubtail dragonfly	*Gomphus (Stylurus) notatus*	Gomphidae	MD,VI, Canada, IA*,IL*,IN*,KY*,MI*,MN*, NY*,OH*,PA*,VT*,WI*,AL?*,GA?*.
2 Bronze clubtail dragonfly	*Gomphus (Stylurus) townesi*	Gomphidae	FL,AL,SC,NC,TN.
2 Extra-striped snaketail dragonfly	*Ophiogomphus anomalus*	Gomphidae	NJ, Canada, MD*,MT*,PA*.
2* Edmund's snaketail dragonfly	*Ophiogomphus edmundo*	Gomphidae	NC*.
2 Midget snaketail dragonfly	*Ophiogomphus howei*	Gomphidae	KY,NC,NY,PA,VA,TN,MD*.
2 Allegheny snaketail dragonfly	*Ophiogomphus incurvatus allegheniensis*	Gomphidae	WV,VA,NJ,TN?.
2 Ozark snaketail dragonfly	*Ophiogomphus westfalli*	Gomphidae	AR,MO.
2 Variegated clubtail dragonfly	*Progomphus bellei*	Gomphidae	FL,NC.
2 Wabash belted skimmer dragonfly	*Macromia wabashensis*	Macromiidae	OH*,IN*,TX.

STONEFLIES (Insects, Order Plecoptera)

2 Lake Tahoe benthic stonefly	*Capnia lacustra*	Capniidae	CA,NV.
2 Natchez stonefly	*Alloperla natchez*	Chloroperlidae	MS.
3A Robert's alloperlan stonefly	*Alloperla roberti*	Chloroperlidae	IL*.
2 Chukcho stonefly	*Haploperla chukcho*	Chloroperlidae	MS.
3B Schoolhouse Springs leuctran stonefly	*Leuctra szczytkoi*	Leuctridae	LA.
2 Shirttail Creek stonefly	*Megaleuctra sierra*	Leuctridae	CA.
2 Meltwater lednian stonefly	*Lednia tumana*	Nemouridae	MT.
2 Wahkeena Falls flightless stonefly	*Nemoura wahkeena*	Nemouridae	OR.
2 Pender's soliperlan stonefly	*Soliperla fenderi*	Peltoperlidae	WA.
3C Georgia beloneurian stonefly	*Beloneuria georgiana*	Perlidae	GA,NC.
2 Cheoha beloneurian stonefly	*Beloneuria jamesae*	Perlidae	AL.
3C Hanson's appalachian stonefly	*Hansonoperla appalachia*	Perlidae	KY,MA,MD,SC,TN.
2 Leon River winter stonefly	*Taeniopteryx starki*	Taeniopteryidae	TX.

COCKROACHES (Insects, Order Blattodes)

2 Tuna Cave roach	*Aspiduchus cavernicola*	Blaberidae	PR.

GRASSHOPPERS & ALLIES (Insects, Order Orthoptera)

2 Idaho pointheaded grasshopper	*Acrolophitus pulchellus*	Acrididae	ID.
2 Michigan hog grasshopper	*Appalachia arcana*	Acrididae	MI.
2 Siskiyou chloealtis grasshopper	*Chloealtis aspasma*	Acrididae	OR.
2* Big Cedar grasshopper	*Eritettix phenax*	Acrididae	OK*.
2* Superb grasshopper	*Eritettix (=Spharagemon) superbus*	Acrididae	TX*.
2 Lake Barco locust	*Trimerotropis barcoiana*	Acrididae	MI,WI, Canada.
2 Pinaleno monkey grasshopper	*Hamotaca pinaleno*	Hamotacidae	AZ.
2 Desert monkey grasshopper	*Psychomastix deserticola*	Hamotacidae	OR,NV.
2 Howarth's cave cricket	*Caconemobius howarthi*	Gryllidae	HI.
2 Schauinsland's bush cricket	*Caconemobius schauinslandi*	Gryllidae	HI.
2 Kaumana Cave cricket	*Caconemobius varius*	Gryllidae	HI.
2 Keys scaly cricket	*Cycloptilus irregularis*	Gryllidae	FL.
2 Prairie-mole cricket	*Gryllotalpa major*	Gryllidae	AR,MO,KS,OK,IL*,MS*.
2 Oahu deceptor bush cricket	*Leptogryllus deceptor*	Gryllidae	HI.
2 Laricis tree cricket	*Oecanthus laricis*	Gryllidae	NY,OR.
2 Volcanoes cave cricket	*Thaumatogryllus cavicola*	Gryllidae	HI.
2 Kauai thinfooted bush cricket	*Thaumatogryllus variegatus*	Gryllidae	HI.
2 Arizona giant sand treader cricket	*Bushiahamotes arizonensis*	Rhaphidophoridae	AZ.
2 Kelso giant sand treader cricket	*Macrobaenetes kelsoensis*	Rhaphidophoridae	CA.
2 Coachella giant sand treader cricket	*Macrobaenetes valgum*	Rhaphidophoridae	CA.
2 Sanwell Cave cricket	*Pristocrothophilus sp.*	Rhaphidophoridae	CA.
2 Tanner's black camel cricket	*Ptabaenetes tanneri*	Rhaphidophoridae	UT.
2 Kelso Jerusalem cricket	*Ammopelmatus kelsoensis*	Stenopelmatidae	CA.
2 Point Conception Jerusalem cricket	*Ammopelmatus nuwu*	Stenopelmatidae	CA.
2 Coachella Valley Jerusalem cricket	*Stenopelmatus cahuilaensis*	Stenopelmatidae	CA.
2 Navajo Jerusalem cricket	*Stenopelmatus navajo*	Stenopelmatidae	AZ.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Sierra pygmy grasshopper	*Tetrix sierrana*	Tetrigidae	CA.
2 Torreya pygmy grasshopper	*Tettigidea augustipennis*	Tettigidae	FL.
2 Kihoa banza conehead katydid	*Banza kihoae*	Tettigoniidae	HI.
2 Big Pine Key conehead katydid	*Belocephalus micanopy*	Tettigoniidae	FL.
2 Keys shortwinged conehead katydid	*Belocephalus sleighti*	Tettigoniidae	FL.
3A Remote conehead katydid	*Conocephaloides remotus*	Tettigoniidae	HI*.
2 Pinnacles shield-back katydid	*Idiostatus kathleenae*	Tettigoniidae	CA.
2 Middlekauf's shieldback katydid	*Idiostatus middlekauffi*	Tettigoniidae	CA.
3A Antioch Dunes shieldback katydid	*Neduba extincta*	Tettigoniidae	CA*.
2 Santa Monica shieldback katydid	*Neduba longipennis*	Tettigoniidae	CA.
ZOROAPTERANS (Insects, Order Zoroaptera)			
2 Swezey's zoropteran	*Zorotypus swezeyi*	Zorotypidae	HI.
TRUE BUGS (Insects, Order Hemiptera)			
2 Saratoga Springs belostoman bug	*Belostoma saratogae*	Belostomatidae	CA.
2 Mauna Loa metrargum seed bug	*Metrargus obscurus*	Lygaeidae	HI.
2 Kauai hand-legged seed bug	*Nysius alternatus*	Lygaeidae	HI.
2 Mt. Haleakala seed bug	*Nysius haleakalae*	Lygaeidae	HI.
2 Villosan flightless seed bug	*Nysius cryptias villosus*	Lygaeidae	HI.
2 French Frigate Shoal seed bug	*Nysius frigatensis*	Lygaeidae	HI.
2 Fullaway's seed bug	*Nysius fullawayi*	Lygaeidae	HI.
2 Wahiawa goosefoot seed bug	*Nysius wahiawaensis*	Lygaeidae	HI.
2 Kihoa nysius seed bug	*Nysius kihoae*	Lygaeidae	HI.
2 Waahila bunchgrass seed bug	*Nysius suffusus*	Lygaeidae	HI.
2 Bryan's oceanides seed bug	*Oceanides bryani*	Lygaeidae	HI.
2 Perkins' oceanides seed bug	*Oceanides perkinsi*	Lygaeidae	HI.
2 Rough-headed oceanides seed bug	*Oceanides rugosiceps*	Lygaeidae	HI.
2 Dry Creek cliff strider bug	*Oravelia pogo*	Hebrovelliidae	CA.
2 Asa water treader bug	*Caveticovelia asa*	Mesoveliidae	HI.
3A Phyllostegian leaf bug	*Cyrtopeltis (=Engytatus) phyllostegiae*	Miridae	HI.
2 Lanai kalamian leaf bug	*Kalama hawaiiensis*	Miridae	HI.
2 Oahu kalamian leaf bug	*Kalama* sp.	Miridae	HI.
2 Amargosa naucorid bug	*Pelocoris shoshone*	Naucoridae	CA,NV.
2 Dismal Swamp chlorochroan bug	*Chlorochroa dismalia*	Pentatomidae	VA.
2 Santa Rita Mountains chlorochroan bug	*Chlorochroa rita*	Pentatomidae	AZ.
2* Pulchrus thread bug	*Empicoris pulchrus*	Reduviidae	HI*.
2 Ana wingless thread bug	*Nabidiolastes ana*	Reduviidae	HI.
2 Mt. Tantalus wingless thread bug	*Nabidiolastes insularis*	Reduviidae	HI.
2 Robert's wingless thread bug	*Nabidiolastes roberti*	Reduviidae	HI.
2 Selius wingless thread bug	*Nabidiolastes selius*	Reduviidae	HI.
2 Smith's stiacallan reduviid bug	*Stiacella smithi*	Reduviidae	HI.
2 Annectans rhopalid bug	*Ithamar annectans*	Rhopalidae	HI.
2 Hawaiian rhopalid bug	*Ithamar hawaiiense*	Rhopalidae	HI.
3C Wilbur Springs shore bug	*Saldula wilburi*	Saldidae	CA.
CICADAS AND ALLIES (Insects, Order Homoptera)			
2 Redwinged prairie leafhopper	*Aflexia (=Flexamia) rubranura*	Cicadellidae	WI, Canada, IL*.
2 Barrens sedge leafhopper	*Limotettix* sp.	Cicadellidae	MD.
2 Kauai parti-colored oliarus planthopper	*Oliarus consimilis*	Cixiidae	HI.
2 Oliarus wild cotton planthopper	*Oliarus discrepans*	Cixiidae	HI.
2 Lanai oliarus planthopper	*Oliarus lanaiensis*	Cixiidae	HI.
2 Libue oliarus planthopper	*Oliarus libue*	Cixiidae	HI.
2 Barber's Point oliarus planthopper	*Oliarus myoporicola*	Cixiidae	HI.
2 Priolan oliarus planthopper	*Oliarus priola*	Cixiidae	HI.
2 Mt. Tantalus short-wing fern planthopper	*Nesosteiros filicicola*	Delphacidae	HI.
2 Iao Valley nesosydne planthopper	*Nesosydne acuta*	Delphacidae	HI.
2 Bridwell's nesosydne planthopper	*Nesosydne bridwelli*	Delphacidae	HI.
2 Waihiu nesosydne planthopper	*Nesosydne cyrtandrae*	Delphacidae	HI.
2 Glenwood nesosydne planthopper	*Nesosydne cyrtandricola*	Delphacidae	HI.
2 Rasche's nesosydne planthopper	*Nesosydne haschei*	Delphacidae	HI.
2 Diamond Head nesosydne planthopper	*Nesosydne leahi*	Delphacidae	HI.
2 Long-footed nesosydne planthopper	*Nesosydne longipes*	Delphacidae	HI.
2 Keanae nesosydne planthopper	*Nesosydne sulcata*	Delphacidae	HI.
LACEWINGS & ALLIES (Insects, Order Neuroptera)			
2 San Francisco lacewing	*Nothochrysa californica*	Chrysopidae	CA.
2 Haleakala mesothemum spongillafly	*Mesothemum haleakalae*	Hemerobiidae	HI.
2 Cookes' spongillafly	*Pseudopsectra cookeorum*	Hemerobiidae	HI.
2 Lobe-wing spongillafly	*Pseudopsectra lobipennis*	Hemerobiidae	HI.
2 Swezey's spongillafly	*Pseudopsectra swezeyi*	Hemerobiidae	HI.
2 Usinger's spongillafly	*Pseudopsectra usingeri*	Hemerobiidae	HI.
2 Cheese-weed owlfly	*Oliarces clara*	Ithonidae	AZ,CA.
2 Molokai antlion	*Eidoleon perjurus*	Myrmeleontidae	HI.
BEETLES (Insects, Order Coleoptera)			
2 Pike anobiid beetle	*Holcobius pikensis*	Anobiidae	HI.
2 Antioch Dunes anthicid beetle	*Anthicus antiochensis*	Anthicidae	CA.
2 Sacramento anthicid beetle	*Anthicus sacramento*	Anthicidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Beller's ground beetle	*Agonum belleri*	Carabidae	WA,OR.
2 Arbuckle Cave ground beetle	*Horologion speokoites*	Carabidae	WV.
2 Echo Cave beetle	*Pseudanophthalmus acherontis*	Carabidae	TN.
2 West Wills Valley cave beetle	*Pseudanophthalmus assimilis*	Carabidae	AL.
2 Avernus cave beetle	*Pseudanophthalmus avernus*	Carabidae	VA.
2 Benderman's cave beetle	*Pseudanophthalmus bendermani*	Carabidae	TN.
2 Limestone Cave beetle	*Pseudanophthalmus calcareus*	Carabidae	KY.
2 Catherine's cave beetle	*Pseudanophthalmus catherinae*	Carabidae	TN.
2 Little Kennedy Cave beetle	*Pseudanophthalmus cordicollis*	Carabidae	VA.
2 Deceptive cave beetle	*Pseudanophthalmus deceptivus*	Carabidae	VA.
2 New River Valley cave beetle	*Pseudanophthalmus egberti*	Carabidae	VA.
2 Engelhardt's cave beetle	*Pseudanophthalmus engelhardti*	Carabidae	TN.
2 Tapered cave beetle	*Pseudanophthalmus fastigatus*	Carabidae	GA.
2 Fowler's cave beetle	*Pseudanophthalmus fowlerae*	Carabidae	TN.
2 Icebox Cave beetle	*Pseudanophthalmus frigidus*	Carabidae	KY.
2 Georgian cave beetle	*Pseudanophthalmus georgiae*	Carabidae	GA.
2 Timber Ridge cave beetle	*Pseudanophthalmus hadencecus*	Carabidae	WV.
2 Lee County cave beetle	*Pseudanophthalmus hirsutus*	Carabidae	TN,VA.
2 Holsinger's cave beetle	*Pseudanophthalmus holsingeri*	Carabidae	VA.
2 Garden cave beetle	*Pseudanophthalmus hortulanus*	Carabidae	VA.
2 Hubbard's cave beetle	*Pseudanophthalmus hubbardi*	Carabidae	VA.
2 Hubricht's cave beetle	*Pseudanophthalmus hubrichti*	Carabidae	VA.
2 Stone-dwelling cave beetle	*Pseudanophthalmus hypolithos*	Carabidae	KY.
2 Illinois cave beetle	*Pseudanophthalmus illinoisensis*	Carabidae	IL.
2 Searcher cave beetle	*Pseudanophthalmus inquisitor*	Carabidae	TN.
2 Baker Station Cave beetle	*Pseudanophthalmus insularis*	Carabidae	TN.
2 Crossroads cave beetle	*Pseudanophthalmus intersectus*	Carabidae	VA.
2 Grassy Cove cave beetle	*Pseudanophthalmus jonesi*	Carabidae	TN.
2 Kramer's cave beetle	*Pseudanophthalmus kraueri*	Carabidae	OH.
2 Rich Mountain cave beetle	*Pseudanophthalmus kreheleri*	Carabidae	WV.
2 Lallemant's cave beetle	*Pseudanophthalmus lallemanti*	Carabidae	WV.
2 Mud-dwelling cave beetle	*Pseudanophthalmus limicola*	Carabidae	VA.
2 Long-headed cave beetle	*Pseudanophthalmus longiceps*	Carabidae	TN,VA.
2 Dry Fork Valley cave beetle	*Pseudanophthalmus montanus*	Carabidae	WV.
2 Nelson's cave beetle	*Pseudanophthalmus nelsoni*	Carabidae	VA.
3A Pickajack Cave beetle	*Pseudanophthalmus pickajackensis*	Carabidae	TN.
2 Morton's cave beetle	*Pseudanophthalmus mortoni*	Carabidae	TN.
2 Western cave beetle	*Pseudanophthalmus occidentalis*	Carabidae	TN.
2 Ohio cave beetle	*Pseudanophthalmus ohioensis*	Carabidae	OH.
2 Pale cave beetle	*Pseudanophthalmus pallidus*	Carabidae	TN.
2 Ridgetop cave beetle	*Pseudanophthalmus paradoxus*	Carabidae	TN.
2 Thin-neck cave beetle	*Pseudanophthalmus parvicollis*	Carabidae	VA.
2 Hobletts Cave beetle	*Pseudanophthalmus paulus*	Carabidae	TN.
2 Payne's cave beetle	*Pseudanophthalmus paynei*	Carabidae	TN.
2 Petrunkevitch's cave beetle	*Pseudanophthalmus petrunkevitchi*	Carabidae	VA.
2 Natural Bridge cave beetle	*Pseudanophthalmus pontis*	Carabidae	VA.
2 South Branch Valley cave beetle	*Pseudanophthalmus potomaca potomaca*	Carabidae	WV,VA.
2 Seneca cave beetle	*Pseudanophthalmus potomaca senecae*	Carabidae	WV.
2 Overlooked cave beetle	*Pseudanophthalmus praeternissus*	Carabidae	VA.
2 Spotted cave beetle	*Pseudanophthalmus punctatus*	Carabidae	VA.
2 Tiny cave beetle	*Pseudanophthalmus pusillus*	Carabidae	TN.
2 Straley's Cave beetle	*Pseudanophthalmus quadratus*	Carabidae	VA.
2 Rogers' cave beetle	*Pseudanophthalmus ropersae*	Carabidae	KY.
2 Saint Paul cave beetle	*Pseudanophthalmus sanctipauli*	Carabidae	VA.
2 Schoolhouse cave beetle	*Pseudanophthalmus scholasticus*	Carabidae	KY.
2 Lean cave beetle	*Pseudanophthalmus scutilis*	Carabidae	TN.
2 Sequoyah cave beetle	*Pseudanophthalmus sequoyah*	Carabidae	AL.
2 Silkun cave beetle	*Pseudanophthalmus sericus*	Carabidae	VA.
2 Meridith Cave beetle	*Pseudanophthalmus sidus*	Carabidae	TN.
2 Simple cave beetle	*Pseudanophthalmus simplex*	Carabidae	TN.
2 Greenbrier Valley cave beetle	*Pseudanophthalmus subaequalis*	Carabidae	WV.
2 Thomas' cave beetle	*Pseudanophthalmus thomasi*	Carabidae	VA.
2 Indian Grave Point cave beetle	*Pseudanophthalmus tiresias*	Carabidae	TN.
3A Duck River cave beetle	*Pseudanophthalmus tullahoma*	Carabidae	TN.
2 Union County cave beetle	*Pseudanophthalmus unicoxis*	Carabidae	TN.
2 Blowing Cave beetle	*Pseudanophthalmus ventus*	Carabidae	TN.
2 Maiden Spring cave beetle	*Pseudanophthalmus (=Aphanotrechus) virginicus*	Carabidae	VA.
2 Wallace's cave beetle	*Pseudanophthalmus wallacei*	Carabidae	TN.
2 Roth's blind ground beetle	*Pterostichus rothi*	Carabidae	OR.
2 (Ground beetle, no common name)	*Rhadine ozarkensis*	Carabidae	AR.
2 Schaum's Blue Ridge ground beetle	*Sphaeroderus schaumi* ssp.	Carabidae	VA.
3C Mojave rabbitbrush longhorn beetle	*Crossidius mojavensis mojavensis*	Cerambycidae	CA.
2 Six-banded longhorn beetle	*Dryobius sexnotatus*	Cerambycidae	LA,MD,MS,OH,PA,AL*,AR*,IN*,KS*,KY*, MI*,MO*,TN*,VA*,WV*.
2 Rude's longhorn beetle	*Necydalis rudei*	Cerambycidae	CA.
2 Hawaiian Plagithymysus longhorn beetles	*Plagithymysus* ca 43 spp.	Cerambycidae	HI.
3B Bog idol leaf beetle	*Donacia idola*	Chrysomelidae	WA*.
2 Idaho dunes tiger beetle	*Cicindela arenicola*	Cicindelidae	ID.
2* Cazier's tiger beetle	*Cicindela cazieri*	Cicindelidae	TX*.
2* Smyth's tiger beetle	*Cicindela chlorocephala smythi*	Cicindelidae	TX*.
3C Columbia River tiger beetle	*Cicindela columbica*	Cicindelidae	ID,WA,OR*.
1 Northeastern beach tiger beetle	*Cicindela dorsalis dorsalis*	Cicindelidae	MA,MD,NY,NC,RI,PA*.
2* Oblivious tiger beetle	*Cicindela latesignata oblitosa*	Cicindelidae	CA*.
2 Coral Pink Dunes tiger beetle	*Cicindela limbata albissima*	Cicindelidae	UT.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Cobblestone tiger beetle	*Cicindela marginipennis*	Cicindelidae	NH,VT,NY,NJ,OH,PA,MS,WV*.
2 Los Olmos tiger beetle	*Cicindela nevadica olmosa*	Cicindelidae	TX,NM, Mexico?.
2 Subtropical blue-black tiger beetle	*Cicindela nigrocoerula subtropica*	Cicindelidae	TX.
2* Neojuvenile tiger beetle	*Cicindela obsoleta neojuvenalis*	Cicindelidae	TX*.
2 Maricopa tiger beetle	*Cicindela oregona maricopa*	Cicindelidae	AZ.
2 Barbara Ann's tiger beetle	*Cicindela politula barbaraannae*	Cicindelidae	TX.
2 Guadalupe Mountains tiger beetle	*Cicindela politula petrophila*	Cicindelidae	TX.
1 Puritan tiger beetle	*Cicindela puritana*	Cicindelidae	MD,VT,PA*,WV*,CT?*.
2 Greenest tiger beetle	*Cicindela tranquebarica viridissima*	Cicindelidae	CA.
2 Oahu neoictous weevil	*Brimoretosomus neoictus*	Curculionidae	HI.
3C Antioch Dune weevil	*Bystichorus rotundicollis*	Curculionidae	CA.
2 Oahu heteramphus fern weevil	*Heteramphus filicum*	Curculionidae	HI.
2 Nelson's milcderes weevil	*Miloderes nelsoni*	Curculionidae	CA.
2 Sullam's milcderes weevil	*Miloderes sullani*	Curculionidae	NV.
2 Gifford's neoctocus weevil	*Neoctocus giffordi*	Curculionidae	HI.
2* Kauai neoctocus weevil	*Neoctocus kauaiensis*	Curculionidae	HI*.
2 Munro's neoctocus weevil	*Neoctocus munroi*	Curculionidae	HI.
2 Lange's El Segundo Dune weevil	*Onychobaris langei*	Curculionidae	CA.
2 Windward Chain Oedemas weevils	*Oedemas*, 4 spp.	Curculionidae	HI.
2 Blackburn's pantarthrus weevil	*Pantarthrus blackburni*	Curculionidae	HI.
2 Obscure pantarthrus weevil	*Pantarthrus obscura*	Curculionidae	HI.
2 Hawaiian rhyncogonus snout beetles	*Rhyncogonus* 23 spp.	Curculionidae	HI.
2 Hilea stenotrupis weevil	*Stenotrupis pritchardiae*	Curculionidae	CA.
2 Blaisdell trigonoscuta weevil	*Trigonoscuta blaisdelli*	Curculionidae	CA*.
2* Brown-tassel trigonoscuta weevil	*Trigonoscuta brunneotasselata*	Curculionidae	CA.
2 Santa Catalina Island trigonoscuta weevil	*Trigonoscuta catalina*	Curculionidae	CA.
2 Dorothy's El Segundo Dune weevil	*Trigonoscuta dorothea dorothea*	Curculionidae	CA.
1 Doyen's trigonoscuta dune weevil	*Trigonoscuta doyeni*	Curculionidae	CA*.
3A Fort Ross trigonoscuta weevil	*Trigonoscuta rossi*	Curculionidae	CA.
2 Santa Cruz Island shore weevil	*Trigonoscuta stantoni*	Curculionidae	CA*.
3A Yorba Linda trigonoscuta weevil	*Trigonoscuta yorbalindae*	Curculionidae	CA.
2 Death Valley agabus diving beetle	*Agabus rumpi*	Dytiscidae	CA,NV?.
2 Bonita diving beetle	*Barronectes necamaxicana*	Dytiscidae	NM,TX.
2* Fig seed diving beetle	*Bosmopachris conchranis*	Dytiscidae	FL*.
2 Texas cave diving beetle	*Haideoporus texanus*	Dytiscidae	TX.
2* Elusive hydroporus diving beetle	*Hydroporus elusivus*	Dytiscidae	MT*.
2 Folkerts' hydroporus diving beetle	*Hydroporus folkertsi*	Dytiscidae	AL.
2 Wooly hydroporus diving beetle	*Hydroporus hirsutus*	Dytiscidae	CA.
2 Leech's skyline diving beetle	*Hydroporus leechi*	Dytiscidae	CA.
2 Simple hydroporus diving beetle	*Hydroporus simplex*	Dytiscidae	UT.
2 Spangler's hydroporus diving beetle	*Hydroporus spangleri*	Dytiscidae	AR*.
2* Sulphur Springs hydroporus diving beetle	*Hydroporus sulphurius*	Dytiscidae	UT.
2 Utah hydroporus diving beetle	*Hydroporus utahensis*	Dytiscidae	CA*.
3A Mono Lake hygrotus diving beetle	*Hygrotus artus*	Dytiscidae	CA.
2 Curved-foot hygrotus diving beetle	*Hygrotus curvipes*	Dytiscidae	WY.
2 Narrow-foot hygrotus diving beetle	*Hygrotus diversipes*	Dytiscidae	CA.
2 Travertine hand-thigh diving beetle	*Hygrotus fontinalis*	Dytiscidae	MN,WY*.
2 Sylvan hygrotus diving beetle	*Hygrotus sylvanus*	Dytiscidae	MD*,VA*.
2* Schaerer' diving beetle	*Laccophilus schwarzi*	Elateridae	WA, Canada?.
2 Hatch's click beetle	*Hamus hatchi*	Elateridae	HI.
2 Hawaiian ecpanthes click beetles	*Ecpanthes* 17 spp.	Elateridae	HI.
2 Hocker itodacnus click beetles	*Itodacnus* 2 spp.	Elmidae	CA.
2 Wawona riffle beetle	*Atractelmis wawona*	Elmidae	AZ.
2 Parker's riffle beetle	*Cylloepus parkeri*	Elmidae	CA.
2 Brownish dubiraphian riffle beetle	*Dubiraphia brunnescens*	Elmidae	CA.
2 Giuliani's dubiraphian riffle beetle	*Dubiraphia giulianii*	Elmidae	OK,LA.
2 Little riffle beetle	*Dubiraphia parva*	Elmidae	VI.
2 Robust dubiraphian riffle beetle	*Dubiraphia robusta*	Elmidae	ME.
2 Dubiraphian riffle beetle (undescribed)	*Dubiraphia* sp.	Elmidae	AZ.
2 Stephan's riffle beetle	*Heterelmis stephani*	Elmidae	AZ.
2 Warren's San Carlos riffle beetle	*Huleechius marroni carolus*	Elmidae	MT.
2 Brown's microcylloepus riffle beetle	*Microcylloepus browni*	Elmidae	AR.
2 Brown's optioservus riffle beetle	*Optioservus browni*	Elmidae	CA.
2 Pinnacles optioservus riffle beetle	*Optioservus canus*	Elmidae	NS.
2 Scott optioservus riffle beetle	*Optioservus phaeus*	Elmidae	NV.
2 Devil's Hole warm spring riffle beetle	*Stenelmis calida calida*	Elmidae	NV.
2 Moapa warm springs riffle beetle	*Stenelmis calida moapa*	Elmidae	MI.
2 Douglas stenelmis riffle beetle	*Stenelmis douglasensis*	Elmidae	NC,AL,VA.
2 Gannon's stenelmis riffle beetle	*Stenelmis gannoni*	Elmidae	MT.
2 Warm spring zaitzevian riffle beetle	*Zaitzevia thermae*	Eubriidae	OR.
2 Beer's false water penny beetle	*Acneus beeri*	Eubriidae	OR.
2 Darnell's false water penny beetle	*Acneus darnelli*	Eubriidae	AL.
2 Stark's false water penny beetle	*Alabamebria starki*	Eubriidae	IL.
2 Variegated false water penny beetle	*Dicranopselaphus variegatus*	Eucnemidae	CA*.
2* Dohrn's elegant eucnemid beetle	*Palecnemus dohrni*	Gyrinidae	AL.
2 Red Hills unique whirligig beetle	*Spangleronyrus albiventris*	Haliplidae	MI.
2 Hungerford's crawling water beetle	*Brychius hungerfordi*	Haliplidae	TX?*, Canada*.
2* Disjunct crawling water beetle	*Haliplus aitens*	Hydraenidae	NS.
2 Maureen's gymnocthebium minute moss beetle	*Gymnocthebius maureenae*	Hydraenidae	VA
2 Maureen's hydraenan minute moss beetle	*Hydraena maureenae*	Hydraenidae	NY.
2 Animas minute moss beetle	*Limnebius aridus*	Hydraenidae	TX.
2 Texas minute moss beetle	*Limnebius texanus*	Hydraenidae	UT.
2 Utah minute moss beetle	*Limnebius utahensis*	Hydraenidae	CA.
2 Wing-shoulder minute moss beetle	*Ochthebius crassalus*	Hydraenidae	

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories)

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Putnam minute moss beetle	*Ochthebius putnamensis*	Hydraenidae	IN.
2 Wilbur Springs minute moss beetle	*Ochthebius reticulatus*	Hydraenidae	CA.
2 Leech's chaetarthrian water scavenger beetle	*Chaetarthria leechi*	Hydrophilidae	CA.
2 Utah chaetarthrian water scavenger beetle	*Chaetarthria utahensis*	Hydrophilidae	UT.
2 Chiricahua water scavenger beetle	*Cymbiodyta arizonica*	Hydrophilidae	AZ.
2 Ricksecker's water scavenger beetle	*Hydrochara ricksecheri*	Hydrophilidae	CA.
2 Seth Forest water scavenger beetle	*Hydrochus* sp.	Hydrophilidae	MD.
2 Seclusive water scavenger beetle	*Paracymus seclusus*	Hydrophilidae	MS.
2 Florida intertidal firefly	*Micronaspis floridana*	Lampyridae	FL.
2 Everglades browning firefly	*Photuris brunnipennis floridana*	Lampyridae	FL.
2 Turtle Mound firefly	*Photuris* sp.	Lampyridae	FL.
2 Blind cave leiodid beetle	*Glacicavicola bathysciodes*	Leiodidae	ID.
2 Kauai flightless stag beetle	*Apterocyclus honoluluensis*	Lucanidae	HI.
2 Hopping's blister beetle	*Lytta hoppingi*	Meloidae	CA.
2* Mojave Desert blister beetle	*Lytta inseparata*	Meloidae	CA*.
2 Anthony blister beetle	*Lytta mirifica*	Meloidae	NV*, Mexico.
2* Mosetan blister beetle	*Lytta moesta*	Meloidae	CA*.
2 Molestan blister beetle	*Lytta molesta*	Meloidae	CA.
2 Morrison's blister beetle	*Lytta morrisoni*	Meloidae	CA.
2 Hawaiian proterhinid beetles	*Proterhinus* 72 spp.	Proterhinidae	HI.
2 Magazine Mountain mold beetle	*Ariancps sandersoni*	Pselaphidae	AR.
2 Arizona water penny beetle	*Psephenus arizonensis*	Psephenidae	AZ.
2 White Mountains water penny beetle	*Psephenus montanus*	Psephenidae	AZ.
2 Ciervo aegialian scarab beetle	*Aegialia concinna*	Scarabaeidae	CA.
2 Crescent Dune aegialian scarab beetle	*Aegialia crescenta*	Scarabaeidae	NV.
2 Hardy's aegialian scarab beetle	*Aegialia hardyi*	Scarabaeidae	NV.
2 Large aegialian scarab beetle	*Aegialia magnifica*	Scarabaeidae	NV.
2* Exiguous anomalan scarab beetle	*Anomala exigua*	Scarabaeidae	FL*.
2 Archbold anomalan scarab beetle	*Anomala oxiada*	Scarabaeidae	FL*.
2* Tibial scarab beetle	*Anomala tibialis*	Scarabaeidae	TX*.
2 Ford's aphodius scarab beetle	*Aphodius fordi*	Scarabaeidae	GA.
2 Aphodius tortoise commensal scarab beetle	*Aphodius troglodytes*	Scarabaeidae	FL,SC.
2 Big Dune aphodius scarab beetle	*Aphodius* sp.	Scarabaeidae	NV.
2 Crescent Dune aphodius scarab beetle	*Aphodius* sp.	Scarabaeidae	NV.
2 Sand Mountain aphodius scarab beetle	*Aphodius* sp.	Scarabaeidae	NV.
2 Big Pine Key ataenius dung beetle	*Ataenius superficialis*	Scarabaeidae	FL.
2 Woodruff's ataenius dung beetle	*Ataenius woodruffi*	Scarabaeidae	FL.
2 San Clemente Island coenonycha beetle	*Coenonycha clementina*	Scarabaeidae	CA.
2 Copris tortoise commensal scarab beetle	*Copris gopheri*	Scarabaeidae	FL.
2* Miami roundhead scarab beetle	*Cyclocephala miamiensis*	Scarabaeidae	FL*.
2 Kalao Dune glaresis scarab beetle	*Glaresis arenata*	Scarabaeidae	CA.
2 Spiny Florida sandhill scarab beetle	*Granocarus multispinosus*	Scarabaeidae	FL.
2 White sand bear scarab beetle	*Lichnanthe albopilosa*	Scarabaeidae	CA.
2 Bumblebee (=Pacific sand bear) scarab beetle	*Lichnanthe ursina*	Scarabaeidae	CA.
2 Scrub Island burrowing scarab beetle	*Mycotrupes pedester*	Scarabaeidae	FL.
2 Orthophagus tortoise commensal scarab beetle	*Orthophagus polyphemi*	Scarabaeidae	SC,GA,FL,AL,MS.
2 Ocala burrowing scarab beetle	*Peltotrupes youngi*	Scarabaeidae	FL.
3C Robinson's rain scarab beetle	*Phoebetus robinsoni*	Scarabaeidae	CA.
2 Wooly Gulf dune scarab beetle	*Polylamina pubescens*	Scarabaeidae	FL.
2 Saline Valley snow-front June beetle	*Polyphylla asternivea*	Scarabaeidae	CA.
2 Spotted Warner Valley Dunes June beetle	*Polyphylla avittata*	Scarabaeidae	UT.
2 Barbate June beetle	*Polyphylla barbata*	Scarabaeidae	CA.
2 Death Valley June beetle	*Polyphylla erratica*	Scarabaeidae	CA.
2 Atascadero June beetle	*Polyphylla nubila*	Scarabaeidae	CA.
2 Delta June beetle	*Polyphylla stellata*	Scarabaeidae	CA.
2 Andrews' dune scarab beetle	*Pseudocotalpa andrewsi*	Scarabaeidae	CA.
2 Giuliani's dune scarab beetle	*Pseudocotalpa giulianii*	Scarabaeidae	NV.
2 Frost's spring serican scarab beetle	*Serica frosti*	Scarabaeidae	FL.
2* Tantula serican scarab beetle	*Serica tantula*	Scarabaeidae	FL*.
2 Crescent Dune serican scarab beetle	*Serica* sp.	Scarabaeidae	NV.
2 Sand Mountain serican scarab beetle	*Serica* sp.	Scarabaeidae	NV.
2 Scrub palmetto flower scarab beetle	*Trigonopelastes floridana*	Scarabaeidae	FL.
2 Caracara commensal scarab beetle	*Trox howelli*	Scarabaeidae	FL.
3A Tooth Cave blind rove beetle	*Cylindropsis* sp.	Staphylinidae	TX.
2 Black lordithon rove beetle	*Lordithon niger*	Staphylinidae	MD, Canada,AR*,CT*,DC*,GA*,IL*,KS*, KY*,MI*,NY*,NC*,OH*,PA*,TX*,VA*,WV*.
2 Globose dune beetle	*Coelus globosus*	Tenebrionidae	CA, Mexico.
1 San Joaquin dune beetle	*Coelus gracilis*	Tenebrionidae	CA.

SCORPIONFLIES & ALLIES (Insects, Order Mecoptera)

2 Gold rush hanging fly	*Orbittacus obscurus*	Bittacidae	CA.

FLIES (Insects, Order Diptera)

2 Mary Alice's smallheaded fly	*Eulonchus marialiciae*	Acroceridae	NC.
3A Valley mydas fly	*Raphiomydas trochilus*	Apioceratidae	CA*.
2* Antioch cophuran robberfly	*Cophura burdi*	Asilidae	CA*.
2 Antioch efferian robberfly	*Efferia antiochi*	Asilidae	CA.
2 Burd's metapogon robberfly	*Metapogon burdi*	Asilidae	CA.
2 Nihoa two-spotted asterid fly	*Bryania biguttata*	Asteriidae	HI.
3A Ko'olau spurwing long-legged fly	*Campsicnemus [illegible] anthilis*	Dolichopodidae	HI*.
3A Lanai pomace fly	*Drosophila lanaiensis*	Drosophilidae	HI*.
3A Hawaiian chersodromian dance fly	*Chersodromia hawaiiensis*	Empididae	HI*.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Wilbur Springs shore fly	*Paracoenia calida*	Ephydridae	CA.
2	Sugarfoot moth fly	*Neuropsylpus nearcticus*	Psychodidae	FL.
2	Delong's nixogaster flower fly	*Nixogaster delongi*	Syrphidae	FL.
3C	Ross's spatalestes tabanid fly	*Spatalestes rossi*	Tabanidae	CA*.
2	Florida asaphomyian tabanid fly	*Asaphomyia floridensis*	Tabanidae	FL.
2*	Texas asaphomyian tabanid fly	*Asaphomyia texanus*	Tabanidae	TX*.
3C	Belkin's dune tabanid fly	*Brennania belkini*	Tabanidae	CA, Mexico.
2	Brown neorcyomyian tabanid fly	*Neorcyomyia brunnea*	Tabanidae	FL.
3A	Volutine stonemyian tabanid fly	*Stonemyia volutina*	Tabanidae	CA*.

BUTTERFLIES & MOTHS (Insects, Order Lepidoptera)

3A	Chestnut ermine moth	*Argyresthia castaneela*	Argyresthiidae	NH*,VT*.
2	Green heterocrossan carposinid moth	*Heterocrossa (=Carposina) viridis*	Carposinidae	HI.
3B	Lora Ahorn's moth	*Lorita ahornana (synonym of L. scarificata)*	Cochylidae	CA.
3A	Chestnut casebearer moth	*Coleophora leucochrysella*	Coleophoridae	PA*.
2	Lost ethmiid moth	*Ethmia monachella*	Ethmiidae	CO.
2	Ixoanthan looper moth	*Fletcherana ixoantha*	Geometridae	HI.
2	Geometrid moth, no common name	*Lytrosis paraagnaria*	Geometridae	GA,KY,MD,TN,WV*.
3A	Kona giant looper moth	*Scotorythra (=Acrodrepanis) megalophylla*	Geometridae	HI*.
3A	Ko'olau giant looper moth	*Scotorythra (=Acrodrepanis) mesiotes*	Geometridae	HI*.
3A	Hawaiian hopseed looper moth	*Scotorythra paratactis*	Geometridae	HI*.
3A	'Ola' a pepppered looper moth	*Tritocleis microphylla*	Geometridae	HI*.
2*	Wagner petrochroman leaf miner moth	*Petrochroa wagneranais*	Gracilariidae	HI.
2	Dun skipper	*Euphyes vestris harbisoni*	Hesperiidae	CA.
2	Dakota skipper	*Hesperia dacotae*	Hesperiidae	MN,IA,SD,NB,IL*, Canada.
2	MacNeill sooty wing skipper	*Hesperopsis gracilae*	Hesperiidae	AZ,CA,NM,UT.
2	Salt marsh skipper	*Panoquina errans (=panoquinoides e.)*	Hesperiidae	CA, Mexico.
2	Rare skipper	*Problema bulenta*	Hesperiidae	MD,VA,NC,SC,GA.
2	Wandering skipper	*Pseudocopaedes eunus eunus*	Hesperiidae	CA,NV?,AZ?, Mexico?.
2	Laguna Mountains skipper	*Pyrgus ruralis laguna*	Hesperiidae	CA.
2	Atala butterfly	*Eumaeus atala florida*	Lycaenidae	FL.
3C	Comstock's blue butterfly	*Euphilotes (=Shijimaecides) battoides comstocki*	Lycaenidae	CA.
2	Baking Powder Flat blue butterfly	*Euphilotes battoides ssp.*	Lycaenidae	NV.
3C	Langston's blue butterfly	*Euphilotes (=Shijimaecides) enoptes langstoni*	Lycaenidae	CA.
2	Mattoni's blue butterfly	*Euphilotes (=Shijimaecides) rita mattoni*	Lycaenidae	NV.
3A	Karens blue butterfly	*Glaucopsyche xerces*	Lycaenidae	CA*.
2	Miami blue butterfly	*Hamaeris thomasi bethunebakeri*	Lycaenidae	FL.
3A	Fender's blue butterfly	*Icaricia icarioides fenderi*	Lycaenidae	OR.
2	Morro Bay blue butterfly	*Icaricia icarioides morroensis*	Lycaenidae	CA.
2	Pharos blue butterfly	*Icaricia icarioides pharos*	Lycaenidae	CA.
2	Bog elfin butterfly	*Incisalia (=Callophrys =Titoura) lanoraiensis*	Lycaenidae	ME,NY, Canada, MN*.
3C	Doudoroff's elfin butterfly	*Incisalia (=Callophrys =Titoura) mossi doudoroffi*	Lycaenidae	CA.
3C	Wind's elfin butterfly	*Incisalia (=Callophrys =Titoura) mossi windi*	Lycaenidae	CA.
2	San Gabriel Mountains elfin butterfly	*Incisalia (=Callophrys =Titoura) mossi hidalgoa*	Lycaenidae	CA.
2	Karner blue butterfly	*Lycaeides melissa samuelis*	Lycaenidae	IN,MI,MN,NY,OH,WI,IL*,MA*,PA*.
3C	Clouded tailed copper butterfly	*Lycaena arota subila*	Lycaenidae	CA.
2	Clayton's copper butterfly	*Lycaena dorcas claytoni*	Lycaenidae	ME.
2	Mariana copper butterfly	*Lycaena hermes*	Lycaenidae	CA, Mexico.
2	Swaddner's olive hairstreak butterfly	*Mitoura (=Callophrys) gryneus swaadneri*	Lycaenidae	FL.
3C	Hessel's hairstreak butterfly	*Mitoura (=Callophrys) hesseli*	Lycaenidae	GA,FL,MS,NC,NH,NJ,VA,MD*.
2	Thorne's hairstreak butterfly	*Mitoura thornei*	Lycaenidae	CA.
2	Behrets' blue butterfly	*Philotiella speciosa behrtorum*	Lycaenidae	CA.
2	San Emigdio blue butterfly	*Plebulina (=Plebejus) emigdionis*	Lycaenidae	CA.
2	Mardon blue butterfly	*Plebejus mardon*	Lycaenidae	CA.
2	San Gabriel Mountains blue butterfly	*Plebejus saepiolus auratus*	Lycaenidae	NV.
2	Spring Mountains blue butterfly	*Plebejus shasta charlestonensis*	Lycaenidae	NV.
2	Bartram's hairstreak butterfly	*Strymon acis bartrami*	Lycaenidae	FL.
3C	Hawaiian hairstreak butterfly	*Vaga blackburni*	Lycaenidae	HI.
3C	Kendall's yucca skipper butterfly	*Megathymus coloradensis kendalli*	Megathymidae	TX.
2	Maculated sanfrada skipper butterfly	*Stallingsia maculosus*	Megathymidae	TX, Mexico.
3A	American chestnut nepticulid moth	*Ectodemia castaneae*	Nepticulidae	MD*.
3A	Paleophagan chestnut nepticulid moth	*Ectodemia paleophaga*	Nepticulidae	MD*.
2	Albarufan dagger moth	*Acronicta albarufa*	Noctuidae	MA,MD,NJ, Canada, CT*,GA*,NC*,NY*, PA*,OH*,CO*,MP*.
2	Bucholz' dart moth	*Agrotis bucholzi*	Noctuidae	NJ.
3A	'Poko' noctuid moth	*Agrotis (=Spaelotis) crinigera*	Noctuidae	HI*.
3A	Midway agrotis noctuid moth	*Agrotis (=Peridroma) fasciata*	Noctuidae	HI*.
3A	Kerr's agrotis noctuid moth	*Agrotis kerri*	Noctuidae	HI*.
3A	Laysan agrotis noctuid moth	*Agrotis (=Prodenia) laysanensis*	Noctuidae	HI*.
3A	Procellaris agrotis noctuid moth	*Agrotis procellaris*	Noctuidae	HI*.
2*	Smyth's apamea moth	*Apamea smythi*	Noctuidae	VA*,IL*.
3C	Marbled underwing moth	*Catocala marmorata*	Noctuidae	KY,NC,SC,IL*,IN*,MD*,NJ*,NY*,OH*,PA*, VA*,VT*,WV*.
2	Precious underwing moth	*Catocala preticosa*	Noctuidae	NJ,ME*,CT*,MA*,MD?*,NY*,PA*,OH*, MD*,VA*,TN*.
2	Hebard's noctuid moth	*Erythroecia hebardi*	Noctuidae	OH,NJ,VA*.
3A	Confused helicoverpan noctuid moth	*Helicoverpa confusa*	Noctuidae	HI*.
3A	Minute helicoverpan noctuid moth	*Helicoverpa minuta*	Noctuidae	HI*.
3A	Laysan dropseed noctuid moth	*Hypena (=Mesamiptis) laysanensis*	Noctuidae	HI*.
3A	Hilo hypenan noctuid moth	*Hypena (=Mesamiptis) newelli*	Noctuidae	HI*.
3A	Lovegrass noctuid moth	*Hypena (=Mesamiptris) plagiota*	Noctuidae	HI*.
3A	Kaholuamano noctuid moth	*Hypena (=Mesamiptris) senicula*	Noctuidae	HI*.
2	Lesmer's noctuid moth	*Lithophane lemeri*	Noctuidae	NJ,NY,CT*,NC?,SC?.

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CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2*	Noctuid moth, no common name	*Luperina trigona*	Noctuidae	TN*.
2*	Noctuid moth, no common name	*Papaipema aweme*	Noctuidae	MI*,NY*, Canada*.
2*	Rattlesnake-master borer moth	*Papaipema eryngii*	Noctuidae	IL*,IN*.
2	Decodon borer moth	*Papaipema sulpburata*	Noctuidae	MA.
2	Ceromatic noctuid moth	*Pyreferra ceromatica*	Noctuidae	AL,FL,SC,IN,AL*,CT*,MA*,MD*,NH*, Canada*.
2	Noctuid moth, no common name	*Schinia indiana*	Noctuidae	MI,MN,WI,NH?*,IL*,IN*,NC?,ME?,TX?.
2	Okefenokee zale moth	*Zale perculta*	Noctuidae	GA,FL*.
2	Florida leafwing butterfly	*Anaea troglodyta floridalis*	Nymphalidae	FL.
1	Uncompahgre fritillary butterfly	*Boloria acrocnema*	Nymphalidae	CO.
3C	Alamosa satyr butterfly	*Cercyonis meadi alamosa*	Nymphalidae	CO.
3A	Sthenele wood nymph butterfly	*Cercyonis sthenele sthenele*	Nymphalidae	CA*.
2	Cmo Flaco patch butterfly	*Chlosyne leanira cmoflaco*	Nymphalidae	CA.
2	Morand's checkerspot butterfly	*Euphydryas anicia morandi*	Nymphalidae	NV.
2	Mono checkerspot butterfly	*Euphydryas editha monoensis*	Nymphalidae	CA,NV.
2	Wright's checkerspot butterfly	*Euphydryas editha quino (=E. e. wrightii)*	Nymphalidae	CA, Mexico.
3C	Obsolete viceroy butterfly	*Limenitis archippus obsoletus*	Nymphalidae	AZ,CA,NM,NV, Mexico.
2	Mitchell satyr butterfly	*Neonympha (=Euptychia) mitchelli*	Nymphalidae	IN,NJ,NC,MJ,OH*,MD*?.
3C	Chryxus arctic butterfly	*Oeneis chryxus valerata*	Nymphalidae	WA.
2	Tawny crescent butterfly	*Phyciodes batesi*	Nymphalidae	NC,VA,NY,MI,WI,MD,SD,MN, Canada, GA*,WV*,PA*,NJ*.
3C	Minute checkerspot butterfly	*Poladryas minuta minuta*	Nymphalidae	TX,NM.
3C	Smoky eyed brown butterfly	*Satyrodes eurydice fumosa*	Nymphalidae	CO,IL,IA,ME.
3C	Unsilvered fritillary butterfly	*Speyeria adiaste adiaste*	Nymphalidae	CA.
3A	Atossa fritillary butterfly	*Speyeria adiaste atossa*	Nymphalidae	CA*.
3C	Clemence's fritillary butterfly	*Speyeria adiaste clemencei*	Nymphalidae	CA.
2	Callippe silverspot butterfly	*Speyeria callippe callippe*	Nymphalidae	CA.
3A	Willamette silverspot butterfly	*Speyeria callippe extincta*	Nymphalidae	OR.
2	Tehachapi Mountain silverspot butterfly	*Speyeria egleis tehachapina*	Nymphalidae	CA.
3B	Hydaspe fritillary butterfly	*Speyeria hydaspe conquista*	Nymphalidae	CO*,MP*.
2	Regal fritillary butterfly	*Speyeria idalia*	Nymphalidae	MA,MD,VA,WV,PA,OH,IN,MI,IL,MO,NH,WI, IA,OK,KS,NE,SD,ND,CO,CT*,RP*,MP*, MT*,NC*,NH*,NJ*,NY*,RI*, Canada.
3C	Apache silverspot butterfly	*Speyeria nokomis apacheana*	Nymphalidae	CA,NV.
2	Blue silverspot butterfly	*Speyeria nokomis caerulescens*	Nymphalidae	AZ*, Mexico.
3B	Blueblack silverspot butterfly	*Speyeria nokomis nigrocaerulea*	Nymphalidae	AZ,NM.
3C	Mountain silverspot butterfly	*Speyeria nokomis nitocris*	Nymphalidae	AZ,NM,CO.
2	Great basin silverspot butterfly	*Speyeria nokomis nokomis*	Nymphalidae	CO,UT.
2	Behren's silverspot butterfly	*Speyeria zerene behrensii*	Nymphalidae	CA.
2	Carole's silverspot butterfly	*Speyeria zerene carolae*	Nymphalidae	NV.
2	Myrtle's silverspot butterfly	*Speyeria zerene myrtleae*	Nymphalidae	CA.
2	Henne's eucoman moth	*Eucoma hennei*	Olethreutidae	CA.
3C	San Francisco tree lupine moth	*Grapholita edwardsiana*	Olethreutidae	CA.
3A	Strohbeen's parnassian butterfly	*Parnassius clodius strohbeeni*	Papilionidae	CA*.
2	Busch's gall moth	*Carolella buschana*	Phaloniidae	CA.
3C	Catalina orange tip butterfly	*Anthocharis cethura catalina*	Pieridae	CA.
2	Andrew's marble butterfly	*Euchloe hyantis andrewsi*	Pieridae	CA.
3C	Helios yellow butterfly	*Eurema dina helios*	Pieridae	FH, Caribbeans.
2*	Daeche's pyralid moth	*Crambus daechaellus*	Pyralidae	NJ*.
2*	Molokai sedge hedyleptan moth	*Hedylepta anastrepta*	Pyralidae	HI*.
2	Kohala Mountain sedge hedyleptan moth	*Hedylepta anastreptoides*	Pyralidae	HI.
2*	'Ohe hedyleptan moth	*Hedylelpta anaphcmbra*	Pyralidae	HI*.
3A	Oahu swamp hedyleptan moth	*Hedylepta epicentra*	Pyralidae	HI*.
2*	Ola'a banana hedyleptan moth	*Hedylepta euryprora*	Pyralidae	HI*.
2*	Fullaway's banana hedyleptan moth	*Hedylepta fullawayi*	Pyralidae	HI*.
2*	Giffard's 'ohe hedyleptan moth	*Hedylepta giffardi*	Pyralidae	HI*.
2*	Kilauea pa'iniu hedyleptan moth	*Hedylepta iridias*	Pyralidae	HI*.
3A	Laysan hedyleptan moth	*Hedylepta laysanensis*	Pyralidae	HI*.
2*	Meyrick's banana hedyleptan moth	*Hedylepta meyricki*	Pyralidae	HI*.
2*	Hawaiian bean leafroller moth	*Hedylepta monozona*	Pyralidae	HI*.
2*	Maui banana hedyleptan moth	*Hedylepta omicola*	Pyralidae	HI*.
2*	Hawaiian lo'ulu hedyleptan moth	*Hedylepta pritchardi*	Pyralidae	HI*.
3A	Telegraphic hedyleptan moth	*Hedylepta telegrapha*	Pyralidae	HI*.
2	Blue marpuronian moth	*Maruyaronia cyanomichle*	Pyralidae	HI.
2	Green marpuronian moth	*Maruyaronia exmula*	Pyralidae	HI.
2	'Ohenaupaka oeobnan moth	*Oeobia dryadopa*	Pyralidae	HI.
2	Ford's sand dune moth	*Psammobotys fordi*	Pyralidae	CA.
2	Chestnut clearwing moth	*Synanthedon castaneae*	Semiidae	VA*,PA*,SC*,MD*,MP*,NY*.
2	Blanchards' sphinx moth	*Adhemarius blanchardorum*	Sphingidae	TX.
3C	Weist's sphinx moth	*Euproserpinus wiesti*	Sphingidae	CO,NM,AZ,TX,MT.
3A	Blackburn's sphinx moth	*Manduca blackburni*	Sphingidae	HI*.
2	Fabulous green sphinx of Kauai	*Tinostoma smaragditis*	Sphingidae	HI.
3A	Chestnut leaf miner moth	*Tischeria perplexa*	Tischeriidae	VA*.
2	Stevens' tortricid moth	*Decodes stevensi*	Tortricidae	CO.
2	'Ohe'ohe leaf roller moth	*Sphaterista checheana*	Tortricidae	HI.
2	Greenbanded 'ohe'ohe leafroller moth	*Sphaterista pterotropiana*	Tortricidae	HI.
2	Wailupe leafroller moth	*Sphaterista reynoldsiana*	Tortricidae	HI.

CADDISFLIES (Insects, Order Trichoptera)

2	Mt. Hood primitive brachycentrid caddisfly	*Eobrachycentrus gelidae*	Brachycentridae	OR.
2	Artesian agapetus caddisfly	*Agapetus arbesus*	Glossosomatidae	MD.
2	Denning's agapetus caddisfly	*Agapetus denningi*	Glossosomatidae	OR*.
2	Arkansas agapetus caddisfly	*Agapetus medicus*	Glossosomatidae	AR.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 San Marcos saddle-case caddisfly	*Procoptila arca*	Glossosomatidae	TX.
2 Flint's net-spinning caddisfly	*Cheumatopsyche flinti*	Hydropsychidae	TX.
2 Helma's net-spinning caddisfly	*Cheumatopsyche helma*	Hydropsychidae	ME,NY*,TN*.
2 Vannote's net-spinning caddisfly	*Cheumatopsyche vannotei*	Hydropsychidae	PA.
2 California diplectronan caddisfly	*Diplectrona californica*	Hydropsychidae	CA.
2 Schuh's homoplectran caddisfly	*Homoplectra schuhi*	Hydropsychidae	OR.
2 Abellan hydropsyche caddisfly	*Hydropsyche abella*	Hydropsychidae	OR.
2 Buffalo Springs caddisfly	*Hydropsyche etnieri*	Hydropsychidae	TN.
2 Reisen's hydropsyche caddisfly	*Hydropsyche reiseni*	Hydropsychidae	OK.
2* King's Creek parapsyche caddisfly	*Parapsyche extensa*	Hydropsychidae	CA*.
2 Knoxville hydroptilan micro caddisfly	*Hydroptila decia*	Hydroptilidae	TN.
2 Kite's neotrichian micro caddisfly	*Neotrichia kitae*	Hydroptilidae	MO.
2 Alsea ochrotrichian micro caddisfly	*Ochrotrichia alsea*	Hydroptilidae	OR.
2 Contorted ochrotrichian micro caddisfly	*Ochrotrichia contorta*	Hydroptilidae	MO,AR.
2 Deschutes ochrotrichian micro caddisfly	*Ochrotrichia phaeosa*	Hydroptilidae	OR*.
2 Provost's ochrotrichian micro caddisfly	*Ochrotrichia provosti*	Hydroptilidae	FL.
2 Vertrees's ochrotrichian micro caddisfly	*Ochrotrichia vertreesi*	Hydroptilidae	OR.
2 Florida oxyethiran micro caddisfly	*Oxyethira florida*	Hydroptilidae	FL,TX?.
3B Fischer's lepidostoman caddisfly	*Lepidostoma fischeri*	Lepidostomatidae	OR.
2 Goeden's lepidostoman caddisfly	*Lepidostoma goedeni*	Lepidostomatidae	OR.
1 Cold Spring caddisfly	*Lepidostoma* sp.	Lepidostomatidae	CA.
2* Florida ceraclean longhorn caddisfly	*Oecetis floridana*	Leptoceridae	FL*.
2 Vertrees's ceraclean caddisfly	*Oecetis (=Ithytrichodes) vertreesi*	Leptoceridae	OR.
2* Little oecetis longhorn caddisfly	*Oecetis parva*	Leptoceridae	FL*.
3A Athens long-horned caddisfly	*Triaenodes phalacris*	Leptoceridae	OR*.
2* Three-tooth long-horned caddisfly	*Triaenodes tridonta*	Leptoceridae	OR*,FL*.
2 Headwater chilostigman caddisfly	*Chilostigma itascae*	Limnephilidae	MN.
2 Cascades apatanian caddisfly	*Apatania (=Radema) tavala*	Limnephilidae	OR.
2 Denning's cryptic caddisfly	*Cryptochia denningi*	Limnephilidae	CA.
2 Kings Canyon cryptochian caddisfly	*Cryptochia excella*	Limnephilidae	CA.
2 Blue Mountains cryptochian caddisfly	*Cryptochia neosa*	Limnephilidae	OR.
2 Confusion caddisfly	*Cryptochia shasta*	Limnephilidae	CA.
2 Amphibious caddisfly	*Desmona bethula*	Limnephilidae	CA.
2 King's Creek ecclisocmyian caddisfly	*Ecclisocmyia balera*	Limnephilidae	CA.
2* Green Springs Mountain farulan caddisfly	*Farula davisi*	Limnephilidae	OR*.
2 Mt. Hood farulan caddisfly	*Farula jewetti*	Limnephilidae	OR.
2 Tombstone Prairie farulan caddisfly	*Farula reuteri*	Limnephilidae	OR.
1 Sagehen Creek goeracean caddisfly	*Goeracea oregona*	Limnephilidae	CA.
2 Long-tailed caddisfly	*Farula* sp.	Limnephilidae	CA.
2 Missouri glyphopsyche caddisfly	*Glyphopsyche missouri*	Limnephilidae	MO.
3C Klamath limnephilus caddisfly	*Limnephilus alconura*	Limnephilidae	OR.
2 Fort Dick limnephilus caddisfly	*Limnephilus atercus*	Limnephilidae	CA,OR.
2 Columbia Gorge neothremman caddisfly	*Neothremma andersoni*	Limnephilidae	OR.
2 Golden-horned caddisfly	*Neothremma genella*	Limnephilidae	CA.
2 Siskiyou caddisfly	*Neothremma siskiyou*	Limnephilidae	CA.
2 Tombstone Prairie oligophlebodes caddisfly	*Oligophlebodes mosbanto*	Limnephilidae	OR.
2* Clatsop philocascan caddisfly	*Philocasca oron*	Limnephilidae	OR*.
3B (Caddisfly, no common name)	*Psilotreta hansoni*	Odontoceridae	MA.
3B Oregon dolophilodes caddisfly	*Dolophilodes (=Sortosa) oregona*	Philopotamidae	OR.
2 Carlson's polycentropus caddisfly	*Polycentropus carlsoni*	Polycentropodidae	SC.
2 Nearctic padunellan caddisfly	*Padunella nearctica*	Psychomyidae	AR.
2 Siskiyou caddisfly	*Tinodes siskiyou*	Psychomyiidae	OR.
2 Alexander's rhyacophilan caddisfly	*Rhyacophila alexanderi*	Rhyacophilidae	MT.
3B Castle Lake rhyacophilan caddisfly	*Rhyacophila amabilis*	Rhyacophilidae	CA*.
2 Obrien rhyacophilan caddisfly	*Rhyacophila colonus*	Rhyacophilidae	OR.
2 Fender's rhyacophilan caddisfly	*Rhyacophila fenderi*	Rhyacophilidae	OR.
2 Haddock's rhyacophilan caddisfly	*Rhyacophila haddocki*	Rhyacophilidae	OR.
2 Castle Crags rhyacophilan caddisfly	*Rhyacophila lineata*	Rhyacophilidae	CA.
2 Bilobed rhyacophilan caddisfly	*Rhyacophila mosana*	Rhyacophilidae	CA.
2 Spiny rhyacophilan caddisfly	*Rhyacophila spinata*	Rhyacophilidae	CA.
2 One-spot rhyacophilan caddisfly	*Rhyacophila unipunctata*	Rhyacophilidae	OR.
2 Stannard's agarodes caddisfly	*Agarodes stannardi*	Sericostomatidae	MS,TN.
2 Zigzag blackwater caddisfly	*Agarodes ziczac*	Sericostomatidae	FL.

ANTS, BEES, & WASPS (Insects, Order Hymenoptera)

2* Yellow-banded andrenid bee	*Perdita hirticeps luteociacta*	Andrenidae	CA*.
2 Antioch andrenid bee	*Perdita scitula antiochensis*	Andrenidae	CA.
2 Franklin's bumblebee	*Bombus franklini*	Apidae	OR.
2 Nihoa sclerodermus wasp	*Sclerodermus nihoaensis*	Bethylidae	HI.
3C Antioch potter wasp	*Microdynerus (=Leptochilus) aranicolus*	Eumenidae	AZ,CA,NV.
2 Nihoa eupelmus wasp	*Eupelmus nihoaensis*	Eupelmidae	HI.
1 Valley oak ant	*Proceratium californicum*	Formicidae	CA.
2 Ancient ant	*Smithistruma* sp.	Formicidae	CA.
2* Andrenoid yellow-faced bee	*Hesperapis andrenoides*	Hylaeidae	HI*.
3A Lanai yellow-faced bee	*Hesperapis aspustula*	Hylaeidae	HI*.
2 Anomalous yellow-faced bee	*Hesperapis anomala*	Hylaeidae	HI.
2* Anthricinan yellow-faced bee	*Hesperapis anthricina*	Hylaeidae	HI*.
2* Assimulans yellow-faced bee	*Hesperapis assimulans*	Hylaeidae	HI*.
3A Blackburn's yellow-faced bee	*Hesperapis blackburni*	Hylaeidae	HI*.
2* Bluewing yellow-faced bee	*Hesperapis caeruleipennis*	Hylaeidae	HI*.
2* Chlorosticta yellow-faced bee	*Hesperapis chlorosticta*	Hylaeidae	HI*.
2* Comma yellow-faced bee	*Hesperapis comes*	Hylaeidae	HI*.
2* Conehead yellow-faced bee	*Hesperapis conicepa*	Hylaeidae	HI*.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
3A Connected yellow-faced bee	*Hesperapis connectens*	Hylaeidae	HI*.
2* Crabronoid yellow-faced bee	*Hesperapis crabronoides*	Hylaeidae	HI*.
2* Difficult yellow-faced bee	*Hesperapis difficilis*	Hylaeidae	HI*.
2* Dimidiatan yellow-faced bee	*Hesperapis dimidiata*	Hylaeidae	HI*.
3A Erythrodesme yellow-faced bee	*Hesperapis erythrodesmas*	Hylaeidae	HI*.
2* Easy yellow-faced bee	*Hesperapis facilis*	Hylaeidae	HI*.
2* Fern yellow-faced bee	*Hesperapis filicum*	Hylaeidae	HI*.
3A Finitiman yellow-faced bee	*Hesperapis finitima*	Hylaeidae	HI*.
2 Very yellow-faced bee	*Hesperapis flavifrons*	Hylaeidae	HI.
2* Yellow-foot yellow-faced bee	*Hesperapis flavipes*	Hylaeidae	HI*.
2 Darkwing yellow-faced bee	*Hesperapis fuscipennis*	Hylaeidae	HI.
2* Shadowfoot darkwing yellow-faced bee	*Hesperapis fuscipennis obscuripes*	Hylaeidae	HI*.
2* Haleakala yellow-faced bee	*Hesperapis haleakalae*	Hylaeidae	HI.
3A Hilaris yellow-faced bee	*Hesperapis hilaris*	Hylaeidae	HI*.
2* Hirsute yellow-faced bee	*Hesperapis hirsutula*	Hylaeidae	HI*.
3A Monocolor yellow-faced bee	*Hesperapis homeochroma*	Hylaeidae	HI*.
2* Hostile yellow-faced bee	*Hesperapis hostilis*	Hylaeidae	HI*.
2* Hulan yellow-faced bee	*Hesperapis hula*	Hylaeidae	HI*.
2* Insignis yellow-faced bee	*Hesperapis insignis*	Hylaeidae	HI*.
2* Kauai yellow-faced bee	*Hesperapis kauaiensis*	Hylaeidae	HI*.
2* Koa yellow-faced bee	*Hesperapis koae*	Hylaeidae	HI*.
2* Kona yellow-faced bee	*Hesperapis kona*	Hylaeidae	HI*.
2* Laetan yellow-faced bee	*Hesperapis laeta*	Hylaeidae	HI*.
3A Broadhead yellow-faced bee	*Hesperapis laticeps*	Hylaeidae	HI*.
2* Longhead yellow-faced bee	*Hesperapis longiceps*	Hylaeidae	HI*.
3A Maui yellow-faced bee	*Hesperapis mauiensis*	Hylaeidae	HI*.
3A Melanothrix yellow-faced bee	*Hesperapis melanothrix*	Hylaeidae	HI*.
3A Mutatan yellow-faced bee	*Hesperapis mutata*	Hylaeidae	HI*.
3A Molokai yellow-faced bee	*Hesperapis neglecta*	Hylaeidae	HI*.
3A Snowy yellow-faced bee	*Hesperapis nivalis*	Hylaeidae	HI*.
2* Obscuratan yellow-faced bee	*Hesperapis obscurata*	Hylaeidae	HI*.
2* Ombrias yellow-faced bee	*Hesperapis ombrias*	Hylaeidae	HI*.
3A Pele yellow-faced bee	*Hesperapis pele*	Hylaeidae	HI*.
2 Perkin's yellow-faced bee	*Hesperapis perkinsiana*	Hylaeidae	HI.
3A Perspicuan yellow-faced bee	*Hesperapis perspicua*	Hylaeidae	HI*.
3A Psammobian yellow-faced bee	*Hesperapis psammobia*	Hylaeidae	HI*.
2* Furry yellow-faced bee	*Hesperapis pubescens*	Hylaeidae	HI*.
2* Redtail yellow-faced bee	*Hesperapis rubrocaudatus*	Hylaeidae	HI*.
3A Rugulose yellow-faced bee	*Hesperapis rugulosa*	Hylaeidae	HI*.
2* Satellus yellow-faced bee	*Hesperapis satellus*	Hylaeidae	HI*.
3A Bristlefront yellow-faced bee	*Hesperapis setosifrons*	Hylaeidae	HI*.
2* Simple yellow-faced bee	*Hesperapis simplex*	Hylaeidae	HI*.
2* Specular yellow-faced bee	*Hesperapis specularis*	Hylaeidae	HI*.
2* Sphecoidal yellow-faced bee	*Hesperapis sphecoidea*	Hylaeidae	HI*.
2* Unique yellow-faced bee	*Hesperapis unica*	Hylaeidae	HI*.
2* Vicinan yellow-faced bee	*Hesperapis vicina*	Hylaeidae	HI*.
2* Volatile yellow-faced bee	*Hesperapis volatilis*	Hylaeidae	HI*.
2 Antioch mutillid wasp	*Myrmosula (Dyrmosa) pacifica*	Mutillidae	CA.
2 Hawaiian deinacmisean sphecid wasp	*Deinacmisma hawaiiensis*	Sphecidae	HI.
2 Puna deinacmisean sphecid wasp	*Deinacmisma punae*	Sphecidae	HI.
2 Giffard's ectemnius sphecid wasp	*Ectemnius (=Mesocrabo) giffardi*	Sphecidae	HI.
2 Short-foot ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) curtipes*	Sphecidae	HI.
2 Brown cross ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) fulvicrus*	Sphecidae	HI.
2 Haleakala ectemnius sphecid wasp	*Ectemnius (=Oreocrabro) haleakalae*	Sphecidae	HI.
2 Bidecoratus sphecid wasp	*Ectemnius (=Mesocrabo) bidecoratus*	Sphecidae	HI.
2 Redheaded sphecid wasp	*Nacerocris ruficeps*	Sphecidae	CA*,NV.
2 Kauai nasacmisean sphecid wasp	*Nasacmisma kauaiensis*	Sphecidae	HI.
2 Perkins' nasacmisean sphecid wasp	*Nasacmisma perkinsi*	Sphecidae	HI.
2 Shade-winged nasacmisean sphecid wasp	*Nasacmisma sciopteryx*	Sphecidae	HI.
2* Antioch sphecid wasp	*Philanthus nasalis*	Sphecidae	CA*.
2 Hihau odynerus vespid wasp	*Odynerus alihauensis*	Vespidae	HI.
2 Soror odynerus vespid wasp	*Odynerus soror*	Vespidae	HI.

MILLIPEDES (Class Diplopoda)

2 (Millipede, no common name)	*Poltecus chihuanus*	Metopotholidae	NM, Mexico.

SNAILS (Mollusks, Class Gastropoda)

2 (Snail, no common name)	*Meritilia hawaiiensis* (Kay,1979)	Meritidae	HI.
2 Tulotoma (Alabama livebearing snail)	*Tulotoma magnifica* (Conrad, 1834)	Viviparidae	AL.
2 (Snail, no common name)	*Valvata utahensis* Call, 1884	Valvatidae	ID,UT.
2 Newcomb's littorine snail	*Algamorda newcombiana (=Littorina subrotunda)* (Carpenter, 1865)	Littorinidae	CA,WA,OR.
2 Tumbling Creek cavesnail	*Antrobia culveri* (Fabricht, 1971)	Hydrobiidae	MO.
2 Bylas springsnail	*Apachecoccus arizonae* Taylor, 1987	Hydrobiidae	AZ.
2 Blue Spring hydrobe	*Aphaostracon asthenes* (Thompson, 1968)	Hydrobiidae	FL.
2 Waldwa hydrobe	*Aphaostracon monas* (Pilsbry, 1899)	Hydrobiidae	FL.
2 Danse hydrobe	*Aphaostracon pycnus* (Thompson, 1968)	Hydrobiidae	FL.
2 Penney Spring hydrobe	*Aphaostracon xynoclictus* (Thompson, 1968)	Hydrobiidae	FL.
2 Crystal siltsnail (=helicoid spring snail)	*Cincinnatia helicogyra* (Thompson, 1968)	Hydrobiidae	FL.
2 Ichetucknee siltsnail	*Cincinnatia mica* (Thompson, 1968)	Hydrobiidae	FL.
2 Enterprise siltsnail	*Cincinnatia monroensis* (Dall, 1885)	Hydrobiidae	FL.
2 Pygmy siltsnail	*Cincinnatia parca* (Thompson, 1968)	Hydrobiidae	FL.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Ponderous siltsnail (=Ponderous spring snail)	*Cincinnatia ponderosa* (Thompson, 1968)	Hydrobiidae	FL.
2	Seminole siltsnail (=Seminole Spring snail)	*Cincinnatia seminolia* (Vanatta, 1934)	Hydrobiidae	FL.
2	Wekiwa siltsnail (=Wekiwa Spring snail)	*Cincinnatia wekiwae* (Thompson, 1968)	Hydrobiidae	FL.
2	Genus (no common names)	*Clappia* 2 spp.	Hydrobiidae	AL.
2	Phantom cave snail	*Cochliopa texana* Pilsbry, 1935	Hydrobiidae	TX.
2	Mespa pebblesnail (=Muddy Valley turban snail)	*Fluminicola avernalis* (Pilsbry, 1935)	Hydrobiidae	NV.
2	Columbia pebblesnail (=Great Columbia River spire snail)	*Fluminicola (=Lithoglyphus) columbianus* (Hemphill in Pilsbry, 1899)	Hydrobiidae	ID,OR,WA.
2	Fahrenagat pebblesnail(=Fahrenagat Valley turban snail)	*Fluminicola merriami* (Pilsbry and Belcher, 1892)	Hydrobiidae	NV.
3A	Longstreet Spring snail	*'Fluminicola'* sp.	Hydrobiidae	NV.
1	Chupadera springsnail	*'Fontelicella' chupaderae* Taylor, 1987	Hydrobiidae	NM.
2	Davis County springsnail	*'Fontelicella' davisi* Taylor, 1987	Hydrobiidae	TX.
1	Gila springsnail	*'Fontelicella' gilae* Taylor, 1987	Hydrobiidae	NM.
2	Presidio County springsnail	*'Fontelicella' metcalfi* Taylor, 1987	Hydrobiidae	TX.
1	Socorro springsnail	*'Fontelicella' neomexicana* (Pilsbry, 1916)	Hydrobiidae	NM.
2	Pecos springsnail	*'Fontelicella' pecosensis* Taylor, 1987	Hydrobiidae	NM.
1	Roswell spring snail	*'Fontelicella' roswellensis* Taylor, 1987	Hydrobiidae	NM.
1	New Mexico hotspring snail	*'Fontelicella' thermalis* Taylor, 1987	Hydrobiidae	NM.
2	Three Forks springsnail	*'Fontelicella' trivialis* (Taylor, 1987)	Hydrobiidae	AZ.
2	Tapered cavesnail	*Fontigens holsingeri* (Hubricht, 1976)	Hydrobiidae	WV.
2	Greenbrier cavesnail	*Fontigens turritella* (Hubricht, 1976)	Hydrobiidae	WV.
2	Mimic cavesnail	*Fluvicodrella imitata* (Herschler and Longley, 1986)	Hydrobiidae	TX.
2	Ocmulgee marstonia (snail)	*Pyrgulopsis (=Marstonia) agarhecta* (Thompson, 1969)	Hydrobiidae	GA.
2	Grand Wash springsnail	*Pyrgulopsis bacchus* Hershler, 1988	Hydrobiidae	AZ.
2	Beaver pond marstonia (snail)	*Pyrgulopsis (=Marstonia) castor* (Thompson, 1977)	Hydrobiidae	GA.
1	Crystal Spring springsnail	*Pyrgulopsis cristalis* Hershler and Sada, 1987	Hydrobiidae	NV
2	Kingman springsnail	*Pyrgulopsis conicus* Hershler, 1988	Hydrobiidae	AZ.
3C	Desert springsnail (=Mt George snail)	*Pyrgulopsis (=Amnicola, =Fontelicella) deserta* (Pilsbry, 1916)	Hydrobiidae	UT,AZ.
1	Ash Meadows pebblesnail (=Point of Rocks Spring snail)	*Pyrgulopsis erythropoma* (Pilsbry, 1899)	Hydrobiidae	NV.
1	Fairbanks springsnail	*Pyrgulopsis fairbanksensis* Hershler and Sada, 1987	Hydrobiidae	NV
2	Idaho springsnail	*Pyrgulopsis (=Fontelicella) idahoensis* (Pilsbry, 1933)	Hydrobiidae	ID.
1	Elongate-gland springsnail	*Pyrgulopsis isolatus* Hershler and Sada, 1987	Hydrobiidae	NV
2	Verde Rim springsnail	*Pyrgulopsis glandulosus* Hershler, 1988	Hydrobiidae	AZ.
2	Oasis Valley springsnail	*Pyrgulopsis (=Fontelicella) micrococcus* (Pilsbry, 1893)	Hydrobiidae	NV.
2	Montezuma Well springsnail	*Pyrgulopsis montezumensis* Hershler, 1988	Hydrobiidae	AZ.
2	Page springsnail	*Pyrgulopsis morrisoni* Hershler, 1988	Hydrobiidae	AZ.
1	Distal-gland springsnail (=Large-gland Nevada spring snail)	*Pyrgulopsis nanus* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Royal (=obese) marstonia (snail)	*Pyrgulopsis (=Marstonia) oparaphe* (Thompson, 1977)	Hydrobiidae	TN.
2	Armored (=thick-shelled) marstonia	*Pyrgulopsis (=Marstonia) pachyta* (Thompson, 1977)	Hydrobiidae	AL. D
1	Median-gland Nevada springsnail	*Pyrgulopsis pisteri* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Jackson Lake springsnail (=Elk Island snail)	*Pyrgulopsis (=Fontelicella) robusta* (Walker, 1908)	Hydrobiidae	WY.
2	Brown springsnail	*Pyrgulopsis solus* Hershler, 1988	Hydrobiidae	AZ.
2	Fossil springsnail	*Pyrgulopsis simplex* Hershler, 1988	Hydrobiidae	AZ.
2	Huachuca springsnail	*Pyrgulopsis thompsoni* Hershler, 1988	Hydrobiidae	AZ, Mexico.
2	Sparrow pebblesnail	*Stenotrema parvulus* (Tryon, 1865)	Hydrobiidae	TN.
2	Savannah pebblesnail	*Stenotrema tenax* (Thompson, 1969)	Hydrobiidae	GA.
2	Sculpin snail	*Stiobia nana* (Thompson, 1978)	Hydrobiidae	AL.
1	Diamond Y Spring snail	*Tryonia adamantina* Taylor, 1987	Hydrobiidae	TX.
1	Alamosa springsnail	*Tryonia alamosae* Taylor, 1987	Hydrobiidae	NM.
1	Sportinggoods tryonia snail	*Tryonia angulata* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Brune's tryonia snail	*Tryonia brunei* Taylor, 1987	Hydrobiidae	TX.
2	Cheatum's snail (Phantom tryonia)	*Tryonia cheatumi* (Pilsbry, 1935)	Hydrobiidae	TX.
2	Grated tryonia (=White River snail)	*Tryonia clathrata* Stimpson, 1865	Hydrobiidae	NV.
1	Point of Rocks tryonia snail	*Tryonia elata* Hershler and Sada, 1987	Hydrobiidae	NV.
1	Minute tryonia snail (=minute slender tryonia snail)	*Tryonia ericae* Hershler and Sada, 1987	Hydrobiidae	NV.
2	Gila tryonia snail	*Tryonia gilae* Taylor, 1987	Hydrobiidae	AZ.
2	Mimic tryonia (=California brackish water snail)	*Tryonia imitator* (Pilsbry, 1899)	Hydrobiidae	CA.
2	Koster's springsnail	*Tryonia kosteri* Taylor, 1987	Hydrobiidae	NM.
2	Quitobaquito tryonia	*Tryonia quitobaquitae* Hershler, 1988	Hydrobiidae	AZ.
1	Gonzales Spring snail	*Tryonia stocktonensis* Taylor, 1987	Hydrobiidae	TX.
2	Amargosa tryonia snail (=Amargosa & small solid tryonia)	*Tryonia variegata* Hershler and Sada, 1987	Hydrobiidae	NV.
2	San Bernadino springsnail	*Vaquicoccus bernardinus* Taylor, 1987	Hydrobiidae	AZ.
1	Virile Amargosa snail	Genus and species undescribed	Hydrobiidae	NV.
1	Wilms Rapids snail	Genus and species undescribed	Hydrobiidae	ID.
2	Badwater snail	*Assiminea infima* Berry, 1947	Assimineidae	CA.
1	Pecos assiminea snail	*Assiminea pecos* Taylor, 1987	Assimineidae	NM,TX.
3B	Anthony's river snail	*Athearnia anthonyi* (Redfield, 1854)	Pleuroceridae	GA,TN.
2	Black-crest elimia (=Albany snail)	*Elimia (=Goniobasis) albanyensis* (Lea, 1864)	Pleuroceridae	FL.
3B	Indiana river snail	*Goniobasis semicarinata indianensis* (Pilsbry, 1903)	Pleuroceridae	IN.
1	Spiny riversnail	*Io fluvialis* (Say, 1834)	Pleuroceridae	TN,VA.
2	Boulder (=crass river) snail	*Leptoxis (=Athearnia) crassa* (Haldeman, 1841)	Pleuroceridae	GA,TN.
2	Onyx rocksnail (=mainstream river snail)	*Leptoxis praerosa* (Say, 1821)	Pleuroceridae	KY,TN.
3B	Umbilicate rocksnail (=Umbilicate river snail)	*Leptoxis subplicosa umbilicata* (Weatherby, 1876)	Pleuroceridae	TN.
2	Armored rocksnail (=armigerous river snail)	*Lithasia armigera* (Say, 1821)	Pleuroceridae	KY.
2	Helmet rocksnail (=Dutton's river snail)	*Lithasia duttoniana* (Lea, 1841)	Pleuroceridae	TN.
2	Ornate rocksnail (=geniculate river snail)	*Lithasia geniculata* (Haldeman, 1840)	Pleuroceridae	KY,TN.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories)

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2	Rugose rocksnail (=Jay's river snail)	*Lithasia jayana* (Lea, 1841)	Pleuroceridae	TN.
2	Warty rocksnail (=Elk River file snail)	*Lithasia lima* (Conrad, 1834)	Pleuroceridae	TN,AL.
3C	Small geniculate river snail	*Lithasia pinguis* (Lea, 1852)	Pleuroceridae	TN.
2	Muddy rocksnail (=rugged river snail)	*Lithasia salebrosa* (Conrad, 1834)	Pleuroceridae	TN.
2	Varicose rocksnail (=verrucose file snail)	*Lithasia verrucosa* (Rafinesque, 1820)	Pleuroceridae	KY,TN.
2	Shortface lanx (=giant Columbia River limpet)	*Fisherola nuttalli* (Haldeman, 1841)	Lymnaeidae	ID,OR,WA.
3B	Spruce Creek king's crown	*Helongena* sp.	Helongenidae	FL.
3A	Fish Springs marshsnail (=Fish Springs pond snail)	*Stagnicola pilsbryi* (Hemphill, 1890)	Lymnaeidae	UT.
2	Thickshell pondsnail (=Utah band snail)	*Stagicola utahensis (=Lymnaea kingii)* (Call, 1844	Lymnaeidae	UT.
2	Jackson Lake snail	*Helisoma (Carinifex) jacksonense* (Henderson, 1932)	Planorbidae	WY.
3C	New Mexico rams-horn (snail)	*Pecosorbis kansasensis* (Case, 1966)	Planorbidae	NM,TX.
2	Magnificent (=Cape Fear) rams horn	*Planorbella (=Helisoma) magnifica* (Pilsbry, 1903)	Planorbidae	NC.
2	Acorn rams-horn	*Planorbella multivolvis* (Case, 1847)	Planorbidae	MI.
2	Greenfield rams-horn	*Taphius eucosmius eucosmius* (Bartsch, 1908)	Planorbidae	NC.
1	Snake River physa snail	*Physa* sp.	Physidae	ID.
3B	Comanche physa (=Diamond-Y pond snail)	*Physella bottoneri (=P. virgata bottoneri)* (Clench, 1924)	Physidae	TX.
2	Fish Lake physa (=Fish Lake snail)	*Physella (=Stenophysa) microstriata* (Chamberlain & Berry, 1930)	Physidae	UT.
2	Cave physa (=Wyoming cave snail)	*Physella (=Physa) spelunca* (Turner & Clench, 1925)	Physidae	WY.
2	Utah physa (=Utah bubble snail)	*Physella (=Physa) utahensis* (Clench, 1925)	Physidae	UT.
2	Wet-rock physa (=Zion Canyon snail)	*Physella (=Physa) zionis* (Pilsbry, 1905)	Physidae	UT.
2	Genus (no common names)	*Perdicella* 7 spp.	Achatinellidae	HI.
2	Short Samoan tree snail	*Samoana abbreviata* (Mousson, 1869)	Partulidae	American Samoa.
2	Genus (Snails, no common names)	*Carelia* ca 12 spp.	Amastridae	HI*.
2	San Clemente Island blunt-top snail (=Insular birddrop)	*Sterkia clementina* (Sterki, 1890)	Pupillidae	CA.
2	Alabama vertigo	*Vertigo alabamensis* Clapp, 1915	Pupillidae	AL.
2	Briarton Pleistocene snail	*Vertigo briarensis* (Leonard, 1972)	Pupillidae	MN,IA,WI.
2	Keys vertigo	*Vertigo hebardi* Vannatta, 1912	Pupillidae	FL.
2	Hubricht's vertigo	*Vertigo hubrichti* (Pillsbry, 1934)	Pupillidae	MN,IA,WI
2	Meramec River vertigo	*Vertigo meramecensis* (Van DaVender, 1977)	Pupillidae	IA,MO.
2	Occult vertigo	*Vertigo occulta* (Leonard, 1972)	Pupillidae	IA,MN.
2	Iowa Pleistocene vertigo	*Vertigo* sp.	Pupillidae	IA.
2	(Snail, no common name)	*Catinella gelida* (Baker, 1927)	Succineidae	IA
2	Kanab ambersnail	*Oxyloma haydeni kanabensis* Pilsbry, 1948	Succineidae	UT.
2	Minnesota Pleistocene succineid	*Succinea* sp.	Succineidae	MN,IA.
2	Iowa Pleistocene succineid	*Succinea* sp.	Succineidae	IA,MN.
3C	Florida treesnail	*Liguus fasciatus* (Müller, 1774)	Bulimulidae	FL.
2	Shaggy coil	*Helicodiscus diadema* Grimm, 1967	Helicodiscidae	VA.
2	Toothy coil	*Helicodiscus hexodon* Hubricht, 1966	Helicodiscidae	TN.
2	Marbled disc	*Discus marmorensis* H.B. Baker, 1932	Discidae	ID.
1	Santa Barbara shelled slug (=Slug snail)	*Rinneya notabilis* Cooper, 1863	Arionidae	CA.
2	Blind glyph	*Glyphyalinia pecki* Hubricht, 1966	Zonitidae	AL.
2	Maryland glyph	*Glyphyalinia raderi* (Dall, 1898)	Zonitidae	KY,MD,VA,WV.
3C	Mirey Ridge supercoil	*Paravitrea clappi* (Pilsbry, 1898)	Zonitidae	NC,TN.
2	Sidelong supercoil	*Paravitrea ceres* Hubricht, 1978	Zonitidae	WV.
2	Mt. Matafao different snail	*Diastole matafaoi* H.B. Baker, 1938	Helicarionidae	American Samoa.
2	Tight coin (=Wate's snail)	*Ammonitella yatesi* Cooper, 1868	Ammonitellidae	CA.
2	Franklin Mountain wood snail	*Ashmunella pasonis* (Drake, 1951)	Polygyridae	TX.
2	Mission Creek oregonian	*Cryptomastix magnidentata (=Tridopsis mullani m.)* (Pilsbry, 1940)	Polygyridae	ID.
2	Palmetto pillsnail	*Euchemotrema cheatumi (=Stenotrema leai cheatumi)* (Pullington, 1974)	Polygyridae	TX.
2	Carinate pillsnail	*Euchemotrema (=Stenotrema) hubrichti* (Pilsbry, 1940)	Polygyridae	IL.
3C	Ocoee cowert (=Archer's toothed land snail)	*Mesodon archeri* Pilsbry, 1940	Polygyridae	TN.
2	Calico Rock oval (=Clench's middle-toothed land snail)	*Mesodon clenchi* (Rehder, 1932)	Polygyridae	AR.
2	(Snail, no common name)	*Mesodon clausus trosulus* Hubricht, 1966	Polygyridae	AL.
3C	Big-tooth cowert (=Jones middle-toothed land snail)	*Mesodon jonesianus* (Archer, 1938)	Polygyridae	NC,TN.
2	Horseshoe liptooth	*Polygyra hippocrepis* (Wheiffer, 1848)	Polygyridae	TX.
2	White liptooth (=strange many-whorled land snail)	*Polygyra peregrina* Rehder, 1932	Polygyridae	AR.
1	Pich Mt. slitmouth (=Pilsbry's narrow-apertured land snail)	*Stenotrema pilsbryi* (Ferris, 1900)	Polygyridae	AR,OK.
2	Arkansas wedge (=western three-toothed land snail)	*Triodopsis occidentalis* (Pilsbry & Ferris, 1907)	Polygyridae	AR.
1	Karok Indian snail(=Karok hesperian)	*Wespericola karokorum* Talmage, 1962	Polygyridae	CA.
2	Idaho banded mountainsnail	*Orecholix idahoensis idahoensis* Newcomb, 1866	Orecholicidae	ID.
2	Boulder pile mountainsnail	*Orecholix jugalis (=Orecholax jugalis jugalis)* (Hemphill, 1890)	Orecholicidae	ID.
2	Coalville mountainsnail	*Orecholix peripherica weberiana* (Pilsbry, 1939)	Orecholicidae	UT.
2	Carinated striate banded mountainsnail	*Orecholix strigosa gonogyra* Pilsbry, 1933	Orecholicidae	ID.
2	Whorled (=vortex banded) mountainsnail	*Orecholix vortex (=Orecholix jugalis vortex)* (Berry, 1932)	Orecholicidae	ID.
2	Lava rock (=Walton's banded) mountainsnail	*Orecholix waltoni* (Soler, 1975)	Orecholicidae	ID.
2	White desertsnail	*Eremarionta (=Micrarionta) inaculata* (Willet, 1937)	Helminthoglyptidae	CA.
2	Thousand Palms desertsnail	*Eremarionta (=Micrarionta) millepalmarum* (Berry, 1930)	Helminthoglyptidae	CA.
2	Morongo (=Colorado) desertsnail	*Eremarionta (=Micrarionta) morongoana* (Berry, 1929)	Helminthoglyptidae	CA.
2	Catalina mountain snail	*Radiocentrus (=Haplotrema) wilsonensis* (Hemphill in Pilsbry, 1905	Orecholicidae	CA.

Note: Species in categories 1 and 2 are candidates; species in category 3 are not (see text for explanation of categories).

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Merced Canyon shoulderband (=Allyc Smith's banded snail)	*Helminthoglypta allynsmithi* (Pilsbry, 1939)	Helminthoglyptidae	CA.
3B Cape Mendocino snail	*Helminthoglypta arrosa mattolensis* (A.G. Smith, 1938)	Helminthoglyptidae	CA.
3B Dented peninsula snail	*Helminthoglypta arrosa saxicola* (Bartsch, 1909)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Helminthoglypta arrosa pomoensis* (A. G. Smith, 1938)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Helminthoglypta arrosa williamsi* (A. G. Smith, 1938)	Helminthoglyptidae	CA.
2 Kern shoulderband	*Helminthoglypta callistoderma* (Pilsbry & Ferris, 1918)	Helminthoglyptidae	CA.
2 Victorville shoulderband	*Helminthoglypta mohaveana* (Berry, 1927)	Helminthoglyptidae	CA.
2 Hicklin's peninsula snail	*Helminthoglypta nickliniana awania* (Bartsch, 1919)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Helminthoglypta nickliniana bridgesi* (Newcomb, 1861)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Helminthoglypta sequoicola consors* (Berry, 1938)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Helminthoglypta traski coelata* (Bartsch, 1916)	Helminthoglyptidae	CA.
1 Banded dune snail (=Morro shoulderband)	*Helminthoglypta walkeriana* (Hemphill, 1911)	Helminthoglyptidae	CA.
1 Santa Barbara islandsnail (=concentrated snail)	*Micrarionta facta* (Newcomb, 1864)	Helminthoglyptidae	CA.
2 San Nicholas islandsnail (=fraternal snail)	*Micrarionta feralis* (Hemphill, 1901)	Helminthoglyptidae	CA.
2 San Clemente islandsnail (=Gabb's snail)	*Micrarionta gabbi* (Newcomb, 1864)	Helminthoglyptidae	CA.
3B Cathedral snail	*Micrarionta indioensis cathedralis* (Willet, 1935)	Helminthoglyptidae	CA.
3C Horseshoe snail	*Micrarionta intercisa* (W. G. Binney, 1857)	Helminthoglyptidae	CA.
2 Prickly pear islandsnail (=prickly pear snail)	*Micrarionta opuntia* Roth, 1975	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Micrarionta rowelli bakeranis* (Pilsbry & Lowe, 1934)	Helminthoglyptidae	CA.
2 California McCoy snail	*Micrarionta rowelli mccoiana* (Willet, 1935)	Helminthoglyptidae	CA.
3C Bicolored cactussnail (=Tryon's snail)	*Xerarionta* (=*Micrarionta*) *tryoni* (Newcomb, 1864)	Helminthoglyptidae	CA.
2 Keeled sideband	*Monadenia circumcarinata* (Stearns, 1879)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Monadenia fidelis minor* (W. G. Binney, 1885)	Helminthoglyptidae	OR.
2 Rocky coast snail	*Monadenia fidelis pronotis* (Berry, 1931)	Helminthoglyptidae	CA.
2 Indian Yosemite snail	*Monadenia hillebrandi yosemitensis* (Lowe, 1916)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Monadenia mormonum buttoni* (Pilsbry, 1900)	Helminthoglyptidae	CA.
2 (Snail, no common name)	*Monadenia mormonum hirsuta* (Pilsbry, 1927)	Helminthoglyptidae	CA.
2 Shasta sideband	*Monadenia troglodytes* (Hanna & Smith, 1933)	Helminthoglyptidae	CA.
2 Trinity bristlesnail (=California northern river snail)	*Monadenia setosa* (Talmadge, 1952)	Helminthoglyptidae	CA.
2 San Xavier talussnail	*Sonorella eremita* (Pilsbry & Ferris, 1915)	Helminthoglyptidae	AZ.
2 Franklin Mountain talussnail	*Sonorella metcalfi* (Miller, 1976)	Helminthoglyptidae	TX.
3C Wreathed cactussnail (=Wreathed island snail)	*Xerarionta* (=*Micrarionta*) *rediviva* (W. G. Binney, 1858)	Helminthoglyptidae	CA.

CLAMS & MUSSELS (Mollusks, Class Bivalvia)

2 Spectacle case (pearly mussel)	*Cumberlandia monodonta* (Say, 1929)	Margaritiferidae	AL,AR,IA,IN,IL,KY,MO,MS?,OH,TN,VA,WI.
2 Alabama pearlshell	*Margaritifera marrianae* Johnson, 1983	Margaritiferidae	AL.
2 Sangre de Cristo peaclam	*Pisidium sanguinichristi* Taylor, 1987	Sphaeriidae	NM.
2 Peaclam (No common name)	*Pisidium ultramontanum* Prime, 1865	Sphaeriidae	CA,OR.
2 Altamaha arc-mussel	*Alasmidonta arcula* (Lea, 1838)	Unionidae	GA.
2 Cumberland elktoe (mussel)	*Alasmidonta atropurpurea* (Rafinesque, 1831)	Unionidae	KY,TN.
1 Dwarf wedge mussel	*Alasmidonta heterodon* (Lea, 1829)	Unionidae	CT,MA,MD,NC,NH,NJ,NY?,PA,VA,VT, Canada.
3A Coosa elktoe (mussel)	*Alasmidonta maccordi* Athearn, 1964	Unionidae	AL.
2 Appalachian elktoe (mussel)	*Alasmidonta ravenelliana* (Lea, 1834)	Unionidae	NC.
3A Carolina elktoe (mussel)	*Alasmidonta robusta* Clarke, 1981	Unionidae	NC.
2 Florida arc-mussel	*Alasmidonta wrightiana* (Walker, 1908)	Unionidae	FL.
2 Fat three-ridge (mussel)	*Amblema neislerii* (T.Lea, 1858)	Unionidae	FL,GA.
1 Ouachita Rock pocketbook (=Wheeler's pearly mussel)	*Arkansia wheeleri* Ortmann & Walker, 1912	Unionidae	AR,OK.
2 Western fanshell (=western fan-shell pearly mussel)	*Cyprogenia aberti* (Conrad, 1850)	Unionidae	AR,KS,MO,OK.
2 Fanshell (mussel)	*Cyprogenia stegaria* (=*C. irrorata*) (Rafinesque, 1820)	Unionidae	AL,IL,IN,KY,OH,PA,TN,VA,WV.
2 Salina mucket (mussel)	*Disconaias salinasensis* (Simpson, 1908)	Unionidae	TX, Mexico.
2 Cape Fear spike (mussel)	*Elliptio marsupiobesa* Fuller, 1972	Unionidae	NC.
2 Winged spike (=recovery pearly mussel)	*Elliptio nigella* (Lea, 1852)	Unionidae	AL,GA.
2 Altamaha lance (mussel)	*Elliptio shepardiana* (T.Lea, 1834)	Unionidae	GA.
2 Altamaha spinymussel (=Georgia spiny mussel)	*Elliptio spinosa* (Lea, 1836)	Unionidae	GA.
2 Waccamaw spike (mussel)	*Elliptio waccamawensis* (Lea, 1863)	Unionidae	NC.
2 Waccamaw lance pearlymussel	*Elliptio* sp.	Unionidae	NC.
2 Purple bankclimber (mussel)	*Elliptoideus sloatianus* (T.Lea, 1840)	Unionidae	AL,GA,FL.
3A Sugarspoon (=arc-form pearly mussel)	*Epioblasma arcaeformis* (Lea, 1831)	Unionidae	AL*,TN*.
3A Angled riffleshell	*Epioblasma biemarginata* (Lea, 1857)	Unionidae	AL*,TN*.
2 Cumberlandian combshell	*Epioblasma brevidens* (Lea, 1831)	Unionidae	AL,KY,TN VA
2 Oyster mussel	*Epioblasma capsaeformis* (Lea, 1834)	Unionidae	AL,KY,TN,VA.
3A Leafshell (=arcuate pearly mussel)	*Epioblasma flexuosa* (Rafinesque, 1820)	Unionidae	AL*,TN*.
3A Acornshell (=acorn pearly mussel)	*Epioblasma haysiana* (Lea, 1834)	Unionidae	AL*,TN*,VA*
3B Lefevre's pearly mussel	*Epioblasma lefevrei* (Utterback, 1915)	Unionidae	AR*,MO*.
3A Narrow catspaw (=Stones pearly mussel)	*Epioblasma lenior* (Lea, 1843)	Unionidae	AL*,TN*
3A Forkshell (Lewis' pearly mussel)	*Epioblasma lewisi* (Walker, 1910)	Unionidae	AL*,TN*,KY*.
2 Upland combshell (mussel)	*Epioblasma metastriata* (Conrad, 1840)	Unionidae	AL,GA.
2 Purple catspaw (mussel)	*Epioblasma obliquata obliquata* (=*E. sulcata sulcata*) (Rafinesque, 1820)	Unionidae	AL,IL,IN,KY,OH TN
2 Southern acornshell (mussel)	*Epioblasma othcaloogensis* (I.Lea, 1857)	Unionidae	GA.
3A Round combshell (=fine-rayed pearly mussel)	*Epioblasma personata* (Say, 1829)	Unionidae	AL*,TN*
3A Tennessee riffleshell (=nearby yearly mussel)	*Epioblasma propinqua* (Lea, 1857)	Unionidae	AL*,TN*
3A Cumberland leafshell (=Steward's pearly mussel)	*Epioblasma stewardsoni* (Lea, 1852)	Unionidae	AL*,TN*.
2 Northern riffleshell (mussel)	*Epioblasma torulosa rangiana* (I.Lea, 1839)	Unionidae	IL IN,KY,MI (WI PA WV Canada
2 Narrow pigtoe (mussel)	*Fusconaia escambia* (Clench and Turner, 1956)	Unionidae	AL FL
2 Cracking pearlymussel	*Hemistena lata* (Rafinesque, 1820)	Unionidae	AL IL IN KY TN VA
2 Fine-lined pocketbook (mussel)	*Lampsilis altilis* (Conrad, 1834)	Unionidae	AL GA

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CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	HISTORIC RANGE
2 Southern sandshell (mussel)	*Lampsilis australis* (Simpson, 1900)	Unionidae	AL,FL.
2 Lined pocketbook (mussel)	*Lampsilis binominata* (Simpson, 1900)	Unionidae	AL,GA.
2 Orange-nacre mucket (mussel)	*Lampsilis perovalis* (Conrad, 1834)	Unionidae	AL,GA,MS.
2 Arkansas fat mucket (mussel)	*Lampsilis powelli*	Unionidae	AR.
2 Neosho mucket (=Neosho pearly mussel)	*Lampsilis rafinesqueana* Frierson, 1927	Unionidae	AR,KS,MO,OK.
2 Shiny-rayed pocketbook (mussel)	*Lampsilis subangulata* (I.Lea, 1840)	Unionidae	AL,FL,GA.
2 Carolina heelsplitter (mussel)	*Lasmigona decorata* (Lea,1852)	Unionidae	NC,SC.
2 Tennessee heelsplitter (mussel)	*Lasmigona holstonia* (Lea, 1838)	Unionidae	AL,GA,IL,IN,KY,TN,VA.
2 Scaleshell (mussel)	*Leptodea leptodon* (Rafinesque, 1820)	Unionidae	AR,IA,IL,IN,KY,MO,OH,OK.
2 Slabside pearlymussel	*Lexingtoni dolabelloides* (Lea, 1840)	Unionidae	AL,TN,VA.
2 Ring pink (Golf stick pearly mussel)	*Obovaria retusa* (Lamarck, 1819)	Unionidae	AL,IL,IN,KY,OH,PA,TN,WV
2 Round ebonyshell (mussel)	*Obovaria rotulata* (Wright, 1899)	Unionidae	AL,FL.
2 Clubshell (mussel)	*Pleurobema clava* (Lamarck, 1819)	Unionidae	AL,IL,IN,KY,MI,OH,PA,TN,WV.
2 Tennessee clubshell (mussel)	*Pleurobema oviforme* (Conrad, 1834)	Unionidae	KY,TN,VA.
2 Oval pigtoe (mussel)	*Pleurobema pyriforme* (T.Lea, 1857)	Unionidae	AL,FL,GA.
2 Warrior pigtoe (mussel)	*Pleurobema rubellum* (Conrad, 1834)	Unionidae	AL.
3B Pink pigtoe (mussel)	*Pleurobema rubrum* (Rafinesque, 1820)	Unionidae	AL,KY,TN.
2 True pigtoe (mussel)	*Pleurobema vernum* (T.Lea, 1860)	Unionidae	AL.
2 Texas hornshell (mussel)	*Popenaias popei* (T.Lea, 1857)	Unionidae	NM,TX, Mexico.
2 Texas heelsplitter (mussel)	*Potamilus amphichaenus* (Frierson, 1898)	Unionidae	LA,TX.
2 Alabama heelsplitter (mussel)	*Potamilus inflatus* (Lea, 1831)	Unionidae	AL,LA,MS.
2 Southern kidneyshell (mussel)	*Ptychobranchus jonesi* (van der Schalie, 1934)	Unionidae	AL,FL.
2 Rough rabbitsfoot (mussel)	*Quadrula cylindrica strigillata* (B.H.Wright, 1896)	Unionidae	KY,TN,VA.
3C Winged mapleleaf (=rough maple leaf pearly mussel)	*Quadrula fragosa* (Conrad, 1835)	Unionidae	IN,IL,KS,KY,MO,OH,OK,WI.
2 False spike (mussel)	*Quincuncina mitchelli* (Simpson, 1896)	Unionidae	TX.
2 Salamander mussel	*Simpsoniaias ambigua* (Say, 1825)	Unionidae	AR,IA,IL,IN,KY,MI,MO,MY,OH,TN,PA,WI,WV, Canada.
2 Purple lilliput (mussel)	*Toxolasma lividus* (Rafinesque,1831)	Unionidae	IL,IN,KY,MI,MO,OH,TN.
2 Savannah lilliput (mussel)	*Toxolasma pullus* (Conrad, 1838)	Unionidae	GA,NC,SC.
2 Mexican fawnsfoot (mussel)	*Truncilla cognata* (T.Lea, 1860)	Unionidae	TX, Mexico.
2 Choctaw bean (=Choctaw pearly mussel)	*Villosa choctaensis* Athearn, 1964	Unionidae	AL,FL.
2 Rayed bean (mussel)	*Villosa fabalis* (Lea, 1831)	Unionidae	AL,IL,IN,KY,MI,OH,TN,PA,VA,WV, Canada
2 Kentucky creekshell (=Ortmann's pearly mussel)	*Villosa ortmanni* (Walker, 1925)	Unionidae	KY.
2 Purple bean (=Fine-rayed purple pearly mussel)	*Villosa perpurpurea* (Lea,1861)	Unionidae	TN,VA.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 107

Access to Secure Areas of Airports; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. 25568; Amdt. No. 107-4]

RIN 2120-AC89

Access to Secured Areas of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a requirement for certain airport operators to submit to the Director of Civil Aviation Security, for approval and inclusion in their approved security programs, amendments to ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and, also, to ensure that such access is denied immediately to individuals whose authority to have access changes. The rule provides for the installation and use of a system, method, or procedure that meets certain performance standards, or the use of an approved alternative system, method, or procedure for controlling access to secured areas of airports. This rule is needed to improve control of the locations that provide access to secured areas of airports. It is intended to enhance airport security by precluding access to these areas by unauthorized persons.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3370.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration's (FAA) Civil Aviation Security Program was initiated in 1973. Part 107 of the Federal Aviation Regulations was promulgated to provide a secure environment in which air carriers can operate. Airport operators are required by Part 107 to have an FAA-approved airport security program. The approved security program must describe the functions and procedures to control access to certain areas of the airport and to control movement of persons and vehicles within those areas. The Personnel Identification Procedures contained in airport security programs provide a means of control once an individual has gained access to a restricted area. The FAA is concerned that these procedures could allow an individual using forged, stolen, or noncurrent identification to compromise the secured areas. The FAA is also concerned that former employees could use their familiarity with airline and airport procedures to succeed in entering a secured area and possibly commit a criminal act on board an aircraft.

The December 7, 1987, tragedy involving Pacific Southwest Airlines (PSA) Flight 1771, in which 38 passengers and 5 crewmembers were killed after departing Los Angeles International Airport, highlighted FAA's interest in improving the control of access to secured areas of an airport. An airport area where access to aircraft and airport facilities is possible should be accessible only to an individual who is authorized to be in that area. These areas should be controlled carefully to prevent tampering with aircraft and airport facilities and to preclude tragic consequences.

The FAA accelerated its efforts to head off the type of situation potentially reflected by the crash of PSA Flight 1771 and to improve the level of security generally. This acceleration resulted in the promulgation of an emergency final rule amending the preboarding screening procedures contained in Parts 108 and 129 of the Federal Aviation Regulations (52 FR 48508; December 22, 1987). To complement the procedures required by that emergency regulation and to expand the performance standards of security systems at airports, on March 11, 1988, the FAA issued Notice of Proposed Rulemaking (Notice) No. 88-6 (53 FR 9094; March 18, 1988). That notice proposed that airport operators, whose airports met certain criteria, be required to submit to the Administrator, for approval and inclusion in their approved security programs, amendments to their programs that ensure that only those persons authorized to have access to secured areas of an airport are able to obtain that access and also ensure that such access is denied immediately to individuals whose authority to have access changes. It further proposed that the program provide for a means to differentiate between persons authorized to have access to only a particular portion of the secured area and persons authorized to have access only to other portions or to the entire secured area. To provide this increased control of locations on the airport, the FAA proposed in Notice No. 88-6 the installation of a computer-controlled card access system. The notice also proposed that airport operators be allowed to install alternative systems which, in the Administrator's judgment, would have the same capabilities as the computer-card system and would provide an equivalent level of security.

Additionally, Notice No. 88-6 specifically stated that the proposal would supplement, not replace, the existing photo identification system required by an airport operator's approved security program. The continuous display of the individual identification in secured areas is necessary so that unauthorized individuals can be challenged in accordance with § 107.13. However, the notice proposed that the airport operator be given the option of integrating the system proposed by Notice No. 88-6 with the photo identification system and issuing a single credential.

The anticipated capabilities of a computer-controlled card access system were discussed in Notice No. 88-6. In addition to being able to monitor each location where access to the secured area is permitted by means of a "card reader" linked to the control computer, the system would be designed to provide for unique coding for each card. The system would also be capable of performing other functions that can improve an airport's security profile including the ability to cause an alert when access is denied to a person who attempts to use an invalid card and to establish a log of the system's activity. The notice intentionally did not address the details regarding the actual locations of the card readers and the operational methods to be employed by the system since each individual airport would employ a system specific to its needs.

In Notice No. 88-6, the FAA proposed a 4-phase schedule for airport operators to submit to the Administrator amendments to their security programs. The phases were based on the total number of persons screened annually at an airport. (The preamble to the proposed rule incorrectly stated "number of passengers screened" annually.)

The notice proposed that, upon approval of the amendment by the Administrator, airport operators would fully implement their systems within 6 months from the date of approval. However, the Administrator could allow up to an additional 6 months for implementation of the system at certain locations on each airport. The intent was to ensure implementation at the most critical airport locations and to allow additional time for implementation at locations that provide access to more remote locations on the airport.

Discussion of Comments

As of May 31, 1988, the FAA received 122 written comments in response to Notice No. 88-6 from organizations representing the aviation industry, air carriers, individuals, manufacturers, and airports. The majority of the commenters object to the proposal either in part or in its entirety. They believe the proposal to be premature and lacking in its evaluation of complex issues. Numerous commenters support the intent of the proposed rule but express concern because it lacked specificity about the requirements and because they made incorrect assumptions about the scope of the requirements. The following discussion is intended to address the comments and explain the FAA's response to the concerns identified in the 122 comments received through May 31, 1988. The FAA has reviewed and considered late-filed comments to determine if any new issues were raised or any significant, new factual information was provided.

Six commenters request a 60-day extension of the May 2, 1988, closing date for comments on Notice No. 88-6 including requests from the American Association of Airport Executives (AAAE), the Airport Operators Council International (AOCI), and the Regional Airline Association (RAA). A letter was also received from the Air Transport Association (ATA) in support of the AAAE and AOCI requests. They comment that, considering the magnitude of the issue, more time is needed to allow for wider distribution and discussion, to prepare additional information concerning the costs associated with the proposed system, and to allow maximum comments and facilitate an open exchange of ideas. The FAA denied the requests for extension. However, the FAA continued to consider late-filed comments beyond July 2, the date on which the requested extension period would have expired.

Twelve commenters are recommending that Notice No. 88-6 be withdrawn to allow time for the FAA, airport operators and tenants, and other interested parties to explore the total security problem that might exist at airports. At least three commenters are requesting a public hearing which they believe will allow them to air their concerns and expose pertinent issues thereby providing the FAA and the aviation community with necessary information. Ten commenters specifically request the FAA to conduct a study of the technology that is available regarding automated access control systems to determine the most appropriate system to accomplish the objective of the proposals. Several commenters, including the ATA and AAAE, recommend that the FAA conduct a pilot program at several airports to evaluate more realistically the issues involved in this rulemaking.

While worthy of merit under less compelling circumstances, the implementation of any of these recommendations would result in the postponement of a security measure intended to promote the safety of air transportation and therefore must be balanced carefully against that goal. The information that would be provided to the FAA through a public hearing would duplicate, to a large extent, that already contained in Docket No. 25566. Through its experience at more than a dozen major airports and other facilities, the FAA has been made aware of most of the existing technology regarding computerized access control systems and is confident that technology is available to meet the requirements of this final rule. Additionally, the FAA historically has been reviewing and evaluating all aspects of an airport operator's security program to ensure that it is commensurate with the size, layout, location, and activity level of the particular airport. Consequently, the FAA fully expects to be involved early on regarding the scope and design of a system that meets the required performance standards or an approved alternative that will comply with the final rule. From its historical role, as well as its early participation in the process outlined in this final rule, the FAA believes that the requirements of this rulemaking are both realistic and supportable.

The FAA plans also to issue general guidelines to assist airport operators in their selection of a system, method, or procedure and preparation of an amendment. The guidelines also will assist FAA personnel in their review and approval of the amendment containing an airport operator's proposed strategy to install and implement a system, method, or procedure that meets the performance standards or an approved alternative. In summary, the FAA's input and involvement at the very early stage will address many of the commenters' concerns that might otherwise argue for delaying final action.

Funding was another concern identified by 46 commenters. Most of them indicate that the Airport Improvement Program (AIP) would be their only source of funding. Many airport managers make reference to the notice which states that the proposed system would be eligible for funding under AIP; however, their concern is that the amount of AIP funding available would not cover all costs. Commenters also express concern that other airport improvement projects would be impeded due to the diversion of AIP funds. Several of the commenters recommend that the FAA consider making other funds available if a final rule is issued. Lastly, the commenters state that the short implementation schedule proposed in the notice could make AIP funding impossible due to the amount of time needed to process such requests.

The majority of the airports covered by this rule are primary airports. These airports, particularly the larger ones, have historically funded much or most of their capital development without Federal financial aid. In addition, primary airports receive entitlement funds each year under the AIP. It is expected that these airport sponsors would use the AIP entitlements or their own resources to fund required security capital costs. To the extent that these resources are not adequate at smaller airports and depending on the availability of other funding sources within the AIP, the FAA would consider supporting the program with funding, as necessary. Since the final rule includes a revised implementation schedule, the FAA believes that normal funding within the AIP should be sufficient to aid airports, and a "set aside" fund is not necessary.

Fifty-eight commenters are concerned about the costs that would be involved to achieve compliance with the requirement being proposed. They believe the cost figures reflected in the notice to be underestimated. Several commenters, including the ATA, AAAE, and AOCI, provide details of estimated costs. Those organizations indicate that the FAA cost estimates are underestimated by as much as a factor of 10. For that reason, the commenters believe that the Regulatory Evaluation is not accurate. They also state that the regulation being proposed meets the criteria for a major regulation under Executive Order 12291 and, therefore, requires a Regulatory Impact Analysis.

In response to the concerns regarding the estimated costs of the proposal, the FAA reviewed further the data contained in its Regulatory Evaluation. The results of that review are reflected in the evaluation for the final rule. A summary of the Regulatory Evaluation is included in this preamble under the heading "Economic Summary."

The concerns identified by the commenters regarding the implementation of the proposal reflect the extremely tight timeframe proposed

in Notice No. 88–6. Twenty-nine commenters contend that the unrealistic schedule makes compliance impossible considering the time-consuming process involved for budgeting, designing, bidding, procuring, and installing a system. Several commenters are recommending 2 years in addition to the time proposed in Notice No. 88–6. One commenter recommends that the compliance time for this requirement be 3 years following the allocation of dedicated AIP funds.

The FAA agrees with the commenters regarding their concerns about the implementation schedule proposed in Notice No. 88–6. Accordingly, the final rule contains a revised implementation schedule. The revised schedule constitutes a significant change from the language proposed in Notice No. 88–6.

Thirteen commenters express concern for the effectiveness of a system that airport operators might be forced to implement if they are subject to the schedule proposed in the notice. If 269 airports were required to comply with the schedule as proposed in the notice, the overdemand for qualified vendors would require using inexperienced contractors and companies. The commenters are in favor of extending the time period for implementation since compliance with the proposed schedule could have a detrimental effect on the system quality and reliability, especially at medium- and small-sized airports.

The FAA considers these concerns to be valid, and as stated above, the schedule contained in the final rule is revised. Current data indicate that 270 airports would be required to comply with a final rule.

The performance standards associated with a computer-controlled card access system causes serious concerns for at least 14 of the commenters. Nine commenters believe the time-date requirement for controlling access to be impractical due to necessary adjustments in work schedules to meet demands. Their specific concern is for the impact it will have on day-to-day operations; e.g., reassigning staff personnel, using different gates for delayed flights, working overtime, and changing workshifts.

If a computer-controlled card system is selected by an airport operator to meet the requirements of the final rule, the FAA anticipates that the system would be designed to have unique coding for each card so that the computer can be reprogrammed in minutes to revise the access authorized by a specific card. Such details will be developed in the context of the amendment to an airport's approved security program and will take into account the need for operational flexibility. The FAA plans to issue general guidelines on system operation.

Many of the commenters express concern for terminology contained in the notice. "Secured area" is not defined in Part 107 or 108 of the FAR. Two commenters request a definition of "immediately" which is stated in the proposal to indicate when access should be denied to individuals whose authority changes. Other commenters express concern regarding the use of the word "airports" versus "airport operators" in the preamble to Notice No. 88–6. Twenty commenters are concerned about an apparent conflict that centers around the airport operator's responsibilities for security under Part 107 and those of air carriers subject to Part 108 who have entered into exclusive use agreements with airport operators. The commenters urge the FAA to clarify this issue before proceeding with a final rule. One commenter requests standardization by the FAA in its interpretation of a final rule.

The FAA intentionally did not define "secured area" in the notice, nor is it defined in the final rule. To do so could result in the compromise of airport operators' security programs. Use of the term "immediately" is intended to stress the urgency with which an airport operator should act to deny access to secured areas by unauthorized individuals. The preamble to Notice No. 88–6 used the phrase "in a matter of minutes." Although the FAA has not further defined this term in the final rule, the FAA believes that the time interval should be the reasonable minimum time necessary to adjust the database to deny access to an individual. Regarding the use of the word "airport," the FAA agrees that the preamble statement referenced by the commenters creates confusion. However, the proposed rule and the final rule clearly establish that the regulated entity is the airport operator. Finally, the FAA does not view the use of the term "airport operator" as being inappropriate notwithstanding that an airport operator may have entered into an exclusive use agreement with an air carrier. When entering into an exclusive use agreement, the air carrier must accept the controls and procedures levied upon it by the airport operator. In such a case, the airport operator may be required to establish additional controls or modify existing ones for selected areas of an airport to comply with this final rule.

The FAA agrees with the commenter who requests that the FAA standardize its interpretation of a final rule to prevent serious differences in its implementation. The FAA will accomplish the requested standardization through the issuance of guidance to the various FAA regions for dissemination to the civil aviation security inspectors.

A number of commenters express concern that individuals who ordinarily have access at several airports (such as crewmembers or officials of a multiairport jurisdiction) would need a card for each airport. At least five commenters recommend that a commonality exist among the systems to preclude possible confusion and inconvenience stemming from individual systems which deny access to the above individuals. The commenters, in essence, recommend that the FAA require access control systems that are compatible on a national basis.

The FAA does not agree at this time that imposing uniformity is warranted. First, it would require imposing a uniform type of system, e.g., a computer-controlled card system. Moreover, requiring each airport to have a system with nationwide capacity and compatibility (capable of storing hundreds of thousands of names) would drive system costs up and would benefit only a small segment of the individuals who are associated with the regulated entities. Moreover, since the final rule expands the opportunity to use an alternative system, method, or procedure in response to the comments, nationwide uniformity is not practicable. However, an effort is underway to study the feasibility of an access system with multiairport capabilities. The FAA anticipates that operational issues will be identified in the study.

Twenty commenters address the issue of alternative access control systems that provide an equivalent level of security. Many of these commenters, including operators of small airports, state that nonautomated systems should be permitted. They believe that the requirement for the alternative to have the same capabilities as a computer-controlled card system is too restrictive. Ten comments were received from people who are in the business of providing systems for access control. The intent of these commenters is to make the FAA aware of technologies that are available, and, more importantly, to recommend that a final rule not require one type of system while allowing others to be used by exception as proposed in Notice No. 88–6.

The FAA agrees that, in addition to the specific technology identified in Notice No. 88–6, others may be available to meet the objectives of the proposal. The FAA also envisions that operators of the smaller airports may be able to meet the requirements of this final rule with minimal or no computer-assisted hardware installation. The final rule is revised accordingly.

The lack of specificity regarding the doors, gates, or other locations that would be involved in the implementation of the proposed system is of concern to 24 commenters. They contend that the number of access points to be controlled will significantly impact the cost of the system. They also express concern about the applicability of a rule to those points that give access to various suppliers who are making daily deliveries to tenants in a restricted area and to the current escort procedures that provide construction workers with daily or temporary access to restricted areas. Seven commenters believe the proposal to be in conflict with fire codes.

For the same reason that "secured area" was not defined, the FAA was not specific regarding doors, gates, and other locations to be controlled. To do so would compromise an airport operator's security program. For that reason, the FAA specifically requested that airport operators not discuss in their comments specific details of current or proposed security arrangements. The FAA-planned guidance for the various FAA regions will assist the FAA personnel and airport operators in the identification of those access points that should be subject to control by the system, method, or procedure required by this final rule. The FAA does not envision that every door or other access point will need the enhanced access controls. In response to the concern regarding suppliers, the intended effect of the requirement proposed by the notice will not allow the FAA to consider the inconvenience of such a requirement to any one group. Escort procedures are associated with an airport's identification system, and Notice No. 88–6 stated that the proposal would supplement, not replace, an existing identification system required by an airport operator's security program. Escorting of persons will continue to be permitted under the rule.

Twenty-nine commenters state that the complicated and expensive automated security measures proposed by the notice are not necessary at small airports since small airports experience different types of problems than do large airports. Nineteen commenters specifically state that the current procedures are adequate and that the level of security anticipated by the FAA through the final rule can only be obtained via greater discipline of personnel and more training on security issues. Six commenters recommend an evaluation of different airports to determine the scope of security needs and to give consideration to the complexity of operations before effecting a rule to require all airports to have a complex and expensive computer-controlled system.

The FAA agrees with the commenters and recognizes that security varies from airport to airport. The final rule is revised to permit FAA approval of an alternative system, method, or procedure that provides an appropriate level of security commensurate with an airport's needs.

At least three commenters express concern that Notice No. 88–6 does not address the impact on fixed based operators (FBO) and request clarification of this issue. Eleven commenters express the same concern for general aviation (GA) operations.

Upon adoption of a final rule, the airport operator would be the regulated party. As tenants of the airport, FBO's and GA operations would be subject to the control procedures identified by the airport operator.

Seventeen commenters state that the required system will not prevent a person from violating security measures if that person has such a desire. At least three commenters state that the required system will not prevent the PSA Flight 1771 type of tragedy.

The FAA believes that the emergency final rule amending the preboarding screening procedures complemented by the requirements of this rule to require airport operators to implement a positive access control system will substantially increase the overall level of security and will minimize the likelihood of a PSA Flight 1771 type of situation.

Finally, 11 persons comment that the proposed regulation will, at the very least, enhance security to a minimal degree. They contend that in some cases security will deteriorate if all issues involved at any one airport are not considered in the system design and implementation.

The FAA believes that the final rule will enhance airport security beyond a minimal degree since its intent is to preclude access to secured areas by unauthorized persons. Since the commenters did not identify the specific issues to be considered to prevent a deterioration of security, the FAA cannot adequately respond to that concern.

Discussion of the Rule

After considering the comments, the FAA is amending Part 107 to add a new § 107.14 to require improved access control to secured areas of certain airports. The final rule revises the proposed rule in several significant respects as a result of the comments received.

Section 107.14(a). Paragraph (a) of § 107.14 is revised in three ways from the proposal. First, the amendment to an airport operator's approved security program is to be submitted to the Director of Civil Aviation Security rather than the Administrator. The substitution of the Director of Civil Aviation Security for the Administrator has been made throughout § 107.14. Second, the last two sentences of proposed paragraph (a), dealing with the timeframe for implementation of a required system, have been deleted. The implementation schedule is found in paragraph (c) of § 107.14 of the final rule and is discussed below. Third, the requirement of paragraph (a) that certain airport operators submit, for approval and inclusion in their approved security programs, amendments that provide for the installation and use of a computer-controlled card system for access to secured areas of the airport, has been modified. Paragraph (a) now requires the installation and use of a system, method, or procedure that meets specified performance standards to control access to secured areas of the airport. This change allows the installation and use of systems, methods, or procedures other than computer-controlled card systems which may be currently available or that become available in the future as technology evolves and that meet the performance standards.

Section 107.14(b). Paragraph (b) of § 107.14 addresses the approval of alternative systems, methods, or procedures. The final rule reflects major changes from the proposed rule as a result of comments received. Approval of an alternative under the final rule is not tied to having the same capabilities as the system, method, or procedure meeting the performance standards of paragraph (a). This permits approval of other than automated systems. However, the critical element for approval of any alternative is the same in the final rule as it was in the proposed rule; the alternative must provide an overall level of security equal to that which would be provided by the type of system, method, or procedure described in paragraph (a).

Section 107.14(c). Paragraph (c) of the proposed rule sets forth the schedule for airport operators to submit the amendments to their approved security programs required by paragraph (a) or (b). The final rule retains the 4-phase approach and the timeframes for airports subject to each phase to submit their amendments. Airport operators may submit their amendments prior to the date required by this final rule. For example, since some airport operators will be able to meet the requirements of the rule without installing a system, method, or procedure that meets the performance standards of paragraph (a), and will be able to meet the intent of the rule on a much faster timeframe, they are encouraged to submit their plans before the dates required by the final rule.

Operators of Phase I airports, where 25 million or more persons are screened annually or as designated by the Director of Civil Aviation Security, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase II airports, where more than 2 million persons are screened annually, must submit amendments by 6 months after the effective date of the final rule. Operators of Phase III airports, where 500,000 to 2 million persons are screened annually, must submit amendments by 12 months after the effective date of the final rule. Operators of Phase IV airports, where less than 500,000 persons are screened annually, must submit amendments by 12 months after the effective date of the final rule.

Paragraph (c) of the final rule also includes an implementation schedule. The implementation timeframe, which was in paragraph (a) of the proposed rule, is substantially revised in the final rule. The proposed rule provided that "the system must be in use within 6 months" after approval of an airport operator's amendment to its approved security program. The proposed rule also provided for an additional 6 months at certain locations on an airport. The short timeframe of the proposed rule applied to airports in all four phases.

The final rule is different in several major respects. First, the implementation schedule is now linked to the phases. The final rule provides that the system, method, or procedure must be fully operational within 18 months after approval of an airport operator's amendment to its approved security program only at Phase I airports. Operators of Phase II airports have 24 months after approval of the amendments to their approved security programs. Operators of Phase III and IV airports have 30 months. The approved amendment for each airport shall specify how the system, method, or procedure will be fully operational within the appropriate timeframe.

Finally, paragraph (c) has added language to address the situation where an existing airport becomes subject to the requirements of § 107.14 after the effective date of the final rule. The timeframes for such an airport operator to submit an amendment to its approved security program and to specify that the system, method, or procedure must be fully operational depend on the phase that is applicable to the airport.

Section 107.14(d). A new paragraph (d) is included in the final rule to address the situation of brand new airports commencing operations after December 31, 1990. It is FAA's view that new airports should meet the requirements of section 107.14 when they commence operations since the improved access control requirements of the rule can be included in the design for these new airports and at a lower cost than a subsequent retrofit.

Economic Summary

The following is a summary of the final cost impact and benefit assessment of this rule amending Part 107 of the Federal Aviation Regulations to provide enhanced control of access to secured areas at certain U.S. airports. A full regulatory evaluation has been inserted into the public docket for this rulemaking.

For purposes only of this evaluation, the projected economic impact of the rule is based on the costs of installing and operating a computer-controlled card access system. Other access control systems, methods, or procedures may be permitted as a means of compliance with this rule subject to the approval of the Director of Civil Aviation Security.

Fifty-eight of the 122 written comments received as of May 31, 1988, in response to Notice No. 88-6 published in the **Federal Register** on March 18, 1988, pertain to the economic impact of the proposal. These comments were submitted by industry associations, individual airport authorities, air services, and producers of airport security equipment. The vast majority of these comments generally state that the FAA had underestimated the total costs required for compliance with the proposed rule.

Many of these comments are premised on two basic assumptions: (1) That the FAA underestimated the cost per access point, and (2) that the FAA underestimated the number of access points requiring enhanced control at airports.

The FAA has carefully reviewed its own cost estimates in light of comments received and does not agree that it underestimated the cost per access point. The FAA's estimates of design, testing, hardware, installation, maintenance, software update, and security card replacement costs were based on price quotes of manufacturers of computer card access systems. Cost per access area will differ for airports of different sizes, due to the large number of variables in required equipment, labor and maintenance and structural alterations associated with retrofit of existing systems. Thus, it is misleading to estimate total costs of the proposed rulemaking based on the cost per access area of one or two airports, as was done by some commenters.

Regarding the number of access points, the FAA believes that several commenters misunderstand the scope of the proposed rulemaking and have therefore overestimated the number of access points that the rule would require to have enhanced access controls (system, method, or procedure). In determining the number of doors that would be affected, the FAA did not envision that every door in a terminal area would need to be so controlled. Rather, the design of many airport buildings permits a "funneling through" effect which would minimize the number of doors requiring such enhanced control. In general, funnelling persons through a single point with enhanced access controls to an area would eliminate the need to have such controls at subsequent doors.

Therefore, for its economic analysis of the final rule, the FAA has not revised its estimates of the average number of access points that would need to be controlled in the four categories of airports. The number of access points for airports of each phase remains as follows in the economic analysis of the final rule:

Phase I: 128 access points
Phase II: 60 access points
Phase III: 25 access points
Phase IV: 10 access points

Several airport operators comment that the cost of the required security measure described in Notice No. 88-6 is excessive and would impose a heavy financial burden on them. The FAA recognizes these concerns and has therefore emphasized in the final rule that an airport operator may submit an amendment to its security program for approval by the Director of Civil Aviation Security, which does not necessarily require a computer card or automated system. The Director of Civil Aviation Security may approve such an alternative system, method, or procedure if, in the Director's judgment, it provides an overall level of security equal to that of a system, method or procedure meeting the performance standards outlined in the final rule. These performance standards, although stringent, do not specifically require use of a computerized or automated system.

In addition, the implementation schedule for affected airports has been revised in the final rule to allow more time for compliance, particularly for medium- and small-sized airports. One positive effect of this change may be to spread up-front costs for installation over a longer period of time, easing the burden on many airport operators.

Costs

This analysis of the costs of compliance with the final rule is premised on the assumption that all 270 airports will install computer-controlled card access systems. In actuality, many airport operators, particularly of medium- and small-sized airports in Phases III and IV, may install alternative access control systems, methods, or procedures, with the approval of the Director of Civil Aviation Security, that may prove to be less costly than the computer card systems. Therefore, the actual costs of this rule may be less than the estimated costs in this analysis.

Estimated costs of implementing controlled access systems at 270 airports in the United States, in accordance with the specifications and revised schedule of new § 107.14, are $169.9 million in 1987 dollars, and $119.1 million discounted present value (employing a 10 percent discount rate), for the 10-year evaluation period from 1989–1998. For Phase I airports, average hardware and installation costs are expected to be $1,465,600, with average annual recurring costs of approximately $126,600. For Phase II airports, average hardware and installation costs are expected to be $732,000, with annual recurring costs of approximately $88,730. For Phase III airports, average hardware and installation costs are expected to be $245,000, with annual recurring costs of approximately $42,969. For Phase IV airports, average hardware and installation costs are expected to be $56,000, with annual recurring costs of approximately $3,100. Table I shows the total of these costs by phase of airport and by year for the 270 airports affected by this rule.

The revised implementation schedules specified in this rule for airports of the four phases, permitting installation, maintenance and labor costs to commence later than indicated in the Initial Regulatory Evaluation, have the effect of slightly reducing the present value of total costs. Nonetheless, overall estimated costs of compliance have increased from estimates in the Initial Regulatory Evaluation, as a result of an increase in the number of airports in each phase. According to a recent review, there are 17 rather than 16 airports in Phase I, 54 rather than 48 airports in Phase II, 46 rather than 45 airports in Phase III, and 153 rather than 160 airports in Phase IV.

Benefits

The primary benefit of this rule will be the prevention of potential fatalities and injuries and the destruction of property resulting from a criminal act or an act of air piracy. The tragic loss on December 7, 1987, of 38 passengers and 5 crewmembers aboard PSA Flight 1771, serves as a basis for focusing on the type of catastrophic event that may be prevented by adopting new security regulations. It is important to recognize that the PSA Flight 1771 incident involved a smaller aircraft and passenger load than a typical Part 121 air carrier operation. If such a criminal act were perpetrated in a larger or more heavily loaded aircraft, the casualty loss would have been significantly higher.

The estimated $119.1 million cost (discounted present value) of this rule can be recovered fully if one incident, involving the loss of 170 lives and a wide-bodied jet transport of the type typically used in domestic operations, is prevented as a result of requiring improved security programs at U.S. airports during the 10 years following adoption of this rule. This determination is based upon a minimum value of $1.0 million per life saved, used in FAA regulatory evaluations, and an aircraft hull value of approximately $30.0 million, discounted from the middle of the 10-year evaluation period to account for the uncertainty of when such an incident may be prevented.

Regulatory Flexibility Determination

This amendment would affect 270 of the 427 airports subject to the security provisions of Part 107. The FAA's small entity size standards criterion define a small airport as one owned by a county, city, town or other jurisdiction with a population of 49,999 or less. Applying the FAA's size threshold criterion, 76 of the 427 airports are small. Since only 22 of the 270 airports that would be required to comply with this proposal are small, the requirement for the enhanced access controls will not affect a substantial number (at least one third) of the 76 small airports subject to Part 107. Therefore, this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

TABLE I.—COST OF COMPUTER-CONTROLLED CARD ACCESS SYSTEMS FOR YEARS 1989–1998

Year	Phase I	Phase II	Phase III	Phase IV	Total Costs
1989	[2] $9,444,067	$13,417,920			$22,861,987
1990	[2] 18,599,133	[2] 24,312,420	[2] 5,359,491		48,271,044
1991	[1] 1,989,000	[2] 14,430,420	[2] 5,646,991		22,066,411
1992	1,989,000	[1] 4,548,420	[2] 5,646,991	[2] 8,698,050	20,882,461
1993	1,989,000	4,548,420	[1] 1,890,324	[1] 359,550	8,787,294
1994	2,641,800	4,548,420	1,890,324	359,550	9,440,094
1995	1,989,000	5,520,420	1,890,324	359,550	9,759,294
1996	1,989,000	4,548,420	2,235,324	818,550	9,591,294
1997	1,989,000	4,548,420	1,890,324	359,550	8,787,294
1998	2,641,800	4,548,420	1,890,324	359,550	9,440,094
Total Cost (1987 dollars)	45,260,800	64,971,700	28,340,416	11,314,350	169,887,266
Total Cost (present value; 10% discount rate)	33,345,586	60,267,176	18,312,651	7,224,445	119,149,858

[1] Recurring annual costs include security access card replacement, computer maintenance, software update and support, and additional labor. Recurring costs also include card readers maintenance every 4th year.
[2] One-time installation costs include planning and procurement of computers, peripheral equipment, card readers, security access cards, engineering site survey and design, and Manager/Operator training.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the United States. This amendment affects only certain domestic airports subject to Part 107 of the FAR. Since there is virtually no foreign competition for the services provided by U.S. domestic airports, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Reporting and Recordkeeping

The requirements in the current regulations (Part 107) for an airport operator to submit an airport security program and amendments to the FAA for approval were approved by the Office of Management and Budget (OMB) under Control No. 2120-0075. Pursuant to this final rule, the FAA forwarded an amendment to Control No. 2120-0075 to OMB in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB approved the FAA's amendment of Control No. 2120-0075 on January 3, 1989.

Federalism Implications

The FAA believes that airport operators and sponsors will not be unduly burdened by the requirements of the final rule based on (1) the availability of AIP funding; (2) potential lower costs associated with alternative systems, methods, or procedures; and (3) the extended implementation schedule providing amortization of installations costs. On these bases, the FAA has determined that this regulation will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980. Because of the substantial public interest resulting from Notice No. 88-6, this rule is considered significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 107

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Aviation security, Secured areas.

The Amendment

Accordingly, Part 107 of the Federal Aviation Regulations (14 CFR Part 107) is amended as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983).

2. By adding a new § 107.14 to read as follows:

§ 107.14 Access control system.

(a) Except as provided in paragraph (b) of this section, each operator of an airport regularly serving scheduled passenger operations conducted in airplanes having a passenger seating configuration (as defined in § 108.3 of this chapter) of more than 60 seats shall submit to the Director of Civil Aviation Security, for approval and inclusion in its approved security program, an amendment to provide for a system, method, or procedure which meets the requirements specified in this paragraph for controlling access to secured areas of the airport. The system, method, or procedure shall ensure that only those persons authorized to have access to secured areas by the airport operator's security program are able to obtain that access and shall specifically provide a means to ensure that such access is denied immediately at the access point or points to individuals whose authority to have access changes. The system, method, or procedure shall provide a means to differentiate between persons authorized to have access to only a particular portion of the secured areas and persons authorized to have access only to other portions or to the entire secured area. The system, method, or procedure shall be capable of limiting an individual's access by time and date.

(b) The Director of Civil Aviation Security will approve an amendment to an airport operator's security program that provides for the use of an alternative system, method, or procedure if, in the Director's judgment, the alternative would provide an overall level of security equal to that which would be provided by the system, method, or procedure described in paragraph (a) of this section.

(c) Each airport operator shall submit the amendment to its approved security program required by paragraph (a) or (b) of this section according to the following schedule:

(1) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where at least 25 million persons are screened annually or airports that have been designated by the Director of Civil Aviation Security. The amendment shall specify that the system, method, or procedure must be fully operational within 18 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(2) By August 8, 1989, or by 6 months after becoming subject to this section, whichever is later, for airports where more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 24 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(3) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where at least 500,000 but not more than 2 million persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(4) By February 8, 1990, or by 12 months after becoming subject to this section, whichever is later, for airports where less than 500,000 persons are screened annually. The amendment shall specify that the system, method, or procedure must be fully operational within 30 months after the date on which an airport operator's amendment to its approved security program is approved by the Director of Civil Aviation Security.

(d) Notwithstanding paragraph (c) of this section, an airport operator of a newly constructed airport commencing initial operation after December 31, 1990, as an airport subject to paragraph (a) of this section, shall include as part of its original airport security program to be submitted to the FAA for approval a fully operational system, method, or procedure in accordance with this section.

Issued in Washington, DC, on January 3, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89-279 Filed 1-4-89; 9:48 am]

BILLING CODE 4910-13-M

federal register

Friday
January 6, 1989

Part VI

Environmental Protection Agency

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00271; FRL 3504-2]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal. The meeting will be open to the public.

DATES: Monday, January 23, and Tuesday, January 24, 1989, beginning at 8:30 a.m. on January 23 and January 24 and ending at 5:00 p.m. each day.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail,

John T. Tice, Office of Pesticide Programs (TS-787C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 712, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7410).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. A status report on the National Ground Water Survey.

2. A summary of issues raised at the Regional Ground Water Workshops and current status of the Ground Water Strategy.

3. A discussion of the Regional role in the Ground Water Strategy for FY 90.

4. A discussion of the Pesticide Programs' needs for ground water data and what the states can provide to meet those needs.

5. A status report and discussion of disposal regulations being developed under the FIFRA 88 amendments.

6. A discussion of the field use of impervious loading pads for 2,4-D products.

7. A presentation by the Office of Compliance Monitoring on issues of interest to State Lead Agencies.

8. Other topics as appropriate.

Dated: January 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-398 Filed 1-5-89; 10:48 am]

BILLING CODE 6560-50-M4700

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Vol. 54 No. 5

federal register

Monday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-31-AD; Amdt. 39-6104]

Airworthiness Directives; Beech Model 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Model 200 airplanes, which requires reduction of the structural safe life of the outer wing panels from 20,000 hours time-in-service (TIS) to 10,000 hours TIS until modified with an improved spar assembly. The original spars in these airplanes have a sharp radius at the lower barrel nut hole which is a potential fatigue origination point. Replacing the original spars with the improved spars will permit safe operation up to 20,000 hours TIS.

DATES: *Effective Date:* February 8, 1989.

Compliance: Required prior to the accumulation of 10,000 hours TIS.

ADDRESSES: Beech Service Bulletin No. 2240, dated February 1988; Beech Letter No. 52-83-0030, dated January 20, 1983; and Beech Letter No. 52-85-0049, dated April 17, 1985, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the outer wing main spars on certain Beech Model 200 airplanes was published in the **Federal Register** on October 13, 1988 (53 FR 40071). The proposal resulted from the discovery of a manufacturing defect, which, if uncorrected, limits the wing outer panel safe life. The Beech Model 200 wing cyclic test was completed in February 1976, after accomplishing the required four lifetimes of testing. Subsequently, during residual strength testing of the same test article to loads exceeding limit loads, a fatigue crack was found in the lower main spar attachment counterbore. Later tests showed that the crack was caused by an inadequate corner radius in the bottom of the counterbore. The boring tool was modified to make a more liberal edge radius at the bottom of the counterbore which solved the problem. This improvement became effective with Model 200 serial number BB-149 for the right wing, and with serial number BB-162 for the left wing. The original wing structural safe life for airplanes with serial numbers below BB-162 must be reduced from what was published at the time of certification. An average reduced safe life of 10,000 hours TIS has been calculated due to the above defect.

It was originally decided to replace the discrepant spars under warranty. Later, the FAA determined that mandatory action was needed to assure that none of the affected airplanes exceed their reduced safe life before spar replacement was accomplished. Therefore an AD was proposed to mandate this spar replacement.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 50 airplanes with an approximate one time cost of $20,000 for each airplane. Until February 1990, this cost will be borne by the manufacturer, not to include removal and reinstallation of any non-Beech appliances or modifications which may prevent access to the main spar. These incidental costs are not considered to be significant. The total cost, if not accomplished by February 1990, is estimated to be $1,000,000 to the private sector.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Model 200 (Serial Numbers BB-2 through BB-161) airplanes certificated in any category.
Compliance: Required as indicated after the effective date of this AD, unless already accomplished per Beech Service Bulletin No. 2240, dated February 1988, or Beech Letter No. 52-83-0030, dated January 20, 1983, or

Beech Letter No. 52-85-0049, dated April 17, 1985.

To prevent possible failure of the wing main outboard spar, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, or upon accumulating 10,000 hours TIS, whichever occurs later, replace both wing main outboard spars in accordance with Beech Service Bulletin No. 2240, dated February 1988. Only the left wing main spar need be replaced for Serial Nos. BB-149 through BB-161.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 8, 1989.

Issued in Kansas City, Missouri, on December 23, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-320 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-93-AD; Amdt. 39-6101]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires replacement of aluminum nose landing gear actuator support fittings. This amendment is prompted by numerous reports of nose landing gear support fitting failures and one recent incident of nose gear collapse on landing. This condition, if not corrected, could lead to failure of the nose landing gear due to inability to achieve a down and locked position.

EFFECTIVE DATE: February 8, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of aluminum nose landing gear actuator support fittings, was published in the **Federal Register** on August 8, 1988 (53 FR 29692). The comment period closed on September 28, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America commented on behalf of two of its members. One member airline commented that the Boeing kit number specified in paragraph A of the Notice should be changed to add the dash number. The FAA does not concur and has determined that the kit number reflected in the proposed rule is correct.

Another member airline suggested that the part number for a certain steel fitting, identified in the manufacturer's illustrated parts catalog, be specified in the final rule as interchangeable with the part number called out in paragraph A of the Notice. The FAA concurs in part with this comment. Since issuance of the Notice, the manufacturer has issued, and the FAA has reviewed and approved, Boeing Service Bulletin 737-53-1119, dated September 22, 1988, which provides instructions for replacement of the nose landing gear retract actuator support fitting. Additionally, this service bulletin identifies the replacement kit numbers and alternate part numbers. Therefore, the final rule has been revised to eliminate the reference to use of a specific part number, and to require replacement of the nose landing gear actuator support fitting in accordance with the new Boeing service bulletin. The FAA has determined that this change does not increase the scope of the rule, nor does it increase the economic burden on any operator.

The manufacturer suggested that the final rule be revised to require repetitive inspections for cracks, prior to replacement of the nose landing gear actuator support fitting. The FAA does not concur. In developing this rulemaking action, the FAA did consider including repetitive inspections, but determined that, in light of the fatigue crack growth rate of the aluminum nose landing gear actuator support fittings and service history of the fittings, such inspections are unnecessary. Further, to add such inspections to the final rule would be beyond the scope of this rulemaking action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously noted.

There are approximately 440 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated to be $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $664,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 9 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 1 through 446, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Replace the aluminum nose landing gear actuator support fitting with a steel fitting, in accordance with Boeing Service Bulletin 737-53-1119, dated September 22, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 8, 1989.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Office.

[FR Doc. 89-319 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-106-AD; Amdt. 39-6100]

Airworthiness Directives: Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a one-time inspection and correction, if necessary, of the brake alternate antiskid valve modules for correct check valve installation, and installation of additional check valves at the alternate brake metering valves. This amendment is prompted by reports of reducer unions installed in place of the required check valves in the alternate antiskid valve modules. Furthermore, an additional problem was identified in that the check valve installed at the alternate metering valves was not located so it could perform its function. These conditions, if not corrected, could result in the loss of fluid from the left hydraulic system after a failure causing loss of fluid in the right hydraulic system.

EFFECTIVE DATE: February 8, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires a one-time inspection of the brake alternate antiskid valve modules to determine the correct check valve installation, and installation of additional check valves at the alternate brake metering valves, was published in the **Federal Register** on September 13, 1988 (53 FR 35319).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter expressed no objection to the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule.

There are approximately 186 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 102 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,320.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, Group 1 and Group 2, as listed in Boeing Alert Service Bulletin 757-2A0061, dated June 24, 1988, certificated in any category. Compliance required within the next 120 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of airplane braking due to a single hydraulic failure, accomplish the following:

A. Inspect Groups 1 and 2 airplanes left and right alternate antiskid valve module return ports for proper check valve configuration, and correct, if necessary, in accordance with Boeing Alert Service Bulletin 757-32A0061, dated June 24, 1988.

B. On Group 1 airplanes, remove the reducer unions installed in the left and right alternate brake metering valve module return ports and install check valves, in accordance with Boeing Alert Service Bulletin 757-32A0061, dated June 24, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 8, 1989.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-318 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ASW-17; Amdt. 39-6098]

Airworthiness Directives; Sikorsky Aircraft Model S-61L, S-61N, S-61NM, S-61R, S-61A, and S-61V Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires frequent inspections of certain Sikorsky Model S-61 series main rotor blades. The amendment increases the main rotor (MR) blade eligibility for S-61 helicopter operators who are involved with external load operations. The amendment is needed to provide relief for operators who may have MR blades or spares that are presently ineligible.

DATES: *Effective Date:* February 8, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, Commercial Customer Service Department, 6800 Main Street, Stratford, CT 06601-1381. A copy of the service bulletin is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by amending Amendment 39-5129 (50 FR 38506; September 23, 1985), AD 85-18-05, as amended by Amendment 39-5525 (52 FR 8582; March 19, 1987), AD 85-18-05R1, by revising the MR blade eligibility list to include previously ineligible MR blade part and dash numbers for use on certain Sikorsky Model S-61 series helicopters was published in the **Federal Register** on August 29, 1988 (53 FR 32921). Amendment 39-5129, as amended by Amendment 39-5525, currently requires frequent inspections on certain Sikorsky Model S-61 series main rotor blades. The proposal was prompted by additional information from the manufacturer and FAA data files that shows additional MR blades are also eligible for use on Sikorsky Model S-61 series helicopters involved in frequent, heavy-lift operations under Part 133 external load operations. This amendment is relieving in nature and imposes no additional burden.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves about 12 helicopters engaged in Part 133 external cargo operations and the approximate cost would be reduced by $250,000 for each helicopter by allowing use of existing main rotor blades. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By further amending Amendment 39-5129 (50 FR 38506; September 23, 1985), AD 85-18-05, as amended by Amendment 39-5525 (52 FR 8582; March 19, 1987), AD 85-18-05R1, by revising

paragraphs (a)(1)(iii), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(6); and by adding new paragraphs (a)(1)(iv) and (a)(2)(v) to read as follows:

* * * * *

(a) * * *

(1) * * *

(iii) P/N's 61170-20201-055, -056, -058, -059, -060, -061, -062, -065, and -067.

(iv) P/N's S6117-20101-041, -046, -050, -051, -054, -055, -056, -057, and -058.

(2) * * *

(ii) P/N's S6115-20601-041, -042, -045, -046, -047, and -048.

(iii) P/N's S6188-15001-041 and -045.

(iv) P/N's 61170-20201-054, -055, -056, -058, -059, -060, -061, -062, -065, and-067.

(v) P/N's S6117-20101-041, -046, -050, -051, -054, -055, -056, -057, and -058.

* * * * *

(6) The following blades are approved for Model S-61R transport category helicopters operating up to a combined aircraft and cargo gross weight of 19,500 pounds:

(i) P/N's S6115-20501-041 and -042.

(ii) P/N's S6115-20601-042, and -045 through -048.

(iii) P/N's S6117-20101-041, -050, -051,-054, -056, -057, and -58.

(iv) P/N's 61170-20201-055, -058, -058 through -062, -064, -065, and -067.

* * * * *

This amendment becomes effective February 8, 1989.

This amendment amends Amendment 39-5129 (50 FR 38506; September 23, 1985), AD 85-18-05, as amended by Amendment 39-5525 (52 FR 8582; March 19, 1987), AD 85-18-05R1.

Issued in Forth Worth, Texas, on December 19, 1988.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-317 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1264

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1264 by making editorial and word changes, and by adding clarifying language consistent with suggestions by the President's Council on Integrity and Efficiency, in compliance with the Model Regulation. This regulation establishes NASA's practices and procedures in compliance with the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*

EFFECTIVE DATE: January 9, 1989.

ADDRESS: Office of the General Counsel, Code GG, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202/453-2465.

SUPPLEMENTARY INFORMATION: NASA published its final rule in the **Federal Register** on October 22, 1987 (52 FR 39498). This amendment corrects misspelled words, makes some word changes for clarity, and adds language conforming to the suggestions of the President's Council on Integrity and Efficiency in response to the American Bar Association (ABA).

Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1264

Administrative practice and procedure, Civil penalties and assessments, False claims or statements, Fraud, Remedies.

For reasons set out in the Preamble, 14 CFR Part 1264 is amended as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. The authority citation for 14 CFR Part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

2. Section 1264.101 is amended by revising paragraphs (d), (m)(3), (o), and (q) to read as follows:

§ 1264.101 Definitions.

* * * * *

(d) Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

* * * * *

(m) * * *

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

* * * * *

(o) Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

* * * * *

(q) Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or of the Commonwealth of Puerto Rico.

3. Section 1264.102 is amended by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 1264.102 Basis for civil penalties and assessments.

(a) * * *

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient or party.

* * * * *

(b) * * *

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

* * * * *

4. Section 1264.103 is amended by revising paragraph (c) to read as follows:

§ 1264.103 Investigation.

* * * * *

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report of referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

* * * * *

5. Section 1264.106 is amended by revising paragraph (b)(4) to read as follows:

§ 1264.106 Complaint.

* * * * *

(b) * * *

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 1264.109.

* * * * *

6. Section 1264.107 is amended by revising paragraphs (b) (1), (2) and (3) to read as follows:

§ 1264.107 Service of complaint.

* * * * *

(b) * * *

(1) Affidavit of the individual servicing the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his/her representative.

7. Section 1264.108 is amended by the addition of paragraph (c) to read as follows:

§ 1264.108 Answer.

* * * * *

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official, as provided in § 1264.110, shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

8. A typo is corrected in § 1264.114 and the section is revised to read as follows:

§ 1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

9. A typo is corrected in the section heading of § 1264.115. The section heading is revised to read as follows:

§ 1264.115 Disqualification of reviewing official or presiding officer.

10. Section 1264.117 is amended by revising paragraph (c) to read as follows:

§ 1264.117 Authority of the presiding officer.

* * * * *

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

11. Section 1264.118 is amended by revising paragraphs (c)(3) and (c)(5) to read as follows:

§ 1264.118 Prehearing conferences.

* * * * *

(c) * * *

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

* * * * *

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written arguments;

* * * * *

§ 1264.125 [Amended]

12. Section 1264.125 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) *Service.* A party filing a document with the presiding officer shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1264.107 shall be made by delivering a copy or by placing a copy of the document in the U.S. mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative.

13. Section 1264.126 is revising paragraph (c) to read as follows:

§ 1264.126 Computation of time.

* * * * *

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

14. Section 1264.132 is amended by revising paragraph (f)(2) to read as follows:

§ 1264.132 Witnesses.

* * * * *

(f) * * *

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

* * * * *

15. Section 1264.136 is amended by revising paragraph (c) to read as follows:

§ 1264.136 Initial decision.

* * * * *

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired or upon notification that the record is now closed. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

16. Section 1264.137 is revising paragraph (f) and adding paragraph (g) to read as follows:

§ 1264.137 Reconsideration of initial decision.

* * * * *

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 1264.138.

(g) If the presiding officer issues a revised initial decision, the revised decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 1264.138.

17. Section 1264.138 is amended by revising paragraphs (b)(1) (c), and (l), to read as follows:

§ 1264.138 Appeal to authority head.

* * * * *

(b) * * *

(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if any other party files a motion for a reconsideration under § 1264.137, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

* * * * *

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 1264.137 has expired, the presiding officer shall forward the record of the proceeding to the authority head.

* * * * *

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

James C. Fletcher,

Administrator.

December 27, 1988.

[FR Doc. 89-333 Filed 1-6-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

International Trade Administration

15 CFR Chs. III and VII

[Docket No. 81263-8263]

Transfer and Redesignation of Industrial Mobilization Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On October 23, 1988, the industrial mobilization functions under the Defense Production Act of 1950, as amended, and the national security investigation functions under section 232 of the Trade Expansion Act of 1962, as amended, were transferred from the International Trade Administration to the Bureau of Export Administration, within the U.S. Department of Commerce.

This rule transfers the Defense Priorities and Allocations Regulations and regulations governing national security investigations performed under section 232 of the Trade Expansion Act of 1962, as amended, from Chapter III where the regulations of the International Trade Administration are published to Chapter VII under Title 15 of the Code of Federal Regulations. Formerly codified as 15 CFR Parts 350 and 359 respectively, the regulations are redesignated as 15 CFR Parts 700 and 705.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Edward L. Levy, Section 232, Program Manager, Office of Industrial Resource Administration, Bureau of Export Administration, Telephone: 202/377-3795.

Accordingly, Title 15 of the Code of Federal Regulations is amended as follows:

CHAPTER III—[SUBCHAPTER B REDESIGNATED AS CHAPTER VII]

CHAPTER VII—[REDESIGNATED FROM CHAPTER III, SUBCHAPTER B]

1. In Chapter III, Subchapter B, is vacated and its contents are transferred to Chapter VII to be redesignated as shown in the table set forth below, and all internal cross references in 15 CFR Parts 350 and 359 are revised to reflect the newly redesignated parts.

Part	Present 15 CFR designation		Part	New 15 CFR designation
350	§§ 350.1-350.93	Defense Priorities and Allocations	700	§§ 700.1-700.93.
		Reserved	701-704	
350	Schedules I and V		700	Schedules I and V.
350	Appendixes I and IV		700	Appendixes I and IV.
359	§§ 359.1-359.10	Effect of Imported articles on the National Security.	705	§§ 705.1-705.10.
		Reserved	706-709	

PART 700—[AMENDED]

2. The authority citation for newly designated Part 700 is revised to read as follows:

Authority: Secs. 101-103, 701-707, 709, and 713, Defense Production Act of 1950, Pub. L. 81-774, 64 Stat. 798, as amended (50 U.S.C. app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 18 FR 4939, 3 CFR 1979 Comp. p. 114, as amended; E.O. 12148, 44 FR 43239, 3 CFR 1979 Comp. p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; DMO-12, 44 CFR 329; and DMO-13, 44 CFR 330.

PART 705—[AMENDED]

3. The authority citation for newly designated Part 705 is revised to read as follows:

Authority: Sec. 232, Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended (Pub. L. 100-418, 102 Stat. 1107), Reorg. Plan No. 3 of 1979 (44 FR 69273, Dec. 3, 1979); E.O. 12188 of Jan. 2, 1980 (45 FR 989, Jan. 4, 1980).

Dated: December 30, 1988.

John A. Richards,

Acting Principal Deputy Assistant Secretary for Export Administration.

Joan McEntee,

Deputy Under Secretary for International Trade.

[FR Doc. 89-175 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Rule Review Under Regulatory Flexibility Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of rules and availability of report.

SUMMARY: The Commission has completed its review of eight rules that were issued under the Flammable Fabrics Act and were in existence on January 1, 1981. The purpose of this review was to determine whether rules issued before enactment of the Regulatory Flexibility Act, which have a significant economic impact on a substantial number of small businesses, should be continued without change, amended or revoked.

After consideration of the rules, comments about them from the public, economic and other factors affecting firms subject to the rules, and other relevant information, the Commission has determined that while some of the rules reviewed may have had a significant economic impact on a substantial number of small businesses, no further action with respect to any of these rules is warranted under the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Flammable Fabrics Act," is available on request.

ADDRESS: Requests for copies of the report should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Warren J. Prunella, Associate Executive Director for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6962; or Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) became effective on January 1, 1981, and generally requires Federal agencies to evaluate the economic impact of their rules on small entities, including small businesses. Section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules in existence on January 1, 1981, which have or will have a significant economic impact on a substantial number of small businesses. The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact they may have on small businesses. Section 610 of the RFA requires consideration of the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments about the rule received from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with state and local government rules;

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the **Federal Register** of September 14, 1981 (46 FR 45621) the Commission published its plan for reviewing all rules existing on January 1, 1981, which may have had, or which could be expected to have, a significant economic impact on small businesses. That notice identified eight rules issued under provisions of the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) which would be reviewed in accordance with section 610 of the RFA.

In the **Federal Register** of February 2, 1984 (49 FR 4103), the Commission began its review of existing FFA rules by publishing a notice which listed eight rules issued under provisions of the FFA which may have an economic impact on small businesses. The rules listed in that notice were:

16 CFR Part No.	Title
1608	General Rules and Regulation Under the Flammable Fabrics Act.
1610	Standard for the Flammability of Clothing Textiles.
1611	Standard for the Flammability of Vinyl Plastic Film.
1615	Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X.
1616	Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14.
1630	Standard for the Surface Flammability of Carpets and Rugs.
1631	Standard for the Surface Flammability of Small Carpets and Rugs.
1632	Standard for the Flammability of Mattresses (and Mattress Pads).

The notice gave a brief description of each rule, the need for the rule, and its legal basis. It also invited public comment on the rules under consideration.

In response to the notices of September 14, 1981, and February 4, 1984, the Commission received one comment from the National Knitwear Manufacturers Association which was not addressed to any specific FFA rule, but which cautioned against amending any FFA rule to make its provisions more stringent. The Commission also received one comment from the Carpet and Rug Institute requesting an extension of the time in which to comment on the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs. The Commission extended the period of time for receipt of comments on all FFA rules, but received no substantive comments on any of the FFA rules.

After considering the comments, the provisions of the rules, an analysis of economic factors and other conditions affecting firms which are subject to the rules under review, and the factors specified by section 610 of the RFA, the Commission has concluded that while some of these rules may have had a significant economic effect on small businesses, no further action with regard to any of these rules is warranted under the RFA.

The Commission has published a report on this RFA rule review. It describes the purpose and requirements of each rule; lists economic factors and other conditions affecting firms which are subject to each rule; and analyses each rule by application of the five factors specified in section 610 of the RFA.

This report, entitled "Regulatory Flexibility Act Review, Flammable Fabrics Act Rules," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: January 3, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–332 Filed 1–6–89; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385, and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Availability of Print Software for FERC Form Nos. 2, 2–A, 14, and 16

Issued January 3, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Print Software for FERC Form Nos. 2, 2–A, 14, and 16.

SUMMARY: Software to print FERC Form Nos. 2, 2–A, 14 and 16 data required to be filed on an electronic medium in accordance with Order Nos. 493 (53 FR 15023 (April 27, 1988)) and 493–A (53 FR 30027 (August 10, 1988)) is now available. The software released today reflects the revisions adopted at the Order No. 493 implementation conference on September 12 and 13, 1988. This software is being made available for testing purposes and written comments are requested from all interested persons. An "INFO" file is included on the diskette(s) for each form and identifies those areas where additional software development and/or instructions are required.

DATE: The software is available as of January 3, 1989.

ADDRESS: Requests for copies of the sotfware and the accompanying User Guide should be directed to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357–8118.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Data Analysis Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010–D, Washington, DC 20426, (202) 357–8995 or (202) 357–8844.

SUPPLEMENTARY INFORMATION: The software to produce a hard copy printout of FERC Form Nos. 2, 2–A, 14 and 16, when filed in accordance with the record formats for those forms as reissued on October 7, 1988 (FERC Form Nos. 14 and 16), and October 26, 1988 (FERC Form Nos. 2 and 2–A), is now available. The software provided is for testing purposes. If the software does not adequately provide a hard copy of the data filed on an electronic medium, respondents are still required to supplement the filings with hard copies of the particular pages or schedules not printed by the software in order to meet the filing requirements of 18 CFR Part 260.

The programming language used for the print software is ANSI 1974 Standard COBOL. The diskette(s) for each form contains the executable files which can be run on an IBM-compatible PC with at least 512K RAM and DOS 3.0 (or later version). A user's guide, a test data file and a sample output file are also included with the software for each form. The user's guide is also available on hard copy.

In testing the software for FERC Form Nos. 8 and 11, it is staff's experience that the majority of the problems in using the Commission-provided software were the result of improper input data formats. The Commission staff requests that respondents carefully examine the formats and character positions of the input data records before contacting staff. If print software problems continue to occur, the Commission staff encourages users to provide written comments as to the exact nature of the problem and submit them to Brooks Carter, Office of Pipeline and Producer Regulation, Room 7010, Federal Energy Regulatory Commission, 825 North Capitol, Street NE., Washington, DC 20426.

The software is available from the Commission's Public Reference Branch through its photocopy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426. All software is available on 5.25" (1.2MB) double-sided, high density diskettes.

Persons requesting this software, in person or by written request, should specify: "Software, Docket Number RM87–17–000, January 3, 1989", and the diskette set(s), or individual diskette numbers desired. Each of the following sets contains the executable programs, test input data and sample output for the indicated form. Appendix A identifies the files contained on each diskette.

SET A. RM87–17–000: Print Software for FERC Form No. 2, January 3, 1989, Diskette Nos. A1–A5.

SET B. RM87–17–000: Print Software for FERC Form No. 2–A, January 3, 1989, Diskette Nos. B1–B2.

SET C. RM87–17–000: Print Software for FERC Form No. 14, January 3, 1989, Diskette Nos. C1.

SET D. RM87–17–000: Print Software for FERC Form No. 16, January 3, 1989, Diskette Nos. D1–D2.

The software is available without charge. However, the Commission's copy contractor has a copy fee of $5.00 per diskette.

Lois D. Cashell

Secretary.

APPENDIX A.—DIVISION OF FILES ON DISKETTES

Set A: RM87–17–000: Print Software for FERC Form No. 2, January 3, 1989, Diskettes A1–A4

* * * Diskette A1: Schedule F4 Executable Programs, Schedule F7 Executable Programs:

USERGUID.TXT		
F2PROBS.TXT		User's Guide Info File.
FORM2F4.BAT		
NEWMNF4.EXE	Driver	Form 2 Schedule F4 Executable Programs.
FM2F4A.EXE	pp. 1–109	Do.
FM2F4B.EXE	pp. 110–119	Do.
FM2F4C.EXE	pp. 120–123	Do.
FORM2F7.BAT		
MAINF7.EXE	Driver	Form 2 Schedule F7 Executable Programs.
FM2F7A.EXE	pp. 350–502	Do.
FM2F7B.EXE	pp. 503–511	Do.
FM2F7C.EXE	pp. 512–519	Do.
FM2F7D.EXE	p. 520	Do.
FM2F7E.EXE	pp. 521–555	Do.

* * * Diskette A2: Schedule F5 Executable Programs:

FORM2F5.BAT		
MAINF5.EXE	Driver	Form 2 Schedule F5 Executable Programs.
FM2F5A.EXE	pp. 200–201	Do.
FM2F5B.EXE	pp. 204–209	Do.
FM2F5C.EXE	pp. 213–218	Do.
FM2F5D.EXE	p. 219	Do.
FM2F5E.EXE	pp. 220–225	Do.
FM2F5F.EXE	pp. 226–231	Do.
FM2F5G.EXE	pp. 233–251	Do.
FM2F5H.EXE	pp. 252–257	Do.
FM2F5I.EXE	pp. 258–263	Do.
FM2F5J.EXE	pp. 264–269	Do.
FM2F5K.EXE	pp. 270–277	Do.

* * * Diskette A3: Schedule F6 Executable Programs:

FORM2F6.BAT		
MAINF6.EXE	Driver	Form 2 Schedule F6 Executable Programs.
FM2F6A.EXE	pp. 300–301	Do.
FM2F6B.EXE	pp. 302–309	Do.
FM2F6C.EXE	pp. 310–311	Do.
FM2F6D.EXE	pp. 312–315	Do.
FM2F6E.EXE	pp. 320–325	Do.
FM2F6F.EXE	p. 326	Do.
FM2F6G.EXE	p. 327	Do.
FM2F6H.EXE	pp. 328–333	Do.
FM2F6I.EXE	pp. 335–340	Do.

* * * Diskette A4: Form 2 Test Input Data, Form 2 Sample Output Files.

FORM02.DAT	Form 2 Test Input File.
F4OUT	Test Output Files for Form 2, Schedules F4–F7.
F5OUT	Do.
F6OUT	Do.
F7OUT	Do.

Set B: RM87–17–000: Print Software for FERC Form No. 2–A, January 3, 1989, Diskettes B1–B2

* * * Diskette B1: Form 2–A Executable Programs:

USERGUID.TXT		User's Guide.
F2APROBS.TXT		Info File.
FORM2A.BAT		Do.
FM2MNF8.EXE	Driver	Form 2A—All Schedules Executable Programs.
FM2A0.EXE	p. 3	Do.
FM2A1.EXE	pp. 4–11	Do.
FM2A2.EXE	pp. 12–23	Do.
FM2F4B.EXE	pp. 110–119	Do.
FM2F5B.EXE	pp. 204–209	Do.
FM2F5D.EXE	p. 219	Do.
FM2F6A.EXE	pp. 300–301	Do.
FM2F6C.EXE	pp. 310–311	Do.
FM2F6E.EXE	pp. 320–325	Do.
FM2F6G.EXE	p. 327	Do.
FM2F7D.EXE	p. 520	Do.
FM2F7E.EXE	p. 521	Do.

* * * Diskette B2: Form 2–A Test Input Data, Form 2–A Sample Output Files:

FORM2A.DAT	Test Input File.
F2AOUT	Test Output File.

Set C: RM87–17–000: Print Software for FERC Form No. 14, January 3, 1989, Diskette C1

* * * Diskette C1: Form 14 Executable Programs, Form 14 Test Input Data, Form 14 Sample Output File:

USERGUID.TXT	User's Guide.
FORM14.BAT, FM14.EXE.	Executable Program.
FM14	COBOL Source Code.
FORM14.DAT	Test Input File.
F14OUT	Test Output File.

Set D: RM87-17-000: Print Software for FERC Form No. 16, January 3, 1989, Diskette D1-D2

* * * Diskette D1: Form 16 Executable Programs:

USERGUID.TXT		User's Guide.
F16PROBS.TXT		Info File.
FORM16.BAT		Do.
FM16MN.EXE	Driver	Form 16—Schedule R7 Executable Programs.
FM16A.EXE	ID Page, Schedules I and V	Do.
FM16B.EXE	Schedules II and VI	Do.
FM16C.EXE	Schedules III and VII	Do.
FM16D.EXE	Schedules IV and VIII	Do.
FM16E.EXE	Schedule IX	Do.

* * * Diskette D2: Form 16 Test Input Data, Form 16 Sample Output File:

F16IN	Test Input File.
F16OUT	Test Output File.

[FR Doc. 89-386 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Employee Pension Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Public notice.

SUMMARY: The Commission hereby publishes this notice stating the position to be taken by the Commission in final regulations under section 4(i) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the effective date of section 4(i).

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634-6423.

Notice

The Equal Employment Opportunity Commission (EEOC) and the Internal Revenue Service (IRS) will issue final regulations under the continued benefit accrual provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA), that will generally provide that no year of service (including years of service before 1988) may be disregarded because of age in determining a participant's benefit under a defined benefit plan for plan years beginning after 1987.

OBRA amended section 411(b) of the Internal Revenue Code of 1986 (Code), section 4(i) of the Age Discrimination in Employment Act of 1967 (ADEA), and section 204(a) of the Employee Retirement Income Security Act of 1974 (ERISA) to, in general, prohibit employee pension benefit plans from reducing or discontinuing benefit accruals, or the rate of benefit accruals, on behalf of an employee because of the employee's attainment of any age. Under section 9204(a)(1) of OBRA, these benefit accrual provisions "shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply."

EEOC published proposed regulations under section 4(i) of the ADEA in the **Federal Register** on November 27, 1987 (52 FR 45360) and IRS published proposed regulations under section 411(b) of the Code in the **Federal Register** on April 11, 1988 (53 FR 11867).

The proposed IRS regulations provided, in general, that effective for plan years beginning in 1988 and thereafter, for a participant who has at least 1 hour of service for the plan sponsor in a plan year beginning in 1988 or thereafter, a defined benefit plan may not disregard any years of service, including years of service before 1988, because of age in determining the participant's plan benefit. The proposed EEOC regulations provided that such years of service before 1988 could be disregarded, as long as such years of service occurred after the participant reached the plan's normal retirement age.

Section 9204(d) of OBRA provides that the final regulations of EEOC and IRS (and the Department of Labor) "shall each be consistent with the others." The agencies have coordinated the issues closely, recognizing the lead regulatory authority given to IRS in several sections of OBRA. As a result of the interagency coordination, and consideration of the comments received by EEOC and IRS during the comment periods of the proposed regulations, the agencies have determined that the final regulations to be issued by EEOC and IRS under OBRA will adopt the position taken in the proposed IRS regulations with respect to years of service that may not be disregarded because of age in determining benefits under noncontributory defined benefit plans. Thus, the final regulations to be issued by EEOC and IRS will provide that the OBRA benefit accrual rules apply to all years of service (including years of service before January 1, 1988) completed by a participant in a noncontributory defined benefit plan who has at least 1 hour of service with the plan sponsor in a plan year beginning on or after January 1, 1988. IRS announced this position in Notice 88-126 issued on December 9, 1988 and published in the Internal Revenue Bulletin on December 27, 1988, 1988-52 I.R.B.

For purposes of this notice, a noncontributory defined benefit plan is a defined benefit plan that does not provide for mandatory employee contributions. No inference should be drawn as to the position that may be taken in final EEOC or IRS regulations regarding defined benefit plans that provide for mandatory employee contributions.

With respect to defined contribution plans, the final regulations to be issued by the two agencies will provide that the OBRA benefit accrual rules do not require that retroactive allocations be made to the accounts of participants for plan years beginning before January 1, 1988. However, such final regulations will provide that if a defined contribution plan allocates amounts to the accounts of participants under a formula that takes prior service into account, no year of service (including years of service before January 1, 1988) may be disregarded because of age in determining allocations to the accounts of participants for plan years beginning on or after January 1, 1988.

This notice is consistent with IRS Notice 88-126.

Signed on behalf of the Commission this 20th day of December, 1988, in Washington, DC.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-343 Filed 1-6-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD 05-88-17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the anchorage regulations in 33 CFR 110.168 and the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia. The need for revision to the anchorage regulations stems primarily from several construction and navigation improvement projects that have been completed, are in progress, or are planned for Hampton Roads. The need for revision to the regulated navigation area regulations stems from a regulatory project being undertaken by Coast Guard Headquarters that will revise all of the Coast Guard's anchorage regulations and separate out those regulations that regulate vessel operations outside of specified anchorage grounds. Those provisions not related to specific anchorage

grounds are being moved to Part 165. In addition to many substantive changes, outdated and confusing language has been removed, anchorages have been redesignated consecutively, and the regulations have been made easier to understand.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6388.

SUPPLEMENTARY INFORMATION: On June 3, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 20339). Interested persons were requested to submit comments and six (6) comments were received.

Drafting Information

The drafters of this notice are LT D. T. Ormes and LT W. J. Wetzel, Project Officers, Port and Vessel Safety Branch, Fifth Coast Guard District, LTJG J. G. Anderson, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, and CAPT R. J. Reining and LCDR R. K. Kutz, Project Attorneys, Fifth Coast Guard District Legal Staff.

Discussion of Comments

Of the six (6) comments received, four (4) were received from the Commander, Naval Base Norfolk, Virginia. The first comment requested a prohibition against anchoring within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove. This prohibition is added in paragraph 165.501(d)(1)(vi). The other three comments addressed corrections to errors of plotted positions for various anchorages. These corrections are incorporated in the final rule. The final rule also contains a number of other minor position coordinate changes. These changes reflect the more accurate positions the Coast Guard was able to obtain using the U.S. Army Corps of Engineers' computer-aided position plotter. In addition to the comments from the Navy, one comment suggested that the regulations should more clearly designate naval anchorages, especially the naval explosive anchorage (Anchorage G). This suggestion has been incorporated in the final rule. Finally, a comment by the U.S. Army Corps of Engineers requested that a circular berth be added to Anchorage Berths K-1 and K-2. After consultation, however, this request was withdrawn and the berths were not added. Editorial corrections have been made to § 165.501 (b)(2), (b)(3), (b)(4), and (d)(4), to clarify the boundaries of the Thimble Shoal Channel, Thimble Shoal North Auxiliary Channel, and Thimble Shoal South Auxiliary Channel. The coordinates that define the anchorages in § 110.168 have been placed in a tabular format, to make it easier to read and plot the anchorages. Editorial changes also have been made throughout the final rule, including, but not limited to, placing the paragraphing and paragraph references in proper form for publication in the **Federal Register**, and conforming the length restrictions in § 110.168(f)(8) to those in paragraph (f)(7) of the same section.

Finally, § 110.168 (d)(4) and (d)(5) have been changed to cover individuals on board vessels handling dangerous cargo or military explosives while in an anchorage, not just those loading such cargo or explosives, to bring the requirement to have a pass or other form of identification into line with the rest of the requirements in § 110.168(d), which are not limited solely to loading operations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. A particular effort has been made to eliminate as many existing regulations as possible, to reduce the burden on commercial and recreational vessel operators. As a result, anchoring in most of the Hampton Roads area is less restrictive than before; smaller vessels are permitted to anchor in many more areas than before. The only adverse effect expected from these regulations is the loss of the use of a small portion of the medium and shallow depth anchorage ground available in Hampton Roads. This results from the construction of the I-664 Bridge Tunnel. Sufficient anchorage ground will be available for vessels that, in the past, have used the anchorage grounds that have been discontinued.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they do not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Vessels.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, 33 CFR Parts 110, 162, and 165 are amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in s110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.168 of Part 110 is revised to read as follows:

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

(a) *Anchorage Grounds*—(1) *Cape Henry Anchorage.* Anchorage A (Naval Anchorage). The waters bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'33.0" N	76°02'47.0" W
36°57'02.8" N	76°03'02.6" W
36°56'45.0" N	76°01'30.0" W
36°55'54.0" N	76°01'37.0" W.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages*—(i) *Anchorage B (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'58.0" N	76°06'07.0" W
36°57'11.0" N	76°03'02.1" W
36°55'48.8" N	76°03'14.0" W
36°56'31.8" N	76°06'07.0" W
36°57'04.0" N	76°06'07.0" W
36°57'08.5" N	76°06'24.5" W.

(ii) *Anchorage C (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'54.8" N	76°09'41.5" W
36°58'18.8" N	76°07'18.0" W
36°57'27.0" N	76°07'37.5" W
36°58'04.0" N	76°10'00.0" W.

(iii) *Anchorage D (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'49.0" N	76°10'32.8" W
36°56'04.0" N	76°10'02.1" W
36°57'31.2" N	76°07'54.8" W
36°55'24.1" N	76°06'28.8" W.

(iv) *Anchorage E (Commercial Explosive Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'58.7" N	76°13'47.0" W
36°59'08.2" N	76°10'33.8" W
36°58'13.0" N	76°10'51.8" W
36°59'02.0" N	76°14'10.2" W.

(A) *Explosive Handling Berth E–1: (Explosives Anchorage Berth):* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°59'05.0" N	76°11'23.0" W

(3) *Hampton Roads Anchorages*—(i) *Anchorage F, Hampton Bar.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'51.8" N	76°19'12.0" W
36°59'25.2" N	76°18'48.5" W
36°58'49.1" N	76°19'33.8" W
36°59'25.0" N	76°20'07.0" W.

(A) *Anchorage Berth F–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°59'16.7" N	76°19'39.0" W.

(B) *Anchorage Berth F–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°59'31.8" N	76°19'16.0" W.

(ii) *Anchorage G, Hampton Flats (Noval Explosives Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'25.0" N	76°20'07.0" W
36°58'49.1" N	76°19'33.8" W
36°57'41.4" N	76°21'07.7" W
36°57'34.6" N	76°21'28.7" W
36°57'31.1" N	76°22'01.9" W
36°58'07.0" N	76°22'03.0" W
36°58'54.8" N	76°21'42.6" W

(A) *Explosives Handling Berth G–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°57'50.0" N	76°21'37.0" W

(B) *Explosives Handling Berth G–2.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'14.0" N	76°21'01.5" W.

(C) *Explosives Handling Berth G–3.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'34.5" N	76°20'31.0" W.

(D) *Explosives Handling Berth G–4.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'53.4" N	76°20'05.0" W.

(iii) *Anchorage H, Newport News Bar.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'07.0" N	76°22'03.0" W.
36°57'31.1" N	76°22'01.9" W.
36°57'18.0" N	76°24'11.2" W.
36°57'38.3" N	76°24'20.0" W.
36°57'51.8" N	76°22'31.0" W.

(4) *James River Anchorages*—(i) *Anchorage I, Newport News.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'06.7" N	76°24'44.3" W.
36°56'22.6" N	76°24'28.0" W.
36°56'03.0" N	76°24'37.0" W.
36°57'53.7" N	76°26'41.5" W.
36°58'23.0" N	76°27'11.0" W
36°58'48.5" N	76°27'11.0" W
36°56'35.4" N	76°26'38.4" W
36°57'51.7" N	76°26'02.8" W
36°57'30.6" N	76°25'34.5" W.

(A) *Anchorage Berth I–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'08.5" N	76°25'21.6" W

(A) *Anchorage Berth I–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'22.4" N	76°25'47.7" W.

(ii) *Anchorage J, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'21.0" N	76°22'22.1" W
36°56'48.5" N	76°22'39.3" W
36°56'25.3" N	76°23'48.0" W
36°57'10.2" N	76°24'09.9" W

(iii) *Anchorage K, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'55.8" N	76°20'31.9" W
36°57'07.9" N	76°20'32.2" W
36°56'48.8" N	76°20'32.2" W.
36°55'59.9" N	76°22'11.7" W.
36°55'59.9" N	76°24'00.0" W.
36°56'25.3" N	76°23'48.0" W.
36°56'46.5" N	76°22'39.3" W
36°57'21.0" N	76°22'22.1" W
36°57'28.1" N	76°21'11.7" W.

(A) *Anchorage Berth K–1.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'56.1" N	76°20'31.5" W
36°57'08.0" N	76°20'32.2" W
36°57'28.1" N	76°21'11.7" W

(B) *Anchorage Berth K–2.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'23.4" N	76°21'58.5" W
36°57'28.1" N	76°21'11.7" W
36°57'15.0" N	76°20'46.4" W
36°57'02.1" N	76°21'09.5" W

(C) *Anchorage Berth K–3.* The waters bounded by the arc of a circle with a radius of 300 yards and with the center located at:

Latitude	Longitude
36°57'12.9" N	76°22'14.2" W

(iv) *Anchorage Berth L, Craney Island Flats.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°56'48.8" N	76°20'20.1" W
36°56'04.2" N	76°20'23.7" W
36°55'59.9" N	76°22'11.7" W

(5) *Norfolk Harbor Channel Anchorages*—(i) *Anchorage M.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°55'37.6" N	76°19'48.1" W
36°55'22.1" N	76°19'48.1" W
36°55'20.5" N	76°20'14.9" W
36°55'36.8" N	76°20'13.8" W

(ii) *Anchorage N.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°54'35.3" N	76°19'47.5" W
36°54'03.9" N	76°19'45.0" W
36°53'55.0" N	76°20'09.0" W
36°54'43.5" N	76°20'18.0" W
36°54'47.2" N	76°20'17.7" W

(iii) *Anchorage O.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°53'28.0" N	76°19'16.3" W
36°53'00.0" N	76°19'29.9" W
36°53'04.9" N	76°20'01.2" W
36°53'28.0" N	76°20'05.1" W

(6) *Elizabeth River Anchorages*—(i) *Anchorage P, Lambert's Point.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°52'41.0" N	76°20'07" W
36°52'39.5" N	76°20'37.8" W
36°52'18.8" N	76°20'34.3" W
36°52'22.2" N	76°20'03.8" W

(ii) *Anchorage Q.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°52'17.8" N	76°19'38.8" W
36°52'01.1" N	76°19'15.5" W
36°51'56.4" N	76°19'21.7" W
36°52'12.6" N	76°19'45.1" W.

(iii) *Anchorage R, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°51'45.7" N	76°19'31.5" W
36°51'45.8" N	76°19'20.7" W
36°51'37.8" N	76°19'24.3" W
36°51'32.5" N	76°19'31.1" W
36°51'40.7" N	76°19'37.3" W
36°51'45.7" N	76°19'31.5" W

(iv) *Anchorage S, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°51'42.1" N	76°19'15.5" W
36°51'33.1" N	76°19'02.6" W
36°51'31.9" N	76°19'17.0" W.

(v) *Anchorage T, Hospital Point.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°51'05.4" N	76°19'18'22.4" W
36°50'54.2" N	76°17'52.2"22.4" W
36°50'36.7" N	76°17'52.8" W
36°50'33.6" N	76°17'58.8" W
36°50'49.3" N	76°18'09.0" W
36°50'50.3" N	76°19'18'07.8" W
36°50'56.2" N	76°18'12.5" W
36°51'01.8" N	76°18'32.3" W

(7) *Anchorage U, The Hague.* The waters of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(b) *Definitions.* As used in this section:

(1) "Dangerous cargo" means "certain dangerous cargo" as defined in § 160.203 of this title.

(2) "Military explosives" means "military explosives" as defined in 46 CFR 146.29–11.

(c) *General Regulations.* (1) Except as otherwise provided, this section applies to vessels over 65 feet long and vessels carrying or handling dangerous cargo or military explosives while anchored in an anchorage ground described in that section.

(2) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may, upon application, assign a vessel to a specific berth within an anchorage for a specified period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If an application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit with which the vessel must comply.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor shall get underway at once or signal for a tug. The vessel shall move to its new location in a prompt manner.

(9) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time shall have two anchors in place with a mooring swivel, unless the Captain of the Port shall waive this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at a mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage shall be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or I–664 Bridge Tunnel shall be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or I–664 Bridge Tunnel if its steering or main propulsion equipment is impaired.

(d) *Regulations for Vessels Carrying or Handling Dangerous Cargoes or Military Explosives.* (1) Paragraph (d) of this section applies to any vessel, except a naval vessel, carrying or handling dangerous cargoes or military explosives.

(2) Unless otherwise directed by the Captain of the Port, a vessel handling or carrying dangerous cargoes or military explosives must be anchored or moored within Anchorage Berth E–1.

(3) Any vessel used in connection with loading or unloading dangerous cargo or military explosives in an anchorage, including tugs and stevedore boats, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every individual having business on board a vessel that is handling dangerous cargo or military explosives while in an anchorage, other than members of the crew, to have a pass issued by the Captain of the Port or other form of identification prescribed by the Captain of the Port.

(5) Every individual having business on board a vessel that is handling dangerous cargo or military explosives while in an anchorage, other than members of the crew, shall present the pass or identification prescribed by paragraph (d)(4) of this section to any Coast Guard boarding officer who request it.

(6) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(4) of this section.

(7) A non-self-propelled vessel carrying dangerous cargo or military explosives shall have a tug in attendance at all times while at anchor.

(8) A vessel that is carrying or handling dangerous cargo or military explosives while at anchor shall display by day a red flag in a prominent location and by night a fixed red light.

(e) *Quarantine Anchorage Regulations.* (1) Anchorage Berth K–3 is the "Quarantine Anchorage".

(2) Any vessel that requires examination by quarantine, customs, or immigration authorities, but whose draft or size prevents it from using Anchorage Berth K–3, may anchor in another anchorage that it is otherwise authorized to use, if the vessel notifies the Captain of the Port and the agency that ordered the vessel to the "Quarantine Anchorage".

(f) *Regulations for Specific Anchorages.* (1) *Anchorage A.* Except for a naval vessel, military support vessel,

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or vessel in an emergency situation, a vessel may not anchor in Anchorage A without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage A.

(2) *Anchorages B and C.* Except for a naval vessel, a vessel may not anchor in Anchorage B or C without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage B or C.

(3) *Anchorage D.* Except for a naval vessel or vessel in an emergency situation, a vessel may not anchor in Anchorage D without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage D.

(4) *Anchorage E.* (i) A vessel may not anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port shall give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may at any time revoke a permit to anchor in Anchorage E issued under the authority of paragraph (f)(4)(i) of this section.

(iv) A vessel may not anchor in Anchorage Berth E–1 unless it is carrying or handling dangerous cargo or military explosives.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel carrying or handling dangerous cargo or military explosives.

(5) *Anchorage F.* A vessel less than 700 feet long or having a draft less than 40 feet may not anchor in Anchorage F without the permission of the Captain of the Port.

(6) *Anchorage G.* (i) Except for a naval vessel, a vessel may not anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring military explosives in Anchorage G, naval vessels must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels carrying military explosives are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°58'34" N., longitude 76°21'12" W., no other vessel, except a vessel that is receiving or offloading military explosives, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility.

(iv) Whenever a vessel is handling or transferring military explosives while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Base Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) A vessel located within Anchorage G may not handle or transfer military explosives within 400 yards of Norfolk Harbor Entrance Reach.

(vi) A vessel may not handle or transfer military explosives within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring military explosives.

(vii) A vessel may not handle or transfer military explosives within 850 yards of Anchorage F or H.

(7) *Anchorage I—Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth I–1 or I–2 without the permission of the Captain of the Port.

(8) *Anchorage K—*(i) *Anchorage Berths K–1 and K–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth K–1 or K–2 without the permission of the Captain of the Port.

(ii) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities may anchor in the Anchorage Berth K–3.

(iii) Unless directed by the Captain of the Port, a vessel that does not require an examination by public health, customs, or immigration authorities may not anchor in Anchorage Berth K–3.

(iv) Every vessel using Anchorage Berth K–3 shall be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and shall promptly vacate Anchorage Berth K–3 after being examined and released by authorities.

(v) When any vessel using Anchorage Berth K–3 is under the charge of a pilot, the pilot shall remain on board while the vessel is in Anchorage Berth K–3.

(vi) Any non-self-propelled vessel using Anchorage Berth K–3 shall have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

(9) *Anchorage P.* (i) A vessel waiting to be loaded may not remain in Anchorage P longer than 48 hours, except when non-availability of loading facilities, inclement weather, ice conditions, or other circumstances beyond the vessel's control prohibit it from moving.

(ii) A vessel loaded with cargo may not remain in Anchorage P for more than 12 daylight hours without permission from the Captain of the Port.

(10) *Anchorage T.* Portions of this anchorage are a special anchorage area under § 110.72aa of this Title during marine events regulated under § 100.501 of this Title.

(11) *Anchorage U.* (i) A vessel may not anchor in Anchorage U unless it is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage U without the permission of the Captain of the Port.

* * * * *

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§§ 162.55 and 162.60 [Removed]

2. Sections 162.55 and 162.60 are removed.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.501 is revised to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(a) *Regulated Navigation Area.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) A line drawn across the entrance to Chesapeake Bay between Cape Charles Light and Cape Henry Light.

(2) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(3) A line drawn across the James River along the eastern side of the U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(4) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(5) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(6) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(7) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(8) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(9) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(10) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(11) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(12) A line drawn across Lynnhaven Inlet along the northern side of the Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) "CBBT" means the Chesapeake Bay Bridge Tunnel.

(2) "Thimble Shoal Channel" consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21, thence to Lighted Buoy 22, thence to Lighted Buoy 18, thence to Lighted Buoy 2, thence to the beginning.

(3) "Thimble Shoal North Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Lighted Buoy 18.

(4) "Thimble Shoal South Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17 thence to Lighted Buoy 19, thence to Lighted Buoy 21.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.*—(1) *Anchoring restrictions.*

(i) No vessel over 65 feet long may anchor or moor in this Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, unless:

(A) The vessel has the permission of the Captain of the Port.

(B) The vessel is carrying explosives for use on river or harbor works or on other work under a permit issued by the District Engineer, Corps of Engineers, and the vessel is anchored in or near the vicinity of the work site. The District Engineer shall prescribe the quantities of explosives allowed on the vessel and the conditions under which the vessel may store or handle explosives. The vessel may not anchor unless a copy of the permit and instructions relating to the carriage and handling of explosives from the Corps of Engineers to the vessel or contractor are provided to the Captain of the Port before the vessel anchors.

(ii) A vessel may anchor in a channel with the permission of the Captain of the Port, if the vessel is authorized by the District Engineer to engage in the recovery of sunken property, to lay or repair a legally established pipeline or cable, or to engage in dredging operations.

(iii) A vessel engaged in river and harbor improvement work under the supervision of the District Engineer may anchor in a channel, if the District Engineer notifies the Captain of the Port in advance of the start of the work.

(iv) Except as provided in paragraphs (d)(1)(ii) and (iii) of this section, a vessel may not anchor in a channel unless it is unable to proceed without endangering the safety of persons, property, or the environment.

(v) A vessel that is anchored in a channel because it is unable to proceed without endangering the safety of persons, property, or the environment, shall:

(A) Not anchor, if possible, within a cable or pipeline area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Anchor near the edge of the channel, if possible.

(D) Not interfere with the free navigation of any channel.

(E) Not obstruct the approach to any pier.

(F) Not obstruct aids to navigation or interfere with range lights.

(G) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(vi) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Secondary Towing Rig Requirements.* (i) A vessel over 100 gross tons may not be towed in this Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessels' hulls.

(3) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(4) *Draft Limitations.* A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(5) *Traffic Directions.* (i) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal South

Auxiliary Channel shall proceed in an eastbound direction.

(6) *Restrictions on Vessels With Impaired Maneuverability.*—(i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by hazardous weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port, unless the vessel is attended by one or more tugboats with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area.

(ii) *After entry.* The master of a vessel over 100 gross tons, which is underway in the Regulated Navigation Area, shall, as soon as possible, do the following, if the vessel's ability to maneuver becomes impaired for any reason:

(A) Report the impairment to the Captain of the Port.

(B) Unless the Captain of the Port waives this requirement, have one or more tugboats, with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area, attend the vessel.

(7) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board:

(i) Corrected charts of the Regulated Navigation Area.

(ii) An operative radar during periods of reduced visibility; or

(iii) A pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(8) *Emergency Procedures.* (i) Except as provided in paragraphs (d)(8) (ii) and (iii) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I–664 Bridge Tunnel (other than a self-propelled vessel that is capable of getting underway in 30 minutes, has sufficient power to avoid any bridge, tunnel island, or vessel, and whose maneuverability is not impaired by a steering equipment or main propulsion defect):

(A) Shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(B) May not anchor outside an anchorage designated in § 110.168 of this title, unless the vessel is unable to proceed to an anchorage without endangering the safety of persons, property, or the environment.

(C) Shall make arrangements for one or more vessels to attend the vessel, with sufficient power to keep the vessel in position.

(iii) If a vessel over 100 gross tons must anchor outside an anchorage because the vessel is unable to proceed without endangering the safety of persons, property, or the environment, the vessel shall:

(A) Not anchor, if possible, within a cable or pipeline area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Not interfere with the free navigation of any channel.

(D) Not obstruct the approach to any pier.

(E) Not obstruct aids to navigation or interfere with range lights.

(F) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(9) *Vessel Speed Limits on Little Creek.* A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(10) *Vessel Speed Limits on the Southern Branch of the Elizabeth River.* A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or that is anchored, no vessel may, without the permission of the Captain of the Port, come within or remain within 500 yards from a naval aircraft carrier or other large naval vessel, which is restricted in its ability to maneuver in the confined waters, while the aircraft carrier or large naval vessel is transiting the Elizabeth River between the Norfolk Naval Base, Norfolk, Virginia, and the Norfolk Naval Shipyard, Portsmouth, Virginia.

(ii) The permission required by paragraph (d)(11)(i) of this section may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or from the Coast Guard patrol commander.

(iii) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by paragraph (d)(11) of this section.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or that is anchored, and which remains moored or at anchor, no vessel may, without the permission of the Captain of the Port, come within or remain within 250 yards from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquefied petroleum gas in bulk as cargo, while the gas carrier transits between Thimble Shoal Lighted Buoy 3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River.

(ii) The permission required by paragraph (d)(12)(i) of this section may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or from the Coast Guard patrol commander.

(iii) A vessel that has carried liquefied petroleum gas in a tank is carrying the liquefied petroleum gas as cargo for the purposes of paragraph (d)(12)(i) of this section, unless the tank has been gas freed since liquefied petroleum gas was last carried as cargo.

(iv) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by paragraph (d)(12) of this section.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section, if the Captain of the Port finds that the vessel can be operated safely.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction, or loss of any vessel, the I–664 Bridge Tunnel, or the CBBT, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed to further the maritime or commercial interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: December 23, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–347 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–88–48]

Temporary Drawbridge Operation Regulations; New River, South Fork, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Southwest 12th Street (Davie Boulevard) drawbridge at Fort Lauderdale, Florida, by extending the hours of the existing regulation to provide draw openings on 15-minute intervals. This temporary change is being made to ease severe traffic congestion and to further evaluate proposed permanent regulations.

DATES: These temporary regulations become effective January 3, 1989, and terminate on March 4, 1989. Comments must be received within this 60-day temporary regulation period.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the proposed permanent rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to alleviate a severe vehicular traffic problem and to evaluate the proposed permanent rule. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change, and determine if a permanent regulation change is necessary.

Drafting Information

The drafters of this notice are Mr. Brodie Rich, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Temporary Regulations

The Davie Boulevard drawbridge presently opens on signal, except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

This change which adds 15-minute scheduled openings from 7 a.m. to 7 p.m., daily, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods. Prompt implementation of this temporary rule has been requested by the City Manager of Fort Lauderdale and Congressman E. Clay Shaw, Jr.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Paragraph (a) of § 117.315 is revised to read as follows for the period January 3, 1989 through March 4, 1989. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.315 New River, South Fork.

(a) *Davie Boulevard (Southwest 12th Street) bridge, mile 0.9 at Fort Lauderdale.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday, the draw need not open; and from 7 a.m. to 7 p.m., daily, with the exception of the authorized closed periods, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

* * * * *

Dated: December 22, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 89–348 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD7 87–38]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of final rule; correction.

SUMMARY: The Coast Guard is correcting errors in the final rules which appeared in the **Federal Register** on October 3, 1988 (53 FR 38718), which established a security zone at Cape Canaveral, Florida.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, Tel: (904) 791–2648, between 7:30 AM and 4:00 PM., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published the final rule on October 3, 1988 (53 FR 38718) which established a security zone at Cape Canaveral, Florida. The final rule contained several errors which are corrected by this notice.

The following corrections are made in CGD7 87–38, the Regulations implementing the security zone at Cape Canaveral, Florida, published in the **Federal Register** on October 3, 1988 (53 FR 38718).

1. On page 38718, third column, line 9, change the latitude from 28°24'36" to 28°24'30".

2. On page 38718, third column, line 22, change the word "of" to read "off".

Dated: November 21, 1988.

R. J. O'Pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 89–349 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Decrease in Amount of Time VA Will Allow a Loan Holder To Begin Terminating Defaulted Loans

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: The Veterans Administration (VA) is correcting its loan guaranty regulations to correct previously published information concerning regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: C. G. Verenes, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233–4244.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53 FR 4977–78), and subsequently in the **Federal Register** of October 25, 1988 (53 FR 42950), the VA published its loan guaranty regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA. In that final regulation, and subsequently in the correction published on October 25, 1988, the VA inadvertently published an outdated version of § 36.4319(f). The VA hereby corrects that error.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Loan Programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

C. G. Verenes,

Acting Chief, Directives Management Division.

38 CFR 36.4319(f) is revised to read as follows:

§ 37.4319 Legal proceedings.

* * * * *

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Administrator do so, or does not prosecute such action with reasonable diligence, the Administrator may at the Administrator's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Administrator. The Administrator may also intervene in, or bring and prosecute to completion any action or proceeding, in the Administrator's name or in the name of the holder, which the Administrator deems necessary or appropriate. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or properly taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4113 of this part), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

(Authority: 38 U.S.C. 1816)

[FR Doc. 89–288 Filed 1–6–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3498–2]

Approval and Promulgation of Implementation Plans; OH

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA finds that Ohio's carbon monoxide (CO) State Implementation Plan (SIP) for Cuyahoga County does not meet the requirements of part D of the Clean Air Act (CAA), because it lacks a vehicle inspection and maintenance program (I/M) which will achieve the minimum emission reduction requirement for CO. USEPA is, therefore, disapproving that plan. This final disapproval of the CO plan results in the imposition of the CAA section 110(a)(2)(I) construction restriction on major stationary sources of CO in Cuyahoga County. USEPA also finds that the State has failed to adequately implement the I/M portion of its conditionally approved Part D CO SIP and has not submitted, nor made reasonable efforts to submit, a SIP revision which considers each of the elements of section 172 of the CAA. This final nonimplementation finding results in the cutoff of CAA grants and imposition of a construction moratorium on major stationary sources of CO in Cuyahoga County. See sections 176(b) and 173(4) of the CAA. The final finding of a lack of reasonble efforts to submit a plan also results in the cutoff of CAA grants, as well as Federal funding for certain highway construction projects. See section 176(a) of the CAA.

USEPA is taking no action at this time on the I/M portion of Ohio's Part D SIP for the Cincinnati and Cleveland areas as it relates to ozone because the State has taken concrete steps to implement an I/M program to achieve minimum required emission reduction levels for hydrocarbons and to meet the ozone I/M requirements of the CAA.

EFFECTIVE DATE: This rule will become effective on March 10, 1989.

ADDRESS: Copies of materials relating to USEPA's action may be inspected during normal business hours at the following address. (It is recommended that you telephone Delores Sieja, at (312) 886–6038, before visiting the Region V office.)

U.S. Environmental Protection Agency, Regulatory Analysis Section, Air and Radiation Branch, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, (Regarding SIPs) at (312) 886–6038, John Paskevicz, (Regarding I/M) at (312) 886–6084.

SUPPLEMENTARY INFORMATION: On July 14, 1987 (52 FR 26413), USEPA proposed to find that Ohio's CO SIP for Cuyahoga County does not meet the requirements of Part D of the CAA, that the State has failed to implement its commitment to adopt the required I/M program for CO, and that the State has failed to submit, and to make reasonable efforts to submit, a Part D SIP revision which considers each of the elements of section 172 of the CAA for CO. Furthermore, USEPA proposed to impose Federal funding and construction restrictions under sections 176(a), 176(b), and 173(4), for Cuyahoga County. A detailed discussion regarding USEPA's basis for this action and a detailed description of Ohio's progress since 1979 are contained in the July 14, 1987, notice. Ohio has not yet authorized legislation for a CO I/M control program for Cuyahoga County. Today, USEPA is taking final action on that proposal and is incorporating, by reference, all the information discussed in that notice and the technical support document associated with that notice. The only information USEPA is repeating here today includes a brief summary of the effect of each of the construction and funding restrictions which will become effective in Cuyahoga County as a result of this final action.

Construction and Funding Restrictions

Section 176(a) restrictions are applicable if the USEPA Administrator finds that a State has failed to submit, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172 of the Act.

As a result of section 176(a) restrictions, the Secretary of Transportation may not approve any projects or award any grants in Cuyahoga County under Title 23 of the United States Code, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. See the April 10, 1980, Policy Notice, 45 FR 24692.

Pursuant to section 176(a) and section 176(b), USEPA will not approve any contracts or award any grants authorized under the CAA as follows:

1. Section 176(a) restrictions on contract approval and grant awards are applicable if a State has not submitted an implementation plan which considers each of the elements required by section 172 of the CAA, or if the State has not made reasonable efforts toward submitting such an implementation plan.

2. Section 176(b) restrictions on grant awards are applicable where the State, general purpose local government or regional agency, as applicable, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised SIP.

The CAA funding restriction formula USEPA will use for implementing this sanction in Ohio would add all CAA funds which would normally be awarded to all levels of government in the State, and will withhold from that total a percentage which is equal to the percentage of the State's population residing in the nonimplementation I/M urbanized areas. Because the State is the only level of government responsible for I/M implementation in Cuyahoga County, USEPA will subtract from the amount to be withheld from the State any funds that are granted directly to local government agencies in the urbanized area, because USEPA believes these local funds are exempt from the funding restrictions.

Section 173(4) provides that, for a pollutant in question, a construction moratorium for major stationary sources and major modification shall be imposed in any nonattainment area where a State is not carrying out an approved plan. (40 CFR 54.24(b)). Therefore, pursuant to section 173(4) of the CAA, no major stationary source of CO can be constructed, and no major modification of a CO source can occur in Cuyahoga County. This restriction will apply to any permit not yet issued as of the effective date of this notice, even if a completed permit application has been submitted to the State Agency.

Today's disapproval also results in the automatic imposition of a construction moratorium on major stationary sources and modifications to major sources in the subject nonattainment area, in accordance with the requirements of section 110(a)(2)(I) of the CAA and 40 CFR 52.24(a). This moratorium will affect those permits applied for after the date of imposition of the moratorium.

USEPA has discretion to withhold certain grants, pursuant to section 316 of the CAA, for construction of sewage treatment works available under Section 201(g) of the Clean Water Act (33 U.S.C. 1251 et. seq.). USEPA is not, however, imposing these restrictions on Cuyahoga County at this time. USEPA will publish a notice of proposed rulemaking and will provide an opportunity for comment, if it determines that imposing these additional funding restrictions on sewage treatment works are appropriate.

Public Hearing and Comment Period

A public hearing on the proposed action to impose Federal funding and construction restrictions under sections 176(a), 176(b), and 173(4) of the CAA was held at the Anthony T. Celebrezze Federal Building in Cleveland, Ohio, on September 1, 1987. The hearing was announced in the July 14, 1987 **Federal Register** Notice of Proposed Rulemaking. Ten speakers made comments at the hearing. Additionally, three commenters submitted written comments. The transcript of the public hearing and the written comments are all available in the docket for this rulemaking action. Below are summaries of the comments raised and USEPA's responses.

Comment

The State of Ohio objected to the proposed discretionary portions of the sanctions as proposed in the **Federal Register** notice of July 14, 1987. The State contends that the CAA requires new source sanctions in cases such as this, but leaves discretionary the highway funding cuts and air program funding sanctions. Four other areas of the country with proposed sanctions for CO received only the proposed new source bans, not the highway or 105 fund cuts. Ohio does not believe that all of the proposed sanctions are appropriate for Cuyahoga County. Another commenter asked if the hearing panel could clarify why USEPA believes that the construction and funding restrictions are nondiscretionary with respect to Cuyahoga County.

USEPA Response

The other areas of which USEPA did not propose to impose section 176(a) and (b) sanctions are areas that have already submitted and implemented an I/M program. The State of Ohio has not yet developed and implemented an appropriate I/M program for CO in Cuyahoga County. Thus, these other States have met the CAA requirement to implement an appropriate I/M program; but they still have an air quality problem based on monitored ambient air quality violations.

Therefore, in these areas USEPA intends to impose only the construction sanctions.

Additionally, it is USEPA's interpretation of the Clean Air Act that once an area has an approved Part D SIP, the highway funding limitations of section 176(a) are no longer applicable. In that sense, Cuyahoga County, without an approved Part D SIP, is in a different position from most of these other areas.

Furthermore, section 176(b) on its face appears to call for an automatic cutoff of Federal air program grant funds to a State that is not implementing its SIP. As discussed above, Ohio is not implementing its SIP, contrary to the situation for most other areas.

Please note, however, that USEPA's proposed Post-1987 Ozone and Carbon Monoxide Policy (52 FR 45044, November 24, 1987) proposed to not use the section 176(b) sanction in a State not implementing its SIP, where the sanction interferes with the goal of achieving plan implementation and where the State is making necessary progress in producing an adequate SIP. In the case of Ohio, air program grant funding sanctions are appropriate even under the proposed Post-1987 Policy, because the State is not making progress in producing an adequate SIP. Additionally, because there is not an I/M program to implement, the funding sanctions will have no effect on plan implementation. Imposition of this sanction will serve as an incentive to the State to adopt a tailpipe I/M program. Over the last several years, the State has made little progress in developing and implementing a tailpipe I/M program in Cuyahoga County.

Comment

The State of Ohio also commented that there is currently no ambient air quality data available to indicate an actual air quality problem for Cuyahoga County.

USEPA Response

The CO data submitted to USEPA since 1980 show that there were violations of the standard at the 8907 Carnegie Avenue monitoring site in 1981 and 1983. Additionally, a violation of the standard was monitored at 1020 Euclid in 1986. It should also be noted that monitors recording violations of the standard (8907 Carnegie Avenue and 1020 Euclid) have not been maintained for sufficient time after the monitored violations to show that violations have not reoccurred. Both monitors were removed shortly after the standard violations were recorded. Such action raises significant questions about claims that violations of the CO standard are no longer occurring in Cuyahoga County. In addition, CO modelling for high traffic intersections in Cuyahoga County showed the potential for CO standard violations at a number of nonmonitored intersections in 1986.

Comment

The State also commented that Ohio EPA has not been given an adequate opportunity to demonstrate the attainment of the CO standard.

USEPA Response

The State of Ohio has been attempting to demonstrate attainment of the CO standard, since the submittal of a June 1982 SIP revision request which attempted to demonstrate attainment by December 31, 1982. USEPA subsequently disapproved this action on March 25, 1986 (51 FR 10198). USEPA also disapproved Ohio's request to redesignate Cuyahoga County to attainment for CO on November 23, 1988 (53 FR 47531). Ohio EPA has had sufficient opportunity to make such a demonstration.

Comment

Several commenters supported the proposed sanctions and requested USEPA to take whatever action is necessary to ensure that a system is in place which will assure that air quality standards are met, as required by the Clean Air Act.

USEPA Response

USEPA agrees.

Comment

One commenter recommended conditional sanctions and passage of a tax to reduce pollution.

USEPA Response

USEPA does not have authority to impose conditional sanctions. However, the following information should provide information useful to the commenter in understanding when sanctions will be lifted.

In the July 14, 1987, proposal regarding the imposition of sanctions, USEPA solicited specific comments regarding what action the State would have to take before USEPA should lift these restrictions. No comments were received. Therefore, the restrictions will remain in effect as follows:

(1) The 176(a) restrictions will be removed when USEPA determines that Ohio is making reasonable efforts to submit an I/M plan which considers all of the elements required in section 172 of the Clean Air Act. The 176(a) restrictions will also be removed if the area for which sanctions are applied is designated attainment by the USEPA. (2) The 176(b) and section 173(4) restrictions will be removed when USEPA determines that the state is implementing its I/M program. (3) The 110(a)(2)(I) construction sanctions will be removed upon final approval of the SIP.

The removal of the sanctions from this area shall be by **Federal Register** notice and a 30-day public comment period will be provided prior to final action. Funding limitations shall remain in effect until publication of the final finding removing the limitations.

The issue concerning taxes is an issue for consideration by the State and local governments and is not applicable to today's rulemaking.

Comment

One commenter questioned if there would be any inspection of trucks or buses as part of the inspection and maintenance program and how would this affect the air quality.

USEPA Response

States may choose the mixture of vehicles they wish to test in order to get the CAA required emission reductions; and they may, in making this decision, choose to do tailpipe inspections of heavy-duty trucks and buses. Some States that run I/M programs test all classes of vehicles, others only test light-duty passenger cars and light-duty trucks; but testing of heavy-duty vehicles is an option, and additional emission reductions can be achieved through the inclusion of these vehicles. As with inspecting light-duty vehicles are requiring maintenance for those that are emitting above the standards, inspecting heavy-duty vehicles such as gasoline powered buses or heavy-duty trucks would also bring about emission reductions and lead to better air quality.

Comment

One commenter believed that Lake County and surrounding areas should also have some kind of sanctions, because they contribute to the problem by sending their workers into Cleveland and because they have a substantial amount of industry.

USEPA Response

The CAA provides USEPA with the authority to impose funding and construction restrictions in areas designated as nonattainment, when States fail to submit or implement the required SIP revisions under Part D of the CAA. Lake County is currently designated as attainment for CO, as codified in the Code of Federal Regulations. Additionally, Lake County and the surrounding counties have an approved SIP for CO. There is currently no basis to impose construction and funding restrictions in either Lake County or other areas surrounding Cuyahoga County.

Comment

One commenter noted that the modest and localized nature of CO problems in Cuyahoga County warant implementation of transportation control measures aimed at moving traffic more efficiently during high volume periods, in lieu of a county-wide vehicle emissions inspection program.

USEPA Response

There is no certainty that the CO problem in Cuyahoga County is modest or localized. Ohio EPA directed a study, using an USEPA contractor, to evaluate carbon monoxide hot-spots at a number of intersections in Cleveland. The results indicated that predicted values of carbon monoxide exceeded the standard at a number of high traffic volume intersections. The predicted high values of CO are sufficient to indicate that the standard has not been attained. The SIP to control emissions of CO included a description of transportation control measures expected to be implemented to reduce the emissions of CO. These measures, however, provide just a fraction of the total reduction required to attain the standard. Transportation control measures by themselves are not sufficient to be substituted for a tailpipe I/M program. For areas such as Cuyahoga County, where an extension of the attainment deadline for CO was granted, the CAA requires the States to meet the additional statutory requirements, which include the development and implementation of an I/M program.

Comment

One commenter continues to believe that remedial actions short of a full-scale tailpipe I/M Program in Cuyahoga County, should be sufficient to attain CO standards in the county.

USEPA Response

Under the CAA, Cuyahoga County is an extension area for CO. The State was unable to demonstrate attainment of the CO national ambient air quality standard in December 1982; and, therefore, as required by the CAA the State committed to implement an I/M program. Therefore, the State must implement an I/M program to fulfill Clean Air Act and Agency policy requirements (i.e., to achieve the minimum emission reduction requirements for CO).

Comment

One commenter questioned if having three exceedances of the CO standard in an eight-quarter period is a trivial thing or is it indicative of severe problems.

USEPA Response

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 10 milligrams per cubic meter of air (10 mg/m^3), or (2) the maximum allowable 1-hour concentration of 40 mg/m^3. Therefore, three exceedances of the standard in a 2-year period (8 quarters) is a violation of the CO standard. The NAAQS for CO were established to protect the public health and welfare. Therefore, USEPA considers there is a potential health problem in the Cleveland area. It should be noted that the monitor at the 8907 Carnegie Avenue site, where a recent violation of the standard was recorded, was taken out of service shortly after the violation occurred. The monitor was not located in a high traffic density location where it is likely additional violations would be recorded. In a recent modeling study which the State Legislature directed the Ohio EPA to complete, the results indicated potential violations at a number of high traffic intersections. A copy of this study is contained in the docket for this rulemaking action.

Comment

One commenter stated he strongly support USEPA's discretionary decision not to impose Clean Water Act sewage treatment grant restrictions on Cuyahoga County as a component of the CAA sanctions. The commenter gave specific examples of how this funding has led to water quality improvements.

USEPA Reponse

In todays notice, USEPA is not taking action to withhold certain grants, pursuant to section 316 of the CAA, for construction of sewage treatment works. USEPA will publish a notice of proposed rulemaking and will provide an opportunity for comment if it later determines that imposing these Federal funding restrictions on sewage treatment works is necessary.

Comment

One commenter asked the following question. How would the implementation of a tailpipe inspection program which imposes additional requirements on inspection stations, dovetail with the anti-tampering program currently programmed for full scale implementation in Cuyahoga County later this year? Stations currently involved with the anti-tampering program may be unable or unwilling to participate in the tailpipe program.

USEPA Response

The question implies that a tailpipe program would follow a similar design of the anti-tampering inspection program. As with the anti-tampering program, the State has the freedom to design the tailpipe program in any number of configurations. As in the past, the State legislature will decide what elements will be contained in the tailpipe program. USEPA's main concern is that the program meets minimum emission reductions for carbon monoxide, and, when finally approved by the legislature, will be expeditiously implemented.

Conclusion

USEPA finds that Ohio's CO SIP for Cuyahoga County does not meet the requirements of Part D of the CAA, that the State has failed to implement its commitment to adopt the required I/M program for CO, and that the State has failed to submit, and to make reasonable efforts to submit, a Part D SIP revision which considers each of the elements of section 172 of the CAA.

Therefore, USEPA is imposing Federal funding and construction restrictions under sections 110(a)(2)(I), 176(a), 176(b) and 173(4), for Cuyahoga County.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: December 15, 1988.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1887 is amended by adding new paragraph (d) to read as follows:

§ 52.1887 Control strategy: Carbon monoxide.

* * * * *

(d) *Disapproval.* The carbon monoxide (CO) State Implementation Plan (SIP) for Cuyahoga County is disapproved because it lacks a vehicle inspection and maintenance program (I/M) which will achieve the minimum emission reduction requirement for CO. Therefore, funding and construction restrictions for CO under sections 110(a)(2)(I), 176(a), 176(b), and 173(4) of the Clean Air Act have been imposed for Cuyahoga County, Ohio.

[FR Doc. 89–297 Filed 1–6–89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 270

[FRL–3502–3]

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 10, 1987 (52 FR 46946), EPA promulgated standards for owners and operators of new and existing hazardous waste management units which were not previously covered under the existing RCRA regulations. This notice clarifies portions of the preamble and corrects several errors in the regulatory language of the December 10, 1987 rule.

EFFECTIVE DATE: This rule is effective on January 9, 1989.

FOR FURTHER INFORMATION CONTACT: For general information on this rulemaking, contact the RCRA hotline, Office of Solid Waste (WH–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346 (toll free) or (202) 382–3000 in the Washington, DC metropolitan area.

For information on technical aspects of the Subpart X rule, contact: Kent Anderson, Land Disposal Branch, Waste Management Division, Office of Solid Waste (OS–321), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4654.

For information on permit submission or review, contact Frank McAlister, Permits Branch, Permits and State Programs Division, Office of Solid Waste (OS–341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–2223, or the appropriate EPA regional office.

SUPPLEMENTARY INFORMATION:

I. Background

On December 10, 1987 (52 FR 46946) the Agency promulgated a new set of standards under Subpart X of 40 CFR Part 264. The Subpart X standards are applicable to owners and operators of miscellaneous hazardous waste management units that are not covered by the other permitting regulations in Subparts I–O of Part 264. The Agency, and any State that adopts equivalent authorities, may issue permits to miscellaneous waste management units in accordance with Subpart X standards. Examples of the kinds of units encompassed by Subpart X include thermal treatment; chemical, physical, and biological treatment; and open burning and detonation.

The December 10, 1987 rule contained several errors in the promulgated regulatory language. Several questions have also arisen concerning the preamble discussion of Federal and State rules in implementing the Subpart X standards. In addition, the preamble discussion misstated the effect of the land disposal restrictions on the in situ treatment of restricted wastes in Subpart X units. The purpose of this notice is to correct these errors and to clarify the preamble discussion.

II. Discussion of Corrections and Clarifications

A. Regulatory Language in § 270.14

In the December 10, 1987 rule, the language of § 270.14 printed in the **Federal Register** inadvertently failed to include two recent amendments to that section. Today's notice reinstates the correct regulatory language. First, § 270.14(b)(5) inadvertently referred to § 264.194 rather than to §§ 264.193(i) and 264.195. This mistake is corrected by this notice. Second, the first sentence of § 270.14(b)(13) is amended to read as follows: "A copy of the closure plan and where applicable, the post-closure plan as requried by §§ 264.112, 264.118, and 264.197." In the December 10 rule, the reference to § 264.197 was inadvertently omitted.

B. Federal Authority to Issue Subpart X Permits

Since the December 10, 1987 publication of the Subpart X rule, the Agency has been contacted by States and permittees who requested clarification on the language contained in Section VII.B (52 FR 46961). The preamble states that this rule is a non-HSWA rule and is therefore not effective in authorized States. However, the preamble subsequently states that, pursuant to 40 CFR 264.1(f)(2), EPA has the authority to issue permits to Subpart X units in authorized States. Both statements are true; the following discussion clarifies this issue.

Subpart X of Part 264 was promulgated pursuant to pre-HSWA authority. Generally, with one exception discussed below (i.e., 40 CFR 264.1(f)(2)), new Federal permitting standards based on pre-HSWA authority are not effective in an authorized State until that State adopts equivalent or more stringent regulations as State law and EPA authorizes that State law change under section 3006 of RCRA. However, under § 264.1(f)(2), new Federal permitting standards issued under Part 264 may be applied to a facility (or units at a facility) which was not covered by permit standards when the State obtained authorization, and for which EPA promulgates standards under this Part after the State is authorized. Thus, § 264.1(f)(2) allows new units to be constructed and allows interim status units to receive permits, both of which would otherwise be foreclosed prior to State authorization for the substantive Part 264 standards involved.

Thus, in the situation here, without § 264.1(f)(2), Subpart X units could not be permitted by an authorized State under RCRA until the authorized State adopts and receives authorization for the Subpart X facility permit standards. This is so because even though the State is authorized to issue permits, there are no authorized substantive standards the State could apply if it were to issue a permit. To avoid this undesirable situation where permits are unavailable even though substantive Part 264 facility standards have been promulgated, under § 264.1(f)(2), EPA has the responsibility to permit these units until the State receives Subpart X authorization even though the Subpart X regulations are not HSWA regulations. This permitting authority applies to both new units and units currently under interim status. It also applies to Subpart X units at facilities that have other units (e.g., a landfill or storage tank), which may be permitted by the State under the authorized RCRA program.

C. Permit Application Deadlines for Subpart X Facilities

The Agency has also received questions regarding the applicability of the November 8, 1988 permit application deadline to interim status facilities regulated under Subpart X. Section 3005(c)(2)(C)(ii) provides that interim status for facilities which do not have land-based or incinerator units will terminate on November 8, 1992 if these facilities failed to submit a Part B permit application to the Agency by November 8, 1988. Of course, if EPA makes a final disposition of the permit application prior to November 8, 1992, the facility's interim status may no longer be at issue. Thus, the ultimate impact of filing a permit application after November 8, 1988 depends both on the statutory provision in section 3005(c)(2)(C)(ii) as well as the timing of any EPA final permit decision.

Also, the section 3005(c)(2)(C)(ii) permit application filing deadline applies only to those facilities that had, or should have had, interim status on or before November 8, 1984. Further, the Part B permit application deadline applies to only those units referenced, or that should have been referenced, in the facility Part A as of November 8, 1984. In summary, facilities with Subpart X units in interim status on November 8, 1984 are required to submit Part B permit applications with regard to those units by November 8, 1988, to ensure continued operation after November 1992. Failure to submit a Part B application for those units could result in loss of interim status on November 8, 1992. Facilities in States not yet authorized for Subpart X should contact the EPA Regional Office where they are located for further information.

D. Treatment of Land Disposal Restricted Wastes in Subpart X Units

The preamble to the December 10, 1987 rule stated that because of the land disposal restrictions on land based in-situ treatment "none of the in-situ treatment methods will be Subpart X units/technologies." (p. 46952, col. 3). While in many cases land disposal restrictions will foreclose the use of in-situ treatment without prior use of best demonstrated available technology for treatment, there are instances where in-situ treatment in a Subpart X unit may be allowed. An example is when the wastes were placed in the unit prior to the effective date of the land disposal restrictions for a particular waste code.

List of Subjects in 40 CFR Part 270

Administrative practice and procedures, Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Date: December 22, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator.

Therefore, Subchapter I of Title 40 is amended as follows.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

2. Section 270.14 is amended by revising paragraphs (b)(5) and (b)(13) to read as follows:

§ 270.14 Contents of Part B: General Requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, and 264.602.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112, 264.118, and 264.197. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.603.

[FR Doc. 89–141 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 716

[OPTS–84014C; FRL–3502–7]

Health and Safety Data Reporting Period Terminations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** of September 30, 1988 (53 FR 38642). The sunset date was inadvertently omitted for several chemicals and categories.

DATE: This document is effective January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1988 (53 FR 38642), EPA issued the Health and Safety Data Reporting Period Terminations final rule. The rule terminated the reporting periods for 37 chemical substances and 5 chemical categories and transferred 34 substances listed as example members of chemical categories from the list of substances found at 40 CFR 716.120(c) to 40 CFR 716.120(a). The sunset date for several chemicals was inadvertently omitted. This document also makes minor technical changes.

Dated: December 22, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 716 is amended as follows:

PART 716—[AMENDED]

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

2. In § 716.120(a):

a. Under the sunset date column, insert "12/29/88" for the following CAS No. entries: 100–54–9, 111–21–7, 121–47–1, 140–66–9, 472–41–3, 563–54–2, 563–58–6, 1333–41–1, 3322–93–8, 18495–30–2, 19660–16–3, 26530–20–1, 61788–33–8, 68298–46–4, and 69009–90–1.

b. Add the following entry in CAS No. sequence: "75–56–9 . . . . . Oxirane, methyl- . . . . . 10/04/82 . . . . . 10/04/92."

c. Under the sunset date column, remove "06/01/09" and insert "06/01/97" for the CAS No. entry 1208–52–2.

d. Remove the entire CAS No. entry for "7390–81–0."

3. In § 716.120(c):

a. Under the sunset date column, insert "12/29/88" for the category alkyl epoxides and the following CAS No. entries under that category: 2855–19–8, 558–30–5, 3266–23–7, 3234–28–4, 67860–04–2, 2404–44–6, and 22092–38–2.

b. Under the category alkyl epoxides, remove the entire entry for "oxirane, methyl-."

c. Under the sunset date column, insert "12/29/88" for the category alkyltin compounds and the following CAS No. entries under that category: 25168–24–5, 26636–01–1, and 54849–38–6.

d. Under the category alkyltin compounds, for the CAS No. entry 54849–38–6, change the chemical spelling to read: "Monomethyltin tris(isooctyl mercaptoacetate)—Acetic acid, 2,2'2"-[(methylstannylidyne)tris(thio)]tris-triisoacetyl ester."

e. Under the sunset date column, insert "12/29/88" for the category chlorinated napthalenes and the following CAS No. entries under that category: 25586–43–0, 70776–03–3, 90–13–1, and 32241–08–0.

f. For the category ethyltoluenes, under the effective date column, remove "10/04/82" and insert "04/29/83" and under the sunset date column insert "12/29/88" for the category ethyltoluenes and the CAS No. entry under that category.

g. Under the sunset date column, insert "12/29/88" for the category halogenated alkyl epoxides and the following CAS No. entries under that category: 3132–64–7 and 38565–52–5.

h. Under the sunset date column, insert "12/29/88" for the following CAS No. entries under the category phenylenediamines (benzenediamines): 3663–23–8, 615–46–3, 42389–30–0, 68459–98–3, 68239–80–5, 6219–71–2, 20103–09–7, 1197–37–1, 67801–06–3, 68015–98–5, 68966–84–7, 614–94–8, 6219–67–6, 5131–58–8, 5042–55–7, 6219–77–8, 18266–52–9, 68239–82–7, 68239–83–8, 66422–95–5, 15872–73–8, and 65879–44–9.

[FR Doc. 89–300 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS-42092A; FRL-3503-7]

Testing Consent Order on Alkyl Phthalates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed an enforceable testing Consent Order with Aristech Chemical Corporation (Aristech), BASF Corporation (BASF), Exxon Chemical Company (Exxon), Eastman Kodak Company (Kodak), and Witco Corporation, Humko Chemical Division (Witco). These companies have agreed to perform certain chemical fate and environmental effects tests on dimethyl phthalate (DMP; CAS No. 131–11–3), di-n-butyl phthalate (DnBP; CAS No. 84–74–2), dihexyl phthalate, (DHP; CAS No. 68515–50–4 and 84–75–3), di–2–ethylhexyl phthalate (DEHP; CAS No. 117–81–7), di-(heptyl, nonyl, undecyl) phthalate (D711P; CAS No. 68515–42–4), diisodecyl phthalate (DIDP; CAS No. 68515–49–1 and 26761–40–0), diundecyl phthalate (DUP; CAS No. 3648–20–2), and ditridecyl phthalate (DTDP; CAS No. 68515–47–9 and 119–06–2). These chemicals are added to the list of testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR Part 707 apply.

Depending on the results of these tests, two additional chemical substances, diethyl phthalate (DEP; CAS No. 84–66–2) and diisononyl phthalate (DINP; CAS No. 68515–48–0 and 28553–12–0), may also be tested, and if so would also be made subject to export notification requirements.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, Aristech, BASF, Exxon, Kodak, and Witco have entered into a testing Consent Order with EPA in which they have agreed to perform certain chemical fate and environmental effects tests for DMP, DnBP, DHP, DEHP, D711P, DIDP, DUP, and DTDP. This rule amends 40 CFR 799.5000 by adding these eight chemical substances to the list of chemical substances and mixtures subject to testing Consent Orders.

I. ITC Recommendation

In its Initial Report to EPA, published in the **Federal Register** of October 4, 1977 (42 FR 55026), the ITC recommended that the alkyl phthalates chemical category be considered for environmental effects testing.

The recommended environmental effects testing included chronic and reproductive effects testing with aquatic organisms, especially fish. EPA's health effects testing concerns for these chemicals are being examined separately and are not addressed in this notice.

EPA responded to the ITC's designation of the alkyl phthalates category by issuing a notice in the **Federal Register** (October 30, 1981; 46 FR 53775) announcing that it had decided not to require testing. EPA instead accepted a testing program sponsored by the Phthalate Esters Program Panel (PEPP) of the Chemical Manufacturers Association (CMA). The program included testing for both health and environmental effects; however, in keeping with the subject of this notice, discussion will focus on the environmental effects portion.

CMA proposed phased testing for environmental effects for 13 alkyl phthalates identified as being annually produced in quantities greater than ten million pounds, and for benzyl butyl phthalate (BBP). CMA's proposal included testing for aquatic toxicity, environmental transport and fate, and biodegradation of the alkyl phthalates and BBP. These were the environmental testing areas of concern to the Agency and to the ITC.

The program was designed to complete testing in two phases. Phase I tests were performed to determine acute toxicity to fish, aquatic invertebrates, and algae, and chronic toxicity to aquatic invertebrates. Biodegradation tests and tests to determine vapor pressure, water solubility and Koctanol/water were also performed. Phase I of testing has been completed. All of the data from these studies have been placed in the public file on alkyl phthalates and BBP (OPTS–42005) and are available for public inspection.

In Phase II of the testing, more advanced tests, including early life stage testing with fish, bioconcentration tests with oysters, soil and water biodegradation tests, and tests of soil transport were to be performed, if the results of the Phase I tests indicated a need for further testing. The tests and chemicals selected for Phase II testing were to be determined primarily by the results of the Phase I tests.

Testing under this negotiated testing agreement (NTA) was suspended when, in August 1984, a suit brought against EPA by the Natural Resources Defense Council (NRDC) resulted in the ruling that such negotiated testing programs were not legal substitutes for a test rule under section 4 of the Toxic Substances Control Act (TSCA) [*NRDC and AFL–CIO v. EPA*, 595 F Supp. 1255 (S.D.N.Y. 1984)]. Furthermore, BBP was specifically mandated for rulemaking, or for notice explaining why testing was not necessary. As a result, the Agency published a proposed rule for BBP requiring environmental effects and chemical fate testing (50 FR 36446; September 6, 1985). The proposed testing for BBP was completed and submitted to EPA by Monsanto Company, and the Agency has issued a **Federal Register** notice withdrawing the proposed rule (52 FR 41593; 29 October, 1987).

For the remaining phthalate esters recommended by the ITC, several of the Phase II tests noted in the NTA are still needed; namely, early life stage testing with fish and sediment transport (adsorption). EPA, in this final rule, announces that these environmental and chemical fate testing needs are being addressed by consent order. Health effects testing for this chemical category will be the subject of a future notice.

II. Testing Consent Order Negotiations

In the **Federal Register** of December 24, 1986 (51 FR 46718), and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons interested in participating in or monitoring testing negotiations on alkyl phthalates to contact the Agency. EPA held public meetings with interested parties on January 7, 1987, February 12, 1987, June 3, 1987, and September 29, 1987 to discuss the testing appropriate for the alkyl phthalate chemical category. On November 11, 1988, EPA, Aristech, BASF, Exxon, Kodak, and Witco signed a testing Consent Order for certain alkyl phthalate esters. A Consent Order is not based on a formal finding and expedites testing, while retaining the same TSCA penalty provisions applicable under rulemaking. Under the Order, these companies have agreed to conduct or provide for the conduct of fish early life stage toxicity tests and adsorption isotherm tests. The specific test standards to be followed and the testing schedule for each test are included in the Order. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions are also included in the Order.

III. Use and Exposure

The alkyl phthalates are a chemical category consisting of alkyl diesters of 1,2-benzenedicarboxylic acid. They typically are formed by esterifying phthalic acid anhydride with various alcohols. The compounds vary in size, depending on the alcohols used, from the short chain compound dimethyl phthalate to long-chain compounds such as ditridecyl phthalate. Mixed alcohols may also be used in the esterification process giving a combination of unsymmetrical alkyl diester compounds, such as D711 phthalate, whose side chains may consist of alkyl groups of 7, 9, or 11 carbons.

Phthalate esters are used as plasticizers in plastic products at different percentages depending on the mutual compatibilities of each and the degree of flexibility desired in the plastic product (Ref. 1). The chain lengths affect the properties of the compounds in a fairly predictible way; as the chain gets longer, water solubility and vapor pressure decrease, and K_{oc} increases (Ref. 1).

Many of the alkyl phthalates are produced in large volume, with some individual compounds having annual production volumes well in excess of 100 million pounds. The alkyl phthalates are primarily used as plasticizers in a wide variety of plastic products (although a few, such as diethyl phthalate, are used in such products as cosmetics), and releases into the environment may occur through waste streams from manufacturing facilities or from use and disposal of end products.

The 14 phthalate esters selected for testing in Phase I of the NTA were selected because they have individual annual production volumes of approximately 10 million pounds or greater. The chemicals selected for additional testing in this Consent Order represent a subset of those 14.

IV. Testing Program; Chemical Fate and Environmental Effects

With regard to untested phthalate esters, EPA believes that it can, for risk assessment purposes, reliably predict values for most of the environmental effects endpoints and chemical fate processes identified as being of concern in the NTA. Bioconcentration potential of the phthalate esters can be predicted from studies performed on a number of these compounds with a variety of fish and aquatic invertebrates. These data indicate bioconcentration values of 112 to 856 in fish and 116 to about 4,000 in invertebrates (Refs. 2 through 11).

Furthermore, EPA has sufficient data based on studies completed during Phase I of the NTA and other available data to estimate the water solubility, volatility and aerobic biodegradability of the phthalate esters and to sufficiently predict the acute toxicity of the phthalate esters to fish, invertebrates and algae and their chronic toxicity to aquatic invertebrates.

However, the Agency believes it has insufficient data to predict chronic toxicity of the phthalate esters to fish, and to reliably predict adsorption of these chemicals to sediments. EPA intends that testing be conducted under this Consent Order to fill those data deficiencies. EPA believes that these data will, with the earlier data on the alkyl phthalates and BBP, be sufficient to reliably assess current risks that the dialkyl and alkyl benzyl phthalates may present to the environment. The testing will examine chronic toxicity to fish (through early life stage toxicity testing with rainbow trout) and adsorption of these chemicals to sediments. EPA intends to gather data by having manufacturers test a subset of the 14 alkyl phthalates tested under Phase I of the negotiated testing agreement.

EPA will use the data to determine a quantitative structure-activity relationship (QSAR) that it can apply to untested members of the alkyl phthalate ester chemical class. EPA believes, from available data, that this chemical category is amenable to a QSAR approach. However, if the data developed under this Consent Order indicate such is not the case, then the Agency reserves its right to re-examine the testing needs for this chemical category. Also, the use of QSAR estimation does not mean that estimated values take precedence over valid experimental data, where the two differ. Therefore, should manufacturers of untested or new phthalate ester compounds wish, they could develop experimental data, which EPA would then consider in any risk estimation or regulatory context.

Under the Consent Order, DMP, DnBP, DHP, D711P and DUP will all be tested in the fish early life stage toxicity test in accordance with the schedules and test protocols specified in the Order. These five phthalate esters are characterized by having low, medium, or high numbers of carbons in their alkyl side chains (n = 1 to 11). In a more limited way, these five compounds also cover an array of chemicals having an odd or even number of carbons in the alkyl side chains and having either branched or unbranched side chains. Based on available data, phthalate esters of side chain lengths of more than six carbons may not be toxic at the chemical's limit of water solubility. EPA and the signatory manufacturers have therefore agreed in this Consent Order to double (under the conditions described in the test standard applicable to this Consent Order) the normal length of exposure to the chemical substance in the early life stage toxicity test. Doing so will strengthen any potential conclusion of no toxic response for some or all of the long-chain compounds.

Depending on the results of the testing of these five compounds, additional phthalate esters may be tested. Diethyl phthalate (DEP) may also be tested if its toxicity cannot be reliably estimated from the test data on DMP and DnBP. Furthermore, if D711P produces a toxic reponse, diisononyl phthalate (DINP) may be tested; positive results for DINP may further lead to testing on diisodecyl phthalate (DIDP). If DUP produces a positive result, ditridecyl phthalate (DTDP) may be tested. Testing of these additional compounds (DEP, DINP, DIDP, and DTDP) would be indicated in a follow-up **Federal Register** notice for notification purposes, but is considered part of this Consent Order.

EPA and representatives of the industry signatories will consult in a good faith effort to reach agreement on the interpretation of the data and the necessity of testing these additional compounds. Should EPA and the industry signatories ultimately disagree on the interpretation of the results, then EPA reserves its right to issue a section 4 test rule to obtain the necessary data. The process for review of the results is described in more detail in the Consent Order.

Adsorption isotherm testing in sediments shall be first conducted on DHP, DEHP, DIDP and DTDP (Group I); and if necessary, also on D711P and DINP (Group II). The compounds selected for Group I cover a range with respect to the physical/chemical properties expected to affect the sorptive behavior of phthalates. Testing of this group should provide useful information about the effects of structure and associated properties on adsorption. Compounds from Group I are C–6 to C–13 linear and branched phthalate esters. Their selection will complement the existing adsorption isotherm data on DNBP, DNOP, and DEHP. The inclusion of DEHP in Group I will provide an internal standard for the new set of chemicals to be tested. Testing of these chemicals will also provide a small data set for the development of new, or use of existing structure-activity relationships, to attempt to predict the sorptive behavior of the compounds in Group II. Testing for D711P and DINP, if necessary, would

be indicated in a follow-up notice in the **Federal Register** for notification purposes.

V. Export Notification

The issuance of the Consent Order subjects any person who exports or intends to export DMP, DnBP, DEHP, D711P, DIDP, DTDP and DUP to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In the June 30, 1986 (51 FR 23706), Interim Rule establishing the Testing Consent Order process, EPA added and reserved Subpart C of Part 799 for listing of chemical substances subject to testing consent orders issued by EPA. This listing serves as notification to persons who export or intend to export chemical substances or mixtures which are the subject of testing consent orders, that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS-42092A). This record contains the basic information considered by the Agency in developing this rule and the testing Consent Order.

This record includes the following information:

A. Supporting Documentation

(1) Testing Consent Order between Aristech, Exxon, Kodak, BASF, and Witco and the Agency.

(2) **Federal Register** notices pertaining to this notice consisting of:

(a) Notice containing the ITC recommendation of alkyl phthalates to the Priority List (October 12, 1977; 42 FR 55026).

(b) Notice containing the ITC recommendation of BBP to the Priority List (November 25, 1980; 45 FR 78432).

(c) Notice containing the Agency's response to the Interagency Testing Committee for the alkyl phthalates and benzyl butyl phthalate (October 30, 1981; 46 FR 53775).

(d) Notice of proposed rulemaking for BBP (September 6, 1985; 50 FR 36446).

(e) Notice of withdrawal of proposed rulemaking for BBP (October 29, 1987; 52 FR 41593).

(f) Notice soliciting interested parties for developing a consent order for the alkyl phthalates (December 24, 1986; 51 FR 46718).

(g) Notice of interim final rule on procedures for developing enforceable consent agreements (51 FR 23706; June 30, 1986).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) Hirzy, J. W., W. J. Adams, W. E. Gledhill, and J. P. Mieure. "Phthalate esters: The environmental issues." Seminar presented to USEPA National Water Quality Laboratory—Duluth. (October 16, 1978).

(2) Karara, A. H. and W. L. Hayton. "Pharmacokinetic model for the uptake and disposition of di-2-ethylhexyl phthalate in sheepshead minnow *Cyprinodon variegatus*." *Aquatic Toxicology* 5:181–195 (1984).

(3) Mehrle, P. M., and F. L. Mayer. "Di-2-ethylhexyl phthalate: residue dynamics and biological effects in rainbow trout and fathead minnows." *In:* "Trace substances in Environmental Health—X. A Symposium", D. D. Hemphill, ed. University of Missouri, Columbia, Missouri. pp. 519–524. (1976).

(4) Macek, K. J., S. R. Petrocelli, and B. H. Sleight III. "Considerations in assessing the potential for, and significance of biomagnification of chemical residues in aquatic food chains." *In:* "Aquatic Toxicology, ASTM STP 667." L. L. Marking and R. A. Kimerle, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 251–268. (1979).

(5) Gledhill, W. E., R. G. Kaley, W. J. Adams, O. Hicks, P. R. Michael, and V. W. Saeger. "An environmental safety assessment of butyl benzyl phthalate." *Environmental Science and Technology* 14(3): 301–305 (1980).

(6) Gloss, S. P. and G. R. Biddinger. "Comparison of system design and reproducibility to estimate bioconcentration of di-n-hexylphthalate by *Daphnia magna*. "*In:* "Aquatic Toxicology and Hazard Assessment" Seventh Symposium, ASTM STP 854." R. D. Cardwell, R. Purdy and R. Comotto, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 202–213 (1985).

(7) Brown, D. and R. S. Thompson "Phthalates and the aquatic environment: Part I of the effect of di-2-ethylhexyl phthalate (DEHP) and di-isodecyl phthalate (DIDP) on the reproduction of *Daphnia magna* and observations on their bioconcentration." *Chemosphere* 11(4): 417–426 (1982).

(8) Brown, D. and R. S. Thompson. "Phthalates and the aquatic environment: Part II the bioconcentration and depuration of di-2-ethylhexyl phthalate (DEHP) and di-isodecyl phthalate (DIDP) in mussels (*Mytilus edulis*). *Chemosphere* 11(4): 427–435 (1962).

(9) Streufert, J. M., J. R. Jones, and H. O. Sanders. "Toxicity and biological effects of phthalate esters on midges (*Chironomus plumosus*)." *Transactions of the Missouri Academy of Science* 14: 33–40 (1980).

(10) Perez, K. T., E. W. Davey, N. F. Lackie, G. E. Morrison, P. G. Murphy, A. E. Soper, and D. L. Winslow. "Environmental assessment of a phthalate ester, di-(2-ethylhexyl) phthalate (DEHP), derived from a marine microcosm." *In:* "Aquatic Toxicology and Hazard Assessment: Sixth Symposium, ASTM STP 802." W. E. Bishop, R. D. Cardwell, and B. B. Heidolph, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 100–191. (1984).

(11) Brown, D., C. Poels, J. B. Scheubel, and H. Wellens. "An assessment of the occurrence and effects of dialkyl orthophthalates in the environment." ECETOC Technical Report No. 19. L. Turner, ed. European Chemical Industry Ecology and Toxicology Center, Brussels, Belgium, 64 pp. (May 22, 1985).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Test procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: December 27, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substances in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS Number	Substance or mixture name	Testing	Federal Register citation
*	*	*	*
84-74-2	Di-n-butyl phthalate	Environmental effects	(Insert FR date)

CAS Number	Substance or mixture name	Testing	Federal Register citation
84-75-3	Di-n-hexyl phthalate	Environmental effects	(Insert FR date)
		Chemical fate	(Insert FR date)
*	*	*	*
117-81-7	Di-2-ethylhexyl phthalate	Chemical fate	(Insert FR date)
119-06-2	Ditridecyl phthalate	Chemical fate	(Insert FR date)
131-11-3	Dimethy phthalate	Environmental effects	(Insert FR date)
*	*	*	*
3648-20-2	Diundecyl phthalate	Environmental effects	(Insert FR date)
26761-40-0	Diisodecyl phthalate	Chemical fate	(Insert FR date)
68515-42-4	Di (heptyl, nonyl, undecyl phthalate (mixed isomers)	Environmental effects	(Insert FR date)
68515-47-9	Ditridecyl phthalate (mixed isomers)	Chemical fate	(Insert FR date)
68515-49-1	Diisodecyl phthalate (mixed isomers)	Chemical fate	(Insert FR date)
68515-50-4	Dihexyl pnthalate (mixed isomers)	Environmental effects	(Insert FR date)
		Chemical fate	(Insert FR date)

[FR Doc. 89-299 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-190-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which would require a one-time inspection of the Honeywell-Sperry navigation equipment to ensure there is no unauthorized mixing of certain Symbol Generator Units (SGU), or mixing of certain Attitude Heading Reference System (AHRS) components and SGU. In addition, this AD would require replacement of the Air Data Computer (ADC), Autopilot/Flight Director (AP/FD) Computer, SGU, and AHRS. This proposal is prompted by reports of malfunctions of the AHRS, ADC, AP/FD computer, and SGU navigation equipment. This condition, if not corrected, could lead to incorrect attitude and heading information on both pilots' primary displays and, in some cases, no information being displayed.

DATE: Comments must be received no later than February 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 series airplanes. There have been numerous reports of malfunctions of the Honeywell-Sperry navigation system due to mixing of system components having various stages of modifications incorporated. This condition, if not corrected, could lead to incorrect attitude and heading information on both pilots' primary displays and, in some cases, no information being displayed.

Aerospatiale has issued Service Bulletin ATR42-34-0027, dated April 6, 1988, which summarizes the modifications required to update the navigation equipment and lists the particular part numbers that cannot be intermixed for Category I or II weather minima landing operations.

Aerospatiale has issued Service Bulletin ATR42-34-0024, Revised 1, dated August 30, 1988, which describes procedures for replacement of the Air Data Computer (ADC).

Aerospatiale has issued Service Bulletin ATR42-34-0025, Revision 1, dated August 30, 1988, which describes procedures for replacement of the Attitude Heading Reference System (AHRS).

Aerospatiale has issued Service Bulletin ATR42-34-0026, Revision 1, dated August 30, 1988, which describes procedures for replacement of the Symbol Generating Units (SGU).

The DGAC has classified all four service bulletins as mandatory, and has issued Airworthiness Directive 88-092-013(B) addressing this subject.

In addition, Aerospatiale has issued Service Bulletin ATR42-22-0009, dated April 6, 1988, which describes procedures for replacement of the Auto Pilot/Flight Director (AP/FD) computer. The DGAC has not classified this service bulletin as mandatory, but the FAA has determined that replacement of the AP/FD computer must be required to ensure that AP/FD computers having software compatible with other system components and maintenance test software are installed in all affected airplanes.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require one-time inspection of the Honeywell-Sperry Navigation equipment to determine if certain combinations of part numbers for SGU and AHRS are installed. If the inspection reveals there is a mixing of SGU Part Number 7004544-411 and 7004544-412, correction would be required prior to further flight. If the inspection reveals there is a mixing of AHRS Part Number 7003360-934 or Part Number 7003360-934B and SGU Part Number 7004544-412, Category II weather minima landings would no longer be authorized. Certain combinations which are listed in Aerospatiale Service Bulletin ATR42-34-0027, are compatible and do not affect Category II weather minima landings. In addition to the one-time inspection, the proposed rule would require the eventual replacement of the Honeywell-Sperry navigation equipment (AHRS, AP/FD computer, ADC, and SGU), with compatible units having updated software.

It is estimated that 36 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts will be furnished by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,200.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, Serial Numbers 003 through 093, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the primary attitude and heading information, accomplish the following:

A. Within 10 days after the effective date of this AD, accomplish the following in accordance with Aerospatiale Service Bulletin ATR42-34-0027, dated April 6, 1988:

1. Inspect Honeywell Sperry Symbol Generator Units (SGU) for unauthorized mixing of units in accordance with paragraph C.(1) of the service bulletin. Correct any unauthorized mixing of units prior to further flight.

2. Inspect Honeywell Sperry navigation equipment for unauthorized mixing of Attitude Heading Reference Units (AHRU) and SGU in accordance with paragraphs C.(2) and C.(3) of the service bulletin. For airplanes with unauthorized mixing of AHRU and SGU prior to further flight, insert the following into the Limitations section 2 of the Airplane Flight Manual (AFM). This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual: "Approach operations are limited to Category I or higher weather minima."

B. Within 120 days after the effective date of this AD, accomplish the following:

1. Replace the Air Data Computer (ADC), in accordance with Aerospatiale Service Bulletin ATR42-34-0024, Revision 1, dated August 30, 1988.

2. Replace the Attitude Heading Reference System (AHRS), in accordance with Aerospatiale Service Bulletin ATR42-34-0025, Revision 1, dated August 30, 1988.

3. Replace the Symbol Generator Units (SGU), in accordance with Aerospatiale Service Bulletin ATR42-34-0026, Revision 1 dated August 30, 1988.

4. Replace the Autopilot/Flight Director (AP/FD) computer, in accordance with Aerospatiale Service bulletin ATR42-22-0009, dated April 6, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9101 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-321 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-38-AD]

Airworthiness Directives; Certain Small Airplanes; Beech et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain small airplanes, which would require the installation of a placard to specify that the airplane is equipped and approved for flight in known icing conditions, or that it is prohibited from such flight. The FAA is aware of numerous accidents which have been attributed to inattention to forecast icing conditions, to an unreasonable delay in exiting an icing environment by the pilot, or by mistakenly assuming the airplane is equipped for flight in known icing conditions. This AD is needed to advise pilots of airplanes unapproved for icing flight not to fly in known icing conditions. Such unapproved operation could result in ice accumulation on the airplane that would cause the airplane to be unable to maintain controlled flight.

DATES: Comments must be received on or before March 10, 1989.

ADDRESSES: Information applicable to this AD may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–CE–38–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Neil B. Christenson, Aircraft Certification Division, FAA, Central Region, ACE–100, 601 East 12th Street, Kansas City, Missouri 64106, (816) 426–6934.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–CE–38–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

As a result of National Safety Board (NTSB) Safety Recommendation No. A–86–97, the Federal Aviation Administration (FAA) has reviewed 516 icing related accidents which occurred during the eleven (11) year period ending in April, 1987. Of these accidents reported by the NTSB, there were 567 fatalities. The following is a summary of the number of icing related accidents and the number of fatalities by manufacturer:

	Accidents	Fatalities
Cessna	206	108
Piper	121	147
Beech	104	201
Mooney	14	23
Mitsubishi	6	18
Grumman Am.	10	12
Gulfstream	14	24
Other	41	34
Totals	516	567

These statistics show that icing related accidents have resulted in an average of over 50 people killed each year since 1975.

The above fatalities have occured on many makes and models of airplanes. Certain models, however, have had a much higher accident rate than others. A listing of those models, which were certificated before an icing placard was required, that have contributed to 60% of these fatalities follows:

	Fatal accidents	Fatalities
Beech:		
Model 18 series	10	13
Model 35 series	17	40
Model 90 series	4	17
Model 55 series	3	13
Model 58 series	16	31
Cessna:		
172 series	24	27
182 series	32	35
210 series	27	44
310 series	23	17
Piper:		
PA–23 series	9	20
PA–24 series	14	21
PA–28 series	32	41
Mooney: M20 series	12	22
Totals	223	341

This review has revealed a number of factors that have contributed to unsafe operation in icing conditions:

First, it has been the practice in the past to allow ice protection equipment to be installed on an airplane without substantiation that the equipment will completely protect that portion of the airplane on which it is installed. Under this type of approval, the only substantiation required was that the equipment would not adversely affect the airplane when it was installed and functioning. This type of approval was allowed because it was felt that such equipment provides an additional level of safety for the airplane should inadvertent icing be encountered.

The second factor involves the current practice of airplane manufacturers approving some models for icing flight. This has resulted in airplanes of the same model being delivered, some of which are completely equipped and approved for flight into known icing conditions, while others may be only partially equipped and not approved for flight in known icing conditions. Many of these models, whose certification bases are prior to the requirements of Civil Air Regulation (CAR) 3.772, do not have a placard to advise the pilot of the meterological conditions in which the airplane is authorized or capable of flying. This creates an environment in which a pilot may fly an airplane that is properly equipped and approved to fly in known icing conditions, while at some time later he may have occasion to fly the same model that is only partially equipped (e.g., wing and horizontal stabilizer boots only). The pilot may assume that the second airplane is also approved to fly in known icing conditions since there is no placard installed to tell him otherwise, and a hazardous icing encounter could result.

Neither the earlier type certification rules to which these airplanes were certified nor the operating rules with which all airplanes have to comply require the installation of a placard which informs the pilot that the airplane is approved for flight in icing conditions, or that it is prohibited from such flight. The installation of such a placard was not made a certification rule until Amendment 3–7 to CAR 3, which added paragraph 3.772 to CAR 3 in 1962. This rule required that "A placard shall be provided in clear view of the pilot which specifies the type of operations (e.g., VFR, IFR, day or night) and the meteorological conditions (e.g., icing conditions) to which the operation of the airplane is limited by the equipment installed." Airplanes certificated prior to the adoption of Amendment 3–7, but still being manufactured, are not required to have this placard installed. It is estimated that approximately 50% of the airplanes involved in icing related accidents do not contain such a placard. There is obviously no guarantee that the installation of a placard will, in all cases, prevent icing accidents from happening. However, the FAA has concluded that this corrective action is needed to prohibit certain airplanes from flight in known icing conditions, except those equipped with approved icing equipment and approved for icing flight. Since the condition described herein exists on these certain airplanes whose certification bases are prior to the 1962 adoption of paragraph 3.772, the FAA is proposing an AD which would require placards that specifically identify whether these airplanes are, or are not, approved for flight in known icing conditions and thereby reduce the possibility of icing related accidents.

This AD will effect those airplanes whose adverse service histories appear to make them most susceptible to icing encounter accidents. The FAA is continuing to evaluate the service history of the remaining pre-CAR 3.772 airplanes. This evaluation may reveal the need for subsequent AD's to improve the airworthiness of these airplanes.

The FAA has determined there are approximately 113,700 airplanes affected by the proposed AD. The cost of placarding the airplanes as specified in the proposed AD is estimated to be $50 per airplane. The total cost is estimated to be $5,685,000 to the private sector. Few, if any, small entities are expected to own a sufficient number of airplanes for this cost to exceed the threshold for Regulatory Flexibility Action.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation, safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Applicability: Applies to certain small airplanes that were certificated prior to the adoption of Amendment 3–7 to CAR 3, dated March 27, 1962, and are limited to those in the attached Applicability List:

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To assure that the pilot has the correct icing condition operational information, accomplish the following:

(a) Check the cockpit area for a placard which either specifies that the airplane is approved for flight in known icing conditions or that it is prohibited from flight in known icing conditions.

Note—A placard stating "KNOWN ICING CONDITIONS TO BE AVOIDED" is not adequate to meet the requirements of this AD.

(1) If a placard is found which authorizes flight in known icing conditions, inspect the airplane to verify that the required approved icing equipment is installed as designated in the airplane records, and that the placard installed properly identifies the airplane's approval for flight in icing conditions.

(2) If a placard is found that prohibits the airplane from flight in known icing conditions, accomplish paragraph (b) of this AD.

(3) If no placard is found, accomplish a review of the airplane records to determine if it is approved for flight in icing conditions. If this review shows that the airplane is not approved for icing flight, fabricate and install on the instrument panel in clear view of the pilot a placard with letters of minimum 0.2 inches in height which reads as follows:

"THIS AIRPLANE PROHIBITED FROM FLIGHT IN KNOWN ICING CONDITIONS (VISIBLE MOISTURE AND TEMPERATURE OF +5 °C or Less)." and operate the airplane accordingly. File a copy of this AD in the Pilot's Operating Handbook (POH) or Airplane Flight Manual (AFM) Limitations Section if either exists.

(4) If the review accomplished per paragraph (a)(1) of this AD shows that the airplane is approved for icing flight, determine that the equipment required by this approval is installed in accordance with that approval and is functional. These airplanes may be approved for flight in known icing conditions, in known light icing conditions, or in known moderate icing conditions as specified in the approval. For these airplanes, fabricate and install on the instrument panel in clear view of the pilot, an appropriate placard with letters of minimum 0.2 inches in height which reads as follows:

(A) "THIS AIRPLANE APPROVED FOR FLIGHT IN [KNOWN, KNOWN LIGHT, OR KNOWN MODERATE] ICING CONDITIONS (VISIBLE MOISTURE AND A TEMPERATURE OF +5 °C OR LESS) WHEN THE LISTED APPROVED EQUIPMENT IS INSTALLED AND FUNCTIONING."or:

(B) "THIS AIRPLANE APROVED FOR FLIGHT IN [KNOWN, KNOWN LIGHT, OR KNOWN MOERATE] ICING CONDITIONS (VISIBLE MOISTURE AND A TEMPERATURE OF +5 °C OR LESS) WHEN ICING EQUIPMENT IS INSTALLED IN ACCORDANCE WITH STC AND FUNCTIONING."

(b) Following the determination that a proper icing operation placard is installed in accordance with this AD, or that a placard has been fabricated an installed in accordance with this AD, file a copy of this AD in the POH or AFM Limitations Section, if such document exists.

(c) The requirements of paragraphs (a) and (b) of this AD must be accomplished by the holder of a mechanic or repairman certificate issued under Part 65 of the FAR.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE–100, 601 East 12th Street, Kansas City, Missouri 64106.

All persons affected by this directive may examine the documents referred to herein at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 20, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

APPLICABILITY LIST

Manufacturer	Affected Airplanes
Beech	Models 18D, H18, A18A, A18D, C18S, D18C, D18S, E18S–9700, G18S, SA18D, S18D (All Serial Numbers (S/N)).
	Models 35, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35R, 35A–33, 35B–33, 35C–33, 35A–33A (All S/N).
	Models 50, B50, C50, D50, E50, F50, G50, H50, J50, D50A, D50B, D50C, D50E, D50E–5990 (All S/N).
	Models D55, D55A, E55, E55A, 95–B55, 95–C55 (All S/N) ADModels 58, 58A (All S/N).
Cessna	172 Series through 172K (All S/N), 172L (S/N 17259224 through 17260758).
	Models P172D, R172E, R172F R172G, R172H, 172RG (All S/N).

APPLICABILITY LIST—Continued

Manufacturer	Affected Airplanes
	182 Series through 182N (All S/N), 182P (S/N 18260826 through 18264295).
	210 Series through T210K (All S/N), 210L/T210L (S/N-21059503 through 21061039).
	310 Series through 310Q/T310Q (All S/N), 310R/T310R (S/N 310R0001 through 310R0801).
Mooney	M20 Series (All S/N).
Piper	PA-23, PA-23-160, PA-23-235, PA-23-250, PA-E23-250 (All S/N).
	PA-24, PA-24-250, PA-24-260, PA-24-400 (All S/N).
	PA-28-140, PA-28-150, PA-28-151, PA-28-160, PA-28-161, PA-28-180, PA-28-181, PA-28-201T, PA-28-235, PA-28-23G, PA-28R-180, PA-28R-200, PA-28R-201, PA-28R-201T, PA-28RT-201, PA-28RT-201T (All S/N).

[FR Doc. 89-322 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-26]

Proposed Macomb, IL, Transition Area Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Macomb, IL, transition area to accommodate a new NDB RWY 26 and LOC RWY 26 Standard Instrument Approach Procedures (SIAPs) to Macomb Municipal Airport, Macomb, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATES: Comments must be received on or before February 9, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, ACL-7, Attn: Rules Docket No. 88-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, ACL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provided the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Macomb, IL.

The present transition area is being modified to accommodate new NDB RWY 26 and LOC RWY 26 SIAPs. The only modification to the existing airspace is in the transition area extension. The extension will consist of an additional 4.5 miles to the east and an additional 1.5-mile width each side of the 090° bearing from Macomb Municipal Airport.

The development of these procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Macomb, IL [Revised]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Macomb Municipal Airport (lat. 40°31'11" N., long. 90° 39'17" W.); and within 4.5 miles each side of the 090° bearing from Macomb Municipal Airport extending from the 6-mile radius area to 12.5 miles east of the airport.

Issued in Des Plaines, Illinois, on December 21, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-285 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-111-86]

Income Tax; Taxable Years Beginning After December 31, 1986; Changes With Respect to Prizes and Awards and Employee Achievement Awards

AGENCY: Internal Revenue Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the excludability of certain prizes and awards and to the deductibility of certain employee awards. Changes to the applicable tax law were made by the Tax Reform Act of 1986. These amendments, if adopted, will provide the public with the guidance needed to comply with the Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 10, 1989. The amendments are proposed to be effective after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: CC:CORP:T:R, IA-111-86.

FOR FURTHER INFORMATION CONTACT: Johnnel St. Germain of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: CC:CORP:T:R, IA-111-86. Telephone 202-566-4509 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service. Copies of comments should also be sent to the Internal Revenue Service at the address previously specified.

The collections of information in this regulation are in 26 CFR 1.74-1(c). This information is required by the Internal Revenue Service in order to verify that the proper amount of income is reported by taxpayers on their returns of tax. The likely respondents are individuals.

Estimated total annual reporting burden: 1,275 hours.

Estimated average annual burden per respondent: 15 minutes.

Estimated number of respondents: 5,100.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 74, 102, and 274 of the Internal Revenue Code (Code). The amendments are proposed to conform the regulations to section 122 of the Tax Reform Act of 1986 (Pub. L. 99-514). The proposed amendments, if adopted, will be issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

General Information

Prior to the 1986 Code, section 74 stated that prizes and awards, other than certain types of fellowship grants and scholarships, were includible in gross income unless they were made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement. To qualify for the exclusion, the recipient must have been selected without any action on his part and could not be required to render substantial services as a condition to receiving the prize or award.

Within the context of a business relationship, prizes and awards that would otherwise be includible in a recipient's gross income were excludable if they qualified as gifts under section 102. In general, section 274(b) disallowed an employer a business deduction for gifts to an employee to the extent that the total cost of all gifts of cash, tangible personal property, and other items to the same individual during the taxable year exceeded $25. A special exception to the $25 limitation was allowed for items of tangible personal property awarded to an employee for length of service, safety achievement, or productivity. The employer could deduct the cost of such an award up to $400. If the item was provided under a qualified award plan, the deductibility limitation was increased to $1600, provided the average cost of all plan awards made during the year did not exceed $400. A de minimis fringe benefit under section 132(e) was, and continues to be, excludable from gross income and is not subject to the requirements imposed upon prizes and awards under sections 74 and 274.

Explanation of Provisions

These proposed amendments relate to the excludability of certain prizes and awards and to the deductibility of certain employee awards and reflect the substantial changes made by the Tax Reform Act of 1986 (the Act) to sections 74, 102 and 274 of the Internal Revenue Code (Code). Changes to the applicable sections of the Code and regulations, amended or newly incorporated by this document, are effective for awards made after December 31, 1986.

Under the Act, the section 74(b) exclusion for prizes or awards received in recognition of charitable achievement is available only if the payor transfers the prize or award to one or more entities described in paragraph (1) and/or (2) of section 170(c), pursuant to the direction of the recipient.

Section 1.74-1(c) of the proposed regulations requires that recipients of prizes and awards clearly designate, in writing, within 45 days of the date the item is granted that they wish to have the prize or award transferred to one or more qualifying donee organizations. The proposed regulations set forth requirements which, in certain instances, determine whether a qualifying designation has been made.

Section 1.74-1(d) of the proposed regulations clarifies that the exclusion under section 74(b) will not be available unless the prize or award is transferred

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by the payor to one or more qualified donee organizations before the recipient, or any person other than the grantor or a qualified donee organization, uses the item. In general, a transfer may be accomplished by any method that results in receipt of the prize or award by, or on behalf of, one or more qualified donee organizations.

Section 1.74–1(e) further clarifies the requirements of section 74(b) by defining certain terms. Definitions are included which determine what constitutes a "qualified donee organization," when a "disqualifying use" has taken place, and when an item is considered "granted."

Section 1.74–1(f) provides that neither the payor nor the recipient of the prize or award may claim a charitable contribution deduction for the value of any prize or award for which an exclusion is allowed under section 74(b).

All of the requirements of section 74(b) in existence prior to passage of the Act remain in effect and must be met in order for the award recipient to be eligible for the exclusion. Accordingly, rules and regulations governing these additional requirements, to the extent they are not inconsistent with the proposed regulations, will remain in effect.

New Code section 74(c) excludes certain employee achievement awards from gross income. The exclusion applies, subject to certain limitations, to the value of awards made by the employer for safety achievement or length of service achievement. The amount of the exclusion generally corresponds with the deduction given the employer under new section 274(j) for these "employee achievement awards." Thus, in general, the employee must include these awards in income to the extent that the fair market value of the award, or, if greater, the cost of the award to the employer, exceeds the amount deductible under section 274(j). The exclusion allows an employee to exclude the full fair market value of the award where the cost of the award is fully deductible by the employer.

Section 1.74–2(d) of the proposed regulations provides special rules for employee achievement awards applicable to sole-proprietors and tax-exempt employers.

Section 1.74–2(e) clarifies that an employee award, whether or not an employee achievement award, may be excludible from gross income as a de minimis fringe benefit under section 132(e).

Section 102(c) of the Code clarifies that, with the exception of employee achievement awards under section 74(c) and de minimis fringe benefits under section 132(e), an employee shall not exclude from gross income any amount transferred to the employee (or for the employee's benefit) by, or on behalf of, the employer in the form of a gift, bequest, devise, or inheritance. Therefore, while awards satisfying the requirements of section 74(c) and de minimis fringe benefits qualifying under section 132(e) will be excluded from gross income under those sections, no amounts (except in certain narrowly defined circumstances) transferred by, or on behalf of, an individual's employer will be excludable from gross income under section 102.

Section 1.102–1(f)(2) of the proposed regulations provides that for purposes of section 102(c), extraordinary transfers to the natural objects of one's bounty will not be considered transfers for the benefit of an employee if it can be shown that the transfer was not made in recognition of the transferee's employment. Thus, the rules set out in *Comm.* v. *Duberstein*, 363 U.S. 278 (1960), formerly applicable in the determination of whether all property transferred inter-vivos from an employer to an employee constitutes a gift, will only be applicable where the transferee employee would be the natural object of the employer's bounty.

From an employer's perspective, the Act substantially modifies an employer's ability to deduct the cost of certain employee awards. New section 274(j) defines deductible "employee achievement awards" to include only those awards made for length of service or safety achievement. In addition, an employee achievement award must be an item of tangible personal property awarded as part of a meaningful presentation and made under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

Section 274(j) also establishes a limit on the amount that may be deducted by an employer. The annual deduction limitation per employee is $400 for employee achievement awards that are not awarded as part of a qualified award plan. The annual deduction limitation per employee is $1.600 for employee achievement awards that are awarded as part of a qualified award plan. In no event may an employer deduct more than $1.600 per employee for all employee achievement awards made during the year. An award is not a qualified plan award where the average cost of all employee achievement awards made by the employer pursuant to a plan exceeds $400 during the taxable year.

Section 1.274–8(b) of the proposed regulations clarifies that the $1.600 deduction limitation applies in the aggregate, so that the $1.600 limitation for qualified plan awards and the $400 limitation for employee achievement awards that are not qualified plan awards cannot be added together to allow deductions exceeding $1.600 for employee achievement awards made to an employee in a taxable year.

Section 1.274–8(c)(2) of the proposed regulations provides that tangible personal property does not include cash or any gift certificate other than a nonnegotiable gift certificate conferring only the right to receive tangible personal property. The proposed regulations also give examples of what will be considered to create a significant likelihood of the payment of disguised compensation. For example, the providing of employee achievement awards in a manner that discriminates in favor of highly paid employees will be considered to be a payment of disguised compensation.

Section 1.274–8(c)(5) of the proposed regulations defines a "qualified plan award" as an employee achievement award presented pursuant to an established written award plan or program of the employer that does not discriminate as to eligibility or benefits.

Section 1.274–8(d)(1) of the proposed regulations states that the deduction limitations shall apply to a partnership as well as to each member of the partnership. Paragraph (d)(2) provides that the cost of length of service achievement awards (other than awards excludable under section 132(e)) may only be deducted by the employer if the employee has at least 5 years of service with the employer and has not received a length of service achievement award during that year or any of the 4 prior years. In addition, this paragraph clarifies that although a retirement award will be treated as having been provided for length of service achievement, it may also qualify for treatment as a de minimis fringe benefit under section 132(e) of the Code. Paragraph (d)(3) provides guidance with respect to safety achievement awards. An employer may deduct the cost of safety achievement awards only when presented to no more than 10 percent of an employer's eligible employees. Eligible employees include any employee who has worked for the employer in full time capacity for at least one year and who is not a manager, administrator, clerical employee, or other professional employee. Special rules clarify that in the case where more than 10 percent of an employer's eligible employees receive a safety achievement award, no award will be considered to be awarded for safety achievement if it cannot be determined that the award was presented before the 10 percent limitation was exceeded.

The Act specifically excludes awards qualifying as de minimis fringe benefits under section 132(e) from the requirements for length of service achievement and safety achievement. As a result, employers are not required to consider section 132(e) awards in determining whether employee achievement awards comply with the 5 year limitations for length of service achievement and the 10 percent eligible employee limitations for safety achievement.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Comments And Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Christopher J. Wilson, formerly of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to The Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.74–1 [Amended]

Par. 2. Section 1.74–1 is amended as follows:

(a) Paragraph (a)(1) is amended by—

(1) Removing the phrase "subsection (b)" and adding the phrase "subsections (b) and (c)" in its place, and

(2) Removing the word "any" in the last sentence and adding the word "most" in its place.

(b) Paragraph (b) is amended by—

(1) Removing the word "and" from the first sentence, and

(2) Removing "award." at the end of the first sentence and adding the language set forth below in its place.

(c) Paragraph (c) is removed and new paragraphs (c), (d), (e), (f), and (g) are added directly following paragraph (b) to read as set forth below.

§ 1.74–1 Prizes and Awards.

* * * * * *

(b) *Exclusion from gross income* * * * award; and (4) the payor transfers the prize or award (and the prize or award is, in fact, transferred) to one or more governmental units or organizations described in paragraph (1) or (2) of section 170(c) pursuant to a designation by the recipient. Accordingly, awards such as the Nobel prize and the Pulitzer prize will qualify for the exclusion if the award is transferred by the payor to one or more qualifying organizations pursuant to a qualified designation by the recipient.

(c) *Designation by recipient.*—(1) *In general.* To qualify for the exclusion under this section, the recipient must make a qualifying designation, in writing, within 45 days of the date the prize or award is granted (see paragraph (e)(3) of this section for a definition of "granted"). A qualifying designation is required to indicate only that a designation is being made. The document does not need to state on its face that the organization(s) are entities described in paragraph (1) and/or (2) of section 170(c) to result in a qualified designation. Furthermore, it is not necessary that the document do more than identify a class of entities from which the payor may select a recipient. However, designation of a specific nonqualified donee organization or designation of a class of recipients that may include nonqualified donee organizations is not a qualified designation. The following example illustrates the application of this section:

A distinguished ophthamologist, S, is awarded the Nobel prize for medicine. S may designate that the prize money be given to a particular university that is described in section 170(c)(1), or to any university that is described in that section. However, S cannot designate that the award be given to a donee that is not described in section 170(c)(1), such as a foreign medical school. Selection of such a donee or inclusion of such a donee on a list of possible donees on S's designation would disqualify the designation.

(2) *Prizes and awards granted before 60 days after date of publication of final regulations.* In the case of prizes and awards granted before 60 days after the date of publication of final regulations, a qualifying designation may be made at any time prior to 105 days after date of publication of final regulations.

(d) *Transferred by payor.* An exclusion will not be available under this section unless the designated items or amounts are transferred by the payor to one or more qualified donee organizations. The provisions of this paragraph shall not be satisfied unless the items or amounts are transferred by the payor to one or more qualifying donee organizations no later than the due date of the return (without regard to extensions) for the taxable year in which the items or amounts would otherwise be includible in the recipient's gross income. A transfer may be accomplished by any method that results in the receipt of the items or amounts by one or more qualified donee organizations from the payor and does not involve a disqualifying use of the items or amounts. Delivery of items or amounts by a person associated with a payor (*e.g.*, a contractual agent, licensee, or other representative of the payor) will satisfy the requirements of this section so long as the items or amounts are received by, or on behalf of, one or more qualified donee organizations. Possession of a prize or award by any person before a designation is made will not result in the disallowance of an exclusion unless a disqualifying use of the items or amounts is made before the items or amounts are returned to the payor for transfer to one or more qualified donee organizations (see paragraph (e)(2) of this section for a definition of "disqualifying use"). Accordingly, transfer of an item or amount to a nonqualified donee organization will not result in an ineffective transfer under this section if the item or amount is timely returned to

the payor by the nonqualified donee organization before a disqualifying use of the item or amount is made and the item or amount is then transferred to a qualifying organization.

(e) *Definitions.*—(1) For purposes of this section, "qualified donee organizations" means entities defined in section 170(c) (1) or (2) of the Code.

(2) For purposes of this section, the term "disqualifying use" means, in the case of cash or other intangibles, spending, depositing, investing or otherwise using the prize or award so as to enure to the benefit of the recipient or any person other than the grantor or an entity described in section 170(c) (1) or (2). In the case of tangible items, the term "disqualifying use" means physical possession of the item for more than a brief period of time by any person other than the grantor or an entity described in section 170(c) (1) or (2). Thus, physical possession by the recipient or a person associated with the recipient may constitute a disqualifying use if the item is kept for more than a brief period of time. For example, receipt of an unexpected tangible award at a ceremony that otherwise comports with the requirements of this section will not constitute a disqualifying use unless the recipient fails to return the item to the payor as soon as practicable after receipt.

(3) For purposes of this section, an item will be considered "granted" when it is subject to the recipient's dominion and control to such an extent that it otherwise would be includible in the recipient's gross income.

(f) *Charitable deduction not allowable.* Neither the payor nor the recipient will be allowed a charitable deduction for the value of any prize or award that is excluded under this section.

(g) *Qualified scholarships.* See section 117 and the regulations thereunder for provisions relating to qualified scholarships.

Par. 3. New § 1.74–2 is added to immediately follow § 1.74–1 as set forth below.

§ 1.74–2 Special exclusion for certain employee achievement awards.

(a) *General rule*—(1) Section 74(c) provides an exclusion from gross income for the value of an employee achievement award (as defined in section 274(j)) received by an employee if the cost to the employer of the award does not exceed the amount allowable as a deduction to the employer for the cost of the award. Thus, where the cost to the employer of an employee achievement award is fully deductible after considering the limitation under section 274(j), the value representing the employer's cost of the award is excludable from the employee's gross income.

(2) Where the cost of an award to the employer is so disproportionate to the fair market value of the award that there is a significant likelihood that the award was given as disguised compensation, no portion of the award will qualify as an employee achievement award excludable under the provisions of this section (see also § 1.274–8(c) (1) and (4)).

(b) *Excess deduction award.* Where the cost to the employer of an employee achievement award exceeds the amount allowable as a deduction to the employer, the recipient must include in gross income an amount which is the greater of (1) the excess of such cost over the amount that is allowable as a deduction (but not to exceed the fair market value of the award) or (2) the excess of the fair market value of the award over the amount allowable as a deduction to the employer.

(c) *Examples.* The operation of this section may be illustrated by the following examples:

Example (1). An employer makes a qualifying length of service award to an employee in the form of a television set. Assume that the deduction limitation under section 274(j)(2) applicable to the award is $400. Assume also that the cost of the television set to the employer was $350, and that the fair market value of the television set is $475. The amount excludable is $475 (the full fair market value of the television set). This is true even though the fair market value exceeds both the cost of the television set to the employer and the $400 deduction allowable to the employer for non-qualified plan awards under section 274(j)(2)(A).

Example (2). Assume the same facts as in example (1) except that the fair market value of the television set is $900. Under these circumstances, the fair market value of the television set is so disproportionate to the cost of the item to the employer that the item will be considered payment of disguised compensation. As a result, no portion of the award will qualify as an employee achievement award. Since no portion of the award is excludable by the employee, the employer must report the full fair market value of the award as compensation on the employee's Form W–2.

Example (3). An employer makes a qualifying safety achievement award to an employee in the form of a pearl necklace. Assume that the deduction limitation under section 274(j) is $400. Assume also that the cost of the necklace to the employer is $425 and that the fair market value of the necklace is $475. The amount includible by the employee in gross income is the greater of (a) $25 (the difference between the cost of the item ($425) and the employer's deductible amount of $400) or (b) $75 (the amount by which the fair market value of the award ($475) exceeds the employer's deductible amount of $400). Accordingly, $75 is the amount includible in the employee's gross income. The remaining portion of the fair market value of the award (*i.e.*, the $400 amount allowable as a deduction to the employer) is not included in the gross income of the employee. If the cost of the pearl necklace to the employer was $500 instead of $425, then $100 would be includible in the employee's gross income because the excess of the cost of the award over $400 (*i.e.*, $100) is greater than the excess of the fair market value of the award over $400 (*i.e.*, $75). The employer must report the $75, which is includible in the employee's gross income, as compensation on the employee's Form W–2.

Example (4). An employer invites its employees to attend a party it is sponsoring to benefit a charity. In order to encourage the employees to attend the party and to make contributions to the charity, the employer promises to match the employees' contributions and also provides expensive prizes to be awarded to contributing employees selected at random. Each employee receiving a prize must include the full fair market value of the prize in gross income because the prizes are not qualifying achievement awards under section 274(j) or de minimis fringe benefits under section 132(e). Since the prizes are not excludable, the employer must report the full fair market value of the prize as compensation on the employee's Form W–2.

(d) *Special rules*—(1) The exclusion provided by this section shall not be available for any award made by a sole proprietorship to the sole proprietor.

(2) In the case of an employer exempt from taxation under Subtitle A of the Code, any reference in this section to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under Subtitle A of the Code.

(e) *Exclusion for certain de minimis fringe benefits.* Nothing contained in this section shall preclude the exclusion of the value of an employee award that is otherwise qualified for exclusion under section 132(e).

Par. 4. Section 1.102–1 is amended as follows:

(a) The last sentence of paragraph (a) is removed.

(b) A new paragraph (f) is added immediately following paragraph (e) to read as follows.

§ 1.102–1 Gifts and inheritances.

* * * * *

(f) *Exclusions*—(1) *In general.* Section 102 does not apply to prizes and awards (including employee achievement awards) (see section 74); certain de minimis fringe benefits (see section 132); any amount transferred by or for an employer to, or for the benefit of, an employee (see section 102(c)); or to qualified scholarships (see section 117).

(2) *Employer/Employee transfers.* For purposes of section 102(c), extraordinary transfers to the natural objects of an employer's bounty will not be considered transfers to, or for the benefit of, an employee if the employee can show that the transfer was not made in recognition of the employee's employment. Accordingly, section 102(c) shall not apply to amounts transferred between related parties (*e.g.*, father and son) if the purpose of the transfer can be substantially attributed to the familial relationship of the parties and not to the circumstances of their employment.

§ 1.274–1 [Amended]

Par. 5. Section 1.274–1 is amended by removing everything after the word "business" in the last sentence of paragraph (d) and adding in its place "activity, see § 1.274–6,"; revising paragraph (e) and adding paragraph (f) to read as follows:

* * * (e) treatment of personal portion of entertainment facility, see § 1.274–7, and (f) employee achievement awards, see § 1.274–8.

§ 1.274–3 [Amended]

Par. 6. Section 1.274–3 is amended as follows:

(a) The last sentence of paragraph (b)(1) is amended by substituting "subsections (b) and (c) of section 74" for "section 74(b)".

(b) The language "recipient, or" at the end of paragraph (b)(2)(ii) is replaced by the language "recipient."

(c) Subdivisions (iii) and (iv) of paragraph (b)(2) are removed.

(d) The first, second, and fourth sentences of the flush material immediately following subdivision (iv) are removed and the last sentence is amended by substituting "sections 61, 74, 102, and 132" for "sections 61, 74, and 102".

(e) Paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f).

§ 1.274–8 [Redesignated as § 1.274–9]

Par. 7. Section 1.274–8 is redesignated as § 1.274–9 and a new § 1.274–8 is added immediately following § 1.274–7 to read as set forth below.

§ 1.274–8 Disallowance of certain employee achievement award expenses.

(a) *In general.* No deduction is allowable under section 162 or 212 for any portion of the cost of an employee achievement award (as defined in section 274(j)(3)(A)) in excess of the deduction limitations of section 274(j)(2).

(b) *Deduction limitations.* The deduction for the cost of an employee achievement award made by an employer to an employee: (1) Which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and (2) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600. Thus, the $1,600 limitation is the maximum amount that may be deducted by an employer for all employee achievement awards granted to any one employee during the taxable year.

(c) *Definitions*—(1) *Employee achievement award.* The term "employee achievement award", for purposes of this section, means an item of tangible personal property that is transferred to an employee by reason of the employee's length of service or safety achievement. The item must be awarded as part of a meaningful presentation, and under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation. For purposes of section 274(j), an award made by a sole proprietorship to the sole proprietor is not an award made to an employee.

(2) *Tangible personal property.* For purposes of this section, the term "tangible personal property" does not include cash or a certificate (other than a nonnegotiable certificate conferring only the right to receive tangible personal property). If a certificate entitles an employee to receive a reduction of the balance due on his account with the issuer of the certificate, the certificate is a negotiable certificate and is not tangible personal property for purposes of this section. Other items that will not be considered to be items of tangible personal property include vacations, meals, lodging, tickets to theater and sporting events, and stocks, bonds, and other securities.

(3) *Meaningful presentation.* Whether an award is presented as part of a meaningful presentation is determined by a facts and circumstances test. While the presentation need not be elaborate, it must be a ceremonious observance emphasizing the recipient's achievement in the area of safety or length of service.

(4) *Disguised compensation.* An award will be considered disguised compensation if the conditions and circumstances surrounding the award create a significant likelihood that it is payment of compensation. Examples include the making of employee achievement awards at the time of annual salary adjustments or as a substitute for a prior program of awarding cash bonuses, the providing of employee achievement awards in a manner that discriminates in favor of highly paid employees, or, with respect to awards the cost of which would otherwise be fully deductible by the employer under the deduction limitations of section 274(j)(2), the making of an employee achievement award the cost of which to the employer is grossly disproportionate to the fair market value of the item.

(5) *Qualified plan awards*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, the term "qualified plan award" means an employee achievement award that is presented pursuant to an established written plan or program that does not discriminate in terms of eligibility or benefits in favor of highly compensated employees. See section 414(q) of the Code for the definition of highly compensated employees. Whether an award plan is established shall be determined from all the facts and circumstances of the particular case, including the frequency and timing of any changes to the plan. Whether or not an award plan is discriminatory shall be determined from all the facts and circumstances of the particular case. An award plan may fail to qualify because it is discriminatory in its actual operation even though the written provisions of the award plan are nondiscriminatory.

(ii) *Items not treated as qualified plan awards.* No award presented by an employer during the taxable year will be considered a qualified plan award if the average cost of all employee achievement awards presented during the taxable year by the taxpayer under any plan described in paragraph (c)(5)(i) of this section exceeds $400. The average cost of employee achievement awards shall be computed by dividing (A) the sum of the costs to the employer for all employee achievement awards (without regard to the deductibility of those costs) by (B) the total number of employee achievement awards presented. For purposes of the preceding sentence, employee achievement awards of nominal value shall not be taken into account in the computation of average cost. An employee achievement award that costs the employer $50 or less shall be considered to be an employee achievement award of nominal value.

(d) *Special rules*—(1) *Partnerships.* Where employee achievement awards are made by a partnership, the deduction limitations of section 274(j)(2) shall apply to the partnership as well as to each member thereof.

(2) *Length of service awards.*—An item shall not be treated as having been provided for length of service achievement if the item is presented for less than 5 years employment with the taxpayer or if the award recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 calendar years. An award presented upon the occasion of a recipient's retirement is a length of service award subject to the rules of this section. However, under appropriate circumstances, a traditional retirement award will be treated as a de minimis fringe. For example, assume that an employer provides a gold watch to each employee who completes 25 years of service with the employer. The value of the gold watch is excluded from gross income as a de minimis fringe. However, if the employer provides a gold watch to an employee who has not completed lengthy service with the employer or on an occasion other than retirment, the value of the watch is not excludable from gross income under section 132(e).

(3) *Safety achievement awards*—(i) *In general.* An item shall not be treated as having been provided for safety achievement if—

(A) During the taxable year, employee achievement awards (other than awards excludable under section 132 (e)(1)) for safety achievement have previously been awarded by the taxpayer to more than 10 percent of the eligible employees of the taxpayer, or

(B) Such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(ii) *"Eligible employee" defined.* An eligible employee is one not described in paragraph (d)(3)(i)(B) of this section and who has worked in a full-time capacity for the taxpayer for a minimum of one year immediately preceding the date on which the safety achievement award is presented.

(iii) *Special rules.* Where safety achievement awards are presented to more than 10 percent of the taxpayer's eligible employees, only those awards presented to eligible employees before 10 percent of the taxpayer's eligible employees are exceeded shall be treated as having been provided for safety achievement. Where the only safety achievement awards presented by an employer consist of items that are presented at one time during the calendar year, then, if safety achievement awards are presented to more than 10 percent of the taxpayer's eligible employees, the taxpayer may deduct an amount equal to the product of the cost of the item (subject to the applicable deduction limitation) and 10 percent of the taxpayer's eligible employees. Except as provided in the preceding sentence, no award shall be treated as having been provided for safety achievement except to the extent that it can be reasonably demonstrated that that award was made before the 10 percent limitation was exceeded.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-366 Filed 1-6-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to definitions, permitting, backfilling and grading, hydrology, soils, alluvial valley floors, alternate reclamation, remining, underground mining, prospecting, bonding, areas where mining is prohibited, and inspection and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguards, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t. February 8, 1989. If requested, a public hearing on the proposed amendment will be held on February 3, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on January 24, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 265-5776.

Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 11th Avenue, Helena, MT 59620, Telephone: (406) 444-2074.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in **"ADDRESSES."**

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letter dated December 21, 1988, (administrative record No. MT-5-1), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a July 2, 1985 letter that OSMRE sent in accordance with 30 CFR 732.17(c). The regulations that Montana proposes to amend are: Definitions and strip mine permit application requirements, Administrative Rules of Montana (ARM) 26.4 Sub-Chapter 3; mine permit and test pit prospecting permit procedures, ARM 26.4 Sub-Chpater 4; backfilling and grading requirements, ARM 26.4 Sub-Chapter 5; transportation facilities, use explosives, and hydrology, ARM 26.4 Sub-Chapter 6; topsoiling, revegetation, and protection of wildlife and air resources, ARM 26.4 Sub-Chapter 7; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 Sub-Chapter 8; underground coal and uranium mining, ARM 26.4 Sub-Chapter 9; prospecting, ARM 26.4 Sub-Chapter 10; bonding, insurance, reporting, and special areas, ARM 26.4 Sub-Chapter 11; special departmental procedures, ARM 26.4 Sub-Chapter 12; and miscellaneous provisions, ARM 26.4 Sub-Chapter 13.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.s.t. on January 24, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 27, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-314 Filed 1-6-89; 8:45 a.m.]

BILLING CODE 4310-05-M

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of proposed amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program).

The proposed amendments consist of changes to restrictions on financial interests of State employees, fish and wildlife information, performance bonds, and individual civil penalties. The amendments are intended to revise the Oklahoma program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on February 8, 1989, will not necessarily be considered in the decision process.

Upon request, OSMRE will hold a public hearing on the proposed amendments on February 3, 1989, beginning at 9:00 a.m., c.s.t.

OSMRE will accept requests for a public hearing until 4:30 p.m., c.s.t. on January 24, 1989. If no person has contacted OSMRE by that date to express an interest in testifying at the hearing, it will not be held. If only one person requests an opportunity to testify at the public hearing, a public meeting, rather than a hearing, will be held, and the results of the meeting will be included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Copies of the Oklahoma program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and the Oklahoma Department of Mines (ODM) during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the **Federal Register** notices of January 19, 1981 (46 FR 4910), April 2, 1982 (47 FR 14152), May 4, 1983 (48 FR 20050), and August 28, 1984 (49 FR 34000). Subsequent amendments to the Oklahoma program can be found at 30 CFR 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) OSMRE notified the Oklahoma Department of Mines (ODM) by letter, dated August 18, 1988 (Administrative Record No. OK–874), of the changes to the Oklahoma program that OSMRE believed to be necessary because of revisions made to the Federal rules during the period between October 1, 1983 and June 15, 1988. By letter dated September 16, 1988 (Administrative Record No. OK–862) ODM submitted a revised rule package reflecting the changes it agreed should be made, and providing copies of current statutes to support its position that some of the changes were not necessary. The letter did not indicate that the revised rules were being submitted as proposed amendments to the Oklahoma program.

By letter dated October 6, 1988, OSMRE notified ODM, under the provisions of 30 CFR 732.17(f)(1) of the changes necessary to make the Oklahoma program no less stringent than SMCRA and no less effective than the Federal rules. ODM responded, by letter dated November 14, 1988, (Administrative Record No. OK–866) asking OSMRE to consider the revised rules submitted on September 16, 1988, as proposed amendments to the Oklahoma program. The package previously submitted consisted of all of the Oklahoma rules with revisions to: Part 773, Requirements for Permits and Permit Processing; Part 705, Restriction on Financial Interests of State Employees; Part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; Part 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; and adding Part 846, Individual Civil Penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15. If approved by OSMRE and promulgated by Oklahoma, the proposed amendments will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma, will not necessarily be considered in the final rulemaking or included in the Oklahoma Administrative Record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 29, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–370 Filed 1–6–89; 8:45 am]

BILLING CODE 4310–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3503–2]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from December 27, 1988, to January 24, 1989, the deadline for receiving written comments on the Agency's proposed approval of a technical amendment to the state-wide sulfur dioxide emission limit as a revision to the Washington state implementaion plan (SIP).

DATES: Comments must be received or postmarked on or before January 24, 1989.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch [10A–88–4], Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101. Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION: On November 7, 1988 (53 FR 44911) EPA solicited public comment on its proposal to approve a revision to WAC 173–400–040(6) (except paragraphs (a) and (b)) and its proposal to rescind approval of the exception provisions in the current SIP (WAC 173–400–040(6)(a) (i) and (ii)). The revision to WAC 173–400–040(6) involves a technical amendment which clarifies the averaging time for the sulfur dioxide emission limit.

On December 9, 1988 (53 FR 49680) EPA extended the public comment period until December 27, 1988. In response to a request for additional time to prepare comments, EPA is again extending the public comment period on this proposed rulemaking.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

Date: December 28, 1988.

Robie G. Russell,

Regional Administrator.

[FR Doc. 89–303 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 435

[FRL—3503–3]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to notice of data availability.

SUMMARY: On October 21, 1988, EPA published in the **Federal Register** a notice of data availability pertaining to effluent limitations guidelines and new source performance standards for the offshore subcategory of the oil and gas extraction point source category (53 FR 41356). Appendix A to that notice contained an analytical method for the measurement of oil content and diesel oil. The Agency inadvertently published an incomplete version of that method. Today's notice contains the correct version of that analytical method.

DATE: Comments on the October 21, 1988 notice of data availability and today's correction thereto must be submitted by January 19, 1989.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The supporting information and data described in the October 21, 1988 notice of data availability and today's correction thereto are available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (rear of EPA Library), 401 M Street, SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information concerning today's notice may be obtained from Mr. Dennis Ruddy at the above address, or call (202) 382–7131.

SUPPLEMENTARY INFORMATION: On October 21, 1988, EPA published a notice of data availability in the **Federal Register** (53 FR 41356) presenting and analyzing new information for the purpose of establishing best available technology (BAT) effluent limitations guidelines and new source performance standards (NSPS) for the drilling fluids and drill cuttings waste streams generated by offshore oil and gas extraction facilities.

The October 21, 1988 notice included a proposed analytical method for the measurement of oil content and diesel oil in drilling wastes. The method was presented in Appendix A to the October 21, 1988 notice of data availability and was titled "Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID." (53 FR 41383–90) The Agency inadvertently published an incomplete version of Appendix A. Today's notice contains the correct version of Appendix A in its entirety.

The Agency has determined that the differences between the version of the analytical method that was published on October 21, 1988 and the version appearing today are not extensive enough to warrant extending the deadline for submission of comments on the notice of data availability. Therefore, comments on all aspects of the October 21, 1988 notice of data availability and the material presented in today's corrective notice must be submitted by January 19, 1989. This closing date for the comment period, an extension of the original deadline for comments, was announced in a **Federal Register** notice that was published on December 5, 1988 (53 FR 48947).

Appendix A—Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID

1. Scope and Application

1.1 This method is used to determine the oil content and the identity and concentration of diesel oil in drilling fluid (mud) samples. It is applicable to all mud types and may also be used to determine the oil content and diesel oil in drill cuttings.

1.2 This method may be used for compliance monitoring purposes as part of the "Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category".

1.3 When this method is used to analyze samples for which there is no reference diesel oil, diesel oil identification should be supported by at least one additional qualitative technique. Method 1625 provides gas chromatograph/mass spectrometer (GC/MS) conditions appropriate for the qualitative and quantiative confirmation of the presence of the components of diesel oil (References 1–2).

1.4 The detection limit of this method is usually dependent upon the presence of other oils in the sample. Excluding interferences, estimated limits of 200 mg/kg of oil content and 100 mg/kg of diesel oil can be obtained.

1.5 Any modification of this method beyond those expressly permitted shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR 136.4 and 136.5.

1.6 The gas chromatography portions of this method are restricted to use by or under the supervision of analysts experienced in the use of gas chromatography and in the interpretation of gas chromatograms. Each laboratory that uses this method must generate acceptable results using the procedures described in Sections 8.2 and 12 of this method.

2. Summary of Method

2.1 A weighed amount of drilling mud is distilled using a retort apparatus. The distillate is extracted with methylene chloride and the extract is dried by passage through sodium sulfate. The extract is evaporated to dryness, and the total amount of oil in the sample is determined gravimetrically. The oil is redissolved in methylene chloride, an internal standard is added, and an aliquot is injected into a gas chromatograph (GC). The components of the oil are separated by the GC and detected using a flame ionization detector (FID).

2.2 Identification of diesel oil (qualitative analysis) is performed by comparing the pattern of GC peaks (rentention times and intensities) from the sample extract with the patter of GC peaks from a reference diesel oil sample. Identification of diesel oil is established when the reference diesel and sample patterns agree per the criteria in this method.

2.3 Quantitative analysis of diesel oil is performed using an internal standard technique.

3. Contamination and Interferences

3.1 Solvents, reagents, glassware and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms. All materials shall be demonstrated to be free from interferences under the conditions of the analysis by running method blanks initially and with each set of samples. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required. Glassware and, where possible, reagents are cleaned by solvent rinse or baking at 450 degrees C for one hour minimum.

3.2 There is no standard diesel oil. Oil components, as seen by GC–FID, will differ depending upon the oil source, the production date, production process, and the producer. In addition, there are three basic types of diesel oils: ASTM Designations No. 1–D, No. 2–D, and No. 4–D. The No. 2–D is the most common "diesel oil"; however, No. 2–D is sometimes blended with No. 1–D which has a lower boiling range. For rigorous identification and quantification of diesel oil in a drilling fluid sample by GC–FID, the chromatographic pattern from the diesel oil should be matched with the chromatographic pattern from a reference standard of the same diesel oil suspencted to be in the sample.

3.3 To aid in the identification of interferences, the chromatographic pattern from a reference sample of drilling fluid prior to use is compared to the chromatographic pattern of the drilling fluid after use. An interference is present when the pattern of the background oil does not match, but contributes substantially to, the pattern of the diesel oil in the sample.

3.4 Mineral oils are often added to drilling fluids for lubricity. These oils, when examined by GC–FID, contain some components common to diesel oil but have chromatographic patterns that are distinctly different from diesel oil.

The analyst must first determine if the sample chromatogram shows the presence of diesel, mineral, or a combination of both before reliable quantification can be performed. This method permits selection of GC peaks unique to diesel oil for determination of diesel oil in the presence of mineral oil.

4. Safety

4.1 The toxicity or carcinogenicity of each reagent used in this method has not been defined. Therefore, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of materials handling data sheets should also be made available to all personnel involved in the chemical analysis. Additional references to laboratory safety are available and have been identified (References 3–5) for the information of the analyst.

4.2 Methylene chloride has been classified as a known health hazard. All steps in this method which involve exposure to this compound shall be performed in an OSHA approved fume hood.

5. Apparatus and Materials

5.1 Sample bottle for discrete sampling

5.1.1 Bottle—4 oz Boston round wide mouth jar with Teflon lined screw cap (Sargent Welsh S–9184–72CA, or equivalent). New bottles are used as received with no further cleaning required.

5.1.2 Bottle mailer—to fit bottles above (Sargent Welsh 2306, or equivalent).

5.2 Distillation Apparatus

5.2.1 Retort—20 mL retort apparatus (IMCO Services Model No. R2100 or equivalent).

5.2.2 Glass wool—Pyrex (Corning 3950, or equivalent). Solvent extracted or baked at 450 degrees C for one hour minimum.

5.3 Extraction/drying apparatus

5.3.1 Separatory funnel—60 mL with Teflon stopcock.

5.3.2 Drying column—400 mm x 15 to 20 mm i.d. Pyrex chromatographic column equipped with coarse glass frit or glass wool plug.

5.3.3 Glass filtering funnel—crucible holder (Corning No. 9480, or equivalent).

5.3.4 Spatulas—stainless steel or Teflon

5.4 Evaporation/concentration apparatus

5.4.1 Kuderna-Danish (K–D) apparatus

5.4.1.1 Evaporation flask—500 mL (Kontes K–570001–0500, or equivalent), attached to concentrator tube with springs (Kontes K–662750–0012).

5.4.1.2. Concentrator tube—10 mL, graduated (Kontes K–570050–1025, or equivalent) with calibration verified. Ground glass stopper (size 19/22 joint) is used to prevent evaporation of extracts.

5.4.1.3 Snyder column—three ball macro (Kontes K–503000–0232, or equivalent).

5.4.1.4 Snyder column—two ball mircro (Kontes K–469002–0219, or equivalent).

5.4.1.5 Boiling chips

5.4.1.5.1 Glass or silicon carbide—approximately 10/40 mesh, extracted with methylene chloride and baked at 450 degrees C for one hr minimum.

5.4.1.5.2 Teflon (optional)—extracted with methylene chloride.

5.4.2 Water bath—heated, with concentric ring cover, capable of temperature control (+/−2 degrees C), installed in a fume hood.

5.4.3 Sample vials—amber glass, 1–5 mL with Teflon-lined screw or crimp cap, to fit GC autosampler.

5.5 Balances

5.5.1 Analytical—capable of weighing 0.1 mg. Calibration must be verified with class S weights each day of use.

5.5.2 Top loading—capable of weighing 10 mg.

5.6 Gas Chromatograph (GC)—analytical system with split injection, capillary column, temperature program with initial and final isothermal holds, and all required accessories including syringes, analytical columns, gases, detector, and recorder. The analytical system shall meet the performance specifications in Section 12.

5.6.1 Column—30 +/−5m × 0.25 +/−0.02mm i.d., 99% methyl, 1% vinyl, 1.0 um film thickness, bonded phase fused silica capillary (Supeloco SPB–1, or equivalent).

5.6.2 Detector—flame ionization. This detector has proven effective in the analyses of drilling fluids for diesel oil, and was used to develop the method performance statements in Section 16. Guidelines for using alternate detectors are provided in Section 11.1.

5.7 GC Data system—shall collect and record GC data, store GC runs in magnetic memory or on magnetic disk or tape, process GC data, compute peak areas, store calibration data including retention times and response factors, identify GC peaks through retention times, and compute concentrations.

5.7.1 Data acquisition—GC data shall be collected continuously throughout the analysis and stored on a mass storage device.

5.7.2 Response factors and calibration curves—the data system shall be used to record and maintain lists of response factors, and multi-point calibration curves (Section 7). Computations of relative standard deviation (coefficient of variation; CV) are used for testing calibration linearity. Statistics on initial (Section 8.2) and ongoing (Section 12.5) performance shall be computed and maintained.

5.7.3 Data processing—the data system shall be used to search, locate, identify, and quantify the compounds of interest in each GC analysis. Software routines shall be employed to compute and record retention times and peak areas. Displays of chromatograms and library comparisons are required to verify results.

6. Reagents

6.1 Sodium sulfate—anhydrous, (ACS) granular.

6.2 Methylene chloride—Nanograde or equivalent.

6.3 Reagent water—water in which the compounds of interest and interfering compounds are not detected by this method.

6.4 Internal standard—dissolve 1.0 g of 1,3,5-Trichlorobenzene (Kodak No. 1801 or equivalent) in 100 mL methylene chloride. Store in glass and tightly cap with Teflon line did to prevent loss of solvent by evaporation. Label with the concentration and date. Mark the level of the meniscus on the bottle to detect solvent loss.

6.5 Calibration standards—calibration standards are prepared from the same diesel oil expected to be in the sample; otherwise, No. 2 diesel oil is used. Calibration standards are prepared at the concentrations shown in Table 1.

6.5.1 Weigh the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride.

6.5.2 Using a micropipet or microsyringe, transfer 100 uL of each reference standard solution (Section 6.5.1) to a GC injection vial. Add 100 uL of the TCB internal standard (Section 6.4) to each vial and mix thoroughly. Calibration standards are made fresh daily to avoid solvent loss by evaporation.

6.6 QC standard—used for tests of initial (Section 8.2) and ongoing (Section 12.5) performance. Prepare a reference mud sample containing 20,000 mg/kg of diesel by adding 20.0 +/−0.2mg of No. 2 diesel oil and 10.0 +/−0.1 g of EPA Generic Mud No. 8 (Reference 6) to a clean retort cup (see Section 10.1). Mix the mud and diesel oil thoroughly with a metal spatula.

7. Calibration

7.1 Establish gas chromatographic operating conditions given in Table 2. Verify that the GC meets the performance criteria (Section 12) and the estimated detection limit (Section 1.4). The gas chromatographic system is calibrated using the internal standard technique.

7.2 Internal standard calibration procedure—1,3,5–Trichlorobenzene (TCB) has been shown to be free of interferences from the diesel oils tested in the development of this method. However, if an interference is known or suspected, the analyst must choose an alternative internal standard that is free from interferences.

7.2.1 Inject 1 uL of each reference oil standard containing the internal standard (Table 1 and Section 6.5.2) into the GC–FID. The TCB will elute approximately 8.5 minutes after injection. For the GC–FID used in the development of this method, the TCB internal standard peak was 30 to 50 percent of full scale at an attenuator setting of 8E–11 amp.

7.2.2 Individual response factors

7.2.2.1 Tabulate the peak area responses against concentration for each of the 10 largest peaks in the chromatogram (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the internal standard peak). (See Section 13 for guidance on peak selection.) Calculate response factors (RF) for each peak using the following equation:

Equation 1:

$$RF = \frac{(A_s)\,(C_{is})}{(A_{is})\,(C_s)}$$

where:

A_s = Area of the peak to be measured.

A_{is} = Area of the internal standard peak.

C_s = Concentration of the peak to be measured (mg/kg).

C_{is} = Concentration of the internal standard (mg/kg).

7.2.2.2 If the RF is constant (<15% CV) over the calibration range (Table 1), the RF can be assumed to be invariant and the average RF can be used for calculations. Alternatively, the results can be used to plot a calibration curve of response rations, A_s/A_{is}, vs RF.

7.2.2.3 Calibration verification—the average RF or a point on the calibration curve shall be verified on each working day by the measurement of one or more calibration standards. If the RF for any peak varies from the RF obtained in the calibration by more than ±15 percent, the test shall be repeated using a fresh calibration standard. Alternatively, a new calibration curve shall be prepared.

7.2.3 Combined response factor—to reduce the error associated with the measurement of a single peak, a combined response factor is used for computation of the diesel oil concentration. This combined response factor is the sum of the individual response factors as given in equations 2 or 3:

Equation 2:

RF combined = RF(1) + RF(2) . . . + RF(n)

Equation 3:

$$RF\ combined = \frac{(A_{s(1)} + A_{s(2)} \cdots + A_{s(n)})\,(C_{is})}{(A_{is})(C_s)}$$

where:

n is the number of individual peaks

$A_{s(1)} \ldots A_{s(n)}$ are the areas of the individual peaks.

8. Quality Assurance/Quality Control

8.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 7). The minimum requirements of this program consist of an initial demonstration of laboratory capability, an ongoing analysis of standards and blanks as a test of continued performance, analyses of spiked samples to assess accuracy, and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

8.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 8.2.

8.1.2 The analyst is permitted to modify this method to improve separations or lower the costs of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to achieve the estimated detection limit (Section 1.4) and to repeat the procedure in Section 8.2 to demonstrate method performance.

8.1.3 Analyses of spiked samples are required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in Section 8.3.

8.1.4 Analyses of duplicate samples are required to demonstrate method precision. The procedure and QC criteria for duplicates are described in § 8.4.

8.1.5 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in Section 8.5.

8.1.6 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the QC standard (Section 6.6) that the analysis system is in control. These procedures are described in Section 12.

8.1.7 The laboratory shall maintain records to define the quality of data that is generated. Development of accuracy statements is described in Sections 8.3.4 and 12.5.

8.2 Initial precision and accuracy—to establish the ability to generate acceptable precision and accuracy, the analyst shall perform the following operations:

8.2.1 Retort, extract, concentrate, and analyze four samples of the QC standard (Sections 6.6 and 10.1.3) according to the procedure beginning in Section 10.

8.2.2 Using results of the set of four analyses, compute the average recovery (X) in mg/kg and the standard deviation of the recovery (s) in mg/kg for each sample by the internal standard method (Sections 7.2 and 14.2).

8.2.3 For each compound, compare s and X with the corresponding limits for initial precision and accuracy in Table 4. If s and X meet the acceptance criteria, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method and the manufacturer's instructions, correct the problem, and repeat the test.

8.3 Method accuracy—the laboratory shall spike a minimum of 20 percent (one sample in each set of five samples) of all drilling fluid samples. This sample shall be spiked with the diesel oil that was added to the drilling fluid. If a reference standard of diesel oil that was added to the drilling fluid is not available, No. 2 diesel oil shall be used for this spike. If doubt of the identity and concentration of diesel oil in any of the remaining 80 percent of the samples exists, that sample shall be spiked to confirm the identity and establish the diesel oil concentration.

8.3.1 The concentration of the spike in the sample shall be determined as follows:

8.3.1.1 If, as in compliance monitoring, the concentration of the oil in the sample is being checked against a regulatory concentration limit, the spike shall be at that limit or at one to five times higher than the background concentration determined in Section 8.3.2, whichever concentration is larger.

8.3.1.2 If the concentration of the oil in a sample is not being checked against a limit, the spike shall be at the concentration of the QC standard (Section 6.6) or at one to five times higher than the background concentration, whichever concentration is larger.

8.3.2 Analyze one sample aliquot to determine the background concentration (B) of oil content and of diesel oil. If necessary, prepare a standard solution appropriate to produce a level in the sample at the regulatory concentration limit or at one to five times the background concentration (per Section 8.3.1). Spike a second sample aliquot with the standard solution and analyze it to determine the concentration after spiking (A) of each analyte. Calculate the percent recovery (P) of oil content and of diesel oil:

$P = 100(A-B)/T$

where T is the true value of the spike.

8.3.3 Compare the percent recovery for oil content and for diesel oil with the corresponding QC acceptance criteria in Table 4. If the results of the spike fail the acceptance criteria, and the recovery of QC standard in the ongoing precision and recovery test (Sections 10.1.3 and 12.5) is within the acceptance criteria in Table 4, and interference may be present (see Sections 3 and 15 for identification of interferences). In this case, the result may not be reported for regulatory compliance purposes. If, however, the results of both the spike and the ongoing precision and recovery test fail the acceptance criteria, the analytical system is judged to be out of control and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.3.4 As part of the QA program for the laboratory, method accuracy for samples shall be assessed and records shall be maintained. After the analysis of five spiked samples in which the recovery passes the test in Section 8.3, compute the average percent recovery (P) and the standard deviation of the percent recovery (s_p). Express the accuracy assessment as a percent recovery interval from $P-2s_p$ to $P+2s_p$. For example, if $P=90\%$ and $s_p=10\%$ for five analyses of diesel oil, the accuracy interval is expressed as 70 to 110%. Update the accuracy assessment on a regular basis (*e.g.*, after each 5 to 10 new accuracy measurements).

8.4 The laboratory shall analyze duplicate samples for each drilling fluid type at a minimum of 20 percent (one sample for each five sample set). A duplicate sample shall consist of a well-mixed, representative aliquot of the sample.

8.4.1 Analyze one sample in the set in duplicate per the procedure beginning in Section 10.

8.4.2 Compute the relative percent difference (RPD) between the two results per the following equation:

Equation 4:

$$RPD = \frac{(D1-D2)}{(D1+D2)/2} \times 100$$

where:

D1 = concentration of diesel in the sample

D2 = concentration of diesel oil in the second (duplicate) sample

8.4.3 The relative percent difference for duplicates shall meet the acceptance criteria in Table 5. If the criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.5 Blanks—reagent water blanks are analyzed to demonstrate freedom from contamination.

8.5.1 Extract and concentrate a reagent water blank initially and with each sample set (samples started through the analysis on the same day, to a maximum of 5 samples). Analyze the blank immediately after analysis of the QC standard (Section 6.6) to demonstrate freedom from contamination.

8.5.2 If any of the components of diesel oil or any potentially interfering compound is detected in a blank, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination.

8.6 Comparison of gravimetric and diesel oil measurements.

8.6.1 Compare the concentration of the oil content (Section 14.1.2) determined gravimetrically with the diesel oil concentration determined by GCFID (Section 14.2.2). If the diesel oil concentration exceeds the gravimetric oil concentration, the analysis has been performed improperly. Correct the error or repeat the sample analysis beginning with Section 10.

8.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for initial (Section 8.2) and ongoing (Section 12.5) precision and recovery should be identical, so that the most precise results will be obtained. The GC instrument will provide the most reproducible results if dedicated to the settings and conditions required for the analyses of the analyte given in this method.

8.8 Depending on specific program requirements, field replicates and field spikes of diesel oil into samples may be required to assess the precision and accuracy of the sampling and sample transporting techniques.

9. Sample Collection, Preservation, and Handling

9.1 Collect drilling fluid samples in wide-mouth glass containers following conventional sampling practices (Reference 8).

9.2 Samples must be representative of the entire bulk drilling fluid. In some instances, composite samples may be required.

9.3 Maintain samples at 0 to 4 degrees C from the time of collection until extraction.

9.4 Sample and extract holding times for this method have not yet been established. However, based on tests of wastewater for the analytes determined in this method, samples shall be extracted within seven days of collection and extracts shall be analyzed within 40 days of extraction.

9.5 As a precaution against analyte and solvent loss or degradation, sample extracts are stored in glass bottles with Teflon lined caps, in the dark, at −20 to −10 degrees C.

10. Sample Extraction and Concentration

10.1 Retort

10.1.1 Tare the retort sample cup and cap to the nearest 0.1 g. Transfer a well homogenized and representative portion of the drilling fluid to be tested into the sample cup. Do not fill the retort cup to the top so that excess sample must be wiped off. Place the cap on the cup and reweigh. Record the weight of the sample to the nearest 0.1 g. Note: On agitation, most drilling fluids entrain air as small bubbles. The extent of air entrainment is uncertain and is difficult to detect when the mud is poured into the retort cup. By weighing the drilling fluid, the quantitative detection of diesel oil is improved. In addition, by using a gravimetric measurement of the amount of sample, the retort cup does not need to be completely filled. This procedure avoids the error that occurs when the cup is filled and the oil rises to the surface of the sample and must be wiped off (as occurs if the manufacturer's instructions are followed), thus resulting in a loss of oil.

10.1.2 Follow the manufacturer's instructions for retort of the drilling fluid. Substitute 6 g of loosely packed glass wool for the steel wool in the manufacturer's instructions and distill the sample into a glass receiver. The presence of solids in the distillate require that the distillation be rerun starting with a new portion of sample. Placing more glass wool in the retort expansion chamber, per the manufacturer's instructions, will help prevent the solids from being carried over in the distillation.

10.1.3 QC standard—used for tests of initial (section 8.2) and ongoing (section 12.5) precision and accuracy. For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a QC sample as follows:

10.1.3.1 Place the QC standard (section 6.y) in the retort cup beginning in section 10.1.

10.1.3.2 Analyze the QC standard beginning with section 10.1.2 then proceeding to section 10.2.

10.1.4 Blank—For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a blank as follows:

10.1.4.1 Place 10 mL of reagent water in a clean, tared, retort cup and weigh to the nearest mg. Record the weight of the reagent water.

10.1.4.2 Analyze the blank beginning with section 10.1.2 then proceeding to section 10.2.

10.2 Extraction and drying.

10.2.1 After the distillation is complete, pour the retort distillate into a 60 mL separatory funnel. Quantitatively rinse the inner surfaces of the retort stem and condenser with methylene chloride into the separatory funnel. Rinse the receiver with two full receiver volumes of methylene chloride and add to the separatory funnel.

10.2.2 Stopper and shake the funnel for one minute, with periodic venting to prevent a buildup of gas pressure. Allow the layers to separate. Prepare a glass filtering funnel by plugging the bottom with a piece of glass wool and pouring in 1 to 2 inches of anhydrous sodium sulfate. Alternatively, a drying column may be used. Wet the funnel or column with a small portion of methylene chloride and allow the methylene chloride to drain to a waste container.

10.2.3 Place the glass filtering funnel or drying column into the top of a Kuderna-Danish (K–D) flask equipped with a preweighed 10 mL receiving flask. Add a preweighed boiling chip to the receiving flask. Drain the methylene chloride (lower) layer into the glass filtering funnel or drying column, and collect the extract in the K–D flask.

10.2.4 Repeat the methylene chloride extraction twice more, rinsing the retort with two thorough washings each time and draining each methylene chloride extract through the funnel or drying column into the K–D flask.

10.3 Concentration

10.3.1 Place a Snyder column on the K–D flask. Prewet the Snyder column by adding about one mL of methylene chloride to the top. Place the K/D apparatus on a hot water bath (60 to 65 degrees C) so that the concentrator tube is partially immersed in the hot water, and the entire lower rounded surface of the flask is bathed with hot vapor. Adjust the vertical position and the water temperature as required to complete the concentration in 15 to 20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood with condensed solvent. Concentrate the sample until it is free of methylene chloride. Remove the K–D apparatus from the hot water bath and allow to cool.

10.3.2 Weigh and record the final weight of the receiving flask.

10.3.3 Dissolve the oil in methylene chloride and adjust the final volume to 1.0 mL. If the extract did not concentrate to a final volume of 1.0 mL or less, adjust the final volume to 10.0 mL.

11. Gas Chromatography

11.1 Table 3 lists the retention times that can be achieved under the condition in Table 2 for the n-alkanes of interest. Examples of separations that can be achieved are shown in Figure 1.[1] Other retort devices, columns, chromatographic conditions, or detectors may be used if the estimated detection limits (Section 1.4) and the requirements of Section 8.2 are met.

11.2 Using a micropipet or microsyringe, transfer equal 100 uL volumes of the sample extract or QC standard extract (Section 10.3.3) and the TCB internal standard solution (Section 6.4) into a GC injection vial. Cap tightly and mix thoroughly.

11.3 Inject 1 uL of the sample extract or reference standard into the GC using the conditions in Table 2.

11.4 Begin data collection and the temperature program at the time of injection.

11.5 If the area of any peak exceeds the calibration range of the system, make a 10-fold dilution of the extract (Section 10.3.3), mix a 100 uL aliquot of this dilute extract with 90 uL of the internal standard solution (Section 6.4), and reanalyze.

12. System and Laboratory Performance

12.1 At the beginning of each working day during which analyses are performed, GC calibration is verified. For these tests, analysis of the 300 mg/mL calibration standard (Table 1) shall be used to verify all performance criteria. Adjustment and/or recalibration (per Section 7) shall be performed until all performance criteria are met. Only after all performance criteria are met may the QC standard, blank, and samples be analyzed.

12.2 Retention times

12.2.1 Retention time of the internal standard—the absolute retention time of the TCB internal standard shall be within the range of 7.96 to 8.08 minutes.

12.2.2 Relative retention times of the n-alkanes—the retention times of the n-alkanes relative to the TCB internal standard shall be within the limits given in Table 4.

12.3 Calibration verification

12.3.1 Compute the response factor for each peak by the internal standard technique (Section 7.2).

12.3.2 For each peak, compare the response factor with the response factor from the initial calibration (Section 7.2.2). If all response factors are within ±15 percent of their respective values in the initial calibration, system calibration has been verified. If not, prepare a fresh calibration standard and repeat the test (Section 12.1), or recalibrate (Section 7).

[1] Figure 1—Sample Chromatograms, is not published in the **Federal Register** but is available in the public docket. See "Addresses" section

12.4 Multiple GC peaks—each n-alkane shall give a single, distinct GC peak.

12.5 Ongoing precision and accuracy

12.5.1 Compute the oil content concentration and the concentration of diesel oil in the QC standard in each sample set (Section 10.1.3) prior to analysis of any sample in the set.

12.5.2 Compare the concentration with the QC limit in Table 4. If the concentrations of oil content and of diesel oil in the QC standard meet the acceptance criteria, system performance is acceptable and analysis of samples may proceed. If, however, the concentrations do not meet the acceptance criteria, system performance is unacceptable. In this event, correct the problem, reprocess the sample set (Section 10), and repeat the ongoing precision and accuracy test (Sections 10.1.3 and 12.5).

12.5.3 Add results that pass the specifications in Section 12.5.2 to initial and previous ongoing data. Update QC charts to form a graphic representation of continued laboratory performance. Develop statements of laboratory accuracy for oil content and diesel oil in drilling fluids by calculating the average percent recovery (R) and the standard deviation of percent recovery (s_r). Express the accuracy statement as a recovery interval from $R-2s_r$ to $R+2s_r$. For example, if R=95 percent and $s_r=5$ percent, the accuracy is 85 to 105 percent.

13. Qualitative Determination

If less than 10 GC peaks (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the TCB internal standard peak) are present in the analysis of the sample, and the QC tests (Sections 8 and 12) for the sample set are acceptable, diesel oil is not present in the sample. If 10 or more GC peaks are present in the analysis of the sample, diesel oil is identified by comparing the relative retention times and relative areas of peaks from the analysis of the concentrated extract of a mud sample to the relative retention times and relative areas of peaks from the reference standard.

13.1 Relative retention times—the n-alkane peaks (Table 3) shall be within the limits in Table 3. If the relative retention times are not within these limits, repeat the analysis of the reference diesel oil and the analysis of concentrated extract of the mud sample and compare the relative retention times. If the relative retention times of the n-alkane peaks do not agree, the retention times of the 10 largest components that agree within ±1 percent are used for the identification of diesel oil (per Section 13.2) and for determination of the concentration of diesel oil in the mud sample (per Section 14).

13.2 Distribution of peak area ratios (Reference 9)—diesel oil is further identified by comparing the distribution of the area ratios of peaks in the chromatogram of the calibration standard (Section 6.5) to these same ratios in the chromatogram of the sample.

13.2.1 Compare the chromatograms of the calibration standard and the sample.

13.2.2 Select the 10 peaks largest in area in the chromatogram of the sample that are in relative retention time agreement with the corresponding peaks in the calibration standard (Section 13.1) and appear to be unique to the calibration standard. Exclude the solvent peak, the internal standard peak, any peaks that elute prior to the internal standard peak, and any multiplet and unresolved peaks. For most samples, these will be the n-alkane peaks.

13.2.3 Using the largest peak of the 10 peaks as reference, divide the area of each of the other nine peaks by the area of this largest peak. Repeat this division process for the same 10 peaks in the calibration standard.

13.2.4 Compare the ratios of areas of the nine peaks in the sample with the respective ratios of the areas of the nine corresponding peaks in the reference standard.

13.2.4.1 If all of these ratios agree within ±21 percent, diesel has been positively identified. The quantity of diesel oil is then determined per Section 14.

13.2.4.2 If any of the ratios do not agree with ±21 percent, an interference is suspected.

13.2.4.3 If other peaks can be found that agree in relative retention time (Section 13.1) and in ratio (Section 13.2.4.1), use these peaks for quantitation per Section 14. If 10 peaks that agree cannot be found, Method 1625 (Revision C or greater) shall then be used to determine the presence and concentrations of the polynuclear atomic hydrocarbons (PAH's) present in the sample.

14. Quantitative Determination

14.1 Oil content by gravimetry.

14.1.1 Subtract the weight of the preweighed receiving flask and boiling chip (Section 10.2.3) from the final weight of the receiving flask (Section 10.3.2).

14.1.2 Calculate the concentration of oil content in the sample using the following equation:

Equation 5:

$$C(mg/kg) = \frac{W_f}{W_s} \times 1000$$

where:

W_f = final weight of oil in mg (from Section 14.1.1)

W_s = wet weight of sample in grams (from Section 10.1.1)

14.2 Diesel oil by gas chromatography

14.2.1 Compute the concentration of diesel oil in the sample extract using the combined response factor given in Section 7.3.3 for the 10 largest peaks chosen in Section 13 using the following equation:

Equation 6:

$$C_{ex}(mg/mL) = \frac{(C_{st})(A_{ex(n)} + A_{ex(n)} \ldots + A_{ex(n)})}{(A_{st})(RF\ combined)}$$

where:

C_{ex} is the concentration of the oil in the extract

14.2.2 Calculate the concentration of diesel oil (in mg/kg) in the sample as follows:

Equation 7:

$$C(mg/kg) = \frac{(C_{ex})(V_{ex})}{(W_s)} \times 1000$$

where:

V_{ex} = final extract volume in mL (from Section 10.3.3 or 14.2.3)

W_s = wet weight of sample in grams (from Section 10.1.1)

14.2.3 If the area of any peak in the chromatographic pattern exceeds the calibration range of the GC, the extract is diluted by a factor of 10 with methylene chloride, 100 uL is withdrawn and mixed with 90 uL of the internal standard solution (Section 6.4) and the diluted extract is reanalyzed.

14.3 Results of analyses of drilling fluids are reported in units of mg/kg (wet weight) to three significant figures. Results for samples that have been diluted are reported at the least dilute level at which the peak areas are within the calibration range (Section 14.2.3).

15. Complex Samples

15.1 The most common interference in the determination of diesel oil is from mineral oil in the drilling fluid (see Sections 3 and 13). Drilling fluids may also contain proprietary lubricity additives that can interfere with the identification and quantification of diesel oil.

15.2 The presence of mineral oil or other interfering oils and additives can often be determined by comparing the pattern of chromatographic peaks in the sample with the patterns of chromatographic peaks in the reference standard (Sections 6.5 and 10.1.3) and in the spiked sample (Section 8.3).

15.3 In cases where there is a mixture of diesel and mineral oil, the analyst may have to choose some of the smaller early or late eluting peaks present in the chromatographic pattern of the diesel oil, and not present in the chromatographic pattern of the mineral oil, to determine the diesel content. Quantification using these peaks is performed by using these peaks for calibration (Section 7) and for determination of the final concentration (Section 14).

16. Method Performance

16.1 This method was developed by two laboratories that tested for diesel oil in drilling fluids (mainly drilling muds) over a two-period. The performance data for this method are based on the performance of the method in these two laboratories (Reference 10).

16.2 The most commonly occurring drilling fluid in the tests of this method was a seawater lignosulfonate mud (EPA Generic Mud No. 8). The estimated detection limit for diesel oil in this mud is 100 ug/kg.

References

1. Brown, John S. "Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives", Proceedings of Tenth Annual Analytical Symposium, USEPA, Industrial Technology Division (WH-552), 401 M St., Washington, DC 20460, March 19–20, 1986.

2. Brown, John S, "Final Report for Research Program on: Organic Chemical Characterization of Diesel and Mineral Oils used as Drilling Mud Additives", Phase II, Contract Reference Agreement No. 501-P-5476R, to Offshore Operators Committee, Environmental Subcommittee, Houston, TX, Prepared by Battelle Ocean Science and Technology Department, 397 Washington St., Duxbury, MA 02332.

3. "Carcinogens—Working With Carcinogens", Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77-206, August 1977.

4. "OSHA Safety and Health Standards, General Industry", [29 CFR Part 1910], Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).

5. "Safety in Academic Chemistry Laboratories", American Chemical Society Publication, Committee on Chemical Safety, 3rd Edition, 1979.

6. Available through the EPA Sample Control Center, P.O. Box 1407, Alexandria, VA 22313 (703-557-5040).

7. "Handbook of Analytical Quality Control in Water and Wastewater Laboratories", USEPA, EMSL, Cincinatti, OH 45268, EPA-600/4-79-019 (March 1979).

8. "Standard Practice for Sampling Water", ASTM Annual Book of Standards, ASTM, Philadelphia, PA 76 (1980).

9. Boehm, Paul D., and Sauer, Theodore C., "Review and Evaluation of Draft EPA Method 1651 Total Oil and Diesel Oil in Drilling Discharges by Retort Gravimetry and GC-FID", Battelle Ocean Sciences, 397 Washington St., Duxbury, MA 02332 (March 4, 1988).

10. Rushneck, D.R., and Eynon B.P., "Precision and Recovery Analysis of DPMP Diesel Measurements", Memorandum to Dennis Ruddy, USEPA, Industrial Technology Division (WH-552), 401 M St. SW., Washington, DC 20460 (23 August 1987, draft).

TABLE 1.—CONCENTRATION OF CALIBRATION STANDARDS

Expected concentration in sample	Wt of Diesel oil in 10 mL volumetric[1] (g)	Concentration in standard
50,000 mg/kg	(2)	
30,000 mg/kg	7.6	760 mg/mL
10,000 mg/kg	3.0	300 mg/mL
5,000 mg/kg	1.5	150 mg/mL
2,000 mg/kg	0.6	60 mg/mL

[1] Weigh oil to the nearest mg.
[2] Use undiluted oil.

TABLE 2.—GAS CHROMATOGRAPHIC OPERATING CONDITIONS—METHOD 1651[1]

Injection port, transfer line, and detector temperatures=275 deg. C
Column temperature program:
Initial temperature: 90 deg. C
Initial time: 0 minutes
Ramp: 90-250 deg. C @ 5 deg. C per minute
Final temperature: 250 deg. C
Final hold: 10 minutes or until all peaks have eluted.
Carrier gas and flow rates:
Carrier: nitrogen or helium
Velocity: 20-40 cm/sec @ 90 deg. C
Split ratio: 80:1-120:1
Makeup gas: as required by manufacturer
Hydrogen and air flow rates: as specified by manufacturer
Detector amplifier settings: 10-11 amp full scale.
Attenuation is adjusted so that the highest peaks are on scale in the most concentrated standard.
Recorder: Chart speed of 1-2 cm/min (fixed).

[1] Conditions are approximate and can be adjusted to meet the performance criteria in Section 12.

TABLE 3—RETENTION TIMES AND RELATIVE RETENTION TIME LIMITS FOR MAJOR COMPONENTS OF DIESEL OIL—METHOD 1651

Retention time	Compound	
	Mean	Relative
TCB	8.0	1.00-1.00
n-C12	9.9	1.22-1.24
n-C13	12.6	1.55-1.57
n-C14	15.3	1.89-1.92
n-C15	17.9	2.21-2.25
n-C16	20.4	2.52-2.56
n-C17	22.9	2.82-2.88
n-C18	25.2	3.12-3.15
n-C19	27.3	3.39-3.43
n-C20	29.4	3.66-3.71
n-C21	31.5	3.90-3.97
n-C22	33.4	4.14-4.21
n-C23	35.3	4.37-4.45
n-C24	37.1	4.58-4.69

TABLE 4.—QC ACCEPTANCE CRITERIA FOR PRECISION AND RECOVERY—METHOD 1651

Analyte	Test Concentration (mg/kg)	Limit for s (mg/kg)	Range for X (mg/kg)	Range for P (mg/kg)
Oil Content by gravimetry	20,000	3,400	18,000–23,700	16,700–24,900
	n [1]	0.17n	0.88n– 1.16n	0.82n– 1.22n
Diesel oil by GC	20,000	3,600	17,200–20,300	13,600–21,400
	n [1]	0.18n	0.80n– 1.08n	0.73n– 1.14n

[1] For other test concentrations in the range of 1,000—50,000 mg/kg, assuming a spike to background ratio of 5:1.

TABLE 5—QC ACCEPTANCE CRITERIA FOR DUPLICATES—METHOD 1651

Concentration detected (mg/kg)	Relative percent difference	
	Oil content	Diesel oil
500	36	94
750	30	68
1,000	28	54
2,000	24	34
5,000	21	22
10,000	21	18
20,000	20	16
50,000	20	15

Dated: December 27, 1988.

William A. Whittington.

Acting Assistant Administrator for Water.

[FR Doc. 89–304 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register

Vol. 54, No. 5

Monday, January 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 88–034N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that meetings of the Meat and Poultry and Seafood Subcommittees of the National Advisory Committee on Microbiological Criteria for Foods will be held on Monday, Tuesday, and Wednesday, January 23–25, 1989, from 9:00 a.m. to 5:00 p.m., at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microoganisms that indicate whether foods have been produced using good manufacturing practices.

The subcommittees, which are comprised of committee members, will be meeting to review and discuss assignments referred to them by the full committee and to prepare comments on those assignments.

The meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on: January 5, 1989.

Kenneth A. Gilles,

Chairman.

[FR Doc. 89–505 Filed 1–6–89; 8:55 am]

BILLING CODE 3410–DM–M

Federal Grain Inspection Service

Designation Renewal of the Lima Agency (OH) and the State of Virginia (VA)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Lima Grain Inspection Service, Inc., and the Virginia Department of Agriculture and Consumer Services as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Lima's and Virginia's designations terminate on January 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the August 2, 1988, **Federal Register** (53 FR 29075). Applications were to be postmarked by September 1, 1988. Lima and Virginia were the only applicants for designation in their area and each applid for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the October 5, 1988, **Federal Register** (53 FR 39121) and requested comments on the applicants for designation. Comments were to be postmarked by November 17, 1988; no comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Lima and Virginia are able to provide official services in the geographic area for which the Service is renewing their designation. Effective February 1, 1989, and terminating January 31, 1992, Lima is designated to provide official inspection services and Virginia is designated to provide official inspection and Class X or Class Y weighing services in their specified geographic areas, as previously described in the August 2 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Lima at (419) 223–7866, and Virginia at (804) 786–3939.

Pub L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: January 3, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–310 Filed 1–6–89; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has requested an expedited OMB clearance review of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Certificate of Eligibility for Atlantic Billfishes.

Form number: None.

Type of Request: New collection—Expedited review requested.

Burden: 10 respondents, 16.5 reporting hours. Average hours per response is .33 hours.

Needs and Uses: A rulemaking for the Atlantic Billfish fishery would prohibit the sale of imported billfish caught in the management area. Persons wishing to import billfish must certify that the

fish were caught outside of the management area. The information is used for fishery management and enforcement.

Affected Public: Individuals, Business and other for-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-22-M

U.S. Dept. of Commerce
NOAA--NMFS
50 CFR 644-24(B)

CERTIFICATE OF ELIGIBILITY
-BILLFISHES-
(white marlin, blue marlin, sailfish, longbill spearfish)

Approved OMB No.
Approval Expires:

1. INFORMATION FOR FISHING VESSEL WHICH CAUGHT BILLFISHES

Name of Fishing Vessel _____ Homeport _____

2. PORT OF OFFLOADING _____ 3. DATE OF OFFLOADING _____

4. DEALER'S DECLARATION

The undersigned hereby certifies that the above information is complete, true and correct to the best of his/her knowledge and that the billfishes accompanying this form were not harvested from their respective management units described below:

FOR BLUE MARLIN AND WHITE MARLIN: Waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5° N. latitude.

FOR SAILFISH: Waters of the North and South Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) west of 30° W. longitude.

FOR LONGBILL SPEARFISH: Waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

NAME (PRINTED OR TYPED) SIGNATURE DATE

IMPORTANT - THIS INFORMATION IS REQUIRED BY LAW (16 U.S.C. 1801 ET SEQ., 50 CFR 644.24(b)). ANY PERSON FOUND TO BE IN VIOLATION OF THIS REGULATION IS SUBJECT TO THE CIVIL AND CRIMINAL PENALTY AND FORFEITURE PROVISIONS OF THE MAGNUSON ACT, INCLUDING FINES NOT TO EXCEED $25,000 PER VIOLATION.

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Rodney Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0648-xxxx), Washington, D.C. 20503.

[FR Doc. 89-312 Filed 1-6-89; 8:45 am]
BILLING CODE 3510-22-C

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Foreign Direct Investment in the United States.

Form Number: Agency—BE–15; OMB—0608–0034.

Type of Request: Revision of a currently approved collection.

Burden: 5,100 respondents; 32,700 reporting hours.

Average Hours Per Response: 6.4 hours.

Needs and Uses: The survey collects data on the financial and operating characteristics of U.S. companies that are foreign owned. Universe estimates are developed from the reported sample data. The data are needed to measure the size of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the U.S.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually (except years in which a BE–12 Benchmark Survey is taken).

Respondent's obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 4, 1989.

Edward Michals,

Departmentol Clearance Officer, Office of Management ond Organization.

[FR Doc. 89–367 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Foreign Availability Assessments; Initiation of an Assessment on 2,4–Dichlorophenoxyacetic Acid (2,4–D) and on Salts and Esters of 2,4–D

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Under sections 5(f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to sections 5(f)(3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On October 31, 1988, OFA accepted for filing a foreign availability submission claiming foreign availability of 2,4–Dichlorophenoxyacetic acid (2,4–D) and its salts and esters. These items are controlled for national security reasons under Export Control Commodity Number (ECCN) 4707B: Chlorophenoxyacetic acids and its salts and esters.

OFA accepted the submission and initiated an assessment of the foreign availability of 2,4–Dichlorophenoxyacetic acid and of Salts and esters of 2,4–D. Consistent with the requirements of the EAA, the Department intends to publish the results of the assessments by May 2, 1989.

To assist the Department in assessing the claim, the Department will receive any information regarding the foreign availability of 2,4–D. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce. Such relevant information may include, but is not limited to, foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information developed to evaluate the claim of foreign availability. Individuals submitting information and requesting confidential treatment of it are required to submit the information separately as described below.

DATES: The period for submission of information will close February 8, 1989.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Irwin M. Pikus, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION: The Office of Foreign Availability will receive any information relating to this allegation of foreign availability. The Office of Foreign Availability will carefully and fully consider any information submitted during its analysis of the claim of foreign availability.

The Department will accept comments accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close February 8, 1989. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the fullest consideration of their information by the Department.

All public information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record of information received on the allegation of foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Dated: December 29, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89–313 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held January 25, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report by Joint Factory Computing & Communications Subcommittee.
4. Discussion of CCL 1091 (machine tools).
5. Discussion of CCL 1532 (precision linear and angular measuring systems and specially designed components therefor).
6. Presentation on Technical Advisory Committee presentation at COCOM.
7. Discussion of Foreign Availability Assessment.

Executive Session

8. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552bf(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–359 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee et al., Notice of Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components & Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held January 26, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The joint subcommittee advises the Office of Technology & Policy Analysis on overlapping issues such as: Computerized Numerical Contol (CNC), Computer-Aided-Design (CAD), Computer-Aided-Manufacturing (CAM), Computer Aided-Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Reports from Technical Advisory Committee Representatives.
4. Presentation and Status of Priority Projects: Lasers, Networking, CAD, Signal Processing.
5. Other Business.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal

BEST COPY AVAILABLE

Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit Office of Technology & Policy Analysis.

[FR Doc. 89–363 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held January 24, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of the Use of DES in Commercial Equipment.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–365 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held January 24, 1989, 2:00 p.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Draft Form 6031P.

The meeting will be open to the public with a limited number of seats. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–364 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 3:00 p.m. in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Reports of the Subcommittees.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–360 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 11:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of Controls on Data Communication Equipment.
4. Discussion of Simplication of CCL 1565A.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Dated: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit Office of Technology & Policy Analysis.

[FR Doc. 89–362 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department on licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Presentation on Multiprocessor-Based Computers.

The entire meeting will be open to the public and a limited number of seats will be available. To the extend that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Anne Ferrell at 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–366 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held January 24, & 25, 1989, in the Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. On January 24 the meeting will convene at 9:00 a.m. in Room 4830. The meeting will reconvene in Executive Session on January 25 and continue to its conclusion in Room 4830. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Public discussion on matters related to activities of the Electronic Instrumentation Technical Advisory Committee. Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

4. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S. C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202–377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–361 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 417]

Withdrawal of Application and Temporary Extension, Subzone 50A, Toyota Plant, Long Beach, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

Whereas, on July 14, 1983, the Board authorized the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of FTZ 50, to establish Subzone 50A for the truck cargo body manufacturing plant of Toyota Auto Body, Inc., of California (Toyota) (formerly, Toyota Motor Manufacturing, U.S.A., Inc.) in Long Beach, California, for a period of five

years (to 7/14/88), subject to extension (Board Order 213, 48 FR 34792);

Whereas, BHC made application to the Board in April 1988 (FTZ Docket 21–88, filed 4/18/88, 53 FR 16178) for an indefinite extension of the authority of Subzone 50A;

Whereas, the authorization was temporarily extended to December 31, 1988 (Board Order 390, 53 FR 27542), to allow the Board to complete its review;

Whereas, on November 30, 1988, the applicant withdrew its application for an indefinite extension, due to changed circumstances, and requested a 90-day period in which to conclude zone status at the plant.

Now, therefore, the Board hereby orders:

That the authority for Subzone 50A is extended to April 1, 1989, to permit a winding up to operations conducted under zone procedures, and that FTZ Board Docket 21–88 is closed.

Signed at Washington, DC, this 29th day of December, 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-307 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 419]

Resolution and Order Approving the Application of the Port of Corpus Christi Authority for a Subzone at the Reynolds Metals Company Plant in the Corpus Christi, TX, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, filed with the Foreign-Trade Zones Board (the Board) on March 4, 1988, requesting special-purpose subzone status at the alumina plant of Reynolds Metals Company (Sherwin Plant) located in the Corpus Christi, Texas, port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application (filed March 4, 1988, FTZ Docket 15–88, 53 FR 8681), in due and proper form to the Board for authority to establish a special-purpose subzone at the alumina production plant of Reynolds Metals Company located in San Patricio and Aransas Counties, Texas (Corpus Christi area);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed March 4, 1988, the Board hereby authorizes the establishment of a subzone at the Reynolds Corpus Christi area plant, designated on the records of the Board as Foreign-Trade Subzone No. 122K at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 30th day of December 1988, pursuant to the Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-306 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 39-88]

Foreign-Trade Zone 83; Huntsville, AL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority (the Airport Authority), grantee of Foreign-Trade Zone 83, requesting authority to expand the zone to include additional acreage at the Huntsville International Airport, within the Huntsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 22, 1988.

The Huntsville zone was approved on February 24, 1983 (Board Order 209, 48 FR 9052, March 3, 1983, and presently covers 1,313 acres at the airport. The grantee has requested authority to include five adjacent tracts (234 acres) located at the intersection of Wall Triana Highway and James Record Road. The expansion is being requested because much of the area presently authorized for zone activity is being utilized for operations that do not presently require zone procedures, and the grantee needs more space to accommodate interested zone users.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; David L. Willette, District Director, U.S. Customs Service, South Central Region, 150 North Royal, Suite 3004, P.O. Box 2748, Mobile, Alabama 36652; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District, Nashville, P.O. Box 1070, Nashville, Tennessee 37202–1070.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1989.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Huntsville-Madison County Airport, P.O. Box 6085, Huntsville, Alabama 35806.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: December 30, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-375 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-801]

Postponement of Public Hearing: Antidumping Duty Investigation on Certain Headwear From the People's Republic of China

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Office of Antidumping Compliance has further postponed the hearing on the antidumping duty investigation on certain headwear from the People's Republic of China.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, United States Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION: On November 25, 1988, we published in the **Federal Register** (53 FR 47741) a notice of postponement of our final antidumping duty determination on certain headwear from the People's Republic of China. The notice also stated that the public hearing was postponed until January 13, 1989.

At the request of the respondents the public hearing on this antidumping duty investigation has been further postponed until January 25, 1989. The hearing will be held at 9:30 a.m. in room 3708, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 202030. Prehearing briefs are due to the Assistant Secretary by January 17, 1989.

This notice is published pursuant to section 774(b) of the Act.

December 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-376 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 14, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada. We have now completed that review and determine the net subsidy to be *de minimus* for slaughter sows and boars and Can $0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 22189) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32880, August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Canadian live swine. Such merchandise is currently classifiable under Harmonized Tariff Schedule items 0103.91.00 and 0103.92.00.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs:

1. Agricultural Stabilization Act
2. Record of Performance Program
3. Canada-Ontario Stabilization Plan for Hog Producers 1985
4. Alberta Red Meat Interim Insurance
5. Saskatchewan Hog Assured Returns
6. British Columbia Farm Income Insurance Plan
7. Manitoba Hog Income Stabilization Plan
8. New Brunswick Hog Price Stabilization Plan
9. Newfoundland Hog Price Support Program
10. Nova Scotia Pork Price Stabilization Program
11. Prince Edward Island Price Stabilization Program
12. Quebec Farm Income Stabilization Insurance Programs
13. New Burnswick Swine Assistance Program
14. New Brunswick Livestock Incentives Program
15. New Brunswick Hog Marketing Program
16. New Brunswick Swine Industry Financial Restructuring Program
17. Nova Scotia Swine Herd Health Policy
18. Nova Scotia Transportation Assistance
19. Ontario Farm Tax Reduction Program
20. Ontario (Northern) Livestock Programs
21. Prince Edward Island Hog Marketing and Transportation Subsidies

22. Prince Edward Island Swine Development Program
23. Prince Edward Island Interest Payments on Assembly Yard Loan
24. Quebec Special Credits for Hog Producers
25. Saskatchewan Financial Assistance for Livestock and Irrigation
26. Saskatchewan Livestock Investment Tax Credit
27. Saskatchewan Livestock Advance Program
28. Ontario Weaner Pig Stabilization Plan

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the National Pork Producers Council (NPPC), we held a public hearing on August 5, 1988. The NPPC, the Canadian Pork Council (CPC), and Quintaine & Sons Ltd., the major Canadian exporter of slaughter sows and boars, took part in the hearing.

Comment 1: The CPC points out that the Department misread the financial statement of the Farm Income Stabilization Commission ("FISC") of Ontario in calculating the benefit from the Ontario Weaner Pig Stabilization Plan.

Department's Position: We agree and have revised our calculations accordingly. We determine the benefit from this program to be Can$0.00000037/lb.

Comment 2: The CPC asks the Department to clarify its rationale for determining that the Agricultural Stabilization Act ("ASA"), the National Tripartite Red Meat Stabilization ("Tripartite") Program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program are limited to specific industries. The CPC also requests that the Department establish detailed criteria to explain further its specificity test by answering the following questions: If all major commodities in a jurisdiction were covered by stabilization programs, would these programs then be considered not countervailable? How is a major commodity defined? If all major commodities are covered by a stabilization or other program (*e.g.*, supply management) at the national or provincial level, should not the Department take this factor into account? On the other hand, if there are no clearly discernible major commodities in a jurisdiction, is it possible to pass the Department's specificity test if less than 100 percent of the commercial farm products are covered by a stabilization program? If so, how much less than 100 percent: 90, 80, 60, or 51 percent? How is coverage measured: by number of products, tonnage, or value?

Department's Position: As stated in our preliminary results, we continue to regard the subsidy programs referred to by the CPC as countervailable because they are provided to specific industries. Several aspects of the ASA have changed since our final determination (50 FR 25097, June 17, 1985). Furthermore, we received additional information on the Tripartite program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program. However, we received no additional evidence that any of these programs are not still limited to specific industries. For example, with respect to the ASA, several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Several major agricultural products are also excluded from the British Columbia Farm Income Insurance Program (*e.g.*, wheat, dairy products, and poultry) and the Quebec Farm Income Stabilization Insurance Program (*e.g.*, milk products, poultry, and eggs). Therefore, we determine that these four programs continue to be countervailable.

The request by the CPC that the Department establish detailed criteria to explain further its specificity test appears to be a request for an advisory opinion. We do not consider it appropriate to issue advisory opinions based upon hypothetical situations. Also, it is well established that the Department's specificity test cannot be reduced to a mathematical formula because domestic subsidy programs are seldom identical. The terms and conditions of domestic subsidy programs differ from case to case, as do the circumstances under which a specific program may be used. Thus, we cannot reduce our test for specificity to a single formula that would be applicable to every case, as CPC implicitly suggests we should. Instead, we must analyze each program on its own merits and weigh various factors before we can determine that a program is or is not provided, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries.

Parties, however, are not without guidance. The determinations published by the Department provide a significant body of precedents by which a domestic subsidy program may be analyzed. Moreover, we routinely consider the following factors when we apply the specificity test: (1) The extent to which a foreign government acts to limit the availability of a program; (2) the number of enterprises, industries, or groups that actually use a program; (3) the dominant or disproportionate use of a program by certain enterprises, industries or groups; and (4) the extent to which the foreign government exercises discretion when it confers benefits under a program. *See, e.g., Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (51 FR 37453, October 22, 1986)).

Comment 3: The NPPC contends that the Department's preliminary determination that the Record of Performance Program (ROP) is not countervailable is based on errors of law and mistakes of fact. As long as the ROP is provided to a specific industry, the Department should find the program to be countervailable.

The NPPC claims that while the results of the ROP research are nominally available to any interested party, few, if any, parties other than the Canadian hog industry are interested in the results. Only the Canadian hog industry can benefit from the ROP research because the information generated is specifically tailored for the production practices and climatic conditions existing only in Canada. ROP data cannot be used by other industries in Canada or by the hog industry in the United States.

The NPPC argues that the Department's long-standing practice is to find research and development programs such as the ROP to be countervailable and, to support its assertion, cites Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, (1982); *Optic Liquid Level Sensing Systems from Canada*, 44 FR 1728, (1979); and *Certain Steel Products from France*, 47 FR 39332, (1982).

Department's Position: We disagree. In Appendix 2 to *Certain Steel Products from Belgium*, we determined that assistance provided by a foreign government to finance research and development does not confer a countervailable benefit if the research and development has broad application and yields results that are made available to the public.

In *Optic Liquid Level Sensing Systems from Canada*, we found that the research and development program provided selective treatment because the information generated was not publicly available and was only used to improve the respondent's ability to introduce a commercially successful product to market. In *Certain Steel Products from France*, we examined two research and development programs, one publicly available and the other not. We found only the program whose research was not publicly available to be countervailable.

The NPPC submitted no information to support its claim that the availability and applicability of ROP research data are selective. The CPC, on the other hand, submitted in its rebuttal brief numerous examples of the broad application and public use outside of Canada of the research and development generated by the ROP. Among the documents submitted by the CPC are copies of scientific papers published outside Canada using ROP data; copies of papers on the results of Canadian ROP tests submitted to the National Swine Improvement Federation in St. Louis, Missouri; extensive mailing lists of recipients of ROP data, including recipients in the United States as well as other foreign countries; circulation lists of *Canadian Swine*, a Canadian industry magazine, that include many subscribers in the United States; and copies of *Canadian Swine* announcements of breeding stock sales—all with ROP data listed. The examples of the wide public use of this information supports our preliminary determination that the ROP research data are publicly available and applicable to hog producers all over the world, including those in the United States. For these reasons, we determine that the ROP program is not counteravailable.

Comment 4: The NPPC contends that the Department understated the benefit from all programs by weight-averaging benefits according to each province's proportion of total Canadian exports of live swine to the United States. The NPPC claims that weight-averaging by province rather than by producer is grossly distortive of market realities, wide open to circumvention, and improper as applied to this case. The Department should focus on the overall effect that the subsidies have on production and calculate one country-wide rate for all hogs by dividing the total amount of subsidies from all provinces by the total Canadian production of live swine. Geographic boundaries are meaningless to the production, flow and pricing of any commodity whose production is easily stimulated by government subsidies. Futhermore, weight-averaging by province creates strong incentives to circumvent or evade countervailing duties by transshipping hogs within Canada prior to exporting to the United States. The Newfoundland transshipments found by the Department in its preliminary results demonstrate that the threat of transshipment is valid.

Department's Position: We disagree. In this administrative review, as in the original countervailing duty investigation, we did not investigate individual producers, electing instead to focus on aggregate benefits provided by the federal and provincial governments to producers of live swine. We did this because of the large number of hog producers and the administrative burden imposed in analyzing and verifying numerous responses.

To calculate the subsidy, we divided, for each province, total benefits paid to hog producers in that province by total production in that province. We then weight-averaged these benefits by the provincial shares of total Canadian exports of the subject merchandise to the United States.

In our view, this method provides a better measure of the subsidy on exports to the United States than that proposed by the NPPC. This is because it gives greater weight to those provinces which ship more hogs to the United States and therefore more accurately reflects the level of subsidy on the subject merchandise.

The danger of transshipment is minimal because the same countervailing duty rate on live swine applies to all of Canada. We believe that the transshipment scenario described by the NPPC is too far removed from reality to pose any significant threat to the integrity of the countervailing duty law. As we stated in our preliminary results, the individual producer usually is not aware of the ultimate destination of his hogs. Furthermore, it is impossible for individual producers to predict which province will have the lowest benefit because the Department does not calculate provincial benefits until up to two years after the time of exportation. Finally, the Newfoundland transshipments do not support the NPPC's argument because they were made at a time that the cash deposit rate was calculated in the manner that the NPPC is now advocating.

Comment 5: The NPPC states that, although it does not challenge the Department's creation of a subclass or kind of merchandise for sows and boars, the Department should announce strict definitions of sows, boars, and slaughter hogs in order to prevent circumvention of the order by masquerading bona fide slaughter hogs as sows and boars. Quintaine opposes NPPC's request for strict definitions as unnecessary because industry standards determine the weight of sows and boars and because sows and boars are sold and shipped separately, command different prices, and have different markets.

Department's Position: We disagree with the NPPC and agree with Quintaine. In our preliminary results of review, we found that sows and boars are distinguishable from other live swine not only by their physical characteristics, but also by their ultimate use, markets and prices. Further, there is no financial incentive to sell slaughter hogs at the much lower price commanded by sows and boars.

Comment 6: The NPPC disputes the Department's estimate that sows and boars represent only one percent of Canadian production of live swine. The NPPC claims that the figure should be at least four percent, which is the approximate proportion of sows and boars to all live swine produced in the United States.

Department's Position: We agree that the one-percent figure underestimates the production of sows and boars in Canada. We requested more precise information from Canada. The CPC submitted a hog cost model developed by the Market Outlook and Analysis Division, Policy Branch, Agriculture Canada. The hog cost model was developed after the passage of the 1985 amendment to the ASA and is used for calculating the benefits from the Tripartite swine program. The model is a national average of provincial/regional costs of production of hogs. The model, which is updated yearly, was designed to reflect current industry structure and production practices. The model estimates that the proportion of sows and boars to total live swine production in Canada is 2.1 percent. We believe that this is the most accurate estimate available.

Adjusting for this change, we have recalculated the benefits from the various programs to be:

	Pound
1. Agricultural Stabilization Act	$0.00075876
2. Record of Performance Program	00000000
3. Canada-Ontario Stabilization Plan for Hog Producers 1985	01249583
4. Alberta Red Meat Interim Insurance	00322447
5. Saskatchewan Hog Assured Returns	00246900
6. British Columbia Farm Income Insurance Plan	00033610
7. Manitoba Hog Income Stabilization Plan	00130644
8. New Brunswick Hog Price Stabilization Plan	00000134
9. Newfoundland Hog Price Support Program	00002401
10. Nova Scotia Pork Price Stabilization Program	00002521
11. Prince Edward Island Price Stabilization Program	00003519

	Pound
12. Quebec Farm Income Stabilization Insurance Programs	00073368
13. New Brunswick Swine Assistance Program	00000003
14. New Brunswick Livestock Incentives Program	00000249
15. New Brunswick Hog Marketing Program	00000019
16. New Brunswick Swine Industry Financial Restructuring Program	00000151
17. Nova Scotia Swine Herd Health Policy	00000312
18. Nova Scotia Transportation Assistance	00000000
19. Ontario Farm Tax Reduction Program	00003182
20. Ontario (Northern) Livestock Programs	00001289
21. Prince Edward Island Hog Marketing and Transportation Subsidies	00000041
22. Prince Edward Island Swine Development Program	00002141
23. Prince Edward Island Interest Payments on Assembly Yard Loan	00000002
24. Quebec Special Credits for Hog Producers	00000000
25. Saskatchewan Financial Assistance for Livestock and Irrigation	00000000
26. Saskatchewan Livestock Investment Tax Credit	00006396
27. Saskatchewan Livestock Stock Advance Program	00000000
28. Ontario Weaner Pig Stabilization Plan (FISC)	00000037
Total benefits from all programs	.022

Final Results of Review

After considering all of the comments received, we determine the net subsidy to be Can$0.00011/lb. for slaughter sows and boars and Can$0.022/lb. for all other live swine for the period April 3, 1985 through March 31, 1986. The rate for slaughter sows and boars is equivalent to 0.30 percent *ad valorem*. The Department considers any rate less than 0.5 percent to be *de minimis* in accordance with 19 CFR 355.8.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of slaughter sows and boars, and to assess coutnervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver and deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Septrini,

Acting Assistant Secretary for Import Administration.

Dated: December 30, 1988.

[FR Doc. 89-377 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-401]

Portland Hydraulic Cement From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Cancel Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and tentative determination to cancel suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on portland hydraulic cement from Costa Rica. The review covers the period October 1, 1985 through September 30, 1986.

As a result of the review, the Department has preliminarily determined that Industria Nacional de Cementos, S.A., a Costa Rican exporter of portland hydraulic cement to the United States and the sole signatory to the suspension agreement, did not account for 85 percent of the subject merchandise imported into the United States from Costa Rica during the review period.

A second firm, Cementos del Pacifico, S.A., accounted for all imports of the subject merchandise during the review period. This firm did not choose to enter into an agreement with the Department and, accordingly, the Department has tentatively determined to cancel the suspension agreement.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47280) notice of an agreement suspending the countervailing duty investigation regarding portland hydraulic cement from Costa Rica. The Department stated that the suspension agreement reached with Industria Nacional de Cementos, S.A., ("INCSA") and the Department met the criteria of sections 704(b) and (d) of the Tariff Act of 1930 ("the Tariff Act"). We received no request to continue the investigation.

In March 1986, Cementos del Pacifico, S.A. ("CPSA"), also a Costa Rican producer of portland hydraulic cement, began exporting the subject merchandise to the United States.

On December 29, 1986, the petitioners, the Puerto Rican Cement Co., Inc., and the San Juan Cement Co., Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of this suspension agreement. We published the initiation on January 20, 1987 (52 FR 2123). The Department has now conducted that review in accordance with section 751 of the Tariff Act.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized Tariff Schedule ("HTS") item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized Tariff Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Costa Rican portland hydraulic cement. Such merchandise is currently classifiable under TSUSA item number 511.1440 and under HTS item number 2523.29.00. We invite comments from all interested parties on this HTS classification.

The review covers the period October 1, 1985 through September 30, 1986 and two firms, INCSA and CPSA.

Compliance With the Agreement

In the suspension agreement, INCSA renounced all existing bounties or grants which would benefit exports of portland hydraulic cement to the United States, and agreed not to apply for or receive substitute or equivalent benefits. In accordance with section 704(b) of the Tariff Act and § 355.31(c) of the Commerce Regulations, the suspension of the investigation can remain in effect only so long as 85 percent of imports of the subject merchandise into the United States are covered by the suspension agreement. INCSA did not export the subject merchandise to the United States during the period of review and, accordingly, did not account for the mandated 85 percent of U.S. imports of portland hydraulic cement from Costa Rica during the period.

A second firm, CPSA, also a Costa Rican producer of portland hydraulic cement, accounted for 100 percent of U.S. imports of portland hydraulic cement from Costa Rica during the review period. In its questionnaire response, CPSA stated that it had not been aware of the suspension agreement in effect respecting this merchandise and indicated that it would not export the subject merchandise to the United States in the future. However, CPSA chose not to enter into a suspension agreement with the Department.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the suspension agreement no longer meets the requirements of sections 704 (b) and (d) of the Tariff Act. We therefore tentatively determine to cancel the suspension agreement. Section 704(b) of the Tariff Act requires that manufacturers accounting for "substantially all" U.S. imports of merchandise subject of a suspended investigation be signatories to an agreement to eliminate or offset completely the total amount of any bounty or grant determined to exist. Section 355.31(c) of the Commerce Regulations defines "substantially all" as 85 percent of total U.S. imports.

If the Department determines as a result of this review that the suspension agreement should be cancelled, we will resume the investigation as if the affirmative preliminary determination had been published on the date of publication of the final results, and will instruct the Customs Service to suspend liquidation on all shipments of portland hydraulic cement exported directly or indirectly to the United States from Costa Rica and entered, or withdrawn from warehouse, for consumption on or after the 90th day prior to publication of the notice of suspension of liquidation (*i.e.*, the notice of cancellation of suspension agreement). The Department will also instruct the Customs Service, in accordance with section 703 of the Tariff Act, to require a cash deposit or bond for each such entry of the merchandise in the amount of 15 percent *ad valorem*, the rate found in our preliminary affirmative countervailing duty determination.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: December 30, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

FR Doc. 89-378 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Cold-Rolled Sheet; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain aluminum-killed cold-rolled steel sheet.

DATE: Comments must be submitted on or before January 19, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION:

Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " * * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for certain aluminum-killed cold-rolled sheet, in coils, conforming to AISI standard C 1001, to be used in the manufacture of aperture masks for color television picture tubes and video monitors. The steel is 381-762 mm in width, 0.0762-0.3049 mm in thickness, and in coils weighing from 1,500 to 3,000 kgs.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than January 19, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 29, 1988.

[FR Doc. 89-309 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

Agency: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on January 11, 1989, at 10 a.m., at the Howard Johnson's Hotel, Route 1, Danvers, MA, to discuss reports from the Groundfish and Scallop Committees, amendments to the Magnuson Fishery Conservation and Management Act, a Mid-Atlantic Fishery Management Council proposal concerning shark data collection, and implementation of the Marine Mammal Protection Act. The public meeting will recess at approximately 5 p.m., reconvene on January 12 at 9 a.m., and will adjourn when agenda items are completed.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: January 4, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc 89–394 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

Endangered Marine Mammals: Application for Permit; LGL Limited, Environmental Research Associates (P273E)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217–222), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant. LGL Limited, Environmental Research Associates, 22 Fisher Street, P.O. Box 280, King City, Ontario, Canada LOG 1KO.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Bowhead whales (*Balaena mysticetus*)—800; White whales (*Delphinapterus leucas*)—600.

4. Type of Take: Harassment by aerial photography, helicopter overflight, and sound projection to study effects of oil production activities on arctic whales.

5. Location and Duration of Activity: Alaskan Beaufort Sea; May 1989.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910, within 30 days of the pulication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the Naitonal Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7330, Silver Spring, Maryland 20910; and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: December 20, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–336 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Application for Permit; Ouwehands Dierenpark bv (P435)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Ouwehands Dierenpark bv, Postbus 9, 3910 AA Rhenen, Netherlands.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*).

4. Type of Take: Capture and maintain for public display at the Ouwehands Zoo in Rhenen, the Netherlands.

5. Location and Duration of Activity: Gulf of Mexico between Mobile Bay and the Mississippi River. Dolphins to be collected, acclimated and transported by a National Marine Fisheries Service designated Collector of Record. Duration of activity is no more than one year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: December 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc 89–337 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

THE COMMISSION OF FINE ARTS

1989 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded by the Congress for 1989 in the amount of $5,000,000. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006.

Phone: 202–566–1066.

Deadlines for receipt of submission of grants applications is 3 March 1989.

This program provides grants for general operating support of organizations whose *primary* purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 89–328 Filed 1–6–89; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract; Morgan Stanley Capital International United Kingdom Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before January 24, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: On May 19, September 2, and November 4, 1988, the Commission published in the **Federal Register**, for 60-day, 15-day, and 15-day comment periods, respectively, notices of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969, 53 FR 34140 and 53 FR 44646). In a December 29, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on January 4, 1989.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 89–358 Filed 1–6–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meetings; Defense Manufacturing Board

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming meeting of the Defense Manufacturing Board (DMB).

DATE AND TIME: 18 January 1989, 0830–1700.

ADDRESS: Pointe at South Mountain, 7777 South Pointe Parkway, Phoenix, AZ 85044.

The agenda for the meeting will focus on concurrent engineering and total quality management.

FOR FURTHER INFORMATION CONTACT: Mrs. Sherry Fitzpatrick of the DMB Secretariat, (703) 756–2310.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 3, 1989.

[FR Doc. 89–335 Filed 1–6–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted To OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Children's Dependency Statement; AF Form 472; and OMB Control Number 0701–0110.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: On occasion.

Number of Respondents: 7,182.

Annual Burden Hours: 3,950.

Annual Responses: 7,182.

Needs and Uses: Individuals applying for monetary allowances and other benefits for the dependent children of service members, retired service members, or surviving spouses need this form to document their relationship and dependency. Air Force claim examiners

use the information on the form to determine whether the claim is valid and the individual is entitled to benefits.

Affected Public: Individuals.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 3, 1989.

[FR Doc. 89-334 Filed 1-6-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Stafford Loan Program, SLS Program, PLUS Program and Consolidation Loan Program; Special Allowance; Correction

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending September 30, 1988: correction.

On November 2, 1988, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (53 FR 44220), a special allowance for the quarter ending September 30, 1988 to holders of eligible loans made under the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This document corrects a typographical error that was made in that notice as follows: In the table under Item III., in the line for applicable interest rate of 9%, "0.8725" in column three is corrected to read "0.3725".

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, Washington, DC 20202. Telephone (202) 732-4242.

Dated: December 13, 1988.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-387 Filed 1-6-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Climate Institute of Washington, DC

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7, eligibility for award of a grant, resulting from Procurement Request No. 01-89EH89009.000, will be restricted to the Climate Institute of Washington, DC. The DOE is conducting negotiations with the Climate Institute for the support of post conference costs of the "Second North American Conference on Preparing for Climate Change." These negotiations are expected to result in the issuance of Grant Number DE-FG01-89EH89009 in which the DOE is anticipated to provide $20,000 of the total estimated post conference costs of $30,592, for a performance period of twelve months, estimated to begin January 25, 1989..

Project Scope: The grant will provide post conference assistance for one conference entitled, "Second North American Conference on Preparing for Climate Change," that will provide for the furtherance of international information exchange and cooperation to adapt to, and mitigate the effects of global climate changes in the North American region. The proposed grantee, the Climate Institute, has already conducted the conference and would expend these post conference costs in the absence of funding by the DOE, however DOE support of the conference would enhance the public benefits to be derived by providing timely, credible and relevant information that would support education, policy development and other decision making by federal, state and local governments; and DOE knows of no other entity which has conducted or is planning to conduct such a conference.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, MA-453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1424.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-389 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the Texas Bureau of Economic Geology

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19-89BC14403.000 to the Texas Bureau of Economic Geology for "Characterization of Oil and Gas Reservoir heterogeneity in San Andres and Grayburg Reservoirs of West Texas".

Scope: The grant is to fund research to increase our understanding of geological heterogeneities that affect the recovery of oil and gas from specific reservoirs, and to develop strategies for exploiting these resources. The specific reservoirs to be examined are the San Andres and Grayburg oil and gas reservoirs in the Permian Basin. The objective of the project is to increase the understanding of the geological variability that affects the recoveries of oil and gas by studying carbonate sandbar trends in a group of reservoirs that contain large volumes of unproduced hydrocarbons. The project will include mapping the distribution of various facies, developing geostatistical models of the reservoirs and developing strategies for geologically targeted infill drilling and selective recompletion that will allow increased economic production and reserve growth.

In accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), the Texas Bureau of Economic Geology has been selected as the grant recipient. The proposed recipient has conducted a series of volumes describing and cataloging characteristics of some of the states' oil and gas fields, which are necessary predecessors to this characterization project. The state has now indicated a commitment to fund this project. DOE support will allow more thorough coverage of the state's reservoirs than would be otherwise possible. Furthermore the Texas Bureau of Economic Geology is considered uniquely qualified based upon experience derived from similar studies and their repository of geological samples and well data. In 1983, the Texas Bureau of Economic Geology completed an atlas of Texas oil reservoirs and is currently compiling a similar atlas. Thsee studies form a unique basis for evaluating reservoir heterogeneity and applying that information to a large group of related reservoirs.

The term of the proposed grant is for a three year period at a total estimated value of $1,520,000.00 to be shared equally between DOE and the State of Texas.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: David N. Barnett, Telephone: AC412/892-5912.

Date: December 21, 1988.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89-391 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the University of Texas at Austin

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19-89BC14251.000 to the University of Texas at Austin for "Reservoir Characterization and Enhanced Oil Recovery Research."

Scope: The grant is to fund the development of an integrated package of (1) Systematic Procedure for Reservoir Characterization, (2) Modeling and Scaleup of Chemical Flooding, and, (3) CO_2-Surfactant Phase Behavior. The integrated program is aimed at improving oil recovery from reservoirs in the State of Texas. The first part of the project will be to create numerical simulation models. The models will account for both 'continuity' and "cross-bedding' of reservoirs, the quantification of existing taxonomy through the use of correlation, fractal representation and nonlinear dynamic statistical procedures. The use of geochemical flow patterns in porosity and permeability that result in diagenetic process; and, to define the patterns on permeability in carbonate formations and the occurrence of calcite cement inclusion caused by both bacterial and/or thermochemical processes. The second part of the project will address the overall goal of modeling and scaleup of chemical flooding focusing on polymer gels for profile modification and chemical tracers. Measure the in-situ behavior of gels formed while flowing in permeable media. Simulate the hydrodynamic instabilities in permeable media. The third part involves a study of CO_2-surfactant-water interactions as a means of developing a thermodynamic model to predict conditions of precipitation and the chemical potential of surfactants in aqueous solutions. A study of oil-CO_2-water-surfactant interactions to develop theoretical models that relate to the phase behavior of the particular system considered, and to assure that a certain surfactant will function properly over a wide range of reservoir conditions. A study of the stability of thin aqueous films on solid surfaces directed toward a study of phase behavior, adsorption, and partitioning of mixed surfactant systems composed of monoisomeric nonionic and monoisomeric anionic surfactant molecules.

In accordance with 10 CFR 600.7(b)(2)(i)(B), the University of Texas at Austin has been selected as the grant recipient. The University is currently undertaking the project by the use of funds derived from the State of Texas and industrial support. It is determined that DOE support of the activity would enhance the public benefits to be derived. The term of the grant will be for a two year period in the amount of $1,920,000.00, the amount to be shared equally between the DOE and the State of Texas.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236 Attn: David N. Barnett, Telephone: AC412/892-5912.

Dated: December 21, 1988.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89-392 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open and Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Nome: Advisory Committee on Nuclear Facility Safety.

Date and Time: Tuesday, January 24, 1989, 8:30 a.m. to 6:30 p.m. Wednesday, January 25, 1989, 9:00 a.m. to 2:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 8E 089, 1000 Independence Avenue, SW, Washington, DC 20585.

Contoct: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586-1770.

Purpose of the Meeting: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda.

January 24, 1989

8:30-Noon: Presentations and Discussions on Savannah River Plant Issues

Noon-1:00: Break

1:00-6:00: Presentations on Selected Reactor and Facility Issues

6:00-6:30: Public Comment

January 25, 1989

9:00-12:00: Discussion of Selected Issues and Committee Business

12:00-1:00: Lunch

1:00-2:00: Closed Meeting

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (U.S.C. App. II (1982)), part of these advisory committee meetings concerns matters listed in 5 U.S.C. 552b(c)(1) and that accordingly on January 25, 1989 at approximately 1:00 p.m. the meeting will be closed to the public.

Public Participation: Except as indicated, the meeting is open to the public. Written statement may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the addres or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the unclassified part of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on January 5, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-499 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-54-NG]

Hadson Gas Systems, Inc; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order extending Hadson Gas Systems, Inc. (Hadson), blanket authorization to import natural gas from Canada. The order issued in ERA docket No. 88-65-NG authorizes Hadson to import up to 50 Bcf of Canadian natural gas over a two-year term beginning March 3, 1989.

A copy of this order is available in the Natural Gas Division Docket Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-390 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-267-000]

Atlantic Richfield Co. and Intalco Aluminum Co.; Extension of Time

December 29, 1988

On December 27, 1988, BP Oil Company (BP) filed a motion for an extension of time to file a motion to intervene or protest in response to the Commission's Notice of Application issued December 13, 1988, in the above-docketed proceeding. In its motion, BP states that because of the press of other business and the intervening holidays, the company requires additional time to study this matter and prepare its filling.

Upon consideration, notice is hereby given that an extension of time for the filing of motions to intervene and protests is granted to and including January 13, 1989.

Lin wood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-327 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-23-000]

Phillips 66 Natural Gas Co. et al.; Complaint and Petition for Emergency Relief

January 4, 1989.

Take notice that on December 15, 1988, Phillips 66 Natural Gas Company and Phillips Petroleum Company (Phillips) filed a complaint against ANR Pipeline Company (ANR) contending that ANR refuses to provide transportation on an open access, non-discriminatory basis for gas owned by Phillips for which Phillips has released ANR from take-or-pay obligations under Order Nos. 451 and 490 series. (*See* FERC Statutes and Regulations, ¶¶ 30,701, 30,720, 30,748 and 30,797, 30,804, 30,831 and 30,825 respectively.)

Phillips requests that the Commission issued an order requiring ANR to file and operate under tariff provisions which eliminate its policy of offering a higher priority to shippers of gas for which ANR receives take-or-pay relief. Additionally, Phillips requests that the Commission direct ANR to immediately begin offering interruptible transportation on a first-come, first-served basis. In the alternative, Phillips requests emergency clarification that its production qualifies as "released" gas for purposes of ANR's tariff.

Any person desiring to be heard or to make any protest concerning Phillips' request should file an answer under Rule 213, 18 CFR 385.213 (1988), or a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later that 15 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Lois D. Cashell,

Secretary.

[FR Doc. 89-385 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension of consultation and comment period for a proposed power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) announced in the **Federal Register** published June 22, 1988 (53 FR 23446), a proposed adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension was to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

After reviewing those requests for extension, Western concurred with the requests and rescheduled for September 7, 1988, the public comment forum previously scheduled for July 22, 1988. In addition, the ending date of the consultation and comment period was changed to September 22, 1988. This was noticed in the **Federal Register** at 53 FR 29085, August 2, 1988.

An additional public comment forum was scheduled (53 FR 38779, October 3, 1988) for October 28, 1988, and the end of the consultation and comment period extended to November 14, 1988.

Due to the need for further data input and analysis, the October 28, 1988, public comment forum was canceled by written notification to the BCP customers and interested parties and was rescheduled (53 FR 48584, December 1, 1988) for December 15, 1988. Also, the consultation and comment period was extended to December 30, 1988.

Several customers requested another extension of the consultation and comment period in order to have sufficient time for detailed analysis of the proposed rates. Western recognizes the appropriateness of such extension and therefore is extending the consultation and comment period.

DATES: The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end January 31, 1989, on which date written comments should be received at the address indicated below.

ADDRESSES: Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

Issued at Golden, Colorado, December 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 89-393 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3503-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Reference or Equivalent Method Determination (EPA ICR #0559; OMB #2080-0005). This is a renewal of a currently approved collection.

Abstract: State and local air monitoring agencies are required to use EPA approved (i.e., reference or equivalent) methods in their air monitoring networks. Manufacturers of commercial air monitoring analyzers (or similar products) may request EPA approval of alternative air monitoring methods by submitting an application containing test data and other information indicating that the method meets performance and other requirements specified in 40 CFR Part 53.

Burden statement: The estimated average public reporting and recordkeeping burden for this collection of information is 100 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

Respondents: Manufacturers of Air Monitoring Analyzers or User Agencies.

Estimated no. of respondents: 8.

Estimated total annual burden on respondents: 800 hours.

Frequency of collection: 1 response per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460; and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503; (Telephone (202) 395-3084).

OMB Respondents to Agency PRA Clearance Requests

EPA ICR #0939; National Human Adipose Tissue Survey; was approved 11/1/88; OMB #2070-0050; expires 11/30/91.

EPC ICR #0801; Uniform Hazardous Waste Manifest For Generators, Transporters, and Disposal Facilities; was approved 11/1/88; OMB #2050-0039; expires 9/30/91.

EPA ICR #0152; Notice of Arrival of Pesticides or Devices; was approved 11/2/88; OMB #2070-0020; expires 11/30/91.

EPA ICR #0270.12; Public Water System Program Information; was disapproved 10/28/88; OMB #2040-0090. (Proposed Rule)

Date: December 21, 1988.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89-305 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3503-5]

Municipal Settlement Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process. In order to provide a public forum for interested parties to provide input into how municipalities should fit in the settlement process, the Agency has formed a Municipal Settlement Discussion Group. The discussion group is not designed to promote consensus on the Municipal Settlement Policy, nor to advise the Agency on policy directions. The group consists of approximately 24 members representing EPA, States, local governments, industry, business, and environmental concerns. The group's third meeting was held on October 20, 1988 in Washington, DC. Copies of the minutes from that meeting are available upon request.

FOR FURTHER INFORMATION CONTACT: Kathleen MacKinnon of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH-527), Washington, DC 20460; telephone 202/475-9812.

Lloyd S. Guerci,

Director, CERCLA Enforcement Division.

[FR Doc. 89-306 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each

agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–001953–006.

Title

City of Oakland Terminal Agreement.

Porties:

City of Oakland.

Matson Terminals, Inc. (Matson).

Synopsis:

Agreement No. 224–001953–006 amends the parties basic agreement which provides for the lease of certain terminal property and berthing areas at the Port of Oakland, California. On July 21, 1988, the above designated lease was extended for 20 years beyond December 31, 1988. The amendment to the Agreement permits Matson to continue paying the rent specified under the basic agreement until the rent for the extended term has been negotiated.

Agreement No.: 224–001953–A–001.

Title:

City of Oakland Terminal Agreement.

Porties:

City of Oakland.

Matson Terminals, Inc. (Matson).

Synopsis:

Agreement No. 224–001953–A–1 amends the parties basic agreement which provides for the lease of certain terminal property for a freight station. On July 21, 1988, the above designated lease was extended for 20 years beyond December 31, 1988. The amendment to the Agreement permits Matson to continue paying the rent specified under the basic agreement until the rent for the extended term has been negotiated.

By Order of the Federal Maritime Commission.

Dated: January 4, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–315 Filed 1–6–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/12/88 AND 12/23/88

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
BBA Group PLC, Jerry Zucker, The InterTech Group, Inc	89–0270	12/12/88
The Coleman Co., Inc., Jonathan Hershberg, Faulkner Manufacturing Co	89–0321	12/12/88
Warburg, Pincus Capital Co., L.P., Westward Communications Public Limited Co., Lee International Limited	89–0348	12/12/88
Cencom Cable Associates, Inc., First Carolina Cable TV, L.P., First Carolina Holdings, Inc and certain assets of FCC	89–0445	12/12/88
Cencom Cable Income Partners II, L.P., First Carolina Cable TV, L.P. of four subsidiaries	89–0446	12/12/88
Cencom Cable Associates, Inc., Wizard Cable Associates I, L.P., Wizard Cable Associates I, L.P.	89–0447	12/12/88
Patrick G. Ryan, Ampco-Pittsburgh Corp., Ampco Metal Division	89–0503	12/12/88
Cookson Group plc, Leach & Garner Co., Precision Metallurgical Corp.	89–0413	12/13/88
Charles J. Urstadt, HRE Properties, HRE Properties	89–0442	12/13/88
C. Itoh & Co., Ltd., Primark Corp., Telerent Leasing Corp.	89–0462	12/13/88
Laidlaw Transportation Limited, Edward Hanenburg Trust, Ottawa County Farms, Inc	89–0488	12/13/88
Torchmark Corp., Kansas City Life Insurance Co., Kansas City Life Insurance Co.	89–0553	12/13/88
Diamond Shamrock R&M, Inc., "Investing In Success" Equities, PLC, Newco	89–0580	12/13/88
Marshall S. Cogan, James W. Hart, Reeves Brothers, Inc	89–0407	12/14/88
Superfos a/s, Will H. Shears, Jr., J.H. Shears' Sons, Inc.	89–0487	12/14/88
The Bear Stearns Companies, Inc., Charles H. Dyson and Margaret M. Dyson, The Dyson-Kissner-Moran Corp	89–0515	12/14/88
Mr. Uwe Holy, TJFC, Inc., TJFC, Inc	89–0533	12/14/88
Mr. Jochen Holy, TJFC, Inc., TJFC, Inc	89–0534	12/14/88
The Litchfield Co. of South Carolina Ltd. Partnership, USX Corp., Litchfield-By-The-Sea, Joint Venture	89–0557	12/14/88
Alcan Aluminium Limited, Lanxide Corp., Lanxide Corp	89–0563	12/14/88
H.F. Holdings, Inc., CityFed Financial Corp., CityFed Financial Corp	89–0574	12/14/88
H. Philip Handy, The Coca-Cola Co., The Coca-Cola Co	89–0578	12/14/88
The McConnel Family Trust, Florida Progress Corp., Crown Industries, Inc	89–0598	12/14/88
Apache Corp., Citizens Energy Corp., Citizens Corp	89–0622	12/14/88
Equiticorp International, plc, John C. Cameron, Trustee, Choctaw Industries, Inc	89–0062	12/15/88
Tate & Lyle plc, Amstar Corp., Amstar Sugar Corp. & 2 other subs of Amstar	89–0213	12/15/88
Jannock Limited, Tate & Lyle plc, Refined Sugars Inc	89–0395	12/15/88
Steinberg Inc., Tate & Lyle plc, Refined Sugars Inc	89–0396	12/15/88
BTR plc, Equiticorp International plc, a U.K. corporation, Feltrax International Limite	89–0472	12/15/88
Donald J. Trump, Texas Air Corp., Eastern Air Lines, Inc	89–0489	12/15/88
Outboard Marine Corp., Donzi Marine Corp., Donzi Marine Corp	89–0493	12/15/88
Warburg, Pincus Capital Co., L.P., Grey Advertising Inc., LBS Communications, Inc	89–0569	12/15/88
Exxon Corp., Mobil Corp., Mobil Corp	89–0588	12/15/88
E. I. du Pont de Nemours and Co., Total Compagnie Francaise des Petroles, Total Petroleum, Inc	89–0659	12/15/88
Norman J. Pattiz, Outlet Communications, Inc., Outlet Broadcasting, Inc	89–0464	12/16/88
Mohamed Hadid, Southmark Corp., North American Mortgage Investors	89–0516	12/16/88
Yoshihiro Kamon, Louis G. Reese, III, Reese	89–0520	12/16/88
Nelson Peltz & Peter May, Pechiney, Triangle Industries, Inc	89–0540	12/16/88
Warburg, Pincus Capital Partners, L.P., Crowns, Inc., U.S. Administrators Inc	89–0573	12/16/88
Gerald L. Wolken, Medicare-Glaser Corp., Medicare-Glaser Corp	89–0579	12/16/88
Krupp Cash Plus–IV Limited Partnership, Harold S. Wenal, Valley Associates, Ltd	89–0590	12/16/88

Transactions Granted Early Termination Between: 12/12/88 AND 12/23/88—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Peabody Holding Co., Inc., Panhandle Eastern Corp., Panhandle Eastern Corp	89–0616	12/16/88
Prudential-Bache Energy Income Ltd. Partnership VP-22, Broken Hill Proprietary Co. Limited, BHP Petroleum (Americas) Inc. et al	89–0618	12/16/88
Mr. Jiro Matsushima, Cnco Hotel Associates I, L. P., Cnco Hotel Associates I, L. P	89–0619	12/16/88
Philips N.V., Teleklew Productions, Inc., Welk Music Group	89–0621	12/16/88
CIGNA Corp., Worcester Center Associates, Worcester Center Associates	89–0623	12/16/88
Continental Information Systems Corp., Transamerica Corp., BWAC Sub Two, Inc., BWAC Sub Six, Inc. & BWAC Sub 7, Inc	89–0624	12/16/88
Exxon Corp., Mobil Corp., Mobil Corp	89–0625	12/16/88
London United Investments PLC, CalFed Inc., CalFed Insurance Syndicate, Inc	89–0626	12/16/88
The Rouse Co., Midwest Malls Limited Partnership, Midwest Malls Limited Partnership	89–639	12/16/88
Ralph J. Roberts, Tele-Communications, Inc., SCI Holdings, Inc	89–0641	12/16/88
Westinghouse Electric Corp., Continental Information Systems Corp., BWAC Sub Two, Inc., BWAC Sub Six, Inc., BWAC Sub 7, Inc	89–0645	12/16/88
General Electric Co., Chemical Banking Corp., Chemical Banking Corp	89–0654	12/16/88
Harken Oil & Gas, Inc., Entrad Corp., AFEX, Inc	89–0655	12/16/88
Shoyi Kanazawa, Sports Arena Boulevard, Inc., Sports Arena Boulevard, Inc	89–0658	12/16/88
Carlyle Real Estate Limited Partnership-XVI, Ernest W. Hahn, Palm Desert Town Center Associates	89–0661	12/16/88
Club Corp. International, Freeport-McMoRan Inc., Barton Creek Properties, Inc	89–0685	12/16/88
S. & W. Berisford PLC, Universal Foods Corp., Universal Foods Corp	89–0605	12/17/88
Fred Giorgi, The Myers Canning Corp., The Myers Canning Corp	89–0378	12/19/88
Masco Industries, Inc., Kelso ASI Partners, L.P., American Standard, Inc	89–0482	12/19/88
Lone Star Industries, Inc., Tarmac PLC, Tarmac-America Inc	89–0508	12/19/88
Fuji Photo Film Co., Ltd., Olin Corp., Olin Hunt Sub II Corp. plus assets of UPE	89–0517	12/19/88
Amos B. Hostetter, Jr., Continental Cablevision, Inc., Continental Cablevision, Inc	89–0562	12/19/88
Floyd Hall, James M. Goldsmith, G.U. Acquisition Corp	89–0585	12/19/88
Cincinnati Bell Inc., Seldon O. Young, NICE Corp	89–0596	12/19/88
Cincinnati Bell Inc., Jered F. Brown, NICE Corp	89–0597	12/19/88
DeMuth, Folger & Terhune, ADT Limited, ADT Communications Systems, Inc	89–0676	12/19/88
General Electric Co., FGIC Corp., FGIC Corp	89–0470	12/20/88
Public Service Enterprise Group Inc., Pennant Holdings Limited, Plainsboro Limited Partnership	89–0684	12/23/88
Mitsubishi and Mining and Cement Co. Ltd., Jacob and Jeanette Brouwer, Escondido Ready Mix Concrete, Inc., TTT Concrete, Inc	89–0686	12/23/88
Kinki Nippon Railway Co., Ltd., Unipac, Ltd., a California limited partnership, Unipac, Ltd., a California limited partnership	89–0688	12/23/88
Southmark Corp., Countrywide Credit Industries, Inc., Countrywide Funding Corp	89–0692	12/23/88
Herbert F. Johnson Distributing Trust, Safety-Kleen Corp., Safety-Kleen Corp. (Restaurant Division)	89–0696	12/23/88
The Coastal Corp., TOTAL Campagnie Francaise des Petroles, TOTAL Compagnie Francaise des Petroles	89–0700	12/23/88
Carena Holdings Limited, Olympia & York Developments Limited, First Canadian Development Co	89–0703	12/23/88
Bain Venture Capital, Palais Royal, Inc., Palais Royal, Inc	89–0704	12/23/88
Bain Venture Capital, 3 Beall Brothers 3, Inc., 3 Beall Brothers 3, Inc	89–0705	12/23/88
Valid Logic Systems Inc., Integrated Measurement Systems, Inc., Integrated Measurement Systems, Inc	89–0708	12/23/88
Valid Logic Systems Inc., Analog Design Tools, Inc., Analog Design Tools, Inc	89–0710	12/23/88
Old Republic International Corp., Lincoln Holding Corp., Lincoln Holding Corp	89–0712	12/23/88
Peter B. Bedford, Maxxam Inc., Kaiser Hawaii Kai Development Co	89–0714	12/23/88
Kemper Corp., Maxxam Inc., Maxxam Inc	89–0715	12/23/88
Ford Motor Co., Centel Corp., Centel Credit Co	89–0719	12/23/88
CC&F Private Partners, L.P.-I, Trustees of T.I.A.A. Stock, certain assets of WRC Properties, Inc	89–0727	12/23/88
Haseko Corp., MSM and Associates, Inc., MSM and Associates, Inc	89–0737	12/23/88
Kazumi Kawazoe, Dr. Richard R. Kelley, Hotel Operating Co. of Hawaii, Ltd	89–0745	12/23/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89–342 Filed 1–6–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 908]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1989 funds for cooperative agreements for Human Immunodeficiency Virus (HIV) prevention projects for minority and other community-based organizations (CBOs) serving populations with and at risk of HIV infection and Acquired Immunodeficiency Syndrome (AIDS).

Authority

This program is authorized under the Public Health Service Act: section 301f(a) (42 U.S.C. 241(a)), as amended and section 317 (42 U.S.C. 247b(a)), as amended.

Eligible Applicants

Eligible applicants are nonprofit community-based organizations, located in the Metropolitan Statistical Areas (MSAs) most heavily affected by HIV infection/AIDS. Congress has authorized funds to provide direct financial and technical assistance to CBOs in those areas most heavily affected by the HIV epidemic so that they may work in their own communities to achieve a reduction of the risky behavior that leads to HIV transmission. These areas as defined by cumulative number of AIDS cases reported to CDC and entered into the CDC surveillance database as of December 1, 1988 are: California: Anaheim, Los Angeles, Oakland, San Diego, San Francisco; Colorado: Denver; Florida: Fort Lauderdale, Miami-Hialeah, Tampa, West Palm Beach-Boca Raton; Georgia: Atlanta; Illinois: Chicago; Louisiana: New Orleans; Maryland: Baltimore; Massachusetts: Boston; Michigan: Detroit; New Jersey: Bergen-Passaic Counties, Jersey City, Newark; New York: Nassau-Suffolk Counties, New York City; Pennsylvania: Philadelphia; Texas: Dallas, Houston; Washington: Seattle; the District of Columbia; and San Juan, Puerto Rico.

Eligible applicants located in the above MSAs must be nonprofit

corporations or associations whose net earnings in no part lawfully accrue to the benefit of any private shareholder or individual. Any of the following is acceptable evidence of nonprofit status:

A. A reference to the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;

B. A copy of a currently valid IRS tax exemption certificate;

C. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals;

D. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or,

E. Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

This proof must be provided before an award can be made, in no case later than July 1, 1989. No award will be made without proof of nonprofit status.

Availability of Funds

It is expected that approximately $9,750,000 will be available in Fiscal Year 1989 to support approximately 75 projects. Awards will range from $20,000 to $225,000 with an average award of $130,000. At least $5,000,000 will be awarded to community-based organizations which represent and serve minority persons and whose governing body is composed of more than 50% racial and/or ethnic minority group members (Asians, Blacks, Latinos/Hispanics, Native Americans, and Pacific Islanders). Priority will be given to supporting at least one project in each of the eligible Metropolitan Statistical Areas. In addition, approximately 15–20 awards will be made to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition.

Awards will be made for a 12-month budget period within a 1- to 3-year project period. (*Budget Period* is the interval of time into which the project period is divided for funding and reporting purposes. *Project Period* is the total time for which a project has been programmatically approved.) Continuation awards for new budget periods within an approved project period are made on the basis of satisfactory performance and availability of funds. No funds will be provided for patient treatment or care. These funds may not be used to supplant existing funding. Funding estimates outlined above may vary and are subject to change.

Purpose

The HIV epidemic constitutes a significant threat to the public health of the United States. High risk behavior such as intravenous (IV) drug use with needle paraphernalia sharing or having sex with an infected person may result in the transmission of HIV. Pregnant women who are infected with HIV may also infect their unborn baby. One of the important means currently available to reduce the prevalence of risky behavior and HIV transmission is effective education about the behaviors that spread the virus from an infected person to an uninfected person, the consequences of infection, and how to prevent becoming infected. Other ways to reduce risky behavior include influencing community norms in support of safer behaviors and developing skills for practicing them.

Congress has therefore authorized funds to provide direct financial and technical assistance to CBOs in the areas most heavily affected by the HIV epidemic so that they may work in their own communities to achieve a reduction of the risk of HIV transmission. Because racial and ethnic minorities have been disproportionately affected by the HIV epidemic, Congress has also authorized CDC to provide direct financial and technical assistance to minority CBOs in these areas most affected by the HIV epidemic. The support is specifically for those CBOs providing information and other services to populations at increased risk of HIV infection and/or HIV infected persons.

The overall goals of the nationwide HIV prevention program are to help uninfected individuals initiate and/or sustain behavior that will eliminate or reduce their risk of becoming infected. The goals are also to assist infected individuals in adopting behaviors that will avoid transmitting the virus to others.

Program Requirements

Recipient Activities

1. Needs Assessment

Applicants should assess the need for the proposed program by:

A. Contacting their State or local health department AIDS Coordinators to obtain information on HIV prevalence in the target populations and HIV/AIDS related baseline knowledge, attitudes, beliefs, and when available, behavior data and other information relevant to the needs of the target population;

B. Identifying other organizations and agencies that are providing to the target populations services which are related to or supportive of the activities being proposed by the applicant; (and briefly listing the services which these organizations and agencies are providing); and

C. Identifying gaps in HIV prevention activities directed to the target populations.

2. Health Education/Risk Reduction

Based on the needs assessment:

A. Develop specific, time-phased, and measurable program objectives;

B. Target these programs to individuals whose behavior may place them at increased risk of HIV transmission, particularly those belonging to racial and ethnic minority populations, including but not limited to:

(1) Infected persons;

(2) Men who have or have had sex with men;

(3) Individuals who exchange sex for drugs or money;

(4) IV drug users who share paraphernalia;

(5) Persons with sexually transmitted diseases; and

(6) Persons who are or were sex or needle sharing partners of those listed above, especially female partners.

C. Develop and conduct culturally sensitive and language specific HIV prevention education programs to reduce or eliminate risky behavior. In addition, some members of the target population may have disabilities which hinder learning and which may require special approaches to communication;

D. Address the need for prevention and treatment of other sexually transmitted diseases when carrying out HIV prevention programs.

3. Collaboration

In implementing programs:

A. Plan and conduct program activities in collaboration and coordination with State/local health departments;

B. Collaborate and coordinate activities with appropriate organizations involved in HIV prevention and education programs serving the target population in the local area, whenever possible. Such organizations would include, as appropriate:

(1) Community groups/organizations, including churches and religious groups, especially those with a racial/ethnic minority membership and focus, and those that serve populations at increased risk;

(2) AIDS service organizations;

(3) Schools, boards of education, and other local education agencies; and

(4) Federally-funded community networks.

Examples of such collaboration include letters of support or workplans jointly developed with local health departments and other community organizations and agencies.

4. Evaluation

Develop and implement an evaluation plan to:

A. Monitor the accomplishment of program activities and progress toward achieving each objective; and

B. Determine how program activities affect the target population and how they will help ensure that State, local, and national HIV prevention goals are addressed. Collaboration with the State or local health department is essential for this activity.

Centers for Disease Control Activities

The CDC activities are to:

1. Provide consultation and technical assistance in planning, operating, and evaluating prevention activities;

2. Provide up-to-date scientific information regarding risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection;

3. Assist in the evaluation of program effectiveness;

4. Assist recipients in collaborating with State and local health departments and other PHS-supported HIV/AIDS recipients; and

5. Facilitate the transfer of successful intervention programs to other areas.

Evaluation Criteria

Eligible applications submitted under this announcement number will be evaluated by a two-step review process.

1. *Initial Evaluation*—CDC-convened ad hoc committees will initially review all applications and evaluate them based on the following criteria:

A. The extent to which the applicant demonstrates ties with and credibility with the target population as evidenced by previous service to that population (10 points);

B The extent to which the applicant plans to involve the target population in carrying out the program (10 points); and

C. The extent to which the applicant provides proof of endorsement by other organizations serving the target population (5 points).

Applications will be ranked based on this preliminary review as follows:

Applicants Applying as Other Than a Minority CBO: Based on the priority of funding 15 to 20 awards to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition, applications from applicants applying as other than a Minority CBO will be ranked without regard to MSA location.

Applicants Applying as a Minority CBO: Based on the priority of funding at least one project in each of the eligible MSAs, minority CBO applications will be ranked within MSAs. In addition, when referring applications for final review, the number of HIV/AIDS cases, percent of population, and percent of minorities in each of the MSAs will also be taken into account in determining the number of applications for each MSA to be referred for review.

2. *Final Evaluation*—A second review will be conducted by CDC-convened review committees on applications referred from the initial review. These applications will be evaluated on an individual basis according to the criteria below:

A. The need for program support as described by the applicant (20 points);

B. Evidence of the ability of the applicant to carry out the proposed program as demonstrated by ties with and credibility within the target community, and to collaborate with appropriate organizations as described in the Recipient Activities Section (25 points);

C. The extent to which the proposed objectives are specific, measurable, time-phased, related to the recipient activities, and related to national HIV prevention goals (20 points);

D. The quality of the applicant's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting its objectives, and the extent to which requested funds are for direct provision of HIV prevention services to the target population (20 points); and

E. The extent to which the evaluation plan measures the accomplishment of program objectives (15 points).

In addition, consideration will be given to the appropriateness and reasonableness of the budget request, proposed use of project funds, the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities, and the need to provide support in each of the eligible Metropolitan Statistical Areas.

In future years, noncompeting continuation applications within an approved project period will be evaluated on satisfactory progress in meeting project objectives as determined by site visits by CDC representatives, progress reports, the quality of future program plans, and the availability of funds.

Funding Priorities

At least $5,000,000 will be awarded to community-based organizations which represent and serve minority persons and whose governing body is composed of more than 50 percent racial and/or ethnic group members (Asians, Blacks, Latinos/Hispanics, Native Americans, and Pacific Islanders). Priority will be given to supporting at least one project in each of the eligible Metropolitan Statistical Areas. In addition, approximately 15–20 awards will be made to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition.

Other Requirements

Recipients must comply with the document titled: Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions. In complying with the Program Review Panel requirements contained in the document, which appears below, recipients are encouraged to use an existing Program Review Panel such as the one created by the Health Department's AIDS/HIV Prevention Program.

Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs October 1988

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. They include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship. For those individuals who do not eliminate risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. This document is intended to provide guidance for the development of educational materials, and to require the establishment of local review panels to consider the appropriateness of messages designed to communicate with various population groups.

1. Basic Principles

a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion

pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to describe dangerous behaviors and explain less risky practices concening AIDS should use terms or descriptors necessary for the target audience to understand the meassages.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as homosexual men, about high risk sexual practices, would be judged by a reasonable person to be inoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

e. Messages provided to young people in schools and in order settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988; 37 [suppl. no. S-2]).

f. AIDS education programs and education curricula funded by CDC from the 1989 appropriations must be consistent with language contained in the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-436) at 102 Stat. 1692. This language is as follows: "Notwithstanding any other provision of this Act, AIDS education programs funded by the Centers for Disease Control and other education curricula funded under this Act dealing with sexual activity—(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual, and (2) in addition, with regard to AIDS education programs and curricula—(A) shall be designed to reduce exposure to and transmission of the etiologic agent for acquired immune deficiency syndrome by providing accurate information, and (B) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse."

The *Surgeon General's Report on Acquired Immune Deficiency Syndrome* (October 1986) contains messages which are consistent with the provisions of this legislation. (Pub. L. 100-436)

2. Program Review Panel

a. Recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles (in the previous section) in conjunction with prevailing community standards, will review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdication. Specifically, applicants for cooperative agreements/grants will be required to include in the application the following:

(1) Identification of a panel of no less than five persons representing a reasonable cross-section of the general community [1] but which is not drawn predominantly from the target population or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational groups sessions are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that their project files are documented with a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed items submitted to them that is subject to this guidance.

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the program review panel specifying the vote for approval or disapproval for each proposed item which is subject to this guidance.

[1] Panels which review materials for use with school age populations should include representatives of such groups as teachers, school administrators, parents, and students.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.118.

Application Submission and Deadline

Preapplication

Applicants are encouraged to submit a preapplication (Standard Form 424) to: (1) determine eligibility before devoting significant expenditures of effort in preparing an application, and (2) obtain information about the availability of technical assistance in developing applications. A preapplication will consist of the Standard Form 424 and the information requested in the paragraphs below. An original and 2 copies of the preapplication should be addressed to:

Centers for Disease Control, Procurement and Grants Office, AIDS Community Based Project—A45, 1600 Clifton Road NE., Atlanta, Georgia 30333. *Preapplications must be received no later than 4:30 p.m. (e.s.t.) February 6, 1989* to ensure that CDC has time to provide technical assistance.

For eligibility to be determined, applicants must provide proof that they meet the requirements outlined under the heading Eligible Applicants; that is, proof of nonprofit status or proof that an application for nonprofit status has been filed.

Applicants should also provide a brief description of the target population, proposed risk reduction activities, and evidence of established ties with the target populations at risk. This description should not exceed two single-spaced typewritten pages. Applicants should also indicate whether they are applying as a minority CBO.

Minority applicants who choose to also apply for funding to target high risk populations *without regard to their racial/ethnic composition* must submit a separate application which clearly describes the high-risk target population and risk reduction activities which the applicant proposes to address. The application must also provide evidence of the appropriate established ties with the target population at risk.

Upon receipt, CDC will determine whether eligibility criteria have been met and will notify applicants of the determination within 1 week of receipt of their preapplication. Therefore, applicants are encouraged to submit their preapplication as early as possible so that they will have as much time as possible to develop their final application.

Technical assistance will be available in the form of workshops in locations convenient to the eligible metropolitan Statistical Areas. Workshops for some MSAs will be combined and will be held in January and February. In addition, a CDC staff person will be assigned as project officer to each of the CBOs submitting a preapplication. This project officer will be available to respond to questions and to ensure the CBOs are notified of the workshop dates and location, and to provide further technical assistance.

Final Application

The original and two copies of the final application (PHS Form 5161-1) must be addressed to: Centers for Disease Control, Procurement and Grants Office, AIDS Community Based Project—A45, 1600 Clifton Road NE., Atlanta, Georgia 30333, on or before March 14, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are received no later than 4:30 p.m. (e.s.t.) March 24, 1989.

2. Late Applications: Applications not received by this deadline are considered late applications and will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Carole J. Tully or Marsha A. Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, (404) 842-6640.

Announcement Number 908, "Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects" must be referenced in all requests for information pertaining to these projects. A Spanish translation of the Announcement is available upon request.

Technical assistance may be obtained from Jack Kirby, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1450 or (404) 639-2778.

CDC will conduct technical assistance workshops to provide applicants with the opportunity to obtain assistance in preparing their applications, developing program plans, setting objectives, developing evaluation plans, and preparing budgets for AIDS/HIV prevention programs. See the Application Submission and Deadline—Preapplication section for additional information pertaining to the workshops.

Dated: January 4, 1989.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89-395 Filed 1-6-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86G-0202]

The Hereld Organization; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 5G0305) proposing that α-cyclodextrin is generally recognized as safe (GRAS) as an encapsulating agent for use in food.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 30, 1986 (51 FR 19612), FDA published a notice that it had filed a petition (GRASP 5G0305) from the Hereld Organization, 401 Christopher Ave., Suite 11, Gaithersburg, MD 20877. This petition proposed to affirm that α-cyclodextrin is GRAS for use as an encapsulating agent for use in human food. The firm has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 15, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-372 Filed 1-6-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the National Cholesterol Education Program Coordinating Committee

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, February 3, 1989, from 9 a.m. to 3 p.m., at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652-2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institutes, National Institute of Health, C-200, Bethesda, Maryland 20892, (301) 496-0554.

Dated: December 30, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-286 Filed 1-6-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Excess and Surplus Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies excess and surplus Federal property determined by HUD to be suitable for

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possible use for facilities to assist the homeless

DATE: January 9, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88–2503–OG, HUD is publishing this Notice identifying Federal buildings and real property in the current excess and surplus inventory of the General Services Administration (GSA) that HUD has determined to be suitable for use for facilities to assist the homeless.

The order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501, HUD is to collect information from Federal landholding agencies about such properties and to identify which of the properties are suitable for use for facilities to assist the homeless. HUD is in the process of surveying Federal agencies to collect the information, and will make determinations of suitability, based on established criteria, as it receives information from the agencies. Pursuant to the court order, HUD will publish a Notice in the **Federal Register** on a weekly basis of properties determined to be suitable.

The properties identified in this Notice are from the current excess and surplus inventory of GSA. The court order required HUD to complete suitability determinations for at least 50 percent of the properties in GSA's excess and surplus inventory by December 28, 1988, and for the remainder by January 12, 1989. The properties in this Notice are the result of an assessment of 65 percent of the inventory. Suitability determinations for the remainder will be made no later than January 12, 1989.

Suitability determinations are based on information provided by GSA. The determinations are classified as: (1) Suitable buildings for occupancy; (2) suitable buildings for non-occupancy; (3) suitable vacant land. Each determination is subject to the property's being used in compliance with applicable Federal, state, and local requirements. Buildings and land found suitable are identified even though they may be currently occupied or in use. The issue of availability will be addressed by GSA or the Department of Health and Human Services (HHS). Detailed information about the property may be obtained from James Folliard ((202) 535–7052) or Richard Stinson ((202) 535–7067), Federal Property Resources Services GSA, 18th and F Streets NW., Washington, DC 20405. (These are not toll-free numbers). (Please refer to the GSA identification number given with each identified property.)

Public bodies and private nonprofit organizations wishing to apply for use of a property should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to Judy Breitman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A–10 Parklawn Building, 5600 Fishers Lane, Rockville, Md 20857; telephone (301) 443–2265. (This is not a toll-free telephone number.)

Dated: January 3, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

Suitable Buildings for Non-occupancy

White Sands Missile Site, Mountain Home, ID, 9–D–ID–404Q
Widscliffe Port Site, Widscliffe, KY, 4–J–KY–0578
Westover Communication Transmit Facility, Chicopee, MA, 2–D–MA–716Q
Rock Hall Tower Site #13, Kent County, MD, 4–D–MD–492–O
Norfolk Lake, Baxter & Fulton Counties, Ark and Ozark, Co., MO, 7–D–AR–482–C
Federal Building & Post Office, Port Gibson, MS, 4–G–MS–474A
Paley Transmitter Annex Site, Seymour Johnson AFB, NC, 4–D–NC–580–A
Dayton Depot, Warehouse No. 3, Moraine, OH, 1–B–OH–748A or 5–G–OH–748–A
Songbird Warehouse Site, Bradford, PA, 4–A–PA–730
Portion, Former Valley Forge General Hospital, Phoenixville, PA, 4–GR(2)PA–666YY
PHS Indian Hospital, Rapid City, SD, 10–F–SD–506
ILS Outer Market Annex, Ogden, UT, 7–GR–UT–421W

Suitable Buildings for Occupancy

International Flight Service Station, Tracy, CA, 9–U–CA–1283
1401 Sepulveda Blvd, West Los Angeles, CA, 9–G–CA–514K or 9–6V–CA–514K
Portion, Bell Federal Ctr., Bell, CA, 9–G–CA–0698G
Point Arena, Tract 200, Point Arena, CA, 9–D–CA–1212
Portion, Square 571, Washington, DC, 4–G–DC–0461–A
US Army Reserve Ctr., Waycross, GA, 4–D–GA–638
Shoshone Administrative Site, Shoshone, ID, 9–I–ID–405A
Oxford Slough, Oxford, ID
Dana Loran Station Family Housing, Dana, IN, 1–U–IN–505D
National Weather Service Upper Air Facility, Boothville, LA, 7–C–LA–538
Portion, Middle River Fed. Depot, Middle River, MD, 4–G–MD–453E
Furlong Building, Pontiac, MI, 2–GR–(1)–MI–693
Headwaters, Headquarters Site, Remer, MN, 01–D–MN–0548
Lee Ft. Port Terminal, Vicksburg, MS, 4–J–MS–520A
Federal Building, Smithfield, NC, NC–0591 or 4 G NC 591
Tonopah Resource Area Housing, Tonopah, NV, 9–I–NV–467
Mountain View Manor Loop (903, 904, 908, 920), Tonopah, NV, 9–U–NV–467A
Mountain View Manor Loop (922, 927), Tonopah, NV, 9–U–NV–467B
GSA Depot, Binghamton, NY, 1–G–NY–760
Kingsley Family Housing Annex, Klamath Falls, OR, 9–D–OR–434I
Ridgeview Housing, Hauser, OR, 9–N–OR–668
Portion, Former Valley Forge General Hospital, Phoenixville, PA, 4–GR–PA–666
Portion, Former Ramey AFB, Aquadilla, PR, 01–D–PR–0475
US Courthouse, San Juan, PR, 1–G–PR–479
Federal Building, Maryville, TN, 4–G–TN–611
Border Patrol Station, Carrizo, Springs, TX, 7–J–TX–995
Federal Building & Post Office, Rockwell, TX, 7–G–TX–800A
Federal Building, San Antonio, TX, 7–G–TX–985
Barracks K (Between Washington Blvd & Columbia Pike West, Arlington County, VA, 4–C–VA–573
3 Residences, Warden, WA, 9–1–WA–0557F
Elma Residence, Elma, WA, 9–B–WA–917A
Ranger Residence, Landover, Fremont County, WY, 7–A–WY–531

Suitable Vacant Land

Alabama Army Ammunition Plant, Childersburg, AL, AL–474–J2

Missile Site #7, Tucson, AZ, 9–D–AZ–0583K
Missile Site #5, Tucson, AZ, 9–D–AZ–583J
Missile Site #10, Tucson, AZ, 9–D–AZ–583–H
Portion, Tract #3, Davis Monthan AFB, Tucson, AZ, 9–D–AZ–437FFF
Missile Site #4, Tucson, AZ, 4–D–AZ–583G
Portion, Camp Elliott, San Diego, CA, 9–D–CA–0694A
Portion, Former FCC Monitoring Station, Santa Ana, CA, 9–GR–(1)–CA–598B
Warm Springs and Lake Sonoma, Sonoma County, CA, 9–D–CA–1293
Portion, Former ENT AFB, Colorado Springs, CO, 7–D–CO–404–C
Former, US Army Reserve CTR., West Palm Beach, FL, 4–D–FL–682A
National Archives Records Admin., East Point, GA, 4–G–GA–640
Albion Substation, Albion, ID, 9–B–ID–414A
Government Quarters, Ft. Hall, ID, 9–I–ID–0501B
Chicago Moorings, Chicago, IL, IL–661
Cannelton Locks & Dam Project, Harrison County, IN, 2–D–IN–569A
Portion, VA Hospital, Corner, Leavenworth, KS, 7–GR(4)–KS–426E
MSO Morgan City Housing Property, Berwick, LA, 7–U–LA–536
Old Lock & Dam No. 5, Sterlington/Union Parish, LA, 7–D–LA–537
Portion, Fort George G. Meade, Anne Arundel County, MD, 4–GR–MD–433D
Tract 1—Manistique Coast Guard Light Station, Manistique, MI, 2–GR–2–MI–571
Aurora Administrative Site—Tract No 4113, Aurora, MN, 1–A–MN–540
Pomme De Terre Lake (2 Tracts), Hickory County, MO, 7–D–MO–456B
Proposed Army Reserve Site, Butte, MT, 7–D–MT–590
Cambridge Canal System, Furnas Co., NE, 7–I–NE–429A
Parcel No. 2, Portion, New Jersey, Job Corps Center, Edison, NJ, 1–L–NJ–463H
Stockpile, Deming, NM, 7–G–NM–45AB
Portion, Former Brookhaven National Laboratory (Shoreham), Brookhaven, NY, 2–GR–NY–429X
Portion, Whitney Pt. Dam & Reservoir, Whitney Pt., NY, 2–D–NY–749A
Portion, Camp Sherman Rifle Range, Chillicothe, OH, 2–GR–OH–433B
Portion, Tract 110—Wright Paterson AFB, Fairborn, OH, 1–D–OH–460–0
Portion, Tract A–135—Dillon Lake Project, Falls Township, OH 1–D–OH–779
Portion, Clarence J. Brown Dam & Reservoir, Springfield, OH, 1–D–OH–722A
NOAA Storm Lab, Enid, OK, 7–C–OK–424–AH
Portion, Camp Gruber, Muskogee County, OK, 7–GR–OK–421–C
Green Peter Lake Rock Quarry, Linn County, OR, 9–I–OR–675
John Day Corridors, Sherman County, OR, 9–B–OR–682
Cape Blanco Light Station, Sixes, OR, 9–U–OR–1283
Portion, Tract VE–176, Vancouver—Eugene T/L, Washington County, OR, 9–B–OR–562E
U.S. Reserve Training Site, Clinton, PA, 4–D–PA–735
Portion, Parking Lot, Philadelphia, PA, 4–G–PA–718
Tioga Hammond Lakes Project, Tioga, PA, 4–D–PA–699F
Smith & Jackson Counties, Carthage, TN, 4–D–TN–609A–L
NASA, Houston, TX, 7–Z–TX–904A
Lake Texoma, Lake Texoma, TX & OK, 7–D–OK–507—F & G
Army Aircraft Plant, Saginaw, TX, 7–GRI–TX–879
Portion, Federal Prison, Seagoville, TX, 7–J–TX–884–B
Former, Wendover AFB, Wendover, UT, 7–GR–UT–401K
Chief Joseph Dam, Bridgeport, WA, 9–D–WA–0746
Portion, Vancouver Barracks, Vancouver, WA, 9–GR–WA–049A

[FR Doc. 89–292 Filed 1–6–89; 8:45 am]

BILLING CODE 4210–27–M

Office of Environment and Energy

[Docket No. I–89–151]

Intent to Issue a Finding of No Significant Impact, McNair Farms, Fairfax County, VA

The Department of Housing and Urban Development gives notice concerning the subject proposal, that it intends to issue a Finding of No Significant Impact (FONSI) based on the preliminary Environmental Assessment (EA) prepared for the project. Comments are solicited before the HUD Philadelphia Regional Office will make a final determination whether to proceed without preparing an Environmental Impact Statement (EIS).

Description

McNair Farms is a proposed mixed use development located south of Herndon, Virginia in Fairfax County. It is approximately 10 miles west of I–495 and 1½ miles east of Dulles International Airport, along Centreville Road between Fox Mill Road and the Frying Pan Park. The overall site consists of 317 acres, of which 264 acres are included in the request for Title X land development assistance. The HUD Title X program provides mortgage insurance assistance for land acquisition, land and site preparation and the installation of infrastructure to allow land to be sold for housing and related uses.

The overall project will provide for up to 3,550 residential housing units at an average density of approximately 15 dwelling units per acre. The project will also accommodate up to 534,000 square feet of commercial and retail space. The Title X project area includes 12 land (development) bays which will provide for a mix of housing types including 67–77 low density detached single family units, and the remainder will be high density town houses and midrise multifamily units. In addition, 500 units of elderly housing is proposed for the non-Title X portion of the overall project. Mortgage insurance for the construction of housing units is not part of the Title X program. Fairfax County has approved the rezoning of the property essentially from R–1 low density residential to PDH–16 to accommodate the mixed use development. Preliminary development plans have been approved for three of the land bays.

The site is relatively flat and the most recent use of the property has been for farming. The overall project will include the widening of Centreville Road to six lanes and the extension of Frying Pan Road and Coppermine Road (both four lanes) through the property. About 10 percent of the land is in the floodplain of the Frying Pan Tributary and the property also contains several ponds and wetland areas.

Purpose of FONSI Notice

Pursuant to HUD environmental regulations at 24 CFR Part 50, a preliminary EA has been prepared by HUD's Washington, DC Field Office to determine whether or not an EIS is required. It is the tentative finding of the EA that there would be no significant impact on the human environment and that the project is in compliance with the National Environmental Policy Act, including initiating the consultation processes under the related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations, a proposed FONSI has been prepared, and a Notice to that effect is hereby published.

Impacts that have been identified and related to historic preservation, floodplain management and wetlands protection are addressed through specific procedural processes for those issues.

In accordance with 40 CFR 1501.4(e) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the proposed FONSI. *Comments should be submitted to:* Regional Environmental Officer, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392.

The proposed EA and supporting documentation may be examined during normal business hours at the Washington, DC Field Office, Room 3158, HUD Building, 451 Seventh Street SW., Washington, DC, as well as the location noted above. Inquiries concerning the EA should be made to Margaret Krengel, Regional Environmental Office at (215) 597–1829, or Millicent C. Grant, Washington, DC Field Office Environmental Officer at (202) 453–4532. (These are not toll-free numbers.)

Dated: January 4, 1989.

Dorothy S. Williams,

Deputy Director, Office of Environment and Energy.

[FR Doc. 89–374 Filed 1–6–89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–3110–10–7201–GP9–0104; NM NM 68533]

Issuance of Mineral Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to the State of New Mexico on August 29, 1988, for the oil, gas, and other minerals, including valuable deposits of sand, gravel, caliche, and similar minerals and the geothermal resources in and under the following described land in Catron, Cibola, Socorro, and Valencia Counties, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), and Section 503 of the Act of December 31, 1967 (101 Stat. 1544):

New Mexico Principal Meridian

T. 8 N., R. 3 W.,
sec. 28, all;
sec. 30, lot 1, E½, and E½W½;
sec. 34, lots 1 to 4, inclusive, W½E½, and W½.

T. 4 N., R. 4 W.,
sec. 2, lots 8, 9, and E½SE¼.
T. 5 N., R. 4 W.,
sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, And SE¼;
sec. 8, all;
sec. 10, all;
sec. 14, NE¼, W½, N½SE¼, and SW¼SE¼;
sec. 16, lots 1 to 4, inclusive, E½, and E½W½;
sec. 20, all;
sec. 22, all;
sec. 26, W½ and W½SE¼SE¼;
sec. 28, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
sec. 34, all.
T. 3 N., R. 5 W.,
sec. 1, all;
sec. 12, all;
sec. 13, all;
sec. 24, N½, SW¼, N½SE¼, and SW¼SE¼.
T. 4 N., R. 5 W.,
sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
sec. 12, all;
sec. 24, all.
T. 4 N., R. 7 W.,
sec. 24, SW¼NW¼;
sec. 26, E½.
T. 3 N., R. 14 W.,
sec. 28, S½;
sec. 27, SE¼.
T. 4 N., R. 15 W.,
sec. 6, lots 1 to 13, inclusive, NE¼SW¼, and SE¼;
sec. 8, all;
sec. 17, N½ and SE¼;
sec. 21, E½, E½W½, and W½NW¼;
sec. 25, W½W½.
T. 6 N., R. 20 W.,
sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
sec. 20, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½W½.

Containing 18,785.09 acres.

In exchange for all the minerals in the land described above, the oil, gas, and other minerals, including valuable deposits of sand, gravel, caliche, and similar minerals and the geothermal resources in and under the following described land in Cibola County, New Mexico, were reconveyed to the United States.

New Mexico Principal Meridian

T. 4 N., R. 9 W.,
sec. 2, lots 1 to 4, inclusive, S½NW¼, and S½
sec. 6, lots 1, 2, 4, and 5.
T. 5 N., R. 9 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, S½;
sec. 12, S½SW¼, NE¼SE¼, and SW¼SE¼, and SW¼SE¼;
sec. 16, all;
sec. 24, E½W½;
sec. 30, N½NE¼, SE¼NE¼, SE¼SW¼, and SW¼SE¼;
sec. 32, all;
sec. 36, all.
T. 7 N., R. 9 W.,
sec. 16, all.
T. 6 N., R. 9 W.,
sec. 32, all;
T. 4 N., R. 10 W.,
sec. 2, lots 1 to 12, inclusive, and S½.
T. 5 N., R. 10 W.,
sec. 32, all;
sec. 34, SW¼SE¼;
sec. 36, all.
T. 8 N., R. 10 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
sec. 16, all;
sec. 36, all.
T. 6 N., R. 11 W.,
sec. 32, all.
T. 9 N., R. 12 W.,
sec. 14, all;
sec. 20, all;
sec. 22, all;
sec. 24, all;
sec. 26, all;
sec. 28, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½ W½;
sec. 32, all;
sec. 34, all.
T. 8 N., R. 13 W.,
sec. 14, NW¼NE¼ and SE¼NW¼;
sec. 16, all.

Containing 16,209.65 acres, more or less.

The purpose of the exchange was to consolidate Federal mineral ownership for the Federal Government within El Malpais National Conservation Area and National Monument. The exchange was consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan approved January 16, 1986, and Public Law 100–225 of December 31, 1987, which established El Malpais National Monument and National Conservation Area.

Dated: December 23, 1988.

Larry L. Woodard,

State Director.

[FR Doc. 89–205 Filed 1–6–89; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been revised and submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the revised collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the information collection should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Production Accounting and Auditing System Oil and Gas Reports.

Abstract: Production Accounting and Auditing System information is needed to provide comprehensive production and disposition data on oil and gas produced from Federal onshore and offshore leases, and from Indian leases. The Minerals Management Service (MMS) uses the data to monitor production, for audits, and to compare reported production with sales data reported in the MMS Auditing and Financial System.

About half of all onshore oil and gas lease operators formerly reporting to the Bureau of Land Management (BLM) have begun reporting production data to MMS using Form MMS–3160. All onshore lease operators were to be reporting to MMS by the end of Fiscal Year (FY) 1989. However, funding to complete the transfer has not been appropriated for FY 1989. Lack of funding will cause a delay in the transfer of responsibility from BLM to MMS and cause a reduction in the estimated burden hours for this information collection in FY 1989. The delay affects only those respondents still reporting onshore oil and gas production to BLM. Respondents already reporting to MMS will continue to do so.

Bureau Form Numbers: MMS–3160, and MMS–3160A, MMS–4051, MMS–4052, MMS–4053, MMS–4054–A,B,C, MMS–4055, MMS–4056–A,B,C, MMS–4057, MMS–4058, MMS–4061.

Frequency: Monthly, annually.

Description of Respondents: Companies producing and processing oil and gas from Federal onshore and offshore leases, and from Indian leases.

Estimated Completion Time: One-half hour to 1 hour.

Annual Responses: 174,180.

Annual Burden Hours: 109,490.

Bureau Clearance Officer: Dorothy Christopher 703–435–6213.

Date: November 23, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89–329 Filed 1–6–89; 8:45 am]

BILLING CODE 4310-MR

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 306X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Stearns County, MN

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 2.78-mile line of railroad between mileposts 58.94 and 59.50 and between milepost 0.00 and 2.22, near St. Cloud, in Stearns County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding a cessation of service over the line is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days are prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of interest of intent to file an offer of financial assistance has been received, this exemption will be effective on February 8, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 19, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–339 Filed 1–6–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–3(Sub-No. 83X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Walker County, TX

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.36-mile line of railroad between milepost 6.67 and milepost 7.03 at Huntsville in Walker County, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 8, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 19, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Room 820, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–340 Filed 1–6–89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Drug Control and System Improvement Discretionary Grants

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Final notice of program priorities.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing the program announcement for the Drug Control and System Improvement Discretionary Grant Program of the Anti-Drug Abuse Act of 1988, Title VI, Subtitle C, Subpart 2 of Pub. L. 100–690 and is requesting applications and proposals for announced programs. The Discretionary Program is part of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

DATES: Due dates for each program are included in the individual program announcement.

ADDRESSES: All concept papers and final applicaitons (original plus two copies) should be addressed to the Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531. A copy of the concept paper/application should also be sent to the State Office which administers the Drug Control and System Improvement Formula Grant Program in the state(s) affected by the proposed program.

FOR FURTHER INFORMATION CONTACT: For general information about the priorities and range of discretionary grant programs, contact James C. Swain, Director, Discretionary Grant Programs Division, 633 Indiana Avenue NW., Washington, DC 20531, 202/272–4601. For specific information on individual program requirements, contact the person indicated in the text for each program.

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988 amends the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711, *et seq.*, hereinafter referred to as the "Act"), and creates the Drug Control and System Improvement Program. Further, this Act unifies two previous public laws: The Justice Assistance Act of 1984 and the Anti-Drug Abuse Act of 1986. This Act gives *special emphasis* to assisting states implementing drug control strategies, with secondary emphasis on assistance to improve the criminal justice system's overall response to violent crime and serious offenders. Section 511 of the Act sets aside 20 percent or $50,000,000, whichever is less, of the total amount appropriated for the Program in a special discretionary fund for use by the Director of BJA in carrying out the purposes established in section 501(b) of the Act. Those purposes are:

- Undertaking educational and training programs for criminal justice personnel;
- Providing technical assistance to States and local units of government;
- Undertaking projects which are national or multi-jurisdictional in scope, which meet the needs of communities and which address the purposes specified in the Act; and,
- Providing financial assistance for demonstration programs likely to be a success in more than one jurisdiction (section 510 of the Act).

The Bureau of Justice Assistance solicited recommendations from more than a thousand Federal, state, and local law enforcement, prosecution, judicial, corrections, and treatment practitioners to assist in the development of priorities for this Program. The Bureau of Justice Assistance will respond under separate cover to each respondent. Working groups of practitioners and national experts were established to review recommendations received, indentify effective programs responsive to those recommendations and propose funding priorities in each of the program areas.

The strategy for the Drug Control and System Improvement discretionary Grant Program is to provide balanced and comprehensive support for state/local initiatives against serious crime problems, especially those problems relating to drug abuse and control, and to improve the functioning of the criminal justice system at the state and local level. The strategy considers:

- Enhancing the capacity of the States to define drug problems and focus program development in areas of greatest need;
- Continuing programs which are demonstrating success in bringing new concepts and techniques to the criminal justice system;
- Initiating new efforts to meet emerging issues or focus on problems not addressed in previous year programs;
- Disseminating programs of proven effectiveness through evaluation and other documents, technical assistance and training;
- Providing a support delivery system to assist implementation of effective programs;
- Geographic distribution of programs to meet regional and state needs; and.
- Special attention to the needs of inner-city communities.

Application and Award Process

The FY 1989 appropriation for Part E discretionary programs is approximately $30,000,000. A portion of these funds were earmarked by Congress for specific programs. This program announcement contains application/proposal requests for a major portion of the available appropriation. The Bureau of Justice Assistance makes every effort to establish an open and competitive application process. Applicaitons or concept papers are being requested. A panel of experts will be established in each of the program areas to review applications or proposals submitted on a competitive basis. Some awards will be negotiated directly with organizations that are uniquely qualified to provide specific services. Such awarding processes are described in this announcement.

Outline of Contents

- Recommendations to Applicants
- Evaluation
- Subpart I—Prevention and Education Programs
- Subpart II—Apprehension Programs
- Subpart III—Prosecution Programs
- Subpart IV—Adjudication Programs
- Subpart V—Corrections Programs
- Subpart VI—Information Systems Programs
- Subpart VII—Other Programs

Recommendations to Applicants

A complete discretionary grant application requires a Standard Form 424 "Federal Assistance." Copies of the form and a completed sample are available upon request to the BJA address noted earlier. After completion of this document it must be signed by a duly authorized official (Item 23) and dated concept papers do *not* require a completed SF424.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circular applicable to financial assistance. The Circular along with additional information and guidance are contained in the "Financial and Administrative Gude for Grants," Office of Justice Programs, Guideline Manual, OJP M7100.1 (current edition), available from the Office of the Comptroller at the address noted earlier.

Non-Discrimination

The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of the Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; Title XI of the Education Amendments of 1972, the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Sub-parts C,D,E, and G.

Intergovernmental Review of Federal Programs

On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," to provide state and local governments increased and more effective opportunities to influence federal actions affecting their jurisdictions. Final regulations (28 CFR Part 30) implementing the Order for the Department of Justice were published in the **Federal Register** on June 24, 1983 (48 FR 29238). The Order and the regulations permit States to establish a state process for the review of federal programs and activities, to select which programs and activities (from a previously published list) they wish to review, to review proposed federal programs and activities, and to make their views known to the Department through a state "Single Point of Contact" (SPOC). The Order and the implementing regulations revoke the former A–95 clearance process. Applicants for these programs, except those that are national in scope, must submit copies of their applications to the appropriate state Single Point of Contact, if one has been established and if the State has selected these programs to be covered in its review process. Copies should be sent to the SPOC at the same time they are submitted to BJA. Under the regulations, the state process has at least thirty (30) days to comment on non-competing continuation applications and at least sixty (60) days to comment on all other applications.

Evaluation

The United States Department of Justice and the Congress have a strong interest in determining what impact BJA programs have in state and local jurisdictions. Do they in fact lead to improvements in crime prevention and drug control, in expeditious and fair case processing and disposition, in better coordination and cooperation among criminal justice system agencies and between these agencies and private and public organizations with which the system must interact and the public that the system serves? Answering these questions leads BJA to a strong commitment to independent and comprehensive evaluation of programs which are initiated through discretionary and block grant funding.

To the extent it is feasible, the announced programs contain provision for such evaluation. Where programs are continuations, an evaluation component may already exist. For new programs, evaluations may be prescribed in the program announcement or anticipated upon completing guidelines to be developed jointly between the Bureau of Justice Assistance and the National Institute of Justice.

These guidelines will be developed and announced in the near future and may effect some of the programs with BJA is announcing today. For that reason, all applicants should be aware of the need to include in their program provisions for adequate documentation of what the program entailed and what it accomplished and, where individual case processing or management is involved, should undertake adequate data collection to allow later independent evaluation.

Applicants should contact the appropriate BJA contact person for their program for further guidance about the evaluation requirement if applications are to be submitted prior to issuance of further information from BJA on this point.

Subpart I—Crime Prevention and Education

Program title: National Citizens' Crime Prevention Campaign.

Goals/objectives: To continue the National Citizens' Crime Prevention

Campaign which features McGruff, the crime dog, the nationally recognized symbol for crime prevention and his "Take A Bite Out Of Crime" slogan. This campaign will continue to be spread by the production and airing of public service announcements; the 124 member Crime Prevention Coalition and related activities; producing a full range of materials from brochures to books for practitioners, citizens, and youth as well as technical assistance and training provided through national/state workshops.

Background: Crime prevention has become and continues to be an important part of our daily lives. Programs and initiatives are now implemented by Federal, state and local levels of government, community organizations, businesses, churches, civic organizations, schools, and citizens. Examples of programs inlcude Neighborhood Watch in both urban and rural communities, Drug Prevention, Business Watch, Teen Programs, Child Safety Programs, Programs for the Senior Citizen, Arson Prevention, Safe Homes for Kids, Operation Property Identification, Home Security, and many others.

The National Citizens' Crime Prevention Campaign was developed in 1978 by the U.S. Department of Justice, the Advertising Council, Inc., and the Crime Prevention Coalition, which at that time numbered 19 members. Since the airing of the first "McGruff" public service announcement (PSA) in 1980, the campaign has continued to grow and flourish. Administering the "McGruff Camapgin" and providing Secretariat support to the Crime Prevention Coalition is the responsibility of the National Crime Prevention Council (NCPC), a not-for-profit organization that provides a wide array of services to a diverse constituency including individual crime prevention practitioners, agencies serving youth, community organizations, schools, corporations, law enforcement, state governments and associations, and Federal agencies. These services include technical assistance and training, high quality materials, educational programs, a computerized database of nationwide crime/drug prevention programs, a resource library, and network building to support Federal, state and local crime/drug prevention efforts.

Through a cooperative agreement with BJA, the National Crime Prevention Council administers the day to day activities of the Campaign; develops, distributes, and promotes crime/drug prevention public service annnuncements, brochures, pumphlets, books, etc.; and provides technical assistance/training to support citizen based activities—convincing people that crime and drugs are not a fact of life, that better and safer communities can be developed.

Program description: Elements of this BJA/NCPC cooperative agreement will include the following:

- Drug prevention and demand reduction activities, targeting our nation's youth;
- Technical assistance directed at States to provide for cost-effective dissemination of prevention information and initiatives to local governments, communities, and citizens.
- Distribution of crime/drug prevention public awareness and positive action opportunities through "How-to Kits," newsletters, brochures, and booklets.

Assistance to citizens, practitioners, community organizations, schools, business, local government, state and Federal agencies will be provided through:

- A National Resource Library with over 1500 volumes on over 100 different crime prevention topics;
- A Computerized Information Center that contains over 5,000 current crime and drug prevention programs, the largest and most comprehensive database in the United States;
- A comprehensive package of crime prevention materials designed specifically for BJA block grant recipients, States, Coalition members, and crime prevention practitioners;
- National/state topical workshops and seminars;
- The continuation of efforts in demand reduction by BJA and NCPC, including providing technical assistance and training to field demand reduction coordinators of the FBI, DEA, and Border Patrol; developing and promoting demand reduction PSA's and support materials, and assisting in demand reduction related activities and special events;
- A national research and policy forum for the crime prevention practitioner. Efforts to include: One National Roundtable Workshop for state association and state policy makers, a state advisory council to provide guidance to NCPC on national issues, and various task forces called by BJA/NCPC to focus on specific issue problems;
- The continuation of the partnership with the National Association of Stock Car Racers (NASCAR) focusing on crime/drug prevention activities and PSA's using nationally recognized Motor Sports Super-Stars.
- Continuation of Secretariat support to the Crime Prevention Coalition.

Additional national drug abuse prevention/demand reduction activities will include:

- Distribution of the McGruff "Drug Prevention Kit" to every school district in the United States;
- Media: Following up on the phenomenally successful McGruff "No Show" by developing a drug prevention video targeting kids 9–13 years of age, to be distributed to every school district in the nation;
- Develop and distribute a demand reduction Resource Guide for local law enforcement officers; and,
- Develop, monitor and evaluate neighborhood/community drug abuse prevention pilot (demonstration) projects.

Eligibility and selection criteria: A cooperative agreement with the National Crime Prevention Council will be continued.

Award period: This supplemental cooperative agreement will be for a period of 12 months, through September 30, 1990.

Award amount: The total award is $3,330,000.

Due date: The National Crime Prevention Council will submit an application by June 30, 1989.

Contact person: The BJA contact for additional information is Ronald J. Trethric, Director, Community Crime Prevention Programs, 202/724–8374.

Program title: Demand Reduction Demonstration.

Goals/objectives: To provide funding for one urban jurisdiction to demonstrate a new and innovative method to reduce the demand for drugs among the general population.

Background: The casual use of drugs among a substantial portion of the population provides a steady source of demand for drugs. Many of these users do not view casual use as a problem and find social acceptance of this view.

This program is intended to attract and demonstrate ideas from the community on how social tolerance of casual use of drugs can be eliminated so that casual usage is actually reduced.

Program description: This program is intended to provide an open competition among large cities and counties for new and innovative ideas on how social acceptance of casual use of drugs can be reduced or eliminated entirely, with active participation by law enforcement and other criminal justice agencies in drug prevention and education. To provide the largest possible impact for this program, which if successful will be replicated in other jurisdictions, the program is limited to local units of government having a population of more than one million persons.

Other than limiting the size of eligible jurisdictions and requiring that the program address the specific issue of reducing demand for drugs by casual users through a reduced social tolerance, BJA is not placing any restrictions on the approach, scope or nature of the programs proposed. However, concept papers which are able to incorporate an objective measurement methodology within their program design by which to demonstrate actual reduced tolerance and use, will be favored.

Eligibility and selection criteria: This is a competition open to any local unit of government having a population larger than one million persons. Concept papers, not exceeding ten pages and containing a budget summary and narrative, are requested for consideration by BJA and a panel of individuals having expertise in the areas of criminal justice and drug abuse, prevention, and treatment fields. The proposing jurisdiction selected will negotiate a final application with BJA.

Award period: The award will be for a 12-month period.

Award amount: One grant will be awarded for up to $500,000.

Due date: Concept papers must be submitted no later than March 1, 1989.

Contact person: The BJA contact for additional information is James C. Swain, Director, Discretionary Grant Program Division, 202/272–4606.

Program title: Comprehensive Community Crime Prevention Demonstration.

Goals/objectives: To implement Phase III activities of this national demonstration project, which is demonstrating a comprehensive, cost effective crime prevention model that involves law enforcement working in cooperation with local governmental agencies, business, community organizations and citizens.

Background: The national crime prevention demonstration sites have played a vital role in the development of new approaches to crime prevention. For the past several decades, the Federal Government has provided both resources and financial assistance to cities, communities, and organizations for the development of new techniques and approaches to reduce crime. The ultimate goal was to transfer technology that was proven to be effective and could be replicated by another city county, or State.

Past crime prevention programs were examined and monitored and a new, more comprehensive approach was developed by the BJA. The model developed is known as the "systems approach." It is proactive, institutionalizes crime prevention throughout the law enforcement agency, utilizes crime analysis/data management, involves community interaction and participation which gives the citizen a sense of ownership, and promotes interagency cooperation by using a multi-disciplinary team of professionals to design and implement strategies for the community.

In 1986, four national crime prevention demonstration sites were selected through a competitive bidding process to implement the systems approach model. These sites are Tucson, AZ; New Haven, CN; Jacksonville, FL; and Knoxville, TN. Phase I activities included: the institutionalization of crime prevention within the host law enforcement agency; developing top level administrative support; training of officers and community volunteers in crime prevention techniques and practices; initiating and maintaining an active neighborhood watch; crime prevention through environmental design (CPTED) and, developing a community database to be used in conjunction with crime analysis/data management.

In the Fall of 1987, the cooperative agreements were extended to continue program development. Each program now utilized a process of Planning—Analysis—and Service Delivery. Phase II involved: Expanding and continuing Phase I activities; targeting a crime ridden area within the city to implement intensive crime prevention activities and municipal services; coordinating demand reduction activities within the school system and communities served; and the intensive analysis of a wide range of data sources to help identify and suggest solutions for chronic problems.

Program description: Phase III activities will specifically target demand reduction/drug prevention activities. Working in cooperation with the law enforcement agency, local governmental agencies, parole/probation, businesses, media, community organizations, churches, and citizens will coordinate and mobilize efforts to reduce crime. Initiatives will include: Increased crime prevention and demand reduction training for law enforcement personnel, local government and community volunteers; a prevention component for youth; enhancing the database; CPTED; establishing a city-wide network or hotline; and increased promotion to city residents using local media.

Eligibility and selection criteria: Programs in Tucson, AZ; New Haven, CN; Jacksonville, FL; and Knoxville, TN will be continued. The institute for Social Analysis will submit an application for continued evaluation.

Award period: The cooperative agreements for the sites and grant for evaluation will be continued for 12 months, through March 31, 1990.

Award amounts: Site awards will be $125,000; up to $100,000 will be provided to the Institute for Social Analysis to finish the evaluation of this demonstration project; the program total is $600,000.

Due dote: Applications are due February 15, 1989.

Contact person: The BJA contact for additional information is Ronald J. Trethric, Director, Community Crime Prevention Program, 202/724–8374.

Program title: Drug Abuse Resistance Education (DARE) Regional Training Centers.

Gools/objectives: To continue providing on-site and documentary technical assistance and training for law enforcement and educational personnel, and to continue transferring the concept of the DARE program to additional States.

Background: BJA began funding this drug prevention program in 1986. Phase I provided resources for seven demonstration sites and one technical assistance and training site. The demonstration sites planned and organized drug prevention programs (using the DARE program as a model) which were implemented in School Year 1987–88, and which were responsible for training more than 45,000 students. The technical assistance and training project trained 132 police officers from the demonstration sites to teach drug use prevention education. Findings of the demonstration projects confirmed the need for additional training sites. BJA provided seed money for four DARE Regional Training Centers in 1988. Those centers are providing cost-effective, quality training for DARE officers and will train approximately 2,000 additional police officers during this project period. Those officers will teach in grades K–12 and/or work with and train other officers as instructors/mentors. These supplemental awards will provide resources for continuation of existing DARE Regional Training Centers, establishment of a new Center, and provision of technical assistance to agencies and schools implementing DARE programs in other jurisdictions.

Program description: Training will be provided for officers that teach in grades

K–12, for instructors/mentors and for updating the state-of-the-art for students, education personnel and officers. On-site and documentary technical assistance will be provided for agencies and schools implementing new DARE programs.

Eligibility and selection criteria: Four supplemental awards and one new award will be negotiated with the following: Arizona Department of Public Safety; City of Los Angeles Police Department; Illinois State Police Academy; Virginia State Police Department; and, North Carolina Department of Justice.

Award period: All awards will be for 12-month periods.

Award amount: There will be four supplemental awards and one new award of up to $125,000 each for a total program cost of $625,000.

Due date: Each applicant will submit a full application not later than January 31, 1989.

Contact person: The BJA contact for additional information is Dorothy L. Everett, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4604.

Program title: Congress of National Black Churches' Anti-Drug Abuse Program.

Goals/objectives: The objectives of this program are to:

- Summon, focus and coordinate the leadership of the Black Church in cooperation with the Department of Justice, other Federal agencies and organizations in support of a unified message and a structural plan to enable and assist high risk target communities to more effectively combat the problems of drug abuse and drug related crime;
- Use the leadership authority of key ministers in each target community, in conjunction with the local mayors, to forge a community-wide task force consisting of organizations, institutions, agencies, service providers and other prominent citizens to support the plan and specifically tailored strategies aimed at reducing the supply and demand for drugs and the crime associated with that demand;
- Mobilize groups of community residents through developmental forums to plan, review, refine and participate in implementing these specific strategies and to evaluate the appropriateness, utility and impact of assisting families and individuals in coping with the crises created by drug abuse and drug crime; and,
- Create a new national communications network between these target communities to allow for the exchange of information and comparison of results regarding the effectiveness of various strategies, and to form a more uniform consciousness of collective action in the fight against drug abuse and drug crime.

Background: Drug abuse and its attendant drug crime, which has been increasing at an alarming rate in recent years, has manifested itself extensively within black communities. There is a need to address capacity building within those communities to enable community involvement in fighting the challenge of drug crime from the perspectives of both supply and demand.

Program description: This program is intended to impact on the values of the Black community in its awareness of the dangers of drug abuse and drug crime and to enlist the active participation of the community in combatting illegal drugs from both the supply side and the demand side. Within the Black community, the church and its leadership has proved to be a primary galvanizing agent in motivating the community to act, and sustaining that motivation. The Black churches in target cities can be used as a structure to organize community involvement with traditional criminal justice agencies and other service providers to have a positive impact on reducing drug abuse and drug crime.

This is Phase III of a projected 30 month effort by the Congress of National Black Churches to implement a community capacity building and mobilization program within target cities, to address the issues and problems of drug abuse within the black community, and to develop srategies for action programs within those cities. The objective of this program is to effect and facilitate community involvement with criminal justice agencies and other traditional service-providing agencies and organizations to fight drug abuse and drug crime through both supply-side and demand-side strategies. The local Black churches of the target communities will serve as the catalyst for project implementation.

Eligibility and selection criteria: This award will be to the Congress of National Black Churches.

Award period: The extension period will be 12 months.

Award amount: This project is funded with combined funds from BJA and other sources. In FY 1989, BJA will provide approximately $150,000. The total amount from all funding sources is not known.

Due date: An application is due by June 30, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Subpart II—Apprehension

Program title: Financial Investigations.

Goals/objectives: To increase the number of narcotics related financial crime investigations and prosecutions; to develop a comprehensive operational approach to the investigation and prosecution of narcotics related financial crime, including asset recovery programs and mechanisms; and to provide financial investigation and analysis techniques training for investigators, prosecutors, and analysts.

Background: A clear picture of the nature of organized crime emerged from the records of the President's Commission on Organized Crime. Its methods are brutal, and its scope is pervasive. This is true for traditional organized crime and possibly even more so for emerging illegal drug trafficking conspiracies. These conspiratorial enterprises exist for one purpose, the tremendous profits to be obtained through crime. The principal income-generating activity for organized crime is the production and distribution of illegal drugs. Recent estimates of illegal drug trafficking revenues in the United States have been as high as $150 billion a year.

Development of successful cases against organized narcotics trafficking conspiracies requires use of unique investigative techniques. Civil and criminal forfeiture of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations, and to remove the assets they have amassed.

Program description: This new progam is designed to develop and implement centrally coordinated multi-jurisdictional financial investigation activities involving tracing narcotics related financial transactions, analyzing movement of currency, identification of criminal financial structures and money laundering schemes, and asset forfeiture administration. Emphasis will be on establishment of an interdisciplinary response to commonly shared major crimes related to drug trafficking conspiracies throughout a regional areea. A formal mechanism will be identified or created whereby investigative and prosecutorial resources can be allocated, focused, and managed against targeted offenses and high level offenders to achieve maximum criminal and civil remedies, and to deprive them of the financial incentives to pursue illegal drug activities. Critical to the success of this progam is a shared management system of intergovernmental law enforcement/prosecutorial resources. Participation by a prosecutor will be a critical element of this program.

Eligibility and selection criteria: BJA will identify potential applicant agencies based on their observed capacity to conduct a complete and fully coordinated demonstration program in areas in which there is a high incidence of drug abuse and drug trafficking, and to identify major drug offenders and move those offenders expeditiously through the judicial system.

Of those agencies identified, BJA will make final site selection based on the following criteria:

- Joint agency management and direction of investigations and prosecutions, including the presentation of signed formal intergovernmental agreements;
- A coordinated approach to the crime problem which results in a major impact on illicit drug trafficking not achievable through a single agency case-by-case approach;
- Standardized procedures for central collection and dissemination of information for joint case administration and for investigative techniques and approaches;
- The proposed case threshold or selection criteria to be used in the selection and prosecution of complaints;
- The anticipated impact upon the criminal justice system and on the illicit drug problem;
- The organization and staffing plan; and a more specific criteria; and,
- The applicant's ability to specify how funds will be used to target investigations that focus on:
  - Uncovering how funding is raised for the illegal purchase of drugs and who provides such funding;
  - Discovering how profits from illegal drug transactions are laundered;
  - Identifying profits resulting from illegal drug trafficking;
  - Identifying assets acquired from illegal drug trafficking; and,
  - Seizing assets gained from illegal drug trafficking under RICO or Continuing Criminal Enterprise, or similar state statutes.

Award period: Projects will be funded for 12 months.

Award amounts: A total of 10 grant awards will be made in the range of $150,000 to $225,000, for a total of $1,800,000. A technical assistance component will be provided through an award to the Institute for Intergovernmental Research in the amount of $300,000.

Due date: Due dates for the applications from IIR and from individual sites will be negotiated with each applicant.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Marijuana Eradication

Goals/objectives: To enhance, through coordinated planning and operations, the ability of Federal, state, and local law enforcement agencies to suppress cultivation of marijuana in potential growing areas and to minimize product availability through crop destruction.

Background: Domestic cultivation of cannabis requires the attention of all levels of government; however, the nature of domestic production places it primarily within the jurisdiction and capabilities of state and local authorities. To assist these efforts the Drug Enforcement Administration (DEA) coordinates the National Domestic Marijana Eradication and Suppression Program which promotes information sharing and provides training, equipment, investigative, and aircraft support to state and local officers. The U.S. Forest Service and the Bureau of Land Management are involved in a major effort to eradicate cannabis cultivated on federal lands. It is the state and local law enforcement role to manage the suppression of illegal cultivation while DEA's role in this cooperative venture is to encourage state and local eradication efforts, to lend intelligence information and technical advice and contribute resources to participating agencies.

Program description: The purpose of this program is to help state law enforcement agencies manage a statewide marijuana eradication program. Each project must be designed around four critical elements:

- *Coordination/Cooperation:* Each project must be composed of participating agencies. The senior agency administrators of the participating agencies must sign a formal intergovernmental agreement affirming their intent to fully participate in the coordination and operation of the project. At a minimum, the participating agencies must include the state, one local agency, and the DEA. The State enforcement agency must serve as the applicant agency and accept responsibility for the project's administrative and financial matters. The proposed operational eradication plan should specify the expected staffing required and the logistical commitment of each participating agency.
- *Planning:* Prior to the design of specific operations, data should be collected and analyzed that presents the most detailed description of the geographical areas in the state where marijuana cultivation may take place. State departments of agriculture, forestry, or natural resources may contribute information. The analysis of this information together with law enforcement intelligence provided by local, state, and federal agencies will be used to select criminal populations against which operations will be directed, the types of operations needed to attach various terrains, and methods of eradication. Analysis also insists in allocating personnel and equipment. Planning includes the consideration of needed agreements or commitments from other governmental agencies or private industry; the development of policies and procedures for the operation that incorporate such elements as lines of authority, handling juveniles or innocent people located on or near the area where marijuana is cultivated; apprehension of suspects; asset seizure and forfeiture of the property; and, the training of personnel assigned to the operation.
- *Administration:* Administration support of the program and its operations is critical. Since the program is based on cooperative agreements with other law enforcement agencies, operations are usually outside of normal administrative channels. Special arrangements may have to be made. Consideration should be given to the management of equipment and its maintenance/repair, the management and use of herbicides, and the transportation of harvested evidence by truck or helicopter slings to burning or storage sites. Administration support should be planned and delivered throughout each operation.
- *Security:* All marijana eradication activities are dangerous and vulnerable. This is especially true when contact is made between law enforcement personnel and criminals in remote locations far from backup support. Precautions must be considered, not only for the participating law enforcement personnel but for innocent persons within or entering the physical area of operations.

The success of the marijuana operation depends on its ability to provide sufficient evidence for prosecution, conviction, and seizure of

forfeiture of property. Therefore, direct and close interaction with prosecutorial authorities throughout each operation is critical.

Eligibility and selection critera: Two state law enforcement agencies will be selected from applications received, based upon a demonstrated need and material included in the applications that clearly demonstrates the ability to:

- Increase detection and eradication of cannabis cultivation;
- Increase arrest and prosecution of cultivators and distributors, including their ability to follow through with asset seizures and forfeitures;
- Provide training for the state and local officers participating in the operations;
- Provide for maximum safety for the officers and innocent civilians during operations;
- Identify any new or unusual cultivation trends or techniques; and,
- Develop and implement cooperative efforts with Federal and local agencies.

Award period: Site awards will be for a period of 12 months.

Award amount: Two successful applicant agencies will be awarded approximately $250,000 each.

Due dates: Applications are due March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Control Technical Assistance and Training.

Goals/objectives: To continue to provide for the management of technical assistance and training for state and local narcotics control enforcement programs to BJA grantees and other state and local law enforcement agencies; and to assist BJA to coordinate and improve communication and networking among law enforcement agencies.

Background: Congress has clearly intended BJA to fund programs that will have a profound and immediate impact on the ability of state and local law enforcement to counter illicit drug and narcotic trafficking in the United States. To ensure that law enforcement agencies throughout the nation have every means possible to enforce state and local laws relating to the production, possession, and transfer or sale of controlled substances, BJA offers technical assistance and training support through the Narcotic Control Technical Assistance Program (NCTAP). A cooperative agreement was awarded as a result of a competitive process in FY 1987, which created a partnership between BJA and the Institute for Law and Justice, Inc. (ILJ), for the purpose of managing and delivering this technical assistance and training program.

Program description: The Narcotic Technical Assistance and Training Program will continue to:

- Design and deliver nationwide training on a regional and request basis in topics including, but not limited to, drug investigations, supervision of drug units, narcotics street sales enforcement, use of microcomputers in narcotics investigations, narcotics enforcement and organized gangs, and advanced narcotics investigations;
- Design and conduct a program to provide technical assistance in narcotics control to law enforcement agencies, including BJA grantees, nationwide;
- Monitor and assess the progress of BJA discretionary grantees conducting narcotics-related law enforcement programs, and improve coordination and communication among grantees by conducting periodic management "cluster" conferences and personnel exchange programs;
- Conduct research, prepare, and disseminate program briefs, legal issues papers, monographs, handbooks, and other reports on narcotics-related topics;
- Design, develop, test and disseminate a variety of personal computer-based information/records systems to improve the efficiency, effectiveness, coordination, and communication of narcotics units and agencies;
- Conduct a series of gang suppression strategy conferences, to provide state and local law enforcement policy makers with a broad range of ideas on gang suppression techniques;
- Design, develop, and test a Field Training Officer (FTO) Program that will apply FTO techniques to narcotics investigators, to be implemented in four sites across the United States and result in a manual for implementation that can be used by narcotic commanders in state and local law enforcement agencies, with the long term result of an overall increase in the effectiveness of narcotic investigations;
- Design, produce and conduct a program for overall coordination of service delivery by all law enforcement technical assistance and training (TA/T) providers funded by the Omnibus Drug Initiative Act of 1988; and,
- Design and conduct a program to provide training and technical assistence to State and local forensics crime laboratory technicians and managers.

The latter activities would include:

- Serving as clearinghouse for all requests for assistance from state and local law enforcement agencies to BJA TA/T providers;
- Assigning, with BJA approval, TA/T requests to appropriate providers; monitoring TA/T delivery; and
- Producing a report on effectiveness of TA/T strategies with suggestions for modifications or improvement.

Eligibility and selection criteria: The existing cooperative agreement between BJA and the Institute for Law and Justice, Inc., will be continued.

Award period: This cooperative agreement will have a duration of 12 months.

Award amount: The award will be in the amount of $750,000.

Due date: The due date for the supplemental application will be negotiated with ILJ.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Crack/Focused Substance Enforcement Demonstration.

Goals/objectives: To improve the capabilities of state and local law enforcement agencies to investigate and immobilize crack cocaine trafficking organizations, and to:

- Enhance the ability of law enforcement agencies to attack higher-level crack cocaine trafficking organizations significant to their areas;
- Increase the rates of arrests, prosecution, conviction, drug removals, and asset forfeitures related to crack traffickers and/or organizations;
- Reduce the incidence of armed robberies and property related crimes committed to support crack cocaine habits;
- Reduce the incidence of violent crime (i.e., homicides) related to crack cocaine distribution;
- Improve the ability of state and local officers to develop strong Federal prosecution against crack traffickers by utilizing the current Federal statutes;
- Increase the utilization of Continuing Criminal Enterprise (CCE) and Racketeer Influenced Corrupt Organizations (RICO) statutes to target and immobilize crack trafficking organizations; and,
- Facilitate the development, implementation, and dissemination of intelligence information on crack trafficking organizations by all members involved in the Crack Task Forces.

Background: This ongoing program is a hybrid enforcement approach incorporation elements successfully utilized in Drug Enforcement Administration, state, and local Task Forces, Organized Crime/Narcotics

Program (OCN) Task Forces and the old Law Enforcement Assistance Administration (LEAA) Organized Crime Discretionary Grant Program to focus on the enforcement of "crack" in major urban areas. The Task Force approach to drug enforcement is universally recognized by enforcement and prosecutorial officials as a viable method for dealing with drug activities and can be readily adopted to the enforcement of a specific drug problem.

Program description: This ongoing effort will significantly enhance state, local and Federal efforts to combat the rapidly growing availability of crack and the threat it poses to our nation. This enhancement reflects the basis of our overall enforcement strategy of integrated operations and makes available the resources to establish viable Crack Task Forces in metropolitan areas where they presently do not exist. The program includes the participation of the U.S. Attorneys and DEA. Federal agency participation in each project is a program requirement. Grant funds will be used primarily for confidential expenditures (purchase of equipment/purchase of information), overtime, specialized equipment (if necessary), and some administrative costs. DEA will pledge personnel and technical assistance support to each of these efforts. Task force personnel will be expected to travel to and participate in BJA management "cluster" meetings of similar enforcement projects. Grantees should allocate funds from the grant to cover the expenses of attending at least two conferences at locations to be selected at a later time.

Jurisdictions selected for awards should anticipate the submission, periodically, of statistics regarding case outcomes, including, arrests, prosecutions, convictions, recoveries, and asset seizures, to assess project accomplishments.

Eligibility and selection criteria: Only jurisdictions already participating in this program are eligible for awards. Four to five existing sites may be continued based on past successful performance. Consideration will be given to the level of commitment and effective utilization of the organization's own resources to implement the project. Consideration will also be given to the extent of the crack/cocaine problem within the applicant's geographical area.

Award period: The project extensions will be for 12 months.

Award amount: Grants will be funded at approximately $200,000 each for a program total not to exceed $1,000,000.

Due date: Applications will be due on or before March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Street Sales Enforcement Demonstration.

Goals/objectives: To demonstrate effective police efforts to target street level narcotic dealers and buyers through effective planning, investigation, and prosecution.

Background: In theory, street-level drug enforcement is one of the most effective uses of local police resources to combat drugs and the problem they create. For every innovative program that has succeeded, an almost identical program has been much less successful. This suggests that jurisdictions should design and implement their own program tailored to their own local conditions, and relying on the full range of local law enforcement, municipal, and community resources available. Collection and analysis of drug market and abuse data is important. Without them, the police run the risk of concentrating on less important markets or individuals, or of displacing the problem to different times, places, and distribution networks. The lack of good information also makes it difficult to redirect efforts once they have begun.

Program description: This ongoing demonstration program will be continued in some, if not all existing sites, for the purpose of strengthening urban enforcement and prosecution efforts targeted on street narcotics dealers and buyers.

At a minimum, site applications selected for continuation funding should address the following program elements:

- Data collection and analysis for identifying and using available resources and for using results of internal evaluation to revise programs to fit changing conditions;
- Emphasis on early involvement of the prosecution and court functions to ensure that both citizen's rights and system impact issues are addressed;
- Training and utilization of uniformed personnel, and certifying uniformed officers as narcotics and illicit drug experts for testifying in court;
- Deployment of street teams for on-going investigations and arrests of street drug traffickers, and for being responsive to citizen complaints;
- Vigorous enforcement effort to arrest and convict illicit narcotic/drug users;
- Organization and deployment of mobile task forces to target those areas of the city where street sales have become blatant;
- An undercover buy program concerned with enforcement efforts aimed at the street retailer who has become the most observable manifestation of narcotic trafficking;
- Asset seizure and forfeiture efforts when practical; and,
- Coordination of project mission with cognizant forensic laboratory and jail or holding facilities.

Project personnel will be expected to travel to and participate in BJA management "cluster" meetings of similar enforcement projects. Grantees should allocate grant funds to cover the expenses of attending at least two conferences at locations to be selected at a later time.

Jurisdictions selected for awards should anticipate the submission, periodically, of statistics regarding case outcomes, including, arrests, prosecutions, convictions, recoveries, and asset seizures, for the purpose of assessing project accomplishments.

Eligibility and selection criteria: Up to seven existing sites may be continued based on successful performance. Consideration will be given to the level of commitment and effective utilization of the organization's own resources to implement the project. Consideration will also be given to the extent of the illicit narcotics and drug trafficking problem within the applicant's geographical area.

Award period: Projects will be supplemented for up to 12 months.

Award amounts: Grants will be funded at approximately $150,000 each for a program total not to exceed $1,000,000.

Due date: Applications will be due on or before March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Clandestine Laboratory Enforcement Training and Certification.

Goals/objectives: To provide law enforcement officials, with the information necessary to safely investigate clandestine laboratories in accordance with the Occupational Safety and Health Administration's standards.

Background: Safety, legal, administrative, and regulatory issues surrounding the seizure of clandestine laboratories and the prosecution of criminals responsible for the laboratories are very complex. Law enforcement officials are beginning to have a better understanding of the special kinds of information needed by our uniformed and non-uniformed

officers and investigators. This information has been accumulated through the detection and seizure of several hundred clandestine laboratories. These hard-won experiences have helped to identify the hazards associated with these operations. Clandestine laboratories contain poisonous, flammable, and explosive chemicals. These chemicals are used, by criminals, with inadequate training and equipment to perform dangerous syntheses of controlled substances. There is a clear danger to the immediate community adjacent to the clandestine laboratory and to law enforcement officers assigned to these investigations.

Program description: BJA will enter into an inter-agency agreement with the Drug Enforcement Administration (DEA) to provide certified training to state and local law enforcement investigators assigned to seize clandestine laboratories, collect dangerous chemicals as evidence for prosecution, and transport and store dangerous chemicals.

Eligibility and selection criteria: An inter-agency agreement will be negotiated between BJA and DEA.

Award period: This project will be funded for 12 months.

Award amount: The agreement amount will be $150,000.

Due date: The date of the agreement will be negotiated with DEA.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Task Force Technical Assistance and Training.

Goals/objectives: To provide specialized technical assistance and training in the area of multi-jurisdictional law enforcement and prosecution approaches to narcotics trafficking. This program is designed to assist state and local criminal justice agencies develop and implement shared management programs involving multiple jurisdictions directed toward disrupting illegal narcotics trafficking at the highest conspiratorial levels.

Background: A clear picture of the nature of organized crime emerged from the records of the President's Commission on Organized Crime. Its methods are brutal, and its scope is pervasive. This is true for traditional organized crime and possibly even more so for emerging illegal drug trafficking conspiracies. The principal income-generating activity for organized crime is the production and distribution of illegal drugs. Recent estimates of illegal drug trafficking revenues in the United States have been as high as $150 billion a year.

Developing successful cases against organized narcotics trafficking conspiracies requires use of unique investigative techniques. Civil and criminal forfeiture of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations.

Program descritpion: The Institute for Intergovernmental Research (IIR) will both provide and manage the delivery of technical assistance and training services for multi-jurisdictional law enforcement and prosecution efforts. These services will be provided in conjunction with the continuing coordination role of IIR with regard to several ongoing enforcement programs. Expertise and examples derive from the Organized Crime Narcotics Trafficking Program (OCN) and Statewide Drug Prosecutions (SDP) programs will be applied to other jurisdictions experiencing similar problems on an as needed basis after approval by BJA.

The inter-jurisdictional nature of drug trafficking today requires cooperation and coordination not only among multiple law enforcement agencies, but also between law enforcement and prosecution. These coordinated efforts face many unique impediments which must be overcome in order to assure effective operations. Technical assistance and training will be provided in areas including: Geographical differences; varying authorities and disciplines; interagency agreements; case control; case management and tracking (including the use of micro-computer capabilities); investigative target selection; matters of liability; and, conflicts in agency policy and procedures.

Training and technical assistance needs in these areas will be provided after being identified and verified. Appropriate expert resources capable of delivering the needed information will be identified, and either provided by IIR staff or located from other expert sources throughout the U.S. and coordinated by IIR. Training and technical assistance will be provided on a multi-agency and interdisciplinary basis. In that inter-jurisdictional criminal conspiracies are involved, part of the service coordination will involve identification of key agencies affected—local, state and Federal, and law enforcement, prosecution and other—and assuring their interface in receiving the technical assistance and training.

In order to provide service delivery as efficiently as possible, consideration will be given to cost savings, costs sharing by the recipient, short term use of practitioners from operational agencies, regional scheduling, and use of current OCN and SDP resources wherever relevant and practical. Technical assistance needs will be handled by screening and verifying assistance requested, developing a pool of practitioner experts, facilitating and providing assistance, arranging follow-up, and evaluating service provision. Training needs will be met by developing course curricula, selecting training sites, developing a pool of expert instructors, delivering and supervising services, and evaluation of training.

Eligibility and selection criteria: This award will be made to the Institute for Intergovernmental Research to expand efforts under the OCN Program awarded in FY 1987.

Award period: The duration period for this supplemental grant will be 12 months.

Award amount: One award will be made for $100,000.

Due date: A due date for a formal application will be negotiated with IIR.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Assets Seizure and Forfeiture.

Goals/objectives: To provide training, technical assistance and model demonstrations to assist local and state level officials to achieve maximum impact against drug traffickers under state laws.

Background: BJA has supported this major training and technical assistance program since 1986 by means of cooperative agreement with the Police Executive Research Forum. Local and state level officials in 16 states are being trained under the program which focuses on investigation and forfeiture under state, rather than Federal statutes. Other aspects of the program are a series of ground-breaking asset forfeiture publications and a newsletter for professionals in this important new field within law enforcement.

Program description: BJA will extend the program through FY 1988, providing six additional states with specialized training, adding two issues of the newsletter, and continuing the technical assistance and host visit functions.

Eligibility and selection criteria: The Police Executive Research Forum will receive a supplemental award.

Award period: The award period will be 12 months.

Award amount: An award of up to $500,000 will supplement the existing cooperative agreement.

Due Date: The Forum should apply for the supplement by February 15, 1989.

Contact person: The BJA contact for additional information is Fred W. Becker, Program Manager, Law Enforcement Branch, 202/272–4605.

Program title: Urban Street Gang Drug Trafficking Enforcement Demonstration.

Goals objectives: To develop city-wide or multi-jurisdictional enforcement projects to investigate and prosecute drug distribution by organized urban street gang networks.

Background: The phenomenon of urban street gang involvement in drug trafficking and its attendant violent crime is becoming increasingly widespread. These gangs generally are of some specific ethnic orientation, and pose very difficult cultural and operational problems for law enforcement. The gangs to be targeted under this initiative are those that are expansionist and entrepreneurial in character. They typically spread from a core geographical location to other cities, where they franchise the drug market by either absorbing existing networks or replacing them through the use of intimidation and violence.

We know through efforts funded by the Office of Juvenile Justice and Delinquency (OJJDP) and the National Institute of Justice (NIJ) that, while these gangs are youth oriented with heavy juvenile involvement, they are generally headed by young adults 18 to 25 years of age. This program represents an initiative aimed at gang drug trafficking and drug related violent crime, and is focused upon gang leadership.

Program description: The Urban Street Gang Drug Trafficking Enforcement Program is a demonstration program directed at the investigation and prosecution of drug distribution and drug related violent crimes by organized urban street gang networks. The focus of the program is on mid-level "crack" cocaine distribution. The program will concentrate on influential and controlling gang members.

To enhance their investigative and prosecutorial activities under this program, grantees will be expected to:

- Develop strategies to recognize and suppress emerging gang narcotics distribution and related activities; and,
- Develop a formal and integral working relationship between law enforcement and Federal, state or local prosecution authorities to investigate and prosecute gang members as part of a conspiratorial entity or enterprise where possible.

Critical elements to be considered under this program are:

- Coordination with other components of the criminal justice system (e.g. probation and parole); and,
- Willingness and ability to share information with other grantees in this program to the extent permitted by law.

The program does not include:

- A focus on juvenile crime;
- Street-level gang sweeps by police;
- Prevention or treatment components; or,
- Funding for non-operational consultants (e.g. training or evaluation).

This program will be coordinated with the Office of Juvenile Justice and Delinquency Prevention to augment that office's companion efforts aimed at urban street gangs.

Eligibility and selection criteria: This is a competitive program. Applicants representing cities or multiple contiguous jurisdictions with a population in excess of 250,000, and which are able to demonstrate a high level of urban street gang drug distribution and drug related violent crime, are eligible for funding consideration.

Award Period: Grants will be for a 12-month period

Award amount: Two grants will be awarded for approximately $250,000 each, for a total program of up to $500,000.

Due date: Applications should be submitted no later than February 15, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Enforcement in Public Housing.

Goals/objectives: To develop and implement a strategy to improve citizen security and the quality of life in public housing areas through the reduction of narcotics trafficking.

Background: While the problems of illicit drug use and drug trafficking in public housing units vary from development to development, they have become a major concern to law enforcement authorities. A majority of the millions of people living in our public housing complexes are, like their neighbors in other communities, honest, hardworking people who want to rid their housing complexes of the scourge of drugs. They want their development to be a place where they and their children can live, play, wait for a school bus, and visit neighbors without having to confront the violence associated with drug trafficking and use. In some cities, municipal police have been reluctant to undertake a visible active presence in public housing. The reasons, which are varied, may reflect local politics, friction between residents and police, or a lack of coordination between the Public Housing Authority and the police department.

Program description: The purpose of this program is to invite applications from urban law enforcement agencies to conduct a comprehensive drug enforcement program within targeted public housing complexes. It is not BJA's intention to set out specific critical elements of a program for which applicants are asked to respond, but rather to solicit from law enforcement agencies their ideas for developing and implementing a strategy to solve the problems of narcotic trafficking and the declining quality of life within the complexes. The following information, however, should be included in the application:

- A demographic description of the identified geographical target area;
- A commitment to using department personnel and citizens, by way of the establishment of a project advisory group, to develop the department's strategy for identifying drug problems and for seeking solutions to these problems;
- The identified Project Director, usually at the rank of lieutenant or above, with a commitment that, if possible, the officer remain the Project Director for the life of the project;
- A commitment, if appropriate, to assign a permanent police squad to the housing complex, the strength of which should be based on the department's analysis of the problems faced by the residents of the complex;
- A description of the commitment by local political decision makers to provide resources as needed to support project activities;
- A description of anticipated project approach and activities; and,
- A description of the project's relationship with other activities sponsored by Housing and Urban Development (HUD).

Applicants are encouraged to provide letters of support from appropriate municipal leaders and private institutions to ensure that the proposed drug enforcement plan has the necessary support. In addition, the successful applicants will be asked to provide selected data to BJA during the duration of the program so that project

accomplishments can be monitored and assessed. Information may be disseminated among other law enforcement agencies.

Grantees are required to send representatives to program management "cluster" conferences. Funds should be allocated from the grant to cover the expenses of personnel to attend at least two conferences at locations to be selected at a later time.

Eligibility and selection criteria: Applicants are limited to urban law enforcement agencies. Grants will be awarded through a competitive process. Since the key to the success of these projects rests with the level of commitment from the sites, selection will be made based on the commitment of the chief of police, the mayor, city manager, the public housing director, the sanitation code enforcement authority, the prosecutor, the residents of the target area and the demonstrated relationship with the local Housing and Urban Development (HUD) Office. The severity of the problem, the agencies approach to solve the problem and the proposed use of grant funds will also be taken into consideration.

Award period: Awards will be for a period of up to 12 months. Projects may need three to four months for data collection and analysis, selection of personnel, training, and coordination with other agencies and the community prior to full implementation.

Award amount: Two applicants will each be awarded grants up to $250,000 for a BJA program total not to exceed $500,000.

Due date: Applications are due on or before March 15, 1989.

Contact person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Program title: Expert Systems for Residential Burglary Investigations.

Goals/objectives: To demonstrate the feasibility and practical value of artificial intelligence systems to assist police personnel to solve burglaries; to demonstrate the transferability of system rules from one jurisdiction to another with only moderate revisions; and, to demonstrate management modes and strategies for effective utilization and institutionalization of expert systems.

Background: Currently BJA is sponsoring demonstrations in three sites of burglary expert systems. The three, Tucson, AZ, Charlotte, NC, and Rochester, NY, are based on the prototype now operating in Baltimore County, MD, with some reference to the work being done in Devon-Cornwall (U.K.) as well. (The seminal work for a burglary expert system was done in Devon-Cornwall.)

Program description: BJA will expand the network of demonstration sites from three to four to demonstrate the model in one more diverse law enforcement environment. The additional site will make the model more accessible to officials in another region, and the network of users/local experts/technical assistance resources will be increased to the benefit of the law enforcement community.

Eligibility and selection criteria: BJA will modify and supplement the current cooperative agreement with the Jefferson Institute for Justice Studies.

Award period: The extension period will be 12 months.

Award amount: Up to $100,000 in supplemental funding will be awarded.

Due date: The Jefferson Institute for Justice Studies should submit an application on or before February 15, 1989.

Contact Person: The BJA contact for further information is Fred W. Becker, Program Manager, Law Enforcement Branch, 202/272-4605.

Program title: Drug Evaluation and Classification Demonstration and Documentation.

Goals objectives: This program will continue to provide state and local criminal justice agencies with documented procedures for the detection of categories of drug-impaired suspects of drug-related offenses.

Background: State and local law enforcement have dealt with a growing number of cases in which drivers, who are clearly impaired, have registered below the legal level for impairment on generally used tests for the presence of alcohol. It has been the general view that many of these drivers are impaired by other or additional drugs for which tests have not been routinely administered. Recent statistics from the Department of Transportation (DOT) indicate that one in ten Driving Under the Influence arrests involves additional drugs and that about one quarter of automobile crashes involve additional drugs. Limited data from shock trauma centers indicate the presence of drugs in more than a quarter of such crashes. In response to this problem, the Los Angeles Police Department has developed and, with the DOT, over the past ten years, has refined a specific procedure and training curriculum for drug impairment recognition and classification.

The Drug Evaluation and Classification Process is a standardized, systematic method of examining a person suspected of a drug-related offense, to determine: Whether the person is impaired; whether the impairment is drug-related; and which of seven categories of drugs is the likely cause of impairment. This rather unobtrusive examination has successfully undergone validation testing in both clinical and field settings. It has been used to establish probable cause for chemical testing of suspects and also as an independent basis for prosecution in some cases. It is more general than chemical testing procedures, in that it identifies categories of drugs (e.g., central nervous system stimulants) rather than specific drugs (e.g., cocaine). It is more specific than chemical testing procedures, in that it identifies drugs that are psycho-active at the time of testing rather than simply present in the body and it identifies classes of drugs (e.g., hallucinogens) which are psycho-active at such low dose levels as to be difficult to detect through chemical analysis.

DOT's National Highway Transportation Safety Administration, along with the Los Angeles Police Department and the International Association of Chiefs of Police, has been transferring this program through training at pilot site in Arizona, Colorado, New York and Virginia. BJA has provided support for this effort and will continue that support by providing resources for continued demonstration, documentation and transfer.

Program description: Under an Interagency Agreement, negotiated with DOT, BJA, will provide support for additional training resources to transfer the Drug Evaluation and Classification Process to pilot sites. BJA has received specific documentation of this process, and its refinement through transfer, and makes this information available in monograph form to guide potential block grnat and state and local resource allocation.

Eligibility and selection criteria: An Interagency Agreement will be negotiated with the Department of Transportation.

Award period: This award will be for 12 months.

Award amount: One award will be made in the amount of $100,000.

Due date: The date of this agreement will be negotiated with DOT.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272-4601.

Program title: Portland, Oregon, Clandestine Lab Program.

Goals/objectives: To provide funding for a program in the Portland, Oregon, metropolitan area designed to attack problems caused by clandestine activities.

Background: The Portland, Oregon, metropolitan area has been experiencing an inordinate problem with clandestine laboratory operations. A number of these labs have been successfully investigated and closed, leaving the metropolitan area with a massive problem of hazardous waste disposal and cleanup.

Program description: This program will be specifically designed to assist Portland area officials in the safe and effective removal of these wastes and the detoxification and cleanup of the lab sites. The application must demonstrate:

- A safe and effective plan for the removal of hazardous wastes, and site detoxification and cleanup;
- A plan for coordination of activities with the cognizant Regional Council of Governments, State environmental protection officials, and the U.S. Environmental Protection Agency; and
- A clearly defined project budget and budget narrative that demonstrates compliance with the financial requirements of the OJP Financial and Administrative Guide for Grants, M7100.1 (current edition).

Eligibility and selection criteria: The City of Portland, Oregon, will be eligible for funding under this program.

Award period: The award will be for a 12-month period.

Award amount: One grant will be awarded for up to $510,000.

Due date: The application must be submitted by no later than March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272-4601.

Subpart III—Prosecution

Program title: State Civil RICO Enforcement Against Major Drug Trafficking Networks Demonstration.

Goals/objectives: To significantly expand the current limited effort of the state civil Racketeer Influenced Corrupt Organizations (RICO) drug enforcement, by demonstrating the effectiveness and potential of civil RICO proceedings in cooperation with an operational network of local, state and federal law enforcement agencies against major drug trafficking enterprises.

Background: The problem of drug trafficking and the attendant laundering of illegally obtained assets continues to grow despite increasingly aggressive criminal enforcement by local, state and Federal agencies and the expansion of Federal criminal task force efforts to coordinate the attack on drug trafficking and money laundering. Both Federal and state cases worthy of prosecution and asset seizure often are delayed while assets disappear. Federal resources are limited and local criminal justice agencies are necessarily committed to the investigation and prosecution of criminal violence as a high priority.

In August 1988, BJA initiated a project designed to promote the increased use of civil RICO proceedings against narcotic trafficking enterprises. Two state Attorneys General are being selected to develop prototype projects showing the feasibility of developing and applying state civil RICO statutes in combating drug networks and in seizing their unlawfully obtained assets.

Program description: This new effort will demonstrate the full range of civil RICO enforcement strategies against drug trafficking and produce models for the appropriate application of civil RICO remedies against the entire spectrum of drug trafficking enterprise activity. State Attorneys General in their primary role as chief state law enforcement officer will receive financial and technical assistance and training to comprehensively demonstrate the effectiveness of state civil RICO proceedings in attacking drug trafficking enterprises and freezing and seizing illegally obtained assets. Based on analysis of the experienced Attorneys Generals' offices and the prototype projects developed under the current BJA-funded State Civil RICO Technical Assistance Project, this new demonstration effort will significantly enlarge the scope of this very promising approach in attacking drug trafficking enterprises.

In addition to initiating prototype civil RICO units, financial assistance will enable already established civil RICO efforts to demonstrate the effectiveness of complex financial investigation and coordinated criminal and civil proceedings involving local, state, regional and Federal enforcement resources in attacking major, statewide drug enterprises and their networks of money laundering activities. The on-going state civil RICO technical assistance project will be providing technical assistance and training both to the prototype and these demonstration sites and to other state civil RICO drug enforcement programs. In addition, the project is developing model pleadings, statutes and practice and procedures manuals and guidelines for Attorneys General who wish to develop a civil RICO unit.

Up to three demonstration projects will be selected to demonstrate the full range of civil RICO litigation techniques and practice and procedure for detecting, freezing, forfeiting, managing and sharing of unlawfully obtained assets will be documented, published and distributed. Technical assistance will continue to be provided by the existing BJA State Civil RICO Technical Assistance Project, administered by the National Association of Attorneys General.

Eligibility and selection criteria: Selected state Attorneys General will be the grantees. The Bureau of Justice Assistance will select the demonstration projects based in part upon the recommendations of the National Association of Attorneys General and the current project staff administering the State Civil RICO Technical Assistance Project. Selection criteria include:

- An existing, effective state civil RICO statute;
- Identified, feasible drug racketeering enterprise cases;
- Dedicated narcotics investigative resources within the Office of the Attorney General, or by virtue of law enforcement working relationships with other agencies;
- Cooperative relationships with local, state and Federal agencies including regional narcotics task forces and Law Enforcement Coordinating Committees;
- Availability of essential criminal drug enforcement tools and authority such as grand jury, subpoena power, use immunity, forfeiture, and electronic surveillance; and
- Demonstrated capacity to conduct financial investigations and complex civil or criminal litigation.

Award period: These projects will be funded for up to a 12 month period.

Award amount: Two or three state Attorneys General Offices will be selected to receive up to $200,000 for each demonstration project for a program total of $400,000.

References: The National Association of Attorneys General, Hall of the States, 444 N. Capitol Street, Washington, DC will provide interested applicants with the following:

- *The Use of State Civil RICO in Drug Enforcement: Analysis and Case Study*, National Association of Attorneys General, Thomas T. Swan, April, 1988.
- *The Office of Attorney General: Powers and Duties*, National Association of Attorneys General, Lynne Ross, edit., 1988;
- *Attorney General's Statewide Action Plan for Narcotics Enforcement*, New Jersey Attorney General W. Cary Edwards, January, 1988.

Due date: Applications are due on or before February 15, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Innovative Drug Prosecution Technical Assistance and Training.

Goals/objectives: To identify, document and disseminate the best of expertise and experience existing in the nation for innovative prosecutorial policies, strategies, procedures and techniques to convict and incapacitate drug offenders, who contribute significantly to the nation's local jurisdictions' crime problem.

Background: BJA has funded the American Prosecutors Research Institute (APRI) to support the development and operation of a comprehensive national-scope technical assistance and training project. APRI's staff, guided by policies set by the National District Attorneys Association's (NDAA) Drug Control Committee (44 elected prosecutors) and the collective experience and proven expertise of these 44 prosecutors' narcotic unit chiefs, is identifying and documenting the innovative policies, strategies, procedures and techniques for the investigation, prosecution and management of drug cases. This project is also the primary technical assistance and training resource for BJA's prosecution-based demonstration projects and similar block grant funded projects. The project staff, expert consultant services and documented information are also available, on a limited basis, to local prosecutors requiring assistance in the investigation and prosecution of drug cases.

Program description: This ongoing national-scope technical assistance and training project identifies, documents and makes available information on proven investigative and prosecutorial approaches currently being utilized by some of the more innovative of the nation's local prosecutors to prosecute and convict drug offenders (both users and traffickers). Based upon these proven, innovative policies and strategies, recommended approaches, procedures and techniques are being documented to encourage the wide transfer and implementation of these effective prosecution efforts. Printed information and expert consultant services along with comprehensive prosecutorial training programs have been developed for dissemination. These technical assistance and training efforts are available for local prosecutors to fully consider and adopt various proven, innovative approaches to enhance their prosecution and conviction of drug offenders. In addition, this program provides comprehensive technical assistance and training to BJA's demonstration and block grant funded drug prosecution program.

Eligibility and selection criteria: The current cooperation agreement with APRI wil be supplemented.

Award period. This on-going 18 month program, initially funded from FY 1987 funds, may be extended by a supplemental award.

Award amount: Up to $200,000 will be added to this project to design and conduct an evaluation of the BJA prosecutor-based demonstration progams. An operational, performance assessment of various innovative local prosecutor-based drug investigation and prosecution efforts may also be included in this supplementation.

Due date: The due date for a supplemental application will be March 31, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Innovative Drug Prosecution Inter-Jurisdictional Demonstration.

Goals/objectives: To demonstrate that prosecutors along with law enforcement agencies working in a multiple county/judicial district task force organization can successfully identify, investigate, apprehend and prosecute organizations or individuals engaged in drug offense activity that cuts across jurisdictional lines.

Background: Prosecutors understand that criminal organizations and individuals dealing in illicit drugs do not confine their activities to the political boundaries of a state, county, or municipal area. However, these boundaries do represent jurisdictional limitations of criminal justice agencies committed to the identification, investigation, apprehensive and prosecution of drug related crime. These jurisdictional limitations too frequently allow major drug distributors to avoid law enforcement and prosecutor efforts to effectively prosecute and curtail their multi-faceted activity. Apprehension and prosecution focused within a single jurisdiction often simply shifts the locus of illegal activity from one geographic area to another and allows it to continue and to flourish regionally. To succeed in prosecuting and convicting these larger networks of drug offenders and enterprises, a task force of committed prosecutorial and investigative resources from two or more jurisdictions is necessary.

Program description: As the chief law enforcement official in their respective counties/judicial districts, the prosecutors must take the lead in determining the required inter-jurisdictional policies, operational cooperation and dispute resolving mechanisms necessary to establish an effective multi-jurisdiction task force. Though flexibility in the organization and membership of the task force is desirable, program objectives, policies and procedures must be well-defined. The task force should consist of localities and jurisdictions which share common and identifiable illegal drug distribution activities.

The purpose of this program is to facilitate the establishment, or to enhance existing inter-jurisdiction task forces to demonstrate the effectiveness and improved results of this organizational approach. The individual jurisdictions participating in the task force must contribute the necessary investigation and prosecution resources to support and staff the task force. Federal funds may be used to hire qualified staff or consultant services to enhance the coordination and management of the task force and its ability to conduct complex investigations and prosecutions in areas utilizing electronic surveillance and financial transactions.

The task force must be led by one of the participating prosecutors. This prosecutor must be willing to assume overall operational responsibility and financial administration for the Federal funds. The task force must be comprise of the prosecutors from each of the participating jurisdictions and to the degree necessary, law enforcement officials from each participating jurisdiction.

In order to be considered for this demonstration effort, at a minimum the proposed or existing inter-jurisdictional task force should address or include the following information in its proposal (concept paper):

- The need for the task force organization with particular attention paid to:
- The types of drug crimes or organizations which exist in the region which are inter-jurisdictional in nature; and,
- The specific approaches in which the inter-jurisdictional task force will address the regional drug prosecution problem;
- The goals of the task force with particular attention paid to the stated need for the task force;
- The objectives of the task force indicating the manner in which these objectives will be measured to indicate attainment of the goals;
- The proposed organization of the task force indicating:
- What jurisdictions wil be involved;
- The task force organizational structure and resources committed, including the total number and direct relationship of each police and prosecution agency within the task force structure, including a discussion of personnel resources which will be contributed, the total number of agencies participating, and their relative size;
- How policies will be established for the task force;
- How priorities and targets will be determined;
- How the work load will be divided among the members of the task force;
- How decision-making will occur;
- What mechanism will be established to resolve disputes;
- The amount of non-personnel resources which will be contributed;
- A one page budget summary indicating each jurisdiction's commitment and how the Federal funds are to be utilized; and
- Actual interagency agreements indicating each jurisdiction's cooperation in the task force or letters of support from each proposed prosecutor indicating a willingness to participate. This is an essential element of any proposal.

Eligibility and selection criteria: Applicants are limited to existing or proposed prosecutor-based, multi-jurisdiction task force organizations. The task force's lead prosecutor should submit a concept paper of approximately ten (10) pages addressing the six elements listed in the Program Description. In addition, existing task forces should include a summary description of how the program was developed and how it is currently administered. Selection will also be dependent in part on the level of jurisdictional commitments, the rationale for development and effective application of both the local and Federal resources, and agreement to participate in a project evaluation process.

Award period: The awards will be for a 12-month period.

Award amount: Two or possibly three grants of up to $200,000 each will be awarded to demonstrate this approach for a program total of $450,000.

Due date: Concept papers are due no later than March 15, 1989.

Contact person: The BJA contact for additional information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Statewide Drug Prosecution Technical Assistance and Demonstration.

Goals/objectives: To develop statewide enforcement and prosecution projects that enable states with statutory authority but without the necessary coordination of resources to effectively attack statewide drug trafficking offenders.

Background: BJA has funded seven statewide prosecution units to demonstrate the enhanced abilities of statewide coordinated narcotics and financial investigators and prosecutions. States were selected that were committed to the concept of creating a statewide capacity to detect, investigate and prosecute major drug trafficking conspiracies and to identify, seize, forfeit and share the unlawfully obtained drug proceeds and assets through a centralized, cooperative effort by local, state and Federal enforcement agencies.

The States vary greatly in their law enforcement organization and allocation of enforcement authority and jurisdiction. Different States have experienced very different problems in attempting to enforce criminal drug laws and to focus all of a state's resources on major drug offenders and conspiracies. State Attorneys General's Offices or comparable statewide prosecutor's offices having criminal prosecution authority have been chosen to serve as demonstration projects for the several differing approaches to providing coordinated selection, investigation and prosecution of drug trafficking.

Program description: Several statewide prosecution projects have been funded to develop centrally coordinated, multi-jurisdictional cases within a state and to bring statewide prosecutions. These statewide enforcement units have or are developing formal mechanisms to coordinate investigations and litigation resources and to target major offenders. Prosecutors will use state statutes such as criminal, forfeiture, money laundering and conspiracy, together with state-of-the-art enforcement tools to conduct intensive financial investigations and mount multi-jurisdictional parallel civil and criminal prosecutions of major organized criminal groups.

Eligibility and selection criteria: Two of the existing seven projects will be given limited continuation funding, based on demonstration successful performance and continuing need.

Award period: The continuation period will be up to 12 months.

Award amounts: Two currently funded demonstration sites will be considered for up to $250,000 each in continuation support. The technical assistance component will be continued in order to support the ongoing program, through a grant to the Institute for Intergovernmental Research in the amount of $200,000 for a program total of $700,000.

Due date: Applications are due on or before February 15, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Development of Model State Drug Control Statutes.

Goals/objectives: To develop "model" state statutes to strengthen the investigation, apprehension, prosecution, and punishment capabilities of states in dealing with drug offenders and organizations trafficking in illegal drugs and narcotics.

Background: The ability of the criminal justice system to put drug offenders and their organizations out of business is becoming more sophisticated and in many ways more successful. As a result, drug traffickers have also developed and are using more sophisticated methods to avoid detection and to hide the proceeds from drug enterprises. In order to address and combat these innovative methods being used by drug traffickers at the state and local level, new legislation must be developed. In response to this need, the National Drug Policy Board has suggested that "model" state statutes be developed which address areas such as asset forfeiture, electronic surveillance, and money laundering in order to assist and, in many instances, enable state and local enforcement and prosecution efforts in this area. This would allow states to utilize their own prosecutorial and court system resources in addition to equitably sharing procedures upon which many state and local agencies currently rely.

Program description: This is a development program to formulate "model" state statutes which respond to the increasing number of complex methods created and utilized by drug statute offenders to avoid detection and prosecution and the imposition of criminal and/or civil sanctions. The grantee selection will: Review existing statutes to identify what sections of state statutes or complete state statutes have proved successful in the apprehension and prosecution of drug traffickers; determine what gaps exist in state statutes which prevent the detection, investigation, apprehension, and prosecution of drug traffickers; survey the states' and Federal laws to determine which existing statutes would

most likely be successful if enacted in other states; establish the preferred structure of the model state statutes in order to accomplish the stated goals of investigation, apprehension, prosecution and punishment of drug traffickers; and, promote the utilization of model state statutes across the country through the presentation of testimony, articles and limited technical assistance.

Eligibility and selection criteria: BJA will negotiate with several national organizations to obtain an application which best demonstrates the following:

- Familiarity with the recommendations of the National Drug Policy Board pertaining to "model" statute development;
- Knowledge and understanding of state and Federal statutes and relevant sections pertaining to asset forfeiture, electronic surveillance, money laundering and other pertinent areas related to drug offenses and offenders;
- Experience in the analysis, formulation and drafting of "model" statutes based on the successful sections of state and Federal statutes concerning the investigation, apprehension and prosecution of drug traffickers; and,
- Capability to provide training and technical assistance on a national basis.

Award period: The project will be funded for 12 months.

Award amount: The award will be a cooperative agreement with up to $132,000 being available to support this effort.

Due date: An application will be due on or before March 31, 1989.

Contact person: The BJA contact with additional information is Charles M. Hollis, Chief, Prosecution Branch, 202/272-4601.

Subpart IV—Adjudication

Program title: Drug Testing and Intensive Supervision Demonstration.

Goals/objectives: To demonstrate the effectiveness of drug testing as case screening and monitoring/supervision devices during the pretrial stage.

Background: For judges and magistrates, determining pretrial dispositions of arrestees is a critical and difficult process, usually conducted hurriedly and often with inadequate information about the arrestee, victim or crime. Inappropriate release or inadequate supervision of arrestees may result in additional harm or trauma to victims, additional crimes perpetrated by the arrestee, and justice delayed/denied should the arrestee fail to appear for trial. Further, research supports that there is a relationship between drug use and crime and that pretrial detention/release decisions by the court should reflect consideration of accurate information about the arrestee's drug abuse history and current usage.

Since FY 1987, BJA has implemented pretrial drug testing and supervision demonstration efforts in six sites (Tucson, AZ; Portland, OR; Wilmington, DE; Phoenix, AZ; Milwaukee, WI; and Prince Georges County, MD). These efforts are based in part on the model program from the District of Columbia Pretrial Services Agency and are structured to: (1) Augment existing criminal justice information about arrestees used for pretrial decision-making, (2) increase the number of pretial release options available to the court for arrestees who are not suited for formal drug treatment, yet should not be detained, and (3) provide a more intensive, supervised program tailored for arrestees exhibiting current drug usage.

Program description: The program to demonstrate the feasibility and replication of pretrial drug testing and monitoring contains three elements: operational sites, technical assistance, and a national-level evaluation. Participating sites will receive extensive technical assistance through the Pretrial Services Resource Center (PSRC), including on-site consultation, host-site visits, and workshops, as required. All sites will participate in a national evaluation, to be conducted by the Criminal Justice Research Institute (CJRI), which will provide both an impact and process assessment of the individual project sites and of the total program. One additional site, among those competing during last year's round, will be added to the program.

Eligibility and selection criteria: Based on continued demonstrated success, five existing sites will be refunded; and, one additional site will be selected by BJA from among those competing during last year's round. The PSRC will continue to provide technical assistance and training and program-related documents. The CJRI will undertake the evaluation of all participating sites.

Award period: All awards will be for 12 months of operation.

Award amounts: A total of $2,600,000 is allocated for this program. Up to $2,425,000 will be available to support programs in participating sites. Awards of up to $75,000 will be available to continue technical assistance and training for PSRC and up to $100,000 for continued evaluation by CJRI.

Due dates: Applications from the currently participating sites are due by March 31, 1989. Applications from PSRC and CJRI are due by June 30, 1989. The due date for an application from the newly selected site will be established at a later time by BJA and the site selected.

Contact person: The BJA contact for further information is Jay Marshall, Chief, Courts Branch, 202/272-4601.

Program title: Expedited Management of Drug Cases.

Goals objectives: To demonstrate the effectiveness of differentiated case management focused on the timely adjudication of drug cases.

Background: The timely and effective processing of drug cases presents a challenge to general jurisdictional trial courts. Increasing arrests/prosecutions add to the caseload volume and unique features attendant to adjudication of drug cases can contribute to major delays. A new technique, Differentiated Case Management (DCM), is being demonstrated and show great promise to further promote the expeditious processing of criminal and civil cases and guide more effective use of adjudication resources during the life of the case. The program concept is to formally screen/assess cases, divert those cases to special processing tracks based on such factors as complexity, and supervise those cases (especially those which require extraordinary coordination and use of court resources). Implicit in the success of this technique is the high level of planned coordination among the court, prosecutor and the public defender agencies. The strategy of Expeditious Management of Drug Cases Program is to employ the DCM concept exclusively for cases in which one or more drug offenses are charged.

Program description: Up to three courts will be selected through a competitive process to participate as demonstration sites. The selection of sites will be based on responses to the Request for Proposals and recommendations by an independent review panel. Emphasis in the program will be given to those local jurisdictions which demonstrate a significant caseload comprising of drug offenses, a coordinated case screening process among the prosecutor, public defense, and court agencies, a case management system which allocates and schedules resources for the timely completion of cases in which those cases, based on characteristics, are assigned to processing tracks, and an automated information system which directly supports case management.

The program will be conducted in two phases: An initial three month period in which participating jurisdictions will prepare for operations and a nine month period to conduct implementation. Technical assistance will be available in both phases to address general and specific problems.

Eligibility and selection criteria: General jurisdiction criminal courts will be selected based on a competitive process. The critical elements, along with selection criteria will be advertised in a Request for Proposals (RFP) to be released by March 1, 1989. Interested jurisdictions may obtain the RFP through the identified BJA contact person. BJA will select the organization through which technical assistance will be provided in support of the demonstration sites.

Award period: All awards will be for 12 months.

Award amount: Up to three demonstration sites will receive awards ranging from $100,000 to $200,000 for a total of $400,000; and award up to $100,000 will be granted for technical assistance.

Due dates: Proposals will be due May 1, 1989.

Contact person: The BJA contact for further information is Jay Marshall, Chief, Courts Branch, 202/272-4601.

Program title: TASC Program Development, Technical Assistance and Training.

Goals objectives: To continue to provide to local and state criminal justice agencies and block grantees necessary technical assistance and training connected with TASC programs and to continue to define and refine the critical elements for individual case management and accompanying performance standards, assessment protocols and outcome measures.

Background: Many evaluations have found treatment for drug-dependent offenders to be most effective when there is direct criminal justice involvement. The threat of criminal justice sanction motivates offenders to enter treatment and, perhaps more importantly, motivates them to stay in treatment for a period of time sufficient for behavior change. Treatment Alternatives to Street Crime (TASC) Programs have fared well in these evaluations and in the assessment of local jurisdictions; over 100 such programs continued during the hiatus of Federal funding, during the early 1980s. In response to this track record, the Congress has included TASC, specifically, in the Omnibus Drug Initiative Act as deserving of continued support. BJA has found TASC programs to be well-evaluated but erratically documented; thus, initial program development and assistance efforts have been aimed at documentation of the core elements that make up the most effective local TASC programs and the data collection necessary to manage and assess monitoring and referral of drug-dependent offenders. This documentation of field experience has improved communication among TASC-like programs and has resulted in a substantial growth in the number of requests for assistance, from both state and local case management.

Program description: This program will supplement the existing cooperative agreement with the National Association of State Alcohol and Drug Abuse Directors (NASADAD) to assist criminal justice agencies and block grantees. Using the TASC program as a individual case management model, technical assistance and training will be delivered on-site to current TASC programs to improve program delivery and to jurisdictions wishing to begin a TASC program in their area.

The TASC Program Brief will be further refined for concrete application, through the development and testing of a program assessment protocol, based on the critical elements and performance standards of the TASC program. Once tested, this assessment tool will be made available to the field, to confirm local program performance and to foster comparisons among sites. Other anticipated areas of priority include: Regional workshops to bring together state criminal justice planners and state alcohol and drug abuse planners to assist in better coordinating state programming for the drug dependent offender population; a model TASC client assessment instrument that provides the courts and the TASC administrator with useful information, documentation and data; training-of-trainers sessions for TASC consultants; TASC newsletter distribution to a growing list of interested individuals and organizations; and a national conference that brings together representatives from the criminal justice/drug treatment fields to review current information and coordinate future efforts.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with the National Association of State Alcohol and Drug Abuse Directors (NASADAD).

Award period: This award will be for 12 months.

Award amount: A supplemental award will be negotiated for up to $300,000.

References: The TASC Program Brief, Implementation Manual, Urinalysis Monograph, and Training Manuals—Trainer and Participant are available from the BJA staff member named below.

Due date: Application for the cooperative agreement will be due on or before January 31, 1989.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272-4601.

Program title: Drug Testing Technology/Focused Offender Disposition.

Goals/objectives: To continue to provide specific, practical assistance to local criminal justice decision-makers regarding the appropriate disposition of drug-using offenders, by providing and demonstrating specific guidelines for assessing offenders and available monitoring and treatment programs.

Background: Research conducted and underway by the National Institute of Justice, continues to support a number of solid findings about drug abuse and offending (e.g., drug use is a reliable predictor of pretrial misconduct, self-reports of drug use are not reliable, reliable technology is available). The same drug testing research which guides much of this discretionary program has highlighted certain areas of uncertainty and disagreement. The apparent success of monitoring as a deterrent to pretrial misconduct has led some to conclude that monitoring is an appropriate, general substitute for drug treatment. Others hold the view that monitoring, while an appropriate part of a treatment program, can promise no long term benefits. There is general agreement, however, regarding the dilemma faced by criminal justice decision-makers who deal with drug-using offenders. In the simplest terms, most judges have great difficulty distinguishing among offenders to determine those in need of and proper candidates for treatment. Similarly, having decided on a treatment condition or referral, most judges have great difficulty distinguishing among treatment programs (i.e., which are credible in general; which one is right for this offender).

This demonstration program is designed to address these questions directly. Over 80 decision-making instruments have been reviewed in light of recent and emerging research. From these sources a decision tool called the "offender profile index" has been developed for use at three competitively selected, demonstration sites, Birmingham, AL, Phoenix, AZ, and Miami, FL. These sites are just beginning to employ and assess the instrument. This continuation anticipates the

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successful demonstration of the offender profile index at one or more of the sites and provides modest funding for continued demonstration at the one or two sites which show the greatest potential for leading the transfer of this technology.

Program description: This program will continue to document and demonstrate the options available to the criminal justice system in dealing with the drug using offender. This continuation will support additional demonstration at one or more of the selected jurisdictions, to document the most appropriate procedures and protocols for the determination of which offenders should be referred to monitoring, which should be referred to treatment, and what kind of treatment is indicated. The demonstration will also recommend the most appropriate criminal justice system role during the monitoring or treatment period. Appropriate national experts and organizations will be called upon to advise and recommend regarding essential site protocols and essential site data collection and analysis. Final products will include the results of a process evaluation, in monograph or Program Brief form, and documented indicators and protocols for effective disposition of drug using offenders. A supplement to the existing cooperative agreement will be negotiated, with the National Association of State Alcohol and Drug Abuse Directors (NASADAD), to accomplish the necessary oversight, administration and assistance. BJA will retain the authority for approval of experts selected, for continuation site selection criteria and for demonstration sites selected to continue.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with NASADAD. Criteria for continuation site selection will be developed by NASADAD and submitted to BJA for approval. BJA will make final site selection, in accordance with approved criteria.

Award period: This award will be for 12 months.

Award amount: One award, through a negotiated cooperative agreement, will be made, to include both oversight functions and site demonstrations. It is anticipated that one or two sites will be continued. The total award amount, including oversight and site assistance, is $800,000.

Due date: Application for the cooperative agreement from NASADAD will be due by February 24, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Adjudication Technical Assistance.

Goals/objectives: To provide state and local adjudication agencies with short-term assistance addressing a number of problem areas.

Background: The Adjudication Technical Assistance Program (ATAP) provides short-term technical assistance, training, resource development, and other services related to adjudication functions. ATAP assists state and local justice systems, in support of both BJA block grant recipients and those not receiving Federal funding, and undertakes other projects in support of the BJA adjudication program. Areas of program concentration include but are not limited to general court management issues, case processing delay reduction, jury utilization, pertrial services including use of drug testing, focused prosecution, and jail management capacity, with an emphasis on adjudication programs which enhance processing of drug abusers and offenders.

ATAP brokers requests and responds in the most appropriate way. In the majority of cases, assignments involve sending staff or consultants on site to do short term data collection and analyses and gather other information relevant to the problem giving rise to the request. A report including specific recommendations for addressing the problem is prepared for the jurisdiction and, in some cases, follow-up assistance is provided to help implement the recommendations made. However, ATAP does not underwrite the costs of implementation.

Other methods of technical assistance which have been effectively used include "hosted" visits of jurisdictional representatives making the request in another jurisdiction which has successfully handled the same problem; providing speakers or arranging special sessions for national-level professional court organizations' conferences; and, providing jurisdictions with technical assistance reports and other documents relevant to their problem without on-site work.

In addition to this type of assistance, the current ATAP develops and disseminates a newsletter and single-issue monographs, assists BJA in special projects of national interest, and provides follow-up to initiatives undertaken in the Adjudication Training Program.

Program description: The program has been operating successfully for approximately three years and has assisted over 150 jurisdictions through on-site and other types of technical assistance. To ensure BJA continues to provide the highest quality services through the program, the award made this year will be based on a Request for Applications, which will be issued in January 1989.

The new award will support a program which is essentially similar to that currently operating, with some possible redirection to avoid unnecessary overlap with newer projects which provide technical assistance in more narrowly defined adjudication areas. Priority will be given to providing assistance to jurisdictions that have problems related to drug abuse and offending and are not currently receiving direct aid and technical assistance from BJA through other ongoing discretionary programs. For example, jurisdictions interested in initiating a pretrial drug testing program that are not being assisted through the Drug Testing and Intensive Supervision Program or those interested in improving their pretrial services that are not being assisted through the Enhanced Pretrial Services Delivery Program would be eligible. Assistance which allows general court improvement, better jail capacity management, and more effective adjudication programs overall will also be provided, in recognition that generalized improvements in adjudication functions impact favorably on the fair and efficient processing of that substantial proportion of all offenders who are abusing drugs or are charged with drug offenses.

Eligibility and selection criteria: One award will be made following a competition based on a Request for Proposals (RFP) which sets forth program elements, eligibility and selection criteria, and other relevant information. While it is anticipated that this RFP will call for a program which operates in a manner very similar to that now ongoing, some modifications are likely based on the experiences of the current program and BJA's assessment of projected needs for such services during the upcoming award period. This RFP will be issued in December 1988 and will allow interested organizations at least 30 days to respond. To be placed on a mailing list to receive this RFP, write the BJA staff contact for this program listed below.

Award period: The award period will be 12 months.

Award amount: Up to $500,000 will be awarded as a cooperative agreement.

References: The Technical Reporter, vol. 2, nos 1 and 2 (ATAP newsletter, which can be obtained by writing or calling program staff at the EMT Group, Inc., 3615 Wisconsin Avenue, NW., Washington, DC 20016, 202/362–4183).

Due date: The RFP will specify the due date for proposals.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Program title: Differentiated Case Management for Trial Courts.

Gools/Objectives: To demonstrate the effectiveness of a new technique in court delay reduction which focuses on intensive case management as a means to expedite adjudication of cases, especially those cases involving drug abuse.

Background: General court delay reduction practices have been implemented over the past decade, achieving great successes in reducing backlogs and improving the timeliness of case disposition. A new technique, Differentiated Case Management (DCM), shows great promise to further promote the expeditious processing of cases and guide more effective use of adjudication resources during the life of the case. The program concept is to formally screen/assess cases to be litigated, divert those cases to special processing tracks based on such factors as complexity, and supervise those cases (especially those which require extraordinary coordination and use of court resources). Implicit in the success of this technique is the high level of planned coordination among personnel from the court, prosecutor and the public defender agencies.

Program description: In FY 1987, BJA intiated the Differentiated Case Management Program in which five jurisdictions (6 courts) received initial funding to begin operations. Those jurisdictions are Camden County, NJ; Berrien County, MI; Pierce County, WA; Ramsey County, MN; and Wayne County, MI. Emphasis is given to accelerate processing of drug abuse cases based on established processing tracks. In addition to the demonstration sites, the EMT Group, Inc., is providing intensive technical assistance during the start-up and operational phases. The National Center for State Courts is performing site and program assessments. Although the sites have been in operation for only four months, interim assessment indicates that the program concept is contributing to more effective case management and expediting processing. These sites will receive additional funding, based on continued success. EMT Group and the National Center for State Courts will receive additional monies to permit further technical assistance and assessment.

Eligibility and selection criteria: The five existing sites, EMT Group, and the National Center for State Courts are eligible for continued funding.

Award period: All awards will be for 12 months.

Award amounts: The demonstration sites will receive up to $75,000 each for a total of $350,000; EMT Group will receive up to $75,000 for technical assistance delivery; and the National Center for State Courts will receive up to $75,000 for continued assessment for a program total of $500,000.

Due date: All applications are due February 1, 1989.

Contact person: The BJA contact for additional information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: Enhanced Pretrial Services Delivery.

Goals/objectives: To improve the utilization and operation of pretrial services delivery agencies nationwide.

Background: The Enhanced Pretrial Services Delivery Program began in October 1988, addressing the operational aspects of pretrial services agencies, to: (1) Identify the basic elements of good agency operations, (2) highlight "enhanced" agencies, and (3) help jurisdictions improve their operations through a mix of technical assistance and direct aid. Early program tasks include conducting an extensive survey of existing agencies and/or units of adjudication agencies which are now providing some type of pretrial services. The survey will determine to what extent these agencies, e.g., do pre-release interviewing, make recommendations to the court, monitor released arrestees prior to trial, and identify diversion or treatment opportunities for arrestees. In addition to a report on the survey results, a number of monographs and other documents are expected to result from this initiative.

A Program Brief will describe a typical or adequate pretrial service delivery agency operation will be prepared and issued. The type of operation described in this document will be used in part as a baseline for identifying agencies above that level, i.e., as "enhanced" pretrial services delivery agencies. At least three enhanced agencies will be identified and used as host sites for other jurisdiction's pretrial services personnel. Some follow-up technical assistance will also be offered to the sites that are hosted and the enhanced sites themselves will receive some direct assistance to facilitate this hosting process and to begin documentation of their operations for the benefit of other jurisdictions.

Program description: The Pretrial Services Resource Center (PSRC) and the National Association of Pretrial Service Agencies (NAPSA) are working together on this project. The new award will allow these groups to schedule hosted visits for more jurisdictions, provide more extensive follow-up to thse hosted visits by intermittent technical assistance and other means, and continue producing monographs on relevant topics.

A key task during this second phase will be the careful documentation of the operations of the enhanced sites, so that individual program components which make these sites "models" can be more readily transferred to and implemented by other jurisdictions.

Eligibility and selection criteria: A supplemental award will be made to the Pretrial Services Resource Center.

Award period: The award will be for a period not to exceed 12 months.

Award amount: The Pretrial Services Resource Center will be awarded up to $300,000.

References: The Program Brief to be developed during Phase I of this program will be mailed to all persons/organizations who ask to be placed on the mailing list; contact the BJA staff member named below.

Due date: The application form PSRC will be submitted no later than May 1, 1989.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272–4601.

Program title: Large Court Capacity.

Goals/objectives: To promote systemic and permanent improvements in court operations, especially in large jurisdiction trial courts, so that these courts can provide fair and efficient adjudication of drug arrestees and offenders.

Background: In FY 1987 BJA and the National Center for State Courts (NCSC) began a major initiative to enhance performance of large jurisdiction courts, to meet the increasing numbers of drug and drug-related cases being referred for adjudication. Implicit in this program is the recognition that existing judicial and support resources can expeditiously handle drug arrestees by a more focused application and use of those resources. Research and evaluation into judicial administration conclude repeatedly that additional judges and support staff do not, in themselves, increase the pace or performance in case processing and that

increased resources may only contribute to existing inefficiencies.

Four major components of the program are: (1) Development and integration of trial court performance standards and recognition of those trial courts which demonstrate achievement of those standards, (2) analysis of caseflow activity in trial courts as a means to focus technical assistance resources on courts which exhibit significant delays in case processing (especially of drug cases), (3) a review of case characteristics to support a differentiated case management (DCM) approach to further expedite drug case processing, and (4) identification of model automated jury management systems to facilitate administration of jury practices/procedures.

Program description: Additional funding was provided during FY 1988 to complete work of the trial court performance standards component and begin a marketing strategy to integrate the standards in courts of large urban areas. This award will focus on continuing the Caseflow Management Resource Project. Under this project, the number of participating jurisdictions will be increased to at least 30 sites from which data will be collected and analyzed. Results from this project will be used to achieve a national perspective of caseflow management of our larger courts, deliver intensive technical assistance to courts which exhibit significant case backlogs and/or slow case processing times, and document those courts with faster times and facilitate technology transfer of their case management systems to other less efficient courts. The impetus is to institutionalize case management systems which are proven successful in addressing caseflow problems, in order to expedite drug and other serious cases.

Eligibility and selection criteria: A supplemental award will be made to the National Center for State Courts.

Award period: The new award will support an additional 12 months of program operation.

Award amount: Up to $450,000 will be awarded.

Due date: An application from NCSC will be due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: The Impact of Drug-related Arrests on Criminal Courts of Limited Jurisdiction.

Goals/objectives: To examine how the increasing numbers of arrests for drug crimes and the increasing proportion of drug users among arrestees have effected the workload, procedures, and policies of courts of limited jurisdiction.

Background: There has been an increase in the numbers of drug-related arrests coming into our court system due both to increases in drug use and trafficking and increased targeting by law enforcement and prosecutorial agencies of these offenders. Some jurisdictions involved in ongoing BJA programs report that as many as 40% of all court filings are for drug offenses. Substantial evidence now exists also, coming from the Drug Use Forecasting (DUF) Program, a joint BJA/National Institute of Justice program, that 50–90% of all arrestees in major metropolitan (and even smaller) cities are drug users.

Despite the fact that nearly all arrestees are initially processed through some limited jurisdiction court (for probable cause hearings, bail hearings, some motions, and even plea acceptances), nearly all the ongoing studies on drugs and their relationship to criminal courts focus on the general jurisdiction or felony-level courts. There is a pressing need to identify the special problems which increased activities focused on drug crime have on these limited jurisdiction courts, because improper or ineffective processing at this point may detrimentally effect substantially more case outcomes than the numbers that are ever handled in the felony courts.

Program description: This new program will focus on the actual operations, policies and procedures, and case dispositions made by a number of limited jurisdiction criminal courts. The grantee will be asked to develop a program which includes analysis of case data, archival research, interviews of key court and other criminal justice system personnel, and other tasks appropriate to the subject, to provide both a national and site-specific perspective and a qualitative and quantitative analysis of what impact drug-related cases have had on these courts and how they are responding.

This program will be initiated by a competition, which will be held pursuant to a Request for Proposals (RFP) to be issued by BJA in March 1989. Within the broad constraints discussed herein and any additional requirements specified in the RFP, the exact focus of, methodologies for, and analyses to be performed for this program will be those suggested by the successful applicant. That is, the focus of the competition for this grant will be on which application presents the best approach to this examination within the resources available. Those organizations interested in competing for this grant should write the BJA contact noted below to be placed on a mailing list for the RFP.

Interested applicants should bear in mind that BJA is an action-oriented agency which is seeking feasible approaches and solutions to problems occurring in the criminal justice system. Therefore, a key selection criteria will be how the applicant proposes to structure and report program findings and recommendations and how readily those findings and recommendations might be acted upon by limited jurisdiction courts to improve their operations overall and especially their handling of drug-related cases.

Award period: This new project will be funded for an 12-month period.

Award amount: Up to $250,000 is available for this program.

Due date: The due date for proposals will be specified in the RFP.

Contact person: The BJA contract for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Program title: Family Violence and the Role of the Family Courts.

Goals/objectives: To determine if family courts, given appropriate jurisdiction over adults involved in domestic violence, can effectively prosecute and adjudicate abusers in order to stop violence in the home, while providing better services to the family unit than are possible through criminal court intervention.

Background: The National Council of Juvenile and Family Court Judges (NCJFCJ) has been working since September 1987 with three family courts that have the jurisdiction to undertake criminal actions against spouse abusers. In these court, the program is developing, testing, and documenting a strategy for responding to instances of spouse abuse which has as its primary goal to intervene in a way which results in permanent cessation of that violence. Since a criteria for cases included in the program is that the domestic violence occurred in a home where children reside, a secondary goal is to foster a situation which preserves the stability of family relationships which are likely to continue even if the abuser and victim do not want to continue their relationship (e.g., divorced parent-child in custody of other parent).

The program seeks to coordinate criminal justice system and public and private service agencies' actions to provide a range of interventions, including criminal prosecution and sanctioning of the abuser, protection of and necessary services for the victim of abuse, identification and response to other types of violence or substance abuse which might be occurring in the home, and provision of longer term assistance/treatment/services to abuser, victim and children in the home. Consistent with this concept of developing a unified approach to each individual family violence case involving both the criminal justice system and service agencies' actions is the potential of the family courts to coordinate or combine all actions pending in the court system relevant to anyone in the same home or family. Providing this coordination has become another objective of the program.

The progress in implementation of program goals by the three sites participating in the program (Quincy MA, Portland, OR, and Wilmington DE) is being documented by the Center for Juvenile Justice, the research and evaluation office of NCJFCJ.

Program description: While significant progress has been made in achieving program goals, the complexity of trying to intervene effectively in family violence situations requires a long-term effort. Complexity arises where violence by abuser to the same victim has occurred over a long period and has become a way of life, where multiple violence (e.g., spouse and child abuse) may be occurring, where the fear of losing the children to state agency custody inhibits the victim from pursuing court action against the abuser, and where a number of civil and criminal processing options are not only available but may in fact have led to pending actions in several courts in the same jurisdiction involving one or more members of an entire family group. This new award will provide supplemental support for this program, to allow continuing development and assessment of the feasibility of the approach to family violence intervention now being taken in the three participating sites.

Eligibility ond selection criteria: The current grantee, the National Council of Juvenile and Family Court Judges, will receive a supplemental award to the cooperative agreement which supports this program's activities.

Award period: The new award will cover a period of up to 12 months.

Award amount: Up to $300,000 will be awarded.

Due date: An application from NCJFCJ will be submitted within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Subpart V—Corrections

Program title: Prison Capacity Demonstration.

Goals/objectives: To assist states to review corrections policies and to establish a balanced corrections system, utilizing commissions or task forces representing all three branches of government.

Background: This program is a continuation of a technical assistance and demonstration program initiated in 1987 to assist state corrections commissions and task forces. The Bureau of Justice Assistance initiated a fifteen-state Prison Capacity Program under a special Congressional authorization to assist state policy makers in developing cohesive correction policies.

Program description: The program provides seed money and technical assistance to state commissions or task forces made up of representatives of the three branches of government or to legislative committees revising corrections policy. Each of the commissions or task forces is considering a wide range of corrections alternatives including prison capacity and updated inmate population projections, distribution of populations between state institutions and jails, and a wide range of alternative sanctions including expanded community corrections options. Technical assistance is provided under a grant to the National Council on Crime and Delinquency (NCCD).

Eligibility and selection criteria: This funding will extend the work of selected state commissions for an additional six to twelve months and continue technical assistance through 1989. Because of funding limitations, no new states will be added to the currently funded sites, although technical assistance will be available.

Award period: The award to NCCD and contracts with sites will be for periods of up to 12 months.

Award amounts: Up to $250,000 is earmarked for this program to be distributed as follows: $150,000 for continuation funding in five or six states; $100,000 for technical assistance and training activities. Currently funded states could receive supplements of $10,000 to $25,000 by submission of amended work plans.

The FY 1989 funds will be awarded to the current technical assistance coordinator, National Council on Crime and Delinquency, San Francisco, which will distribute funding to the states under direction of the Bureau of Justice Assistance.

Due date: States currently participating in the program may submit supplemental workplans to BJA and the National Council on Crime and Delinquency at any time within 90 days of the completion of their current grants. A submission date for the application from the technical assistance provider will be negotiated with NCCD.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Shock Incarceration Treatment Enhancement for Drug Offenders.

Goals/objectives: To provide funding for up to two demonstration sites to develop or enhance drug treatment for drug dependent offenders within a shock incarcerations or boot camp program.

Background: The development of alternative, intermediate sanctions for non-violent, first-time youthful, drug offenders and drug-dependent offenders is a crucial element in the nation's drug control efforts. Shock incarceration is a relatively new alternative sanction which provides a choice between traditional prison incarceration and supervised, community-based release, predominantly for the young, non-violent, first offender, age 18–25, who was a short sentence. These programs operate under several names; "shock incarceration" and "boot camp" are probably the most common. The specific components of these programs vary including activities such as work, community service, education and counseling. Some programs require intensive supervision upon release.

However, one similarity among all programs is a highly structured, military type environment where offenders are required to participate in drills and physical training, all of which is directed by staff in a military, or boot camp, atmosphere. The sentence lengths are usually shorter than traditional detention and are seen by proponents as cost-effective means of reducing prison overcrowding. Proponents also argue that the short-term, demanding and rigorous boot camp component of the programs will be rehabilitative and reduce recidivism.

Program description: The criminal justice system's expanded efforts to apprehend and prosecute both the drug trafficker and drug user requires that new alternative sanctions be established. This program will demonstrate the integration of drug treatment components into shock incarceration programs, to provide an opportunity to test the feasibility and

effectiveness of expanded offender treatment and counseling using a variety of drug treatment modalities for youthful drug and drug dependent offender.

Eligibility and selection criteria: This is a competitive program. However, applications from existing shock incarceration-type programs to establish or enhance drug-dependent offender treatment efforts will receive funding priority.

Award period: Grants will be for 12 months.

Award amount: Two grants will be awarded for approximately $250,000, for a program total of $500,000.

Due date: Applications should be submitted no later than March 31, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Correctional Industry Information Clearinghouse.

Goals/objectives: To support improved operations and expansions of state correctional industries, both as a means to reduce inmate idleness and to develop revenues for a variety of correctional and social purposes.

Background: This project provides publications, technical assistance and special research for state prison industries. It is a continuation of a clearinghouse for state prison industries developed at the American Correctional Association (ACA) in 1986.

Program description: ACA staff handle technical assistance requests on a wide-range of prison and jail industry issues, including legislation, personnel procedures, marketing and sales, and organization and management, as well as joint ventures with the private sector. Requests are handled through document retrieval and reproduction, special research, and operation of CI–NET, the automated information system. Periodic bulletins on topics of special interest are distributed to all state prison and jail industries.

Eligibility and selection criteria: The American Correctional Association will submit a continuation application.

Award period: This award will extend the current project for a period of 12 months, through March, 1990.

Award amount: Up to $175,000 will be awarded to the American Correctional Association.

Due date: An application for continuation funding will be due by February 15, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Strategic Planning for Prison Industries.

Goals/objectives: To assist state correctional industries to develop long-range growth and marketing plans for the expansion of their operations.

Background: This is an ongoing program which provides technical assistance and small grants to state and local correctional industries to complete long-range business plans.

Program description: This program will provide technical assistance to state correctional industries to expand their business operations. The emphasis will be on long term strategic planning, defining business objectives, growth markets, and means of financing growth. Small sub-grants of $10,000 to $25,000 per state may be approved by BJA through the Technical Assistance Coordinator, the Institute for Economic and Policy Studies-Correctional Economics Center.

Eligibility and selection criteria: This will be a continuation grant to the Institute for Economic and Policy Studies. Two small sub-grants will be authorized by BJA on a competitive basis. BJA will submit a separate notification to all state and metropolitan correctional agencies in early 1989. The criteria will be detailed in that special announcement.

Award period: This supplement will fund the project for 12 additional months, through February, 1990.

Award amount: Up to $175,000 will be awarded to the Institute for Economic and Policy Studies, earmarked to be distributed as follows: Approximately $50,000 for two new state prison or metropolitan jail industry planning studies; $75,000 for short-term technical assistance to prison and jail industries and regional meetings; and $50,000 for administration and special studies at the direction of BJA.

Due date: The Institute for Economic and Policy Studies will submit an application for continuation funding by March 15, 1989.

Contact person: The BJA contact for additional information is Nichols Demos Chief, Corrections Branch, 202/272–4605.

Program title: Automation of the Probation and Parole Interstate Compact.

Goals/objectives: To initiate a pilot automated system to facilitate the transfer process for probationers and parolees moving between states under the recently revised Interstate Compact. The goal is to increase public safety and accountability of probationers and parolees, especially for offenders with addiction problems, through a rapid transfer process.

Background: Current estimates are that we are approaching 100,000 transfers of probationers and parolees between states each year. These transfers are made under the terms of the Interstate Compact, which was recently revised to include automated transfers. An extensive survey of the states revealed that the current transfer process is slow, burdensome and unwieldy, often leaving probationers and parolees without supervision for months. The National Institute of Corrections funded a project to revise the Interstate Compact, and that has been completed.

Six states with high volumes of transfers have volunteered to test and evaluate a computerized system of transfers. The six states are: California, New York, New Jersey, Pennsylvania, Florida and Texas. The project has been carefully planned over the past two years by the Interstate Compact Association Information Network Committee with staff from the Council of State Governments. Technical assistance was provided by SEARCH Group, Inc.

Program description: The program will be conducted by the Probation and Parole Compact Administrators Association, with staff and financial management by the Council of State Governments, the Secretariat for the Association. One of the objectives is to insure proper supervision of higher risk drug/alcohol dependent offenders, and their entry into proper treatment programs. Six states are ready to test the automated transfer system. After the evaluation other states may be added to the system.

The Council of State Governments' MicroVAX computer facility in Lexington, Kentucky, will serve as the central "Mailbox" for the transfers. Data record exchange will be supplemented by fax machines. The "Mailbox" would be accessed by the pilot states from dedicated personal computers and modems secured through project funds and maintained at the states' expense.

Eligibility and selection criteria: The project will be implemented by the Probation and Parole Compact Administrators Association, through its Interstate Compact Association Information Network Committee. Staff and financial management will be provided by the Council of State Governments.

Award period: This will be for 12 months.

Award amount: Up to $230,000 is earmarked for this project.

Due date: An application is due from the Compact Administrators Association by January 15, 1989.

Contact person: The BJA contact person for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Intensive Supervision for Drug Offenders (Probation and Parole) Training and Technical Assistance.

Goals/objectives: To provide a minimum of eight intensive training institutes to states or jurisdictions that are ready to implement an intensive supervision for drug offenders project. Training institutes will be provided on planning, implementation strategies, and problem-solving. It is anticipated that approximately 16 jurisdictions will be reached through these training institutes.

Background: Prison crowding is, and will continue to be, the most pressing issue facing state correctional facilities. Intensive supervision is one of the alternatives available to the corrections system to help alleviate crowding. Intensive supervision, if properly implemented, can offer some cost and bed saving respite for crowded institutions. Some jurisdictions could benefit from intensive training that will provide assistance in the implementation phases of program development.

In fiscal years 1986–1988, BJA funded an Intensive Supervision Demonstration Program. This Program provided funding for 10 demonstration sites, national technical assistance, intensive training, and an independent evaluation. Six out of the 10 demonstration sites were specifically targeted to provide services to drug offenders.

The National Council on Crime and Delinquency (NCCD), in conjunction with Rutgers University, has developed and utilized a very successful training and planning format for the BJA intensive supervision demonstration program. This basic format will be used for this new effort, and the experience and expertise of NCCD and Rutgers will be brought together to implement this program.

Program description: This program has two components: (1) The provision of specialized intensive training seminars to provide management and operational training focused on program development, planning, implementation strategies, and problem-solving; and (2) the provision of a comprehensive technical assistance package that will provide on-site consultation to ensure successful program operation. Projects must evidence a commitment to emphasize urinalysis, treatment, and surveillance.

This program will provide all training costs, travel, and per diem directly related to attendance at the training sessions. No project-related costs will be paid out of this grant.

Eligibility and selection criteria: Interested states or jurisdictions must meet four criteria prior to selection for participation in training institutes:

- Priority will be given to those states that are involved in the Prison Capacity or the Department of Corrections Drug Treatment Strategy Programs. Other jurisdictions will be considered on a space available basis. Some weight will also be given to geographic distribution of interested jurisdictions.
- This training is for those jurisdictions ready to implement an Intensive Supervision project. It is expected that the Project Director and approximately 3-4 additional staff members who will be working on this program will take part in these training seminars. Applicants must show evidence that they will be ready to begin implementation of a program immediately after the first training session.
- All intensive supervision projects involved in this training must either show evidence of an existing treatment component or a willingness and funds to develop a treatment component.
- States/jurisdictions must indicate a willingness to participate in both training institutes.

Requests will be reviewed by NCCD and BJA, with final approval for site selection made by BJA.

The National Council on Crime and Delinquency, building upon their specialized experience with BJA's 10 demonstration sites, will receive a grant to provide technical assistance and training services.

Award period: This program will extend for 12 months.

Award amount: Up to $150,000 has been earmarked for this national training and technical assistance grant. All training, travel and per diem costs will be paid for selected sites via voucher submission to NCCD.

Due date: Completed application from NCCD is due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605. For those jurisdictions interested in the training institute, please contact Doug Holien, NCCD, Director of Research, Technical Assistance and Programs, 608/274–8882, to express interest and obtain a copy of eligibility criteria.

Program title: Coordinated Interagency Drug Training and Technical Assistance.

Goals/objectives: To coordinate and enhance the parallel efforts of probation/parole officers and drug treatment practitioners through cross-training. To develop activities that will expand networks and improve community management of the drug-dependent offender.

Background: Coordinating services between the criminal justice and treatment systems is a complex process. Each system tends to define client goals and the manner in which the goals are accomplished differently. Desired behavioral outcomes for the criminal justice system focus on recidivism, whereas the treatment system is more interested in treatment retention and drug-free days.

Drug dependent offenders require close community supervision. If such individuals are sentenced to probation or released from prison on parole without a strong monitoring component that promotes socially acceptable behavior and provides treatment for drug dependency, public safety may be endangered and judicial intent thwarted.

Initiating comprehensive drug programs for offenders requires flexibility in policy, strategy and technology. Cooperative planning by probation/parole systems and drug treatment systems is essential to this process. An important step in cooperative planning is to share and in some cases consolidate, information and resources.

Full case management programs for offenders, emphasizing reduced case loads and combining strong monitoring, sanctions and community-based services, is certain to be a more effective intervention strategy than simply assuming that a jail term will "cure" the deviant behavior and accompanying drug dependency.

Highly structured, daily supervision for drug-dependent offenders is essential to protect public safety. Frequent drug testing, random home visits and collateral contacts with family and employers work in tandem with drug treatment and employee assistance. In addition, a system of prompt positive and negative sanctions work most effectively when probation/parole and treatment work in a coordinated effort with the individual offender.

Criminal justice and drug treatment agencies have traditionally had an almost adversarial relationship because of "turf" issues and a blurry line dividing roles and functions.

Recognizing the potential pitfalls and working to avoid them are two vital actions that are often overlooked. Cooperative interagency agreements, joint training, and efforts to clarify roles and functions can significantly enhance the chances that both systems' goals will be reached.

Program description: The Coordinated Interagency Drug Training and Technical Assistance Program, in its entirety, will develop and implement joint training for both probation/parole officers and for treatment practitioners. Two national organizations representing the two fields will work together: The National Association of State Alcohol and Drug Abuse Directors (NASADAD) and the American Probation and Parole Association (APPA). Their cooperative efforts will help garner support from their constituents and will ensure that the project's approach, materials and use of language are appropriate. Training activities will be conducted under the auspices of a Justice/Treatment Coalition composed of nationally-known experts and representatives from both organizations.

The full project plan for the program includes: Determining the specific problems and issues to be addressed and developing a curriculum which matches the joint needs of the two fields; conducting training of the trainers who will teach the material; conducting 60 two-day seminars (at least one in each state) which train probation/parole and treatment personnel jointly; providing follow-up technical assistance as needed; evaluating a portion of the training 3 to 4 months later; and preparing and disseminating a Program Brief outlining the training's critical elements and guiding principles.

However, in FY 1989, BJA will fund only the following activities: Start-up and needs assessment, curriculum development and teacher training; pilot training, site evaluation and analysis of impact; plan for completion of projects.

Eligibility and selection criteria: This award will be made to NASADAD and the Council of State Governments, APPA based on a negotiated cooperative agreement.

Award period: The period of performance for the full project is estimated to be 24 months. However, BJA will fund only 12 months of activity during FY 1989.

Award amount: Up to $500,000 is available for this award.

Due date: Application for the cooperative agreement will be due by February 15, 1989.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: BJA/Public Health Service Drug Treatment Intervention.

Goals/objectives: To develop a model substance abuse program that will incorporate the needs of the corrections system with the services of the U.S. Public Health Service (PHS). This program will provide substance abuse diagnosis and treatment referral services to local and county jail inmates and offenders on Intensive Supervision by PHS community and migrant health centers. A national conference of public and correctional health care providers will result from this effort.

The objectives are to:

- Provide a continuum of health care *and* substance abuse treatment to offenders, and
- Foster the development of a network of criminal justice and health care agencies to better serve the substance abuse/treatment needs of jail inmates, probationers, and parolees.

Background: Although some public health centers are providing direct health services to correctional agencies, few are actually working together. This program, therefore, presents a logical mechanism for integrating community and correctional facilities interests in substance abuse and treatment. Inmates, probationers and parolees return to their communities with untreated substance abuse problems which continue to cause medical problems for the individual as well as societal problems for the community in general. Under an existing Interagency Agreement with PHS, it has been mutually agreed to enter into a joint venture to develop a model substance abuse/intervention program(s) within the correctional system.

Program description: This program is divided into the following two components:

- *Program Planning and Implementation:* A number of host sites will be identified by BJA and PHS, based on locations of existing local health centers and location of correctional facilities. Facilities will be contacted to determine interest. Public health and correctional officials will be working together to plan and implement program goals, develop appropriate policies and procedures to integrate correctional needs with health care services. A Program Manual/Guidebook will be developed.
- *Notional Conference:* Based on documentation and expertise gleaned from program operation, a joint national conference on substance abuse for public health and correctional health care providers will be conducted in the latter portion of this program effort.

Eligibility and selection criteria: An award will be made to Correctional Research Institute, based on their existing working relationship with PHS and existing available consultant network established under a previous grant. As the national program coordinator, Correctional Research Institute will be responsible for:

- A design for joint administrative oversight and provision of onsite consultation and information dissemination to assist in the development and implementation of selected sites;
- A design for implementation of the joint national conference; and,
- A design for joint evaluation which provides some impact assessment.

Award period: This will be a 12 month effort.

Award amount: Up to $150,000 is earmarked for this program.

Due date: The application from the Correctional Research Institute is due no later than March 31, 1989.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Drug Treatment in a Jail Setting Demonstration.

Goals/objectives: To assist local jails and community corrections agencies to improve their drug screening and treatment services, through the continuation funding of one of the model jails funded in FY 1987. The emphasis of this program is on drug treatment in larger metropolitan jails, but training and clearinghouse services will be provided for smaller jails as well.

Background: In FY 1987, the American Jail Association (AJA) proposed a national research and demonstration program to assist jails and community corrections agencies in improving screening and treatment for drug offenders. In FY 1987, BJA funded two national models, and in FY 1988, funded one additional site. These projects are located in Pima County, AZ; Hillsborough County (Tampa), FL; and in Cook County (Chicago), IL.

Program description: This program will be continued to provide for the following components:

- Continuation funding of one existing pilot project at approximately $350,000. The model site will cooperate in the transfer of project components from the model jail to others jails through documentation and host visits.
- Transfer of project components from the other existing model jails to other metropolitan jails through documentation and host visits; and,
- Continued research updates on success in reducing drug abuse and recidivism rates through a combination of institutional and community treatment.

Eligibility and selection criteria: For the pilot project to be continued eligibility criteria include: Level of integration of jail and community treatment components; comprehensiveness of the drug treatment component; strategy for aftercare; support from local correctional and drug treatment officials; strategy for enlisting the cooperation of corrections officers and overcoming resistance to treatment programming; and local funding sources committed to the project. Projects are strongly encouraged to combine block grant and discretionary funds to the extent possible. The American Jail Association will continue to be the National Program Coordinator for this program.

Award period: The new award will extend the project for 12 months.

Award amount: Up to $460,000 is earmarked for this program, to be distributed as follows: $110,000 for a grant to the American Jail Association for administration, technical assistance, and the research component and $350,000 to continue one jail project.

Due date: Applications must be submitted to BJA by the AJA and by the site to be continued no later than February 1, 1989.

Program contact: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Technical Assistance to Corrections Agencies.

Goals/objectives: To provide a range of site-specific technical assistance and training in support of new block grant and non-block grant projects in correctional institutions and in community corrections agencies; and to support BJA-initiated special projects.

Background: In FY 1987, BJA funded Corrections Research Institute (CRI) to provide a range of site-specific technical assistance and training efforts in support of new block grant and non-block grant projects in correctional institutions and in community corrections agencies. This program was developed with the recognition that state departments of corrections, local jails, and community corrections agencies would be implementing a wide range of drug screening, drug treatment, and rehabilitation projects with block and non-block grant funds. It was recognized that many of these new or expanded drug-related projects could have a significant impact on the operations of corrections agencies, and that there would be a substantial need for technical assistance and training to support these projects. Six to eight regional training seminars on drug-related topics were scheduled, and in addition, twenty-five of these grant funds were set aside for special projects.

Program description: A supplemental grant will be awarded to Corrections Research Institute to continue providing technical assistance and training activities. It is projected that another six regional or State seminars will be implemented on special topics related to drugs, such as special handling of drug dealers, eliminating drugs in the institution, model personnel and job descriptions, and community supervision. It is also projected that up to 60 additional on-site technical assistance assignments will be completed, covering drug treatment, organization, management, and screening instruments.

Implementation will continue to be delivered primarily on a broker basis, i.e., maximum use will be made of exprienced administrators, practioners, and consultants. Twenty-five percent of grant funds will again be earmarked for special projects at the direction of BJA.

Eligibility and selection criteria: One national scope grant will be awarded to Corrections Research Institute to continue their present efforts. CRI must submit a Federal SF–424 application which must include a complete budget, efforts to be continued, up-to-date staff capabilities, up-to-date consultant capabilities, any changes in present operation.

Award period: This award will be for 12 months.

Award amount: Up to $250,000 is earmarked for this project.

Due date: An application is due at BJA no later than January 15, 1989.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Comprehensive State Department of Corrections Treatment Strategies for Drug Abuse.

Goals/objectives: To reduce recidivism rates of major drug using offenders by a range of drug treatment programs and community supervision and treatment.

Background: This program was initiated in FY 1987 to assist state departments of corrections to expand and upgrade drug treatment and rehabilitation activities in all state institutions. BJA selected Narcotic and Drug Research, Inc. (NDRI), as the national program coordinator to assist with technical assistance and training. Six states were selected for Phase I Planning contracts for the first year: Connecticut, New York, Delaware, Florida, Alabama, and New Mexico. All six states are now in the implementation phase and four new states were added to Phase I in FY 1988: New Jersey, Oregon, Washington, and Hawaii.

Program description: The major objective is to develop a range of model state drug treatment activities including: Therapeutic communities, drug resource centers, drug education, and self-help groups that can be integrated into existing and proposed institutions. An ancillary objective is to train corrections and treatment staffs in the latest techniques for drug treatment. Lastly, the program has an evaluation objective, whereby both the treatment process and the impact will be assessed.

Eligibility and selection criteria: No new Phase I planning states will be added to the program at this time. Only those states presently working through their planning phases are eligible to submit applications for the Implementation Phase. NDRI will receive a supplemental award to continue its technical assistance to participating sites. Site applicants must submit completed SF 424 applications to BJA upon completion of their comprehensive plan. The current planning states should be ready for implementation projects in the Spring or Summer of 1989.

Award period: All implementation grants will be for a 12 month period. The NDRI supplemental award will be for an additional 12 months.

Award amount: Up to $1,800,000 is earmarked for this program to be distributed as follows: $1,300,000 for implementation grants to those states that have completed Phase I with an approved plan by BJA and NDRI and $500,000 is set asisde for continuation of technical assistance and training through NDRI.

References: Information packets on prison drug treatment programs are available from NDRI upon request. Address requests to Lenny Posner, Narcotics and Drug Research, Inc., 3d Floor, 11 Beach Street, New York, NY, 10013.

Due dates: Implementation applications are due in the Spring or Summer of 1989 from those current Phase I states that complete their implementation plans. NDRI's supplemental application is due by February 1, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Probation and Narcotic Interdiction National Training Program.

Goals/objectives: To reduce the incidence of drug abuse and subsequent arrests or revocation of offenders on probation or parole. The objective is to provide probation and parole line officers with the knowledge and skills to detect drug use, assess severity, and learn techniques of surveillance, testing, and intervention.

Background: This national scope research and training program was developed by the American Probation and Parole Association and the National Association of Probation Executives to strengthen the ability of probation and parole officers in detecting and treating drug abuse. The grantee is documenting and disseminating successful models of drug screening, intervention and treatment, and the means of strengthening relationships with community treatment agencies. The project is staffed by the Council of State Governments, which provides Secretariat services to the American Probation and Parole Association.

Program description: This program is divided into three phases:

- National search and documentation of successful probation/parole drug surveillance and intervention techniques, and successful models of probation/parole coordination with community treatment agencies (completed);
- Development of a Training Manual for Probation/Parole agencies; and
- Seven training seminars for approximately 250 Probation Executives and Training Directors (training the trainers). Successful program models will also be disseminated to state legislative and executive officials.

Continuation funding will allow training of an additional 300 probation/parole administrators and trainers in 1989 through an additional six or seven seminars.

Eligibility and selection criteria: This will be a continuation grant to the Council of State Governments, as Secretariat to the American Probation and Parole Association and the National Association of Probation Executives.

Award period: The current grant will be extended for a period of 15 months.

Award amount: Up to $250,000 is earmarked for this program for six or seven additional regional seminars. One of the seminars may take place at the APPA annual institute.

Due date: An application for extension of this program will be due by March 1, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–1605.

Program title: Private Sector/Prison Industry Enhancement Certification Technical Assistance and Training.

Goals/objectives: To provide technical assistance and training to current certified agencies and interested organizations and applicants of the Prison Industry Enhancement Program to assist in complying with the nine mandatory program requirements for participation. These certified projects represent prison industries operated at free-world standards and paying prevailing wage rates under special legislation authorized by the Congress. The benefits received are the availability to sell prison-made goods in interstate commerce and to federal agencies.

Background: 18 U.S.C. 1761 implements the Prison Industry Enhancement Program originally authorized within the Justice System Improvement Act of 1979. The program provides exemption from Federal constraints on the marketability of non-Federal prison-made goods by permitting the sale of these products in interstate commerce and to the Federal Government. Up to 20 non-Federal prison industry projects may be certified for this exemption when their operation has been determined by the Director of the Bureau of Justice Assistance to meet statutory and guideline requirements. The certified projects are designed to place inmates in a realistic working and training environment enabling them to acquire marketable skills, thus potentially increasing the possibilities for successful rehabilitation and the chances for meaningful employment upon release. Tensions are reduced in participating institutions as idleness decreases. Project workers alleviate some of the costs of incarceration by contributing room and board and family support payment, and becoming taxpayers, and victims of crime are compensated for their loss.

Program description: This project will be a continuation of the present technical assistance and training cooperative agreement with the American Correctional Association, to support the Private Sector/Prison Industry Enhancement Certification Program. The Program requires that state and local units of government comply with the following legislative-mandated conditions and administrative authority: Statutory authority to administer prison industry program; contributions to victims compensation or victim assistance programs; consultation with organized labor; consultation with local private industry; payment of prevailing wages; free worker displacement; voluntary participation; worker compensation; and private sector involvement.

The cooperative agreement shall provide for the use of expert personnel from previously certified projects who have demonstrated skill in achieving administrative, correctional and business objectives. These experienced prison industry officials will help upgrade other project management systems, assist in resolving operational problems, and enhance communication and sharing among project participants. Depending on interest expressed by state and local governments, up to 20 on-site technical assistance visits are anticipated.

Eligibility and selection criteria: This continuation award will be made to the American Correctional Association as a cooperative agreement.

Award period: The supplemental award will be for 12 months.

Award amount: Up to $265,000 is earmarked to supplement the Association's current technical assistance and training project.

Due date: An application from the American Correctional Association will be due by February 28, 1989.

Contact person: The BJA contact for additional information is Louise S. Lucas, Program Manager, Corrections Activities, 202/724–8374.

Program title: Treatment Outcome Study.

Goals/objectives: To participate in a five-year "Drug Abuse Treatment Outcome Study" (DATOS) funded by the National Institute on Drug Abuse (NIDA).

Background: In early FY 1989, NIDA will award a five-year national study, similar to, but in greater depth than, the "Treatment Outcome Perspectives Study" (TOPS). The new DATOS study will measure the effectiveness of drug treatment and investigate the treatment process. One measure of client change to be examined is criminal behavior. Data will be collected on an estimated 20,000 clients from approximately 32 different treatment programs in two one-year admission cohorts.

BJA's participation in the initial phase of the project will help to ensure that the questions and analyses for the criminal behavior factor address the interests of BJA and that special studies will examine specific factors such as the extent of criminal behavior when the Treatment Alternative to Street Crime (TASC) program is involved in the treatment process.

Program description: Under an Interagency Agreement, negotiated with the National Institute on Drug Abuse, BJA will provide support for additional resources to the DATOS project to aid in the design of the criminal behavior analyses and to specifically examine the extent of criminal behavior when the TASC program is involved in the treatment process. Information gathered through this effort will be made available to the states to guide state and local criminal justice formula grant allocations for continued technology transfer.

Eligibility and selection criteria: An Interagency Agreement will be negotiated with the National Institute on Drug Abuse.

Award period: This award will be for a period of 12 months.

Award amount: One award will be made in the amount of $60,000.

References: National Institute on Drug Abuse, Request for Proposal No. 271–89–8233, "Drug Abuse Treatment Outcome Study." June 30, 1988, is available from NIDA c/o Parklawn Building, 5600 Fisher's Lane, Rockville, MD 20857.

Due date: The Interagency Agreement date will be negotiated with NIDA.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: National Drug Treatment Training Institute.

Goals/objectives: This project initiates a National Drug Treatment Training Institute to train staffs from prisons, jails and community drug treatment agencies. The objectives are: (1) To support staff training for prison and jail projects participating in BJA demonstration programs; (2) to expand community drug treatment agencies that serve correctional populations as rapidly as possible.

Background: There is a growing commitment in correctional agencies to provide improved drug treatment services, to break the drug/crime connection, and to reduce recidivism rates. The greatest impediment to this goal is the lack of trained corrections and drug treatment staffs. The severe lack of substance abuse training resources within corrections and treatment communities required a national drug treatment training institute. Ten states are now participating in BJA's Corrections Drug Treatment Program, and within two years that number is expected to double. There is an equivalent situation with metropolitan jails.

Program description: A curriculum will be tested, refined, and amended as the project evolves. The Institute will include workshops and courses, intensive therapeutic community training, regional training workshops, and internships at various sites throughout the country. Training will be developed for corrections policy-makers, administrators, prison and jail line staffs, and community treatment staffs and aftercare supervisors. Approximately 350–500 personnel will be trained during the first year of operation. The project will develop manuals and related training materials as necessary for use of the participants and for replication purposes.

This project will allow for the testing and refinements of a national drug treatment training curriculum, and lead into the national institute authorized under section 6292 of the 1988 Act, when funds are appropriated for that purpose.

Eligibility and selection criteria: An interagency agreement will be negotiated with the National Institute of Corrections (NIC), Bureau of Prisons.

Award period: The project will be for a period of 12 months.

Award amount: Up to $300,000 has been earmarked for this project.

Due dates: An interagency agreement date will be negotiated with NIC.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Subpart VI—Information Systems

Program title: Operational Systems Support Technical Assistance and Training.

Goals/objectives: To enable state and local criminal justice agencies to determine systems needs, establish systems requirements and design or procure cost-effective, integrated information and management systems.

Background: This project implements BJA's technical assistance and training program, for state and local criminal justice agencies engaging in the necessary planning, organizational and analytical steps to implement operational information systems and workload management systems. The benefits of progress in information and management technology have not been universally shared. Small to medium sized agencies, which make up the vast majority of criminal justice agencies, often lack the resources to identify and employ available technology. This program will be designed to reach these agencies, directly and through their state and national organizations.

Past technical assistance and training programs have included the conduct of training sessions, the provision of documentary and on-site technical assistance, the generation and dissemination of guidance documents, and the generation and dissemination of generic systems. This program, especially the provision of on-site assistance, will function under strict priorities, with states lacking and in need of automation receiving priority attention.

Program description: A cooperative agreement will be negotiated with SEARCH Group, Inc. A comprehensive plan for the progam will be submitted to BJA for approval. This plan shall recommend priority areas (and schedules) for training and other forms of technical assistance and support. The approved plan and schedule will be published and will govern activities under this program.

Eligibility and selection criteria: The cooprative agreement will be negotiated with SEARCH Group, Inc., in accordance with the priority and guidance provided by the Congress.

Award period: This award will be for 12 months.

Award amount: The award will be up to $400,000.

Due date: An application from SEARCH Group will be due to BJA within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: National Criminal Justice computer Laboratories and Training Centers.

Goals/objectives: To provide specific, practical assistance and training to state and local criminal justice agencies, in automating functions, in implementing available systems and in comparing technologies and selecting the most cost-effective technology for local application.

Background: This program provides support to the joint efforts of the Criminal Justice Statistics Association (CJSA) and SEARCH Group, Inc., in the conduct of the computer laboratories and training centers. This program is designed to respond to specific, information systems needs of criminal justice agencies. Most criminal justice agencies, and especially small to medium-sized agencies, lack the necessary resources and expertise to: Maintain information on available,

public domain systems; investigate new technologies; develop criminal justice applications for existing technology; compare available technology and select the most cost-effective hardware and software for local systems; and provide necessary, technical training for their employees, to meet local and national information requirements.

Drawing upon the experience of the original laboratory and training center, operated by SEARCH Group, Inc. in Sacramento, CA, and the Washington DC facility, operated jointly by CJSA and SEARCH, this program will provide support for both facilities to purchase and operate essential equipment and software and to receive and maintain equipment and software donated by private vendors. The laboratories will house each center's publications library, the library of public domain and private sector software, and the clearinghouse of computer vendors and users. They will provide sites for CJSA and SEARCH to assist users in the evaluation of software and hardware, and in the selection of appropriate products to meet their needs. They will also serve as sites for vendors to demonstrate their products to potential users and as sites for demonstrations of public domain software. The training centers will continue to provide programs focused on: decision support; policy analysis; automation needs of criminal justice agencies; and, the operation and use of public domain software, such as "DA's Assistant" for prosecution management and "Lock-up" for jail management.

Progrom description: A cooperative agreement(s) will be negotiated with the Criminal Justice Statistics Association and SEARCH Group, Inc. This program will provide for the continuing development and implementation of the National Computer Laboratories and Training Centers for the Eastern and for the Western United States. More specifically, this program will focus on: Demonstration of specific, operational micro-technology systems; the provision of specific training programs; the provision of specific technical assistance. A comprehensive plan for the program, addressing each center, will be submitted to BJA for approval. This plan shall recommend priority areas (and schedules) for training, systems demonstration, technologies comparison and technical assistance. The approved plan and schedule will be published and will govern the activities of each center.

Eligibility and selection criteria: The cooperative agreement(s) will be negotiated with the Criminal Justice Statistics Association and SEARCH Group, Inc., the organizations jointly responsible for the conduct of the computer laboratories and training centers. Eligibility is established in accordance with the priority and guidance provided by the Congress.

Award period: This award will be for 12 months.

Award amount: The award(s), through cooperative agreement(s), will be negotiated to provide equivalent support for each laboratory and training center. The total program amount is $500,000.

Due date: Applications are due to BJA by February 15, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: A TASC/Case Management Information System: Design, Development and Training.

Goals/objectives: To improve the management, assessment and evaluation capabilities of individual Treatment Alternative to Street Crime (TASC) programs and other case management programs; to replace costly manual data collection for program assessment or retrospective evaluation studies; and, to develop a major data base for statewide and national assessment of criminal justice case management programs, through the development of a basic management information system.

Background: TASC and other programs which manage drug-dependent offenders must provide criminal justice agencies with accurate, complete and timely information to be effective. Criminal justice oversight, which is essential to effective intervention and treatment for drug-dependent offenders, must be continually and accurately informed of an offender's compliance and progress with the case plan. With the growth in drug use by offenders and the consequent growth in drug law enforcement and criminal justice case loads, reliable and timely information can continue only if the TASC program is automated.

BJA-supported analysis by the National Consortium of TASC Programs ("Baseline Management and Assessment Data—TASC") has found that TASC programs systematically collect, use and report on a variety of case management information. However, the collection methods employed, the specific applications made and accessibility, or "user friendliness," of these data systems vary widely among the more than 116 programs in 24 States and one territory. Moreover, only one-quarter of the programs have automated their case management systems.

As criminal justice case management programs continue to shoulder a larger share of community offender monitoring, the volume of data they collect, track and report on is also expanding. An efficient management information system is essential to improve each program's management and operations. The cross program analysis essential to overall program improvement will be possible only when basic data elements are collected in a similar manner by all TASC programs. Other legitimate requests for TASC information are also growing. These requests come from a range of local criminal justice and substance abuse treatment agencies, local, state and national funding agencies, from professional organizations, universities, and other interested parties. Complying with mounting information requests is becoming progressively more difficult and time consuming.

Finally, access to TASC and case management information will foster improved criminal justice planning on the state and national levels. State strategy development for BJA block grant programs requires accurate and reliable information about criminal justice resources and unmet needs within a state. TASC programs must be in a better position to supply information when it can be most useful to criminal justice planners.

Program description: The intended result of this effort is a basic, micro technology system which can be thoroughly documented and placed in the public domain and made available to the vast majority of TASC and case management agencies, directly and through their state and national organizations. If possible, this will be accomplished by identifying and documenting operational or emerging, transferable systems. Given the technical and organizational complexity of this program, it will be accomplished in several stages.

The first stage will be a fundamental needs assessment and requirements analysis based on a careful examination of TASC management requirements and of information systems currently in use or under development. This stage will draw upon an Advisory Board composed of representative TASC program operators and others familiar with BJA/TASC program development. Crucial to the proper design and ultimate acceptability of a TASC management information system is the active involvement of an Advisory Board which reflects the current environment of TASC across the nation.

The first stage will conclude with the presentation to BJA of a full report of the state-of-the-art of automated case management systems, in a form designated by BJA, which gives criteria for a fully operational management information system.

The second stage, based on the results of the first stage, will be to actually develop the management information system, demonstrate it and test it. Criteria for site selection and an implementation plan for selected sites will be developed. An Advisory Board will also be involved in this stage. We anticipate making revisions and adaptations to the system as a result of testing, culminating in specific software design. The second stage will conclude with a final documented and tested system with an accompanying dissemination plan.

Eligibility and selection criteria: Drawing heavily on the advice of field representatives and interested vendors, selection of the recipient of stage one of this cooperative agreement will be guided by the following criteria:

- Ability to develop an organizational structure for implementing the program;
- Corporate capability and experience in management information system development and software design;
- Current working knowledge of the resources and limitations of TASC and/or criminal justice case management programming;
- Ability and experience in management information system documentation, training, and technical assistance; and,
- Knowledge and experience in criminal justice assessment and evaluation.

Based on the results of stage one, the stage two selection or competition will be separately announced.

Award period: The entire project as described herein will extend no longer than 18 months. However, an initial award will be made for 6 months and will be designated for stage one only: Fundamental needs assessment and requirements analysis and a report on the state-of-the-art of automated case management systems with criteria for a full management information system.

Award amount: One cooperative agreement will be awarded for stage one after negotiations with interested parties. BJA will hold an initial meeting and request for information with representatives from the TASC field and with interested vendors. As a result of that meeting, BJA will announce stage one selection or competition. Specific award amounts will be determined prior to each stage. The award for both stages will not exceed a total of $350,000 allocated for this program.

References: TASC Program Brief, available from BJA by contacting the program manager named below.

Due dates: Application dates for stages one and two will be announced.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Criminal Justice System Modeling Development and Demonstration: JUSSIM Improvements.

Goals/objectives: To enable state and local criminal justice agencies to make use of modeling technology for budget, policy and program decisions.

Background: This modest project continues implementation of an ongoing BJA technical assistance and training program, by providing specific, immediate improvements in the Justice System Improvement Model (JUSSIM), for integration into the demonstration of modeling technology as a tool for criminal justice decision-makers. It will draw upon recent, practical experience in transferring the JUSSIM model from Santa Clara County, CA, to local governments in Ohio, Florida and California. The project will make specific enhancements to the system and make it more user-friendly, in response to the recent growth of interest by state and local governments.

Program description: A supplement to an existing cooperative agreement will be negotiated with The Center for Urban Analysis. A workplan and schedule of deliverables will be submitted to BJA for approval. This plan shall address: Specific improvements in the use and application of JUSSIM, based on recent transfer experience; documentation of the improvements made; demonstration of the methods to be used by state and local governments in acquiring the necessary data to utilize the model; demonstration of the use of the model to track the volume and cost of drug cases passing through the system.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with The Center for Urban Analysis.

Award period: This award will be for 12 months.

Award amount: The award amount will be up to $50,000.

Due date: Application will be due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Ssytems Branch, 202/272–4601.

Program title: State Law Enforcement Management Information Systems.

Goals/objectives: To assist and draw upon the experience of selected states actively involved in the design and implementation of information and management systems for law enforcement, for the purpose of identifying basic systems for transfer and for additional development.

Background: This project implements a BJA technical assistance and training program, by providing modest support for states actively engaged in the implementation of basic operational information systems for state and local law enforcement. The intent is to identify basic, micro technology systems which can be thoroughly documented and placed in the public domain and made available to those small to medium sized agencies, which make up the bast majority of criminal justice agencies, and which often lack the resources to identify and employ appropriate technology. This program will be designed to reach these agencies, directly and through their state and national organizations, by documenting the experience of their peers.

Program description: A cooperative agreement(s) will be negotiated with one or more states, to provide modest, additional support for major, ongoing, state-funded (through block or local resources) efforts to implement a basic public domain law enforcement management information system. BJA will receive sufficient documentation to allow for system transfer and for future system refinement and enhancement.

Eligibility and selection criteria: Cooperative agreement(s) will be negotiated with interested states which meet the following criteria: The system is already funded; the system is at a stage of planning and development which allows for demonstration that it is a basic system, a micro technology system, a system with clear potential for wide transfer, a public domain system, a thoroughly documented system.

BJA will invite eligible states to negotiate cooperative agreements, not to exceed $50,000 each. The intention of BJA is to identify and provide modest support for emerging, transferable systems; and to determine the feasibility of a major demonstration program in subsequent funding cycles.

Award period: Award(s) will be for 12 months.

Award amount: The total program amount is $80,000. Individual awards will be for $50,000 or less.

Due date: Applications for cooperative agreements will be due by February 28, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272-4601.

Subpart VII—Other

Program title: Drug Use Forecasting (DUF).

Goal/objective: To provide to local, state and Federal government, specific information on the prevalence and type of drug use among arrestees, in up to 25 sites and by inference in the country as a whole.

Background: This transfer of funds will provide continued support to efforts by the National Institute of Justice (NIJ) to document the prevalence and type of drug use among arrestees in American cites. The program was initially based on extensive research conducted by the NIJ in two major cities. This research was designed to determine the relative risk to the public resulting from pretrial release of drug using arrestees. One by-product of this effort was determining that drug use was much more prevalent than anticipated; over half of the arrestees at these two sites had used drugs just prior to arrest.

The DUF Program was initially established in ten cities to test the representativeness of those findings. By the end of its first year of operation, the program had cumulative data from 12 sites confirming high prevalence levels among the arrestee population. At the end of its second year, 21 sites were operational, women and juvenile arrestees were being included in the sample populations at some of the sites, and regional or other patterns had begun to emerge as to type of drug preferred, frequency of use, and route of administration.

Program Description: An Interagency Agreement will be negotiated with the National Institute of Justice to support periodic urinalysis of arrestees, in up to 25 sites, for the purpose of determining the prevalence of drug use and the kinds of drugs being used. This will provide a broader base of information, by which to determine the rates and kinds of drug use in the nation as a whole, and by which to identify regional variations. NIJ will identify sites in addition to the 21 now participating, will test a representative sample of arrestees quarterly and will report on the findings. This effort is directly supportive of BJA efforts underway to document and transfer the testing approach employed in Washington, DC, and will contribute directly to the development of other testing efforts which are a part of this discretionary program and which are envisioned in state block programs. Coordination with the Drug Enforcment Administration will continue in selecting sites and the substances to be tested.

Eligibility and selection criteria: The Interagency Agreement will transfer the funds to NIJ.

Award Period: This award will be for 18 months.

Award amount: One award, through Interagency Agreement, will be negotiated in the amount of $1,300,000.

Due Dote: The Interagency Agreement date will be negotiated with NIJ.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, (202) 272-4601.

Program title: BJS Criminal Justice Drug Data Center Clearinghouse.

Goals/objectives: To provide direct assistance to local, state and Federal anti-drug efforts, through the identification, collection and analysis of drug-crime information necessary for strategic and tactical planning.

Background: This program will continue BJA support of the clearinghouse effort, to meet the need of the criminal justice system for credible, accessible and directly useful data on drugs, the drug-crime relationship and the implications, for criminal justice policy and programs, of the infusion of as growing number of drug-dependent offenders. While data are gathered by a number of Federal agencies, they are seldom consolidated and made available in a form directly useful to criminal justice agencies. The intent here is to inform Federal and state drug efforts with a clear baseline from which to assess their impact.

Program description: The Bureau of Justice Statistics (BJS) has taken the steps necessary to: develop a pointer system which will identify existing sources for drug information; collect drug information relevant to criminal justice, which is not now being collected; analyze and present drug information in a form directly useful to criminal justice policy makers and practitioners; and, to assess the quality of drug information available. This effort, the Data Center and Clearinghouse for drugs and Crime: Provides an "800" number for direct access; gathers and analyzes information being collected as part of the Federal drug effort, such as the strategies under development by the states; coordinates with other information gathering efforts; and publishes appropriate documents, such as a drug version of the BJS Report to the Nation. The Center and Clearinghouse is a central source of data from diverse Federal, state, and local agencies as well as from the private sector.

Eligibility and selection criteria: The Interagency Agreement will transfer the funds to the Bureau of Justice Statistics.

Award period: This award will be for 12 months.

Award amount: One award, through Interagency Agreement, will be made in the amount of $200,000.

Due Date: The Interagency Agreement date will be negotiated with BJS.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, (202) 272-4601.

Program title: Innovative Local Program Documentation: Disposition and Management of the Drug-dependent Offender.

Goals/objectives: To provide modest assistance to and to draw upon and document the experience of innovative local programs which have the potential of contributing substantially to the existing body of knowledge regarding the drug-dependent offender.

Background: This project will provide modest support for programs actively serving the criminal justice system in the disposition and management of the drug-dependent offender. BJA has actively supported TASC, as the case management standard, and Intensive Supervision Probation as an appropriate disposition for certain drug-dependent offenders. The intent here is not to duplicate or supplement those programs, for which critical elements are established and for which block funding is available. Rather the intent of this effort is to identify established and effective local programs or functions which differ from, and can potentially contribute to, BJA-supported programs.

Priority consideration will be given to effective programs which: Assist criminal justice decision makers in the disposition of drug-dependent offenders; provide aftercare for drug-dependent offenders released from institutional programs; manage drug-dependent offenders facing extended waiting periods for treatment; provide credible evaluations of local treatment and/or case management programs and/or, match drug-dependent offenders with available local services.

Program description: Cooperative agreements will be negotiated with selected operating programs to provide modest, additional support for ongoing efforts. BJA will receive sufficient information and documentation, in an agreed upon form, to allow for the

contributions of these programs to be incorporated into the overall BJA program.

Eligibility and selection criteria: Concept papers will be accepted from public and private, non-profit programs. An expert panel will review, rank and rate the concept papers and make recommendations to BJA. The panel will be guided by the priorities listed above, by the degree to which the concept papers establish the effectiveness of the program addressed, and by the relative contribution to program knowledge anticipated from the program addressed. Cooperative agreements will be negotiated with selected programs.

Award period: Awards will be for 12 months.

Award amount: The total program amount is $250,000. Individual awards will be for $50,000 or less.

Due dotes: Concept papers are due by January 31, 1989. Selected programs will be invited to negotiate for final awards before the end of March, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272-4601.

Program title: Consortium to Assess the Impact of the State Drug Strategies.

Goals/objectives: To bring together states committed to assessing the impact of their state drug strategies for the purpose of defining, collecting and analyzing information on drug control efforts and to provide policy makers at the Federal, state and local levels with feedback on the effectiveness of state drug control strategies.

Background: States receiving BJA block grant funding were required by the Anti-Drug Abuse Act of 1986 to develop a statewide drug strategy. The strategy must be reviewed and updated annually. This review and any modifications of the strategy should be based on an analysis of the impact of current efforts on the drug problem. A Consortium of States was established in early 1988 to serve as a forum for the states to work together to identify methods of assessing the impact of their strategies and share information. Fifteen states are actively participating in the Consortium.

Program description: BJA will negotiate a cooperative agreement with the Criminal Justice Statistics Association (CJSA) to continue and expand the Consortium efforts in up to 20 states to define methods of assessing the impact of the state strategies, collect and analyze data on drug control efforts in the states, and provide assistance to non-participating states through a workshop on strategy evaluation. CJSA will prepare a report on the methods used to assess the impact of the state strategies and the results of the analysis. The report will serve as a guide for states not participating in the Consortium and the results will be incorporated in BJA's annual report to Congress.

Eligibility and selection criteria: The award will be made to the Criminal Justice Statistics Association, on a non-competitive basis, due to the Association's unique qualifications and relationship with the Statistical Analysis Centers in the states.

Award period: This award will be for a 12-month period.

Award amount: One cooperative agreement of up to $600,000 will be negotiated.

Due date: The application for the cooperative agreement will be due by January 15, 1989.

Contact person: The BJA contact for additional information in Patricia A. Malak, Chief, Program Analysis Branch, Policy Development and Management Division, 202/724-5974.

Program title: Serious Juvenile Offenders Project: Accountability in Disposition for Juvenile Drug Offenders.

Goals/objectives: To continue providing technical assistance and training for Serious Juvenile Offender Projects. To enhance the program by adding a new component which will assess interest in the accountability approaches for youthful drug offenders and the feasibility of various options for implementation; develop guidelines and program requirements; provide technical assistance and support for the implementation of demonstration projects; and document the implementation process to facilitate evaluation and eventual replication of a program that makes youth accountable for drug offenses.

Background: Since 1986, BJA has funded the Pacific Institute for Research and Evaluation (PIRE) to provide on-site and documentary training and technical assistance for judiciary and criminal justice personnel who administer and work with BJA-funded local programs that address the needs of serious juvenile offenders. This effort complements the work of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by meeting the needs of BJA-funded programs addressing this issue.

When this effort began, the number of projects requiring services was 19. During the years 1987–1988 that number grew to 42. These Serious Juvenile Offenders Programs have provided services which impacted 10,033 youth. PIRE has sponsored two National Conferences and several Mini Seminars and Cluster Conferences which responded to the training needs of persons working in restitution programs from almost every state in the United States. This program will continue providing training and technical assistance for new block grantees and will implement a new component which will research and document guidelines and program administration requirements to be used in programs which address accountability requirements of youth who are drug dependent.

Program description: The Program will continue on-site and documentary technical assistance and training for recipients of BJA block grants administering programs which address problems of serious juvenile offenders, based on the critical program elements documented in the revised "Restitution by Juveniles" Program Brief prepared in 1988. As in the past, BJA block grantees will also be eligible to recieve training and other benefits from the marketing efforts, training events, and other contacts provided through grants from OJJDP. This program will continue to be coordinated with OJJDP.

This initiative will be enhanced to provide a survey report assessing needs and interest in accountability approaches for youthful drug offenders and to develop an implementation guide (Program Brief) that includes program designs, critical program elements and performance standards for programs which address accountability of drug-dependent youth. The project staff will develop the plan for providing technical assistance and training for programs/staffs that implement these approaches, and for selection of juvenile courts interested in pilot or demonstration projects under Phase I. Phase II, if funded, will provide for demonstration sites to implement projects using the documented critical program elements, guidelines, and performance standards developed under Phase I.

Eligibility and selection criteria: The BJA will negotiate a supplemental cooperative agreement with the Pacific Institute for Research and Evaluation.

Award period: The extension will be for 12 months.

Award amount: One cooperative agreement for up to $200,000 will be awarded.

Due date: The grantee must submit a full application not later than January 31, 1989.

Contact person: The BJA contact for additional information is Dorothy L. Everett, Program Manager, Drug Abuse/

Information Systems Branch, 202/272–4604.

Program title: Crime Victims Clearinghouse.

Goals/objectives: To continue providing support for the operation of the National Victims Resource Center, a national clearinghouse which provides informational services to crime victims services agencies.

Background: BJA has provided support through transfers of funds to the Office for Victims of Crime for the collection and maintenance of data developed by grantees funded under the Victims of Crime Act of 1984. This data is used to assist victims assistance programs in furthering their mission.

Program description: BJA will continue to help support the operation of the National Victims Resource Center to assist crime victims and victim service agencies through an interagency transfer of funds to the Office for Victims of Crime (OVC).

Eligibility and selection criteria: A transfer of funds will be made to the Office for Victims of Crime.

Award period: Program funding will be for a 12-month period.

Award Amount: Up to $100,000 will be available for this transfer.

Due dates: The date of the interagency transfer will be negotiated between BJA and OVC.

Contact person: The BJA contact person for additional information is John Veen, Program Manager, Prosecution Branch, 202/272–4601.

Charles P. Smith,

Director, Bureau of Justice Assistance.

[FR Doc. 89–264 Filed 1–6–89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–6040 et al.]

Proposed Exemptions; Coldwell Banker Commercial Group, Inc. (CBCG), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon the by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Coldwell Banker Commercial Group, Inc. (CBCG) Located in Los Angeles, CA

[Application No. D–6040]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Part I—Exemption for Certain Transactions Involving Investment in a Managed Trust Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the code by reason of section 4975(C)(1)(A) through (D) of the Code shall not apply to employee benefit plan (Participating Plan) investment in a trust account (Managed Trust Account) which is not commingled with the assets of other trust accounts where Coldwell Banker Real Estate Trust Services (the Trust Company) serves as trustee and the Trust Company (or its affiliate) renders investment management services, provided that:

(a) Each investment is authorized in writing by a fiduciary of a Participating Plan who is independent of the Trust Company and any of its affiliates; and

(b) The applicable General Conditions of Part V are met.

Part II—Exemption for Certain Transactions Involving Parties in Interest and Common Trusts

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction between a party in interest with respect to a Participating Plan and a common or collective trust sponsored and maintained by the Trust Company (Common Trust) if the applicable General Conditions of Part V are met and, at the time of the transaction, the Participating Plan in such Common Trust together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total of all assets in the Common Trust.

Part III—Exemption for Certain Transactions Between Common Trusts or Managed Trust Accounts and the Trust Company or its Affiliates

The restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the transaction described below, if the General Conditions of Part V are satisfied:

The payment to the Trust Company of disposition fees (Disposition Fees) under the terms established in the respective Trust Agreement governing the Common Trust or Managed Trust Account (and as described in the summary of facts and representations), provided that the payment and terms of such Disposition Fees shall have been approved by an independent fiduciary of the plan at the time the Trust Agreement was entered into and that the total of all fees paid to the Trust Company constitute no more than reasonable compensation.

Part IV—Exemption for Certain Transactions Between Joint Ventures or Partnerships and the Trust Company or its Affiliates

The restrictions of section 406(b)(3) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the transaction described below:

The payment of fees or commissions to CBCG or its affiliates by partnerships or joint ventures in which a Common Trust or Managed Trust Account is a partner or joint venturer or by an entity with respect to which a Common Trust or Managed Trust Account has made a loan which is convertible into equity, for Management Services furnished with respect to such partnership or joint venture; provided that the applicable General Conditions of Part V are satisfied and the following conditions are met:

(a) The fees or commissions paid to CBCG or its affiliates are reasonable;

(b) A party which is not affiliated with the Trust Company or its affiliates and which has an equity interest in excess of 10 percent in the partnership, joint venture or the entity to which the loan was made makes the decision to hire the service provider;

(c) Neither the Trust Company nor its affiliates have the power to exercise control over the selection of the service provider (other than through the exercise of a veto for reasonable cause); and

(d) The portion of any fee received by the CBCG or an affiliate from the partnership or joint venture for which the Common Trust or Managed Trust Account is responsible due to its proportionate interest in the partnership or joint venture will be applied as a credit to the Management Fee paid to the Trust Company by the Common Trust or Managed Trust Account.

Part V—General Conditions

(a) All transactions are on terms and conditions that are at least as favorable to the Managed Trust Account(s) and Common Trust(s) as those in arm's length transactions between unrelated parties would be.

(b) No plan subject to the provisions of Title I of the Act or to section 4975 of the Code may invest in a Common Trust or establish a Managed Trust Account unless the plan has total net assets with a value in excess of $50,000,000 and no such plan may invest more than 5 percent of its assets in any one Common Trust or Managed Trust Account, or more than 10 percent of its assets in Trust Accounts established by the Trust Company or an affiliate.

(c) Prior to making an investment in a Common Trust or Managed Trust Account, a fiduciary for the plan independent of CBCG and its affiliates receives offering materials which disclose all material facts concerning the purpose, structure and operation of the such Trust or Trust Account in which it participates.

(d) Each Participating Plan shall receive the following with respect to any Common Trust or Managed Trust Account in which it participates:

(1) Audited Financial Statements, prepared by independent public accountants selected by the Trust Company, not later than 90 days after the end of the Common Trust or Managed Trust Account fiscal year.

(2) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account, which will include all fees paid by the Common Trust or Managed Trust Account, and by any partnerships or joint ventures in which the Common Trust or Managed Trust Account is invested.

(3) Annual estimates prepared by the Trust Company of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(4) Copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks, and an immediate report with regard to any findings by the California Superintendent of Banks involving inappropriate fiduciary behavior with respect to any Managed Trust Account of Common Trust.

(5) In the case of a Common Trust, a list of all of the other investors in the Common Trust.

(e) The Trust Company or its affiliate shall maintain, for a period of six years, the records necessary to enable the persons described in subsection (f) of this Part V to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Trust Company or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty that may be assessed under Section 503(i) of the Act or to the taxes imposed by Section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (f) below.

(f) Notwithstanding any provisions of section 504(a)(2) and

(b) of the Act,

The records referred to in subsection (e) of this Part V shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the California Superintendent of Banks;

(2) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

Part VI—Definitions and General Rules.

For the purposes of this exemption:

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Management Services" means:

(1) Services of real estate brokers and finders in connection with the acquisition or disposition of real property or interests therein.

(2) Services of property managers.

(3) Services of leasing agents in connection with obtaining leases on properties owned by the Common Trust or Managed Trust Account.

(d) The term "relative" means a "relative" as that term is defined in Section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

The availability of this exemption is subject ot the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Summary of Facts and Representations

1. The Trust Company is a California trust company formed as a wholly-owned subsidiary of CBCG. An application for authorization to form the Trust Company was approved by the California State Banking Department on August 5, 1980. A letter supplementing the original application was filed on May 11, 1982, reflecting certain changes which have occurred since that application was approved, e.g., the acquisition of CBCG's parent company, Coldwell, Banker & Company (CB), by Sears, Roebuck and Co. (Sears). That supplemental application has been reviewed and approved by the California State Banking Department. The Trust Company's activities will be governed by the rules and regulations of California law which control the activities of trust companies and will be subject ot the supervision of the California Superintendent of Banks, including on-site audits and quarterly reporting.

The principal activity of the Trust Company will be to provide trust and real estate investment management services for tax exempt institutions wishing to invest in real estate. It is contemplated that, for the most part, its clientele will be comprised of employee benefit plans sponsored by corporations, labor unions and governmental agencies. In all cases the institutional investor will enter into an agreement (the Trust Agreement) pursuant to which the Trust Company will become trustee with respect to invested assets. The Trust Agreements for Common Trust Accounts will provide that assets contributed thereto will be commingled with the assets of other Common Trust Accounts in one of a series of closed-end collective trusts (Common Trusts) for the purpose of making investments in real estate.[1] As an alternative to participating in a Common Trust, a plan may elect to establish a Managed Trust Account which will invest in real estate separately. In all cases, the Trust Company will have the responsibility for investing any contributions either separately in the case of the Managed Trust Accounts or collectively, through the Common Trust, and for the management and disposition of the properties it acquires as trustee. The applicant represents that the Trust Company is expected to be a qualifed professional asset manager (QPAM) as that term is defined in Prohibited Transaction Exemption 84–14 (PTE 84–14,49 FR 9494, March 13, 1984).[2] Therefore, the applicant's request for exemption involves those transactions which may not be covered by PTE 84–14 or other relevant statutory exemptions under section 408 of the Act.

CBCG was incorporated in 1972 to take over the function of providing fully integrated commercial real estate services for CB's clients and to manage the real estate assets of institutional partnerships formed by it. CBCG provides a broad range of services related to commercial real estate. It has been involved in negotiating the sale and lease of virtually every type of real property, including industrial, commercial; office building and apartment complexes. CBCG is also involved directly in property management, capital management, real estate investment advisory services, real estate appraisal, real estate consultation, market research, and other real estate related services.

CB is a wholly-owned subsidiary of Sears and operates as the successor to a real estate brokerage business established in 1906. Prior to its acquisition by Sears on December 31, 1981, CB was, and continues to be, the largest diversified real estate service organization in the United States, with operating offices throughout the country.

Since being acquired by Sears, the activities of CB and its affiliates have been designated a part of the Coldwell Banker Real Estate Group (CB Real Estate Group). The CB Real Estate Group in turn has three major groups in its organizational structure: (1) Coldwell Banker Residential Group, providing residential brokerage and other services; (2) Homart Development Co., involved in commercial real estate development; and (3) CBCG, providing brokerage and other services for all types of commercial real estate.

2. The applicant represents that Participating Plans establish either Common Trust Accounts or Managed Trust Accounts (collectively, Trust Accounts) which will invest in real estate, either by pooling assets through the mechanism of a Common Trust or separately in the case of Managed Trust Accounts. No plan may invest in a Trust Account unless it has at least $50,000,000 in assets, and no plan may invest more than 5% of its assets in any one Trust Account, nor more than 10% of its assets in Trust Accounts maintained by the Trust Company or an affiliate. The Common Trusts and Managed Trust Accounts will be designed either as "blind" accounts where the plans invest and the Trust Company then selects real estate investments, or as "specified property" accounts where the Trust Company identifies a particular property or properties for investment and the plan(s) then invest in the specified account. The Trust Accounts will be established pursuant to a Trust Agreement. Under the terms of the Trust Agreements, the Trust Company will have complete responsibility, with certain exceptions discussed in paragraph 7 below, for, *inter alia*, searching for investments, making investment decisions and for the management and disposition of the properties it acquires as trustee, although a plan establishing a Managed Trust Account may, if it chooses to do so, provide guidelines to be followed by the Trust Company in investing and managing assets in that Managed Trust Account.

[1] The term Common Trust as used herein includes common trust funds exempt from tax under section 584 of the Code and group trusts, as defined in Rev Rul. 81–100, 1981–1 C.B. 326. In the case of a group trust, Common Trust Accounts will not actually be separate trusts formed for purposes of participating in the collective investment trust. Rather, the Participating Plans will invest directly in the group trust via agreements to participate. Such agreements to participate are included within the term Common Trust Account. The applicant represents that a plan's investment in a Common Trust will be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all of the conditions of section 406(b)(8) will be satisfied in such transactions.

[2] The applicant represents that, in order to comply with the conditions of PTE 84–14, Parts II and III, in cases where a Common Trust or Managed Trust Account using a CB affiliated broker leases property to the Trust Company, an employer with respect to an investing plan or an affiliate, of either the Trust Company will pay the broker's commission, credit that amount to the Trust Account, and reduce the monthly Management Fee by that amount. The Department expresses no opinion as to whether this arrangement complies with the relevant conditions of the PTE 84–14, Parts II and III.

3. The decision to participate in a Trust Account and the determination of the amount to be placed therein will be made by a fiduciary of the plan who is independent of and unrelated to CBCG or any of its affiliates.[3] The decision to invest in a Trust Account will be based upon knowledge of the terms and conditions established in the Trust Agreement and disclosed in a prospectus, and of the conditions imposed by this exemption. The investment objectives of each Common Trust and Managed Trust Account will be to obtain operating income and capital appreciation, primarily through the purchase of equity interests in or the development of income-producing real property. Investments will consist principally of fee interests, leaseholds, joint venture participations and mortgage loans convertible into any of the forgoing interests in real estate. The Trust Company represents that, due to the illiquid nature of most real estate investments and the closed end nature of the Common Trusts, Participating Plans generally will not be able to redeem their interests in a Common Trust prior to the termination and dissolution of the Common Trust.

4. The Trust Company expects that Trust Accounts ordinarily will be fully invested in real estate within 12 to 18 months of their inception depending on the type of properties sought, the market for such properties at the tme, any geographic or size requirements and other variables. Pending the investment in real estate, the Trust Company will invest cash contributed to the Trust Account in: obligations of the United States or its agencies; repurchase agreements with respect to such obligations; certificates of deposit or deposits in interest bearing accounts of banks insured by the Federal Deposit Insurance Corporation; money market funds having assets of over $100 million; commercial paper rated A1 or better; and bankers' acceptances of banks having assets in excess of $1 billion.

5. Any income from the operation or proceeds from the sale or refinancing of assets of the Common Trust or Managed Trust Account and any contributions by the Participating Plan(s) to the Common Trust or Managed Trust Account in excess of the amount required for initial investment will be distributed to such Plan(s) to the extent that such amounts are not needed for Trust purposes. For example, certain sums will be used to maintain reasonable reserves established by the Trust Company in connection with the Trust assets (including, without limitation, reserves for repayment of existing or anticipated obligations or for contingent liabilities). Such distributions shall be made to the Participating Plan within a reasonable time after the completion of the annual audit for that fiscal year, but in no event later than ninety (90) days after the close of such fiscal year. Subject to the dissolution and termination provisions of the Trust Agreement (described in paragraphs 9 and 10), the Trust Company expects that the Trust Accounts will generally hold their real property investments for a period of not less than ten years. However, there is no restriction upon the length of time that real property investments of the Common Trusts and Managed Trust Accounts may be held. The Trust Company, in its sole discretion, may sell or refinance any or all investments at any time if it believes such action would be in the best interest of the Managed Trust Account or the Common Trust.

The income from investments and the net cash proceeds from any sale or other disposition or refinancing of real property, less the operating reserves noted above, will not be reinvested in real estate but will be distributed to the Plan(s) participating in the Managed Trust Accounts of Common Trusts. The Managed Trust Accounts and Common Trusts, therefore, are intended to be self-liquidating in nature. Such distributions to Participating Plans will be treated as return of capital and taken into account when the Disposition Fee (described below) is calculated.

6. The applicant represents that Participating Plans will be charged a one-time Subscription Fee (generally 1–2% of invested assets) at the tme they make their investment in a Trust Account to defray the expenses of organizing the Trust Account, identifying suitable investments, and completing the initial purchases of investment properties for the Trust Account. In addition, the Trust Company will be paid a monthly Management Fee, expected to range from 0.1667–0.2083% per month (or 2–2.5% annually) of the net asset value of the Trust Account. The value of assets for the purpose of determining the Management Fee will be based upon independent appraisals by licensed appraisers who are not employees or affiliates of the Trust Company or an affiliate. The Management Fee will compensate the Trust Company for its investment management and Management Services, including property management, real estate brokerage and related services.[4] The Trust Company will employ Coldwell Banker Capital Management Services, Inc. (CBCMS) a subsidiary of CBCG and an affiliate of the Trust Company to provide such Management Services. CBCMS is a registered investment advisor under the Investment Advisers Act of 1940 and the applicant represents that CBCMS will also be a QPAM. CBCMS will utilize the services of others, including other CBCG divisions and subsidiaries as required, at no additional cost to the Trust Accounts. The Trust Company will also have the responsibility to provide or arrange for all other support services performed by non-CBCG affiliates necessary to the operation of the investment of the Common Trusts and Managed Trust Account.

Once all the investment properties of a Trust Account have been sold and the proceeds of the sale have been distributed or are available for distribution the Trust Company may be paid a Disposition Fee in accordance with the terms of the Trust Agreement. (A Disposition Fee may also be paid on the basis of a constructive sale pursuant to the trustee removal and resignation provisions of the Trust Agreement discussed in paragraph 9 below.) A Disposition Fee will be payable only after the Participating Plans have received, through distributions from the Trust Account, a return of all the capital

[3] The applicant has represented that CBCG or its affiliates may act as a fiduciary or a service provider to plans which may invest in a Trust Account. However, the applicant has also represented that neither CBCG nor any affiliate will use the authority, discretion or influence which makes CBCG or such affiliate a fiduciary with respect to such plan to cause the plan to invest in a Trust Account.

The Department notes that, to the extent that CBCG or an affiliate is deemed to be a fiduciary by virtue of rendering investment advice as described in regulation 29 CFR 2510.3–21(c)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) In this regard, the Department has determined that it is unable to make the findings necessary under section 408(a) of the Act with respect to transactions which involve the provision of investment advice by CBCG or its affiliates. Accordingly, the Department has limited relief for investments in Managed Trust Accounts to section 406(a) of the Act.

[4] The applicant represents that the provision of investment management and Management Services by CBCG or its affiliates and the receipt of fees thereby is exempt from the prohibitions of section 406(a) of the Act by reason of section 408(b)(2). The Department expresses no opinion as to whether the relevant conditions of section 408(b)(2) are complied with in the above arrangement. The Department notes, however, that to the extent that a Participating Plan's investment in a Trust Account does not meet the conditions of section 408(b)(8) of ERISA or Part I of this proposed exemption, the relief afforded by section 408(b)(2) of ERISA may not be available.

invested in the Trust Account by the Participating Plans and an annual rate of return on that capital which will be specified in advance for each Trust Account before any investments are made by any Participating Plan. The Disposition Fee will be a pre-determined fixed percentage of the excess of the disposition proceeds over the amount necessary to provide the return of capital and pre-established rate of return to the Participating Plans.

The applicant represents that the fee structure, including the Disposition Fee, is in the interest of the Participating Plans because it provides an added inducement for the Trust Company to take the actions necessary to maximize the return to the Participating Plans. In addition, the Participating Plans will receive their return of capital and the pre-established rate of return before a Disposition Fee will be payable.

7. The applicant represents that with certain types of investment activity, it is very difficult to estimate leasing brokerage fees. Accordingly, when such investment activity is to be the principal activity of a Managed Trust Account, Participating Plans may want to retain control over leasing brokerage decisions to avoid the uncertainty in the fee estimation process. In order to accommodate this interest, some Managed Trust Accounts may be structured so that the Participating Plans maintain complete control over all leasing brokerage decisions including the selection of leasing brokers and payment of leasing brokerage fees. As a result, the Trust Company would not exercise any fiduciary authority in the leasing brokerage area. Rather, independent fiducia.ies for the Participating Plans will select the leasing brokers, and negotiate and approve all leasing brokerage fees. Such leasing brokerage fees will be charged back directly to the Managed Trust Account.[5] The applicant represents that the Management Fee charged Managed Trust Accounts for real estate related services will be reduced in these circumstances to reflect the reduced responsibilities of the Trust Company.

8. Services which are necessary and customary in the operation of real estate investments, and not included in Management Services, will be provided exclusively by independnt service providers who will be compensated by the Trust Accounts. Such services include, but are not limited to: legal services; services of architects, designers, engineers, etc.; insurance brokerage and consultation; auditing and accounting; appraisals and mortgage brokerage; and development of income-producing real property. The fees charged to the Trust Accounts by the independent service providers will be commesurate with the fees charged by the service provider on a regular basis for comparable work in the respective locale.

9. Under the Trust Agreement for a Managed Trust Account, the Trust Company may be removed as trustee, at any time, without cause, by the Participating Plan establishing such Managed Trust Account through the delivery of a notice of removal to the Trust Company. The Trust Company may resign as trustee, at any time after the Managed Trust Account has been in existence for ten years, without cause, by written notice to the Plan. Such removal or resignation will generally be effective upon the acceptance of appointment by a successor trustee appointed by the Plan.

The Trust Company may be removed as trustee under a Common Trust at any time upon an affirmative vote or written consent of Participating Plans which have contributed 50% or more of the capital in the Common Trust. The Trust Agreement will provide that any holders of 10% or more of the interests in the Common Trust can direct the Trust Company to call a meeting of the investors to consider such removal. The Trust Company may resign, without cause, at any time after the tenth anniversary of the creation of the Common Trust, by written notice to the Participating Plans. Such removal or resignation will generally be effective upon the acceptance of appointment by a successor trustee appointed by Participating Plans which have contributed 50% or more of the capital in the Common Trust.

In the case of either a Common Trust or Managed Trust Account, when the Trust Company is removed or resigns as trustee, the Trust Company will be entitled to the Disposition Fee based on a constructive sale of the Trust Account's assets, calculated as the Disposition Fee would be in the event of the actual sale of all of the Trust Account's assets. The value of the Trust Account's assets for the purpose of a constructive sale will be established by an MAI licensed real estate appraiser, independent of CBCG and its affiliates and approved by the Participating Plan establishing the Managed Trust Account or Participating Plans which have contributed 50 percent or more of the capital to the Common Trust. The valuation to be used for the purpose of calcualting whether a "constructive sale" Disposition Fee is owed, and how much, will be the lower of the appraisal or the most recent annual valuation prepared by the Trust Company for the Trust Account's assets.

10. A Managed Trust Account may be dissolved and terminated at any time by the Participating Plan upon ninety (90) days written notice to the Trust Company. The events which will cause dissolution and termination of a Common Trust are: (1) The decision of participants holding more than fifty percent (50%) of all interests in the Common Trust; (2) the decision of the Trust Company, after the Common Trust has been in existence for 15 years; and (3) failure to select a successor trustee within sixty (60) days following the removal or resignation of the Trust Company as trustee.

11. Each plan participating in a Common Trust or Managed Trust Account will receive:

(a) Audited Financial Statements prepared by independent public accountants selected by the Trust Company not later than ninety (90) days after the end of the Common Trust or Managed Trust Account fiscal year.

(b) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account and, in the case of Common Trusts, the balance of each participant's Trust interest. In addition, the reports will include a full disclosure of all fees paid by the Common Trust or Managed Trust Account, and by any partnerships or joint ventures in which it has invested.

(c) Annual estimates of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(d) In the case of a Common Trust, a list of the investors in that Common Trust.

In addition, the plan or plans participating in a Managed Trust Account or Common Trust, the sponsor or sponsors of such plan or plans, the participants and beneficiaries of such plan or plans and duly authorized representatives of any of the above will have access during normal business hours to all records of the Trust Company relevant to Trust Accounts in which they have an interest. The Department, the Internal Revenue Service and the California Superintendent of Banks will have access to all Trust Company records. The Trust Company will retain all such records for a period of six years. The Participating Plans will also be provided with copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks.[6]

12. The Trust Company will be empowered to invest Trust Account assets in joint ventures or partnerships for the purpose of acquiring or developing real property. In connection with those transactions, CBCG or its affiliates may be employed by the joint venture or partnership to provide services and be compensated by the entity, provided that:

(a) The decision to hire service providers is made by a party unaffiliated with the Trust Company or its affiliates which owns more than 10 percent of the equity interet in the entity;

(b) The fees are reasonable;

(c) Neither the Trust Company nor any affiliate has the power to exercise control over the selection of service providers (other than through the exercise of a veto for reasonable cause); and

(d) the amount of any fee received by CBCG or an affiliate from the partnership or joint venture representing the Trust Account's proportionate share of the partnership or joint venture and its expenses will be applied as a credit to the Management Fee paid by the Trust Account.[7]

13. The applicant represents that the Trust Company and CBCMS will be QPAMs, and intend to rely on PTE 84–14 for most transactions between the Trust Accounts and parties in interest with respect to Participating Plans. However, in addition to their reliance on QPAM they are requesting an exemption from section 406(a)(1) (A) through (D) of the Act for transactions between a Common Trust and a party in interest with respect to a Participating Plan which has the power to appoint or terminate the Trust Company as the manager of any of the Plan's assets, or to negotiate the terms of the management agreement with the Trust Company on behalf of the Plan, if the interest of the Participating Plan together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total assets of the Common Trust. The applicant represents that the 10 percent limitation, which applies to each Common Trust, rather than the total client assets managed by the Trust Company, is a sufficient safeguard against the Trust Company being subjected to improper influence by those entities with the power to hire or fire the Trust Company.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because, among other things:

(a) The decision to invest in a Trust Account will be made on behalf of a Plan by a fiduciary independent of CBCG, the Trust Company and their affiliates following full disclosure of all material facts of the purpose, structure and operation of the Trust Account;

(b) Only Plans with at least $50,000,000 in assets will be allowed to invest in a Trust Account and no Plan may invest more than 5 percent of its assets in a Trust Account, nor may any Plan invest more than 10% of its assets in the Trust Accounts;

(c) A Disposition Fee will be paid only: (1) after all the properties in a Trust Account have been sold (or constructively sold); and (2) if the total proceeds exceeds the amount necessary to provide the Participating Plan(s) the return of invested capital plus the pre-established annual rate of return; and

(d) the decision to have CBCG or an affiliate provide services to a joint venture or partnership in which a Trust Account has invested will be made by an owner of at least 10% of the equity of the entity who is independent of CBCG and there will be a credit applied to the Management Fee of the Trust Account for any fee paid for services by the joint venture or partnership to the extent of the Trust Account's proportionate responsibility for such fee.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number).

Pan American World Airways, Inc. Cooperative Retirement Income Plan, (Cooperative Plan) et al.

In the matter of Pan American World Airways, Inc. Cooperative Retirement Income Plan (Cooperative Plan); Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers (Flight Engineers Plan); Pan American World Airways, Inc. Non-Contract Employees' Pension Plan (Non-Contract Plan); Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan (Mechanical Stores Plan); and Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan (Clerical Plan) (collectively, the Plans) Located in New York, New York.

[Application Nos. D–7433 and D–7444 through D–7447]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed purchase, by the Plans from Pan Am World Airways, Inc. (Airways) of a portion of a leasehold estate (the Leasehold) in the "Worldport" airline passenger terminal (the Terminal) and the land (the Land) underlying the Terminal located at John F. Kennedy International Airport (JFK); (2) the proposed contribution in kind to the Plans by Airways of the remaining value of the Leasehold following reduction for that portion of the Leasehold sold to the Plans by Airways; and (3) the proposed sublease (the Sublease) of the Terminal by the Plans to Airways for the duration of the remaining term of the Leasehold at a fixed monthly rental rate; provided that the terms of the transactions are not less favorable to the Plans than those negotiated at arm's length in similar circumstances between unrelated third parties, and an independent fiduciary, among other things, reviews, monitors, and approves the proposed transactions.

[5] It is represented that in such situations, the possible payment of brokerage commissions to CBCG affiliates will be exempt from the prohibitions of section 406(a) of the Act by the statutory exemption provided by section 406(b)(2). The Department expresses no opinion herein whether all of the conditions of section 406(b)(2) of the Act will be satisfied in such transactions. In addition, the Department notes that the exemption for party in interest transactions with such plans contained in PTE 84–14 will be unavailable, because the Trust Company, as QPAM, will not be negotiating the terms of the transactions on behalf of the Managed Trust Accounts.

[6] In addition, where CBCMS or another Coldwell Banker affiliate which is a registered investment advisor provides services with respect to any Managed Trust Account or Common Trust, copies of reports filed with the SEC under the Investment Advisers Act of 1940 will also be provided to the plan or plans participating in such Managed Trust Account or Common Trust.

[7] The applicant represents that in the circumstances described, to the extent that the decision to select the Trust Company or an affiliate to provide services to the joint venture or partnership is made by a party independent of the Trust Company, and all of the conditions of section 406(b)(2) of the Act are satisfied, the provision of services and the receipt of fees by the Trust Company or an affiliate would be exempt from the prohibitions of section 406(a) of the Act. The applicant further represents that such selection would not constitute violations of the self dealing provisions of section 406(b)(1) and 406(b)(2). However, the applicant has requested an exemption from section 406(b)(3) of the Act, because an affiliate of the Trust Company may receive fees from the joint venture or partnership.

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Summary of Facts and Representations

1. Airways, the sponsor of the Plans, is a New York corporation organized in 1927 and headquartered at 200 Park Avenue, New York, New York. Airways is an international airline serving approximately 28 cities in the U.S. and 68 destinations in Europe, Latin America, the Caribbean, Asia, Africa, and the Middle East. Airways is one of two principal subsidiaries of Pan American Corporation (Pan Am), a Delaware holding company. The other subsidiary, Pan Am World Services, Inc. (World Services), provides management and technical services on a contract basis to governments and private entities around the world.

In addition to World Services and Airways, Pan Am owns two other airline subsidiaries, Pan Am Express, Inc. (Pan Am Express) and the Pan Am Shuttle. Pan Am Express services 12 cities in the U.S. and Canada and 10 cities in Europe, providing connecting traffic to Airways' long-haul international operations. The Pan Am Shuttle provides hourly service in the New York-Boston and New York-Washington DC markets.

2. All of the Plans involved in the proposed transactions are tax-qualified defined benefit pension plans, and all are subject to Title IV of the Act. The named fiduciary for the Plans, within the meaning of section 402(a)(2) of the Act, is a pension committee (the Committee) established by Airways which is responsible for establishing investment guidelines for the investment and reinvestment of assets of the Plans, other than the Leasehold, and for monitoring the investment performance of Bear Stearns Fiduciary Services, Inc. (Fiduciary Services), which is acting as the independent fiduciary on behalf of the Plans for the proposed transactions.

As of January 1, 1987, the Plans had a total of 40,200 participants of which 17,637 are active and 22,563 are inactive, retired, or terminated vested participants. As of January 1, 1987, the three largest Plans were the Cooperative Plan, the Clerical Plan, and the Mechanical Stores Plan.

Collectively, the Plans have assets, as of January 1, 1987, totalling approximately $475.3 million, excluding any unpaid contributions due to the Plans. The Cooperative Plan is the largest with assets amounting to $345.3 million. The Flight Engineers Plan, the Mechanical Stores Plan, the Non-Contract Plan, and the Clerical Plan have assets of $68.8 million, $26.2 million, $21.7 million, and $13.4 million, respectively, as of January 1, 1987. The total unfunded liability for the Plans at the end of 1986 was approximately $621.3 million. Benefit accruals under all of the Plans were frozen as of December 31, 1983, as a condition of certain funding waivers granted by the Internal Revenue Service (IRS).[a]

IRS has granted Airways conditional waivers of the minimum funding requirements of the Plans for plan years 1980, 1981, 1982, 1983, and 1986. With respect to the Plans, the waivers for 1980, 1981 and 1982 entitled Airways to defer and fund over fifteen years a total of $146.2 million. The conditional waiver for the year 1983 in the amount of $35.6 million with respect to the Plans required early payment in lieu of a fifteen-year amortization program. Part of such amount was repaid in 1985, and the remaining portion was paid in the first quarter of 1986. The conditional waiver for the 1986 plan year amounts to $48.2 million, plus interest for a total of approximately $51.1 million.

Under the terms of the 1986 waiver which was conditionally granted by IRS on September 15, 1987, Airways could by March 15, 1988, either: (1) Obtain a prohibited transaction exemption from the Department which permitted the assignment of the Leasehold and the contribution in kind of the value of Airways' Leasehold interest to the Plans; or (2) make certain cash payments to the Plans. The waiver was conditioned on airways' pledging stock in World Services as collateral for amounts due under the minimum funding requirements. Subsequently, the IRS granted extensions to the 1986 waiver on the condition that certain cash payments were made to an escrow account on behalf of the Plans.

Most recently, the IRS by letter dated September 14, 1988, further modified the 1986 waiver by extending the deadline to January 15, 1989, and by reopening the 1983 waiver in the amount of $29.5 million. In connection with the reopening of the 1983 waiver, Airways agreed to restore, in full, the credit balance in the funding standard account by making periodic installment payments to the Plans of $4 million by October 15, 1988, $6 million by November 15, 1988, $9 million by December 15, 1988, and $10.5 million by January 15, 1989. Further, because the Leasehold had not been contributed to the Plans by September 15, 1988, Airways was obligated on that date to make a cash payment to the Plans totalling approximately $36 million, which included the amount previously held in the escrow account. It is represented that this $36 million dollar payment, together with the aggregate credit of approximately $29.5 resulting from the reopening of the 1983 funding waiver, and the extension of the 1986 conditional funding waiver amount, enabled Airways to satisfy in full its funding requirement under Section 412 of the Code for the 1987 plan year which was due on September 15, 1988.

As a condition of the 1986 funding waiver, Pan Am pledged for the benefit of the Plans the outstanding capital stock of World Services as collateral satisfactory to the Pension Benefit Guaranty Corporation (the PBGC) to secure the funding amount waived in 1986 and to secure a portion of previously waived contributions up to a maximum of $75 million. Subsequently, in reopening the 1983 funding waiver on September 14, 1988, in the amount of $29.5 million, the IRS required an additional security interest in the World Services stock be pledged in that amount, and increased the total security interest in favor of the Plans to $104.5 million. Under the terms of the pledge, the additional security interest in the amount of $29.5 million is to be released *pro rata* as installment payments are made to the Plans from October, 1988 through January, 1989. In addition, the Plans' original $75 million security interest in the stock of World Services is to be released, if either: (1) The Department grants an exemption for the subject transactions, or (2) Airways contributes an additional $60 million to the Plan on January 15, 1989.

3. Airways' principal base of operations is located at JFK in New York, where it operates ground facilities, including a major maintenance building and the Terminal. The Terminal in its present configuration provides 16 jet gates, plus a heliport, commuter aircraft, and plane-mate facilities for up to 26 aircraft. It is represented that there are 713,568 square feet of rental space in the Terminal, 102,432 square feet in roadways, and 49.38 acres of ground surrounding the Terminal. The Terminal also provides facilities to various concessionaires, restaurants, and other businesses which operate within the building. It is represented that the Terminal is unique in that it is the only major airport facility that permits international connections within a single building and which has its own U.S. Customs inspection area.

The Terminal was constructed by Airways during 1957–1960 at an historical cost of $20 million, substantially enlarged during the period 1970–1972 at a cost of $120 million, and updated in 1980–1984 for $40 million. Airways provided the equity funding for the Terminal construction and improvements under agreements with the City of New York (the City), and with the Port Authority of New York and New Jersey, formerly called the Port of New York Authority (the Port Authority), a corporate and politic body established by compact between the states of New York and New Jersey. The City retains title to the Terminal and the ownership of the Land underlying the Terminal but leases this Land to the Port Authority under a lease that expires at the end of 2015. The Port Authority in turn leases the Land to Airways on an exclusive long-term basis, pursuant to a lease (the Lease) which established the Leasehold estate for Airways in the Land and the Terminal.

4. The Lease was originally entered January 1, 1970, between Airways and the Port Authority. It is represented that the terms of the Lease and any amendments thereto were negotiated at arm's length between Airways and the Port Authority. The Port Authority's Lease with Airways stipulates a non-escalating rent of $1.68 million per year and expires in 1998. Under the provisions of the Lease, the Leasehold may not be assigned nor the Terminal sublet to another party without the Port Authority's consent and approval.

5. Airways proposes: (1) To sell to the Plans a portion of its Leasehold interest in the Land and the Terminal for a sales price which equals the $36 millon transferred by Airways to the Plans after September 14, 1988, and any additional contributions made to the Plans through the date on which the proposed transactions are consummated; (2) to contribute to the Plans the value of the Leasehold reduced by the sales price paid by the Plans to Airways for the above portion of the Leasehold; and (3) to sublease the Terminal from the Plans for the duration of the remaining term of the Leasehold which expires in 1998. To the extent the value of the Leasehold exceeds Airways' 1986 and 1987 plan year funding obligations, it is represented that the Plans will benefit from pre-funding of the 1988 minimum funding amount due in September 1989.

It is represented that at closing on the proposed transactions, the Port Authority will execute the following documents: (1) the assignment of the Leasehold to the Plans, and (2) an acknowledgment and consent to the assignment of the Leasehold, but only if the prohibited transaction exemption is granted by the Department. In addition, the Port Authority's consent is conditioned upon: (a) Airways and any subsequent occupants (or sublessees) of the Terminal participating in the cost of the extensive capital improvement program contemplated for JFK (the JFK 2000 Project) by the Port Authority; (b) any re-letting of the Terminal to one or more successor sublessees being subject to the consent and approval of the Port Authority; (c) the Port Authority and the Plans splitting 50–50 any rental received from any replacement sublessee, greater than the rental amount due the Plans from Airways; and (d) to the extent that scheduled aircraft arrivals of Airways or any successor are less than 60% of an agreed upon basic schedule, the Port Authority's having the right to require Airways or any successor to sub-sublease the under-utilized portion of the Terminal to other air carriers (hereinafter referred to as the Use or Lose Provision).

6. Pursuant to the terms of the proposed Sublease, Airways will operate the Terminal and pay to the Plans a fixed monthly rent of $2.78 million for the duration of the Leasehold. The Sublease will expire one day before the expiration of the term of the Lease in 1998. The proposed Sublease is a triple net lease, which places on Airways, the responsibility of all costs of care and maintenance, all taxes, and all insurance. Under the terms of the Sublease: (1) Airways will pay the first two monthly installments of rent on the date the Sublease is executed; (2) Airways shall have the right without the consent of the Plans to make alterations, improvements and additions to the Terminal, subject to certain limitations; (3) Airways shall have the right, subject to certain restrictions, to sub-sublet all or any part of the Terminal or assign its rights under the Sublease without the consent of the Plans; (4) Airways agrees to participate in the anticipated costs, construction, maintenance, and operation associated with the JFK 2000 Project, to the extent that Airways will be treated in the same manner as that received by all similarly situated passenger airlines at JFK; and (5) in the event Airways defaults on the payment of the rent and does not cure such default within sixty (60) days, the Plans have the right to terminate the Sublease at the end of any month upon thirty (30) days notice to Airways. As addressed in paragraph ten below, Fiduciary Services, in its capacity as independent fiduciary for the Plans, has reviewed and approved the terms of the Sublease on behalf of the Plans.

7. It is represented that the rental income from the Sublease and the ownership interest in the Leasehold will be allocated in a manner consistent with the relative liabilities and funding requirements of the Plans. If such allocation is employed, the range of percentages of the assets of each of the individual Plans involved in the sale and contribution of the Leasehold is estimated to be from 6.8% to 32.9%, with the aggregate value of the sale and contribution of the Leasehold constituting approximately 28.8% of the cumulative assets of the Plans.

Airways represents: (1) That such an allocation is fully consistent with the funding needs of the Plans, (2) that any other arrangement would result in an imposition of an earlier cash contribution upon Airways, and (3) that such allocation is consistent with the funding waivers granted to Airways and the corresponding pledge agreement with PBGC.

Because each payment of rent will increase the non-Leasehold assets of the Plans individually and collectively, Airways states that it is reasonable to expect the interest in the Leasehold allocated to each of the Plans to decline within a short period of time. In addition, Airways states that given its financial situation, denial of the contribution of a valuable asset such as the Leasehold to the Plans would be adverse to the best interest of the participants and beneficiaries.

8. At the request of Fiduciary Services, the independent fiduciary for the Plans, Arthur D. Little, Co. (Arthur Little), an independent consultant, was retained by Airways to value the Leasehold. It is represented that Arthur Little has experience in all facets of the aerospace industry, including specific work in preparing valuations. It is further represented that Arthur Little has no common directors nor any existing relationships with Airways or the Plans. Arthur Little states that projects conducted in the past on behalf of Fiduciary Services represented less than one percent (1%) of the total revenues of Arthur Little over the periods in which it was involved in such projects.

The record contains several appraisals of the value of the Leasehold prepared by Arthur Little, some of which employ different methodologies and which arrive at different values. In the most recent appraisal, Arthur Little estimated the fair market value of the Leasehold as of October 31, 1988, to be $172 million. Arthur Little states that in estimating the value of the Leasehold, it interviewed officials at Airways and at the Port Authority, toured the Terminal facilities, and had access to all publicly available information relevant to the valuation of an airport terminal. In addition, Arthur Little represented that

[a] The applicant represents that the information provided is the most current available.

it had in-house expertise and data on which it based its estimates of the revenues and expenses associated with the Terminal.

It is represented that the methodology used in the appraisal attempted to project income statements for the Terminal to determine expected annual net cash flows for the remainder of the Lease term. Income for the Terminal was derived from a number of sources, including certain fees charged to other airlines for use of similar terminals and rental rates for square footage at another JFK terminal recently negotiated between the Port Authority and another airline. Net cash flows were derived by subtracting actual Terminal expenses from income. It is represented that the present value of these cash flows, when appropriately discounted, represented the fair market value of the Leasehold. In the appraisal, Arthur Little also: (a) Assumed the subject transactions would occur on December 15, 1988; (b) included operating and concession revenue in the calculation of Terminal income; (c) included the cost of an ongoing asbestos operation and maintenance program (see paragraph 9 below) and the immediate cleanup of certain asbestos containing material; and (d) assumed a 14.5% discount rate for risks associated with the Leasehold.

Fiduciary Services has reviewed the income projections used in the most recent appraisal by Arthur Little and concluded that they are reasonable, based on knowledge of the Terminal, demand studies, and familiarity with the airline industry. Fiduciary Services also concluded that an appropriate discount rate for valuation purposes should reflect the risks of (a) subleasing the Terminal to Airways given its financial condition; (b) holding an asset which comprises a significant portion of the assets of each of the Plans and which cannot be sold to or financed by a third party; (c) not receiving full and timely rental payments upon default by Airways and having to find a successor sublessee; and (d) not receiving full and timely rental payments, if Airways should go into bankruptcy and the transaction is treated as a secured financing, rather than a sublease. Based upon these factors, Fiduciary Services concluded that a discount rate of 14.5% was fair, producing a net present value of the Leasehold of $172 million. This, Fiduciary Services represents, equates to a return of 14.5% on the Plans' investment and contribution value and a monthly rental of $2.78 million.

9. In December 1987, Airways designated Connecticut National Bank (CNB) to act as independent fiduciary on behalf of the Plans with respect to the proposed transactions. However, on July 19, 1988, CNB confirmed to Airways that it would be unable to act as independent fiduciary for the Plans and gave as its sole reason for withdrawing its inability to quantify the economic implications of the presence of asbestos containing material in the Terminal. Subsequently, Fiduciary Services, a Delaware corporation, was retained by the Committee to act as independent fiduciary for the Plans in connection with the proposed transactions. Fiduciary Services engaged its own experts to review the findings associated with the existence of asbestos in the Terminal and concluded that the economic implications of the asbestos conditions can be quantified and that they are *de minimis*. Moreover, Fiduciary Services has negotiated with Airways to enter into an operational and maintenance program, the cost of which will be paid by Airways, in order to adequately monitor and control the asbestos containing material in the Terminal.

Fiduciary Services is a wholly owned subsidiary of Bear Stearns Companies Inc. (Bear Stearns Inc.) and is a registered investment advisor under the Investment Advisers Act of 1940. It is represented that Bear Stearns Inc., the parent company, will guarantee the performance and obligations of Fiduciary Services. Fiduciary Services represents it is qualified to act on behalf of the Plans with respect to the proposed transactions in that it was established in 1986 to serve as an independent fiduciary for employee benefit plans covered by the Act and to perform various other investment-related functions for such plans and other institutional investors. Fiduciary Services includes among its experiences advising plans on asset allocation, diversification and liquidity, assessment of investment opportunities, selection of investment managers, trust and custody of plan assets, and compliance with the requirements of the Act bearing on investment decisions and related fiduciary matters. It is represented that Fiduciary Services typically performs its functions through the use of its own expertise and resources and those of its affiliates, such as Bear Stearns & Co., Inc. (Bear Stearns & Co.).

It is represented that Bear Stearns & Co. is the nation's eighth largest broker-dealer and investment bank with $32 billion in assets, as of April 30, 1988, and $1.4 billion in shareholders' equity and long-term debt. Bear Stearns & Co. has 13 offices worldwide and approximately 6,000 employees. Bear Stearns & Co. offers a range of resources and expertise in financial markets and investment matters generally, including departments in corporate finance and business valuation, financial restructuring, mergers and acquisitions, research, equity and fixed income trading, real estate, economic and portfolio analysis, and asset management. Bear Stearns & Co. has rendered opinions regarding numerous proposed investment transactions between pension plans covered by the Act and their corporate sponsors.

Fiduciary Services states that it is independent in that there is no prior or existing relationships with Airways or the Plans, other than the services to be performed as the independent fiduciary in connection with the proposed transactions. Fiduciary Services has stated that Bear Stearns & Co. has acted and will act from time to time as a broker for outside investment managers of various employee benefit plans sponsored by Airways, including the Plans. The total amount of commissions Bear Stearns & Co. earned in 1987 as broker for outside investment managers for transactions on behalf of the Plans and other plans sponsored by Airways is represented to be approximately $37,000. It is represented that such commissions represent less than one percent (1%) of the commission income and total revenues of Bear Stearns, Inc., the parent corporation of Bear Stearns & Co.

In addition to hiring Fiduciary Services to act as independent fiduciary on behalf of the Plans, Airways has also retained Mellon Bank to act as on-going trustee (the Trustee) of those assets of the Plans involved in the proposed transactions. It is represented that Mellon Bank is independent of Airways and the Plans, except that: (a) It provides services to another pension plan sponsored by Airways for its pilots, and (b) is a lessor to Airways, under a lease which expires in 1989, of a single B–747 aircraft which Mellon Bank owns for its own account. It is represented that the fees to be paid to Mellon Bank with respect to the proposed transactions, the rental payments made by Airways on the B–747 aircraft, and the fees paid by Airways to Mellon Bank in connection with services provided to the pilot's plan, in the aggregate, are less than one percent (1%) of the revenue of Mellon Bank. The Committee represents that it has determined that the fees proposed by Mellon bank are reasonable for the services contemplated and that Mellon Bank is qualified to perform those services.

By letter dated September 12, 1988, Fiduciary Services formally consented to its designation by the Committee as independent fiduciary. Fiduciary Services acknowledges that it will be a fiduciary within the meaning of section 3(21) of the Act, and in connection with the proposed transactions, will be subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Committee in its agreement with Fiduciary Services (the I/F Agreement) has delegated authority to Fiduciary Services to decide whether the Plans should enter into the proposed transactions, and if so, to instruct the Trustee, to implement such decision. In addition, Fiduciary Services is authorized to enforce and monitor compliance with the terms of the Sublease on behalf of the Plans throughout the duration of the proposed transactions. Under the I/F Agreement, Fiduciary Services is empowered to take such actions and to direct the Trustee, as in its absolute discretion, it deems necessary or appropriate to protect the best interest and rights of the Plans and their participants and beneficiaries with respect to the proposed transactions. Fiduciary Services may employ, as it deems advisable and in the best interests of the Plans, such legal counsel, accountants, appraisers, and agents to assist in connection with the operation, preservation, management, defense, custody, and administration of the Leasehold and the property underlying the Leasehold.

It is represented that Fiduciary Services shall receive reasonable out-of pocket expenses properly and actually incurred in connection with the performance of its duties as independent fiduciary, including reasonable fees of outside counsel, accountants, appraisers, and other independent agents employed by Fiduciary Services. Further, it is represented that, except to the extent that Airways shall have paid, the compensation for Fiduciary Services and the Trustee shall be paid out of the assets of the Plans held in the trust fund.[9] it is also represented that the Committee has considered the primary liability of the Plans to pay the fees, expenses, and compensation to Fiduciary Services and the Trustee in the event Airways is unable to make such payments. The Committee has determined that in the event of financial failure of Airways, the need for services to be rendered by an independent fiduciary to the Plans, the desirability of having Plans' assets held by parties other than Airways, the need to maintain continuity of operations, income collection, and benefit disbursements for the Plans, justifies the fees, expenses, and compensation for which the Plans will be liable. The Committee has further determined that such fees, expenses, and compensation are reasonable and not less favorable in the aggregate to the Plans than the fees, expenses, and compensation which either: (1) Were quoted by other candidates considered by the Committee for appointment as independent fiduciary with respect to the proposed transactions, or (2) would be borne by the Plans if the Plans were required to engage any similar independent parties to perform comparable services.

The Committee may remove Fiduciary Services at any time by giving written sixty (60) days notice to that effect; provided however that Fiduciary Services may not be removed at any time that the Trustee, is entitled to exercise rights and remedies as a result of a default by Airways of its obligations under the Sublease. Fiduciary Services may resign by giving sixty days written notice to the Committee.

10. Airways has represented that it considers the transactions to be unitary in nature; and thus, has stated that it will not make the in kind contribution without the Plans' purchasing in part the value of the Leasehold and entering into the Sublease of the Terminal for the duration of the Leasehold term. Fiduciary Services has reviewed Airways representations as to the unitary nature of the proposed transactions and has represented that when taken as a whole the transactions would provide the Plans a prudent investment under the circumstances. Nevertheless, Fiduciary Services has examined each of the proposed transactions independent of the others to ensure that each transaction meets the statutory criteria of section 408(a) of the Act. Fiduciary Services represents that in carrying out this responsibility either the staff of Fiduciary Services or experts under Fiduciary Services' supervision reviewed extensive information and documentation regarding the proposed transactions. After reviewing such information, Fiduciary Services has determined that each of the proposed transactions is administratively feasible, in the best interest of the Plans, and protective of the Plans and their beneficiaries and participants.

In order to insure the administrative feasibility of the proposed transactions, Fiduciary Services has agreed to prepare and render annually an accurate and detailed accounting of all transactions and other actions taken by it for each of the Plans with respect to the proposed transactions. In addition, the Trustee, will account separately for each of the Plans' interests in the Leasehold and the attributable earnings. Fiduciary Services will keep all accounts, books, and records relating thereto which will be open to inspection and audit at all reasonable times by an accountant designated by the Committee, the Trustee, Airways, and their respective agents. Finally Fiduciary Services is broadly empowered to instruct the Trustee to enforce the terms of the proposed transactions and take necessary action to protect the Plans' rights.

With respect to the in kind contribution of the value of the Leasehold to the Plans, Fiduciary Services has determined that such contribution presents the Plans with a unique opportunity to operate with substantially greater assets than the Plans would otherwise have and provides enhanced security for the Plans' participants and beneficiaries. Fiduciary Services states that the increase in the Plans assets would provide a justification for the contribution, even if Airways were in better financial condition. However, given Airways' troubled financial position, in the opinion of Fiduciary Services, the reasons supporting the in kind contribution are all the more compelling.[10]

With respect to the effect of the contribution on the Plans' diversification of assets and liquidity requirements, Fiduciary Services has concluded that the concentration of assets of the Plans in the Leasehold will not present an undue risk and the cash stream generated by the Sublease will enable the Plans to increase gradually the diversification of their investments. With respect to the Plans' liquidity requirements, Fiduciary Services has determined that the other assets of the Plans together with the cash stream generated by the Sublease will be more

[9] The Department notes that the statutory exemption under section 408(b)(2) of the Act regarding the provision of services by a party in interest to a plan is applicable, provided no more than reasonable compensation is paid for such service.

[10] The 1987 Annual Report on Airways and the Form 10K filed with the Securities and Exchange Commission reveal net losses and operating losses of $274.6 million and $113.3 million, respectively. According to the same reports, shareholders equity in Airways at the end of 1987 was a negative $245 million.

than sufficient to meet the liquidity requirements over the next 9½ years.

With respect to the purchase of a portion of the value of the Leasehold by the Plans, Fiduciary Services has concluded that it is in the interest of the Plans and the Plans' participants and beneficiaries. The reasons given by Fiduciary Services in support of this conclusion are: (a) The sale will result in the Plans receiving a significant prefunding amount of approximately $57 million that would otherwise not be available; (b) the Plans will be placed in as good or possibly better position in the event a bankruptcy proceeding is brought by or against Airways; and (c) the rental stream under the terms of the Sublease will provide the Plans with a favorable return on the investment.

Fiduciary Services has determined that the contribution and the purchase of a portion of the value of the Leasehold are protective of the rights of the Plans' participants and beneficiaries, because: (a) The Leasehold has been valued by Arthur Little, an independent appraiser, (b) the appraisal has been reviewed by Fiduciary Services, and (c) the triple net Sublease and the advance payment of two months' rent will minimize the risk that any Plans' assets will need to be expended for initial maintenance or other such expenses. In addition, Fiduciary Services will be responsible for monitoring Airways' compliance with the Sublease and for instructing the Trustee to take appropriate action to protect the Plans' interests as sublessor. It is represented that in order to protect the interests of the Plans, the assignment and all other necessary documentation of the proposed transactions, including the Sublease and the acknowledgement and consent to the assignment of the Leasehold from the Port Authority, will promptly and properly be recorded in accordance with state and local law. Also, Fiduciary Services will take all necessary steps to ensure that the interests of the Plans are protected if the Leasehold and the Sublease are viewed as a mortgage providing security for the funding obligations of Airways. It is represented that the Plans' interests are protected against property damage and general liability through insurance policies maintained by Airways, pursuant to the terms of the Sublease.

Fiduciary Services has concluded that the entry into the Sublease with Airways is in the best interest of the Plans. In making this decision, Fiduciary Services took into consideration the fact that (a) Airways has agreed to Sublease the Terminal for the approximately 9½ years remaining in the term of the Leasehold; (b) the entry into the Sublease will commence simultaneously with the other two proposed transactions and will avoid any delay which is particularly important with a wasting asset such as the Leasehold; (c) the responsibilities and expenses of operating the Terminal, including the rent due to the Port Authority under the Lease of the Land will be borne by Airways; (d) Airways is in the best position to discharge such responsibilities because it is familiar with the Terminal and its operations; and (e) the amount of rent to be charged to Airways is calculated to allow the Plans to recover the appraised value of the Leasehold ($172 million) plus a return of 14.5 percent on such value. As noted above, Fiduciary Services has concluded that a rate of return of 14.5 percent is fair and reasonable. Such rate is representative of the risks associated with the proposed transactions, and is particularly desirable to the Plans in view of their underfunded status.

11. Fiduciary Services has determined that the principal risks to the Plans involving the Sublease are the possibility of: (1) A default by Airways under the provisions of the Sublease; and (2) the bankruptcy of Airways during the term of the Sublease. Fiduciary Services states that it will take measures to ensure that in either case the Plans' interests are protected. Despite the potential risks, Fiduciary Services has concluded that there is a reasonable likelihood that the Plans would ultimately realize a substantial portion of the value of the Leasehold in the event of a default by Airways or a bankruptcy proceeding involving Airways.

Specifically, with respect to a default, the Sublease permit Fiduciary Services on behalf of the Plans, either to cure the default and then recover against Airways or to evict Airways in order to regain possession of the Terminal and then rent the premises to a successor sublessee. Fiduciary Services has determined, based on knowledge of the airline industry, and a review of demand studies regarding JFK, that the Terminal is in a very desirable location in one of the busiest metropolitan airports in the world. It is also represented that the Plans and Port Authority share a mutual interest in keeping the Terminal occupied and that the Port Authority will assist in any efforts to keep the Terminal operating as close as possible to full capacity. Fiduciary Services conservatively estimates the Plans may experience a delay of six months in locating a successor sublessee, if Airways defaults, but represents that this factor is reflected in the 14.5 percent discount rate used in the valuation of the Leasehold prepared by Arthur Little. Given that the volume of international passenger traffic will continue even in the absence of Airways, Fiduciary Services beleives that there is a reasonable likelihood that a successor to Airways could be found at a level of rent comparable to that agreed to by Airways.

To the extent a successor pays more rent than Airways, the Port Authority and the Plans have agreed to split the increase on a 50–50 basis. Fiduciary Services states that provisions for sharing profit on subleasing are common in commercial leases and that receipt of a 50 percent portion of any increase in rent can only be an added benefit for the Plans.

Fiduciary Services also has considered the risks to the Plans in the event of a bankruptcy petition being filed by or against Airways during the term of the Sublease. After reviewing the current financial condition of Airways and discussing this issue with representatives of Airways, Fiduciary Services has determined that there is little risk of Airways filing or having filed against it a bankruptcy petition in 1989. Nevertheless, Fiduciary Services states that the risk of Airways' filing for bankruptcy at some point and the possible effects of such bankruptcy on the Plans was factored into the determination of the value of the Leasehold and in the choice of the appropriate rate of return (14.5%) on the Plans' investment.

If under the bankruptcy laws the relationship between Airways and the Plans is characterized as a Sublease, Fiduciary Services represents it will take any and all measures to ensure that the Plans' interests are protected, including commencing proceedings under the Bankruptcy Code to require Airways either to assume or reject the Sublease within sixty (60) days of the commencement of the proceeding, as required by law. In the opinion of Fiduciary Services, it is unlikely that Airways would seek to reject the Sublease, and if Airways were to assume the Sublease, Airways must satisfy all obligations under the terms of the Sublease, including the rental payments. Even if Airways were to reject the Sublease, it is represented that the Plans retain the right to re-let the Terminal to another tenant subject to the Port Authority's consent.

Fiduciary Services has also considered the consequences should the relationship between Airways and the Plans be treated in a bankruptcy proceeding as a secured financing or mortgage. Because the Leasehold is a wasting asset, Fiduciary Services represents that the Plans should have a reasonable prospect of demonstrating that "adequate protection" is warranted to protect the Plans' secured claims and that such protection may be provided in the form of cash payments, additional or replacement liens, or some other appropriate measures.

Fiduciary Services has also considered the likelihood and effect of a possible avoidance of the proposed transactions based on a finding that such were considered either preferences or fraudulent conveyances under the bankruptcy laws. Because fair value will be given for the Leasehold, Fiduciary Services has been advised by counsel that the Plans' exposure for a fraudulent conveyance is insignificant. However, to the extent that any portion of the value of the Leasehold was recovered from the Plans as a preference, the Plans would be able to assert only an unsecured claim for the avoided value. A preferential transfer is one taking place within ninety (90) days of the filing of a petition in bankruptcy. Fiduciary Services maintains that to the extent granting the proposed transactions sufficiently delays (even if it does not ultimately preclude) the filing of a bankruptcy petition by or against Airways, the period for avoiding contributions to the Plans as preferences will have passed, thus protecting the Plans' assets.

Finally, Fiduciary Services compared the relative positions of the Plans in the event that a bankruptcy petition were filed against Airways before or after the proposed transactions are granted an exemption. Fiduciary Services notes that the Plans could be worse off if Airways enters bankruptcy between the date the proposed transactions occur and the date when the waiver payments otherwise would have been paid on January 15, 1989. However, because in Fiduciary Services' opinion the chances are small of Airways entering bankruptcy in1989, it believes that in the event thereafter of bankruptcy by Airways, the Plans would likely be as well or possibly better positioned with the Leasehold and the Sublease than without them. In any case, Fiduciary Services believes that in the event of bankruptcy the likelihood of the Plans receiving continued income through rental payments under the Sublease is probably greater than the likelihood of the Plans receiving income through continued contributions to the Plans from Airways, if the proposed transactions are not granted.

12. Fiduciary Services reviewed the terms of the Sublease, and the conditions imposed by the Port Authority in the acknowledgement of consent and assignment of the Leasehold in order to determine whether any such terms and conditions, specifically those relating to: (1) The allocation of the costs for the JFK 2000 Project, (2) the Use or Lose Provision, and (3) the agreement to split excess rent between the Port Authority and the Plans, will affect the value of the Leasehold. After examining said relevant documents, Fiduciary Services concluded that the terms of the assignment of the Leasehold, the consent of the Port Authority, and the Sublease are similar to those that would have been negotiated at arms' length by unrelated third parties. It is represented that Airways or its successor, and not the Plans, will bear the cost of the JFK 2000 Project. Because the cost of the JFK 2000 Project will not be borne by the Plans, and because under the JFK 2000 Project the Terminal will not be disadvantaged as compared to other terminals at JFK, Fiduciary Services believes that there should be no adverse effect on the value of the Leasehold. Further, in the opinion of Fiduciary Services the Use or Lose Provision in the Sublease will not affect the Lease between the Port Authority and the Plans, nor the value of the Leasehold, and will only require Airways or its successor to find sub-subtenants for the Terminal. Finally, Fiduciary Services believes that the Plans can only benefit from receiving a percentage of any increased rental paid by a successor of Airways.

13. In summary, the applicant asserts that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because among other reasons:

(a) Fiduciary Services, as independent fiduciary for the Plans, has determined that each of the proposed transactions is in the best interest and protective of the Plans and their participants and beneficiaries;

(b) Arthur Little, a qualified independent appraiser has determined the fair market value of the Leasehold;

(c) Fiduciary Services has established a fair market value rental for the Sublease of the Terminal by the Plans to Airways;

(d) Fiduciary Services also has reviewed, approved, and will monitor and enforce the terms of the Sublease between the Plans and Airways;

(e) Revenue from the rental payments made by Airways under the Sublease will be used to diversify the Plans investment portfolio;

(f) The contribution and purchase of a portion of the value of the Leasehold are one-time transactions;

(g) The Plans will receive a significant amount of prefunding from the in kind contribution of the Leasehold;

(h) The Plans will make a 14.5% return on their investment in the purchase of a portion of the Leasehold and contribution of the remaining portion of the Leasehold; and

(i) Fiduciary Services has determined that the terms of the Sublease are similar to those negotiated at arms' length between unrelated third parties

For Further Information Contact: Angelena C. Le Blanc of the Department telephone (202) 523–8883. (This is not a toll-free number.)

Spertus College of Judaica Pension Trust (the Plan) Located in Chicago, Illinois

[Application No. D–7610]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the past cash sale of certain securities (the Bonds) by the Plan to Spertus College of Judaica (the Employer), provided that the Plan received no less than the fair market value of the Bonds on the date of sale.

Effective Date: If granted, the proposed exemption will be effective January 28, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase plan. It has 48 participants and, as of June 30, 1987, net assets of $670,597. The trustees (the Trustees) of the Plan are Ezra Sensibar and Dr. Howard A. Sulkin. Ezra Sensibar is also a trustee of the Employer, but is neither an employee of the Employer nor a participant in the Plan. Dr. Howard A. Sulkin is the President and Chief Executive Officer of the Employer and is a participant in the Plan. The Employer is a tax exempt organization under section 501(c)(3) of the Code.

2. Pursuant to the recommendation of a committee of Plan participants, the Plan, in January 1987, was in the process of liquidating its investment portfolio for

the purpose of investing its assets in a TIAA–CREF (TIAA) group annuity contract. On January 27, 1987, the Trustees of the Plan were made aware that if the total vested funds of the Plan were deposited with TIAA by January 30, 1987, the Plan assets would receive 1986 vintage treatment rather than 1987 vintage treatment. The applicant represents that the term vintage, as used here, means the portion of the annuity accumulation resulting from premiums paid and additional amounts credited during a specific period. The Trustees anticipated that the 1986 vintage would yield a higher return than the 1987 vintage and, in fact, it did yield a return ½% more than that in 1987.

3. In order to take advantage of the offer by TIAA, the Plan needed to dispose of the Bonds immediately. The first bond was a $50,000 par value Federal National Mortgage Association mortgage backed trust certificate (FNMA Bond) and the second was a $50,000 par value corporate bond issued by Citicorp (Citicorp Bond). The FNMA Bond earned interest at an annual rate of 8.65% and matured in March, 1990. The Citicorp Bond earned interest at the rate of 10.5% and matured in October, 1990.

4. On January 28, 1987, the FNMA Bond had a quoted value of $52,875, using the average of the bid and asked quotations in the Wall Street Journal. In addition, there was accrued and unpaid interest of $1,635.21 owed to the Plan on the FNMA Bond. The Citicorp Bond was not actively traded and no daily price quotation was available. However, the Plan trustees contacted the Plan's financial consultant, Merrill, Lynch, Pierce, Fenner & Smith (Merrill Lynch), who valued the Citicorp Bond in the Plan's portfolio at the time of the transaction at $51,722.50. In addition, accrued and upaid interest of $1,495.89 was owed to the Plan on the Citicorp Bond.

5. The applicant represents that Merrill Lynch advised the Plan that it was too late to liquidate the Bonds on the open market, since the normal settlement time for such transactions was five business days. Further, even if the Bonds could be liquidated on the open market, the commission costs would be particularly high because of the small odd-lot amount of the Bonds.

On January 28, 1987, the Employer offered to purchase the Bonds from the Plan for $108,000 in cash, which offer was reviewed and accepted by the Plan's Trustees. The Plan sold the Bonds to the Employer for their fair market value of $52,875.00 and $51,722.50, respectively, for a total purchase price of $104,597.50. In addition, the Employer paid the Plan $3,131.10 representing the accrued interest due on the Bonds. The difference between the $108,000 in cash transferred to the Plan and the combined fair market value plus accrued interest on the Bonds ($107,728.60) of $271.40 was treated as a contribution to the Plan for the Plan year ended June 30, 1987. The applicant represents that the Plan bore no expenses with respect to the transaction.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because:

(a) The Plan was able to sell the Bonds at their fair market price; (b) the Plan bore no expenses with respect to the sale; (c) the price of the FNMA Bond was determined by reference to the quotations listed in the Wall Street Journal and the price of the Citicorp Bond was determined by an independent third party; and (d) the immediate sale of the Bonds for cash allowed the Plan to invest its funds in a group annuity contract in sufficient time to secure the highest rate of return available under such contract.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Money Purchase Pension Plan and Trust of the Edmonds Family Medicine Clinic (the Plan) Located in Edmonds, Washington

[Application Nos. D–7700 and D–7701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the assumption and immediate repayment of a mortgage note (the Note) by Robert A. Bettis, M.D. (Dr. Bettis) to his individually directed separate account in the Plan, provided that the amount paid to Dr. Bettis' individual account in the Plan is no less than the greater of the unpaid principal balance of the Note plus any accrued interest due as of the date of assumption, or the fair market value of the Note as of the date of assumption, as established by an independent and qualified appraiser.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan which had ten participants as of July 1, 1988. As of July 31, 1987, the Plan had assets of $461,844. Dr. Bettis' account in the Plan had a balance of $120,446 as of July 31, 1987.

The Plan is sponsored by Edmonds Family Medicine Clinic, P.S., (the Clinic), which proves medical services in Edmonds, Washington. The five trustees for the Plan are Robert B. Bettis, M.D., Mark T. Hanson, M.D., Roger B. Olsson, M.D., Joseph G. Petrin, M.D., and Jeffrey F. Schlaemus, M.D., all principals in the Clinic. The Plan permits each participant the exclusive right to exercise control over the selection of assets in his or her account.

2. On February 16, 1983, the Plan purchased for Dr. Bettis' separate account a parcel of unimproved real property (the Real Property) in the Town of Lake Park, Chelan County, Washington, for $25,730.72 from Belden and Sandra L. Morgan, unrelated third parties. The Real Property did not produce any income during the time it was held by the Plan.

3. The Real Property was sold to Jordan and Mary Miller (the Millers), unrelated third parties, on December 31, 1987 for $35,000. The terms of purchase included a down payment of $1,500, delivery of a deed of trust for the benefit of Dr. Bettis' individual account in the Plan as security, and the Note in the amount of $33,500 at 12% interest per annum. The principal amount of the Note is due and payable on January 1, 1991, with installments of accrued interest due on January 1, 1989 and January 1, 1990.

4. Dr. Bettis and the Millers have now agreed that the Real Property will be sold to Dr. Bettis. It is proposed that Dr. Bettis take title to the Real Property from the Millers by making a down payment of $1,500 in cash to the Millers, assuming the Note and accelerating the Note by paying his individual account in the Plan in cash the total principal amount of $33,500 together with accrued interest due as of the date of the payment. Any transfer fees and other expenses will be paid by Dr. Bettis.

5. On June 1, 1988, Tom Walters, associate member of SREA, of Walters Appraisal Service of Chelan, Washington, stated that the fair market value of the Real Property was $35,000.

6. On August 23, 1988, Peter Unger, Vice President of the Bank of California in Seattle, Washington, an unrelated third party, stated that in his opinion the value of the Note does not exceed the unpaid principal balance plus any accrued interest due.

7. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) Dr. Bettis' individual account in the Plan will receive all principal and interest due under the Note; (b) the transaction represents a one-time payment in cash to Dr. Bettis' individual account in the Plan, which can be easily verified; (c) Dr. Bettis will pay all fees and expenses due with respect to the transaction; and (d) Dr. Bettis, the only participant whose individual account is affected by this proposed exemption, has determined that the proposed transaction would be in the interest of his individual account in the Plan, and desires that the proposed transaction be consummated.

Notice to Interested Persons: Because Dr. Bettis in the only person in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Operating Engineers Local No. 37 Pension Fund (the Plan) Located in Baltimore, MD

[Application No. D–7728]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan of two parcels of improved real property (Parcel Two and Parcel Three), for the total cash consideration of $345,000, from Operating Engineers, Inc. (OEI), a party in interest with respect to the Plan, provided the amount paid by the Plan for Parcel Two and Parcel Three is not more than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a collectively-bargained, multiemployer pension plan having 1,563 participants and total assets of $76,027,686 as of March 31, 1988. The Plan is administered by a board of trustees (the Trustees) consisting of six members. The employee Trustees, who are appointed by Operating Engineers, Local 37 (the Union) acting through its Executive Board, are Messrs. James R. DeJuliius, Terry L. Bowman and John R. George. The employer Trustees, who are appointed by employer associations, are Messrs. Harry Ratrie (Chairman), Calvin H. Coblentz and Gus A. Lambrow. The Plan Administrator is Decision Science, Inc. acting through its employee, Mr. Russell L. Clark. Investment decisions for the Plan are made by Investment and Capital Management Corporation of Rolling Meadows, Illinois and Farragut Asset Management, Inc. of New York, New York.

2. The Union is an employee organization within the meaning of section 3(4) of the Act and a labor organization affiliated with the Building and Construction Trades Department of the AFL–CIO. The Union represents employees for purposes of collective bargaining on terms and conditions of employment in the geographic area which includes the State of Maryland, excluding Montgomery County and Prince George's County. The employees represented by the Union work primarily in the building and construction industry as well as related industries. The Union normally has collective bargaining agreements in effect with about 300 employers of which 180 employers are active at any time. The Union has approximately 2,235 members of whom approximately 550 members are retired.

3. OEI is a Maryland corporation that is wholly-owned and controlled by the Union. OEI's sole purpose is to hold title to real property.

4. Among the assets of the Plan is a parcel of improved real property (Parcel One), located at 5901–5905 Harford Road, Baltimore, Maryland. Parcel One consists of 10,500 square feet of commercial office space in a subdivided one story brick building. At the rear of Parcel One is a parking lot which is also owned by the Plan. The Plan purchased Parcel One and the parking lot on December 28, 1982 for $900,000 from Meatcutters Local 117 Building, Inc., an unrelated party. Since August 1988, the Plan has been leasing 2,681 square feet of office space in Parcel One and the parking lot to the Union for a monthly rental of $1,900 or $9.40 per square foot based upon market rates. The lease is for a term of five years and has two five year renewal options. The remaining 7,819 square feet of office space comprising Parcel One is occupied by the Plan for purposes of Plan administration.[11]

5. On behalf of the Union, OEI holds title to real property located at 5907–5913 Harford Road, Baltimore, Maryland. Parcel Two consists of 7,500 square feet of office space that is situated in the same one story building in which space has been allocated to comprise Parcel One. Behind Parcel Two is a parking facility which is also owned by OEI. OEI purchased Parcel Two on June 29, 1956 from an unrelated party for a purchase price of $35,000. Parcel Two is not presently encumbered by a mortgage. A unit comprising 3,218 square feet of office space is leased to the law firm of Peter G. Angelos, an unrelated party. The 4,282 square feet of remaining office space in parcel Two is occupied by the Union.

6. In addition to Parcel Two, OEI holds, on behalf of the Union, title to real property located at 3007 E. Glenmore Avenue, Baltimore, Maryland. Parcel Three, which adjoins Parcel One and Parcel Two, consists of a two-story frame dwelling and a rear parking lot. On August 4, 1980, OEI purchased Parcel Three for $50,315 from Mr. and Mrs. James B. Steedman, who were unrelated parties. Presently, Parcel Three is being leased to Ms. Judith L. McNemar (Ms. McNemar), an unrelated party, for a monthly rental of $250. Ms. McNemar uses Parcel Three as her personal residence and the lease expires in 1991. Parcel Three is not encumbered by a mortgage.

7. Due to increasing staff size and anticipated expansion of existing facilities, the Plan is in need of additional operating and parking space in which to conduct its activities. Because of these circumstances, the Trustees have determined that it would be appropriate for the Plan to purchase additional office and parking space from OEI, an entity owned and controlled by the Union rather than purchasing such space form an unrelated party. The Trustees believe that if the Plan purchases Parcel Two and Parcel Three form OEI, the Plan's participants will

[11] The applicants represent that the leasing of office space in Parcel One by the Plan to the Union satisfies the terms and conditions of Part C of Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, 12745, March 26, 1976), and PTE 77–10 (42 FR 33918, July 1, 1977). The Department, however, expresses no opinion on whether the leasing arrangement complies with the provisions of PTEs 76–1 and 77–10. Accordingly, the Department is not proposing any exemptive relief beyond that offered by PTEs 76–1 and 77–10.

have the indirect benefit of obtaining reasonably-priced office space. Moreover, from an investment standpoint, the Trustees have determined that the economic value of having the Plan own Parcel One and Parcel Two will enhance the value and marketability of such property as a Plan investment since the Plan will then own the building in its entirety. Accordingly, the Trustees request an administrative exemption from the Department to permit the Plan to purchase Parcel Two and Parcel Three from OEI.

8. The Plan will purchase Parcel Two and Parcel Three from OEI for the fair market value of such properties as determined by an independent appraiser. The consideration will be paid by the Plan in cash. The Plan will not be required to pay any real estate fees or commissions in connection therewith. After the proposed transaction is consummated, the deeds to Parcel Two and Parcel Three will be recorded to reflect the Plan's exclusive ownership of the subject properties.

9. In an appraisal report dated January 18, 1988, Mr. Robert V. McCurdy (Mr. McCurdy), C.R.E., M.A.I., S.R.E.A., determined the fair market values of Parcel Two and Parcel Three. Mr. McCurdy, who is unrelated to the parties involved in the proposed transaction, is affiliated with the real estate consulting firm of Robert V. McCurdy and Company of Baltimore, Maryland. On January 1, 1988, Mr. McCurdy placed the fair market value of Parcel Two at $280,000 and Parcel Three at $65,000 or an aggregate consideration of $345,000.

10. Also subsequent to the proposed sale, the Trustees anticipate that the Plan will continue leasing office space in Parcel Two to the unrelated law firm for an indeterminate period. Similarly, but until 1991, the Plan will continue leasing Parcel Three to Ms. McNemar. According to the exemption application, the Trustees do not intend to allow the Plan to lease office space in either Parcel Two or Parcel Three to the Union or to other parties in interest.

11. Mr. Francis Burch, Jr. (Mr. Burch) has been designated as the independent fiduciary with respect to the proposed transaction. Mr. Burch is a Certified Public Accountant who has been licensed in the State of Maryland since 1967. Mr. Burch is the principal in the firm of Burch and Company, Certified Public Accountants of Towson, Maryland. Approximately 25 percent of Mr. Burch's practice is related to providing auditing services to multiemployer pension, annuity, health, vacation and apprentice training plans for various trades. Mr. Burch represents that he is not related in any way to the Plan or to the Union and that he provides no services to either organization. Mr. Burch also states that he has consulted with counsel experienced with the Act regarding the duties, responsibilities and liabilities imposed by the Act on plan fiduciaries. As a result of this meeting, Mr. Burch represents that he acknowledges his duties, responsibilities and liabilities under the Act in serving as a fiduciary on behalf of the Plan.

Mr. Burch believes the proposed transaction is an appropriate investment for the Plan and is in the best interest of the Plan's participants and beneficiaries. Mr. Burch represents that the proposed transaction complies with the Plan's investment objectives. He states that the terms of the sale compare favorably with what would be considered normal business practice between unrelated parties inasmuch as the fair market values of the subject properties have been determined on the basis of an independent appraisal and the proposed sales terms require the Plan to make a lump sum cash payment to OEI. Moreover, Mr. Burch believes the value to the Plan and the Plan participants would be enhanced if the Plan were to acquire both properties. In particular, Mr. Burch notes that the Plan's exclusive ownership of the building comprising Parcel One and Parcel Two would enhance the building's value for future development or sale to a prospective purchaser. In addition, Mr. Burch states that by owning the entire building, the Plan would be in a better position to negotiate improved rates for contract and other services with various lessees since the existing duplication of services would be eliminated.

As the independent fiduciary, Mr. Burch states that it is his intention to review and monitor all contracts entered into by the parties from the inception of the proposed transaction until its consummation. In this record, Mr. Burch represents that he will represent the interests of the Plan. Mr. Burch also states that he will review all other documentation associated with the proposed transaction.

12. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (1) The purchase of Parcel Two and Parcel Three by the Plan will be a one-time transaction for cash; (b) the purchase price for Parcel Two and Parcel Three will be based upon the fair market values of the subject properties as determined by an independent appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; (d) the acquisition of Parcel Two and the adjoining Parcel Three will provide the Plan with a sound investment and reasonably-priced office and parking space; (e) by purchasing Parcel Two from OEI and combining it with Parcel One, the Plan will be ensuring the marketability of such property; and (f) Mr. Burch, who will serve as the independent fiduciary and monitor the transaction on behalf of the Plan, has determined that the acquisition of Parcel Two and Parcel Three is an appropriate transaction for the Plan and is in the best interest of the Plan's participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, NJ

[Application No. D-7749]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the loan (the New Loan) by the Plan of $350,000 to Orloff, Lowenbach, Stifelman and Siegel, P.C. (the Employer), a party in interest with respect to the Plan; and (2) the guarantee of repayment of the New Loan by the principals of the Employer (the Principals), provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 36 participants and total assets of $4,772,119 as of June 30, 1988. The trustees of the Plan are the nine principal shareholders of the Employer. The Principals make investment decisions for the Plan. The Employer is a law firm which maintains its offices at 101 Eisenhower Parkway, Roseland, New Jersey.

2. In 1982, the Employer moved from Newark, New Jersey to its present location where it leases 11,000 square feet of office space (the Lease) from Roseland II Limited Partnership, an unrelated party. The Lease has an initial term of five years and allows three additional five year renewal options. To pay for certain expenses associated with the move, the Employer requested an administrative exemption from the Department. On February 11, 1983, the Department granted Prohibited Transaction Exemption (PTE) 83-24 at 48 FR 6430. PTE 83-24 permitted the Plan to lend $300,000 to the Employer (the Original Loan). PTE 83-24 also provided that the Principals guarantee the repayment of the Original Loan. The Original Loan was made on March 1, 1983. It has been amortized in monthly installments of principal and interest and is for a duration of 84 months. The Original Loan carries interest at the rate of one percent over the prime rate of First National State Bank of New Jersey and it contains a floor on the interest rate of twelve percent per annum. The Original Loan is secured by the accounts receivable (the Receivables) of the Employer as well as by the personal guarantees of the Employer's Principals. The Orignal Loan is being monitored by Mr. Irwin Gedinsky (Mr. Gedinsky) who is serving on behalf of the Plan as the independent fiduciary. As of August 31, 1988, the remaining principal balance due under the Original Loan was $64,285.

3. Due to the Employer's growth over the past six years and its anticipated future growth, the Employer represents that it is in need of additional office space. Consequently, the Employer has entered into an amendment to the Lease to incorporate an additional 3,750 square feet of space contiguous to the original space. The estimated cost relating to expanding into the new space is approximately $285,000 which consists primarily of leasehold improvements, fixtures, furnishings and office equipment. The Employer anticipates remaining at its present location for at least the next nine years and it may lease even more space in the same building.

4. To finance costs associated with the expansion of office space, the Employer proposes to borrow $350,000 from the Plan. The New Loan will be repaid in 84 successive monthly installments of principal in the amount of $4,166 which will be due on the last day of each calendar month the New Loan is in effect. Interest on the unpaid principal balance of the New Loan will be paid at the same time as each principal payment, at an annual rate equal to the greater of: (a) one percentage point above the base rate charged by First Fidelity Bank, N.A., New Jersey (First Fidelity) of Newark, New Jersey, on the first business day of such calendar month or (b) twelve percent. The interest rate will be adjusted monthly by Mr. Gedinsky, who has agreed to serve as the independent fiduciary for the New Loan. The New Loan may be prepaid at any time by the Employer without premium or penalty.

5. The New Loan will be secured by an assignment of the Employer's Receivables which presently serve as partial collateral for the Original Loan. The applicant states that at the time the New Loan is made, the Employer will repay the outstanding principal balance due under the Original Loan. As a result of the repayment, the Receivables securing the Original Loan will be released. The Employer will then execute and file a Form UCC-1 in order to perfect the Plan's first security interest in the Receivables.

6. The Receivables represent the amount due the Employer from bills that have been submitted by the Employer to its clients for previously rendered legal services performed by the Employer. On June 30, 1988, the Employer had total Receivables of $1,186,050. During the twelve month period from June 30, 1987 to June 30, 1988, approximately 75.7 percent of the Receivables outstanding on June 30, 1987 were collected, 3.6 percent were written off and 20.7 percent remained outstanding. By September 30, 1988, a total of 80.1 percent of the Receivables outstanding on June 30, 1987 were collected, 10.9 percent were written off as uncollectible and 9 percent remained outstanding. Between June 30, 1985 and June 30, 1988, the Employer collected over 90 percent of the Receivables that arose during the three year period.

7. At all times during the term of the New Loan, the Employer expects that the Receivables will be equal to at least 200 percent of the outstanding balance due under such loan. If the Receivables are ever less than 200 percent of the outstanding balance due of the New Loan, the Employer will post sufficient additional collateral acceptable to Mr. Gedinsky in order to maintain the 200 percent collateral to loan ratio. In addition, the employer warrants to own the collateral used to secure the New Loan free from adverse claims, security interest and other encumbrances, other than the security interest that the Plan would have in the collateral. Further, the Employer will bear all costs, if any, of appraisal fees in connection with valuing the Receivables and all servicing fees in connection with the New Loan.

9. As additional security for the New Loan, the Principals of the Employer will give their personal guarantees. As of October 26, 1988, the Principals had a combined net worth that was in excess of $8 million.

10. The Employer has discussed with First Fidelity, an unrelated party, potential financing arrangements it would extend to the Employer, in connection with the expansion of the Office space. First Fidelity is a major New Jersey bank with assets that are in excess of $20 billion. By letter dated October 12, 1988, First Fidelity indicated that it would make a loan to the Employer on substantially the same terms and conditions as the New Loan. First Fidelity explained that the duration of its loan to the Employer would be for 60 months with quarterly payments of principal and interest. The First Fidelity loan would be similarly secured as the New Loan and would not have a floor on the interest rate.

11. As explained above, Mr. Gedinsky will serve as the independent fiduciary for the New Loan. Mr. Gedisnky is a Certified Public Accountant with over 32 years of accounting experience. Mr. Gedinsky is affiliated with the accounting firm of Granet and Granet of Livingston, New Jersey where he serves as the senior tax partner. Mr. Gedinsky has served in the past as an executor and trustee of many estates and trusts and, at the present time, he is serving in such capacity for several entities. With respect to the Act, Mr. Gedinsky has advised his firm's clients regarding the design of pension and profit sharing plans, the administration of such plans (including the investment of plan assets) and compliance with the Act. Other than serving as the independent fiduciary for the Original Loan, Mr. Gedinsky has no relationship to either the Plan or the Employer. Mr. Gedinsky represents that he understands and acknowledges his duties, responsibilites and liabilities in acting as a fiduciary on behalf of the Plan.

Mr. Gedinsky represents that all payments under the Original Loan have been paid in a timely manner and that there have been no delinquencies. Mr. Gedinsky also states that the collateral to loan ratio under the Original Loan has always been maintained.

With respect to the New Loan, Mr. Gedinsky states that he has looked at the specific terms of such loan and he believes it is in the best interests of the Plan and its participants and beneficiaries because: (a) The proposed interest rate will be substantially higher than the interest rate the Plan would otherwise earn on the investment of

such funds; (b) the duration of the New Loan is fair and reasonable; and (c) the collateral securing the New Loan is sufficient and adequate to fully protect the interests of the Plan and its participants and beneficiaries. Mr. Gedinsky also represents that he has examined the overall Plan Portfolio, considered the cash flow needs of the Plan, considered the assets that might have to be sold to meet the liquidity requirements of the Plan, examined the diversification of the Plan's assets in light of the New Loan and analyzed the New Loan in terms of how it relates to the Plan's investment scheme. In addition to the duties described above, Mr. Gedinsky will monitor the terms of the New Loan to ensure monthly payments are made by the Employer. In this regard, Mr. Gedinsky will take all actions that are necessary and proper to enforce and safeguard the rights of the Plan and its participants and beneficiaries.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The New Loan will be monitored by Mr. Gedinsky, the independent fiduciary, who believes such loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; (b) the New Loan will be secured by a first security interest in the Employer's Receivables, which have a value of more than three times the amount of the New Loan; (c) the New Loan will also be secured by the personal guarantees of the employer's Principals who have a combined net worth that is substantially in excess of the New Loan; (d) at all times throughout the duration of the New Loan the Receivables will represent 200 percent of the outstanding principal balance of such loan; (e) the New Loan will represent less than 8 percent of the assets of the Plan; and (f) the Employers will bear all costs, if any, in connection with the valuing of the Receivables and the servicing of the New Loan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Peruri S. Rao, Ltd., Retirement Plan and Trust (the Plan), Located in Libertyville, Illinois

[Application No. D–7750]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property (the Property) to Sankara Rao Peruri, M.D. (Dr. Peruri), a disqualified person with respect to the Plan, provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of August 23, 1988, had one participant and total plan assets of $512,820. The trustees of the Plan, and the decision-makers with respect to Plan investments, are Dr. Peruri and his wife, Amar J. Peruri (together, the Trustees).

2. The sponsor of the Plan is Peruri S. Rao, Ltd. (the Employer). The Employer was an Illinois service corporation engaged in the practice of medicine in Grayslake, Illinois. The Employer has been dissolved and no longer exists as a legal entity. Dr. Peruri is the sole shareholder of the Employer and the only participant covered by the Plan.[1,2]

3. The Property is a 1.33 acre vacant lot in Kendler's Country Place Subdivision in Lake Forest, Illinois. The Plan purchased the Property on November 20, 1986, from the American National Bank and Trust Company of Chicago, an unrelated party, for the sum of $110,000. The Trustees state that the Plan acquired the Property as an investment and that the Property has never been leased to, or used by, a disqualified person with respect to the Plan. In addition, neither Dr. Peruri, nor any related party, own any property which is adjacent to the Property.

4. The Property was appraised on May 25, 1988, by Donald A. Engel, M.A.I. (Mr. Engel), an independent real estate appraiser in Chicago, Illinois, as having a fair market value of $200,000. Mr. Engel states that the Property is located in the western section of Lake Forest, Illinois, in an area which is now zoned to permit the construction of high quality, single family residences. Mr. Engel notes that this area, which was recently primarily an agricultural area, is now undergoing steady commercial and residential development.

5. The Trustees state that the Plan currently has a large unrealized gain on its investment in the Property. However, the Property does not produce any current income and real estate taxes must be paid annually. In addition, improvements to the subdivision in which the Property is located could cause special assessments to be made to the Plan, as owner, which would deplete the Plan's assets. Construction and use of a single family dwelling is the only type of building or activity permitted on the Property. The Trustees have determined that it would not be economically prudent for the Plan to finance the construction of a permitted single family dwelling for rental to third parties.

6. The applicant states that benefit accruals under the Plan were "frozen" as of February 1, 1983. The applicant states further that the Plan will be terminated in the near future and the assets of the Plan will be distributed. Dr. Peruri would like to be able to receive his distribution from the Plan in cash. The Property represents approximately 39% of the Plan's total assets. In this regard, Dr. Peruri states that he has considered the option of taking a distribution in kind of the Property as part of his total distribution of the Plan's assets. However, Dr. Peruri states that he wants to "roll over" his entire distribution from the Plan either to another qualified plan or to an individual retirement account (IRA). Dr. Peruri represents that he has had difficulty finding a corporate trustee that is willing to hold the Property in either an IRA or another qualified plan.

7. The Trustees represent that it would be in the best interests of the Plan to sell the Property. The Trustees state that a sale of the Property would relieve the Plan of the ongoing obligation to pay real estate taxes on the Property and would enable the Plan to reinvest the cash proceeds from the sale in more liquid and diversified investments. The Trustees state further that a sale of the Property would eliminate the anticipated costs to the Plan of assessments for improvements in the subdivision in which the Property is located.

8. Dr. Peruri proposes to purchase the Property from the Plan for $200,000 in cash, in accordance with Mr. Engel's appraisal. The Trustees believe that the proposed transaction would be in the best interests of the Plan because it would eliminate the need for the Plan to find a willing buyer for the Property. In addition, the Plan would not incur any brokerage fees or other expenses with respect to the proposed sale. The applicant states that Mr. Engel's appraisal would be updated as of the date of the sale to ensure that the Plan receives the most current fair market value for the Property.

9. In summary, the applicant represents that the proposed transaction would satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale would be a one-time transaction for cash; (b) the Plan would receive an amount which would be no less than the fair market value of the Property, as established by an independent, qualified appraiser; (c) the Plan would not pay any brokerage commissions or other expenses with respect to the sale.

Notice to Interested Persons: Because Dr. Peruri is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of January, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 89–379 Filed 1–6–89; 8:45 am]

BILLING CODE 4510–29–M

[1] Because Dr. Peruri is the only participant in the Plan and the Employer is wholly-owned by Dr. Peruri, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NUCLEAR REGULATORY COMMISSION

Radiopharmacy Workshop; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned to meet with members of the nuclear medicine community to discuss items of mutual interest. *Date and time of meeting:* Wednesday, January 25, 1989, at 8:00 a.m. *Location:* Room 318, Crystal Plaza #5, (Crystal City); 2211 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Medical, Academic and Commercial Use Safety Branch 6H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3417.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to obtain information on the practice of radiopharmacy, its associated regulatory framework and other related matters as they arise.

Conduct of the Meeting

Dr. John H. Austin, Acting Chief, Medical, Academic and Commercial Use Safety Branch, U.S. Nuclear Regulatory Commission, will conduct the meeting. Dr. Austin will conduct the meeting in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public observation of the meeting:

1. At the meeting, questions may be asked only by participants, i.e., invitees and NRC staff.

2. Seating for the public will be on a first come-first served basis.

The meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), Executive Order 11769, and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated at Washington, DC, this 4th day of January, 1989.

For the Nuclear Regulatory Commission.

John H. Austin,

Acting Chief Medical, Academic and Commercial Use Safety Branch.

[FR Doc. 89–353 Filed 1–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Co. of Colorado; Fort St. Vrain Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Exemption from the requirements of certain portions of 10 CFR Parts 2, 70 and 73 for Public Service Company of Colorado (the licensee) for the Fort St. Vrain Nuclear Generating Station, located at the licensee's site in Weld County, Colorado.

Environmental Assessment

Identification of the Proposed Action

On November 10, 1988, the NRC published in the **Federal Register** a final rule amending certain portions of 10 CFR Parts 2, 70 and 73. These amendments concerned increased safeguards requirements for the four NRC licensed fuel facilities possessing formula amounts of strategic special nuclear material.

In issuing this rule, the Commission determined that it should not apply to Fort St. Vrain and an exemption should be granted to the amendments pursuant to 10 CFR 73.5.

Need for Proposed Action

The exemption is needed to implement the Commission's intent that Fort St. Vrain not have to meet the increased safeguards requirements of the rule.

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of the Fort St. Vrain licensed facility. In fact, the exemption

allows the facility operation to remain unchanged.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Actions

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 45447) and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Greeley Public Library, City Complex Building, Greeley, Colorado.

Dated at Rockville, Maryland this 30th day of December, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-351 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-48]

US Ecology, Inc.; Final Finding of No Significant Impact Regarding the Amendment in Its Entirety of Special Nuclear Material License 16-19204-01

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (NRC) is proposing to renew, pursuant to 10 CFR Part 70, the special nuclear material license (16-19204-01) which allows US Ecology Inc. to dispose of special nuclear material at its commercial low-level waste disposal facility on the Hanford Reservation near Richland, Washington.

(2) NRC Position

The staff has prepared an Environmental Assessment for the licensing action. Based on the Environmental Assessment, the staff does not plan to prepare an Environmental Impact Statement on the proposed action.

(3) Reasons for the Finding of No Significant Impact

The NRC staff of the Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards has reviewed the licensee's application for renewal of the special nuclear material license and has prepared Amendment 8 to NRC license No. 16-19204-01.

By means of reviews and analyses of material submitted by the licensee, the staff concludes that operations in accordance with the renewed license will result in no incremental adverse environmental impacts. This conclusion is documented in the Environmental Assessment for Renewal of Special Nuclear Material Disposal License at US Ecology, Inc.'s Hanford Facility, dated February 8, 1987, as supplemented November 18, 1988. In the assessment, the staff has evaluated the alternatives of 1) denial of the renewal application, 2) renewal on the basis of the original renewal application, and 3) renewal on the basis of an upgraded application incorporating staff suggestions for improvement.

The staff has concluded that, because the renewal does not grant the licensee the authority to dispose of greater or more concentrated quantities of SNM than is the current practice and yet does impose greater restrictions on the licensee with respect to operations, monitoring and closure, there will be no degradation of the environment associated with the renewal. This conclusion is based on the following findings:

(a) The renewal will result in more rigorous operational standards for receipt and disposal of SNM waste.

(b) The renewal will result in more rigorous requirements for verifying and reporting waste contents.

(c) The renewal will result in increased environmental monitoring by the licensee.

(d) The renewal will result in the development of an emergency contingency plan.

(4) Related Reference Material

In addition to the Environmental Assessment, referenced herein, the following references relate to the renewal of NRC License No. 16-19204-01.

U.S. NRC staff, Safety Evaluation Report for Renewal of NRC License No. 16-19204-01, February 1985.

U.S. NRC Staff, Environmental Impact Appraisal for Renewal of the Special Nuclear Material Disposal License at the Nuclear Engineering Company's Hanford Facility, January 18, 1980.

U.S. Ecology, Inc., Facility Standards Manual, Richland Low-Level Radioactive Waste Disposal Facility, Rev. O, January 13, 1987.

US Ecology, Inc. Richland Operational Procedures No. 1-66, dates vary.

Documents are available for public inspection, and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room located at the Richland Public Library, Swift and Northgate Streets, Richland, Washington.

Dated at Rockville, Maryland, this 29th day of December 1988.

For the Nuclear Regulatory Commisson.

Paul H. Lohaus,

Chief, Operations Branch Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 89-352 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority; (Browns Ferry Nuclear Plant, Unit 2); Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Operating License No. DPR-52 which authorizes operation of Unit 2. This license provides, among other things, that Unit 2 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

Browns Ferry (BFN), Unit 2, is a boiling water reactor (BWR) at the licensee's site located near Decatur, Alabama.

II

By letter dated December 15, 1988, the licensee requested a temporary

exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 17 concerning electrical cable independence of electric power systems for BFN 2. As relevant to the licensee's request GDC 17 requires that " * * * The onsite electric power supplies, including the batteries, and the onsite electric distribution system, shall have sufficient independent, redundancy, and testability to perform their safety functions assuming a single failure * * *." The requested exemption would be temporary for Browns Ferry, Unit 2 and would permit movement of fuel back into the reactor vessel and hydrostatic testing. Compliance with GDC 17 will be achieved prior to Unit 2 restart.

III

During a recently completed program review of BFN electrical cable separation, TVA has concluded that electrical separation criteria as defined in GDC 17 have not been met in a number of instances in safety-related systems.

This review was initiated as a result of conditions identified by various other review programs (e.g., cable ampacity and drywell penetration modifications) being performed as part of the BFN restart effort. These conditions were first reported to the NRC in a Licensee Event Report dated October 22, 1988. By letter dated November 10, 1988 TVA committed to completing the discovery phase of the program and to correct the problems identified in support of fuel loading. By letter dated December 15, 1988 TVA stated that the first phase of the program identified approximately 250 discrepancies with GDC 17 electrical cable separation criteria for BFN. These discrepancies were evaluated for impact on systems required to be operational during fuel reload operations. TVA has determined that postulated electrical failures resulting from improper cable separation during refueling activities are highly improbable and do not pose an undue risk to the health and safety of the public. The licensee requested that fuel reload be permitted while TVA makes its best effort to complete all necessary work in the shortest time as reasonably possible without impacting plant safety.

BFN 2 has been shutdown for over four years. Consequently, the decay heat power output from the fuel is extremely low (i.e., less than 0.4 MW for the entire Unit 2 fuel pool) and the only fission product remaining in any significant quantity is Krypton 85 (Kr 85). During fuel reload and other activities leading to restart of the Unit 2 reactor, the following measures must be assured: (1) The fuel must be maintained cool, (2) the fuel must remain covered with sufficient water to ensure shielding for personnel on the refuel floor, and (3) in the event of fuel damage, the offsite and control room dose must be maintained within the guidelines established by 10 CFR 20.101 and 10 CFR 100.11.

The potential adverse effects due to the electrical cable separation discrepancies have been evaluated for credible events which would exist during reload and hydrostatic testing activities. The licensee has stated that based upon the analysis there are no common mode failures that could affect all of the cables with separation problems. Since the plant is shutdown with extremely low decay heat and with adequate cooling water in the fuel pool and reactor vessel, the potential for environmental extremes (i.e., harsh environments) from loss-of-coolant accidents (LOCA) and/or high energy line breaks is extremely low. Extensive fire related failures are not anticipated based on existing fire prevention/detection features and interim compensatory measures. These fire prevention/detection measures are either in place or to be implented by TVA before fuel reload. Raceways in the safety-related buildings are designed to survive seismic events without damage to required equipment; therefore, the potential for common mode failures from a seismic event is extremely low. The staff has also reviewed the potential for individual cable failure which could have an impact within the affected systems.

Due to the extremely low decay heat of the Unit 2 fuel, the time available for the plant staff to respond to transients is very long. Therefore, considering the low likelihood of an isolated electrical failure occurring because of improper cable separation, the diverse means and sources of water which the plant has to respond to the events (i.e., availability of RHR Service Water, Feedwater, and Control Rod Drive System Water) and the slow development of transients in the plant's current configuration, the licensee has concluded and the staff concurs that there is sufficient means to maintain the reactor core covered during fuel reload and during the time after reload until restart of Unit 2.

In the event that, during the time when the vessel head is removed and the cavity is flooded, active cooling for the water in the reactor vessel pool and/or spent fuel pool were lost (i.e., residual heat removal and fuel pool cooling systems), the licensee indicates it will take in excess of 40 days for the water to boil down to the TS limit for minimum shielding height (8½ feet) above the top of the fuel. Based on the guidance in Regulatory Guide 1.27, "Ultimate Heat Sink for Nuclear Power Plants," a period of 30 days is considered an adequate period of time to evaluate a situation of this nature (e.g., loss of cooling source) and to take corrective actions. Thus, the loss of active fuel pool cooling because of improper electrical cable separation does not represent a threat to nuclear safety.

To conservatively assess the potential impact on offsite doses, the consequences of a potential fuel handling accident concurrent with a failure to isolate secondary containment were evaluated by the licensee. The evaluation concluded that the site boundary and low population zone two hour doses are on the order of one hundred times lower than the limits specified in the BFN FSAR and NUREG-0800 and are thus on the order of one thousand times less than the 10 CFR 100.11 limits. A similar evaluation was conducted of the resulting control room operator dose consequences following a fuel handling accident. This analysis showed that the control room dose was on the order of 300 times lower than the 10 CFR 20.101 limits.

After fuel reload, the reactor vessel head will be installed in order to perform reactor vessel hydrostatic testing. This will involve pressurizing the reactor vessel and pressure boundary. During this test the control rods will remain inserted, and therefore, the reactor will not produce any power or increase fission product inventory. Following placement of the head on the vessel, the fuel in the vessel is isolated from the heat sink provided by the fuel pool. While in this configuration, the fuel in the vessel is cooled by the shutdown cooling mode of the Residual Heat Removal System. During hydrostatic testing, three potential accident scenarios were evaluated by the licensee: (1) Loss of active cooling to the water in the vessel, (2) inadvertent draining of the vessel, or (3) a LOCA during vessel hydrostatic testing.

Based upon a TVA/NRC telephone conference call, this evaluation determined that in the event of total core uncovery concurrent with loss of core cooling capability, it would take at least eight to ten hours before the fuel temperature would reach the point (2200°F) at which fuel damage is assumed to occur. Because of the extended time frame of this transient and since TVA will maintain required systems available for reactor water injection, core reflood for mitigating this postulated event can be accomplished in

a timely manner such that fuel damage and subsequent fission product release will be prevented. In addition, it will be TVA's operational philosophy during fuel load and restart that there will be as much equipment available as is possible to provide additional fuel cooling and/or water injection to the vessel.

The staff has reviewed the potential accident scenarios discussed above. We conclude that postulated electrical failures due to improper cable separation are highly improbable and do not pose undue risk to public health and safety.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12 this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

This exemption would provide BFN with only temporary relief from compliance with specific separation requirements of GDC 17 for those electrical cable separation discrepencies only recently identified by the BFN Electrical Separation Program. BFN is making good faith efforts to comply with the regulations and has implemented a two phase program to: (1) Ensure that the electrical cable configuration meets the BFN separation criteria committed to by the licensee in the BFN FSAR and evaluate any identified discrepancies for their impact on systems required to be operable for Unit 2 fuel reload, and (2) complete the program prior to Unit 2 restart. Completing the subject modifications prior to restart will bring BFN, Unit 2 (and common) systems in compliance with GDC 17.

Accordingly, the Commission hereby temporarily grants the exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion 17. In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.32 (December 29, 1988, 53 FR 52880), it is determined that the intended action will have no significant impact on the environment.

A copy of the licensee's request for exemption dated December 15, 1988, and the Safety Evaluation dated December 30, 1988, related to this action, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama 35611.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 89-354 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-48]

US Ecology, Inc.; License Issuance

AGENCY: Nuclear Regulatory Commission.

ACTION: License Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has renewed, pursuant to 10 CFR Part 70, license No. 16-19204-01 issued to US Ecology, Inc. of Louisville, Kentucky, for disposal of special nuclear material (SNM) at US Ecology's low-level waste disposal facility located near Richland, Washington. The amended license incorporates more stringent conditions on facility operations, waste verification and reporting, environmental monitoring, and emergency planning. The NRC Staff has determined that issuance of this amended license will have no significant adverse impacts on health, safety, or the natural environment.

FOR FURTHER INFORMATION CONTACT: James A. Shaffner, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3450.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has renewed license No. 16-19204-01 issued to US Ecology, Inc. for disposal of special nuclear material (SNM) at US Ecology's low-level waste disposal facility located near Richland, Washington.

The renewed license supersedes the previous license authorizing disposal activities at US Ecology's facility in Richland, Washington. The amended SNM license incorporates, to the extent practicable, operations and monitoring requirements of 10 CFR Part 61. More stringent waste inspection requirements at the point of disposal are being imposed. Environmental monitoring requirements have been upgraded and action levels have been reduced. A site emergency contingency plan has been required of the licensee.

The State of Washington, Department of Social and Health Services (DSHS), has issued a renewed State license for disposal of source and byproduct material under the regulatory purview of the Department. The amendments to both licenses were closely coordinated such that the NRC and State licenses complement each other. Conditions of the NRC and State licenses have been made as consistent as possible to implement the new requirements and to minimize confusion on the part of waste generators, brokers and shippers. Conditions deemed to be duplicative of the regulatory responsibility of the State of Washington that are enforced through its license for source and byproduct material disposal have been eliminated from the NRC SNM License.

The NRC staff has prepared both a Safety Evaluation Report (SER) and an Environmental Assessment (EA) for this renewal. These documents have recently been supplemented to reflect current staff approaches for regulation of SNM disposal at LLW sites otherwise regulated by Agreement States. The documents, as supplemented, support the conclusion that issuance of the renewed license will have no significant adverse impacts on health, safety or the natural environment. Accordingly, a Finding of No Significant Impact (FONSI) was issued under separate cover.

Copies of the SER, as supplemented, EA, as supplemented, and all other documents relevant to the license renewal are available for public inspection at the Commission's Public Document Room, 2120 L Street, Lower Level, Washington, DC and at the Local Public Document Room located at the Richland Public Library, Swift and Northgate Streets, Richland, Washington.

The NRC finds that the issuance of the license complies with the requirements of the Atomic Energy Act of 1954, as amended, and the requirements of Title 10, Chapter 1, Code of Federal Regulations.

Dated at Rockville, Maryland, this 29th day of December, 1988.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-355 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, January 25, 1989
Wednesday, February 1, 1989
Wednesday, February 8, 1989
Wednesday, February 15, 1989
Wednesday, February 22, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisons of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

December 22, 1988.

[FR Doc. 89-371 Filed 1-6-89; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP)

Generalized System of Preferences (GSP), and Review and solicitation of Public Comment: United States International Trade Commission Public Report Assessing Economic Impact of Proposed Modifications of the List of Articles Eligible for Duty-Free Treatment under the U.S. Generalized System of Preferences (GSP); 1988 Annual Review; and Timex Petition. Change in Date for Submission of Post-hearing and Rebuttal Briefs

As indicated in a previous notice of July 20 (FR DOC 88-16303), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the United States International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the 1988 Annual Review of the Generalized System of Preferences. The report is available from the USITC by calling Dennis Rudy at the Office of Industries at (202) 252-1461 (Room #501c). The USITC is located at 500 E Street NW., in Washington, DC. The report is also available for review by appointment at the GSP Information Center, Office of the USTR in Washington, DC; the GSP Information Center can be contacted at (202) 395-6971.

All comments concerning the ITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street NW., Room 517, Washington, DC 20506. Comments must be received no later than 5:00 p.m. on Monday, January 23, 1989.

Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, 20 copies of a nonconfidential version of the submission along with 12 copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly maked at the top and bottom of each and every page (either "public version" or "non-confidential").

Questions concerning the comment period or any other aspect of the GSP program may be directed to the GSP Information Center at (202) 395-6971.

Notice is hereby given of a change in deadlines for the submission of post-hearing and rebuttal briefs regarding the Timex petition to add watches to the list of GSP eligible products. The new dates will be as follows:

Post-hearing briefs—5:00 p.m., Tuesday, March 28, 1989

Rebuttal Briefs—5:00 p.m., Tuesday, April 11, 1989.

Briefs or statements will be accepted if submitted in 20 copies, in English, no lated than 5:00 p.m. on the designated days.

Federal Register notices regarding these submissions have been published on two occasions. The document numbers and the dates of these notices are as follows: FR Doc. 88-23939 (Oct. 18) and FR Doc. 88-23176 (Oct. 7).

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-316 Filed 1-6-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26413; File Nos. SR-Amex-88-35; SR-CBOE-88-26; SR-Phlx-88-43; SR-PSE-88-29]

Self-Regulatory Organizations; American Stock Exchange, Inc, et al.; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Changes Relating to the Extension of the Near-Term Options Expiration Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act") [1] and Rule 19b-4 [2] thereunder, notice is hereby given that on December 27, 1988, December 21, 1988, and December 19, 1988, respectively, the American ("Amex"), Philadelphia ("Phlx"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE") (collectively, the "Exchanges"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") proposed ruled changes extending the Exchanges' pilot programs providing for four expiration months for stock options, including two near-term months, until April 30, 1989. The Exchanges also request permanent approval of the pilot programs prior to their expiration in April. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

In 1985 the options exchanges implemented stock option pilot programs for certain January cycle stock options. Under the terms of the pilots, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot programs have been extended and expanded to all equity options on all three expiration cycles.

The purpose of the pilot programs is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the programs since their inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchanges have found the pilots have improved investors' interest in trading such options.

At the request of Commission staff, the Exchanges propose to continue the pilot programs until April 30, 1989, and have requested accelerated effectiveness pursuant to section 19(b)(2) of the Act so that the pilot programs can continue without interruption.[3] The extension will give the Exchanges additional time to compile data which the Commission has requested in connection with the Exchanges' monitoring of the program. In addition, the extension will give the Commission the time to analyze this data before acting on the Exchanges' requests for permanent approval.

The Exchanges believe the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges because they continue a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule changes will benefit public customers by continuing pilot programs designed to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot programs can continue without interruption. In addition, the Commission previously solicited comment on these near-term expiration pilot programs and has not received any negative comments on their operation. Moreover, the current pilot programs have operated effectively and generally have been well received. Finally, the Commission's approval is limited until April 30, 1989, or until the Commission acts on the Exchanges' request for permanent approval of the pilot programs.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 30, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule changes are partially approved until April 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: December 30, 1988

Jonathan G. Katz,

Secretary.

[FR Doc. 89-388 Filed 1-6-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The New York Stock Exchange ("NYSE") previously requested and received Commission approval of an extension to the NYSE near-term options expiration pilot program. Securities Exchange Act Release No. 26369 (December 16, 1988), 53 FR 51941 (December 23, 1988).

[4] 15 U.S.C. 78s(b) (1982).

[5] 17 CFR 200.30-3(a)(12) (1986).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of National Executive Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89-1-2, order to show cause.

SUMMARY: The Department of Transportation is proposing to find National Executive Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: January 3, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-344 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46034]

Office of Hearings; U.S.-Australia Service Proceeding; Assignment of Proceeding

Served January 4, 1989.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-345 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46034]

Office of Hearings; U.S.-Australia Service Proceeding; Prehearing Conference

Served January 4, 1989.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 19, 1989, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, January 4, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 89-346 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Availability of the Priority System for Selecting Projects for Grants to Preserve and Enhance Capacity at Airports

AGENCY: Federal aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of the Airport Improvement Program priority system for selecting projects for grants to preserve and enhance airport capacity. Section 507(c) of the Airport and Airway Improvement Act of 1982 (AAIA), as amended, authorizes the Secretary to make grants from discretionary funds for the purpose of preserving and enhancing airport capacity. In selecting projects for these grants, consideration is to be given to their effect on overall national air transportation system capacity, project benefit and cost, and the financial commitment of the airport operator or other non-Federal funding sources to preserve or enhance airport capacity. Because the demand for these discretionary funds exceeds the amount available, the Federal Aviation Administration (FAA) is unable to fund all of those capacity projects for which airport sponsors wish to obtain grants. The FAA has developed a priority system to help make decisions on the relative priority of such capacity projects proposed during the fiscal year. Under this system, projects are favored which best preserve and enhance capacity in the national system of airports.

The FAA is making this document available for review by the aviation public. Interested parties may call, write, or visit the following office to obtain the document: Office of Airport Planning and Programming, Grants-in-Aid Division, APP-500 (Room 620), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-8825 contact: Richard L. Angle.

Issued in Washington, DC on December 5, 1988

Paul L. Galis,

Director, Office of Planning and Programming, APP-1.

[FR Doc. 89-326 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

[File No. AC 21.17-2]

Advisory Circular; Type Certification—Fixed-Wing Gliders (Sailplanes), Including Self-Launching (Powered) Gliders

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Proposed advisory circular; request for comments.

SUMMARY: Proposed Advisory Circular (AC) 21.17-2 will replace AC 21.23-1 titled Type Certification—Fixed-Wing Gliders (Sailplanes). AC 21.23-1, dated January 12, 1981, will be cancelled. AC 21.17-2 described three acceptable criteria, but not the only criteria, for the type certification of fixed-wing gliders (sailplanes) including self-launching (powered) gliders, that may be used by an applicant in showing compliance with new § 21.17(b) of the Federal Aviation Regulations (FAR 21).

DATE: Comments must be received on or before February 8, 1989.

ADDRESS: Comments on proposed AC 21.17-2 may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Room 225, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110, Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing Advisory Circular 21.17-2.

Background

Federal Aviation Regulations (FAR) Part 21 was amended effective April 13, 1987, to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of subchapter C of the FAR. Airworthiness standards for these special classes of aircraft are designated in new FAR 21.17(b). Proposed AC 21.17-2 contains a comprehensive list of acceptable criteria, but not the only means, for the type certification of gliders. This AC also provides procedures for other persons to develop and obtain FAA approval for their own design criteria. In addition, procedures and additional criteria necessary to obtain a U.S. type certification are provided.

Section 21.23 of FAR Part 21 was removed and the glider requirements incorporated into § 21.17(b). Therefore, the essence of AC 21.23-1 is included in proposed AC 21.17-2

Related FAR

Section 21.5—Airplane or Rotorcraft Flight Manual.

Section 21.17—Designation of applicable regulations.

Part 23—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.

Part 33—Airworthiness Standards: Aircraft Engines.

Part 35—Airworthiness Standards: Propellers.

Part 45, Subpart C—Nationality and Registration Marks.

Section 91.31—Civil aircraft flight manual, marking and placard requirements.

Section 91.33—Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

How To Obtain Copies

A copy of proposed AC 21.17-2, Type Certification—Fixed Wing Gliders (Sailplanes) Including Self-Launching (Powered) Gliders, may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Monoger, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 89-324 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

Proposed Special Purpose Operation; Target Towing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special purpose operation—target towing; request for comments.

SUMMARY: Tracor Flight Systems, Inc. (TFSI) of Mojave, California, has applied to the FAA for a restricted category type certificate under Federal Aviation Regulations (FAR) 21.25(a)(2) for the USAF F-100-F fighter built by North American Aviation. The F-100-F would be modified for towing targets in restricted operations areas. The proposed special purpose operation would be "Target Towing" under FAR § 21.25(b)(7). Since target towing is not an approved special purpose operation, the FAA is requesting public comments before making its final determination that the new special purpose operation is in the public interest and safety would not be compromised.

DATE: Comments on this notice must be received on or before February 8, 1989.

ADDRESS: Comments may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Room 335, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110. Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the address specified above. All communication received on or before the closing date specified above will be considered by the Administrator before approving the new special purpose operation.

Background

On August 17, 1988, Tracor Flight Systems, Inc. (TFSI) applied to the FAA for a restricted category type certificate for the United States Air Force (USAF) F-100-F built by North American Aviation. The special purpose operation will be towing targets for the military services. The type certification basis for this project is Federal Aviation Regulations (FAR) §§ 21.25(a), 21.25(a)(2) and 21.25(b)(7). The special purpose operation is to be established under the provisions of § 21.25(b)(7).

The USAF F-100-F two-seat trainer is eligible for a restricted category type certificate under FAR § 21.25(a)(2) because it is a type of airplane that has been manufactured in accordance with the requirements of, and accepted for use by, an Armed Force of the United States and has been later modified for a special purpose. TFSI has modified the F-100-F by installing a target towing system to be used during the special purpose operations.

TFSI has three F-100-F airplanes to be modified for towing targets. The target towing operation would be conducted in Military Operations Area gunnery ranges where public safety would not be compromised. The target and towing system is to be stowed during takeoff and en route to the restricted area. When in the proper area, the target would be deployed by unreeling the cable to which it is attached. After the gunnery practice is completed, the target would be jettisoned by cutting the towing cable while still in restricted airspace; therefore, there would be no hazard to the public.

Tracor contends that the special purpose operation of towing targets is clearly in the best interest of the U.S. public for these reasons:

1. Tracor Flight Systems, Inc. is a major employer in the Antelope Valley. This project would significantly enhance the industrial activity in the Mojave area, thus contributing to the economic health of the Antelope Valley.

2. The target towing operation furnishes an essential ingredient of the combat readiness of our military air arm and the counterparts within the armed forces of our NATO allies. Without such operations, national security would surely suffer.

3. The awarding of a contract of a U.S. firm, in this case TFSI, has a positive effect on the international balance of payments.

Related FAR

Section 21.25, Issue of type certificate; Restricted category aircraft.

Section 21.27, Issue of type certificate, surplus aircraft of the Armed Forces.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-323 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

Crewmember Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C116 prescribes the minimum performance standards that Crewmember Protective Breathing Equipment must meet to be identified with the marking "TSO-C116."

DATE: Comments must identify the TSO file number and be received on or before March 30, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C116, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO-C116 may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-325 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in cooperation with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to report the results of the 15th session of the United Nation's Committee of Experts on the Transport of Dangerous Goods.

DATE: Janaury 27, 1989, 9:30 a.m.

ADDRESS: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: Topics to be covered at the meeting include: (1) Review of the decisions taken by the Committee of Experts on the Transport of Dangerous Goods at its 15th Session; (2) discussion of items of interest on the Committee's work plan for the next biennium; and (3) open discussion on general topics of interest for the next meeting of the International Civil Aviation Organization's Dangerous Goods Panel.

Issued in Washington, DC on January 4, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-384 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Mint

OMB Number: New.
Form Number: MF 1006.
Type of Review: New Collection.
Title: Quantitative Research/Buyers of 1989 American Eagle Proof Coins.
Description: This information collection will provide the U.S. Mint with valuable data on customer needs and behavior, and will aid in the evaluation of proposed marketing strategies and creative executions, as well as the assessment of general advertising effectiveness. The U.S. Mint requires this collection as part of a direct marketing program for 1989 American Eagle Proof Coins.
Respondents: Individuals or households.
Estimated Number of Respondents: 90.
Extimated Burden Hours Per Response: 2 hours.
Frequency of Response: One time only.
Estimated Total Reporting Burden: 180 hours.
Clearance Officer: Robert Parker, (202) 376-0557, United States Mint, Room 639, 633 3rd Street NW., Washington, DC 20220.
OMB Reviewer: Milo Suderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-380 Filed 1-6-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 4, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0195.
Form Number: 5213.
Type of Review: Extension.
Title: Election to Postpone Determination as to Whether the Presumption That an Activity is Engaged in for Profit Applies.
Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 10,730.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 7 minutes
Learning about the law or the form, 5 minutes
Preparing the form, 10 minutes
Copying, assembling, and sending the

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form to IRS, 20 minutes
Estimated Total Recordkeeping/ Reporting Burden: 7,511 hours.
OMB Number: 1545–0534.
Form Number: 5303.
Type of Review: Revision.
Title: Application for Determination for Collectively-Bargained Plan.
Description: The IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.
Respondents: State or local governments, Businesses or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 23 hours 41 minutes
Learning about the law or the form, 2 hours 22 minutes
Preparing the form, 6 hours 35 minutes
Copying, assembling, and sending the form to IRS, 1 hour 4 minutes
Estimated Total Recordkeeping/ Reporting Burden: 84,250 hours.
OMB Number: 1545–0732.
Form Number: None.
Type of Review: Extension.
Title: Credit for Increasing Research Activity.
Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by the Tax Reform Act of 1984 and section 30 before change by the Tax Reform Act of 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.
Respondents: Individuals, or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–381 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

Advisory Committee for the Preservation of the Treasury Building; Renewal

The Department of the Treasury, pursuant to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, as amended, and with approval of the Secretary of the Treasury, announces the renewal of the Charter of the Advisory Committee for the Preservation of the Treasury Building.

The primary purpose of the committee is to consult with and advise the Secretary of the Treasury and his staff upon request regarding various rehabilitation projects in the Main Treasury Building. The committee will also undertake active solicitation to raise funds as well as to encourage donors to contribute works of art and furnishings of historic importance to the Department of the Treasury.

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Department of the Treasury has renewed the Charter of Advisory Committee for the Preservation of the Treasury Building for a period of two years beginning January 3, 1989.

Dated: January 3, 1989.

Jill E. Kent,
Assistant Secretary of the Treasury (Management).
[FR Doc. 89–382 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC, on January 31 and February 1, 1989 of the following debt management advisory committee.

Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on January 31 and the preparation of a written report to the Secretary of the Treasury on February 1, 1989.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9) (A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Date: January 4, 1989.

David W. Mullins, Jr.,
Acting Assistant Secretary (Domestic Finance).
[FR Doc. 89–289 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Fort Bragg, Camp Le Jeune, North Carolina, Santo Domingo, Dominican Republic, and Tegucigalpa, Honduras on January 12–15.

The Commission will consult with U.S. Mission and U.S. military personnel on public diplomacy policies and programs and U.S. psychological operations activities.

Please call Gloria Kalamets, (202) 485–2468 for further information.

Dated: January 3, 1989.

Ledra L. Dildy,
Staff Assistant, Federal Register Liaison.
[FR Doc. 89–383 Filed 1–6–89; 8:45 am]
BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document list the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required to asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 8, 1989.

Dated: December 29, 1988.

By direction of the Administrator.

Frank E. Lalley,
Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Benefits under the Provisions of section 156, Pub. L. 97–377.
3. VA Form 21–8924.
4. This form is used by the VA to identify claimants and to determine their eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 9,000 responses.
8. 3,000 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Application for Cash Surrender of Policy Loan.
3. VA Form 29–1546.
4. This form is used by the insured to establish eligibility to obtain a loan or cash surrender an existing policy.
5. On occasion.
6. Individuals or households.
7. 29,636 responses.
8. 4,939 hours.
9. Not applicable.

[FR Doc. 89–287 Filed 1–6–89; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

January 4, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552B):

TIME AND PLACE: 10 a.m., January 11, 1989.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

839th Meeting—January 11, 1989, Regular Meeting (10 a.m.)

CAP-1.
Docket No. UL87-30-002, Kirkway Electric Corporation
CAP-2.
Docket No. UL88-24-002, City of Martinsville, Virginia
CAP-3.
Project No. 8714-001, Pennichuck Water Works, Inc.
CAP-4.
Project No. 8121-003, Warren B. Nelson
CAP-5.
Project Nos. 2911-011 and 3015-005, Alaska Power Authority
CAP-6.
Project No. 10655-001, Manter Corporation
CAP-7.
Docket No. EL88-29-001, Larry M. Taylor
CAP-8.
Project No. 5308-005, City of Beaverton, Michigan
CAP-9.
Project No. 943-002 and Docket No. E-9569-000, Public Utility District No. 1 of Chelan County, Washington
CAP-10.
Docket No. EL80-38-003 and Project No. 405-009, Philadelphia Electric Power Company and Susquehenna Power Company
CAP-11.
Project No. 67-017, Southern California Edison Company
CAP-12.
Project No. 2484-001, Village of Gresham, Wisconsin
CAP-13.
Docket Nos. ER87-72-003, ER87-73-002, ER89-73-000 and ER89-74-000, Orange and Rockland Utilities, Inc.
CAP-14.
Docket No. ER89-49-000, Pacific Gas and Electric Company
CAP-15.
Docket No. ER88-432-000, Tucson Electric Power Company
CAP-16.
Docket No. ER89-66-000, Canal Electric Company
CAP-17.
Docket No. ER84-560-007, Union Electric Company
CAP-18.
Docket No. ER88-619-001, Gulf States Utilities Company
CAP-19.
Docket No. ER82-774-010, Nantahala Power & Light Company and Tapoco, Inc.
CAP-20.
Docket Nos. ER88-304-002, 003, ER88-305-001 and 002, Niagara Mohawk Power Corporation
CAP-21.
Docket No. EL83-24-006, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP-22.
ER81-177-008, Southern California Edison Company
CAP-23.
Omitted
CAP-24.
Docket No. EL89-2-000, City of Piqua, Ohio v. Dayton Power and Light Company
CAP-25.
Docket No. QF88-507-000, U.S. Army Corps of Engineers

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA87-3-000, Central Vermont Public Service Corporation

Consent Gas Agenda

CAG-1.
Docket No. RP88-203-003, Panhandle Eastern Pipe Line Company
CAG-2.
Docket Nos. RP89-4-002, 001 and RP88-228-006, Tennessee Pipe Line Company
CAG-3.
Docket Nos. RP81-85-003, RP83-93-019 and FA85-01-002, Trunkline LNG Company and Gas Company
CAG-4.
Docket Nos. RP89-09-001 and RP88-241-003, Panhandle Eastern Pipe Line Company
CAG-5.
Docket Nos. RP89-10-001 and RP88-240-003, Panhandle Eastern Pipe Line Company
CAG-6.
Docket No. RP88-228-005, Tennessee Gas Pipeline Company
CAG-7.
Docket Nos. RP85-122-013 and RP87-30-019, Colorado Interstate Gas Company
CAG-8.
Docket No. RP86-35-013, Great Lakes Gas Transmission Company
CAG-9.
Docket Nos. RP88-217-007 and TA88-1-22-005, CNG Transmission Corporation
CAG-10.
Docket No. RP84-34-002, Midwestern Gas Transmission Company
CAG-11.
Docket Nos. RP88-27-009 and RP88-264-001, United Gas Pipeline Company
Docket No. CP87-524-002, Texas Gas Transmission Corporation
CAG-12.
Docket Nos. RP88-263-002 and RP88-92-006, United Gas Pipe Line Company
CAG-13.
Docket No. RP85-148-008, Transcontinental Gas Pipe Line Corporation
Docket No. RP85-170-005, Texas Eastern Transmission Corporation
Docket No. RP85-181-003, Texas Gas Transmission Corporation
Docket No. RP85-202-003, Trunkline Gas Company
Docket No. RP85-203-004, Panhandle Eastern Pipe Line Company
CAG-14.
Docket Nos. RP88-257-002, RP88-181-005 and RP86-94-012, Sea Robin Pipeline Company
CAG-15.
Docket No. RP88-106-002, Northern Natural Gas Company, Division of Enron Corp.
CAG-16.
Docket Nos. RP89-1-004, Northwest Pipeline Corporation
CAG-17.
Docket Nos. RP86-63-012, RP86-114-007 and RP88-17-019, Southern Natural Gas Company
CAG-18.
Docket No. RP88-45-010, Arkla Energy Resources, a division of Arkla, Inc.
CAG-19.
Docket No. RP86-45-020, El Paso Natural Gas Company
CAG-20.
Docket No. RP88-205-000, Alabama-Tennessee Natural Gas Company
CAG-21.
Docket Nos. RP88-68-008 and RP87-7-044, Transcontinental Gas Pipe Line Corporation
CAG-22.
Docket No. TQ89-1-46-002, Kentucky West Virginia Gas Company

CAG-23.
Docket No. TA89-1-41-003, Paiute Pipeline Company
CAG-24.
Docket Nos. RP88-217-002, TA88-1-22-002 and TA88-1-22-003, CNG Transmission Corporation
CAG-25.
Docket No. RP88-47-014, Northwest Pipeline Corporation
CAG-26.
Docket No. RP89-32-000, Florida Gas Transmission Company
CAG-27.
Docket Nos. TM89-1-1-000 and RP88-205-001, Alabama Tennessee Natural Gas Company
CAG-28.
Docket No. RP89-45-000, ANR Pipeline Company
CAG-29.
Docket Nos. TA89-1-35-000 and 001, West Texas Gas Inc.
CAG-30.
Docket No. RP88-242-001, Granite State Gas Transmission, Inc.
CAG-31.
Docket Nos. RP80-80-008, RP88-192-001 and RP88-223-003, Texas Eastern Transmission Corporation
CAG-32.
Docket Nos. TQ89-1-29-000 and TA89-1-29-000, Transcontinental Gas Pipe Line Corporation
CAG-33.
Docket Nos. RP88-80-011 and RP88-251-002, Texas Eastern Transmission Corporation
CAG-34.
Docket Nos. RP85-177-056, CP88-136-001 and RP88-67-011, Texas Eastern Transmission Corporation
CAG-35.
Docket Nos. ST88-5348-000 and ST83-297-000, Tejas Gas Corporation
CAG-36.
Docket Nos. RP88-45-009 and RP88-46-002, Arkla Energy Resources, a division of Arkla, Inc.
CAG-37.
Docket Nos. ST88-2553-000 and ST88-3191-000, Wintershall Pipeline Corporation
CAG-38.
Docket No. ST88-1898-000, Wintershall Pipeline Corporation
CAG-39.
Docket Nos. ST88-3342-000 and ST88-4552-000, Wintershall Pipeline Corporation
CAG-40.
Docket No. CI88-639-001, Amoco Production Company
CAG-41.
Docket No. CI88-473-000, Southland Royalty Company
CAG-42.
Docket No. CI89-104-000, Mobil Oil Exploration & Producing Southeast, Inc.
CAG-43.
Docket No. CI85-513-009, Tenngasco Gas Supply Company, *et al.* v. Southland Royalty Company, *et al.*
Docket No. CI88-605-000, People of the State of California and the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, Southern California Gas Company and Southwest Gas Corporation v. El Paso Natural Gas Company and Odessa Natural Gasoline Company
CAG-44.
Docket Nos. CP88-490-001 and CP88-548-001, Panhandle Eastern Pipe Line Company
CAG-45.
Docket No. CP88-332-001, El Paso Natural Gas Company
CAG-46.
Docket No. CP88-700-001, Windard Energy and Marketing Company and ARCO Oil and Gas Company
CAG-47.
Docket No. CP87-451-019, Northeast U.S. Pipeline Projects
Docket Nos. CP88-180-001, CP88-181-002 and CP88-185-001, Penn East CDS
CAG-48.
Docket Nos. CP87-479-008, 009, CP87-480-005 and 006, Wyoming-California Pipeline Company
CAG-49.
Docket No. CP87-524-003, Texas Gas Transmission Corporation
CAG-50.
Docket Nos. CP86-725-001 and 002, United Gas Pipe Line Company and Trunkline Gas Company
CAG-51.
Docket Nos. CP88-307-001 and 002, Great Lakes Gas Transmission Company
CAG-52.
Docket Nos. CP86-636-004, CP86-735-002, CP87-10-002, CP87-66-002, CP87-84-002, CP87-21-003, CP87-19-001 and CP88-276-001, Pacific Gas Transmission Company
CAG-53.
Docket No. CP84-348-006, Mississippi River Transmission Corporation
CAG-54.
Docket No. CP87-451-017, Northeast U.S. Pipeline Projects
Docket No. CP88-194-000, National Fuel Gas Supply Corporation
Docket No. CP89-7-000 (Superseding Docket No. CP88-177-000), Transcontinental Gas Pipe Line Corporation
Docket No. CP88-171-000, Tennessee Gas Pipeline Company
Docket No. CP88-195-000, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP88-186-000, CP88-187-000 and CP88-188-000, Algonquin Gas Transmission Company
Docket No. CP88-183-000, PennEast Gas Services Company and CNG Transmission Corporation
CAG-55.
Docket No. CP89-3-000, Panhandle Eastern Pipe Line Company
CAG-56.
Docket No. CP88-416-000, Southern Natural Gas Company
CAG-57.
Docket Nos. CP87-205-000 and 001, Texas Gas Transmission Corporation
CAG-58.
Docket No. CP88-586-000, ANR Pipeline Company
CAG-59.
Docket No. CP88-28-000, Nora Transmission Company
CAG-60.
Docket Nos. CP87-57-004 CP87-166-004, CP87-386-005, CP87-560-000, CP88-242-000, 002 and CP88-245-000 (Not Consolidated), Florida Gas Transmission Company
CAG-61.
Docket No. CP84-31-004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG-62.
Docket No. CP87-130-001, Tennessee Gas Pipeline Company
CAG-63.
Docket No. CP88-699-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-64.
Docket No. TA89-1-45-001, Inter-City Minnesota Pipelines, Ltd., Inc.
CAG-65.
Docket Nos. TF89-2-51-000 and TQ89-2-51-001, Great Lakes Gas Transmission Company

I. Licensed Project Matters

P-1.
Commission's Procedures Under Section 10(j) of the Federal Power Act

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-785-001, ER86-387-001 and ER86-526-001, Wisconsin Electric Power Company. Opinion and Order on initial decision concerning service to Wisconsin Public Power, Inc. System

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved

I. Pipeline Rate Matters

RP-1.
Reserved

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP88-6-001 and RP88-8-007, United Gas Pipe Line Company. Order ruling on experimental capacity brokering proposal.
CP-2.
Docket No. CP87-451-016, Northeast U.S Pipeline Projects. Order ruling on discreteness of additional northeast projects.
CP-3.
Docket Nos. CP85-437-000 and 003, Mojave Pipeline Company
Docket Nos. CP85-552-000 and 002, Kern River Gas Transmission Company
Docket Nos. CP85-625-000 and 001, Northwest Pipeline Corporation

Docket Nos. CP86-197-000, 001, 002, and 003, El Paso Natural Gas Company
Docket Nos. CP86-212-000 and 001, Transwestern Pipeline Company
Docket Nos. CP87-479-001 and CP87-480-000, Wyoming-California Pipeline Company. Order on review of initial decision and determination of adequacy of supplement to Final Environmental Impact Statement.

Lois D. Cashell,

Secretary.

[FR Doc. 89-439 Filed 1-5-89; 3:26 pm]

BILLING CODE 6717-01-M

FEDERAL TRADE COMMISSION

TIME AND PLACE: 10:00 a.m., Wednesday, January 4, 1989.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Further Consideration of Budget Situation.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326-2179. Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 89-418 Filed 1-5-89; 12:21 pm]

BILLING CODE 6750-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, January 12, and 13, 1989.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW. ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA (TENTATIVE):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-seventh meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: January 5, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-397 Filed 1-5-89; 10:35 am]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59858; FRL-3488-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-28328 beginning on page 49787 in the issue of Friday, December 9, 1988, make the following correction:

On page 49788, in the second column, under "**Y 89-31**", in the third line, *Use/Import*" should read "*Use/Production*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-13; A-23217]

Exchange of Public and Private Mineral Estates in La Paz, Mohave, and Yavapai Counties, AZ

Correction

In notice document 88-29420 beginning on page 51591 in the issue of Thursday, December 22, 1988, make the following corrections:

1. On page 51592, in the second column, in the second line, "NE¼W¼" should read "NE¼SW¼".

2. On page 51593, in the third column, under T. 14 N., R. 12 W., in the second line, "N½W¼" should read "N½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Moratorium on Importation of Raw and Worked Ivory From CITES Nonparty Producing and Intermediary Countries

Correction

In notice document 88-29529 beginning on page 52242 in the issue of Tuesday, December 27, 1988, make the following correction:

On page 52243, in the first column, in the first column of the table, the fourth entry from the bottom should read "*Gabon".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Correction

In notice document 88-25642 beginning on page 44957 in the issue of Monday, November 7, 1988, make the following correction:

On page 44958, in the first column, immediately below the first indented block of text, insert:

Extension

Bureau of Labor Statistics

U.S. Import Product Information

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 3

Diseases Subject to Presumptive Service Connection, and Payment of the Special Allowance

Correction

In proposed rule document 88-28928 beginning on page 50547 in the issue of Friday, December 16, 1988, make the following correction:

§ 3.309 [Corrected]

On page 50550, in the first column, in § 3.309(d)(4)(v)(I), in the second and third lines, "June 20, 1952" should read "June 20, 1953".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

Per Diem Rates for Eligible Veterans in State Homes

Correction

In notice document 88-28908 appearing on page 50620 in the issue of Friday, December 16, 1988, make the following correction:

In the 3rd column, in the 11th line, "$8.80" should read "$8.70".

BILLING CODE 1505-01-D

federal register

Monday
January 9, 1989

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

Supportive Housing Demonstration Program; Notice of Changes to Final Rule and Notice of Funds Availability and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. N-89-1903; FR 2581]

Supportive Housing Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of changes to final rule and notice of funds availability.

SUMMARY: Title IV, Subtitle C, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) (McKinney Act) authorizes the Supportive Housing Demonstration program. The program makes assistance available for projects providing housing and supportive services for homeless persons in the forms of transitional housing to facilitate the movement of the homeless to independent living and permanent housing to assist handicapped homeless persons to live more independent lives. On June 24, 1988, HUD published the final rule governing the Supportive Housing Demonstration program (53 FR 23898). The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 Amendments Act) made several amendments to the program. This Notice announces the changes to the program as a result of the 1988 Amendments Act and solicits public comments on the changes. The June 24, 1988 final rule, as amended by this Notice, will govern the program until a revised final rule is published. This Notice also announces the availability of $89.6 million in funds for transitional housing assistance and $15 million in funds for permanent housing assistance.

DATE: *Effective Date:* January 9, 1989.

Comments Due: March 27, 1989. Applications due by March 30, 1989 (transitional housing) and April 27, 1989 (permanent housing).

ADDRESS: Interested persons are invited to submit comments regarding the changes to the regulations announced in this Notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address. Copies of the final rule described in the Summary are available at the above address upon request.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-9075. Hearing or speech-impaired individuals may call HUD's TDD number (202) 755-6490. (These phone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Supportive Housing Demonstration Program were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were approved on July 1, 1988 and assigned OMB control number 2502-0361. As a result of changes to the program made by the 1988 Amendments Act, revised information collection requirements, which are described in this Notice, were submitted to OMB for review and approved on December 30, 1988 under the same control number. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The McKinney Act authorized the Supportive Housing Demonstration program. The program is designed to develop innovative approaches to providing housing and supportive services to the homeless. It consists of two components: (1) Transitional housing to facilitate the movement of homeless persons to independent living (transitional housing) and (2) permanent housing to assist handicapped homeless persons to live more independent lives (permanent housing).

HUD published a final rule governing the two components on June 24, 1988 (53 FR 23898) (24 CFR Part 840 (transitional housing) and Part 841 (permanent housing)). The 1988 Amendments Act made several changes in both programs, and directed HUD (1) to publish a Notice within 60 days of enactment to establish the requirements necessary to implement those changes for immediate effect, and (2) to adopt a final rule within 12 months of enactment.

Parts III and IV of this Notice describe the changes in the two programs as a result of the 1988 Amendments Act. These changes will be effective immediately for the funding round announced in this Notice. The June 24, 1988 final rule, as modified by this Notice, constitutes the requirements for the programs until a final rule governing them takes effect. HUD invites the public to comment on the changes contained in this Notice to form a basis for amending the final rule.

This Notice also announces the availability of $89.6 million in funds for transitional housing and $15 million in funds for permanent housing, and solicits the submission of applications for the programs. Application deadline dates are March 30, 1989 for transitional housing, and April 27, 1989 for permanent housing. Applicants for projects to be located in Federally-designated enterprise zones are encouraged to apply. (See 53 FR 30944 (Aug. 16, 1988) and 53 FR 48638 (Dec. 2, 1988). Sections V and VI of this Notice contain information on the submission of applications.

II. Comprehensive Homeless Assistance Plan

Under both the transitional housing program and the permanent housing program, assistance may not be provided to or within the jurisdiction of a State or an ESG formula city or county (defined in 24 CFR 840.5 and 841.5), unless the jurisdiction (or jurisdictions, where necessary) has a HUD-approved Comprehensive Homeless Assistance Plan (CHAP). In addition, supportive housing applications must contain a certification from the appropriate CHAP jurisdiction that the proposed project is consistent with the CHAP. (See §§ 840.150, 840.210(b)(4)(v)(B), 841.150, and 841.210(b)(4)(v)(B).)

On December 28, 1988, HUD published a **Federal Register** Notice announcing the current requirements for HUD approval of a CHAP as a result of the 1988 Amendments Act (53 FR 52600). Applicants are encouraged to familiarize themselves with the CHAP requirements.

III. Changes in the Transitional Housing Program

The 1988 Amendments Act made the following changes in the transitional housing program (24 CFR Part 840):

1. *Definition of Project.* Section 441(a) of the 1988 Amendments Act redefines the term "project" to include those structures or portions of structures used for transitional housing that receive operating costs assistance or technical assistance only. This amendment does not require a change in the final rule. The definition of "project" in § 840.5 is not limited to transitional housing programs that receive operating costs assistance or technical assistance in connection with acquisition or rehabilitation assistance.

In addition, under § 840.100(b), applicants may receive operating costs assistance independent of acquisition or rehabilitation assistance. Technical assistance is only available in connection with another form of transitional housing assistance, but it is not tied to acquisition or rehabilitation activities, since it may be used with operating costs assistance alone.

Thus, operating costs will continue to be eligible for funding in their own right. As provided in the final rule, technical assistance will be available, but only in connection with another form of transitional housing assistance.

2. *Availability of Operating Costs Assistance and Technical Assistance for New Structures.* Sections 441 (b) and (c) provide that operating costs assistance and certain types of technical assistance may be made available for transitional housing, without regard to whether the housing is an existing structure. This change will allow a project with a structure not yet completed to receive operating costs assistance and technical assistance without also receiving acquisition or rehabilitation assistance. However, no assistance may be provided for the construction of structures, with the limited exception discussed in III.3.

In addition to compliance with the criteria set out in § 840.115 on funding for annual operating costs, an applicant for operating costs assistance for a transitional housing project involving a structure not yet completed must provide reasonable assurance that construction will be completed within nine months following notification of an award of a grant for operating costs. ("Notification" of an award means the date of the letter from HUD to the applicant notifying the applicant that its application for assistance has been approved.) Reasonable assurance may be satisfied by submission of the following:

(a) Plans and specifications for the purposed structure;

(b) Evidence that construction financing has been obtained; and

(c) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

HUD may deobligate an award for operating costs and technical assistance if the construction has not been completed within nine months following notification of the award.

For transitional housing projects in structures not yet completed, technical assistance will be offered only in connection with an award of operating costs assistance. Under section 441(c), technical assistance for a structure not yet completed may be available in *operating* transitional housing and *providing supportive services* to the residents of transitional housing. Technical assistance in *establishing* transitional housing is available only in connection with existing structures. A description of technical assistance offered to recipients is contained in § 840.120. Since technical assistance does not involve a grant of funds, HUD will continue to provide technical assistance only through HUD offices. As a conforming change, the language in § 840.5 limiting a transitional housing "project" to "existing" structures will be deleted.

3. *Availability of Grant for Limited New Construction.* Section 449(b) authorizes an advance for new construction in limited circumstances. Under § 840.125(d), assistance for transitional housing may not be used for new construction of housing. Section 449(b) will allow an advance for new construction only if the Secretary finds that the project:

(a) Involves the cooperation of a city and a State university;

(b) Has the land donated by a State university;

(c) Proposes a supportive housing structure of at least 10,000 square feet; and

(d) Proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

Where the proposed site for a new construction advance is located in a wetland, the procedures required by Executive Order 11990, Protection of Wetlands, must be undertaken before any decision is made on the environmental acceptability of the project site for assistance. These procedures are identical to the procedures under Executive Order 11988, Floodplain Management (see III.14). If a proposed new construction site is in a floorplain and a wetland, a single procedure will be carried out under both Executive Orders.

4. *Maximum Period of Residence.* Section 443 provides for the movement of residents of transitional housing to independent living within 24 months, or for a longer period determined by the Secretary as necessary to facilitate the transition. The definition of transitional housing in § 840.5, which specifies that the maximum period of residency is not to exceed 18 months for any individual, will be amended to comport with section 443. This change affects only the maximum period of residency; the requirements of § 840.325 with regard to resident discharge are not affected.

This amendment provides recipients more flexibility for assistance programs, which is sometimes necessary given the broad range of homeless populations that are served by transitional housing projects. HUD will make determinations to exceed the 24-month period on a project-by-project basis. Recipients must apply to HUD at least 90 days before the 24-month residency period expires for a waiver of the 24-month residency requirement, explaining the circumstances that necessitate the longer period.

5. *Use of Acquisition/Rehabilitation Advances to Repay Debt.* Section 445 provides that advances for acquisition/rehabilitation may be used to repay any outstanding debt on a loan made to purchase an existing structure for use as supportive housing. An advance may be used for this purpose only if the structure was not used as supportive housing before the receipt of assistance.

An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(a) A copy of the contract of sale;

(b) A copy of the loan agreement, mortgage agreement, or deed of trust;

(c) Documentation showing the purpose of the loan;

(d) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(e) Certification that the structure has not been used as supportive housing before the receipt of assistance.

This provision is made applicable by the 1988 Amendments Act of all future

applicants, as well as to any recipients that were notified of awards on or after November 1, 1987 whose funds were later deobligated by HUD upon learning of the recipient's intent to use the funds to repay a debt made to purchase the structure.

6. *Limitation on Grants for Moderate Rehabilitation.* Section 446 sets a cap of $200,000 on grants for moderate rehabilitation. Under § 840.110, a grant for moderate rehabilitation of an existing structure was limited to the lowest of (a) $100,000; (b) the project limit (see § 840.110(b)(2)); or (c) 50 percent of the cost of rehabilitation. The amount in (a) will now be $200,000; (b) and (c) will be unchanged. (See III.7 for the special circumstances under which a grant in excess of $200,000 may be available.)

7. *Raised Limits on Advances for Acquisition/Rehabilitation and Grants for Moderate Rehabilitation.* Section 449(a) authorizes the Secretary to raise the limits on advances for acquisition/rehabilitation or grants for moderate rehabilitation from $200,000 to $400,000 in areas determined by the Secretary to have high acquisition and rehabilitation costs. HUD will consider applications for amounts above $200,000 from applicants in geographic areas determined by the Secretary to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701g) by at least 75 percent. (A list of these geographic areas is included in the application package. Applicants may also obtain a list of the areas from HUD Field Offices.) All requirements with regard to matching funds are applicable to increased advances or grants.

8. *Eligible Assistance.* Section 447 provides that a recipient may receive both an advance for acquisition/rehabilitation and a grant for moderate rehabilitation under one application. Under § 840.100(b), assistance was limited to either an advance for acquisition/rehabilitation or a grant for moderate rehabilitaion. HUD anticipates that applicants for both types of assistance will use the advance for acquisition of a structure and the grant for rehabilitation of the structure.

9. *Employment Assistance Programs.* Section 448 authorizes a new type of assistance in transitional housing—grants for establishing and operating employment assistance programs (EAP). Grants will be available for up to 50 percent of the cost of establishing and operating an EAP for residents for one year, and for up to 50 percent of the cost of operating an EAP for up to four additional years. Upon approval of an application requesting assistance for an EAP, HUD will obligate amounts for the period sought, not to exceed five years. The funding level for the first year will not exceed the recipient's estimate of the cost of establishing and operating the EAP for the first year, less the recipient's matching contribution. The funding level for each of the next four years will not exceed the recipient's estimate of the costs of operating the EAP for the first year, less the recipient's annual matching contribution. (See § 840.130 for matching requirements and III.11 for amendments to the matching requirements by the 1988 Amendments Act.)

Recipients are free to develop their own EAP, but to qualify for assistance, the program must provide for at least the following:

(a) Employment of residents in the operation and maintenance of the transitional housing; and

(b) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

Salaries paid to resident employees may be included as an operating cost of an EAP. The cost of transportation for residents to places of employment outside the transitional housing is allowable as an operating cost of an EAP. Transportation costs must not exceed the cost of public transportation. If public transportation is not available, other transportation costs, subject to approval by HUD, may be substituted.

Amounts obligated for an EAP grant are subject to the same rules as amounts obligated for operating costs grants with regard to deobligation. Those rules are set out in § 840.400.

The extent to which an applicant has an EAP, whether assisted by HUD or not, will be a ranking criterion in the competition with other applicants, as described in III.12.

10. *Site Control.* Section 450 provides that an application for assistance must furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than six months after notification of an award for grant assistance. Under the final rule at § 840.210(b)(4)(iv)(A), applicants were required to demonstrate control of a site at the time of the application for assistance. This change in the rule will permit approval of applications from projects that are not able to gain control of a site until they have been notified of an assistance award. Reasonable assurance must be satisifed by identification of a suitable site (a suitable site is one that meets the requirements of §§ 840.210 and 840.330 applicable to sites) and:

(a) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

Although section 450 authorizes an award of assistance to applicants that do not have site control, it also provides that the extent to which an applicant has control of a site upon application for assistance will be a ranking criterion in the competition with other applicants, as described in III.12.

Section 450 also provides that an applicant may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it is able to furnish the difference in costs, HUD may cancel or recapture the obligated funds and reallocate the funds to other projects.

If a recipient does not have control of the site within one year after notification of an award for assistance, section 450 requires HUD to cancel or recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for assistance under 24 CFR Part 840, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning that the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

11. *Matching Requirements.* Section 452 revamps the categories that may be used to satisfy the program's matching requirements. Under § 840.130, the only "in-kind" contributions that could be counted toward the match were contributions of materials or structures. Section 452 specifically makes eligible, for matching purposes, the value of time and services contributed by volunteers to carry out the recipient's transitional housing program, at a rate determined by HUD. Thus, applicants may count volunteer contributions of time and services toward the required match. Consistent with the Emergency Shelter Grants program, these contributions will be valued at $5.00 per hour (see 24 CFR 576.71(b)).

Section 452 also specifies that the salaries paid (1) to staff to carry out the grantee's transitional housing program and (2) to residents of transitional housing under an EAP (see III.9) may be counted toward the match. The Department will recognize these salaries to the extent they are paid from sources other than a Federal assistance program, including the transitional housing program. To permit Federal assistance both to pay staff and resident salaries and to be counted toward the match is an inappropriate double-counting of the amounts involved and dilution of the purpose of the program's matching requirements.

Consistent with § 840.130(b), volunteer time and services, and staff and resident salaries, will be included in the matching calculation for the type of assistance to which the contribution relates. For example, if volunteers assist in the rehabilitation of the structure, the contribution will be calculated as a match for rehabilitation assistance. If outside service providers donate supportive services or if volunteers assist in administration of the program, the value of their services will be calculated as a match for operating costs. Salaries paid to residents under an EAP may be calculated as a match for grants for establishing and operating, or operating, the EAP, and staff salaries may be calculated as a match for operating costs assistance.

Other sources for matching funds recognized by HUD under § 840.130 are:

(a) State or local agency funds;

(b) Contributions of materials (§§ 840.130(c)(2) (i) and (ii));

(c) Contribution of a fee ownership in a structure (§ 840.130(c)(2)(iii));

(d) Contribution of a leasehold interest in a structure (§ 840.130(c)(2)(iv)); and the extent of the fair rental value of the structure;

(e) Rental income paid by residents of transitional housing under § 840.320 (§ 840.130(g)).

12. *Ranking Criteria.* The 1988 Amendments Act authorizes two additional criteria to be included in the ranking criteria described in § 840.215(b). Section 448 provides for the inclusion of the extent to which a proposed project contains an employment assistance program meeting the requirements described in III.9, and section 450 provides for the inclusion of the extent to which an applicant has control of the site of the proposed project.

(a) Employment Assistance Program. In assessing an application under this factor, HUD will award the most points to applications that demonstrate that:

(1) The transitional housing will have an employment assistance program providing for:

(i) The employment of all residents either in the operation and maintenance of the housing or outside the housing, except where they are participating in a job training program, are actively seeking employment, or are unable to obtain employment due to disabilities (including mental disabilities) or other causes; and

(ii) The payment of the full transportation costs of the residents to places of employment outside the housing, where such payment is necessary and appropriate.

(2) The employment assistance program is operated with funds that are obtained from sources other than the Supportive Housing program and that have not been used as part of the applicant's matching contribution.

(b) Site Control. In assessing an application under this factor, HUD will award the most points to the applicant that demonstrates that:

(1) The applicant owns or has a contract of sale for the site at the time of the application;

(2) The applicant has a lease for the site for a period of 10 years from the date of the application;

(3) The applicant has an option to purchase the site at the time of the application; or

(4) The applicant has an option to lease the site for a period of 10 years from the date of the application.

13. *Environmental Review.* Section 443 provides that the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law specified by the Secretary that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in III.14.)

As applied to transitional housing, the Department views section 443 as authorizing the Secretary to require States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose governmental powers to assume the responsibility for assessing the environmental effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, the Department will, in connection with future transitional housing advances or grants, provide for assumption of these responsibilities by jurisdictions with general governmental powers whenever they are deemed to have the legal capacity to assume the responsibilities. This policy will *not* be applied to advances or grants made to governmental entities with *special* or *limited purpose* powers or to *private nonprofit organizations.* HUD will continue to perform the environmental review for these entities, in accordance with 24 CFR Part 50, to the extent required. Relevant reviews completed for purposes of another McKinney Act program or other HUD programs may suffice for purposes of transitional housing, where permitted under Part 58.

An applicant with general purpose governmental powers that believes that it does not have the legal capacity to carry out the environmental responsibilities required by 24 CFR Part 58 should contact the appropriate HUD Field Office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

With respect to applications for which the applicant will be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold review and ranking process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, § 840.210(b)(7) will not apply to those applications and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in ranking such applications. Similarly, since under § 840.210(b)(7), an application that requires an Environmental Impact Statement (EIS) will not pass threshold review and, therefore, will not be eligible for assistance, this provision will be applied only to the applications for which HUD performs the environmental review. HUD will not enforce this provision

where the applicant performs the environmental review and, after finding that an EIS is necessary, chooses to prepare the EIS.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection and physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environmental review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of this program). Such activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that under section 104(g), HUD may not release transitional housing funds for a project if the grantee, a subgrantee, or another party commits transitional housing funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, such funds) before the grantee submits its request for release of transitional housing funds to HUD.

14. *Floodplain Restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. Therefore, the restrictions with respect to location of projects in floodplains contained in the final rule at § 840.210(b)(4)(iv)(C) no longer apply to projects assisted under the transitional housing program. HUD interprets section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outlined in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees will perform the eight-step process during the environmental review process, whenever they assume other environmental review responsibilities (see III.13).

The eight-step process applies to all applications for projects within the 100-year floodplain and, for critical actions, the 500-year floodplain. Critical actions are defined as those projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents. Applicants with proposed projects located in a floodplain should be aware that the public notification and decisionmaking process takes a minimum of 30 days from the time the first published notice in the process appears. Where HUD will carry out the process, applicants may be required to provide engineering and structural information (*e.g.*, elevations and data) in order to permit HUD to undertake its analysis. If HUD is unable to make a floodplains determination within 60 days from the date it publishes the first notice (where HUD has the responsibility for carrying out the eight-step process), and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

Executive Order 11988 requires HUD or the applicant (where it assumes environmental review responsibilities in III.13) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD or the applicant must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the process, HUD will assign a higher environmental rating to applications with less hazardous sites. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedures of the Floodplain Management Guidelines.

15. *Drug- and Alcohol-Free Facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential applicants are encouraged to read the Notice on Comprehensive Homeless Assistance Plans, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

IV. Changes in the Permanent Housing Program

The 1988 Amendments Act made the following changes in the permanent housing program (24 CFR Part 841):

1. *Project Sponsor.* Section 442 authorizes a public housing agency (PHA) to be a project sponsor for a permanent housing project. Before this amendment to the McKinney Act, project sponsorship was limited to private nonprofit organizations. As required by § 841.210(b)(2)(i), the applicant for assistance must be the State in which the permanent housing is to be located. The application must indicate whether the project sponsor is a private nonprofit organization or a PHA. (The requirement of § 841.210(b)(2)(ii)(B) that the applicant demonstrate State approval of the financial responsibility of the project sponsor does not apply when the project sponsor is a PHA).

Section 442 also eliminates the requirement, contained in § 841.210(b)(2)(ii), that the applicant's letter of participation and approval of financial responsibility be signed by the Governor or other chief executive officer of the State. The signature of an authorized State official may be substituted.

2. *Grants for Operating Costs.* Section 447 authorizes grants for operating costs for permanent housing not to exceed 50 percent of the costs for the first year and 25 percent the second year. The definition of operating costs in the final rule governing transitional housing (§ 840.5) will be applicable for permanent housing as well. As defined in § 840.5, operating costs means expenses that a recipient incurs for:

(a) The administration, maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments; and

(d) The provision of supportive services to the residents of the housing.

Operating costs do not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

HUD will provide up to 50 percent of the annual operating costs of permanent housing for the first year and 25 percent for the second year. Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed two years. Each annual funding level will be equal to an amount not to exceed the recipient's estimate of operating costs for the first year of operation, less the recipient's matching contribution of 50 percent the first year and 75 percent the second year. In each of the two years, HUD will make operating cost payments to the recipient from the amounts obligated. The rules regarding reduction of funding for acquisition/rehabilitation advances and moderate rehabilitation grants in § 841.400 will apply to grants for operating costs. HUD may deobligate the amounts for annual operating costs if the proposed permanent housing operations are not begun within a reasonable time following selection.

3. *Definition of Project.* Section 441(a) of the 1988 Amendments Act redefines the term "project" to include those structures or portions of structures used for permanent housing that receive operating costs assistance or technical assistance only. This amendment does not require a change in the final rule. The definition of "project" in § 841.5 is not limited to permanent housing programs that receive operating costs assistance or technical assistance in connection with acquisition or rehabilitation assistance.

In addition, applicants may now receive operating costs, which is available independent of acquisition or rehabilitation assistance (see IV.2). Under § 841.100(b), technical assistance was available only in connection with acquisition or rehabilitation assistance. This will be changed to provide that technical assistance will be available also in connection with operating costs. However, technical assistance is available only in connection with some other type of assistance.

4. *Availability of Operating Costs Assistance and Technical Assistance for New Structures.* Sections 441 (b) and (c) provide that operating costs assistance and certain types of technical assistance may be made available for permanent housing, without regard to whether the housing is an existing structure. This change will allow a project with a structure not yet completed to receive operating costs assistance and technical assistance without also receiving acquisition or rehabilitation assistance. However, no assistance may be provided for the construction of structures, with the limited exception discussed in IV.5.

In addition to compliance with the criteria set out in IV.2 for grants for annual operating costs, an applicant for operating costs assistance for a permanent housing project involving a structure not yet completed must provide reasonable assurance that construction will be completed within nine months following notification of an award of a grant for operating costs. ("Notification" of an award means the date of the letter from HUD to the applicant notifying the applicant that its application for assistance has been approved.) Reasonable assurance may be satisfied by submission of the following:

(a) Plans and specifications for the proposed structure;

(b) Evidence that construction financing has been obtained; and

(c) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

HUD may deobligate an award for operating costs and technical assistance if the construction has not been completed within nine months following notification of the award.

For permanent housing projects involving structures not yet completed, technical assistance will be offered only in connection with an award of operating costs assistance. Under section 441(c), technical assistance for a structure not yet completed may be available in *operating* permanent housing and *providing supportive services* to the residents of permanent housing. Technical assistance in *establishing* permanent housing is available only in connection with existing structures. A description of technical assistance offered to recipients is contained in § 841.115. Since technical assistance does not involve a grant of funds, HUD will continue to provide technical assistance only through HUD offices. As a conforming change, the language in § 841.5 limiting a permanent housing "project" to "existing" structures will be deleted.

5. *Availability of Grant for Limited New Construction.* Section 449(b) authorizes an advance for new construction in limited circumstances. Under § 841.120(d), assistance for permanent housing may not be used for new construction of housing. Section 449(b) will allow an advance for new construction only if the Secretary finds that the project:

(a) Involves the cooperation of a city and a State university;

(b) Has the land donated by a State university;

(c) Proposes a supportive housing structure of at least 10,000 square feet; and

(d) Proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

Where the proposed site for a new construction advance is located in a

wetland, the procedures required by Executive Order 11990, Protection of Wetlands, must be undertaken before any decision is made on the environmental acceptability of the project site for assistance. These procedures are identical to the procedures under Executive Order 11988, Floodplain Management (see IV.15). If a proposed new construction site is in a floodplain and a wetland, a single procedure will be carried out under both Executive Orders.

6. *Use of Acquisition/Rehabilitation Advances to Repay Debt.* Section 445 provides that advances for acquisition/rehabilitation may be used to repay any outstanding debt on a loan made to purchase an existing structure for use as supportive housing. An advance may be used for this purpose only if the structure was not used as supportive housing before the receipt of assistance.

An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(a) A copy of the contract of sale;

(b) A copy of the loan agreement, mortgage agreement, or deed of trust;

(c) Documentation showing the purpose of the loan;

(d) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(e) Certification that the structure has not been used as supportive housing before the receipt of assistance.

This provision is made applicable by the 1988 Amendments Act to all future applicants, as well as to any recipients that were notified of awards on or after November 1, 1987, whose funds were later deobligated by HUD upon learning of the recipient's intent to use the funds to repay a debt made to purchase the structure.

7. *Limitation on Grants for Moderate Rehabilitation.* Section 446 sets a cap of $200,000 on grants for moderate rehabilitation. Under § 841.110, a grant for moderate rehabilitation of an existing structure was limited to the lower of (a) the project limit (see § 841.110(b)(2)); or (b) 50 percent of the cost of rehabilitation. A grant for moderate rehabilitation will now be limited to the lesser of (a) $200,000; (b) the project limit; or (c) 50 percent of the cost of rehabilitation. (See IV.8 for the special circumstances under which a grant in excess of $200,000 may be available.)

8. *Raised Limits on Advances for Acquisition/Rehabilitation and Grants for Moderate Rehabilitation.* Section 449(a) authorizes the Secretary to raise the limits on advances for acquisition/rehabilitation or grants for moderate rehabilitation from $200,000 to $400,000 in areas determined by the Secretary to have high acquisition and rehabilitation costs. HUD will consider applicants for amounts above $200,000 from applicants in geographic areas determined by the Secretary to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent. (A list of these geographic areas is included in the application package. Applicants may also obtain a list of the areas from HUD Field Offices.) All requirements with regard to matching funds are applicable to increased advances or grants.

9. *Eligible Assistance.* Section 447 provides that a recipient may receive both an advance for acquisition/rehabilitation and a grant for moderate rehabilitation under one application. Under § 841.100(b), assistance was limited to either an advance for acquisition/rehabilitation or a grant for moderate rehabilitation. HUD anticipates that applicants for both types of assistance will use the advance for acquisition of a structure and the grant for rehabilitation of the structure.

10. *Site Control.* Section 450 provides that an application for assistance must furnish reasonable assurances that the applicant (or project sponsor) will own or have control of a site for the proposed project not later than six months after notification of an award for grant assistance. Under the final rule at § 841.210(b)(4)(iv)(A), applicants were required to demonstrate control of a site at the time of the application for assistance. This change in the rule will permit approval of applications from projects that are not able to gain control of a site until they have been notified of an assistance award. Reasonable assurance must be satisfied by identification of a suitable site (a suitable site is one that meets the requirements of §§ 841.210 and 841.330 applicable to sites) and:

(a) Certification by the applicant (or project sponsor) that it is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD that the applicant (or project sponsor) will gain control of the identified site.

Although section 450 authorizes an award of assistance to applicants (or project sponsors) that do not have site control, it also provides that the extent to which an applicant (or project sponsor) has control of a site upon application for assistance will be a ranking criterion in the competition with other applicants, as described in IV.13.

Section 450 also provides that an applicant (or project sponsor) may obtain ownership or control of a suitable site different from the one specified in its application. An applicant may not change sites during the application review period. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it is able to furnish the difference in costs, HUD may cancel or recapture the obligated funds and reallocate the funds to other projects.

If a recipient (or project sponsor) does not have control of the site within one year after notification of an award for assistance, section 450 requires HUD to cancel or recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for assistance under 24 CFR Part 841, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning that the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

11. *Matching Requirements.* Under § 841.125, which implemented the matching fund requirements of section 425 of the McKinney Act, the recipient was required to match the assistance provided by HUD with at least an equal amount of State or local government funds, 50 percent of which were to be State funds. The 50 percent State funds requirement could have been waived where HUD determined that the State was experiencing a severe financial hardship and that local governments in the area to be served would furnish the difference. Section 452 of the 1988 Amendments Act provides that a State submitting an application for permanent housing must certify that it will supplement the assistance provided by HUD with an equal amount of funds from non-Federal sources. The requirement that a portion of the matching funds be from local government funds and the provision for a waiver for financially burdened States have been eliminated.

Section 452 defines the term "funds from non-Federal sources" to include a number of sources that can be used as matching funds for an advance or grant. HUD will recognize matches to the extent they are paid from sources other than a Federal assistance program, including the permanent housing program, to avoid inappropriate double-counting of the amounts involved and the dilution of the purpose of the program's matching requirements. A State may include in the calculation of its matching funds:

(a) State or local agency funds;

(b) Salaries paid to staff to carry out the program of the recipient;

(c) Time and services contributed by volunteers to carry out the program of the recipient, valued at $5.00 an hour;

(d) Contributions of materials;

(e) Contribution of a fee ownership in a structure to the extent of the fair market value of the structure;

(f) Contribution of a leasehold interest in a structure to the extent of the fair rental value of the structure;

(g) Rental income paid by residents of permanent housing under § 841.320.

Although section 452 does not include cash contributions from third parties as a source of non-Federal funds, HUD recognizes such contributions as a source of matching funds.

HUD will include the value of the matching funds in the calculation for the type of assistance to which they are related. For example, a contribution of materials will be included in the calculation of a match for an acquisition/rehabilitation advance or a moderate rehabilitation grant if the materials will be used in the rehabilitation of a structure for use as permanent housing. A contribution of materials that would fall within the definition of operating costs under IV.2 will be included in the match for operating costs assistance. A contribution of a fee ownership in a structure will be included in the match for an acquisition/rehabilitation advance, and a contribution of a leasehold interest will be included in the match for a grant for operating costs.

Volunteer time and services will also be included in the calculation of the match for the type of assistance to which such time and services are related. For example, if volunteers assist in the rehabilitation of the structure, the contribution will be calculated as a match for an acquisition/rehabilitation advance or a moderate rehabilitation grant. If outside service providers donate supportive services or if volunteers assist in administration of the program, the value of their services will be calculated as a match for operating costs. Staff salaries will be included as a match for operating costs.

12. *Number of Residents.* Under § 841.325, a permanent housing program consisting of dwelling units in a rental building, condominium, or cooperative may not serve more than eight persons and their families (if the head of the family or spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of such persons. Section 444 of the 1988 Amendments Act permits HUD to waive this limitation on the number of residents if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the community.

HUD anticipates that requests for waivers of § 841.325 will be from project sponsors of permanent housing located in densely populated urban areas where supportive services, such as health facilities, employment opportunities, or public transportation, are concentrated. HUD will grant the waivers on a case-by-case basis.

13. *Ranking Criteria.* The 1988 Amendments Act authorizes an additional criterion to be included in the ranking criteria described in § 841.215(b). Section 450 provides for the inclusion of the extent to which an applicant has control of the site of the proposed project. In assessing an application under this factor, HUD will award the most points to an applicant that demonstrates that:

(a) The applicant (or project sponsor) owns or has a contract of sale for the site at the time of the application;

(b) The applicant (or project sponsor) has a lease for the site for a period of 10 years from the date of the application;

(c) The applicant (or project sponsor) has an option to purchase the site at the time of the application; or

(d) The applicant (or project sponsor) has an option to lease the site for a period of 10 years from the date of the application.

14. *Environmental Review.* Section 443 provides that the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law specified by the Secretary that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in IV.15.)

As applied to permanent housing, the Department views section 443 as authorizing the Secretary to require States (as the applicants under § 841.5) to assume the responsibility for assessing the environmental effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, HUD will, in connection with future permanent housing advances and grants, provide for assumption of these responsibilities by States. Relevant reviews completed for purposes of another McKinney Act program or other HUD program may suffice for purposes of permanent housing, where permitted under Part 58.

Since applicants will now be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold review and ranking process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, § 841.210(b)(7) will not be in effect, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in ranking the applications. Similarly, the provision in § 841.210(b)(7) that applications requiring Environmental Impact Statements (EIS) will not pass threshold review will not be enforced.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD

believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection or physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environmental review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of the program). Such activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and to the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that, under section 104(g), HUD may not release permanent housing funds for a project if the grantee, a subgrantee, or another party commits permanent housing funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, such funds) before the grantee submits its request for release of permanent housing funds to HUD.

15. *Floodplains Restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. Therefore, the restrictions with respect to location of projects in floodplains contained in the final rule at § 841.210(b)(4)(iv)(C) no longer apply to applicants for assistance under the permanent housing for the handicapped homeless program. HUD interprets section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outline in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken by the applicant before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees with projects in floodplains will perform the eight-step process at the time they perform the environmental review (see IV.14).

The eight-step process applies to all applications for projects for critical actions within the 500-year floodplain. Critical actions include those projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents and, therefore, include all permanent housing projects. Applicants with proposed projects located in a 500-year floodplain should be aware that the public notification and decisionmaking process takes a minimum of 30 days from the time the first published notice in the process appears.

Executive Order 11988 requires the applicant to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site. As part of the eight-step process, the applicant must reevaluate alternatives to projects/sites located in floodplains. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedures of the Floodplain Management Guidelines.

16. *Drug- and Alcohol-Free Facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential applicants are encouraged to read to Notice on Comprehensive Homeless Assistance Plans, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

V. Application Process—Transitional Housing

One of the purposes of this Notice is to announce the availability of $65 million in funds for transitional housing appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989. The Department also is announcing the availability of an additional $24.6 million in funds, which has been reallocated to the transitional housing program from funds that were set aside from FY 1987 and FY 1988 appropriations for the permanent housing program but were not obligated for that program. Section 455 of the 1988 Amendments Act requires the Secretary to reallocate to transitional housing any amounts set aside for permanent housing that will not be required to fund approvable applications for permanent housing funds. Therefore, the Department has reallocated $24.6 million in unused funds set aside for permanent housing to the transitional housing program, making a total availability of $89.6 million in funds for transitional housing.

Section 428(b) of the McKinney Act requires that at least $20 million in funds for any fiscal year be set aside for transitional housing projects that serve homeless families with children. Therefore, at least $20 million of the total $65 million in funds for transitional housing will be set aside for projects that serve homeless families with children.

An application package is available that describes the information and documents that transitional housing applicants must submit. The application package identifies all information and documents that must be submitted by the application deadline, as well as the information and documents that must be submitted upon preliminary approval of the application. The package will be provided upon the written or oral request of any party made to the Office of Supportive Housing Demonstration Program at the address set forth in the beginning of this document, or by calling (202) 755–1514 or 755–1525. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015. (These numbers are not toll-free.)

Applications must be in the form prescribed by HUD and must be received at the specified address no later than 5:15 p.m. (e.s.t) on March 30, 1989. Late-filed and incomplete applications will be rejected.

Following the expiration of the March 30, 1989 deadline, HUD headquarters will review, rate, and rank the applications in a manner consistent with the selection procedures described at §§ 840.207–840.225, as modified by the statutorily required changes to those procedures announced in section III of this Notice. HUD will announce its final selections no later than July 10, 1989. No information regarding the status of applications will be released until final selections are made.

VI. Application Process-Permanent Housing

This Notice announces the availability of $15 million in funds for permanent housing appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989.

An application package is available that describes the information and documents required from applicants for assistance for permanent housing projects. The application package identifies all information and documents that must be submitted by the application deadline, as well as the information and documents that must be submitted upon preliminary approval of the application. The package will be provided to eligible states upon written or oral request to the Office of Supportive Housing Demonstration Program at the address set forth in the beginning of this document, or by calling (202) 755–1514 or 755–1525. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015. (These numbers are not toll-free.)

Applications must be in the form prescribed by HUD and must be received at the specified address no later than 5:15 p.m. (e.s.t.) on April 27, 1989. Late-filed and incomplete applications will be rejected.

Following the expiration of the April 27, 1989 deadline, HUD headquarters will review, rate, and rank the applications in a manner consistent with the selection procedures described at §§ 841.207–841.255, as modified by the statutory required changes to those procedures announced in section IV of this notice. HUD will announce its final selections no later than July 31, 1989. No information regarding the status of applications will be released until final selections are made.

VII. Other Matters

The revised collection of information requirements contained in this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections V and VI of this notice have been determined by the Department to contain collection of information requirements not included in the Department's assessments of the burden of these requirements when they were originally approved by OMB on July 1, 1988 under control number 2502–0361. Information on the revised reporting burden is provided as follows:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Permanent HSG:				
—Applications	100	1	44	4,400
—Recordkeeping	100	1	1	100
—Environ Review	100	1	14	1,400
Transtl HSG:				
—Applications	300	1	44	13,200
—Recordkeeping	300	1	1	300
—Environ Review				
Total Annual Burden				19,400

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that some of the policies in this Notice will have a potential significant impact on the formation, maintenance, and general well-being of homeless families. The Notice makes available $100 million for the Supportive Housing program. Both transitional housing and permanent housing that serve families, including families with children, are eligible for funding under the program. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and in the case of transitional housing, by encouraging them to acquire the skills and knowledge necessary to live independently in mainstream American society.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the amendment made by section 443 of the 1988 Amendments Act will have federalism implications. That section provides that HUD shall apply the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action

under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this Notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the delegation of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to review under Executive Order 12612.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Only a limited number of small entities will be eligible for and affected by this program because: (1) The current funding level will support only a limited number of recipients; and (2) recipients under the program include small and large private nonprofit organizations and government entities.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.178.

Dated: January 3, 1989.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-293 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. R-89-1433; FR-2581]

Supportive Housing Demonstration Program; Cross Reference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere in today's **Federal Register**, HUD is announcing the availability of $104.6 million for the Supportive Housing Demonstration program. The Notice also announces changes to the Supportive Housing final rule (24 CFR Parts 840 and 841), which implement amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Although the changes are published for immediate effect, the public is invited to comment on the changes for consideration in developing amendments to the final rule within 12 months of enactment of the McKinney legislative amendments. Comments received by March 27, 1989, will be considered in amendments to the final rule.

Dated: January 5, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

[FR Doc. 89-417 Filed 1-6-89; 8:45 am]

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federal register

Monday
January 9, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Emergency Shelter Grants Program; Notice and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1906; FR-2562]

Emergency Shelter Grants Program; Notice of Fund Availability; Amended Program Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $46,500,000 for the Emergency Shelter Grants (ESG) program, appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). The Notice also implements amendments to the ESG program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). These amended requirements: (1) Enable States to distribute ESG funds directly to private nonprofit organizations if the relevant unit of general local government certifies that it approves the proposed project; (2) increase from 15 to 20 percent the proportion of ESG assistance that a State or unit of local government may use to provide essential services; (3) in the case of States, provide that each State administer its grant so that on an aggregate basis, the amount that its State recipients expend on essential services does not exceed the 20 percent limitation; (4) permit ESG funds to be used for homeless prevention efforts; (5) in the case of assistance solely for operating costs and essential services, require that the homeless services or shelters be made available for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served; and (6) provide for the assumption of environmental review responsibilities by certain grantees and recipients. This Notice, and the public comments received by the Department on the Notice, will form the basis for a final rule to be published no later than November 7, 1989.

EFFECTIVE DATE: January 9, 1989.

ADDRESS: Interested persons are invited to submit comments on this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. Hearing or speech impaired individuals may call HUD's TDD number: (202) 426-0015. [These are not toll-free telephone numbers].

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0089. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The Emergency Shelter Grants (ESG) program was first enacted as Part C of Title V of HUD's appropriation for fiscal year 1987.[1] The Part C program authorized HUD to make grants to States, units of general government, and private nonprofit organizations for the renovation, rehabilitation, or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for essential social service expenses in connection with emergency shelters for the homeless. HUD published a proposed rule and program requirements to implement the ESG program on December 17, 1986 (51 FR 45278).

On July 22, 1987, President Reagan approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) (the McKinney Act). Subtitle B of Title IV of the McKinney Act reauthorized, with amendment, the ESG program. HUD published a proposed rule for Subtitle B on November 6, 1987 (52 FR 42664). A final rule governing the ESG program was published on August 10, 1988 (53 FR 30186) (ESG final rule).

Because the Department perceived that certain McKinney Act provisions required implementation before the ESG final rule could take effect, two Notices were separately published in the Federal Register. On September 4, 1987, the Department published a Notice (52 FR 33790) identifying the McKinney Act provisions that would be implemented immediately, and those that would take effect in the ESG final rule. On October 19, 1987, HUD published a Notice (52 FR 38864) implementing the authority under section 414(b) of the McKinney Act to waive the percentage limitation on essential services by units of local government.

II. 1989 Fisal Year Appropriations; Amendments Under the Stewart B. McKinney Homeless Assistance Amendments Act of 1988

The Department received an appropriation of $46,500,000 for fiscal year 1989 for the Emergency Shelter Grants program under the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) (the Appropriations Act).

Subsequently, on November 7, 1988, President Reagan approved the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) (the 1988 McKinney Act). The 1988 McKinney Act makes a number of substantive amendments to the ESG final rule. These include: (1) Permitting States to distribute ESG funds directly to private nonprofit organizations if the relevant unit of general local government certifies that it approves the proposed project; (2) increasing from 15 to 20 percent the proportion of ESG assistance that a State or unit of local government may use to provide essential services; (3) in the case of States, providing that each State administer its grant so that on an aggregate basis the amount that its State recipients expend on essential services does not exceed the 20 percent limitation; (4) permitting ESG funds to be used for homeless prevention efforts; (5) in the case of assistance solely for operating costs and essential services, specifying that the homeless services or shelters be made available for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served; and (6) providing for the assumption of environmental review responsibilities by certain grantees and recipients.

In accordance with section 485 of the 1988 McKinney Act, the Department is required to implement the 1988 amendments by a Notice, with a final rule to be published within 12 months of the date of statutory enactment. Consequently, the provisions discussed below are effective immediately and, combined with those provisions of the August 10, 1988 ESG final rule that remain unaffected by this Notice, will govern the allocation and use of funds under the ESG program until the final rule is published.

1. Distribution of Assistance by States to Private Nonprofit Organizations

Section 413 of the McKinney Act required States to distribute all their grant amounts to units of general local government. Section 421 of the 1988 McKinney Act amended section 413 to permit States to distribute funds to private nonprofit organizations as well. The Senate Committee on Banking, Finance and Urban Affairs expressed a specific concern resulting from States' inability to contract directly with nonprofits under the initial ESG legislation:

> Under the existing ESG program, States are required to contract with local governments which, in turn, may contract with nonprofit organizations. The Committee believes that the limitation has impaired program operation in two significant ways.
>
> First, the "three-step contracting" requirement has caused delays and administrative burden, particularly in smaller cities and towns where government boards with contracting authority meet sporadically.
>
> Second, many states have shelter assistance programs that predate the ESG program and provide for direct contracting between the state and shelter operator; the ESG program, therefore, has required the establishment of two parallel administrative systems. (S. Rep. No. 100-393, 100th Cong., 2d Sess. 4 (1988).

However, it should be noted that distributions to nonprofit organizations are permitted only where the unit of general local government in which the assisted projects are to be located certifies that it approves the proposed project. This certification must be submitted to the State at the time the nonprofit organization seeks funding from the State. If the nonprofit organization intends to provide homeless assistance in a number of jurisdictions, the certification of approval must be submitted by each of the units of general local government in which the projects are to be located.

2. Essential services

Section 414(a)(2) of the McKinney Act made eligible for ESG funding the provision of essential services, such as those concerned with employment, health, drug abuse, or education. This authority, however, was subject to the following two limitations:

(a) The unit of general local government must not have provided the essential services during the preceding 12-month period; and

(b) Not more than 15 percent of the amount of any ESG assistance to a unit of general local government could be used for these services.

Section 414(b) authorized HUD to waive the 15 percent limitation in certain circumstances.

A. *The 12-month limitation.* The Department implemented the 12-month limitation relating to essential services in § 576.21(a)(2)(i) of the ESG final rule. That provision required a unit of local government to demonstrate that the essential service was either:

—A new service; or

—A quantifiable increase in the level of the service that the unit of government provided with local funds during the 12 months before it received its initial ESG grant amounts.

Section 422(b) of the 1988 McKinney Act amended the 12-month limitation by permitting a unit of local government to use ESG funds to "complement" its provision of essential services. The Department construes the term "complement" to be consistent with the existing regulatory standard under § 576.21(a)(2)(i): *i.e.*, a new service or a "quantifiable increase" in the level of existing essential services "complements" those services. Thus, § 576.21(a)(2)(i) will apply without amendment to the proposed use of ESG amounts for essential services.

B. *Percentage limitation.* Section 422(a)(1) of the 1988 McKinney Act revises the percentage limitation on essential services by increasing the percentage from 15 to 20 percent. Due to an apparent oversight, Congress failed to provide for a parallel amendment to section 414(b) of the McKinney Act, which gives the Department the authority to waive the essential services limitation. Currently, the Department has the authority to waive the *15 percent* limitation. HUD is construing the 1988 McKinney Act increase in the essential services limitation from 15 to 20 percent as implicitly authorizing the Department to apply its waiver authority to the 20 percent limitation.

Section 422(a)(2) of the 1988 McKinney Act provides that the 20 percent limitation is to be measured against "the aggregate amount of all [ESG] assistance to a State or a local government," rather than to "the amount of any assistance to a local government," as required under existing law. This provision only affects grants made to States. Grant amounts that the State distributes to *individual* State recipients are not subject to the percentage limit. Thus, States are free to vary the percentage of ESG grant amounts that State recipients may use for essential services above or below the 20 percent standard. However, each State must administer its grant so that, on an aggregate basis, the amount expended on essential services does not exceed the applicable limit under § 576.21.

For ESG formula cities and counties, as well as units of local government receiving reallocated funds from HUD, the 20 percent limitation on essential services will continue to apply at the local level. In accordance with existing requirements at § 576.21(a)(2)(ii) of the ESG final rule, the limitation will apply to the total of each grant amount provided by HUD to these entities.

3. Homeless prevention

Section 423 of the 1988 McKinney Act provides for a new category of eligible activities under the ESG program—homeless prevention. The Senate Committee Report offers the following insight into the purpose of this legislative amendment:

> The Committee Bill would make homeless prevention an eligible activity under the ESG program. The McKinney Act has been criticized for its neglect of the "at-risk" homeless population. The argument for prevention is compelling: catching a family before it falls into homelessness is probably more cost-effective and certainly less disruptive than serving the family's needs after they become displaced. * * *
>
> Because the Committee believes that states and localities should have a great degree of

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

flexibility in using ESG funds for homeless prevention efforts, the Committee bill intentionally does not define the activities that would qualify as "homeless prevention." (S. Rep. No. 393, 100th Cong., 2d Sess. 5–6 (1988).)

Although Congress did not specify an exhaustive list of the types of activities that qualify as "homeless prevention," the Senate Committee Report on the 1988 McKinney Act listed several examples: (1) Short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; (2) security deposits or first month's rent to enable a homeless family to move into its own apartment; (3) programs to provide mediation services for landlord-tenant disputes; or (4) programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure. (*Id.*, at 5)

Consistent with legislative intent, the Department intends to provide the maximum amount of flexibility to States and localities to design programs to prevent homelessness. However, the following statutory criteria apply to the extent that ESG funds are used to provide financial assistance to families that have received eviction notices or notices of termination of utility services:

(1) The inability of the family to make the required payments must be due to a sudden reduction in income;

(2) The assistance must be necessary to avoid eviction of the family or termination of services to the family;

(3) There must be a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

(4) The assistance must not supplant funding for preexisting homeless prevention activities from any other sources.

In implementing these statutory criteria, the Department offers the following guidance:

—Homeless prevention assistance is available to "families" that meet the requisite criteria. The Department interprets "families" to include one-person families.

—The third criterion requires that there be a reasonable prospect that the family will be able to resume rental or utility payments "within a reasonable period of time." The Department construes this phrase to mean a reasonable period of time, as determined by the ESG grantee. Hence, this period will not be uniform, but will vary based upon conditions within a particular jurisdiction.

—The fourth criterion prohibits ESG homeless prevention assistance from being used to supplant funding for preexisting homeless prevention activities being provided from any other source, including Federal assistance programs. In implementing this requirement, the Department will require that ESG assistance be used either to implement new homeless prevention activities, or to provide a quantifiable increase in the level of homeless prevention activities already being provided from any other source.

It should be noted that even though homeless prevention activities are not restricted to essential services, the 1988 McKinney Act provides that these activities are to be treated as essential services for purposes of calculating the 20 percent limitation. Thus, the 20 percent cap applies to the *total* ESG grant amounts that are used for essential services, including homeless prevention activities that are not essential services.

Similarly, for purposes of qualifying for a waiver of the 20 percent limitation on essential services under § 576.21(b) of the final rule, this Notice provides that homeless prevention activities are to be regarded as essential services. Thus, the current regulatory standard for waiver of the 20 percent limitation on essential services remains intact: *i.e.*, (1) activities other than essential services (i.e., maintenance and operating costs, renovation, rehabilitation, and conversion activities) are adequately provided from other public and private resources; and (2) the amount in excess of the 20 percent limitation that is proposed for use for essential services cannot practicably be used for eligible activities other than essential services.

While it is difficult to envision a situation in which a State could adequately demonstrate that it meets the waiver requirements, the Department will entertain waiver requests from States that make the requisite showing. HUD specifically requests public comments on the feasibility of modifying, in the case of States, the current standard for obtaining a waiver of the 20 percent limitation on essential services.

4. Required Use of Building as a Shelter

Section 415(c)(1) of the 1987 McKinney Act requires each ESG recipient to certify to HUD that it will maintain as a homeless shelter, for a statutorily mandated time period, any building for which ESG assistance is used. Under section 424 of the 1988 McKinney Act, this statutory "use" requirement continues to be 10 years in the case of ESG activities involving major rehabilitation or conversion. Similarly, the use requirement for rehabilitation activities (other than major rehabilitation or conversion) remains unchanged at three years.

However, the use requirements for activities conducted under sections 414(a) (2) and (3) of the McKinney Act—essential services and maintenance and operating costs, respectively—have been legislatively revised. The current regulations (§ 576.73(a)(4)) contain the following use requirements for assisted essential services and maintenance and operating costs: there is no length of use requirement for essential services (§ 576.73(a)(2); the leasing of commercial facilities triggers a three-year use requirement (§ 576.73(a(3)); and all other operating and maintenance costs have a one-year use requirement.

Section 424 of the 1988 McKinney Act now specifies that an ESG recipient using program funds to provide essential services, or maintenance and operating costs, must carry out the assisted activities "for the period during which [ESG] assistance is provided." The Act further provides that recipients may use a different site or shelter during this period, as long as the same general population is served. The House Committee Report describes this legislative amendment, as follows:

> The Committee believes that the current (time-specific use) requirement is overly burdensome to homeless shelter providers who provide assistance during seasonal periods or during a limited amount of time * * *. The Committee believes that the current requirement discourages homeless shelter providers from utilizing program funds, and unfairly could require shelter providers to keep shelters operating years after the federal funds have been expended. (H. Rep. No. 718, Part 2, *supra.*, at 34.)

In implementing this statutory requirement, the Department is adopting the following procedure for ESG activities involving solely essential services or maintenance and operating costs:

—The shelter operator or service provider may use one or more sites or structures to carry out its activities, but must serve the same general population. The Department construes the term, "same general population", to mean:

• The types of homeless persons originally served with the ESG assistance, such as homeless persons generally or specific categories of the homeless, including battered spouses, runaway children, families, or chronically mentally ill individuals); *or*

• Persons in the same geographical area.

—If the operator or provider receives ESG amounts from a State or unit of general local government, the use requirement continues until the ESG funds are expended, or for such additional time as the parties may agree upon in their funding agreement. This implements the minimum time period prescribed in the 1988 McKinney Act, while providing States and localities the discretion to require assisted shelters to continue operating even after ESG amounts have been expended.

—If the operator or provider receives funds directly from HUD, the grant agreement will require that the same general population be served until the grant amounts are expended.

—If the operator or provider receives funds directly from HUD, the grant agreement must contain an assurance that if the grantee later intends to vary the location of the shelter, the same general population will continue to be served. In all other cases, the jurisdiction with which the operator or provider has the funding agreement must ensure compliance with the "same general population" requirement.

The same procedure applies to the leasing of commercial facilities under section 414(a)(3) of the McKinney Act. However, it should be noted that the Department will continue to provide that commercial facilities may be used as a homeless shelter only if the conditions in § 576.51(b)(2)(iv) (B) and (C) of the ESG final rule are satisfied: *i.e.*, (i) the space is being rented at substantially less than the daily room rate otherwise charged by the facility; and (ii) the grantee or State recipient has determined that the use of these facilities constitutes the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction. If a nonprofit organization wishes to use grant amounts that it receives from the State to lease commercial facilities as a homeless shelter, the certification of approval of the project by the unit of general local government (discussed earlier) must also include the cost-effectiveness determination required by § 576.51(b)(2)(iv)(C).

Finally, it should be noted that under the 1988 McKinney Act, there is no statutory use requirement for newly eligible homeless prevention activities conducted under section 414(a)(4) of the McKinney Act.

5. Environmental Review

Section 482 of the 1988 McKinney Act revised the environmental review procedures for assistance and projects under Title IV of the McKinney Act by making applicable the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974).

Section 104(g)(1) authorizes HUD to provide for the release of funds for particular projects to "recipients of assistance" under title I of the HCD Act of 1974 that assume all of HUD's responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and certain other environmental authorities. Section 104(g)(2) contains the requirements for HUD approval of the release of funds for specific projects. Section 104(g)(4) provides that in the case of grants to States in the States program, the State will perform HUD's role with respect to the release of funds to particular projects to be undertaken by units of general local government receiving grant amounts from the State. HUD regulations implementing section 104(g) are found in 24 CFR Part 58. Aside from the NEPA requirements, the additional environmental authorities with which recipient States and units of local government under the HCD Act of 1974 must comply are listed in 24 CFR 58.5.

In applying the regulations and procedures under section 104(g) to the McKinney Act, the Department is providing for the assumption of environmental review responsibilities only by States and units of general local government (including Territories). It will not permit assumption of these responsibilities by nonprofit organizations that receive reallocated funds directly from HUD. This is consistent with HUD's current regulations and procedures under section 104(g), which permit assumption of environmental review responsibilities only by States or units of general local government. Moreover, in order to do an environmental review under NEPA and related authorities, a recipient must possess certain land use powers. Nonprofit entities do not possess these powers, and would be unable successfully to carry out these environmental responsibilities. The Department will perform the required environmental review for nonprofit grantees in accordance with 24 CFR Part 50 and §§ 576.51(b)(2)(iv) and 576.53(c)(2) and (3).

The Department intends to adopt the following environmental review procedures for States and units of general local government in the Emergency Shelter Grants program:

—In the case of ESG grants to States that are distributed to units of general local government, the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and the State will assume HUD's functions with regard to the release of funds, as provided by section 104(g)(4).

—In the case of ESG grants to States that are distributed to nonprofit organizations, the State will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

—In the case of ESG grants that a unit of general local government distributes to nonprofit organizations, the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

—In the case of grants to units of general local government (including ESG formula cities and counties and Territories), the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

Accordingly, for States and units of general local government assuming responsibilities under section 104(g), the following regulatory provisions do not apply:

—The prohibition contained in § 576.51(b)(2)(vi) against undertaking, or committing funds to, activities to be assisted with ESG amounts before HUD's environmental review is complete.

—Section 576.53(c)(2)'s provision for conditional grants to ensure that assisted activities do not begin before HUD completes its environmental review.

The matters covered by these provisions will be governed by 24 CFR Part 58.

In addition, § 576.53(c)(3) prohibits HUD from authorizing the use of ESG amounts for activities, properties, or locations that would result in unavoidable significant impact on the human environment, as determined by the Department's environmental review. As noted earlier, this provision will continue to apply to the entities for which HUD will continue to conduct environmental reviews: nonprofit organizations.

This provision will not, however, apply to States and units of general local government that assume environmental review responsibilities under section 104(g): The determination to proceed with a project within

§ 576.53(c)(3)'s description will be made by the jurisdiction involved. These jurisdictions should note, however, that the 180-day deadline on the obligation of grant amounts under § 576.55 (a) and (b) will continue to apply. Thus, although the jurisdiction may choose to go through the more elaborate environmental review procedure for projects described in § 576.53(c)(3), it must meet the current regulatory deadline for obligating grant amounts. Failure to obligate the amounts within the required time will result in their reallocation under § 576.55(c).

Recipients are cautioned that under section 104(g), HUD or a State may not release ESG funds for a project if the recipient, subrecipient, or other party commits ESG funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, ESG funds) before the recipient submits its request for release of ESG funds to HUD or the State.

Finally, it should be noted that the final ESG rule contained amendments to HUD's environmental regulations at 24 CFR Parts 50 and 58. These amendments excluded certain McKinney Act activities from the NEPA requirements of those Parts (53 FR 30186). These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment, including services such as health, substance abuse and counseling services; the provision of meals and the payment of rent; utility and maintenance costs; and similar activities that do not involve physical alterations to buildings or sites.

Environmental review focuses on new site selection and physical development activities, such as property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not automatically excluded from the individual compliance requirements of other environmental statutes, Executive Orders, and HUD standards listed in §§ 50.4 and 58.5. However, activities consisting solely of supportive services and other "soft-cost" activities normally do not require environmental review under NEPA *or* the related authorities, provided once again that they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of the program involved). Activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58.

Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

As part of the final rule, the Department intends to amend Part 58 to reflect the changes described in this Notice.

6. Drug- and Alcohol-Free Facilities

Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, ESG grantees and recipients are encouraged to read the Notice on the Comprehensive Homeless Assistance Plan, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

7. Timing Considerations

A. Comprehensive Homeless Assistance Plans

The applicability of the Comprehensive Homeless Assistance Plan requirements to the 1989 ESG program may raise some timing questions. For example, with respect to the reallocation provisions triggered by failure to have an approved Plan (section 413(d) of the McKinney Act), the Department interprets this provision as intended to provide States and formula cities and counties a reasonable period within which to obtain Plan approval. Consequently, HUD interprets the 90-day statutory deadline for this year to begin running from the date the Department published its Notice on the Comprehensive Homeless Assistance Plan, *i.e.*, from December 28, 1988.

B. State Application Deadlines

It should be noted that in the ESG final rule, the application deadline for States under § 576.51(a) was revised from 75 days to 45 days after the date of notification to the State of its grant allocation. The Department wishes to emphasize that this 45-day State application deadline is the operative deadline for purposes of the funding allocation announced in this Notice.

C. Obligation of Funds—Homeless Prevention

Under the ESG final rule (§ 576.55(a)), States are required to make available to their States recipients all emergency shelter grant amounts received under § 576.43 within 65 days of the grant award by HUD. Thereafter, each State recipient is required to obligate all of its grant amount within 180 days of the date on which the State made the grant amounts available to it.

The Department will not apply these obligation deadlines in the limited circumstance of homeless prevention activities. Because it would be difficult for a State to ascertain local homeless prevention needs within the current 65-day deadline, HUD will permit States to set aside up to 10 percent of their grant amounts for homeless prevention efforts. These set-aside funds must be made available to State recipients within *180 days* of the grant award by HUD. Thereafter, the State recipient will have *30 days* to obligate the funds for homeless prevention activities.

Other Matters. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN NOTICE—EMERGENCY SHELTER GRANTS PROGRAM

Description of information collection	Provisions of notice or final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application (annual) to HUD	§ 576.51	375	1	375	16.0	6,000
Initial report to HUD	§ 576.85(a)	375	1	375	12.0	4,500
Annual report to HUD	§ 576.85(b)	375	1	375	12.0	4,500
Environmental submission to HUD by local governments funded by HUD.	II.(5)	325	1	325	0.4	130
Environmental recordkeeping by local governments funded by HUD.	II.(5)	325	1	325	30.0	9,750
Environmental submission to States by local governments funded by States.	II.(5)	300	1	300	0.4	120
Environmental recordkeeping by local governments funded by States.	II.(5)	300	1	300	30.0	9,000
Environmental submissions from States to HUD for nonprofits funded by States.	II.(5)	200	1	200	0.4	80
Environmental recordkeeping by States for nonprofits funded by States.	II.(5)	50	1	50	8.0	400
Waiver requests to HUD	§ 576.21(b)	25	1	25	4.0	100
Local government certification to States for nonprofits seeking funding from States.	II.(1)	200	1	200	0.25	50
Total burden hours					34,630.00	

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that certain provisions of this Notice may have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The Notice makes available $46,500,000 for the ESG program, which authorizes HUD to make grants to States, units of general local government and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses, essential social service expenses, and for the newly eligible homeless prevention activities. To the extent that ESG funds are used to undertake homeless prevention activities, they will help to sustain the family as a cohesive unit by preventing displacement. While provisions of this Notice might potentially have an impact on the family, these are legislatively prescribed and HUD has exercised little or no discretion in implementing them.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that some of the provisions of this Notice implementing the 1988 McKinney Amendments have "Federalism implications" within the meaning of the Order. These include: (1) Permitting States to provide ESG funds directly to a nonprofit organization, rather than requiring that the funds be provided to a unit of local government for distribution to the nonprofit; and (2) in the case of States, applying the 20 percent limitation on essential services at the State, rather than at the local, level. However, these provisions do not need to be considered further under the Executive Order because they implement statutory requirements over which HUD has exercised little or no discretion. Additionally, section 443 of the 1988 Amendments Act provides that HUD shall apply the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this Notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the assumption of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to review under Executive Order 12612.

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 3, 1989.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89-291 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 576

[Docket No. R-89-1434; FR-2562]

Emergency Shelter Grants Program; Cross Reference

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere in this Part III of the Federal Register, HUD is announcing the availability of $46,500,000 for the Emergency Shelter Grants (ESG) program. These funds were appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). The Notice also implements amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Public comments received by the Department by March 10, 1989, will be used to develop a final rule for the Emergency Shelter Grants program under 24 CFR Part 576. The reader is advised to review this Notice for information on ESG grant fund availability, and for the substance of the McKinney legislative amendments.

DATES: *Comment Due Date:* March 10, 1989.

Dated: January 4, 1989.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89-415 Filed 1-6-89; 8:45 am]

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federal register

Monday
January 9, 1989

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Ch. VII

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Notice of Fund Availability and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1893; FR-2539]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Fund Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: The purpose of the section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The assistance is in the form of rental assistance under the section 8 Housing Assistance Payments Program. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937. HUD will make the assistance available for 10 years. This program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

This Notice informs the public of the availability of $45 million appropriated for the program by the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). HUD estimates that this $45 million will assist approximately 1,200 units over the 10-year period. The Notice states the requirements that will govern the use of the funds made available in Fiscal Year 1989 for use under section 441.

HUD will fund applications from public housing agencies (PHAs) which best demonstrate a need for the assistance and the ability to undertake and carry out the program. HUD will conduct a national competition to select PHAs to participate.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) adopted additional program requirements (as discussed below under *Background*). The new law requires the Department to implement the requirements by Notice within 60 days of its enactment and by regulations within 12 months. This Notice and the provisions set forth in it are in compliance with the first half of the mandate. In order to meet the second half, the Department solicits public comment on this Notice so that the Department may promulgate a final rule within the next 12 months.

DATES: Effective Date: January 9, 1989.

Application Submission Deadline April 10, 1989.

Comments Due: March 10, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0367. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

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I. Background

A. Legislative Authority and Applicability

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act"), Pub. L. 100-77. Title IV of the McKinney Act contains a number of housing assistance provisions for HUD to administer. This Notice implements section 441 of the McKinney Act, which authorizes the section 8 Moderate Rehabilitation Assistance Program for Single Room Occupancy Dwellings for Homeless Individuals.

The Notice also announces availability of a $45 million appropriation under the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). A prior Notice of Funding Availability was published in Fiscal Year 1988 (52 FR 38380, October 15, 1987). The requirements of today's Notice only apply to funds made available in Fiscal Year 1989 under section 441. (The Fiscal Year 1988 Notice continues in effect for the funds made available in Fiscal Year 1988 under section 441).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100-628, approved November 7, 1988) (the "1988 Amendments") makes additional program changes regarding (1) the use of efficiency units, (2) a definition of "major spaces", (3) an annual adjustment of the cost limitation per unit, and (4) responsibility for environmental reviews. A discussion of these program changes is set forth below under *Summary*.

B. Summary

Under the program as originally enacted, HUD will enter into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties in which some or all of the dwelling units may not contain either food preparation or sanitary facilities. Each of thse single room occupancy (SRO) units is intended for occupancy by one eligible homeless individual.

Selection of tenants is not subject to the 15 and 30 percent limitations on the number of units that may be occupied by "other single persons" or to the preference for elderly, handicapped, or displaced single persons over other single persons (see section 3(b)(3) of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(b)(3), and the waiver of these provisions in section VIII.B. of this Notice). If, after appropriate outreach efforts by the PHA and the Owner, there are insufficient eligible homeless individuals to fill all assisted units, the Owner may rent them to eligible non-homeless individuals.

Amounts made available must be allocated by HUD on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted under that section. No single city or urban county is eligible to receive more than 10 percent of the assistance made available.

Under this program, HUD will provide assistance for a 10-year assistance period. (In Fiscal Year 1989, 10 percent of assistance made available is $4,500,000 of budget authority, which is equivalent to administratively controlled contract authority of $450,000 for each year over the 10-year assistance period.) The statutory allocation procedures established for the program by section 441 apply instead of the "fair share" allocation procedures required for most assisted housing funds by section 213(d) of the Housing and Community Development Act of 1974, 42 U.S.C. 1439(d).

Applications must contain an identification of the particular structures proposed for rehabilitation. HUD does not require competitive selection of Owners by PHAs because of the special nature of this program. A PHA which is selected will execute an ACC with HUD. The ACC shall be for a term of eleven years (thus allowing for one year to place the units under a Housing Assistance Payments Contract (HAP Contract) and a 10-year assistance period under the HAP Contract). The ACC will give HUD the option to renew the ACC for an additional 10 years, subject to the availability of appropriations.

Before the Owner begins any rehabilitation, the PHA and the Owner must enter into an Agreement to Enter into Housing Assistance Payments Contract (Agreement). After completion of rehabilitation, the PHA and the Owner will enter into a Housing Assistance Payments Contract. The HAP Contract must be entered into within 12 months of execution of the ACC and will have a 10-year term.

Under the original program, the total cost of rehabilitation that may be compensated through Contract Rents under a HAP Contract could not exceed $14,000 per SRO unit (including a pro rata share of the cost related to common areas). This limit could be adjusted in certain circumstances. (There is no limitation on the cost of rehabilitation under the regular program.) Displacement (the permanent, involuntay move of an occupant) will not be allowed under the SRO Program, as further elaborated upon in section II.D.[1]

This Notice incorporates by reference many of the regulations for the current Moderate Rehabilitation Program in 24 CFR Part 882, Subparts D and E, and refers to other regulations in Title 24. Section references to HUD regulations are to Title 24. The term "family" as used in Title 24 shall be understood to refer to an individual for purposes of this program.

The 1988 Amendments made the following changes to the SRO Program:

(1) SRO assistance may now be used in connection with the moderate rehabilitation of efficiency units, if the owner agrees to pay the additional costs of rehabilitating and operating the units. This amendment is evidenced in this Notice by permitting, under section II.B. *Housing Quality Standards*, an SRO unit that may contain both food preparation and sanitary facilities. However, in no case, may the fair market rents for SRO units be exceeded. (That fair market rent is 75 percent of the 0-bedroom Moderate Rehabilitation fair market rent.)

(2) A definition of "major spaces" is provided in connection with fire and safety improvements and is set forth to mean "hallways, large common areas, and other areas specified in local fire, building, or safety codes." This definition is contained in this Notice under section II.B. *Housing Quality Standards*.

(3) HUD is required to increase the per unit cost limit each year to take into account increases in construction costs, starting with assistance provided on or after October 1, 1988. For purposes of Fiscal Year 1989 funding, the cost limitation has been raised from $14,000 per unit to $14,300 per unit to take into account increases in construction costs during the past 12-month period. This amendment is made by changes to section III.G *Initial Contract Rents*.

(4) Under section 104(g) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304 (the "1974 Act"), funds may be released for particular projects to recipients of assistance under Title I of the 1974 Act who assume all of the responsibilities for environmental review, decisionmaking, and actions under the 1974 Act. Section 482(a) of the 1988 Amendments states that "the provisions of, and regulations and procedures applicable under, section 104(g)" of the 1974 Act shall apply to assistance and

[1] PHAs should be aware that any displacement resulting from the regular Moderate Rehabilitation Program after April 2, 1989, will be subject to the requirements of the Uniform Relocation Act (URA). The URA will cover all persons displaced by the rehabilitation project, not just those in assisted units. In other words, if the rehabilitation of an occupied 10-unit structure displaces any family, that family would be covered by the URA, whether or not the family occupied one of the units to be assisted, and regardless of the family's income. Regulations implementing the URA requirements for the regular Moderate Rehabilitation Program will be issued before April 2, 1989.

projects under Title IV of the McKinney Act. This gives HUD the discretion to apply the environmental review procedures of section 104(g) and its implementing regulations at 24 CFR Part 58 to the section 8 SRO program.

In all the programs to which section 104(g) (other than those in Title IV of the McKinney Act) applies, the recipients of assistance are jurisdictions with general purpose powers. Although a small minority of PHAs are agencies of general local government, the majority do not possess general purpose powers. The Department believes that the existence of such powers—especially powers relating to land use control—is an important element in a recipient's ability to carry out the status of a "responsible Federal official," within the meaning of section 104(g). Clearly, most PHAs do not possess these powers and would be unable to successfully carry out these environmental responsibilities.

Thus, for purpose of this Notice, the Department will provide for assumption of environmental review responsibilities by PHAs, but will carry out these functions itself. This decision applies to all PHAs, even if they possess general governmental powers. In the Department's view, the relatively small number of PHAs that have these powers does not justify operating a dual system for environmental review for the program.

In developing a final rule for this program, the Department specifically requests comments on the following alternative proposals for handling environmental reviews for this program in the future:

(a) HUD to continue to conduct the environmental reviews for all recipients under this program, or

(b) Units of general local government that operate as PHAs to assume responsibility for conducting their own environmental reviews, with HUD continuing to conduct the reviews for all other PHAs.

(5) The 1988 Amendments require Comprehensive Homeless Assistance Plans (CHAPs) to contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. SROs under this program are homeless facilities for this purpose and, therefore, subject to CHAP requirements regarding drug- and alcohol-free facilities as set forth in Section III.4 of the CHAP Notice published on December 28, 1988 (53 FR 52600). This requirement is set forth in this Notice under Section III.B *Comprehensive Homeless Assistance Plan (CHAP)* as paragraph (3).

C. Processing Schedule

The first Notice for this program, which was published on October 15, 1987, set extremely short deadlines for the various processing stages under the program in an effort to make housing available for the homeless as soon as possible.

Experience has shown that the schedule required by the first Notice was unrealistic in many cases, especially where specific structures had not been identified. Accordingly, this Notice extends the time periods for the application and rehabilitation processes. However, applicants should ensure that their applications are prepared expeditiously: the application now requires more detailed information and evidence of commitments than were required by the first Notice and the maximum rehabilitation period is still shorter than that permitted under the regular Moderate Rehabilitation program. The Department believes that the application period provided strikes the appropriate balance between ensuring quality projects and the timely provision of assistance to homeless individuals.

II. Project Eligibility and Other Requirements

A. Eligible and Ineligible Properties

(1) Except as otherwise provided in this paragraph A, housing suitable for moderate rehabilitation, as defined in § 882.402, is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is *not* eligible for assistance under this program if it:

(a) Is, or has been within 12 months before the Owner submits a proposal to the PHA, subsidized under any Federal housing program, including the Certificate or Housing Voucher program;

(b) Is owned either by the PHA administering the ACC under this program or by an entity controlled by that PHA;

(c) Is a project with a HUD-held mortgage or is a HUD-owned project;

(d) Is assisted, or is a project for which a commitment for assistance has been entered into, under the Rental Rehabilitation program, 24 CFR Part 511; or

(e) Would require displacement of any person (see paragraph II.D.(2)).

(3) Nursing homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No section 8 assistance may be provided with respect to any unit occupied by an Owner.

B. Housing Quality Standards

Section 882.404 (including its incorporation by reference of § 882.109) shall apply to this program, except as follows:

(1) The housing quality standards in §§ 882.109(i) and 882.404(c), concerning lead-based paint, shall not apply to this program, since these SRO units will not house children under seven years of age.

(2) In addition to the performance requirements contained in § 882.109(p) concerning SRO units, a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require shall be installed in each building. (The term "major spaces" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.)

(3) Section 882.109(g), concerning shared housing, shall not apply to this program.

(4) Section 882.404(b), concerning site and neighborhood standards, shall not apply to this program, except that § 882.404(b) (1) and (2) shall apply. In addition, the site shall be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

(5) An SRO unit may contain both food preparation and sanitary facilities; however, in no case may the fair market rents for SRO units (75 percent of the 0-bedroom Moderate Rehabilitation fair market rent) be exceeded.

C. Financing

Section 882.405 shall apply to this program.

D. Temporary Relocation/Displacement

(1) *Temporary Relocation.* The following policies apply to the temporary relocation of residential tenants who are required to relocate temporarily following the date the PHA submits its application to HUD.

(a) No tenant shall be required to move temporarily from the property unless: (i) The tenant is provided adequate, advance written notice and appropriate advisory services; (ii) suitable housing is available for the temporary period; (iii) the temporary relocation period will not exceed 12 months; (iv) the tenant will receive reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from the temporarily occupied housing and any increase in monthly housing costs; and (v) the tenant is provided a reasonable opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or a nearby building on the real property following completion of the rehabilitation.

(b) The PHA is responsible for assuring that all the temporary relocation requirements are met. Reasonable relocation costs incurred by the Owner for the temporary relocation of tenants to be assisted under this program are considered eligible rehabilitation costs for inclusion in the Contract Rents. (Temporary relocation costs for tenants not to be assisted under this program may not be included in the Contract Rents.) Preliminary administrative funds may be used for costs of PHA advisory services for the temporary relocation of tenants to be assisted under this program.

(2) *Displacement.* As indicated in the displacement certification (see paragraph III.C.(5)), no person (family, individual, business or nonprofit organization) shall be displaced as a direct result of acquisition, rehabilitation or demolition of the structure, whether or not the person occupies a unit assisted under the moderate rehabilitation SRO program. For the purposes of this Notice, a person is displaced if the person is required to move permanently and involuntarily. However, a person will not be considered displaced if (a) the person commences occupancy after the PHA submits the application to HUD and, before commencing occupancy, is provided adequate written notice from the Owner of the impending rehabilitation and possible displacement; or (b) the person's tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does *not* include termination because of Owner participation in this program.)

E. Other Federal Requirements

Section 882.407, Other Federal Requirements, shall apply to this program, with the additions and modifications noted below:

(1) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy, shall apply. Consistent with HUD's responsibilities under these Executive Orders and Executive Order 11625 (see § 882.407(c)(5)), the PHA and Owner shall make efforts to encourage the use of minority and women's business enterprises in connection with activities assisted under this program.

(2) If the procedures that the PHA or Owner, as appropriate, intends to use to make known the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for admission to the program, the PHA or Owner shall establish additional procedures that will ensure that such persons are made aware of the availability of the program. The PHA or Owner shall also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities which are accessible to handicapped persons.

(3) Notwithstanding that structures may serve designated populations of homeless persons, the PHA or Owner, as appropriate, is required, in serving a designated population, to comply with the requirements under this paragraph E relating to nondiscrimination on the basis of race, color, religon, sex, age, or national origin. Designated populations of homeless persons may include (but are not limited to) substance abusers and the chronically mentally ill. In addition, the PHA shall comply with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR Part 8 which prohibit discrimination against otherwise qualified individuals with handicaps solely by reason of handicap.

Single-sex facilities are allowable under the Moderate Rehabilitation SRO program, provided that the PHA determines that because of the physical limitations or configuration of the facility, consideration of personal privacy requires that the facility (or parts of the facility) be available only to members of a single sex.

(4) HUD shall comply with the Coastal Barriers Resources Act (which prohibits assistance for sites in the coastal barrier resources system identified under that Act).

(5) Projects of nine or more assisted units are subject to Davis-Bacon Act requirements regarding wage rates paid for rehabilitation work. The Department of Labor has advised that residential, rather than commercial, wage rates apply for buildings of four stories or less being rehabilitated for the homeless.

(6) In lieu of the provisions of § 882.407(b), the environmental review requirements of 24 CFR Part 50, implementing the National Environmental Policy Act and related environmental laws and authorities listed in 24 CFR § 50.4, are applicable to this program. HUD will complete environmental reviews on applications under this program before selecting PHAs. HUD may elect to eliminate a proposal from consideration where a proposal would require an Environmental Impact Statement (generally, where HUD determines that the proposal would have a significant effect on the human environment), or where the time necessary for the completion of the review process under an environmental law (e.g., the National Historic Preservation Act) for structures identified in a particular application would prevent timely completion of the selection process. If a successful PHA proposes, after selection, to enter into an Agreement with respect to a sturcture that was not identified in its application, the requirements in paragraph III.F.(10) will be followed.

III. PHA Application Process, HUD Review and Selection, ACC Execution, and Pre-Rehabilitation Activities

A. General

(1) PHAs that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882 are invited to submit applications for this program. There is no application form. Applications shall contain the information prescribed in paragraph III.C, be addressed to Lawrence Goldberger in Room 6130 at the address specified above, and be received by 5:15 p.m. Eastern Standard Time on April 10, 1989. Each PHA shall also submit a copy of the application to the appropriate HUD field office by the same deadline. HUD will reject late applications.

(2) PHAs have discretion to select proposals by Owners in accordance with their own procedures and policies, consistent with the requirements of this Notice. Accordingly, § 882.503, Obtaining Proposals from Owners; § 882.504(c) (1), (4), and (5), Selection of Proposals; and § 882.504(d) Notification of Owners, shall not apply to this program.

(3) HUD headquarters will process all applications and select the successful PHAs.

B. Comprehensive Homeless Assistance Plan (CHAP)

(1) Section 401 of the McKinney Act prohibits assistance under this program from being made available within the jurisdiction of a State, or a metropolitan city or urban county that is eligible for a formula allocation under the Emergency

Shelter Grants program established by the McKinney Act (ESG formula city or county), unless the entity has a HUD-approved CHAP. For PHAs that wish to receive funding under this program, the following rules apply. If the structure to be assisted is located *within* an ESG formula city or county, the city or county must have an approved CHAP. If the structure is located *outside* an ESG formula city or county, the State must have an approved CHAP. Since Indian tribes are not required to have approved CHAPs, the CHAP requirement does not apply to PHAs seeking funding for structures within the jurisdictions of Indian tribes. However, if an Indian tribe seeks to receive funding under this program for a project outside of its jurisdiction, it would be required to obtain a certification that its proposed activities are consistent with the CHAP for the jurisdiction in which the activities are to be located.

(2) The Department published a Notice in the **Federal Register** on August 14, 1987 (52 FR 30628) establishing requirements for CHAPs. Among other things, that Notice listed the ESG formula cities and counties and other entities that are subject to the CHAP requirements. The recently enacted reauthorization of the McKinney Act requires the annual submission of CHAPs. The Department published updated CHAP requirements on December 28, 1988 (53 FR 52600). Potential applicants under this program are encouraged to familiarize themselves with these requirements.

(3) Each CHAP must contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that each SRO is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. CHAP requirements regarding drug- and alcohol-free facilities are set forth in section III.4 of the CHAP Notice published on December 28, 1988 (53 FR 52600).

C. PHA Application

Section 441 of the McKinney Act requires that HUD allocate the amounts made available for this program on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted. Each application shall contain the following information to enable HUD to make these determinations.

(1) *Size and Characteristics of SRO Population.* The application shall include a description of the size and characteristics of the homeless population within the applicant's jurisdiction that would occupy SRO dwellings under this program, and a statement of the basis for this description, (*i.e.*, the source of the information). If the PHA intends to serve a designated population of homeless persons, such as substance abusers or the chronically mentally ill, the application should identify the designated population.

(2) *Identification of Suitable Housing Stock to Be Rehabilitated Under This Program.* (a) The application shall identify specific structures, by address (indicating city and urban county where applicable), that the PHA proposes for rehabilitation and assistance under this program, including:

(i) The total number of SRO units requested;

(ii) The total number of units in each structure;

(iii) The number of vacancies among SRO units to be assisted;

(iv) The type of rehabilitation expected; and

(v) For applications identifying more than one structure, a priority ranking of the structures in the event that the application can only be partially funded.

(b) The application shall also include a description of the interest that has been expressed by builders, developers, Owners, and others (including profit and nonprofit organizations) in participating in the program. This may include statements expressing interest in acquiring or rehabilitating structures identified in the application or information on site control, and should include a discussion of the relevant development and management experience, and the length of experience, of individuals or organizations that will participate in the program.

(c) The application shall also include a preliminary feasibility analysis for the structure identified which demonstrates that a preliminary estimate of the gross rents for the structure indicate that the project is feasible within the fair market rent limitation. The analysis should also address the structure's compliance with basic program requirements regarding eligible properties and tenants, site control, the $1,000 minimum in eligible rehabilitation work, and eligible work items.

(3) *Additional Commitments for Supportive Services.* The application shall identify any supportive services (as defined in section VII.B) which would be necessary for the population expected to be served. The availability of these services should be demonstrated by letters from the agencies (including public and private sources) providing the services. The letters should describe the services to be provided, the funding source, and the proposed period of availability. The PHA shall demonstrate that the supportive services appropriately address the needs of the homeless population to be served. The application should address whether these services will be provided in the structure or elsewhere. If elsewhere, the application should demonstrate that the services will be readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided.

(4) *CHAP Certifications.* The application shall contain a certification that each proposed structure is consistent with the appropriate CHAP submitted in accordance with the 1989 requirements referenced in paragraph III.B. The certification shall be from the public official responsible for submitting the CHAP for the State, formula city or county, or territory and shall indicate that the proposed activities of the PHA are consistent with the CHAP. Such certification must be provided as follows:

(a) If the proposed structure is located within the boundaries of a city or urban county required to submit its own CHAP under the requirements referenced in section III.B., then a certification from the appropriate official of that jurisdiction is required; or

(b) If the proposed structure is not located within such a unit of local government, then a certification from the appropriate State official is required.

(5) *Displacement Certification.* The application shall contain a certification from the PHA that neither its proposed activities, nor the acquisition, rehabilitation or demolition activities of any Owner whose proposal is selected or considered for selection, will result in the displacement (the permanent, involuntary move) of any person (family, individual, business or nonprofit organization).

(6) *Section 213 Letter.* Section 213 of the Housing and Community Development Act of 1974 requires HUD to provide the chief executive officer of the unit of general local government an opportunity to comment on the application. Where the unit of general local government has a housing assistance plan, its comment may include an objection to HUD approval of an application for housing assistance on the grounds that the application is inconsistent with the local housing assistance plan. PHAs should encourage the chief executive officer to submit a section 213 letter with the PHA application. (See 24 CFR Part 791 for specific requirements). Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application and indicate that approval of the application for assistance under this Notice is consistent with the community's housing assistance plan, where applicable, but should also state that HUD may consider the letter to be the final comments, and that no additional comments will be submitted by the unit of local government.

(7) *Schedule.* The application shall contain a schedule for completion of all necessary steps through execution of the Housing Assistance Payments Contract and demonstrate that it is feasible for the PHA to meet its schedule. The schedule shall specify when the following will be completed:

(a) Inspection of units and determination of eligibility of any current residents, final feasibility analysis, detailed work write-ups, and cost estimates;

(b) Determination of initial base rents and Contract Rents;

(c) Ensuring that firm commitments of financing and identified necessary supportive services and other resources to be provided are in place;

(d) Execution of the Agreement;

(e) Start of rehabilitation activities, with an identification of any which may be affected by weather conditions and a discussion of how weather delays have been taken into account; and

(f) Execution of the Contract (must be within 12 months from execution of the ACC).

(8) *Administrative Capability and Rehabilitation Expertise.* The application shall include a description of the PHA's experience in administering the section 8 Moderate Rehabilitation Program and a description of the PHA's rehabilitation expertise.

(9) *Financing.* The application shall indicate the types of financing expected to be used, including Federal, State, or locally assisted financing programs, and describe the availability of such financing. If availale, statements from these financing sources indicating their willingness to provide financing should be submitted.

D. HUD Selection Process

(1) *Part 791.* Upon receipt of an application that does not include a section 213 letter from the chief executive officer of the unit of general local government (see paragraph III.C.(6)), HUD shall send the application to the appropriate chief executive officer in accordance with 24 CFR Part 791.

(2) *Ranking.* Before ranking applications, HUD will complete environmental reviews required under 24 CFR Part 50 on all applications. HUD may elect to eliminate a proposal from consideration where the application would require an Environmental Impact Statement, or the time necessary for the completion of the review process under an enviromental law for structures identified in a particular application would prevent timely completion of the ranking and selection process. Except for such eliminated proposals, HUD will rank all applications from PHSs administering the Moderate Rehabilitation Program that contain all items required by section C, based upon HUD's assessment of which applications have the best combination of the following:

(a) The need for assistance, as demonstrated by the PHA's analysis of the size and characteristics of the population to be served, and by the thoroughness of the analysis of the need presented; and

(b) The PHA's ability to undertake and carry out the program within the schedule proposed by the PHA, as demonstrated by:

(i) Whether the preliminary feasibility analysis demonstrates that it appears likely that the proposed structure will be feasible and meets basic program requirements;

(ii) Whether there is evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule;

(iii) The percentage of units proposed for assistance which are vacant (rehabilitation of vacant units generally will result in more units becoming available for the homeless; therefore, a preference will be given to applications indicating the highest percentage of vacancies);

(iv) Whether it appears feasible that the PHA and Owner will complete all steps necessary so that the Contract may be executed within 12 months of execution of the ACC;

(v) Whether the PHA has specified the resources available to provide necessary supportive services, including the strength and length of the commitments to provide those resources;

(vi) The availability of financing, both assisted and unassisted, as demonstrated by statements or commitments from lenders, with a preference for assisted financing availability; and

(vii) The PHA's experience with rehabilitation programs, including past performance in placing Moderate Rehabilitation units under Agreement and Contract, and the PHA's overall administrative capability, as evaluated by the HUD field office.

HUD shall assign a maximum of 30 points based on paragraph (a) and 70 points based on paragraph (b), with an equal maximum amount of points (10) for each element in paragraph (b).

3. *Selection of Applications.* (a) HUD will select the highest ranking applications. However, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program ($4,500,000 in budget authority, which is the equivalent of $450,000 in administratively controlled contract authority per year, which HUD expects will fund a maximum of approximately 120 units for any one city or urban county).

(b) HUD will notify each PHA whether or not its application has been selected.

(c) Where the review and comment process required under 24 CFR Part 791 has not been completed by the time HUD is ready to make its selections, it may select one or more applications subject to completion of the process required under Part 791, if it has determined that the application is consistent with a housing assistance plan (where applicable). See, also, paragraphs III.C(6) and III.D.(1).

E. ACC Execution

(1) Before execution of the ACC, the PHA shall submit to the appropriate HUD field office the following:

(a) Equal Opportunity Housing Plan and Certification, Form HUD–820;

(b) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(c) Administrative Plan, which should include:

(i) Procedures for tenant outreach and for establishing waiting lists;

(ii) A policy governing temporary relocation; and

(iii) A mechanism to monitor the provision of supportive services.

(d) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(e) If applicable, proposed variations to the accceptability criteria of the Housing Quality Standards (see section II.B); and

(f) The fire and building code applicable to each structure.

(2) After HUD approves the PHA's application, the review and comment requirements of 24 CFR Part 791 have

been complied with, and the PHA has submitted (and HUD has approved) the items required by paragraph III.E(1). HUD and the PHA shall execute the ACC in the form prescribed by HUD. The initial term of the ACC shall be 11 years. This allows one year to rehabilitate the units and place them under a 10-year HAP Contract. The ACC will establish a separate term for the funding provided in Fiscal Year 1989 for this program. The ACC shall give HUD the option to renew the ACC for an additional 10 years.

(3) Section 882.403(a), Maximum Total ACC Commitments, shall apply to this program.

(4) Section 882.403(b), Project Account, shall apply to this program.

F. Project Development

Before execution of the Agreement, the PHA shall:

(1)(a) Inspect the structure to determine the specific work items which need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see section II.B) or other standards approved by HUD; (b) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added; (c) ensure that the Owner prepares the work write/ups and cost estimates required by § 882.504(f); and (d) determine initial base rents and Contract Rents;

(2) Assure that the Owner has selected a contractor in accordance with § 882.504(g);

(3) After the financing and a contractor are obtained, determine whether costs can be covered by initial Contract Rents, computed in accordance with section III.G; and, where a structure contains more than 50 units to be assisted, submit the base rent and Contract Rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner;

(4) Obtain firm commitments to provide necessary supportive services;

(5) Obtain firm commitments for other resources to be provided;

(6) Determine that the $1,000 minimum amount of work requirement and other requirements in § 8821.504(c) (2) and (3) are met;

(7) Determine eligibility of current tenants, and select the units to be assisted in accordance with § 882.504(e);

(8) Comply with the financing requirements in § 882.504(i);

(9) Assure compliance with all other applicable requirements of this Notice; and

(10) In the event that the PHA determine that any structure proposed in its application is infeasible, or the PHA proposes to select a different structure for any other reason, the PHA must submit the information required in III.C.(2) for the selected structure to HUD Headquarters for review and approval and to the HUD Field Office for environmental review, as required by II.E(6). HUD Headquarters will rate the proposed structure in accordance with the procedures in III.D. The proposed structure must rank at least as high as the lowest ranked application selected for funding in Fiscal Year 1989. If the PHA fails to submit a structure of such ranking, HUD may reduce the amount of annual contributions payable or reduce the funding reserved for the structure. The PHA may not proceed to Agreement execution until it is notified by HUD and all requirements for the proposed structure have been met.

G. Initial Contract Rents

Section 882.406, Initial Contract Rents (including the establishment of fair market rents for SRO units at 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent), shall apply to this program, except as follows:

(1)(a) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.406(c)(2), a 10-year loan term (instead of a 15-year loan term) shall be assumed. The exception in § 882.406(c)(2)(iii) for using the actual loan term where the total amount of the rehabilitation is less than $15,000 shall continue to apply. In addition, the cost for the rehabilitation that may be included for the purpose of calculating the amount of the initial Contract Rent for any unit shall not exceed the lower of (i) the projected costs of rehabilation, or (ii) $14,300 per unit, plus the cost of the fire and safety improvements required by section II.B.(2). HUD may, however, increase the limitation in clause (ii) by an amount HUD determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes.

(b) Where the PHA believes that high construction costs warrant an increase in the limitation in clause (a)(ii) above, the PHA shall demonstrate to HUD's satisfaction that a high average per unit amount is necessary to conduct this program and that every appropriate step has been taken to contain the amount of the rehabilitation within an average of $14,300 per unit, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(i) HUD may approve a higher per unit amount up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) in use before April 1988, for the area to the total of the $14,300 per unit cost and the cost of the required fire and safety improvements; or

(ii) HUD may, on a structure-by-structure basis, increase the level approved in paragraph (i) to up to an amount computed by multiplying 2.4 by the total of the $14,300 average per unit cost and the cost of the required fire and safety improvements.

(2) In approving changes to initial Contract Rents during rehabilitation in accordance with § 882.408(d), the revised Contract Rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph G.(1) of this section.

(3) Where the structure contains four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1-, 2-, 3-, or 4-bedroom unit, as applicable) shall apply instead of a separate Fair Market Rent for each SRO unit. The Fair Market Rent for the structure shall be apportioned to each SRO unit.

(4) Contract Rents shall not include the costs of providing supportive services, transportation, furniture, or other non-housing costs, as determined by HUD. Also, contract rents shall not include the additional costs of rehabilitation and operating efficiency units. PHAs shall consult with HUD where it is not clear whether the cost may be covered by the Contract Rent.

IV. Agreement to Enter into Housing Assistance Payments Contract, Rehabilitation Period, and Cost Certifications

A. Rehabilitation Period

(1) *Agreement.* Before the Owner begins any rehabilitation, the PHA shall enter into an Agreement with the Owner is the form prescribed by HUD.

(2) *Timely Performance of Work.* Section 882.506(a) shall apply to this program. In addition, the Agreement shall provide that the work shall be completed and the Contract executed within 12 months of execution of the ACC. HUD may reduce the number of units or the amount of the annual contribution commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units.

(3) *Inspections.* Section 882.506(b) shall apply to this program.

(4) *Changes.* Section 882.506(c)(1) shall apply to this program. Contract Rents may only be increased in accordance with the rehabilitation cost limits in section III.G.(2) of this Notice.

(5) *List of Vacancies.* Section 882.506(d) shall apply to this program. See also, section VI.A. *Outreach to Lower Income Individuals and Appropriate Organizations; Waiting Lists.*

B. Completion of Rehabilitation

(1) *Notification of Completion.* Section 882.507(a) shall apply to this program.

(2) *Evidence of Completion.* Section 882.507(b) shall apply to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, shall not apply.

(3) *Actual Cost and Rehabilitation Loan Certifications.* Section 882.507(c) shall apply to this program, except that Contract Rents shall be established in accordance with section III.G of this Notice.

(4) *Review and Inspections.* Section 882.507(d) shall apply to this program.

(5) *Acceptance.* Section 882.507(e) shall apply to this program.

V. Housing Assistance Payments Contract

A. Time of Execution of Contract

Section 882.508(a) shall apply to this program.

B. Term of Contract

The Contract for any unit rehabilitated in accordance with this program shall be for a term of 10 years. The Contract shall give the PHA the option to renew the Contract for an additional 10 years.

C. Changes in Contract Rents from Agreement

The Contract Rents may be higher or lower than those specified in the Agreement, in accordance with section III.C.

D. Unleased Units

Section 882.508(c) shall apply to this program.

E. Contract Rents at End of Rehabilitation Loan Term

Section 882.409 shall apply to this program, except that the requirement to reduce rents shall apply on the earlier of (1) the end of the term of the rehabilitation loan, or (2) 10 years from the effective date of the Contract. Base rents for this program are determined under section III.G.

VI. Management

A. Outreach to Lower Income Individuals and Appropriate Organizations; Waiting Lists

(1) *Outreach to Lower Income Individuals and Appropriate Organizations.* Promptly after receiving the executed ACC, the PHA shall engage in outreach efforts to make known the availability of this program to homeless individuals in general, or to homeless individuals in the category for which the structure is designed. The PHA shall also ask appropriate organizations to refer homeless individuals to the PHA or to assist the PHA in locating them. Any outreach shall be made in accordance with the PHA's HUD-approved application and Administrative Plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(2) *Waiting Lists.* The PHA shall maintain a separate waiting list for all applicants (or each category of applicants) for this program. In establishing waiting lists, the PHA shall first review any of its existing waiting lists for section 8 Moderate Rehabilitation and Existing Housing (Certificate and Housing Voucher) programs and add the names of any homeless individuals on those lists to the lists for this program, where it is able to identify the individuals on those lists as homeless. The names of the individuals on the section 8 Moderate Rehabilitation and Existing Housing lists shall remain on those lists as well.

(3) *First Priority for Homeless Individuals.* Homeless individuals on a waiting list shall have a first priority for occupancy of housing rehabilitated under this program.

B. Individual Participation

(1) *Initial Determination of Individual Eligibility.* Section 882.514(a) shall apply to this program.

(2) *PHA Selection of Individuals for Participation.* Section 882.514(b) shall apply to this program, except that the PHA shall only refer Homeless Individuals.

(3) *Owner Selection of Individuals.* All vacant units under Contract shall be rented to Homeless Individuals referred by the PHA from its waiting lists. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting lists to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from homeless persons, and refer such persons to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Individual, provided that the Owner does not unlawfully discriminate. Should the Owner reject an Individual, and should the Individual believe that the Owner's rejection was the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue and may also file a complaint with HUD. If the individual requests the assistance of the PHA and if the PHA cannot resolve the complaint promptly, the PHA should advise the Individual that he or she may file a complaint with HUD.

(4) *Leasing to Non-Homeless Individuals.* When neither the PHA nor the Owner can find a sufficient number of interested applicants who are Homeless Individuals, the Owner may rent to non-homeless Eligible Individuals, in accordance with § 882.514 (a) through (c).

(5) *Briefing of Individuals.* Section 882.514(d) shall apply to this program, except that paragraph (d)(1)(vi) shall not apply.

(6) *Continued Participation of Individual When Contract Is Terminated.* Section 882.514(e) shall apply to this program, except that the PHA may issue a Housing Voucher instead of a Certificate.

(7) *Individuals Determined by the PHA To Be Ineligible.* Section 882.514(f) shall apply to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

C. Lease

(1) *Contents of Lease.* Section 882.504(j) shall apply to this program. In addition, the Lease shall limit occupancy to one Eligible Individual.

(2) *Term of Lease.* Section 882.403(d) shall apply to this program.

D. Security and Utility Deposits

Section 882.112 shall apply to this program.

E. Rent Adjustments

Section 882.410 shall apply to this program.

F. Payments for Vacancies

Section 882.411 shall apply to this program.

G. Subcontracting of Owner Services

Section 882.412 shall apply to this program.

H. Responsibility of the Individual

Section 882.412 shall apply to this program.

I. Reexamination of Individual Income

(1) *Regular Reexaminations.* The PHA shall reexamine the income of all individuals at least once every 12 months. After consultation with the Individual and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR Part 813, and determine whether only one individual is still occupying the unit. The PHA shall adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(2) *Interim Reexaminations.* The Individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of Individual income and determinations as to whether only one person is occupying the unit. In addition, the second and third sentences of § 882.515(b) shall apply.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(c) shall apply to this program.

J. Overcrowded Units

If the PHA determines that anyone other than, or in addition to, the Eligible Individual is occupying an SRO unit assisted under this program, the PHA shall take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one Eligible Individual. Such action may include assisting the occupants of the unit in locating other housing, and requiring the occupants who do not have a right to occupy the unit under the Lease to move to other housing.

K. Adjustment of Utility Allowance

Section 882.510 shall apply to this program.

L. Termination of Tenancy

Section 882.511 shall apply to this program.

M. Reduction of Number of Units Covered by Contract

Section 882.512 shall apply to this program.

N. Maintenance, Operation, and Inspections

Section 882.516 shall apply to this program.

O. HUD Review of Contract Compliance

Section 882.217 shall apply to this program.

VII. Definitions

A. Section 882.402 shall apply to this program, except that:

(1) With respect to the definition of Moderate Rehabilitation, in determining compliance with the $1,000 minimum expenditure required to qualify as Moderate Rehabilitation, the cost of the repair or replacement of major building systems or components in danger of failure shall not be counted; and

(2) With respect to the definition of Single Room Occupancy (SRO) Housing, the requirement that an SRO unit must be located within a multifamily structure consisting of more than 12 units shall not apply.

B. In addition to the definitions contained in § 882.402, the following definitions shall apply to this program:

Eligible Individual ("Individual"). A lower income individual who, taking into account the supportive services available to the individual, is capable of independent living as a "Family" or "Single Person" under 24 CFR Part 812.

Homeless Individual. An individual who—

(1) Is an Eligible Individual;

(2) Lacks a fixed, regular, and adequate nighttime residence; and

(3) Has a primary nighttime residence that is—

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "Homeless Individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Supportive Services. Services that may include outpatient health services; employment counseling; nutritional counseling; information on obtaining furniture or clothing; security arrangements necessary for the protection of residents of facilities to assist the homeless; other services essential for maintaining independent living; assistance to homeless individuals in obtaining other Federal, State, and local assistance available for such individuals, including mental health benefits, employment counseling, medical assistance, and income support assistance, such as Supplemental Security Income benefits, General Assistance, and Food Stamps; and residential supervision necessary to facilitate the adequate provision of supportive services to the residents. The term does not include major medical equipment.

VIII. Waivers

A. Authority to Waive Provisions of this Notice

Upon determination of good cause, the Assistant Secretary for Housing—Federal Housing Commissioner may, subject to statutory limtations, waive any provision of this Notice. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

B. Waiver of the Limitation and Preference in the Second and Third Sentences of Section 3(b)(3) of the 1937 Act

Section 8(n) of the U.S. Housing Act of 1937 authorizes HUD, in appropriate cases involving SRO housing, to waive the limitation and preference in the second and third sentences of section 3(b)(3) of that Act. The second sentence of section 3(b)(3) limits to 15 percent the number of units under the jurisdiction of any PHA which can be occupied by "other single persons" (those who do not qualify as elderly, displaced, or the remaining member of a tenant family). The third sentence requires a preference for persons who are elderly, handicapped, or displaced over other single persons.

The Department believes that waiver of the limitation and preference is appropriate for this program since many of those who will occupy this housing probably would not be subject to the 15 percent limitation and, therefore, would qualify for the preference. Therefore, in light of the administrative burden involved for the few who may be subject to the 15 percent limitation, HUD hereby waives these provisions for purposes of this program. In addition, any regulations implementing the percentage limitation or the preference shall not apply to units assisted under this Notice. The authority elsewhere in section 3(b)(3) to "increase the [15 percent] limitation described in the second sentence" to 30 percent does not apply, since the limitation in the second sentence has been waived and there is no applicable limitation in the second sentence to "increase."

IX. Significant Changes From Fiscal Year 1988 Notice

This Notice tracks for the most part the Notice published for Fiscal Year 1988. However, for the convenience of the reader, below is a listing of the significant changes which have been made and are not discussed previously under *Background.*

1. *II.B. Housing Quality Standards* has been changed to add a fifth provision that an SRO unit may contain both food preparation and sanitary facilities, but that in no case may the fair market rents for SRO units (75 percent of the 0-bedroom Moderate Rehabilitation fair market rent) be exceeded.

2. *II.D. Temporary Relocation/ Displacement* has been revised to remove the reference to 24 CFR 882.406(a) regarding applicability of the Uniform Relocation Act because the Notice sets forth specific policies regarding temporary relocation and displacement as they apply to this program. These requirements are basically the same as those contained in the Fiscal Year 1988 Notice except that (a) temporary relocation may not exceed 12 months (as opposed to six months) and (b) the tenant must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or nearby building following completion of the rehabilitation.

3. *II.E. Other Federal Requirements* has been changed to:

—Add a statement to paragraph (3) indicating that single-sex facilities are allowable under certain circumstances.

—Add a provision that Davis-Bacon Act requirements regarding wage rates paid for rehabilitation work apply to projects of nine or more assisted units, and that residential, rather than commercial, wage rates shall apply for buildings of four stories or less being rehabilitated for the homeless.

—Add a paragaph regarding the environmental review requirements that must be met before selection of successful PHAs.

4. *III.C. PHA Application* has been changed to:

—Delete from paragraph (2) the option that the PHA application may include an inventory of structures, by address, that would be available and appropriate for rehabilitation under this program, if it is not possible to identify a specific site. However, the application should now contain a priority ranking of the structures where more than one structure is identified.

—Add a paragraph (2)(c) to require that the application include a preliminary feasibility analysis of the structures identified following rehabilitation and specifying what that analysis should contain.

—Revise paragraph (3) regarding additional commitments for supportive services to require that the availability of these services should be demonstrated by letters from the agencies providing the services, and specifying what the letters should contain.

—Revise paragraph (4) regarding the CHAP certification to update those requirements. (PHA and local government certifications previously under paragraph (7) are subsumed under paragraph (4)).

—Revise paragraph (5) to make technical adjustments to the breadth of the displacement certification.

—Revise paragraph (7) regarding *Schedule* to remove from the schedule for completion a specific date for completion of the selection of the specific structure or structures to be rehabilitated. Paragraph (7)(a) now requires that the schedule include a date for completion of the determination of eligibility of any current residents. Paragraph 7(f) continues to require that the schedule specify the date for execution of the Contract, but specifies that it must be within 12 (as opposed to six) months from the execution of the ACC.

—Revise paragraph (9) regarding *Financing* to add that the application should contain, if available, statements from the financing sources indicating their willingness to provide financing.

5. *III.D. HUD Selection process* has been changed to:

—Revise paragraph (2) to require environmental reviews before ranking applications. HUD may eliminate a proposal from consideration where an Environmental Impact Statement is necessary and time does not permit.

—Delete from the ranking considerations old paragraph (2)(b)(i) regarding whether the PHA proposed specific projects for assistance or only submitted an inventory of structures that would be available and appropriate for rehabilitation. A new paragraph (i) has been added to include, in the ranking considerations, whether the preliminary feasibility analysis demonstrates a likelihood that the proposed structure will be feasible and will meet basic program requirements.

—Revise paragraph (2)(b)(ii) to provide that a preference will be given to applications indicating the highest percentage of vacancies.

—Revise paragraph (2)(b)(iv) to remove from the ranking considerations the feasibility of executing an agreement before January 4, 1988, and executing the Contract within *six* months of execution of the Agreement. (The paragraph now speaks only to whether the Contract may be executed within 12 months of execution of the ACC.)

—Revise paragraph (2)(b)(vi) [previously (2)(b)(vii)] to establish a preference for assisted financing availability under ranking considerations.

—Eliminate from the ranking considerations old paragraph (2)(b)(ix) (demonstrated capacity of the PHA to administer a rehabilitation program) and old paragraph (2)(b)(x) (overall feasibility of the proposed program).

6. *III.E. ACC Execution* has been changed to add a listing of what the Administrative plan should include: (i) Procedures for tenant outreach and for establishing a waiting list, (ii) a policy governing temporary relocation, (iii) a mechanism to monitor the provision of supportive services, and (iv) review and approval of the lease, including any special lease provisions related to special characteristics of the designated population to be served. (These four items were previously listed under *III.F. Project Development* as things the PHA had to do before execution of the Agreement.)

7. *III.F. Project Development* has been changed to:

—Revise paragraph (3) to remove reference to a January 4, 1988 deadline for execution of the Agreement to require such execution *in a timely manner.*

—Add paragraph (10) regarding selection of a different structure in the event the proposed structure is infeasible or for other reasons. The PHA must submit all of the same information for the newly selected structure, and the newly selected structure must rank at least as high as the lowest ranked application selected for funding.

8. *IV.A Rehabilitation Period* has been changed to:

—Remove from paragraph (1) reference to the January 4, 1988 deadline to enter into the Agreement.

—Revise paragraph (2) to state that the Agreement shall provide that the work be completed and the Contract executed within 12 months of execution of the *ACC,* as opposed to

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six months from execution of the Agreement.

9. *VI.B. Individual Participation* has been changed to revise paragraph (3) regarding refusal of an Individual by an Owner. If the refusal is the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue *and* may also file a complaint with HUD. If the PHA cannot resolve the complaint promptly, the PHA should advise the Individual that he or she may file a complaint with HUD. The PHA is no longer required to refer the Individual to the next available unit in the program.

10. *VII. Definitions* has been changed to add to the definition of "supportive services" information on obtaining furniture or clothing.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC, 20410.

Information collection requirements. The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502–0367. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN

[Notice of fund availability—Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals]

Description of information collection	Section of 24 CFR affected	Number of respond-ents	Number of re-sponses per respond-ents	Total annual re-sponses	Hours per response	Total hours
Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals (2502–0367).	24 CFR Part 882	100	1	100	25	2,500

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order because the Notice merely provides, at statutory direction, housing for homeless individuals through a housing assistance mechanism that is already established between HUD, the PHA, and the Owner under the Section 8 Housing Assistance Payments Program.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order, because its aim is to provide single room housing for homeless individuals.

The Catalog of Federal Domestic Assistance Program number is 14.156, Lower Income Housing Assistance Program.

Authority: Secs. 401 and 441, Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 10–628, approved November 7, 1988; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 3, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–290 Filed 1–6–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 891

[Docket No. R–89–1432; FR–2539]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Cross Reference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule; cross-reference.

SUMMARY: In a Notice published elsewhere in this Part IV of the **Federal Register**, HUD is announcing the availability of $45 million for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. These funds were appropriated by the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100–404, approved August 19, 1988). The Notice also implements amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988). The Notice of Fund Availability will be the basis for development of a final rule for this program, to be added to Chapter VIII of Title 24 of the Code of Federal Regulations, and therefore invites public comment on the Notice within 60 days of today's **Federal Register** publication.

DATES: *Comment due date:* March 10, 1989.

Date: January 5, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 89–416 Filed 1–6–89; 8:45 am]

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federal register

Monday
January 9, 1989

Part V

Department of Energy

10 CFR Part 1018
Referral of Debts to the Internal Revenue Service for Tax Refund Offset; Interim Rule With Request for Comments

DEPARTMENT OF ENERGY

10 CFR Part 1018

Referral of Debts to the Internal Revenue Service for Tax Refund Offset

AGENCY: Department of Energy (DOE).

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Energy, as a participant in the Federal Tax Refund Offset Program, is issuing temporary regulations to govern the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to DOE. These regulations are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A) (the Act). Section 2653 of the Act allows DOE to collect debts by means of offset from the income tax refunds of persons owing money to DOE provided certain conditions are met. This rule amends Chapter X of Title 10 of the Code of Federal Regulations (CFR) by adding a new Part 1018. Part 1018 establishes procedures to be followed by DOE in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the DOE.

DATES: Interim rule is effective on January 9, 1989. Written comments must be received on or before February 8, 1989.

ADDRESS: Send comments to: Elizabeth E. Smedley, Controller, Department of Energy, (Mail Stop MA–3, Room 4A–139), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Carl W. Guidice, Office of the Controller, 202–586–4860 (FTS 896–4860).

SUPPLEMENTARY INFORMATION: This interim rule provides procedures for DOE to refer past-due legally enforceable debts to the IRS for offset against the income tax refunds of persons owing debts to the DOE. This rule is authorized by section 2653 of the Deficit Reduction Act of 1984. The purpose of the Act is to improve the ability of the government to collect money owed it while adding certain notice requirements and other protections applicable to the government's relationship to the debtor.

This rule implements section 2653 of the Act which directs any Federal agency that is owed a past-due legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of the Treasury at 26 CFR 301.6402–6T. Before a Federal agency may give such notice, however, it must first: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 days from the date of the notification to present evidence that all or part of the debt is not past-due or legally enforceable; (3) consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. This program for tax refund offsets extends through January 10, 1994.

This rule, in accordance with IRS regulations, provides that before DOE refers a debt to Treasury (through IRS), a notice of intention (Notice of Intent) will be sent to the debtor. This Notice of Intent will inform the debtor of the amount of the debt and that unless the debt is repaid within 60 days from the date of the DOE's Notice of Intent, DOE intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor has a right, during such period, to present evidence that all or part of the debt is not past-due or legally enforceable. This rule also establishes procedures for the debtor who intends to present such evidence.

Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291. The rule is not classified as a major rule because it does not have the gross effects on the economy, States, or the public which are required to classify a rule as "major" and to warrant preparation of a formal regulatory impact analysis.

Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulation applies to private persons and does not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under E.O. 12612.

Regulatory Flexibility Act Certification

This rule does not have a significant impact on a substantial number of small entities (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

No additional information and recordkeeping requirements are imposed by this rule.

National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental impact. Therefore, preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

Public Comments

Pursuant to the Agreement between the IRS, the Financial Management Service, and the DOE regarding the DOE's participation in the Tax Refund Offset Program for 1989, the DOE is required to have promulgated regulations regarding referral of debts to IRS for tax refund offset prior to DOE's participation in the program. DOE is issuing interim final regulations to take effect today in order to fulfill that requirement. Although DOE will respond to written comments on today's notice, DOE is neither holding a hearing, nor providing an opportunity for prior comments, nor delaying the effective date for 30 days because these regulations are mostly procedural and because there are no significant issues of law or fact nor relevant substantial impacts on the Nation or large numbers of persons of which DOE could take account consistent with law. Moreover, issuance of immediately effective interim final regulations does not prejudice the due process rights of debtors and is essential in order to participate in the 1989 program given that the legislative authority was not extended until October 1988. Written comments are solicited for 30 days after publication of this document. A final document discussing any comments received and revisions required will be published in the **Federal Register** as soon as possible.

Other Matters

These procedures are being codified in the Department's regulations for general information and are pursuant to statutory requirements regarding publication of rules of procedure in the

Federal Register, 5 U.S.C. 552(a)(1)(C). However, the procedures described in the rule will be utilized before it becomes effective with respect to persons who are provided actual notice of the procedures through the notices required under the procedures. See 5 U.S.C. 552(a)(1).

List of Subjects in 10 CFR Part 1018

Administrative practice and procedure, Claims.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter X of Title 10 of the Code of Federal Regulations by adding a new Part 1018 as set forth below.

Issued in Washington, DC, on January 5, 1989.

Lawrence F. Davenport,

Assistant Secretary, Management and Administration.

Part 1018 is added to 10 CFR Chapter X to read as follows:

PART 1018—REFERRAL OF DEBTS TO IRS FOR TAX REFUND OFFSET

Sec.

1018.1 Purpose.
1018.2 Applicability and scope.
1018.3 Administrative charges.
1018.4 Notice requirement before offset.
1018.5 Review within the Department.
1018.6 Departmental determination.
1018.7 Stay of offset.

Authority: 31 U.S.C. 3720A; Pub. L. 98–369; 98 Stat. 1153.

§ 1018.1 Purpose.

This part establishes procedures for the Department of Energy (DOE) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to DOE. It specifies the agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to DOE.

§ 1018.2 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Dapartment;

(4) With respect to which DOE has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by DOE to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which DOE has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402–6T relating to the eligibility of a debt for tax return offset have been satisfied.

§ 1018.3 Administrative charges.

In accordance with 10 CFR Part 1015, all administrative charges incurred in connection with the referral of the debts to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 1018.4 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after the DOE makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The DOE's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the DOE's Notice of Intent, DOE intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 1018.5 Review within the Department.

(a) *Notification by Debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by DOE.

(c) *Review of the evidence.* DOE will consider all available evidence related to the debt. Within 30 days, if feasible, DOE will notify the debtor whether DOE has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 1018.6 Departmental determination.

(a) Following review of the evidence, DOE will issue a written decision which will include the supporting rationale for the decision.

(b) If DOE either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If DOE cancels its original determination, the debt will not be referred to IRS.

§ 1018.7 Stay of offset.

If the debtor timely notifies the DOE that he or she is exercising the right described in § 1018.5(a) of this part and timely submits evidence in accordance with § 1018.5(b) of this part, any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

[FR Doc. 89–502 Filed 1–5–89; 5:00 pm]
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federal register

Monday
January 9, 1989

Part VI

The President

Proclamation 5928—Territorial Sea of the United States of America

Executive Order 12661—Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters

Executive Order 12662—Implementing the United States-Canada Free-Trade Implementation Act

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

Presidential Documents

Title 3—

The President

Proclamation 5928 of December 27, 1988

Territorial Sea of the United States of America

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or

(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89-515
Filed 1-6-89; 10:32 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12661 of December 27, 1988

Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418, 102 Stat. 1107) ("Omnibus Trade Act"), the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended ("Tariff Act"), the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100–456, 102 Stat. 1918) ("Defense Authorization Act"), section 301 of Title 3 of the United States Code, and, in general, to ensure that the international trade policy of the United States shall be conducted and administered in a way that achieves the economic, foreign policy, and national security objectives of the United States and in a coordinated manner under the direction of the President, it is hereby ordered as follows:

PART 1—TRADE, CUSTOMS, AND TARIFF LAWS

Section 1–101. *Accession of State Trading Regimes to the General Agreement on Tariffs and Trade.* The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act, regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative.

Sec. 1–201. *Wine Barriers.* The functions vested in the President by section 1125 of the Omnibus Trade Act, regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

Sec. 1–301. *Steel Imports.* The functions vested in the President by section 805(d)(1) and (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act, are delegated to the United States Trade Representative.

Sec. 1–401. *Telecommunications Trade.* The functions vested in the President by sections 1375 and 1376(c) of the Omnibus Trade Act, regarding certain telecommunications negotiations as may be ordered by the President and reports thereon to Congressional Committees, are delegated to the United States Trade Representative.

Sec. 1–501. *Uniform Fee on Imports.* The functions vested in the President by section 1428 of the Omnibus Trade Act, regarding negotiations to obtain authority under the General Agreement on Tariffs and Trade to impose a small uniform fee on imports, are delegated to the United States Trade Representative.

PART II—EXPORT ENHANCEMENT

Sec. 2–101. *Countertrade and Barter.*

(1) *Establishment.* There is established an Interagency Group on Countertrade, which shall be composed of the Secretaries of Commerce, State, Defense, Treasury, Labor, Agriculture, and Energy, the Attorney General, the Administrator of the Agency for International Development, the Director of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce or his representative shall be the Chairman of the interagency group.

(2) *Functions.* The interagency group shall carry out the functions and duties set out in section 2205(a) of the Omnibus Trade Act.

Sec. 2–201. *Sanctions Against Toshiba and Kongsberg.*

(1) *Procurement Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with or procure products and services from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation or Kongsberg Vaapenfabrikk. The head of each department, agency or instrumentality is hereby directed and authorized to implement this procurement sanction in accordance with paragraph (3).

(2) *Import Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), importation into the United States, its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for three years from the effective date of this Order. The Secretary of the Treasury is hereby directed and authorized to implement this import sanction in accordance with paragraph (3).

(3) *Exceptions.* Authority to make determinations as to exceptions to sanctions and to implement exceptions by regulation or otherwise is delegated (i) to the Secretary of Defense with respect to determinations under section 2443(c)(1) regarding the procurement of defense articles or defense services, (ii) to the Secretary of the Treasury with respect to exceptions under section 2443(c)(2) regarding importation prohibited by section 2443(a)(2), and (iii) to the head of each Federal department, agency or instrumentality with respect to exceptions under section 2443(c)(2) affecting their respective contracting and procurement. All regulations implementing these exceptions provisions shall be consistent with any guidelines provided by the Office of Federal Procurement Policy, Office of Management and Budget.

(4) *Annual Report.* The annual report required by section 2445, concerning estimated increases in defense expenditures arising from illegal technology transfers, shall be prepared by the Secretary of Defense, in consultation with the Secretaries of State and Commerce, for submission to the Congress by the President.

PART III—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

Sec. 3–101. *Foreign Corrupt Practices Act Amendments.*

The functions conferred upon the President by section 5003(d)(1) ("International Agreement") of the Omnibus Trade Act are delegated to the Secretary of State, who in performing such functions shall act in consultation with the Attorney General, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.

Sec. 3–201. *Authority to Review Certain Mergers, Acquisitions, and Takeovers.*

(1) Executive Order No. 11858, as amended, regarding the Committee on Foreign Investment in the United States (the "Committee") is further amended as follows:

(A) By adding new Sections 7 and 8 as follows:

"Sec. 7. (1) *Investigations.* (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall conclude action under this section on such notice. The Chairman shall advise the President of said decision.

"(2) *Report to the President.* Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

"Sec. 8. The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act."

(B) By deleting, from the second sentence in Section 1(a), the text beginning with "a representative" and ending with "by each of".

(C) By deleting, from the third sentence in Section 1(a), the phrase "representative of the".

(D) By deleting "and" at the end of subparagraph (3) of Section 1(b), by substituting "; and" for the period at the end of subparagraph (4) of that Section; and by adding a new subparagraph (5) as follows: "(5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) ("Defense Production Act")."

(E) By adding the following sentence at the end of Section 5: "Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act."

(F) By inserting in Section 1(a) the following additional Committee members: "(7) The Attorney General." and "(8) The Director of the Office of Management and Budget."

(G) The Interim Presidential Directive to the Secretary of the Treasury of October 26, 1988, is hereby revoked, and any notices received or investigations pending as of the date this Order takes effect shall be referred to the Chairman of the Committee for action consistent with this Order.

Sec. 3–301. *Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials.*

(1) The Secretary of Commerce, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Director of the Office of Management and Budget, shall prepare for the President to submit to the Congress with the Fiscal Year 1990 budget a report describing policies and budget proposals regarding:

(A) Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(B) Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(C) Superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research

is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry to ensure that no unnecessary duplication of research exists and that all important scientific and technical barriers to the commercialization of superconducting materials will be addressed; and

(D) Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

(2) The Department of Defense, the Department of Energy, the National Science Foundation, the National Aeronautics and Space Administration, the Department of State, the United States Trade Representative, and other Federal agencies deemed appropriate by the Secretary of Commerce shall provide the information described in section 5141 of the Omnibus Trade Act concerning their Fiscal Year 1989 program and proposed Fiscal Year 1990 program to the Secretary of Commerce in sufficient time to permit preparation of the report.

(3) The Office of Management and Budget shall provide to the Secretary of Commerce, in sufficient time to permit preparation of the report, a summary of the Federal base program and Fiscal Year 1990 budget initiatives in each of the technical areas of the report.

(4) The Office of Science and Technology Policy ("OSTP") shall provide the Secretary of Commerce with appropriate policy guidance in the technical areas of the report, including a summary of the criteria used to select research projects within an agency and among agencies, and the results of any studies conducted by OSTP, or by others if OSTP deems them to be relevant, which analyze the influence of the Federal research programs in the technical areas of the report.

Sec. 3–401. *A National Commission on Superconductivity.*

(1) *Establishment.* There is established a National Commission on Superconductivity ("Commission"). The Commission shall consider major policy issues regarding United States applications of recent research advances in superconductors including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

(2) *Membership.* The membership of the Commission shall be not more than 24 individuals appointed by the President and include representatives of:

(A) The National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, the Department of Defense, and the Office of Management and Budget;

(B) Organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists; and

(C) Industries, universities, and national laboratories engaged in superconductivity research.

(3) *Chairman.* A representative of the private sector shall be designated by the President as Chairman of the Commission.

(4) *Coordination.* The National Critical Materials Council shall be the coordinating body of the Commission and shall provide staff support for the Commission.

(5) *Report.* By February 23, 1989, the Commission shall submit a report to the President and the Congress with recommendations regarding methods of enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

(6) *Scope of Review.* In preparing the report required by subsection (5), the Commission shall consider addressing, but need not limit its review to:

(A) The state of United States competitiveness in the development of improved superconductors;

(B) Methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

(C) Methods to improve and coordinate funding of research and development of improved superconductors;

(D) Methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

(E) Foreign government activities designed to promote research, development, and commercial application of improved superconductors;

(F) The need to provide increased Federal funding of research and development of improved superconductors;

(G) The impact on the United States national security if the United States must rely on foreign producers of superconductors;

(H) The benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

(I) Options for providing income tax incentives for encouraging research, development, and production in the United States of products containing improved superconductors; and

(J) Methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

(7) *Termination.* The Commission shall disband within a year of the date of this Order. Thereafter the National Critical Materials Council may review and update the report required by subsection (5) and make further recommendations as it deems appropriate.

PART IV—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

Sec. 4–101. *Buy American Act of 1988.*

(1) The functions vested in the President by section 7002 of the Omnibus Trade Act, regarding section 4(d) of Title III of the Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), are delegated to the Secretary of Defense.

(2) The functions vested in the President by section 7003 of the Omnibus Trade Act, regarding the annual report required by subsection (d) of section 305 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515), are delegated to the United States Trade Representative.

PART V—MISCELLANEOUS

Sec. 5–101. *Executive Oversight.*

Any actions or determinations taken or made by an officer or agency under the Omnibus Trade Act or this Order shall be subject to the Executive oversight and direction of the President, and such actions or determinations shall be undertaken after appropriate inter-agency consultation as established by the President.

Sec. 5–102. *Regulatory Review.* Notwithstanding the provisions of section 1(a)(2) of Executive Order No. 12291 of February 17, 1981, the Director of the Office of Management and Budget shall, with regard to regulations, rules, or agency statements of general applicability and future effect designed to

implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations, rules, or agency statements are exempted from review under that Order, pursuant to the provisions of section 8(b) thereof.

Sec. 5–201. *Offsets.* The negotiating functions under section 825(c) of the Defense Authorization Act, as may be ordered by the President, are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be coordinated with the Secretary of State and conducted in consultation with the Secretaries of Commerce, Labor and the Treasury.

Sec. 5–202. *Reporting Functions.* The reporting functions of the President under section 825(d) of the Defense Authorization Act are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

Sec. 5–301. *International Trade Commission Report.* The functions vested in the President by section 332(g) of the Tariff Act, regarding reports by the United States International Trade Commission to the President, are delegated to the United States Trade Representative.

Sec. 5–401. *Strengthening International Institutions.* To the extent possible, actions undertaken under this Order shall be conducted in a manner that strengthens international institutions that further United States objectives, such as opening foreign markets and preventing the export of strategic goods and technologies to proscribed destinations.

Sec. 5–501. *Effective Date.* This Order shall take effect at 12:01 a.m. on Wednesday, December 28, 1988.

Ronald Reagan

THE WHITE HOUSE,
December 27, 1988.

[FR Doc. 89-516
Filed 1-6-89; 10:33 am]
Billing code 3195-01-M

Editorial note: For a statement by the Deputy Press Secretary to the President, dated Dec. 28, on Executive Order 12661 and a list of seven members appointed to the National Commission on Superconductivity, dated Dec. 22, see the *Weekly Compilation of Presidential Documents* (vol. 24, pp. 1666 and 1663, respectively).

Presidential Documents

Executive Order 12662 of December 31, 1988

Implementing the United States-Canada Free-Trade Implementation Act

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449, 102 Stat. 1851) ("FTA Implementation Act"), it is hereby ordered as follows:

Section 1. *Publication of Proposed Rules regarding Technical Standards.*

(a) In accordance with Articles 601(1) and 607 of the United States-Canada Free-Trade Agreement ("Free-Trade Agreement"), each agency subject to the provisions of the Administration Procedure Act (5 U.S.C. section 551 *et seq.*) shall, in applying section 553 of Title 5 of the United States Code with respect to any proposed Federal standards-related measures or product approval procedures, publish or serve notice of such measures or procedures not less than 75 days before the comment due date, except where, in urgent circumstances, delay would frustrate the achievement of a legitimate domestic objective.

(b) For purposes of this section:

(1) "legitimate domestic objective" means an objective whose purpose is to protect health, safety, essential security, the environment, or consumer interests;

(2) "product approval" means a Federal Government declaration that a set of published criteria has been fulfilled and therefore that goods are permitted to be used in a specific manner or for a specific purpose;

(3) "standards" and "certification systems" shall be defined in accordance with the definitions for those terms set out in section 451 of the Trade Act of 1979, 19 U.S.C. section 2571; and

(4) "standards-related measures" include technical specifications, technical regulations, standards and rules for certification systems that apply to goods, and processes and production methods.

(c) This section shall not apply with respect to any proposed rules related to agricultural, food, beverage, and certain related goods as defined in Chapter Seven (Agriculture) of the Free-Trade Agreement.

Sec. 2. *Establishment of United States Secretariat.*

Pursuant to subsection 405(e) of the FTA Implementation Act, a "United States Secretariat" shall be established within the International Trade Administration of the Department of Commerce. The Secretariat shall facilitate:

(1) the operation of Chapters 18 and 19 of the Free-Trade Agreement, and

(2) the work of the binational panels and extraordinary challenge committees convened under those Chapters.

Sec. 3. *Acceptance by the President of Panel and Committee Decisions.*

In accordance with subsection 401(c) of the FTA Implementation Act, in the event that the provisions of subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. section 1516a(g)(7)(B), take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sec. 4. *Judicial Review.*

This Order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 5. *Effective Date.*

This Order shall take effect upon the entry into force of the Free-Trade Agreement.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1988.

[FR Doc. 89-517
Filed 1-6-89; 10:34 am]
Billing code 3195-01-M

Editorial note: For the text of a memorandum to the Secretary of State and the U.S. Trade Representative, dated Dec. 31, on the implementation of the agreement, see the *Weekly Compilation of Presidential Documents* (vol. 24, p. 1668).

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec 31, 1987. The CFR volume issued January 1, 1987, should be retained.

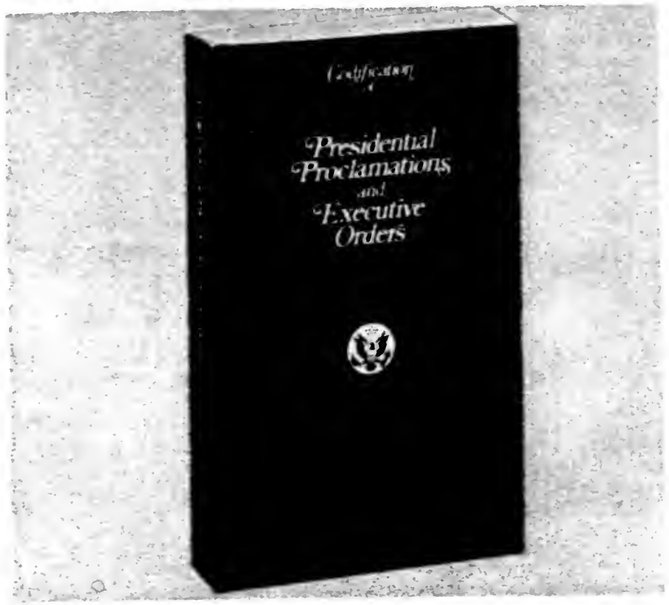
[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Vol. 54 No. 6

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Presidential Documents

Title 3—

The President

Proclamation 5929 of January 6, 1989

National Skiing Day, 1989

By the President of the United States of America

A Proclamation

We can trace evidence for skiing back more than 5,000 years. This efficient method of traveling over snow in difficult or inaccessible terrain has benefited mankind in countless ways over the centuries and continues to do so in our land. The practicality and pleasure of skiing are worth celebrating by all of us, and that is the reason for this National Skiing Day.

Skiing is advantageous to many of us for the jobs and income it generates. It also proves useful for residents of isolated areas; rescue teams; and Armed Forces units. Additionally, national and international sports groups, including Special Olympics International, recognize the athletic and therapeutic benefits of skiing for handicapped people and include it in their regular programs.

Skiing is now one of our most popular winter sports. It is loved by fans of national, international, and Olympic competition and enjoyed by millions of Americans as healthful, exciting recreation. More and more of us are becoming skiers. The increase of ski trails and slopes on private and public lands is making skiing much more widely available, as is the advent of artifical snow surfaces in areas with mild winter weather.

In recognition of skiing and its benefits, the Congress, by Public Law 100–634, has designated January 20, 1989, as "National Skiing Day" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 20, 1989, as National Skiing Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89–596
Filed 1–6–89; 4:31 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5930 of January 6, 1989

National Tourism Week, 1989

By the President of the United States of America

A Proclamation

The travel and tourism industry is the source of countless benefits for both Americans and our guests from other lands. Friendship, knowledge, and appreciation of intercultural differences, enhancement of international understanding, cooperation, and goodwill are just a few.

Our abundant natural and manmade attractions, the warm hospitality of our people, and the outstanding facilities and services provided by our travel and tourism industry establish the United States as the preeminent destination for both foreign and domestic travelers.

Every year, millions of Americans and foreign visitors travel throughout our country discovering the glory of America—the beauty of our natural wonders, cities, wilderness, and countryside; the hospitality of our people; and our outstanding recreational, educational, and cultural activities. They learn America's history and see, firsthand, that ours is the land of freedom, justice, democracy, and opportunity.

The travel and tourism industry, which is composed mainly of small businesses, is now America's second largest private employer and its third largest retail industry. The industry directly employs over 5-½ million Americans and indirectly employs another 2,200,000. Total travel expenditures in the United States amount to nearly $280 billion—over 6 percent of our gross national product. The more than $19.4 billion spent here on travel and tourism by foreign visitors improves our balance of trade and makes travel and tourism our largest service export.

National Tourism Week fittingly honors all those Americans who earn their livelihood in the travel and tourism industry. National Tourism Week reminds us of this industry's economic, educational, cultural, and social benefits—that come from a productive partnership of industry, labor, and government.

The Congress, by Public Law 100–672, has designated the week beginning the second Sunday in May 1989 as "National Tourism Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 14–May 20, 1989, as National Tourism Week, and I call upon the people of the United States to observe the week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89–587
Filed 1–6–89; 4:32 pm]
Billing code 3195–01–M

Presidential Documents

Executive Order 12663 of January 6, 1989

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 620 of Public Law 100–440, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay and salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of pay or salaries for the following offices and positions are set forth on the Schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Salaries for justices and judges (28 U.S.C. 5, 44(d), 135, 252) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 100–456, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for herein are effective on January 1, 1989. All other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1989.

Sec. 6. Executive Order No. 12622 of December 31, 1987, is superseded.

Ronald Reagan

THE WHITE HOUSE,
January 6, 1989.

Billing code 3195–01–M

SCHEDULE 1--GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,213	$10,555	$10,894	$11,233	$11,573	$11,773	$12,108	$12,445	$12,461	$12,780
2	11,484	11,757	12,137	12,461	12,601	12,972	13,343	13,714	14,085	14,456
3	12,531	12,949	13,367	13,785	14,203	14,621	15,039	15,457	15,875	16,293
4	14,067	14,536	15,005	15,474	15,943	16,412	16,881	17,350	17,819	18,288
5	15,738	16,263	16,788	17,313	17,838	18,363	18,888	19,413	19,938	20,463
6	17,542	18,127	18,712	19,297	19,882	20,467	21,052	21,637	22,222	22,807
7	19,493	20,143	20,793	21,443	22,093	22,743	23,393	24,043	24,693	25,343
8	21,590	22,310	23,030	23,750	24,470	25,190	25,910	26,630	27,350	28,070
9	23,846	24,641	25,436	26,231	27,026	27,821	28,616	29,411	30,206	31,001
10	26,261	27,136	28,011	28,886	29,761	30,636	31,511	32,386	33,261	34,136
11	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510
12	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
13	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
14	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
15	57,158	59,063	60,968	62,873	64,778	66,683	68,588	70,493	72,398	74,303
16	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*	82,500*	
17	76,990*	79,556*	82,122*	82,500*	83,818*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $75,500.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$57,158	$46,315	$37,529	$30,410	$24,641	$22,028	$19,693	$17,605	$15,738
2	58,873	47,704	38,655	31,322	25,380	22,689	20,284	18,133	16,210
3	60,639	49,136	39,815	32,262	26,142	23,370	20,892	18,677	16,696
4	62,458	50,610	41,009	33,230	26,926	24,071	21,519	19,237	17,197
5	64,332	52,128	42,239	34,227	27,734	24,793	22,165	19,815	17,713
6	66,262	53,692	43,506	35,254	28,566	25,536	22,830	20,409	18,245
7	68,250	55,303	44,812	36,311	29,423	26,303	23,514	21,021	18,792
8	70,297	56,962	46,156	37,400	30,305	27,092	24,220	21,652	19,356
9	72,406	58,670	47,541	38,522	31,214	27,904	24,947	22,301	19,936
10	74,303	60,431	48,967	39,678	32,151	28,742	25,695	22,971	20,535
11	74,303	62,243	50,436	40,868	33,115	29,604	26,466	23,660	21,151
12	74,303	64,111	51,949	42,095	34,109	30,492	27,260	24,369	21,785
13	74,303	66,034	53,507	43,357	35,132	31,407	28,078	25,101	22,439
14	74,303	68,015	55,113	44,658	36,186	32,349	28,920	25,854	23,112

SCHEDULE 3--DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES VETERANS ADMINISTRATION

Section 4103 Schedule

	1	2	3	4	5	6	7	8
Chief Medical Director	$97,206***							
Deputy Chief Medical Director	93,248**							
Associate Deputy Chief Medical Director	89,314*							
Assistant Chief Medical Director	86,682*							
Medical Director	76,990*	$78,128*	$79,266*	$80,404*	$81,542*	$82,500*	$83,818*	
Director of Nursing Service	76,990*	78,128*	79,266*	80,404*	81,542*	82,500*	83,818*	
Director of Podiatric Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	$81,060*
Director of Chaplain Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Pharmacy Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Dietetic Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*
Director of Optometric Service	67,038	69,273	71,508	73,743	75,473	76,678*	78,869*	81,060*

*** The rate of basic pay is limited to the rate for level III of the Executive Schedule, which is $82,500.

** The rate of basic pay is limited to the rate for level IV of the Executive Schedule, which is $80,700.

* The rate of basic pay is limited to the rate for level V of the Executive Schedule, which is $75,500.

SCHEDULE 3 (Continued)

Physician and Dentist Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$67,038	$69,273	$71,508	$73,743	$75,473	$76,678*	$78,869*	$81,060*	$82,500*	
Executive Grade	61,900	63,963	66,026	68,089	70,152	72,215	74,278	76,341*	76,868*	$78,891*
Chief Grade	57,158	59,063	60,968	62,873	64,778	66,683	68,588	70,493	72,398	74,303
Senior Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Intermediate Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Full Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Associate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510

Clinical Podiatrist and Optometrist Schedule

	1	2	3	4	5	6	7	8	9	10
Chief Grade	$57,158	$59,063	$60,968	$62,873	$64,778	$66,683	$68,588	$70,493	$72,398	$74,303
Senior Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Intermediate Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Full Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Associate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510

Nurse Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$57,158	$59,063	$60,968	$62,873	$64,778	$66,683	$68,588	$70,493	$72,398	$74,303
Assistant Director Grade	48,592	50,212	51,832	53,452	55,072	56,692	58,312	59,932	61,552	63,172
Chief Grade	41,121	42,492	43,863	45,234	46,605	47,976	49,347	50,718	52,089	53,460
Senior Grade	34,580	35,733	36,886	38,039	39,192	40,345	41,498	42,651	43,804	44,957
Intermediate Grade	28,852	29,814	30,776	31,738	32,700	33,662	34,624	35,586	36,548	37,510
Full Grade	23,846	24,641	25,436	26,231	27,026	27,821	28,616	29,411	30,206	31,001
Associate Grade	20,521	21,205	21,889	22,573	23,257	23,941	24,625	25,309	25,993	26,677
Junior Grade	17,542	18,127	18,712	19,297	19,882	20,467	21,052	21,637	22,222	22,807

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule which is $75,500.

SCHEDULE 4 -- SENIOR EXECUTIVE SERVICE

ES-1 . . . . . the sum of $68,700 and an amount equaling 28.8 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-2 . . . . . the sum of $71,800 and an amount equaling 31.0 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-3 . . . . . the sum of $74,900 and an amount equaling 38.4 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-4 . . . . . the sum of $76,400 and an amount equaling 55.0 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-5 . . . . . the sum of $78,600 and an amount equaling 74.8 percent of the amount by which the rate in effect from time to time for level IV of the Executive Schedule exceeds $80,700, rounded to the nearest multiple of $100.

ES-6 . . . . . the rate in effect from time to time for level IV of the Executive Schedule.

SCHEDULE 5 -- EXECUTIVE SCHEDULE

level I	$99,500
level II	89,500
level III	82,500
level IV	80,700
level V	75,500

SCHEDULE 6 -- VICE PRESIDENT AND MEMBERS OF CONGRESS

Vice President	$115,000
Senators	89,500
Members of the House of Representatives	89,500
Delegates to the House of Representatives	89,500
Resident Commissioner from Puerto Rico	89,500
President pro tempore of the Senate	99,500
Majority leader and minority leader of the Senate	99,500
Majority leader and minority leader of the House of Representatives	99,500
Speaker of the House of Representatives	115,000

SCHEDULE 7 -- JUDICIAL SALARIES

Chief Justice of the United States	$115,000
Associate Justices of the Supreme Court	110,000
Circuit Judges	95,000
District Judges	89,500
Judges of the Court of International Trade	89,500
Judges of the United States Claims Court	89,500

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I--MONTHLY BASIC PAY TABLE

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10**	$5710.80	$5911.80	$5911.80	$5911.80	$5911.80	$6138.30	$6138.30	$6478.80*	$6478.80*	$6875.10*	$6875.10*	$7115.10*	$7115.10*	$7558.50*
O-9	5061.30	5193.90	5304.30	5304.30	5304.30	5439.30	5439.30	5665.80	5665.80	6138.30	6138.30	6478.80*	6478.80*	6875.10*
O-8	4584.30	4721.40	4833.60	4833.60	4833.60	5193.90	5193.90	5439.30	5439.30	5665.80	5911.80	6138.30	6289.50	6289.50
O-7	3809.10	4068.00	4068.00	4068.00	4250.40	4250.40	4496.70	4496.70	4721.40	5193.90	5551.20	5551.20	5551.20	5551.20
O-6	2823.30	3102.00	3305.10	3305.10	3305.10	3305.10	3305.10	3305.10	3417.30	3957.60	4159.80	4250.40	4496.70	4877.10
O-5	2257.80	2651.40	2834.70	2834.70	2834.70	2834.70	2920.50	3077.40	3283.80	3529.50	3732.00	3845.10	3979.20	3979.20
O-4	1903.50	2317.80	2472.30	2472.30	2518.20	2629.20	2808.60	2966.40	3102.00	3237.90	3327.60	3327.60	3327.60	3327.60
O-3***	1768.80	1977.60	2114.10	2339.10	2451.00	2538.90	2676.30	2808.60	2877.90	2877.90	2877.90	2877.90	2877.90	2877.90
O-2***	1542.30	1684.50	2023.50	2091.60	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40	2135.40
O-1***	1338.90	1394.10	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50	1684.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER														
O-3	----	----	----	$2339.10	$2451.00	$2538.90	$2676.30	$2808.60	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50	$2920.50
O-2	----	----	----	2091.60	2135.40	2202.90	2317.80	2406.30	2472.30	2472.30	2472.30	2472.30	2472.30	2472.30
O-1	----	----	----	1684.50	1799.40	1865.70	1933.20	2000.70	2091.60	2091.60	2091.60	2091.60	2091.60	2091.60

* Basic pay is limited to the rate of basic pay for level V of Executive Schedule, which is $6,291.60 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
						WARRANT OFFICERS								
W-4	$1802.10	$1933.20	$1933.20	$1977.60	$2067.30	$2158.50	$2249.10	$2406.30	$2518.20	$2606.40	$2676.30	$2762.70	$2855.10	$3077.40
W-3	1637.70	1776.60	1776.60	1799.40	1820.40	1953.60	2067.30	2135.40	2202.90	2268.60	2339.10	2430.00	2518.20	2606.40
W-2	1434.30	1551.90	1551.90	1597.20	1684.50	1776.60	1844.10	1911.60	1977.60	2046.90	2114.10	2180.70	2268.60	2268.60
W-1	1195.20	1370.40	1370.40	1484.70	1551.90	1618.80	1684.50	1754.10	1820.40	1888.20	1953.60	2023.50	2023.50	2023.50
						ENLISTED MEMBERS								
E-9*	----	----	----	----	----	----	$2096.10	$2143.50	$2192.10	$2242.20	$2292.30	$2337.00	$2459.70	$2698.80
E-8	----	----	----	----	----	$1758.00	1808.10	1855.80	1904.10	1954.20	1999.20	2048.40	2168.70	2410.20
E-7	$1227.30	$1324.80	$1374.00	$1422.00	$1470.60	1517.40	1566.00	1614.60	1687.80	1735.80	1784.10	1807.20	1928.70	2168.70
E-6	1056.00	1150.80	1198.80	1249.80	1296.30	1343.40	1392.90	1464.60	1510.50	1559.40	1583.10	1583.10	1583.10	1583.10
E-5	926.70	1008.60	1057.50	1103.70	1176.00	1224.00	1272.60	1319.40	1343.40	1343.40	1343.40	1343.40	1343.40	1343.40
E-4	864.30	912.60	966.30	1041.30	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40	1082.40
E-3	814.20	858.90	893.40	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80	928.80
E-2	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60	783.60
E-1**	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00	699.00
E-1***	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20	646.20

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* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,280.50 regardless of cumulative years of service computed under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

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SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$613.20	$50.70	$754.50
O-9	613.20	50.70	754.50
O-8	613.20	50.70	754.50
O-7	613.20	50.70	754.50
O-6	562.50	39.60	679.80
O-5	541.80	33.00	654.90
O-4	502.20	26.70	577.80
O-3	402.60	22.20	478.20
O-2	319.50	17.70	408.00
O-1	268.80	13.20	364.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$434.40	$22.20	$513.30
O-2	369.60	17.70	463.20
O-1	317.70	13.20	428.10
WARRANT OFFICERS			
W-4	$453.30	$25.20	$511.20
W-3	380.70	20.70	468.60
W-2	337.80	15.90	430.80
W-1	283.20	13.80	372.60
ENLISTED MEMBERS			
E-9	$372.00	$18.60	$490.50
E-8	342.00	15.30	452.10
E-7	291.90	12.00	420.30
E-6	264.00	9.90	387.90
E-5	243.60	8.70	348.90
E-4	212.10	8.10	303.60
E-3	208.20	7.80	282.30
E-2	169.20	7.20	268.80
E-1	150.30	6.90	268.80

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed service without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order 11157, as amended.

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SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

Part III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month) $119.61

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.27	$5.70
When rations-in-kind are not available	5.95	6.44
When assigned to duty under emergency conditions where no messing facilities of the United States are available	7.89	8.53

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $525.00.

[FR Doc. 89-598
Filed 1-6-89; 4:33 pm]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 88-194]

Pink Bollworm Regulated Areas; Removal of Mississippi from List of Quarantined States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the pink bollworm quarantine and regulations by removing previously regulated areas in Mississippi and by removing Mississippi from the list of states quarantined because of pink bollworm.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 20, 1988 (53 FR 36431-36432, Docket Number 88-112), we amended the pink bollworm quarantine and regulations by removing Bolivar and Washington Counties in Mississippi from the list of regulated areas in 7 CFR 301.52-2a and deleted Mississippi from the list of states quarantined because of pink bollworm. Comments on the interim rule were required to be postmarked or received on or before November 21, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in the state of Mississippi. There are hundreds of small entities that move these articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that eight small entities move these articles interstate from the previously quarantined areas in MIssissippi. Further, we estimate that this action will save approximately $7,000 per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR Part 301 that was published at 53 FR 36431-36432 on September 20, 1988.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, DC, this 5th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-492 Filed 1-9-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 704

Conservation Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 704 to expand the land eligibility provisions of the Conservation Reserve Program to include certain fields which are subject to scour erosion or which contain wetlands.

DATES: Effective January 10, 1989. Written comments must be received not later than March 13, 1989, in order to be assured of consideration.

ADDRESS: Written comments on this interim rule must be submitted to the Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Service (ASCS), P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen at the above address, phone: (202) 447-6221.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor." It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 USC 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have a significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The title and number of the Federal assistance program to which this rule applies are: Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Under the Conservation Reserve Program (CRP), which is provided for in Title XII of the Food Security Act of 1985 (Pub. L. No. 99–198) ("the Act"), the Secretary of Agriculture is required, during the 1986–90 crop years, to enter into long-term contracts with eligible owners and operators of eligible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting the eligible land to a permanent vegetative cover in accordance with an approved conservation plan.

Title XII of the Act generally limits eligible cropland to "highly erodible cropland," except that Section 1231(c)(2) of the Act provides that the Secretary may include in the program lands that are not highly erodible lands but that pose an off-farm environmental threat or which, if permitted to remain in production, pose a threat of continued degradation of productivity due to soil salinity. Section 1232(c) of the Act provides that, to the extent practicable, not less than one eighth of the number of acres of land that is placed in the CRP in each of the 1986 through 1990 crop years shall be devoted to trees.

This rule, pursuant to the authority contained in Section 1231(c)(2) of the Act, expands the land eligibility provisions of 7 CFR 704.7. Under this rule certain fields with soils that do not qualify as highly erodible soils under the CRP regulations in 7 CFR Part 704 may, nonetheless, qualify for enrollment in the CRP if the field: (1) Contains land which has evidence of substantial scour erosion or (2) contains wetlands. This authority will be in addition to the authority already present in § 704.7 which permits "filter strips" to be enrolled in the progam even though the soil within the strip is not "highly erodible".

Land enrolled into the CRP under the authority provided for in this rule must be planted to trees unless the Soil Conservation Service (SCS) of the Department of Agriculture determines that tree-planting is not appropriate. If SCS determines that tree planting is not appropriate, the land must be devoted to other permanent vegetative cover approved by SCS.

Scour erosion is erosion caused by over-flowing water from streams and rivers. Normally, the overflowing water will return to the stream or river and may carry with it environmentally harmful pollutants and sedimentation picked up from the flooded land.

Wetland areas are areas that have a predominance of hydric soils and will, in their normal state, support hydrophytic vegetation. Title XII of the Act provides, in general, that a person may lose eligibility for specified USDA benefits by producing an agricultural commodity on converted wetlands. However, persons producing agricultural commodities on certain wetlands are exempt from this provision. This rule will permit some fields with such wetland areas to be placed in the CRP. Returning cropped wetlands to non-cropped vegetation and trees will reduce the off-farm environmental threat posed by the continued cropping of these areas. The continued cropping of wetland areas reduces the availability of natural habitats for wildlife including migratory birds. In addition, wetland areas, because they often serve as collection areas for runoff from other lands on which crops are produced tend to be areas where pollutions can collect. Cropping of these areas allows the continued movement of pollutants into downstream streams, lakes, and rivers.

To be eligible to be enrolled in the CRP under the amendment to § 704.7 adopted in this rule, a field, must have evidence of scour erosion or have wetland areas within its boundaries, as determined by the Commodity Credit Corporation (CCC) in consultaton with the Soil Conservation Service (SCS) of the Department. Fields with qualifying scour erosion or wetland areas must, in addition: (1) Have been committed to the production of an annual corp, as determined under § 704.7 of the regulations, for 2 out of the 5 years in the period from 1981–85, and (2) as determined pursuant to § 704.7(a)(2), be capable, at the time of enrollment in the CRP, of being planted to an annual crop. For purposes of this rule, the term "wetland" has the same meaning as that which is assigned in the provisions of the "Swampbuster" regulations in 7 CFR Part 12. Where enrollment is sought on the basis of scour erosion, it must be determined, in addition to the other requirements for eligibility, that the cropland in the field will likely flood, on the average, once every 10 years and that the cropland has suffered damage as a result of the scour erosion.

The full amount of the cropland in the field will be eligible for CRP enrollment if: (1) The field is 9 acres or less in size, or (2) at least one-third of the field has qualifying scour erosion or wetland areas.

If the full field is not eligible then: (1) In the case of a field with scour erosion, the eligible portion shall consist only of that portion of the cropland in the field which lies between the waterbody and the inland limit of the damage and (2) in the case of a cropland field with wetland areas, the eligible area shall include the amount of land deemed by the CCC to be necessary to create reasonable boundaries between the ares to be enrolled in the program and those not enrolled.

This amendment will provide greater CRP environmental benefits, increase the quantity of land eligible for the program, and will foster the planting of trees. The rule is adopted as an interim rule in order that the changes made by the rule with respect to eligibility of land for enrollment in the CRP may be in effect at the time of the next sign-up period for the program.

List of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Interim Rule

Accordingly, 7 CFR Part 704, Conservation Reserve Program is amended as follows:

PART 704—[AMENDED]

1. The authority citation for Part 704 continues to read as follows:

Authority: Secs. 1201, 1231–1244, Pub. L. 99–198, 99 Stat. 1354, as amended (16 USC 3801, 3831–3844).

2. Section 704.7 is amended by adding a new paragraph (e), to read as follows:

§ 704.7 Eligible cropland.

* * * * *

(e)(1) A field which has evidence of scour erosion caused by out-of bank flows of water, as determined by SCS, or wetland areas, and which meets the other requirements of this paragraph may, as approved by CCC, be eligible to be placed in the CRP, although the field does not meet the erodibility criteria of paragraph (a)(3) of this section.

(2) In order for land to be eligible for enrollment in the CRP under this paragraph, the land must be cropland and must meet the criteria of paragraphs (a)(1) and (a)(2) of this section.

(3) In order for land to be eligible for enrollment in the CRP on the basis of scour erosion, the land at the time of enrollment in the program must be cropland which:

(i) Can be expected to flood a minimum of once every 10 years; and

(ii) Has evidence of damage as a result of such scour erosion.

(4) For purposes of this paragraph, the term "wetland" shall, to the extent practicable, be given the same meaning as is designated in the regulations in 7 CFR Part 12.

(5) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled in the CRP if:

(i) The size of the field is 9 acres or less, or,

(ii) More than one third of the cropland in the field is either wetland or is land which, in the case of scour erosion, lies between the water source and the inland limit of the scour erosion.

If the full field is not eligible for enrollment, the quanitity of cropland within the field which is eligible for enrollment shall be determined in accordance with subparagraphs (6) and (7).

(6) If the full field is not eligible for enrollment under this paragraph:

(i) That portion of the field eligible for enrollment on the basis of scour erosion shall be that portion of the cropland between the water body and the inland limit of the scour erosion plus whatever additional areas would otherwise be unmanageable and would be isolated by the eligible areas; and,

(ii) That portion of the field which is eligible for enrollment on the basis of the presence of wetlands, shall be only the wetland, except as determined under paragraph (7).

(7) The area of a field deemed eligible for enrollment under this paragraph may be adjusted as necessary to establish manageable boundaries between the eligible and ineligible areas of the field.

(8) If cropland is approved for enrollment in the CRP under this paragraph, the eligible cropland shall be planted to an appropriate tree species approved by SCS unless tree planting is determined to be inappropriate by SCS in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by SCS and the CCC.

Signed at Washington, DC on January 3, 1989.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation and Administrator, Stabilization and Conservation Service.

[FR Doc. 89–414 Filed 1–9–89; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 682]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 682 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 6 through January 12, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 682 (§ 907.982) is effective for the period January 6, 1989, through January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 4, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a six to two vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that demand for navel oranges has reduced sharply.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable,

unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.982 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.982 Navel Orange Regulation 682.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 8, 1989, through January 12, 1989, are established as follows:

(a) District 1: 1,176,000 cartons;
(b) District 2: 112,000 cartons;
(c) District 3: 42,000 cartons;
(d) District 4: 70,000 cartons.

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–433 Filed 1–6–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Regulation 647]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 647 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 302,312 cartons during the period January 8 through January 14, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 647 (§ 910.947) is effective for the period January 8 through January 14, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on January 4, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.947 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.947 Lemon Regulation 647.

The quantity of lemons grown in California and Arizona which may be handled during the period January 8, 1989 through January 14, 1989, is established at 302,312 cartons.

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–432 Filed 1–6–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

[FV–88–134]

Irish Potatoes Grown in Colorado Area 2; Reduction in Minimum Size Requirement for Round Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the minimum diameter for round potato varieties from 2⅛ inches to 2 inches in diameter. The size change also applies to imported red-skinned round type potatoes. This action is expected to foster increased consumption and have a positive impact on the industry.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. Also, there are about 20 potato importers subject to the requirements of the potato import regulation. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes and importers of potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987–88 season totaled 29,252 loads at about 480 hundredweight (cwt.) per load. Of the total, 97 percent or 13,686,191 cwt., entered the fresh market and two percent (315,857 cwt.) was shipped to processors. Culls approximated 1.4 million cwt., which were utilized for starch.

The breakdown of fresh shipments by variety was 69.2 percent Centennial Russets (9,469,033 cwt.), 23.9 percent Russet Burbanks (3,268,607 cwt.), 6.7 percent reds (927,231 cwt.), and 0.2 percent other varieties (21,318 cwt.).

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/ Size B.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 (53 FR 8146, March 14, 1988) and, with the exception of the maturity requirements, are in effect all year long. The current minimum grade, size, and maturity requirements require that fresh potatoes be shipped under the following conditions. Round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1⅞ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This rule reduces the minimum size requirement for round potato varieties from 2⅛ to 2 inches in diameter. This change was recommended by a vote of 10 to two by the San Luis Valley Potato Administrative Committee Area 2 at its August 18, 1988, meeting.

A proposal inviting comments on this action was published in the **Federal Register** on November 4, 1988 (53 FR 44591). Interested persons were invited to submit comments until November 21, 1988. One comment was received in favor of the proposed change. The comment was filed by Wayne D. Thompson, manager of the San Luis Valley Potato Administrative Committee Area 2, on behalf of the committee. Also included in the comment was a recommendation for an additional change in the handling regulation to reduce the minimum size requirement for certain long variety potatoes. This recommendation, however, is being addressed in a separate rulemaking proceeding.

The minimum size requirement for round potato varieties was 2 inches in diameter for many years. During the 1987–88 marketing season, the minimum size requirement was increased to 2⅛ inches in diameter. This change was intended to upgrade the pack and thereby foster increased consumption and have a positive impact on the industry. However, this size increase did not satisfy consumer preferences and proved unsatisfactory in the marketplace.

Consumer demand has increased for small round potato varieties. Virtually all round potatoes grown in Colorado's San Luis Valley are red-skinned. Such potatoes typically account for about 6.5 percent of San Luis Valley's total crop. Centennial Russets and Russet Burbanks (long white varieties) are the other dominant varieties. There are minimal shipments of round white potatoes from this area.

The committee concluded that the change in the minimum size requirement for round potato varieties would provide handlers the opportunity to ship smaller round potatoes (primarily red skinned) without adversely affecting the market for larger potatoes.

Quality assurance is very important to the Colorado (Area 2) potato industry

both within and outside of the State. Providing the public with quality potatoes which are appealing and responsive to consumer trends is necessary in order to maintain market share. This action is expected to foster increased consumption and benefit Colorado Area 2 potato growers and handlers.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of potatoes, the current import regulation (§ 980.1), specifies that import requirements for long types be based on tnose in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the marketing year. The import requirements for round white types are based on those in effect for potatoes grown in the Southeastern States from June 5 to July 31 (7 CFR Part 953), and on those in effect for potatoes grown in Colorado Area 3 for the remainder of the year (7 CFR Part 948).

The quality standards imposed upon imports of red skinned, round type potatoes are based on that type grown in Washington during the months of July and August (7 CFR Part 946). During the remainder of the year, the import requirements are based upon those in effect for potatoes grown in Colorado Area 2 (7 CFR Part 948).

Because this rule reduces the minimum size requirement for round potato varieties, and virtually all round potatoes grown in Area No. 2 are red skinned, this change is applicable to imports of red-skinned round type potatoes from September 1 to June 30 each season.

No change is required in the language of § 980.1 or § 948.386(h).

Applicability to Imports

Based on the above, the Administrator of AMS has determined that this action will not have a significant eocnomic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the committee, and other available information, it is hereby found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 533) in that the shipping season for Colorado Area 2 potatoes has already begun, and it is important that the change resulting from this rulemaking be in effect as soon as possible to be of maximum benefit to producers and handlers. Furthermore, producers and handlers of potatoes in the production area are already aware of the changes, which relax current handling requirements.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraph (a)(1) to read as follows:

Note.—This regulation will appear in the Code of Federal Regulations:

§ 948.386 Handling regulation.

* * * * *

(a) *Minimum grade and size requirements*—(1) Round varieties, U.S. No. 2, or better grade, 2 inches minimum diameter.

* * * * *

Dated: January 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–491 Filed 1–9–89; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Singapore International Monetary Exchange Limited ("SIMEX") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Lauchlan Wash, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America

Before the

Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Designated Members of the Singapore International Monetary Exchange Limited from the Application of Certain of the Foreign Futures and Option Rules Thirty Days after Filing of Consents and Representations by Such Members and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to customers located in the United States

by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10. 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, in adopting Commission Rule 30.10, the Commission stated that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to activity subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated January 29, 1988, SIMEX, which is regulated by the Monetary Authority of Singapore ("MAS"), petitioned the Commission for an exemption from the application of certain of the Commission's foreign futures and option rules. In support of its petition, SIMEX represented that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because SIMEX and its members were subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by SIMEX and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Singapore law, regulations and SIMEX rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission;
—The separate account requirement contained in Commission Rule 30.7 17 CFR 30.7; and
—Those sections of Part I of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30;

based upon substituted compliance by such persons with the applicable statutes, regulations and relevant exchange rules of the SIMEX in effect in Singapore.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Singapore who would be exempted hereunder provides:

(1) A system of licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, procedures for granting, conditioning, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for firms carrying customer accounts including, without limitation, a required minimum level of adjusted net capital of S$250,000 (US$129,075) [2] or 10% of the amount of customer funds required to be segregated, whichever is higher, and an early warning system requiring firms to immediately inform MAS or SIMEX, as appropriate, if such firms' adjusted net capital falls below a specified level;

(3) A system for the protection of customer funds that applies to all customers which provides for the maintenance of customer trust accounts at designated locations and in designated investments, which precludes the use of customer funds to satisfy house obligations and which mandates certified audits of accounts, augmented by a compensation fund administered by SIMEX;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, records of all customer transactions, monthly customer account statements, customer segregation records and discretionary account documentation;

(5) Sales practice standards for licensees which include, for example, required risk disclosures to prospective customers and prohibitions on: (a) Fraudulent and misleading practices; (b) commingling of customer funds with house funds; and (c) insider dealing and other improper trading practices;

(6) Procedures to aduit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program which monitors and enforces compliance with rules adopted with respect to fraud, bucketing, manipulation, the withholding of orders, trading ahead of or opposite customer orders, and prearranged trades, among others; and

(7) Mechanisms for sharing imformation with the Commission and NFA of an "as needed" basis including, without limitation, confirmation data,

[1] 52 FR 28980, 28981 and 29002.

[2] Currency is valued at .5163 United States dollar equivalent as of December 12, 1988. *The Wall Street Journal*, December 13, 1988, at C13, col. 4.

data necessary to trace funds related to trading futures and option products subject to regulation in Singapore, position data and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the anti-fraud provision in Commission Rule 30.9, 17 CFR 30.9, or the disclosure provisions of Commission Rules 30.6 and 33.7, 17 CFR 30.6 and 33.7. Moreover, the relief granted is directed to brokerage activities by the firm licensed in Singapore on SIMEX and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading on United States markets for its own account would be subject to the large trader reporting requirement. *See, e.g.*, 17 CFR Part 18. Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to, among other things, the reporting requirements applicable to foreign brokers. *See e.g.*, 17 CFR Parts 17 and 21. The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirements to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Singapore; such firm is engaged in business with customers located in Singapore as well as in the United States; and such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on SIMEX with respect to customers resident in the United States will be made on or subject to the rules of SIMEX and the Commission will receive prompt notice of all material changes in the Singapore Futures Trading Act of 1986, Regulations thereunder and SIMEX rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Singapore customers under all relevant provisions of Singapore law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an " as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of a Singapore-domiciled firm doing business in the United States under the exemption granted by this order.[3]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5;

(b) Agrees to provide the books and records related to transactions under Part 30 required to be maintained under the applicable statutes, regulations and SIMEX rules in effect in Singapore upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative, after notice of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under Section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32;

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, bank or broker/dealer affiliate) and provides brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representatives or activities with respect to foreign futures and option transactions under Part 30 and consents to notify all customers resident in the United States of the availability of such a program; and

(f) Undertakes to comply with the applicable provisions of Singapore law and SIMEX rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and SIMEX and/or any applicable regulatory or self-regulatory organization.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firm required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, generally have been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the

[3] In this connection, the Commission notes that SIMEX's petition dated January 29, 1988 and related documents already address the representations required in paragraphs (1) (c), (d) and (e) of the conditions specified above.

systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide relevant books and records. If necessary, provisions will be made for servicing existing client positions.

In the future, the Commission may determine that other considerations and conditions are also relevant to the determination to exempt, or to continue to exempt, specified firms from the application of the Part 30 rules generally. To this end, the Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. Appendix C is added to Part 30 to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

Firms designated by the Sydney Futures Exchange Limited.

FR date and citation, November 7, 1988; 53 FR 44856.

Firms designated by the Singapore International Monetary Exchange Limited.

FR date and citation: January 10, 1989; 54 FR _____.

Issued in Washington, DC, on December 30, 1988.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Availability of Record Formats and Notice of Second Implementation Conference

Issued January 4, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of availability of record formats for rate, tariff and certificate filings; notice of Second Implementation Conference on Order Nos. 493, 493-A, and 493-B.

SUMMARY: On January 4, 1989, the Commission staff issued revised record formats for submitting rate filings, tariffs and certificate applications on an electronic medium. These formats are revised to respond to certain recommendations and comments submitted during and after the Order No. 493 (53 FR 15023 (Apr. 27, 1988)) implementation conference held on September 12 and 13, 1988. Additionally, the Commission staff is issuing hard copy print formats for rate filings and tariff sheets. The Commission staff also identifies minor revisions to the FERC Form Nos. 2 and 2-A record formats which were issued on October 26, 1988. Finally, Commission staff is scheduling a second implementation conference to be held on February 1 and 2, 1989. The revised formats issued with this notice will be discussed at this conference.

DATES: The revised formats are available as of January 4, 1989. The implementation conference will be held on Wednesday and Thursday, February 1 and 2, 1989, at 10:00 a.m.

ADDRESSES: The implementation conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Requests to attend the conference, comments and questions regarding participation may be directed in writing or via telephone to: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357-8995 or (202) 357-8844.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357-8995 or (202) 357-8844.

SUPPLEMENTARY INFORMATION: Order No. 493-B, issued November 30 1988, extended the implementation date for submitting rate filings, tariffs and certificate applications on an electronic medium from March 31, 1989 to October 31, 1989. At the implementation conference on Order Nos. 493 and 493-A, held on September 12 and 13, 1988, and in supplemental comments filed after the conference, commenters recommended numerous technical revisions to the record formats for rate, tariff and certificate filings. Staff has reviewed these comments and incorporated most of the recommended revisions in the record formats released with this notice. The technical revisions to the formats for rate, tariff and certificate filings are described in Appendices A, B, and C, respectively. In addition, certain revisions to Form Nos. 2 and 2-A omitted from the October 26, 1988 Notice of Availability of Revised Record Formats are listed in Appendix D.

Additionally, staff is releasing hard copy print formats for rate filings and tariff sheets.

Finally, staff is announcing a second implementation conference as requested by commenters. The conference will be held on February 1 and 2, 1989, and will provide representatives of natural gas companies and the public with an opportunity to discuss the revised record formats for rate, tariff and certificate filings in a public forum. Staff intends to resolve all remaining technical problems with these record formats at this conference and then issue final formats after the conference. Therefore, persons representing companies required to make rate, tariff and/or certificate filings with the Commission should be prepared to indicate whether or not the format for each record is adequate to satisfy the applicable statement or schedule content requirements for their company. If a particular format is not adequate, then participants should be prepared to propose all necessary technical additions or revisions.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice and the associated record formats, during normal business hours in Room 1000 at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

This notice and the record formats for tariff and certificate filings are also available through the Commission Issuance Posting System (CIPS), an

electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, eight data bits and one stop bit. The full text of the notice and the tariff and certificate record formats will be available on CIPS for 10 days from the date of issuance.

Due to the size of the record format and hard copy print format files for rate filings, these formats will not be available through CIPS. However, the revised formats for rate filings on diskette in ASCII text file format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The record formats for tariff and certificate filings, and the hard copy print formats for tariff sheets are also included on the diskette.

All record formats, and hard copy print formats are available on a single 5.25" (1.2MB) double-sided, high density diskette. To order a copy of the diskette, please request: RM–87–17–000, Record Formats for Rates, Tariffs and Certificates (January 4, 1989)—1 Diskette.

The diskette contains a copy of this notice and an INFO file which describes the files on the diskette and specifies the margin, font and orientation required to print each file after importing the file into a word processing program.

Lois D. Cashell,

Secretary.

Appendix A—Revisions to the Rate Filing Record Formats

The current rate filing record formats represent a major revision of the formats presented at the Implementation Conference of September 12 and 13, 1988. Most of the records are revised or corrected (new items or character positions, deletions, expanded codes, etc.). This appendix identifies the major technical changes to the working draft formats presented at the September implementation conference.

General Changes

(1) Schedule R1 is now labeled Schedule RA.

(2) Statement M is now included under Schedule RB.

(3) An expanded table of Function Codes is now contained in Exhibit G.

(4) A Footnote ID is included in all non-text records.

(5) Records containing text information are now preceded by a header record.

Schedule RA

(01) *Rate Case Filing Requirements—Part 1* (old R1/01)

No change.

(02) *Rate Case Filing Requirements—Part 2* (old R1/02)

This record is revised to incorporate a header record followed by text.

Note 1 includes a code for the letter of transmittal.

(03) *Statement A, Overall Cost of Service* (old R1/03)

This record is expanded to allow for Operating Expense Classification codes.

The number of "other" functional classification fields is expanded from one to four with corresponding description fields included in the record.

(04) *Statement B, Rate Base and Return* (old R1/04)

Codes are added for Gas Plant Classification and Accumulated Depreciation Classification. Fields are included in the record to describe the "other" codes within these classifications.

Three "other" functional classification fields are added with corresponding description fields included in the record.

(05) *Statement C, Cost of Plant* (old R1/05)

An additional account description code is added for "Other utility plant".

Account 118 is added to FERC Account Number.

The number of adjustment entries is expanded from one to three with adjustment description fields included in the record.

(06) *Schedule C–1, Detailed Plant Accounts* (old R1/06)

Account 118 is added to FERC Account Number; new function codes are defined in new Exhibit G.

Project Name is a new item.

The number of adjustment entries is expanded from one to three with adjustment description fields included in the record.

(07) *Schedule C–2, Major Plant Additions and Retirement Projects—Part 1* (old R1/07)

New function codes are defined in new Exhibit G.

FERC Docket Number is a new item.

The Date of Addition or Retirement is divided into separate date fields.

The description of any "other" function code is now included in the record instead of a footnote.

(08) *Schedule C–2 Major Plant Additions and Retirement Projects—Part 2* (new record)

This is a new text record to describe the plant additions or retirement projects included in Schedule C–2, Part 1.

(09) *Statement C–3, Uncompleted Work Orders* (old R1/08, with revised title)

Type of Undistributed Construction Overhead is deleted.

(10) *Schedule C–4, Storage Projects* (old R1/09)

Codes for base period and test period are redefined. The following items are new: Unit Reported Code, Ending Volume, Ending Cost, and Name and Description of Storage Project. Note 1 is deleted.

(11) *Statement C, Work Papers* (old R1/10)

This record is revised to include a header record followed by text.

(12) *Statement D, Accumulated Provisions for Depreciation, Depletion, Amortization, and Abandonment* (old R1/11)

Account No. 117 is added to Gas Plant Account Number. Additional function codes were added and included in Exhibit G.

Adjustments and Reimbursements is deleted.

The number of Adjustments to Accumulated Provision at End of Period is expanded from one to three with descriptions of the adjustments included in the record.

The description of any "other" function code is now included in the record instead of a footnote.

(13) *Statement D, Work Papers* (old R1/12)

This record is revised to include a header record followed by text.

Text ID 1 in Note 8 is revised to include negative salvage.

(14) *Statement E, Working Capital* (old R1/13)

Working capital codes are added for prepaid gas purchase agreements, prepaid gas purchase take or pay amounts, and fuel stock.

The number of "other" entries is expanded from one to four with description fields included in the record.

A new item is added for statement or schedule reference.

(15) *Schedule E–1, Working Capital—Monthly Balances—Part 1* (old R1/14)

Parts 1 and 2 of Schedule E–1 are revised so that Working Capital monthly balances and totals are reported in the same record formats.

Month/year is revised to Year/Month/Total to allow for total, 13-month average balance, test period adjustment, and adjusted balance entries. The separate item for Total Working Capital is deleted.

The following items are new: Prepaid Gas Purchase Agreements (138a), Prepaid Gas Purchase Take or Pay Agreements (138b), Fuel Stock (138c), and Storage Expense (140).

(16) *Schedule E–1, Working Capital—Monthly Balances—Part 2* (old R1/15)

This record is now a continuation of new Record 15. The description of Other Working Capital is now included in the record format.

(17) *Schedule E–2, Storage Record* (old R1/16–17)

The two records previously used for Schedule E–2 are reformatted into one record. This single record is now used to report a monthly balance, total, 13-month average balance, test period adjustment, or adjusted balance.

Two items are added to the record: a code for the units used to report volumes and cost; and Storage Field Name.

(18) *Schedule E–3, Account 191 Reconciliation—Part 1* (old R1/18)

Storage Field Name is a new item.

(19) *Schedule E–3, Account 191 Reconciliation—Part 2* (old R1/19)

A Storage Activity Code and a code for units reported are added to the record.

The Month/Year field is revised to Year/Month/Total.

(20) *Schedule E–4, Research and Development Expense—Account 188* (new title) (old R1/20)

This record is totally revised to allow reporting of research and development expenses by individual project and for the total of all projects. The balances reported include monthly balances, totals, 13-month average balances, test period adjustments and adjusted balance.

(21) *Statement E, Working Capital Narrative Reports* (old R1/21)

This record is revised to include a header record followed by text.

(22) *Statement F(1), Rate of Return Claimed* (old R1/22)

This record is revised to include a header record followed by text.

(23) *Statement F(2), Rate of Return and Cost of Capital* (old R1/23)

This record is expanded to include both base period and test period data.

Item Nos. 191, 196, 201, 205–209, and 212 are new.

(24) *Statement F(3) Debt Capital-Individual Instruments* (old R1/24)

This record is expanded to include both base period and test period data.

Item Nos. 229 and 233 are new.

Items pertaining to the weighted average cost of debt capital (old Item Nos. 185 and the entry in old character positions 195–200) are deleted.

Old Item Nos. 202–204 are deleted.

(25) *F(3), Debt Capital-Total Debt* (old R1/25)

This record is expanded to include both base period and test period data.

Item Nos. 242, 243, and 249 are new.

Old Item Nos. 210, 212, 214–216, and 220–221 are deleted.

(26) *Statement F(3)(g), Amortization of Gain/Loss on Reacquired Debt* (old R1/26)

This record is substantially revised.

(27) *Statement F(4), Preferred Stock Capital* (old R1/27)

This record is expanded to include both base period and test period data.

Item Nos. 285–291 and 293–294 are new.

(28) *Statement F(5), Common Stock Capital—Part 1* (old R1/28)

Item Nos. 297 and 307 are new.

(29) *Statement F(5), Common Stock Capital—Part 2* (new record)

This is a new record for reporting the text of new issues.

(30) *Schedule F(5)–1, Stock Dividends, Splits, etc.* (old R1/29)

Item No. 323, Text for Changes in Common Stock Capital, is added to this record.

The Time Period Codes in Note 14 are revised so that codes 01–12 correspond to month 1–12 and codes 21–24 correspond to years 1–4.

Company Name (old Item No. 284) is deleted.

(31) *Schedule F(5)–2/3, Stock Information* (old R1/30–32)

Item Nos. 324–326 and 337 are new.

The Time Period Codes in Note 15 are revised as in Note 14 with additional codes 25 and 31 for "year 5" and "total", respectively.

(32) *Schedule F(5)–4/5, Earnings Per Share/Interest Coverage* (old R1/33)

Balance Sheet Date (old Item No. 322) is revised to Income Statement Date (new Item No. 338). This record is expanded with Item Nos. 341–347 for deductions and identification of the deductions.

(33) *Schedule F(6), Changes in Financial Position—Part 1* (old R1/34)

Schedule F(6) is expanded from four records to six records.

Record RA/33 is expanded with Item Nos. 355 and 356 for indicating base period or test period data, and Item Nos. 368 and 369 for reporting and describing other non-cash charges.

Old Item Nos. 326 and 327 are deleted. Old Item Nos. 340–343 are moved to Record RA/34, Item Nos. 372–375.

(34) *Schedule F(6), Changes in Financial Position—Part 2* (old R1/35)

This record is expanded with Item Nos. 371 to indicate base period or test period data, and Item Nos. 377 and 386 to describe other sources of funds.

(35) *Schedule F(6), Changes in Financial Position—Part 3* ((R1/36)

Item Nos. 388 is added to indicate base period or test period data.

Old Item No. 355 is deleted.

(36) *Schedule F(6), Changes in Financial Position—Part 4* (old R1/37)

Item No. 404 is added to indicate base period or test period data. Item No. 416, Inventory and supplies, is new.

Old Item Nos. 386–391 are moved to Record RA/37.

(37) *Schedule F(6), Changes in Financial Position—Part 5* (new record)

This record is a continuation of Schedule F(6), Part 4.

(38) *Schedule F(6), Changes in Financial Position—Part 6* (new record)

This record is added to report "Other Non-Cash Charges" in addition to Item No. 368 in Part 1 and to report "Other Sources of Funds" in addition to Item No. 385 in Part 2.

(39) *Statement G, Gas Operating Revenues and Sales Volume* (old R1/38)

Character positions are revised.

(40) *Statement G, Gas Operating Revenues and Sales Volumes—Field Sales, Non Jurisdictional Sales, and Other Sales* (old R1/39)

The record now contains a single indicator for the United Reported Code.

(41) *Statement G, Gas Operating Revenues and Sales Volumes—Total Jurisdictional, Field and Other Sales* (old R1/40)

Old Item No. 445 is deleted.

(42) *Statement G, Gas Operating Revenues and Sales Volumes—Volumes—Transportation of Gas for Others* (old R1/41)

Character positions are revised.

(43) *Statement G, Gas Operating Revenues and Sales Volumes—Process Plant* (old R1/42)

Old Item No. 474, Field Code of Product, is revised to new Item No. 518, Field or Plant Code.

(44) *Statement G, Gas Operating Revenues and Sales Volumes—Products Extracted* (old R1/43)

Item No. 528 is added to indicate the units reported.

Item No. 531 may be reported in $/MMBtu or $/gallon.

(45) *Statement G, Gas Operating Revenues and Sales Volumes—Incidental Sales* (old R1/44)

Item Nos. 495 and 497, the names of the gasoline and oil purchasers, are deleted.

(46) *Statement G, Gas Operating Revenues and Sales Volumes—Other Gas Revenues* (old R1/45)

Character positions are revised.

(47) *Statement G, Gas Operating Revenues and Sales Volumes—Rents* (old R1/46)

Character positions are revised.

(48) *Statement G, Gas Operating Revenues and Sales Volumes—Liquids and Liquefiables—Details* (old R1/47)

Character positions are revised.

(49) *Statement G, Gas Operating Revenues and Sales Volumes—Liquids and Liquefiables—Totals* (old R1/48)

Character positions are revised.

(50) *Statement H(1), Operations and Maintenance Expenses—Part 1*

Schedule H(1)–1(a), Labor Costs

Schedule H(1)–1(b), Materials and Other Charges (Excluding Purchased Gas Costs)

Schedule H(1)–1(c), Expenses and Associated Volumes Applicable to Accounts 810, 811 and 812—Part 1 (old R1/49, 51–53)

There are major revisions to the former records. The new formats now provide for the type of balance, 12 monthly balances, an adjustment identifier, and a project name. The base period total, adjustment, and test period total are retained from old Record R1/49.

Old Record R1/53 is divided into separate records for reporting expenses (included in new Record RA/50) and volumes (new Record RA/52) applicable to Accounts 810, 811 and 812.

(51) *Statement H(1), Operations and Maintenance Expenses—Part 2* (old R1/50)

This record is revised to include a header record in presenting text data for the adjustments to the gas operation and maintenance expenses for each account.

(52) *Schedule H1–1(c), Expenses and Associated Volumes Applicable to Accounts 810, 811, and 812—Part 2* (new record)

This is a new record used to report volumes associated with expenses applicable to Accounts 810, 811 and 812.

(53) *Schedule H(1)–2, Purchased Gas Costs—Part 1*

(54) *Schedule H(1)–2, Purchased Gas Costs—Part 2*

(55) *Schedule H(1)–2, Purchased Gas Costs—Part 3*

(56) *Schedule H(1)–2, Purchased Gas Costs—Part 4* (old R1/55–56)

The Purchase Gas Costs Records are expanded and reformatted to provide more specific data formats as well as new items and codes.

(57) *Schedule H(1)–3, Workpapers* (old R1/54)

This record is revised to include a header record in presenting text data for workpapers.

(58) *Schedule H(2), Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 1* (old R1/58)

Functionalization codes are expanded in Note 22.

(59) *Schedule H(2), Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 2* (new Record)

Record RA/59 is a text record used to provide an explanation of the depreciation, depletion and amortization rates reported in Record RA/58.

(60) *Schedule H(2)–1, Reconciliation of Depreciable Plant Included in Statement H(2) and Gas Plant Included in Statement C* (old R1/57)

Character positions are revised.

(61) *Statement H(3), Income Taxes—Part 1*

(62) *Statement H(3), Income Taxes—Part 2*

(63) *Statement H(3), Income Taxes—Part 3* (old R1/59–60)

The Income Tax Records are expanded to capture additional data on federal, state and local income tax rates. New Item No. 716 is used to describe the "other function" code in Item No. 699. Individual Tax adjustments are now included in Record RA/62. The text data is now presented in Record RA/63.

(64) *Schedule H(3)–6, Accumulated Deferred Income Taxes* (old R1/61)

A code is added for test period adjustment and individual items are added for the Deferred Tax Balances in Accounts 190, 282, and 283, and the Total Accumulated Deferred Income Taxes.

(65) *Statement H(4), Other Taxes* (old R1/63)

This record is expanded to show the taxes by function (Item Nos. 732–743a). Item No. 726 is now used to indicate whether totals or individual tax items are being reported.

(66) *Schedule H(4)–1, Workpapers* (old R1/64)

This record is revised to include a header record in presenting text data for workpapers.

(67) *Statement I, Allocation of Overall Cost of Service—Part 1* (old R1/65)

This record is revised to include a header record in presenting test data.

(68) *Statement I, Allocation of Overall Cost of Service—Part 2* (old R1/66)

New "mainline" and "production area" codes are added to Item Nos. 744. The description of "other" in Item No. 744 is now described in Item No. 746.

(69) *Statement I–4, Transmission and Compression of Gas by Others* (old R1/67)

Item No. 750, Unit Reported Code, replaces old Item No. 673.

(70) *Schedule I–5, Meters* (old R1/68 No changes.)

(71) *Schedule I–6, Deliveries* (old R1/69)

A "special off-system" code is added to delivery Type (Item No. 780). A "direct sales" code is added to Nature of Service (Item No. 783). Item No. 784, Unit Reported Code, replaces old Item No. 701. An optional data item, Customer Name (item No. 802) is added. Item No. 802a is used to describe the "other" delivery type code.

(72) *Schedule I–7, Gas Account—Part 1*

(73) *Schedule I–7, Gas Account—Part 2*

(74) *Schedule I–7, Gas Account—Part 3* (old R1/70)

The original record is expanded into 3 new records. Specific instructions for completion of these records are included as Note 29 in Record RA/72.

Note: Records RA/75–80 are text records that now include a header record.

(75) *Statement J, Allocation of Cost of Service by Zones* (old R1/71)

(76) *Statement J–1, Allocation of System Cost by Zones* (old R1/72)

(77) *Statement J–2, Development of the Zone Rate Differential Proposed* (old R1/73)

(78) *Statement K, Comparison of Estimated Revenues with Cost of Service* (old R1/74)

(79) *Statement K–1, Rate Design* (old R1/75)

(80) *Statement K–2, Proposed Changes in Cost Classification, Allocation, Crediting and/or Rate Design Procedures* (old R1/76)

Note: Records RA/81–88 are not revised except for the Schedule/Record ID and addition of the Footnote ID.

(81) *Comparative Balance Sheet—Part 1 (Major)* (old R1/77)

(82) *Comparative Balance Sheet—Part 2 (Major)* (old R1/78)

(83) *Comparative Balance Sheet—Part 3 (Major)* (old R1/79)

(84) *Comparative Balance Sheet—Part 4 (Major)* (old R1/80)

(85) *Comparative Balance Sheet—Part 5 (Major)* (old R1/81)

(86) *Comparative Balance Sheet—Part 8 (Major)* (old R1/82)

(87) *Comparative Balance Sheet—Part 7 (Major)* (old R1/83)

(88) *Comparative Balance Sheet—Part 81 (Major)* (old R1/84)

Note: An information reported code to indicate consolidated or non-consolidated reporting is added to Records RA/89–93. There are no other revisions except for the Schedule/Record ID and the addition of a Footnote ID.

(89) *Comparative Balance Sheet—Part 1 (Major)* (old R1/85)

(90) *Comparative Balance Sheet—Part 2 (Major)* (old R1/86)

(91) *Comparative Balance Sheet—Part 3 (Major)* (old R1/87)

(92) *Comparative Balance Sheet—Part 4 (Major)* (old R1/88)

(93) *Comparative Balance Sheet—Part 5 (Non-Major)* (old R1/89)

Schedule RB

(01) *Statement M, Statement of Income for the Year—Part 1 (Major)* (old R1/90)

Old Item No. 928 (Utility Plant Reported) is deleted.

Balance Year is a new item to indicate current or previous year data.

Old Item No. 946 (Net Utility Operating Income) is moved from Record R1/90 to new Item No. 1059 in Record RB/02.

Note 40 is added and contains specific instructions for Records RB/01–04. Balance year has also been added to Records RB/02–04.

(02) *Statement M, Statement of Income for the Year—Part 2 (Major)* (old R1/91)

(03) *Statement M, Statement of Income for the Year—Part 3 (Major)* (old R1/92)

(04) *Statement M, Statement of Income for the Year—Part 4 (Major)* (old R1/93)

(05) *Statement M, Statement of Income for the Year—Part 1 (Non-Major)* (old R1/94)

Old Item No. 991 (Plant Reported) is deleted and new Item No. 1105 (Year Reported) is added.

Note 41 contains specific instructions for Records RB/05–07. Year Reported and the Information Reported Code, to indicate consolidated or non-consolidated reporting, are added to Records RB/05–07.

(06) *Statement M, Statement of Income for the Year—Part 2 (Non-Major)* (old R1/95)

(07) *Statement M, Statement of Income for the Year—Part 3 (Non-Major)* (old R1/96)

(08) *Schedule N–1, Cost of Plant By Functional Classification Part 1* (old RB/01)

Old Item No. 1042 (Plant Name Code) is changed to new Item No. 1158 (Account Description Code) and the codes are expanded to include "other" and "total cost of plant". The description of "other" is reported in Item No. 1173.

Old Item No. 1043 (FERC Account Number) is changed to new Item No. 1159 and the comments are expanded to include account 118 and "0" when reporting total cost of plant.

Old Item 1049 (Adjustments) is expanded to new Item Nos. 1165 through 1170 to provide for as many as three adjustments and descriptions. Item No. 1171, Eliminations, is new.

(09) *Schedule N–1, Cost of Plant By Functional Classifications Part 2* (old RB/02)

Old Item No. 1051 (FERC Account Number) is changed to new Item No. 1174 and expanded to include account 118.

Old Item No. 1052 (Function Code) is changed to new Item No. 1175 and expanded. Codes are defined in Exhibit G.

Old Item No. 1053 (Detailed Plant) is deleted.

A new Item No. 1176 (Subaccount No.) is added; account codes are defined in Exhibit E.

Item Nos. 1177 (Information Reported Code) and 1178 (Project Name) are new.

Old Item No. 1055 (Adjustments) is expanded to new Item Nos. 1180 through 1185 to allow entry of as many as three adjustments and descriptions.

Old Item Nos. 1057, (Functional Subtotal Code) and 1058 (Functional Subtotal Amount) are deleted. New Item No. 1187 (Description of Other Function) is added.

(10) *Schedule N–2, Accumulative Provisions for Depreciation, Depletion, Amortization, and Abandonment* (old RB/03)

Old Item No. 1059 (Account Number) is changed to new Item No. 1188 (Gas Plant Account Number) and expanded to include account 117.

Old Item No. 1060 (Function Code) is changed to New Item No. 1189 and expanded. Codes are defined in Exhibit G.

Balances at the beginning and ending of the TEST period are revised to balances per books at beginning and end of BASE period.

Old Item No. 1068 (Adjustments) is expanded to new Item Nos. 1197 to 1202 to allow for entry of as many as three adjustments and descriptions.

New Item No. 1204 (Description of Other Function) is added.

(11) *Schedule N–3, Working Capital—Monthly Balances—Part 1* (old RB/04)

The same record format is now used to report both monthly balances and totals.

Old Item No. 1070, (month/year) is changed to new Item No. 1205 and expanded to include a "Total" indicator.

New Item Nos. 1214 to 1216 are added.

Old Item No. 1087 is changed to Item No. 1228, Total Working Capital, and moved to Part 2.

(12) *Schedule N–3, Working Capital—Monthly Balances—Part 2* (old RB/05)

Old Item Nos. 1089 to 1107 are combined with new Record RB/11. New Item Nos. 1225 to 1227 and 1229 are added.

(13) *Schedule N–4, Rate of Return—Part 1* (old RB/06)

Note 1 is changed to note 43 and the requirement to file the company's latest prospectus on an electronic medium is deleted from the instructions.

The text data is now presented with a header record.

(14) *Schedule N–4, Rate of Return and Cost of Capital—Part 2* (old RB/07)

A new Item No. 1231 is added to indicate base period or test period data.

New Item Nos. 1238, 1243 are added to file adjustments for preferred stock and common equity. Item Nos. 1247 through 1251 are added for filing "other" amounts and adjustments.

Item No. 1254 is added to indicate schedules from which information was taken.

(15) *Schedule N–5, Operations and Maintenance—Part 1* (old RB/08)

Item No. 1255 is added to indicate the beginning month or total.

Classification Code is changed to Type of Balance (Item No. 1257 and expanded to include "Total", and "Expenses applicable to accounts 810, 811 and 812."

Monthly balances can now be entered in twelve individual fields in a single record. Previously, a single record could contain only one monthly balance.

New Item Nos. 1272 (Adjustment Identifier) and 1274 (Project Name) are added.

(16) *Schedule N–5, Operations and Maintenance—Part 2* (old RB/09)

The text data is now presented with a header record.

(17) *Schedule N–6, Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 1* (old RB/10)

New Item No. 1275 (Account Number) is expanded to include accounts 404.2 and 404.3.

Functionalization Code (new Item No. 1276) is expanded; codes are defined in Note 46.

Old Item No. 1133 (Function Code) is expanded to provide an individual entry in the record for each function. The description of "Other Functionalization" is entered in new Item No. 1288.

Old Item No. 1140 (% Functionalized) is deleted.

(18) *Schedule N–6, Depreciation, Depletion, Amortization, and Negative Salvage Expenses—Part 2* (new record)

This is a new text record.

(19) *Schedule N–7, Income Taxes—Part 1* (old RB/11)

There are now three records for Schedule N–7 instead of two.

New Item No. 1289 (Function Code) includes "total" and "other function", to be specified in new item 1306.

New Item Nos. 1297 (Federal Tax Rate) and 1300 (State Income Tax Rate) are added. Old Item No. 1152 (Deferred State Tax) is deleted.

Old Item No. 1154 is changed to new Item No. 1304 and expanded to include local income tax. Old Item No. 1156 is changed to new Item No. 1305 and expanded to include local income tax.

(20) *Schedule N–7, Income Taxes—Part 2* (new record)

This record is a continuation of Record RB/19. New Item Nos. 1310 and 1311 are added.

(21) *Schedule N–7, Income Taxes—Part 3* (old RB/12)

The text data is now presented with a header record.

(22) *Schedule N–8, Other Taxes* (old RB/13)

An Information Reported Code is added for reporting total or individual tax items.

Old Item No. 1158 (Function Code) is expanded into individual items (new Item Nos. 1318 to 1329).

A new Item No. 1330 is added to describe "other taxes except income taxes" for Tax Type Code = 9.

(23) *Schedule N–9, Allocation of Overall Cost of Service—Part 1* (old RB/14)

Schedule N–9 is expanded into two parts. The text data in Part 1 is now presented with a header record.

Note 49 and 50 are added.

(24) *Schedule N–9, Allocation of Overall Cost of Service—Part 2* (new record)

New Item Nos. 1331 to 1333 are added to indicate the Type of Sale or Transportation and the Total Cost. Item No. 1333 is used to describe "other" in Item No. 1331.

(25) *Schedule N–10, Gas Operation Revenues and Sale Volumes* (old RB/15)

This record is substantially revised.

(26) *Schedule N–10, Gas Operation Revenues and Sale Volumes, Field Sales, Non-Jurisdictional Sales, and Other Sales* (old RB/16)

This record is substantially revised.

(27) *Schedule N–10, Gas Operation Revenues and Sale Volumes Total Jurisdictional, Non-Jurisdictional, Field, and Other Sales* (old RB/17)

This record is substantially revised.

(28) *Schedule N–10, Gas Operation Revenues and Sales Volumes Transportation of Gas of Others* (new record)

(29) *Schedule N–11, Research and Development Expenses Account 188* (old RB/18)

Old Item Nos. 1195, 1196, and 1197 are replaced by new Item Nos. 1397 to 1401.

(30) *Schedule O, Description of Company Operations* (old RB/19)

The text data is now presented with a header record.

(31) *Schedule P, Explanatory Text and Prepared Testimony* (old RB/20)

The text data is now presented with a header record.

(32) *Footnotes* (old RB/21)

Reference Number is changed to Footnote ID.

(33) *Nonstandard Statements and Schedules* (new record)

(34) *Notes to Financial Statements* (new record)

Exhibits

Item No. 5 is expanded in Exhibit B.

Footnotes are deleted from items 7 & 8 of Exhibit D.

Exhibit E is expanded to include additional accounts.

Exhibits F & G are new.

Appendix B—Revisions to Tariff Record Formats

ANR/CIG point out that the Tariff Volume Header Record has only one place to designate the printer pitch of the entire document. To create the documents that are currently submitted to FERC, it will be necessary to change the pitch of the printing within the document. Williston Basin points out that for portrait documents, the length of the header and trailer records exceeds the boundaries for tariff sheet text and will require margin changes at the top and bottom of each page. Northwest suggests that the trailer records are redundant and unnecessary since the header record can serve as the delimiter for each page. ANR/CIG note a discrepancy between the maximum line lengths in the October 7, 1988 Commission Staff Response and the instructions for Schedule TF.

In response to these comments, staff is eliminating all trailer records and reformatting the margin and page format information into four header records. The revised header records have a maximum usable length of 65 characters (limited by the number of characters allowable at 10 cpi pitch in Portrait orientation) and may be used with either Portrait or Landscape orientation without changing the margins on each page. The printer pitch specification is moved to Tariff Sheet Header Record No. 1, so that pitch can be changed for individual sheets within a volume. In addition, a Line Density Indicator is added so that tariff sheets can be printed at either six- or eight-lines per inch with appropriate fonts.

The revised formats issued with this notice contain maximum characters/line and lines/page values for 10 cpi, 12 cpi and 17 cpi pitch. However, staff will consider additional pitch options for printing tariff sheets. Table 1 lists the characters/line limits, up to a maximum pitch of 20 cpi, and lines/page limits for various print pitches at six and eight lines per inch. These limits are determined by margin and border requirements specified in the Commission's regulations, by the space needed to print information in the margin, and by legibility considerations. Staff invites comments at the conference on the need for and the feasibility of the additional print options, and the impact of these options on tariff sheets that would otherwise have to be reformatted.

TABLE 1.—CHARACTER, LINE AND BLANK MARGINS FOR AVAILABLE PRINT DENSITIES

[Maximum Values]

Pitch (cpi)	Inside border limits			Margins (excl. text)
	Char/Line	Lines (6/in.)	Lines (8/in.)	
Portrait:				
10	85	50	70	Top: ½ in.
12	79	50	70	Bottom: ½ in.
15	99	50	70	Left: 1¼ in.
16.6	110	50	70	Right: ½ in.
17	112	50	70	
20	134	50	70	
Landscape:				
10	98	31	45	Top: 1¼ in.
12	118	31	45	Bottom: ½ in.
15	148	31	45	Left: ½ in.
16.6	163	31	45	Right: ½ in.
17	168	31	45	
20	196	31	45	

Note.—8.5 point print font will be used for: (1) 6 lines/inch print, and (2) 15, 16.6, 17 and 20 pitch print at 6 or 6 lines per inch.

Sheet Number and Tariff Volume Number in the header records are revised from numeric to character fields in response to comments from Northwest and Enron. For tariff sheets that must be revised, this will allow additional pages to be included with an alphabetic suffix.

In response to comments submitted by Enron, staff clarifies that margin data included in the header records does not need to be repeated in the text record. The Commission-provided software will print the border required on the hard copy and will print information from the header records in the margin. However, there are several revisions to the current display format which are required to print tariff sheets filed on an electronic medium. First, for sheets printed in Landscape orientation, margin information will be printed in the same orientation instead of the Portrait format used in current hard copy filings. Top, bottom and side margins will be revised to accommodate the margin information for Landscape orientation.

Second, for Portrait orientation at 10 cpi and 12 cpi pitch, the Superseded Sheet Number will be printed on the line below the Tariff Volume ID and will be right justified with the border. This change is due to the size of the items to be printed and the 65 and 79 character limits for 10 cpi and 12 cpi pitch, respectively. This revision will eliminate the need to change print fonts within an individual tariff sheet. The same format for printing information in the margin will be used for all other pitch, font and orientation combinations.

ANR/CIG question if footnotes must be included within the borders of the tariff sheet or be printed outside as is the current practice for some companies. In addition, marginal footnotes concerning information imposed by Commission order are printed at the bottom of the page on the current hard copy. Will there be a separate marginal footnote record or will this type of marginal note be acceptable in the footnote sequence at the end of the document?

Staff responds that footnotes applicable to the text on a tariff sheet will be printed within the borders for all companies. Footnote text, and all appropriate footnote reference numbers, should be included as part of the regular text for each tariff sheet, i.e., there is no special record format for entering footnotes. If a tariff sheet is filed to comply with a Commission order, and Order Date and Docket Number are entered on Tariff Sheet Header Record 4, then the following message will be printed in the bottom margin as specified by Commission regulation:

"Issued to comply with order of the Federal Energy Regulatory Commission, Docket No. dated "

Enron questions how the Navy Document Interchange Format (DiF) is to be used by the Commission and whether header records apply to this format or only to ASCII files. Enron also notes that older versions of word processing software do not provide a conversion utility to Navy DIF.

Staff notes that the Commission cannot require that specific word processing software be used to submit tariff filings. For this reason, staff could consider only generic file formats such as ASCII and Navy DIF. Furthermore, a single format for submittal of tariff sheets will simplify the development and use of microcomputer-based systems for tariff sheet control and inquiry/search functions. Therefore, output from specific word processing software, without conversion, will not be acceptable.

Staff considered Navy DIF because of its concern that special print features, such as underlining and bold-face print, are not preserved in an ASCII file. Commission regulations do not require that these features be included in tariff sheets. If it is acceptable to natural gas companies and the public to submit tariff sheets without these features, then an ASCII file is acceptable to staff. If certain special features are necessary or desirable, then Navy DIF may be an acceptable alternative to an ASCII file. Staff recognizes, however, that Navy DIF is not a universal solution and that, after testing, limits might have to be placed on the use of that format.

Staff clarifies that header records will be required regardless of the format adopted by the Commission.

Enron notes that the 144 byte limit for all records submitted on tape is inconsistent with the maximum length of 170 characters stated in the Staff Response and asks if this limit also applies to diskettes. ANR/CIG question whether tariff filings can be submitted on tape or diskette, since the Staff Response stated that it will be less burdensome on industry and staff if pipelines submit tariffs on diskette only.

Staff clarifies that the byte limit should have corresponded to the maximum length stated in the Staff Response. That maximum length is revised to 168 characters but may be increased after the conference discussion on print options. Staff intends to develop a microcomputer-based system for control of tariff sheets. For this reason, staff prefers that tariff sheets be filed on diskette. However, pipelines may file tariffs on magnetic tape or cartridge, as well as diskettes.

ANR/CIG state that certain tariff sheets will need new formats due to the proposed Maximum Line Length and questions if the filing fee and notice procedure apply if the new formats do not require changes to the existing tariff. ANR/CIG also ask whether the new tariff sheets must be provided to all holders of the tariff when the sheets are filed, and whether the Commission will issue an order accepting the tariff sheets with the new formats despite the fact that there have been no changes in the tariff provisions.

Staff clarifies that all current regulations with respect to filing fees, notice procedure, service, and the requirement for a Commission order accepting the tariff sheets will apply to all tariff sheets filed on an electronic medium.

ANR/CIG ask if only tariff sheets should be included on the electronic medium and not other materials such as the Statement of Reasons and the transmittal letter. ANR/CIG state that these ancillary materials should not be required to be included on tape or diskette since there is not a record in Schedule TF for submitting such data.

Staff agrees that the transmittal letter and Statement of Reasons are not required to be included on the electronic medium.

Appendix C—Revisions to Certificate Application Record Formats

The certificate application record formats are revised to include an expanded General Information Record and summary records for various types of certificate applications. The actual text of a certificate application will be entered without prefix of any kind. However, a header record indicating the type of text immediately following the header must be inserted prior to the text. The text header record contains a code corresponding to specified sections of the Commission's regulations and also indicates printed orientation and pitch.

Appendix D.—Clarification of Revisions to FERC Form Nos. 2 and 2–A

The following corrections are added to those listed in Appendix A of the October 26, 1988 Notice of Availability of Revised Record Formats for FERC Form Nos. 2 and 2–A:

FERC Form No. 2

Specific Instruction 6(a) is revised to agree with the codes in Schedule F4, Records 19–21. Delete "or 4" in line 4 and change "= 5" to "= 4" in the last line of the instruction.

In Schedule F5, Record 33, change Item No. 559a to Item No. 559b.

In Schedule F5, Record 41, the character positions for Item Nos. 602–607 and the Footnote ID are revised as follows:

Item	New character position
602	11–142
603	143–148
604	149–160
605	161–172
606	173–184
607	185–196
Footnote ID	197–200
Filler	201–255

In Schedule F6, Record 09, the Information Reported Codes are expanded.

In Schedule F6, Record 31, two new items are added: Item Nos. 1016a (Special Construction Personnel) and 1016b (Equivalent Employees).

In Schedule F7, Record 17, the character positions for Gas for Compressor Fuel are revised to 198–209, and the character positions for Item Nos. 1254–1256 and the Footnote ID are 210–214, 215–220, 221–226, and 227–230, respectively.

FERC Form No. 2–A

In Schedule F8, Record 02, the character positions for Item No. 17 and the Footnote ID are revised to 244–249 and 250–253, respectively.

In Schedule F8, Record 08, the Plant Reported Codes are revised (one of the two "other utility" codes was deleted) and the remaining "other utility" code is identified in new Item No. 99a, character positions 193–217.

In Schedule F8, Record 23, the character positions for Item Nos. 235–238 are revised.

In Schedule F8, Record 37, a Utility Plant Reported Code is added in character position 12.

In Schedule F8, Record 80, the character positions for Item No. 948, Salary and/or Fee, are revised to 58–67.

[FR Doc. 89–434 Filed 1–9–89; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1311–89]

Delegation of Power of the Attorney General's Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order delegates to the Assistant Attorney General in charge of the Civil Rights Division authority to implement section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100–383, 50 U.S.C. App. 1989b. The effect of this delegation is to delegate to the Assistant Attorney General for Civil Rights the responsibilities and duties assigned to the Attorney General by the Civil Liberties Act of 1988. This is done to carry out the Department's responsibility for the restitution provisions of this Act.

EFFECTIVE DATE: January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert K. Bratt, Redress Administrator, Office of Redress Administration, Civil Rights Division, Department of Justice, Washington, DC 20530 (202/633–4224).

SUPPLEMENTARY INFORMATION: This order deals with Agency management. It is not required to be and has not been published in proposed form for comment under 5 U.S.C. 553(b).

This regulation is not a major rule within the meaning of Executive Order 12291 because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 0

Indemnity payments.

For the reasons stated in the preamble Title 28, Part 0, Subpart J of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. In § 0.50, General functions, a new paragraph (j) is added to read as follows:

§ 0.50 General functions.

* * * * *

(j) Administration of section 105 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b).

Date: January 3, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–474 Filed 1–9–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Kansas Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns a proposal to assume responsibility for administering an emergency reclamation program. After opportunity for public comment and review of the amendment, the Deputy Director has determined that the Kansas amendment meets the requirements of the Surface Mining Control and Reclamation Act and the Secretary's regulations at 30 CFR Part 884.

EFFECTIVE DATE: January 10, 1989.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–6405

Kansas Department of Health and Environment, Surface Mining Section, Bureau of Waste Management, 1501 South Joplin, P.O. Box 1418, Pittsburg, Kansas 66762, Telephone: (314) 231–8615

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the February 1, 1982, **Federal Register** (47 FR 4513). Deficiencies that resulted in the conditional approval were corrected by the State, and on June 3, 1983, all conditions of approval were removed by OSMRE. The Secretary's findings can be found in the June 3, 1983 **Federal Register** (48 FR 24874).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "**ADDRESSES**".

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to OSMRE proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Deputy Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated September 30, 1988, Kansas submitted a reclamation plan amendment to OSMRE (Administrative Record No. AML–KS 93). The amendment consists of procedures to be used in the implementation and administration of emergency reclamation projects.

On September 19, 1983, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The State of Kansas has submitted material demonstrating compliance with these requirements.

OSMRE announced receipt of the proposed amendment in the October 27, 1988, **Federal Register** (53 FR 43449–43450), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. One public comment was received by November 28, 1988, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

Following a thorough review of the Kansas amendment, OSMRE notified the State on November 29, 1988, of the need for several nonsubstantive editorial changes and clarifications. On December 8, 1988, Kansas submitted the necessary clarifications and editorial corrections. The Deputy Director has determined that these corrections are insignificant in nature and accordingly require no further public comment.

Under SMCRA, OSMRE codifies the approved requirements of individual States including decisions on State reclamation plans and amendments under parts 900 to 950 of 30 CFR Subchapter T. Provisions relating to Kansas are found in 30 CFR Part 916.

III. Deputy Director's Findings

In accordance with Section 405 of SMCRA, the Deputy Director of OSMRE finds that Kansas has submitted an amendment to its Abandoned Mine Land reclamation plan and has determined pursuant to 30 CFR 884.15 and the criteria for assumption of emergency response activities specified in 47 FR 42729–42730, that:

1. The State provided adequate notice and opportunity for public comment in the development of the plan amendment and that the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan or amendment have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the OSMRE AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

7. State emergency reclamation activities (47 FR 42729–42730).

Kansas submitted a comprehensive package to demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work, and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors.

Based upon OSMRE's substantive review and after considering other agency comments, the Deputy Director finds that the Kansas Department of Health and Environment has complied with the emergency program guidelines and qualifies for assumption of emergency response capability within the constraints imposed by law and Departmental regulations.

IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Amendment," OSMRE solicited public comment and provided opportunity for a public hearing on the proposed amendment. Since no one requested an opportunity to testify, the public hearing scheduled for November 21, 1988, was cancelled. One comment was received from the public during the comment period, which closed on November 28, 1988. A summary of the comment and its disposition follows:

The Wyoming Department of Environmental Quality suggested that OSMRE provide a description of the benefits that will result to the public from transfer of emergency reclamation authority to the State of Kansas. OSMRE finds that the following benefits will result from such transfer:

(a) Administrative costs will be reduced.

(b) Accessibility of the administering agency to the public and response time to emergency complaints will improve because the State Program office is located in the center of the major area of historical emergency complaints.

(c) The State's overall control of the Abandoned Mine Land Reclamation Program will be enhanced.

The Wyoming Department of Environmental Quality suggested that a cost/benefit analysis be performed to ensure that the proposed transfer of emergency reclamation authority is in the best financial interest of the Abandoned Mine Land Reclamation Fund. OSMRE has performed an analysis of State vs. Federal costs and found that State administration of the program should be less costly.

Pursuant to 30 CFR 884.14(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas plan. No comments were received in response to the solicitation.

V. Deputy Director's Decision

Based upon the findings enumerated above, the Deputy Director is approving the Kansas amendment. A copy of the approved amendment can be obtained by contacting the offices listed under "**ADDRESSES**".

VI. Procedural Matters

1. Executive Order 12291 and the Regulatory Flexibility Act

OSMRE examined this final rulemaking under Executive order 12291 and has determined that on November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State AMLR plans and amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review of OMB.

This rulemaking was examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities. No burden will be imposed on entities operating in compliance with the Act.

2. Compliance with the National Environmental Policy Act

Furthermore, OSMRE has determined that the approval of State and Tribal AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) Kansas' Department of Health and Environment is staffed and prepared to administer the emergency reclamation program, and (2) OSMRE wishes to expedite grant assistance to the State to initiate emergency reclamation work.

List of Subjects in 30 CFR 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 5, 1989

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

PART 916—KANSAS

1. The authority citation for Part 916 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.20 is revised to read as follows:

§ 916.20 Approval of Kansas Abandoned Mine Land Reclamation Plan.

The Kansas AMLR Plan, as submitted on October 1, 1981, and amended by Kansas Statute 49–428, April 14, 1982, is hereby fully approved and all conditions prohibiting the funding of State AML construction grants are deleted.

3. A new Section 916.25 is added to read as follows:

§ 916.25 Approval of Kansas Abandoned Mine Land Reclamation Plan Amendments.

The Kansas AMLR plan amendment allowing the State to assume responsibility for administering an emergency reclamation program, as submitted on September 30, 1988, and modified on December 8, 1988, is approved. Copies of the approved plan and amendments are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106

Kansas Department of Health and Environment, Surface Mining Section, Bureau of Waste Management, 1501 South Joplin, P.O. Box 1418, Pittsburg, Kansas 66762

[FR Doc. 89–406 Filed 1–9–89 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42071B; FRL–3503–6]

Testing Consent Order for Octamethylcyclotetrasiloxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule announces that EPA has signed an enforceable testing consent order with six manufacturers of octamethylcyclotetrasiloxane (OMCTS; CAS No. 556–67–2), who have agreed to perform certain chemical fate and environmental effects tests with OMCTS. OMCTS is added to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR Part 707 apply.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, six manufacturers have entered into a testing consent order with EPA in which they have agreed to perform certain chemical fate and environmental effects tests with OMCTS.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. ITC Recommendation

In its 15th Report to EPA, published in the **Federal Register** of November 29, 1984 (49 FR 46931), the ITC recommended that OMCTS be considered for chemical fate and environmental effects testing. Chemical fate testing included water solubility, octanol/water partition coefficient, and biodegradation studies. The recommended environmental effects testing included acute toxicity testing with several species and, if indicated by the results of the acute tests, chronic toxicity tests with appropriate species.

II. Proposed Test Rule

In the **Federal Register** of October 30, 1985 (50 FR 45123), EPA issued a proposed test rule requiring that manufacturers and processors of OMCTS conduct chemical fate and environmental effects testing of OMCTS. Chemical fate testing included biodegradability testing in water and sediment using the eco-core method of Bourquin et al. (Ref. 1), aerobic and anaerobic biodegradability tests in soil, and a biodegradability test in a sludge system. Environmental effects testing included acute toxicity tests with rainbow trout, fathead minnow, bluegill, sheepshead minnow, silversides, daphnids, mysid shrimp, oyster, and freshwater and saltwater algae; chronic effects tests with a fish, daphnid, and mysid shrimp; bioconcentration tests with fathead minnows and oysters; a marine sediment toxicity test; and a reproduction test with mallard ducks. EPA based this testing on a finding of potential for unreasonable risk of injury to the environment under TSCA section 4(a)(1)(A) and a finding of substantial environmental exposure under section 4(a)(1)(B). These finds are more fully described in the proposed rule.

III. Testing Consent Order Negotiations

After issuing the proposed test rule on OMCTS, EPA amended the regulations for rulemaking to expedite the development of data for risk assessment by establishing the TSCA section 4 testing consent order process. A consent order is not based on formal findings and expedites testing while retaining the same TSCA penalty provisions applicable under rulemaking.

On March 18, 1988, the Silicones Health Council (SHC) submitted a proposal to EPA requesting EPA to develop a testing consent order for OMCTS (Ref. 2). The SHC proposal contained most of the testing that EPA had included in the proposed rule. EPA agreed to consider negotiating a consent order with the SHC and issued a notice, published in the **Federal Register** on April 6, 1988 (53 FR 11341), announcing the decision. This notice also announced the time and location of a public meeting to initiate testing negotiations on OMCTS and requested that all "interested parties" who wanted to participate in negotiations identify themselves to EPA by April 28, 1988.

Prior to the public meeting of April 20, 1988 the SHC drafted a consent order on OMCTS and submitted it to EPA for review (Ref. 3). This draft was modified by EPA and was discussed at the public meeting of April 20 and a revised draft was discussed at the meeting of May 11. By December 1, 1988, six OMCTS manufacturers: Dow Corning Corp., Union Carbide Corp., General Electric Co., Rhone-Poulenc Inc., Mobay Corp., and Wacker Silicones Corp., and two interested parties, the Silicones Health Council and the County of Onondaga, New York had signed the Testing Consent Order for OMCTS. The manufacturers agreed to perform certain chemical fate and environmental effects tests by specified dates according to the test standards in the Appendix of the Consent Order.

IV. Use and Exposure

OMCTS is a colorless oily liquid with a water solubility of approximately 50 ppb, a log soil-sorption coefficient of 4.45, a log octanol/water partition coefficient of 3.8, and a vapor pressure of 1 mm Hg at 20°C (Refs. 4 through 10).

Based on data submitted under section 8(a) of TSCA and by Dow Corning, the 1985 importation/production volume of OMCTS was 110 to 135 million pounds and is expected to increase about 10 percent per year (Ref. 10). Approximately 80 percent of the OMCTS produced or imported is used on-site as an intermediate in the production of polydimethylsiloxane polymers (Ref. 9 through 12). These polymers are used in making surfactants, propellants, lubricants, caulks, sealants, and rubber products (Refs. 9, 11, and 12). The remaining 20 percent of OMCTS is used in spray cleaners and polishes, in paper and textile sizing agents, in detergents, as a defoamer in inks and paints, and in cosmetic products such as colognes, hairsprays, and antiperspirants (Refs. 11 and 13).

The proposed rule on OMCTS included the results of several monitoring studies reporting the presence of organosilicones in rivers and estuaries, effluents, sludges, and sediments at several locations in the United States, Europe, and Japan. After publication of the proposed test rule, the SHC submitted the results of a monitoring study it had sponsored (Ref. 14). In this study, 15 sediment samples from 3 estuaries and 8 sediment samples from 4 freshwater sites were analyzed for OMCTS and organosilicon. Effluent and sludge samples from 3 waste water treatment plants were also analyzed. Organosilicon was found in 17 of 28 samples, but OMCTS was identified in only 1 sediment sample from the Rouge River, Detroit, and in 2 sludge cake samples. EPA has reviewed this study, and, although locations below manufacturing plants were not sampled, the study is sufficient to show that OMCTS is not a widespread environmental contaminant at concentrations exceeding 50 ppb.

V. Testing Program

A. Chemical Fate

SHC has reported that OMCTS is not biodegradable in water and sediment, but due to its volatility, will not persist in receiving waters and sediments (Ref. 15).

Under the Consent Order, the manufacturers have agreed to determine the solubility of OMCTS in freshwater and saltwater, its volatility half-life in freshwater and saltwater, and its biodegradability rate in a sediment/water system.

B. Environmental Effects

Several acute toxicity tests were summarized in the proposed rule. EPA judged all the test data inadequate because they were based on nominal test concentrations that exceeded the water solubility of OMCTS. Available bioconcentration data indicate that the bioconcentration factor for OMCTS in fish may be as high as 10,000.

On February 10, 1988, Dow Corning Corporation submitted the results of a recently completed daphnid chronic toxicity test with OMCTS to EPA under section 8 (d) and (e) of TSCA (Ref. 16). These data suggested that OMCTS was toxic to daphnids at a concentration as low as 10 ppb. Since similar adverse effects were seen in the daphnids exposed to the solvent control, EPA and Dow Corning consider these data unreliable and inadequate to assess the toxicity of OMCTS.

In the Consent Order, the manufacturers agreed to a tiered testing program. Tests agreed upon are presented in the following table.

TABLE.—TESTING PLAN FOR OMCTS

	Test methods	Start date [1]	Report date [1]
Tier 1 Tests			
Solubility test in fresh water	40 CFR 796.1860	8	10
Solubility test in salt water	40 CFR 796.1860	8	10
Aquatic half-life	Smith [2]	8	10
Aquatic biodegradation	Bourquin [3]	12	16
Acute toxicity, algae	40 CFR 797.1050	12	16
Acute toxicity, daphnid	40 CFR 797.1300	12	16
Acute toxicity, rainbow trout	40 CFR 797.1400	12	16
Acute toxicity, silverside or sheepshead minnow	40 CFR 797.1400	12	16
Acute toxicity, mysid shrimp	40 CFR 797.1930	12	16
Chronic toxicity, daphnid	40 CFR 797.1330	12	16
Bioconcentration, fathead minnow	40 CFR 797.1520	12	16
Tier II Tests [4]			
Fish early life stage test	40 CFR 797.1600	18	24
Sediment/invertebrate test	Adams [5]	18	24

[1] Months after the effective date.

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[3] Smith, J.H., Bomberger, D.C. Jr., and Haynes, D.L. "Prediction of the volatilization rates of high-volatility chemicals from natural water bodies." *Environmental Science and Technology*. 14:1332-1337. (1980).

[4] Bourquin, A.W., Hood, M.A., and Garnas, R.I. "An artificial microbial ecosystem for determining effects and fate of toxicants in a salt-marsh environment." *Developments in Industrial Microbiology*. 18:185-191. (1977).

[5] Performed only if any LC50 from Tier I is <1 mg/l or the MATC from the daphnid chronic test is <0.1 mg/l.

[6] Adams, W.J., Kimerle, R.A., and Mosher, R.G. "Aquatic safety assessment of chemicals sorbed to sediments." In: "Aquatic Toxicology and Hazard Assessment." Seventh Symposium, ASTM STP 854. R.D. Caldwell, R. Purdy, and R.C. Bahner, Eds., American Society for Testing and Materials, Philadelphia, PA, pp. 429-453. (1985).

In tier I, the manufacturers will perform all the required chemical fate tests, the acute tests with algae, daphnid, rainbow trout, a marine fish, and mysid shrimp, and a bioconcentration test with fathead minnows, and will repeat the chronic toxicity test with daphnids. Tier II testing includes a fish early life stage toxicity test and a test to determine sediment toxicity to benthic invertebrates. Tier II tests will be performed only if any of the LC50's from the tier I tests are <1 mg/l, or the maximum acceptable toxicant concentration (MATC) from the daphnid chronic test is <0.1 mg/l. If no such adverse effects are observed in any of the tier I tests, tier II testing is not required.

EPA is not requiring that the manufacturers perform all the acute tests that were identified in the proposed rule. EPA believes that if acute toxicity is observed, data on five species are sufficient to assess the acute toxicity of OMCTS to aquatic organisms. EPA is not including a mysid chronic test in tier II because EPA believes that both the toxicity data from the daphnid life cycle test, and, if triggered, the fish early life stage test and the sediment test with the midge, will be sufficient to assess the chronic toxicity of OMCTS.

EPA is not requiring a reproduction test in mallard ducks because available health effects data demonstrate that OMCTS is not toxic to mammals, and thus is not expected to be toxic to ducks. The rat oral LC50 is >2.0 g/kg and antifoam A (5 percent OMCTS) had no adverse effects on rats in a 2-year feeding study (Ref. 17).

The manufacturers agreed to perform the testing according to cited EPA test standards and a specified test schedule. Tier I testing will be completed in 16 months with interim status reports due 6 and 12 months after the date of publication of this notice. If tier II testing is required, it will be completed in 24 months with an interim status report due after 18 months.

EPA and the manufacturers recognize that OMCTS is a volatile substance that is soluble in water at extremely low concentrations and that a test method does not exist to measure OMCTS at concentrations below 30 ppb. Also, additional efforts are needed to develop test systems that can generate stable concentrations of OMCTS in water. The manufacturers will work on the development of such methods and test systems during the period after signature of the Consent Order and before the first test in tier I is performed.

EPA will use the data generated by these tests to determine the risk of adverse environmental effects associated with the manufacture, use, and disposal of OMCTS.

VI. Export Notification

The issuance of this Testing Consent Order subjects any person who exports or intends to export OMCTS to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In 52 FR 23548 of June 23, 1987, EPA issued 40 CFR 799.5000 as a listing of testing consent orders issued by EPA. This listing serves as notification to persons who export or who intend to export chemical substances or mixtures which are the subject of testing consent orders that 40 CFR Part 707 applies.

VII. Rulemaking Record

EPA has established a record for this rule (docket number OPTS-42071B). This record contains the information EPA considered in developing this rule and the Consent Order and includes the following information.

A. Supporting Documentation

(1) Testing Consent Order for OMCTS.

(2) **Federal Register** notices pertaining to this rule and Consent Order consisting of:

(a) Notice containing the ITC designation of OMCTS to the Priority List (49 FR 46931; November 29, 1984).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on OMCTS (49 FR 46739 and 46741; November 28, 1984).

(c) Notice of EPA's proposed test rule for octamethylcyclotetrasiloxane (50 FR 45123; October 30, 1985).

(d) Notice soliciting interested parties for developing a Testing Consent Order for OMCTS (53 FR 11341; April 6, 1988).

(3) Communications consisting of:

(a) Written letter.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished materials.

B. References

(1) Bourquin, A.W., Hood, M.A., and Garnas, R.I. "An artificial microbial ecosystem for determining effects and fate of toxicants in a salt-marsh environment." *Development in Industrial Microbiology*. 18:185-191. (1977).

(2) Silicones Health Council. Letter from E.J. Hobbs to Stephen Ells, Environmental Protection Agency. (March 18, 1988).

(3) Silicones Health Council. Draft Testing Consent Order on OMCTS. (April 13, 1988).

(4) Dow Corning Corporation. Letter with attached studies from Cecil L. Frye to Martha G. Price, Environmental Protection Agency. (December 12, 1984).

(5) Vogel, G.E. and Stark, F.O. "Mutual solubilities in water-permethylsiloxane system." *Journal of Chemical Engineering Data*. 9(4):555-601. (October 1984).

(6) Bruggemen, W.A. et al. "Absorption and retention of polydimethylsiloxanes (Silicones) in fish: preliminary experiments." *Toxicology and Environmental Chemistry*. 7(4):287-296. (1984).

(7) Dow Corning Corporation. Unpublished study of T.H. Lane and C.I. Frye. Letter with attached studies from Cecil L. Frye to Martha G. Price, Environmental Protection Agency. (December 12, 1984).

(8) Kenaga, E.E., "Predicted bioconcentration factors and soild sorption coefficients of pesticides and other chemicals." *Ecotoxicology and Environmental Safety*. 4:26-38. (1980).

(9) Interagency Testing Committee (ITC). Fifteenth Report to the Administrator and Request for Comments. (November 29, 1984).

(10) Dow Corning Corporation. Letter with attachment from C.W. Lentz to Martha Price, Environmental Protection Agency. (February 27, 1986).

(11) Dow Corning Corporation. Letter with attached studies from E.J. Hobbs to M. Grief, Interagency Testing Committee. (December 16, 1982).

(12) Browning, G.R. Silicone Products Division, General Electric Co. Personal communication with M.G. Price, U.S. Environmental Protection Agency. (May 23, 1985).

(13) Versar, Inc. Environmental risk assessment for octamethaylcyclotetrasiloxane. Springfield, VA (1986).

(14) Ann Arbor Technical Services, Inc. Organosiloxanes in fresh water and salt water sediments. Ann Arbor, MI. (1985).

(15) Silicones Health Council. Comments of the Silicones Health Council on EPA's proposed test rule for octamethylcyclotetrasiloxane. (February 28, 1986).

(16) Dow Corning Corporation. A chronic reproductive limit test of polyethylene glycol sorbitan monolaurate and octamethylcyclotetrasiloxane with *Daphnio magno*. (1988).

(17) CRCS, Inc. Information Review No. 348, Octamethylcyclotetrasiloxane. Reston, VA (May 31, 1983).

A public version of this record is available for inspection in the OPTS Reading Rm. NE-G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of this Paperwork Reduction Act, 44 U.S.C. *et seq.* and have been assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 799

Testing procedures,
Environmental protection,
Hazardous substances,
Chemicals,
Chemical export,
Recordkeeping and reporting requirements.

Dated: December 28, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substance in Chemical Abstract Service (CAS) Registry Number order to the table to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS No.	Substance or mixture name	Testing	Federal Register citation
556-67-2	Octamethylcyclo-tetrasiloxane	Chemical fate	[Insert FR date].
		Environmental effects	[Insert FR date].

[FR Doc. 89-298 Filed 1-6-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 80625-8183]

Atlantic Billfishes; Delayed Enforcement of Collection-of-Information Requirement

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of delayed enforcement of collection-of-information requirement.

SUMMARY: NOAA announces a delay in enforcement of the collection-of-information requirement applicable to commercial seafood dealers and processors who possess billfish. This delay is necessary because the collection-of-information requirement has not yet been approved by the Office of Management and Budget (OMB), as required by the Paperwork Reduction Act (PRA). Until approval by OMB, the collection-of-information requirement cannot be enforced.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, Southeast Region, 813-893-3722.

SUPPLEMENTARY INFORMATION: A final rule to implement the Fishery Management Plan for Atlantic Billfishes (FMP) was published September 28, 1988 (53 FR 37765). A detailed discussion of the background, issues, regulations, and classification of the FMP is set forth in the final rule and is not repeated here. The final rule became effective October 28, 1988, with the exception of a phrase in § 644.7(e) and § 644.24(c), which were added and effective from October 28 through December 26, 1988, and §§ 644.7(g) and 644.24(b), which were effective December 27, 1988. Section 644.24(b) specifies that, with a limited exception, a regulated billfish (blue marlin, white marlin, sailfish, and longbill spearfish) possessed by a seafood dealer or processor will be presumed to have been harvested from its management unit unless it is accompanied by specified documentation that it was harvested from outside its management unit. (A billfish from its management unit may not be purchased, bartered, traded, or sold.) Section 644.7(g) prohibits the possession of a billfish by a commercial seafood dealer or processor without the specified documentation. The specified documentation constitutes a collection-of-information requirement subject to the PRA. A request to collect this information was submitted to OMB for approval and the issuance of a control number.

Under the final rule, §§ 644.7(g) and 644.24(b) became effective December 27, 1988. However, pursuant to the PRA, OMB approval is necessary before the collection-of-information requirement is enforceable. When OMB approval is obtained, a notice to that effect will be published in the **Federal Register**, and §§ 644.7(g) and 644.24(b) will be enforced.

It should be noted that the information specified in 50 CFR Part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce are in effect without regard to OMB approval of the specified documentation requirements of § 644.24(b).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 5, 1989.

Richard B. Stone,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-447 Filed 1-5-89; 4:20 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

Training

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: This document proposes changes in the regulation implementing the Government Employees Training Act so as to eliminate unnecessary reporting on training provided by Federal agencies to State and local government employees, eliminate an obsolete reference to the report on cooperative education, and update references to certain training forms. This document also proposes changes in the regulation on training source determinations which would eliminate unnecessary features dealing with agencies' determinations as to whether to use Government or non-Government sources to meet their training needs.

DATE: Comments must be received on or before March 13, 1989.

ADDRESS: Send or deliver written comments to: Office of Personnel Management, Office of Training and Development, Policy and Oversight Branch, Room 1215TC, 1121 Vermont Avenue NW., Attn: Mr. Harold Segal, P.O. Box 7230, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Masterson, (202) 632-9789.

SUPPLEMENTARY INFORMATION: The proposals would change the regulations implementing the training law (5 U.S.C. 4101 *et seq*) in various ways when dealing with agencies' *reporting training information* to the Office of Personnel Management (OPM). All references in 5 CFR 410.901 to reports on training provided to State and local government employees would be eliminated. OPM has not found this information useful in recent years and has ceased asking for it in its annual request to agencies for training information. A reference in paragraph (d) of § 410.901 to reporting on cooperative education programs—as specified in the Federal Personnel Manual chapter dealing with those programs—would be eliminated, because the report has been dropped from that chapter. Lastly, references in paragraph (b) of § 410.901 to forms used to transmit special information to OPM would be updated to reflect the forms now in use.

The regulation dealing with *training source determinations*, 5 CFR 410.501, would be revised to eliminate unnecessary provisions. That section is based on the training law which provides, in 5 U.S.C. 4118(b)(2), that OPM authorize in its regulations training by, in, or through non-Government facilities "only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not reasonably available * * *". The initial advice in the Federal Personnel Manual dealing with this matter stated that agencies ordinarily would consider whether new programs could be established in time to meet a training need. However, the regulation initially adopted by OPM in implementation of this provision of the law merely addressed the *use* of reasonably available training facilities, not the *establishment* of training facilities. There was no hard-and-fast obligation to consider the establishment of new "in-house" training programs if it had none to meet its needs and adequate training were available elsewhere.

The present § 410.501 (issued in 1980) *requires* that an agency which lacks in-house training to meet its need and finds nothing available elsewhere in Government determine whether it can establish new in-house training in time to meet its need. If it can do that, the agency is then to estimate the cost of the new "in-house" training so as to compare it to the cost of using a non-Government facility. While an agency *may* give consideration to the establishment of new in-house training law which suggests that an agency would be required to go to that length before using a non-Government facility. This feature of the regulations unnecessarily mixed determinations made under the training law on *use* of training facilities and determinations made under agency and Executive Branch policies on the *establishment* of training facilities.

This blending of disparate determinations came about after it was decided that Federal employee training was to be viewed as a "commercial activity" under Office of Management and Budget Circular No. A-76 (which deals with the performance of commercial activities). The provision in the training law cited above was then interpreted as covering the same ground as Circular A-76 which deals, among other things, with the creation of new commercial activities by Federal agencies. This interpretation brought about an unnecessary requirement that an agency hypothesize the creation of an in-house training activity, as explained above, before using a non-Government source. The proposed revision of material now in paragraph (a) of § 410.501 would remove this unnecessary feature and make other changes in the interest of simplification.

Another feature of the change adopted in 1980 for § 410.501 was intended as a means of reconciling what was perceived at the time as a conflict between the training law and Circular A-76. It was assumed that the process used under the training law in justifying the use of training from a non-Government source had to be blended with the A-76 process of determining whether an agency's in-house training should be performed instead by a non-Government source. As a result, it was determined that an exception would be needed to assure that agencies, in following Circular A-76, did not run afoul of the training law. It was felt that agencies would come into conflict with the training law if they exercised the option, afforded in A-76, to contract out small activities without going through a cost-comparison process. Hence, the 1980 regulations authorized OPM to prescribe alternative procedures for cost-comparison studies of small training activities in lieu of the A-76 cost-comparison process.

Various decisions could be made by agency management affecting the availability of in-house training to meet particular training needs. Management could decide to consolidate training activities and transfer one of them to a different geographic area, thus rendering in-house training in one of the areas unavailable. Or, agency management could decide to abolish a training activity, thus making the agency's constituent organizations dependent on non-Government sources if adequate training were not available elsewhere in the Government. Or, management could decide to contract out a training activity. Each of these decisions would affect the "availability" of in-house training yet would be independent of determinations made under the training law on use of training sources to meet instances of needed training.

The training law does not force an agency to make cost comparisons before deciding to terminate or contract out a training activity. If an agency determines, for whatever reason, that it would not be feasible to continue or expand an existing training activity, or establish a new training activity—or would not be justified in doing so under Circular A-76—its subsequent use of a non-Government source without reference to in-house performance would not contravene 5 U.S.C. 4118(b)(2).

Another provision in § 410.501, adopted in 1980, authorized OPM to approve, after consultation with the Office of Management and Budget, alternatives to Circular A-76 procedures, intended for application to training activities exceeding the small activity "threshold" in that Circular. OPM announced in its Federal Personnel Manual that it would entertain proposals from agencies for such alternatives. OPM has received no proposal from an agency under this provision. Here, too, it should be noted that OPM adopted a provision dealing with the maintenance/establishment of training activities, a provision unrelated to the thrust of 5 U.S.C. 4118(b)(2).

In view of the foregoing, all provisions in section 410.501 dealing with determinations concerning the maintenance or establishment of training activities are unnecessary and would be removed. This would mean the removal of all of the present paragraph (b) from § 410.501, except for subparagraph (3). That subparagraph would also be removed, for the reasons stated below.

The authority delegated to agencies by the present 5 CFR 410.506(a) to waive a limitation in the training law on the amount of training allowable each year through non-Government facilities would be preserved but modified by removing the reference to cost-comparison studies. This would bring § 410.506 into harmony with the proposed revision of § 410.501 described above. Revising § 410.506 would have the effect of broadening the authority of agencies to waive the limitation on the amount of training allowable through non-Government facilities. It would, for example, authorize such a waiver if an agency were to determine that training from non-Government facilities was the only training available even though it made that determination without estimating the cost of creating in-housing training to meet a new need.

The reference to this waiver authority appearing in the present 5 CFR 410.501(b)(3) restates what is in the training law and is adequately covered by 5 CFR 410.506(a). It is, therefore, unnecessary and would be removed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 11291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 410

Education, Government employees, Personnel Management Office, Manpower training programs, Authority delegation.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR Part 410 as follows:

PART 410—[AMENDED]

1. The authority citation for Part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275. § 410.503 also issued under 5 U.S.C. 5364. § 410.506 and § 410.602 also issued under 5 U.S.C. 1104. § 410.902 also issued under 42 U.S.C. 4746.

2. Section 410.501 is revised to read as follows:

§ 410.501 Determining the source of training.

If adequate training is reasonably available from a Government facility to meet an agency's need, it shall use that facility. If adequate training is not reasonably available from a Government facility, the agency shall use a non-Government facility. The head of an agency will determine that adequate training is not reasonably available within the Government when either of the following conditions is met:

(a) There is no training within the agency, and reasonable inquiry has failed to disclose training elsewhere in the Government (in another agency or an interagency training facility), which would be available and adequately meet its need; or

(b) Adequate training available within the Government would be more expensive, because of the costs of distance, time, or other factors, than training available from non-Government facilities which would adequately meet the need.

3. Section 410.506(a) is revised to read as follows:

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) The head of an agency may waive the limitation in section 4106(a)(1) of title 5, United States Code, if it is in the public interest because the training from non-Government facilities is the only available training or is as effective as, and less costly than, training available from Government facilities.

* * * * *

4. Section 410.901 is revised to read as follows:

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and the reports required by this section shall be prepared for each fiscal year. An agency shall submit a consolidated report to OPM by the date specified each year by OPM in its notification to agencies.

(b) The consolidated report shall include:

(1) A narrative summary—

(i) Outlining, in the first report to OPM under this section, the training policies and overall program of the agency and, in each subsequent report, any major changes in policy or shifts in program emphasis;

(ii) Describing the manner in which training has aided in the accomplishment of the mission of the agency by providing skills and knowledges;

(iii) Assessing generally the values of training to the agency;

(iv) Assessing generally the extent to which economies and improved operation have resulted in the agency; and

(v) Providing other information which OPM may request concerning specific areas of agency training activity.

(2) A statistical summary, in the format prescribed by OPM, on employee participation and agency expenditures in training conducted through agency, interagency, and non-Government facilities.

(3) A Long-Term Training Report, OPM Form 1306, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees receiving training

by, in, or through non-Government facilities for more than 120 days.

(4) A Contributions and Awards Report, OPM Form 1307, containing special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities.

(5) A report on personnel engaged in agency training activities, OPM Form 1186.

(6) Information on the number of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, and a description of the action taken with respect to the recovery of the additional expenses incurred by the Government in connection with their training.

(7) Such other information as OPM may request.

(c) OPM may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

[FR Doc. 89-428 Filed 1-9-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations governing the management and supervision of FmHA Multiple Family Housing loan and grant recipients. This action is taken to comply with Office of Management and Budget Circulars A-73 and A-128 and U.S. Department of Agriculture, Departmental regulations, Subpart I of Part 3015 of Chapter XXX of Title 7. The intended effect of this action is to provide for better borrower auditing standards through the implementation of the above.

DATES: Comments must be submitted on or before March 13, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, FmHA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Booker Reaves, Senior Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5329, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382-1617.

SUPPLEMENTARY INFORMATION: .

Classification

This action has been reviewed under USDA procedures established in Departmental Regulations 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" because there will not be an annual effect on the economy of $100 million or more; a major increase in cost of prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of accounting changes, does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Intergovernmental Consultation

For reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.415 Rural Rental Housing Loans
10.427 Rural Rental Assistance Payments (Rental Assistance)

Background

This package is an accumulation of regulation changes needed to comply with the requirements the Single Audit Act of 1984, OMB Circular A-128 and "Audit of Federal Operations and Programs." The primary changes proposed include the following:

1. OMB Circular A-73, which requires that audits submitted in accordance with program requirements, must be prepared on the basis of the audit standards issued by the Comptroller General of the United States. These standards are published in "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." It is important to note that the standards include the requirement that the generally accepted Government auditing standards (GAGAS) be used instead of the generally accepted auditing standards (GAAS). Audits must be submitted by certain participants in the Multiple Family Housing Programs. GAGAS has three elements: (1) Financial and compliance; (2) economy and efficiency; and, (3) program results. FmHA will only be requiring auditors to use the GAGAS element that provides for financial and compliance audits. Basic financial statements should be prepared in conformity with generally accepted accounting principles (GAAP). The change from GAAS to GAGAS will have only a minimal effect on the conduct of audits, since GAGAS requires the auditor to report on the entity's material compliance with requirements governing financial assistance it received; and, GAAP-based reporting requires disclosure of material violations of legal and contractual provisions. Therefore, it is FmHA's feeling that to perform a GAGAS audit, the auditor would have to conduct similar tests of the accounting records and such other auditing procedures as considered in performing a GAAS audit. FmHA believes the proposed changes will clarify the regulations and help FmHA to serve the public more efficiently while protecting the Government's interest.

2. The paragraphs on audits of borrower operations are revised to comply with the Single Audit Act of 1984, Pub. L. 98-502, and OMB Circular A-128, "Audits of State and Local Governments." The Single Audit Act establishes audit requirements for State and local governments that receive Federal assistance and defines Federal responsibilities for implementing and monitoring these requirements. Section 7505 of the Act requires OMB to issue implementing guidelines which were issued as OMB Circular A-128. Further, the Circular directed Federal agencies to publish regulations implementing it.

3. FmHA expects to include additional changes to 7 CFR Part 1930, Subpart C in the final rule. These additional proposed changes are not included for publication in the proposed rule because they are items of internal management not directly impacting the public.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing loans—Rental, Reporting requirements.

Accordingly, FmHA proposes to amend Part 1930, Subpart C, Title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. In § 1930.124, paragraphs (c) (1), (2), (3), (4) and (5) are redesignated as paragraphs (c)(3) (i), (ii), (iii), (iv) and (v); the introductory text of paragraph (c) is revised; and new paragraphs (c) (1) and (2) and the title and introductory paragraph (c)(3) are added to read as follows:

§ 1930.124 Borrower budgets, reports, audits, and analysis.

* * * * *

(c) *Audits Reports.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions. (commonly referred to as the "Yellow Book"). In addition, the audits are also to be performed in accordance with Departmental regulations, Subpart I of Part 3015 of Chapter XXX of Title 7, when applicable and in accordance with requirements as specified in separate sections of this subpart.

(1) *State and Local governments and Indion tribes.* These organizations are to be audited in accordance with this Subpart, Title 7 CFR Part 3015, Subpart I, and OMB Circular A-128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency, if applicable.

(i) *Cognizant agency.*

(A) "Cognizant agency" means the Federal agency assigned by OMB Circular A-128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities.

(B) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted for technical assistance related to auditing matters.

(ii) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(A) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128.

(B) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal assistance shall have an audit made in accordance with OMB Circular A-128 or in accordance with FmHA audit requirements. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (c)(3) of this section.

(C) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from OMB Circular A-128.

(2) *Nonprofit organizations.* These organizations are to be audited in accordance with OMB Circular A-110 and paragraph (3) of this section. These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audit requirements of paragraph (c)(1) of this section.

(3) *For profit organizations and others referred to this paragraph by paragraphs (c)(1) and/or (c)(2) of this section.* For guidance in performing audits under this paragraph, the USDA Office of Inspector General has published an audit bulletin entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA office).

* * * * *

3. Exhibit B of Subpart C is amended by removing the first sentence in paragraph XIII C 2 c beginning with the word "All" and substituting in its place the following two sentences:

Exhibit B—Multiple Housing Management Handbook

* * * * *

XIII * * *
C * * *
2 * * *

c Audit report or verification. All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" (1988 revision), established by the Comptroller General of the United States and any subsequent revisions. State and local governments and Indians Tribes must also meet the audit requirements set forth in Title 7 CFR Part 3015, Subpart I, when applicable. For all other borrowers, the USDA Office of Inspector General has published an audit bulletin entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA office). * * *

* * * * *

§ 1930.124 [Amended]

4. In § 1930.124, newly designated paragraph (c)(3)(iii) is amended in the first sentence by changing the reference "paragraph (c)(3) of this section" to "paragraph (c)(3)(iii) of this section."

Date: October 28, 1988.
Vance L.Clark,
Administrator, Farmers Home Administration.
[FR Doc. 89-490 Filed 1-9-89; 8:45 am]
BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

Required Capital Levels For Insured Institutions; Regulatory Intervention

Date: December 30, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Bank Board" or "Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has recently proposed to amend its regulations establishing minimum capital requirements for insured institutions whose accounts are insured by the FSLIC ("insured institutions," "thrift institutions," or "institutions"). The Board has determined that it is appropriate, in conjunction with the capital proposal, to raise the related issue of whether the final capital regulation should contain specific provisions defining a particular level of regulatory capital as an "unsafe and unsound condition to transact business" for purposes of triggering the Board's statutory authority to appoint a conservator or receiver for the institution. The Board seeks public comment on questions that arise from consideration of this "regulatory intervention" issue.

DATE: Comments must be received on or before February 9, 1989.

ADDRESS: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331-4592; John Robinson, Director, Policy Analysis, (202) 331-4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street NW., Washington, DC 20006; Deborah Dakin, Regulatory Counsel, (202) 377-6445; Theresa Stark, Attorney, (202) 377-7054; Karen Solomon, Associate General Counsel, (202) 377-7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The Board has recently proposed substantial revisions to its regulations defining regulatory capital and establishing minimum capital requirements for insured institutions. Board Res. No. 88-1342, 53 FR 51800 (December 23, 1988). The proposal would establish new capital requirements on the basis of the various risks an insured institution's portfolio may present to the FSLIC and to the institution itself ("risk-based capital proposal"). Under the risk-based capital proposal, institutions would be required to maintain a minimum capital level equal to the higher of two requirements. The first would be based upon the credit risk and interest-rate risk presented by its portfolio and its level of collateralized borrowings and would equal approximately eight percent of risk-weighted assets. The second would equal two percent of an institution's total assets, in recognition that the risk-weighting provisions of the capital proposal do not address all risks to which an institution may be subject.

An institution could satisfy the first capital requirement with a variety of elements, including contributions to capital, retained earnings, maturing subordinated debt instruments, and general loan loss allowances. The proposal would establish a two-tiered requirement, with certain components qualifying for inclusion as "core equity capital" and others restricted to use as "supplementary capital." "Core equity capital" would equal capital as computed in accordance with Generally Accepted Accounting Principles, commonly referred to as "GAAP", with some modification. *See* 53 FR 51812. Half of an institution's capital as determined under the first test would have to be held in the form of core equity capital. The second minimum capital requirement could only be met with core equity capital. Because all institutions would be required to hold an amount of capital equal to the higher of these two requirements, no insured institution could hold core equity capital in an amount below 2% of its total assets and still satisfy its minimum regulatory capital requirements.

Both the Board's current regulation and the risk-based capital proposal provide that the Board may require one or more corrective actions, through enforcement proceedings or otherwise, of thrift institutions that fail to meet their capital requirements. *See* 12 CFR 563.13(d) (1988) (existing), 563.13(g) (proposed). These corrective actions include requiring an insured institution to increase capital, hold meetings with supervisory personnel, conform with lending and investment restrictions, and restrict a variety of account or deposit activities, including growth. The Board's policy is to use these tools to improve the capital levels of insured institutions whenever possible. As part of its overall supervision of an insured institution, it may enter into a supervisory agreement with an institution that is operating with insufficient capital. Such an agreement may authorize a variety of actions, including the replacement of an institution's management or a supervisory merger. The Board's goal is, as it has always been, to achieve the safe and sound operation of all insured institutions, including adequate capital levels for each insured institution, by the least disruptive and most effective means available.

The Board is considering, and by this Advance Notice, soliciting public comment on, whether its authority to take corrective actions when an institution falls below its minimum regulatory capital levels should be clarified. The Board contemplates regulatory provisions establishing failure to maintain a floor or "subminimum" level of capital as an unsafe or unsound condition to transact business for purposes of the Home Owners' Loan Act of 1933 ("HOLA") and the National Housing Act ("NHA"). Such a regulatory provision would clarify the Board's existing ability to appoint a conservator or receiver before an insured institution reaches insolvency if, in the Board's judgment, no other effective regulatory action would be sufficient.

B. Issues Presented

1. Board's Authority to Establish Failure To Maintain a Required Level of Capital as an Unsafe or Unsound Condition

The HOLA sets forth five grounds for the Board's appointment of a conservator or receiver for a federal association. *See* HOLA section 5(d)(6)(A), 12 U.S.C. 1464(d)(6)(A). The statute does not require that all of these grounds, or any combination of them, must exist before such regulatory intervention. Each, standing alone, may support such action. The grounds are: (1) Insolvency; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations or any unsafe or unsound practices(s); (3) an unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order which has become final; and (5) concealment of or refusal to produce for inspection the books, papers, records or assets of the institution. *Id.* In addition, the NHA grants the Board exclusive power and jurisdiction to appoint the FSLIC as sole receiver for state-chartered insured institutions where it determines that insolvency, a substantial dissipation of assets, or an unsafe or unsound condition exists.[1] Neither statute further defines these conditions in this context. Under such circumstances, the Board has considered whether a regulatory definition of an "unsafe or unsound condition to transact business" would further the statutory objectives. The Board believes that it would.

The Board has the authority to issue regulations to ensure the safety and soundness of insured institutions. Since its enactment in 1934, the NHA has contained a grant of general rulemaking authority, empowering the Board to make rules to carryout the purposes of the Act. 12 U.S.C. 1725(a). Two key purposes of the NHA are the protection of the FSLIC fund from excessive risk [2] and the development and maintenance of a safe and sound economic system of home financing.[3] *See also Lincoln Savings* v. *Federal Home Loan Bank Board*, 856 F.2d 1588 (DC Cir. 1988). The determination in a regulation of what can constitute unsafe or unsound practices and conditions follows logically from this authority.

In this regard, the next question presented is what would be an appropriate indicator of an unsafe or unsound condition. The Board believes that an insured institution's capital level is one of the appropriate indicia of its health and that inadequate capital is an appropriate indicator of an unsafe and unsound condition to transact business. Congress has recognized the critical importance of capital and the use of levels of capital as a regulatory measurement device. In the Competitive Equality Banking Act of 1987 ("CEBA"), it provided that the Board and FSLIC may, in their discretion, treat the inability of a federal association or an insured institution "to maintain capital at or above the minimum level required * * * as an unsafe or unsound practice" [within the meaning of 12 U.S.C. 1464(d) or 12 U.S.C. 1730(e)]. 12 U.S.C. 1464(s)(3); 1730(t)(3). This may trigger a variety of enforcement actions.

Additionally, by establishing a CEBA a specific capital forbearance program whereby a "troubled but well-managed" institution "With net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, *may be allowed* to continue to operate and be eligible for capital forbearance" if it met certain conditions and adhered to an approved capital recovery plan, Congress impicitly recognized that institutions in weakened capital conditions but not yet insolvent and not qualifying for capital forbearance *might not be allowed* to continue to operate. *See* 12 U.S.C. 1467(a), 1730i (emphasis added).

These provisions, taken as a whole, demonstrate Congress's recognition of capital levels as an appropriate standard for the Board to use in determining whether to take a variety of regulatory and enforcement actions. It is less clear, however, what relationship Congress intended the capital adequacy provisions of CEBA to bear to the Board's existing authority to appoint conservators and receivers. Thus, the Board requests comment on the interaction of the statutory provisions governing capital standards with those governing the appointment of conservators and receivers in establishing a regulatory definition of unsafe and unsound condition tied to capital and in implementing such a definition.

The Board wishes to emphasize that nothing in this Notice should be construed as in any way indicating that the Board will not, when and where appropriate, use other criteria to determine the existence of an unsafe or unsound condition. For example, in the past, inability to meet liabilities or obligations has been considered evidence of operation in an unsafe or unsound condition. *See Washington Federal Savings and Loan Association* v. *Federal Home Loan Bank Board*, 526 F. Supp. 343 (N.D. Ohio 1981). Neither CEBA nor this Notice calls into question the Board's authority to act in such a case.

2. Appropriate Triggers for Regulatory Intervention

The Board is considering establishing a "floor" capital requirement below which an institution would, by definition, be considered to be operating in an unsafe or unsound condition to transact business. Such a requirement would further the Board's goal of providing institutions with sufficient incentives to conduct business in a prudent manner as well as providing a "bright line" test for possible regulatory intervention.

The Board is considering setting this requirement at a level of 1.5% of total assets, to be held in the form of core equity capital. This level is intentionally lower than the alternate minimum capital requirement of 2% of total assets, also to be held in the form of core equity capital, discussed in Part A above. As discussed above, in Part B.1, operation below the *minimum* capital requirement may be considered an unsafe or unsound *practice*. 12 U.S.C. 1464(s)(3), 1730(t)(3). Today, the Board is addressing establishment of a "subminimum" or floor capital level, operation below which would constitute an unsafe and unsound *condition*. While an unsafe or unsound practice does not imperil an institution in a manner necessitating the appointment of a conservator or receiver unless the practice results in the substantial dissipation of assets, the existence of an unsafe or unsound condition calls for decisive action by the Board to protect account holders and the public.

The contemplated subminimum or floor capital requirement would be tied to core equity, rather than total, capital because the Board believes that core equity capital provides the best protection to the FSLIC and is the best indicator of the institution's ability to absorb losses. The Board solicits comments, with any available supporting empirical data, on whether the required level should be higher or lower. Commenters may wish to discuss whether this requirement should be tied to core equity capital or whether tangible capital would be a more appropriate measure.

The capital floor would be designed primarily to provide additional protection to the FSLIC by clarifying that the Board may take active management control of a deteriorating institution by appointing a conservator

[1] *See* NHA section 406(c)(1)(B)(i)(I), 12 U.S.C. 1729(c)(1)(B)(i)(I). In addition, the Board may appoint a receiver for a state-chartered institution on any of the five grounds enumerated in the HOLA, once it has been closed by a state authority and certain technical requirements have been satisfied, pursuant to section 406(c)(2) of the NHA.

[2] The title of the bill that became the National Housing Act identified it as a bill to, *inter alia*, "promote thrift and protect savings". *See also* specific provisions of the NHA which are directed toward achieving this objective, *e.g.*, 12 U.S.C. 1726(b) (provisions for examination of insured institutions and for reserves); section 1726(c) (provisions for safe management and financial policies); section 1730 (provisions regarding unsafe or unsound practices).

[3] One example illustrating this purpose is found at section 403(c) of the NHA, 12 U.S.C. 1726(c). That section provides that the FSLIC may reject the application of a state-chartered institution if the applicant's "home-financing policy is inconsistent with economical home financing or with the purpose of this subchapter." *See also*, 78 Cong. Rec. 11196, 11198 (Remarks of Representatives Reilly and Williams) (June 12, 1934); 78 Cong. Rec. 12013-15 (Senate statement of objectives of the NHA) (June 16, 1934).

or receiver where the institution has not reached insolvency but is in a substantially weakened, or weakening, capital condition.

Implementation of this objective raises the further question whether the Board may, or should, act solely upon the finding that an insured institution has reached the specified floor capital level. The Board invites comments and suggestions regarding any other, additional factors that should be considered when making the determination that an institution is operating in an unsafe or unsound condition under a scheme of regulatory intervention.

The Board also notes that fiscal constraints, together with other factors such as the impact of Board action on local economies, may make it difficult, impossible, or unwise for it to take action under a regulatory intervention rule with respect to all of the insured institutions that have reached the floor capital level at any given time. At the same time, the Board wishes to avoid unnecessary disparity in its treatment of similarly situated institutions. In this regard, the Board invites suggestions about the factors it should consider in prioritizing its caseload of institutions found to be in an unsafe or unsound condition.

The Board also wishes to consider suggestions as to the mechanics of establishing that an institution is in an unsafe or unsound condition based upon its capital level. For instance, the Board invites comment on whether it should establish that an institution has been operating with capital below 1.5% of total assets for some specified period of time prior to considering it to be in an unsafe or unsound condition. Commenters addressing this issue are invited to discuss what period of time would be meaningful.

3. Procedural Issues

As discussed above, the Board has the authority under the HOLA and the NHA to appoint a conservator or receiver for an insured institution operating in an unsafe or unsound condition. Such an action could result in a loss of any property interests held by shareholders of stock institutions or members of mutual institutions. The Board believes, however, that it can create standards for the proper use of this authority by promulgating regulations pursuant to section 402 of the NHA. *See Lincoln*, supra. In this regard, the Board wishes to solicit comments on a variety of procedural issues detailed below.

Both the current and proposed capital regulations provide for a series of corrective actions that the FSLIC may require when an institution fails to meet its minimum capital requirement. 12 CFR 563.13(d) (1988) (current), 563.13(g) (proposed). These actions are wide-ranging and, while they are aimed at remedying shortfalls in capital, they also serve to place institutions on notice that the FSLIC regards their capital levels as dangerously low. The Board is interested in comments that address whether these measures provide notice sufficient to address any fairness or due process concern prior to a Board determination that a particular institution is in an unsafe or unsound condition, or whether it must, or should, establish procedures to give notice and an opportunity to respond to institutions operating with capital approaching the 1.5% level prior to such determination. *See* 12 CFR 563.14–1 (issuance of capital directives, including an example of notice procedures). In this regard, the Board is concerned that all institutions be accorded adequate procedural protections and seeks suggestions to ensure fair treatment.

Additional fairness or due process issues may arise once the Board makes a determination that an institution is in an unsafe or unsound condition. As further discussed below, the Board has formulated some preliminary views on such issues, but invites commenters to submit other analyses of the questions raised here.

The Board believes that the statutory provisions governing receivership challenges satisfy any procedural rights of the owners of insured institutions found to be in an unsafe or unsound condition. Both the HOLA and the NHA provide that an institution for which the Board appoints a conservator or receiver may, within thirty days, bring an action in federal district court for an order to remove the appointee. *See* HOLA section 5(d)(6)(A), 12 U.S.C. 1464(d)(6)(A); NHA section 406(c)(3)(A), 12 U.S.C. 1729(c)(3)(A). The statutes further provide that such an action will be given precedence over other pending cases and, upon consideration of the merits, the court will either dismiss the action or order the Board to remove the conservator or receiver. *Id.*

In *Fahey v. Mallonee*, 332 U.S. 245, 253–54 (1947), the Supreme Court upheld then-current Board regulations (later embodied in the HOLA and NHA) that provided for a hearing following, rather than preceding, the appointment of a conservator or receiver for a federal association against a due process challenge. *See also Federal Deposit Insurance Corporation v. Mallen*, 486 U.S. ____, 100 L. Ed. 2d 265, 278, 108 Sup. Ct. ____ (1988) (unanimous decision that the Federal Deposit Insurance Act provisions for a hearing following rather than preceding the suspension of an indicted bank officer were justified by the FDIC's need to be able to act promptly and effectively where necessary to protect the interests of depositors and to maintain public confidence in banking institutions). The Board believes that the statutory provisions for immediate judicial review on the merits therefore afford adequate due process for the shareholders of insured institutions affected by regulatory intervention, especially in light of the competing concern that advance notice of the Board's intent to intervene in the case of a particular insured institution may itself cause further reductions in the institution's capital and a dissipation of its assets. *See Fahey*, 332 U.S. at 253.

Moreover, the regulations regarding the priority of claims in a receivership adequately provide for any constitutionally protected property interests that shareholders may have. Section 569c.11(a)(10) of Title 12 of the Code of Federal Regulations provides that holders of nonwithdrawable accounts, including stock, shall have priority, after depositors and general creditors of the institution, in accordance with the written instruments that evidence such claims. 53 FR 25129, 25133 (July 5, 1988).

While members of mutual savings and loan associations are not specifically mentioned in the priority scheme, the courts have not generally given significant weight to a member's interest beyond its deposit in the institution. The courts have viewed a mutual savings and loan member's interest as primarily that of a creditor of the association and only secondarily as that of an equity owner. *See Washington Federal*, 526 F. Supp. at 400, citing *York* v. *Federal Home Loan Bank Board*, 624 F.2d 495, 500 (4th Cir. 1980). This view is supported by the fact that depositors of a mutual institution are not allowed to realize or share in profits of the association but only receive an established rate of interest. In addition, because members's deposits are federally insured to the statutory maximum, they do not share in the institution's risk of loss. *Id.*

The Supreme Court has disposed of arguments made by members of mutual institutions asserting an interest in anything beyond their deposits as follows:

> The asserted interest of the depositors is in the surplus of the bank, which is primarily a reserve against losses and secondarily a repository of undivided earnings. So long as the bank remains solvent, depositors receive a return on this fund only as an element of the interest paid on their deposits. If a depositor withdraws from the bank, he receives only his deposits and interest. If he continues, his only chance of getting anything more would be in the unlikely event of a solvent liquidation, a possibility that hardly rises to the level of an expectancy. It stretches the imagination very far to attribute any real value to such a remote contingency, and when coupled with the fact that it represents nothing which the depositors can readily transfer, any theoretical value reduces almost to the vanishing point.[4]

The Board solicits comments on whether the regulations regarding creditor priorities would satisfy constitutional requirements for compensation should the Board's action be construed as a taking under the Fifth Amendment and whether specific provisions should be made for a member's equity interest in a mutually held institution to address the possibility of that interest having some value in a liquidation.

In addition, the Board wishes to consider whether, and to what extent, the "Takings Clause" of the Fifth Amendment to the United States Constitution would apply in a regulatory intervention context. That clause provides that private property may not be taken for public use without just compensation. U.S. Constitution amendment V. Owners of insured institutions where a receiver is appointed on grounds that an unsafe or unsound condition exists, rather than on grounds of insolvency, may argue that the Board's appointment constitutes a Fifth Amendment "taking".

A preliminary analysis of the case law suggests that such action by the Board would not constitute interference with property rights so as to violate the Fifth Amendment. Courts have said that the purpose of the Fifth Amendment Takings Clause is to "bar the government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the public as a whole." [5] It is well established that Congress is entitled to create statutory rights and liabilities that are rationally related to a legitimate government purpose.[6] Moreover, Congress can create public programs that adjust the benefits and burdens of economic life to promote the common good; the government may affect property rights under such programs without engaging in a compensable taking under the Fifth Amendment.[7]

In the Board's view, the regulation of thrifts by the Federal government constitutes a public program as contemplated by the courts. By enacting legislation to establish the Federal Home Loan Bank System, the Bank Board, and the FSLIC, Congress created a separately regulated housing finance industry after the Great Depression. Since that time, Congress has seen fit to adjust the parameters under which the thrift industry operates as economic conditions have changed. Throughout this period, however, Congress' intention has been to establish a government program designed to promote housing and protect depositors. It gave the Bank Board regulatory authority over thrifts and specifically enumerated the grounds upon which the Board may appoint a conservator or receiver, including grounds other than insolvency. It also carefully crafted measures to provide a remedy to challenge such an appointment by the affected association.

The Supreme Court has not developed a set formula for determining when justice and fairness require that economic injuries caused by public action be compensated by the government.[8] Recently, it has relied on an *ad hoc* factual analysis to determine whether a government action constitutes a Fifth Amendment taking. Three factors that have particular significance in the determination are: (1) The economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action.[9]

With respect to the first factor, the Court has analyzed regulatory schemes to determine whether those burdened bear only their rightful portion of the burden and whether there exist any provisions that serve to moderate the economic impact of the program.[10] In determining the extent to which the regulation interferes with distinct investment-backed expectations, the Court considers whether claimants have advance notice of the regulation affecting their ownership rights and asks what fairness and justice require by way of distribution of the burdens under the regulatory scheme.[11] Finally, when attempting to determine the character of the governmental action, the Court asks, among other things, whether the government has permanently appropriated assets *for its own use* and whether the action is incident to a public program that adjusts the benefits and burdens of economic life for the promotion of the public good.[12]

The Board's analysis of these factors based on the case law leads it to the preliminary conclusion that the actions suggested in this notice would not constitute a taking under the Fifth Amendment. First, Congress, in reaction to an economic crisis, determined that regulation of the nation's financial institutions was necessary and important. It established the FSLIC in an effort to promote public confidence in the nation's thrifts by insuring deposits. As a condition of obtaining the benefits of this overall goal, thrift institutions were subject to regulations reasonably aimed at protecting the safety and soundness of the industry as a whole and the viability of the FSLIC fund. This statutory and regulatory scheme, including explicit factors that could cause regulatory intervention to appoint a conservator or receiver, has been in place since the 1930s. Shareholders of insured institutions assume the risks and responsibilities placed upon them under this regulatory design. They are not provided any assurance that their investment in a thrift institution operating under this statutory and regulatory scheme will continue to retain its value if all regulatory requirements are not satisfied.

Second, as discussed above, both Congress and the Board have recognized that capital levels are an indicator of the health of an institution. Further, the operation of institutions below minimum capital requirements, especially where such capital is steadily decreasing, erodes the public's confidence in the industry as a whole and endangers the continued viability of the insurance fund. For these reasons, the Board believes that the operation of an institution at subminimum levels of capital could be explicitly defined as an unsafe or unsound condition such that regulatory intervention, including but not limited to the appointment of a conservator or receiver, is justified.

Finally, conservators and receivers do not appropriate the assets of institutions

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[4] *Society for Savings* v. *Bowers*, 349 U.S. 143, 150, 75 Sup. Ct. 607, 611, 99 L.Ed. 950 (1955).

[5] *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U.S. 211, 227 (1986) citing *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960).

[6] *Motor & Equipment Manufacturers' Association, Inc.*, v. *EPA*, 267 F.2d 1085, 1127 (DC Cir 1979), *cert. denied*, *General Motors Corp.* v. *Costle*, 446 U.S. 952 (1980).

[7] *Connolly*, 475 U.S. at 225. *See Penn Central Transportation Co.* v. *New York City*, 438 U.S. 104, 124 (1978); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15–16 (1976).

[8] *Penn Central*, 438 U.S. at 124.

[9] *Connolly*, 475 U.S. at 224–225.

[10] *Penn Central*, 438 U.S. at 137.

[11] *See Connolly*, 475 U.S. at 226–227.

[12] *Id.* at 223–26.

for the government's own use. Instead, they preserve such assets for the use of depositors and other creditors of the institution who do not invest in an insured instituton with the same expectations of risk should the institution fail to operate in accordance with regulatory guidelines as would a shareholder.

The Board invites comment on all aspects of this Notice. Comments are particularly solicited as to what additional administrative or regulatory procedures might be appropriate to implement any rulemaking on this subject. After reviewing the comments received, the Board anticipates promulgating a notice of proposed rulemaking, including regulatory language addressing a number of the issues discussed in this Advance Notice. The Board contemplates that any final rulemaking regarding this proposal might be made effective 30 days after its adoption. While the risk-based capital proposal has an extended transition period, the Board believes that it is important that it take action with respect to institutions operating under unsafe and unsound conditions promptly.

Finally, the Board has announced that it will be holding a public hearing on the risk-based capital proposal. The Board anticipates a discussion of the regulatory intervention issues discussed in this Advance Notice at that time. The date of the hearing will be published in the **Federal Register**.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-404 Filed 1-9-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-175-AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which would require inspection of motor driven fuel valve actuators and replacement with actuators that have been modified to reduce corrosion and improve sealing around mating joints. This proposal is prompted by reports of Boeing Model 767 fuel crossfeed and APU fuel shutoff valve failures that were caused by corrosion of the fuel valve actuator housing that allowed moisture to enter the actuator assembly around mating joint seals, which subsequently froze in flight after cold soaking. These actuators are used for all of the fuel tank valves installed on Boeing Model 757 and 767 airplanes, including the engine shutoff valves, APU isolation and shutoff valves, the fuel crossfeed valve, and the defuel valves. This condition, if not corrected, could lead to the inability to shut off fuel to an engine or the APU in the event of fire, to correct fuel tank imbalance, or to allow use by either engine of all of the usable fuel on board the airplane after an engine inflight shutdown.

DATES: Comments must be received no later than February 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM-140S; telephone (206) 431-1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-175-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received reports of Boeing Model 767 fuel crossfeed and APU fuel shutoff valve failures. The failures have been determined to be caused by corrosion of the fuel valve actuator housing that allowed moisture to enter the actuator assembly around mating joint seals, which subsequently froze in flight after cold soaking. These actuators are used for all of the fuel tank valves installed on Boeing Model 757 and 767 airplanes, which include the engine shutoff valves, APU isolation and shutoff valves, the fuel crossfeed valve, and the defuel valves. There are between six and eight actuators installed on each airplane. A failure of a fuel valve actuator in flight could lead to the inability to shut off fuel to an engine or the APU in the event of fire, to correct fuel tank imbalance, or to allow use by either engine of all of the usable fuel on board the airplane after an engine inflight shutdown.

The FAA has reviewed and approved Boeing Alert Service Bulletins 757-28A0018 and 767-28A0020, both dated September 15, 1988, which describe an inspection of the fuel valve actuators for corrosion, and replacement with actuators that have been modified in accordance with Mitsubishi Electric Corporation Service Bulletin AV-31-28-1, in order to reduce corrosion and improve the sealing around mating joints.

Since this condition is likely to exist or develop on other airplanes of these same type designs, and AD is proposed which would require inspection and replacement of the fuel valve actuators, in accordance with the service bulletins previously mentioned.

There are approximately 211 Model 757 and 249 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 126 Model 757 and 112 Model 767 airplanes of U.S. registry would be affected by this AD. It would take approximately 16 manhours per Model 757 airplane and 8 manhours per Model 767 airplane to accomplish the required actions; the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $126,560.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Exeuctive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 or Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Aplies to Model 757 and 767 series airplanes identified in Boeing Alert Service Bulletins 757-28A0018 and 767-28A0020, both dated September 15, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent freezing of motor driven fuel valve actuators caused by moisture ingress around corroded mating joint seals, accomplish the following:

A. For Model 757 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, and Auxiliary Power Unit (APU) fuel shutoff valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 757-28A0018, dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

B. For Model 767 series airplanes: Within the next 60 days after the effective date of this AD, visually inspect the left and right engine fuel shutoff valve actuators, engine fuel crossfeed valve actuator, Auxiliary Power Unit (APU) fuel shutoff valve actuator, and APU fuel isolation valve actuator for aluminum oxide corrosion residue on actuator screw heads and joining surfaces of the actuator body, in accordance with Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988. Any corroded actuator found must be replaced, prior to further flight, with a serviceable part; or as an alternative, a corroded actuator may be exchanged with a non-corroded actuator from a defuel valve position.

C. Within one year after the effective date of this AD, replace all fuel valve actuators with modified valve actuators, in accordance with Boeing Alert Service Bulletin 757-28A0018 dated September 15, 1988, for Model 757 series airplanes, and Boeing Alert Service Bulletin 767-28A0020 dated September 15, 1988, for Model 767 series airplanes.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office,. FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-409 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 93

[Docket 25758; NPRM 88-17]

High Density Traffic Airports; Slot Allocation and Transfer Methods; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: FAA is correcting an error in the Amendment Number. In FR Doc. 88-29309, published Monday, December 22, 1988, on page 51628, please delete the Amendment number 93-56 and insert NPRM 88-17.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Bartanowicz, Office of Rulemaking (ARM-1), (202) 267-9679.

Michael D. Triplett,

Legal Technician, Program Management Staff.

[FR Doc. 89-410 Filed 1-9-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Withdrawal of a Proposed Rulemaking To Amend the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Withdrawal of Proposed Amendments.

SUMMARY: OSMRE is announcing the withdrawal of a proposed rulemaking to extend the deadline for Texas to submit proposed rules governing the training, examination, and certification of blasters. The required amendments were submitted before the final rule extending the deadline was approved.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E.

Skelly Drive, Suite 550, Tulsa, Oklahoma 74135: telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION: The Federal rules at 30 CFR 943.16 established a May 15, 1987, deadline for Texas to submit rules governing the training, examination, and certification of blasters. Texas was not able to meet that deadline, and in a letter dated June 4, 1987 [Administrative Record No. Tx–389], Texas requested an extension of the deadline until December 31, 1987. By letter dated July 31, 1987 [Administrative Record No. Tx–393], Texas submitted, along with numerous other proposed amendments, proposed rules governing the training, examination, and certification of blasters. OSMRE was not immediately aware that the July 31, 1987, package contained the blaster rules, and on August 18, 1987, [52 FR 30930] OSMRE published a notice in the **Federal Register** announcing receipt of the request to extend the deadline for Texas to submit rules governing the training, examination, and certification of blasters.

OSMRE had received the proposed amendments before the notice proposing to extend the deadline was published; therefore, the proposed rule published in the August 18, 1987, **Federal Register** extending the deadline for Texas to submit rules governing the training, examination and certification of blasters is withdrawn, and 30 CFR 943.16 is not amended.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date December 30, 1988.

[FR Doc. 89–407 Filed 1–9–89; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 943

Withdrawal of a Proposed Rulemaking To Amend the Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Withdrawal of proposed amendments.

SUMMARY: OSMRE is announcing the withdrawal of proposed amendments to the Texas permanent regulatory program. The proposed amendments consisted of changes to the Texas regulations governing prime farmland, water quality standards and effluent limitations, designation of lands as unsuitable for surface coal mining, and notices of violation.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION: By letter dated October 22, 1986, (Administrative Record No. TX–373), Texas submitted a package of proposed amendments to OSMRE. The proposed amendments consisted of modifications to Texas regulations governing prime farmland, water quality standards and effluent limitations, designation of lands unsuitable for mining, and notices of violation. OSMRE announced receipt of the amendments on December 3, 1986 (51 FR 43618).

Texas followed the State rulemaking process and solicited comments on the proposed amendments. Texas revised the amendments based on comments received and OSMRE announced receipt on February 17, 1988 (53 FR 4645) of the revised amendments.

By letter dated November 29, 1988 (Administrative Record No. TX–422), Texas withdrew the proposed amendments, stating that it intends to resubmit them with other amendments at a future date. Therefore, the revised, proposed amendments published in the February 17, 1988 **Federal Register** are withdrawn.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: January 4, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–408 Filed 1–9–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13 88–09]

Security zone; Sinclair Inlet, WA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; correction.

SUMMARY: In the **Federal Register**, Vol. 53, No. 236, dated December 8, 1988, commencing on page 49562, a notice of proposed rulemaking considering a proposal to establish a security zone in the waters of Sinclair Inlet immediately adjacent to the Puget Sound Naval Shipyard Bremerton, Washington was published. Upon further review of the coordinates of the proposed security zone an error was detected.

FOR FURTHER INFORMATION CONTACT: CDR W.O. Harper, (206) 442–1711.

PART 165—[CORRECTED]

§ 165.1303 [Corrected]

Paragraph (a) of § 165.1303 entitled "Puget Sound Naval Shipyard Bremerton, WA", is correctly added to read as follows:

* * * * *

(a) Location. The following is a security zone: The waters of the Sinclair Inlet encompassed by a line commencing on the north shore of Sinclair Inlet at latitude 47°33'40"N, longitude 122°37'29"W; thence to latitude 47°33'35"N, longitude 122°37'28"W; thence to latitude 47°33'21"N, longitude 122°37'37"W; thence to latitude 47°33'02"N, longitude 122°38'26"W; thence to latitude 47°33'02"N, longitude 122°38'40"W; thence to the shoreline at latitude 47°33'23"N, longitude 122°38'40"W; thence easterly along the shoreline to the point of origin.

* * * * *

Dated: December 28, 1988.

G.A. Penington,

Captain, U.S. Coast Guard Commander, Thirteenth Coast Guard District Acting.

[FR Doc 89–350 Filed 1–9–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 403

[EN–FRL–3503–8]

EPA Administered Permit Programs; The National Pollutant Discharge Elimination System; General Pretreatment Regulations for Existing and New Sources; Proposals to Implement the Recommendations of the Domestic Sewage Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period for proposed amendments to 40 CFR Parts 122 and 403 to carry out the recommendations of the Domestic Sewage Study is extended. The proposed amendments were published in the **Federal Register** on November 23, 1988 (53 FR 47632).

DATES: All comments on the November 23, 1988 proposed rule published at 53 FR 47632 must be received on or before February 22, 1989.

ADDRESSES: Interested persons may submit written comments to Marilyn Goode, Permits Division (EN–336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN–336), Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 475–9528.

SUPPLEMENTARY INFORMATION: On November 23, 1988, EPA published proposed amendments to 40 CFR Parts 122 and 403 to implement the recommendations of the Domestic Sewage Study. The November 23 notice set a period of 60 days for the receipt of public comments. Since publication of that notice, EPA has received several requests to lengthen the comment period. In response to these requests, EPA has decided to extend the comment period to February 22, 1989.

Date: January 3, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–422 Filed 1–9–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–8, 201–13, and 201–39

Restructuring and Simplification of Federal Information Resources Management Standards

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rule is to simplify provisions on the use and implementation of Federal automatic data processing and telecommunications standards. It results in major changes in the regulatory coverage and presentation of FIRMR provisions on standards. The intent of these changes is to remove redundant and non-regulatory provisions from the FIRMR that may be found in other agency issuances, and to reorganize the FIRMR so that users may more readily locate standards provisions relevant to their particular requirements. The changes do not relax an agency's obligation to comply with the standards.

The use of uniform standards permits the integration and sharing of information and processes among vendors, and helps agencies maximize the productivity of their investments in information technology. Ready access to information about standards applicability and to standards specifications is critical to realizing the benefits standards can help provide. To ensure that agencies have up-to-date standards specifications for use in solicitations and contracts, GSA plans to publish and distribute its "ADP and Telecommunications Standards Index" initially on a semi-annual basis. FIRMR changes are published infrequently, and continued inclusion of information about standards and specifications in the codified regulation will not provide such timely access as more frequent distribution of the Index. These changes will also make FIRMR coverage of standards specifications consistent with Federal Acquisition Regulation (FAR) coverage of similar specifications.

Federal Information Processing Standards (FIPS), and the implementing specifications that are included in agency contracts, can have important effects on agencies and on businesses that sell to the Government. Proposed changes to standards and specifications will continue to be published in the **Federal Register** and circulated to agency regulatory and standards contacts for comment, and the comments resolved, before changes are adopted and printed in the Index.

The specific changes in this proposal include the following. Information regarding the applicability of Federal standards is removed, the individual standard "requirements statements" for inclusion in solicitation documents are removed, and overall policies and procedures governing the use of standards are separated from contracting policies and procedures regarding the implementation of standards. In addition, contracting provisions are reorganized for consistency with the FAR.

Because these changes represent such a radical departure from current FIRMR provisions, this notice solicits comments not only on the changes but also on any adverse impact the changes may cause. Comments are specifically requested on whether the proposed approach will make the FIRMR easier to use.

DATE: Comments are due: March 13, 1989.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Project 87.26A, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch, Office of Information Resources Management Policy, telephone (202) 566–0194 or FTS, 566–0194. The full text of the proposed rule for Project 87.26A is available upon request, by telephoning (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) FIRMR Part 201–8, Implementation and Use of Federal Standards, will be removed and reserved and provisions will be relocated as follows: (a) Provisions addressing overall policies and procedures for using Federal standards will be relocated in FIRMR Part 201–13, and (b) contracting provisions that implement standards in the acquisition process will be amended and relocated in FIRMR Part 201–39. All existing Federal standard "requirement statements" for inclusion in solicitation documents will be removed.

(2) The changes proposed for FIRMR Part 201–13 are explained in the following paragraphs.

(a) Reserved Part 201–13 will be activated under the title, Operations and Control. It will contain management policies and procedures pertaining to the use of standards and other aspects of information resources management.

(b) Subpart 201–13.1, Standards, will be established to contain overall policies and procedures for using standards, including Federal Information Processing Standards (FIPS), Federal Telecommunications Standards (FED–STDS), joint FIPS/FED–STDS, and agency standards.

(c) Other subparts in Part 201–13 will be reserved.

(3) The changes proposed for FIRMR Part 201–39 are explained in the following paragraphs.

(a) Reserved Part 39 will be activated under the title, Acquisition of Information Resources. It will contain the special acquisition rules that apply Governmentwide to information resources.

(b) Subpart 201–39.10, Standards, will be established and organized consistent with Part 10 of the FAR. It will contain policies and procedures from Part 201–8 pertaining to the implementation and use of requirements statements in the acquisition process. Provisions will be amended by replacing the term "requirements statement" with the term "specifications", removing the applicability statements for individual standards, and adding a requirement for agencies to review the GSA "ADP and Telecommunications Standards Index" to determine standards applicability.

(c) Subpart 201–39.52, Solicitation Provisions and Contract Clauses, will be established and organized consistent with Part 52 of the FAR. It will contain provisions and contract clauses for inclusion in solicitation documents for information resources. It will provide a provision for incorporating standards specifications in solicitation documents by reference to the "ADP and Telecommunications Standards Index".

(d) All other subparts in Part 201–39 will be reserved and activated as other FIRMR contracting provisions are relocated in this part.

(5) The General Services Administration (GSA) has determined that the proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The proposed rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Parts 201–8, 201–13 and 201–39

Computer technology, Telecommunications, Information resources activities, Government procurement, Competition, and Hearing and appeal procedures.

(40 U.S.C. 486(c) and 751(f))

Dated: June 15, 1988.

Fred L. Sims,

Acting Deputy Commissioner for Federal Information Resources Management.

[**Editorial note:** This document was received at the Office of the Federal Register on January 4, 1989.]

[FR Doc. 89–330 Filed 1–9–89; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 81270–8270]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Notice of proposed Pacific halibut catch sharing plan and request for comments.

SUMMARY: NOAA announces and requests comments on a proposed Catch Sharing Plan developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut in 1989 between Treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A.

This proposal plan allocates the total allowable catch of Pacific halibut in Area 2A as established by the IPHC between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The purpose of this notice is to solicit public comments on the proposed plan before final action is taken by the Council in recommending approval by the Secretary of Commerce and implementation by the IPHC.

DATES: Comments on the proposed plan must be received by January 17, 1989; Comments submitted on or before January 10, 1989, will be presented to the Council by NMFS.

ADDRESS: Send comments to Rolland A. Schmitten, Director Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140 or Lawrence D. Six at 503–221–6352.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Pub. L. 97–176, 16 U.S.C. 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with the regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A.

The Pacific halibut harvest in Area 2A historically has been almost entirely a commercial longline fishery. In recent years however, the Treaty Indian tribes have begun to develop a commercial halibut fishery, and tribal fishing effort and harvests have increased from four Treaty Indian tribes with 17,000 pounds harvested in 1986 to eleven Treaty Indian tribes with over 105,000 pounds of halibut harvested in 1988. In addition non-Indian recreational catch has undergone a dramatic increase from a catch of about 50,000 pounds in 1983 to a peak catch of about 461,000 pounds in 1987. These increases culminated in a combined harvest of over one million pounds of halibut in Area 2A in 1987 by Treaty Indian and non-Indian commercial and sport users which exceeded the maximum sustained yield of 800,000 pounds set by the IPHC. Because the increasing annual catch needed to be controlled and reduced to meet conservation goals established by the IPHC, it became necessary for the Council for the first time in 1988 to allocate the catch among the three user groups.

In 1988, the Council developed a Catch Sharing Plan (Plan) in compliance with a directive by the Under Secretary of Commerce that the Pacific and North Pacific Fishery Management Councils should allocate halibut catches among user groups if allocation is necessary. The 1988 Plan was based on a total allowable catch (TAC) of 750,000 pounds and included a number of specific provisions that were described in the **Federal Register** notice (53 FR 7528, March 9, 1988) that announced its approval by the Secretary of Commerce (Secretary). Following approval by the Secretary, the 1988 Plan was forwarded to the IPHC which adopted implementing regulations. The Plan was for the 1988 fishing season only for treaty Indian/non-Indian sharing, and for two years (1988 and 1989 seasons) for non-Indian commercial and recreational sharing. In general, the 1988 Plan provided the Treaty Indian fishermen a fixed season that was projected to harvest no more than 100,000 pounds. A reserve of 50,000 pounds was established for Treaty Indian fishermen to accommodate a larger harvest if necessary. Non-Indian users were allocated 600,000 pounds which were divided 55 percent for the commercial catch and 45 percent for the recreational catch. In addition the Council recommended recreational seasons and size and bag limits that were designed to achieve overall recreational allocation and to distribute it among four geographic areas within Area 2A. These recommendations were accepted and implemented by the IPHIC in their 1988 regulations. The 1988 Plan and IPHC implementing regulations resulted in a harvest of about 105,000 pounds by Treaty Indians, about 381,000 pounds by non-Indian commercial users, and about 256,000 pounds by recreational users for a total of 742,000 pounds of halibut harvested in Area 2A.

A Catch Sharing Plan for the three user groups in Area 2A is again necessary in 1989 because the combined fishing power of the user groups easily exceeds the anticipated 1989 TAC of 750,000 pounds. In addition, the 1988 sharing provisions between Treaty Indian and non-Indian fisheries have expired. Although the allocation between non-Indian commercial and recreational users is fixed for 1989, the Council again developed and will recommend recreational seasons and size and bag limits to the IPHC. The 1989 Catch Sharing Plan was developed by a Halibut Managers Group consisting of State, Federal, and tribal fishery managers, user group representatives and the general public. A number of meetings were convened betweeen Treaty Indian tribes and Federal and State fishery managers to negotiate a Treaty Indian/non-Indian allocation of the TAC. Four public workshops were held in Oregon and Washington to obtain input from user groups and the general public. In addition, the Council appointed a Halibut Advisory Panel consisting of non-Indian commercial and recreational representatives to advise the Council on the non-Indian allocation and distribution of the recreational share between four geographic areas within Area 2A.

The Council adopted a proposed 1989 Catch Sharing Plan for public review at its November 16–18, 1988 public meeting after receiving recommendations from the Halibut Managers Group on the negotiated treaty Indian/non-Indian catch sharing agreement and from the Council advisory bodies on the sharing of the non-Indian allocation between commercial and recreational users. The proposed Plan is for 1989 only and distributes the anticipated TAC of 750,000 pounds as subquotas between the three user groups as follows:

Treaty Indian subquota = 150,000 pounds
Reserve = 25,000 pounds
Non-Indian Commercial subquota = 316,000 pounds
Non-Indian Recreational subquota = 259,000 pounds.

The reserve would be set aside initially for Treaty Indian use, although parts or all of the reserve would be released to non-Indian recreational users during the season if it is determined that all or parts of the reserve are surplus to tribal needs. The reserve release would occur no later than July. Further, if it is determined at that time that some portion of the Treaty Indian subquota of 150,000 pounds is surplus to tribal needs, then that portion may be released to the non-Indian fisheries.

This proposed Plan is based on an anticipated 750,000 pound TAC; a final TAC is not yet available. Establishment of the final TAC is the responsibility of the IPHC and the final TAC will not be determined until the annual meeting of the IPHC in January. The proposed Plan provides that the subquotas and the reserve will be adjusted upward or downward proportionately with any change in the TAC from the anticipated 750,000 pounds. Additional details of the proposed plan are as follows:

1. The Treaty Indian subquota will include both commercial and ceremonial and subsistence (C&S) fishing. The Treaty Indian commercial fishing season will extend from March 1 through October 31, and C&S fishing will be permitted all year. The IPHC commercial 32-inch size limit will apply to fish sold by tribal commercial fishermen; however, no size limits will apply to C&S-caught halibut, including C&S fish retained during commercial fishing. Other IPHC regulations on commercial fishing gear and C&S daily bag limits before and after the commercial fishing season will remain the same as in 1988.

2. The non-Indian allocation will be divided 55 percent to commercial users and 45 percent to recreational users, with a minimum of 60,000 pounds to Oregon recreational users in accordance with the provisions of the two-year sharing agreement established in 1988. The recreational catch will be divided into four areas: (1) Inside waters of Washington State eastward of the Bonilla-Tatoosh line; (2) North coastal Washington waters from the U.S./Canada border to the Queets River; (3) Southern Washington and northern Oregon waters from the Queets River to Cape Falcon; and (4) Oregon and California waters south of Cape Falcon.

The Council will consider final adoption of the 1989 Catch Sharing Plan at its January 11–12, 1989, public meeting in Seattle, WA. After receipt and consideration of public comments, the Council will recommend a final 1989 Plan to the Secretary of Commerce to be forwarded to the IPHC for implementation. Public comments made before the Council will also be considered a port of record in this proceeding. Specific regulations to implement the final plan will be developed by the IPHC consistent with its responsibilities under the international convention.

Classification

This proposed 1989 Catch Sharing Plan is published with a request for public comments as a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b)(A). Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review was prepared for this proposed action to fulfill the requirements of E.O. 12291 and concludes that actions taken under the proposed plan are not "major" and a Regulatory Impact Analysis is not required.

The present action will not have cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to the consumers, industries, government agencies, or geographical regions. An Environmental Assessment (EA) was prepared for the 1988 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA determined that there would be no significant adverse environmental impact resulting from the plan and that preparation of an environmental impact statement was not required by section 102(2)(C) of NEPA or its implementing regulations. The alternatives and environmental impacts of the 1989 proposed plan are no different than those evaluated in the EA for the 1988 Catch Sharing Plan. Therefore, this action is categorically excluded from the NEPA requirements to prepare an EA in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed and the determination of no significant environmental impact would also apply to the 1989 proposed plan.

The proposed plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Copies of the 1988 environmental assessment and the regulatory impact review are available at the address above. The Council has determined that this action is consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: January 4, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89–448 Filed 1–5–89; 3:30 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-301-001]

Leather Wearing Apparel From Colombia; Final Results of Changed Circumstances Administrative Review, Determination Not To Cancel Suspension Agreement, and Termination of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review, determination not to cancel suspension agreement and termination of administrative review.

SUMMARY: On November 4, 1987, the Department of Commerce published a notice of intent to review, preliminary results of changed circumstances administrative review, and tentative determination to terminate suspended investigation on leather wearing apparel from Colombia. We have now completed that review and determine that the agreement meets the requirements of sections 704 (b) and (d) of the Tariff Act of 1930. Therefore, we are not canceling the suspension agreement.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 42330) its intention to review, preliminary results of changed circumstances administrative review, and tentative determination to terminate the suspended investigation on leather wearing apparel from Colombia (46 FR 19963; April 2, 1981). The Department has now completed that administrative review in accordance with section 751(b) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Colombian men's, boys', women's, girls', and infants' leather coats, jackets and other leather wearing apparels (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90 of the Harmonized Tariff Schedule. The review covers the period from December 8, 1986, the effective date of the revised suspension agreement, through September 30, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Colombian government and from the Amalgamated Clothing and Textile Workers Union, AFL–CIO ("ACTWU"), a domestic interested party.

Comment 1: The Colombian government does not believe that the Department should cancel the revised suspension agreement. It asserts that it has maintained an internal monitoring procedure since January 1987, when the revised suspension agreement went into effect, to ensure that all exporters of leather wearing apparel renounced all countervailing benefits. The Colombian government did not present the details of these monitoring procedures to the Department because it believed that this information was implicit in the quarterly monitoring reports submitted during the first three quarters of 1987, all of which stated that "none of the signatories" received benefits. The Colombian government maintains that the "signatories" referred to in the monitoring reports meant all exporters of leather wearing apparel to the United States.

In addition, the Colombian government has established a mechanism to ensure that the agreement covers all exporters by continually updating the list of exporters of leather wearing apparel to the United States and by securing commitment letters from new entrants into the market to renounce all countervailing benefits in the future.

Department's Position: Astrakan was the only signatory to the revised suspension agreement during the period of review (having succeeded Confecciones Amazonas Orinoco, the sole signatory to the original agreement). The other "signatories" to which the Colombian government refers are leather wearing apparel exporters willing to renounce countervailable benefits. They were not, however, signatories to the agreement as we accept the term.

We recognize that there was a fundamental misunderstanding over the interpretation of the term "signatory" with respect to the revised suspension agreement. Although other exporters did renounce benefits, the Colombian government did not inform the Department of the renunciations by these "signatories" until after the publication of the preliminary results of this review.

A procedure whereby new entrants renounce benefits on their exports to the United States and provide letters to that effect to the Department has been a part of the Colombian government's monitoring of the suspension agreement on fresh cut flowers from Colombia since its inception in 1983. Effectively, we have treated these exporters as new signatories. Because we consider such a procedure an acceptable method for monitoring a suspension agreement and because we now know that a comparable procedure exists for the suspension agreement on leather wearing apparel, we hereby consider the exporters that have submitted letters renouncing all benefits to be signatories from this point on. The Government of Colombia must continue to forward comparable letters from any new exporters to the Department for such exporters to be considered signatories. (The signatories to the revised suspension agreement are listed in Appendix I).

In addition, the Government of Colombia has stated that it will continue to require all new entrants into the market to sign a commitment letter renouncing all benefits. Therefore, we determine that the suspension agreement in its current form is enforceable and monitorable and meets the requirements of section 704(b) of the Tariff Act.

Comment 2: ACTWU endorses our tentative determination to cancel the revised suspension agreement, arguing that it is long overdue given the history of problems with this suspension agreement and the Department's inability to enforce its terms. ACTWU notes that during the two-year period over which the original agreement was renegotiated, new exporters received additional countervailable benefits, and the domestic industry was not afforded adequate relief. ACTWU claims that the intent of Congress in suspension agreements is to ensure that governments maintain their commitments for the complete renunciation of countervailable benefits and that when agreements fail, they should be canceled.

Department's Position: We determine that the Colombian exporters of leather wearing apparel to the United States did not receive any bounties or grants after the revised suspension agreement went into effect and that they complied with the terms of the agreement through September 30, 1987, the period covered by this review. We also determine that, because the U.S. industry is not forced to compete against imports that benefit from bounties or grants, the agreement provides the domestic industry with the relief intended by section 704(b) of the Tariff Act and that it is monitorable and enforceable in its current form (see our response to Comment 1).

Final Results of Review, Determination Not To Cancel Suspension Agreement, and Termination of Administrative Review

After considering all of the comments received, we have determined that the suspension agreement is enforceable and can be adequately monitored and that it meets the requirements of sections 704 (b) and (d) of the Tariff Act. Therefore, we are not canceling the suspension agreement on leather wearing apparel from Colombia.

We also determine that the Colombian exporters of leather wearing apparel have complied with the terms of the suspension agreement through September 30, 1987, thus obviating the need to complete section 751(a) reviews requested in accordance with § 355.10 of the Commerce Regulations covering that period. Therefore, we are terminating those administrative reviews.

This changed circumstances administrative review, determination not to cancel suspension agreement, termination of administrative review and notice are in accordance with sections 704(b) and 751 (a) and (b) of the Tariff Act (19 U.S.C. 1671c(b) and 1675 (a) and (b)) and 19 CFR 355.10, 355.31 and 355.41.

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 3, 1989.

Appendix I

1. Andina de Curtidos, S.A.
2. Arpiel de Colombia Ltda.
3. Astrakan Ltda. Colombian Bags Ltda.
4. Comercializadora Gloria & Tirado & Cia. Ltda.—G.E. Collection.
5. Curtiembres Progreso Ltda.
6. Emicolor Ltda.
7. Exporimp Ltda.
8. Catalina Falquez de Donado.
9. Glaser & Cia. Ltda.
10. Hacienda Cencerro Ltda.
11. Inversiones Licarmo Ltda.
12. Jaime Vallejo Sra. e Hijos Ltda.
13. JAS & Cia., S. en C.
14. Jose Ortiz Gonzalez, J. Alco S. en C.
15. Julia de Rodriguez e Hijos S. en C.
16. Luis Alberto Rayran Rodriguez.
17. Martha Marina Latorre.
18. Opera Ltda.
19. Ivan Ramirez Martinez.
20. Miguel Angel Rodriguez.
21. Sistemas de Informacion SIDEIN Ltda.
22. Sociedad Administradora Mercantil Ltda., SAMER Ltda.
23. Versatil Cueros Ltda.

[FR Doc. 89–457 Filed 1–9–89; 8:45 am]

BILLING CODE 3510-DS-M

[Application #87-2A004]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987 (52 FR 19371, May 22, 1987).

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

The amendment consists of the following changes:

(1) Each of the following companies has been added as a new "Member" of the Certificate: Compumachine Inc.; Elox Corporation; Fayscott Company; Innovex; J.M. Montgomery Mfg. Inc.; PH Hydraulics & Automation, Inc.; The Pratt & Whitney Company, Incorporated; Productivity Systems, Inc.; Strippit, Inc.; Trumpf Industrial Lasers, Inc.

(2) Each of the following companies has been reinstated as a "Member" of the Certificate and the company name has been changed as indicated (new listing cited in parentheses): Acme-Cleveland Corporation (National Acme Co.); MG Cutting Systems (MG Systems Div.).

(3) Each of the following companies has been deleted as a "Member" of the Certificate: Acro Automation Systems, Inc.; Automation Associates, Inc.; Colt Industries, Inc.; Continental M.D.M., Inc.; Engis Corporation; GM Industries, Inc.; GT Acoustical Technologies; Grinders for Industry; Houdaille Industries, Inc.; Industrial Development Systems, Inc.; The OK Tool Company, Inc.; Reno Machinery and Engineering Co.; Universal Engineering Div. Stanwich Industries, Inc.; Wotan Machine Tool, Inc.; Zero Manufacturing Co.

(4) The company name listing for the "Member" APEC/CPM Guill Technologies Inc. has been changed to A.P.E.C.; Centro-Morgardshammer Inc. to Centro-Metalcut, Inc.; Danley Machine Division to Danley Machine Division/Connell Ltd. Partnership; Equipment Systems to ES/TECH-Equipment Systems Technology Co.; Sciaky Bros. Inc. to Ferranti Sciaky, Inc.; Gehring LP to Gehring Corporation; Bohle Machine Tools Inc. to George Fisher-Bohle Machine Tool Corp.; Geometric Tool-Division Greenfield Industries to Greenfield Industries; USI Clearing to HZ Clearing Inc.; Hansvedt to Hansvedt Industries, Inc.; Kayex-Spitfire Tool & Machine Co. to Kayex-Spitfire; Lodge & Shipley/Manuflex to Manuflex Corporation; Pneumo

Precision Inc. to Rank Pneumo Inc.; Surf/Tran to Surf/Tran Division, Robert Bosch Corporation; Ex-Cell-O Corporation to Textron Inc./North American Machine Tool Division; Eitel Presses Inc. to Transmares Corp.; and White Consolidated Industries to WCI Machine Tool & Systems Co.

(5) The Certificate holder is now identified as "National Machine Tool Builders' Association (aka NMTBA—The Association for Manufacturing Technology)."

Effective date: October 17, 1988.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: January 4, 1989.

Thomas H. Stillman,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-456 Filed 1-9-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

[CFDA No. 90.001]

Inviting Applications for New Awards for FY 1989 Bicentennial Educational Grant Program

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Notice inviting applications and providing application forms for Bicentennial Educational Grant Program—Second Round.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its application deadline for a second round of FY-1989 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program notice informs all interested individuals and organizations about the closing dates for the receipt of applications for funding. The application conditions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications wil be accepted from April 1, 1989 until May 15, 1989 at 5:30 pm. Applications by mail must be postmarked no later than May 15, 1989.

ADDRESS: For further information contact: Anne A. Fickling, Associate Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 808 17th Street, NW., Suite 800, Washington, DC, 20006, (202) 653-5110.

SUPPLEMENTARY INFORMATION: The objective of this program is to help elementary and secondary school teachers develop a better understanding of the history and development of the U.S. Constitution and Bill of Rights and to provide them with materials and methods so they will become more able to teach the Constitution to young learners. Programs designed to affect students directly are also encouraged. Programs designed for adult learners in an elementary or secondary school environment are also eligible. The Commission continues to encourage proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, people for whom English is a second language, and other special interest organizations such as those concerned with the learning disabled and the physically handicapped.

Available funds anticipated: Approxiamtely $2 million.

Estimated range of awards: $3,000-$125,000.

Estimated number of awards: 25-35.

Project period: No longer than 24 months, beginning no later than September 1, 1990.

Priority areas for funding: The Program Announcement and Final Rule governing the 1989 Bicentennial Educational Grant Program were published in the **Federal Register** on August 14, 1987. Specifically, the Commission encourages proposals which focus on themes paralleling those of the Commission's five-year plan and the development of the three branches of government. In this round of its 1989 Educational Grant Program, the Commission shifts the focus to the commemoration taking place in 1990—a study of the Judiciary and its historical development in the 200 years since the first session of the Supreme Court. In addition, for projects taking place in the 1990-91 school year, the Commission welcomes proposals which focus on the Bill of Rights and subsequent Amendments. The focus of any proposal, therefore should be dictated to some extent by when the project will go into effect.

Limited funding is available for expanding, replicating, or continuing highly successful educational programs which effectively link the Constitution to civic literacy and responsibility today. A significant aspect of any such program would be the inclusion of a co-curricular activity and/or community invovlement component. The Commission encourages applications for funding these exemplary projects from schools, school districts, or organizations. A well-developed dissemination plan should be included in any proposal for funding under this initiative.

Selection criteria: The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history, while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)

2. The project has potential to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grants Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate for the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applicants have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Applicable regulations: 45 CFR 2010 as published in the August 14, 1987 **Federal Register** (52 FR 30582). The Commission's program announcement was also published together with the grant regulation.

Interested applicants are invited to call or write to the Commission for a copy of the printed version of the program announcement and application forms.

Authority: Title V of Pub. L. 99-194; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

[FR Doc. 89-469 Filed 1-9-89; 8:45 am]

BILLING CODE 6340-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

January 6, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 24 Jan 89 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington DC.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-566 Filed 1-9-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: January 30 and 31, 1989.

Time: 0900-1630 hours each day.

Place: Louisiana Army Ammunition Plant, Shreveport, LA.

Agenda: The Army Science Board Ad Hoc Subgroup on Toxic and Hazardous Waste Management will conduct its second meeting at the Louisiana Army Ammunition Plant in Shreveport, LA. Briefings will be conducted by various members of the DOD and EPA respect to the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-452 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: February 1-2, 1989.

Time: 0900-1630, February 1

0800-1700, February 2.

Place: Fort Ord, California.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Families will be hosted by the Commanding General of Ford Ord, California. The subgroup will receive briefings on those programs being utilized at Fort Ord that address soldier and family issues impacting on quality of life in the Fort Ord community. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-453 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Partially Closed Meeting; Chief of Staff's Special Commission on the Honor Code and Honor System at the U.S. Military Academy

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy.

Name of Panel: Legal panel of the Chief of Staff's Special Commission to Review the Honor Code and Honor System at the U.S. Military Academy.

Date: 23 January 1989.

Place: U.S. Court of Military Appeals, 5th and E Streets NW., Washington, DC.

Summary of Agenda:

Date/time	Open/closed to public	Discussion items
23 Jan/0900 to 1200.	Open	Review and discussion of legal, and procedural aspects of USMA Honor System and Honor Code.
23 Jan/1300 to 1600.	Closed	Study of illustrative cadet/midshipmen case histories.

Note: 1. The public may attend the meeting marked "OPEN". 2. The meeting being "CLOSED" to the public is due to privacy act restrictions. Specific honor cases will be presented to the panel. The basis for the closed portion of the meeting is paragraph (6) of section 552b(c), title 5, U.S. Code.

Point of Contact: Executive Secretary, LTC James O. Younts III, 695-1963.

[FR Doc. 89-400 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

Meeting; Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy

Subject: Chief of Staff's Special Commission on the Honor Code and Honor System at the United States Military Academy.

Name of Subcommittee to Meet: Panel on Military Environment—Values, Functions, and Regulations.

Date of Meeting: 23 January 1989.

Place: U.S. Court of Military Appeals, 5th and E Streets NW., Washington, DC.

Proposed Agenda: 1. Review of plenary commission meetings. 2. Discussion of the relationship of the honor system to the values, functions, and regulations of the military environment.

Point of Contact: Executive Secretary to the Commission, LTC James O. Younts III, 695-1983.

[FR Doc. 89-401 Filed 1-9-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Chicago Operations Office, Restricted Eligibility for Grant, Award: American Nuclear Society

AGENCY: Department of Energy.

BEST COPY AVAILABLE

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.7(b)(2), it is restricting eligibility for award of a grant to the American Nuclear Society (ANS) in order to partially support a conference commemorating fifty years of research on the nuclear fission process. The conference will provide a forum for the exchange of knowledge among peers through the presentation of papers which will feature a recapitulation of progress by outstanding contributors and presentations of nuclear fission and applications.

FOR FURTHER INFORMATION CONTACT: Richard Oehl, NE, U.S. Department of Energy, Associate Deputy Assistant Secretary for Reactor Deployment, 11901 Germantown Road, Germantown, Maryland 20874, (301) 353–2948.

SUPPLEMENTARY INFORMATION: DOE believes that the American Nuclear Society and the other sponsoring organizations of the conference (American Chemical Society, American Physical Society and the National Institute of Standards and Technology) are the only entities in the United States planning to conduct a conference commemorative of the discovery of nuclear fission. The American Nuclear Society is considered to be unique in its qualification to sponsor such a conference because of the nature of its charter as a technical society devoted to the nuclear field.

The conference will be held in April 1989. DOE plans to provide ANS with $20,000.00 in funding.

Issued in Chicago, Illinois, on December 23, 1988.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89–495 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–61–NG]

Metro Gaz Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Metro Gaz Marketing, Inc. (Metro Gaz Marketing), blanket authorization to export natural gas to Canada. The order issued in ERA Docket No. 88–61–NG authorizes Metro Gas Marketing to export up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–497 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–57–NG]

Natgas U.S. Inc.; Order Extending Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Natgas U.S. Inc. an extension of its blanket authorization to import up to 730 Bcf of Canadian natural gas over a two-year term beginning July 1, 1988, through June 30, 1991.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–498 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket Nos. 87–34–LNG]

Pan National Gas Sales, Inc.; Order Granting Authorization To Import Liquefied Natural Gas From Algeria and Imposing Conditions

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of order granting authorization to import liquefied natural gas from Algeria and imposing conditions.

SUMMARY: The Economic Regulatory Administration (ERA) gives notice that it has issued an order granting Pan National Gas Sales, Inc. (Pan National), a 20-year authorization to import up to 3.3 Tcf of liquefied natural gas (LNG) from Algeria, to be delivered to Lake Charles, Louisiana, beginning on the date of first delivery. The ERA conditioned the order so that, for any LNG imported pursuant to the authorization which involves a purchase agreement of over two years in length, Pan National or some other designated applicant shall file with the ERA a separate application for import authority for the LNG within 90 days of the date of such purchase agreement.

A copy of this Order is available in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on December 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–500 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Small Business Innovation Research Commercialization Assistance Project

AGENCY: Department of Energy, Office of Energy Research.

ACTION: Notice of program solicitation.

SUMMARY: The Department of Energy (DOE), Office of Energy Research, through the Oak Ridge Operations Office, invites organizations with appropriate capability to submit applications for financial assistance for planning and implementing a commercialization project for Phase II awardees under the Small Business Innovation Research (SBIR) Program.

The objective of this project is to help SBIR awardees to commercialize their products and processes, and may include:

1. Assistance to awardees in determining approaches to be taken in marketing the results of their research and development.

2. Providing opportunities for awardees to contact or meet with potential investors or licensors for the purpose of developing arrangements for pursuing commercial use of their results.

DATE: To be eligible, applications must be submitted to Ms. Susan G. Hiser, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Oak Ridge, Tennessee 37830, by 4:30 p.m. February 17, 1989.

FOR FURTHER INFORMATION CONTACT: All technical questions concerning this Program Solicitation should be directed to Dr. Samuel J. Barish, SBIR Program Manager, ER–16, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20545, telephone: (301) 353–3054. All other inquiries should be directed to Ms. Susan G. Hiser, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8758, telephone: (615) 576–6367.

Authority: 10 CFR Part 600.

SUPPLEMENTARY INFORMATION:

Eligibility

This solicitation is open to private and public entities (except Federal Agencies) within the United States and its territories, including industry, associations, schools, colleges, universities, and state, local and regional government organizations, small business concerns and individuals.

Award Size and Duration

The FY 1989 budget for this project is $20,000. It is anticipated that one award will be made for a 12-month period.

No fee will be paid in accordance with 10 CFR Part 600.103(h).

Evaluation Process and Selection Criteria

Applications will be judged competitively to select for award the application offering the best value to the Government on the following criteria:

1. The approach shown in the application, and the likelihood that it will be successful in helping SBIR awardees to commercialize their products and processes.

2. The qualifications and experience of the Project Manager and other key staff, and their ability to carry out the project.

3. The company experience in or related to:

a. Marketing high technology innovation,

b. Providing training for marketing and commercialization. More specific evaluation criteria will be available in the "Guide for the Preparation of Applications for the SBIR Commercialization Project—1989."

Application Preparation Guidelines

Applications submitted in response to this solicitation shall contain the information required in the "Cuide for the Preparation of Applications for an SBIR Commercialization Assistance Project—1989," Program Solicitation Number DE–PS05–89ER80688. Copies of the guide are expected to be ready for mailing by January 3, 1989. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, ATTN: Susan G. Hiser, P.O. Box 2001, Oak Ridge, Tennessee 37831–8758, telephone number: (615) 576–6367.

DOE assumes no responsibility for any costs associated with application preparation under this announcement.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–496 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2216–001 New York]

Power Authority of the State of New York; Availability of Environmental Assessment

January 5, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Niagara County, near Lewiston and Niagara Falls, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–489 Filed 1–9–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–583–002]

O'Brien California Cogen II Limited; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

December 16, 1988.

On December 2, 1988, O'Brien California Cogen II Limited (Applicant), of 225 South Eighth Street, Philadelphia, Pennsylvania 19106 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Salinas, California. The facility as originally proposed was to consist of a combustion turbine generator, a three drum (tri-pressure) heat recovery steam generator and an extraction condensing turbine generator. Thermal energy recovered from the facility will be used either via absorption chiller for freezing of food products or directly used for food processing. The primary energy source will be natural gas.

The original application was filed on June 27, 1985 and granted on September 18, 1985 (32 FERC ¶ 62,606).

The recertification is requested due to the following changes: (1) Ownership has been changed from O'Brien Energy Systems, Inc. to O'Brien California Cogen II Limited, (2) the capacity has increased from 41 megawatts to 48 megawatts, (3) thermal output has increased from 23,750 lb/hr to 29,000 lb/hr, (4) the installation date was changed from June 1986 to August 1988. In addition, the proposed facility will not include an extraction/condensing turbine generator.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of

Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-488 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on December 30, 1988, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Fifth Revised Sheet No. 31; Alternate Substitute Fifth Revised Sheet No. 31

CNG states that this filing is an out-of-cycle PGA made for the purpose of passing through the increased cost of gas from CNG's pipeline suppliers. The non-gas cost of service and rates reflected on Substitute Fifth Revised Sheet No. 31 are the same as that reflected on Fifth Revised Sheet No. 31 filed in CNG's Docket No. RP88-211 on December 29, 1988 and reflect a voluntary reduction in rates. The alternate tariff sheet is based on the same non-gas cost of service and rates that are contained on the alternate tariff sheets filed in Docket No. RP88-211 on December 29, 1988, and reflects compliance with the suspension order in Docket No. RP88-211, as amended.

CNG seeks a waiver of the Natural Gas Act and the Commission's regulations to permit the primary tariff sheets to become effective on January 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-478 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that on December 30, 1988, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Twelfth Revised Sheet No. 47; Twelfth Revised Sheet No. 48

Carnegie states that this out-of-cycle purchased gas adjustment filing is made to reflect charges in its projected gas costs resulting from rate charges by its pipeline supplier, Texas Eastern Transmission Corporation. Carnegie proposes to adjust its rates effective February 1, 1989, to reflect a $0.2269 per Dth increase in the applicable commodity components of its LVWS and CDS rate Schedules, a $0.1769 per Dth decrease in the D-1 component, and a $0.0007 per Dth decrease in the D-2 components of those Rate Schedules. The proposed increase in the LVIS Rate Schedule is $0.2176 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-479 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on December 30, 1988 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1989.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.1211 per dt in the Commodity Charge; a decrease of $0.3892 per dt in the Demand Charge 1; and a decrease of $0.0561 per dt in the Demand Charge 2 all as measured against ESNG's previously scheduled PGA filing in Docket No. TA89-1-23-000 as filed on September 2, 1988 and approved to be effective November 1, 1988. As measured against ESNG's currently effective sales rates as filed on November 30, 1988 in Docket No. TF89-2-23-000 and approved to be effective December 1, 1988 the sales rates filed hereon reflect a decrease of $0.0691 per dt in the Commodity Charge; a decrease of $0.0306 per dt in the Demand Charge 1; and a decrease of $0.0500 per dt in the demand Charge 2. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply (firm and spot) and requirements and the latest pipeline supplier rates on file with the Commission. ESNG expects its pipeline suppliers, Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Corporation to file, on or about December 30, 1988 revised rates to comply with their quarterly PGA effective date of February 1, 1989. ESNG, therefore, anticipates amending its filing in this docket in early January, 1989, in order to reflect any necessary revisions

in its rates as a result of their new filed rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-480 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-025]

El Paso Natural Gas Co.; Compliance Filing

January 5, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on December 22, 1988, tendered for filing in compliance with ordering paragraph (A) of the Federal Energy Regulatory Commission's ("Commission") order issued December 8, 1988 at Docket Nos. RP85-58-022, TA85-1-33-011, RP85-58-023 and TA85-1-33-012, certain tariff sheets which reflect a reduction in jurisdictional sales rates. Such tariff sheets are identified on the appendix for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that on October 24, 1988, in response to the Commission's letter order dated September 30, 1988, and ordering paragraph (B) of the Commission's order issued May 18, 1988, El Paso filed certain tariff sheets which reflected the rate impact of deducting from the rate base, certain deferred income taxes related to El Paso's company-owned production that was repriced from a cost of service basis to NGPA prices effective October 1, 1983. Subsequently by order issued December 8, 1988, the Commission accepted for filing certain tariff sheets filed October 24, 1988, subject to El Paso refiling within fifteen (15) days of issuance of said order those tariff sheets effective July 1, 1985 forward, to reflect the rate reductions as stated in the order. The order accepted as filed the revised tariff sheets having effective dates prior to July 1, 1985.

El Paso further states that it has revised the tariff sheets effective July 1, 1985 forward to reflect the rate decreased stipulated by the December 8, 1988 order.

Copies of El Paso's filing were served upon all parties of record in Docket Nos. RP85-58-000 and TA85-1-33-000 and otherwise upon all interstate pipeline system customers of El Paso and all interesed state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-481 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-184-007]

El Paso Natural Gas Co.; Tariff Filing

January 5, 1989.

Take notice that on December 30, 1988, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, El Paso Natural Gas Company ("E Paso") submitted a filing pursuant to the Commission's Order No. 500-F, "Order Extending Date for Filing Final Tariff Sheets Under Alternative Passthrough Mechanisms," issued December 9, 1988, at Docket No. RM87-34-000.

El Paso states that on December 1, 1988, at Docket No. RP88-184-005, El Paso tendered certain tariff sheets to comply with the Commission's orders issued June 30, 1988 and November 21, 1988 and filed concurrently a motion to place those tariff sheets into effect on December 1, 1988. Such tariff sheets serve to establish the procedures by which El Paso proposed to recover from its customers, as prescribed by Order No. 500, a portion of the payments (referred to herein as "buyout" or "buy-down" payments or costs) to its natural gas suppliers made in settlement of claims arising under gas purchase agreements or to terminate or suspend such agreements.

El Paso states that on December 9, 1988, the Commission issued Order No. 500-F which extended the previously set deadline of December 31, 1988 to March 31, 1989 for the filing of final tariff sheets under the alternative passthrough mechanism. Order No. 500-F stated that a pipeline must file by March 31, 1989 tariff language to be eligible to use this provision. Accordingly, El Paso filed revisions to its tariff filed on December 1, 1988.

El Paso requested that the Commission grant any and all waivers of its rules and regulations as may be necessary so as to permit the tendered tariff sheets to become effective on January 1, 1989.

Copies of the filing were served upon all parties of record in Docket No. RP88-184-000 and, otherwise, upon all interstate pipeline system sales customers and shippers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-482 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-029]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

January 5, 1989.

Take notice that on December 22, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on December 7, 1988 and January 1, 1989:

Proposed for Effectiveness December 7, 1988

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 7
Eighth Revised Sheet No. 7-A
Third Revised Sheet No. 14
Sixth Revised Sheet No. 68
Third Revised Sheet No. 69
Fifth Revised Sheet No. 70
Third Revised Sheet No. 70-A
Fourth Revised Sheet No. 71
Third Revised Sheet No. 71-A
Fourth Revised Sheet No. 72
Third Revised Sheet No. 73
Third Revised Sheet No. 74
Fifth Revised Sheet No. 75
Third Revised Sheet No. 75-A
Second Revised Sheet No. 75-B
First Revised Sheet No. 75-C
Fourth Revised Sheet No. 76
Second Revised Sheet No. 77
First Revised Sheet No. 77-A
Original Sheet No. 77-B
Second Revised Sheet No. 82
Third Revised Sheet No. 112
Second Revised Sheet No. 116

Original Volume No. 2

Ninth Revised Sheet No. 27

Proposed for Effectiveness January 1, 1989

First Revised Volume No. 1

Twenty-Third Revised Sheet No. 7

According to Granite State the rate changes and revised tariff provisions are submitted in compliance with an order of the Commission issued November 23, 1988 approving a settlement in Docket No. RP87-87-000. Granite State further states that the rate filing in Docket No. RP87-87-000, originally filed on August 20, 1987, reflected its increased costs for service to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) resulting from the expanded operations approved in Docket No. CP87-39-000 to import and pu chase Canadian gas from Shell Canada Limited (Shell) for system supply.

It is further stated that the settlement certified to the Commission contained two levels of a jurisdictional cost of service because of a phasing of the Shell deliveries during an initial interim period on an interruptible basis, followed by a period during which Shell will make firm daily deliveries. Also, according to Granite State, the settlement proposed jurisdictional rates for each cost of service based on different cost allocation methods: Granite State's historical method and an allocation based on a systemwide costs. Granite State further states that, in the order approving the settlement issued November 23, 1988, the Commission directed Granite State to adopt the systemwide cost allocation procedure and to implement this method with rates effective December 1, 1988.

In its compliance filing, Granite State proposes to implement the requirements of the settlement on December 7, 1988. According to Granite State the compliance rates are based on the settlement rates for the period during which Shell provides full firm daily service to Granite State and the inauguration of such firm service commenced December 7, 1988.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulation commissions of the State of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-483 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

January 5, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 30, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) an interim PGA filing, which includes Eighth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective February 1, 1989. The revised tariff sheet reflects a current increase of $.1440 in the average cost of purchased gas.

Kentucky West states that, effective February 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.0957 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-484 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-209-015]

Natural Gas Pipeline Co. of America; Motion Filing To Make Suspended Tariff Sheets Effective

January 5, 1989

Take notice that on December 21, 1988, Natural Gas Pipeline Company of America (Natural) filed at Docket No. RP88-209 a Motion Filing and Stipulation And Agreement Pertaining To Interim Rate Reduction. This filing includes, among other things, two separate sets of rates: (1) Motion Rates which reflect Natural's as-filed rates adjusted to comply with the Suspension Order herein, 44 FERC ¶ 61,176, *reh'g denied*, 44 FERC ¶ 61,404 (1988) and to reflect a unilateral reduction in cost of service and (2) rates resulting from the Stipulation and Agreement Pertaining to Interim Rate Reduction (Interim Settlement). Natural proposes that the Interim Settlement rates become effective January 1, 1989.

Natural states further that the Motion and Interim Settlement rates reflect the GRI charge approved by the Commission in Opinion No. 320, 45 FERC ¶ 61.344 (1988) issued November 30, 1988. Additionally, the Motion Filing shows the recomputation of Natural's Quarterly PGA adjustment effective December 1, 1988. The cumulative adjustment was restated to reflect revisions resulting from the use of costs and units underlying the settlement base tariff rates. Natural stated that as in the past, it will utilize the procedures of 18 CFR 154.309 where necessary to adjust its commodity rates.

Natural states that copies of this filing have been served on all of its jurisdictional customers, all parties at Docket No. RP88-209, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc 89-485 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-009]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

January 5, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 30, 1988, certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised sheets are indicated in Appendix A.

Transco states that the purpose of its tariff filing is to revise rates related to the recovery of producer buyout and buydown costs to comply with the provisions of Ordering Paragraph (I) of the Commission's March 31, 1988 order in the subject docket and §§ 29.3(b) and 29.5(b) of Transco's General Terms and Conditions of Volume No. 1 of its FERC Gas Tariff. The referenced order and tariff provisions require Transco to file within 30 days after November 30, 1988 revised amounts which it seeks to recover under its Order 500 recovery mechanism to reflect actual amounts paid or for which it has a written obligation to pay as of November 30, 1988.

Transco further states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-486 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

January 5, 1989.

Take notice that Western Gas Interstate Company ("Western"), on December 29, 1988, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheets is February 1, 1989.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for: (1) An increase in cost under Western's Rate Schedule G-N of 23.07 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 49.72 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 No. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-487 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-55-001]

Questar Pipeline Co.; Rate Change

January 4, 1989.

Take notice that on December 22, 1988, Questar Pipeline Company tendered for filing and acceptance Eighteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1988, and First Revised Sheet No. 12-A to First Revised Volume No. 1 and Eleventh Revised Sheet No. 8 to Original Volume No. 3 to be effective January 1, 1989.

Questar Pipeline states that the purpose of this filing is to: (1) Adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective December 1, 1988; (2) conform to the Commission's November 30, 1988, order in Docket No. TQ89-1-55-000; and (3) implement the Gas Research Institute charge adjustment authorized by the Commission in Docket No. RP88-182-000 to be effective January 1, 1989.

Questar Pipeline further states that Eighteenth Revised Sheet No. 12 shows a community base cost of purchased gas as adjusted of $2.16041/Dth for sales under its Rate Schedule CD-1 which is $0.13906/Dth higher than the currently effective rate of $2.02106/Dth. The demand base cost of purchased gas as adjusted is decreased by $0.14159/Mcf to $0.1357/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-435 Filed 1-9-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 4, 1989.

Take Notice that Transwestern Pipeline Company (Transwestern) on December 30, 1988 tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1. Transwestern states that the proposed changes would: *First*, adjust Transwestern's rates resulting in a decrease in revenues from sales, transportation, and production and gathering services by $9.9 million annually, based on volumes and costs for the twelve months ended August 31, 1988, as adjusted for the Test Period: *Second*, modify the transportation tariff provisions and implement fixed variable rate design prospectively. Transwestern also proposed to establish a Federal Income Tax Tracker in its Tariff. The Revised Tariff Sheets will not result in an increase in the level of charges to any of Transwestern's jusrisdictional customers. Transwestern has requested that the proposed tariff changes filed therein be made effective February 1, 1989, without suspension.

Transwestern advises that the filed-for revenue level is actually $12.5 million less than the annual revenues required to recover the Test Period Cost of Service. Transwestern states that in addition to the proposed rate decrease for certain services, it has voluntarily maintained the currently effective level of any derived rate which would have otherwise increased in order to maintain the marketability of its system in light of today's intensely competitive market environment.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 29426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 285.211). All such motions or protests must be filed on or before January 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-436 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

[Docket No. TQ89-1-50-000]

January 4, 1989

Take notice that on December 29, 1988, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tarriff:

Thirty-Ninth Revised Sheet No. 2A
Substitute Thirty-Nineth Revised Sheet No. 2A to Original Volume No. 1
Twelfth Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on February 1, 1989 and April 1, 1989 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-438 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-197-005]

Williston Basin Interstate Pipeline Co.; Compliance Filing for Self-Implementing Transportation

January 4, 1989.

Take notice that on December 21, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing a revised tariff sheet to Original Volume No. 1-B of its FERC Gas Tariff. Williston Basin states that the revised tariff sheet is being filed in compliance with the Commission's Order of November 25, 1988 in Docket Nos. RP88-197-000 *et al.* Williston Basin requests that Third Substitute Original Sheet No. 127 submitted in its filing be made effective September 24, 1988.

Copies of the instant filing were served upon Williston Basin's affected jurisdictional customers, interested state regulatory agencies and intervenors herein.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-437 Filed 1-9-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $7.2 million, plus accrued interest, in alleged crude oil violation amounts obtained from New York Petroleum, Inc. (Case No. KFX-0052), Chevron U.S.A. Inc. (Case No. KEF-0100), Patton Oil Company (Case No. KEF-0107), and Ladd Petroleum Corporation (Case No. KEF-0112). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from New York Petroluem, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Date: December 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Names of Firms: New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company, Ladd Petroleum Corporation.

Dates of Filing: April 6, 1988, January 27, 1988, March 25, 1988, July 8, 1988.

Case Numbers: KFX-0052, KEF-0100, KEF-0107, KEF-0112.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from New York Petroleum, Inc. (NYP), Chevron U.S.A. Inc. (Chevron), Patton Oil Company (Patton), and Ladd Petroleum Corporation (Ladd).[1] These four firms remitted a total of $7.2 million to the DOE pursuant to court approved settlements, adjudications or DOE consent orders. An additional $504,000 in interest has accrued on that amount as of November 30, 1988. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the

[1] The OHA previously established refund procedures for the crude oil overcharge funds obtained from NYP pursuant to a court-approved settlement. *New York Petroleum, Inc.*, 12 DOE ¶ 85,047 (1984). Those procedures permitted direct purchasers of NYP crude oil to submit applications for refund. *See New York Petroleum, Inc./Ashland Oil, Inc.*, 16 DOE ¶ 85,613 (1987). Since that time, the Stripper Well Settlement Agreement has been implemented. As explained below, the Settlement Agreement permits purchasers of refined petroleum products that were injured by alleged crude oil overcharges, such as those settled in the NYP litigation, to submit applications for refund to the OHA. The remaining $115,580.42 in NYP funds are subject to the terms of the Settlement Agreement.

Ladd remitted $2,887,611.31 to the DOE pursuant to a July 27, 1987 Judgement of the United States District Court for the Eastern District of Louisiana. Chevron remitted $3,092,414.21 pursuant to Consent Order Number RGFE006A1Z, and Patton remitted $1,110,940.14 pursuant to Consent Order Number 810C00323Z.

authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides the crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchse volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a volumetric refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,606 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On July 26, 1988, the OHA issued a Proposed Decision and Order (PD&O) establishing tenative procedures to distribute the alleged crude oil violation amounts obtained from NYP, Chevron, Patton and Ladd. The OHA tentatively concluded that the monies in those cases should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O.

III. Discussion of the Comments Received

In response to the PD&O, the OHA received comments from three parties: Chevron; a group of 15 States of the United States ("the States"); and Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's clients are all potential recipients of crude oil refunds. In general, the commenters addressed two issues: (1) The amount of funds reserved to pay injured claimants; and (2) the presumption of injury for end-users.[2]

A. The Amount Reserved for Refunds to Claimants

In his comments, Mr. Kalodner contends that the OHA should not distribute 80 percent of the alleged crude oil violation amounts to the states and federal government. According to Kalodner, such a distribution will "preclude full direct restitution to claimants." Kalodner comments at 4. Kalodner claims that the 20-percent reserve is insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner asserts that both the DOE and the states assured the United States District Court for the District of Kansas that the amount reserved for the claims process would be adequate to provide refunds for all successful claimants. "Having provided that asurance in order to obtain approval of the Court of the Final Settlement Agreement and the benefits to themselves, the states and the DOE are required by the doctrine of judicial estoppel to make good on that assurance." Kalodner comments at 5.

There is absolutely no evidence that the 20-percent reserve will be insufficient to pay claimants. We have examined Kalodner's assertions and find them unsupported. Moreover, the 20-percent set aside is mandated by the following terms of the Settlement Agreement:

> OHA may reserve a reasonable portion of funds from each such proceeding to satisfy potentially provable claims of identifiable injured claimants who have not waived their claims, but such reserve *shall not exceed 20 percent* of the monies in such proceeding and amounts in excess of the reserve shall be distributed while awaiting completion of the first stage refund proceedings. The percentage of the reserve will be altered * * * periodically * * * to reflect the amount of reserve that is warranted and sufficient to provide adequate funding for eligible first-stage claims, and will be lowered as justified by claims experience as a consequence of this Agreement.

Settlement Agreement at IV.B.6, 6 Fed. Energy Guidelines ¶ 90,509 at 90,665 (emphasis added).

Thus the OHA may not set aside more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. The OHA may reduce the size of this reserve, but it may not raise the reserve above 20 percent of the funds received. *A. Torricone, Inc.*, 15 DOE ¶ 85,495 at 88,893 (1987). The remainder of the crude oil violation amounts must be distributed to the states and federal government prior to the completion of the refund claims process. As stated in the PD&O, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts subject to this determination in order to ensure that sufficient funds will be available for refunds to injured claimants. We will therefore adopt the procedures as proposed in the PD&O, and order the disbursement of 80 percent of the alleged crude oil violation amounts to the states and federal government.[3]

B. The Presumption of Injury for End-Users

The only matter addressed by the States in their comments is the use of a presumption of injury to allow end-users to meet their burden of proving injury. Of the many issues relating to the end-user presumption raised in the States' comments, two warrant further discussion. First, the States ask whether the presumption of injury is rebuttable. Second, the States request "clear guidelines as to what evidence is relevant or sufficient to rebut" the presumption. States' comments at 1.

1. The presumption of injury is rebuttable. We agree with the States that the presumption of injury for end-users is rebuttable, and have so indicated on numerous previous occasions. *See, e.g., Allerkamp*, 17 DOE at 88,172; *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). In *Allerkamp*, we discussed the presumption of injury and the burdens of proof as follows:

> The claimants' burden of proof is eased by the presumption. If an interested party submits evidence to rebut the presumption of injury, we must first determine whether the evidence submitted is relevant to the issue. If the evidence is relevant and sufficient to rebut the presumption, the claimant has the burden of coming forward with further evidence of injury. However, if we find the evidence submitted to rebut the presumption to be insufficient, a refund to the end-user can be approved, based on the weight of the presumption, without requiring the end-user to submit further evidence of injury.

17 DOE at 88,172–73

2. Evidence required to rebut the presumption of injury. In their comments, the States request "clear guidelines" concerning the evidence that the OHA considers "relevant and sufficient" to rebut the end-user presumption. States' comments at 1. As explained below, we cannot approve the States' request. Further "guidelines" are neither necessary nor appropriate in the context of this order establishing refund procedures, and they can be issued only in connection with individual refund claims.

The States wrongly claim that the end-user presumption is based only "on the need for efficient procedure." States' comments at 9. The end-user presumption was adopted first and foremost as an evidentiary tool so that parties injured by crude oil overcharges would have the opportunity to obtain some measure of restitution of those overcharges. As we previously noted, the DOE "has a duty to identify injured persons and, to the extent possible, to make direct refunds to them." *Torricone*, 15 DOE at 88,894. This duty arises in part from section 209 of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 (note), and the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4502(b). To fulfill this Congressional mandate and assure that restitution is achieved, the OHA must take into account the complexity of oil overcharge proceedings, as well as the difficulty in actually proving injury from crude oil overcharges, caused in part by the passage of time since the period of price controls and difficulties applicants may experience in locating records and relevant market data. *Torricone*, 15 DOE at 88,894. *See also Report to the United States District Court for the District of Kansas, In re: Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985) (the *Stripper Well Report*) (evidentiary hearing, during which the OHA determined the amount of crude oil overcharges absorbed by refiners as a class, resulted in a record of nearly 13,000 pages of written and oral testimony from 64 public and private entities). The Subpart V regulations reflect the DOE's awareness of these factors, and specifically authorize the use of presumptions for the evaluation of individual refund claims. 10 CFR 205.282(e).

If end-user claimants were routinely required to submit detailed evidence of injury in order to receive refunds for crude oil overcharges, a great majority of claimants would find that the refunds in question were not worth the time and cost involved in pursuing them. The result would be the complete frustration of the restitutionary purposes of these proceedings, since "virtually no end-users would receive restitution for the crude oil overcharages they experienced." *Id.* at 88,895. Accordingly, the presumption satisfies the important restitutionary policy objectives outlined above. Moreover, the States' challenge to the presumption was rejected by Judge Theis, who found the States' arguments unpersuasive and upheld this fundamental element of the OHA's crude oil refund process. *See In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. at 1323. The States may not relitigate those issues in this proceeding under the guise of seeking "clear guidelines" on how to rebut the end-user presumption.

The crude oil refund procedures have been extremely effective in making refunds available to many members of the overcharged community. To date,

[2] In its comments, Chevron noted a factual omission in the PD&O. The Chevron Consent Order, Number RGFE008A1Z, settled violations of the crude oil pricing regulations allegedly committed by Gulf Oil Corporation (Gulf), not Chevron. According to Chevron, it entered into this Consent Order after it had acquired Gulf. The PD&O failed to state that the Consent Order which was executed by Chevron does not actually involve any alleged crude oil violations by that firm.

[3] Mr. Kalodner also suggests in his comments that we add various amounts to the numerator of the volumetric formula in order to increase the size of refunds. These suggestions were previously considered and rejected in *Allerkamp*, 17 DOE at 88,174–175. Mr. Kalodner has presented no new arguments to justify a reconsideration of those issues in this determination.

the OHA has decided over 40,000 crude oil refund applications. Our decisions on individual crude oil refund applications hold that the presumption of injury is a sufficient basis for approving a refund unless an interested party submits relevant and sufficient evidence to the contrary concerning a particular applicant. *See, e.g., Royal Crown of Angelo, Inc.*, 17 DOE ¶85,734 at 89,398 (1988). If an objecting party submits sufficient evidence to rebut the presumption, however, the burden of going forward with the evidence shifts to the applicant, who must then present relevant information to support its Application for Refund. *See Christian Haaland A/S*, 17 DOE ¶85,439 at 88,865 (1988) (factual and legal issues raised by the States rebutted the presumption and shifted the burden of going forward with the evidence to the applicants); *Cook Construction Co.*, 18 DOE ¶—, No. RF272–2005 (December 1, 1988) (issues raised by the States concerning price escalator clauses in the applicant's contracts partially rebutted the presumption of injury for that applicant).

The States are aware of the type of evidence that is necessary to rebut the end-user presumption. They successfully presented such evidence in *Christian Haaland* and *Cook Construction*. The evidence required to rebut the presumption must be of sufficient weight to cast serious doubt upon the notion that the applicant was injured by crude oil overcharges. Generalized assertions or allegations concerning injury clearly will not satisfy this standard. *See, e.g., Chicago Transit Authority*, 17 DOE ¶85,223 at 88,440 (1988) (inadequate proof of the assertion that all governmental units passed through overcharges); *Gulf States Asphalt Co.*, 18 DOE ¶85,154 at 88,250 (1988) (broad statement that "almost every industry" was able to pass through some of its increased costs found insufficient to rebut the presumption). Industry-wide data that has no relationship to the individual applicant also will be insufficient. *Royal Crown*, 17 DOE at 89,398 (evidence of pass through of increased sugar costs irrelevant to determination of pass through of increased energy costs); *Airborne Express, Inc.*, 18 DOE ¶85,170 at 88,278 (1988) (evidence of cost pass through by the scheduled passenger airlines insufficient to rebut the injury presumption for all-cargo airlines); *Mid-Atlantic Coca-Cola Bottling Co.*, 18 DOE ¶85,141 at 88,227 (1988) (industry-wide data insufficient to rebut the presumption in industries where the energy needs of individual firms vary due to firm-specific operating factors). Moreover, evidence of sustained growth and profitability of a particular firm or industry will not in and of itself rebut the presumption. *Los Angeles Times*, 18 DOE ¶85,013 at 88,022–23 (1988).

These are equitable proceedings, and the facts and circumstances of each contested case must be carefully weighed and balanced to achieve restitution to injured claimants. Therefore, the adjudication of contested crude oil refund claims under the Subpart V regulations will continue on a case-by-case basis, as envisioned in Paragraph IV.B.1 of the Settlement Agreement.[4]

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $7.2 million in alleged crude oil violation amounts covered by this Decision, plus the $504,000 in interest which has accrued on that amount as of November 30, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted in section III.A, *supra*, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or the $1.54 million including interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.*, 15 DOE ¶85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have absorbed rather then passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased. *See Tarricone*, 15 DOE, at 88,893–96. The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE at 88,797. If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury.

Reseller and retailer claimants must submit detailed revidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed by the OHA in the *Stripper Well Report*. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascase Corp.*, 16 DOE ¶85,214 at 88,411 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶85,496 at 88,991 n.1 (1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts involved in this determination ($7.2 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This yields a volumetric refund amount of $0.0000035658 per gallon. Refund applications submitted pursuant to this Decision must be filed by October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶85,568 (1988).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.[5] The

[4] The States raise other, similar theoretical objections and questions concerning the crude oil refund process. These are inappropriate for the same reasons discussed in the text. Each crude oil refund application must be analyzed individually. Differences arise from various company-specific factors, including competitive environments, the effects of long-term contracts, and the mix of products produced by a particular firm.

[5] The total volumetric refund amount approved in all proceedings finalized prior to and including *Shell* Continued

volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Settlement Agreement in the Stripper Well Exemption Litigation);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $7.2 million in principal, plus $504,000 in interest, in alleged crude oil violation amounts subject to this Decision, or $6.16 million, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $6.16 million and transfer one-half of that amount, or $3.08 million, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states form their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remittted by New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company and Ladd Petroleum Corporation may now be filed.

(2) All applications submitted prusuant to paragraph (1) above must be filed no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5), and (6) below, all of the funds from the following subaccounts: New York Petroleum, Inc., Account No. 640C00247Y; Chevron U.S.A. Inc., Account No. RGFE006A1Z; Patton Oil Company, Account No. 810C00323Z; and Ladd Petroleum Corporation, Account No. 810C00341Z.

(4) The Director of Special Accounts and Payroll shall transfer $3,084,125.32 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from November 30, 1988 to the date of the transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $1,542,062.67 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from November 30, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

Date: December 28, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–501 Filed 1–9–89; 8:45 am]

BILLING CODE 6450–01–M

Oil was $0.0008442315. *Shell Oil*, 17 DOE at 88,406. When the volumetric approved in *World Oil co.* and this Decision is added to that amount, the current total per-gallon refund is $0.0008478963.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3504–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the

information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202–382–2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Pesticide Product Registration Fee (EPA ICR #1214). This is a new collection.

Abstract: Recent Amendments to the Federal Insecticide, Fungicide and Rodenticide Act require pesticide registrants to pay an annual fee for each pesticide registered with EPA. To aid in the collection of these fees, EPA will send a maintenance fee filing form (and instructions) to each registrant, which they must complete and return to the Agency by March 1.

Burden statement: Public reporting burden for this collection of information is estimated to average 1.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide product registrants.

Estimated no. of respondents: 5,300

Estimated total annual burden on respondents: 9,010 hours.

To obtain a copy of the ICR package contact Sandy Farmer on (202–382–2740).

Public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, must be received by January 23, 1989. Send comments to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460 and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503 (Telephone (202) 395–3084).

Date: January 3, 1989.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–421 Filed 1–9–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3503–8; Number SE 87–01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Colmac Energy, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 12, 1988 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 49–MW biomass fired power plant to be located on the Cabazon Indian Reservation near Mecca in Riverside County, California. The permit is subject to certain conditions, including an allowable emission rate for SO_2—12.0 lbs/hr or 20 ppm, TSP—7.5 lbs/hr or 0.010 gr/dscf, (3-hour average, corrected to 12% CO_2) CO—45.0 lbs/hr or 173 ppm, N O_x—30.0 lbs/hr or 70 ppm.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to:

Linda Barajas (A–3–1–), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: the use of an ammonia injection system for the control of NO_x emissions, a limestone injection system for the control of SO_2 emissions, a baghouse for the control of TSP emissions, and combustion controls for the control of CO emissions.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by March 13, 1989.

Date: December 29, 1988.

Kenneth Bigos,

Acting Director, Air Management Division, Region 9.

[FR Doc. 89–425 Filed 1–9–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3504–4]

Science Advisory Board, Sediment Criteria Subcommittee; Open Meeting

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on February 2 and 3, 1989. The meeting will begin at 9:00 a.m. and will be held in the Congressional Room of the Quality Inn Capitol Hill, at 415 New Jersey Avenue, NW., Washington, DC. The meeting will adjourn no later than 5:00 p.m. on Friday.

The Subcommittee has been charged with evaluating the scientific and technical foundations of methodologies available to the Agency for estimating sediment toxicity and the biological impact of inplace contaminated sediments. In addition, the Subcommittee has agreed to comment on the feasibility of utilizing each methodology to determine the extent of contamination and risk posed to the environment and human health. Research directions will also be identified for strengthening each methodology reviewed.

PURPOSE: The specific purpose of this meeting is to review the Equilibrium Partitioning (EP) Method. The technical aspects of this methodology will be presented by Agency staff for evaluation by the Subcommittee. In addition, the relationship between water quality criteria and the EP approach will be explained. The importance of contaminated sediment issues to Superfund activities will be discussed, and a Case Study will be described by EPA Region 1 staff. Finally, the potential for further development and application of the EP method will be explored, including assessment and application to metal contaminations.

FOR FURTHER INFORMATION: This meeting will be open to the public. Any member of the public who wishes to present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A–101 F) Science Advisory Board, U.S. EPA, 401 M Street, SW., Washington, DC. Telephone (202) 382–2552 or FTS–8–382–2552. Written comments will be accepted and fifteen copies can be sent to Ms. Kurtz at the address above. Persons interested in making brief oral statements before the Subcommittee must contact Ms. Kurtz no later than January 26, 1989 to be assured of space on the agenda. Oral presentations should be supplemented by a written statement for the record, which may be submitted (15 copies) to Ms. Kurtz at the time of the meeting for distribution to members of the Subcommittee. Seating at the meeting will be limited and will be on a first come basis.

Donald G. Barnes,

Director, Science Advisory Board.

Dated: January 4, 1989.

[FR Doc. 89–426 Filed 1–9–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3504–5]

Science Advisory Board, Executive Committee Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet on January 30 from 9:00 a.m. to 5:00 p.m. and on January 31 from 9:00 a.m. to 12:00 noon in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to review proposed SAB reports on: Modeling Resolution; Radon Measurement; and Measurement of Lead in Drinking Water.

The Committee will be briefed by the Agency on: the EPA budgeting process and its implications for SAB operations; developments in risk assessment associated with the EPA Workshop on Cancer Guidelines; and an update on the Agency's approach to "adversity of effect".

The Committee will discuss SAB followup to modeling resolution: a discussion on the report on Acid Aerosol Health Effects; recommendations for Future Research on Acid Aerosols and a report from the Indoor Air Quality/Total Human Exposure Committee on the review of the EPA Indoor Air Quality Implementation Plan; review of CASAC actions on Ozone Standards and Forest-Related Research; review of Products of Incomplete Combustion of Hazardous Waste; and review of Agency reports to Congress on the Effects of Global Climate Change.

Committee members will brief the Executive Committee on activities of the Drinking Water Metals Subcommittee; Lead Steering Committee; Subcommittee on Halogenated Organic Solvents; Exposure Measurements Guidelines Review; Sediment Criteria Subcommittee; and Research Strategies Advisory Committee.

There will be a discussion of an ORD request to review criteria for personnel advancement to higher grades. The Advancement Criteria Subcommittee will conduct an initial meeting on the issue immediately following the main portion of the Executive Committee Meeting on January 31.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202–382–4126 by January 23, 1989.

Dated: January 3, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–427 Filed 1–9–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of Current OMB Clearance: August 31, 1990.

Frequency of Response: Quarterly.

Respondents: Insured state nonmember commercial and savings banks.

Number of Respondents: 8301.

Number of Responses Per Respondent: 4.

Total Annual Responses: 33,204.

Average Number of Hours Per Response: 20.67.

Total Annual Burden Hours: 686,369.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contract: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before February 9, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the FFIEC Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial and savings banks. The changes affect several Call Report schedules and are being made primarily to aid the banking agencies in identifying and monitoring risks for which adequate data have not been available. These risks emanate in part from the ongoing expansion of bank powers, especially at the state level, which allow banks to make investments that were previously not permissible. Memorandum items covering an area of off-balance sheet exposure for which no data are currently collected would be added at this time to fill the void prior to the anticipated adoption of other refinements to off-balance sheet item reporting in conjunction with risk-based capital. Another change relates to information needed to measure the assessment base from which all banks calculate their deposit insurance assessments. The proposed revisions would, if approved, the effective as of the March 31, 1989 report date. These changes would apply to all four sets of report forms (FFIEC 031, 032, 033, and 034).

Dated: December 30, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–475 Filed 1–9–89; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

Power of Receiver and Conduct of Receiverships; Repurchase Agreements; Western Savings and Loan Association

Date: December 29, 1988.

AGENCY: Federal Home Loan Bank.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing Board Resolution No. 88–572 to clarify its position concerning the protections afforded to those dealing with insured savings and loan association in "repos" of government and mortgage backed securities. With particular reference to Western Savings and Loan Association, Phoenix, Arizona ("Western") which has engaged in substantial volume of

such "repo" transaction, the Board wishes to make it clear that the protections given to securities dealers and others in the "repo" market by amendments to the Bankruptcy Code would also be afforded to securities dealers and others engaged in repo transactions with Western.

EFFECTIVE DATE: December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377–6428; or Debra Buie, Attorney, Office of General Counsel, (202) 377–6851; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Whereas, The Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for Western Savings and Loan Association, a Arizona chartered institution ("Western"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to Western, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, the Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows:

1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to Western shall be conducted solely by the FSLIC (and not the Arizona Superintendent of Banks) as receiver, conservator or similar official ("Receiver") under federal law and regulations, Board Resolution No. 84–572, and these resolutions.

2. The Receiver will perform all of Western's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Board and the Receiver shall use their best efforts to cause the Federal Home Loan Mortgage Corporation and/or the Federal Home Loan Banks to make necessary purchases from, or loans, to, the Receiver, so as to enable the Receiver to perform the obligations assumed or incurred under Repos and New Repos to the extent necessary to maintain an orderly market in Repo Assets.

4. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

5. In any termination of the receivership of Western or disposition of Western's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84–572 and these resolutions.

6. Notwithstanding any provision of law, regulation, or these resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

7. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

8. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

9. In connection with a Repo or New Repo counterparty's exercise of remedies upon failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

10. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; provided, however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

11. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fradulent conveyance made by Western, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to Western in exchange for such transfer and provided further that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

12. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of Western's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; provided, however, that a liquidation of Repo Assets at any point during such period or after a linger period of time shall not in and of itself constitute a commercially unreasonable time.

13. In connection with any Repo or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right or notice and purchase (12 CFR 563.B–2) and the contractual language

required thereby, if applicable to any Repo Assets.

14. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84–572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 3, 5, 6, 7, 8, 9, 11 and 13, the proviso to paragraph 10, and the second sentence of paragraph 12 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on the appointment of the Receiver for Western.

15. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolutions No. 84–572 and these resolutions in continuing to renew and enter into Repos with Western, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84–572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days and any such amendment or rescission shall operate only prospectively.

"Cross Default" means, as to any counterparty to a Repo or New Repos, the failure by Western or the Receiver to make any payment of funds or delivery of additional Repo Asset to any other Repo or New Repo counterparty when due, (b) the failure by Western or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity, "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), whole loan mortgages and interests therein.

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by Western (or the Receiver, in the case of New Repos) pursuant to which Western or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (to the extent that Repo Assets are securities that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to retransfer such Repo Assets to Western or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–405 Filed 1–9–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Advisory Committees; Meetings for the Month of February

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1989:

Name: Health Services Development Grants Review Subcommittee.

Date and Time: February 22–24, 1989, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Montrose Room, 1750 Rockville Pike, Rockville, Maryland. Open February 23, 8:30 a.m. to 9:00 a.m. Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of February 23 from 8:30 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Gerald E. Calderone, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: February 8–10, 1989, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland. Open February 8, 8:00 a.m. to 8:30 a.m. and February 9, 8:00 a.m. to 8:30 a.m. Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting on February 8 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed session, the Subcommittee will be reviewing National Research Service Award applications. The open session fo the meeting on February 9 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act.

Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. B. William Lohr, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Care Technology Study Section.

Date and Time: February 13–14, 1989, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland. Open February 13, 8:30 a.m. to 9:30 a.m. Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care tehnologies and procedures, including these in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 8:30 a.m. to 9:30 a.m. on February 13 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Director, NCHSR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Date: December 28, 1988.

Norman Weissman,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 89–446 Filed 1–9–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1987

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1987 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1987 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1987, and was submitted to the Congress on November 28, 1988. By this notice, the public is informed that the report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn B. Starnes, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (202) 632–2202.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specifically the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: December 22, 1988.

Steve Robinson,

Acting Director.

[FR Doc. 89–470 Filed 1–9–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 31, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 25, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Covington County

Andalusia Commercial Historic District, Roughly bounded by Coffee St., Seaboard RR tracks, and S. Three Notch St., Andalusia, 88003238

Bank of Andalusia, 29 S. Court Sq., Andalusia, 88003239

Covington County Courthouse and Jail, 101 N. Court Sq., Andalusia, 88003240

Jefferson County

Phelan Park Historic District, Roughly bounded by 13th Ave. S., 14th St. S., 16th Ave. S., and 13th Pl. S., Birmingham, 88003241

Perry County

Phillips Memorial Auditorium, Lincoln Ave. and Lee St., Marion, 88003243

Tuscaloosa County

Downtown Tuscaloosa Historic District (Boundary Increase), Roughly bounded by University Blvd., 21st Ave., 6th St. and 22nd Ave., Tuscaloosa, 88003242

ARIZONA

Maricopa County

Maricopa County Courthouse, 125 W. Washington St., Phoenix, 88003237

ILLINOIS

Cook County

Northwestern Terra Cotta Company Building, 1701–1711 W. Terra Cotta Pl., Chicago, 88003245

McHenry County

Covell, Lucein Boneparte, House, 5805 Broadway, Richmond, 88003246

IOWA

Boone County

First National Bank, 8th and Story Sts., Boone, 88003232

Herman, John H., House, 711 S. Story St., Boone, 88003233

KENTUCKY

Boone County

Allen, B. M., House (Boone County MRA), 11301 Riddles Run Rd., Union vicinity, 88003290

Aylor, A. J., House (Boone County MRA), 2162 Petersburg Rd., Hebron, 88003275

Barger, Donald, House (Boone County MRA), 2972 Front St., Petersburg, 88003259

Belleview Baptist Church (Boone County MRA), 6658 Fifth St., Belleview, 88003248

Belleview Post Office (Boone County MRA), 6256 Main St., Belleview, 88003250

Big Bone Methodist Church (Boone County MRA), 3435 Beaver Rd., Union vicinity, 88003287

Blankenbeker, Clinton, House (Boone County MRA), 7414 US 42, Florence, 88003302

Boone County Distillery Cooperage (Boone County MRA), Mill and First Sts., Petersburg, 88003255

Boone County Distillery Superintendant's House and Guest House (Boone County MRA), 3073 Front St., Petersburg, 88003256

Botts House (Boone County MRA), 4752 Petersburg Rd., Petersburg vicinity, 88003269

Calvert, B. C., House (Boone County MRA), 10246 Lower River Rd., Union vicinity, 88003292

Chambers, A. E., Octagonal Barn (Boone County MRA), 5009 Petersburg Rd., Petersburg vicinity, 88003268

Chandler House (Boone County MRA), 167 S. Main St., Walton, 88003305

Christian Meeting House (Boone County MRA), 6561 Tanner St., Petersburg, 88003262

Clore House (Boone County MRA), 6001 Burlington Pike, Belleview vicinity, 88003252

Clore, Jonas, House (Boone County MRA), 6256 Main St., Belleview, 88003249

Collins, Capt. N., House District (Boone County MRA), 6255 Aurora Ferry Rd., Petersburg vicinity, 88003253

Corn, Allie, House (Boone County MRA), 2807 Graves Rd., Hebron vicinity, 88003271

Crouch, Dr. M. J., House (Boone County MRA), 2063 Hathaway Rd., Union vicinity, 88003307

Delehunty, John, House (Boone County MRA), 212 Main St., Florence, 88003300

Delph, Sam, House (Boone County MRA), 4633 Garrison Creek Rd., Petersburg vicinity, 88003270

Delph, W. T., House (Boone County MRA), 6180 Rogers Ln., Burlington, 88003277

Dew, Daniel, House (Boone County MRA), 2950 Third St., Petersburg, 88003264

Early House (Boone County MRA), 2970 First St., Petersburg, 88003297

East Bend Church (Boone County MRA), 12341 Lower River Rd., Union vicinity, 88003291

Edwards House (Boone County MRA), 143 S. Main St., Walton, 88003304

Farmers Bank of Petersburg (Boone County MRA), 3010 First St., Petersburg, 88003261

Flick House (Boone County MRA), 6282 Burlington Pike, Belleview, 88003251

Florence Fire Station (Boone County MRA), Main St., Florence, 88003301

Florence Hotel (Boone County MRA), 262 Main St., Florence, 88003280

Gaines, Benjamin R., Farm (Boone County MRA), 3895 Idlewild Rd., Burlingotn vicinity, 88003299

Gordon's Hall (Boone County MRA), 6561 Market St., Petersburg, 88003260

Hamilton School (Boone County MRA), 4837 Beaver Rd., Union vicinity, 88003308

Hebron Deposit Bank (Boone County MRA), 1871 Petersburg Rd., 1871 Petersburg Rd., Hebron, 88003274

Hicks, Harvey A., House (Boone County MRA), 1325 Hicks Pike, Walton vicinity, 88003281

Hind, Samuel, House (Boone County MRA), 417 Stephenson Mill Rd., Walton vicinity, 88003278

Hopeful Lutheran Church (Boone County MRA), 6431 Hopeful Rd., Florence vicinity, 88003279

Horton, Agnes, House (Boone County MRA), 2901 Second St., Petersburg, 88003263

Hudson House (Boone County MRA), 12328 Gaines Way, Walton vicinity, 88003283

Huey, D. W., House (Boone County MRA), 7812 East Bend Rd., Burlington vicinity, 88003294

Hughes House (Boone County MRA), 771 Chambers Rd., Walton vicinity, 88003282

Johnson, Cave, House (Boone County MRA), 8368 River Rd., Hebron vicinity, 88003273

Kirtley, Rev. Robert E, House (Boone County MRA), 8545 River Rd., Hebron vicinity, 88003273

Lassing, Morris, House (Boone County MRA), 10515 US 42, Union vicinity, 88003285

Loder House (Boone County MRA), 3028 Front St., Petersburg, 88003257

Mayhugh, John Clifton, House (Boone County MRA), 113 N. Maint St., Walton, 88003303

Miller, John C., House (Boone County MRA), 3700 Beaver Rd., Union vicinity, 88003288

Miller, M., House (Boone County MRA), 3805 Beaver Rd., Union vicinity, 88003289

Norman, L.C., House (Boone County MRA), 1966 Mt. Zion Rd., Union, 88003286

Parker, Richard, House (Boone County MRA), 4312 Belleview Rd., Petersburg vicinity, 88003296

Peters House (Boone County MRA), 2973 Third St., Petersburg, 88003298

Prospect Farm (Boone County MRA), 6279 Petersburg Rd., Petersburg vicinity, 88003285

Rabbit Hash General Store (Boone County MRA), 10021 Lower River Rd., McVille vicinity, 88003293

Ransom House (Boone County MRA), 1842 Messmer Rd., Crittenden vicinity, 88003284

Rogers, James, House (Boone County MRA), 6259 Sycamore St., Belleview, 88003295

Ryle's Super Market and Oddfellows Building (Boone County MRA), 6571 Tanner St., Petersburg, 88003258

Terrill, George H., House (Boone County MRA), 6002 Petersburg Rd., Petersburg vicinity, 88003286

Uitz, Ephraim, House (Boone County MRA), 5206 Bullittsville Rd., Burlington vicinity, 88003276

Wallace House (Boone County MRA), 67 S. Main St., Walton, 88003306

Wingate-Gaines Farm District (Boone County MRA), 5225 Whitton Rd., Petersburg vicinity, 88003287

Madison County

Blythewood (Madison County MRA), Jct. of Peytontown and Duncanon Rds., Richmond vicinity, 88003330

Campbell House (Madison County MRA), KY 52 near Paint Lick, Paint Lick vicinity, 88003334

Chenault House (Madison County MRA), N of Richmond off I–75, Richmond vicinity, 88003339

Clay, Brutus and Pattie Field, House (Madison County MRA), Lexington Rd. W of Richmond, Richmond vicinity, 88003341

Cobb, Whitney, House (Madison County MRA), KY 388, Richmond vicinity, 88003312

Covington House (Madison County MRA), SW of Richmond on KY 595, Richmond vicinity, 88003329

Elk Garden (Madison County MRA), S of Kirksville off KY 595, Kirksville vicinity, 88003326

Farmers Bank of Kirksville (Madison County MRA), Near jct. of KY 595 and CR 1295, Kirksville, 88003324

Griggs House (Madison County MRA), N of Waco, Waco vicinity, 88003316

Hagan House (Madison County MRA), Hagans Mill Rd., Richmond vicinity, 88003337

Hakins—Stone—Hagan—Curtis House (Madison County MRA), 1875 Curtis Pike, Kirksville vicinity, 88003327

Homelands (Madison County MRA), NW of Richmond on US 25, Richmond vicinity, 88003332

Karr House (Madison County MRA), Lost Fork Rd., Richmond vicinity, 88003313

Kirksville Christian church (Madison County MRA), KY 595, Kirksville, 88003325

Mason House (Madison County MRA), S of Richmond off Meneleus Pike, Richmond vicinity, 88003320

Moberly House (Madison County MRA), 0.3 N of Old KY 52, Moberly vicinity, 88003315

Morrison House (Madison County MRA), E of Kirksville off KY 595, Kirksville vicinity, 88003340

Mt. Pleasant Christian Church (Madison County MRA), N of Richmond on US 25, Richmond vicinity, 88003331

Mt. Zion Christian Church (Madison County MRA), US 421 S of jct. with US 25, Richmond vicinity, 88003316

Rolling Meadows (Madison County MRA), KY 595 N of Round Hill, Round Hill vicinity, 88003321

Shearer Store (Madison County MRA), KY 1936 at Union City, Richmond vicinity, 88003314

Simmons House (Madison County MRA), Arbuckle Lane off CR 1295, Richmond vicinity, 88003323
Stephenson House (Madison County MRA), N of Round Hill on KY 595, Round Hill vicinity, 88003322
Tates Creek Baptist Church (Madison County MRA), KY 627/Boonesborough Rd., Richmond vicinity, 88003333
Taylor House (Madison County MRA), N of Baldwin, Baldwin vicinity, 88003336
Tevis House (Madison County MRA), KY 627/Boonesborough Rd., Richmond vicinity, 88003335
Turner House (Madison County MRA), SE of Richmond on Curtis Pike, Richmond vicinity, 88003338
Turner—Fitzpatrick House (Madison County MRA), Off Mule Shed Rd., Richmond vicinity, 88003328
Viney Fork Baptist Church (Madison County MRA), Jct. of CR 499 and 374, Speedwell vicinity, 88003317
Walker, William, House (Madison County MRA), Duncannon Rd., Richmond vicinity, 88003319

Mercer County

Adams House (Mercer County MRA), Van Arsdell Pike, Salvisa vicinity, 88003357
Aspen Hall (Mercer County MRA), 558 Aspen Hall Dr., Harrodsburg, 88003372
Baldin House (Mercer County MRA), S of Ebeneezer on Ebeneezer Rd., Ebeneezer vicinity, 88003349
Beaumont Avenue Residential District (Mercer County MRA), 538—336 Beaumont Ave., Harrodsburg, 88003359
Boise House (Mercer County MRA), Bohon Rd. E. of Salt River, Harrodsburg vicinity, 88003356
Bonta House (Mercer County MRA), NE of Danville on US 127, Danville vicinity, 88003354
Bowman, Col. John, House (Mercer County MRA), Kennedy Bridge Rd., Harrodsburg vicinity, 88003353
Burford Hill (Mercer County MRA), Greenville St., Harrodsburg vicinity, 88003367
Burris House (Mercer County MRA), S of Kirkwood Rd., Salvisa vicinity, 88003362
Cunningham House (Mercer County MRA), W of RR tracks in Bondville, Salvisa vicinity, 88003361
Curry, Daniel, House (Mercer County MRA), 414 N. Main St., Harrodsburg vicinity, 88003363
Dunn, Peter, House (Mercer County MRA), S of McAfee off Old US 127, McAfee vicinity, 88003358
Elms, The (Mercer County MRA), 354 E. Lexington, Harrodsburg vicinity, 88003379
Greystone (Mercer County MRA), 616 Beaumont Ave., Harrodsburg vicinity, 88003382
Critton, Floyd, House (Mercer County MRA), Bondville Rd. W of Salt River, Salvisa vicinity, 88003363
Matheny—Taylor House (Mercer County MRA), Poplar and College Sts., Harrodsburg, 88003378
McAfee Farm Historic District (Mercer County MRA), S of McAfee on Old Lousiville Rd., McAfee vicinity, 88003360
McGee House (Mercer County MRA), Jackson Rd., Harrodsburg vicinity, 88003364
Mercer County Jailer's Residence (Mercer County MRA), 320 S. Chiles St., Harrodsburg vicinity, 88003375
Moreland House (Mercer County MRA), Off US 68, Harrodsburg, 88003371
Morgan, Joseph, House (Mercer County MRA), Moberly Rd., Harrodsburg vicinity, 88003365
Passmore, Benjamin, House (Mercer County MRA), 111 W. Broadway, Harrodsburg, 88003376
Passmore, Benjamin, Hotel (Mercer County MRA), N. Main St. and Broadway, Harrodsburg, 88003374
Passmore, George, House (Mercer County MRA), Poplar and Greenville Sts., Harrodsburg, 88003379
Pioneer Memorial State Park (Mercer County MRA), College Ave. between Lexington and Poplars Sts., Harrodsburg, 88003377
Price, Dr. A. D., House (Mercer County MRA), 115 W. Poplar St., Harrodsburg, 88003373
Roach—Ison House (Mercer County MRA), NE of Harrodsburg off US 68, Harrodsburg vicinity, 88003352
Smith—Williams House (Mercer County MRA), S of Cane Run Pike, Burgin vicinity 88003355
St. Peters AME Church (Mercer County MRA), Lexington St. and US 127, Harrodsburg, 88003381
Sutfield House (Mercer County MRA), 304 N. Main St., Harrodsburg, 88003368
Tobin House (Mercer County MRA), 1450 Curry Pike, Harrodsburg vicinity, 88003350
US Post Office—Harrodsburg (Mercer County MRA), 105 N. Main St., Harrodsburg, 88003380
Wildwood (Mercer County MRA), 388 Curry Pike, Harrodsburg vicinity, 88003366
Williams House (Mercer County MRA), Warwick Rd., Harrodsburg vicinity, 88003351

Washington County

Barber, John R., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003423
Beech Fork Bridge, Mackville Road (Washington County MRA), E of Springfield on KY 152, Springfield vicinity, 88003429
Beechfork Presbyterian Church (Washington County MRA), N of Springfield off KY 555, Springfield vicinity, 88003406
Berry, Richard, Jr., House (Washington County MRA), N of Springfield on Hwy. 438, Springfield vicinity, 88003400
Blackwell, William, House (Washington County MRA), 136 Lebanon Hill, Springfield, 88003401
Cartwright Creek Bridge (Washington County MRA), W of Springfield on Booker Rd., Springfield vicinity, 88003425
Clements House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003401
Cocanougher House (Washington County MRA), Off US 150, Mackville vicinity, 88003413
Conner, George, House (Washington County MRA), Off US 150, Fredericktown, 88003402
Cusick, Ed, House (Washington County MRA), W of Springfield opn Bearwallow Rd., Springfield vicinity, 88003428
Dog Run Trestle (Washington County MRA), W of Springfield off US 150, Springfield vicinity, 88003418
Duncan House (Washington County MRA), 206 Lincoln Park Rd., Springfield, 88003393
Edelen House (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003433
Farmer's Bank of Mackville (Washington County MRA), KY 152, Mackville, 88003431
Fields' House (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003422
Glenn Cottage Tract (Washington County MRA), KY 55, Maud vicinity, 88003416
Gregory—Barlow Place (Washington County MRA), S of Mooresville off KY 55, Mooresville vicinity, 88003396
Hamilton, Thomas H., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003403
Holy Rosary Church (Washington County MRA), Hwy. 1183, Springfield vicinity, 88003409
Johnson's Chapel AME Church (Washington County MRA), E. High St., Springfield, 88003396
Kendrick—Crooke House (Washington County MRA), Hog Run, Booker Station, Maud vicinity, 88003417
Kendrick—Tucker—Barber House (Washington County MRA), Off US 150, Mooresville vicinity, 88003421
Litsey, John, House (Washington County MRA), N of Springfield off KY 438, Springfield vicinity, 88003404
Long Lick Creek Bridge (Washington County MRA), Hardesty-Polin Rd. over Long Lick Creek, Willisburg vicinity, 88003414
Lyddan, Pat, House (Washington County MRA), S of Mooresville on KY 55, Mooreville vicinity, 88003420
Mayes, Archibald Scott, House (Washington County MRA), E of Springfield off US 150, Springfield vicinity, 88003405
McElroy, T. I., House (Washington County MRA), E of Springfield on US 150, Springfield vicinity, 88003397
McElroy, Wilson, House (Washington County MRA), 321 E. High St., Springfield, 88003392
Parrot House (Washington County MRA), E of Springfield on KY 152, Springfield vicinity, 88003412
Pile, Benjanin, House (Washington County MRA), Off KY 55, Springfield vicinity 88003407
Ray—Wakefield House (Washington County MRA), Off KY 55, Maud vicinity, 88003415
Road Run School (Washington County MRA), W of Springfield off KY 152, Springfield vicinity, 88003424
Simms—Edelen House (Washington County MRA), SE of Springfield, Springfield vicinity, 88003427
Simms-Mattingly House (Washington County MRA), E of Springfield off KY 152, Springfield vicinity, 88003428
Simmstown (Washington County MRA), S of Springfield on Rineltown-Simmstown Rd., Springfield vicinity, 88003408
Smith, Levi J., House (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003411
Springfield Baptist Church (Washington County MRA), Lincoln Park Rd., Springfield, 88003394

Springfield Graded School (Washington County MRA), Mackville and Perry Rds., Springfield, 88003389
Springfield Historic Commercial District (Washington County MRA), Roughly bounded by McCord, Walnut, Ballard and Doctor Sts., Springfield, 88003434
St. Catherine of Sienna Convent (Washington County MRA), W of Springfield on US 150, Springfield vicinity, 88003395
St. Dominic's Catholic Church (Washington County MRA), Main St., Springfield, 88003388
Tatham Springs (Washington County MRA), M of Willisburg on Hwy. 1796, Willisburg vicinity, 88003399
Thomas, John, House (Washington County MRA), S of Mooresville on KY 55, Mooresville vicinity, 88003419
Thompson, Dr., House (Washington County MRA), E of Springfield on Mackville Rd., Springfield vicinity, 88003430
Turner, S.F., and Company Steam Flouring and Grist Mill (Washington County MRA), 400 W. Main St., Springfield, 88003390
Walnut Street Historic District (Washington County MRA), 200—600 blocks of Walnut St., Springfield, 88003435
Williams, Thomas H., House (Washington County MRA), Hardesty Rd., Springfield vicinity, 88003410
Willisburg Central Bank and Post Office (Washington County MRA), KY 53, Willisburg, 88003432

Woodford County

Black, Charles, Farm (Pisgah Area of Woodford County MPS), Faywood Rd., Versailles vicinity, 88003347
Buck Pond (Pisgah Area of Woodford County MPS), Paynes Mill Rd., Versailles vicinity, 88003344
Calmes, Marquis, Tomb (Pisgah Area of Woodford County MPS), Paynes Mill Rd., Versailles vicinity, 88003346
Harris, A.T., House (Pisgah Area of Woodford County MPS), Big Sink Pike, Versailles vicinity, 88003345
Pisgah Rural Historic District (Pisgah Area of Woodford County MPS), Area NE of Versailles roughly bounded by S. Elkhorn Creek, US 60, and Big Sink Rd., Versailles vicinity, 88003348

MICHIGAN

Oceana County

Gay, Jared H., House, Rt. 2, 128th Ave., Crystal Valley, 88003235

St. Joseph County

US Government Land Office Building, Old, 113 W. Chicago Rd., White Pigeon, 88003234

Wayne County

Tiger Stadium, 2121 Trumbull Ave., Detroit, 88003236

MISSOURI

St. Louis County

Larimore, Wilson, House, 11510 Larimore Rd., Bellefontiane Neighbors, 88003244

MONTANA

Ravalli County

Lost Horse Fireman's Cabin (24RA197), Off Lost Horse Rd. near Bear Creek Pass, Darby vicinity, 88003437

NORTH CAROLINA

Carteret County

Cape Lookout Coast Guard Station, Cape Lookout, Beaufort vicinity, 88003436

OHIO

Summit County

East Market Street Church of Christ, 864 E. Market St., Akron, 88003440

TENNESSEE

Maury County

Ashwood Rural Historic District, Spans US 43 between Columbia and Mount Pleasant, Columbia vicinity, 88003247

UTAH

Cache County

Wellsville Relief Society Meeting House (Mormon Church Buildings in Utah, 1847—1936 MPS), 67 S. Center, Wellsville, 88003439

Weber County

Weber Stake Relief Society Building (Mormon Church Buildings in Utah, 1847—1936 MPS), 2148 Grant Ave., Ogden, 88003438

WASHINGTON

Chelan County

Bridge Creek Cabin—Ranger Station (North Cascades National Park Service Complex MPS), Bridge Creek Campground off Stehekin Valley Rd., Stehekin vicinity, 88003458
Bridge Creek Shelter (North Cascades National Park Service Complex MPS), Bridge Creek Campground off Stehekin Valley Rd., Stehekin vicinity, 88003445
Buckner Homestead Historic Distict (North Cascades National Park Service Complex MPS), Stehekin Valley Rd., Stehekin, 88003441
Flick Creek Shetler (North Cascades National Park Service Complex MPS), E side of Lake Chelan S of Flick Creek, Stehekin vicinity, 88003444
Golden West Lodge Historic District (North Cascades National Park Service Complex MPS), Stehekin Landing, Stehekin, 88003442
High Bridge Ranger Station Historic District (North Cascades National Park Service Complex MPS), Stehekin Valley Rd., Stehekin, 88003443
High Bridge Shelter (North Cascades National Park Service Complex MPS), High Bridge Campground off Stehekin Valley Rd., Stehekin vicinity, 88003461
Miller, George, House (North Cascades National Park Service Complex MPS), E side Lake Chelan on Stehekin Valley Rd., Stehekin, 88003464
Purple Point—Stehekin Ranger Station House (North Cascades National Park Service Complex MPS), E side of Lake Chelan, Stehekin, 88003460
Sulphide—Frisco Cabin (North Cascades National Park Service Complex MPS), Bridge Creek Trail, 9 mi. N of Stehekin Valley Rd., Stehekin vicinity, 88003459

Skagit County

Backus—Marblemount Ranger Station House No. 1009 (North Cascades National Park Service Complex MPS), Ranger Station Rd., 1 mi. N of WA 20, Marblemount, 88003462
Backus—Marblemount Ranger Station House No. 1010 (North Cascades National Park Service Complex MPS), Ranger Station Rd., 1 mi. N of WA 20, Marblemount, 88003463
Gilbert's Cabin (North Cascades National Park Service MPS), Cascade River Rd. W of Gilbert Creek, Stehekin vicinity, 88003453
Rock Cabin (North Cascades National Park Service Complex MPS), Fisher Creek Trail S of Diablo Lake, Diablo vicinity, 88003457
Swamp—Meadow Cabin West (North Cascades National Park Service Complex MPS), Thunder Creek Trail S of Diablo Lake, Diablo vicinity, 88003455
Swamp—Meadow Cabin West (North Cascades National Park Service Complex MPS), Thunder Creek Trail S of Diablo Lake, Diablo vicinity, 88003456

Whatcom County

Beaver Pass Shelter (North Cascades National Park Service Complex MPS), Beaver Pass, 14 mi. W of Ross Lake, Diablo vicinity, 88003448
Copper Mountain Fire Lookout (North Cascades National Park Service Complex MPS), On Copper Mountain, 10 mi. E of Wannegan Campground, Newhalen vicinity, 88003446
Deer Lick Cabin (North Cascades National Park Service Complex MPS), E of Ross Lake on Lightening Creek Trail, S. of Three Fools Trial, Hozoneen vicinity, 88003452
Desolation Peak Lookout (North Cascades National Park Service Complex MPS), On Desolation Peak E of Ross Lake, 6 mi. S of Canadian border, Hozoneen vicinity, 88003451
Fish and Game—Hozoneen Cabin (North Cascades National Park Service Complex MPS), Hozoneen Lake—Lightening Creek trailhead on E side of Ross Lake, Hozoneen, 88003454
International Boundary US—Canada (North Cascades National Park Service Complex MPS), Along US—Canada border, Hozoneen vicinity, 88003450
Perry Creek Shelter (North Cascades National Park Service Complex MPS), On Little Beaver Trail, 5 mi. W of Ross Lake, Hozoneen vicinity, 88003447
Sourdough Mountain Lookout (North Cascades National Park Service Complex MPS), On Sourdough Mountain, 4 Mi. NE of Diablo, Diablo vicinity, 88003449

WISCONSIN

Grant County

Hazel Green Town Hall, 2130 N. Main St., Hazel Green, 88003231

The following property is also being considered for listing in the National Register:

BEST COPY AVAILABLE

CONNECTICUT

New Haven County

River Street Historic District, Roughly bounded by Chapel St., Blatchley Ave., New Haven Harbor, and James St. New Haven 88003213

[FR Doc. 89-441 Filed 1-9-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 256X)]

CSX Transportation, Inc.; Abandonment Exemption; in Levy and Marion Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 5.87 miles of rail line in Levy and Marion Countries, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 9, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 20, 1989; petitions to stay must be filed by January 25, 1989; and petitions for reconsideration must be filed by February 6, 1989. Requests for a public use condition must be January 20, 1989.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 256X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washinton, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: December 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley and Phillips. Commissioner Simmons commented with a separate expression. Commissioner Lamboley concurred in the result with a commenting separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-431 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31383]

Soo Line Railroad Co.; Trackage Rights Exemption; CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo) over the following lines: (1) A 4.5-mile line of railroad owned by CSXT and its wholly owned subsidiary, Baltimore & Ohio Chicago Terminal Railroad Company (BOCT), between BOCT milepost 15.2 at Blue Island Junction, IL and BOCT milepost 10.7 at Dolton Junction, IL; (2) a 85.7-mile line of railroad, jointly owned by CSXT and Missouri Pacific Railroad Company, from milepost ZA 16.92 at Dolton Junction, IL to milepost ZA 82.6 at Woodland Junction, IL; and (3) a 99.6-mile CSXT line, from milepost ZA 82.6 at Woodland Junction, IL to milepost ZA 182.1 at Spring Hill, IN interlocking in Terre Haute, IN. In addition, CSXT has agreed to grant Soo the right to enter and exit these rights at milepost ZA 16.92 at Dolton Junction, IL, to enable Soo to use its pre-existing trackage rights via the Indiana Harbor Belt Railroad between Blue Island Junction and Dolton Junction as required by termina: traffic conditions. The trackage rights became effective on or after December 23, 1988.

Any comments must be filed with the Commission and served on: Larry D. Starnes, Soo Line Railroad Company, Soo Line Building, 105 South 5th Street, Minneapolis, MN 55042 and Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 4, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-430 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 53X)]

Notice of Exemption; Norfolk and Western Railway Co.—Abandonment Exemption—Huron and Erie Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 8.3-mile line of railroad between milepost HN-2.3 near Mittingers and milepost HN-10.6 near Shinrock, in Huron and Erie Counties, OH, respectively.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 9, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 20, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, (804) 629-2844.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 13, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-341 Filed 1-9-89; 8:45 am]

BILLING CODE 7035-01-M

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[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environment concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Continued

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting Advisory Policy Board (APB) Uniform Crime Reporting (UCR)

The UCR APB will meet on February 14-15, 1989, from 9 a.m. until 5 p.m. and 9 a.m. until 12 noon, respectively, at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22314.

The major topic of discussion will be organizational in nature, since this is the first meeting of the UCR APB. Work will be conducted in writing the Bylaws for the APB.

The meeting will be open to the public with approximately 25 seats available on a first-come, first-served basis. Any member of the public may file a written statement with the APB before or after the meeting. Anyone wishing to address a session of the meeting should notify the Committee Management Liaison Officer, Mr. J. Harper Wilson, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain their name, corporate or Government designation, and consumer affiliation, along with the capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. J. Harper Wilson, Committee Management Liaison Officer, Office of Congressional and Public Affairs, Federal Bureau of Investigation, Washington, DC 20535, telephone number (202) 324-2614.

Dated: January 5, 1989.

William S. Sessions,

Director.

[FR Doc. 89-419 Filed 1-9-89; 8:45 am]

BILLING CODE 4410-02-M

Immigration and Naturalization Service

[INS No. 1141-89]

Direct Mail Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of a Change in the Location Where Certain Applications and Petitions are filed.

SUMMARY: This notice expands the Direct Mail Program in the Service's Northern Region by adding Form I-130 "Immigrant Petition for Relative". The Direct Mail Program is a process in which certain applicants and petitioners seeking immigration benefits mail their applications directly to an INS Regional Service Center instead of to a local office. This process has been shown to speed case processing and to be more efficient. This notice expands the program to further realize these efficiencies.

DATES: This expansion will be effective February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Senior Examiner, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW., Room 7122, Washington, DC 20536. Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: The Direct Mail Program was established in 1985. Under this program individuals and companies mail applications and petitions directly to a Regional Service Center (RSC) instead of to a local field office. This program was adopted to improve service to the public by speeding processing, to increase productivity and to free field offices to concentrate on interview cases and other field world. To date, the response has been overwhelmingly favorable. Therefore, the Service is expanding it further.

Use the following sections to determine where to file an application or petition. First use Section I to determine which region would have jurisdiction. Then use Section II to find if the application or petition is included in the Direct Mail Program in that region. If it is, you can get the center mailing address from Section III. You should also read Sections IV and V, which describe Direct Mail filing procedures.

I. Jurisdiction

The following table lists the jurisdiction of each INS Region. Jurisdiction is based on the address of the applicant or petitioner, or, in the case of a petition for a foreign worker, by the address of the intended place of employment. If a petitioner is a United States Citizen or a Permanent Resident stationed outside the United States on government business (either civilian or military), his or her home of record in the United States is used to determine jurisdiction. In such a case he or she should include a copy of his or her orders assigning him or her overseas with the petition.

Area	Region
Alabama	S
Alaska	N
Arizona	W
Arkansas	S

Area	Region
California	N
Colorado	E
Connecticut	E
Delaware	E
District of Columbia	E
Florida	S
Georgia	S
Guam	W
Hawaii	W
Idaho	N
Illinois	N
Indiana	N
Iowa	N
Kansas	N
Kentucky	S
Louisiana	S
Maine	E
Maryland	E
Massachusetts	E
Michigan	N
Minnesota	N
Mississippi	S
Missouri	N
Montana	N
Nebraska	N
Nevada	W
New Hampshire	E
New Jersey	E
New Mexico	S
New York	E
North Carolina	S
North Dakota	N
Ohio	N
Oklahoma	S
Oregon	N
Pennsylvania	E
Puerto Rico	E
Rhode Island	E
South Carolina	S
South Dakota	N
Tennessee	S
Texas	S
Utah	N
Vermont	E
Virginia	E
Virgin Islands	E
Washington	N
West Virginia	E
Wisconsin	N
Wyoming	N

Regions: E—Eastern Region, N—Northern Region, S—Southern Region, W—Western Region.

II. Direct Mail Applications

The following table lists the applications and petitions processed under the Direct Mail Program in each region. Service Center Director have the authority to accept filing fees for these forms. All other applications and petitions should be filed at the appropriate local INS office.

Form number	Short title	Region			
		E	N	S	W
I-129B	Petition for Temporary Worker.	X	X	X	X
I-129F	Petition for Finance(E).	X	X	X	X
I-128H	Petition for Temporary Worker.	X	X	X	X
I-129L	Petition for Intracompany Transferee.	X	X	X	X
I-129S	Certificate of L-1 Eligibility.	X	X	X	X
I-140	Immigrant Petition for Foreign Worker (unless filed with an I-485 Application for Adjustment of Status).	X	X	X	X
I-506	Application To Change Nonimmigrant Status.	X	X	X	X
I-1539	Application To Extend Temporary Stay (if filed with an I-506 or I-1298, I-129H or I-129L).	X	X	X	X
I-130	Immigrant Petition for Relative (unless filed with an I-485 Application for Adjustment of Status).	X	X	X	X
I-751	Petition To Remove Conditions on Residence.	X	X	X	X
I-752	Petition To Waive I-751 Requirement.	X	X	X	X

Regions: E—Eastern Region, N—Northern Region, S. Southern Region, W—Western Region.

Symbols: X—Current Direct Mail applications and petitions; A—Applications and Petitions added by this notice.

III. Service Center Addresses

Normal mailing address	Overnight delivery address
Eastern	
INS Regional Service Center, P.O. Box 1270, St. Albans, VT 05478-1270.	INS Regional Service Center, 1A Lemnah Drive, St. Albans, VT 05478.
Northern	
INS Regional Service Center, Federal Bldg & U.S. Courthouse, 100 Centennial Mall North, Rm B26, Lincoln, NE 68508-1619.	INS Regional Service Center, Federal Bldg & U.S. Courthouse, 100 Centennial Mall North, Rm B26, Lincoln, NE 68508-1619.
Southern	
INS Regional Service Center, P.O. Box 50200, Dallas, TX 75207.	INS Regional Service Center, 311 N. Stemmons Freeway, Dallas, TX 75207.
Western	
INS Regional Service Center, P.O. Box 1-C, San Ysidro, CA 92173.	INS Regional Service Center, 801 E. San Ysidro, San Ysidro, CA 92173.

IV. How To File a Direct Mail Case

Applications and petitions processed through the Direct Mail Program within a region should be mailed directly to the appropriate service center. The form number, from the lower left corner of the application or petition, should be written on the envelope below the address. Cases can be mailed via an express mail service, but this will not affect processing after the case is received.

Direct Mail cases may only be filed with a local INS office under the emergency procedures outlined in Section IV. Non-emergent cases that are taken to a local office will not be accepted, and the applicant will be instructed to mail the case directly to the appropriate service center. Any Direct Mail cases that are mailed to a local office will be re-mailed by that office to the service center. A case that is not accepted for emergency processing will not be considered received and properly filed until it is receipt processed at a service center. Therefore, failure to follow these instructions will delay processing and will affect a petition's priority date.

V. How To File in an Emergency

An applicant or petitioner can request emergency processing by taking his or her application or petition to the local INS office along with a written explanation of the grounds for the request.

Emergency processing will only be granted where it can be shown that there is a bona fide emergency that warrants processing the case before others that were filed before it, and that the emergency could not have been reasonably foreseen and the case filed earlier. If it is granted, the case will be processed at the local office. If not, the case will be noted and then handed back to the applicant or petitioner, so he or she can mail it directly to the service center.

A request for emergency processing is reviewed outside of normal processing channels. If an applicant or petitioner makes an unwarranted request for emergency processing, the end result will be that it will take longer for him or her to get a final decision on a case than if he or she had filed it normally.

Dated: January 4, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Branch, Immigration and Noturalization Service.

[FR Doc. 89-440 Filed 1-9-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 19th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Adkins Supply Incorp. (Workers)	Hobbs, NM	12/19/88	12/6/88	22,267	Oil & Gas.
Allied Products Co. (IBB)	Midfield, AL	12/19/88	12/7/88	22,268	Cement & Clinker.
Ames Company Plant #2 (Workers)	Parkersburg, WV	12/19/88	12/1/88	22,269	Hand Tools.
Athenia Audio/Disc Corp. (Workers)	Toms River, NJ	12/19/88	12/6/88	22,270	C-O Cassettes.
Borden Chemical Fabric Leather Div. (Workers)	Glen Cove, NY	12/19/88	11/28/88	22,271	Fabric.
Becton-Dickenson & Co. (Workers)	East Rutherford, NJ	12/19/88	12/2/88	22,272	Supplies.
Charms Candy (Company)	Colts Neck, NJ	12/19/88	12/6/88	22,273	Candy.
Cleveland Xray Inspection (Workers)	Cleveland, OK	11/18/88	11/17/88	22,274	Oil & Gas.
Coca Cola, Inc. (Workers)	Clarksdale, MS	12/5/88	11/28/88	22,275	Soft Drinks.
Coleman Products Co. (Workers)	Nogales, AZ	12/19/88	12/7/88	22,276	Wire Harness.
Cone Mills Corp. (Workers)	Gibsonville, NC	12/19/88	11/30/88	22,277	Yarns & Fabrics.
Consolidated NDE, Inc. (Workers)	Woodbridge	11/18/88	11/17/88	22,278	Oil & Gas.
Edwards Pipeline Testing, Inc. (Workers)	Tulsa, OK	11/18/88	11/17/88	22,279	Do.
Fina Oil (Workers)	Corpus Christi, TX	12/19/88	11/29/88	22,280	Do.
General Motors Corp., CPC (UAW)	Bay City, MI	12/19/88	12/5/88	22,281	Automotive Parts.
General Textile Printing (ACTWU)	Branford, CT	12/19/88	10/17/88	22,282	Cloth.
Herbick & Held Printing Co. (ILBW)	Pittsburgh, PA	12/9/88	12/19/88	22,283	Printing Forms.
Heritage Cable TV (Workers)	Branford, CT	12/19/88	12/8/88	22,284	Cable TV.
Howard Boat Wright (Workers)	Odessa, TX	12/19/88	12/7/88	22,285	Oil & Gas.
Intec Medical Products, Inc. (Workers)	Blue Springs, MO	12/19/88	12/5/88	22,286	Nebulizers.
J&S Sewing, Inc. (ILGWU)	Ridgefield, NJ	12/19/88	12/9/88	22,287	Sweaters.
Jan Xray Service (Workers)	Perma, MI	11/18/88	11/17/88	22,288	Oil & Gas.
John L. Cox (Workers)	Oklahoma City, OK	12/19/88	12/1/88	22,289	Do.
Johnson Controls (Workers)	Vincennes, IN	12/19/88	11/3/88	22,290	Car Seats.
Lee Co. (The) (Workers)	Broadway, VA	12/19/88	12/12/88	22,291	Jeans.
Martin Oil & Gas Co. (Workers)	Houston, TX	11/18/88	10/29/88	22,292	Oil & Gas.
Do	Phoenix, AZ	11/18/88	10/29/88	22,293	Do.
Miura Pet Co. (Company)	Chanute, KS	12/19/88	10/3/88	22,294	Do.
North American Inspection, Inc	Laurys Station, PA	11/18/88	11/17/88	22,295	Do.
Otis Engineering Corp. (Workers)	Corpus Christi, TX	11/18/88	8/08/88	22,296	Do.
Do	New Iberia, LA	11/18/88	11/17/88	22,297	Do.
PBCP Services, Inc. (Workers)	Midland, TX	12/19/88	12/7/88	22,298	Do.
Pancho's Backhoe Serv. (Workers)	Seminole, TX	12/19/88	11/30/88	22,299	Do.
Penaljo Shoe Co. (Workers)	DeSota, MO	12/12/88	11/19/88	22,300	Sandals.
Pool Co.-Special Serv. Div. (Workers)	Middland, TX	12/19/88	12/7/88	22,301	Oil & Gas.
Quest Intl Flavors U.S.A., Inc. (Company)	East Hanover, NJ	12/19/88	12/1/88	22,302	Food.
Robert Shaw Controls (UAW)	Milford, CT	12/19/88	11/9/88	22,303	Heating Controls.
Simonds Industries (Workers)	Portland, OR	12/19/88	12/8/88	22,304	Saws.
Sohmer Piano Co. (IUE)	Ivoryton, CT	12/19/88	12/8/88	22,305	Pianos.
Teledyne Turner Tube (Company)	Cranberry, NJ	12/19/88	12/8/88	22,306	Tubes.
Testmaster Inspection (Workers)	Perrysburg, OH	11/18/88	11/17/88	22,307	Oil & Gas.
Walnut Grove Mfg., Co. (Workers)	Walnut Grove, MS	12/19/88	12/5/88	22,308	Gloves.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Wisconsin Industrial Testing, Inc	Brookfield, WI	11/18/88	11/17/88	22,309	Oil & Gas.

[FR Doc. 89-458 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 12th day of December 1988.

Marin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
FN Drilling Co. (Workers)	Tuler, TX	11/18/88	11/1/88	22,136	Oil and Gas.
Fancy Stitchers Inc. (Company)	Lewistown, ME	11/18/88	11/15/88	22,137	Hanbags.
Felmont Oil Corp. (Workers)	Olean, NY	11/18/88	11/17/88	22,138	Oil & Gas.
Do	Midland, TX	11/18/88	11/17/88	22,139	Do.
Do	Houston, TX	11/18/88	11/17/88	22,140	Do.
Do	Lafayette, LA	11/18/88	11/17/88	22,141	Do.
Geoservices Inc. (Workers)	Denver, CO	11/18/88	11/9/88	22,142	Do.
Do	Houston, TX	11/18/88	11/9/88	22,143	Do.
Gearhart Industries, Inc. (Workers)	Indiana, PA	11/18/88	11/18/88	22,144	Do.
Gruy Companies (The) (Workers)	Irving, TX	11/18/88	11/17/88	22,145	Do.
Gruy & Associates (Workers)	do	11/18/88	11/17/88	22,146	Do.
Gruy Petroleum Management Co. (Workers)	do	11/18/88	11/17/88	22,147	Do.
Hamilton Brothers Oil Co. (Workers)	Denver, CO	11/18/88	11/15/88	22,148	Do.
Hilyard Drilling Co. (Workers)	ElDorado, AR	11/18/88	11/12/88	22,149	Do.
Do	Laurel, MS	11/18/88	11/12/88	22,150	Do.
Holmes & Narver Serv., Inc. (Workers)	Prudo, Bay AL	11/18/88	11/1/88	22,151	Do.
Hydril Co. (Workers)	Houston, TX	11/18/88	11/13/88	22,152	Do.
Industrial Machine Shop (Workers)	Williston, ND	11/18/88	9/14/88	22,153	Do.
Industrial Machinery Div.	Mesquite, TX	11/18/88	11/17/88	22,154	Do.
J.C. Langley Oil Co. (Company)	Smackover, AR	11/18/88	11/2/88	22,155	Do.
Jennings Hellms Trucking, Inc. (Company)	Indiana, PA	11/18/88	11/14/88	22,156	Do.
Kiewit Southern (UAJAP)	Prudoe Bay, AL	11/18/88	11/14/88	22,157	Do.
LHR Synder (Workers)	Grayville, IL	11/18/88	11/13/88	22,158	Do.
Lamb Enterprises (Workers)	Lone Star, TX	11/18/88	11/16/88	22,159	Do.
Louisiana Land & Exploration Co. (Workers)	Denver, CO	11/18/88	11/11/88	22,160	Do.
Martin Petterson (Company)	Lovington, NM	11/18/88	11/17/88	22,161	Do.
Mayers & Co. (Company)	Englewood, CO	11/18/88	11/17/88	22,162	Do.
Micro Energy Intl, Inc. (Workers)	Roswell, NM	11/18/88	10/31/88	22,163	Do.
Monroe Well Service (Workers)	Philadephia, PA	11/18/88	11/11/88	22,164	Do.
National Oilwell (USWA)	Garland, TX	11/18/88	11/17/88	22,165	Do.
Northland Maintenance Co. (Workers)	Prodoe, Bay, AL	11/18/88	11/1/88	22,166	Do.
Oceanic Butler, Inc. (Workers)	Morgan City, LA	11/18/88	11/14/88	22,167	Do.
Pennzoil Exploration (Company)	Lafayette, LA	11/18/88	11/17/88	22,168	Do.
Pennzoil Products Co (Company)	Bradford, PA	11/18/88	11/17/88	22,169	Do.
Do	Louisville, PA	11/18/88	11/17/88	22,170	Do.
Peterson Management Co. (Workers)	Midland, TX	11/18/88	11/13/88	22,171	Do.
Petroleum Information (Workers)	Casper, WY	11/18/88	11/17/88	22,172	Do.
Do	Billings, MT	11/18/88	11/17/88	22,173	Do.
Phillips Production Co. (Company)	Butler, PA	11/18/88	11/17/88	22,174	Do.
Questa Petroleum Co. (Workers)	Pittsburgh, PA	11/18/88	11/18/88	22,175	Do.
Reed Tool Co. (USWA)	Houston, TX	11/18/88	11/17/88	22,176	Do.
Roy M. Huffington, Inc. (Workers)	do	11/18/88	11/16/88	22,177	Do.
SSM Partnership (Workers)	Philadelphia, PA	11/18/88	11/11/88	22,178	Do.
Santa Fe Intl. Corp. (Company)	Alhambra, CA	11/18/88	11/16/88	22,179	Do.
Savage Drilling Inc. (Workers)	Houston, TX	11/18/88	11/18/88	22,180	Do.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Schlumberger Well Serv. (Workers)	Broussard, LA	11/18/88	11/10/88	22,181	Do.
Do	Lafayette, LA	11/18/88	11/10/88	22,182	Do.
Do	Magnolia, AR	11/18/88	11/10/88	22,183	Do.
Security Division of Dresser Industries, Inc. (USWA)	Dallas, TX	11/18/88	11/17/88	22,184	Do.
Storagetek (Workers)	Louisville, CO	11/18/88	11/11/88	22,185	Computer Equipment.
T.M.T. Services, Inc. (Workers)	Lafayette, LA	11/18/88	11/10/88	22,186	Oil & Gas.
Tenneco Oil Exploration & Production Pacific Coast Div. (Company)	Bakersfield, CA	11/18/88	11/1/88	22,187	Do.
Tenneco Oil Exploration & Production Rocky Mountain Div. (Company)	Denver, CO	11/18/88	11/1/88	22,188	Do.
Tenneco Oil Exploration Southwestern Div. (Company)	San Antonio, TX	11/18/88	11/1/88	22,189	Do.
Tenneco Oil Exploration Mid-Continent Div. (Company)	Oklahoma City, OK	11/18/88	11/1/88	22,190	Do.
Tenneco Oil Exploration Gulf Coast Div. (Company)	Houston, TX	11/18/88	11/1/88	22,191	Do.
Tenneco Oil Exploration Intl. Div. (Company)	do	11/18/88	11/1/88	22,192	Do.
Tenneco Oil Exploration South America Div. (Company)	do	11/18/88	11/1/88	22,193	Do.
Tenneco Oil Exploration Eastern Gulf Div. (Company)	Lafayette, LA	11/18/88	11/1/88	22,194	Do.
Tenneco Oil Exploration Western Gulf Div. (Company)	do	11/18/88	11/1/88	22,195	Do.
Tenneco Oil Exploration Central Gulf Div. (Company)	do	11/18/88	11/1/88	22,196	Do.
Terra Resources, Incorp. (Workers)	Denver, CO	11/18/88	11/15/88	22,197	Do.
Thymes, Corp. (Workers)	Farmington, NM	11/18/88	11/18/88	22,198	Do.
Tri-State Oil Tools, Inc. (Workers)	Bossier City, LA	11/18/88	11/16/88	22,199	Do.
Tullos Group, (Workers)	Philadelphia, PA	11/18/88	11/11/88	22,200	Do.
Unisys Corp. (Workers)	Plymouth, MI	11/18/88	11/18/88	22,201	Computer Equipment.
Vega Oil & Gas Co. (Workers)	El Dorado, AK	11/18/88	11/10/88	22,202	Oil & Gas.
Wiser Oil Co. (Company)	Corbin, KY	11/18/88	11/16/88	22,203	Do.
Witco Corp. (Workers)	Bradford, PA	11/18/88	11/15/88	22,204	Do.
Air Management Industries (Company)	Newton, NJ	12/5/88	11/29/88	22,205	Metal Modular Smokestacks.
Amerada Hess Corp. (Workers)	Seminole, TX	11/18/88	11/14/88	22,206	Oil & Gas.
Amoco Production Co. (USWA)	Farmington, NM	11/18/88	11/17/88	22,207	Do.
Bob Head Excavation (Company)	Indiana, PA	11/18/88	11/16/88	22,208	Do.
Brook's Woolen, Inc. (Workers)	Sanford, ME	11/18/88	11/22/88	22,209	Wool Fabrics
Buckeye, Inc. (Workers)	Midland, TX	11/18/88	11/18/88	22,210	Oil & Gas.
CSX (Workers)	Oklahoma City, OK	11/18/88	11/15/88	22,211	Do.
Carhartt Inc. (UGWA)	Irvine, KY	12/5/88	11/22/88	22,212	Work-wear.
Cheynne Oil Well (Workers)	Ness City, KS	11/18/88	11/16/88	22,213	Oil & Gas.
Conoco, Inc. (Workers)	Houston, TX	11/18/88	11/14/88	22,214	Oil.
Continental Car (USWA)	Milwaukee, WI	11/18/88	11/10/88	22,215	Containers.
Covington, MDM, LTD (Workers)	Covington, VA	11/5/88	11/15/88	22,216	Ladies Pants & Skirts.
Delhi Gas Pipeline Corp. (Workers)	Dallas, TX	11/18/88	11/16/88	22,217	Oil & Gas.
Dresser Atlas (Workers)	Farmington, NM	11/18/88	11/18/88	22,218	Do.
Endevco Producing Co. (Company)	Jackson, MS	11/18/88	11/8/88	22,219	Do.
Energx (Workers)	LeCenter, MN	12/5/88	11/21/88	22,220	Electric Generators.
Fandango Plant (Company)	Zapata, TX	11/18/88	11/8/88	22,221	Oil & Gas.
General Oil Field Supply Co., Inc. (Workers)	Evansville, IN	12/5/88	11/23/88	22,222	Do.
Geophysical Service Inc. (Workers)	Dallas, TX	11/18/88	11/16/88	22,223	Seismic Data.
Do	Denver, CO	11/18/88	11/10/88	22,224	Do.
Gold Seal Rubber Co. (Company)	Readville, MA	12/5/88	11/17/88	22,225	Rubber/Canvas Footwear
Gregory & Cook Co. (Workers)	Houston, TX	11/18/88	11/18/88	22,226	Oil & Gas.
Grove Co. (The) (ACTWU)	Sikeston, MO	12/5/88	11/18/88	22,227	Ladies' Sportwear.
Haley Well Service, Inc. (Workers)	Carmi, IL	11/18/88	10/11/88	22,228	Well Maintenance & Repair.
Hazle Garment, Inc. (Workers)	Hazleton, PA	12/5/88	11/21/88	22,229	Girl's Dresses.
Heluatia Coal Co. (Workers)	Indiana, PA	12/5/88	11/18/88	22,230	Coal.
Holiday Formals, Inc. (Workers)	Hialeah, FL	12/5/88	11/16/88	22,231	Men's Shirts.
Homco International (Workers)	Oklahoma, City OK	11/18/88	11/7/88	22,232	Oil & Gas.
Houston Contracting (Laborers)	Anchorage AK	11/18/88	11/7/88	22,233	Do.
Independent Contractors (Company)	Denham Springs LA	11/18/88	11/7/88	22,234	Do.
Jaquar Manufacturing Co., Inc. (ACTWU)	Smethport, PA	11/18/88	11/7/88	22,235	Men's Slacks.
Keyston Fireworks Mfg. Co., Inc. (Workers)	Dunbar, PA	12/5/88	11/9/88	22,236	Fireworks.
Klev Bro Shoe Mfg. Co. (ACTWU)	Derry, NH	12/5/88	11/21/88	22,237	Ladies' Shoes.
Lee Co. (The) (UGWA)	Jasper, LA	12/5/88	10/31/88	22,238	Jeans.
Do	Houston, TX	11/18/88	12/5/88	22,239	Do.
Levelor Larentzen, Inc. (Workers)	Parsippany, NJ	11/18/88	11/10/88	22,240	Venetian Blinds.
Lozier Corporation/AFI Div (IAM)	Joplin, MO	12/5/88	11/18/88	22,241	Garment Racks.
Lucky's Well Service (Workers)	St. Elmo, IL	11/18/88	10/01/88	22,242	Oil & Gas.
MI Drilling Fluids, (Workers)	Olney, IL	11/18/88	11/17/88	22,243	Do.
Mobil Exploration & Producing Services, Inc. (Workers)	Dallas, TX	11/18/88	11/14/88	22,244	Do.
Mobil Oil Exploration Production Services, Inc. (Workers)	Lafayetta, LA	11/18/88	11/18/88	22,245	Do.
NRG Exploration, Inc. (Workers)	The Woodlands, TX	11/18/88	11/16/88	22,246	Do.
National Mechnical (Laborers')	Anchorage, AK	11/18/88	11/7/88	22,247	Do.
New York Abrasive File Co. (Workers)	Kenmore, NY	12/5/88	11/28/88	22,248	Foot-care Files.
Pennzoil Producing Co. US. Offshore Exploration & Producing Div. (Workers).	Houston, TX	11/18/88	11/18/88	22,249	Oil & Gas.
Pickens Footwear (Company)	Jasper, GA	12/5/88	11/17/88	22,250	Rubber/Canvas Footwear
R.E. Williams Drilling Co. (Workers)	Memphis, TN	11/18/88	11/16/88	22,251	Oil & Gas.
Scoggins Construction (Workers)	Norphlet, AR	12/5/88	11/17/88	22,252	Do.
Sheehan Pipe Line Construction Co. (Workers)	Kingsville, TX	11/18/88	11/18/88	22,253	Do.
Sohio Construction Co. (UAJA)	San Francisco, CA	11/18/88	11/14/88	22,254	Do.
Southern Automation (Workers)	Gautier, MS	11/18/88	11/9/88	22,255	Heater Repair, Electrical Upgrade.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Southport Exploration, Inc. (Workers)	Tulsa, OK	11/18/88	11/18/88	22,256	Oil & Gas.
Spartan Well Service (Workers)	Farmington, NM	11/18/88	11/18/88	22,257	Do.
Spooner Petroleum Co. (Workers)	Jackson, MS	11/18/88	11/14/88	22,258	Do.
Stowell Wood Products (Workers)	Bryant Pond, ME	12/5/88	11/21/88	22,259	Wooden Novelties.
Texaco Inc. Exploration Div. (Workers)	Denver, CO	11/18/88	11/14/88	22,260	Oil & Gas.
Texas Oil & Gas Corp. (Workers)	Dallas, TX	11/18/88	11/18/88	22,261	Do.
U Save Auto Rental (Workers)	Meridian, MS	12/5/88	11/10/88	22,262	Auto Rental.
Walters Drilling, Inc. (Workers)	Farmington, NM	11/18/88	11/18/88	22,263	Contract Drilling.
Willbros Drilling Co. (Workers)	Midland, TX	11/18/88	11/16/88	22,264	Oil & Gas.
Willbros Energy Services (Workers)	Tulsa, OK	11/18/88	11/18/88	22,265	Do.
Wyatt Drilling Co. (Workers)	Fairfield, IL	11/18/88	11/15/88	22,266	Do.

[FR Doc. 89-459 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-21, 340]

Gates Molded Products, Milby Street Plant, Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1988 in response to a worker petition which was filed on behalf of workers at Gates Molded Products—Milby Street Plant, Houston, Texas.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was issued on September 25, 1987 (TA-W-19, 978). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 16th day of December 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-460 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-M

Westland Oil Development Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-20,652, Montgomery TX, TA-W-20,652A, Abilene, TX, TA-W-20,652B, Levelland, TX, TA-W-20,652C, Liberty, TX, TA-W-20,652D, Winnsboro, TX, TA-W-20,652E, Tomball, TX.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 22, 1988 applicable to all workers of the Westland Oil Development Corporation, Montgomery, Texas. The certification was published in the **Federal Register** on July 6, 1988 (53 FR 25393).

Based on new employment information from the company, workers at additional locations were engaged in activities supporting the production of crude oil at Midland, Texas, whose workers are under a certification issued on February 27, 1987 (TA-W-18,854). That certification runs from December 16, 1985 until February 27, 1989. Section 223(b)(1) of the Trade Act does not allow the certification of workers who were separated prior to one year of the date of the Montgomery petition, April 21, 1988. The intent of the certification is to cover all of Westland Oil Development Corporation in all locations within the purview of section 223(b)(1) of the Act.

The amended notice applicable to TA-W-20,652 is hereby issued as follows:

All workers of Westland Oil Development Corporation, Abilene, Texas; Levelland, Texas; Liberty, Texas; Winnsboro, Texas, and Tomball, Texas, who became totally or partially separated from employment on or after April 21, 1987 and before June 1, 1988 and all workers of Westland Oil Development Corporation, Montgomery, Texas who became totally or partially separated from employment on or after April 21, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of December 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-461 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-21, 544; 21,544A]

Williams Exploration Co.; Houston, TX, Lafayette, LA; of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1988 in response to a worker petition which was filed on October 31, 1988 on behalf of workers at Williams Exploration Company in Houston, Texas. The workers were engaged in employment related to the production of crude oil and natural gas.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act to the implementation of the retroactive provisions.

All workers of the Williams Exploration Company were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of December, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-462 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-M

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1988 for JTPA Title II–B; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1988.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0157. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for JTPA Titles II–A and III, and for the summer youth program in (CY) 1989 for JTPA Title II–B; and, in accord with section 6(b)(5) of the Wagner-Peyser Act, preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1989. The allotments and estimates are based on the appropriations of DOL for Fiscal Year (FY) 1988 and FY 1989.

Attached are a list of the allotments for PY 1988 for programs under JTPA Titles II–A and III, a list of the allotments for the CY 1988 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1989 allotments are based on the funds appropriated by Public Law 100–436 for FY 1989; the CY 1989 allotments are based on funds appropriated by Public Law 100–202 for FY 1988.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1988 data, and published in the **Federal Register** at a later date.

Note: These Allotments and Estimates are Based on FY 1988 and FY 1989 Department of Labor Appropriations Acts. Any Subsequent Action Taken by Both Houses of Congress May Require Revisions to These Allotments and Estimates.

JTPA Title II–A Allotments. Attachment No. I shows the PY 1989 JTPA Title II–A allotments by State on a total appropriation of $1,787,772,000. The amount is composed entirely of PY 1989 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in developing these allotments:

—Data for areas of substantial unemployment are averages for the 12-month period, July 1987 through June 1988.

—The number of excess unemployed individuals or the area of substantial unemployment excess (depending on which is higher) are averages for this same 12-month period, July 1987 through June 1988.

—The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas, including the Freely Associated States (FASs), are based on estimated 1987 unemployment. The estimated unemployment data were developed using 1980 Census unemployment as a base. The 1980 data were updated according to relative shifts in the population. A 90-percent relative share hold-harmless of the Title II–A allotments for these areas and a minimum allotments of $125,000 were also applied in determining the allotments.

PY 1989 JTPA Title II–A funds are to be distributed among designated service delivery areas (SDAs) in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B as contained in Section 202(a) of the JTPA, as amended.

JTPA Title II–B Allotments. Attachment No. II shows the CY 1989 JTPA Title II–B allotments by State based on a total FY 1988 available appropriation of $718,050,000. The data used for these allotments are the same data as were used for JTPA Title II–A allotments. The amount allotted is composed entirely of CY 1989 formula funds.

For the Insular Areas, the amount is based on the percentage of Title II–B funds each area received during the previous summer.

CY 1989 Title II–B summer youth funds are to be distributed among designated SDAs in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B contained in Section 202(a) of the JTPA, as amended.

JTPA Title III Allotments. Attachment No. III shows the PY 1989 JTPA Title III Dislocated Worker Program allotments. It shows the total appropriation of $283,773,000, which includes the base allotment of federal funds totaling $227,621,803 and the national reserve of $56,151,197, to be distributed at a later date.

Except for the Insular Areas, the unemployment data used for determining these allotments, relative numbers of unemployed, and relative numbers of excess unemployed are averages for the September 1987 through August 1988 period. Long-term unemployed data used were for CY 1987.

For Insular Areas, the allotments are based on the percentages of Title II–A allotments.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates. Attachment No. IV shows preliminary Employment Service planning estimates which have been produced using the legislatively-mandated formula. See Wagner-Peyser Act Section 6 (a) and (b). These estimates are based on preliminary data on each State's relative share of civilian labor force and unemployment for the 12-month period ending September 1988. The methodology for allocating the Secretary's 3-percent setaside is unchanged from that used in the prior year. See Wagner-Peyser Act section 6(b)(4); and 53 FR 11715 (April 8, 1988).

Final Wagner-Peyser allotments will be issued within 90 days, based on CY 1988 data, and published in the **Federal Register**. The amount appropriated for public employment service activities is $763,752,000; however, $15,275,040 has been withheld from distribution to finance postage costs associated with the conduct of employment service business, leaving $748,476,960 to be distributed. Ten percent of the planning estimate may be reserved at the discretion of the Governor for activities described in section 7(b) of the Wagner-Peyser Act, as amended.

Signed at Washington, DC, this 29th day of December 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

ATTACHMENT I

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1989 JTPA TITLE II-A ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	39,536,916
Alaska	6,525,963
Arizona	23,590,066
Arkansas	25,219,161
California	183,035,142
Colorado	28,517,359
Connecticut	9,509,392
Delaware	4,457,582
District of Columbia	5,426,859
Florida	63,868,146
Georgia	40,988,178
Hawaii	4,663,848
Idaho	9,406,332
Illinois	99,565,573
Indiana	32,899,563
Iowa	17,210,087
Kansas	9,332,082
Kentucky	41,852,122
Louisiana	63,942,299
Maine	5,968,897
Maryland	19,309,657
Massachusetts	20,250,997
Michigan	95,193,607
Minnesota	20,349,307
Mississippi	32,550,450
Missouri	34,489,693
Montana	7,917,824
Nebraska	6,332,133
Nevada	6,581,597
New Hampshire	4,457,582
New Jersey	29,203,407
New Mexico	17,126,683
New York	94,544,905
North Carolina	27,612,128
North Dakota	4,457,582
Ohio	80,400,855
Oklahoma	25,755,780
Oregon	19,936,621
Pennsylvania	71,500,850
Puerto Rico	77,555,294
Rhode Island	4,457,582
South Carolina	20,389,867
South Dakota	4,457,582
Tennessee	36,341,763
Texas	170,320,426
Utah	9,580,826
Vermont	4,457,582
Virginia	25,456,830
Washington	39,265,302
West Virginia	23,556,000
Wisconsin	29,248,932
Wyoming	4,457,582
American Samoa	195,906
Guam	1,181,934
Marshall Islands	487,746
Micronesia	1,147,905
Northern Marianas	125,000
Palau	125,000
Virgin Islands	1,475,716
NATIONAL TOTAL	1,787,772,000

ATTACHMENT II

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1988 JTPA TITLE II-B ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	15,230,848
Alaska	2,509,214
Arizona	9,088,384
Arkansas	9,711,931
California	70,528,504
Colorado	10,973,032
Connecticut	5,980,781
Delawere	1,759,490
District of Columbia	4,955,670
Florida	24,621,954
Georgia	15,800,583
Hawaii	1,805,289
Idaho	3,622,102
Illinois	38,321,955
Indiana	13,626,344
Iowa	6,508,249
Kansas	3,590,204
Kentucky	16,112,017
Louisiana	24,596,400
Maine	2,304,506
Meryland	8,461,088
Massachusetts	12,443,965
Michigan	36,624,989
Minnesota	7,846,619
Mississippi	12,535,367
Missouri	13,289,183
Montana	3,049,132
Nebraska	2,433,527
Nevada	2,533,372
New Hampshire	1,759,490
New Jersey	16,151,325
New Mexico	6,593,962
New York	36,908,521
North Carolina	10,903,115
North Dakota	1,759,490
Ohio	30,959,267
Oklahoma	9,832,824
Oregon	7,517,380
Pennsylvania	26,842,002
Puerto Rico	29,889,635
Rhode Island	2,180,420
South Carolina	7,864,806
South Dakota	1,759,490
Tennessee	14,006,726
Texas	65,527,821
Utah	3,692,264
Vermont	1,759,490
Virginia	9,821,583
Washington	15,111,738
West Virginia	9,063,932
Wisconsin	11,266,722
Wyoming	1,759,490
American Samoa	54,510
Guam	664,813
Marshall Islands	19,591
Micronesia	46,428
Northern Marianas	25,499
Palau	7,688
Virgin Islands	376,958
Native Americans	13,058,321
NATIONAL TOTAL	718,050,000

ATTACHMENT III

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1989 JTPA TITLE III ALLOTMENTS TO STATES

	ALLOTMENT
Alabama	5,275,817
Alaska	1,114,713
Arizona	2,647,363
Arkansas	3,300,286
California	20,777,981
Colorado	4,524,491
Connecticut	1,021,390
Delaware	190,617
District of Columbia	529,865
Florida	6,625,966
Georgia	4,671,188
Hawaii	338,612
Idaho	1,253,411
Illinois	15,780,341
Indiana	4,341,299
Iowa	1,931,984
Kansas	1,165,716
Kentucky	6,205,881
Louisiana	11,011,555
Maine	485,076
Maryland	1,953,493
Massachusetts	1,766,391
Michigan	14,464,854
Minnesota	2,269,537
Mississippi	4,409,215
Missouri	4,249,437
Montana	1,145,734
Nebraska	728,019
Nevada	918,218
New Hampshire	232,193
New Jersey	3,020,835
New Mexico	2,331,393
New York	8,588,141
North Carolina	2,318,402
North Dakota	349,301
Ohio	12,602,844
Oklahoma	3,767,239
Oregon	2,474,339
Pennsylvania	8,466,368
Puerto Rico	7,778,478
Rhode Island	303,387
South Carolina	2,214,285
South Dakota	298,136
Tennessee	4,182,744
Texas	24,999,936
Utah	1,151,844
Vermont	176,050
Virginia	2,247,014
Washington	5,887,534
West Virginia	1,999,471
Wisconsin	3,926,723
Wyoming	603,293
American Samoa	24,943
Guam	150,486
Marshall Islands	62,101
Micronesia	146,153
Northern Marianas	15,915
Palau	15,915
Virgin Islands	187,890
National Reserve	56,151,197
NATIONAL TOTAL	283,773,000

[FR Doc. 89-503 Filed 1-9-89; 8:45 am]
BILLING CODE 4510-30-C

ATTACHMENT IV

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
PRELIMINARY PY 1989 WAGNER-PEYSER ALLOTMENTS TO STATES

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	11,312,358	0	223,512	223,512	11,535,870
Alaska	7,102,456	1,033,847	0	1,033,847	8,136,303
Arizona	9,262,299	0	0	0	9,262,299
Arkansas	6,969,307	0	206,987	206,987	7,176,294
California	76,879,939	0	0	0	76,879,939
Colorado	10,022,377	0	0	0	10,022,377
Connecticut	8,226,907	0	0	0	8,226,907
Delaware	2,027,755	0	62,872	62,872	2,090,627
District of Columbia	4,793,873	0	650,471	650,471	5,444,344
Florida	32,278,084	0	0	0	32,278,084
Georgia	17,444,536	0	0	0	17,444,536
Hawaii	2,565,088	0	348,051	348,051	2,913,139
Idaho	5,917,608	861,379	0	861,379	6,778,987
Illinois	34,356,520	0	0	0	34,356,520
Indiana	15,168,311	0	0	0	15,168,311
Iowa	8,186,002	0	1,110,741	1,110,741	9,296,743
Kansas	6,674,563	0	0	0	6,674,563
Kentucky	10,848,886	0	0	0	10,848,886
Louisiana	13,688,528	0	232,313	232,313	13,920,841
Maine	3,519,146	512,254	0	512,254	4,031,400
Maryland	12,464,923	0	0	0	12,464,923
Massachusetts	14,890,345	0	0	0	14,890,345
Michigan	28,261,662	0	0	0	28,261,662
Minnesota	11,867,347	0	0	0	11,867,347
Mississippi	7,377,937	0	569,594	569,594	7,947,531
Missouri	14,356,913	0	0	0	14,356,913
Montana	4,835,901	703,923	0	703,923	5,539,824
Nebraska	5,811,802	845,977	0	845,977	6,657,779
Nevada	4,701,004	684,288	0	684,288	5,385,292
New Hampshire	2,716,266	0	0	0	2,716,266
New Jersey	19,686,875	0	0	0	19,686,875
New Mexico	5,426,730	789,926	0	789,926	6,216,656
New York	49,395,737	0	6,702,400	6,702,400	56,098,137
North Carolina	16,344,304	0	0	0	16,344,304
North Dakota	4,924,393	716,804	0	716,804	5,641,197
Ohio	30,537,435	0	0	0	30,537,435
Oklahoma	11,293,961	0	1,532,452	1,532,452	12,826,413
Oregon	8,100,624	0	834,128	834,128	8,934,752
Pennsylvania	31,212,026	0	0	0	31,212,026
Puerto Rico	9,120,265	0	0	0	9,120,265
Rhode Island	2,512,896	0	138,319	138,319	2,651,215
South Carolina	8,817,523	0	0	0	8,817,523
South Dakota	4,551,271	662,492	0	662,492	5,213,763
Tennessee	13,280,779	0	0	0	13,280,779
Texas	51,193,521	0	0	0	51,193,521
Utah	9,954,184	1,448,950	0	1,448,950	11,403,134
Vermont	2,132,077	310,349	0	310,349	2,442,426
Virginia	15,289,375	0	0	0	15,289,375
Washington	13,647,341	0	0	0	13,647,341
West Virginia	5,209,380	758,287	0	758,287	5,967,667
Wisconsin	13,507,687	0	0	0	13,507,687
Wyoming	3,531,097	513,993	0	513,993	4,045,090
FORMULA TOTAL	724,198,124	9,842,469	12,611,840	22,454,309	746,652,433
Guam	350,229	0	0	0	350,229
Virgin Islands	1,474,298	0	0	0	1,474,298
Indicia Postage	15,275,040	0	0	0	15,275,040
NATIONAL TOTAL	741,297,691	9,842,469	12,611,840	22,454,309	763,752,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1988 TO THE PY 1989 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1988 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1988 TO THE PY 1989 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

Mine Safety and Health Administration

[Docket No. M-88-230-C]

Consolidation Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (belt conveyors) to its Buchanan No. 1 Mine (I.D. No. 44-04856) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that in all coal mines, waterlines be installed parallel to the entire length of belt conveyors and be equipped with fire hose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of fire hose with fittings suitable for connection with each belt conveyor waterline system be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. As an alternate method, petitioner proposes the following:

(a) To keep the waterline and outlets in the track entry which is adjacent to the belt entry (headgate entry);

(b) A fire hose would be strategically located and would be of sufficient length so that any affected area on the belt would be covered from the most proximate fire hose outlet. In addition, seven hundred feet of fire hose, instead of the required five hundred feet, would be maintained at a location in the immediate area of the longwall belt drive;

(c) Crosscuts leading to fire hose outlets from the belt entry would be passable by removing a portion of the stoppings at or near the fire hose outlets, or by providing stopping doors at or near the fire hose outlets; and

(d) Each fire hose outlet would be marked for easy identification.

3. In support of this request, petitioner states that—

(a) The air ventilating these track and belt entries is common to both entries, and

(b) By allowing the fire hose outlets to remain in the track entry, the advantage to manage fire fighting procedures is enhanced.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-463 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. (M-88-237-C)]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. Petitioner is mining in virgin coal and is developing this area for future longwall retreat mining. Large quantities of methane gas are expected, which will require large quantities of air for dilution. Due to the minimum number of airways that will be developed and to maximize effectiveness of these entries, it will be necessary to use the air that is conducted through the belt haulage entries at the working places.

3. As an alternate method, petitioner proposes to use the air in the belt entry to ventilate active working places and planned longwall panels. The belt conveyor entry would be examined at least once during each coal producing shift while persons are working.

4. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

5. The CO system would be visually examined at least once each coal-producing shift and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

6. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

7. The details for the fire detection system would be included as part of the Ventilation System Methane and Dust Control Plan.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-464 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. (M-88-238-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of any fire within each belt flight.

2. In a separate petition (M-88-237-C), petitioner proposes to use the air in the belt entry to ventilate active working places and longwall panels.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (co) detection system in all belt entries used as intake aircourses with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (February 9, 1989). Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-465 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-236-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656, has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 6 Mine (I.D. No. 44-06486) and its Dominion No. 9 Mine (I.D. No. 44-06482) both located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a borehole or boreholes be drilled to a distance of at least 20 feet in advance of the working place and be continually maintained to a distance of at least 10 feet in advance of the advancing working face whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas; or within 200 feet of any working of an adjacent mine.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In support of this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib, restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry would be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry would be a 90 degree angle to the face and the hole drilled 5 feet from the right rib would be a 75 degree angle to the face with a margin of error of +/-5 degrees. This pattern would provide a 10-foot barrier in all directions to the cut to be taken. This pattern would also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Dated: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-466 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-232-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its North Branch Mine (Potomac Division) (I.D. No. 46-01309) located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt haulage entries as intake aircourses in continuous and longwall mining sections. In addition, an early-warning fire detection system would be installed in the belt entry as follows:

(a) A low-level carbon monoxide (CO) detection system would be installed in straight Mains, the rehabilitation belt entries, and at each belt drive and tailpiece located in the intake aircourse. The low-level CO system would be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient level and an audible signal would sound at 15 ppm above the ambient level. All

persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and and detecting electrical malfunctions;

(b) The CO monitoring system would initiate the fire alarm signals at an attended surface location. This reponsible person would have two-way communications with all personnel who may be endangered and can hear or observe the signals and take appropriate action immediately. The responsible person would be trained in the operation of the CO monitoring system and in the proper procedures to follow in the event of an emergency or malfunction. In addition, the detector located at or near the section loading point would activate when the CO monitoring system initiates the fire alarm signals and would give a warning that could be heard on the working section;

(c) The CO monitoring system would be visually examined, at least once each coal-producing shift, and tested for functional operation weekly, to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly;

(d) If at any time the CO monitoring system or any portion of the system is deengerized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate, provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using hand-held CO detecting devices;

(e) The details for the fire detection system would be included as a part of the Ventilation System and Methane and Dust Control plan. The District Manager may require additional carbon monoxide monitors to be installed as part of said plan to ensure the safety of the miners.

3. This plan would increase the quantity of air that can be supplied to the face areas, and thereby provide increased protection to the miners against hazards created by accumulation of methane and other harmful gases, as well as respirable dust. Also, by using the belt entry as an intake, the velocity of air in the belt entry would be increased. This would provide more positive ventilation and reduce the possibility of methane accumulation in the belt entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or receive in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-467 Filed 1-9-89; 8:45 am]

BILLING CODE 5410-43-M

[Docket No. M-88-240-C]

Sahara Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75-326 (aircourses and belt haulage entries) to its Mine No. 21 (I.D. No. 11-00784) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air coursed through designated belt haulage entries to ventilate specific active working sections.

3. In support of this request, petitioner proposes to install a carbon monoxide (CO) fire detection system. CO detectors would be located at the beginning and end of the belt flight and at intervals not greater than 2,000 feet along the belt, if the belt air velocity is greater than 50 feet per minute and does not exceed 200 feet per minute. CO detectors would be located at the beginning and end of each belt flight and at intervals not greater than 3,000 feet along the belt, if the belt air velocity is greater than 200 feet per minute.

(a) CO detectors would be capable of providing a warning at an attended location when the CO level is 10 parts per million above the ambient level;

(b) CO detectors would be visually examined weekly when belts are operating. The CO detectors would be calibrated at the time of installation and monthly;

(c) In the event that the monitoring system becomes inoperative, the belt would continue to operate provided the area is continually monitored and patrolled by a qualified person who would test for the presence of CO at frequent intervals; and

(d) In the event a warning signal is transmitted to the attended location or CO is detected by the person monitoring the area, employees would be notified and an investigation would be conducted.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: December 27, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-468 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-18-M]

C & M Sand and Gravel; Petition for Modification of Application of Mandatory Safety Standard

C & M Sand and Gravel, 7916 Niwot Road, Box 490, Niwot, Colorado 80544 has filed a petition to modify the application of 30 CFR 56.14132 (horns and backup alarms) to its Zweck Pit (I.D. No. 05-04375) located in Boulder County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that when the operator has an obstructed view to the rear, self-propelled mobile equipment have an automatic reverse-activated signal alarm or an observer to signal when it is safe to backup.

2. As an alternate method, petitioner proposes to shut down loader activity when pedestrians are present in lieu of an automatic reverse-activated signal alarm or an observer. In support of this request, petitioner states that—

(a) There are two loaders operating at the site. One would excavate or load pit run into a hopper for the crushing operation. There would be minimal truck or foot traffic in this area. The other would load finished products onto haul vehicles in the stockpile area. Access to this area will be by a 1,500-foot haul road and haul vehicle drivers would be required to remain in their vehicles. The traffic pattern would limit backup by the loader to those times when the loader is backing from the stockpile to load the truck. Therefore, there would be no pedestrian or truck traffic behind the loader at the times when backing is required;

(b) People routinely working near audible backup alarms become accustomed to the alarms and no longer respond to their warning; and

(c) The alarms bother people living in residential areas near the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 9, 1989. Copies of the petition are available for inspection at that address.

Date: January 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-504 Filed 1-9-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-01)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATE AND TIME: February 1, 1989, 8:30 a.m. to 5 p.m., February 2, 1989, 8:30 a.m. to 5:30 p.m., and February 3, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to review the OSSA Program, Budget, and Strategic Plan. They will also hear reports on the Federal and NASA FY 1990 Budgets and receive reports on Information Systems, Microgravity, the Space Science Board, and Center Science Assessment. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members).

TYPE OF MEETING: Open.

Agenda:

Wednesday, February 1

8:30 a.m.—Open Remarks and Committee Business.
8:45 a.m.—Status of the Office of Space Science and Applications (OSSA) Program.
9:15 a.m.—Overview of the FY 1990 Federal Budget.
9:45 a.m.—NASA and OSSA FY 1990 Budget.
10:30 a.m.—Committee Discussion.
11:30 a.m.—OSSA Strategic Plan.
1:30 p.m.—National Research Council (NRC) Space Science Board Reorganization.
2:30 p.m.—Information Systems Strategic Planning.
4.15 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Thursday, February 2

8:30 a.m.—Discussion of Internal Committee Business.
8:45 a.m.—Center Science Assessment Report.
9:30 a.m.—Division Subcommittee Reports.
1 p.m.—Microgravity Science Tutorial.
2 p.m.—Discussion on the Microgravity Program.
3:30 p.m.—Committee Discussion and Writing Group Assignments.
5:30 p.m.—Adjourn.

Friday, February 3

8:30 a.m.—Internal Committee Business.
8:45 a.m.—Writing Groups and Committee Discussion.
12:30 p.m.—Adjourn.

January 4, 1989.

Ann Bradley,

Advisory Committe Management Officer. National Aeronatics and Space Administration.

[FR Doc. 89-396 Filed 1-9-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

1. *Date:* January 31, 1988–February 1, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1989.

2. *Date:* February 2, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Ancient, Classical, and Near Eastern Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

3. *Date:* February 3, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Music and other Performing Arts, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

4. *Date:* February 6–7, 1989.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1989.

5. *Date:* February 7, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Literature and Philosophy, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

6. *Date:* February 14, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the field of Linguistics, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

7. *Date:* February 21, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Tools and Access categories in the fields of World History and the Social Sciences, submitted to the Division of Research Programs, for projects beginning after July 1, 1989

8. *Date:* February 23, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access category in the field of American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

9. *Date:* February 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the field of American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

10. *Date:* February 28, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Art and Architecture, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

11. *Date:* January 23, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Fine Arts, submitted to the Division of Research Programs, for projects beginning after July 1, 1989. Publication of this notice was unavoidably delayed due to exceptional circumstances during the recent holdiay season.

12. *Date:* January 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research applications for Humanities, Science and Technology, submitted to the Division of Research Programs, for projects beginning after July 1, 1989. Publication of this notice was unavoidably delayed due to exceptional circumstances during the recent holiday season.

13. *Date:* January 30, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Philosophy and Literature, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

14. *Date:* January 31, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Archaeology, New World, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

15. *Date:* February 6, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Anthropology and Sociology, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

16. *Date:* February 13, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Archaeology, Old World, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

17. *Date:* February 14, 1989.
Time: 8:30 a.m. 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for Guided Studies of Great Texts in Science, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

18. *Date:* February 24, 1989.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Interpretive Research/Projects applications for World History and Religion, submitted to the Division of Research Programs, for projects beginning after July 1, 1989.

Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 89-454 Filed 1-9-89; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-458]

Gulf States Utilities Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF-47 issued to Gulf States Utilities Company, (the licensee), for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identificotion of the Proposed Action

The proposed amendment would revise the provisions in Technical Specification (TS) Definition 1.31 and in TS 4.6.1.2 to modify the primary containment integrity requirements to permit the performance of a limited number of local leak rate tests while handling irradiated fuel within the containment. TS 3.9.4 would be modified to increase the decay time required for irradiated fuel before the vent and drain line pathways can be opened for the purpose of conducting local leak rate surveillance testing.

The proposed action is in accordance with the licensee's application for amendment dated September 28, 1988, as supplemented November 30, 1988.

The Need for the Proposed Action

The proposed change to the TS is required to relieve the licensee from the unnecessary hardship due to the current requirement to suspend handling of irradiated fuel if primary containment integrity is not maintained. As a result of this requirement, most Type C leak rate tests required by Appendix J to 10 CFR Part 50 cannot be performed while refueling is in progress. The requested TS change would permit leak rate testing in parallel with refueling to reduce the refueling outage duration because a limited number of vent and drain pathways could be opened while refueling operations are underway.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would nodify the provisions in Technical Specification Definition 1.31 and TS 4.6.1.2 to revise the primary containment integrity requirements during fuel handling to permit up to twenty vent and drain line pathways to be opened for the purpose of performing local leak rate tests. TS 3.9.4 would be modified to increase the decay time required for the irradiated fuel from 24 hours to 80 hours before the vent and drain line pathways can be opened for the purpose of performing the local leak rate tests.

The NRC staff performed an evaluation of the offsite radiological consequences resulting from a postulated fuel handling accident inside the primary containment while performing Type C leak rate testing with up to 20 vent and drain lines opened.

In the River Bend Safety Evaluation Report (NUREG-0989) dated May 1984, the staff previously evaluated a postulated fuel handling accident using assumptions contained in Positions C.1.a through C.1.k of Regulatory Guide 1.25 and the procedures specified in Standard Review Plan (SRP) section 15.7.4 (NUREG-0800). A 24 hour delay between shutdown and accident was used in the evaluation. In addition, the specified assumptions postulate a single dropped fuel assembly, the kinetic energy of which is expended with perfect mechanical efficiency in breaking open the maximum possible number of fuel rods. Instantaneous release of noble gases and radioiodine vapor from the gaps of the broken rods occurs as gas bubbles pass up through the water covering the fuel. All radioactivity reaching the primary containment atmosphere is exhausted within 2 hours through engineered safety feature filtered exhaust systems to the environment.

In this current evaluation, the staff performed the offsite dose calculations using the same assumptions previously used for a postulated fuel handling accident with the following two exceptions:

1. An unmitigated release of 70.2 CFM from the primary containment through up to 20 open vent and drain lines in addition to the maximum allowable unidentified primary containment leakage of 0.26 percent per day; and

2. A credit was given for 10 percent mixing of airborne radioactive material within primary containment atmosphere prior to release to the secondary containment (the licensee proposed 50 percent mixing credit).

The offsite doses computed for the River Bend Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) boundaries using the above assumptions, assumptions contained in Regulatory Guide 1.25, and the procedures specified in Standard Review Plan (SRP) section 15.7.4, were 21 rem to the thyroid and 6 rem to the whole body at the EAB and 2.7 rem to the thyroid and 0.6 rem whole body at the LPZ. These calculated offsite doses are well within the exposure guidelines of 10 CFR 100 and are within the acceptance criteria given in Standard Review Plan section 15.7.4.

The change does not otherwise affect the probability or consequences of any accident.

The tasks that the licensee's personnel will perform to accomplish the tests will not be significantly different from those tasks performed during previous leak rate testing. Thus, there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

There are no changes being made in the types of any effluents that may be released offsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on October 24, 1988 (53 FR 41634). No request for bearing or petition for leave to intervene was filed following these notices.

Alternative to the Proposed Action

Since the Commission concluded that there is no significant adverse environmental effect that would result from the proposed action, alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the impact of plant operations on the environment and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 28, 1988, and supplement dated November 30, 1988, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-444 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co., Humboldt Bay Power Plant, Un. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 70.51(d) to Pacific Gas and Electric Company (the licensee), for Humboldt Bay Power Plant, Unit 3, located in Humboldt County, California.

Environmental Assessment

Identification of Proposed Action

By application dated June 6, 1988 as revised July 19 and September 13, 1988, Pacific Gas and Electric Company requested an exemption. The exemption will delete the requirement for an annual inventory of spent fuel at the permanently shut down Humboldt Bay Power Plant, Unit 3 provided that specified commensurate conditions and requirements are established.

The Need for the Proposed Action

The licensee is requesting an exemption from the annual physical inventory.

Humboldt Bay Unit 3 was shut down on July 2, 1976 and all spent fuel was subsequently transferred to the spend fuel pool. The operating license was modified to possess-but-not-operate status on July 16, 1985. On July 19, 1988 the NRC approved a decommissioning plan that allowed storage of spent fuel on site until a Federal repository was available to receive it.

Environmental Impact of the Proposed Action

The proposed action is administrative only and will have no environmental impact.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The licensee initiated this exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application dated June 6, 1988 as revised July 19 and September 13, 1988 which is available in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Eureka-Humboldt County Library, 421 I Street, Eureka, California.

Dated at Rockville, Maryland, this 4th day of January 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-445 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341; License No. NPF-43; EA 88-104]

Detroit Edison Co. (Fermi 2); Order Imposing Civil Monetary Penalty

I

Detroit Edison Company (licensee) is the holder of Operating License No. NPF-43 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 15, 1985. The license authorizes the licensee to operate Fermi 2 in accordance with the conditions specified therein.

II

Special safety inspections of the licensee's activities were conducted during the periods October 18, 1987 through March 31, 1988 and January 17 through April 28, 1988. The results of these inspections indicate that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated June 16, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 15, 1988. In its response, the licensee admitted Violation A and denied Violation B. In addition, the licensee requested remission of the civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice. However, escalation of the civil penalty for past poor performance was not warranted for Violation A. Consequently, the proposed escalation of the penalty on this basis has been withdrawn. In all other aspects, the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: The licensee pay a civil monetary penalty in the amount of One Hundred Seventy-Five Thousand Dollars ($175,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Assistant General Counsel for Enforcement, the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, and a copy to the NRC Resident Inspector, Fermi 2.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made at that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation B of the Notice of Violation and Proposed Imposition of Civil Penalties referenced in section II above, and

(b) Whether, on the basis of Violations A and B, this Order should be sustained.

Dated at Rockville, Maryland this 28th day of December 1988.

For the U.S. Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluation and Conclusion

On June 16, 1988, a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for violations identified during NRC inspections. Detroit Edison Company (licensee) responded to the NOV on July 15, 1988. In its response, the licensee admitted that Violation A occurred, but denied that Violation B occurred as stated in the NOV. The licensee requested partial mitigation of the civil penalty for Violation A and the withdrawal of Violation B. The violations are restated below, followed by a summary of the licensee's response, the NRC evaluation, and the NRC conclusion.

I. Restatement of Violation A

A. 10 CFR Part 50, Appendix A, General Design Criterion 56 requires, in part, that each line that connects directly to the containment atmosphere and penetrates primary reactor containment shall be provided with containment isolation valves both inside and outside primary containment unless it can be demonstrated that the containment isolation provisions for a specific class of lines, such as instrument lines, are acceptable on some other defined basis.

Contrary to the above, as of October 17, 1987, the containment isolation configuration for the primary containment radiation monitoring (PCRM) system violated the requirements of General Design Criteria 56 in that containment isolation valves were not provided on the system lines both inside and outside primary containment and this configuration was not accepted on some other defined basis.

This is a Severity Level III violation (Supplement I). Civil Penalty—$100,000.

Summary of Licensee's Response

The licensee admits Violation A as stated in the NOV but believes extenuating circumstances exist which make the proposed escalation of the civil penalty unwarranted.

1. *Corrective Action to Prevent Recurrence.* The licensee states that action was taken promptly following identification of the problem to isolate the affected system and perform leakage testing. Submittals were made to the NRC in a timely manner. Frequent communications occurred between the licensee and the NRC until the interim resolution was reached. The licensee cites the NRC letter granting the temporary exemption to GDC 56 which states that the licensee had made a good faith effort to come into compliance with GDC 56.

2. *Past Performonce.* The licensee believes that increasing the civil penalty based on past performance, specifically including an original design deficiency (EA 87-232) involving the 72CF Bus design deficiency, is inappropriate. Increasing the civil penalty, it is argued, is not appropriate when two existing unrelated design problems are discovered in the same general time period. The licensee stated that it believes that the purpose of the provision in 10 CFR Part 2, Appendix C for increasing a penalty based on poor past performance is to penalize utilities for ineffective corrective action and that use of this provision is only appropriate when a licensee violates a requirement, supposedly takes corrective action, but then repeats the violation. Therefore, the licensee argues that corrective action for an original design problem discovered in September 1987 could not have affected a modification performed in 1984, and so should not form the bases for escalation of the civil penalty for poor past performance.

3. *Prompt Identification and Reporting.* Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In this case, the licensee argues that it identified and reported the problem.

NRC Evaluation of Licensee's Response

With respect to unusually prompt and extensive corrective action, the issue is not the licensee's good faith. The issue is the adequacy of the corrective actions. The NRC staff does not agree that the actions taken demonstrate adequate effort to either compensate for the technical deficiency or come into compliance with GDC 56. The NRC had to meet with the licensee to convince it to commit to taking compensatory actions during the time the licensee would be operating under the exemption it had requested from GDC 56. In addition, the licensee had proposed the exemption without compensatory measures. Further, the licensee's proposal to achieve compliance with GDC 56 was deficient in that the NRC had to convince the licensee that additional automatic isolation valves with proper signal diversity would be required to satisfy GDC 56. The base civil penalty was increased 50% based on these considerations which demonstrated minimal corrective actions.

With respect to past performance, 10 CFR Part 2, Appendix C, section V.B. addresses past performance in subsection 3. It states that the base civil penalty may be increased as much as 100% for prior poor performance in the general area of concern. It further states that, in weighing this factor, consideration will be given to a number of factors including the effectiveness of previous corrective action for similar problems, overall performance such as SALP evaluations, and prior enforcement history including Severity Level IV and V violations in the area of concern. It is not necessary for application of this factor that prior corrective actions be shown to be ineffective. The factor may be applied upon an assessment of overall past performance in the general area of concern. Therefore, the NRC staff does not agree with the licensee's understanding of the application of this factor.

Specifically, a correlation to corrective action is not necessary. However, after reconsidering the circumstances of this case, the staff has concluded that escalation of the civil penalty for this factor is not warranted.

With regard to the factor of identification and reporting, while the licensee reported the violation, it was the NRC who actually raised the issue of compliance with GDC 56. The Resident Inspector had to convince the licensee that it did not meet GDC 56 or an alternative as described in the UFSAR. Also, it would be inappropriate to mitigate the civil penalty based on this factor due to the length of time that a significant deficiency existed without discovery. Therefore, no reduction was made.

II. Restotement of Violation B

B.1. With the unit in Modes 1, 2, or 3, Technical Specification Limiting Condition for Operation Action Statement 3.7.2.b.2 requires that if a

Control Room Emergency Filtration System flowpath damper is inoperable for seven days, the unit be placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

Technical Specification 1.25 defines a system, subsystem, train, component, or device to be OPERABLE or having OPERABILITY when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication, or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support functions.

Contrary to the above, at 10:15 p.m. on January 21, 1988, with the unit in Mode 1, a Control Room Emergency Filtration system flowpath damper, which had been inoperable for seven days because the necessary attendant noninterruptible air compressor was out-of-service, was not returned to service nor was the unit placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

B.2. With the unit in Modes 1, 2, and 3, Technical Specifications Limiting Condition Action Statement 3.6.5.3.a.1 requires that if one Standby Gas Treatment subsystem is inoperable for seven days the unit be placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

Technical Specification 1.25 defines a system, subsystem, train, component, or device to be OPERABLE or having OPERABILITY when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication, or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support functions.

Contrary to the above, at 10:15 p.m. on January 21, 1988, with the unit in Mode 1, the Division II subsystem of Standby Gas Treatment, which had been inoperable for seven days because the necessary attendant noninterruptible air compressor was out-of-service, was not returned to service nor was the unit placed in HOT SHUTDOWN within 12 hours and COLD SHUTDOWN in the following 24 hours.

This is a Severity Level III problem (Supplement I). Civil Penalty—$100,000 (assessed equally between the violations).

Summary of Licensee's Response

The licensee denies that Violation B occurred. The licensee references section 9.3.1.2 of the Fermi Updated Final Safety Analysis Report (UFSAR) which states in part, "There is a normally closed intertie between the Divisions I and II noninterruptible control air systems. During a maintenance outage of the supply to one of these divisions, the intertie is opened so that the division having the outage can be supplied by the other division." The licensee believes that its proposed method of operation of the Noninterruptible Air System (NIAS) as described in the UFSAR was acceptable to the NRC, based on its belief that active discussion took place between licensee representatives and NRR on this subject during the licensing of the facility. Thus, a decision not to put NIAS into Technical Specifications was made consciously with the NRC during the Technical Specifications development process.

The licensee contends that there is no regulation, order, or license condition which makes the method of operation as described in the UFSAR illegal. The licensee denies that there is a Technical Specification requirement for complete independence of the two noninterruptible air systems (NIAS), based upon the context of the licensing history of the facility discussed above.

The licensee stated that, if the NRC should find that violations did occur in this instance, a situation existed where remission or mitigation of the proposed penalty would be appropriate. The licensee argues that it relied upon the licensing history of Fermi 2 in determining its legal obligations and in taking actions which it took. In addition, additional steps were taken and self-imposed restraints imposed by the licensee when the facility was operated in the configuation which formed the bases for the violation. These actions were taken as a result of management involvement in and recognition of an operating condition which should not be allowed to continue beyond a reasonable period of time.

Detroit Edison believes that its actions are consistent with the NRC's view of greater management involvement in nuclear activities and establishment of prudent operating practices. So, if the NRC finds that a violation occurred, then Detroit Edison's actions should be considered in light of its understanding of its UFSAR and the proposed penalties should be remitted or mitigated, not doubled.

NRC Evaluation of Licensee's Response

In determining the appropriate action to take in the event one of the redundant divisions of the NIAS is inoperable, the respective action statements for the redundant equipment required to be operable by Technical Specifications should be examined. That equipment which requires the affected division of NIAS to be operable should be declared inoperable. In this case, the NIAS serves as a support system for the control room emergency filtration system, the standby gas treatment subsystem, and the main steam isolation valve leakage control system and is required for these systems to be considered operable. With a division of NIAS rendered inoperable, the affected division would be governed by a 7 day action statement, rather than the 30 day administrative action statement the licensee imposed.

It should be noted that both the staff and the licensee in the SER and USAR, respectively, stated that the noninterruptible control air is "supplied through two separate systems (Division I and Division II) to" emergency equipment. The licensee admits that its NIAS was designed to be redundant and not subject to a single failure. Furthermore, the statement in section 9.3.1.2 of the UFAR regarding the intertie between Divisions I and II is not inconsistent with requirements specified in the Technical Specifications. Reading this provision with the Technical Specifications would permit the intertie but for no longer than 7 days.

The licensee's argument that it relied on the licensing history of Fermi 2 in determining the appropriate action that it took is not controlling and may reflect an unacceptable understanding of the Technical Specifications. The decision not to include a specific Technical Specification for a support system such as NIAS is consistent with the NRC's general approach to Technical Specifications that support systems are encompassed by the concept of operability. At the time of licensing, the licensee should have understood that operability extended to the NIAS. The NIAS System serves as a support system for equipment required operable by Technical Specifications, and is therefore, addressed explicitly in Technical Specification 1.25. In other words, since the redundant NIAS System supports redundant equipment required to be operable by Technical Specifications, a loss of one division will make the affected portions of systems which NIAS supports inoperable as defined in Technical Specification 1.25. The licensee's failure to appreciate the meaning of operability is cause for concern.

With respect to the licensee's arguments concerning mitigation and extenuating circumstances, the NRC does not believe that mitigation is appropriate. The root cause for this violation was the failure of the licensee's engineering staff to provide adequate guidance on the system interfaces to other departments and the failure of the operations staff to identify these violations when the Division II NIAS was taken out of service. The plant operations section of the SALP 8 report covering the period April 1986 thorugh March 1987 lists examples where the licensee failed to recognize the appropriate action to be taken under the license when equipment was found out of service. The licensee's response to SALP 8 acknowledged the Category 3 rating in plant operations and indicated that development of an operability matrix to facilitate better understanding of Technical Specification/FSAR nuances which could affect operation of the plant, would be investigated. SALP 9 discussed the plant operations area and noted that violations "* * * when viewed collectively indicate a negative trend showing a lack of attention to detail and poor understanding of Technical Specification actions by operational personnel." Because of prior poor performance in this area, the civil penalty was escalated 100 percent. The staff does not believe mitigation is warranted.

III. NRC Conclusions

The NRC staff has concluded that Violations A and B occurred as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty. However, the staff concluded that escalation of the civil penalty for past performance was not warranted for Violation A. Accordingly, the proposed civil penalties in the amount of $175,000 should be imposed.

[FR Doc. 89-443 Filed 1-9-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16738; 812-7117]

Allstate Life Insurance Co. of New York et al.

January 4, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Allstate Life Insurance Company of New York (the "Company") and Allstate Life of New York Variable Annuity Account (the "Account") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to the extent necessary to permit the Company to deduct from the assets of the Account the morality and expense risk charges imposed under certain variable annuity contracts.

FILING DATE: The application was filed on September 12, 1988 and amended on December 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC, 20549. Applicants, P.O. Box 2898, Huntington Station, New York, New York 11746.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Company established the Account as a segregated investment account on June 26, 1987, as a facility through which assets attributable to certain flexible premium variable annuity contracts (the "Contracts") would be set aside and invested. The Account is registered as a unit investment trust under the 1940 Act and each Sub-Account of the account invests solely in shares of a particular series of the Dean Witter Variable Investment Series ("Fund"). The Fund is an open-end diversified investment company registered under the 1940 Act.

2. The Company will deduct annually a contract maintenance charge of $30.00 from the contract value to reimburse the Company for its costs in maintaining each Contract and the Account. The Company does not expect to realize a profit from this charge.

3. A Surrender Charge will be applied to amounts withdrawn in excess of a free withdrawal amount, as set forth below:

Elapsed time since purchase payment being withdrawn was made	Applicable surrender percentage
Less than 1 year	6
1 year, but less than 2 years	5
2 years, but less than 3 years	4
3 years, but less than 4 years	3
4 years, but less than 5 years	2
5 years, but less than 6 years	1
6 years or more	0

The cumulative total of all Surrender Charges is guaranteed never to exceed 7% of an Owner's actual Purchase Payments.

4. The Company deducts a daily mortality and expense risk charge equal to an annual rate of 1% of the daily net assets of the Account and the value of the assets in the fixed account attributable to the Contracts. The level of this charge is guaranteed and will not change. This charge is allocable 0.35% to the Company's assumption of morality risks, and 0.65% to the assumption of expense risks. Under the Company's current procedures, these amounts are paid to the general account monthly.

5. The Company represents that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount, the Company guarantees certain risks in the Contracts. The application states that the mortality and expense risk charge is a reasonable charge to compensate the Company for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that the contract value before the income starting date will be less than the death benefit; and for the risk that the amounts realized from the contract maintenance will be insufficient to cover actual administrative expenses. The Company represents that the mortality and expense risk charge is within the range of industry practice for

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comparable annuity products. This representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. The Company will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey.

6. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the surrender charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

7. The Company represents that the Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–471 Filed 1–9–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16739; File No. 812–7134]

DSI Series Fund, Inc., et al.

January 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: DSI Series Fund, Inc. ("Fund" or "Applicant") and certain Life Insurance Companies and Variable Life Insurance Separate Accounts investing therein and Principal Underwriters thereof.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed on September 23, 1988 and amended on December 16, 1988.

Hearing or Notification of Hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. DSI Series Fund, Inc., 909 3rd Avenue, 19th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272–3017 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (80) 231–3282 (Maryland (301) 253–4300).

Applicant's Representations

1. The Fund is a Maryland corporation registered as an open-end diversified investment company. The Fund intends to offer shares of its existing and future series to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to as "variable contracts"). Insurance companies whose separate accounts own shares of the Fund are referred to as "participating insurance companies." The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

2. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15)(i) and (ii), provide exemptions from section 9(a) and certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

3. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicant states that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicant believes that it is unnecessary to apply section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, and alleges that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. The relief provided by Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) is requested only for participating insurance companies and their affiliated persons who do not participate directly in the management or administration of the Fund.

4. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed.

5. Applicants represent that the right under Rules 6e–2(b)(15) and 6e–(T)(b)(15) of the insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts and that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The application states that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determination.

6. Use of the Fund as a common investment medium for variable contracts would, according to Applicant, encourage more insurance companies to offer variable contracts. Applicant believes that this will result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicant also believes that mixed and shared funding should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Granting the requested relief should also result in an increased amount of assets available for investment by the Fund which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new series of the Fund more feasible.

Applicant's Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with section 16(a) and, if and when applicable, section 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirments of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

3. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

4. Participating insurance companies and the Fund's investment adviser, Directed Services, Inc. ("Adviser"), will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract owners.

5. If it is determined by a majority of the Board of Directors of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these resonsibilities will be carried out with a view only to the interests of contract owners.

For purposes of this condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund of the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconcilable material conflict.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be

made known promptly to all participating insurance companies and the invesment manager for the Fund.

7. Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund. Participating insurers will be required to vote Fund shares attributable to variable life insurance policies for which no instructions have been received in the same porportion as votes cast for Fund shares for which instructions have been received.

8. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the participating insurance companies as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–472 Filed 1–9–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16736; 812–7092]

PW Private Capital Technology Fund, L.P.; Application

January 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act" or the "Act").

Applicants: PW Private Capital Technology Fund, L.P. (the "Partnership") (formerly PaineWebber Technology Capital Fund, L.P.), PaineWebber Technology Management, L.P. ("Managing General Partner"), PaineWebber Development Corporation.

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the Act from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Applicotion: Applicants seek an order determining that: (i) The Independent General Partners (as hereinafter defined) of the Partnership will not be deemed "interested persons" of the Partnership, the Managing General Partner or PaineWebber Development Corporation solely by reason of serving as general partners of the Partnership; and (ii) that persons who become limited partners (the "Limited Partners") of the Partnership who own less than five percent of the limited partnership interests (the "Interests") will not be deemed "affiliated persons" of the Partnership or of its other partners solely by reason of their status of Limited Partners.

Filing Date: The application was filed on August 4, 1988, and amended on October 21, 1988, and December 2, 1988. The SEC staff received a supplemental letter to the application on January 4, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o PaineWebber Development Corporation, 1285 Avenue of the Americas, New York, New York 10019, Attn: Reinaldo Diaz.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272–3022 or H.R. Hallock, Jr., Special Counsel, (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Partnership is a Delaware limited partnership organized on August 5, 1988, under a Certificate of Limited Partnership. The limited partnership form will be used to avoid the adverse consequences of being taxed as a corporation while still affording investors the advantage of limited liability. The Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the Act and those sections of the Act made applicable to business development companies by section 59 thereof. Interests in the Partnership will be sold to qualified investors in a private placement transaction pursuant to Regulation D under the Securities Act of 1933. The Managing General Partner expects to raise $30–50 million in the offering but reserves the right to raise up to $75 million. PaineWebber Development Corporation, general partner of the Managing General Partner, will act as selling agent for the Interests.

2. The investment objective of the Partnership is to seek capital appreciation and current income by making investments, primarily in private companies which the Managing General Partner believes offer significant long-term growth possibilities. The Partnership is to terminate on December 31, 1998 (unless extended for up to four additional one-year terms in order to permit an orderly liquidation).

3. The Managing General Partner, a Delaware limited partnership, will be responsible for managing the investments of the Partnership, subject to the supervision of the Independent General Partners. The Managing General Partner will be registered as an investment adviser under the Investment Advisers Act of 1940. The Managing General Partner also will be responsible for the admission of additional or substitute Limited Partners. Pursuant to the Partnership Agreement and subject to the supervision of the Independent General Partners, the Managing General Partner will also perform management and administrative services in connection with the operation of the Partnership.

4. The General Partners of the Partnership will consist of (i) not less than two nor more than nine individuals (the "Independent General Partners"), the precise number of which shall be fixed from time to time by the Independent General Partners then in office, and (ii) one Managing General Partner. The number of Independent General Partners will initially be two, both of whom will be Disinterested Individuals, defined as individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act. If at any time the number of Disinterested Independent General Partners is less than a majority of the General Partners, the Independent General Partners shall designate one or more Disinterested successor Independent General Partners until the Disinterested Independent General Partners constitute a majority of the General Partners. In the event that no Independent General Partner remains, the Managing General Partner will, within 90 days, call a meeting of the Limited Partners for the purpose of electing Independent General Partners. The Partnership Agreement has no provision for regularly scheduled meetings of the Limited Partners for the election of General Partners. Each Independent General Partner, including any Disinterested successor Independent General Partner, will serve until the termination of the Partnership, unless such Independent General Partner either withdraws, resigns or is removed earlier pursuant to the Partnership Agreement.

5. The Partnership Agreement provides that an Independent General Partner may be removed (i) for cause by the action of at least two thirds of the remaining Independent General Partners (but only if there are at least three Independent General Partners at the time of such action) or (ii) with the consent of Limited Partners holding a majority of the Interests then outstanding. At any time at which the number of Independent General Partners is less than three, an Independent General Partner may be removed only in the manner described in clause (ii) of the preceding sentence. The Managing General Partner may be removed either (i) by the action of at least two thirds of the Independent General Partners (or by unanimous action if the number of Independent General Partners is less than three) or (ii) with the consent of Limited Partners holding a majority of the Interests then outstanding.

6. The Managing General Partner may withdraw from the Partnership only upon 60 days notice, which notice must name a successor Managing General Partner. The successor Managing General Partner must certify that it (i) has sufficient experience in the performance of such activities, (ii) has sufficient net worth such that the Partnership will not fail to be classified as a partnership for federal income tax purposes, and (iii) is willing to serve as Managing General Partner on the terms provided in the Partnership Agreement. In addition, Limited Partners holding a majority of the outstanding Interests must consent to the appointment of the successor Managing General Partner.

7. The Independent General Partners will provide overall guidance and supervision of the Partnership. Subject to the guidance and supervision of the Independent General Partners, the Managing General Partner will be responsible for the management of the Partnership's investments in companies, the admission of additional, assignee or substitute Limited Partners to the Partnership and the performance of the management and administrative services in connection with the operation of the Partnership. The General Partners will otherwise act by majority vote of the Independent General Partners. The Independent General Partners will perform the same functions as directors of a corporation.

8. The Limited Partners will have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner as specified in the Partnership Agreement, including rights to vote and approve certain matters as required by the Act. Counsel for the Partnership will render an opinion at the initial closing of the sales of the Interests that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take any action necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not at present carry an errors and omissions insurance policy. Applicants acknowledge that the SEC staff may view such insurance coverage as appropriate when the limited partnership form is used for registered investment companies and undertake that the Independent General Partners will periodically review the appropriateness of obtaining an errors and omissions policy for the Partnership.

9. Under the Partnership Agreement, each Independent General Partner will receive an annual fee of $30,000, together with reimbursement for all out-of-pocket expenses relating to meetings of the Independent General Partners. The Managing General Partner will receive an annual management fee equal to two percent of the Annual Fee Calculation Base (as defined below), subject to certain reductions in fiscal periods in which profits of the Partnership do not exceed a money-market-based rate of return on the Annual Fee Calculation Base. The Annual Fee Calculation Base will initially be an amount equal to the gross proceeds of the offering of the Interests subject to reduction in the event of certain distributions.

10. Under the Partnership Agreement, distributions to the General Partners and the Limited Partners will be made 1% to the General Partners and 99% to the Limited Partners, reflecting the *pro rata* capital "contributions of the General Partners and the Limited Partners, until contribution payout," as defined in the Partnership Agreement, is reached. "Contribution payout" occurs when each Limited Partner has received aggregate distributions from the Partnership equal to the amount of its capital contributions to the Partnership, plus simple interest thereon accrued at 5% per annum. After contribution payout, distributions will be made 20% to the General Partners and 80% to the Limited Partners. Distributions to the Managing General Partner will be subject to certain reductions in the event that there is net cumulative unrealized depreciation at the time of distribution on securities held by the Partnership for which market quotations are readily available. The distributions to the General Partners will be allocated among the Managing General Partner and the Independent General Partners in a manner agreed to by them in a separate contract. Under such contract.

substantially all of any distribution to the General Partners will be payable to the Managing General Partner and a small fixed percentage of each such distribution will be payable to each Independent General Partner.

Applicants' Legal Conclusions

1. By virtue of their status as partners of the Partnership, the Independent General Partners could be deemed to be "affiliated persons" of the Partnership, as defined under section 2(a)(3)(D) of the Act, and, consequently, "interested persons" of the Partnership within the meaning of section 2(a)(19). The Independent General Partners could also be construed to be "interested persons" of an investment adviser and principal underwriter to the Partnership by virtue of their status as "co-partners" (and, consequently, "affiliated persons") with the Managing General Partner in the Partnership. The Managing General Partner could be construed to be an investment adviser and its general partner an underwriter, of the Partnership. Each person who becomes a Limited Partner will be a partner of the Partnership, the other Limited Partners, each Independent General Partner and the Managing General Partner. Therefore, each Limited Partner could be deemed to be an "affiliated person" of the Partnership, the Limited and General Partners, merely by having purchased an Interest and become a Limited Partner.

2. The Partnership has been structured so that the Disinterested Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Although section 2(a)(19) of the Act excludes from the definition of "interested persons" those individuals who would be "interested persons" solely because they are directors of an investment company, there is no equivalent exception for partners of an investment company. Section 2(a)(3)(D) similarly excludes shareholders of an investment company from the definition of an "affiliated person" if such shareholder owns less than five percent of the company's outstanding voting securities.

3. Applicants request that the Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner or PaineWebber Development Corporation, solely because such Independent General Partners are general partners of the Partnership and "co-partners" with the Managing General Partner in the Partnership. Applicants further request that any Limited Partner owning less than five percent of the Partnership Interests not be deemed an "affiliated person" under section 2(a)(3)(D) of the Act of the Partnership, any other Limited Partner, any Independent General Partner, the Managing General Partner or PaineWebber Development Corporation, solely because such Limited Partner is a partner of the Partnership or a partner with any such other person in the Partnership.

4. Applicants submit that the requested exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) are consistent with the requirements of section 6(c) that an exemption be necessary or appropriate in the public interest, be consistent with the protection of investors, and be consistent with the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

1. The Applicants undertake that the Partnership will not commence operations until the Managing General Partner is registered as an investment adviser under the Investment Advisers Act of 1940.

2. The Partnership will be structured so that, as contemplated by the Partnership Agreement, the Disinterested Independent General Partners will be the functional equivalent of non-interested directors of an incorporated investment company under the Act. The Independent General Partners will assume the responsibilities and obligations imposed by the Act on non-interested directors of a business development company.

3. The Partnership Agreement authorizes the Partnership to make in-kind distributions of securities for which market quotations are readily available at the time of distribution. The Partnership will be structured and its Interests will be marketed in such a manner to meet the requirements of Rule 205–3 under the Advisers Act which provides an additional exemption from the prohibition on performance-based investment adviser compensation under section 105(a). In accordance with Rule 205–3, Partnership Interests will be sold only to investors who (i) will have a least $500,000 under the management of the Managing General Partner immediately after the investment or (ii) whom the Managing General Partner reasonably believes to have a net worth exceeding $1,000,000 at the time of investment. Investors in the Partnership must also meet the accredited investor criteria under Regulation D of the Securities Act of 1933.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–473 Filed 1–9–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:00 a.m. on Monday, January 23, 1989 at the Sugar House, Route 7, New Haven, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05602, 802/828–4422.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 3, 1989.

[FR Doc. 89–455 Filed 1–9–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/1252]

U.S. Organizations for the International Consultative Committees on Radio (CCIR) and Telegraph and Telephone (CCITT); Notice of Meeting

The Department of State announces that there will be a joint meeting of the National Committees of the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on January 17, 1989 from 1:00 p.m. to 5:00 p.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The National Committees provide advice on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general. The ITU will convene a Plenipotentiary Conference in May 1989, which will consider issues of considerable interest to U.S. CCIR and CCITT participants.

The main purposes of this third meeting of this series is to: 1. Report on national preparations for the Plenipotentiary; 2. Discussion of specific issues of interest to the CCIs; 3. Consideration of future activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, Department of State, Washington, DC; telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Date: December 19, 1988.

Earl S. Barbely,

U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89–402 Filed 1–9–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1253]

Overseas Security Advisory Council Notice of Meeting; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday, January 17, 1989, at 8:30 a.m. at the Indigo Lakes Resort, 2620 Volusia Avenue, Daytona Beach, Florida. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Mrs. Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20520, phone: 202/663–0002.

Date: December 19, 1988.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 89–403 Filed 1–9–89; 8:45 am]

BILLING CODE 4710–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147; Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463; 5 U.S.C. App. I), notice is hereby given for the twenty-eight meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held January 24, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of meeting held November 15–17, 1988, RTCA Paper No. xxx–89/SC147–xxx; (3) TCAS Program status reports; (4) report of pilot working group activities; (5) reports and discussion of New York Area TCAS capacity; (6) review of draft change 6 to RTCA Document DO–185; (7) discuss plans for proposed Document DO–185A; (8) review of draft minimum operational performance standards for TCAS III; (9) discussion of SC–147 plans and schedules; (10) other business; and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on January 3, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89–412 Filed 1–9–89; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee meeting to be held January 27, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of meeting held November 28, 1988; (3) Executive Director's report; (4) Special Committee Activities Report for November–December 1988; (5) report of the RTCA Awards Committee; (6) report of the RTCA Fiscal and Management Subcommittee; (7) consideration of RTCA Executive Director's letter of resignation; (8) consideration of Electronics Industries Association member's letter concerning Special Committee 147 (TCAS) Reports; (9) consideration of proposals to establish new special committees; (10) other business; and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval fo the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 3, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89–413 Filed 1–9–89; 8:45 am]

BILLING CODE 4910–13–M

Advisory Circular: Equipment, Systems, and Installations in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of proposed advisory circular (AC) and request for comments; Correction, dates.

SUMMARY: FAA is correcting an error on the dates line. In FR Doc. 88–29677, published Wednesday, December 28, 1988, on page 52558, please change February 29, 1989, to read February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Dahl, Aerospace Engineering.

Standards Office 9ACE–110, (816) 426–6941 or FTS 867–6941.

Michael D. Triplett,

Legal Technician Program Management Staff ACC–10.

[FR Doc. 89–411 Filed 1–9–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Northeast Corridor Safety Committee; Meeting

Pursuant to section 11 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342), notice is hereby given that a meeting of the Northeast Corridor Safety Committee will be held on January 17, 1989, at 10.00 a.m. in room 4338 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. This meeting will be open to the public.

This meeting is called for the purpose of providing counsel and advice to the Department of Transportation on safety improvements on the main line of the Northeast Corridor (NEC). The agenda will include reports from various members on principal activities affecting NEC safety and discussions of problem areas and priorities for action.

Written data, views or comments may be submitted (preferably with 15 copies) to the FRA Docket Clerk, RCC–30, Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Dated: January 5, 1989.

John H. Riley,

Federal Railroad Administrator.

[FR Doc. 89–429 Filed 1–9–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Public Forum; Air Carrier Smuggling Prevention Program

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of public forum, Air Carrier Smuggling Prevention Program.

SUMMARY: This notice is to advise that a series of public forums will be held in order to solicit input from the air transportation community with regard to Customs Air Carrier Smuggling Prevention Program.

FOR FURTHER INFORMATION CONTACT: Louis Razzino, Office of Inspection and Control (202–566–2140).

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988, specifically Section 7369(b), establishes an Air Carrier Smuggling Prevention Program. This section mandates that a 2-year demonstration program be created at three U.S. Airports of entry. To comply with this section, Customs must develop procedures for this program within six months after the date of enactment of this law. The regulations shall be initially applied at the following three U.S. Airports: Miami International Airport (MIA), Los Angeles International Airport (LAX), and Dallas-Fort Worth International Airport (DFW).

In order to solicit input from the air transportation community, public forums will be conducted at the three demonstration airports. Through this process, U.S. Customs will be initiating dialogue with the carriers that will take into account all considerations of security and commercial needs, all the while focused on program development. Procedures for acceptance and certification into the Air Carrier Smuggling Prevention Program will be the primary issues. Air Carriers who arrive at the aforementioned three airports and envision applying to be participating carriers should attend these forums. Other concerned members of the air transportation industry are invited to attend and are encouraged, separate from these forums, to submit, in writing, recommendations and program considerations to: Office of Regulations and Rulings, United States Customs Service, Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Dates, times and locations of these public forums are listed below:

Location	Date	Time	Forum location
MIA	Jan. 10	9:00 a.m.–1:00 p.m.	Miami Int'l. Airport Hotel, 7th Fl. Exec. Conf. Rm., Miami, FL.
DFW	Jan. 11	1:00 p.m.–5:00 p.m.	Lexington Hotel Suites, 3rd Level Meeting Room, DFW Airport North, Irving, TX.
LAX	Jan. 12	1:00 p.m.–5:00 p.m.	United Air. Training Room, Terminal 7, 700 Worldway, Room 408, Los Angeles, CA.

Further information regarding these public forums will be provided in Customs Information Bulletins that will be issued by the District Director of Customs at each cited located.

Dated: January 6, 1989.

Samuel H. Banks,

Assistant Commissioner, Inspection and Control.

[FR Doc. 89–569 Filed 1–6–89; 4:19 pm]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Goya and the Spirit of Enlightenment; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Goya and the Spirit of Enlightenment" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts in Boston, Massachusetts, beginning on or about January 18, 1989, to on or about March 26, 1989, and at the Metropolitan Museum of Art in New York, New York, beginning on or about May 9, 1989, to on or about July 16, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

Date: January 5, 1989.

[FR Doc. 89–570 Filed 1–6–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting the Office of the General Counsel of USIA. The telephone number is 202–485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., January 17, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of last meeting.
2. Thrift Savings Plan activities report by Executive Director.
3. Approval of legislative proposals.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, or Catherine Ball, Deputy Director, Office of External Affairs, (202) 523–5660.

Dated: January 5, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89–548 Filed 1–6–89; 2:42 pm]

BILLING CODE 6760–10–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 9, 16, 23, and 30, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED: .

Week of January 9

Friday, January 13

11:30 a.m.
Affirmation/Discussion and Vote (Public Meetings)
a. Policy Statement on the Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities (Tentative)

Week of January 16—Tentative

Thursday, January 19

10:00 a.m.
Briefing on Medical Use of By-Product Materials (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 23—Tentative

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Wednesday, January 25

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)
2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

January 5, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–560 Filed 1–6–89; 2:43 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 9, 1989.

A closed meeting will be held on Tuesday, January 10, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of to the Commssion, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 10, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alden Adkins at (202) 272–2000.

Jonathan G. Katz,

Secretary.

January 4, 1989.

[FR Doc. 89–577 Filed 1–6–89; 4:01 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53111; FRL-3486-4]

Premanufacture Notices; Monthly Status Report for October 1988

Correction

In notice document 88-28332 beginning on page 52084 in the issue of Friday, December 23, 1988, make the following corrections:

1. On page 52084, in the second column, in the seventh line, in the heading, "92" should read "91".

2. On the same page, in the third column, in the third and fourth lines, "44" and "442 P 87 0199" should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting

Correction

In rule document 88-26411 beginning on page 46768 in the issue of Friday, November 18, 1988, make the following corrections:

1. On page 46769, in the first column, in the third complete paragraph, in the third line, "ground" should read "round".

2. On page 46773, in the second column, in the last paragraph, in the 16th line, "spillage" was misspelled.

3. On the same page, in the third column, in the first paragraph, in the 23rd line, "50 persons" should read "50 percent".

4. On page 46774, in the third column, in the first line, after "of" insert "the".

5. On the same page, in the same column, in the second complete paragraph, in the 10th line, after "magazines", insert a period. In the 14th line, after "equipment", insert a period. In the 22nd line, after "minimized", insert a period.

6. On the same page and in the same column, in the third complete paragraph, in the 10th line, "final" was misspelled.

7. On page 46777, in the third column, in the first line, "inches" was misspelled.

8. On page 46784, in the second column, in the last complete paragraph, in the second line, "to steps" should read "the steps".

§ 75.1318 [Corrected]

9. On page 46788, in the second column, in § 75.1318(e), in the third line, "of" should read "or".

BILLING CODE 1505-01-D

federal register

Tuesday
January 10, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3501-9]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule: reopening of public comment period.

SUMMARY: The period for receiving written comments on the proposed New Source Performance Standards (NSPS) for Volatile Organic Compounds (VOC) emissions from the Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Industry is being reopened for the limited purpose of allowing public comment on a new approach for determining which process emissions from polypropylene and polyethylene production would be subject to the proposed standards. Previously, a model plant based approach was used to identify which process emissions from all four types of polymers would be subject to the proposed standards. A new approach for polypropylene and polyethylene is being considered as a result of new information in the comments received on the standards that were proposed on September 30, 1987 (52 FR 36678). The model plant based approach for determining which process emissions from polystyrene and poly(ethylene terphthalate) (PET) production processes would be subject to control, however, is being retained.

The new approach affects both continuous and intermittent process emissions from polypropylene and polyethylene production processes. Under the new approach, the determination of which process emission streams would be subject to the proposed standards would be made on a more generic basis rather than relying on a model plant based analysis. For continuous emissions, the control determination would be based either on VOC concentration (weight percent) or annual emissions or both, depending on whether the emissions are from a new or a modified or reconstructed affected facility. For intermittent emissions, the control determination would be made on the basis of the type of release alone (i.e., normal process releases such as start-up, shut-down, and maintenance purges; overpressurizations other than decomposition emissions; or decomposition emissions).

The new approach retains process section as the designated affected facility, and, in general, does not affect the degree of control required by the standards as proposed on September 30, 1987. Continuous emissions would still be required to be controlled by 98 percent reduction or to 20 parts per million by volume (ppmv), whichever is less stringent, although the Agency is considering in this notice the requirement that allows certain continuous emission streams with flows of 8 standard cubic feet per minute (scfm) or less to be controlled in an existing or otherwise available control device without specifying the control efficiency of that control device. With regard to the standards proposed for intermittent emissions, the Agency is currently evaluating comments suggesting that control devices other than flares be allowed. These comments will be addressed in the **Federal Register** notice for final rule, and not in this notice.

As identified in this notice, documents containing the analyses that form the basis of this new approach are found in the docket (see the **ADDRESSES** section of this notice).

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the new approach being considered for determining which process emission streams from polypropylene and polyethylene production plants would be subject to the proposed standards.

DATE: *Comments.* Comments must be received by EPA on or before February 21, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 26, 1989, a public hearing will be held on February 2, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA January 26, 1989.

ADDRESSES: *Comments.* Submit written comments (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-82-19, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, the public hearing will be held at EPA's Office of Adminstration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Supplemental Information. The documents containing the analyses that provide the basis for the new approach being considered are contained in Docket No. A-82-19, Docket Items IV-B-1 through IV-B-13. Docket No. A-82-19 is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy (telephone number (919) 541-5263), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

SUPPLEMENTARY INFORMATION:

Proposed Outline

I. Background

II. Revision to Proposed Standards

A. Comments of concern in this notice.
B. Review of model plant approach.
C. Review of new approach being considered:
1. Continuous emissions:
a. Control of continuous emissions from existing process sections.
b. Control of continuous emissions from new process sections.
2. Intermittent emissions.
3. Examples.
D. Summary of analyses behind new approach:
1. Continuous emissions.
2. Intermittent emissions.
E. Impacts of new approach.

III. Reopening of Public Comment Period

IV. Summary

I. Background

On September 30, 1987, NSPS were proposed for certain types of polymer manufacturing plants (52 FR 36678). The proposed standards would limit emissions of VOC from new, modified, and reconstructed polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) production plants. In addition, the proposed standards would apply to certain sources in polymer production plants that produce copolymers consisting of at least 50 percent by weight of ethylene, propylene, or bis-(2-hydroxylethyl)terephthalate, or at least 80 percent by weight of styrene. The proposed standards also cover fugitive equipment leak sources in all of these plants except those producing poly(ethylene terephthalate) (PET) or PET copolymers.

A public comment period was provided in the September 30, 1987, **Federal Register** notice until December 10, 1987. This comment period was extended until February 8, 1988, upon request by the Chemical Manufacturers Association (52 FR 47032). A public hearing was requested and was held on November 16, 1987. Fourteen comment letters were received, all from industry sources. A wide range of comments were received pertaining to such items as the definition of affected facility, the feasibility of applying refrigerated condensers to emission streams containing water, and the use of flow monitors. This notice addresses one set of comments, which expressed concern about the flexibility of certain sections of the regulation. These comments are described in the next section. As noted, the Agency received numerous comments on other parts of the proposed standard. These other comments received on the September 30, 1987, **Federal Register** notice will be considered before the final rule is published and will be responded to in the **Federal Register** notice for the final rule.

Because of the changes being considered and EPA's desire to ensure that the standards are based on the most complete and accurate information available, EPA is reopening the public comment period until February 21, 1989. The EPA will consider only those comments that pertain to the new approach being considered in this **Federal Register** notice for determining which process emissions from polypropylene and polyethylene manufacturing plants would be subject to the proposed standards; the comment period for all other aspects of the rulemaking ended February 8, 1988.

II. Revision to Proposed Standards

A. Comments of Concern in this Notice

Numerous comments were received concerning the use of model plants as the basis for categorizing the polyprophylene and polyethylene segments of the industry. Most of these comments expressed concern over the lack of flexibility of the proposed standards in dealing with process changes in these two segments of the industry, stating that model plant derived standards do not take into account changes, in old processes or new emerging processes. Several commenters pointed out that process changes in some existing processes have reduced the VOC concentration in certain streams to such a low level that the cost of control is no longer reasonable considering the reduced emissions. One commenter pointed out that not all polypropylene processes were represented by the model plants, while several others identified modified processes that are no longer represented by the model plant and its emission characteristics. Another commenter pointed out a situation in which the type of product was changed from a high density polyethyylene (HDPE) to a low density polyethlene (LDPE) so that the regulations that would apply are now different, but the production process and its emission characteristics have remained essentially the same. According to this commenter, the application of the standards based on the new product are not appropriate. Other concerns expressed about the model plant approach were that it would give unfair trade advantages to those companies whose processes served as the basis for a model plant and that it does not adequately consider low VOC concentration streams or copolymer plants. Commenters suggested two alternatives to the model plant based approach for the standards for polypropylene and polyethylene: (1) An approach that would be based on system pressure and (2) a generic stream-by-stream approach where cost effectiveness of control would be considered.

In considering these comments and other information provided by the commenters, the Agency identified at least two other concerns with using model plants to describe the polypropylene and polyethylene segments. First, the Agency is concerned that the apparent rapid process changes in the polypropylene and polyethylene industry may be creating new emission streams from process sections that previously had none or may be increasing emissions from process sections that previously had very little. The rapid changes in these industries may be undermining the reasonableness of using the model plants described in the background information document (BID) (EPA-450/3-83-019a) as the basis for determining which streams to control. This could result not only in the control of emissions that are no longer cost effective to control (as pointed out by the commenters), but could also allow new or larger emission streams to go uncontrolled when they are in fact cost effective to control. Second, since the proposed standards apply to certain specified process sections, process standards do not exist to control emissions from "new" process sections that may be incorporated into newer designs. For example, new information provided in the comments revealed that some polyethylene plants using the UNIPOL technology now have a material recovery process section. The UNIPOL process used to develop the model plant for LDPE, low pressure processes, however, did not have a material recovery process section.

In another general comment, it was suggested that the proposed exemption for emergency releases emitted from both LDPE high and low pressure plants and from HDPE gas phase plants be extended to other types of polymer manufacturing plants. Finally, an exemption level was requested for very small emission streams from polypropylene and polyethylene plants. Though not directly related to the flexibility issue or the model plant approach, the incorporation of an annual emission rate cutoff for small streams is now being considered for continuous emissions. As discussed later, the Agency does not believe this cutoff is appropriate for intermittent emissions.

The Agency considered three basic options for addressing the concerns identified above that were raised by the industry and the Agency for the polypropylene and polyethylene segments of the industry. These options were: (1) Develop additional model plants to cover new and modified processes identified by the commenters; (2) redefine the model plants on the basis of system pressure; and (3) develop a generic approach that would eliminate the need for defining model plants. For each of these options, the Agency also examined the feasibility and desirability of adding a small annual emission rate cutoff and a low VOC concentration cutoff.

The Agency considered the feasibility of each option as a basis for developing standards and the responsiveness of the option to the concerns raised by industry and the Agency. In general, the Agency concluded that developing additional model plants to cover new and modified processes was technically feasible. This effort would require a substantial amount of information gathering, and would likely result in a substantial increase in the number of model plants. The Agency was somewhat concerned that this option might lead to developing plant-specific standards rather than a national standard. A brief examination of

available information on system pressure and emissions led the Agency to the conclusion that this option was unlikely to be feasible. The information examined by the Agency did not show a relationship between system pressure and emissions. In addition, the amount of material recovery practiced, which is not directly related to system pressure, affects total emissions and emission characteristics of downstream emission sources. Thus, the Agency did not pursue this option any further. Lastly, the Agency concluded that a generic approach that does not rely on defining model plants could be developed. After examining various emission stream characteristics and the cost of controlling various streams, the Agency determined that a generic approach could be implemented.

Next, the Agency considered the responsiveness of the two options determined to be feasible to the concerns identified by the industry and the Agency. The Agency concluded that developing additional model plants could alleviate most of the concerns. For example, new model plants could be added to describe (1) the UNIPOL process with a material recovery section; (2) the modified HDPE process that now produces LDPE; and (3) all polypropylene production processes rather than two. By adding new model plants, many of the dilute streams for which industry claims the cost of control is not cost effective can be more directly considered. If sufficient model plants are described, then the concern over unfair trade advantages to companies whose processes served as the basis for a model plant should be reduced. However, the model plant option could become cumbersome since the Agency would have to continue to add new model plants as new processes are developed in the future when the rule is reviewed. While this option alleviates many of the concerns, it does not really address the root cause of many of these concerns, which is the rapidly changing nature of the processes within the polypropylene and polyethylene segments of the industry.

The generic approach addresses all of the concerns as well as, if not better than, does the model plant option. For example, the generic approach now directly considers the VOC concentration of emission streams in making the control/no control decision rather than relying on the average concentration of emissions from a process section in a model plant. This approach addresses in a much better manner industry concern over control of low VOC concentration streams. As another example, it may not be realistic to describe sufficient model plants in order to eliminate the concerns that may arise when one company's process is used to describe a model plant. A generic approach focusing on certain stream characteristics would provide a "level playing field" for all processes. In addition, by not relying on model plants and their specific emission characteristics and by focusing on generic aspects of emission streams (VOC concentration, annual emissions, nature of the release), the Agency believes the generic approach provides the flexibility needed to eliminate concern over the rapid process changes in these two segments of the industry.

While both options are feasible, the Agency believes a generic approach is more responsive to the concerns raised than is the development of additional model plants, and therefore has selected this option for determining which process emissions from polypropylene and polyethylene plants would be subject to the proposed standards. This new approach is based on the same information that was used in developing the standards that were proposed on September 30, 1987, but reformats that information to provide the basis for a generic approach for these two types of polymers.

The Agency is not considering changing the model plant basis for determining which streams from the polystyrene and PET segments of the industry would be subject to the proposed standards. The major factor in the decision to use a generic approach for determining which polypropylene and polyethylene emission streams to control is the rapidly changing nature of the production processes used in these segments of the industry. In contrast to the polypropylene and polyethylene segments of the industry, the production processes used in the manufacture of polystyrene and PET do not appear to be undergoing rapid changes. This suggests that the model plants used to describe polystyrene and PET production processes and their emissions are still as reasonable as when they were initially developed. Industry comments indicated that it was the polypropylene and polyethylene segments of the industry where the model plant approach was a problem. (One commenter did question the representativeness of the polystyrene model plant for its process, but did not question the model plant approach. The Agency will respond to this comment regarding the polystyrene model plant in the **Federal Register** notice for the final rule.) For these reasons, the Agency continues to believe that model plant based standards are appropriate for polystyrene and PET production processes.

In the remainder of this notice, the model plant approach is reviewed first (Part B). This review will enable the reader to understand better the relationship of the new approach with the model plant approach. In Part C, the new approach for determining which polypropylene and polyethylene emissions would be subject to the proposed standards is described, followed by examples that illustrate some of the differences between the two approaches. The purpose of Part C is to describe the new approach being considered in a straightforward factual presentation. The rationale and analyses that led the Agency to select particular aspects of this approach are summarized in Part D. The projected impacts of the new approach are presented in part E.

B. Review of Model Plant Approach

Based on information obtained from industry prior to proposal, a number of processes for producing polypropylene and polyethylene were identified. These processes were used to identify six generic or "model" plants. To the best of EPA's knowledge, which was based on information from the industry, these six model plants were representative of the processes that would be affected by the proposed standards. Further, EPA did not expect that these processes would change very much. Thus, appropriate industry-wide standards could be based on the stream characteristics associated with each model plant.

In developing the proposed standards, the Agency identified five generic process sections that could be a part of each polymer production plant. These process sections are raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage. Each model plant's emissions were identified as to the process section from which they were emitted. For analysis purposes, continuous emission streams within a process section were combined with each other to yield a single combined stream. Similarly, intermittent emission streams within a process section were combined with each other, except for emergency (decomposition) releases which were analyzed separately.

Standards were proposed for those process sections whose emissions were found to be cost effective to control. Such process sections were found to be cost effective to control based on one of the following cost scenarios: (1) Being controlled by its own control device, or (2) being combined with streams from other process sections on both a process line basis and a whole plant basis. For each process section proposed for control, an uncontrolled emission rate cutoff was provided. If a process section's uncontrolled emissions were less than the cutoff level, the Agency determined that control would not be cost effective and, thus, that process section would be exempt from the standards.

The cutoff levels proposed were the result of an analysis to identify the uncontrolled emission level below which the cost of control is unreasonable in light of the small amount of VOC emission reduction (see Docket Item II–B–85). This analysis assumed that VOC emissions from each process section would be controlled either by their own control device if the process section is constructed, modified, or reconstructed by itself or by a shared control device (i.e., a control device controlling emissions from the other process sections for which standards were recommended) if the process section is part of a constructed, modified, or reconstructed process line or plant. Some process sections were assumed to have their own control device even when constructed as part of a new process line because of the flow characteristics of their VOC emissions. The distribution of new individual process sections, process lines, and plants was estimated for each model plant and represented the "most likely growth" distribution. The emissions from each process section were reduced by lower the flow. (Where a shared control device was assumed, the flows and emissions from the other process sections were assumed to remain at their model plant levels.) At the same time, the cost of the control device was reduced to correspond to the process section's reduced flow and emissions. Emission levels were reduced for each process section until the incremental cost of control associated with the most likely growth distribution for that model plant became unreasonable with regard to the VOC emission reduction achieved.

C. Review of New Approach Being Considered

The approach presented below is generic in that the standards are no longer linked to specified model plants, but would apply to any polypropylene or polyethylene production process regardless of how well the particular production process is represented by the specific production process sequences of the model plants. As noted earlier, process sections are retained as the affected facility. Under the new approach, any existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards. Similarly, any newly constructed process section at an existing plant or a new plant would also be an affected facility subject to the proposed standards.

The new approach affects both continuous and intermittent emissions from all affected facilities. Table 1a summarizes the new approach for continuous emissions from modified and reconstructed affected facilities, while Table 1b summarizes the new approach for new affected facilities and for concurrently constructed and modified or reconstructed affected facilities. Table 3 summarizes the new approach for intermittent emissions from new, modified, and reconstructed affected facilities. The new approach for continuous emissions is discussed first, followed by a discussion of the new approach for intermittent emissions. These discussions are then followed by two examples. The rationale and analyses that led the Agency to consider the new approach for both continuous emissions and intermittent emissions are summarized later in this notice in Part D.

TABLE 1a.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH CONTINUOUS EMISSIONS FROM MODIFIED AND RECONSTRUCTED AFFECTED FACILITIES AT POLYPROPYLENE AND POLYETHYLENE PLANTS WOULD BE SUBJECT TO THE PROPOSED STANDARDS

A Exemptions:
1. No control of individual streams with uncontrolled annual VOC emissions less than 1.6 Mg/yr.
2. No control of individual streams with VOC concentrations less than 0.10 percent VOC by weight.
B. Control individual streams with flows of 8 scfm or less (except for those exempted as indicated above)
C. Control 98% (or to 20 ppmv, whichever is less stringent) each individual emission stream as follows:

Procedures[a]	Applicable weight percent range	Control/No Control Criteria
1. Sum all streams with VOC weight percent within the applicable weight percent range from all concurrent modified and reconstructed facilities at a plant site.	0.10 <5.5	1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE) [b], control.
2. Calculate total uncontrolled annual emissions after modification or reconstruction for each weight percent range.		2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.
3. Calculate composite VOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range before and after modification or reconstruction.	5.5 <20	1. If total combined uncontrolled emissions are equal to or greater than CTE, control. 2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.
4. Select the higher of the two VOC concentrations for each weight percent rate.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control

Procedures[a]	Applicable weight percent range	Control/No Control Criteria
5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite VOC concentration selected above.		2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control in any control device.

[a] Do not include individual streams excluded under "Exemptions" in the calculation procedures. Exempted streams are those with uncontrolled annual emissions of less than 1.6 Mg/yr and those with a VOC concentration of less than 0.10 percent by weight.
[b] See Table 2 for equations to be used in calculating threshold emissions.

TABLE 1b.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH CONTINUOUS EMISSIONS FROM NEW AFFECTED FACILITIES AND CONCURRENTLY CONSTRUCTED AND MODIFIED OR RECONSTRUCTED AFFECTED FACILITIES AT POLYPROPYLENE AND POLYETHYLENE PLANTS WOULD BE SUBJECT TO THE PROPOSED STANDARDS

A. Exemptions:
1. No control of individual streams with uncontrolled annual VOC emissions less than 1.6 Mg/yr.
2. For modified and reconstructed affected facilities only, no control of individual streams with VOC concentrations less than 0.10 percent VOC by weight.
B. Control individual streams with flows of 8 scfm or less (except for those exempted as indicated above).
C. Control 98% (or to 20 ppmv, whichever is less stringent) each individual emission stream as follows:

Procedure[a]	Applicable weight percent range	Control/no control criteria
1. Sum all streams with VOC weight percent within the applicable weight percent range from all new or set of concurrently constructed, modified, and reconstructed facilities at a plant site.	0<5.5	1. If total combined uncontrolled emissions are equal to or greater than 47 Mg/yr, control 2. If total combined uncontrolled emissions are less than 47 Mg/yr, control only individual streams with volume flow rates of 8 scfm or less.
2. Calculate total uncontrolled annual emissions for each weight percent range. 3. Calculate composite VOC concentration (weight percent) for streams in the 5.5 to less than 20 weight percent range.	5<5<20	1. If total combined uncontrolled emissions are equal to or greater than calculated threshold emissions (CTE)[b], control. 2. If total combined uncontrolled emissions are less than the CTE, control only individual streams with volume flow rates of 8 scfm or less.
4. Calculate the threshold emissions for the 5.5 to less than 20 weight percent range using the composite VOC concentration.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr. control in any control device.

[a] Do not include individual streams excluded under "Exemptions" in the calculation procedures. Exempted streams are those with uncontrolled annual emissions of less than 1.6 Mg/yr from new, modified, and reconstructed affected facilities, and those with VOC concentrations less than 0.10 percent VOC by weight from modified or reconstructed affected facilities.
[b] Equations 7, 8, or 9 as appropriate, in Table 2 are to be used in calculating threshold emissions.

TABLE 2.—THRESHOLD EMISSIONS EQUATIONS

VOC Concentration of Combined Stream (Weight Percent)	Threshold Emissions (Mg/yr)	Equation Number
0.10<0.12	(a×164)	1
0.12<0.20	(b×47.3)+96.4	2
0.2<0.3	(c×24.8)+68.5	3
0.3<0.4	(d×531)+52.4	4
0.4<0.6	47+30 (0.6−wt percent VOC).	5
0.6<5.5	47	6
5.5<7.0	(e×691)+30.9	7
7.0<9.0	(f×324)+25.0	8
9.0<20.0	(g×125)+18.2	9

where:

$$a = \left[\frac{0.12}{\text{weight percent VOC}}\right]^{5.9}$$

$$b = \left[\frac{0.2}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$c = \left[\frac{0.3}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$d = (0.4 - \text{weight percent VOC})^{1.5}$$

$$e = \left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$f = \left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$g = \left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

TABLE 3.—SUMMARY OF NEW APPROACH FOR DETERMINING WHICH INTERMITTENT EMISSIONS FROM NEW, MODIFIED, OR RECONSTRUCTED AFFECTED FACILITIES WOULD BE SUBJECT TO THE PROPOSED STANDARDS

Type of emissions	Control Determination
Decomposition emissions[a].	None; no control required
Overpressurizations other than decompositions[b].	Control
Start-up, shut-down, maintenance purges, and other normal process releases.	Control

[a] Excludes emissions that occur during attempts to prevent a decomposition.
[b] Includes emissions that occur during attempts to prevent a decomposition.

1. Continuous Emissions

As seen in Tables 1a and 1b, certain individual continuous emission streams may be exempted from any control. These exemptions are based on either an uncontrolled small annual emission rate cutoff or low VOC concentration (weight percent) cutoff. (As defined in the proposed rule, "uncontrolled" emissions refer to the emissions that would be emitted to the atmosphere in the absence of any add-on control devices, but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.) Once a continuous emission stream has been exempted by one of these two criteria, it is no longer considered in any procedure to determine whether any of the remaining continuous emission streams are to be controlled. Note that these individual stream exemptions apply only to continous emission streams; they do not apply to intermittent emission streams.

The determination of whether the remaining, nonexempt continuous emission streams are to be controlled is based on uncontrolled annual emissions, VOC concentration (weight percent), and flow rate (scfm). All nonexempt continuous emission streams are grouped into one of three VOC concentration weight percent ranges—0 to less than 5.5, 5.5 to less than 20, and 20 or greater—to determine whether control is required. Continuous emission streams within each weight percent range would be combined across all concurrently constructed, modified, and reconstructed process sections at a plant to calculate total uncontrolled annual emissions. For those streams with individual VOC concentrations between 5.5 and 20 percent VOC by weight, the weight percent VOC concentration of the combined stream would be calculated. Where the affected facilities at an existing plant are only modified or reconstructed process sections (i.e., no new process sections are constructed concurrently), the weight percent VOC concentration of the combined stream would also be calculated for continuous emission streams with individual VOC concentrations between 0.10 and less than 5.5 weight percent VOC from modified and reconstructed affected facilities. The Agency is proposing to define "concurrent" to mean the construction, modification, or reconstruction of affected facilities that is commenced or completed within a two year period after the commencement date of the construction modification, or reconstruction of an affected facility.

Control of all nonexempt continuous emission streams within a weight percent range would be required if the sum of uncontrolled annual emissions from all nonexempt continuous emission streams in that weight percent range is equal to or greater than the annual threshold emissions applicable for that weight percent range. If the sum of uncontrolled annual emissions is less than the applicable annual threshold emissions, the continuous emission streams within that weight percent range would not be required to be controlled, except as discussed in the following paragraph.

Under the new approach, individual continuous emission streams with flows of 8 scfm or less would still be required to be controlled even when the sum of uncontrolled annual emissions for that weight percent range is less than the applicable annual threshold emissions. The Agency believes that these low flow streams can be controlled in an existing or otherwise available control device. This is based on an analysis (see Docket Item IV–B–7) that shows flows of 8 scfm or less represent a small fraction of total excess capacities of control devices expected to be found at polymer manufacturing plants. The new approach does not require that these low flow streams meet the 98 percent reduction (or to 20 ppmv, whichever is less stringent) standard. (Low flow streams that are in a weight percent range whose total uncontrolled annual emissions are equal to or greater than the applicable annual threshold emissions would be required to be controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.) Such control could take place in a flare, incinerator, boiler, or other control device located at the plant site. Note that this low flow requirement results in all nonexempt continuous emission streams in the 20 to 100 weight percent range being controlled regardless of the total uncontrolled annual emissions because all individual streams with less than 18.2 Mg/yr of emissions and a VOC concentration of at least 20 percent VOC also have flows of less than 8 scfm.

The following paragraphs explain in more detail how this new approach would be implemented for determining which continuous emissions from modified or reconstructed process sections and from new process sections are subject to control.

a. *Control of Continuous Emissions from Existing Process Sections.* Prior to any changes to an existing process section that could conceivably be a modification or reconstruction, an owner or operator of the subject process section would be required to identify each individual continuous emission stream in the subject process section and to measure each stream's VOC concentration (weight percent). For process sections that are modified or reconstructed under the Clean Air Act, the owner or operator would then determine which emission streams in the affected facilities to control as outlined in Table 1a and as described in Steps 1 through 5 below. Except as noted in Step 1, all annual emissions, flows, and VOC concentrations used for determining whether control is required are those values after the modification or reconstruction has been made. Where more than one process section is modified or reconstructed concurrently, the emissions from all such concurrently modified or reconstructed affected facilities are combined, as outlined below in Steps 3, 4, and 5, for purposes of determining which emission streams would be controlled.

Step 1. Exemption for individual continuous emission streams. Based on annual emissions after the modification or reconstruction, each individual continuous emission stream with an uncontrolled annual emission rate of less than 1.6 Mg/yr that is in an affected facility would be exempt from any control requirements. Each individual continuous emission stream with a VOC concentration less than 0.10 weight percent that is in an affected facility would also be exempt from any control requirements. The VOC concentration to be used for determining whether an individual stream is exempt from control is the higher of the two VOC concentrations (that measured prior to the modification or reconstruction or that which occurs after modification or reconstruction). The selection of the higher of the two VOC concentrations is to discourage dilution of streams during the modification or reconstruction process that would exempt from control streams that otherwise should be controlled and could be controlled cost effectively.

Once an individual stream has been exempted on one of the two bases identified in this step, it is no longer considered in any of the calculation procedures identified below. Thus, the following steps and the resulting control/no control decisions apply only to all remaining nonexempt individual continuous emission streams.

Step 2. Control of "low flow" continuous emission streams. Each individual continuous emission stream with a flow rate of 8 scfm or less that is

in an affected process facility would be required to be controlled, unless the emission stream has been already exempted under Step 1. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently modified or reconstructed affected facilities) whose total emissions are required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, or 5 below, control by 98 percent reduction (or to 20 ppmv, whichever is less stringent) would also be required for these low flow streams. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently modified or reconstructed affected facilities) whose total emissions are not required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, or 5 below, control of these low flow streams would still be required. However, such control can take place in a flare, incinerator, boiler, or other control device located at the plant site and the destruction efficiency of the control device would not be specified.

Step 3. Control of continuous emission streams with concentrations between 0.10 and less than 5.5 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 0.10 and less than 5.5 percent by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions and the VOC concentration (weight percent) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

Step 4. Control of continuous emission streams with concentrations between 5.5 and less than 20 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 5.5 and less than 20 percent VOC by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions and the VOC concentration (weight percent) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

Step 5. Control of continuous emission streams with concentrations of 20 percent or more VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration of 20 percent or higher by weight that are in an affected facility are combined across all concurrently modified or reconstructed affected facilities at the site, and the total uncontrolled annual emissions would be calculated to determine the level of control required. If total combined uncontrolled annual emissions are equal to or greater than 18.2 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual emission streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s). As noted earlier, continuous emission streams with uncontrolled annual emissions of less than 18.2 Mg/yr and VOC concentrations of 20 percent or more by weight have flows of less than 8 scfm, and such flows can be vented to existing control devices. Thus, if the total combined uncontrolled annual emissions are less than 18.2 Mg/yr, then control of streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process section(s) would still be required. Control would take place in an existing control device located at the plant site.

b. *Control of Continuous Emissions from New Process Sections.* As seen in Table 1b, the procedures for determining which continuous process emissions from new affected facilities to control are nearly identical to those for modified or reconstructed affected facilities. There are two differences between the two sets of procedures. One difference is that the individual low VOC concentration cutoff does not apply to continous emissions from new affected facilities. The second difference concerns the threshold emissions for streams with VOC concentrations less than 5.5 percent VOC by weight. For new affected facilities, a single threshold limit of 47 Mg/yr is being considered rather than a threshold limit based on the combine stream's VOC concentration and an equation.

Where more than one new process section is added at an existing plant, the emissions from all concurrent new process sections are combined, as outlined below in Steps 3, 4, and 5, for purposes of determining which emission streams would be controlled. In addition, where the construction of one or more new process sections at an existing plant occurs concurrently with the modification or reconstruction of one or more existing process sections, emissions from all affected facilities (new, modified, and reconstructed process sections) would be combined as described in Steps 1 through 5 below. Where process sections are constructed concurrently with the modification or reconstruction of existing process sections at a plant site, the control/no control decisions for this set of concurrently constructed and modified or reconstructed affected facilities would be made according to the steps for new process sections.

Step 1. Exemption for individual continuous emission streams. Based on annual emissions, each individual continuous emission stream with uncontrolled annual emissions below 1.6 Mg/yr that is in an affected facility (or set of concurrently constructed, modified, and reconstructed affected facilities) would be exempt from any control requirements. For the reasons discussed later in Part D of this notice, a low VOC concentration cutoff for individual streams from new affected facilities is not included in the new approach being considered. Where process sections at an existing plant are constructed, modified, and reconstructed concurrently, the low VOC concentration cutoff is still applicable to exempt individual continuous emission streams from the modified or reconstructed affected facilities.

Step 2. Control of low flow continuous emission streams. Each individual continuous emission stream with a flow of 8 scfm or less that is in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) would be required to be controlled, unless the emission stream has been already exempted under Step 1. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) whose total emissions are required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, and 5 below, control by 98 percent reduction (or to 20 ppmv, whichever is less stringent) would also be required for these low flow streams. For streams with individual flows of 8 scfm or less that are in an affected facility (or set of concurrently constructed, modified, or reconstructed affected facilities) whose total emissions are not required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent) as determined in Steps 3, 4, and 5 below, control of these low flow streams would still be required. However, such control would take place in a control device located at the plant site and the destruction efficiency of the control device would not be specified.

Step 3. Control of continuous emission streams with concentrations between 0 and less than 5.5 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 0 and less than 5.5 percent VOC by weight that are in an affected facility are combined across all concurrent new affected facilities at the site, and the total uncontrolled annual emissions would be calculated. If concurrent new and modified or reconstructed affected facilities are involved, then the combined stream would not include individual continuous emission streams with individual VOC concentrations of less than 0.10 percent by weight from the modified or reconstructed affected facilities. If the total combined uncontrolled annual emissions are equal to or greater than 47 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range except those individual streams exempted by either its low uncontrolled annual emission rate (less than 1.6 Mg/yr) or its low VOC concentration (less than 0.10 percent VOC by weight), as appropriate, that are in the affected process section(s). If the total combined uncontrolled annual emissions are less than 47 Mg/yr, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

It is possible that the emissions from the new process section(s) do not include any with individual VOC concentrations less than 5.5 percent by weight and the emissions from the concurrently modified or reconstructed process sections do have emissions with VOC concentrations less than 5.5 percent VOC by weight. In these situations, the control/no control procedure to be used for the emissions with less than 5.5 percent VOC by weight from the modified or reconstructed process sections would "revert" to that procedure being proposed for modified and reconstructed affected facilities only, as outlined in Table 1a.

Step 4. Control of continuous emission streams with concentrations between 5.5 and less than 20 percent VOC by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration between 5.5 and less than 20 percent VOC by weight that are in an affected facility are combined across all concurrent new process sections (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate) at the site, and the total uncontrolled annual emissions and the VOC concentration (percent weight) for the combined stream would be calculated. The VOC concentration of the combined stream would then be inserted into the appropriate equation in Table 2 to determine the threshold emissions. If the total combined uncontrolled annual emissions are equal to or greater than the calculated threshold emissions, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected facility (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate). If the total combined uncontrolled annual emissions are less than the calculated threshold emissions, then control of streams within this weight percent range that are in the affected process section(s) would not be required except that, as noted in Step 2 above, individual streams with flows of 8 scfm or less would still be required to be controlled in a control device located at the plant site.

Step 5. Control of continuous emission streams with concentrations of 20 percent VOC or more by weight. Excluding individual continuous emission streams with uncontrolled annual emissions of less than 1.6 Mg/yr, all individual continuous emission streams with a VOC concentration of 20 percent or more by weight that are in an affected facility are combined across all concurrent new process sections (or set of concurrently constructed, modified, and reconstructed process sections, as appropriate) at the site, and the total uncontrolled annual emissions would be calculated to determine the level of control required. If the total combined uncontrolled annual emissions are equal to or greater than 18.2 Mg/yr, then 98 percent control (or to 20 ppmv, whichever is less stringent) would be required of all individual streams within this weight percent range with individual uncontrolled annual emission rates equal to or greater than 1.6 Mg/yr that are in the affected process sections. If the total combined uncontrolled annual emissions are less than 18.2 Mg/yr, then control of streams within this weight percent range that are in the affected process section(s) with individual uncontrolled annual emission rate equal to or greater than 1.6 Mg/yr would still be required. As noted earlier, these streams have flows of less than 8 scfm, and such low flow streams can be vented to other control devices. Control

of these low flow streams would take place in a control device located at the plant site.

2. Intermittent Emissions

The new approach being considered for intermittent emissions was summarized earlier in Table 3. As seen in Table 3, the new approach would exempt all decomposition emissions from control at both existing and new plants, and would require control of all other intermittent emissions, which the Agency believes fall within one of the two remaining categories shown in Table 3, again at both existing and new plants. Intermittent emissions that occur during attempts to prevent a decomposition would be required to be controlled. The Agency has included in this notice proposed definitions for "decomposition" and "decomposition emissions."

3. Examples

The following two examples are designed to illustrate some of the differences and similarities between the model plant approach and the new approach and to illustrate further how the new approach works.

Example 1. A new raw materials preparation section is added to an existing polypropylene, liquid phase plant. This section has three continuous emission streams. The capacity of the facility is 200 Gg/yr. Emission stream characteristics are as shown in Table 4.

TABLE 4. HYPOTHETICAL EMISSION STREAMS FOR A RAW MATERIALS PREPARATION SECTION IN A EXISTING POLYPROPYLENE PLANT

	Stream A	Stream B	Stream C	Total
Emissions, Mg/yr	0.5	25	10	35.5
Weight percent VOC	100	100	93	—
Uncontrolled Emission Rate, kg VOC/Mg product	0.0025	0.125	0.05	0.1775
Flow, scfm	0.1	5.0	2.2	

Under the model plant approach, a decision is first made that the facility is classified as a polypropylene liquid phase plant. Next, it would be determined whether the new process section is an affected facility. As proposed, the raw materials preparation section in a polypropylene, liquid phase plant, is an affected facility for continuous emissions. Lastly, the uncontrolled emission rate of the *process section* is calculated (equals 0.1775 kg VOC/Mg product) and compared to the cutoff level in the standards (0.15 kg/Mg) as previously proposed. Since the total uncontrolled emission rate is greater than the cutoff level, all three streams would be subject to the standard and controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.

Under the new approach, Stream A would be excluded from control because its uncontrolled annual emissions are less than the annual emission rate cutoff for small streams (i.e., less than 1.6 Mg/yr). The two remaining streams (Streams B and C) would be combined because each stream has a VOC weight percent greater than 20 percent. Total uncontrolled annual emissions from the combined stream would be calculated. Since the total combined uncontrolled annual emissions (i.e., 35 Mg/yr) are greater than 18.2 Mg/yr, both streams would be required to be controlled by 98 percent reduction or to 20 ppmv, whichever is less stringent.

The difference in the control requirements between the two approaches is that Stream A would be controlled under the model plant approach, but not under the new approach.

Example 2. A new polypropylene plant is built. The plant has three process lines. Each line has individual process sections. Each individual process section has the *combined* emission stream characteristics shown in Table 5. A very important point in this simplified example for the new approach is the implicit assumption that the individual streams within each process section are within the same weight percent range. If individual streams within a process section are not within the same weight percent range, then they would not be combined with each other under the new approach, and the example in Table 5 would be inappropriate.

TABLE 5. HYPOTHETICAL EMISSIONS FROM NEW POLYPROPYLENE PLANT, PER LINE

[3 Process Lines in Plant]

	Raw materials preparation	Polymerization reaction	Material recovery	Product finishing	Product storage
Continuous Emissions:					
Emissions, Mg/yr	3.5	205	2,500	130	28
Wt. % VOC	100	100	100	9.3	0.4
Emission Rate, kg/Mg	0.07	4.1	30	2.6	0.4
Flow, scfm	0.07	8	46	71	800
Intermittent Emissions:					
Emissions, Mg/yr	15	100	25	30	—
Emission Rate, kg/Mg	0.075	0.5	0.125	0.15	—
Type of Emission	Purge	Decomposition	Purge	Purge	—

Under the model plant approach, the first step is to determine whether the new plant is a liquid phase or gas phase facility. Assume it is a liquid phase facility. Under the proposed standards based on the model plant approach, all process sections, except product storage, are affected facilities in polypropylene liquid phase plants for continuous emissions, and the polymerization reaction section is the only affected facility for intermittent emissions. Thus, the continuous emissions from product storage and the intermittent emissions from the raw materials preparation, material recovery, and product finishing sections would not be subject to the proposed standards based on the model plant approach. Continuous emissions from the raw materials preparation section would be exempt because the emission rate (0.07 kg VOC/Mg product) is less than the proposed cutoff level (0.15 kg VOC/Mg product). Continuous emissions from the other three process sections would be required to be controlled by 98 percent reduction as their emission rates are greater than their respective proposed cutoff levels. The decomposition emissions from the polymerization reactor would be required to be controlled as the uncontrolled emission rate (0.5 kg VOC/Mg product) is greater than the proposed cutoff level (0.24 kg VOC/Mg product) for intermittent emissions from the polymerization reaction section.

Under the new approach, it is unnecessary to determine whether the new plant is a liquid phase or gas phase type plant. For continuous emissions at a new plant, the first step would be to see if any individual continuous streams are exempt on the basis of the annual emission rate cutoff for small streams. Although individual streams are not explicitly shown in this example, assume that no individual stream is exempted; that is, all individual streams have uncontrolled emission rates of 1.6 Mg/yr or greater. The next step is to combine all streams within the plant that are within the same weight percent range (i.e., 0 to less than 5.5, 5.5 to less than 20, and 20 to 100 percent) and calculate total uncontrolled annual emissions for the set of emissions within each weight percent range. As noted earlier, the implicit assumption for this example has already been made that all individual streams within a process section are within the same weight percent range. Keeping this in mind, continuous emissions would then be summed across: (1) All raw materials preparation, polymerization reaction, and material recovery process sections (a total of 8,126 Mg/yr); (2) across the three product finishing sections (a total of 390 Mg/yr); and (3) across the three product storage sections (a total of 84 Mg/yr). In addition, the VOC concentration (weight percent) for the combined emission stream from the product finishing section would be calculated. In this simplified example, the combined emission stream is 9.3 percent VOC by weight.

Since the sum of uncontrolled emissions from continuous streams in the 20 to 100 VOC weight percent range (that is, in this example, those emissions from raw materials, polymerization reaction, and material recovery process sections) exceeds 18.2 Mg/yr, they would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent). For the product finishing section, the threshold emissions are calculated by inserting the combined emission stream's VOC concentration (i.e., 9.3 percent VOC by weight) into Equation 9 in Table 2. Using this equation, the threshold emissions are calculated to be 24.5 Mg/yr. Since the sum of uncontrolled emissions from continuous streams in the 5.5 to less than 20 VOC weight percent range exceeds this, they would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent). Finally, since the sum of uncontrolled emissions from continuous streams in the 0 to less than 5.5 VOC weight percent range exceeds 47 Mg/yr, they too would be required to be controlled by 98 percent reduction (or to 20 ppmv, whichever is less stringent).

For intermittent emissions, Table 3 would be used to determine which intermittent emissions would be subject to control. Under the new approach being considered, decomposition emissions, which are emitted from the polymerization reaction section, would be exempt from control. However, the purges, which are emitted from the raw materials preparation, material recovery, and product finishing sections, would now be subject to control.

The primary differences between the two approaches in Example 2 are: (1) under the model plant approach, continuous emissions from the raw materials preparation section and the product storage section are not controlled, but are controlled under the new approach; (2) decomposition emissions are controlled and purges are not controlled under the model plant approach, whereas decomposition emissions are not controlled and purges are controlled under the new approach; and (3) under the new approach, all process sections are subject to potential control, whereas in the model plant approach only those process sections specified in the proposed rule are potentially subject to regulation.

Discussion of Examples 1 and 2. The above two examples illustrate a number of points concerning the two approaches. The following items highlight the main differences between the two approaches.

1. The model plant approach requires one additional definitional step—classifying the type process to determine which standards apply. The new approach eliminates this aspect of the model plant approach.

2. The model plant approach specifies certain process sections potentially subject to control. The new approach assumes all process sections, and thus all process emissions, are potentially subject to control.

3. The model plant approach requires summing emission rates within a process section to determine if control is required or not. Under the new approach, control decisions are made for continuous emissions on either an individual stream basis or a similar combined total emissions (Mg/yr rather than kg VOC/Mg product) basis.

D. Summary of Analyses Behind New Approach

In this section of the preamble, a summary of the analyses undertaken and conclusions reached by the Agency for the major portions of the new approach are presented. The summaries for the continuous emissions portion of the generic approach being considered focus on (1) weight percent and annual emissions as the control/no control decision parameters; (2) the weight percent ranges selected for combining emissions; (3) control/no control annual emission threshold levels; (4) the low VOC concentration cutoff determination; (5) the control determination procedure to use for emissions with less than 5.5 percent VOC by weight from concurrently constructed, modified, and reconstructed process sections; (6) the annual emission rate cutoff for small streams; and (7) the control of all low flow (i.e., <8 scfm) streams. Following these discussions, analyses concerning the intermittent emissions portion of the generic approach being considered are summarized. The summaries for intermittent emissions focus on the selection of the type of release as the control/no control decision parameter and on the lack of a threshold level for intermittent emissions and an annual emission rate cutoff for small intermittent streams.

1. Continuous Emissions

Weight Percent and Annual Emissions. In response to comments received, EPA went back to the information available on the polypropylene and polyethylene plants to see if there were alternative ways of identifying the cost effectiveness of controlling continuous emissions from polypropylene and polyethylene plants other than by relying on model plant emission stream characteristics. (See Docket Item IV–B–4, which presents the

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cost analyses for flares, and Docket Item IV–B–10, which presents the cost analyses for incinerators). The cost effectiveness of controlling an emission stream is a function of the amount of emission reduction and the cost of achieving that amount of emission reduction. Thus, it seemed reasonable to look for parameters that could be related to emission reduction and costs. The obvious choice for the emission reduction parameter appeared to be annual emissions. Since emission reduction for continuous emissions is essentially fixed at 98 percent within the proposed standard, annual emissions would be directly related to emission reduction.

The Agency then examined a large number of general emission streams to determine if any single emission stream parameter could be related to the cost of control; or, when used in conjunction with annual emissions, could be used for determining which continuous emission streams are cost effective to control. Emission stream characteristics that the Agency viewed as realistic potential condidates were volume flow rate (scfm), volume percent VOC concentration, and weight percent VOC concentration.

Volume flow rate is a very good surrogate for cost of control of flares and incinerators because the sizing of these control devices is largely dependent on the volume flow of the stream. In addition, a number of operating costs are a function of volume flow rate. However, when VOC concentrations drop below approximately 20 percent VOC by weight, auxiliary natural gas is required to meet certain minimum heating requirements. The cost of natural gas, which is a function of volume flow rate and weight percent VOC, increases as the weight percent of VOC decreases. If the VOC concentration is small enough, the cost of natural gas can be much larger than the cost of the control device itself. As increasing amounts of natural gas are required, volume flow rate becomes a much poorer surrogate for costs. Neither volume percent nor weight percent VOC concentration by themselves are good surrogates for costs. For example, knowing that a stream is 100 percent VOC tells nothing about the size of the stream to be controlled and thus tells little about the size and cost of the control device required.

The Agency then examined the relationship between annual emissions and these three stream characteristics to see if, when used together to define an emission stream, there was a good correlation to the cost effectiveness of controlling that stream. The Agency initially examined volume percent and annual emissions as parameters for identifying the cost effectiveness of controlling a given stream. The cost effectiveness of control was found to vary for a given VOC volume percent, primarily due to the molecular weight of the VOC. Thus, volume percent was not considered a good parameter to use in conjunction with annual emissions for evaluating the cost effectiveness of controlling a continuous emission stream. The effect of molecular weight can be negated, however, by converting volume percent to weight percent. When this is done, the two parameters of weight percent and annual emissions provide a very good correlation to the cost effectiveness of controlling a continuous emission stream. This good correlation occurs, in part, because defining an annual emission rate and a particular weight percent VOC concentration for a continuous emission stream determines the volume flow for that stream. By considering these two parameters, the two major factors affecting the cost of control (volume flow for defining the size and thus the cost of the control device, and volume flow and weight percent VOC for determining the amount of natural gas) are taken into account. Thus, relatively simple control/no control decisions for continuous emissions can be made on the basis of weight percent VOC concentration and annual emissions.

For similar reasons as for weight percent VOC concentration, volume flow rate used in conjunction with annual emissions can also provide a very good correlation to the cost effectiveness of controlling a continuous emission stream. However, when considering whether or not two streams can be combined and vented to a control device, one has to consider the VOC concentration of the individual VOC components in a stream in relation to the corresponding explosive limits of the individual VOC components. In general, one does not want to combine low VOC concentration streams with high VOC concentration streams in order to avoid creating a stream with a VOC concentration of one of the VOC components in the explosive range for that VOC component. Volume flow rates do not allow consideration of this concern nearly as well as does weight percent VOC concentrations. The Agency, therefore, selected annual emissions and weight percent VOC concentration as the two generic stream parameters for continuous emissions.

Weight Percent Ranges. The Agency examined the costs of using flares, thermal incinerators, and catalytic incinerators to control continuous emissions (see Docket Items IV–B–4 and IV–B–10). Flares were found to be the most cost-effective means of control when VOC concentrations are approximately 5.5 percent VOC by weight or higher. For VOC concentrations of less than 5.5 percent VOC by weight, catalytic incinerators were found to be the most cost effective control device.

Flares can achieve 98 percent destruction efficiencies when operated under certain conditions. For example, a steam-assisted flare requires an offgas heat content of at least 300 Btu/scf. This heating value (i.e, 300 Btu/scf) corresponds to approximately 20 percent VOC by weight (see Docket IV–B–6). Streams with higher VOC concentrations do not need auxiliary natural gas added to meet the 300 Btu/scf requirement for steam-assisted flares. On the other hand, as the VOC concentration of a stream decreases below 20 percent VOC by weight, increasing amounts of auxiliary natural gas are required to meet the 300 Btu/scf requirement. Auxiliary natural gas requirements can greatly increase the cost of controlling streams in flares. As the VOC concentration approaches 5.5 percent by weight, controlling continuous emissions in flares begins to become more costly than controlling such streams in catalytic incinerators. The cost of controlling streams in a catalytic (or thermal) incinerator is highly dependent on the flow (scfm) and natural gas requirements. The cost of control begins to rise very rapidly as the VOC concentration approaches 0.10 weight percent VOC (see Docket Item IV–B–10). It was on the basis of these findings that the various weight percent ranges were developed.

Control/No Control Annual Emission Threshold Levels. Having identified the control techniques that achieve the most cost-effective emission reduction, the Agency then determined for each of the three weight percent ranges (i.e., less than 5.5 percent, 5.5 to less than 20 percent, and equal to or greater than 20 percent) the uncontrolled annual emissions necessary so that the cost of constructing a new control device is reasonable given the amount of emission reduction achieved. The Agency determined that for emissions with a concentration of 20 percent VOC or greater by weight at least 18.2 Mg/yr of emissions are needed for cost-effective control in a newly constructed flare. For emissions with a concentration between 5.5 and less than 20 percent VOC by weight, the Agency determined that the amount of emissions needed for cost-effective control in a newly constructed flare increases as the VOC concentration approaches 5.5 percent. Equations 7, 8, and 9 in Table 2 approximate the emissions needed for control to be cost effective. These analyses and three equations are presented in Docket Item IV–B–4.

For emissions with a concentration below 5.5 percent VOC by weight, the Agency found that approximately 47 Mg/yr of emissions was, in general, sufficient to make control in a catalytic incinerator cost effective (see Docket Item IV–B–10). Below approximately 0.6 weight percent VOC, the amount of emissions needed to make control cost effective increases above 47 Mg/yr. Below 0.10 weight percent VOC, the cost of control becomes so large that control is not cost effective regardless of the amount of emissions. Equations 1 through 6 in Table 2 approximate the emissions needed for control to be cost effective. These equations apply only to emissions from modified or reconstructed affected facilities. For new affected facilities, the Agency has elected to set a single emission control/no control level of 47 Mg/yr for streams with VOC concentrations below 5.5 percent by weight because of concerns over necessary versus excessive dilution (as discussed below).

Low VOC Concentration Cutoff. The Agency considered the desirability and practicality of using a low VOC concentration (weight percent) cutoff in the control/no control decision in response to industry concerns over controlling dilute VOC emissions. The Agency cost analysis based on incinerators (Docket Item IV–B–10) showed that control of dilute streams above approximately 0.10 weight percent VOC [approximately 3% of the lower explosive level (LEL) for ethylene] can be cost effective provided there is a sufficient quantity of emissions entering the incinerator. Below approximately 0.10 weight percent VOC, the gas volumes and auxiliary gas requirements become so large that control is not cost effective regardless of the amount of emissions. The Agency, however, is concerned that a low VOC concentration cutoff could lead to excessive dilution, especially for streams that would already be near the cutoff. The Agency does not wish to set a concentration cutoff and require potentially subjective judgments on what constitutes necessary dilution.

The Agency reviewed in-house information on polypropylene and polyethylene plants in an attempt to identify the sources of low VOC concentration streams, the levels of dilution occurring in the industry, and the reasons for such dilution levels (see Docket Item IV–B–9). This analysis showed that low VOC concentration continuous emission streams in these plants tend to come from process equipment in product finishing and product storage process sections, although some types of recovery equipment may also emit dilute streams to the atmosphere. Sources of such streams include dryers, pneumatic transfer systems, blenders/mixers, and storage bins. Most of the low VOC concentration streams are VOC in air, although some are VOC in nitrogen. Based on the information reviewed, the concentration of VOC for VOC-in-air streams ranged from less than 0.1 percent of the LEL to as high as 80 percent of the LEL (see Docket Items IV–B–1 and IV–B–9). Unfortunately, the reasons for such dilution levels were not indicated. The Agency believes that in general the purpose of dilution would be to lower the concentration of the VOC to a point below the LEL of the VOC in question. Typically, such dilution for safety reasons would be expected to result in a VOC concentration of 20 to 25 percent of the LEL. For certain equipment, such as dryers and pneumatic conveying systems, the Agency believes design factors rather than safety concerns may determine the amount of air required. Such design considerations may be the main reason that such low concentration levels occur for some of the process streams, but for blenders/mixers or storage bins it is not obvious to the Agency that dilution needs to result in VOC concentrations less than 20 percent of the LEL.

In light of this information, the Agency considered several alternatives. One alternative was to differentiate the sources of the various low VOC concentration streams according to whether the amount of dilution was the result of design parameters (as might be the case for dryers) or the result of safety (i.e., to ensure dilution to at least 20 percent of the LEL). A weight percent cutoff presumably could be applied more objectively with regard to excessive dilution by determining whether a dryer, for example, is designed according to sound engineering principles and by "limiting" dilution air from storage bins to the amount necessary to achieve VOC concentrations of 20 percent of the LEL. While the Agency believes this alternative has some merit, the implementation and enforcement of it would be time consuming and costly. Further, the identification of which sources are "process driven" and which are "safety driven" for determining allowable dilution air is not without problems.

A second alternative considered was to provide a weight percent cutoff for emission streams from existing affected facilities only, but require control of all low VOC concentration streams (i.e., those with VOC concentrations less than 5.5 percent VOC by weight) at all new affected facilities provided there are at least 47 Mg/yr of uncontrolled VOC emissions from continuous emissions at these affected facilities. Existing plants already have a given level of emissions and emission stream characteristics. By requiring companies to test these streams before modification or reconstruction occurs, a baseline set of emission characteristics can be obtained. (The Agency does not believe, however, that all existing VOC concentration levels represent necessary levels of dilution. Changes in the production processes may have reduced concentrations in other parts of the process below previous levels.) However, the VOC concentrations of the streams may change as a result of the modification or reconstruction. Decreases in VOC concentrations could occur for several reasons, including attempts to take advantage of a VOC weight cutoff. To minimize this possibility under this alternative, the Agency has considered the requirement that the VOC concentration of streams in modified or reconstructed process sections be determined before and after such changes, and the higher of the two VOC concentrations be used as the basis for determining whether an individual stream can be excluded from control.

For new affected facilities, such given levels generally do not exist. New process sections at existing plants may match exactly existing process sections, in which case the existing process section's emission characteristics could be used to identify a given level of VOC concentration. On the other hand, a new process section at an existing plant may be partially or entirely a new design that will have emission streams for which there are no corresponding streams in existing process sections. For new plants, the Agency believes much greater freedom exists in designing equipment and determining not only total emissions, but the concentrations at which they will be emitted. Therefore, for new affected facilities, the Agency considered an annual uncontrolled emission threshold for low VOC

concentration streams, but not a low VOC concentration cutoff.

A third alternative considered by the Agency was simply to apply an annual uncontrolled emission threshold level for dilute streams from both existing and new facilities without regard to a low VOC concentration cutoff. The major concern with this alternative was that some emissions at existing facilities may be controlled under modification or reconstruction provisions that are in fact not cost effective to control. However, on the basis of current in-house information, very few instances of this occurring were identified by the Agency.

Of these alternatives, the Agency favors the second alternative. The Agency believes that this alternative provides adequate safeguards against excessive dilution and, in general, meets industry concern over unnecessary or not cost-effective control of low VOC concentration streams. The Agency welcomes comments on this particular aspect of the new approach being considered. Commenters are especially encouraged to explain how dilution levels are determined for various pieces of process equipment and to suggest alternative ways objective determinations can be made as to what constitutes necessary dilution in the industry. It should be noted that the revised rules being considered do *not* supercede the general provisions against international circumvention of a standard. Rather, the revised rules would provide a guideline for determining the weight percent to be used in making the control/no control decision.

Emissions With Less Than 5.5 Percent VOC by Weight From Concurrently Constructed, Modified, and Reconstructed Process Section. The procedures for determining which process emissions with VOC concentrations less than 5.5 percent VOC by weight would be subject to control are slightly different depending on whether they are emitted from a new process section or an existing process section. The primary reason for this, as discussed above, is the inability to assess whether the degree to which an emission stream from a new process section is diluted is "necessary" or "excessive." As a result of these slightly different procedures, the Agency had to consider what rule or procedure to use for combining emissions from concurrently constructed, modified, or reconstructed affected facilities.

It is important to remember that this concern only arises when the concurrently constructed and modified or reconstructed process sections both have at least one continuous emission stream with a VOC concentration of less than 5.5 percent VOC by weight. If the concurrently constructed process sections do not have an emission stream with less than 5.5 percent VOC by weight and the modified or reconstructed process sections do, then the procedure that applies is the same as for modified and reconstructed process sections only. Similarly, if the concurrently modified and reconstructed process sections do not have an emission stream with less than 5.5 percent VOC by weight and the new process sections do, then the procedure that applies is the same as for new process sections only.

The Agency again considered three basic alternatives. The first alternative was to apply the procedures separately. The Agency believes owners and operators would seek to combine emissions from all affected facilities, where possible, in order to minimize the number of emission points and to minimize control costs. Thus, to consider control separately was not considered to be realistic. Of the three alternatives, this alternative would result in the least amount of control, but would also provide the greatest safeguard against controlling emission streams from existing process sections that are in fact not cost-effective to control.

The second alternative considered was to apply the new affected facility procedure to both new and modified or reconstructed process sections when they occur concurrently. This would require all emissions to be combined and total uncontrolled annual emissions calculated. If the total combined uncontrolled annual emissions exceeded 47 Mg/yr, then control would be required. This alternative was considered by the Agency because there still is the concern of not being able to determine the necessary amount of dilution associated with emissions from newly constructed process sections. Since a combined stream is being considered, its VOC concentration is dependent on the VOC concentration of the emissions both from the new process sections and from the modified and reconstructed process sections. The VOC concentration of the combined stream could be manipulated to some extent. This alternative would achieve the most emission control of the three alternatives, but has the greatest risk of requiring control of emissions from existing process sections that are in fact not cost effective to control.

The third alternative considered was to apply the procedure for modified and reconstructed process sections only to the combined emission stream from the concurrently constructed, modified, and reconstructed affected facilities. The VOC concentration that would be used to calculate the threshold emissions would be the higher of either the combined stream's VOC concentration or the VOC concentration of the combined emission streams from the modified and reconstructed process sections only. (Note that the latter concentration itself would be the higher of the two VOC concentrations measured before and after the modification or reconstruction.) This alternative most likely falls in between the first two alternatives in terms of emission reduction and does the best job avoiding control of emissions from existing process sections that are not in fact cost effective to control.

Of these three alternatives, the Agency prefers the second alternative and the third alternative over the first alternative because the latter two options consider combining emissions, which better reflects what would occur at the plants. The Agency has a slight preference for the second alternative over the third alternative, because it would provide the greatest amount of emission reduction and it encourages industry to seek to minimize unnecessary dilution. The number of instances in which emissions from modified and reconstructed process sections would be required to be controlled when they are in fact not cost effective to control under the second alternative is highly uncertain. It is dependent on such factors as the number of times when process sections are constructed, modified, and reconstructed concurrently, and when such occurs concurrently, on the number of times when new process sections and the modified or reconstructed process sections both have emission streams with VOC concentrations of less than 5.5 percent VOC by weight. In addition, knowing that this procedure will be used will help minimize the number of instances where emissions that are truly not cost effective to control end up being controlled.

The Agency feels the third alternative has some merit, but also falls short in several aspects. The third alternative would allow dilution levels of the combined stream down to the existing VOC concentration of the emissions from the modified or reconstructed process section. Although the Agency considered using before or after VOC concentrations of emissions from modified or reconstructed process section as part of the control determination procedure, the Agency does not believe that all current dilution

levels represent necessary dilution levels. The Agency also believes this alternative may send the "wrong signal" to the industry by encouraging or continuing to allow unnecessarily dilute emissions, and could result in unnecessarily not controlling the combined emissions.

For the reasons stated above, the Agency has selected the second alternative as part of the new approach being presented in this **Federal Register** notice. The Agency welcomes comments on this particular aspect of the new approach being considered. Commenters are especially encouraged to offer alternatives to the ones considered by the Agency.

Annual Emission Cutoff for Small Streams. As mentioned earlier, an annual emission cutoff for small continuous emission streams is now being considered by the Agency. The concept behind this small stream cutoff is that an individual stream may be so small (in terms of total annual emissions) that it is not cost effective to control, even in an existing control device. The Agency agrees with this basic concept, and is considering setting a small stream cutoff of 1.6 Mg/yr for individual continuous emission streams. This revision would not supercede the general provisions against intentional circumvention of a standard (i.e., multiplying streams for the purpose of evasion rather than for independent process-related reasons). This cutoff level is based on the costs for ducting a stream to a control device. Such costs include piping, associated incremental operating costs of the control device, and a compressor/blower. One of the basic assumptions in setting this level is that the emission stream does not affect the size of the control device. Docket Item IV–B–5 contains the analysis for this annual emission cutoff for small streams.

Low Volume Flow Streams. Control devices are typically constructed larger than necessary, and thus generally have some amount of excess capacity. The Agency, therefore, considered whether or not individual streams with uncontrolled annual emissions of 1.6 Mg/yr or higher might be able to be vented to a control device located on the plant site. Existing facilities already have control devices as a result of safety, insurance requirements, or State regulation. New plants will also have control devices if not as a result of these other considerations (i.e., safety, insurance requirements, or State regulation). Therefore, the Agency examined the volume flow rates of streams with uncontrolled annual emissions of 1.6 Mg/yr and greater and whether control devices likely to exist at polymer plants would have the excess capacity to accept such streams. A continuous emission stream with 20 weight percent VOC and annual emissions of 18.2 Mg/yr has a potential flow of up to approximately 8 scfm. This maximum volume flow rate is based upon information on stream composition and characteristics found in the BID. The Agency examined the volume flow rate of 8 scfm in relationship to expected capacities of existing control devices (see Docket Item IV–B–7). This comparison showed that this low volume flow rate (i.e., 8 scfm) represents a small fraction of expected excess capacities of control devices expected to be found at polymer manufacturing plants. On the basis of this analysis, the Agency believes that low volume flow rate (i.e., $\leq$ 8 scfm) continuous emission streams can be controlled in existing control devices. Since the volume flow rate (scfm) is independent of the VOC concentration, the Agency considered extending control of low volume flow streams to those continuous emission streams with VOC concentrations of less than 20 percent VOC by weight. Because of the relativcly small contribution of these streams to the total volume flow entering a control device, the Agency does not believe extending the low volume flow rate requirement to low VOC concentration streams will introduce safety problems. Finally, as noted above, as long as the low volume flow rate streams have uncontrolled annual emissions of 1.6 Mg/yr or greater, control of these low volume flow rate emission streams is cost effective. Thus, the Agency has proposed that each low volume flow rate stream (i.e., $\leq$ 8 scfm) from new, modified, or reconstructed affected facilities be controlled unless its uncontrolled annual emissions are less than 1.6 Mg/yr.

2. Intermittent Emissions

The Type of Release. As for continuous emissions, EPA went back to the information available on intermittent emissions from polypropylene and polyethylene plants to see if a similar control/no control approach could be developed. The Agency looked at annual emissions, volume flow rate, and weight percent VOC concentration as possible parameters for estimating the cost effectiveness of controlling intermittent emissions (see Docket Item IV–B–12). As noted earlier, the flow for a continuous emission stream could be calculated from a given weight percent VOC concentration and a given level of annual emissions. The resulting flow (which is an average) could then be used as a reasonable estimate of actual flow for calculating the cost of the control device. However, the resulting flow calculated for intermittent streams cannot be used in most instances. An intermittent emission stream typically will have a peak volume flow rate that is much larger than the average volume flow that is calculated from a given weight percent and a given annual emissions level. Since control devices are sized to control peak volume flow rates, the cost of control is more dependent on the peak rather than the average volume flow rate. Furthermore, there is not a unique peak volume flow rate associated with a given combination of weight percent VOC concentration and annual emissions since the time duration of the flow is unpredictable. Lacking this relationship, weight percent VOC concentration cannot be used as a parameter.

The Agency then considered using peak flow rate and annual emissions as the two parameters for a control/no control determination. For emission streams with VOC concentrations of more than 8 percent VOC by weight, the Agency found a good correlation between these two parameters and the cost effectiveness of control. For intermittent emissions with lower VOC concentrations, natural gas would be required. Since the amount of natural gas required is a function of the VOC concentration and the average volume flow and is not related to the peak flow, the cost of this natural gas would adversely affect the use of peak volume flow rate as a parameter for assessing the cost-effectiveness of control. Furthermore, the typically very high peak volume flow rates associated with decomposition emissions may require such a large control device that control of all intermittent emissions in a single flare would not be cost effective. Thus, the Agency does not believe intermittent emission streams lend themselves, as continuous emission streams do, to a simple two parameter control/no control determination.

The Agency then examined the information on intermittent emissions to see if a different type of generic approach could be used to determine which intermittent emissions would be subject to control. The Agency looked at aggregating emissions according to the type or nature of the release. In doing this, the Agency identified three basic types of intermittent emissions. These types were decomposition emissions, emergency releases other than decomposition emissions, and normal

process releases that include startup, shut-down, and maintenance purges. In reviewing the information in-hand and in anticipation of information being requested, the Agency believes that the emissions that occur due to a decomposition, regardless of the type of polymer being produced or the type of reactor being used, will be, on an incremental basis, not cost effective to control. Current available information shows that the other intermittent releases (emergency releases other than those that occur due to a decomposition and normal process releases including maintenance, start-up, and shut-down purges) may or may not be currently controlled due to State regulation or for safety purposes (see Docket Items IV–B–3 and IV–B–8). An Agency cost analysis based on the model plants' emissions as reported in BID (see Docket Item IV–B–12) shows that on a plant-wide basis sufficient intermittent emissions from these other various types of intermittent releases exist to make control cost effective. This cost analysis also examined the cost of controlling these other intermittent emissions on an individual process line basis. The cost of control on this basis was found to be less than $2,000/Mg of VOC reduction for all six model plants and less than $1,000/Mg of VOC reduction for four of the six model plants. Therefore, pending new information to the contrary, EPA is considering exempting all intermittent emissions that occur due to a decomposition from control and requiring all other intermittent releases, including intermittent emissions that may occur during an attempt to prevent a decomposition, to be controlled regardless of the type of polymer being produced and regardless of whether the affected facility is new, modified, or reconstructed.

Control/No Control Annual Emission Threshold Levels. Unlike the new approach for continuous emissions, the new approach being considered for intermittent emissions does not include a minimum threshold level of uncontrolled annual emissions before control is required. The absence of a threshold level is based upon a reconsideration by the Agency of the estimation of emissions from intermittent releases and the control of such streams. A threshold level requires the estimation or prediction of emissions beforehand so control devices can be put in place. Total emissions from an intermittent stream is dependent in many instances on the number of releases in a year, which is unpredictable in most cases. The number of releases can vary substantially from one year to another. Thus, conceivably, a particular stream may be below a threshold level one year and above it the next. As noted above, the Agency's cost analysis based on the model plant's emissions showed that sufficient emissions from intermittent releases (not including decomposition emissions) exist to make control cost effective. For these reasons, the Agency is not including a threshold level for intermittent releases in the new approach currently being considered.

Annual Emission Cutoff for Small Streams. The Agency considered an annual emission cutoff for small individual intermittent emission streams as it did for continuous emissions. Although by definition an emission stream with low annual emissions will have a low average flow (scfm), some intermittent streams may have a peak flow that would exceed the excess capacity of the existing control device or affect the size of a new control device. Thus, the same basic assumption (that control device size is not affected) used in the annual emission cutoff analysis for small continuous streams cannot be made for intermittent emissions. In addition, as the total emissions for some streams depend on the frequency and duration of reliefs in a year, a particular stream conceivably may meet the cutoff one year due to an unusually low number of reliefs, but exceed the cutoff another year due to an average or large number of reliefs. For these reasons, the Agency does not believe it is practical to provide an annual emission cutoff for small individual intermittent streams.

E. Impacts of New Approach

The Agency examined each process section, as described in the BID, to compare which process sections are projected to be controlled under the model plant approach and which are projected to be controlled under the new approach. The results of this analysis are presented in Docket Item IV–B–13. The impacts examined were for emission reductions and costs of control to the industry. Quantitative estimates were made on the basis of the effects of the new approach on emissions from new plants in order to be consistent with the previous estimated impacts reported in the **Federal Register** notice for the proposed standards. Projected effects were identified for modified and reconstructed affected facilities, but no quantitative estimates were made.

Emission Impacts. Several process sections or sets of emission streams in several of the model plants were identified as being controlled under the new approach but not under the model plant approach. In some instances, whether a process section was projected to be controlled varied depending on whether it was by itself or part of a process line or plant. In general, the process sections for which control under the new approach but not under the model plant approach was projected were: (1) The raw materials preparation section (continuous emissions) at both new and existing polypropylene, liquid phase process plants; (2) the product finishing and product storage sections (continuous emissions) at new LDPE, high pressure process plants; (3) the raw materials preparation sections (intermittent emissions) at both new and existing HDPE, slurry process plants; (4) the product finishing sections (continuous emissions) at new and existing HDPE, slurry process plants; (5) the raw materials preparation sections (continuous and intermittent emissions) at both new and existing HDPE, solution process plants; and (6) the product finishing sections (continuous emissions) at new HDPE, solution process plants.

The new approach would also result in some projected loss of emission control. The types of losses include decomposition emissions from polypropylene plants and some polyethylene plants, emission streams from modified or reconstructed affected facilities with either a VOC weight percent of less than 0.10 percent or annual emissions of less than 1.6 Mg/yr (for example, from raw materials preparation sections in polypropylene, liquid phase plants), and emission streams from new affected facilities with annual emissions of less than 1.6 Mg/yr.

Although it is difficult to estimate the exact increase or decrease in emission reductions, it has been estimated using the model plant emission data and projected growth estimates found in the BID that the new approach would result in a small net increase in emission reduction over the 5-year growth projection period.

Cost Impacts. The new approach would require model plant owners and operators to incur additional control costs in some instances (e.g., control of product finishing sections in new HDPE, slurry process plants) and may reduce control costs in other instances (e.g., streams exempted under the annual emission cutoff for small continuous emission streams). Though the cost impacts may be distributed over different owners or operators, a net cost savings is projected. For the process sections identified above as now being likely to be controlled under the new approach, an increase in annualized costs attributable to the standards is projected to be about $900,000 spread over 5 years, while for process emissions that may now be exempt from control due to the new approach, a cost savings of approximately $1,700,000 over the next 5 years has been estimated (see Docket Item IV–B–13).

The incremental cost effectiveness of the control of the process sections which were projected to now be controlled as a result of the new approach being considered were also estimated. Incremental costs of control were calculate using the model plant emission characteristics as reported in the BID. The costs were also calculated for each type of new growth (new plant, process line, or process section) projected for the four model plant types that had process sections identified as now being controlled by the new approach.

One new plant was projected to be built for three of four model plants. (No new LDPE high pressure plant was projected to be built.) The incremental cost effectiveness of controlling emissions from the five process sections at the three new plants was estimated to be between $340/Mg to $870/Mg of VOC reduction for four of the five. The fifth process section, the product finishing section at the new HDPE, solution process plant, was projected to have an incremental cost effectiveness of almost $3,000/Mg. As noted above, these cost estimates were based on emission characteristics found in the model plant. The Agency believes new plants have much greater freedom in controlling emissions and their characteristics. Thus, the Agency believes the cost of controlling the product finishing emissions from a new HDPE, solution process plant may be overstated. The cost estimate is based on an existing facility with two streams diluted to approximately 4.3 and 0.9 percent of the lower explosive level. The latter stream is a VOC-in-air stream from a stripper. If a new plant would limit the amount of dilution from this stream to 25 percent of the lower explosive level, the Agency estimated that the cost effectiveness of control from product finishing in a new plant to be about $720/Mg.

The Agency also looked at the worst case costs where individual process sections are constructed (or modified or reconstructed). As expected, the incremental cost effectiveness of control increased. Eighteen process sections were projected to be constructed by themselves. For twelve of the process sections (six raw material preparation sections at polypropylene liquid phase plants and six at HDPE, solution process plants), the incremental cost effectiveness was less than $500/Mg of VOC reduction. For the other six process sections (three product storage sections at LDPE, high pressure plants and three raw materials preparation sections at HDPE, slurry process plants), the incremental cost effectiveness of control was between $1,300/Mg and $1,900/Mg. Where more than one of these process sections are constructed, modified, or reconstructed concurrently, the incremental cost of control would decrease.

Lastly, one new processs line was projected to be built at a LDPE, high pressure plant. The product finishing and product storage sections of this new line were projected to be controlled under the new approach, and an incremental cost effectiveness of $1,200/Mg of VOC reduction was estimated.

Applicability Date Impact. While the Agency believes the new approach more closely matches those streams that are cost effective to control with those streams that actually become controlled as a result of the regulation than would be achieved under the model plant approach, it is important to recognize, as discussed above and as illustrated in the two examples above, certain emissions and process sections not required to be controlled under the standards proposed on September 30, 1987, may be required to be controlled under the new approach. Therefore, the Agency would solve this potential compliance problem by proposing a new applicability date for those affected facilities that can be shown to have been excluded under the standards as proposed on September 30, 1987, but now would be subject to the final rule under the new approach.

Relationship to Current Levels of Control. As noted above, the approach being proposed in this notice may result in different control/no control decisions being made for certain emission streams in comparison to the previously proposed model plant approach. At the same time, the control/no control determination procedures under either approach may indicate that certain existing streams that are currently being controlled would not be required to be controlled under the approaches that have been proposed were they part of a new, modified, or reconstructed affected facility. The possibility of such instances occurring as a result of these standards does not constitute endorsement by the Agency of the removal of existing control equipment or the "decontrol" of such streams by venting them directly to the atmosphere rather than to the control device. Further, the analyses that form the basis of these approaches examined the cost incurred to control emissions that are uncontrolled and not the cost of continuing to control such streams. Thus, where such a "discrepancy" occurs, the analyses used to develop these approaches do not support the control of existing emissions. Finally, there may be reasons for continuing to control such streams that were not part of the analyses. For example, insurance requirements or State regulations may require greater levels of control than indicated by the analyses.

III. Reopening of Public Comment Period

As discussed above, the Agency is requesting comments on the new approach being considered for the standards for polypropylene and polyethylene production as outlined in this notice. Memoranda containing the analyses that form the basis of this new approach are found in the docket (see the **ADDRESSES** section of this notice). Based on the comments received, the Agency will reconsider the merits of this new approach and, if it is retained, will finalize the standard, considering any additional information that may be provided as a result of comments on this notice.

IV. Summary

In summary, the Agency has used the same basic information on emissions in the industry and has applied the same decision criteria for determining cost-effective levels of control, but has "repackaged" that information in a new approach for determining the control/no control decision. The Agency believes this new approach provides a standard that can meet the challenge of new processes and process modifications, and provide a more equitable standard for all those affected. Finally, the Agency believes that the new approach being considered is as protective of the environment as the model plant approach.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Plastic materials, synthetic resins, and nonvulcanizable elastomers (SIC 2821), and Reporting and recordkeeping requirements.

Date: December 29, 1988.

Eileen Claussen,

Acting Assistant Administrator for Air and Radiation.

It is proposed to amend 40 CFR Part 60 as follows:

PART 60—[AMENDED]

§ 60.560 [Amended]

1. In proposed § 60.560, by revising paragraphs (a)(1)(i) and (a)(1)(ii); removing paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v); redesignating paragraphs (a)(1)(vi); (a)(1)(vii), and (a)(1)(viii) as (a)(1)(iii), (a)(1)(iv), and (a)(1)(v), respectively; revising paragraphs (a)(2)(i) and (a)(2)(ii); revising paragraph (b); revising paragraph (c) and redesignating paragraph (c) as paragraph (e); redesignating paragraph (d) as paragraph (f); and adding paragraphs (c), (d), (g), and (h) as follows:

(a) * * *

(1) * * *

(i) For the manufacture of polypropylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

(ii) For the manufacture of law density or high density polyethylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

(iii) * * *

(iv) * * *

(v) * * *

(2) * * *

(i) For the manufacture of polypropylene: each raw materials preparation section, each polymerization section, each material recovery section, each product finishing section, and each product storage section; and

(ii) For the manufacture of low density or high density polyethylene: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section;

* * * * *

(b) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after September 30, 1987, is subject to the requirements of this subpart except as provided in paragraphs (c) through (f) of this section.

(c) Any polypropylene or polyethylene facility listed in Table 1 that commenced construction, modification, or reconstruction after September 30, 1987, and before January 10, 1989 with uncontrolled emission rates at or below those identified in Table 1 is not subject to the requirements of this subpart unless and until such facility commences construction, modification, or reconstruction after January 10, 1989, or its uncontrolled emission rate exceeds that rate listed for it in Table 1.

TABLE 1. MAXIMUM UNCONTROLLED EMISSION RATE [a]

Production process	Process section	Uncontrolled emission rate, kg VOC/Mg product
Polypropylene, liquid phase process	Raw Materials Preparation	0.15 [b]
	Polymerization Reaction	0.14 [b], 0.24 [c]
	Material Recovery	0.19 [b]
	Product Finishing	0.57 [b]
Polypropylene, gas phase process	Polymerization Reaction	0.12 [c]
	Material Recovery	0.02 [b]
Low Density Polyethylene, high pressure process	Raw Materials Preparation	0.41 [d]
	Polymerization Reaction	[e]
	Material Recovery	[e]
	Product Finishing	[e]
	Product Storage	[e]
Low Density Polyethylene, low pressure process	Raw Materials Preparation	0.05 [f]
	Polymerization Reaction	0.03 [e]
	Production Finishing	0.01 [b]
High Density Polyethylene, liquid phase slurry process	Raw Materials Preparation	0.25 [c]
	Material Recovery	0.11 [b]
	Product Finishing	0.41 [b]
High Density Polyethylene, liquid phase solution process	Raw Materials Preparation	0.24 [f]
	Polymerization Reaction	0.16 [c]
	Material Recovery	1.66 [f]
High Density Polyethylene, gas phase process	Raw Materials Preparation	0.05 [f]
	Polymerization Reaction	0.03 [e]
	Product Finishing	0.01 [b]
Polystyrene, continuous process	Material Recovery	0.016 [b, h]
Poly(ethylene terephthalate), dimethly terephthalate process.	Material Recovery	0.06 [b, h]
	Polymerization Reaction	1.80 [b, i, k]
		3.92 [b, j, k]
Poly(ethylene terephthalate), terephthalic acid process	Raw Materials Preparation	[l]
	Polymerization Reaction	1.80 [b, l, m]
		3.92 [b, k, m]

[a] "Uncontrolled" emissions refer to the emissions that would be emitted to the atmosphere in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.
[b] Emission rate applies to continuous emissions only.
[c] Emission rate applies to intermittent emissions only.
[d] Total emission rate for non-emergency intermittent emissions from raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage process sections.
[e] See footnote d.
[f] Emission rate applies to both continuous and intermittent emissions.
[g] Emission rate applies to non-emergency intermittent emissions only.
[h] Applies to modified or reconstructed affected facilities only.
[i] Includes emissions from the cooling water tower.

[j] Applies to a process line producing low viscosity poly(ethylene terephthalate).
[k] Applies to a process line producing high viscosity poly(ethylene terephthalate).
[l] See footnote m.
[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw material preparation section (i.e., the esterifiers).

(d) The continuous and intermittent emissions from any polypropylene or polyethylene facility listed in Table 2 that commences construction, modification, or reconstruction after January 10, 1989, are subject to the requirements of this subpart as shown in Table 2.

TABLE 2.—AFFECTED FACILITIES IN POLYPROPYLENE AND POLYETHYLENE FACILITIES WITH (DATE OF PROPOSAL IN FEDERAL REGISTER) APPLICABILITY DATES

Production process	Process section	Emissions	
		Continuous	Intermittent
Polypropylene, liquid phase process	Raw Materials Preparation		X
	Material Recovery		X
	Product Finishing		X
	Product Storage	X	X
Polypropylene, gas phase process	Raw Materials Preparation	X	X
	Polymerization Reaction	X	
	Material Recovery		X
	Product Finishing	X	X
	Product Storage	X	X
Low Density Polyethylene, high pressure process	Raw Materials Preparation	X	
	Polymerization Reaction	X	
	Material Recovery	X	
	Product Finishing	X	
	Product Storage	X	
Low Density Polyethylene, low pressure process and High Density Polyethylene, gas phase process.	Polymerization Reaction	X	
	Material Recovery	X	X
	Product Finishing		X
	Product Storage	X	X
High Density Polyethylene, liquid phase slurry process	Raw Materials Preparation	X	
	Polymerization Reaction	X	
	Material Recovery		X
	Product Finishing		X
	Product Storage	X	X
High Density Polyethylene, liquid phase solution process.	Polymerization Reaction	X	
	Product Finishing	X	X
	Product Storage	X	X

(e) Except for new affected facilities, modified or reconstructed affected facilities at polystyrene and poly(ethylene terephthalate) plants with uncontrolled emission rates at or below those identified in Table 1 are exempt from the requirements of § 60.562–1.

(f) * * *

(g) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr in new polypropylene or polyethylene affected facilities are exempt from the requirements of § 60.562–1.

(h) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr or with a weight percent VOC of less than 0.10 percent from a modified or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1.

§ 60.561 [Amended]

2. In proposed § 60.561, by adding the following definitions in alphabetical order:

* * * * *

"Concurrent" means construction, modification, or reconstruction of affected facilities that is commenced or completed within a two year period after the commencement date of the construction, modification, or reconstruction of an affected facility.

* * * * *

"Decomposition" means for the purposes of this standard an event in a polymerization reactor that advances to the point where the polymerization reaction becomes uncontrollable, the polymer begins to break down (decomposes), and it becomes necessary to relieve the reactor instantaneously in order to avoid catastrophic equipment damage or serious adverse personnel safety consequences.

"Decomposition emissions" refers to only those emissions released from a polymer production process as the result of a decomposition. For purposes of this standard, this term does not include emissions that may occur during attempts to prevent a decomposition.

* * * * *

§ 60.562–1 [Amended]

3. In proposed § 60.562–1, by revising paragraph (a)(1) introductory text, redesignating paragraphs (a)(1)(i) and (ii) as paragraphs (a)(1)(ii) and (iii); adding paragraph (a)(1)(i); revising paragraphs (a)(1)(ii) and (iii) introductory text; and revising paragraph (a)(2) introductory text as follows:

(a) * * *

(1) For each vent stream that emits continuous emissions in an affected facility as defined in § 60.560(a)(1), Table 3 shall be used to identify those continuous emissions from each new affected facility or set of concurrently constructed, modified, and reconstructed affected facilities that are required to be controlled, and Table 4

shall be used to identify those continuous emissions from each modified or reconstructed affected facility or set of concurrently modified and reconstructed affected facilities that are to be controlled. The level of control is identified in Tables 3 and 4 as one of the following:

(i) Venting the emissions to a control device located on the plant site.

(ii) Reducing emissions of total organic compounds (TOC) (minus methane and ethane) by 98 weight percent, or to a TOC (minus methane and ethane) concentration of 20 ppm by volume (ppmv), expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen, whichever is less stringent. If a boiler or process heater is used to comply with this paragraph, then the vent stream shall be introduced into the flame zone of the boiler or process heater; or

(iii) Combusting the emissions in a flare as follows:

* * * * * *

(2) For each vent stream that emits intermittent emissions in an affected facility as defined in § 60.560(a)(2), except for decompositions:

* * * * * *

TABLE 3. PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM ALL NEW AND FROM ALL CONCURRENT NEW, MODIFIED, AND RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
1. Sum all streams with VOC weight percent within the applicable weight percent range from all new or from all concurrently constructed, modified, and reconstructed facilities at a plant site.	0<5.5[b]	1. If total combined uncontrolled emissions are equal to or greater than 47 Mg/yr, control.. 2. If total combined uncontrolled emission are less than 47 Mg/yr, control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii) or (iii)
2. Calculate total uncontrolled annual emissions for each weight percent range. 3. Calculate composite VOC concentration (weight percent) for streams in the 5.5 to less than 20 weight percent range.	5.5<20	1. If total combined uncontrolled emissions are equal to or greater than calculated threshold emissions (CTE)[c], control. 2. If total combined uncontrolled emissions are less than the CTE, control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)
4. Calculate the threshold emissions for the 5.5 to less than 20 weight percent range using the composite VOC concentration.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)

Footnotes to Table 3:

[a] Individual streams excluded under paragraphs § 60.560(g) and (h) from the requirements of § 60.562-1 are to be excluded from all calculations in this table. These two paragraphs exempt all individual emission streams with individual uncontrolled annual emissions rates of less than 1.6 Mg/yr that are in a new, modified, or reconstructed affected facility and all individual emission streams with individual VOC concentrations of less than 0.10 percent VOC by weight that are in a modified or reconstructed affected facility.

[b] If the emission streams in this weight percent range (i.e., 0 < 5.5) come only from modified or reconstructed process sections, then the procedure and control/no control criteria in Table 4 for this weight percent range shall be used instead.

[c] For a composite VOC concentration between 5.5 and less than 7 percent by weight, calculate threshold emissions using Equation 1.

Equation 1. Threshold Emissions, Mg/yr = (a × 691) + 30.9

For a composite VOC concentration between 7 and less than 9 percent by weight, calculate threshold emissions using Equation 2.

Equation 2. Threshold Emissions, Mg/yr = (b × 324) + 25

For a composite VOC concentration between 9 and less than 20 percent by weight, calculate threshold emissions using Equation 3.

Equation 3. Threshold Emissions, Mg/yr = (c × 125) + 18.2

$$\text{where: } a = \left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$\text{where: } b = \left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$\text{where: } c = \left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

weight percent VOC = weight percent of composite emission stream of all emission streams with individual weight percent VOC between 5.5 and less than 20.

TABLE 4.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM MODIFIED OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
1. Sum all streams with VOC weight percent within the applicable weight percent range from all concurrent modified and reconstructed facilities at a plant site. 2. Calculate total uncontrolled annual emissions after modification or reconstruction for each weight percent range.	0.10 <5.5	1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE)[b], control. 2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)

TABLE 4.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM MODIFIED OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES—Continued

Procedure[a]	Applicable weight percent range	Control/no control criteria	Applicable standard
3. Calculate composite VOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range before and after modification and reconstruction. 4. Select the higher of the two VOC concentrations for each weight percent range.	6.5 <20	1. If total combined uncontrolled emissions are equal to or greater than CTE, control. 2. If total combined uncontrolled emissions are less than the CTE[b], control only individual streams with volume flow rates of 8 scfm or less.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)
5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite VOC concentration selected above.	20 to 100	1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control.. 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control.	1. § 60.562-1(a)(1)(ii) or (iii) 2. § 60.562-1(a)(1)(i), (ii), or (iii)

Footnotes to Table 4.

[a] Individual streams excluded under paragraph § 60.560(h) from the requirements of §60.562-1 are to be excluded from all calculations in this table. This paragraph exempts all individual emission streams with individual uncontrolled annual emission rates of less than 1.6 Mg/yr and all individual emission streams with individual VOC concentrations of less than 0.10 percent VOC by weight.

[b] For the 0.10 to less than 5.5 weight percent range, the following equations are used:

If the percent composite VOC concentration is . . .	Use this equation to calculate threshold emissions . . .
0.10<0.12	(a × 164).
0.12<0.2	(b × 47.3) + 96.4.
0.2<0.3	(c × 24.8) + 68.5.
0.3<0.4	(d × 531) + 52.4.

If the percent composite VOC concentration is . . .	Use this equation to calculate threshold emissions . . .
0.4<0.6	47 + 30 (0.6) − weight percent VOC).
0.6<5.5	47.

$$\text{where: } a = \left[\frac{0.12}{\text{weight percent VOC}}\right]^{5.9}$$

$$b = \left[\frac{0.2}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$c = \left[\frac{0.3}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$d = (0.4 - \text{weight fraction VOC})^{1.54}$$

For the 5.5 to less than 20 weight percent range, the following equations are used.

If the percent composite VOC concentration is . . .	Use this equation to calculate threshold emissions . . .
5.5<7	(e × 691) + 30.9.
7<9	(f × 324) + 25.0.
9<20	(g × 125) + 18.2

$$\text{where: } e = \left[\frac{7.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$f = \left[\frac{9.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

$$g = \left[\frac{20.0}{\text{weight percent VOC}}\right]^{0.5} - 1$$

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federal register

Tuesday
January 10, 1989

Part III

Environmental Protection Agency

40 CFR Parts 61 and 763
Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools; Notice of Proposed Rule Revision and Opportunity for Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 763

[AD-FRL-OPTS-3469-4]

Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule revision and opportunity for public hearing.

SUMMARY: These proposed amendments to the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) require control device and fugitive emission monitoring, recordkeeping, and reporting for asbestos milling, manufacturing, and fabricating operations. For planned demolitions and renovations, the notification requirements are revised, and safety is added as a reason for exemption from the use of wet removal methods. Recordkeeping is required for asbestos waste disposal. Clarifying revisions are made to several definitions and provisions.

The existing standard and the proposed amendments implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (see 36 FR 3031 (March 31, 1971)). The standard proposed today amends the asbestos NESHAP to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.

These regulations also would implement, in part, section 203(h) of the Asbestos Hazard Emergency Response Act (AHERA) to the extent they apply to disposal of asbestos removed from school buildings.

A public hearing will be held, if requested, to provide interested persons with an opportunity for oral presentation of data or views concerning the proposed amendments.

DATES: *Comments.* Comments must be received on or before March 7, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 31, 1989, a public hearing will be held on February 8, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at telephone no. 919-541-5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 31, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), South Conference Center, Room 4, Attention: Docket No. A-88-28, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requestng a public hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons who want to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. 919-541-5578. Persons interested in attending the hearing should call Ms. Ann Eleanor to verify that a hearing will occur.

Docket. Docket No. A-88-28, containing supporting information used in developing the proposed standards revisions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the policy aspects of the proposed standard revisions, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. 919-541-5263. For information concerning technical aspects, contact Mr. Bruce Moore, Industrial Studies Branch, telephone no. 919-541-5460, at the same address.

SUPPLEMENTARY INFORMATION:

Introduction

Section 112(a)(1) of the CAA defines a "hazardous air pollutant" as one that the Administrator judges "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness." Section 112(b)(1)(A) of the CAA requires the Administrator to publish a list that includes each hazardous air pollutant for which he intends to establish an emission standard under this section. Asbestos was listed as a hazardous air pollutant under section 112 on March 31, 1971 (36 FR 3031).

Initial standards controlling milling, manufacturing, demolition, spraying, and roadway sources of asbestos emissions were promulgated on April 6, 1973 (38 FR 8820). These standards were based on the 1970 conclusion by the National Academy of Science (NAS) that asbestos emissions from major manmade sources should be minimized. On October 14, 1975, the demolition standards were revised to place additional requirements on demolitions ordered by State or local governments besides notification requirements already in effect, and the standard was expanded to cover renovation activities, use of asbestos in friable insulation, and waste disposal (40 FR 48299). Work practices covering emissions from demolition and renovation were amended on June 19, 1978 (43 FR 26372), and were repromulgated on April 5, 1984 (49 FR 13658), to reinstate work practice and equipment controls held not to be emission standards by the Supreme Court in its decision in *Adamo Wrecking Company v. United States*, 434 U.S. 275 (1978). The 1977 amendments to the CAA authorize work practice standards when it is not feasible to prescribe an emission standard. Such an instance occurs, for example, when a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture such a pollutant or when a measurement methodology is not available.

A general review of the current asbestos NESHAP was undertaken to evaluate the consistency of the existing standard with current EPA policies for NESHAP regulatory development, the availability of improved emission controls, the need to improve compliance, and the integration of the NESHAP with other regulatory requirements. The EPA determined that, when complied with, the asbestos NESHAP is effective in reducing emissions and protecting the public health. However, EPA also concluded that many demolition and renovation sources do not comply with the removal and waste disposal provisions of the current standard, and that some additional work practices should be required. Also, there is a need for an explicit requirement to monitor air pollution control devices at milling, manufacturing, and fabricating sources to ensure their proper operation.

A risk-based approach was also considered in the review of the current asbestos NESHAP. However, questions regarding how EPA weighs a range of health, risk, and other factors in establishing an ample margin of safety for NESHAPs were raised in the District of Columbia Circuit Court decision in the *Natural Resources Defense Council v. EPA*, 824 F. 2d 1146 (D.C. Cir. 1987), "vinyl chloride case." In the vinyl chloride decision, the court prescribed a two-step process under which the Administrator must first determine an acceptable risk level based on consideration of health and risk factors alone, and then determine the level at which to set the standard in order to provide an ample margin of safety, which can include consideration of costs, feasibility, and other relevant factors. In connection with regulation of some sources of benzene, the Agency has recently published in the **Federal Register** (43 FR 28496) four proposed approaches for implementing the vinyl chloride decision. Public comment on these approaches is being sought, and these comments will be reviewed before the Administrator makes a decision regarding which approach to use to develop NESHAP standards. Until the NESHAP policy is clarified, EPA cannot complete its work on risk-based proposals for revision of the asbestos NESHAP. At this time, the Agency is merely revising the portions of the standard that are not risk-based to clarify their intent and to facilitate their enforcement.

Today's notice proposes to amend the NESHAP to enhance enforcement and improve compliance by (1) permitting the use of percent by area as an expression for the asbestos content of bulk materials; (2) adding monitoring and recordkeeping provisions for asbestos milling, manufacturing, and fabricating operations; (3) revising notification requirements for demolitions and renovations; (4) adding recordkeeping and reporting provisions for waste disposal; and (5) making other revisions that clarify the rule and its intent and implement enforcement determinations previously made. None of the proposed amendments affects the stringency of controls; accordingly, the amendments are not affected by the vinyl chloride decision.

The EPA may issue a second proposal at a later date that would include a review of the stringency of controls, and propose possible changes to the stringency of controls. Such a proposal would follow the "acceptable risk" and "ample margin of safety" requirements of the vinyl chloride decision.

These rules, to the extent they apply to disposal of asbestos from schools, are also being issued under authority of AHERA. AHERA enacted Title II (sections 201 thru 214) of the Toxic Substances Control Act (TSCA), codified at 15 U.S.C. 2641 thru 2654.

Section 203 of TSCA requires EPA to promulgate regulations governing asbestos-containing material in schools. The EPA is to issue several specific kinds of rules, including inspection rules, rules for determining appropriate actions to take in response to potential asbestos hazards and rules to require implementation of management plans for asbestos.

On October 17, 1987, EPA issued most of the regulations mandated by section 203 (52 FR 41826, October 30, 1987). The regulations are codified at 40 CFR Part 763, Subpart E. However, the Agency did not promulgate rules for asbestos waste disposal required under section 203(h). Failure to promulgate the disposal rules resulted from a decision EPA made when the section 203 rules were proposed in April 1987 (52 FR 15820). The EPA had reasoned that, since the asbestos NESHAP covers wastes from all buildings including schools, the section 203(h) disposal rules should be included in the NESHAP. At the time, NESHAP revisions were expected to be proposed in the summer of 1987. Due to the vinyl chloride decision, however, the NESHAP revisions were not proposed as expected.

The EPA continues to believe that it is inappropriate to have separate regulations for disposal of asbestos from schools and from other buildings. However, because of the uncertainty caused by the vinyl chloride opinion, EPA may issue final regulations under section 203(h) applicable only to disposal of asbestos from schools and may incorporate such regulations into 40 CFR Part 763, basing them on this proposal.

The standard under which these regulations are to be issued under TSCA Title II is provided by section 203(a), which requires that any regulation promulgated under section 203 "must protect human health and the environment." The EPA believes that these regulations will protect human health and the environment under the section 203(a) standard because they will facilitate enforcement of existing regulations governing disposal of asbestos from schools, as noted in this preamble. The EPA, however, does not believe that these regulations necessarily complete its obligation under section 203(h). If at a later date risk-based revisions to the NESHAP are issued, the remainder of the Agency's obligation under section 203(h) will be fulfilled.

This preamble first provides background information in the form of a brief description of the health effects associated with exposure to asbestos and a summary of the widespread Federal authority for regulating asbestos. The preamble then summarizes the proposed amendments. Next, the environmental, health, energy, and economic impacts of the proposed amendments are summarized. The rationale is then provided for each decision made in selecting the proposed amendments. Also discussed are the impacts of the recordkeeping and reporting requirements. Administrative considerations, including Executive Order 12291 and the Regulatory Flexibility Act (RFA) are described at the end of the preamble. The preamble consists of the following:

- Background
- Summary of Changes to Asbestos NESHAP
  - —General
  - —Milling, Manufacturing, and Fabricating Sources
  - —Demolition and Renovation
  - —Waste Disposal
- Summary of Environmental, Energy, and Economic Impacts
- Rationale
  - —Demolition and Renovation
  - —Milling, Manufacturing, and Fabricating
  - —Waste Disposal
  - —Spraying
  - —Roadways
  - —Definitions
- Impacts of Reporting Requirements
- Regulatory Flexibility Act
- Public Hearing
- Docket
- Miscellaneous.

Background

Diseases associated with asbestos exposure include asbestosis, mesothelioma, cancer of the lung, and cancer of the gastrointestinal tract. Asbestosis is a pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs and is usually associated with occupational exposure to asbestos concentrations much higher than those that normally occur in outdoor air. Mesothelioma is a cancer of the pleura or the peritoneum. Mesotheliomas are rarely curable, and death usually results within a year of diagnosis. Asbestos-induced lung cancer usually has a latency period of more than 20 years, and few cases of lung cancer are curable. A number of epidemiologic studies of asbestos workers have indicated increases in esophageal, stomach, colorectal, kidney, laryngeal, pharyngeal, and buccal-cavity

cancers, though at a smaller magnitude of increased cancer risk than lung cancer and mesothelioma. The health aspects of asbestos are discussed in the Health Effects Document for asbestos, which is available from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711. Please refer to *Airborne Asbestos Health Assessment Update* (EPA 600/8–84/003f).

In evaluating the coverage and effectiveness of the existing asbestos standards under section 112, it is important to recognize the widespread use of Federal authority to control asbestos use and exposure. Within, EPA, regulations for asbestos have been issued under the CAA, TSCA, the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Federal Water Pollution Control Act (FWPCA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under the authority of TSCA, EPA has promulgated regulations requiring inspection for asbestos in schools, and has published regulations to require State/local governments not covered under Federal Occupational Safety and Health Administration (OSHA) requirements for asbestos abatement projects to comply with the Federal OSHA requirements. Under AHERA, EPA has promulgated regulations to protect public health and the environment from asbestos in school buildings. Additionally, EPA, under the authority of TSCA, has proposed to ban certain asbestos products and phase out other such products (51 FR 3738, January 29, 1986). Guidelines for proper disposal of asbestos waste have been published recently by EPA. Under CERCLA, EPA has developed a Reportable Quantity (RQ) of one (1) pound for asbestos waste. The EPA also has set asbestos effluent standards for some source categories (40 CFR 427) and developed water quality criteria (45 FR 79326) for asbestos.

Outside of EPA, the Department of Labor's OSHA and Mine Safety and Health Administration (MSHA) control workplace asbestos exposure levels. The OSHA has promulgated a revised workplace standard that reduces the allowable workplace exposure level as an 8-hour time-weighted-average (TWA) from 2.0 fibers per cubic centimeter (f/cc) to 0.2 f/cc (29 CFR 1910.1001 and 29 CFR 1926.58). The OSHA regulations protect workers (the NESHAP protects public health principally) and require certain actions, such as the use of wetting techniques, to prevent the workplace concentrations from reaching the permissible exposure limit of 0.2 f/cc. Asbestos use in some consumer products is regulated by the Consumer Product Safety Commission (CPSC). The U.S. Department of Transportation (DOT) has regulations covering the transportation of asbestos and asbestos products. Recently, DOT promulgated regulations in compliance with the Superfund Amendments and Reauthorization Act (SARA) of 1986 that cover the transportation of asbestos-containing waste material (51 FR 42174, November 21, 1986). The effective date of these regulations was subsequently delayed to July 1, 1987.

Summary of Changes to Asbestos NESHAP

General

The regulation is reorganized by combining applicability, notification requirements, and procedures for asbestos emission control into a single standard for demolition and renovation. It requires milling, manufacturing, and fabricating operations to monitor visible emissions daily, inspect air cleaning devices weekly, and keep records. The regulation also requires recordkeeping and reporting for waste disposal activities.

In general, compliance with the NESHAP approaches 100 percent for all operations except demolition and renovation, including disposal of demolition and renovation waste, where it is estimated to be about 50 percent for demolition and about 80 percent for renovation. As a result of this noncompliance, significant asbestos emissions occur, with those from the disposal of demolition waste greatly exceeding other emissions, including those from asbestos milling, manufacturing, and fabricating. Several amendments are proposed to improve compliance with and enforceability of the NESHAP and to help ensure proper operation and maintenance of control equipment.

Milling, Manufacturing, and Fabricating Sources

This proposal requires asbestos milling, manufacturing, and fabricating sources to perform daily monitoring for visible emissions and weekly inspection of air cleaning devices.

Demolition and Renovation

This proposal clarifies the definition of demolition to recognize that intentional burning is a method of demolition. An additional notification provision requires owners or operators to contact EPA in advance of the actual start date if the demolition or renovation will begin on a date other than the one specified in the original notification. The requirement that the on-site supervisor at asbestos removals be trained in procedures for removal and handling of asbestos-containing material in accordance with the NESHAP is also a new provision in the regulation.

Waste Disposal

An amendment is proposed to make the waste disposal site operator responsible for complying with the waste disposal site provisions. Under the current NESHAP, the waste generator is responsible for selecting a disposal site that meets the waste disposal requirements of the NESHAP. A new requirement is added for keeping records that show the location and quantity of asbestos waste disposed of at disposal sites and for noting this information on the deed to property when the site becomes inactive.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed amendments for demolition and renovation, including waste disposal, were estimated from two baselines. One is full compliance with the NESHAP, and the other is current use of engineering controls and work practices. Enforcement experience indicates that many asbestos removal operations related to demolition and the subsequent waste disposal operations related to both demolition and renovation are performed out of compliance with the NESHAP. The lack of compliance with the NESHAP removal provisions leads to the improper disposal of some waste, especially demolition waste, with the result that emissions from the disposal of demolition waste greatly exceed other emissions, including process emissions from milling, manufacturing, and fabricating. Liability and other considerations generally lead the owners of buildings being renovated to follow or even exceed the requirements of the NESHAP. Thus, the baseline for demolition and renovation is current use of work practices rather than full compliance. At asbestos milling, manufacturing, and fabricating facilities, the required air pollution control devices are generally in place. Thus, for milling, manufacturing, and fabricating, full compliance with the NESHAP, including the waste disposal requirements, is assumed for the baseline.

Impacts of the demolition and renovation amendments are based on estimated annual emissions of asbestos. Emission estimates are the product of emissions per unit of asbestos removed and disposed of and the average quantity of asbestos removed and disposed of annually. The annual amount of asbestos removed and waste generated was estimated using representative models of asbestos-containing structures and projections of the average number of demolitions and renovations for an 83-year period (i.e., the time during which all asbestos-containing structures are expected to be demolished or renovated to remove asbestos). Impacts of the proposed amendments, including the waste disposal provisions, for milling, manufacturing, and fabricating are based in part on information from confidential data submitted to the Office of Pesticides and Toxic Substances (OPTS) under section 8(a) of TSCA and on information obtained under section 114 of CAA.

Little emission measurement data exist for asbestos sources. Thus, emissions were estimated using engineering methods and numerous assumptions, which resulted in substantial uncertainty. A detailed description of the approaches used to estimate emissions is found in "Asbestos Emission Estimates for Milling, Manufacturing, Fabricating, Demolition, Renovation, and Waste Disposal," which is contained in Docket A–88–28. Estimated emissions from asbestos removal activities associated with demolition and renovation assuming full compliance are about 700 kg/yr. Estimated emissions from waste disposal, assuming full compliance with the NESHAP by all sources, are about 600 kg/yr. Estimated process emissions under the current NESHAP at full compliance for milling, manufacturing, and fabricating are approximately 7,400 kg/yr.

As has been stated previously, enforcement experience indicates that a significant amount of asbestos material is handled out of compliance with some of the provisions of the NESHAP. An estimated 50 percent of asbestos removal operations related to demolition and renovation are performed without EPA notification, implying that many asbestos removals and the subsequent waste disposal operations are performed out of compliance with the NESHAP. However, without precise information on the relationship between notifications and level of compliance, the actual degree of compliance with the NESHAP is uncertain. The amendments being proposed today are intended to increase the level of compliance with the demolition and renovation provisions, thereby reducing emissions, yet the extent to which emissions would be reduced by the proposed amendments cannot be quantified precisely.

The following estimates of nationwide emissions are based on current practices. Emissions for milling, manufacturing, and fabricating are the same as for full compliance. Estimated emissions from demolition and renovation are approximately 1,300 kg/yr. Estimated waste disposal emissions from all waste are 227,000 kg/yr.

The costs of the proposed amendments are expected to be small relative to normal operating costs for these industries. The amendments are intended to promote compliance and codify existing good practices. Small additional costs are associated with the recordkeeping and reporting requirements of the amendments. Economic impacts of the alternatives included in this proposal are expected to be minimal. Adverse impacts of the proposed amendments on water, noise, and energy were considered. Due to the nature of the amendments, no significant adverse impacts on water, noise, or energy are anticipated.

Rationale

Demolition and Renovation

Sections 61.145 through 61.147 of the existing asbestos NESHAP require removal of friable asbestos materials prior to demolition and require controls during removals associated with demolition or renovation. Costs and benefits attributable to the NESHAP for asbestos removal during renovation are difficult to establish because removal operations are also subject to the requirements of existing State and OSHA regulations for occupational exposure. As noted earlier, EPA has promulgated regulations under the authority of AHERA that cover asbestos removals at school buildings. Furthermore, many renovations already use controls exceeding those in the NESHAP because of the concern over occupant exposure once the renovation is completed and the building is returned to use. In demolition, however, occupant exposure is not typically a factor so that asbestos removal is generally not as strictly controlled as it is in renovation. Thus, the potential for emissions is usually greater in a demolition than in a renovation.

The major provisions of the current demolition standard are the requirement for removal (and control during removal) of friable asbestos material prior to demolition and the requirement for proper waste disposal. Because these two provisions are tied intimately to one another (i.e., the waste disposal provisions cover the waste generated by the removal requirement), the impacts related to asbestos removal and waste disposal must be considered together in evaluating amendments to the demolition standard.

As explained above, the existing NESHAP was evaluated at two levels of compliance. It was evaluated at full compliance and, because enforcement experience indicates substantial noncompliance, it also was evaluated based on current practice. At full compliance, nationwide asbestos emissions from removal and waste disposal under the current NESHAP would be an estimated 1,100 kg/yr. The uncertainty associated with estimates of emissions is very large.

The extent to which asbestos is handled out of compliance with the NESHAP demolition and renovation regulations is uncertain and depends on various factors. For example, because of OSHA and State and local regulations and pressures from other sources, including the general public, renovations and waste from renovations may be well-controlled even if EPA is not notified. Removal emissions associated with renovation are small and do not constitute a significant fraction of the total emissions from removal and waste disposal combined. Demolitions, however, are not affected by other regulations to the extent that renovations are. Thus, the absence of a notification may indicate that an asbestos-containing structure is demolished with the asbestos left in place. However, asbestos emissions from the disposal of the demolition debris may be overstated because some of the waste might still be incidentally deposited in a landfill and covered. Under the existing NESHAP, assuming 50 percent compliance with the notification requirement, nationwide asbestos emissions are estimated as about 228,000 kg/yr. Increasing compliance to 100 percent would reduce estimated emissions to 1,100 kg/yr, a decrease of approximately 227,000 kg/yr. Considering the magnitude of asbestos emissions associated with current practice, amendments are being proposed to facilitate enforcement and promote compliance.

A proposed revision to the standard includes the addition of a volume equivalent of 1 m^3 (35 ft^3) in addition to the 15 m^2 (160 ft^2) and 80 m (260 ft). A volume of 1 m^3 is equivalent to 15 m^2 of asbestos assuming a typical thickness of 7.6 cm (3 in.). This was requested by enforcement officials who stated that they often arrive at asbestos removal

operations, for which no notice was given, and find the asbestos already in containers. A volume equivalent will facilitate the determination of how much asbestos is involved.

A statement is added to clarify that the asbestos-containing materials to which the standards are applicable are friable asbestos materials and also materials that are nonfriable but may be broken or crumbled and emit asbestos fiber during demolition operations if not removed and disposed of properly. For example, asbestos cement board is not considered friable or likely to emit asbestos fibers under normal usage. However, if fractured or crushed during a demolition or renovation, it will emit fibers and, under today's proposal, would be considered friable under those conditions. Some nonfriable asbestos-containing materials, such as packings, gaskets, asphalt roofing, and vinyl flooring, that normally do not emit asbestos fibers are not subject to the removal and disposal provisions of the standard; however, even these nonfriable materials may be subject to regulation under certain conditions e.g., during the sanding of vinyl-asbestos flooring or when asphalt roofing is old and severely weathered. Under the proposed amendments, the amounts of these nonfriable materials must be estimated and reported if a notification is required. The amounts of nonfriable materials, such as asbestos-cement products, that potentially can emit fibers must be included in the quantities reported in the notification.

Several amendments being proposed today are intended to promote notification and increase compliance. These provisions include allowing a uniform 10-day period for written notification of all planned demolitions or renovations. This uniform notification requirement has been requested by industry and enforcement representatives and, in conjunction with the other notification requirements that would be added, is expected to improve compliance because it is simpler and easier to understand. However, the degree to which compliance would be improved over current practices cannot be quantified precisely. To assist enforcement personnel in tracking asbestos demolitions, notification is required by the following workday for demolitions ordered by State or local government agencies and not later than the following working day after stripping or removal work begins for emergency renovations. If asbestos removal at a demolition or renovation site starts on a date other than that specified in the notice or if the other reported information changes, renotification is required and must be postmarked at least 5 working days or received at least 3 working days prior to the new start date. Notices that are mailed are required to be sent by certified mail, return receipt requested, in order to allow the contractor to demonstrate that EPA was notified. Further, § 61.145(b) is amended by prohibiting asbestos removal at demolitions and renovations from starting on any date other than the one contained in the applicable notification. The purpose of this amendment is to allow enforcement personnel to observe removal operations at demolition and renovation sites. This requirement is needed because some asbestos removal operations are completed before the starting dates specified in the notification, precluding inspections for compliance by enforcement personnel.

The notification provisions have been revised to require, in addition to the name and address, the telephone number of both the owner and operator to provide enforcement personnel with information necessary to track compliance activity and to prioritize inspections. The proposed amendments clarify that, if the demolition or renovation operation will involve less than the total amount of asbestos material in the facility, only the amount to be removed has to be reported. The revised notification provisions require that information on the amount of potentially friable asbestos-containing material and the amount of nonfriable asbestos-containing material that will not become friable in the course of the demolition and renovation be reported in the notification. In addition, the owner or operator submitting a notification is required to include the procedure employed to detect the presence of asbestos materials as part of the notification. Knowing the procedure used, enforcement personnel are better able to evaluate the adequacy of the building survey and asbestos analysis already required by the current standard. Because building survey and analysis are already required, the additional cost of describing the procedure employed is negligible.

To ensure that an effort is made to locate all of the asbestos, the current notification provisions require owners or operators of demolitions and renovations to identify all asbestos, including asbestos that is encased or covered by a nonasbestos material, prior to beginning operations that would break up or preclude access to the material for subsequent removal. For example, the current NESHAP has been correctly interpreted to require that friable asbestos pipe lagging covered with a nonfriable painted canvas or metal jacket must be included in the notification and removed prior to a demolition or renovation that would disturb the asbestos or preclude access to it. Given the nature and complexity of some renovations and demolitions, it is possible that some asbestos may not be discovered until after demolition or renovation has begun or previously nonfriable material may become friable. To cover these situations, the proposed amendments will add a requirement for owners or operators to include contingency plans in their notifications describing what they will do if they find unexpected asbestos or if previously nonfriable material becomes friable. Under the current standards, the demolition or renovation work would have to cease until EPA was notified, but EPA decided that this would be unnecessary provided contingency plans are included in the notification. For asbestos that is not discovered until after demolition begins, the owner or operator is given the choice of removing the asbestos or, if removal cannot be done safely, keeping the asbestos and asbestos-contaminated debris wet. This revision is proposed in recognition of a situation in which worker safety may be threatened and provides a reasonable alternative while adequately controlling emissions. The only other exceptions to the requirements to remove friable asbestos are found in § 61.145(a)(3), which applies to facilities demolished under a State or local government order, and in § 61.145(c)(1)(i), which applies to friable material encased in concrete. In both of these instances, wetting of the asbestos is still required.

Another proposed amendment requires the owner or operator submitting a notification to certify that at least one on-site representative, such as a foreman or management-level person trained as required by § 61.145(c)(8), will supervise the demolition and renovation covered by the notification. Another amendment to this section specifies that the start and completion dates required in the notification pertain to the dates that asbestos removal and related operations, such as site preparation, will begin and end in addition to the scheduled starting and completion dates of the demolition, wrecking, or renovation. Waiting periods between notification and initiation of work also are clarified to state explicitly that they refer to the initiation of asbestos stripping and removal and related work. This clarifies the regulation to read as it currently is interpreted and would permit certain demolition and renovation activities (such as site preparation, the removal of salvageable fixtures and equipment, and other activities that do not disturb asbestos or preclude access to the material) to begin before the required waiting periods expire. It does not permit the demolition of nonasbestos structures before the required waiting period. This accommodates the contractors' need to initiate various activities at demolition and renovation sites while giving enforcement personnel adequate advance notice.

The notification must state whether it is for a demolition or a renovation. In addition, a proposed amendment clarifies the current requirement that notifications must be made for all demolitions, even when no asbestos is present, in order to promote compliance and aid enforcement. In addition, a provision is added that makes it clear that planned renovations involving less than the specified amounts of asbestos are not subject to the notification provisions of the regulation.

Additional notification requirements have been added for State or local government-ordered demolitions, § 61.145(b)(4)(xiii), and emergency renovations, § 61.145(b)(xiv). Notification regarding ordered demolitions must now include the date the order was issued and the date on which the demolition was ordered to begin. This change was requested by enforcement officials who were concerned that, without this requirement, the notification provisions for ordered demolitions would be abused. For emergency renovations, additonal information is required on the nature of the sudden unexpected event that necessitated the emergency renovation. This change was also requested by enforcement officials to prevent circumvention of the notification requirements by contractors claiming that a renovation was an emergency.

To clarify whether planned renovations involving individual, nonscheduled operations must comply with the notification provisions of § 61.145(b), paragraph (a)(4)(i), is modified to require that the additive amount of asbestos to be removed or stripped over a calendar year of January 1 through December 31 be used instead of over the "maximum period of time a prediction can be made not to exceed 1 year." This clarifies the intent of the current regulation to cover individual, nonscheduled asbestos removal operations involving small amounts of asbestos if the total amount of asbestos that will be removed in 1 year is projected to exceed the quantities of asbestos specified in § 61.145(a). When individual renovations exceed the cutoff, a separate notification is required.

In the interest of worker safety, safety will be permitted as a reason for exemption from the requirement to use wet methods during removal although § 61.145(c)(3) will be revised to require that the Administrator's approval is obtained before removal begins. This provision is intended to cover obvious safety hazards such as electrical hazards and, in some instances, hot pipes or other facility components, which are not now mentioned in the regulation. The EPA recognizes that what constitutes safety hazard may be open to interpretation; however, the Administrator must make that determination on a case-by-case basis. For example, hot pipes may be the basis for an exemption from wetting. In some situations, however, the Administrator may determine that it is reasonable for a process to be shut down to allow the use of wet methods. The EPA does not intend for OSHA regulations to be violated in order to comply with the NESHAP.

Provisions are added that specify the conditions under which large pieces of asbestos-covered or asbestos-coated equipment can be removed from a facility and transported, stored, and reused without first stripping the asbestos. The addition of this provision recognizes that situations arise where certain large pieces of equipment can be removed and eventually reused without disturbing the asbestos.

An amendment to § 61.145(c)(3)(i)(B) will allow two new work practices in addition to the local exhaust ventilation system currently permitted for renovations where wetting would damage equipment or pose a safety hazard. The new work practices are use of glove bag systems and covering friable material in leak-tight wrapping prior to removal.

The glove bag is similar in principle to glove boxes used to confine and handle hazardous materials in laboratories and is a proven control technology widely used for small jobs. Glove bags, when properly designed, installed, and used, provide nearly complete isolation of the asbestos material. When properly used, they are at least as good as and probably superior to the use of local exhaust ventilation. They typically are used in conjunction with wet removals where the wetting is done inside the bag, but glove bags also can be used with dry removal techniques as well as with a High-Efficiency Particulate Air (HEPA) powered vacuum system for evacuating the bag. The EPA intends for glove bags to be used with wet removal methods inside the glove bags. While glovebags offer potential advantages, recent EPA and NIOSH studies have indicated potential problems with their use. Work place asbestos concentrations during glovebag use have exceeded the OSHA permissible exposure limit. Although the source of the elevated asbestos levels was not identified, potential sources of fiber release include air leaks, and vibrations in the pipe outside the glovebags. Workers should be made aware of these potential problems and instructed in the proper installation and use of glovebags. In addition, it is recommended that any worker using glove bags be protected by a respirator.

Covering friable material with leak-tight wrapping prior to removal also prevents asbestos emissions from being released into the air and provides an alternative to stripping the asbestos, which increases the likelihood of asbestos emissions. Permitting the use of these two work practices acknowledges changes that have taken place in removal methods and increases the number of options open to demolition and renovation contractors for compliance with this regulation.

Section 61.145(c)(4) is revised to allow operators to cover and seal facility components with a lead-tight wrapping for removing the components intact from a facility. This method is an effective means of emission control and is currently in use. A provision also is added that permits the Administrator to approve equivalent control methods other than the wetting, glove bags, or leak-tight wrapping methods already allowed. (This provision is also covered under the General Provisions, but it is included in this subpart for convenience.) So that inspectors can readily determine if alternative methods have received Administrator approval, a copy of the approval is required to be kept at the demolition or renovation site for inspection. Section 61.145(c) is revised to apply to all asbestos material including materials that have been stripped or removed. This is intended to clarify that materials that were not stripped but may have fallen off facility components must be treated the same as those that were stripped. Section 61.145(c)(6)(iv) is added to clarify that materials that have been removed and were contained in leak-tight wrappings do not need to be unwrapped and wetted.

Section 61.145(c)(8) adds the requirement that all asbestos material be stripped, removed, and otherwise handled by a contractor or by a representative of the facility owner or operator trained in the provisions of this regulation and the means of complying with them. This requirement will ensure that an on-site supervisor, such as a foreman or management-level person, has a knowledge of this regulation and approved methods of asbestos removal and handling. The training on-site supervisor does not have to be at the site at all times but must present for a time sufficient to provide supervision of asbestos-related operations. In addition, this proposed amendment requires that evidence that training has been accomplished be made available for inspection by EPA during normal business hours. This training does not replace the training requirements of OSHA's workplace regulation (29 CFR 1926.58) or the general training recommended by EPA. The ultimate objective of this requirement is increased compliance with this regulation and decreased emissions. The annual cost of training in the provisions of NESHAP is estimated to be about $1.9 million.

Comments made to EPA question the intent of the requirements in § 61.145(c) for lowering stripped or removed materials to the ground or lower floors. The standard requires all facility components that have been removed in units or sections to be carefully lowered to the ground. Asbestos material, other than that on facility components removed in sections or units, also must be carefully lowered to the ground or lower floors. If the asbestos-containing material is more than 50 feet above the ground, it may be transported by a leak-tight chute or container. In all cases, it is the intent of the standard that asbestos materials be lowered carefully to the ground or a lower floor to the greatest extent possible, not dropped or thrown. The use of a leak-tight chute to transport material stripped or removed 50 feet above ground level is one exception to this. Another exception occurs during the stripping of asbestos material from facility components. In these instances, it is not always practical to prevent the stripped material from falling to the ground or floor, e.g., during the stripping of asbestos material from ceilings.

In addition to the proposed revisions discussed above, several editorial changes are proposed that are intended to clarify the intent of the regulation as it is now written and make it more understandable. The changes consist primarily of adding a phrase or substituting terms for clarity and are based on comments from both enforcement agencies and industry. One significant clarifying revision to the demolition and renovation requirements deals with the friability of materials and is discussed under the Definitions section of this preamble.

The overall costs associated with these proposed amendments cannot be quantified but are expected to be small compared to actual removal and disposal costs. Benefits also cannot be quantified precisely but should be commensurate with the increase in compliance up to the benefits estimated for full compliance.

Comments on the proposed demolition and renovation standards were submitted by the National Association of Demolition Contractors (NADC), many of whose members perform asbestos removal work. In general, NADC believes that an increasingly stringent regulation increases noncompliance and results in increased emissions rather than producing the desired opposite effect. The NADC cites as reasons for current noncompliance the notification requirements that treat late notifications the same as no notification, and the difficulty of identifying all asbestos in a structure prior to demolition. Contractors' concerns that an inspection may discover the unsuspected presence of asbestos resulting in a citation and the job delayed while notifying EPA are additional reasons notification may not be given. The NADC claims that the contractors feel that no matter how hard they try to comply with the NESHAP, they are going to be found out of compliance with some provision. They believe that by not notifying EPA, their chances of being found in violation are substantially decreased. Finally, NADC feels that another reason for noncompliance is the perception that the current NESHAP is not effective in reducing emissions.

In describing ways to promote compliance with the NESHAP, NADC suggests developing separate requirements for demolition and renovation because of differences in job characteristics, the extensive use of large equipment in demolitions as opposed to slower manual techniques in renovations, differences in resulting waste characteristics, and less concern about water damage at the job site from controlling dust with water at demolitions. A property owner who wants a building demolished is not as concerned about having a careful asbestos removal job done as a property owner who wants to have the asbestos removed as part of a renovation and is concerned about his liability as a result of the removal operation. The NADC suggests that simplification of the regulation would help promote compliance because most demolition contractors are small businesses lacking the educational and technical background to fully understand all the details of the regulation. The NADC also suggests that asbestos materials that are tightly bound in a matrix and difficult to break should be excluded from the regulation because they are not likely to release many asbestos fibers. Several NADC recommendations are intended to facilitate notification, including a 10-day notice for all jobs with approximate start and completion dates followed by a telephone notification giving specific starting dates. The written notification would be on a form required by EPA.

The NADC recommends that each on-site supervisor be trained and suggested giving contractors some discretion in selecting appropriate control methods rather than prescribing specific work practices to be followed in all situations. Finally, the NADC suggests that there be a procedure whereby unintentional violations could be corrected quickly without severe economic consequences resulting from imposed fines or lengthy delays.

The NADC comments include recommendations for reducing asbestos emissions, including development of regulations for abandoned buildings and reduction of disposal costs to promote proper disposal. Disposal costs could be reduced, according to NADC, by avoiding requirements for special handling or segregation methods and avoiding special recordkeeping requirements that will cause some disposal site owners to charge more for asbestos waste in order to cover potential liability costs and will discourage others from accepting asbestos waste. To promote the use of proper disposal sites, disposal sites should be encouraged to accept all asbestos waste and not question its source or condition.

The EPA has been evaluating NADC's comments and believes some have merit. Several of their comments have already been addressed in the proposed standard. The EPA is interested in receiving comments on any of the issues suggested by NADC as likely to improve compliance.

Milling, Manufacturing, and Fabricating

Under the existing standard, the owner or operator of an affected milling, manufacturing, or fabricating source may meet a no-visible-emission limit or install emission control equipment meeting the specifications described under § 61.154. Section 61.154 includes specifications for baghouses, but it also allows the use of wet collectors (i.e., scrubbers) if fabric filters create a fire or explosion hazard.

Amendments are being proposed that will retain the existing controls now in place and add monitoring and recordkeeping provisions at a reasonable cost that will help ensure continued low emissions. Under these amendments, the owners or operators of milling, manufacturing, or fabricating operations are required to perfom daily monitoring for visible emissions from operating control devices and process fugitive sources and weekly inspections of control devices, maintain records of monitoring and inspections results, and submit quarterly reports to EPA of results of visible emission monitoring, if visible emissions occur during the reporting period. The recordkeeping and reporting requirements will provide information to EPA that can be used to alert enforcement personnel of operating problems at individual sources and aid in determining compliance.

Some control device inlet loadings are high enough that visible emissions could occur during a malfunction of a control device. For these sources, visible emissions could be useful as an early indicator of a malfunction. A 15-second observation period for visible emission monitoring of each control device is proposed. Visible emission monitoring will identify problems and help to ensure that pollution control equipment achieves its design emission reduction potential; weekly inspection of control devices will permit the early identification and correction of problems that could lead to baghouse failure and increased emissions. Some small air-cleaning devices do not permit ready access for the interior inspection of bags. For such devices, the owner or operator will be required to submit a maintenance plan for the Administrator's approval. The maintenance plan must include, as a minimum, recordkeeping and a maintenance schedule. According to industry sources, visual monitoring and inspection are already practices at many facilities.

The EPA is proposing to delete the 4-inch water gage requirement in § 61.152 for all existing and new baghouses because many baghouses remove particles at high efficiencies at higher pressure drops. The proposed standard allows the Administrator to authorize the substitution of a wet collector for a fabric filter when it is determined that a fabric filter is not feasible. Such situations may occur, for example, when a gas stream has a high moisture content or the particles are sticky and would cause blinding of a fabric filter. The current standard only permits the use of wet collectors when a fire or explosion hazard attends the use of a fabric filter.

Visible emissions from fugitive sources at milling, manufacturing, and fabricating operations are also prohibited. This amendment is not a new requirement because it clarifies the intent of the regulation as it is currently implemented.

Assuming 100 percent compliance with the existing control requirements, nationwide asbestos emissions from milling, manufacturing, and fabricating are estimated to total 7,400 kg/yr. The uncertainty associated with estimates of emissions is large and was discussed previously. The actual degree of compliance at present is unverifiable because of the lack of explicit monitoring, inspection, recordkeeping, and reporting requirements. However, industry sources indicate that monitoring and inspection are currently practiced by most asbestos milling, manufacturing, and fabricating sources; therefore, additional costs resulting from these provisions should be small. The recordkeeping and reporting costs also are estimated to be small and are included in the impacts of the reporting requirements. The benefits of the monitoring, inspection, recordkeeping, and reporting provisions are unquantifiable, but the provisions will aid enforcement and improve compliance so that emissions and health risks close to the estimates for 100 percent compliance are attained.

Section 61.144(a)(9) is also revised by specifying that chlorine manufacturing that uses asbestos diaphragm technology is regulated by the NESHAP and not chlorine manufacturing that uses other technologies. This is a clarifying amendment; therefore, no costs are associated with this change.

Paragraph (a) of § 61.153 on reporting requirements is clarified to instruct new and existing million, manufacturing, and fabricating operations under what conditions and when they must report certain information on emission control equipment and processes that generate asbestos emissions. Because this amendment is a clarification, there are no associated costs.

Waste Disposal

Provisions for the disposal of asbestos-containing waste material are contained in the NESHAP under the authority of the CAA and AHERA. RCRA regulates the disposal of solid waste as either a hazardous or nonhazardous waste. Asbestos is not listed as a hazardous waste under Subtitle C of RCRA; therefore, it is regulated as a Subtitle D waste and is subject to the standards contained in 40 CFR Parts 257 and 258. Revised Subtitle D standards were proposed recently (53 FR 33314, August 30, 1988), and changes to 40 CFR Parts 257 and 258 apply to asbestos-containing waste. The waste shipment records being proposed in the asbestos NESHAP are similar to the manifest requirements of Subtitle C, whereas Subtitle D contains no recordkeeping requirements. The current asbestos NESHAP requirement for daily cover is more specific than are the requirements of Subtitle D. Asbestos is generally thought not to be a threat to ground-water quality, although asbestos-containing waste may contain constituents other than asbestos that may pose a threat to ground-water quality. For all of these reasons, EPA has determined that the asbestos NESHAP is the most efficient way for the Agency to regulate the disposal of asbestos-containing waste material at this time. Other regulations have been promulgated that cover specific problems. The DOT has promulgated regulations that cover the transportation of asbestos-containing waste material, and EPA has promulgated regulations specifically governing removal of asbestos from school buildings under the authority of AHERA.

The existing asbestos NESHAP defines responsibilities for asbestos waste disposal and requires either no visible emissions or the use of specific disposal methods for asbestos mills; manufacturing, fabricating, demolition, renovation, and spraying operations; inactive disposal sites for asbestos mills and manufacturing and fabricating operations; and active disposal sites. As was stated earlier, enforcement experience indicates that approximately 50 percent of asbestos removal operations related to demolition and renovation are performed without EPA notification. This implies that a significant volume of demolition and renovation waste may be disposed of out of compliance with the existing NESHAP. The actual degree of noncompliance cannot be determined because of a lack of reasonably available information on the relationship between notifications and compliance with the waste disposal requirements. Risks from uncontrolled sources can be very large; therefore, amendments to the existing NESHAP are being proposed to aid enforcement and improve compliance. In addition,

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responsibility for waste management and disposal is explicitly defined. Also, the proposed reporting and recordkeeping requirements are consistent with EPA guidelines published in *Asbestos Waste Management Guidance* (EPA/530–SW–85–007, May 1985) for asbestos waste disposal.

A provision is added that requires the broken edges of nonfriable asbestos material to be wetted or encapsulated. This change is intended to help clarify the intent of the regulation as it is now written. This is aimed principally at many asbestos-cement products that are normally nonfriable when whole but that may release fibers when broken. If the broken edges are treated so that the asbestos fibers are sealed in, the material does not have to be put into leak-tight enclosures prior to its disposal in a NESHAP landfill. If the edges are wetted but not sealed, the material would have to be placed in leak-tight enclosures for disposal in a NESHAP landfill.

The handling and disposing of waste resulting from the demolition of buildings where the asbestos is encased in concrete is clarified to include similarly hard material. A compliance option is added for the situation where the asbestos was not discovered until after demolition began. The types of nonfriable asbestos that needed not be removed before demolition are specified § 61.145(c)(1)(iii)).

A new provision (§ 61.155) is added that allows the Administrator to approve waste treatment methods that destroy or transform asbestos-containing waste into nonasbestos material and specifies the information that the Administrator needs to make such determinations. Provisions that specify testing for the presence of asbestos in the output material are added in addition to provisions that require key process parameters to be continuously monitored. Prior to disposal, process output materials will be determined to be asbestos-free using transmission electron microscopy (TEM), or the location of their disposal recorded. These provisions are needed in view of requests received by EPA for approval of new asbestos waste treatment methods.

Milling, manufacturing, and fabricating facilities and demolition and renovation contractors will be required to prepare and maintain records of waste shipments and submit semiannual reports to EPA summarizing waste shipment records. In addition, they will be required to furnish a copy of the record of the waste shipment to the owner or operator of the disposal site. The most likely mechanism will be to send a copy of the record along with the waste transporters. This requirement will establish a record of the chain-of-custody and alert enforcement personnel of potential violations of the waste disposal requirements. In addition, all containers of waste will be required to be labeled with the waste generator's name and location of the site where the asbestos waste was generated. This requirement will enable enforcement personnel to enforce the requirements for leak-tight containers where asbestos from multiple job sites are in a single vehicle. It will assist enforcement officials in tracking asbestos waste shipments and in determining that asbestos waste is being properly disposed of and result in increased compliance.

At present, the waste generator is responsible for selecting a disposal site that meets the asbestos waste disposal requirements of the NESHAP. The proposed amendments also make the disposal site owner or operator responsible for complying with the NESHAP provisions for waste disposal sites. Enforcement officials have stated that the current waste disposal provisions are difficult to enforce because the responsible party, the generator, does not have sufficient control of the disposal practices used at the disposal site. This proposed amendment should increase compliance with the NESHAP provisions at an active disposal site by making each party responsible. Specifically, the waste generator is responsible for selecting a disposal site that meets the NESHAP requirements, and the waste site operator is required to comply with the work practice provisions at the waste disposal site. All waste must be disposed of at the site specified on the waste shipment record. The generator may haul his own waste, contract with the disposal site operator for hauling services, or contract with an independent hauler. A requirement also is added to require the Administrator's approval before removal or disturbance of previously deposited asbestos material at both active and inactive disposal sites. In making a decision on the request, the Administrator will consider the following: (1) Reason for moving or removing the waste, (2) procedures to be used to control emissions, and (3) location of the final disposal site. At a minimum, the asbestos waste should be handled in a wet condition until final disposal. In addition, waste disposal site operators will be required to document all asbestos waste shipments that are received, document the arrival of improperly contained waste, investigate discrepancies between waste shipment records and waste actually received, document the location and quantity of asbestos in a landfill, and record the presence and location of asbestos and the asbestos NESHAP regulatory authority over the disposal site on the property deed. Waste disposal site operators also will be required to submit semiannual reports to EPA summarizing activities involving the disposal of asbestos-containing waste. Enforcement personnel have noted that asbestos waste that is not properly documented may lead to future exposures if sites are disturbed. These requirements will aid enforcement in tracking shipments of waste to ensure compliance and help avoid possible recurrence of inadvertent exposure incidents as have been found by EPA by ensuring that future owners and users of land are alerted to the presence of asbestos waste and take adequate precautions if the waste is disturbed. These requirements are consistent with EPA's intent to prevent public exposure to asbestos emissions from waste disposal sites. These requirements are considered reasonable because expected costs are small and some sites already use special precautions when disposing of asbestos waste.

To retain control over disposal sites that have already become inactive, the current provisions of § 61.151 for inactive disposal sites are retained with only a few modifications. A provision is added allowing the use of crushed stone as a final cover in desert areas where a vegetative cover is difficult to establish and maintain. This amendment offers greater flexibility without affecting control stringency. The provisions for inactive tailing piles are revised to clarify the standard's current intent that dust suppression agents be used in a manner to maintain dust control.

The provisions that allow the Administrator to approve alternative control methods are modified to give more detailed instructions on requesting approval of alternative methods. This change is intended to clarify the regulation by indicating what criteria are used by the Administrator in ruling on alternative control methods.

Vehicles used to transport waste are required to display placards warning of the presence of asbestos during the loading and unloading of waste. Such a measure will warn persons of the asbestos hazard and help prevent accidental exposures to asbestos during loading and unloading. The DOT regulations require placards during

transportation of asbestos-containing waste.

Table 1 presents the estimated nationwide asbestos emissions from disposal of demolition and renovation wastes for different levels of control. Full compliance with the current NESHAP would result in estimated emissions of about 400 kg/yr. However, if (as enforcement experience implies) a significant percentage of demolition and renovation wastes may be disposed of out of compliance, estimated emissions are actually 227,000 kg/yr. Most of these emissions, an estimated 226,000 kg/yr, result from the improper disposal of asbestos waste from demolition and greatly exceed other asbestos emissions. These revisions are intended to improve compliance that will reduce asbestos emissions.

TABLE 1.—ESTIMATED NATIONWIDE ASBESTOS EMISSIONS FROM DEMOLITION AND RENOVATION,[a] kg/yr

Level of control	Asbestos removable		Waste disposal		Total
	Demolition	Renovation	Demolition	Renovation	
Current NESHAP (full compliance)	700	9	380	2	1,100
Current NESHAP (current practice)[b]	1,300	13	226,000	1,000	226,300

[a] See Preamble text for discussion of uncertainties associated with estimated emissions.
[b] Emission estimates under the current NESHAP, assuming current practice, are uncertain. Emission estimates are based on EPA enforcement personnel estimates of the level of compliance with the NESHAP notification requirements, rather than on the actual level of compliance with the removal and disposal requirements.

In addition to the proposed revisions discussed above, several editorial changes are proposed (but not discussed) that are intended to clarify the intent of the regulation as well as make it more understandable. The changes consist primarily of adding clarifying phrases or substituting terms for clarity and are based on comments from both enforcement agencies and industry.

The costs associated with the proposed amendments are expected to be small. The recordkeeping and reporting costs are included in the impacts of the reporting requirements. The benefits of the amendments cannot be precisely quantified, but the above assessment of the effectiveness of the current NESHAP at full compliance and at current practice gives a measure of the magnitude of the increase in benefits that could be achieved.

Spraying

The current NESHAP prohibits the use of materials that contain greater than 1 percent asbestos on a dry weight basis for spray-on application on buildings, structures, pipes, and conduits unless the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying. This requirement is amended by substituting percent by area for percent by weight as the expression for asbestos concentration as discussed under "Friable asbestos material" in the Definitions section of this preamble.

Roadways

Section 61.143, "Standard for roadways," is clarified by substituting "construct or maintain" for "surface." This revision will codify a determination already made by EPA.

The amendment will make it clear that unbound tailings are not allowed in a road base, based on a prior EPA applicability determination, unless the road is a temporary roadway on an area of asbestos ore deposits, i.e., an asbestos mine. Tailings are permitted in temporary roadways at asbestos mill sites if they are encapsulated with a resinous or bituminous binder. Periodic maintenance of the encapsulated road surface to prevent dust emissions will be required. Asbestos tailings are not permitted to be used in road construction unless they are encapsulated in asphalt concrete meeting Federal Highway Administration (FHWA) roadway construction specifications. Because of their aggregate characteristics which give them some value for use in road construction, tailings encapsulated in asphalt concrete will continue to be allowed. This change explicitly will permit the nse of asbestos tailings which have been encapsulated, and which, because of the milling process, typically have a low asbestos content.

Definitions

"Adequately wetted" is changed to "Adequately wet" because in most places in the regulation, the verb "wet" is used. The definition clarifies that the owner or operator must wet asbestos to a sufficient degree to prevent any particulate emissions.

To be consistent with other revisions to the standard, the definition of "Asbestos material" was changed to "Asbestos-containing material" and expanded to include both friable material and nonfriable material that potentially can become a source of emissions.

The definition of "Asbestos-containing waste material" is modified to give additional examples of waste material that are covered by the regulation. The part of the definition pertaining to waste from demolition and renovation is modified to clarify that the standard applies to nonfriable material that can be broken, crumbled, pulverized, or reduced to powder by operations covered by the regulation.

The definition of "Commercial asbestos" is modified to clarify that it includes any material that contains asbestos and has value because of its asbestos content. This is consistent with EPA's previous applicability determination.

The definition of "Demolition" is modified to clarify that the intentional burning of load-supporting structures or the intentional burning of facilities is considered a demolition. This more clearly specifies that buildings that are intentionally burned, usually under the supervision of a fire department, to make way for new structures, for example, would have to comply with the provisions for demolition and renovation, thus avoiding occasional emissions from a previously unregulated source. Economic impacts of this amendment would be negligible because occurrences are so few.

The definition of "Emergency renovation operation" is modified to give more explicit criteria for what constitutes an emergency renovation.

The definition of "Fabricating" is clarified by stating that, for friction products, bonding and debonding are included.

The definition of "Facility" is modified by adding the terms "residential," "public," "ships," and "active and inactive disposal sites." Adding these terms serves to clarify the regulation to read as it is interpreted currently to include residential

structures, publicly owned buildings, ships, and waste disposal sites.

The meaning of "Facility component" is clarified by defining it as any part of a facility, including equipment.

The current definition of "Friable asbestos material" contains a threshold of 1 percent for the amount of asbestos that must be present before friable material is subject to the demolition and renovation provisions. The intent of the 1 percent threshold was to distinguish between material that contained asbestos and material that did not contain asbestos within the limits of detection of the available analytical methods. The current definition also expresses the asbestos threshold as percent by weight. The proposed standard expresses asbestos content as percent by area to make the regulation consistent with preferred analytical methodology, which gives results as percent by area, and with current practice; it does not change the stringency of the standard.

The mass of asbestos present in a bulk sample cannot be determined directly. In the context of bulk sample analysis, mass is a derived property because it is obtained by counting and sizing asbestos particles under a microscope, assuming a geometric shape for the particles, calculating their volume, and multiplying by an assumed density. The mass of nonasbestos material present in a bulk sample would be obtained by the same procedure.

On the other hand, the area and type of asbestos present in a bulk sample can be determined directly through microscopic analysis. Appendix A, Subpart F, 40 CFR Part 763, contains the approved method of bulk sample analysis for asbestos—polarized light microscopy (PLM) and point counting and is incorporated by reference in the definition. In this method, the area of an analytical slide occupied by asbestos particles and the area occupied by matrix are both measured directly. The Agency is considering incorporation of this method explicitly in the final rule if it would be more convenient to use. Therefore, EPA is requesting comments on whether the method should be incorporated by reference as it is in this proposal, or whether the method should be stated explicitly in the rule.

The relationship between percent weight and percent area has been studied by EPA *(Draft Relationship Between Visual Estimates and Weight Percentage of ACM)*. This study discusses ways to convert percent area measurements to percent weight equivalents, generally concluding that percent weight and percent area are equivalent for most matrices in which asbestos is found. Furthermore, using percent area will serve the same purpose as was intended initially, i.e., whether asbestos is present or not.

The cost and availability of methods for the identification and quantitation of asbestos vary greatly depending on the particular method. The TEM, for example, is relatively expensive with costs ranging from about $500 to $700 per sample analyzed. PLM costs, however, average about $25 to $50 per sample. Numerous laboratories are capable of performing PLM, while the number of laboratories with TEM capabilities for asbestos analysis are somewhat more limited.

An informal survey by EPA's Office of Research and Development (ORD) of analysts performing asbestos bulk sample analyses reveals that in practice they determine and report percent asbestos by area, not be weight. This is considered to be the norm rather than an exception.

The EPA also considered, but rejected, a revision to the definition of "Friable asbestos material" to include materials that can be crumbled, pulverized, or reduced to powder by the mechanical forces expected to act on the material. The intent of such a change would be to codify an interpretation already made by EPA. The interpretation states that, in effect, the demolition and renovation regulations apply to materials that are normally nonfriable (e.g., asbestos-cement sheet), which because of forces acting on the material during demolition or renovation and subsequent handling, transportation, storage or disposal operations, would result in asbestos emissions. However, as a result of numerous comments from government and industry stating that the existing definition of friable was well established and widely accepted, EPA has decided to retain the existing definition with the exception that "broken" is inserted ahead of "crumbled, pulverized, or reduced to powder." This is consistent with EPA's current interpretation and application of this definition. Throughout the regulation where the phrase "crumbled, pulverized, or reduced to powder" is used, the word "broken" has been added.

The standard will be revised where appropriate to regulate materials that are normally nonfriable but potentially can be broken, crumbled, pulverized, or reduced to powder as a result of the regulated operations. Such materials include, for example, A/C products and paper insulation. These materials must be removed from a facility prior to its demolition because they are likely to be broken up during demolition and inaccessible after demolition for segregation and separate disposal in a NESHAP landfill. To the extent that these materials can be removed without breaking or crumbling, they do not have to be wetted and sealed in leak-tight containers, although they are to be included in determining applicability and their quantity must be included in the notification. In addition, they must be disposed of in a NESHAP landfill. Nonfriable materials that are likely to remain nonfriable and, therefore, not be subject to the demolition and renovation provisions, include packings and gaskets, floor tile, asphalt roofing shingles, roofing felt, coatings, and sealants. However, even these nonfriable materials may be subject to regulation under certain situations. For example, the sanding of asbestos floor tiles that can produce asbestos emissions is considered a renovation and subject to the regulation. Severely weathered asphaltic materials may become brittle and, therefore, be subject to the regulation. Because handling even normally nonfriable materials can result in asbestos emissions under some conditions, case-by-case determinations of friability will still be required in many instances.

A definition of "Fugitive sources" is added to help clarify the modified provisions for mills, manufacturing, and fabricating.

A definition of "Glove bag" is added because the use of glove bags will be permitted in renovations when wetting is determined not to be feasible for safety reasons or because of the potential to damage equipment. However, EPA intends for glove bags to be used with wetting inside the glove bags.

The definition of "Inactive waste disposal site" in revised by deleting reference to vehicular traffic and stipulating that an inactive site is one at which asbestos-containing waste material has not been deposited within the past year.

"Installation" is defined as a building or group of buildings at a demolition or renovation site. This definition is added to clarify the existing applicability requirements for demolition or renovation. For purposes of determining the amount of asbestos to be stripped or removed, the amounts of asbestos in a group of buildings to be demolished or renovated are summed.

"Leak-tight" is defined to help clarify the intent of the demolition and renovation and waste disposal requirements as they pertain to the use of leak-tight containers, wrappings, and

(in the case of demolition and renovation) the use of leak-tight chutes to convey waste from aboveground stripping and removal operations. Leak-tight implies that, in the course of operations covered by this regulation, the contents are sealed adequately to prevent any asbestos or asbestos-containing material, including contaminated water, from escaping. Although it is impractical to identify in advance what is considered leak-tight, the use of certain containers or seals may be considered unacceptable in many instances. For example, the use of flimsy twist ties or bags of less than 6-mil thickness would not constitute "leak-tight" under most conditions. A case-by-case determination will be required in many instances.

A definition of "Malfunction" is added to clarify conditions covered by the requirements for air pollution control devices in milling, manufacturing, and fabricating.

The definition of "Manufacturing" is revised to clarify that chlorine manufacturing is covered by the definition. Chlorine manufacturers use asbestos in the production of chlorine rather than processing asbestos into a final or intermediate product.

"Natural barrier" is defined to help clarify the intent of the waste disposal requirements and, specifically, that remoteness of a disposal site alone does not constitute a natural barrier.

A definition of "Nonscheduled operation" is added to help clarify the intent of the applicability provisions for renovation.

The definition of "Outside air" is clarified by specifying that outside air means air outside buildings and structures and includes air under bridges and open air ferry docks.

"Owner or operator of a demolition or renovation activity" is defined to help clarify responsibility for compliance. The definition of "owner or operator of a demolition or renovation activity" includes the owner of the facility being demolished or renovated. It also includes the current owner of the property on which the facility is situated, if the owner sells the facility to another party for demolition or renovation. In such circumstances, the property owner, while no longer holding title to the facility, causes the demolition or renovation to occur, and thereby owns, leases, operates, controls, or supervises the demolition or renovation operation. See, e.g., *U.S. v. Geppert Bros., Inc. et al.*, 638 F. Supp. 996 (E.D.Pa. 1986).

The definition of "Planned renovation operations" is revised to require knowledge that "some" friable asbestos material will be stripped or removed rather than knowledge of "the amount of" material to be stripped or removed.

"Remove" is clarified to include the taking out of "asbestos-covered facility components."

"Renovation" is clarified by specifying stripping and removal of asbestos as renovation activities. An additional change makes clear that wrecking or taking out load-supporting structural members is demolition.

The definition of "Roadways" is clarified by adding the term "public and private" so that it is clear that the regulation is applicable to roadways regardless of ownership.

The definition of "Strip" is clarified by adding "or facility components" at the end of the definition.

In order to facilitate enforcement of the visible emission limitations, the definition of "Visible emissions" is revised to mean any emissions coming from asbestos-containing material.

"Working days" is defined as Monday through Friday to help clarify the notification requirements for demolition and renovation.

Impacts of Reporting Requirements

The proposed amendments to the asbestos NESHAP will impose several reporting and recordkeeping requirements. Owners or operators of milling, manufacturing, and fabricating sources will be required to maintain records of monitoring and inspections and of waste shipments and will be required to submit quarterly reports of visible emission monitoring. Each owner or operator involved in a demolition or renovation operation will be required to maintain records of waste shipments. All generators of waste will also be required to submit semiannual reports summarizing their records of waste shipments. Owners or operators of active waste disposal sites will be required to maintain records of all asbestos waste shipments, document the arrival of improperly contained waste, maintain records of the location and quantity of asbestos in the landfill, make semiannual reports to the Administrator summarizing disposal activities, and record on the property deed the presence and location of asbestos. As is discussed in the rationale for the selection of the proposed amendments, the recordkeeping and reporting requirements will assist enforcement efforts.

The information collection provisions summarized above have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

An analysis of the burden associated with the proposed reporting and recordkeeping requirements has been made. During the first 3 years of this regulation, the annual burden of the reporting and recordkeeping requirements for asbestos mills; manufacturing, demolition, renovation, spraying, and fabricating operations; and active and inactive waste disposal sites is estimated to be about 308,000 person-hours.

Regulatory Flexibility Act

The RFA (5 U.S.C. 601 *et seq.*) requires EPA to consider the potential impacts of proposed standards on small "entities." If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number (i.e., 20 percent or more) of small entities, then a regulatory flexibility analysis must be prepared. Current RFA guidelines indicate that an economic impact should be considered significantly adverse if it meets one of the following criteria: (1) Annual compliance costs increase production costs by more than 5 percent; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; and (4) regulatory requirements are likely to result in closures of small entities. Effects of the proposed standard on small firms in the milling, manufacturing, and fabricating industry cannot be estimated because of lack of data on the existing distribution of plant sizes and on plant ownership by size of firm. It is likely that differences in unit compliance costs between large and small entities (higher unit costs for smaller firms) are not large enough to create significant interplant cost differences. In the demolition services industry, the increases in demolition costs and the nature of the industry itself are such that no significantly disproportionate impacts will be experienced by smaller entities. In the renovation services industry, the effects on smaller firms are likely to be quite small because cost increases are slight.

Thus, a regulatory flexibility analysis is not required.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendments to the asbestos NESHAP, in accordance with sections 112(b)(1)(B) and 307(d)(5) of the CAA and the Administrative Procedure Act. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble and should refer to Docket No. A–88–28.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of the proposed amendments. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (Section 307(d)(7)(A)).

Miscellaneous

When the amended asbestos NESHAP is reviewed again, the review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and reporting requirements. The reporting requirements in this standard will be reviewed as required under the EPA sunset policy for reporting requirements in regulations.

In accordance with section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during development of the proposed amendments. The Administrator will welcome comments within the public comment period, on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test method.

Comments are specifically invited on the following aspects of the proposed amendments:

- Expressing asbestos content of materials as percent by area;
- Requiring weekly inspections of air cleaning devices at mills, and manufacturing and fabricating operations, and keeping records of same;
- Requiring notification of demolitions where no asbestos is involved;
- Training of asbestos removal contractors;
- Comments by NADC to improve compliance.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it would result in none of the adverse economic impacts set forth in section 1 of the Executive Order as grounds for finding a regulation to be major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be approximately $9.3 million, less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increases on asbestos products would not be considered "major increases in costs or prices" specified as the second criterion in the Order. The analysis of the proposed amendments' effect on the asbestos industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of the Order).

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket No. A–88–28. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the Addresses section of this preamble.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 61 and 763

Asbestos, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride, Blast furnaces, Steel mills.

Date: December 22, 1988.

Lee M. Thomas,

Administrator.

It is proposed that 40 CFR Chapter I be amended as follows:

PART 61—[AMENDED]

1. In Part 61:

1. The authority citation for 40 CFR Part 61, Subpart M is revised to read as follows:

Authority: Secs. 101, 112, 114, 116, 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601); Sec. 203 of the Toxic Substances Control Act, 15 U.S.C. 2643.

2. The table of sections is revised in its entirety to read as follows:

Subpart M—National Emission Standard for Asbestos

Sec.

61.140 Applicability.
61.141 Definitions.
61.142 Standard for asbestos mills.
61.143 Standard for roadways.
61.144 Standard for manufacturing.
61.145 Standard for demolition and renovation.
61.146 Standard for spraying.
61.147 Standard for fabricating.
61.148 Standard for insulating materials.
61.149 Standard for waste disposal for asbestos mills.
61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.
61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
61.152 Air cleaning.
61.153 Reporting.
61.154 Standard for active waste disposal sites.
61.155 Standard for sites that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.
61.156 Cross reference to other asbestos regulations.
61.157 Delegation of authority.
Figures to Subpart M

3. Section 61.140 is revised to read as follows:

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155.

4. In § 61.141, the following definitions are revised: "Asbestos-containing waste materials," "Commercial asbestos," "Demolition," "Emergency renovation operation," "Fabricating," "Facility," "Facility component," "Friable asbestos material," "Inactive waste disposal site," "Manufacturing," "Natural barrier," "Outside air," "Particulate asbestos material," "Planned renovation operation," "Remove," "Renovation," "Roadways," "Strip," and "Visible emissions." The following definitions are added: "Adequately wet," "Asbestos-containing material," "EPA identification number," "Fugitive sources," "Glove bag," "Installation," "Leak-tight," "Malfunction," "Natural barrier," "Nonscheduled renovation operation," "Owner or operator," "Waste generator," "Waste shipment record," "Working days." The definitions, "Adequately wetted" and "Asbestos material," are removed.

§ 61.141 Definitions.

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in Subpart A of this part.

* * * * *

"Adequately wet" means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

* * * * *

"Asbestos-containing material" means friable asbestos material, and nonfriable asbestos material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this subpart.

"Asbestos-containing waste materials" means any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes asbestos mill tailings, asbestos waste including filters from control devices, friable asbestos waste material, and bags or containers that previously contained commercial asbestos. As applied to demolition and renovation operations, this term also includes nonfriable asbestos waste that can be broken, crumbled, pulverized, or reduced to powder in the course of demolition and renovation operations covered by this subpart, and materials contaminated with asbestos including equipment and clothing.

* * * * *

"Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

"Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

"Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that results in unsafe conditions. This term includes operations necessitated by nonroutine failures of equipment.

"EPA identification number" means the number assigned by EPA to each waste generator.

"Fabricating" means any processing of a manufactured product that contains commercial asbestos, with the exception of processing, or field fabricating, at temporary sites for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding and debonding.

"Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (residential buildings having four or fewer dwelling units are excluded); any ship; and any active and inactive waste disposal site.

"Facility component" means any part of a facility including equipment.

"Friable asbestos material" means any material containing more than 1 percent asbestos by area as determined by the method specified in Appendix A, Subpart F, 40 CFR Part 763 that, when dry, can be broken, crumbled, pulverized, or reduced to powder by hand pressure.

"Fugitive sources" means any source not controlled by an air pollution control device.

"Glove bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA) final rule on occupational exposure to asbestos (Appendix G to 29 CFR 1926.58).

"Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

"Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of a single entity (i.e., one owner or one operator).

"Leak-tight" means that solids or liquids cannot escape or spill out. It also means dust-tight.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable equipment breakdown.

"Manufacturing" means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

"Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

"Nonscheduled renovation operation" means a renovation operation that is not planned but is caused by the routine failure of equipment.

"Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

"Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

"Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.

"Planned renovation operations" means a renovation operation, or a number of such operations, in which some friable asbestos material will be removed or stripped within a given period of time and which can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

"Remove" means to take out asbestos-containing materials or asbestos-covered facility components from any facility.

"Renovation" means altering in any way one or more facility components including the stripping or removal of asbestos-containing material from facility components. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

"Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

"Strip" means to take off asbestos-containing materials from any part of a facility or facility components.

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"Visible emissions" means any emissions, which are visually detectable without the aid of instruments, coming from asbestos-containing material. This does not include condensed uncombined water vapor.

"Waste generator" means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

"Waste shipment record" means the shipping document, originated and signed by the generator, used to substantiate the disposition of asbestos-containing waste material.

"Working days" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

5. Section 61.142 is revised to read as follows:

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator and revise as necessary, a written maintenance plan to include at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and control device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bags.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(4) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(5) Retain a copy of all monitoring and inspection records for at least 2 years.

(6) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

6. Section 61.143 is revised to read as follows:

§ 61.143 Standard for roadways.

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless, for asbestos tailings,

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of once per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in Section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP–85, 1985, or their equivalent.

7. In § 61.144, paragraph (a)(9) and paragraphs (b) (1) and (2) are revised and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.144 Standard for manufacturing.

(a) • • •

(9) The manufacture of chlorine utilizing the asbestos diaphragm technology.

• • • • •

(b) • • •

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bags.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(6) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

§§ 61.146 and 61.147 [Removed]

8. Sections 61.146 and 61.147 are removed, and § 61.145 is revised to read as follows:

§§ 61.145 Standard for demolition and renovation.

(a) *Applicability.* The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity including the removal of asbestos-containing material as follows:

(1) If the amount of asbestos-containing material in a facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or a total of at least one cubic meter (35 cubic feet) on or off all facility components in a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section.

(2) If in a facility being demolished, the amount of asbestos-containing material is less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components and if the total amount present in or off all facility components in a facility being demolished is less than one cubic meter (35 cubic feet) or there is no asbestos, only the notification requirements of paragraphs (b) (1), (2), (3) (i) and (iv), and (4) (i) through (vi) and (4) (viii) and (xv) of this section apply.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(vii)), (b)(5), and (c) (4), (5), (6), (7), (8), and (9) of this section apply.

(4) If at least 80 linear meters (260 linear feet) of asbestos-containing materials on pipes or at least 15 square meters (160 square feet) of asbestos-containing materials on other facility components or a total of at least one cubic meter (35 cubic feet) on or off all facility components are stripped, removed, or otherwise disturbed from a facility being renovated including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply.

(i) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of asbestos-containing materials to be removed or stripped from one or more facilities during a calendar year of January 1 through December 31.

(ii) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the amount of asbestos-containing materials to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) For the purpose of determining applicability, do not include materials that cannot become friable, such as packings, gaskets, asphalt roofing, and vinyl floor tile that are in good condition. Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Update notice, as necessary, including when the amount of asbestos affected changes.

(2) Send the notice by certified mail, return receipt requested, or hand deliver the written notice.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or other activities such as site preparation which would disturb any asbestos material in a demolition or renovation begin, if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(i) and (a)(4)(ii)), of this section. If the operation is described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) For renovations described in paragraph (a)(4)(i) of this section, send by certified mail, return receipt requested and postmarked or hand deliver notice 10 working days before the end of the calendar year preceding the year for which notice is being given.

(iii) As early as possible before, but not later than the following working day after asbesto stripping or removal work in a renovation begins, if the operation is described in paragraph (a)(4)(ii) of this section or as early as possible before or by the following working day if the operation is a demolition described in paragraph (a)(3) of this section.

(iv) If asbestos stripping or removal work in demolition or renovation operations, described in paragraphs (a)(1) and (4) (except (a)(4)(i) and (a)(4)(ii)) of this section, will begin on a date other than the one contained in the notice, written notice of the new start date must be sent by certified mail, return receipt requested and postmarked at least 5 working days or received at least 3 working days before asbestos stripping or removal work in a demolition or renovation begins and postmarked at least 5 working days or received at least 3 working days before the original start date. For demolitions covered by paragraph (a)(2) of this section, written notice of the new start date must be sent by certified mail, return receipt requested and postmarked at least 5 working days or received at least 3 working days prior to commencement of demolition. In no event shall an operation covered by this provision begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) Name, address, and telephone number of owner and operator.

(ii) Type of operation: Demolition or renovation.

(iii) Description of the facility including the size (square meters) (square feet) and number of floors), age, and present or prior use of the facility.

(iv) Procedure employed to detect the presence of asbestos-containing materials.

(v) Estimate of the approximate amount of asbestos-containing material, including nonfriable asbestos material that will not be broken, crumbled, pulverized, or reduce to powder in the course of operations regulated by this section, to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, and volume on both in cubic meters (cubic feet). Provide separate estimates of the amounts of friable asbestos-containing material; the amount of nonfriable asbestos-containing material that has the potential to be broken, crumbled, pulverized, or reduced to powder; and the amount of nonfriable asbestos-containing material that will not be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section.

(vi) Location and address of the facility being demolished or renovated.

(vii) Scheduled starting and completion dates of asbestos removal work in a demolition or renovation; planned renovation operations involving

individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(i) of this section.

(viii) Scheduled starting and completion dates of demolition or renovation.

(ix) Description of planned demolition or renovation work to be performed and method(s) to be employed including demolition or renovation techniques to be used and description of affected facility components.

(x) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste handling emission control procedures and the procedures to prevent nonfriable material from being broken, crumbled, pulverized, or reduced to powder in course of operations regulated by this section.

(xi) Name and location of the waste disposal site where the asbestos containing waste material, including nonfriable asbestos that has the potential to be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section will be deposited.

(xii) A certification that only an owner or operator of a demolition or renovation activity trained as required by paragraph (c)(8) of this section will supervise in the stripping and removal described by this notification.

(xiii) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin.

(xiv) For emergency renovations described in paragraph (a)(4)(ii) of this section, the date and hour that the emergency occurred, a description of the sudden unexpected event, and an explanation of how the event has caused unsafe conditions.

(xv) Description of procedures to be followed in the event that unexpected asbestos is found or previously nonfriable asbestos material becomes broken, crumbled, pulverized, or reduced to powder.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similar to that shown in Figure 3.

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this section applies shall comply with the following procedures:

(1) Remove asbestos-containing materials from a facility being demolished or renovated before any activities that would disturb the materials or preclude access to the materials for subsequent removal. However, asbestos-containing materials need not be removed before demolition if:

(i) They are on a facility component that is encased in concrete or other similarly hard material and are adequately wetted whenever exposed during demolition; or

(ii) They were not accessible for testing and were not discovered until after demolition began and, as a result, cannot be safely removed. If not removed for safety reasons, the exposed asbestos-containing material and any asbestos-contaminated debris must be adequately wetted.

(iii) They are materials that cannot become friable during demolition or renovation, such as, packing, gaskets, asphalt roofing, and vinyl floor tile in good condition.

(2) When a facility component that contains asbestos or that is covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:

(i) Adequately wet any asbestos-containing materials exposed during cutting or disjoining operations; and

(ii) Carefully lower the units or sections to ground level not dropping, throwing, sliding or otherwise damaging them.

(3) When asbestos-containing material is stripped from facility components in a facility, adequately wet the asbestos-containing material during the stripping operation.

(i) In renovation operations, wetting is not required if the owner or operator has obtained written approval from the Administrator by:

(A) Asking the administrator to determine whether wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard, and supplying the Administrator with adequate information to make this determination before beginning to strip asbestos-containing material; and

(B) Using one of the following when the Administrator does determine that equipment damage would be unavoidable or that a safety hazard would exist:

(*1*) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements of § 61.152.

(*2*) A glove-bag system designed and operated to capture the particulate asbestos material produced by the stripping of the asbestos materials.

(*3*) Leak-tight wrapping to contain all asbestos-containing material prior to dismantlement.

(ii) In renovation operations where wetting or the methods allowed in paragraph (c)(3)(i) of this section cannot be used, other methods may be used after obtaining written approval from the Administrator upon determination that they are equivalent to wetting or the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and available for inspection.

(4) After a facility component covered or coated with asbestos-containing material has been taken out of the facility as units or in sections, it must be stripped or contained in leak-tight wrapping for disposal, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet asbestos-containing materials during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams, the asbestos is not required to be stripped if the following requirements are met:

(i) They can be removed, transported, stored, and reused without disturbing or damaging the asbestos.

(ii) They are encased in a leak-tight wrapping.

(iii) It is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all asbestos-containing materials including those that have been removed or stripped:

(i) Adequately wet the materials to ensure that they remain wet until they are collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the materials to the ground or a lower floor, not dropping, throwing, sliding, or otherwise damaging them; and

(iii) Transport the materials to the ground via leak-tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as units or in sections.

(iv) Asbestos-containing materials contained in leak-tight wrapping that have been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(*3*) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0°C (32°F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) of this section and the wetting provisions of paragraph (c)(e) of this section.

(ii) The owner or operator must remove facility components coated or covered with asbestos-containing materials as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature at the beginning, middle, and end of each work day and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the records of temperature for at least 2 years.

(8) All asbestos-containing material shall be stripped, removed, and otherwise handled by an owner or operator of a demolition or renovation activity with at least one on-site representative, such as a foreman or management level person, trained in the provisions of this regulation and the means of complying with them. The required training shall include as a minimum: applicability; notifications; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been accomplished shall be made available for inspection by the Administrator during normal business hours at the demolition or renovation site. This requirement shall become effective one year after promulgation of this regulation. This training does not replace the training requirements of the Office of Pesticides and Toxic Substances nor the training requirements of OSHA in 29 CFR 1926.58.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains asbestos-containing materials during the wrecking operation.

§ 61.148 [Redesignated as § 61.146 and Amended]

9. Section 61.148 is redesignated as § 61.146 and is amended by revising paragraphs (a), the introductory text of (b), paragraph (b)(2), and paragraph (d) to read as follows:

§ 61.146 Standard for spraying.

* * * * *

(a) Use materials that contain 1 percent asbestos or less by area for spray-on application on buildings, structures, pipes, and conduits, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos by area on equipment and machinery, except as provided in paragraph (c) of this section:

* * * * *

(2) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(d) Owners or operators of sources subject to this paragraph are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

§ 61.149 [Redesignated as § 61.147 and Amended]

10. Section 61.149 is redesignated as § 61.147, paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during operation. The monitoring period shall be of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions including, to the maximum extent possible, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of bags, including presence of tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of bag.

(v) Brief description of corrective actions taken including date and time.

(vi) Daily hours of operation for each control device.

(6) Furnish upon request and make available during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

§ 61.150 [Redesignated as § 61.148 and Revised]

11. Section 61.150 is redesignated as § 61.148 and revised to read as follows:

§ 61.148 Standard for insulating materials.

No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this paragraph do not apply to spray-applied insulating materials regulated under § 61.146.

§ 61.151 [Redesignated as § 61.149 and Amended]

12. Section 61.151 is redesignated as § 61.149 and is amended by revising paragraphs (a), (b), (c)(1)(ii) and (iii), and (c)(2), and adding new paragraphs (d) through (f) to read as follows:

§ 61.149 Standard for waste disposal for asbestos mills.

* * * * *

(a) Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of § 61.154; and

(b) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.150(a) or paragraph (c) of this section; and

(c) * * *

(1) * * *

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less then −9.5 °C (15 °F), as determined by an appropriate measurement method with an accuracy of ±1°C (±2°F). During periods when wetting operations are suspended, temperature must be recorded at least at hourly intervals and records must be retained for at least 2 years in a form suitable for inspection.

(2) Use an alternative treatment that has received prior approval by the Administrator. To obtain approval for an alternative treatment, a written request must be submitted to the Administrator. The Administrator will use the following criteria to evaluate the alternative treatment method:

(i) The ability of the method to control asbestos emissions to levels equivalent to those achieved by currently required methods.

(ii) The suitability of the method for the intended application.

(iii) The likelihood that the method would contravene other regulations.

(iv) The likelihood that the method would result in increased water pollution, land pollution, or occupational hazards.

(d) If waste is transported by vehicle to a disposal site:

(1) Placard vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The placards must:

(i) Be posted in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm × 36 cm (20" × 14") upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

LEGEND
ASBESTOS DUST HAZARD
Do Not Remain In Area Unless
Your Work Requires It
Breathing Asbestos Dust is Hazardous
to Your Health
Notation

2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (¾ inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

(2) Provide a copy of the waste shipment record described in paragraph (e)(1) of this section, to the disposal site owner or operator at the same time as the asbestos-containing waste material arrives at the disposal site.

(e) For all asbestos-containing waste material transported off site:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iii) The name and telephone number of the disposal site operator.

(iv) The name and location of the disposal site.

(v) The date transported.

(vi) The names, address, and telephone number of the transporter(s).

(2) Retain a copy of asbestos waste shipment record for at least 2 years.

(3) Maintain records of all waste shipments for which a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received within 35 days of the date the waste was accepted by the initial transporter.

(4) Prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning off-site waste disposal activities during each consecutive 6-month period:

(i) The name, EPA identification number, address, and location of the waste generator.

(ii) The calendar period covered by the report.

(iii) Using a format similar to that shown in Figure 5, a list of all off-site waste shipments including the date shipped, the date received by the disposal site, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the disposal facility to which waste was shipped, the name of the transporter, and an indication of whether 35 days or more have elapsed since the waste was shipped without having received a copy of the waste shipment record signed and dated by the disposal site owner or operator.

(f) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

§ 61.152 [Redesignated as § 61.150 and Revised]

13. Section 61.152 is redesignated as § 61.150 and is revised to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the treatments specified in paragraphs (a) (1) through (4) of this section. Paragraphs (a) (1), (2), and (4) of this section do not apply to nonfriable materials.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section as follows:

CAUTION
Contains Asbestos
Avoid Opening or
Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, use warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast as to be readily visible and legible.

(v) Label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes; and

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Broken areas of nonfriable asbestos material that potentially can be further broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section must be either adequately wetted using a wetting agent or encapsulated. If encapsulated, these materials need not be sealed in leak-tight containers or wrapping. If adequately wetted, these materials must be sealed in leak-tight containers or wrapping.

(4) For facilities demolished where the asbestos-containing material is not removed prior to demolition according to § 61.145 (c)(1) (i) and (ii), or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste after demolition and while loading for transport to disposal site.

(5) Use an alternative treatment that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(b) All asbestos-containing waste material from manufacturing and fabricating and, for demolition and renovation, all friable and nonfriable asbestos-containing waste material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section must be deposited as soon as is practical at—

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) A site that converts asbestos-containing material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to nonfriable materials from demolition and renovation operations that normally will not be broken, crumbled, pulverized, or reduced to powder, such as, packing, gaskets, asphalt roofing, and vinyl floor tile in good condition.

(c) When transporting asbestos-containing waste material to a storage or disposal site:

(1) Placard vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The placards must conform to the requirements of § 61.149(d)(1) (i), (ii), and, (iii).

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material arrives at the disposal site.

(d) For all asbestos-containing waste material including nonfriable material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this section:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The quantity in cubic meters (cubic yards) that is friable and the quantity that is nonfriable.

(iii) The name and telephone number of the disposal site operator.

(iv) The name and location of the disposal site.

(v) The date transported.

(vi) The name of the transporter(s).

(2) Retain a copy of asbestos waste shipment records for at least two years.

(3) Maintain records of all waste shipments for which a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received within 35 days of the date the waste was accepted by the initial transporter.

(4) Prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning waste storage and disposal activities during each consecutive 6-month period:

(i) The name, EPA identification number, address, and location of the waste generator.

(ii) The calendar period covered by the report.

(iii) Using a format similar to that shown in Figure 5, a list of all waste shipments including the date shipped, the date received by the disposal site, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the disposal facility to which waste was shipped, the name of the transporter, and an indication of whether 35 days or more have elapsed since the waste was shipped without having received a copy of the waste shipment record signed and dated by the storage or disposal site owner or operator.

(e) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

§ 61.153 [Redesignated as § 61.151 and Amended]

14. Section 61.153 is redesignated as § 61.151 and is amended by revising the introductory text, paragraphs (a)(2), (a)(4), and (b)(3), and adding paragraphs (d) and (e) to read as follows:

§ 61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under § 61.142, 61.144, or 61.147 and received desposits of asbestos-containing waste material generated by the sources, shall:

(a) * * *

(1) * * *

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

* * * * *

(4) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (a) (1), (2), and (3) of this section. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior

approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, waste oil is not considered a dust suppression agent.

(b) * * *

(3) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately access by the general public.

* * * * *

(d) Obtain the Administrator's approval in writing prior to disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. Provide the following information to the Administrator:

(1) Reason for disturbing the waste.

(2) Procedures to be used to control emissions.

(3) Location of the final disposal site.

(e) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during a title search—that will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plat and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in § 61.154(g) have been filed with the Administrator; and

(3) The site is subject to 40 CFR Part 61 Subpart M.

§ 61.154 [Redesignated as § 61.152 and Amended]

15. Section 61.154 is redesignated as § 61.152 and amended by removing paragraph (a)(1)(i), redesignating paragraphs (a)(1)(ii)–(iv) as paragraphs (a)(1)(i)–(iii), redesignating paragraph (b)(2) as paragraph (b)(3), revising the introductory text of paragraph (a) and paragraphs (b)(1) and (b)(3), and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 61.152 Air cleaning.

(a) The owner or operator who uses air-cleaning, as specified in §§ 61.142(a), 61.144(b)(2), 61.145(c)(3)(i)(B)(*1*), 61.145(c)(4)(ii), 61.146(b)(2), 61.147(b)(2), 61.149(b), 61.149(c)(1)(ii), 61.150(a)(1)(ii), 61.150(a)(2)(ii), and 61.155(e) shall:

* * * * *

(3) For fabric filter collection devices installed after (the date of proposal of this NESHAP revision), provide for easy inspection for faulty bags.

(b) * * *

(1) After (the date of proposal of this NESHAP revision), if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) Use a HEPA filter that is at least 99.97 percent efficient as determined by ASTM method D–2986–71.

(3) The Administrator may authorize the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

§ 61.155 [Redesignated as § 61.153 and Amended]

16. Section 61.155 is redesignated as § 61.153 and amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, revising the introductory text of paragraphs (a), (a)(4), and (a)(5) and paragraphs (a)(2), (a)(4)(ii) and (iii), and (b), and adding paragraph (a)(3) to read as follows:

§ 61.153 Reporting.

(a) Any new source to which this subpart applies (with the exception of roadways, demolition and renovation, spraying and insulating materials), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator within 90 days of the effective date. In the case of a new source which did not have an initial startup date preceding the effective date, the information shall be provided within 90 days of the initial startup date. Any owner or operator of an existing source who provided this information prior to the effective date is not required to resubmit it. Any changes in the information provided by any existing source shall be provided to the Administrator within 30 days after the change.

* * * * *

(2) If a fabric filter device is used to control emissions,

(i) The airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$) if the fabric filter device uses a woven fabric, and; if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$).

(3) If a HEPA filter is used to control emissions, the efficiency as determined by ASTM method D–2986–71.

(4) For sources subject to §§ 61.149 and 61.150:

* * * * *

(ii) The average volume of asbestos-containing waste material disposed of, measured in cubic meters (cubic yards); and

(iii) The emission control methods used in all stages of waste disposal; and

* * * * *

(5) For sources subject to § 61.151:

* * * * *

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. Roadways, demolition and renovation, spraying and insulating materials are exempted from the requirements of § 61.10(a). The information described in this section must be reported using the format of Appendix A of this part as a guide.

§ 61.156 [Redesignated as § 61.154 and Amended]

17. Section 61.156 is redesignated as § 61.154 and amended by revising the introductory text of § 61.154, paragraphs (c) and (d), and adding paragraphs (e) through (k) to read as follows:

§ 61.154 Standard for active waste disposal sites.

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material under §§ 61.149 and 61.150 shall meet the requirements of this section:

* * * * *

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent which effectively binds dust and controls wind erosion. Such agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative control method for emissions that has received prior approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator shall:

(1) Maintain records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, EPA identification number, address, and telephone number of the waste generator.

(ii) The name of the transporter.

(iii) the quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers.

(v) The date of receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the generator.

(3) Retain a copy of the records required by this paragraph for at least two years.

(4) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report to the Administrator, describing the discrepancy and attempts to reconcile it and submit a copy of the waste shipment record along with it.

(f) The owner or operator of a disposal site shall prepare and submit a single copy of a semiannual report to the Administrator and include the following information concerning activities during each consecutive 6-month period.

(1) The name, address, and location of the disposal site.

(2) The calendar period covered by the report.

(3) The method of disposal.

(4) Using a format similar to that shown in Figure 5, a list of all asbestos-containing waste shipments including, the date received, the name and EPA identification number of the generator, the date shipped from the generator, the quantity of asbestos-containing waste in each shipment (both the quantity that is friable and that which is nonfriable), the name of the storage site and transporter, and the date that a copy of the waste shipment record was sent back to the generator and storage site.

(g) Maintain until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(h) Upon closure, comply with all the provisions of § 61.151.

(i) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(j) Furnish upon request and make available during normal business hours for inspection by the Administrator all records required under this section.

(k) Obtain the Administrator's approval in writing prior to disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. Provide the following information to the Administrator:

(1) Reason for disturbing the waste.

(2) Procedures to be used to control emissions.

(3) Location of the temporary storage and final disposal site.

18. Section 61.155 is added to Subpart M to read as follows:

§ 61.155 Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

Each owner or operator of an operation that converts asbestos-containing waste material into nonasbestos (asbestos-free) material shall meet the requirements of this section.

(a) Obtain the written approval of the Administrator to construct. To obtain approval, provide the Administrator with the following information:

(1) Application to construct pursuant to § 61.07.

(2) In addition to the requirements of § 61.07(b)(3), supply the following process information to the Administrator:

(i) Description of waste feed handling and temporary storage.

(ii) Description of process operating conditions.

(iii) Description of end product handling and temporary storage.

(3) Performance test protocol, including provisions for obtaining information required under paragraph (b) of this section.

(4) The Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(b) Conduct a start-up performance test. Test results shall include:

(1) A detailed description of the types and quantities of nonasbestos material and asbestos-containing wastes processed, e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200 gm sample per hour), beginning with the initial introduction of asbestos-containing waste material and continuing until end of performance test.

(4) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

(c) During the initial 90 days of operation,

(1) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Collect and analyze samples, taken as 10-day composite samples (one 200 gm sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period all output materials must be stored onsite until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to § 61.150.

(d) After the initial 90 days of operation,

(1) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any product produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(i) Disposed of as asbestos-containing waste material according to § 61.150, or

(ii) Recycled as waste feed during process operation within the established range of operating conditions, or

(iii) Stored temporarily onsite until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled.

(2) Collect and analyze monthly composite samples (one 200 gm sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(e) Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(f) Maintain records and include the following information:

(1) Results of start-up performance testing and any subsequent performance testing including operating parameters, feed characteristics, and analyses of output materials.

(2) Results of the composite analyses required during the initial 90 days of operation under § 61.155(c).

(3) Results of the monthly composite analyses required under § 61.155(d).

(4) Results of continuous monitoring and logs of process operating parameters required under § 61.155 (c) and (d).

(5) The information on waste shipments received as required in § 61.154(e).

(6) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the disposal site to which the output materials were deposited, and the date of disposal.

(7) Retain records required by paragraph (f) of this section for at least 2 years.

(g) Submit the following reports to the Administrator:

(1) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(2) A quarterly report including the following information concerning activities during each consecutive 3-month period:

(i) Results of analyses of monthly product composite samples.

(ii) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(iii) Disposition of any product produced during a period of deviation including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.

(iv) The information on waste disposal activities as required in § 61.154(f).

(h) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this subpart. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by transmission electron microscopy (TEM) analysis to be asbestos free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to §§ 61.150 and 61.154 or reprocessed while all of the established operating parameters are being met.

19. Section 61.156 is added to Subpart M to read as follows:

§ 61.156 Cross reference to other asbestos regulations.

In addition to this subpart, the regulations referenced below also apply to asbestos and may be applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155 of this subpart. These cross references are presented for the reader's information and to promote compliance with the cited regulations.

Agency	CFR Citation	Comment
EPA	40 CFR Part 763, Subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR Part 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR Part 763, Subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.58	Worker protection measures for all construction work involving asbestos, including demolition and renovation—work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR Part 56, Subpart D	Specifies exposure limits, engineering controls and respiratory protection measures for workers in surface mines.
	30 CFR Part 57, Subpart D	Specifies exposure limits, engineering controls and respiratory protection measures for workers in underground mines.
DOT	49 CFR Parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

20. Section 61.157 is added to Subpart M to read as follows:

§ 61.157 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States:

(1) Section 61.149(c)(2).
(2) Section 61.150(a)(5).
(3) Section 61.151(c).
(4) Section 61.152(b)(3).
(5) Section 61.154(d).
(6) Section 61.155(a).

Figures to Subpart M

FIGURE 1. RECORD OF VISIBLE EMISSION MONITORING

Date of inspection (mo/day/yr)	Time of inspection (am/pm)	Control device or fugitive emission source designation or number	Visible emissions observed (yes/no), corrective action taken	Daily operating hours	Inspector's initials

FIGURE 2. AIR POLLUTION CONTROL DEVICE INSPECTION CHECKLIST

1. Control device designation or number .....
2. Date of inspection .....
3. Time of inspection .....
4. Is control device operating properly (Yes/No) .....
5. Tears, holes, or abrasions in bags (Yes/No) .....
6. Dust on clean side of bags (Yes/No) .....
7. Other signs of malfunctions or potential malfunctions (Yes/No) .....
8. Describe other malfunctions or signs of potential malfunctions .....
9. Describe corrective action(s) taken .....
10. Date and time corrective action taken .....
11. Inspected by:

(Print/Type Name) (Title) (Signature) (Date)

(Print/Type Name) (Title) (Signature) (Date)

Figure 3. Notification of Demolition and Renovation

I. Name, address, and telephone number of:
(a) Facility owner or operator

(name)

(address)

(phone number)

(person to contact and telephone number)
(b) Asbestos removal contractor

(name)

(address)

(phone number)

(person to contact and telephone number)
II. Type of operation: demolition ____ renovation ____
III. Description of facility
(a) Location
(b) Address
(c) Size (square meter (square feet) and number of floors)
(d) Age
(e) Prior use
IV. Is asbestos present? yes ____ no ____
V. Procedure used to detect the presence of asbestos material:

VI. Approximate amount of asbestos that is friable; nonfriable, but has the potential to be broken, crumbled, pulverized, or reduced to powder; and nonfriable. Specify amount of asbestos in terms of: linear meters (linear feet) on pipes; square meters (square feet) for surface area and cubic meters (cubic feet) for volume on both.
(a) Friable
(b) Nonfriable, but may become broken, crumbled, pulverized, or reduced to powder—
(c) Nonfriable
VII. Scheduled dates of asbestos removal
Start
Completion
VIII. Scheduled dates of demolition or renovation
Start
Completion
IX. Description of planned demolition or renovation work, and method(s) to be used.

X. Description of work practices and engineering controls to be used to prevent emissions of asbestos.
(a) At the demolition and renovation site

(b) During storage of the waste

(c) At the waste disposal site

XI. If you are claiming an exemption from certain requirements of the asbestos NESHAP (40 CFR Part 61, subpart M) for all or part of the nonfriable asbestos reported in item VI (b) and (c) above, describe the procedures to be used to prevent nonfriable material from being broke, crumbled, pulverized, or reduced to powder.
(a) At the demolition site

(b) At the storage site

(c) At the waste disposal site

XII. Name and location of the waste disposal site

XIII. If ordered by a government agency, name, title, and authority of government agency requiring the demolition.

Date order issued
Date demolition ordered to begin.
XIV. For emergency renovations
(a) Date and hour that the emergency occurred
(b) Description of the sudden unexpected event
(c) Explanation of how the event caused unsafe conditions or serious disruption of industrial operations

XV. Description of procedures to be followed in the event that unexpected asbestos is found or previously nonfriable asbestos material becomes broke, crumbled, pulverized, or reduced to powder.

XVI. I certify that the following individual will be on site during the demolition or renovation and has been trained in the provisions of this regulation (40 CFR Part 61, subpart M) and evidence that the required training has been accomplished by this person will be available for inspection during normal business hours.

(name)

(title)

(years with firm)

(Signature of owner or operator)

(Date)

Figure 4. Asbestos Waste Tracking System

1. Work Site Name and Mailing Address
Owner's Name
Owner's Phone No.
Owner's Phone No.
2. Operator's Name and Address
Operator's Phone No.
Operator's US EPA ID No.
3. Waste Disposal Site (WDS) Name and Mailing Address
WDS Phone No.
WDS US EPA ID No.
4. Description of Materials
(a)
(b)
(c)
(d)
(e)
5. Containers No. and Type
(a)
(b)
(c)
(d)
(e)
6. Total Quantity ft³ or yd³
(a)
(b)
(c)
(d)
(e)
7. Special Handling Instructions and Additional Information
8. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.
Printed/Typed Name & Title
Signature
Month Day Year
9. Transporter 1 (Acknowledgement of Receipt of Materials)
Printed/Typed Name & Title
Signature
Month Day Year
10. Transporter 2 (Acknowledgement of Receipt of Materials)
Printed/Typed Name & Title
Signature
Month Day Year
11. Discrepancy Indication Space
12. Waste Disposal Site—Owner or Operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 11.
Printed/Typed Name & Title
Signature
Month Day Year

INSTRUCTIONS

Waste Generator Section (Items 1–8)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces also enter the name of the owner of the facility and the owner's phone number.

2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the phone number and the US EPA ID Number of the operator.

3. Enter the name and address of the waste disposal site (WDS) which will be receiving the asbestos materials. In the appropriate spaces also enter the phone number and US EPA ID Number of the WDS. Enter "on site" if the waste will be disposed of on the generator's property.

4. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, possibilities include, but are not limited to:

—Spray-on asbestos insulation from piping
—Wrapped asbestos insulation from piping
—Spray-on asbestos ceiling/wall insulation
—Asbestos ceiling tile
—Asbestos wallboard

5. Enter the number of containers used to transport the asbestos materials listed in item 4. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):

DM—Metal drums, barrels
DP—Plastic drums, barrels
BA—6 mil plastic bags or wrapping

6. Enter the friable and nonfriable quantities of each type of asbestos material removed in units of cubic feet (ft ³) or cubic yards (yd ³) as appropriate.

7. Use this space to indicate special transportation, treatment, storage or disposal or Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.

8. The authorized agent of the operator must read and then sign and date this certification. The date is the date of receipt by transporter.

Note: The operator must retain a copy of this form.

Transporter Section (Items 9–10)

9. & 10. Enter name of transporter firm, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

Note: The transporter must retain a copy of this form.

Disposal Site Section (Items 11–12)

11. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.

12. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in item 11. The date is the date of signature and receipt of shipment.

Note: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

FIGURE 5. INFORMATION REQUIRED ON INDIVIDUAL WASTE SHIPMENTS FOR SEMIANNUAL REPORTS

Generator						Name of first transporter	Name of second transporter	Disposal site[a]		
Name	EPA ID No.	Date shipped	Quantity (ft³, yd³)		Excepted shipment (Yes/No)[b]			Name	Date received	Date WSR[c] returned to generator
			Friable	Nonfriable						

NOTE: Indicate "NA" if not applicable.
[a] A site that converts asbestos-containing waste material to nonasbestos material is considered a disposal site.
[b] Indicate "yes" if more than 35 days have elapsed since the waste was shipped and a signed and dated waste shipment record (WSR) has not been returned by the disposal site.
[c] WSR = Waste Shipment Record.

II. In Part 763:

PART 763—[AMENDED]

1. The authority citation for 40 CFR Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

2. By adding § 763.96 to Subpart E to read as follows:

§ 763.96 Disposal.

All persons participating in disposal activities affecting friable asbestos-containing material removed from a school building must comply with the provisions of 40 CFR Part 61, Subpart M—National Emission Standards for Asbestos. If such persons violate any provision of such subpart, it will be a violation of this section also.

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Tuesday
January 10, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

Traffic Alert and Collision Avoidance System; Final Rule

federal

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

[Docket No. 25355; Amdt. Nos. 1-35, 91-208, 121-201, 125-11, 129-17, and 135-29]

RIN 2120-AC34

Traffic Alert and Collision Avoidance System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments require the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport type airplanes and certain turbine powered smaller airplanes. The TCAS, which uses the Air Traffic Control Radar Beacon System transponder reply from other aircraft, will provide a collision avoidance capability that operates independently of the ground-based Air Traffic Control (ATC) system, and in areas where there is no ATC radar coverage. The Airport and Airway Safety and Capacity Expansion Act of 1987 directs the FAA to require the installation and operation of TCAS in commercial aircraft flying in the United States. The intended effect of this action is to minimize the possibility of midair collisions involving air carrier airplanes.

EFFECTIVE DATE: February 9, 1989.

Compliance Dates (Where Later Than Effective Date):

1. *Part 121.* TCAS II requirement for operations conducted under Part 121 with more than 30 passenger seats: December 30, 1991.

2. *Part 125.* TCAS II requirement for operations conducted under Part 125 with more than 30 passenger seats: December 30, 1991.

3. *Part 129.* TCAS I requirement for operations conducted under Part 129 with 10 to 30 passenger seats February 9, 1995. TCAS II requirement for operations conducted under Part 129 with more than 30 passenger seats: December 30, 1991.

4. *Part 135.* TCAS I requirement for operations conducted under Part 135 with 10 to 30 passenger seats: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, AIR-120, FAA, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Background

Regulatory History

On August 21, 1987, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) No. 87-8 (52 FR 32268; August 26, 1987). The NPRM proposed to amend Parts 91, 121, 125, 129, and 135 to require the installation and use of a family of Traffic Alert and Collision Avoidance Systems (TCAS) onboard certain airplanes, as follows:

14 CFR part	Applicability	Equipment	Compliance
91	All	TCAS	Voluntary
121	Large airplanes	TCAS II/Mode S	3 years after effective date
125	do	do	3 years after effective date
129	Turbine powered airplanes/10 to 19 passenger seats.	TCAS I	5 years after effective date
	Turbine powered/20 to 30 seats	TCAS II/Mode S	4 years after effective date
	Turbine powered/30 seats or more	TCAS II/Mode S	3 years after effective date
135	Turbine powered/10 to 19 seats	TCAS I	5 years after effective date
	Turbine powered/20 seats or more	TCAS II/Mode S	4 years after effective date

All comments received in response to NPRM No. 87-8 were considered in adopting these amendments.

On December 30, 1987, the President of the United States signed the Airport and Airway Safety and Capacity Expansion Act of 1987, which, among other amendments, amended the Federal Aviation Act of 1958, Section 601, by adding a new section (f), titled "Collision Avoidance Systems." Title III, section 203 of that act states:

"SEC. 203. Aircraft Collision Avoidance Systems

"(a) Findings.—Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue at a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS III, to ensure the safe separation of aircraft.

"(b) General Rules.—Section 601 is amended by adding at the end the following new subsection:

(f) Collision Avoidance Systems.—

(1) Development and Certification.—

(A) Standards.—The Administrator shall complete development of the collision avoidance system known as TCAS II so that such system will be operable under visual and instrument flight rules and will be upgradeable to the performance standards applicable to the collision avoidance system known as TCAS III.

(B) Schedule.—The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

(2) Installation.—The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers."

Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100-223, section 203 (December 30, 1987).

The FAA has informed Congress that a schedule requiring a "complete" certification of TCAS II equipment within 18 months is extremely difficult because of the different equipment manufacturer designs to be approved; the number of different aircraft types and models; and the large number of commercial carriers requesting approval. Currently, the FAR require that operators apply for a separate supplemental type certificate for each equipment manufacturer's design and each type/model aircraft. Since the ultimate goal of Congress is clearly the actual installation of TCAS, the FAA is promulgating this rule to require the air carriers to install the system prior to the 48-month overall deadline. Therefore, after consideration of the legislation and the particular circumstances, the FAA concluded that these amendments requiring certification and installation of TCAS within 48 months from the date of enactment of Pub. L. 100-223 (December 30, 1987) constitute compliance with that amendment to the FA Act.

Public Law 100-223 also mandated an FAA regulation requiring the use of altitude-encoding transponders in certain airspace and terminal areas. An automatic altitude-encoding transponder, designated as Mode C (or Mode S, since all Mode S transponders incorporate this feature), provides the air traffic controller with aircraft altitude in 100-foot increments. This information is displayed on the controller's radar screen with the data block for each tracked aircraft. The information is transmitted automatically in response to radar interrogations of the aircraft's radar transponder, and no communication with the pilot is required.

In response to Pub. L. 100-223 and previous FAA regulatory proposals, the agency adopted Amendment 91-203, *Transponder Automatic Altitude Reporting Capability Requirement*, in June 1988 (53 FR 23356, June 21, 1988). The rule requires the use of a Mode C transponder for all operations within and above a terminal control area (TCA) or airport radar service area (ARSA); within 30 miles of a TCA or within 10 miles of certain other airports; and above 10,000 feet above mean sea level (MSL).

A TCAS II or III unit receives information from the Mode C transponder on a target aircraft. The TCAS unit processes the information to provide the pilot of the TCAS airplane with altitude information on potentially conflicting aircraft and to provide vertical resolution advisories (RA's) (to climb or descend) to avoid the conflict. Mode C equipment installed on other aircraft is the only source of altitude information for a TCAS unit.

Discussion of Comments

Seventy commenters responded to Notice No. 87-8. Thirty-three respondents favor the proposed rule to require TCAS; however, seventeen from this group expressed reservations about the phase-in period and ten stated that the final rulemaking should be postponed.

A breakout of the respondents showed the following number of commenters by interest category:

Commercial aviation—6 foreign and 13 domestic carriers	19
Public comment—7 general public, 2 state representatives, and 1 consumer group	10
Government agencies—8 foreign and 2 domestic	10
Industry governing bodies	7
Industry/technical groups	9
Associations	8
Research organizations	2
Airframe manufacturers	4
Training/educational group	1
Total	70

Phase-In Period

Thirty-five commenters expressed concern regarding the phase-in period for TCAS. Of these, 12 requested an implementation time of 4 years minimum up to 7 years, with a 5-year period as the most popular timeframe mentioned.

Four commenters wanted a uniform time schedule for installation, instead of the uneven phase-in time proposed in the NPRM.

Only one person, a state government representative, mentioned shortening the phase-in period. That commenter wants TCAS installed as soon as possible.

Three commenters, including two manufacturers, expressed the opinion that the proposed deadline could be met.

Public Law 100-223 mandated the installation and operation of TCAS II on each civil aircraft that has a passenger capacity of more than 30 seats and that is used to provide air transportation of passengers including intrastate air transportation of passengers. The FAA cannot promulgate rulemaking contrary to the Public Law even in response to public comments to the proposed rule. Therefore, those comments proposing an extended phase-in time for aircraft with more than 30 passenger seats will not be addressed here.

The FAA agrees that those aircraft with 30 passenger seats or less and operated under FAR Parts 125 and 135 should not be required to have installed a TCAS II. Part 129 and Part 135 operators of turbine-powered aircraft with 10 to 30 passenger seats will be required to have a TCAS I system installed and operating.

While the technology required to build a TCAS I is fully developed, currently, there is no TCAS I design approved, and no manufacturer has built a TCAS I unit. There are three or four manufacturers considering the merits of developing a TCAS I design. One system is based on a passive design concept, another design is based on active interrogation, and a third concept is a combination of active/passive. These concepts have not been developed to a point where it can be judged whether any of the concepts will function as required. Considering the time required to develop, test, and obtain approval of TCAS I design and the time required to develop production facilities, coupled with user installation and training requirements, the need to allow additional calendar time became apparent. The additional time reflected in this final rule provides for the fabrication, certification, and operational evaluation of a TCAS I unit prior to installation on passenger carrying airplanes.

In consideration of the absence of an approved TCAS I system at this time, the compliance dates for TCAS I installation and operation have been extended from 5 years to 6 years for those aircraft operating under Parts 129 and 135 with 10 to 30 passenger seats. Additionally, the FAA will provide test data and certain test assistance, and will participate with interested manufacturers and users to evaluate and test TCAS I units in accordance with Technical Standard Order (TSO)-C118, and participate in a field evaluation of TCAS I units with Part 135 carriers.

Two manufacturers announced publicly at the Airlines Electronic Engineering Committee (AEEC) International Conference on TCAS Implementation, December 1 and 2, 1987, that their production of TCAS II systems can be adjusted to accommodate any air carrier installation schedules.

Postpone Final Rulemaking

Most commenters stated that the final rulemaking should be postponed until the results of the Limited Installation Program (LIP) system tests could be analyzed. The LIP, which continues the operational evaluation of TCAS II, requires analysis and periodic reporting to the FAA. The primary objective of the LIP is to evaluate the TCAS II preproduction units in air carrier service using line pilots. United Airlines, the first airline to apply for supplemental type certificate for installation of a TCAS II system for the LIP, completed their 6-month evaluation and currently is in the process of completing the data analysis. During the United evaluation a

total of 2,066 flight hours were logged on the two TCAS II equipped airplanes. The system generated a total of 933 traffic advisories (TA's) and 68 RA's. Northwest Airlines is scheduled to begin their LIP evaluation on or about September 1, 1988. Northwest will use two MD 80 airplanes for the evaluation.

The FAA believes that any fundamental problem existing would have shown up early in the LIP program. None has to date, nor has any major problem been identified in the Piedmont Phase I or II programs. (The 5-month evaluation of TCAS II on two Piedmont Airlines B–727 airplanes between November 1981 and May 1982 is referred to as Piedmont Phase I. The primary objectives of this evaluation were to assess the operation of TCAS in an air carrier operational environment and to develop an understanding of the potential effect of alerts on air carrier flight operations, flight crews, and ATC controllers and on the frequency of alerts and the circumstances under which they occur. The operational evaluation of TCAS II on a Piedmont Airlines B–727 airplane between March 1987 and January 1988 is referred to as Piedmont Phase II. The primary objectives of this operational flight evaluation were to assess the impacts of TCAS operation on flight crew workload; evaluate the impacts of TCAS on the ATC system and individual controllers; and obtain flight crew comments on the system's design parameters, displays, and operational procedures. The evaluation was also designed to provide additional data on the frequency of TCAS alerts and the circumstances under which TCAS alerts occur, evaluate the effectiveness of the flight crew training program, and identify and resolve equipment certification issues. See NPRM 87–8).

Most non-U.S. commenters expressed varying degrees of displeasure at the proposed unilateral action of the United States to mandate the installation and use in U.S. airspace of a collision avoidance system *in the absence of internationally agreed-upon technical specifications and operational procedures* for such an important system. These international standards, normally developed through the vehicle of the International Civil Aviation Organization (ICAO) for equipment such as this prior to introduction into the international aviation system, are designed to insure equipment interoperability and avoid equipage redundancy. Hence, most foreign observers would like to see the U.S. equipage/use requirement delayed and, at the very least, its application to foreign operators under 14 CFR Part 129 delayed until such international standards are in place (currently expected to occur in late 1990) and a sufficient period of time is permitted for system acquisition and installation.

With regard to the present status of the effort to standardize the Airborne Collision Avoidance System (ACAS—the international equivalent of the U.S. TCAS), ICAO is relying on the services of technical and operational experts provided by 15 countries and 4 international organizations—organized into the Secondary Surveillance Radar Improvements and Collision Avoidance Systems Panel (SICASP)—to develop these important technical equipment specifications and operational procedures, which will result in the safe and efficient use of this system internationally. United States participation in this effort has been very active and has included the FAA, the National Aeronautics and Space Administration (NASA), U.S. industry groups, and FAA's two major TCAS contractors, MITRE and Lincoln Labs. At the behest of U.S. and other participants, a concerted effort is being made by this group to complete its work at a spring 1989 meeting, at which time proposed ACAS international standards will be presented to ICAO's Air Navigation Commission and Council for final review and approval. Assuming no unexpected difficulties materialize during this review process, the most critical changes to ICAO documents—the technical ACAS equipment specifications in ICAO Annex 10—should become applicable internationally in late 1990.

Four commenters mentioned postponing the rule until after the Radio Technical Commission for Aeronautics (RTCA) Minimum Operational Performance Standards (MOPS) changes 6 and 7 were complete and Aeronautical Radio Inc. (ARINC) specifications were in final form. The RTCA MOPS, change 6, was not completed in time for publication in TSO C–119, TCAS II; therefore, the TSO references FAA Report No. DOT/FAA/SA–88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS).* When change 6 is approved by the RTCA Council, the TSO will be revised to reference RTCA DO–185 changes 1 through 6. Change 7 is not required for FAA approval.

One manufacturer recommended delaying the rule and holding the docket open until the LIP is finished and all reports are made available and the MITRE report 87W000157 is released and reviewed. The United Airlines LIP report has been completed and made available in the docket. The Mitre report 87W000157 was revised and adopted in the TSO.

Public law 100–223, section 203, does not permit compliance dates for TCAS II later than those adopted in this rule, and the FAA could not consider comments requesting later dates.

Technical Discussion

Thirty-three commenters included a discussion of TCAS, ACAS, Mode S, Mode C, or ATC technologies in their comments. Many in this group expressed the opinion that the technology still needed to be "fine tuned" before implementation. The FAA has provided for fine tuning of TCAS through the RTCA SC–147 committee working groups. The RTCA MOPS change 6 will contain additional fine tuning features, including simplification of the TCAS-to-TCAS coordination process, elimination of the advisory invalid indication, and many other recommendations.

One commenter postulated that the requirements for all aircraft to have "active TCAS systems would overload and violate the FAA's own requirement of limiting radio use for TCAS purposes to 1 percent of the total usage of the frequency that TCAS would operate on." This issue is not new. It was identified as one of the main development questions when, in 1982–84, the Beacon Collision Avoidance System (BCAS) design was extended to TCAS by increasing the ability to operate effectively under high density conditions. In the Lincoln Laboratory report that documents this development effort, "TCAS II: Design and Validation of the High-Traffic-Density Surveillance Subsystem," this issue is clearly identified (ATC–126, Feb-85, pages 2–6 to 2–9).

The TCAS II includes a provision called "Interference Limiting," the purpose of which is to insure that TCAS transmissions will not cause any degradation of any other systems operating in the 1030/1090 MHz frequency bands. During the TCAS development, it was recognized that a number of possible interference mechanisms needed to be considered: (1) Reception of TCAS interrogations by transponders, (2) reception of TCAS replies by ground-based ATCRBS equipment, and (3) self-suppression of the transponders on the TCAS aircraft. It was decided to place limits on TCAS transmissions in such a way as to give TCAS a low priority in these frequency bands. In doing this, a rather severe limit of 2 percent was adopted as the maximum interference that can be contributed by all of the TCAS transmissions in a given area. The Interference Limiting standards were initially determined analytically from basic principles of physics. It was found that a relatively simple model could be implemented to provide the ability to adapt to any given density of aircraft and any percentage that are TCAS equipped. Subsequently, the interference limiting design was assessed by a large interference simulation of the 1030/1090 MHz bands. This simulation study was conducted by the Electromagnetic Compatibility Analysis Center (ECAC), making use of their experience in assessing many other similar interference issues. The simulation included a large number of aircraft, each with a given flight path, acting together with a large number of ground-based interrogators, with power levels, beamwidths, and other characteristics relating to operating conditions predicted for the 1995 timeframe. Two main conclusions resulted from this study. One was that the 2 percent interference allocation for TCAS was not exceeded. The other was that radio transmissions attributable to TCAS were completely insignificant in their effects on the performance of the ground-based ATCRBS equipment. As a result of this analysis and testing, the FAA concluded that there will not be a frequency interference problem.

One manufacturer submitted the following comments not previously addressed.

Comment: Equipment designs tested to date have not represented production TCAS II equipment. Representative equipment must be tested so that its acceptability in service can be assessed. Logic included in equipment tested, or to be tested (LIP), does not include corrective logic for "Altitude Crossover" or "TCAS-Invalid" deficiencies.

FAA response: The FAA will conduct flight tests of production units to validate the corrective logic.

Comment: Display requirements for "Glass Cockpits" will not be defined before mid-1988.

FAA response: The FAA defined and issued display requirements for "Glass Cockpits" in an advisory circular (AC) entitled *Airworthiness and Operational Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders*, AC No. 20–131, October 3, 1988.

Comment: Certification requirements, analysis, simulation, and flight test are not adequately defined, nor is a flight criticality level for TCAS II certification specified.

FAA response: As previously mentioned, AC No. 20–131 was published on October 3, 1988. It proposes acceptable certification criteria. The TCAS II system must be certified to the essential level, and the software programs to level 2 of RTCA DO–178A.

Comment: Certification requirements for compliance with foreign regulatory agency requirements for TCAS deactivation are unknown.

FAA response: There is a possibility that a foreign government may request a U.S. TCAS-equipped airplane to deactivate the TCAS system, which is provided for in the TCAS equipment standards. Section 91.1 of the FAR's provides for compliance with the foreign government regulatory requirements.

Comment: Certification requirements for U.S. carriers with airplanes dedicated to service abroad, such as Pan Am, are unknown.

FAA response: Public Law 100–223 requires installation "on each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers. . . ." An air carrier operator who experiences hardship due to this regulation may petition for an exemption under section 601 of the FA Act of 1958.

Comment: The means of providing integrated TA's and RA's on older airplanes without color weather radar displays has not been economically addressed.

FAA response: The FAA minimum requirements specified in the TSO will require only a minimum of a three-target display. Any display beyond this minimum will be evaluated at the time of certification.

Comment: Required crew response to TA's and RA's should be specified. For TCAS to be effective, a standard mandatory response is necessary.

FAA response: The FAA does not believe that a mandatory response to TA's or RA's is necessary or appropriate. The AC for TCAS II certification and operation [AC No. 20–131; October 3, 1988] addresses crew training objectives.

Mode C

Five commenters addressed the issue of using Mode C. Generally, the respondents expressed the opinion that Part 125 aircraft should be allowed to use Mode C as an alternative to the TCAS II system, as the TCAS equipment costs would be prohibitive for such a class of operator. As previously mentioned, if the Part 125 operator's aircraft is configured for 30 passenger seats or less, then that aircraft is exempt from the TCAS requirement.

ICAO/PART 129 Foreign Carriers

The majority of comments mentioning ICAO (15) suggest that the FAA should coordinate TCAS implementation with Standards and Recommended Practices (SARPS) for international standardization. A standard for an ACAS generated by ICAO is especially important to foreign carriers. The FAA is actively participating with various ICAO technical groups through SICASP in an effort to generate this standard. The SICASP group will have been provided all FAA data concerning TCAS.

Of the comments addressing only the issue of TCAS implementation in Part 129 aircraft, two are against, two are for, and three request additional time to comply. Public law 100–223 did not exempt foreign air carrier operations, within U.S. airspace, from TCAS II requirements. The Congressional finding states that public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States. However, the FAA is extending the compliance time from 5 to 6 years for airplanes with 10 to 30 seats. These operators may elect to install TCAS I, II, or III. If they install a TCAS II or III unit, it must be compatible with TSO C–119.

Foreign air carrier aircraft with more than 30 passenger seats will be required to have installed and operating a TCAS II system, compatible with TSO C–119, when operating in the United States after December 30, 1991.

Upgrade TCAS II to TCAS III

In responding to the issue of upgrading TCAS II to TCAS III, most comments addressed the need for clarification. The respondents stated that the implied requirement for upgrading was questionable and should be more definitive. The upgrading has the support of one manufacturer, and another is supportive of the idea to require that TCAS III include the same operational criteria that will be used for TCAS II. One manufacturer stated that the "incentive to provide TCAS III growth is too vague to justify economic commitments."

Although the FAA has not required or proposed a compliance date for TCAS III, it will continue to develop, test, and evaluate TCAS III and provide data and technical support to RTCA for development of a TCAS III MOPS. Although the FAA may support a particular design for testing, it is more

important that it fosters the development of the MOPS. The FAA continues to support a LIP for TCAS III.

Other than the air-to-air coordination logic, the manufacturer has freedom of design of the TCAS systems. The FAA agrees with the commenter who expressed concerns regarding the interoperability of TCAS II and III. The TCAS II design shall not preclude the upgradeability to, nor the interoperability of, TCAS II and III. This rule does not mandate a TCAS III system. New rulemaking would have to be initiated for the requirement of TCAS III.

Training

Eight commenters were evenly divided concerning the need for standardized training prior to TCAS II implementation. Those who favor training requirements want training to focus on end-level performance, and do not believe that a specific technique is important. Training should focus also on difficulties involving the upgrade from TCAS II to TCAS III. The FAA intended the training requirements proposed in the NPRM to be training objectives, and the training program may not necessarily be limited to the proposed items. The training items, as proposed, appear in AC No. 20–131 dated October 3, 1988. The AC prescribes a means, but not the only means, of complying with the regulatory requirements.

Advisory Circular

Five commenters addressed the need to publish AC's regarding the TCAS system. Domestic industries that responded to this issue requested that such a circular be published 24 months in advance of the rule adoption. The FAA published AC No. 20–131 on October 3, 1988, to provide guidance for the installation and operational approval of TCAS III.

Product Liability

Several commenters, some foreign, addressed the issue of product liability. The commenters suggested that, as a result of the FAA's requirement to install a system designed and developed by the FAA, the Government will be subject to product liability claims for use of TCAS equipment. Some commenters further requested that the FAA voluntarily indemnify the regulated operators from such liability.

The FAA considers the TCAS requirement similar to other operating requirements involving the use of certain equipment, and the agency does not consider it necessary or beneficial to make any special provision for liability claims against the Government or regulated operators.

Applicability

Thirty-six commenters addressed this issue. Four of the comments were sent by private individuals, nine were sent by foreign agencies, and the remainder were submitted by domestic (U.S.) industries. The primary concern expressed was that TCAS I should be required for Part 135 operators, but not TCAS II. Many commenters expressed the opinion that there is no justification for the use of the TCAS system over other collision avoidance systems. As previously stated, the FAA relaxed the TCAS requirement and compliance times proposed in the NPRM for Part 135 operators. Additionally, the FAA will evaluate passive/active TCAS I systems.

Foreign operators stated that it was necessary to continue to allow ATCRBS to be used, due to the cost of installing and operating Mode S, and that the installation of the TCAS system should be limited to new U.S.-registered aircraft. Many comments addressed the need for uniform installation of the TCAS system, and a few respondents expressed the opinion that Mode C should be mandatory in all aircraft.

The FAA addressed the Mode C requirement in another rulemaking action, "Transponders With Automatic Altitude Reporting Capability Requirement," Amendment No. 91–203 (53 FR 23356; June 21, 1988). Mode S is a necessary component of TCAS II. The Mode S air-to-air data link provides TCAS II with the coordination procedures necessary for the proper RA in a TCAS to TCAS conflict. The TCAS I does not require a Mode S transponder to be installed.

The introduction of TCAS I and II is expected to reduce substantially the threat of midair collision. To equip only new U.S.-registered aircraft would be inconsistent with the requirements of Pub. L. 100–223 and would delay the benefits of a TCAS program. A high degree of protection can be realized for those operators with the expanded requirement for Mode C in general aviation aircraft and TCAS II in air carrier aircraft. Concerns were raised about the size, weight, and interfacing of the new equipment, and some comments cited the need to test representative equipment to assess its service acceptability. Some commenters stated that the display of aircraft was an essential component in the Minimum Equipment List (MEL). The FAA promulgates minimum standards and evaluates manufacturers' designs to those standards. Size, weight, and interface are market place decisions. Service acceptability will be assessed in that the system is compatible with other TCAS designs with respect to coordination logic and human factor considerations. The FAA evaluates the display systems for minimum requirements and functional compatibility during the certification evaluation in the aircraft.

Nine commenters expressed concerns relative to Part 125 aircraft. Four of these respondents stated that Part 125 aircraft should be exempt from the rule or be allowed to maintain the existing ATCRBS system requirements. The Congressional mandate covers all commercial aircraft with passenger seating configuration of more than 30 seats. With respect to aircraft with 30 seats or less, the FAA agrees with the comments. Under the rule adopted, those aircraft operating under the provisions of Part 125 in nonrevenue passenger service, with passenger seat configuration of 30 seats or less, will not be required to have a TCAS system installed.

Include All Aviation

Fifteen commenters stated that the only way to ensure maximum effectiveness of the proposed TCAS system is to extend the requirement to include Part 125, Part 129, Part 135, and military aviation aircraft. The final rule does include aircraft operating under these parts to varying degrees, but it does not apply to military aircraft. However, the U.S. Navy is studying the feasibility of using TCAS I on military trainers, and the FAA is cooperating with the Navy to pursue certification of a passive/active system for the Navy T–34C trainer aircraft.

One commenter questioned whether the rule is to apply to air cargo carriers. The Part 121 rule specifically addresses aircraft with passenger configuration of more than 30 seats. However, if there is a split cargo/passenger aircraft with more than 30 seats, the airplane must have a TCAS II installed; 10 to 30 seats, the airplane must have at least a TCAS I installed. However, the FAA will not require installation of a TCAS on a large combination cargo/passenger airplane simply because of the capability for increasing passenger capacity, if the aircraft is not operated with 10 or more passenger seats.

One commenter suggested issuing a supplemental NPRM that airworthiness regulations be amended to require TCAS and to adjust the requirement of Section 25.1309 to recognize the value of TCAS in reducing overall risk. The FAA does not believe this is necessary in that all Part 25 aircraft are not required to have TCAS II installed according to the operating rules.

FAA Responsibility

Several comments received expressed a desire that configuration of the Collision Avoidance System (CAS) software be the responsibility of the FAA. The FAA does control the configuration of the CAS logic software by requirements in the TSO and subsequent installation approval. To change the software of the CAS logic would require the TSO holder to apply to the FAA for approval of a major change to the original approved design data. Deviations (major changes) to TSO's are only approved by the Aircraft Engineering Division of the Office of Airworthiness in Washington, DC.

Pilot Immunity for TCAS

There are several commenters who desire the FAA to grant blanket immunity to pilots for following or failing to follow an RA from the TCAS. The FAA cannot support this proposal from the industry for the following reasons:

(a) The pilot will always be ultimately responsible for his/her actions and must be held accountable for them. In the case of TCAS, there is no doubt that there may be instances where the pilot will be "off-altitude" in response to a TCAS-generated RA, and may indeed be involved in a near midair collision or an actual collision. During the review process of the incident, as in all incidents, all factors will be considered, including the factors that are TCAS related, and a determination made. This is the only position that the FAA can take on this matter and it must be made clear to all operators of TCAS.

(b) The FAA has never granted blanket immunity to flightcrews for any operation regardless of the criticality of that operation. There is no legal precedent for granting such broad relief from responsibility. Section 91.3 of the FAR states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." Introducing TCAS into the National Airspace System does nothing to change this regulation.

Every consideration will be given to the flightcrew in the review process for TCAS-related incidents. All factors will be thoroughly reviewed and determination made as to responsibility.

Aviation Trust Fund

One commenter expressed the opinion that the FAA would be well advised to use the Aviation Trust Fund to upgrade and improve the existing ATC system. This comment is outside the scope of this NPRM.

Economic Considerations

Of the 32 comments received mentioning economic considerations, only two respondents, both elected government representatives, were of the opinion that the cost involved is minimal. Most commented that the economic impact is not adequately addressed. Specific concerns voiced include those from small operators who believe they will be forced out of business, and large airlines who believe that the upgrade from TCAS II to TCAS III will be costly. As previously mentioned, the FAA relaxed the time for compliance for airplanes having a seating capacity of 10 to 30 passenger seats. This change will definitely reduce the economic impact on small operators. Four commenters proposed less costly alternate systems to TCAS.

In the NPRM the FAA agreed to consider passive versus active TCAS I systems as long as the applicant can demonstrate that the passive system provides the equivalent level of safety as active TCAS I. To date, the FAA has received no valid data to show that a passive TCAS I can meet the safety intent of the rule, so this final action assumes an active TCAS I. If passive TCAS I can be demonstrated to meet the rule, than the FAA would be amenable to follow-on regulatory action to allow its use.

The FAA does not expect to mandate TCAS III at this time. The economic considerations for TCAS II are discussed in the regulatory impact analysis summary.

Other Comments Not Previously Addressed

One manufacturer suggested new standards for automatic altitude reporting be required similar to an ATA petition dated March 25, 1986. Although the FAA would have to agree that reduced altitude error does increase the accuracy of the projected flight path of the intruder aircraft during TCAS tracking, the safety analysis done on the current altitude encoder errors would conclude safe TCAS operation.

One commenter was concerned that there was no data on the performance characteristics of TCAS II in high wing with engines mounted on the wing. The FAA does not have any information or data that indicates there will be any adverse effect of TCAS operation on these aircraft. However, the FAA will conduct in-service evaluations in such aircraft to obtain system performance and aircraft performance information.

One commenter, James Pope, was critical of the FAA's TCAS program and supported an ACAS unit not dependent on radar transponders. Pope alleged that 770 lives have been lost in ACAS-preventable midair collisions during the development of TCAS. This commenter asserts that NPRM 87–8 must be promptly withdrawn and immediate action taken by FAA to certify the proven and ready-to-go ACAS.

This commenter has previously made these same allegations to the FAA which were subsequently investigated on two occasions by the General Accounting Office and found to be without basis. The FAA believes that it has previously provided detailed answers to the commenter's allegations, and does not believe it is necessary to give an indepth analysis here. Anyone wishing a copy of the investigative reports can contact the person identified under the section, "**FOR FURTHER INFORMATION CONTACT**."

Discussion of Rule

The FAA currently operates a complex network of facilities and subsystems designed to ensure the safe and efficient operation of the National Airspace System (NAS). Operations within the NAS and its many components are governed by an array of Federal Aviation Regulations (FAR) and procedures. Consequently, a wide variety of facilities and services are available. Nevertheless, the primary function of separating aircraft is predicated on the fundamental concepts of ground-based control and the see-and-avoid responsibility of the flightcrew.

Under the see-and-avoid concept, the level of safety is related to the ability of pilots, individually and collectively, to detect and avoid encounters with other aircraft. Although common sense and the FAR require continuous adherence to the principles of see-and-avoid, the concept does have limitations. The pilot's ability to acquire aircraft visually on collision courses is reduced under heavy workload conditions, in areas of high traffic densities, and when the aircraft is in conditions of poor visibility.

The second fundamental concept upon which the separation of aircraft is predicated is ground-based control. Through the issuance of instructions, clearances, and advisories, air traffic controllers ensure that prescribed separation standards are applied between aircraft. Since these instructions are based on known and projected flight information, this system does not rely totally on the pilot's ability

to acquire traffic visually to achieve acceptable levels of safety. In some segments of the NAS, such as terminal control areas, positive control is exercised, and operations in such airspace are conducted under ATC instructions. A terminal radar service area is an example of upgrading of the see-and-avoid concept and represents a complex control environment, since both controlled and uncontrolled aircraft are operating in the area. The overall collision avoidance system design must address the unique problems of such a mixed traffic environment.

The FAA's approach to TCAS is to encourage the development of a family of onboard collision avoidance systems, to demonstrate the operational and technical feasibility of the concept, and to support the development of national/international standards for the equipment. A principal objective of the TCAS approach is to provide a range of collision avoidance equipment alternatives for the full spectrum of airspace users ranging from small airplanes to large transport category airplane. The TCAS Program consists of the following three program elements: TCAS I, which provides only TA's; TCAS II, which provides TA's and RA's in the vertical plane only; and TCAS III, which provides TA's and RA's in both the vertical and the horizontal planes.

On December 30, 1987, the President of the United States signed Pub. L. 100–223 which among other provisions, amended the FA Act of 1958, Section 601, by adding a new paragraph (f) entitled "Collision Avoidance Systems." This new section requires TCAS II on "each civil aircraft which has a maximum passenger capacity of more than 30 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers." The amendment does not provide for the exception of any class of civil operation or operator, U.S. or foreign, from the basic rule.

The rule adopted provides for the installation of appropriate TCAS units on airplanes used in commercial air carrier, selected air taxi/commuter operations, and on airplanes used by foreign carriers flying in the U.S. airspace. The categories of commercial aircraft for which TCAS I or II will be required are based on the provisions of Pub. L 100–223 and on the relative speed of the aircraft, the size of the aircraft, and the number of passengers per aircraft who would benefit from TCAS installation.

Aircraft operating exclusively under Part 91, General Operating and Flight Rules, are not required to have installed any TCAS equipment. However, if an operator or owner elects to install a TCAS unit, the system must be FAA approved and operated according to FAA prescribed procedures. The TCAS system installed must be shown to operate in the ATC system and in coordination with other FAA approved active TCAS systems.

Part 135 commuter and air taxi operators of turbine powered airplanes with 10 to 30 passenger seats will be required to install a TCAS I system to provide TA's from other transponder-equipped aircraft. These advisories should give bearing and distance from the TCAS-equipped airplane in the case where the other aircraft have only a Mode A transponder (no altitude reporting). If the intruder aircraft is Mode C- or Mode S-equipped, the TCAS I unit should also display altitude, which provides the pilot a sector both in the vertical as well as the horizontal plane to look for the threat aircraft. TCAS I, although not providing an RA, does provide sufficient alerting time for the pilot to visually acquire the threat aircraft and take evasive action if necessary. Although the RTCA MOPS has been approved for TCAS I, no system has been built to date. The FAA believes that development of collision avoidance equipment that can meet the TCAS I MOPS is well within the state of the art for equipment manufacturers and that adequate quantities to supply the commuter/air taxi fleet can be manufactured and installed during the time period prescribed.

Part 135 operators of 10 to 30 passenger seat turbine powered airplanes are required to have installed a TCAS I within 6 years after the effective date of the rule. Installation of TCAS I does not require the installation of a Mode S transponder.

Part 121 and 125 operators of large airplanes of more than 30 seats are required to have TCAS II and Mode S installed and operating by December 30, 1991. These operators may wish to upgrade to TCAS III units when they become available. Much research is necessary to develop TCAS III to the point that it can be type certificated. The ability to produce operational TCAS III units is many years away.

Part 129 foreign air carrier operators of turbine powered airplanes with passenger seating configurations of 10 to 30 are required to have installed and operating a TCAS I when operating in U.S. airspace 6 years after the effective date of this rule. Foreign air carrier operators of airplanes with more than 30 passenger seats are required to have installed and operating a TCAS II and Mode S transponder when operating in U.S. airspace after December 30, 1991.

The FAA believes that this final rule will encourage affected foreign airplane operators, and their airworthiness authorities, to become familiar with the associated TSO's and RTCA documents that form the basis of approval and manufacture of a TCAS approved by the FAA. The TCAS systems approved by foreign airworthiness authorities must be compatible with and perform with the FAA-approved TCAS, transponders, and ATC system when operating in United States airspace.

Where the rules require a TCAS I or II unit, the intended minimum TCAS units are those complying with the requirements of TSO C–118 and TSO C–119 as appropriate, with the exception of Part 129 foreign air carrier operators. Where the rule specifies an approved TCAS, the installer may elect TCAS I, II, or III. Where the rule requires a TCAS II, the installer may elect TCAS II or III. There is no requirement, at this time, for the installation of a TCAS III system. The TCAS III system is being developed to enhance the basic TCAS II system by providing a more accurate surveillance capability and alternative escape maneuver selection in the horizontal plane. The FAA can envision that some operators may want to update their TCAS II units to TCAS III when available. The required TCAS III system design as will be defined in the applicable TSO and MOPS will permit the upgrading of a TCAS II unit to a TCAS III. In the applicable standards for TCAS II, whenever a choice exists between TCAS II and TCAS III elements (i.e., antenna, etc.), the TCAS III element will be specified in the TSO and MOPS. The FAA is committed to support the development of TCAS III. Any rulemaking concerning mandatory use of TCAS III will be handled separately from this rulemaking.

Flight Manual Requirements and Operational Approval

Where the rule requires TCAS to be used in air carrier service, operational approval must be obtained from the FAA at the time that certification (TC or STC) application is made. The applicant must submit for approval flight crew qualification, training program, and TCAS inoperative items to be included in the appropriate Master Minimum Equipment List.

Technical Standard Order

The RTCA Special Committee SC–147 has developed RTCA Document DO–197, Minimum Operational Performance Standards (MOPS) for An Active Traffic Alert and Collision Avoidance System I (Active TCAS I). This document forms the basis of a TSO that will permit the active TCAS I to be manufactured under the TSO approval system.

The RTCA Document DO–185, Volume I and II, Changes 1 thru 5, *Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment* and FAA Report No. DOT/FAA/SA–88/3, *Required Modifications to the Traffic Alert and Collision Avoidance System (TCAS II) Minimum Operational Performance Standards (MOPS)* set forth standards for TCAS II equipment. These documents will also form the basis of a TSO to permit manufacturing under the TSO approval system. The TCAS III MOPS will be a new RTCA document separate from DO–185 but will identify a system functionally compatible and interchangeable with TCAS II. The three TCAS systems I, II, and III will be identified under the TSO system by different TSO numbers. Concurrent with the publication of this rule, the FAA is publishing TCAS I and TCAS II TSO's defining the minimum standards for such units.

While FAA research, to date, has focused on an active TCAS I, it has been suggested by some people that a passive (listen only) device may be able to meet the same objective intended by the active TCAS I units. While this regulatory action on a TCAS I TSO presupposes an active TCAS I, the FAA wishes to go on record as not being opposed to a passive TCAS I, as long as it meets the same safety objectives of DO–197.

TCAS Training Requirements

The introduction of TCAS into revenue service need have little impact on the existing regulations regarding required crew training, and therefore should not require a change to the existing training requirements. As specified in § 121.401, a Part 121 certificate holder is required to establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of Part 121, Subpart N, and insure that each crewmember is adequately trained to perform his/her assigned duties. Section 121.401 will have the effect of requiring training on TCAS. Section 121.415(g) requires that each crewmember qualify in any new equipment, including modifications to airplanes. Section 121.407(a)(3) requires that each airplane simulator and other training device be modified to conform with any modification to the airplane being simulated.

The pilot training program for TCAS should provide the flightcrew the necessary knowledge, skills, and abilities to safely conduct TCAS operations.

Regulatory Impact Analysis Summary

Introduction

This section summarizes the cost impact and benefit assessment of the final rule to amend Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (FAR) to require the installation and use of a Traffic Alert and Collision Avoidance Systems (TCAS) in large transport airplanes and certain turbine-powered smaller airplanes. TCAS II, which utilizes a signal from existing transponders equipped with altitude encoding capability, provides collision avoidance guidance in the airplane independent of the ground Air Traffic Control (ATC) system. These amendments also require that all operators of TCAS-equipped airplanes have an FAA-approved training program for flight crewmembers. Finally, this rule requires that certain small aircraft be equipped with TCAS I, a simpler system providing collision alert warning but no flight guidance. The amendments are in response to legislation that mandates the FAA to require the installation and operation of TCAS in certain commercial airplanes flying in the United States.

These amendments stem from a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 26, 1987. Comments on the proposal were submitted by individuals, foreign and domestic air carriers, air carrier and airplane pilot associations, foreign and domestic Government agencies, research and consultant organizations, avionics manufacturers, and the National Transportation Safety Board. Approximately half of the 70 respondents expressed support of the proposed rule to require TCAS. The remaining respondents, however, opposed certain proposed requirements and disagreed with the economic impact estimates presented in the preliminary regulatory analysis. The FAA has evaluated the public comments and made a final determination regarding their impact. The comments have caused the FAA to revise its estimates of economc impacts and increase compliance costs. The final rule amendments to Parts 121, 125, and 129 require that after December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II and the appropriate class of Mode S transponder.

A substantial change in the final rule is the elimination of the requirement contained in the notice that airplanes operated under 14 CFR Parts 125, 129, and 135 having a passenger seating configuration of 20 to 30 seats be equipped with TCAS II. The final rule, therefore, requires that turbine-powered airplanes operated under Parts 129 and 135 having a passenger seating configuration of 10 to 30 seats, excluding pilot seats, be equipped with TCAS I under a longer than normal compliance period.

Cost-Benefit Analysis

Executive Order 12291 of February 17, 1981, requires that to the extent permitted by law, regulatory action not be taken unless the potential benefits to society for the regulation outweigh potential societal costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress may be said to have already determined that this final rule is in the public interest: that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule be promulgated (The Airport and Airway Safety and Capacity Expansion Act of 1987: Pub. L. 100–223). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify taking this rulemaking action (which has already been done through congressional action), but to estimate dollar costs and benefits to promote understanding of the impact of the rule.

Costs

The FAA finds that the revisions to Parts 1 and 91 will have no cost impact. The amendments, however, to Parts 121, 125, 129, and 135 will cause affected certificate holders to incur costs.

The FAA recognizes that there will be costs associated with the amendments to Part 129. These costs are likely to be similar to those incurred by affected Parts 121 and 135 certificate holders, but have not been quantified because the burden of compliance will not be directly borne by any sector of U.S. society.

The methods and assumptions used in this analysis to prepare the final cost and benefit estimates for the revisions to Parts 121, 125, and 135 have been developed by the FAA. Data used to develop cost estimates at the NPRM stage of rulemaking were obtained from manufacturers, air carriers, avionics repair facilities, and industry trade associations. The FAA has updated this information and conducted additional

research to respond to the comments concerning the economic impact estimates of various proposals. The information obtained has been used to formulate the final cost estimates of the rule. The cost and benefits calculated for the final rule are projected over the estimated 15-year life cycle of TCAS equipment. Therefore, this analysis compares the costs and benefits of TCAS II equipment for Parts 121 and 125 over a 15-year period of 1989 to 2003. To allow sufficient time for the development and certification, this rule does not require the use of TCAS I until 1996. Accordingly, to reflect the longer than normal compliance period, the analysis for Part 135 has been extended over the 15-year period of 1993 to 2007.

New § 121.356 will have an economic impact on the 3,365 existing airplanes expected to be in service in 1989 and 3,100 airplanes expected to be manufactured between 1989 and 2003 because these airplanes will be required to be equipped with a TCAS II system. The estimated cost of this requirement is $806.3 million in 1987 dollars and $543.0 million at a present worth discount rate of 10 percent over the 15-year period of 1989 to 2003.

The amendments to Part 121 will also require that air carriers develop and implement an FAA-approved TCAS II training program for their captains and first officers. The training program will require that air carriers install approved TCAS II aerodynamic data programs in their flight simulators and provide an additional one and a half hours of classroom instruction during initial training for their existing and newly-hired flightcrews. As part of the classroom instruction, certificate holders will be required to use a real time interactive device to complete transfer of system knowledge from the classroom to the cockpit. The estimated cost of modifying the 150 flight simulators currently in use by Part 121 certificate holders is $2.2 million in 1987 dollars and $2.0 million discounted at a present worth rate of 10 percent in the first year the rule is in effect. The cost of acquiring the small computers to be used as interactive training devices to transfer and reinforce classroom instruction is estimated to be $462 thousand in 1987 and $420 thousand discounted the first year the rule is in effect.

The estimated cost of requiring captains and first officers of the 149 affected Part 121 certificate holders to undergo additional classroom training is $24.5 million and $13.7 million discounted over the projected time period. Finally, the onetime cost of developing an FAA-approved TCAS II training program is estimated to be $3.7 million in 1987 dollars and $3.4 million discounted at a rate of 10 percent in the first year the rule is in effect. This analysis indicates that the total cost of compliance to Part 121 certificate holders with the equipment acquisition, installation, maintenance, and flight crewmember training requirements contained in this rule is estimated to have a present value of $562.5 million over the 15-year period of 1989 to 2003.

The addition of § 125.224 will require that airplanes with a passenger seating configuration, excluding any pilot seats, of more than 30 seats be equipped with TCAS II. The estimated cost of equipping the 22 airplanes now operating under the rule of Part 125 is $2.5 million in 1987 dollars and $2.3 over the 15-year period of 1989 to 2003.

The amendments to Part 135 will require that all turbine powered airplanes with 10 to 30 passenger seats be equipped with TCAS I. In addition, the rule will require that all operators of TCAS I equipped airplanes have an FAA-approved TCAS I training program for flight crewmembers.

The estimated cost of equipping 2,772 airplanes with TCAS I units is $34.1 million in 1987 dollars and $14.7 million discounted over the 15-year projected service life of the equipment of 1994 to 2008. The estimated cost of requiring the flightcrews of affected air taxi and commuter operators to undergo additional classroom training during the initial phase of flight training is $1.3 million in 1987 dollars and $0.7 million at a 10 percent present worth rate. Finally, affected Part 135 operators required to have an FAA-approved training program will incur a one-time cost estimated to be $1.0 million in 1987 dollars and $.9 million discounted at 10 percent the first year the rule is in effect. On the basis of the above, the aggregate impact of these amendments on affected air taxi and commuters is $36.5 million in 1987 dollars and $16 million when discounted at 10 percent over the 15-year period of 1993 to 2007.

Benefits

The TCAS rule is expected to provide potential benefits primarily in the form of improved safety to the aviation community and flying public. Such safety, for example, will take the form of reduced casualty losses (namely, fatalities and property damages) as the result of a lowered likelihood of midair collisions.

In general terms, the benefits of an effective airborne traffic alert and collision avoidance system in reducing the risk of midair collisions system in reducing the risk of midair collisions have been obvious for many years. As air traffic continues to increase and concentrate at terminal areas, the growing consensus of both the general public and most aviation professionals is that such a system would be a valuable safety addition. In 1987, Congress determined that requiring TCAS II in most large aircraft is in the public interest. Although experienced airspace system operators also agree that the system would be beneficial, accurately quantifying benefits is difficult because (fortunately) there have been few actual Part 121 midair collisions in recent years. At the time of the notice, the FAA developed a mathematical model to assess the increase in collision risk that would result from the projected growth in aviation traffic activity. The FAA used a "square law model" to forecast that four midair collisions involving a large airplane and 24 midair collisions of taxi and commuter airplanes would occur if no additional safety measures were taken to offset the affects of traffic growth. Since that time, the FAA has analyzed the issue further, and has concluded that although the "square law model" is simple to apply and yields specific results, the air traffic control system is too complex for the model to be expected to provide reasonably accurate results. For this reason, the FAA has changed the basis of its benefits analysis for the final rule. The fact is, that given the very few midair collisions involving large aircraft that have occurred in recent years, and given the air traffic control improvements that have occurred and will occur shortly (such as new Mode C requirements), it is not possible to reasonably forecast specific numbers of future midair collisions. Also, the FAA is unable to allocate specific numbers of future midair collisions that will be avoided in the future between the new Mode C requirements and this TCAS rule. Instead of attempting to do this, the FAA has chosen to estimate a range of midair collisions that may occur. Currently, the stage is set for a midair collision only when one or both pilots of two aircraft make a mistake *and* the ATC system fails *and* TCAS fails. In the enroute system, TCAS plays a somewhat stronger role where ATC radar coverage does not exist.

The above factors tend to reduce the number of future midair collisions. On the other hand, steadily increasing traffic levels tend to increase the risk. In an attempt to estimate the range of midair collisions within which the actual number of future midair collisions of large aircraft will fall, the FAA employed a Poisson distribution. Based on a history of two collisions in the recent past, the Poisson distribution indicates that there is a 60 percent probability two or more collisions in the future forecast period, and a 95 percent probability that the number will not exceed seven. The FAA believes that the range of two to seven is a reasonable expectation of the number of midair collisions involving a large aircraft during the next 15 years. In monetary terms, over the subject time period, this rule is expected to accrue potential benefits ranging between $207 million and $724 million (discounted, in 1987 dollars).

A similar analysis of the number of Part 135 midair collisions that may be avoided through TCAS I yields a range of 4 to 14 during the 15-year analysis period. Based on the moderate cost of TCAS I, this part of the rule is cost-beneficial throughout the range of potential midair collisions avoided. For example, in monetary terms, over the subject time period, this rule is expected to accrue potential benefits ranging between $27 million and $97 million (discounted, in 1987 dollars), compared to costs of $18 million (which included $2 million for the Mode C rule).

In view of the aforementioned discussion on benefits for Parts 121 (including Part 125) and 135, the FAA believes that a share of the potential benefits expected to accure from implementation of this rule must be attributed to the Mode C rule, though to what extent is not known. This situation is due to the belief that the benefits of the TCAS and Mode C rules are inextricably linked.

Comparison of Parts 121 and 135 Costs and Benefits

Addressing only 14 CFR Parts 121 and 135 costs and benefits of this TCAS rule, the cost of compliance is estimated to be $563 million and $18 million, respectively (discounted) in 1987 dollars. The benefits of this rule, however, are difficult to quantify for two reasons. The first is associated with the uncertainty of estimating the number of midair collisions that will occur in the future absent any improvements in the airspace system over and above what currently exists. This difficulty has already been discussed at length in the detailed regulatory evaluation and the FAA has chosen to consider ranges of 2 to 7 and 4 to 14 collisions involving Parts 121 and 135 operators, respectively, may occur in the forecast period.

The second reason benefits are difficult to forecast accurately is that at about the same time this rule becomes effective a separate rule will become effective expanding Mode C requirements. Both rules are aimed at reducing the risk of midair collisions and are inextricably linked. The FAA is unable at this time to document the separate impacts of these two rules in reducing the risk.

The FAA made an earlier estimate of the dollar value benefits associated with avoiding future midair collisions as part of its evaluation of the Mode C rule. That estimate was significantly lower than the updated estimate prepared for this rule. The difference is only partly explained by the fact that the Mode C rule estimate was for a 10-year period while the estimate for this rule covers a 15-year period into the future (to allow for the relatively long periods before compliance is required).

Both evaluations used a Poisson distribution model as a basis to estimate the number of future midair collisions that might be expected in the absence of any further airspace system improvements to prevent them. In the Mode C analysis, the FAA very conservatively accepted the low side of the distribution (two accidents) in calculating benefits. However, based on the belief that U.S. commercial aircraft operations are forecast to more than double during the analysis period, the FAA now believes that a better approach is to analyze a range of values.

In view of the difficulties discussed above, the FAA believes that the most realistic approach to comparing benefits and costs is to compare the total Part 121 costs of the TCAS rule plus the Mode C rule with the full estimated range of possible Part 121 benefits. In a similar manner, total Part 135 TCAS rule plus Mode C rule are compared to the total range of Part 135 benefits.

In the case of Part 121 operator, the cost of the Mode C rule is negligible because virtually all Part 121 aircraft are already in compliance with the rule. Table 1 shows the cost of saving one life through the range of estimated Part 121 midair collisions. As indicated in the table, these cost-per-life-saved figures are based on an estimated total Part 121 TCAS cost of $563 million and no attempt was made to allocate some benefits to the Mode C rule. (A similar exercise can be performed for Part 135 from Table 1.)

TABLE 1.—ESTIMATED TCAS II (PART 121) AND TCAS I (PART 135) COST OF SAVING LIVES

[1987 dollars]

Range of potential midair collisions		Estimated discounted benefits (TCAS plus Mode C rules) ($ millions)		Estimated cost of saving one life in ($ thousands)	
Part 121	Part 135	Part 121	Part 135	Part 121	Part 135
7	14	$724	$97	$710	$0
6	12	621	83	880	20
5	10	517	69	1,120	70
4	8	414	55	1,480	120
3	6	310	42	2,080	290
2	4	207	27	3,280	550
1	2	103	14	6,830	1,360

The FAA concludes that this TCAS rule is warranted because it will contribute to an overall enhancement of transport and commuter categories airplane safety and utility which will both promote and enhance public confidence in, and utilization of, the U.S. air transportation system. Although the FAA has not yet quantified the value of public confidence in air transportation, it believes there is a very real cost to the system when public confidence is reduced through media coverage of each major midair collision tragedy. The fragility of public confidence is difficult to quantify, but the potential benefits in this regard stemming from avoidance of a major midair collision is very real and substantial. For example, the near-to-midair term loss of passenger bookings following the publicity of a midair collision is readily acknowledged within the industry. Even a special Government safety review of a particular air carrier

can have a temporary adverse impact on yields. The qualitative nature of this consideration does not render it less significant as a factor in determining to proceed with the TCAS rulemaking action.

The Regulatory Impact Analysis that has been placed in the docket contains detailed information related to the potential costs and benefits of those amendments to Parts 121, 125, and 135 that are expected to accrue from implementation of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. In consideration of the cost information discussion under the Regulatory Impact Analysis, the FAA concludes that these amendments to Parts 121, 125, and 135 will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that will reduce the cost of compliance yet achieve the levels of protection sought by these amendments. It can be pointed out, however, that the majority of small entities affected by this rule are Part 135 operators (small air taxis and small commuters). These small businesses will have 6 years to comply with this rule (as opposed to 3 years for Parts 121 and 125 operators). The average total cost impact of this rule on a small air taxi operator or small commuter for TCAS I units is estimated at $36,000 (or $4,700 annualized) and $76,000 (or $10,000 annualized), respectively, over the 15-year period 1989 to 2003. For Parts 121 and 125 operators, the average total cost for TCAS II units is estimated to be $734,000 (or $96,000 annualized) over the 15-year period.

International Trade Impact Statement

These amendments will have little or no impact on trade opportunities of U.S. firms doing business overseas or for foreign firms doing business in the United States. These rules will impose the same requirements on both domestic operators under Parts 121, 125, and 135 of the FAR and foreign air carriers subject to Part 129. The cost of compliance with these rule amendments to foreign carriers flying into the United States under Part 129 is likely to be very similar to the cost incurred by domestic operators. Thus, neither domestic nor foreign air carriers will be affected disproportionately by these amendments. These rules, therefore, will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Federalism Implications

The regulations adopted herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination, and the International Trade Impact Analysis, the FAA has determined that this rule is a major rule under Executive Order 12291. In addition, in consideration of the cost information discussion under the Regulatory Impact Analysis, the amendments to Parts 121, 125, and 135 will have a significant economic impact on a substantial number of small entities. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory impact analysis of this final rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects

14 CFR Part 1

Air carriers, Aircraft, Airplanes, Air safety, Aviation safety, Safety.

14 CFR Part 91

Air Traffic control.

14 CFR Part 121

Air carriers, Aircraft, Airspace, Air traffic control, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airplanes, Air traffic control.

14 CFR Part 129

Air carrier, Aircraft, Air traffic control.

14 CFR Part 135

Aircraft, Airplanes, Airspace, Air traffic control, Aviation safety, Safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Parts 1, 91, 121, 125, 129, and 135 of the Federal Aviation Regulations (14 CFR Parts 1, 91, 121, 125, 129, and 135) as follows:

PART 1—DEFINITION AND ABBREVIATIONS

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 1.1 is amended by adding new definitions to read as follows:

§ 1.1 Definitions.

* * * * *

"TCAS I" means a TCAS that utilizes interrogations of, and replies from, airborne radar beacon transponders and provides traffic advisories to the pilot.

"TCAS II" means a TCAS that utilizes interrogations of, and replies from airborne radar beacon transponders and provides traffic advisories and resolution advisories in the vertical plane.

"TCAS III" means a TCAS that utilizes interrogation of, and replies from, airborne radar beacon transponders and provides traffic advisories and resolution advisories in the vertical and horizontal planes to the pilot.

* * * * *

3. Section 1.2 is amended by adding a new abbreviation as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"TCAS" means a traffic alert and collision avoidance system.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

4. The authority citation for Part 91 continues to read as follows:

Authority: U.S.C. 1301(7), 1303, 1344, 1352 through 1355, 1401 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

5. Section 91.26 is added to read as follows:

§ 91.26 Traffic alert and collision avoidance system equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* Any traffic alert and collision avoidance system installed in a U.S.-registered civil aircraft must be approved by the Administrator.

(b) *Traffic alert and collision avoidance system, operation required.* Each person operating an aircraft equipped with an operable traffic alert and collision avoidance system shall have that system on and operating.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a,) 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

7. Section 121.356 is added to read as follows:

§ 121.356 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) After February 9, 1995, no person may operate a combination cargo/passenger airplane that has a passenger seat configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with an approved traffic alert and collision avoidance system.

(c) The appropriate manuals required by § 121.131 of this part shall contain the following information on the TCAS II System required by this section:

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operative for the TCAS to function properly.

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6000 POUNDS OR MORE

8. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. Section 125.224 is added to read as follows:

§ 125.224 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no person may operate a large airplane that has a passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with an approved TCAS II traffic alert and collision avoidance system and the appropriate class of Mode S transponder.

(b) The manual required by § 125.71 of this part shall contain the following information on the TCAS II system required by this section.

(1) Appropriate procedures for—

(i) The operation of the equipment; and

(ii) Proper flightcrew action with respect to the equipment.

(2) An outline of all input sources that must be operating for the TCAS II to function properly.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

10. The authority citation for Part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. Section 129.18 is added to read as follows:

§ 129.18 Traffic Alert and Collision Avoidance System.

(a) After December 30, 1991, no foreign air carrier may operate in the United States a turbine powered airplane that has a maximum passenger seating configuration, excluding any pilot seat, of more than 30 seats unless it is equipped with—

(1) A TCAS II traffic alert and collision avoidance system capable of coordinating with TCAS units that meet the specifications of TSO C–119, and

(2) The appropriate class of Mode S transponder.

(b) After February 9, 1995, no foreign air carrier may operate in the United States a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with a traffic alert and collision avoidance system. If a TCAS II system is installed, it must be capable of coordinating with TCAS units that meet the specifications of TSO C–119.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

12. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

13. Section 135.180 is added to read as follows:

§ 135.180 Traffic Alert and Collision Avoidance System.

(a) After February 9, 1995 no person may operate a turbine powered airplane that has a passenger seating configuration, excluding any pilot seat, of 10 to 30 seats unless it is equipped with an approved traffic alert and collision avoidance system.

(b) The airplane flight manual required by § 135.21 of this part shall contain the following information on the TCAS I system required by this section:

(1) Appropriate procedures for—

(i) The use of the equipment; and

(ii) Proper flightcrew action with respect to the equipment operation.

(2) An outline of all input sources that must be operating for the TCAS to function properly.

Issued in Washington, DC, on January 5, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89–451 Filed 1–5–89; 4:15 am]

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January 10, 1989

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 175

Implementation of the ICAO Technical Instructions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-184E; Amdt. No. 171-99, 175-42]

Implementation of the ICAO Technical Instructions

January 3, 1989.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations (HMR) in order to permit the offering, acceptance and transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1989-90 edition of the ICAO Technical Instructions becomes effective on January 1, 1989, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0656.

SUPPLEMENTARY INFORMATION: On September 15, 1988, RSPA published a notice of proposed rulemaking (Docket HM-184E, Notice No. 88-4) in the **Federal Register** (53 FR 35968) which requested comments on RSPA's intention to incorporate by reference the 1989-1990 edition of the ICAO Technical Instructions in § 171.7(d) of the HMR, and revise § 175.10(a)(21) to align the requirements in the HMR with the ICAO Technical Instructions. The proposed amendment to § 175.10(a)(21) would permit "hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element at all times. Gas refills for such curlers are not permitted in checked or carry-on baggage."

Four comments were received in response to Notice 88-4. One commenter expressed support for the incorporation by reference of the 1989-1990 ICAO Technical Instructions into the HMR. The three other commenters suggested editorial revisions to the provision. The National Business Aircraft Association (NBAA) recommended that a qualifying term such as box, package, or hair curling unit be added following the word "one", and noted that the proposed provision contains no limitation on the size of the hair curling unit. RSPA believes that the proposed wording adequately conveys that no more than one hair curling unit is permitted per passenger or crew member. Further, NBAA provided no information to support the need for a restriction on the size of these hair curling units. RSPA has not adopted these suggested changes in this final rule. The Air Transport Association (ATA) and the Airline Pilots Association (ALPA) both suggested that the words "at all times" be included in the provision, with ALPA going a step further by suggesting that the phrase "the hair curler shall not be used on board the aircraft" be added. As suggested by both ATA and ALPA, the provision would read: "Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element *at all times. The hair curler shall not be used on board the aircraft.*" ATA and ALPA stated that these changes are needed to emphasize that the hair curling units may not be used on board an aircraft. RSPA finds the suggested language is redundant. The requirement that the safety covery be securely fitted over the heating element is unqualified, that is, the cover cannot be removed in order to use the hair curler in flight. Because the additional language is not necessary, and for consistency with the ICAO Technical Instructions, RSPA has not adopted the suggested change in this final rule.

Administrative Notices.

Executive Order 12291

The RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) A regulatory evaluation is available for review in the Docket.

Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely to be affected by this final rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 171

Hazardous materials transportation. Incorporation by reference.

49 CFR Part 175

Hazardous materials transportation. Air carriers.

In consideration of the foregoing, 49 CFR Parts 171 and 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.7, paragraph (d)(27) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284-AN/905 (ICAO Technical Instructions), 1989-1990 edition.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for Part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 175.10, paragraph (a)(21) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(21) Hair curlers containing hydrocarbon gas, no more than one per passenger or crew member, provided that the safety cover is securely fitted over the heating element. Gas refills for such curlers are not permitted in checked or carry-on baggage.

* * * * *

Issued in Washington, DC on January 3, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-271 Filed 1-9-89; 8:45 am]

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federal register

Tuesday
January 10, 1989

Part VI

The President

Executive Order 12664—Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of its Employees Represented by the Brotherhood of Locomotive Engineers

Federal Register
Vol. 54, No. 6
Tuesday, January 10, 1989

Presidential Documents

Title 3—

The President

Executive Order 12664 of January 6, 1989

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Brotherhood of Locomotive Engineers

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Locomotive Engineers.

The dispute has not heretofore been completely adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. section 159a).

Section 9A(e) of the Act provides that the President, upon such a request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective January 7, 1989, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
January 6, 1989.

[FR Doc. 89-643
Filed 1-9-89; 11:00 am]
Billing code 3195-01-M

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[FV-89-012]

Irish Potatoes Grown in Colorado Area 2; Reduction in Minimum Size Requirement for Certain Long Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule reduces the minimum size requirement for certain long potato varieties from 2 inches to 1⅞ inches in diameter. This action is expected to foster increased consumption and have a positive impact on the industry.

DATES: Interim rule effective January 11, 1989; comments which are received by February 10, 1989, will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5160.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987–88 season totaled 29,685 loads at about 480 hundredweight (cwt.) per load. Of the total, about 97 percent or 13,884,416 cwt., entered the fresh market and three percent (364,339 cwt.) was shipped to processors.

The breakdown of shipments by variety was about 69.6 percent Centennial Russets, about 23.6 percent Russet Burbanks, about 6.7 percent reds, and about 0.2 percent other varieties.

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/Size B.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 [53 FR 8146, March 14, 1988] and, with the exception of the maturity requirements, are in effect all year long. Currently, round variety potatoes must grade at least U.S. No. 2 and be at least 2⅛ inches in diameter. Russet Burbank potatoes must grade at least U.S. No. 2 and be at least 1⅞ inches in diameter. All other long varieties must be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

This interim final rule reduces the minimum size requirement for long variety potatoes, except for the Centennial Russet and Russet Burbank varieties, from 2 to 1⅞ inches in diameter. This change was unanimously recommended by the San Luis Valley Potato Administrative Committee Area 2.

Until recently, virtually all long type potatoes grown in the production area were either of the Russet Burbank or Centennial Russet variety. Because these two varieties have different physical characteristics, different size requirements were established for each. The Russet Burbank, which is longer and thinner than the Centennial Russet, is required to be at least 1⅞ inches in diameter. Other long varieties, including the Centennial Russet, are currently required to be at least 2 inches in diameter.

This year, a number of new varieties of long potatoes were planted in the San

Luis Valley, including the Russet Norkotah, Russet Nugget, Nooksack, and Targhee. During harvest of the crop, it was found that these other long varieties are more similar in size and shape to the Russet Burbank than the Centennial Russet. The committee therefore recommended that these varieties be subject to the 1⅝-inch minimum diameter size requirement established for Russet Burbanks rather than the 2-inch minimum set for other long varieties.

The industry estimates that absent this change, about 15 to 18 percent of these new variety potatoes would be precluded from being shipped to fresh outlets. This action is therefore expected to increase the amount of marketable potatoes and improve returns to growers. This change is not expected to adversely affect the market for larger potatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

Because the current import regulation [§ 980.1], specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon [7 CFR Part 945] during each month of the marketing year, this change in the handling regulation for Colorado Area 2 potatoes will not affect potato import requirements.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Pursuant to 5 U.S.C. 533, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the following reasons: (1) Shipments of long variety potatoes have begun, and this relaxation of requirements should apply to as many shipments as possible; (2) potato handlers are aware of this action which was unanimously recommended by the committee at a public meeting, and they will not need additional time to comply with the changed requirements; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 948.386 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

NOTE:—[This section will appear in the Code of Federal Regulations]:

§ 948.386 Handling regulations.

(a) • • •

(2) Centennial Russet. U.S. No. 2, or better grade, 2 inches minimum diameter or 4-ounce minimum weight.

(3) All other long varieties. U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

• • • • • •

Dated: January 6, 1989.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–532 Filed 1–10–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–88–129 FR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1988–89 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification as a final rule, the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1988–89 marketing year which began June 1, 1988. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, the agency responsible for local administration of the order.

EFFECTIVE DATE: June 1, 1988, through May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 170 producers hold "Class 1" oil (Scotch) allotment base and 143 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), at its August 10, 1988, meeting, unanimously recommended that the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1988–89 marketing year be increased. The 1988–89 salable quantities and allotment percentages for those classes of oil were first published in a final rule in the March 1, 1988, issue of the Federal Register (53 FR 6129). Subsequently, an interim final rule increasing the salable quantity and allotment percentage for Scotch spearmint oil for the 1988–89 marketing year was published in the August 18, 1988, issue of the Federal Register (53 FR 31281). Comments on this interim final rule were to be received by September 19, 1988. No comments were received. That interim final rule increased the 1988–89 salable quantity for Scotch spearmint oil from 650,131 to 766,387 pounds and the allotment percentage from 39 to 46 percent.

An interim final rule, modifying the August 18, 1988, interim final rule by increasing the salable quantity of Scotch spearmint oil from 766,387 to 883,011 pounds and increasing the allotment percentage from 46 to 53 percent, was published in the September 30, 1988, issue of the Federal Register (53 FR 38281). In addition, that interim final rule increased the salable quantity of Native spearmint oil from 701,077 to 793,143 pounds and increased the allotment percentage form 38 to 43 percent. Those revisions were issued pursuant to § 985.51(b) of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

At its August 12, 1987, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1988–89 marketing year to be 761,063 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 761,063 pounds. The Committee estimated that 15,703 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 745,360 pounds as the salable quantity needed. This figure was further reduced by 100,000 pounds which was the amount of Far West Scotch sales estimated to be filled by production from outside the production area (South Dakota). This left a salable quantity needed of 645,360 pounds. This quantity, divided by the total of all allotment bases of 1,667,002 pounds, resulted in 38.7 percent which was the computed allotment percentage. This figure was adjusted to 39 percent and established as the 1988–89 Scotch allotment percentage which resulted in a 1988–89 salable quantity of 650,131 pounds.

At the time of the July 6, 1988, Committee meeting, the 1988–89 salable percentage of 39 percent, when applied to the then current total allotment base of 1,666,059 pounds, gave a 1988–89 salable quantity of 649,763 pounds. Since all growers either produced their individual salable quantity or filled any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1988, was 683,644 pounds, and was the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 33,881 pounds of Scotch oil, higher than the Committee had estimated.

The Committee, at its July 6, 1988, meeting, recommended increasing the salable percentage by 7 percent, from 39 to 46 percent, thus making an additional 116,624 pounds available to the market. The basis for this recommendation was that when these additional pounds are added to the total supply available of 683,644 pounds, the resulting 800,268 pounds is between the five-year average sales of 758,682 pounds and the highest year of sales of 868,242 pounds. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 39 to 46 percent resulting in an increase in the salable quantity from 650,101 to 766,387 pounds. This figure added to the June 1, 1988, carry-in of 33,881 pounds resulted in a total available supply of 800,268 pounds. Thus, the interim final rule published in the August 18, 1988, issue of the Federal Register (53 FR 31281) increased the salable quantity for Scotch spearmint oil from 650,101 to 766,387 pounds and increased the allotment percentage from 39 to 46 percent.

Estimates at the time of the July 6, 1988, Committee meeting indicated that a maximum of 50 percent of a normal crop would be harvested in the Mideast this year. The demand for Far West Scotch oil has increased as buyers of Midwest Scotch oil substituted Far West oil for Midwest oil. A considerable amount of contracting of the 1988–89 crop, including the additional quantity of Scotch oil recommended at the July 6, 1988, meeting, has occurred. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were required.

At their August 10, 1988, meeting, the Committee unanimously voted to make more Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. The Committee therefore recommended that the 1988–89 Scotch salable percentage be increased from 46 to 53 percent resulting in an increase in the salable quantity from 766,387 to 883,011 pounds. This figure, added to the June 1, 1988, carry-in of 33,881 pounds, resulted in a total available supply of 916,892 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

[In pounds]

	Recommendation Aug. 12, 1987	Recommendation July 6, 1988	Recommendation Aug. 10, 1988
(1) Carry-in	15,703	33,881	33,881
(2) Quantity available	865,834	800,268	916,892
(3) Desirable carryout	0	0	0
(4) Salable quantity[1]	645,360	766,387	883,011
(5) Total allotment bases for Scotch oil	1,667,002	1,666,059	1,666,059
(6) Allotment percentage (⅝×100)	39	46	53
(7) Adjusted salable quantity	650,101	766,387	883,011

[1] Salable quantity equals trade demand minus carry-in and minus an additional 100,000 pounds of Scotch oil expected to be available from South Dakota, which is outside the production area.

Thus, the Department determined an allotment percentage of 53 percent should be established for Scotch spearmint oil for the 1988–89 marketing

year. This percentage made available 916,892 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

In addition, at its August 12, 1987, meeting, the Committee estimated trade demand for Native spearmint oil for the 1988–89 marketing year to be 750,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 750,000 pounds. The Committee estimated that 50,000 pounds would be carried-in on June 1, 1988. This amount was deducted from the total supply needed leaving 700,000 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,844,940 pounds, resulted in 37.9 percent which was the computed allotment percentage. This figure was adjusted to 38 percent and established as the 1988–89 Native allotment percentage which resulted in a 1988–89 salable quantity of 701,077 pounds based on the estimated total base of 1,844,940 pounds.

The 1988–89 salable percentage of 38 percent, when applied to the revised total allotment base of 1,841,330 pounds, gave a 1988–89 salable quantity of 699,705 pounds. Since all growers will either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which will be available, when this figure is combined with the actual carry-in on June 1, 1988, is 703,107 pounds, and is the total supply available for the 1988–89 marketing year. Carry-in on June 1, 1988, was 3,402 pounds of Native oil, which was lower than the Committee had estimated.

Extensive surveys of growers and buyers led the Committee to an estimate of 610,479 pounds as the amount of the 1988–89 total available supply that was committed to the market. This was the highest amount that has been sold or committed to be sold at that time of the year. When the estimated amount that is committed to the market of 610,479 pounds is deducted from the total supply available of 703,107 pounds, the result of 92,628 pounds is the amount that is currently available to the market. This was considered by the Committee to be less than is desirable for this early in the marketing year. In order to meet the anticipated increase in trade demand, a higher salable quantity and allotment percentage for Native oil was required. The Committee recommended increasing the salable percentage by 5 percent, from 38 to 43 percent, thus making an additional 92,067 pounds (0.05 × 1,841,330 pounds which is the current total allotment bases for Native oil) available to the market. The Committee decided that this figure could meet immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1988–89 Native salable percentage be increased from 38 to 43 percent resulting in an increase in the salable quantity from 699,705 to 791,772 pounds. This figure added to the June 1, 1988, carry-in of 3,402 pounds resulted in a total available supply of 795,174 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

[In pounds]

	Recommendation Aug. 12, 1987	Recommendation Aug. 10, 1988
(1) Carry-in	50,000	3,402
(2) Quantity available	750,000	795,174
(3) Desirable carryout	0	0
(4) Salable quantity	701,077	791,772
(5) Total allotment bases for Native oil	1,844,940	1,841,330
(6) Allotment percentage (% × 100)	38	43

Thus, the Department determined an allotment percentage of 43 percent should be established for Native spearmint oil for the 1988–89 marketing year. This percentage made available 795,174 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

An interim final rule establishing those allotment percentages and salable quantities was issued on September 28, 1988, and was published in the **Federal Register** on September 30, 1988 (53 FR 38281). Comments were solicited from interested persons through October 31, 1988. No comments were received. Thus the allotment percentages and salable quantities as established by that interim final rule are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 1, 1988, issue of the **Federal Register** (53 FR 6129) and the interim final rule published in the August 18, 1988, issue of the **Federal Register** (53 FR 31281), in connection with the initial establishment of the salable quantities and allotment percentage for Scotch and Native spearmint oils, the Committee's recommendation and other information, it is found that to amend § 985.208 (53 FR 6129) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by increasing the quantities of Scotch and Native spearmint oils that may be marketed for the 1988–89 marketing year; (2) it should be effective as soon as possible to enable handlers to satisfy current market needs for Scotch and Native spearmint oils; and (3) this final rule adopts the provisions of the interim rule without modification.

List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 985.208 [Amended]

2. Accordingly, the interim final rule amending § 985.208, which was published at 53 FR 38281 on September 30, 1988, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: January 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–533 Filed 1–10–89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1479

Forage Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with a revision of § 1479.6(c), with respect to eligible costs for which cost-sharing is

authorized and minor changes for clarity, the interim rule published in the **Federal Register** on October 21, 1988, at 53 FR 41309 for the Forage Assistance Program (FAP) provided for in section 103 of the Disaster Assistance Act of 1988 (Pub. L. 100–387).

DATE: The effective date of this final rule is January 11, 1989.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013; telephone: 202–447–6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed for compliance with Executive Order 12291 and Department Regulation 1512–1 and has been classified as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Forage Assistance Program; Number—10.FAP; as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule, published in the **Federal Register** on October 21, 1988 (53 FR 41309), set forth the terms and conditions for the conduct of the Forage Assistance Program (FAP) provided for in section 103 of the Disaster Assistance Act of 1988 (the 1988 Act) (Pub. L. 100–387). No comments were received with respect to this rule. The interim rule is adopted as a final rule except for revisions in § 1479.6(c) and corrections of minor typographical or organizational errors.

Section 1479.6(c) has been revised to remove the requirement that the costs be "paid" by the eligible person to be considered "incurred" for FAP purposes. This will permit billing by third persons to suffice and will permit compensation for the eligible person's own labor and related costs. Section 1479.6(c) has been revised in two other respects as well. As revised, it is specifically provided that eligible costs must be "reasonable" and, unless otherwise approved by the Agricultural Stabilization and Conservation Service, the practice or activity for which the costs were incurred must have been completed. These revisions will allow for full compensation within the limits of the 1988 Act. They will also avoid unnecessary public expense.

List of Subjects in 7 CFR Part 1479

Administrative practices and procedures, Agreements, Forage, Reseeding established pasture, Cost-share assistance, and Drought damage.

Final Rule

Accordingly, the interim rule amending 7 CFR Part 1479 which was published at 53 FR 41309–41312 on October 21, 1988, is adopted as a final rule with the following changes:

PART 1479—FORAGE ASSISTANCE PROGRAM

1. The authority citation for Part 1479 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103 of the Disaster Assistance Act of 1988, 102 Stat. 932 (7 U.S.C. 1471d *note*).

§ 1479.6 [Amended]

2. Section 1479.6(a) is amended by adding, in the second sentence, a comma after "and labor" and a comma after "county committee".

3. Section 1479.6(c) is revised to read as follows:

* * * * *

(c) Eligible costs shall only include reasonable costs which have been incurred for which the eligible person has presented adequate documentation and, except as otherwise authorized by DASCO, shall not include costs for a practice or activity which has not been completed.

4. Section 1479.6(f) is amended by changing "(i)" to "(1)".

§ 1479.7 [Amended]

5. Section 1479.7(c) is amended by removing the last sentence of that paragraph; by redesignating that paragraph as "(c)(1)"; by changing "(1)", "(2)", "(3)", and "(4)", to read "(i)", "(ii)", "(iii)", and "(iv)", respectively; and, by adding a new paragraph, (c)(2), to read as follows:

(2) Federal, State and local governments and agencies and political subdivisions thereof, shall not be considered to be eligible persons for purposes of this part.

§ 1479.8 [Amended]

6. Section 1479.8 is amended by, in paragraph (a), changing "Application for" to "Application for a"; and, in paragraph (b)(3), by adding a comma after "designee".

Signed at Washington, DC on January 6, 1989.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–592 Filed 1–10–89; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1951

Implementation of Internal Revenue Service Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to establish procedures for referring to the Secretary of the Treasury delinquent amounts owed to FmHA for collection by offset against Federal income tax refunds. The intended effect is to strengthen the ability of FmHA to collect delinquent debts.

EFFECTIVE DATE: January 11, 1989.

ADDRESS: The collection of information requirements contained in this rule will be submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, telephone (202) 475–4705, Farmers Home Administration, U.S. Department of Agriculture, Room 5505, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is amending Subpart C of Part 1951 of Title 7 of the Code of Federal Regulations to establish procedures to be followed to implement the authority for Federal agencies to refer debts to the Department of the Treasury for collection by offset against tax refunds owed to individuals. Tax refund offset is authorized by 31 U.S.C. 3720A and Treasury regulations at 26 CFR 301.6402–6T. Due to the lack of permanent legislation allowing IRS offset, FmHA has not published a permanent rule in the past. However, tax refund offset has recently been extended for three years and FmHA plans to participate this year.

Implementation of the tax refund offset initiative in 1988–1989 through regulations is essential to effective Federal debt collection. The IRS has established a deadline of January 1, 1989, for referral of debts to be collected by offset against tax refunds. By that date, FmHA must have provided each debtor whose account FmHA proposes to refer to the IRS with a notice of proposed offset, and a period of at least 60 days within which to submit evidence regarding that debt. To complete this process before January 1, 1989, notices must be sent before November 1, 1988. Thus, unless deadlines and other procedural rules applicable to tax refund offset are established before the commencement of the upcoming tax refund season, there is a significant likelihood of substantial loss to the Government.

FmHA is promulgating this regulation on a final basis in order to establish procedures applicable to the collection of debts by tax refund offset. Publication of these regulations on a final basis is permissible under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) as a rule of agency procedure. In addition, for the reasons set forth above, FmHA has determined that there is an immediate need for procedures governing tax refund offsets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969 Pub. L. 91–190, an Environmental Impact Statement is not required.

The collection of information requirements contained in this rule, specifically the requirement that borrowers produce documents to demonstrate that a debt is not owed or is not subject to offset, will be submitted to OMB for review. We estimate that 600 borrowers will submit such documentation and the time required will be 15 minutes per borrower, a total of 150 hours.

This activity is listed in the Catalog of Federal Domestic Assistance under (No. 10.410) Low Income Housing Loans (section 502 Rural Housing Loans). For the reasons set forth in the Final Rule and related Notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983), this activity is excluded from the scope of Executive Order 12372 requiring intergovernmental consultation with State and local officials.

FmHA amends its regulations to establish procedures the Agency will follow to implement the authority for Federal agencies to refer delinquent amounts to the Department of the Treasury for collection by offset against tax refunds owed to named persons. (See 31 U.S.C. 3720A). Under this authority, the Internal Revenue Service (IRS) may collect debts referred by Federal agencies through offset against refunds that would otherwise be made to delinquent debtors.

IRS regulations require that debts be reported to a credit bureau before referral for offset. FmHA will publish a regulation permitting credit bureau reporting of borrowers before referral to IRS.

List of Subjects in 7 CFR Part 1951

Account servicing, Accounting, Credit, Loan Programs—Agriculture, Low and moderate income housing loans—Servicing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23 & 7 CFR 2.70.

Subpart C—Offset of Federal Payments to FmHA Borrowers

2. Subpart C is amended by adding §§ 1951.121 through 1951.127 to read as follows:

§ 1951.121 Internal Revenue Service (IRS) offset.

The IRS can reduce a taxpayer's overpayment of tax by the amount of any legally enforceable debt owed to a Federal agency. This subpart establishes procedures to implement IRS offsets. Borrowers referred to IRS for offset will continue to be serviced as required by § 1951.312 of Subpart G of Part 1951 of this chapter.

§ 1951.122 Finance Office screening.

The FmHA Finance Office will perform an initial computer screening to identify accounts potentially eligible for IRS offset. FmHA field offices will further screen these accounts based on the eligibility criteria. The Finance Office will determine the appropriate date for this screening based on IRS deadlines. All overdue accounts except those in one or more of the following categories are potentially eligible for IRS offset:

(a) Account is less than 3 monthly payments overdue (or, for annual payment borrowers, the equivalent of less than 3 monthly payments overdue) or more than 9 years delinquent.

(b) Account has a bankruptcy action pending (BAP).

(c) Account has a foreclosure action pending (FAP).

(d) Account has a transfer pending (TP).

(e) Account has a voluntary conveyance pending.

(f) Account has been accelerated.

(g) Account is subject to approved adjustment (SAA).

(h) Account has a current moratorium.

(i) Account has a suspend code.

(j) Account is overdue by less than $25.

(k) Account has a total unpaid balance (principal and interest) that is less than $100.

(l) Account has been referred to a collection agency, returned from a collection agency or coded collection only.

(m) Account has a loan that is ahead of schedule and the net amount overdue is less than 3 monthly payments, or the equivalent of 3 monthly payments for annual payment borrowers.

(n) Account has an Additional Payment Agreement (APA) in effect and payments under the APA are less than 3 months overdue.

(o) Borrower is a Federal employee, a member of the active reserve, or an employee of the U.S. Postal Service. IRS regulations require salary offset to be used against these individuals in lieu of IRS offset.

(p) Account is eligible for debt settlement. The County Office will immediately initiate debt settlement in accordance with Subpart B of Part 1956 of this chapter.

(q) Borrower has been discharged in bankruptcy but has not reaffirmed debt.

§ 1951.123 Field office screening.

Accounts determined by computer screening in the Finance Office to be potentially eligible will be referred to the IRS and to the appropriate FmHA County Office for review. If the County Office is aware that any account should be removed for any of the above reasons, the County Office will remove the account in accordance with the instructions accompanying the list. Borrowers who are removed by the County Office will not receive an offset letter, and no further action is necessary concerning borrowers removed. The Finance Office will remove those accounts identified as ineligible by County Offices and provide this information to IRS in accordance with IRS deadlines and procedures.

§ 1951.124 Notice to borrowers.

The Finance Office will send FmHA Form Letter 1951–6 to each borrower who still appears to be eligible for IRS offset after County Office screening and a computer screening using the latest account information that is available. This letter must be mailed to ensure that borrowers receive their letters no later than November 1. Borrowers will have until January 1 (60 days from November 1) to provide, in writing, to the County Supervisor evidence that their debt is not at least 3 months delinquent or that the debt is not legally enforceable. Borrowers who reduce their debt to 3 months or less overdue during this 60-day period will not be offset.

§ 1951.125 Processing borrowers' requests not to exercise IRS offset.

If a borrower responds to FmHA Form Letter 1951–6 within 60 days from the date of receipt, the County Supervisor will review the borrower's reasons for believing that the debt is either not more than 3 months overdue or is not legally enforceable. After such determination, the County Supervisor will send the borrower FmHA Form Letter 1951–7 advising the borrower if offset will be exercised.

§ 1951.126 Final referral to IRS.

All accounts not eliminated will be sent to IRS for offset, and a list of those accounts sent to each appropriate County Office. Prior to referring the account to the IRS for offset, the debt must have been reported to a consumer reporting agency pursuant to FmHA regulations governing such reporting. Each County Office will review the list upon receipt and submit Form FmHA 1951–43, "Accounts to be Removed from IRS Offset" in accordance with the FMI for that form. The list of borrowers will be reviewed each week and, if any of the events listed under § 1951.122 of this subpart occurs, Form FmHA 1951–43 will be submitted immediately. This weekly review will continue until September 1 for the previous year's submission, or until action has been taken on each account (offset or removal).

§ 1951.127 Processing of amounts offset.

After IRS effects an offset, IRS will notify the Finance Office. The Finance Office will deduct an amount equal to IRS' processing costs from the amount offset to reimburse the Agency for the cost of processing the offset and will credit the borrower's amount for the amount remaining and will notify the appropriate County Office. The County Supervisor will carefully review the list to ensure that any borrower who would have been eliminated from offset due to the provisions of § 1951.122 of this subpart was not subjected to an offset. If the offset was not correct, the County Supervisor will immediately notify the Finance Office of any such offsets using FmHA Form Letter 1951–5. This Form Letter will be processed by the Finance Office and a refund, including the processing fee, will be sent to the borrower. If the offset is correct, Finance and County Office records will be adjusted accordingly.

Date: December 22, 1988.

La Verne Ausman,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–593 Filed 1–10–89; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

[Docket No. 87–182]

9 CFR Part 92

Importation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator". We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service". These changes are necessary to clarify that authority under these regulations is held by the Administrator, Animal and Plant Health Inspection Service, and not by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service. We are also making several other nonsubstantive changes to ensure that the regulations are clear and terms are used in a uniform and consistent manner.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 92 concern the importation into the United States of certain animals, birds, poultry, and pigeons. These regulations were written before publication of this document, and they imply that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service, is the official responsible for various decisions under these regulations. However, this is not correct. Authority and responsibility belongs to the Administrator, Animal and Plant Health Inspection Service.

Therefore, to clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator", and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service". We are also adding a definition of "Animal and Plant Health

Inspection Service," and deleting the definition of "Deputy Administrator."

We are also making other nonsubstantive changes in the regulations. We are amending the reference in § 92.17 of the regulations to "Veterinary Services" of foreign governments. We are changing the captial letters in "Veterinary Services" to lower case, to eliminate any confusion with the administrative unit of the Animal and Plant Health Inspection Service known as "Veterinary Services." In addition, we are amending the reference in the regulations to "Veterinary Services quarantine facility" (§ 92.2(j)(2)) to read "USDA-operated quarantine facility." With these changes, all references in the regulations to these facilities will be uniform. Also, we are amending § 92.2(i)(2)(iii)(A) to change the reference to "Veterinary Services" to read "the Department." This amendment conforms the wording of the text to the wording of footnote 4, which refers to breed associations and recordkeeping systems approved by "the Department."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Making the nonsubstantive wording changes described in this document will have no effect on importers, quarantine facility operators, or any other persons outside of the Animal and Plant Health Inspection Service.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

Determining the official responsible for decisions made under these animal importation regulations is a matter of internal Agency management. Therefore, neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under 5 U.S.C. 553. Accordingly, this regulation is effective upon publication.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 92 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are amending 9 CFR Part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105; 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of "Deputy Administrator, Veterinary Services" is removed and the definitions of "Accredited veterinarian", "Department", "Inspector", "Port veterinarian", and "Recognized slaughtering establishment" are revised to read as follows:

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of Part 161 of this title to perform functions specified in Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

* * * * *

Department. The United States Department of Agriculture (USDA).

* * * * *

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this Part.

* * * * *

Port Veterinarian. A veterinarian employed by the Animal and Plant Health Inspection Service to perform duties required under this Part at a port of entry.

* * * * *

Recognized slaughtering establishment.[1] An establishment where slaughtering operations are regularly carried on under federal or state inspection and which has been approved by the Animal and Plant Health Inspection Service to receive animals for slaughter under this Part.

* * * * *

§ 92.1 [Amended]

3. In § 92.1, a definition of "Animal and Plant Health Inspection Service" is added, in alphabetical order, to read as follows:

* * * * *

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service.)

* * * * *

§ 92.2 [Amended]

4. In § 92.2, paragraph (i)(2)(iii) (A), remove the words "Veterinary Services" and add the words "the Department" in their place.

5. In § 92.2, paragraph (j)(2), remove the words "Veterinary Services" and add the words "USDA-operated" in their place.

§ 92.2a [Amended]

6. In § 92.2a, paragraph (a), remove the words "of the Division".

§ 92.4 [Amended]

7. In § 92.4, paragraph (a)(4)(i), remove the words "Veterinary Services" and add the word "USDA" in their place.

8. In § 92.4, paragraph (a)(10)(iv)(B), remove ", Animal and Plant Health Inspection Service" in the third and fourth sentences.

[1] The name of recognized slaughtering establishments approved under this Part may be obtained from the Area Veterinarian in Charge, Veterinary Services, for the state of destination of the shipment.

9. In § 92.4, paragraph (c)(1), second sentence, remove the words "with Veterinary Services" and add the words "with APHIS" in their place.

§ 92.8 [Amended]

10. In § 92.8, paragraph (a), remove the words "of Veterinary Services".

§ 92.11 [Amended]

11. In § 92.11, paragraph (d)(1)(iv), sentence 2, remove the words "Deputy Administrator, Veterinary Services," and add the word "Administrator," in their place; and remove the words "notified by Veterinary Services" and add the words "notified by APHIS" in their place.

12. In § 92.11, paragraph (d)(2), sentence 3, remove the words "Veterinary Medical Officer of Veterinary Services" and add the words "Veterinary Medical Officer of APHIS" in their place.

13. In § 92.11, paragraph (f)(7)(iii), "Cooperative and Trust Fund Agreement," title paragraph, remove ", Veterinary Services".

§ 92.16 [Amended]

14. In § 92.16, remove the words "Deputy Administrator, Veterinary Services" and add the word "Administrator" in their place.

§ 92.17 [Amended]

15. In § 92.17, remove the words "Veterinary Services of the national government" and add the words "veterinary services of the national government".

§ 92.27 [Amended]

16. In § 92.27, paragraph (a), remove the words "obtain from Veterinary Services an import permit as provided in § 92.4: *Provided,* That the Deputy Administrator, Veterinary Services," and add the words "obtain from APHIS an import permit as provided in § 92.4: *Provided,* That the Administrator," in their place.

§ 92.39 [Amended]

17. In § 92.39, remove the word "Deputy" and add the word "Administrator" in its place.

§ 92.41 [Amended]

18. In § 92.41, paragraph (a)(5), remove the words "Administrator, Veterinary Services," and add the word "Administrator" in their place; and remove the words "applicants and Veterinary Service personnel" and add the words "applicants and APHIS personnel" in their place.

19. In § 92.41, paragraphs (c)(3)(i) and (c)(3)(ii), remove the words "Veterinary Services' employees" and add the words "APHIS employees" in their place.

20. In § 92.41, paragraph (c)(3)(iv) remove the words "a Veterinary Services protocol" and add the words "an APHIS protocol" in their place.

21. In § 92.41, paragraph (d), in the Cooperative and Trust Fund Agreement, in the heading remove "Veterinary Services"; in the first paragraph remove, "Veterinary Services"; and in the signature block remove the following:

"Date _____

_____

Cooperator.
Date _____

_____

Director, NPPS, VS."

and add the following in its place:

"Date _____
Cooperator _____
Date _____
(Signature of authorized APHIS official) _____
(Title of signing official)" _____

§§ 92.2, 92.3, 92.4, 92.5, 92.6, 92.8, 92.11, 92.12, 92.17, 92.20, 92.21, 92.25, 92.27, 92.28, 92.30, 92.33, 92.34, 92.36, 92.41, and 92.42 [Amended]

22. In addition to the amendments set forth above, in 9 CFR Part 92 remove the word "Deputy" in the following places:

(a) Section 92.2 (a); (c)(1); (c)(2)(ii); (c)(3)(ii); (c)(3)(ii), footnote 2; (c)(3)(iii); (d), footnote 3; (d)(1)(ii); (d)(3)(v); (i)(2)(i); (j)(2); and (j)(2), footnote 6;

(b) Section 92.3(g), footnote 1; and (h);

(c) Section 92.4 (a)(3); (a)(4)(iv)(B); (a)(5)(i); (a)(6)(i); (a)(7); (a)(8)(i); (a)(9)(i); (a)(10)(i); (a)(10)(iii); (a)(10)(iv)(A); (a)(10)(iv)(B); (c)(1); (c)(3), "Agreement," paragraph #1; (c)(3), "Agreement," paragraph #2; (d)(1)(iii); (d)(4); and (d)(6);

(d) Section 92.5(a)(3);

(e) Section 92.6(c);

(f) Section 92.8(a);

(g) Section 92.11 (b)(1); (c)(1); (c)(2); (d)(1)(iii); (d)(1)(iii), footnote 1; (d)(1)(iv); (d)(2); (d)(3)(i), footnote 2; (d)(3)(iii)(D); (e); (f); (f), footnote 3; (f)(3)(ii)(E); (f)(4); (f)(5)(i); (f)(5)(iii); (f)(5)(vi); (f)(6)(i); (f)(6)(iv); (f)(7)(i); (f)(7)(ii); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(4); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(12); (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (A)(14), second paragraph; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(6); and (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(7);

(h) Section 92.12 (a); (b);

(i) Section 92.17;

(j) Section 92.20(a);

(k) Section 92.21(b);

(l) Section 92.25(a);

(m) Section 92.27(c);

(n) Section 92.28 (a); (c); and (d);

(o) Section 92.30;

(p) Section 92.33(a);

(q) Section 92.34 and 92.34, footnote 7;

(s) Section 92.36(c);

(t) Section 92.41 (a)(1); (a)(5); (c)(2); (c)(4); (c)(5); (d), "Cooperative and Trust Fund Agreement," Part I, paragraph A.1.b.; (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.1.b.; (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.7.; and (d), "Cooperative and Trust Fund Agreement," Part II, paragraph A.8.; and

(u) Section 92.42 (a)(1); (a)(4); (a)(5); (a)(6); (a)(7); (b)(1)(iv); (b)(2)(vii), footnote 16; (b)(3)(i); (b)(4)(ii); (b)(4)(iii); (b)(4)(vi); (b)(4)(viii); and (b)(4)(xi).

§§ 92.2, 92.3, 92.4, 92.6, 92.11, 92.12, 92.30, and 92.42 [Amended]

23. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Administrator, Veterinary Services." and add, in their place, the word "Administrator." in the following places:

(a) Section 92.2(j)(2), first undersignated paragraph;

(b) Section 92.3(g), footnote 1;

(c) Section 92.4 (a)(7); (d)(1)(iii); and (d)(4);

(d) Section 92.6(c);

(e) Section 92.11(d)(2), first sentence; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (a)(14), second paragraph;

(f) Section 92.12(a), second sentence and twelfth sentence; and (b), second sentence and eighth sentence;

(g) Section 92.30; and

(m) Section 92.42(a)(4), fourth and fifth sentence; and (a)(6).

§§ 92.4, 92.5, 92.12, 92.17, 92.21, 92.27, 92.28, 92.33, and 92.36 [Amended]

24. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Administrator, Veterinary Services" and add, in their place, the word "Administrator" in the following places:

(a) Section 92.4(c)(1); (c)(3), "Agreement," paragraph 1; (c)(3), "Agreement," paragraph 2; and (d)(6);

(b) Section 92.5(a)(3);

(c) Section 92.12(b);

(d) Section 92.17;

(e) Section 92.21(b);

(f) Section 92.27(c);

(g) Section 92.28 (a); (c); and (d);

(h) Section 92.33(a); and
(i) Section 92.36(c).

§§ 92.2, 92.4, 92.11, 92.33, 92.34, 92.41, and 92.42 [Amended]

25. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services," from the following places:
(a) Section 92.2 (c)(1); (c)(2)(ii); (c)(2)(ii), footnote 3; and (d), footnote 4;
(b) Section 92.4 (a)(6)(i); (a)(7); (a)(9)(i); and (a)(10)(iii);
(c) Section 92.11 (c)(1); (c)(2); (d)(1)(iii); (d)(1)(iii), footnote 1; (d)(2), second sentence; (d)(2), fourth sentence; (d)(3)(i), footnote 2; (e); (f), footnote 3; (f)(3)(ii)(E), second sentence; (f)(4); (f)(5); (f)(5)(vi), third and fifth sentences; (f)(6)(i); (f)(8)(iv); (f)(7)(i); (f)(7)(iii), "Cooperative and Trust Fund Agreement," second paragraph; (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(6); and (f)(7)(iii), "Cooperative and Trust Fund Agreement," paragraph (B)(7);
(d) Section 92.33(a);
(e) Section 92.34, footnote 7;
(f) Section 92.41(d), "Cooperative and Trust Fund Agreement," first paragraph; and
(g) Section 92.42(a)(4), first sentence; (a)(7); (b)(1)(iv); and (b)(2)(vii), footnote 16.

§§ 92.4, 92.11, 92.12; 92.25; and 92.42 [Amended]

26. In addition to the amendment set forth above, in 9 CFR Part 92, remove the words "Administrator, Veterinary Services," and add, in their place, the word "Administrator" in the following places:
(a) Section 92.4 (a)(4)(iv)(B); (a)(8)(i); (a)(10)(i); (a)(10)(iv)(A); and (a)(10)(iv)(B);
(b) Section 92.11(d)(1)(iv), first sentence; (d)(1)(iv), third sentence; (d)(1)(iv), fourth sentence; (d)(3)(iii)(D); and (f)(5)(iii);
(c) Section 92.12(a), sixth and eighth sentences;
(d) Section 92.25(a);
(e) Section 92.41(a)(5); and
(f) Section 92.42 (a)(1); (a)(4), sixth sentence; (a)(5); (b)(4)(ii); (b)(4)(vi); (b)(4)(viii); and (b)(4)(xi).

§§ 92.3, 92.11, 92.12, 92.20, 92.24, and 92.42 [Amended]

27. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services" from the following places:
(a) Section 92.3(h);
(b) Section 92.11 (b)(1); (f)(1); (f)(3)(i); (f)(3)(i)(B); (f)(3)(ii)(E), first sentence;
(c) Section 92.12(a), fourth sentence;
(d) Section 92.20(a);
(e) Section 92.24(a); and
(f) Section 92.42(a)(4), second sentence.

§§ 92.2, 92.11, and 92.45 [Amended]

28. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "a Veterinary Services inspector" and add, in their place, the words "an inspector" in the following places:
(a) Section 92.2(i)(2)(v)(H);
(b) Section 92.11(f)(3)(ii)(E) and (f)(3)(ii)(F); and
(c) Section 92.45 (b)(3)(iii); and (b)(3)(iv)(B).

§§ 92.11 and 92.45 [Amended]

29. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "a Veterinary Services veterinarian" and add, in their place, the words "an APHIS veterinarian" in the following places:
(a) Section 92.11(d)(3)(i); and
(b) Section 92.45(b)(1).

§§ 92.2, 92.3, 92.4, 92.8, 92.10, 92.11, 92.12, 92.19, 92.31, 92.41, 92.42, and 92.45 [Amended]

30. In addition to the amendments set forth above, in 9 CFR Part 92 remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:
(a) Section 92.2(c)(3)(v);
(b) Section 92.3(a);
(c) Section 92.4, heading;
(d) Section 92.4 (a)(1); (c)(3), "Agreement," paragraph #5; and (d)(3);
(e) Section 92.8 (b); and (c);
(f) Section 92.10
(g) Section 92.11 (d)(3)(iv); (f)(3)(ii)(D); (f)(3)(iii); and (f)(5)(vi), fourth sentence;
(h) Section 92.12(a), third, fourth and fifth sentences; and (b), third and fourth sentences;
(i) Section 92.19(a);
(j) Section 92.31(a);
(k) Section 92.41 (a)(1); (c)(6); (d), "Cooperative and Trust Fund Agreement," Part I, paragraph A.3.; and (d), "Cooperative and Trust Fund Agreement," Part II, paragrph A.2.;
(l) Section 92.42(b)(2)(iv); and
(m) Section 92.45 (b)(3)(i); (b)(3)(i)(B); and (b)(3)(v).

Done at Washington, DC., this 5th day of January, 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-493 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 89-6]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Thailand

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by expanding the exemptions to which commercial aircraft registered in Thailand are eligible, to include an exemption from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has informed Customs that Thailand will now exempt flights by U.S. registered carriers from duties and taxes on ground support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Thai registry from the payment of duties and taxes when ground support equipment is withdrawn from Customs or internal revenue custody. Previously, the exemption has applied only to aircraft supplies and did not extend to ground support equipment.

DATES: The exemption became effective on November 16, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch, U.S. Customs Service, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States registered aircraft. Section

10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In T.D. 71-138, the United States extended a partial exemption from duties and taxes to Thai aircraft. In that decision, the exemption from duties and taxes was not extended to ground equipment.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, that Thailand will now grant to American operators of U.S. registered aircraft, exemption from customs duties and related taxes on ground support equipment, except security equipment, needed to support commercial flights into an out of Thailand, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 U.S.C. 1309 and 1317, and under 26 U.S.C. 4221, for such equipment and use by foreign registered aircraft operating into and out of the United States. This finding became effective on November 16, 1988. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by removing the exception which had appeared in the regulations which indicated that Thai aircraft were not exempt from duties and taxes which applied to ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Thailand is extending exemption privileges regarding ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by deleting, in the column headed "Exceptions, if any, as noted", opposite "Thailand", the wording "Not applicable to ground equipment", and inserting the number of this Treasury Decision opposite "Thailand" in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-549 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 10

[T.D. 89-7]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Turkey

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Turkey to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Turkey will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Turkish registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on December 5, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, U.S. Customs Service, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective December 5, 1988, that Turkey will grant to American operators of U.S. registered aircraft, exemption from customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into an out of Turkey, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 USC §§ 309 and 317, and under 26 USC 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal

revenue custody for use by aircraft to indicate that Turkey has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section has been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that notice and public procedure thereon are unnecessary. As Turkey is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. § 10.59 also issued under 19 U.S.C 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), is amended by inserting "Turkey" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 5, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-551 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 10

[T.D. 89-5]

Customs Regulations Amendment Concerning Reciprocal Privileges Extended to Aircraft of Zambia

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Zambia to the list of countries whose commercial aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has found that Zambia will exempt U.S. registered aircraft from duties and taxes on aircraft supplies and support equipment in a manner substantially reciprocal to those exemption privileges the United States may provide, under law, to operators of foreign registered aircraft. Accordingly, the United States will now exempt commercial aircraft of Zambian registry from the payment of duties and taxes when their supplies and ground support equipment are withdrawn from Customs or internal revenue custody.

DATES: The exemption became effective on March 30, 1988. This regulation is effective January 11, 1989.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Entry Rulings Branch, (202) 566-5856.

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin for use as supplies (including equipment), ground equipment, or for maintenance or repair of the aircraft from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes. This privilege is granted if the Secretary of Commerce finds and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 20.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce found and conveyed to the Customs Service, effective March 30, 1988, that Zambia will grant to American operators of U.S. registered aircraft, exemption from Customs duties and related taxes on aircraft supplies and equipment needed to support commercial aviation flights into and out of Zambia, in a manner that is substantially reciprocal to exemption privileges which the United States may provide, under 19 U.S.C. 309 and 317, and under 26 U.S.C. 4221, to operators of foreign registered aircraft. This document amends § 10.59(f), Customs Regulations (19 CFR 10.59(f)), by changing the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft to indicate that Zambia has been granted an exemption regarding aircraft supplies and ground support equipment.

Authority to sign an amendment to this section had been delegated to the Chief, Regulations and Disclosure Law Branch.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.),* certification is not required because no notice of this action is necessary.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C.

553(b)(B), that notice and public procedure thereon are unnecessary. As Zambia is currently extending exemption privileges regarding supplies and ground support equipment to United States aircraft, a delayed effective date is not appropriate.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and specific relevant authority continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624. Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)) is amended by inserting "Zambia" in the proper alphabetical position in the column headed "Country", and the number of this Treasury Decision opposite in the column headed "Treasury Decision(s)".

Dated: January 4, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-550 Filed 1-10-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 65

[DoD Directive 1304.19]

Accession of Chaplains for the Military

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This Part amends 32 CFR Part 65 to add the Appendix which should have been included in the original submission. 32 CFR Part 65 was printed in the **Federal Register** on December 5, 1988 (53 FR 48898) as a final rule.

EFFECTIVE DATE: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Chaplain, Colonel John L. Mann, USAF, Office of the Assistant Secretary of Defense (Force Management and Personnel), Armed Forces Chaplains Board, Room 4C759, Pentagon, Washington, DC 20301-4000, telephone 202-697-9015.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 65

Armed Forces, Chaplains.

Accordingly, 32 CFR Part 65 is amended as follows:

PART 65-[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 10 U.S.C. 532, 591, and EO 9397, 3 CFR, 1943-1948 Comp., p. 283.

2. Appendix-Ecclesiastical Endorsing Agent Certification is added to

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

January 6, 1989.

BILLING CODE 3810-01-M

Appendix—Ecclesiastical Endorsing Agent Certification.

ECCLESIASTICAL ENDORSING AGENT CERTIFICATION

Form Approved OMB Number 0704-0190 Expires Jan 31, 1990

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Privacy Act Statement

AUTHORITY: Title 10, United States Code, Sections 532 and 591; and EO 9397, November 1943 (SSN)

PURPOSE: To certify the professional qualifications of clergy for appointment in the Military Services.

ROUTINE USE: This form is an essential element of a chaplain's professional qualifications and will become part of a chaplain's military personnel record.

DISCLOSURE: Voluntary; however, failure to provide all the information requested may significantly delay the processing of this endorsement.

1. FROM:	a. TYPED OR PRINTED NAME OF ENDORSING AGENT		b. ADDRESS (*Street, City, State, and Zip Code*)
2. TO:	a. CHIEF OF CHAPLAINS (*X appropriate block*)	(1) Army	b. ADDRESS (*Street, City, State, and Zip Code*)
		(2) Navy	
		(3) Air Force	

3. APPLICANT INFORMATION

a. TYPED OR PRINTED NAME (*Last, First, Middle Initial*)		e. NUMBER OF YEARS APPLICANT HAS COMPLETED ACTIVE PROFESSIONAL / PASTORAL EXPERIENCE (*after completing the requirements for the Chaplaincy*).	
b. SOCIAL SECURITY NUMBER (SSN)	c. TELEPHONE NUMBER (*Include Area Code*)	f. NUMBER OF YEARS APPLICANT HAS COMPLETED PRIOR ACTIVE COMMISSIONED OFFICER SERVICE.	
d. ADDRESS (*Street, City, State, and Zip Code*)		g. APPLICATION IS FOR (*X one*)	
		(1) Inactive Reserve	
		(2) Extended active duty	
		(3) Appointment to regular commissioned officer	
		(4) Appointment to National Guard	

4. ENDORSER INFORMATION

a. AS THE AUTHORIZED ENDORSING AGENT FOR (*name of religious faith group*) _____ AND IN RECOGNITION OF DoD DIRECTIVE 1304.19, I HEREBY CERTIFY THE ABOVE APPLICANT PROFESSIONALLY QUALIFIED AS CLERGY AND ENDORSED FOR THE MILITARY CHAPLAINCY.

b. TYPED OR PRINTED NAME (*Last, First, Middle Initial*)	c. TELEPHONE NUMBER (*Include Area Code*)
d. SIGNATURE	e. DATE SIGNED (*YYMMDD*)

5. AUTHORIZED AGENT FOR ADMINISTRATIVE MATTERS PERTAINING TO THIS ENDORSEMENT (*DoD Directive 1304.19, Paragraph E.2.c.*).

a. TYPED OR PRINTED NAME (*Last, First, Middle Initial*)	c. ADDRESS (*Street, City, State, and Zip Code*)
b. TELEPHONE NUMBER (*Include Area Code*)	

6. COMMENTS

DD Form 2088, SEP 88 *Previous editions are obsolete.* 390/265

[FR Doc. 89-586 Filed 1-10-89; 8:45 am]
BILLING CODE 3810-01-C

32 CFR Part 376

[DoD Directive 5154.28]

Joint Tactical Command, Control, and Communications Agency (JTC3A)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule removes 32 CFR Part 376 in its entirety. It has been superseded by 32 CFR Part 362, therefore is no longer valid.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 376

Organization and functions (Government agencies).

PART 376—[REMOVED]

Accordingly, Title 32, Chapter R is amended to remove Part 376.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-588 Filed 1-10-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6699

[ID-943-09-4214-10; I-25492]

Partial Revocation of Secretarial Order Dated March 12, 1910; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 74.91 acres of public lands withdrawn for the Bureau of Reclamation's Boise Project. The withdrawal is being revoked to permit consummation of a pending Forest Service exchange. The lands are located within the Boise National Forest. This action will open the lands to surface entry and mining. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated March 12, 1910, which withdrew public lands for the Bureau of Reclamation's Boise Project is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 3 N., R. 6 E.,
Sec. 31, NW¼NE¼;
Sec. 32, lot 4.

The areas described aggregate 74.91 acres in Elmore County.

2. At 9:00 a.m. on February 7, 1989, the lands described in paragraph 1 will be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-525 Filed 1-10-89; 8:45 am]
BILLING CODE 4310-GG-M

43 CFR Public Land Order 6700

[MT-930-09-4214-10; NDM 43100]

Partial Revocation of Executive Order No. 7674; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 40.00 acres of public land withdrawn for the Department of Agriculture in connection with soil erosion control and other land utilization activities. The revocation is needed to permit consummation of an exchange. This action will open the land to surface disposal. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 7674 of July 19, 1937 (as modified by Executive Order No. 7908 of June 9, 1938, and Executive Order No. 8531 of August 31, 1940), which withdrew land for the Department of Agriculture for use and development in connection with the Little Missouri Project LA-ND 1, is hereby revoked insofar as it affects the following described land:

Fifth Principal Meridian

T. 148 N., R. 98 W.,
Sec. 13, SW¼NW¼.

The area described contains 40.00 acres in McKenzie County.

2. At 9 a.m. on February 7, 1989, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-527 Filed 1-10-89; 8:45 am]
BILLING CODE 4310-DN-M

43 CFR Public Land Order 6701

[ID-943-09-4214-10; I-21725]

Partial Revocation of Bureau of Land Management Order dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Bureau of Land Management order insofar as it affects 360.00 acres of public land withdrawn for the Bureau of Reclamation's Southwest Idaho Water Development Study Area. The revocation is needed to permit disposal of the land through public sale. This action will restore 360 acres to surface

BEST COPY AVAILABLE

entry and mining. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Bureau of Land Management Order dated January 28, 1952, which withdrew lands for the Bureau of Reclamation's Southwest Idaho Water Development Study Area is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 1 N., R. 1 E.
Sec. 6, E½SE¼, E½E½W½SE¼;
Sec. 7, E½,NE¼, E½E½W½NE¼;
Sec. 8, NW¼.

The area described contains 360.00 acres in Ada County.

2. At 9:00 a.m. on February 7, 1989, the land described in paragraph 1 shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications recevied at or prior to 9:00 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:00 a.m. on February 7, 1989, the land described in paragraph 1 will be opened to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89–524 Filed 1–10–89; 8:45 am]

BILLING CODE 4310–GG–M

43 CFR Public Land Order 6702

[ID–943–09–4214; I–07470, I–08371, I–012556, I–15302, I–15594]

Revocation of Secretarial Order Dated December 9, 1918, Bureau of Land Management Order Dated August 18, 1955, and Public Land Order Numbers 1829, 2022, 2066, and 3164; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one Secretarial order, one Bureau of Land Management (BLM) order, and four public land orders as to 59,028.51 acres of public, Forest Service, and private lands withdrawn for use by BLM as stock driveways. This action restores to surface entry 51,518.78 acres of public land which have been and remain open to mining and mineral leasing. The 7,189.29 acres of Forest Service lands, which have been and remain open to mining and mineral leasing, will be open to such forms of disposition as may by law be made of national forest lands. The balance of 320.44 acres are privately owned and not subject to the public land laws.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated December 9, 1918, Bureau of Land Management Order dated August 18, 1955, and Public Land Order Numbers 1829, 2022, 2066, and 3164, which withdrew the following described lands for stock driveways, are hereby revoked in their entirety:

Boise Meridian Public Lands

I–15594

T. 8 S., R. 18 E.,
Sec. 4, W½SW¼SW¼;
Sec. 9, W½SW¼NW¼.
T. 8 S., R. 14 E.,
Sec. 4, lot 3, S½NW¼, and W½SW¼;
Sec. 5, SE¼.

I–08371

T. 8 S., R. 18 E.,
Sec. 2, lot 3, SE¼NW¼, and N½SW¼;
Sec. 3, SW¼NW¼ and N½S½;
Sec. 4, S½N½ and W½NW¼SW¼.
T. 7 S., R. 18 E.,
Sec. 22, E½E½, S½SW¼, and SW¼SE¼;
Sec. 26, S½SW¼;
Sec. 27, E½E½ and NW¼NW¼.

I–07470

T. 7 S., R. 23 E.,
Sec. 5, lots 2, 3, 4, S½NW¼, and W½SW¼;
Sec. 6, lots 1 to 5, inclusive, SE¼NE¼, and E½SE¼;
Sec. 7, lot 1 and NE¼NE¼;
Sec. 8, NE¼NE¼.
T. 7 S., R. 22 E.,
Secs. 1, 2, 11, and 14.
T. 6 S., R. 22 E.,
Secs. 13, 14, and 23;
Sec. 26, W½E½ and W½;
Sec. 35.

I–012556

T. 4 S., R. 13 E.,
Sec. 29, W½W½;
Sec. 31, E½SE¼;
Sec. 32, NW¼ and W½SW¼.
T. 5 S., R. 13 E.,
Sec. 5, lot 4, SW¼NW¼, and W½SW¼;
Sec. 6, lot 1, SE¼NE¼, and E½SE¼;
Sec. 7, E½ and E½W½;
Sec. 8, W½NW¼;
Sec. 18, W½E¼ and E½W½;
Sec. 19, W½E½ and E½W½;
Sec. 30, NW¼NE¼ and NE¼NW¼;
Sec. 31, SE¼NE¼ and E½SE¼.
T. 7 S., R. 18 E.,
Secs. 13 and 14;
Sec. 15, E½E½.
T. 7 S., R. 19 E.,
Sec. 6, S½;
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, SW¼, W½SE¼, and SE¼SE¼;
Sec. 12, SW¼SW¼ and E½SE¼;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½;
Sec. 17;
Sec. 18, lots 1 to 8, inclusive, E½, and E½W½.
T. 8 S., 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and SE¼;
Sec. 3, lots 1 to 4, inclusive, S½N½;
Sec. 8, SE¼;
Sec. 9, NE¼NE¼, S½NE¼, and S½;
Sec. 10, NW¼;
Sec. 17, E½;
Sec. 20, E½;
Sec. 29, NE¼ and S½;
Sec. 30, E½SE¼;
Sec. 31, NE¼.
T. 6 S., R. 20 E.,
Sec. 15, E½;
Sec. 22, NE¼;
Sec. 23;
Sec. 24, N½;
Sec. 26;
Sec. 27, S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½.
T. 7 S., R. 20 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 7, lots 3, 4, E½SW¼, and SE¼;
Sec. 8, S½;
Sec. 9, S½;
Secs. 10 and 11;
Sec. 17, N½;

Sec. 18, lots 1, 2, NW¼, and E½NW¼.
T. 8 S., R. 20 E.,
Sec. 2, SW¼;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 1 to 11, inclusive, S½NE¼; SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, N½;
Sec. 35.
T. 9 S., R. 20 E.,
Sec. 1, lots 3, 4, S½NW¼, and SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4 inclusive, S½N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 4, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 5, 6, 9, 10, and SE¼NE¼;
Sec. 12, W½.
T. 6 S., R. 21 E.,
Sec. 6;
Sec. 17, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 18, lots 7 to 12, inclusive, and SE¼;
Sec. 19, lots 1 to 6, inclusive, and NE¼;
Sec. 20, W½NE¼, NW¼, and S½;
Sec. 28, S½;
Sec. 29, E½;
Sec. 33.
T. 7 S., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 11, 14, 23, and 24;
Sec. 31, lots 3, 4, E½SW¼, and SE¼;
Sec. 32, S½;
Sec. 33, S½;
Sec. 34, S½S½;
Sec. 35, S½S½.
T. 8 S., R. 21 E.,
Sec. 1, lots 1 to 4, inclusive, and S½N½;
Sec. 2, lots 1 to 4, inclusive, and S½N½;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 4, lots 1 to 4, inclusive, and SE¼NE¼;
Sec. 5, lot 1;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, W½E½ and W½.
T. 7 S., R. 22 E.,
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 21, and 22;
Sec. 23, NE¼NE¼, W½E½, W½, and SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½.
T. 8 S., R. 22 E.,
Sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼.

I–15302

T. 1 N., R. 12 E.,
Sec. 12;
Sec. 13, N½, NW¼SW¼, E½SW¼, and SE¼.
T. 1 S., R. 11 E.,
Sec. 18, S½NE¼ and N½SE¼.

U.S. Forest Service Sawtooth National Forest

I–15594

T. 8 N., R. 14 E.,
Sec. 21, W½NE¼, NW¼, and SE¼.

I–15302

T. 9 N., R. 14 E.,
Sec. 7, lots 1 to 4, inclusive;
Sec. 8, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½SW¼;
Sec. 31, lots 1 to 4, inclusive, SE¼NW¼, E½SW½, and SE¼;
Sec. 32, SW¼SW¼.
T. 8 N., R. 14 E.,
Sec. 3, lots 3, 4, S½NW¼, and S½;
Sec. 6, lots 1 and 2;
Sec. 8;
Sec. 17, N½N½.
T. 7 N., 14 E.,
Sec. 2, SW¼;
Sec. 3, lots 1, 2, S½NE¼, and SE¼;
Sec. 11, S½NE¼, NW¼, N½SW¼, and SE¼;
Sec. 14, NE¼, E½SE¼;
Sec. 23, NE¼NE¼;
Sec. 24, E½ and N½NW¼;
Sec. 25, E½E½.
T. 10 N., R. 13 E.,
Sec. 6, lots 1, 2, SW¼NE¼, and SE¼;
Sec. 8, lots 1 to 30, inclusive, and SW¼SW¼;
Sec. 17, NW¼NW¼;
Sec. 20, S½NE¼ and SE¼NW¼;
Sec. 21, S½SW¼NE¼, S½S½NW¼, N½SW¼, and SE¼;
Sec. 22, lot 7, W¼SW¼, and SE¼SW¼;
Sec. 23, lots 4 and 5;
Sec. 25, lots 2, 5, and SW¼SW¼;
Sec. 26, lots 3 to 8, inclusive, lot 10, S½NW¼, NW¼SW¼, and NE¼SE¼;
Sec. 27, lot 2, NW¼NE¼, S½NE¼, NW¼, and N½S½;
Sec. 28, NE¼, NE¼SE¼;
Sec. 35, N½NE¼, SE¼NE¼, and E½SE¼.

Patented Lands

I–15594

T. 8 S., R. 14 E.,
Sec. 30, lots 3, 4, and SE¼SW¼.

I–15302

T. 10 N., R. 13 E.,
Sec. 4, NE¼SW¼.
T. 1 N., R. 12 E.,
Sec. 9, NW¼.

The areas described aggregate 59,028.51 acres in Elmore, Gooding, Jerome, Camas, Lincoln, and Minidoka Counties.

2. At 9 a.m. on February 7, 1989, the Forest Service lands described in paragraph 1 will be opened to such forms of surface disposition as may by law be made of national forest lands.

3. At 9 a.m. on February 7, 1989, the public lands described in pargaraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89–529 Filed 1–10–89; 8:45 am]

BILLING CODE 4310–GG–M

43 CFR Public Land Order 6703

[NV–943–09–4214–10; Nev–047449]

Partial Revocation of Executive Order Dated April 17, 1926; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 40 acres of public land withdrawn for a public water reserve. There is no evidence of water or a water source and, therefore, the land does not qualify for public water reserve status. The land has been identified for disposal through exchange. This action will open 40 acres to surface entry and non-metalliferous mining. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–784–5481.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order dated April 17, 1926, which withdrew public land for public water reserves is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 40 N., R. 66 E.,
Sec. 8, SE¼ SE¼.
The area described contains 40 acres in Elko County.

2. The land has been identified for disposal through exchange.

3. At 10 a.m. on February 7, 1989, the land described in paragraph 1, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10 a.m. on February 7, 1989, the land described in paragraph 1, will be opened to location and entry for non-metalliferous minerals under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land has been and will remain open to location and entry for metalliferous minerals under the United States mining laws and to applications and offers under the mineral leasing laws.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-526 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-HC-M

43 CFR Public Land Order 6704

[MT-930-09-4214-10; MTM 40740; MTM 070475]

Partial Revocation of Secretarial Order of May 24, 1909 and Public Land Order No. 3938; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order and a public land order insofar as they affect 20 acres of public lands withdrawn for Bureau of Reclamation's Milk River Project and 5 acres of public lands withdrawn by the Bureau of Land Management to protect recreation values. The lands are no longer needed for those purposes; however, they are part of a proposed exchange that will transfer several solid waste disposal sites to local authorities. This action will open the lands to surface entry and mining. They have been and will remain open to mineral leasing.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 101 of the Omnibus Public Lands and National Forests Adjustments Act of 1988, 102 Stat. 4624, it is ordered as follows:

1. Secretarial Order of May 24, 1909, which withdrew public lands for the Bureau of Reclamation's Milk River Project is hereby revoked insofar as it affects the following described land:

(MTM 40740) Principal Meridian

T. 30 N., R. 28 E.,
Sec. 21, E½SE¼SE¼.

The area described contains 20 acres in Phillips County.

2. Public Land Order No. 3936, which withdrew certain lands to protect recreation values is hereby revoked insofar as it affects the following described land:

(MTM 070475) Principal Meridian

T. 25 N., R. 24 E.,
Sec. 28, N½SW¼SE¼SE¼.

The area described contains 5 acres in Phillips County.

3. At 9 a.m. on February 7, 1989, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on February 7, 1989, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 3, 1989.

[FR Doc. 89-528 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-DN-M

43 CFR Public Land Order 6705

[AK-932-09-4214-10; F-84742]

Withdrawal of Public Land for the Air Force Beaver Creek Research Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,830 acres of public land from surface entry and mining for a period of 20 years to protect the U.S. Air Force Beaver Creek Research Site. The land has been and will remain closed to mineral leasing.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), and from leasing under the mineral leasing laws, to protect the integrity of the information being monitored by seismic equipment at a U.S. Air Force research site:

Cooper River Meridian

T. 15 N., R. 19 E.,
Sec. 14, W½E½ and W½, excluding PLO 5164;
Sec. 15, E½;
Sec. 20, E½SE¼;
Sec. 21, S½N½NE¼, S½N½, and S½, excluding PLO 5164;
Sec. 22, excluding PLO 5164;
Sec. 23, S½NE¼, NW¼, and S½, excluding PLO 5164;
Sec. 24, W½SW¼;
Sec. 25, NW¼NW¼;
Sec. 28, NE¼, E½NW¼, and NW¼NW¼;
Sec. 27, N½N½NE¼, NE¼NE¼NW¼, SW¼, and W½W½SE¼, excluding PLO 5164;
Sec. 28, N½NE¼, E½W½E½SW¼NE¼, E½E½SW¼NE¼, SE¼NE¼, N½NW¼, N½SW¼NW¼, NW¼SE¼NW¼, W½W½NE¼SE¼NW¼, NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼, E½W½W½NW¼SE¼, and SE¼SE¼, excluding PLO 5164;
Sec. 29, NE¼NE¼;
Sec. 33, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, and N½NE¼SE¼;
Sec. 34, W½W½NE¼, NW¼, and N½N½SW¼, excluding PLO 5164.

The area described contains approximately 3,830 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws.

3. The withdrawal made by this order shall overlap but not otherwise affect PLO No. 6677 of May 23, 1988.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89-530 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6706

[AK-932-09-4214-10; F-14988]

Withdrawal of Public Land for the Air Force Indian Mountain Research Site; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,606.70 acres of public land from surface entry and mining for a period of 20 years to protect the U.S. Air Force Indian Mountain Research Site. The land will be jointly administered by the U.S. Air Force and the Bureau of Land Management under two memorandums of understanding. The land has been and will remain closed to mineral leasing.

EFFECTIVE DATE: January 11, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), and from leasing under the mineral leasing laws, to protect the integrity of the information being monitored by seismic equipment at a U.S. Air Force Research site:

Kateel River Meridian

T. 7 N., R. 24 E. (Unsurveyed)
Sec. 13 S½S½NE¼SW¼, SE¼SE¼NW¼SW¼, NE¼NW¼SW¼SW¼, S½NW¼SW¼SW¼, S½S½SW¼, N½SE¼SW¼, SW¼SW¼NW¼SE¼, NW¼SW¼SE¼, NW¼NE¼SW¼SE¼, S½NE¼SW¼SE¼, S½S½SE¼, S½S½NE¼SE¼SE¼;
Sec. 14, SW¼NW¼SW¼, S½SE¼NW¼SW¼, SW¼SW¼, NW¼NE¼SE¼SW¼, S½NE¼SE¼SW¼, NW¼SE¼SW¼, S½SE¼SW¼, SW¼NW¼SW¼SE¼, SW¼SW¼SE¼, S½N½SE¼SW¼SE¼, S½SE¼SW¼SE¼, NE¼SE¼SE¼SE¼, S½S½SE¼SE¼;
Sec. 15, S½SW¼SW¼NE¼, SE¼SW¼SW¼NW¼, S½SE¼SW¼NW¼, S½N½S½E¼NW¼, S½S½SE¼NW¼, SW¼, NW¼NE¼SE¼, S½NE¼NE¼SE¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;
Sec. 16, S½NE¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼, SE¼SE¼;
Sec. 21, NE¼NE¼, NE¼SE¼NE¼, NE¼NW¼SE¼NE¼, NE¼SE¼SE¼NE¼;
Sec. 22, N½, N½NE¼NE¼SW¼, N½NE¼SE¼, N½S½NE¼SE¼, S½SE¼NE¼SE¼, NE¼NW¼SE¼, N½NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, NE¼SE¼NW¼SE¼;
Sec. 23, all;
Sec. 24, N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, N½SW¼SE¼SE¼, SW¼SW¼SE¼SE¼, N½N½SE¼SE¼SE¼;
Sec. 25, W½NW¼NE¼NE¼, W½SW¼SE¼NE¼, W½E½, W½, W½W½E½SE¼;
Sec. 26, all;
Sec. 27, S½S½NE¼NE¼NE¼, SE¼NW¼NE¼NE¼, S½NE¼NE¼, SE¼SW¼NW¼NE¼, SE¼NW¼NE¼, S½NE¼, NE¼NE¼SE¼NW¼, S½NE¼SE¼NW¼, S½SE¼NW¼, E½SW¼, E½NE¼NW¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼SW¼, SE¼SE¼SW¼SW¼, SE¼;
Sec. 34, N½NE¼, N½N½S½NE¼, E½NE¼NW¼, NW¼NE¼NW¼, N½SW¼NE¼NW¼, E½NE¼NW¼NW¼;
Sec. 35, NE¼NE¼NE¼, N½NW¼NE¼NE¼, NE¼SE¼NE¼NE¼, N½N½NW¼NE¼, N½N½NW¼, SW¼NW¼NW¼, NW¼SE¼NW¼NW¼;
Sec. 36, NE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, NW¼NW¼NE¼, N½SW¼NW¼NE¼, N½NW¼;

T. 7 N., R. 25 E. (Unsurveyed)
Sec. 18, S½N½SW¼SW¼, S½SW¼SW¼, SW¼NW¼SE¼SW¼, SW¼SE¼SW¼, W½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼;
Sec. 19, W½NW¼NW¼NE¼, SW¼NW¼NE¼, W½SW¼NE¼, NW¼, N½SW¼, N½SW¼SW¼, N½NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SW¼NW¼SE¼.

The area described contains approximately 4,606.70 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws.

3. The withdrawal made by this order shall overlap but not otherwise affect PLO No. 1910 of July 17, 1959, PLO No. 3942 of March 2, 1966, and PLO No. 5164 of February 28, 1972.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

January 3, 1989.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 89-531 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-JA-M

VETERANS ADMINISTRATION

48 CFR Part 817

Acquisition Regulations Pertaining to Multiyear Contracts

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulation to implement Pub. L. 100-322 which authorizes the use of multiyear contracts for items and services for use at VA medical facilities. This regulation will provide the means for using the multiyear contracting method.

EFFECTIVE DATE: January 4, 1989.

FOR FURTHER INFORMATION CONTACT: Chris Figg, Chief, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, (202) 233-3054.

SUPPLEMENTARY INFORMATION:

I. Background

The Veterans Benefits and Services Act of 1988, Pub. L. 100-322, authorizes the use of multiyear contracts for acquiring supplies and services for use in VA health care facilities when determined in the best interest of the VA. This regulation prescribes criteria that must be considered in determining the desirability for using multiyear contracts for a given acquisition as well as prescribing approval levels for its use.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these regulations.

List of Subjects in 48 CFR Part 817:

Government procurement.

Approved: January 4, 1989.

Thomas K. Turnage,

Administrator.

48 CFR Part 817, is amended as set forth below:

PART 817—[AMENDED]

1. The authority citation for Part 817 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Section 817.102–1 is revised to read as follows:

817.102–1 Uses.

(a) Pursuant to Title 38, United States Code, Chapter 1, Section 114 (as amended by Pub. L. 100–322), multiyear contracting not exceeding 5 years is authorized for obtaining supplies and services for use in Veterans Administration health care facilities when the Administrator has made the following determinations:

(1) Appropriations are available for obligation for the total payments for the fiscal year the contract is entered into plus the estimated amount of any cancellation charges.

(2) The contract is in the best interest of the Government due to the effect it would have in:

(i) Reducing cost;

(ii) Achieving contract administration and other efficiencies;

(iii) Increasing quality contract performance;

(iv) Encouraging effective competition.

(3) During the contract period:

(i) There is a continuing need for the supplies or services;

(ii) There is little likelihood of substantial changes in need for the supplies and services in terms of quantity or rate of delivery; and

(iii) The specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to a prospective contractor's ability to perform in accordance with the specifications and other contract terms are not excessive;

(5) The use of a multiyear contract will not inhibit competition from small business firms;

(6) In the case of a pharmaceutical item for which a patent has expired less than 4 years before the solicitation issue date, there is no substantial likelihood that increased competition will occur during the term of the contact that would make the contract prices higher than would be reasonable.

(b) The authority of the Administrator to enter into multiyear contracts and to make the determinations specified in 817.102–1(a) of this section is delegated as follows:

(1) *Heads of contracting activities.* For contracts not requiring legal/technical reviews pursuant to 801.602–70 (for purposes of determining applicability of the thresholds, the total dollar amount of the contract over its full multiyear term will be used), and which do not contain a first year cancellation ceiling which exceeds 20 percent of the total dollar amount of the contract over the full multi-year term.

(2) *Director, Office of Acquisition and Moteriel Management,* will approve all proposed uses of multiyear contracts not authorized for approval by heads of contracting activities. For approval purposes, the head of the contracting activity will justify and document the use of a multiyear contract against each of the criteria specified in 817.102–1 (a)(1) through (a)(6) of this section. The justification will additionally delineate the cancellation ceiling and the method used for calculating that ceiling and will specify the advantages of multiyear contracts over other alternative methods, e.g., option year contracts.

(c) Cancellation ceilings will be carefully developed in accordance with FAR 17.103–1 and VAAR 817.103–1.

817.202 [Amended]

3. Section 817.202 is amended by removing the words "Office of Procurement and Supply" wherever they appear, and adding in their place the words "Office of Acquisition and Materiel Management". Paragraph (b) is also removed and the designation for paragraph (a) is removed.

817.402 [Amended]

4. Section 817.402 is amended by removing the words "Office of Procurement and Supply" wherever they appear, and adding in their place the words "Office of Acquisition and Materiel Management".

[FR Doc. 89–518 Filed 1–10–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87–09: Notice 4B]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of Petition for Extension of Time (Arkansas).

SUMMARY: This is in response to a petition for an extension of time filed by the Arkansas Department of Finance and Administration, Revenue Division, Office of Motor Vehicles (Arkansas). Arkansas cannot conform its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Arkansas an extension of time, until March 31, 1990, to achieve compliance. Because Arkansas has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Arkansas' petition for an extension of time. Arkansas has until March 31, 1990 to revise its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Arkansas' Petition

The Arkansas Department of Finance and Administration, Revenue Division, Office of Motor Vehicles (Arkansas) submitted a petition for an extension of time. In support of its petition, Arkansas states that upon enactment of the Truth in Mileage Act it immediately began to revise its titles procedures and documents to conform to the Act. Arkansas redesigned the title to incorporate what it believed was all the necessary information required by the Act and purchased 1.5 million of the redesigned titles. Arkansas anticipates that the inventory of redesigned titles will be depleted in February or March 1990, and therefore, requests that it be granted an extension of time until March 31, 1990.

NHTSA's Response to the Petition

NHTSA finds that Arkansas has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

After enactment of the Truth in Mileage Act, recognizing that it would need a new supply of titles and seeking to conform this new supply to the Federal criteria, Arkansas redesigned its title to incorporate what it believed was all the necessary information required by the Act. This information included an abbreviated odometer disclosure statement in each reassignment space on the reverse of the title and a space for the odometer reading and model on the face of the title. Subsequent to the publication of the final rule, Arkansas again redesigned its title to incorporate additional information required by the rule. Arkansas submitted a copy of this title specimen to NHTSA for review. Upon completion of this review, the State will be notified by letter as to the acceptability of the proposed title.

In light of Arkansas' past and planned actions, and in order to allow Arkansas to expend its current supply of titles which it ordered prior to the publication of NHTSA's final rule, we grant Arkansas' request for an extension of time until March 31, 1990, to revise its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e)

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–556 Filed 1–10–89; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 580

[Docket Number 87–09: Notice 4C]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Idaho).

SUMMARY: This is in response to a petition for an extension of time filed by the Idaho Transportation Department (Idaho). Idaho cannot conform its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Idaho an extension of time, until August 1990, to achieve compliance. Because Idaho has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and intends to take additional action while the extension is in effect, we have granted Idaho's petition. Idaho requested an extension until August 1, 1990 to revise its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer rules, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Idaho's Petition

The Idaho Transportation Department (Idaho) submitted a petition for an extension of time. In support of its petition, Idaho states that for some time, it had realized that it had fallen behind in the development and design of a "state of the art" certificate of title. Therefore, it had worked for many months to create a document that would discourage odometer fraud while allowing easy detection if the document security had been compromised. After completing its specifications and plans to implement the new form, Idaho learned that NHTSA was about to publish a final rule concerning titles and odometer disclosure information. The State had made several improvements in its title and rather than risk running out of titles, Idaho decided to have a new supply of titles printed. Idaho now has a stock of 500,000 titles and anticipates that these titles will last approximately one and one-half years. Therefore, Idaho requests that it be granted an extension of time until August 1990.

NHTSA's Response to the Petition

NHTSA finds that Idaho has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

Recognizing that it would need a new supply of titles, Idaho redesigned it title, incorporating several improved features. Idaho had its titles printed by a secure printing process. Some of the security features that Idaho adopted include: visible fibers, a security thread, background inks that will show attempts to alter information chemically or by erasure, and a microprint line. Idaho added a space on the face of its title for an odometer reading at the time the title is issued by the State. Idaho has also added space on the reverse side of the title for an odometer reading at the time of the first reassignment and at the time

of subsequent reassignments. However, in order to conform with the Federal requirements, Idaho must make additional revisions to the title document. The State will be notified by letter of the changes needed.

In light of Idaho's past actions and its expressed intention to make additional changes, and in order to allow Idaho to expend its current supply of titles which it had ordered prior to the publication of NHTSA's final rule, we grant Idaho's request for an extension of time until August 1, 1990, to revise its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–557 Filed 1–10–89; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 580

[Docket Number 87–09; Notice 4A]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Mississippi).

SUMMARY: This is in response to a petition for an extension of time filed by the Mississippi State Tax Commission (Mississippi). Mississippi cannot conform its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Mississippi an extension of time, until January 1, 1990, to achieve compliance. Because Mississippi has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has included a description of the steps to be taken while the extension is in effect, we have granted Mississippi's petition for an extension of time until January 1, 1990 to revise its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to achieve such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules, which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Mississippi's Petition

The Mississippi State Tax Commission (Mississippi) submitted a petition for an extension of time. In support of its petition, Mississippi states that legislation will be required to conform its laws. Currently, legislation is being drafted. It will be submitted to the 1989 Regular Session of the Mississippi legislature which convenes in January 1989. In addition, Mississippi states that it has an inventory of title documents necessary to fulfill its requirements until January 1, 1990. Therefore, Mississippi requests that it be granted an extension of time until January 1, 1990.

NHTSA's Response to the Petition

NHTSA finds that Mississippi has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

After NHTSA issued its NPRM to implement the Truth in Mileage Act, recognizing that it would need a new supply of title and seeking to conform this new supply to the Federal criteria, Mississippi wrote to NHTSA requesting assistance. In October 1987, Mississippi added a space for the buyer's signature on its titles. Because the title already contained all the information required by the current Federal regulation, NHTSA advised Mississippi that a transferor may use the title in lieu of a separate odometer disclosure statement.

On November 14, 1988, Mississippi provided NHTSA with a copy of draft of a revised title. This draft accurately reflects the requirements of the final rule. Mississippi is currently drafting legislation which would allow the use of these revised titles. It will submit this legislation to the State legislature which convenes in January 1989.

In light of Mississippi's past and planned actions, and in order to allow Mississippi to expend its current supply of titles, we grant Mississippi's request for an extension of time until January 1, 1990, to revise its laws and its titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–558 Filed 1–10–89; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 580

[Docket No. 87–09; Notice 4D]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Grant of petition for extension of time (Utah).

SUMMARY: This is in response to a petition for an extension of time filed by the Utah State Tax Commission (Utah). Utah cannot conform its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule implementing the Act by April 29, 1989, the effective date of the statutory and regulatory requirements. Therefore, the petition requests that NHTSA grant Utah an extension of time, until July 1989, to achieve compliance. Because Utah has made an effort to meet the deadline, sets forth reasons why it has failed to do so, and has advised us of the steps to be taken while the extension is in effect, we have granted Utah's petition for an extension of time until July 1, 1989 to revise its laws and its titles to meet the requirements of the Truth in Mileage Act and the final rule.

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1834).

SUPPLEMENTARY INFORMATION:

Background

Section 2(c) of the Truth in Mileage Act of 1986 authorizes the National Highway Traffic Safety Administration (NHTSA) to provide for an extension of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the requirements of the Motor Vehicle Information and Cost Savings Act and the implementing regulations set forth in 49 CFR Part 580. It provides that, in granting an extension, NHTSA "shall ensure that the State is making reasonable efforts to such compliance."

To implement the Truth in Mileage Act and to make some needed changes in the Federal odometer laws, the agency published final rules which provide that a State may file a petition for an extension of time. The petition should discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension, and a description of the steps to be taken while the extension is in effect. 53 FR 29464 (1988).

Utah's Petition

The Utah State Tax Commission (Utah) submitted a petition for an extension of time. In support of its petition, Utah states that it has proposed amendments to its odometer disclosure statute that are consistent with the new Federal law and regulations. In addition, Utah has designed a new title that it believes conforms to the new Federal requirements. Utah estimates that its existing supply of titles will last until June 1989. Therefore, Utah requests that it be granted an extension of time until July 1989.

NHTSA's Response to the Petition

NHTSA finds that Utah has made reasonable efforts to achieve compliance with the Motor Vehicle Information and Cost Savings Act and the implementing regulations.

To meet the requirements of the new Federal law and regulations, Utah has redesigned its title document. The draft title which Utah included with its petition does not appear to conform with the Federal requirements; however, only minor changes appear to be needed. In addition, Utah has proposed amendments to its odometer disclosure statutes. The Utah legislature will consider the proposed amendments when it convenes in January 1989.

In light of Utah's past and planned actions, and in order to allow Utah to expend its current supply of titles, we grant Utah's request for an extension of time until July 1, 1989, to revise its laws and titles to meet the Federal criteria.

Authority: 15 U.S.C. 1988 note; delegation of authority at 49 CFR 1.50(f) and 501.8(e).

Issued on January 6, 1989.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 89–559 Filed 1–10–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in 1988 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of the Convention may occur only if (1) a Scientific Authority has advised a permit-issuing Management Authority that such export will not be detrimental to the survival of the species, and (2) if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This document announces final findings by the Scientific Authority and Management Authority of the United States that approve the export of bobcat harvested in the 1988 and subsequent years on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe and Shoshone Tribes. This rule also stipulates that monitoring procedures previously established for other States and Indian Nations or Tribes be extended to include the Wind River Indian Reservation, Wyoming.

In a January 5, 1984, **Federal Register** notice (49 FR 590), the Service published a rule granting export approval for bobcats (*Lynx rufus*) and certain other Convention-listed species from specified States and Indian Nations and Tribes for the 1983–84 and subsequent harvest seasons. This document adds the Wind River Indian Reservation, Wyoming, to the list of States and Indian Nations and Tribes for which the export of bobcats is approved.

DATE: January 11, 1989.

ADDRESSES: Please send correspondence concerning this rule to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street NW., Washington, DC or at the Office of Management Authority, Room 400, 1375 K Street Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202–653–5948).

Export permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4955.

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION:

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

In the January 5, 1984, and the August 18, 1983, (48 FR 37494) **Federal Register** documents, the Service announced the decision, from a review of listed species concluded at the Fourth Meeting of the Conference of the Parties in Botswana, that each of the specified furbearer species or geographically separate populations addressed in those export findings, including the bobcat, should be regarded as listed in Appendix II

because of its similarity in appearance to other listed species or populations. As indicated in those documents, the Conference of the Parties adopted a resolution accepting the report of the Central Committee on the 10-year review of species listed in Appendices I and II. The report included recommendations that these populations or species should be considered as listed in Appendix II only because of similarity in appearance, if they were to be retained in that Appendix.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor both the status of these species and their trade on an annual basis so that it could detect any significant downward trends in populations and, where necessary, institute more restrictive export controls in response to them. The document also described how the Service, as Management Authority, would determine if specimens had been lawfully acquired on the basis of mandatory tagging requirements.

This previously described monitoring procedure will be extended to include the Wind River Indian Reservation, Wyoming.

This is the second **Federal Register** document concerning the Service's findings on export of bobcats taken on the Wind River Indian Reservation, Wyoming, in the 1988 and subsequent harvest seasons. The first document (53 FR 33156; August 30, 1988) announced the Service's intention to develop findings on the export of bobcats taken on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe Shoshone Tribes.

The purpose of this rule is to add the Wind River Indian Reservation, Wyoming, to those States and Indian Tribes and Nations from which the Service has approved the export of bobcats in the 1988–89 and subsequent seasons. The approved entities were identified in the January 5, 1984, **Federal Register** (49 FR 590), are listed in 50 CFR 23.52, and additional entities were added in a March 24, 1988, **Federal Register** notice (57 FR 9631).

Comments and Information Received

No comments or information were received concerning the August 30, 1988, **Federal Register** (53 FR 33156) notice proposing export of bobcats from the Wind River Indian Reservation.

Management Authority Determinations

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the listed wildlife or plants. The Service, therefore, must be satisfied that the pelts, hides, or products of the furbearer in question were not obtained in violation of State or Federal law, in order to allow export. A system to determine whether specimens have been lawfully acquired on the basis of tagging requirements was stipulated in the January 5, 1984, **Federal Register** (49 FR 590).

The Service has continued to monitor the implementation of these regulations and considers that these programs provide reasonable assurance that bobcat specimens being exported were not obtained in violation of laws established for their protection.

Scientific Authority Advice

Article IV of the Convention requires that export permits for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted by the Management Authority. Consistent with the determination that the bobcat is listed to enable trade in other species to be effectively controlled, the Scientific Authority considers this control aspect when advising on non-detriment.

Bobcat population estimates for the Wind River Indian Reservation, Wyoming, were based on the relationship between population density from other studies in the State and habitat types and distributions on the Reservation. This information has been supplemented with data on reproductive rates and age structure of the population obtained from harvested bobcats, and with the relative number of bobcats trapped per trapping effort. The tagging and harvest assessment programs will provide additional means of monitoring any effects of the harvest program.

The Service continues to believe that the bobcat is properly listed for reasons of similarity of appearance, and that with the tagging of pelts and hides as described in the Management Authority determinations (49 FR 590), the export of those tagged animals will not reduce the effectiveness of the Convention in controlling trade in other listed species. The Wind River Indian Reservation, Wyoming, has established a management program to properly mark all bobcat hides or pelts harvested so their export will not be detrimental to the species that the bobcat is listed to protect, and to provide information to indicate whether the harvest will threaten the survival of the species.

Export Approval

The Service approves exports of bobcats harvested in the 1988 and subsequent harvest seasons on the Wind River Indian Reservation, Wyoming, by enrolled members of the Arapahoe and Shoshone Tribes on the basis that both the Scientific Authority and Management Authority criteria have been satisfied.

This approval is subject to revision prior to any subsequent taking season in any particular State, Indian Tribe, or Indian Nation if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of specimens of this species originating in any State or Indian Nation not named for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State or Indian Nation or Tribe, or (3) the Service does not have current information needed for Scientific Authority and Management Authority findings.

The Department has determined, within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, to make these findings and rule effective immediately. By making this rule effective immediately, a restriction on international trade will be lifted from individual trappers on the Wind River Indian Reservation, Wyoming, and fur dealers within Wyoming. Furthermore, this document represents the final administrative step in authorizing the export of bobcats from Service-approved States and Indian Nations and Tribes in accordance with the Convention. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that is about to begin in the State and Indian Reservation. It could also adversely affect the species by reducing compliance with Service-mandated, Indian Nation tagging requirements. Furthermore, good cause exists for making these findings effective as soon as possible to avoid economic injury to individual trappers, dealers, or other small entities that are directly affected by the finding. It should be noted that making this finding and rule effective immediately will not adversely affect the species involved, in view of the findings of nondetriment contained herein.

Note.—The Department has previously determined that the export of certain species of various States and Indian Nations or Tribes, taken in the 1983–1984 and subsequent harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement was not required (48 FR 37494). The Department has also determined that such harvest is not a major rule under Executive Order 12291 and does not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Mr. S. Ronald Singer, Office of the Management Authority, and Dr. Charles W. Dane, Office of the Scientific Authority, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.52 Bobcat (*Lynx rufus*), paragraphs (a) and (b) are revised, and paragraphs (c) through (h) are removed as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * *

(a) States and Harvest Seasons Approved for Export of Bobcat From the United States.

	1977–78	1978–79	1979–80	1980–81	1981–82	1982–83	1983 and subsequent	1987 and subsequent	1988 and subsequent
Alabama	+	+	+	+	+	+	+	+	+
Arizona	+	+	+	+	+	+	+	+	+
Arkansas	+	+	+	+	+	+	+	+	+
California	+	+	+	+	+	+	+	+	+
Colorado	+	+	+	+	+	+	+	+	+
Florida	+	+	E	+	+	+	+	+	+
Georgia	+	+	+	+	+	+	+	+	+
Idaho	+	+	+	+	+	+	+	+	+
Kansas	+	+	+	+	+	+	+	+	+
Kentucky	–	–	–	–	–	–	–	+	+
Klamath Tribe	–	–	–	–	–	+	+	+	+
Louisiana	+	+	+	+	+	+	+	+	+
Maine	+	+	+	+	+	+	+	+	+
Massachusetts	+	+	E	+	+	+	+	+	+
Michigan	+	+	+	+	+	+	+	+	+
Minnesota	+	+	+	+	+	+	+	+	+
Mississippi	+	+	+	+	+	+	+	+	+
Missouri	–	–	–	+	+	+	+	+	+
Montana	+	+	+	+	+	+	+	+	+
Navajo Nation	+	+	+	+	+	+	+	+	+
Nebraska	+	+	+	+	+	+	+	+	+
Nevada	+	+	+	+	+	+	+	+	+
New Hampshire	–	–	–	+	+	+	+	+	+
New Mexico	+	+	E	+	+	+	+	+	+
New York	+	+	+	+	+	+	+	+	+
North Carolina	+	+	+	+	+	+	+	+	+
North Dakota	+	+	E	+	+	+	+	+	+
Oklahoma	–	–	+	+	+	+	+	+	+
Oregon	+	+	E(1)	+	+	+	+	+	+
Penobscot Nation	–	–	–	–	–	–	–	+	+
South Carolina	+	+	+	+	+	+	+	+	+
South Dakota	+	+	+	+	+	+	+	+	+
Tennessee	+	+	+	+	+	+	+	+	+
Texas	+	+	E(2)	+	+	+	+	+	+
Utah	–	–	+	+	+	+	+	+	+
Vermont	+	+	+	+	+	+	+	+	+
Virginia	+	+	+	+	+	+	+	+	+
Washington	+	+	+	+	+	+	+	+	+
West Virginia	+	+	+	+	+	+	+	+	+
Wisconsin	+	E	+	+	+	+	+	+	+
White Mt Tribe	–	–	–	–	–	–	–	+	+
Wind River Reservation	–	–	–	–	–	–	–	–	+
Wisconsin	+	+	E	+	+	+	+	+	+
Wyoming	+	+	+	+	+	+	+	+	+

\+ Export approval.
– Export not approved.
E 1979–80 bobcat export enjoined by U.S. District Court, District of Columbia.
E(1) As above but for eastern portion of State.
E(2) As above but for high plains ecological area.

(b) *Condition on export:* Each pelt must be clearly identified as to species; State, Indian Tribe, or Indian Nation of origin; and season of taking by a permanently attached, serially numbered tag of a type approved by and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may only be exported from the United States when the State, Indian Tribe, or Indian Nation export tags, removed from the hides used to manufacture the product being exported, are surrendered to the Service at the time of export. Such tags must be removed by cutting the tag strap on the female side next to the locking socket of the tag so the locking socket and locking tip remain joined.

(c) through (h) [Removed]

Dated: November 22, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-514 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

Groundfish of the Gulf of Alaska, and Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of clarification.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has decided to retain the existing definitions of "directed fishing" applicable to the groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area. The Regional Director has reviewed changes to these definitions recommended by the North Pacific Fishery Management Council (Council) and has determined that the recommended changes would encourage overharvest and waste of high-value bycatch species of low abundance. This notice is intended to notify the public that the existing definitions will apply until further notice and will be enforced as written.

DATE: Effective January 6, 1989.

FOR FURTHER INFORMATION CONTACT: Dale R. Evans (Chief, Fisheries Management Division, Alaska Region, NMFS) 907-586-7414.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska and the Bering Sea-Aleutian Islands Management Area are managed under the Fishery Management Plans for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands Area (FMP's). The FMP's were prepared by the Council and are implemented by regulations for the domestic fisheries at 50 CFR Parts 672 and 675. Definitions of "directed fishing" are codified in §§ 672.2 and 675.2. (53 FR 44011 November 1, 1988, 50 FR 46072 (November 6, 1985, respectively).

At its June, 1988 meeting, the Council requested that the Regional Director amend the "directed fishing" definitions. After careful review, the Regional Director has determined that the Council's recommendation would encourage overharvest of high-value bycatch species, require additional at-sea discard of groundfish species, and result in additional waste of valuable groundfish resources. Therefore, the Regional Director rejects the Council's recommendation and announces that the current definitions will remain in effect until further notice and will be enforced as written.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 5, 1989.

Richard B. Stone,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-542 Filed 1-6-89; 1:13 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commodity Credit Corporation

7 CFR Parts 17 and 1493

[PL 480, GSM-102, GSM-103, EEP, DEIP, and SOAP Export Programs]

Duty Drawback and USDA Export Programs

AGENCY: Office of the Secretary and Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture is considering a revision to its export programs which would require that program participants, as a condition of program participation, agree that they will not claim the benefit of duty drawback with respect to any U.S. agricultural exports made under the program.

DATE: Comments must be received on or before April 11, 1989.

ADDRESS: Mail comments to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, Washington, DC 20250, Tel: (202) 447-6225 or John Reddington, Deputy Assistant Administrator, Commodity & Marketing Programs, Foreign Agricultural Service, Washington, DC 20250, Tel: (202) 447-7791.

SUPPLEMENTARY INFORMATION: The Department of Agriculture has received comments expressing concern that exporters who export U.S. agricultural commodities under the Department's export programs may be receiving a drawback of import duties paid on the importation of certain fungible commodities. Although this is in accordance with the U.S. custom laws (19 U.S.C. 1313), these commentators argue that this situation contravenes the intent and purposes of the Department's export programs. The commentators have asked the Department to take action which would prevent, with respect to a specific transaction, both participation in a Department program and receipt of drawback.

In view of the comments that the Department has received with regard to the drawback concerns, the public is invited to submit comments generally on this issue. Comments are specifically invited on the economic and programmatic impact, if any, on exports of U.S. agricultural commodities and the Department's export programs: (1) Of the current system under which exports under these programs may benefit from duty drawback; and (2) if program participants were required to agree, as a condition of program participation, that they would not claim duty drawback with respect to U.S. agricultural exports under these programs. The Department also invites comments with respect to the extent that duty drawback is now being claimed on exports made under the above programs.

The proposed revision would apply to the following export programs:

(1) 7 CFR Part 17-Sales of Agricultural Commodities Made Available Under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended.

(2) 7 CFR Part 1493-Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103).

(3) Export Enhancement Program (EEP).

(4) Sunflower Oil Assistance Program (SOAP).

(5) Dairy Export Incentive Program (DEIP).

Each person submitting suggestions or comments is requested to include his/her name and address and give reasons for the comments or suggestions. Copies of all written communications will be available for examination by interested persons in Room 4503, South Building, U.S. Department of Agriculture during regular business hours.

Signed at Washington, DC, on December 2, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 89-535 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-01-M; 3410-05-M

Agricultural Marketing Service

7 CFR Part 989

[FV-88-135PR]

Raisins Produced From Grapes Grown in California; a Change to the Administrative Rules and Regulations Regarding the Raisin Diversion Program Final Redemption Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would change the final redemption date for Raisin Diversion Program (RDP) certificates from January 15 to December 15. December 15 would remain the final redemption date thereafter. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order. This change is intended to improve the efficiency of the program.

DATE: Comments must be received by February 10, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 [7 CFR Part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-

major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was unanimously recommended by the Committee. The change would revise the redemption date for RDP certificates from January 15, 1990 to December 15, 1989, if a RDP were established for the next crop year. December 15 would remain the final redemption date thereafter.

The RDP gives producers the means of voluntarily reducing the quantity of grapes grown for drying into raisins. Producers wishing to participate in the RDP divert their grape crop from production. In return, the producer receives the equivalent quantity of raisins from the previous year's reserve pool, which is represented by a diversion certificate, to sell to handlers as though the raisins were produced in the current crop year. The producer is paid by a handler the established field price minus the harvest costs determined for that year. Current rules and regulations require handlers to redeem diversion certificates by January 15.

When RDP certificates are redeemed, the handler receives a quantity of reserve pool raisins equal to the amount of diverted raisins represented on the diversion certificate. Prompt redemption of diversion certificates, as proposed in this action, would allow equity holders in the reserve pool to receive payment as early as possible for those reserve pool raisins utilized to redeem diversion certificates. This action would also tend to decrease storage and insurance costs related to reserve pool raisins because those raisins would be stored in the reserve pool for a reduced period of time.

The information collection requirements contained in the section of the regulations that would be amended, if the proposed rule is adopted, have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0093.

Based on the foregoing and other available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 989.156 is amended by revising the last sentence of paragraph (k) to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(k) * * * Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued.

* * * * *

Dated: January 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-534 Filed 1-10-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 401

[Docket No. R-89-1435; FR-2585]

Supplemental Assistance for Facilities To Assist the Homeless; Cross Reference

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere is today's **Federal Register**, HUD is announcing changes for immediate effect to the guidelines for the Supplemental Assistance for Facilities to Assist the Homeless program (SAFAH). (The guidelines for SAFAH were published on October 19, 1987 (52 FR 38880).) The changes implement amendments to the program by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Although the guidelines, as well as the changes announced today, were published for immediate effect, the public is invited to comment by March 27, 1989, on the guidelines and changes for consideration in developing a final rule within 12 months of enactment of the McKinney legislative amendments.

Dated: January 5, 1989.

Kenneth J. Beirne,

Assistant Secretary for Policy Development and Research.

[FR Doc. 89-554 Filed 1-10-89; 8:45 am]

BILLING CODE 5210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1911; FR-2603]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Providence, RI; Special Revisions for Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document proposes to amend the Fiscal Year 1987 Fair Market Rent Schedule to establish new FMRs for the Providence, Rhode Island market area for that fiscal year. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

DATE: Comments due: February 10, 1989.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Offices of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs and FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 **Federal Register**, 53 FR 14954), these rents reflected the Department s cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the Fiscal Year 1987 Fair Market Rent schedules applicable to the Providence, Rhode Island market area. These FMRs reflected data submitted by the Providence Office. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Providence Office requested that the Department establish new rents for the Providence, Rhode Island market area. Careful analysis of this request and reanalysis of the FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1987 FMRs for this market area is needed. Accordingly, the Department is proposing a revision of the FY 1987 schedule applicable to the Providence, Rhode Island market area. It is intended that when this schedule is published for effect, its applicability will be the same as set forth in the preamble to the original FY 1987 schedule, published on April 26, 1988, at 53 FR 14954.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(l), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendment to the FY 1987 Fair Market Rent schedule is proposed for the Providence, Rhode Island Market Area:

Authority: Sec. 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

[Special Revision of FY 1987 FMRs]

	Number of Bedrooms				
	0	1	2	3	4
Structural:					
Detached			848	987	1104
Semi-Detached/ Row	515	618	719	797	860
Walkup	463	603	695	715	840
Elevator 2-4 STY	469	621	808		
Elevator 5+ STY	475	626	816		

Dated: January 6, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-552 Filed 1-10-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 761

Announcement of Public Hearings and Availability of Draft Supplemental Environmental Impact Statement; on Proposed Rule on Valid Existing Rights and Application Prohibitions of Surface Mining Control and Reclamation Act to Underground Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available a draft supplement to the 1979 environmental impact statement (EIS) on OSMRE's permanent program regulations. This draft Supplement addresses proposed revisions to the permanent program rules that implement section 522(e) of the Surface Mining Control and Reclamation Act (SMCRA): A standard for valid existing rights (VER) for mining in areas where Congress has otherwise prohibited mining under section 522(e) of SMCRA, and the applicability of the

prohibitions in section 522(e) to subsidence resulting from underground mining. OSMRE is soliciting public comment on this draft Supplement. All substantive comments received within the comment period will be considered in the preparation of the final EIS Supplement. In accordance with the Administrative Procedure Act, any comments on the rule itself should be submitted to the Administrative Record Room (see the Notice of Proposed Rulemaking, 53 FR 52374, December 27, 1988, for full address).

DATES: *Written comments:* Comments on the draft Supplement must be received no later than 3:30 p.m., March 3, 1989. Comments sent to another address or received after the close of the comment period may not be included in the preparation of the Final EIS Supplement.

Hearings: Hearings on the draft Supplement are scheduled on February 16, 1989. All hearings will start at 9:00 a.m. local time.

ADDRESSES: *Written comments:* By mail: Catherine Roy, Office of Surface Mining Reclamation and Enforcement, L–5121 (MS–10), 1951 Constitution Avenue, NW., Washington, DC 20240; or

Hand-deliver: Office of Surface Mining Reclamation and Enforcement, Room 5121, 1100 L Street, NW., Washington, DC, weekdays between 8:00 a.m. and 3:30 p.m.

Hearings: Public hearings are scheduled at the following locations:

Denver, CO—Brooks Towers, Second Floor Conference Room, 1020 15th Street.

Pittsburgh, PA—Parkway Center Inn, 875 Greentree Road.

Washington, DC—First Floor Auditorium, South Interior Building, 1951 Constitution Avenue, NW.

St. Louis, MO—Park Terrace Airport Hilton, 10330 Natural Bridge Road.

FOR FURTHER INFORMATION CONTACT: Single copies of the draft Supplement are available from Catherine Roy, Division of Technical Services (5121–L), OSMRE, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202 or FTS) 343–5143.

(Requests for information on the rule itself should be addressed to Dr. Annetta Cheek or Mr. Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone Dr. Cheek at (202 or FTS) 343–4006 and Mr. Winters at (202 or FTS) 343–1928.)

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, as amended, OSMRE has prepared a draft Supplement to the 1979 environmental impact statement on the permanent program regulations. This draft Supplement analyses the potential environmental impacts of a proposed revision to the permanent program rules, 30 CFR Part 761. This proposed rule would affect future surface coal mining operations on lands within National Parks, Wildlife Refuges, Wilderness Areas, Wild and Scenic Rivers, the National System of Trails, and National Recreation Areas. In addition, this proposed rule would affect future surface coal mining operations that would adversely affect places listed on the National Register of Historic Places or any publicly owned park, or operations within a National Forest or within 100 feet of cemeteries and public roads, or within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks. The proposed action and alternatives are as follows:

Alternative A1 (No Action): Modified All Permits/Prohibitions Apply Through State Programs.—Under Alternative A1, coal mining in section 522(e) areas would be regulated as it is now. VER is established by the modified all permits standard. An applicant must demonstrate that he/she had obtained, or made a good-faith effort to obtain, all permits necessary for surface coal mining operations prior to August 3, 1977. Under this alternative, almost no one would qualify for VER, and no surface mining or related impacts are expected on any of the prohibited areas identified in section 522(e). Provisions relating to subsidence in section 522(e) areas vary by State and allow a range of subsidence effects from underground mining in the 522(e) areas.

Alternative B1: Modified All Permits/Total Prohibition.—Under Alternative B1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under Alternative A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. No underground mining or surface impacts of adjacent underground mining would be allowed in section 522(e) areas.

Alternative P1 (Proposed Action): Modified All Permits/No Subsidence.—Under Alternative P1, VER for surface coal mining operations (including off-site preparation plants) would be established by the modified all permits standard as described under A1. Because almost no one would qualify for VER under this standard, there would be virtually no surface mining or off-site preparation plants in 522(e) areas. Underground mining would be allowed within protected zones currently delineated in section 522(e), but surface facilities and any measurable subsidence in the reasonably foreseeable future would be prohibited. The mine operator would be allowed to use whatever means are available to meet this performance standard.

Alternative P2 (Proposed Action): Modified All Permits/No Material Damage.—Alternative P2 is similar to P1, except that under P2, some underground coal mining in 522(e) areas would be allowed, but surface facilities and subsidence that causes material damage to protected lands, features and structures would be prohibited.

Alternative E1: Modified All Permits/Prohibitions Not Applicable.—Under Alternative E1, VER would be established using the modified all permits standard. Because virtually no one would qualify for VER, there would be no surface coal mining or off-site preparation plants in 522(e) areas. The prohibitions of section 522(e), however, would not apply to subsidence resulting from underground mining. Operations would still be required either to (a) adopt measures to prevent subsidence from causing material damage, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or (b) adopt measures that provide for planned subsidence.

Alternative P3 (Proposed Action): Ownership and Authority.—Under Alternative P3, the person claiming VER would need to show the right to extract the coal by the method intended, as determined by the laws of the State in which the property is located. To establish VER for off-site preparation plants, an operator would have to show the right to use the land and have all the permits needed before August 3, 1977.

Most owners of private coal rights in section 522(e) areas would be able to establish VER for underground mining, and the prohibitions of 522(e) would therefore not apply to underground mining. In addition, some operators would be able to establish VER for surface mining within the 522(e) areas. Very few new off-site preparation plants would be established within 522(e) areas. Applicability of the prohibitions of 552(e) to subsidence would be relevant only in those few cases where an operator would not be able to establish VER for the proposed method of mining.

Under this alternative, almost all the non-Federal coal in 522(e) areas could be underground mined, and some could be surface mined.

Tokings Alternative.—Under this alternative, an applicant for VER would have to demonstrate that the person has property rights, as defined by the laws of the State in which the property is located, such that, if the mining permit is denied, the denial would effect a taking of property that would entitle the person to just compensation under the fifth and fourteenth amendments to the United States Constitution. Although the effect of the Takings Alternative for VER cannot be quantitatively analyzed in this supplement, the impacts would be similar to those discussed under A1, B1, P1, and P2, except that less land would be subject to the prohibitions.

The analysis considers the general effects on the human environment that might occur as a result of coal mining under the various alternatives. The analysis is based on assumptions concerning where coal is likely to be produced to meet the Nation's energy needs and the level of that production. These will be determined in part by the availability of coal based on the restrictions imposed under each alternative, that is, the standard used to establish VER and how the subsidence restrictions are applied. This has a direct correlation with the effect of coal mining on the environment.

OSMRE will limit oral testimony at these hearings to 10 minutes. Additional time may be granted at the discretion of the presiding officer based on the number of speakers registered. OSMRE encourage speakers to provide a written text of prepared comments, regardless of length, to help ensure that OSMRE has an accurate record.

Persons who wish to speak should sign the register before the hearing begins. After the last registered speaker has been heard, the hearing officer will consider the request of any other person present who wishes to speak. Any person present may speak; however, only one person will be allowed to represent the viewpoints of any organization.

Dated: January 4, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 89–356 Filed 1–10–89; 8:45 am]

BILLING CODE 4310–05–M

Notices

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Officer of Management and Budget

January 6, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118. Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA. If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New Collection

- Farmers Home Administration.
  Automatic Payment System Survey
  None
  One time
  Individuals or households; 350 responses; 87 hours; not applicable under 3504(h)
  Jack Holston (202) 382–9736

Reinstatement

- Food and Nutrition Service
  Summer Food Service Program for Children (SFSPC) Food Service Management
  Company-Application for Registration
  None
  Recordkeeping: Annually
  State or local governments; Businesses or other for-profit; Federal agencies or employees; 236 responses; 579 hours; not applicable under 3504(h)
  Terry Hallberg (703) 756–3600
- Food and Nutrition Service
  Application for Participation (FNS–66); Agreement Between School Food Authority and U.S.D.A. (FNS–67)
  FNS–66 and FNS–67
  Annually
  Non-profit institutions; 1,271 responses; 1,301 hours; not applicable under 3504(h)
  Terry Hallberg (703) 756–3600

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89–591 Filed 1–10–89; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than January 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceeding	
Brazil: Brass sheet and strip (A–351–603)	01/01/88–12/31/88
Canada: Brass sheet and strip (A–122–601)	01/01/88–12/31/88
Canada: Color picture tubes (A–122–605)	06/30/87–12/31/88
France: Anhydrous sodium metasilicate (A–427–096)	01/01/88–12/31/88
Japan: Calcium pantothenate (A–588–049)	01/01/88–12/31/88
Japan: Cell cite transceivers (A–588–021)	01/01/88–12/31/88
Japan: Color picture tubes (A–588–609)	06/30/87–12/31/88
Japan: Expanded metal (A–588–048)	01/01/88–12/31/88
The People's Republic of China: Potassium permanganate (A–570–001)	01/01/88–12/31/88
The Republic of Korea: Brass sheet and strip (A–580–603)	01/01/88–12/31/88
The Republic of Korea: Color picture tubes (A–580–605)	06/30/87–12/31/88
The Republic of Korea: Certain stainless steel cooking ware (A–580–601)	01/01/88–12/31/88
Singapore: Color picture tubes (A–559–601)	06/30/87–12/31/88
South Africa: Low-fuming brazing copper rod and wire (A–791–502)	01/01/88–12/31/88
Spain: Potassium permanganate (A–469–007)	01/01/88–12/31/88
Taiwan: Certain stainless steel cooking ware (A–583–603)	01/01/88–12/31/88
Suspended Investigation	
Canada: Potassium chloride (A–122–701)	06/26/87–12/31/88
Canada: Certain red raspberries (C–122–504)	01/01/88–12/31/88
Colombia: Miniature carnations (C–301–601)	01/01/88–12/31/88
Colombia: Roses and other cut flowers (C–301–003)	01/01/88–12/31/88
Costa Rica: Fresh cut flowers (C–223–601)	01/01/88–12/31/88
Hungary: Trick trailer axle-and-brake assemblies (A–437–001)	01/01/88–12/31/88
Countervailing Duty Proceeding	
Argentina: Non-rubber footwear (C–357–052)	01/01/88–12/31/88
Brazil: Brass sheet and strip (C–351–604)	01/01/88–12/31/88
Equador: Fresh cut flowers (C–331–601)	01/01/88–12/31/88
Italy: Semi-finished forged undercarriage components (C–475–008)	01/01/88–12/31/88
Mexico: Fabricated automotive glass (C–201–406)	01/01/88–12/31/88
The Republic of Korea: Stainless steel cooking ware (C–580–602)	01/01/88–12/31/88
Spain: Stainless steel wire rod (C–469–004)	01/01/88–12/31/88
Taiwan: Stainless steel cooking ware (C–583–604)	01/01/88–12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by January 31, 1989.

If the Department does not receive by January 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Richard W. Moreland,

Acting Deputy Assistont Secretary for Compliance.

Date: January 6, 1988.

[FR Doc. 89–583 Filed 1–10–89; 8:45 am]

BILLING CODE 3510–DS–M

Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping And Countervailing Duty Proceedings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of conversion to use of the harmonized tariff schedule classifications for antidumping and countervailing duty proceedings.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of customs nomenclature. As a result, the Harmonized Tariff Schedule classifications will now be applicable for all active antidumping and countervailing duty proceedings, including orders, current investigations and future cases.

On August 21, 1987, the Department of Commerce published a notice inviting public comment on its proposed conversion from the Tariff Schedules of the United States classifications to the Harmonized Tariff Schedule classifications for antidumping and countervailing duty proceedings up to that date. On December 14, 1987, the Department published an amendment to the August 21, 1987, notice.

The Department has reviewed comments received and is now giving notice of Harmonized Tariff Schedule classifications for all antidumping and countervailing duty orders in effect. Classifications for investigations currently in progress are available by consulting the notices of initiation for those investigations.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Craig Johnke or Christopher Beach, or the case analyst, Office of Countervailing Compliance, (telephone: (202) 377–2786) or Barbara Victor, or the case analyst, Office of Antidumping Compliance (telephone: (202) 377–5222), Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Use of Harmonized Tariff Schedule Classification

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988 provides that the United States will convert to the Harmonized Tariff Schedule (HTS) as of January 1, 1989.

On August 21, 1987, the Department of Commerce ("the Department") published in the **Federal Register** a notice inviting public comment on its "Proposed Conversion of Tariff Schedules of the United States Classifications to the Harmonized System of Tariff Schedule Classifications" (52 FR 31657) for all antidumping and countervailing duty orders in effect and investigations in progress up to that date, except for six countervailing duty orders on textile and apparel products. On December 14, 1987, the Department published an amendment to that notice (52 FR 47439) on its proposed conversion of those textile and apparel orders. In addition, the Department began requesting that petitioners provide both the Tariff Schedules of the United States Annotated and the harmonized system classifications in all new petitions filed with the Department.

The Department has reviewed comments received and made adjustments where appropriate. The HTS classifications for the following six countervailing duty orders on textile and apparel products have undergone substantial revision since publication of our December 1987 notice:

Argentina—Woolen Garments (C–357–048)
Argentina—Textiles and Apparel (C–357–404)
Mexico—Textiles Mill Products (C–201–405)
Peru—Textiles and Apparel (C–333–402)
Sri Lanka—Textiles and Apparel (C–542–401)
Thailand—Apparel (C–549–401)

Lists of HTS classifications for all antidumping and countervailing duty orders in effect are now available at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We have forwarded these lists to the U.S. Customs Service, which will use them as the basis for collecting cash deposits of estimated antidumping and countervailing duties. HTS classifications for investigations currently in progress may be found by consulting the notices of initiation for those investigations. If we receive new information or additional comments on any HTS classifications at any time during the course of a proceeding, we will review those classifications.

A reference copy of the Harmonized Tariff Schedule is available for consultation at the Central Records Unit. Additionally, all U.S. Customs offices have reference copies, and

interested parties may contact the Import Specialist at their local Customs office to consult the schedule.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-584 Filed 1-10-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 1 February 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) 1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-585 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on January 26, 1989, and from 8:30 a.m. to 10:30 a.m. on January 27, 1989. The meeting will be held at the Sheraton Hotel, 2000 NW., 19th Street, Boca Raton, Florida 33431. The purpose of the meeting is to review (1) the equating plan for computerized adaptive testing, (2) adaptability screening measures, and (3) enlistment screening test development and validation. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than January 15, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-589 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Board Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board have been scheduled as follows:

DATE: 4-11 February 1989 (9:00 a.m. to 5:00 p.m. each day).

ADDRESS: Germany and London.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1989.

[FR Doc. 89-590 Filed 1-10-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Prepare Environmental Impact Statement on the Electromagnetic Pulse Simulator Operations at the Harry Diamond Laboratories Woodbridge Research Facility, Woodbridge, VA

AGENCY: Department of the Army, DOD.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Electromagnetic Pulse (EMP) Simulator Operations at the U.S. Army Laboratory Command's Harry Diamond Laboratories Woodbridge Research Facility (HDL-WRF), Woodbridge, VA.

1. The Department of the Army intends to prepare an Environmental Impact Statement (EIS) for the operation of the electromagnetic pulse (EMP) simulators which support the U.S. Army's Nuclear Weapons Survivability Technology Base Program. An Environmental Assessment of the Woodbridge Research Facility Operations at Woodbridge, Virginia, is being completed and will be published for public comment.

The U.S. Army Laboratory Command, Harry Diamond Laboratories, as the Army's lead laboratory for Nuclear Weapon Effects Survivability is responsible for executing a research and development technology base program that provides techniques to assure that U.S. Army systems will survive the effects of the EMP phenomena generated by nuclear weapons on the battlefield. The Harry Diamond Laboratories EMP program involves research and technology development for simulating the EMP environment, providing test and evaluation instrumentation and methods for survivability verification testing, and protecting U.S. Army systems against the effects of the EMP. For these efforts, the Army has built and operates EMP simulators at the Harry Diamond Laboratories HDL-WRF, Woodbridge, VA. EMP simulators consist of an electrical current source which generates a very short (one-millionth of a second) pulse of electrical current. The current pulse flows along the simulator's antenna and produces an electromagnetic wave which travels away from the antenna.

Alternatives to EMP simulator operations at HDL-WRF which will be considered in the EIS include:

a. Relocate EMP Simulators

b. Cease all WRF EMP Simulator Operations

(1) Use Other Army EMP Simulators

(2) Use Navy or Air Force EMP Simulators

(3) Use Analysis and Computer Modeling Exclusively

(4) Use Laboratory Testing (Scale Model and Direct Injection)

c. Build a New EMP Simulator Facility at Another Location

For this EIS it is anticipated that the Army will use the services of contractors, consultants, and advisors with demonstrated expertise and experience, as well as scientists, engineers, and other government personnel to accumulate the necessary information to make the appropriate analyses.

2. The environmental impact analysis process will be in accord with the National Environmental Policy Act (NEPA) of 1969, Army Regulation 200-2 (32 CFR Part 651), and the regulations of the Council on Environmental Quality, 40 CFR Part 1500. The purpose of this analyses is to determine the extent of environmental impacts and incorporate appropriate mitigation measures.

3. The Army will conduct a scoping process to aid in determining the significant issues related to the proposed action. Public as well as federal, state, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration and possible incorporation into the Army's EIS. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts, and recommended mitigating measures associated with the proposed action.

4. A public scoping meeting will be held in January 1989. The time and place will be announced in a later issue of the **Federal Register.** This meeting is intended to provide a forum for individuals or agencies to offer information relevant to the environmental impacts or aspects of the proposed action which should be considered by the Army. Those unable to attend the scoping meeting may convey their concerns by writing to the address shown below. Notice will also be mailed to groups and individuals, agencies, and anyone responding to this Notice of Intent desiring to be informed on the details of this upcoming public participation meeting. Questions and comments regarding the scope of the environmental analysis should be submitted to:

U.S. Army Laboratory Command,
ATTN: AMSLC-PA, 2800 Powder Mill Road, Adelphi, MD 20783-1145.

Comments and suggestions should be received no later than 15 days following the public scoping meeting to be considered in the Draft EIS (DEIS). For additional information call (301) 394-3590.

5. The DEIS is expected to be available to the public in September 1989. The completed DEIS will be available for review in order that interested persons may comment on the document. Comments received will be considered in preparation of a Final Environmental Impact Statement (FEIS). Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the DEIS and FEIS may contact Ms. Marian Singleton at the address above.

January 6, 1989.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(I&L).

[FR Doc. 89-567 Filed 1-10-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management, Change in Provisions for Characters Participating in International Traffic

AGENCY: Military Traffic Management Command, Department of the Army, DOD 4500.34R and Appendix A, Tender of Service.

ACTION: Request for comments on a proposed regulation and Tender of Service change.

SUMMARY: The Military Traffic Management Command (MTMC) has reviewed the procedure of granting an additional 15 days to carriers participating in international traffic when there is a loss of agent representation at an installation. It is our determination that the additional 15 days is not necessary, and that 30 days notice to procure agent representation is sufficient. Therefore, MTMC is proposing the elimination of the 15 days for Volume 58, effective April 1, 1989. There will still be a requirement on the transportation offices to notify MTMC when a Letter of Intent is returned if the carrier does not procure an agent within the 30-days time frame. This will allow MTMC to continue to monitor the full rate area coverage requirement in the international program.

DATE: Comments submitted on or before February 1, 1989.

ADDRESS: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTN: MT-PPC-I, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige or Mrs. Jean Summers, HQMTMC, ATTN: MT-PPC, 5611 Columbia Pike, Falls Church, VA, 22041-5050, (703) 756-2383.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 89-678 Filed 1-10-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Civil Rights Office: Public Higher Education Desegregation Plan Implementation by Kentucky; Proposed Report Availability

AGENCY: Department of Education.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Office for Civil Rights proposed factual report on public higher education desegregation plan implementation by the Commonwealth of Kentucky is available for inspection by the public from 9:00 am to 4:00 pm, Washington, DC time, Monday through Friday, excluding Federal holidays, at the following location: U.S. Department of Education, Switzer Building, 330 C Street, SW., Room 5323, Washington, DC.

This action is taken to obtain public comments on the report before a final decision is made on compliance with Title VI of the Civil Rights Act of 1964. This state's higher education desegregation plan expired in the 1986-87 academic year.

DATES: Comments on the proposed factual report will be accepted March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Sharon H. McCoy at 202-732-1691.

BEST COPY AVAILABLE

Date: January 5, 1989.

LeGree S. Daniels,

Assistant Secretary for Civil Rights.

[FR Doc. 89-604 Filed 1-10-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-50-NG]

Poco Petroleum, Inc.; Order Granting Authorization To Import Canadian Natural Gas; Conditional Authorization To Import Canadian Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Authorization to Import Natural Gas; and Conditional Authorization to Import Natural Gas

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Poco Petroleum, Inc. (Poco), authority to import up to 15 MMcf per day of Canadian natural gas beginning on the effective date of the order through October 31, 1989, and up to 25 MMcf per day, from November 1, 1990, through March 31, 2005, for Consumers Power Company's system supply. The order also grants conditional authority to Poco to import up to 25 MMcf per day of Canadian natural gas beginning on the date of first delivery in 1990 through October 31, 2004, to provide generation fuel for Midland Cogeneration Venture Limited Partnership's proposed new cogeneration facility at Midland, Michigan.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 23, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-600 Filed 1-10-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 89-03; Certification Notice 28]

Filing a Certification of Compliance: Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
P&N Partners, L.P., New York, NY	12-22-88	Combined cycle	9.3	West Carthage, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on January 5, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-599 Filed 1-10-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200208.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Hapag-Lloyd, A.G., Gulf Container Line BV and Compagnie Generale Maritime, (referred to collectively as Sagumex Consortium).

Synopsis: The Agreement provides that Sagumex Consortium shall have the exclusive use of premises assigned by GPA on Container Berth No. 5 for Sagumex Consortium's steamship operations, storage and handling of containers and parking of an office trailer. The Agreement also provides that Sagumex Consortium will pay GPA for wharfage, crane rental, and slot lease as specified in the Agreement. In addition, Sagumex Consortium will pay GPA for dockage and any other services provided at GPA's published tariff rates effective when such services are performed. The term of the Agreement is for three years. It replaces the parties' previous terminal agreement Agreement No. 224-200047.

Agreement No.: 224/200209.

Title: Port of Portland Terminal Agreement.

Parties: Port of Portland (Portland), Oregon Terminal Company (OTC).

Synopsis: The agreement provides for OTC to operate portions of Portland's Terminal 4 facility, including 61.2 acres, three berths, a backup storage area, a gearlocker building and three warehouses. OTC guarantees Portland a minimum revenue of $870,000 which shall be adjusted the second year and thereafter. Portland will receive a share of the wharfage, dockage and other facility revenue generated at the facility. The initial term of the agreement is for two years. There is an option to renew the agreement for five additional three year terms.

By Order of the Federal Maritime Commission.

Dated: January 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-523 Filed 1-10-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CB&T Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control noting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *CB&T Bancshares,* Inc., Columbus, Georgia; Barnett Banks, Inc., Jacksonville, Florida; Bank South Corporation, Atlanta, Georgia; Citizens and Southern Georgia Corporation, Atlanta, Georgia; and SunTrust Banks, Inc., Atlanta, Georgia; to acquire Georgia Interchange Network, Inc., Atlanta, Georgia, and thereby engage in data processing transmission and related activities through the operation of an electronic funds transfer network for interchanging ATM, POS, and related transactions among financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-506 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Financial Future Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Financiol Future Corporation,* Ceredo, West Virginia; to acquire 100 percent of the voting shares of First Bancorp of Wayne, Inc., Sprague, West Virginia, and thereby indirectly acquire The First National Bank of Kenova, Kenova, West Virginia.

2. *The George Washington Banking Corporation,* Alexandria, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the The George Washington National Bank, in organization, Alexandria, Virginia, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation,* Kalamazoo, Michigan, and First of America Bancorporation-Illinois, Inc., Libertyville, Illinois; to acquire 100 percent of the voting shares of Whiteside County Bank, Morrison, Illinois.

2. *First Wisconsin Corporation* and F.W.S.B., both of Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Stillwater Holding Company, Stillwater, Minnesota, and thereby indirectly acquire First National Bank of Stillwater, Stillwater, Minnesota, and First State Bank of Hugo, Hugo, Minnesota. Comments on this application must be received by January 24, 1989.

3. *Northern Trust Corporation,* Chicago, Illinois; to acquire 99.7 percent of the voting shares of Concorde Bank, Dallas, National Association, Dallas, Texas.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *MGB Bancshares, Inc.,* Mulberry Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Mulberry Grove, Mulberry Grove, Illinois.

2. *Trenton Bancshares, Inc.,* Trenton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Commerce, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-507 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Gary-Wheaton Investment Services, Inc., Wheaton, Illinois, in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *Gary-Wheaton Corporation*, Wheaton, Illinois; to engage *de novo* through its subsidiary, Gary-Wheaton Investment Services, Inc., Wheaton, Illinois, in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

3. *Star Financial Group, Inc.*, Marion, Indiana; to engage *de novo* through its subsidiary, Star Trust Company, Marion, Indiana, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to engage *de novo* in data processing activities related to financial, banking, and economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January, 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-508 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Interstate Corp. of Wisconsin; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Kohler, Wisconsin; to acquire First Interstate Management Services of Wisconsin, Sheboygan, Wisconsin, and thereby engage in management consulting services pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-509 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

First Union Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina, and First Wachovia Corporation, Winston-Salem, North Carolina; to engage de novo through their subsidiary, Georgia Interchange Network, Inc., Atlanta, Georgia, in data processing trasmission and related activities through the operation of an electronic funds transfer network for interchanging ATM, POS, and related transactions among financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hasten Bancorp*, Indianapolis, Indiana; to engage de novo through its subsidiary, Hasten Financial Services, Indianapolis, Indiana, securities brokerage activities pursuant to § 225.25(b)(15); and providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Community Bancorp*, Lacey, Washington; to engage de novo in providing courier services pursuant to § 225.25(b)(10); real estate appraising pursuant to § 225.25(b)(13); performing trust company functions pursuant to § 225.25(b)(3); SBA Financing pursuant to § 225.25(b)(1); and insurance sales pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted throughout Washington and Oregon.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-510 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

JTNB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 2, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *JTNB Bancorp, Inc.*, Jim Thorpe, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Jim Thorpe National Bank, Jim Thorpe, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mid Am Inc.*, Bowling Green, Ohio; to acquire 100 percent of the voting shares of FBC Bancshares, Inc., Lakeview, Ohio, and thereby indirectly acquire Farmers Banking Company, National Association, Lakeview, Ohio. Comments on this application must be received by January 27, 1989.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Baldwin Bancshares, Inc.*, Milledgeville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Baldwin County, Milledgeville, Georgia, a de novo bank.

2. *CB&T Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares of Farmers and Merchants Bank of Russell County, Phenix City, Alabama.

3. *1st United Bancorp*, Boca Raton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of 1st United Bank, Boca Raton, Florida.

4. *Sweet Water State Bancshares, Inc.*, Sweet Water, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Sweet Water State Bank, Sweet Water, Alabama.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire at least 39.34 percent of the voting shares of Fidelity Bancorp, Inc. of West Memphis, West Memphis, Arkansas, and thereby indirectly acquire Fidelity National Bank of West Memphis, West Memphis, Arkansas.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; Stuart Family Partnership, Lincoln, Nebraska; Catherine Stuart Schmoker Family Partnership, Lincoln, Nebraska; James Stuart, Jr. Family Partnership, Lincoln, Nebraska; and Scott Stuart Family Partnership, Lincoln, Nebraska; to acquire 15 percent of the voting shares of Lincoln Bank South, Lincoln, Nebraska. Comments on this application must be received by January 25, 1989.

2. *First Tuttle Bancorp, Inc.*, Tuttle, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Tuttle, Tuttle, Oklahoma. Comments on this application must be received by January 25, 1989.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-511 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Randall Porter, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 25, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Randall Porter,* Alpharetta, Georgia; to acquire an additional 1.2 percent of the voting shares of First Colony Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire First Colony Bank, Alpharetta, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Joseph Polack,* M. Victor Monson, and L.T. Womack; to acquire 26.6 percent of the voting shares of Corn Belt Bancorporation, Lincoln, Nebraska, and thereby indirectly acquire Corn Belt State Bank, Correctionville, Iowa, and Union National Bank, Massena, Iowa.

2. *Joseph Polack,* to acquire 5.81 percent of the voting shares of Thurman State Corporation, Lincoln, Nebraska, and thereby indirectly acquire American National Bank, Bedford, Iowa, and thereby indirectly acquire Union National Bank of Iowa, Sidney, Iowa.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Helene M. McCann,* Shawnee Mission, Kansas, to acquire an additional 2.48 percent, and Glenn McCann and Helene McCann, Shawnee Mission, Kansas, to acquire an additional 1.54 percent of the voting shares of Fidelity Banc Corporation, Dodge City, Kansas, and thereby indirectly acquire Fidelity State Bank and Trust Company, Dodge City, Kansas.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Robert B. Sharples,* George West, Texas, and Larry J. Jurica, George West, Texas, to each acquire 6.35 percent of the voting shares of Luling Bancshares, Inc., Luling, Texas, and thereby indirectly acquire The First National Bank in Luling, Luling, Texas.

Board of Governors of the Federal Reserve System, January 5, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-512 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; J. Bar M. Shonsey, Inc., et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. § 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 24, 1989.

A. **Federal Reserve Bank of Minneapolis.** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *J. Bar M. Shonsey, Inc.,* Omaha, Nebraska; to acquire an additional 0.95 percent of the voting shares of Hebron Bancshares, Inc., Hebron, North Dakota, and thereby indirectly acquire Security Bank of Hebron, Hebron, North Dakota.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sammy P. Pierce,* Bellville, Texas, to acquire 7.72 percent; and Pierce Sale Company, Trustee of Profit Sharing Plan, Bellville, Texas, to acquire 4.86 percent of the voting shares of Community Bancorporation, Inc., Bellville, Texas, and thereby indirectly acquire The First National Bank of Bellville, Bellville, Texas, and The Waller Bank, N.A., Waller, Texas.

2. *Daniel P. Bolin,* Wichita Falls, Texas, to acquire 18.48 percent; Patrick S. Bolin, Dallas, Texas, to acquire 20.35 percent; and Warren T. Ayres, Wichita Falls, Texas, to acquire 6.78 percent; of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank of Dallas, Dallas, Texas.

3. *Elwood Freeman,* Lamesa, Texas; to acquire 28.48 percent of the voting shares of Lamesa National Corporation, Lamesa, Texas, and thereby indirectly acquire The Lamesa National Bank, Lamesa, Texas.

4. *Klaus Peter Ulrich,* Kingwood, Texas, to acquire 100 percent of the Class A voting common stock; Heinz Klinckwort, Calz Del Las Brujas, Mexico, to acquire 21.1 percent of Class B non-voting common stock; Inge. Ramon E. Beteta De Cou, Guadalajara, Mexico, to acquire 14.1 percent of the Class B non-voting common stock; and Luis Mendez Jiminez, Prolongacion, Mexico, to acquire 61.7 percent of Class B non-voting common stock of Sun Belt Bancshares Corporation, Conroe, Texas, and thereby indirectly acquire National Bank of Conroe, Conroe, Texas.

Board of Governors of the Federal Reserve System, January 4, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-513 Filed 1-10-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of record

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine uses for an existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is amending the system notice for the Health Insurance Master Record HHS/HCFA/BPO No. 09-70-0502, to add two new routine uses.

EFFECTIVE DATES: The proposed new routine uses shall take effect without further notice February 10, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Health Care Financing Administration, G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Marla Kilbourne, Office of Prepaid Health Care, 320 Meadows East Building, 6325 Security Boulevard, Baltimore Maryland 21207, 301-966-7622.

SUPPLEMENTARY INFORMATION: The Health Insurance Master Record, System No. 09-70-0502, contains records on enrollment, entitlement, bill processing, and certain other information relating to Medicare beneficiaries. The system notice for this system was most recently published at 53 FR 52792; December 29, 1988. As described below, we are proposing to establish two new routine uses under the system notice to permit disclosure to group health plans, directly or through a contractor, of a limited amount of information from the Health Insurance Master Record. The term "group health plans" includes health maintenance organizations (HMOs) and competitive medical plans (CMPs) which have entered into Medicare contracts with HCFA and health care prepayment plans (HCPPs) which have been approved by HCFA.

The proposed disclosure of limited information from the Health Insurance Master Record to group health plans with Medicare contracts or approvals is necessary to enable a plan to determine accurately, at the time an application for enrollment is submitted, the eligibility of a Medicare beneficiary to enroll in the plan. Thus, disclosure of data in the file would enable a group health plan to identify on a timely basis whether the beneficiary applying to enroll (1) is entitled to Medicare Part A and/or Part B, (2) has been medically determined to have end stage renal disease (ESRD), (3) has an active hospice care election, or (4) is already enrolled in another Medicare group health plan. Entitlement to Part A and/or Part B is relevant to determine the extent of Medicare coverage, if any, of a group health plan applicant. ESRD status or hospice election status are relevant since, except under certain circumstances, individuals having such status are not eligible to enroll in an HMO or CMP. Whether a beneficiary is already enrolled in a Medicare group health plan is relevant since it helps to assure that the beneficiary is not disenrolled from his/her current plan and enrolled in a new one as a consequence of inadvertence or misunderstanding.

A further purpose in disclosing certain data from the file would be to enable group health plans to verify at the time of an application for enrollment that the name and Hi claim number provided by the group health plan applicant correspond with the name and number in HCFA's records. This helps to avoid the processing and other complications that result from an enrollment based on erroneous eligibility information. Since the purposes of disclosure under the proposed routine uses relate to beneficiary eligibility and bill and payment record processing, they are compatible with the purpose of collecting the information maintained in the Health Insurance Master Record.

In order to protect the privacy of Medicare beneficiaries, we are proposing to limit the data released to grou health plans to the minimum necessary to determine the enrollment eligibility of group health plan applicants. Thus, only the following data elements will be disclosed under the proposed routine uses: Health Insurance Claim number, name, sex, date of birth, Part A and/or Part B entitlement data, State and county code, status code (alive/deceased), Medicaid/ESRD/hospice code (if applicable), and current HMO enrollment period (if applicable). As a further precaution, we are providing that group health plans would have access only to one record at a time and only through a CRT terminal. A password would have to be entered to gain access to the file. Both the beneficiary's name and the Health Insurance Claim number would have to be entered to access individual records within the file.

We are proposing that when a contractor is used to refine or otherwise process data and make the limited disclosure just described, the contractor would be required to safeguard the confidentiality of the data maintained in its information system and prevent unauthorized use or disclosure. The contractor would be required, for instance, to provide an adequate level of security for the data by maintaining it under appropriate technical, personnel, administrative, and telecommunications safeguards. The contractor could use the data only for purposes of fulfilling its contract with HCFA and not for any other purpose. We are proposing that the following routine uses be added to the current system notice for the Health Insurance Master Record, System No. 09-70-0502:

(14) To a group health plan (i.e., a health maintenance organization (HMO) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use no. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

The new routine uses are consistent with Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, they are compatible with the purpose for which the information is collected. Because the addition of these new routine uses will not change the purposes for which the information in the system will be used, or otherwise alter the system, we are not required to prepare a report of altered system of records under 5 U.S.C. 552a(o).

We are publishing the system notice below in its entirety for the convenience of the reader.

Date: January 6, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0502

SYSTEM NAME:

Health Insurance Master Record, HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207.

Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently

are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquires from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health an Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosured to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity,

or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one if its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plans (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment, query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems securities are established in accordance with DHHS ADP Systems Manual, Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements 6325 Security Boulevard, Baltimore, Md. 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health

insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. [These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).)]

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-628 Filed 1-10-89; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Division of Research Resources, National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on February 2-3, 1989, at the National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 2, from 9 a.m. until recess and from 8:30 a.m. until approximately 10:45 a.m. on February 3 during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Acting Director, DRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 3 from approximately 10:45 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496-6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health).

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-543 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute, National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, January 26, 1989, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. until approximately 11:00 a.m. on Thursday, January 26. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 11:00 a.m. until closing on January 26 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will be no meeting of the Vision Research Program Planning Subcommittee in January 1989.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-545 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases, National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 26-27, 1989 at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on January 26 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 10 a.m. to recess for meetings of the Council subcommittees. On January 27 the meeting will be open to the public from approximately 8:30 a.m. until 2 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussion will include a report on the revision and institution of procedures for review of large grant mechanisms; a discussion of transplantation immunology and a report from each of the Council subcommittees.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 10 a.m. on January 26, in conference rooms 5, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 2 p.m. until adjournment on January 27 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301-496-7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Mocrobiology and Infectious Diseases Research, National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-544 Filed 1-10-89; 8:45am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases National Arthritis and Musculoskeletal and Skin Diseases Advisory Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advince to the National Institute of Arthritis and Muscoloskeletal and Skin Diseases on February 16, and 17, 1989, Conference Room 6, Building 31, National Institutes, of Health, Bethesda, Maryland. The meeting will be open to the public February 16 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 16 from 1 p.m. to adjournment and again on February 17 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Seven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: December 30, 1988.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 89-546 Filed 1-10-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1989.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301-496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Nome of Committee: Population Research Committee.

Executive Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496-1696.

Date of Meeting: March 2-3, 1989.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 2, 1989, 9:00 a.m.-10:00 a.m.

Closed: March 2, 1989, 10:00 a.m.-5:00 p.m., March 3, 1989, 9:00 a.m.-adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496-1485.

Date of Meeting: March 7-8, 1989.

Place of Meeting: Executive Plaza North, Conference Room H, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 7, 1989, 9:00 a.m.-10:00 a.m.

Closed: March 7, 1989, 10:00 a.m.-5:00 p.m., March 8, 1989, 9:00 a.m.-adjournment.

Nome of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: March 9–10, 1989.

Place of Meeting: Executive Plaza North, Conference Room G, 6130 Executive Blvd., Bethesda, Maryland.

Open: March 9, 1989, 9:00 a.m.–10:00 a.m.

Closed: March 9, 1989, 10:00 a.m.–5:00 p.m., March 10, 1989, 9:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: December 30, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–547 Filed 1–10–89; 8:45]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research; Supplemental Assistance for Facilities To Assist the Homeless; Amendments to Guidelines

[Docket No. N–89–1904; FR–2585]

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of amendments to program guidelines.

SUMMARY: This notice announces changes for immediate effect to HUD's guidelines for the operation of the program of Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) as a result of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988) (1988 Amendments Act). This program was authorized by Title IV, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987) (McKinney Act) to provide: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Guidelines for the operation of SAFAH were published by HUD on October 19, 1987 (52 FR 38880). This notice also announces proposed changes to the guidelines to be incorporated in a final rule after public comment. The notice solicits public comment on the October 19, 1987 guidelines, the 1988 Amendments Act changes announced in this notice, and the proposed changes to the guidelines in order to prepare a final rule for publication. No funds are available for obligation for SAFAH for FY 1989 as of the date of this notice.

EFFECTIVE DATE: January 11, 1989.

Comments due: March 27, 1989.

ADDRESS: Interested persons are invited to submit comments on the October 19, 1987 guidelines (52 FR 38880) and the changes to the guidelines announced in this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address. Copies of the October 19, 1987 SAFAH guidelines may be obtained from the above address on request.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Division of Policy Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8112, Washington, DC 20410, telephone (202) 755–5537. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015. These telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Supplemental Assistance for Facilities to Assist the Homeless program were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and were approved on December 30, 1988 and assigned OMB control number 2528–0361. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background and Procedural Matters

The McKinney Act authorized the SAFAH program to provide two categories of assistance: (1) Assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants and the Supportive Housing Demonstration programs that are required to meet the special needs of certain homeless populations or to facilitate the transfer and use of public buildings to assist the homeless; or (2) comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless. Section 433 of the McKinney Act required HUD to establish by **Federal Register** notice the guidelines for governing SAFAH. HUD published the guidelines on October 19, 1987 (52 FR 38880) (the SAFAH guidelines).

Section 485 of the 1988 Amendments Act requires that HUD publish, within 60 days of its enactment, a notice for immediate effect describing the changes to the SAFAH guidelines made by the Act. In addition to the changes for immediate effect necessitated by the 1988 Amendments Act, HUD is proposing in this notice two changes to the guidelines, which will not be effective until public comment has been received and considered.

The 1988 Amendments Act also requires HUD to issue a final rule not later than 12 months after enactment based on the guidelines and the changes to the guidelines established in this notice. HUD invites the public to comment on the guidelines, the changes for immediate effect, and the proposed changes announced in this notice for consideration in the final rulemaking. Interested persons should refer to the October 19, 1987 guidelines (52 FR 38880) in order to understand the changes described in this notice within the context of those guidelines.

No funds are available for obligation for SAFAH for FY 1989 as of the date of this notice. When funds become available in the future, HUD will publish a Notice of Funds Availability and will invite eligible applicants to apply for assistance under the program.

II. Comprehensive Homeless Assistance Plan

SAFAH assistance may not be provided to or within the jurisdiction of a State or an ESG formula city or county (defined in section A of the SAFAH guidelines), unless the jurisdiction (or jurisdictions, where necessary) has a HUD-approved Comprehensive Homeless Assistance Plan (CHAP). On December 28, 1988, HUD published a notice announcing the current requirements for HUD approval of a CHAP as a result of the 1988 Amendments Act (53 FR 52600). Readers should familiarize themselves with the CHAP requirements.

III. 1988 Amendments Act Changes to SAFAH Guidelines

1. *Assistance provided.* Section 461(1) of the 1988 Amendments Act is a technical amendment to clarify that assistance is available to provide supportive services to the homeless in the category of assistance in excess of ESG and SHD program funding (see section B.1.(ii) of the SAFAH guidelines). The term "supportive services" is defined in section A of the SAFAH guidelines.

In the category of comprehensive assistance (section B.1.(i) of the SAFAH guidelines), section 461(2) of the 1988 Amendments Act authorizes assistance for the operation of facilities to assist the homeless, in addition to assistance for the purchase, lease, rehabilitation, or conversion of the facilities. Operating expenses are those that a recipient incurs for administration, maintenance, minor or routine repair, security, utilities, fuel, furnishings, equipment, and rental of the housing. The term does not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

2. *Site control.* Section 463 of the 1988 Amendments Act provides that an application for assistance must furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than six months after notification of an award for assistance. Under the SAFAH guidelines (sections E.2.(i)(b)(3)(*c*) and E.3.(i)(b)(4)(*c*)), applicants were required to demonstrate control of a site at the time of the application for assistance. This amendment will permit applications to be made for projects that are not able to gain control of a site until they have been notified of an award for assistance. "Reasonable assurances" must be satisfied by identification of a suitable site (a suitable site is one that meets the threshold requirements applicable to sites in sections E.2.(i) and E.3.(i) of the guidelines) and:

(a) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

Section 463 also provides that an applicant may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it has the ability to furnish the difference in costs, HUD may recapture the obligated funds and reallocate the funds to other projects.

If a recipient does not have control of the site within one year after notification of an award for assistance, section 463 requires HUD to recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for SAFAH assistance, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

3. *Environmental review.* Section 443 provides that the provisions of, and regulators and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in III.4.)

As applied to SAFAH, the Department views section 443 as authorizing the Secretary to require States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose governmental powers to assume the responsibility for assessing the environmetal effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, HUD will, in connection with future SAFAH grants, provide for assumption of these responsibilities by jurisdictions with general governmental powers that are deemed to have the legal capacity to assume the responsibilities. This policy will *not* be applied to advances or grants made to governmental entities with *special* or *limited purpose* powers or to *provide nonprofit organizations.* HUD will continue to perform the environmental review for these entities in accordance with 24 CFR Part 50, to the extent required. Relevant reviews completed for purposes of another McKinney Act program or other HUD programs may suffice for purposes of SAFAH, where permitted under Part 58.

An applicant with general purpose governmental powers that believes that it does not have the legal capacity to carry out the environmental responsibilities required by 25 CFR Part 58 should contact the appropriate HUD Field Office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

With respect to applications for which the applicant will be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold requirements and selection process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, the provisions of sections E.2(i)(b)(3)(*c*) and E.3(i)(b)(4)(*c*) of the SAFAH guidelines that concern historic preservation requirements, as well as sections E.2(iii) and E.3(iii) of the SAFAH guidelines, will not apply to those applications, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in selecting such applications. Similarly, since under sections E.2(iii) and E.3(iii) of the

SAFAH guidelines, an application that requires an Environmental Impact Statement (EIS) will not be eligible for funding, this provision will be applied only to the applications for which HUD performs the environmental review. HUD will not enforce this provision where the applicant performs the environmental review, and after finding that an EIS is necessary, chooses to prepare the EIS.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection and physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environental review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of this program). Activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selection and to the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that under section 104(g), HUD may not release SAFAH funds for a project if the grantee, a subgrantee, or another party commits SAFAH funds (*i.e.*, incurs any costs or expenditures to be paid for or reimbursed with such funds) before the grantee submits its request for release of SAFAH funds to HUD.

4. *Floodploin restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. HUD has determined that this provision should be applied to the SAFAH program as well. Therefore, the restrictions with respect to location of projects in floodplains contained in sections E.2(i)(b)(3)(c) and E.3(i)(b)(4)(c) of the SAFAH guidelines will no longer apply to projects assisted under SAFAH. HUD interprets Section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outlined in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees will perform the eight-step process whenever they assume other environmental review responsibilities (see section III.3), doing so during the environmental review process.

The eight-step process applies to all applications for projects within the 100-year floodplain and, for critical actions, the 500-year floodplain. Critical actions are defined as those projects intended to serve developmentally disabled, chronically mentally ill, or mobility imparied residents. Applicants with proposed projects located in a floodplain should be aware that the public notification and decisionmaking period takes a minimum of 30 days from the time the first published notice in the process appears. Where HUD will carry out the process, applicants may be required to provide engineering and structural information (*e.g.*, elevations and data) in order to permit HUD to undertake its analysis. If HUD is unable to make a floodplains determination within 60 days from the date it publishes the first notice (where HUD has the responsibility for carrying out the eight-step process), and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

Executive Order 11988 requires HUD or the applicant (where it assumes environmental review responsibilities) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD or the applicant must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the process, HUD will assign a higher environmental rating to applications with less hazardous sites. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 (CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedure of the Floodplain Management Guidelines.

5. *Drug- and alcohol-free facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential applicants are encouraged to read the notice on Comprehensive Homeless Assistance Plans, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

IV. Proposed Changes to SAFAH Guidelines

1. *Outpatient health services.* The definition of "outpatient health services" in section A of the SAFAH guidelines would be changed to exclude outpatient substance abuse services. HUD believes these services are adequately covered under the definition of "supportive services."

2. *Ranking criteria for comprehensive assistance.* An additional ranking factor on cost-effectiveness would be included for applications for comprehensive assistance (see section E.2.(ii) of the SAFAH guidelines). (This ranking factor is already included for applications for excess assistance (see section E.3.(ii)(c).) Under the cost-effectiveness factor for comprehensive assistance, HUD would consider the extent to which the applicant's proposed costs under the proposal are reasonable in relation to the work done and the goods and services purchased, and are effective in accomplishing the purposes of the proposal.

V. Other Matters

The collection of information requirements contained in this Notice and in the SAFAH guidelines were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Section III of this notice has been determined by the Department to contain new collection of information requirements not included in the Department's assessment of the burden of these requirements when it was originally approved by OMB. Information on the reporting burden is provided as follows:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Applications:				
Comprehensive	250	1	100	25,000
Supplemental	30	1	52	1,560
Total annual burden				26,560

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family,* has determined that the changes to the SAFAH program announced in this Notice will not have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. The changes are either procedural or of little substantial significance. In addition, the Notice announces statutorily imposed requirements over which HUD has little or no implementing discretion.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism,* that the amendment made by section 443 of the 1988 Amendments Act will have federalism implications. That section provides that HUD shall apply the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the delegation of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by, and clearly the intent of, section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to further review under Executive Order 12612.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.510.

Dated: January 4, 1989.

Kenneth J. Beirne,

Assistant Secretary for Policy Development and Research.

[FR Doc. 89–553 Filed 1–10–89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–4111–15; WYW84965]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW84965 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW84965 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89–519 Filed 1–10–89; 8:45 am]

BILLING CODE 4310-22-M

[WY–920–09–4111–15; WYW29920]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW29920 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in

sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW29920 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-520 Filed 1-10-89; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity; Bolivia

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Bolivia (the "Borrower"), acting through the Central Bank of Bolivia, as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter programs for low-income families in Bolivia. The following is the address of the Borrower and the loan amount and terms for which the Borrower is requesting proposals from U.S. lenders or investment bankers:

Bolivia

Project: 511-HG-007—$7.5 Million.

Lic. Fernado Caceres P., Gerente de Division de Supervision de Lineas Gerencia de Desarrollo, Banco Central de Bolivia, Ayacucho Esquina Mercado S/N, Cajon Postal No. 3118, La Paz, Bolivia, Telex No.: NAVIANA 3398, Telefax No.: 377122—366636, Telephone No.: 374151 Ext. 170 or 351458.

Interested lenders should telex their bids to the Borrower's representative by January 24, 1989, 12:00 noon New York Time. Bids should be valid for a period of 72 hours. Copies of all bids should be simultaneously sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication).

USAID/La Paz, Attention: Mr. Dino Sierve, Private Sector Office (PSO), (street address: Avenida 16 de Julio, Edificio del Banco de Industrial (BISA)), La Paz, Bolivia, Telephone No.: 591/2/350-120, Telex No.: 3532 USAID BV.

Mr. Francis Conway, Assistant Director/South America, RHUDO/Quito, USAID/Quito, APO Miami 34039, (street address: 1573 Ave. Colombia by Queseras del Medio Edificio Computec, 30 Piso, Quito, Ecuador, Telephone No.: 593/2/521-100 or 544-365, Telefax No.: 593/2/561-228 or 502-052, Telex No.: 23239 UCICA ED.

For your information the Borrower is considering the following terms:

1. *Amount:* U.S. $7.5 million with capitalization of interest during the grace period of 3 years.

2. *Term:* Up to 30 years.

3. *Grace period:* Ten years grace period for payment of principal and 3 years grace period on interest payments. Proposals should consider providing Borrower with the option of repaying capitalized interest in full at the end of the 3 years grace period on interest.

4 *Payment:* The payment for the service of the debt will be on a semi-annual basis.

5. *Interest rate:* The rate of interest sould be quoted in relation to the Libor rate. The proposals should include both fixed interest rate and variable interest rate alternatives. The option for Borrower to convert from variable to fixed or vice versa, should be addressed.

6. *Drawdowns:* The Loan should be disbursed in full by the Investor not later than February 15, 1989.

7. *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by the Borrower.

8. *Fees and contracting expenses:* Proposals should specify the contracting expense and fees.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursement under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporation whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523, Telephone: 202/633-2530.

Dated: January 6, 1989.

William Gelman,

Assistant Director for Operations Office of Housing and Urban Programs Agency for International Development.

[FR Doc. 89-612 Filed 1-9-89; 11:04 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Investment Opportunity; Ecuador

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Ecuador (the "Borrower") as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Ecuador. The Government of Ecuador has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Ecuador

Project: 518-hg-007—$10 million.

Ing. Jorge Gallardo Zavala, Ministro de Finanzas y Credito Publico, Attn: Ing. Edison Ortiz Duran, Subsecretaria de Credito Publico, Ave. 10 de Agosto 1661 y Jorge Washington, Quito, Ecuador, Telex No.: 2449 MIN FIN ED, Telefax No.: 593/2/564872, Telephone Nos.: 593/2/541908, or 543469, 500864, 568883.

Interested lenders should telex their bids to the Borrower's representative by January 24, 1989, 5:00 p.m. Eastern Standard Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following:

Michael G. Kitay/Barton Veret, Agency for International Development, GC/PRE, Room 3328 N. S., Washington, DC 20523, Telephone: 202/647-8235, Telex No.: 892703 AID WSA, Telefax No.: 202/647-4958 (preferred communication).

Mr. Francis Conway, Assistant Director/South America, RHUDO/Quito, USAID/Quito, APO Miami 34039, (street address: 1573 Ave. Colombia y Queseras del Medio Edificio Computec, 30. Piso Quito, Ecuador, Telephone No.: 593/2/521-100 or 544-365, Telefax No.: 593/2/561-228 or 502-052 Telex No.: 23239 UCICA ED.

Each proposal should consider the following terms:

1. *Amount:* U.S. $10 million.

2. *Term:* Up to 30 years.

3. *Grace period:* Ten years on payment of principal.

4. *Interest rate:* Both fixed and variable rate, indicating, as appropriate, conditions placed upon conversion from variable rates to fixed rates.

5. *Payments:* Semi-annual.

6. *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by the Borrower.

7. *Fees and contracting expenses:* Proposals should specify the contracting expense and fees.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. quaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA-2, Washington, DC 20523, Telephone: 202/633-2530.

Dated: January 6, 1989.

William Gelman,

Assistant Director for Operations, Office of Housing and Urban Progroms, Agency for International Development.

[FR Doc. 89-611 Filed 1-9-88; 11:04 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-referenced investigation with respect to certain issues, and has determined not to review the remainder of the ID. The Commission has requested parties and interested Government agencies to file written submissions on the issues on review. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-210.58 of the Commission's Interim Rules of Practice and Procedure (53 FR 33071-72, Aug. 29, 1988).

The Commission instituted this investigation on September 16, 1987, in response to a complaint filed on August 5, 1987, by Intel Corporation (Intel) of Santa Clara, California. A supplement to the complaint was filed on September 2, 1987. Amendments to the complaint were filed on October 13, 1987, January 12, 1988, March 3, 1988, and September 16, 1988. Intel originally complained of unfair acts and unfair methods of competition in the importation and sale of certain EPROMs and products containing same, by reason of alleged direct and induced infringement of six U.S. product patents, and the manufacture abroad of the subject EPROMs in accordance with a process which, if practiced in the United States, would infringe claims of two U.S. process patents. The complaint further alleged that the tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complaint, and the Commission's original notice of investigation, named seven resondents allegedly engaged in the manufacture, importation, and sale of allegedly infringing EPROMs.

On September 16, 1988, following enactment of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (Aug. 23, 1988), Intel moved to amend the complaint and notice of investigation to, *inter alia*, delete the allegation of tendency to substantially injure the domestic industry, and the allegation of efficient and economic operation. The presiding administrative law judge (ALJ) granted Intel's motion and issued an ID (Order No. 137) amending the complaint and notice of investigation. The Commission denied two respondents' petitions for review of the ID, but determined to review the ID on its own motion and modified the ID in order to incorporate the claims of the patents remaining in controversy, which were omitted from the amended notice of investigation as set forth in the ID. 53 FR 45399 (Nov. 9, 1988).

On November 16, 1988, the ALJ issued her final initial determination (ID), finding that there is a violation of section 337 in the importation of EPROMs or the manufacture of EPROMs for importation. Complainant and all respondents filed petitions for review of various portions of the ID. All parties filed responses to the petitions for review. Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following questions:

1. Whether, as a matter of policy, the Commission should apply the doctrine of assignor estoppel in its consideration of the issue of violation of section 337 in this investigation;

2. Assuming the Commission does apply the doctrine of assignor estoppel in its consideration of the issue of violation of section 337 in this investigation, whether any of the respondents are in privity with George Perlegos, assignor of four of the seven patents in controversy;

3. What is the scope of the domestic industry;

4. Whether U.S. Letters Patent 3,938,108 is valid, whether any of respondents' products in issue infringe claims 14–17 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

5. Whether U.S. Letters Patent 4,048,518 is valid, whether any of respondents' products in issue infringe claims 1–3 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

6. Whether U.S. Letters Patent 4,223,394 is valid and enforceable, whether any of respondents' products in issue infringe claims 1–6 of that patent, and whether the domestic industry produces articles protected by those claims of the patent. Review on the validity issue is limited to the questions of claim construction and obviousness;

7. Whether U.S. Letters Patent 4,519,050 is valid, whether any of respondents' products in issue, other than Atmel's 1 megabit part, infringe claims 1–4 of that patent, and whether the domestic industry produces articles protected by those claims of the patent;

8. Whether U.S. Letters Patent 4,103,189 is valid. Review is limited to the question of inventorship;

9. Whether U.S. Letters Patent 4,685,084 is valid, whether any of respondents' products in issue infringe claims 1–10 of that patent, and whether the domestic industry produces articles protected by those claims of the patent; and

10. Whether U.S. Letters Patent 4,114,255 is valid, whether any of respondents' products in issue infringe claims 1–5 and 7–8 of that patent, and whether the domestic industry produces articles protected by those claims of the patent.

The Commission has determined not to review the remainder of the ID, which has thereby become the determination of the Commission. The Commission has also determined to deny Atmel's appeal of the ALJ's ruling excluding certain evidence concerning the interpretation of the license agreement between Intel and Sanyo Electric Company, to deny Intel's request to reopen the record to allow introduction of additional evidence concerning Atmel's 1 megabit EPROM, and to deny Atmel's appeal of the ALJ's ruling allowing Intel to withdraw an exhibit relating to U.S. Letters Patent 4,048,518, upon which Atmel sought to rely as prior art. In addition, the Commission has taken under advisement the question of whether certain portions of the ID should be published, or whether they contain business confidential information which should not be published, and will make its decision at a later date.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist order(s) which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order(s) would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

While the Commission has determined that no hearing before the Commission will be held in this investigation, the parties to the investigation and interested Government agencies are requested to file written submission on the issues under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Submissions on the issues of remedy, the public interest, and bonding are limited to forty (40) pages, excluding exhibits in support thereof, and twenty (20) pages in response, excluding exhibits in support thereof.

In connection with its review of the issues specified above, the Commission wishes to receive written submissions which are responsive to the following issues only:

1. With respect to the applicability of the doctrine of assignor estoppel, the parties should address the policy considerations in support of and opposed to the application of the doctrine in the violation phase of a section 337 investigation. In addition, the parties should address the concept of privity as it applies in the application of the doctrine of assignor estoppel, and as it applies in other areas of the law which may be analogous for purposes of analysis. Finally, the parties should address whether any of the respondents are in privity with George Perlegos, assignor of four of the patents in controversy.

2. With respect to U.S. Letters Patent 3,938,108, the parties should address the following issues:

a. Whether the term "sense amplifier" should be construed as meaning a differential sense amplifier;

b. Whether the ALJ was correct in construing the claims as requiring that the branches of the sense amplifier be coupled in parallel through a common node, *see* ID at 82;

c. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, specifying how the function, way, and result test of *Graver Tank* v. *Linde Air Prod. Co.*, 339 U.S. 605 (1950) is met, and citing record support for findings of fact on these issues.

3. With respect to U.S. Letters Patent 4,048,518, the parties should address the following issues:

a. Whether the ALJ's definition of an "inverter" (ID at 121) is correct and whether she was correct in her finding that claim 1 "does not require that the inverter always perform an inversion function," *id.*;

b. Whether the ALJ's determination that "decoupling [in reference to the claimed decoupling transistor] may include something less than completely turning off the transistor so that the transistor ceases to conduct (or in an MOS transistor ceases to conduct *significant* current)," ID at 123;

c. Whether an MOS transistor operating in saturation ceases to conduct significant current;

d. Whether the ALJ correctly construed the claim elements "controlled variable potential means" and "MOS circuit for providing an output signal in response to an input signal;"

e. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, again citing record support for the findings required by *Graver Tank*.

4. With respect to U.S. Letters Patent 4,223,394, the parties should address the following issues:

a. Construction of the claim terms "first biasing means," "second biasing means," and "comparator means;"

b. Whether there is any teaching in the prior art that suggests the combination of U.S. Letters Patent 4,094,012 and U.S. Letters Patent 3,398,108 so that when the claimed invention is viewed as a whole it would have been obvious to a person of ordinary skill in the art at the time that the claimed invention was made;

c. Whether it is appropriate to limit the claims to preserve the enforceability of the patent.

d. Whether the accused EPROMs infringe the claims in controversy under the doctrine of equivalents, again citing record support for the findings required by *Graver Tank*.

5. With respect to U.S. Letters Patent 4,519,050, the parties should address the following issues:

a. Whether the ALJ construed the claim phrase "permanently programmed" by reference to the accused devices and, if so, whether this construction is improper. Specific reference should be made to the language in the ID beginning with the third full paragraph of page 214 and continuing through the first eight lines on page 216.

b. Whether the accused devices are "permanently programmed" within the meaning of the terms of the relevant claims.

6. With respect to U.S. Letters Patent 4,103,189, the parties should address the question of invalidity due to incorrect inventorship under 35 U.S.C. 102(f). Specifically, the parties should state whether there is any evidence in the record on the correctness or incorrectness of inventorship, citing to the record.

7. With respect to U.S. Letters Patent 4,685,084, the parties should address whether the ALJ construed the claim phrase "programmable selection means" to include process steps.

8. With respect to U.S. Letters Patent 4,114,255, the parties should address the extent to which the reverse doctrine of equivalents has been raised, and as appropriate, the precise manner in which it was raised. The parties should also address whether the doping concentration in the channel region must attain a minimum level of 2×10^{16} per cubic centimeter in order for the claims to be operative. Lastly, the parties should address the language in the specification of the patent at column 3, lines 7–9, and comment on whether that is an accurate teaching of this patent.

The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. The submissions are limited to seventy-five (75) pages with respect to the patent validity, infringement, and practice by the domestic industry issues, and an additional twenty-five (25) pages with resepct to the assignor estoppel issue. Submissions in response are limited to forty (40) pages with respect to the patent validity, infringement, and practice by the domestic industry issues, and an additional twelve (12) pages with respect to the assignor estoppel issue. Written submissions on the issues enumerated above, and on remedy, the public interest, and bonding, must be filed by Monday, January 23, 1989. Submissions in response concerning the enumerated issues, and on remedy, the public interest, and bondings, must be filed by Monday, January 30, 1989.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public interest at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of September 16, 1987 (52 FR 35004).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 3, 1989.

[FR Doc. 89–574 Filed 1–10–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–424 (Preliminary)]

Martial Arts Uniforms From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of martial arts uniforms,[2] normally provided for in items 381.06, 381.32, 381.63, 381.97, 384.09, 384.24, 384.50, and 384.92 of the Tariff Schedules of the United States (subheadings 6203.22.10, 6203.23.00, 6203.29.20, 6204.22.10, 6204.23.00, and 6204.29.20 of the Harmonized Tariff Schedule of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 15, 1988, a petition was filed with the Commission and the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of this investigation, "martial arts uniforms" refers to tops, pants, and belts, imported separately or as ensembles, for men, boys, women, girls, and infants, of cotton or of man-made fibers, whether ornamented or not ornamented, suitable for wearing while practicing all forms of martial arts, including but not limited to Judo, Karate, Kung Fu, Tae Kwon Do, Ninja, Ninjutsu, Hakama, Tai Chi, Jujitsu, and Hapkido.

Department of Commerce by Century Martial Art Supply, Inc., Midwest City, Oklahoma, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of martial arts uniforms from Taiwan. Accordingly, effective November 15, 1988, the Commission instituted preliminary antidumping investigation No. 731–TA–424 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 23, 1988 (53 FR 47587). The conference was held in Washington, DC, on December 6, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 30, 1988. The views of the Commission are contained in USITC Publication 2148 (January 1989), entitled "Martial Arts Uniforms From Taiwan: Determination of the Commission in Investigation No. 731–TA–424 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 3, 1989.

[FR Doc. 89–576 Filed 1–10–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–282]

Certain Venetian Blind Components; Commission Decision not to Review an Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 20) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation. The ID grants: (1) the Joint Motion of Complainant Hunter Douglas for Termination of Investigation with respect to Hunter Douglas, Inc. (Hunter Douglas) and A.J. Boyd Industries, Inc. (Boyd); (2) the Motion of Complainant Hunter Douglas for termination of Investigation with respect to Vogue Hardware Products (Vogue) and W&P Company Inc. (W&P); and (3) the Motion of Complainant Hunter Douglas for an Order Terminating Investigation with respect to Foreign Respondents with Prejudice. In granting all three motions, the ID terminates the investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210. 51 and 210.53 (53 FR 33069,70, August 29, 1988).

On November 22, 1988, complainant filed three motions to terminate the investigation with respect to all respondents. The motion to terminate with respect to domestic respondent Boyd was filed jointly with Boyd, and was based upon a settlement agreement between complainant and Boyd. The motion to terminate with respect to the other two domestic respondents (Vogue and W&P) was based upon separate settlement agreements between complainant and each respondent. The third motion requested voluntary termination with prejudice with respect to the four foreign respondents, in light of the settlement agreements with all three domestic respondents.

The Commission investigative attorney filed a public interest statement supporting the motions to terminate the investigation. On December 7, 1988, the ALJ issued an ID granting all three motions, and terminating the investigation. No petitions for review or agency or public comments were received.

By order of the Commission.

Issued: January 3, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–575 Filed 1–10–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–298 (Preliminary)]

Fresh, Chilled, or Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–298 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in heading 0203 of the Harmonized Tariff Schedule of the United States (HTS) (previously provided for in item 106.40 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by February 21, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202–252–1189) or Fred Rogoff (202–252–1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on January 5, 1988, by The National Pork Producers' Council, Des Moines, IA and others.[1]

Participation in the investigations. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 26, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Lisa Zanetti (202–252–1189) not later than January 24, 1989, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before January 30, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than February 2, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 6, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–671 Filed 1–10–89; 8:45 am]

BILLING CODE 7020–02–M

[1] Arkansas Pork Producers' Council, Atkins, AR; Colorado Pork Producers' Council, Eaton, CO; Idaho Pork Producers' Association, Caldwell, ID; Illinois Pork Producers' Association, Springfield, IL; Indiana Pork Producers' Association, Indianapolis, IN; Iowa Pork Producers' Association, Clive, IA; Michigan Pork Producers' Association, Lansing, MI; Minnesota Pork Producers' Association, Albert Lea, MN; Nebraska Pork Producers' Association, Lincoln, NE; North Carolina Pork Producers' Association, Raleigh, NC; North Dakota Pork Producers' Council, Leith, ND; Ohio Pork Producers' Council, Westerville, OH; Wisconsin Pork Producers' Association, Lancaster, WI; National Pork Council Women, Des Moines, IA; ConAgra Red Meats, Inc., Greeley, CO; Dakota Pork Industries, Inc., Minneapolis, MN; Farmstead Foods, Albert Lea, MN; IBP, Inc., Dakota City, NE; Illinois Pork Corporation, Monmouth, IL; Thorn Apple Valley, Southfield, MI; Wilson Foods, Oklahoma City, OK.

INTERSTATE COMMERCE COMMISSION

[No. MC–C–30129]

Pittsburgh-Johnstown-Altoona Express, Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by Pittsburgh-Johnstown-Altoona Express, Inc. (PJAX), a motor carrier, for institution of a declaratory order proceeding to determine whether the transportation of various shipments of property between points in Pennsylvania is in interstate commerce. The shipments involved appear to fall within two categories: (1) Shipments moved between points in Pennsylvania through other States; and (2) pool distribution traffic and warehouse traffic transported by PJAX within Pennsylvania but having prior movements from out-of-State origins.

DATE: Persons interested in participating in this proceeding should so advise the Commission in writing by January 26, 1989.

A list of interested parties will then be compiled and served. PJAX will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to PJAX's representatives. PJAX will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments, referring to No. MC–C–30129, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each of PJAX's representatives: Arthur J. Diskin, 1450 Two Chatham Center, Pittsburgh, PA 15219, and Christian V. Graf, Graf,

BEST COPY AVAILABLE

Andrews & Radcliff, P.C., 407 North Front Street, Harrisburg, PA 17101.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 275–7898, Richard B. Felder, (202) 275–7691. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD service: (202) 275–1721]

Decided: January 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–601 Filed 1–10–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 244)]

CSX Transportation, Inc.; Abandonment Between Willow and Ellenton Junction—in Manatee County, FL; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 15.1-mile rail line between Willow (milepost SW–854.0) and Ellenton Junction (milepost SW–869.1) in Manatee County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 89–602 Filed 1–10–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31360]

Decision; South Carolina Central Railroad Co., Inc.; Purchase and Lease

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed December 8, 1988, by the South Carolina Central Railroad Company, Inc. (SCRF), to acquire, from CSX Transportation, Inc. (CSXT), by purchase and lease, 258.82 miles of rail line, between Rhine, GA and Mahrt, AL, and between Columbus and Bainbridge, GA. CSXT will retain trackage rights over SCRF between Bainbridge and Lynn, GA, and between Cordele, GA, and milepost SL 666.93. Pursuant to 49 CFR Part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 10, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by February 27, 1989. Applicant's reply is due by March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

ADDRESSES: An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31360, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives: Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201; Kelvin J. Dowd, 1224 17th Street NW., Washington, DC 20036.

SUPPLEMENTAL INFORMATION: By application filed December 8, 1988, South Carolina Central Railroad Company, Inc. (SCRF) and CSX Transportation, Inc. (CSXT), collectively referred to as applicants, seek Commission approval under 49 U.S.C. 11343, *et seq.*, for SCRF to acquire, by purchase and lease, 258.82 miles of CSXT lines in Georgia and Alabama. SCRF will purchase for $5 million CSXT's lines between milepost SL 629.25 near Rhine, GA, and milepost SL 755.13 near Mahrt, AL; between milepost SLB 0.38 near Columbus, GA, and milepost SLB 39.77 near Richland, GA; between milepost SLC 91.68 near Bainbridge, GA, and milepost SLC 181.55 near Richland, GA; between Valuation Station 41+60 and Valuation Station 107+35 near Columbus, GA (Dummy Line); and between Valuation Station 0+00 to Valuation Station 41+61 near Columbus, GA (the Georgia Ports Authority lead). Also, SCRF will lease from CST trackage at Lynn, GA, from milepost SLC 96.66 over Tracks SV 4 (6,875 feet), SV 12 (1,360 feet), and SV 14 (400 feet) for a 20-year period for an amount to be determined by the number of carloads that originate or terminate on the leased line. CSXT will retain trackage rights over the lines to be acquired by SCRF between Bainbridge and Lynn, and between Cordele, GA, and milepost SL 666.93. SCRF will acquire trackage rights over CSXT lines between milepost SLC 91.68 and CSXT's yard in Bainbridge and between Bainbridge and Saffold, GA. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted an application in accordance with the railroad consolidation procedures at 49 CFR Part 1180 for minor transactions. The parties intend to consummate the transaction as soon as possible after final Commissioin approval.

SCRF is a Class III common carrier controlled by a non-carrier, Railtex, Inc. CSXT is a Class I common carrier and a unit of CSX Corporation. SCRF now operates 55.2 miles of lines between Florence and Bishopville, SC, and between Cheraw and Society Hill, SC. These lines do not connect with the line to be acquired (or with another line between White Oak and Smithville, GA, that SCRF intends to acquire from Norfolk Southern Corporation).

At present there are approximately 125 shippers using the line to be acquired. CSXT handled a total of 12,667 originating or terminating carloads in 1987 and indicates that the volume of traffic in 1988 is about the same.

Applicants state that the proposed transaction will result in operating economies and improved service, enhancing the financial viability of both applicants. Specifically, the proposed transaction will enable SCRF to enter a new market and spread its administrative, insurance, and operating costs over a larger base. SCRF claims this will result in operating efficiencies that will allow it to offer better service at more competitive prices. CSXT, on the other hand, will no longer have to maintain what is for it a marginally profitable operation.

Applicants also state that the transaction will improve service. As a small local carrier, SCRF assertedly will be better able to accommodate the needs of the lines shippers.

Because SCRF will be replacing CSXT, applicants contend that the proposed transaction will not cause a monopoly or reduce rail competition. Rather, they submit the transaction is more likely to reduce CSXT's market power in the region. Also, the area is served by a significant number of water and motor carriers. Applicants expect the transaction to result in increased competition, with SCRF offering efficient, price competitive service. SCRF anticipates that will be able to draw traffic away from motor carriers.

SCRF intends to operate the line with its own employees. As a result, CSXT's work force, will be reduced to by 54 positions. Additionally, certain of CSXT's officers and managers will be affected. No positions with SCRF will be eliminated. SCRF expects to hire additional employees to operate the acquired line and states that it will offer these positions to the former CSXT employees on a preferential basis.

CSXT states it intends to negotiate employee protection agreements with affected employees pursuant to the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). These conditions are appropriate for employees affected by the acquisition. In the event that there are employees affected only by the lease, the appropriate conditions will be those contained in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). Any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) as modified in *Mendocino* at 360 I.C.C. 653.

Under the consolidation regulations, we must determine initially whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction involves a Class I and a Class III railroad. It has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal a minor transaction under 49 CFR 1180.2(c). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments regarding the application. Comments must be filed no later than February 10, 1989. The Secretary of Transportation and the Attorney General of the United States must file their comments no later than February 27, 1989. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Written comments must be served concurrently by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by February 27, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31360 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: January 3, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–603 Filed 1–10–89; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences (ACAST) Subcommittee on the Functioning of ACAST; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences (ACAST) Subcommittee on the Functioning of ACAST.

Date & Time: January 25 and 26, 1989—9:00 A.M.–5:00 P.M.

Place: National Science Foundation—Room 642.

Type of Meeting: January 25 and 26, 1989—Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise on ACAST organization and operation with particular emphasis on how ACAST gives timely advice on budgetary matters and scientific priorities in a manner useful to the National Science Foundation staff.

Agenda: Functioning of Federal Advisory Committees; Other Examples of Federal Advisory Committees; Role of Decade Survey; Timing of NSF Budget Process; Discussion of Future Functioning of ACAST.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–595 Filed 1–10–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 16, 1988 through December 29, 1988. The last biweekly notice was published on December 30, 1988 (53 FR 53086).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 14, 1988

Description of amendments request: The proposed amendment will add Technical Specifications for the reactor vessel level indicating system (RVLIS) which has been installed per Generic Letter (GL) 82–28 and NUREG–0737, Item II.F.2. In addition, an editorial change is made for Unit 1 to remove a one time change approved by Amendment No. 34.

Basis for proposed no significant hazards considerotion determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee's findings regarding the RVLIS change are summarized below:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated. The RVLIS is neither credited nor required for the mitigation of any previously evaluated accident, and is not relied upon for reactor trip or initiation of any plant safety system. Therefore, the proposed change does not affect the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is intended solely to enhance the ability of the operator to manage accidents and transients by providing the operator with additional corroborative information.

3. The proposed change will not involve a reduction in a margin of safety. The components installed within the reactor vessel were designed and fabricated to produce the same flow effect as the control rod drive mechanism guide tubes which they replaced. Existing technical specifications provide assurance that the minimum thermal design flow is maintained. The specific purpose of the proposed amendment is to enhance accident and transient monitoring capabilities and thus increase the margin of safety. If four of the eight sensors are functioning, the operator can determine if a void has formed, if it is growing, or if the corrective action is succeeding in reducing the void. These requirement are considered adequate to track the course of an accident.

Based on the above reasoning, the license has determined that the proposed change involves no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission guidance (51 FR 7751) notes certain examples of amendments that are not likely to involve a significant hazards consideration. One example is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed change concerning the RVLIS fits this example. Concerning the editorial change to the Unit 1 Technical Specifications, example (i), "A purely administrative change: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature" applies. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Houston—Love Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: Ernest L. Blake, Esquire, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Elinor G. Adensam.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 28, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2 by modifying footnote * * *, in Table 1.2, entitled "Operational Conditions" on page 1–10 for Unit 1 and page 1–11 for Unit 2. The revised footnote would allow the reactor mode switch to be placed in the Refuel position while a single control rod is being moved, as opposed to only when being recoupled, provided the one-rod-out interlock is operable.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to TS Table 1.2 and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. Revising Footnote * * * to more clearly allow movement as opposed to recoupling of a single control rod does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Brunswick Technical Specifications currently allow, while in Operational Conditions 3 (Hot Shutdown) or 4 (Cold Shutdown), the reactor mode switch to be placed in the Refuel position from the Shutdown position while a single control rod is being recoupled provided that the one-rod-out interlock is operable (Footnote * * * to Table 1.2). The proposed change will allow the operator to move a control rod for testing or recoupling while the unit is in either Operational Condition 3 or 4. This will be in addition to control rod testing already permitted by the Brunswick Technical Specifications in Operational Conditions 2 (Startup) and 5 (Refueling).

When the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically. The proposed change will not impact these mechanisms, and the same shutdown margin will be maintained. Thus, the probability of an accident will not be significantly changed.

Control rod recoupling involves moving the control rod from full-in to full-out and vice-versa. Control rod testing involves recording the time it takes for the control rod to be withdrawn from full-in to full-out and from full-out to full-in. Thus, the movement involved in recoupling a rod bounds the movement involved in control rod testing. Therefore, the consequences of any accident that could occur during control rod testing would be bounded by those that could occur during recoupling. Thus, the consequences of an accident will not be changed.

2. The Brunswick Technical Specifications currently allow, while in Operational Conditions 3 or 4, the reactor mode switch to be placed in the Refuel position from the Shutdown position while a single control rod is being recoupled provided that the one-rod-out interlock is operable (Footnote * * * to Table 1.2). Movement of a control rod through the recoupling process encompasses any possible position the control rod can be placed in when being moved. In addition, when the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically.

The proposed change will not impact the existing plant protective system and the same shutdown margin will be maintained. No modifications are being made that will decrease the shutdown margin or jeopardize the safety functions of the protection system. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not impact the existing plant protective system and the same shutdown margin will be maintained. When the mode switch is in the Refuel position, criticality cannot be achieved, even with one control rod completely removed from the core. Currently, only a single control rod may be removed from the core at any given time while the mode switch is in the Refuel position. This maintains the shutdown margin of the plant and enforces the shutdown margin electronically. No modifications are being made that will decrease the shutdown margin or jeopardize the safety functions of the protective system. Thus, the proposed amendment does not involve a significant reduction in the margin of safety.

The staff has reviewed the CP&L determinations and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3298.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant (SHNPP), Wake and Chatham Counties, North Carolina

Date of Amendments Request: November 9, 1987

Description of Amendments Request: The purpose of the proposed amendment is to change the general limiting conditions for operation (LCO) and general surveillance requirements (SR) of the Technical Specifications (TS) for SHNPP, TS 3.0.4, 4.0.3 and 4.0.4, and the Bases Sections associated with Sections 3.0 and 4.0, as well as to modify numerous other TS sections to conform to the revised general LCO and general SR. The proposed changes are in response to the Commission's Generic Letter (GL) 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," issued June 4, 1987.

Currently, TS 3.0.4 does not allow entry into an OPERATIONAL CONDITION unless the conditions of the specific LCO are met without reliance on provisions contained in the ACTION statements. This unduly restricts facility operation when conformance to the ACTION requirements provides an acceptable level of safety for continued operation. The proposed revision to TS 3.0.4 would allow entry into an OPERATIONAL CONDITION in accordance with ACTION requirements when conformance to the ACTION requirements provides an acceptable level of safety for continued operation of the facility for an unlimited period of time. This is consistent with the guidance provided in GL 87–09. In order to prevent operator confusion, individual exceptions to TS 3.0.4 are to be deleted where appropriate.

Currently, TS 4.0.3 states that performance of an SR within the specified time interval shall constitute compliance with the OPERABILITY requirements for an LCO and associated ACTION statements. If an SR is not met as a result of failure to perform the scheduled surveillance, the LCO would not be met and the associated ACTION requirements must be entered. If the missed surveillance cannot be successfully performed during the time interval specified, a plant shutdown is usually required. It is considered overly conservative to assume that a system or component is inoperable when an SR has not been performed. The proposed revision to TS 4.0.3 provides a delay of up to 24 hours to permit the completion of a missed surveillance when the time allowed by the ACTION requirements is less than 24 hours. The 24-hour time limit balances the risks associated with an allowance for completing the surveillance against the risks associated with the potential for a plant transient and a challenge to safety systems when the alternative is a shutdown to comply with ACTION requirements before the surveillance can be completed, and is consistent with the guidance provided in GL 87–09.

Currently, TS 4.0.4 prohibits entry into an OPERATIONAL CONDITION unless the SR associated with the LCO have been performed within the applicable surveillance interval. This creates a conflict when a mode change is required, as a consequence of shutdown ACTION requirements, and the associated SR that become applicable have not been performed within the specified surveillance interval. The proposed revision would clarify TS 4.0.4 by adding the sentence: "This provision shall not prevent passage through or to OPERATIONAL CONDITIONS, as required to comply with ACTION requirements." The proposed revision to TS 4.0.3 would permit a delay of up to 24 hours in the applicability of the ACTION requirements, allow sufficient time for the completion of those SR that become applicable when an exception to TS 4.0.4 is allowed.

The proposed revision would incorporate slightly modified versions of the TS Bases 3.0 and 4.0 presented in GL 87–09. Also, to prevent operator confusion, the proposed revision would remove specific reference to the non-applicability of TS 3.0.4 from TS 3/4.3.1 (Reactor Trip System Instrumentation), TS 3/4.3.2 (Engineered Safety Features Actuation System Instrumentation), TS 3/4.3.3 (Monitoring Instrumentation), TS 3/4.4.10 (Structural Integrity), TS 3/4.7.9 (Sealed Source Contamination), TS 3/4.7.12 (Area Temperature Monitoring), TS 3/4.8.4 (Electrical Equipment Protective Devices), TS 3/4.9.7 (Crane Travel—Fuel Handling Building), TS 3/4.9.9 (Containment Ventilation Isolation System), TS 3/4.9.11 (Water Level—New and Spent Fuel Pools), TS 3/4.9.12 (Fuel Handling Building Emergency Exhaust System), TS 3/4.11.1 (Liquid Effluents), TS 3/4.11.2 (Gaseous Effluents), TS 3/4.11.3 (Solid Radioactive Wastes), TS 3/4.11.4 (Total Dose), TS 3/4.12.1 (Monitoring Program), TS 3/4.12.2 (Land Use Census), and TS 3/4.12.3 (Interlaboratory Comparison Program).

Basis for proposed no significant hazards consideration determination: As stated in 10 CFR 50.92, the Commission has provided guidelines and standards for determining whether a significant hazards consideration exists. According to 10 CFR 50.92(c), the Commission may make a final determination that a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant Technical Specifications in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of SHNPP in accordance with these changes would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The operational flexibility that would result from the proposed revision to TS 3.0.4 is consistent with that allowed by the existing individual LCO and their associated ACTION requirements, which provide an acceptable level of safety for continued operation.

A delay of up to 24 hours provided by TS 4.0.3 to permit the completion of a missed surveillance when the time allowed by the ACTION requirements is less than 24 hours reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance interval was exceeded.

The proposed revision to TS 4.0.4 makes it clear that TS 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. The revisions of the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revisions result in improved Technical Specifications by removing (a) unnecessary restrictions on mode changes and facility operation, (b) unnecessary shutdowns caused by inadvertently exceeding surveillance intervals, and (c) conflicts within the Technical Specifications themselves.

The revisions to the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety.

The operational flexibility that would result from the proposed revision to TS 3.0.4 is consistent with that allowed by the existing individual LCO and their associated ACTION requirements, which provide an acceptable level of safety for continued operation.

A delay of up to 24 hours provided by TS 4.0.3 to permit the completion of a missed surveillance, when the time allowed by the ACTION requirement is less than 24 hours, reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance interval was exceeded.

The proposed revision to TS 4.0.4 makes it clear that TS 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. The revisions to the TS Bases 3.0 and 4.0 and the elimination of specific exemptions to TS 3.0.4 are administrative in nature and, therefore, do not involve a significant reduction in a margin of safety. These revisions would result in improved Technical Specifications and, therefore, would increase the margin of safety.

The NRC staff believes that the proposed changes to the Technical Specifications meet the criteria specified in 10 CFR 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Attorney for licensee: R.E. Jones, General Counsel, Carolina Power & Light Company, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 3, 1988

Description of amendment request: The proposed amendments would change Technical Specification (TS) 4.7.8, SNUBBERS, to correct a typographical error. Specifically, the sentence in surveillance specification 4.7.8e.3) which begins "This plan be plotted . . . ." would be corrected to read "This can be plotted. . . ."

Also, TS Figure 3/4 7–1, "Nuclear Service Water System" (NSWS) would be replaced by a more legible figure, with full (rather than abbreviated) valve designation. The intent of the figure is to designate which lines and valves of the NSWS are shared between the two McGuire units. If a shared component of the NSWS becomes inoperable, both units are affected and both units must comply with the ACTION requirements of TS 3.7.4b, "Nuclear Service Water System." The proposed changes to Figure 3/4 7–1 make it clearer to plant operating personnel which NSWS components are shared between the two units. The revised line and valve designations do not make any change in existing system design, equipment, power source or plant operating practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazard exists by providing certain examples (51 FR 7744). One of the examples of actions involving no significant hazards considerations is example (i) "a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The requested changes to correct a typographical error and substitute an improved figure have as no safety implication, are purely administrative, and match this example. Accordingly, the Commission proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: David B. Matthews, Director.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment would change the Technical Specifications by deleting requirements for overcurrent protection on disconnected motor-operated-valve actuator compartment-heater breakers. from Table 3.8–1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has performed an analysis of the safety significance of disconnecting compartment heaters to motor operated valves (MOV) and deleting the requirement to perform overcurrent protections testing on the circuits. The heaters play no functional role in Limitorque actuator operation. Because disconnecting compartment heaters does not change any MOV safety role, the probability and consequences of all accidents remains as before.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The MOV compartment heaters protect the internals from condensation during storage in uncontrolled atmospheres and for extended periods of no maintenance or inspection. Valves and their operators installed in various plant systems receive regular maintenance. Disconnecting in-service valve operator heaters eliminates a failure mode identified in Information Notice 86–71. Limitorque clearly states that the motor operator IEEE qualification tests were successful without using heaters.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Specification 3/4.8.4 intends to limit potential damage to conductors internal to electrical penetration assemblies. The role of the four penetration assemblies involved remain unchanged by disconnecting compartment heaters. The heater usefulness manifests only during valve storage. LCO 3.8.4.1 allows de-energized circuits instead of primary and backup overcurrent protection.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

We have reviewed the licensee's analysis and agree. Based on the above considerations, the staff proposes to determine that the amendment involve no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037.

NRC Project Director: Jose A. Calvo.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 16, 1988

Description of amendment request: This proposed amendment would revise the Technical Specifications (ST) to (1) change the Safety Injection and Refueling Water Tank minimum temperature from 40°F to 50°F, (2) change the title of the Senior Vice President—Nuclear Operations, Production Operations, Production Engineering, and Quality and Environmental Affairs to Senior Vice President—Nuclear Operations, Production Engineering, and Quality and Environmental Affairs in order to reflect the current organizational structure, and (3) correct errors in references and a mailing address. Additionally, the proposed amendment would revise Facility Operating License DPR–40 to delete present paragraph 3.E, dealing with the Spent Fuel Pool Modification, since the modification is complete and the applicable Technical Specification requirements are in effect.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

With regard to the three standards concerning increase in the Safety Injection and Refueling Water Tank (SIRWT) minimum temperature, the licensee states that operation of the facility in accordance with this amendment would not:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated. The increase in minimum temperature is a conservative change. The change merely increases the minimum SIRWT temperature to match the tested values. No new accidents are created nor are the consequences of any existing accidents increased by this change because the change will result in a less severe pump thermal transient. This change is bounded by test data and current Technical Specification limitations. Therefore, this change does not increase the probability or consequences of a previously evaluated accident.

(b) Create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not propose new or different modes of operation for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety. This change increases the minimum SIRWT temperature for pump thermal transient considerations in a conservative direction. Therefore, this change will not cause any reduction in the margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed change to increase the minimum SIRWT temperature is an additional restriction to the allowable temperature range for the SIRWT and is, thus, similar to example (ii): "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed changes to correct the titles in the organizational structure, to correct references, and delete the operating license condition in this amendment are similar to example (i): "A purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

Accordingly, the staff proposes to determine that the proposed changes to the technical specifications and to the Facility Operating License do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Jose A. Calvo.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 10, 1988

Description of amendment request: The licensee has provided, in part, the following description:

This application for amendment to the Indian Point 3 Technical Specifications seeks to replace the organization charts contained in Section 6.2 of Appendix A with more general organizational requirements. These general requirements, in accordance with Generic Letter 88–06 (GL 88–06), incorporate with one deviation those organizational features currently depicted on the charts that are important for ensuring that the plant will be operated safely. The one deviation taken from the requirements of GL 88–06 is the deletion of the requirement that the Operations Superintendent maintain a Senior Reactor Operator license.

The proposed changes include:

(1) Deletion of organization charts, figures 6.2–1 and 6.2–2.

(2) Deletion of references made to those figures from Technical Specification sections 6.1, 6.2, 6.3, and the List of Figures.

(3) Deletion of requirement that Operations Superintendent maintain a Senior Reactor Operator (SRO) license.

(4) Addition of general requirements to sections 6.2.1 and 6.2.2.

(5) Addition to Table of Contents.

Additionally, proposed changes not related to the subject generic letter include:

(1) Deletion of figure titles 2.1–2, 3.10–5, and 4.2–2 from the List of Figures.

(2) Addition of figure title 3.8–1 to the list of Figures.

These last two changes are editorial in nature. Figures 2.1–2 and 3.10–5 were deleted from the Technical Specifications by Amendment No. 48 to the Facility Operating License; Figure 4.2–2 was deleted by Amendment No. 57, and Figure 3.8–1 was added by Amendment No. 70. The changes to the List of Figures were inadvertently overlooked.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the licensee's organizational structure, responsibilities and authorities, and personnel qualification requirements be included in the Final Safety Analysis Report (FSAR). As required by 10 CFR 50.71(e), the Authority submits annual updates to the FSAR. Chapter 12 of the IP–3 FSAR provides a description of the organization, and organization charts to the same level of detail as currently exists in the Technical Specifications have been included via the 1988 IP–3 FSAR Update.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed amendment does not create the possibility of a new or different kind of accident from that previously evaluated because the

proposed changes do not involve any physical alterations of plant configuration or changes to setpoints or operating parameters.

3. Does the proposed amendment involve significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. Through the Authority's Quality Assurance program and its commitment to maintain only qualified personnel in positions of responsibility, it is assured that safety functions performed by the onsite and the corporate organizations will continue to be performed at a high level of competence. Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 23, 1988

Description of amendment request: The proposed amendment would change surveillance requirements 4.1.3.4 and 4.1.3.5 to eliminate the requirement to verify shutdown rod and control bank rod positions within one hour after rod motion. Also, a footnote would be added to clarify that Surveillance Requirement 4.1.3.4a is applicable prior to withdrawing control banks in preparation for entering Mode 2 (Startup).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee proposes to correct an error in Surveillance Requirement 4.1.3.4 and 4.1.3.5 that requires shutdown rod positions and control bank rod positions be verified within one hour of rod motion. In addition, a footnote would be added to Technical Specification 3.1.3.4 clarifying that Surveillance Requirement 4.1.3.4a is applicable while in Mode 3 and preparing to enter Mode 2 withdrawal of the control banks.

The licensee has provided an analysis as follows:

The proposed changes to Technical Specifications 3/4.1.3.4 and 3/4.1.3.5 for both Salem 1 and 2 do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Verifying rod position and rod position indicators on a nominal basis of once per 12 hours with more frequent verification required if an automatic monitoring channel is inoperable is acceptable as per the basis of these Technical Specification Surveillance [SIC]. The bases state that the verification frequencies are adequate for assuring that the applicable LCO's are satisfied.

The change does not alter the use of the rod control system and operation of the plant would remain the same. The operation of the rods will still be consistent with present criteria which has been established and considered in the consequences of the accidents already evaluated.

(2) Create the possibility of a new or different kind of accident from an accident previously evaluated. The requested change does not alter the surveillances in any way which is outside the scope of the intent indicated in the bases of the Salem and Westinghouse Standard Technical Specification Surveillances. The revised surveillance will continue to assure that the applicable LCO's are satisfied and will be consistent with other Westinghouse designed plants. The operation of the rod control system will not change and therefore, no new or different kinds of accidents can be created.

(3) Involve a significant reduction in a margin of safety. The change in the surveillance requirement does not affect the operation of the rod control system in any way. The change only affects the frequency that the position of the rods are documented. Independent of the requirement for verification of rod position once every 12 hours, the operators have continuous display of rod positions. Since the proposed change does not affect the minimum surveillance frequency of 12 hours as supported in the bases, the change does not reduce the margin of safety.

We have reviewed the licensee's determinations and agree with them. Based on the above discussion, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: October 24, 1988 (TS 258).

Description of amendment requests: The proposed amendments would change the expiration dates for the Operating License DPR–33 (Unit 1) from May 10, 2007 to December 20, 2013, for Operating License DPR–52 (Unit 2) from May 10, 2007 to June 28, 2014, and for Operating License DPR–68 (Unit 3) from July 31, 2008 to July 2, 2016.

The current operating license expiration dates are 40 years from the date of issuance of the construction permits (May 10, 1967 for Units 1 and 2 and July 31, 1968 for Unit 3). Because of the time required between the issuance of the construction permits and the full-power operating licenses the effective period for the operating licenses is approximately 33 years.

The licensee's application requests a 40 year operating license term from the date of issuance of initial operating license for all the three units because the units were designed and constructed on the basis of 40 years of plant operation. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems, and equipment. Surveillance and maintenance practices which have been implemented in accordance with the American Society of Mechanical Engineers Code and technical specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The original design of the reactor pressure vessel (RPV) and associated internals considered the effects of 40 years of operation within the cyclic limits given in the Browns Ferry Final Safety Analysis Report (Section 4.2). Those cyclic limits equate to 40 years of operation at full power with a plant capacity factor of 80% (i.e., 32 effective full power years), including expected operational and thermal transients. In addition, the RVP stress analyses include appropriate consideration of thermal transient and fatigue effects which may be expected during the extended period of operation.

Aging analyses are being performed for all safety-related electrical equipment within the scope of 10 CFR 50.49, "Environmental Qualification of Electrical Equipment Important to Safety for Nuclear Power Plants." The qualified life of the equipment or component will be incorporated within Browns Ferry maintenance and replacement practices to ensure that the subject safety-related electrical equipment remains qualified and available to perform its intended safety function regardless of the overall age of the plant.

Basis for proposed no significant hazards consideration determinotion: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated. This change does not involve any changes to the design or operation of BFN. Therefore, no change will be made that could alter postulated scenarios regarding accident initiation or response. In addition this proposed amendment does not require any changes to the safety analysis. There are no modifications to the facility procedures or technical specifications. Existing surveillance, inspection, testing, and maintenance practices provide assurance that degradation in plant equipment, structures, or components will be identified and corrected as necessary throughout the life of the facility. The operation of BFN in accordance with the existing programs will ensure that plant operation will be bounded by the BFN Final Safety Analysis Report (FSAR) and Final Environmental Statement as amendment.

2. The proposed change does not create the possibility of a new or different kind of accident previously evaluated. This amendment does not involve any change to the physical structure or any of the components or systems of the plant. This proposed change is administrative in nature and does not exceed any of the analysis as evaluated in the BFN FSAR.

3. The proposed amendment does not involve a significant reduction in a margin of safety. There are no changes in the design, design basis, or operation of the facility. This change does not require any technical specification changes. Existing surveillance, inspection, testing and maintenance programs will provide assurance that degradation of equipment, structures or components will be identified and corrected throughout the lifetime of the facility. These practices will be maintained throughout the operating life of BFN and therefore assuring that there will not be any significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room locotion: Athens Public Library, South Street, Athens, Alabama, 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistont Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 6, 1988 (TS 88–26).

Description of omendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN) Units 1 and 2 Technical Specifications (TS). The changes are to add a footnote to limiting condition for operation (LCO) 3.4.2 for the reactor coolant system (RCS) safety valves for both units. The footnote would allow all three safety valves to be tested at the same time provided the valves are removed and the hole in the system is covered by a non-pressure-retaining membrane.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS changes in its submittal:

LCO 3.4.2 requires at least one pressurizer code safety valve to be operable during modes 4 and 5 (shutdown conditions). The basis for this requirement ensures adequate relief capacity for any overpressure condition that could occur during shutdown. However, the actual wording of the LCO prevents full valve testing if all three valves are to be tested at the same time.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The intent of the LCO has not been changed. Pressure relief capabilities for overpressure protection still exist. The proposed change simply allows for more efficient testing techniques.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. No hardware changes or operating changes are being made. The valves will still be tested in accordance with ASME section XI.

(3) Involve a significant reduction in a margin of safety. The removal of all three safety valves at the same time does not reduce the pressure relief capabilities; thus, the margin of safety is not changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room locotion: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 6, 1988 (TS 88–29).

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS). The changes are to delete surveillance requirement (SR) 4.4.3.2.3 for the pressurizer power-operated relief valves (PORVs) and associated block valves. This SR demonstrates the operability of the emergency power supply for these valves.

Basis for proposed no significant hazards consideration determination: TVA provided the following information on the proposed TS change in its submittal:

The pressurizer PORVs have been changed from air-operated to solenoid operated valves in order to meet requirements of NUREG–0737. The PORVs are now permanently aligned to the 125-volt (V) direct current (dc) vital battery boards, which are the

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emergency power supply. Therefore, no transfer is required to demonstrate operability of the emergency power supply.

The block valves are motor-operated valves (MOVs) powered from the 480–V reactor MOV boards, which are powered by the shutdown boards. The emergency power transfer is performed at the feed to the 6.9-kilovolt (kV) shutdown boards by transfer from offsite power to the diesel generators (DGs). Emergency power supply operability to the shutdown boards is accomplished by SR 4.8.1.1.2. Thus, the requirements for block valve operation provides no additional assurance of emergency power supply operability.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration.

Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The pressurizer PORVs are designed to limit pressurizer pressure and prevent the undesirable opening of the safety valves. The PORVs are also used for automatic and manual pressure control. The FSAR [Sequoyah Final Safety Analysis Report] analysis for overpressure protection assumes that the PORVs do not actuate. The steam generator safety valves and pressurizer safety valves provide the required pressure relief. However, the FSAR accident analysis for a steam generator tube rupture does rely on the PORVs for pressure reductions.

The intent of the subject SR for the PORVs and associated block valves is to demonstrate operability of the emergency power supply. Because power supply operability for these valves is included in other SRs with equal time intervsl requirements, no additional operability assurance is gained by this redundant testing. Existing SRs for the PORVs and block valves, along with the existing SRs for emergency power supplies, provide adequate assurance of valve capability to functionally control pressure. Thus, the proposed change does not affect the probability or consequences of an accident previously analyzed.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The deletion of the subject SR does not require any hardware changes nor any change to the operating procedures. This change simply removes an unnecessary operator burden during performances of the DG test sequences and avoids any potential confusion about the intent of the requirement. Thus, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety. The intended design and operation of the PORVs and block valves have not been changed. Appropriate testing of the valves and power supplies still exists. Thus, the margin of safety has not been changed.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Dote of application for amendment: December 16, 1988.

Brief description of amendment: The proposed amendment would revise Technical Specification 5.3.2 to allow the use of hafnium, silver-indium-cadmium (Ag–In–Cd), or a mixture of both types as the absorber material in rod cluster control assemblies (RCCA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This license amendment request will allow the use of Ag-In-Cd in RCCA's at Callaway Plant. These RCCA's will meet the same mechanical, nuclear, and thermal hydraulic limits as originally approved for hafnium RCCA's and described in FSAR Chapter 4.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. As discussed above, RCCA's with Ag–In–Cd absorber material satisfies the same design limits as an original RCCA.

The proposed change does not involve a significant reduction in a margin of safety. As discussed above, the use of RCCA's with Ag–In–Cd absorber material will not result in an existing design limit being exceeded.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; does not involve a reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: John N. Hannon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 30, 1988.

Description of amendment request: Amendment would revise the fuel cladding integrity safety limit (FCISL) in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no signfiicant hazards

considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or possibility of a new or different kind of accident from any accident previously evaluated; or (2) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the November 30, 1988 letter states the following:

Three standards defined in 10 CFR 50.92 are used to arrive at a determination that this request for amendment involves no significant hazards considerations. The discussion below addresses these three standards and demonstrates that operating the facility in accordance with this proposed change involves no significant hazards considerations.

1. The proposed changes will not involve any significant increase in the probability or consequences of an accident previously evaluated. No changes are being made to the facility or its equipment so there is no increase of the probability of any previously analyzed event.

For the P8X8R, BP8X8R, GE8X8E, or GE8X8EB with R factors [greater than] 1.04, the 1.04 FCISL provides the same degree of assurance for fuel cladding integrity during an abnormal event as the 1.07 FCISL does for all other core loadings (See NRC SER of December 27, 1987). Since Vermont Yankee uses and will install these GE fuel types in future reloads, the use of the 1.04 FCISL does not increase the consequences of any event previously analyzed.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated since the facility is not being changed.

3. The proposed change will not involve a significant reduction in the margin of safety. The use of 1.04 as the minimum critical power ratio FCISL reflects the utilization of current GE fuel designs and does provide the same margin of safety as 1.07 does with the older GE fuel types as discussed in the SER included with the NRC letter to General Electric Company, dated December 27, 1987.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion, the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman, Director.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification requirements for the Control Room Emergency Filtration System and its associated actuation instrumentation to reflect the control room configuration for two-unit operation.

Date of publication of individual notice in **Federal Register**: December 16, 1988 (53 FR 50606).

Expiration date of individual notice: January 17, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 6, 1988.

Description of amendment request: The proposed amendment revise Technical Specification sections which would require that diesel generator voltage be within a specified range during surveillance testing.

Date of publication of individual notice in **Federal Register**: December 15, 1988 (53 FR 50480).

Expiration dote of individual notice: January 17, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: December 12, 1988.

Description of amendment request: The proposed amendment would replace the Unit 1 Technical Specifications with combined Technical Specifications for Units 1 and 2.

Date of publication of individual notice in **Federal Register**: December 27, 1988 (53 FR 52266)

Expiration date of individual notice: January 26, 1989.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 28, 1988.

Brief description of amendment request: The proposed amendment would revise the spent fuel storage capacity limitation presently stated in the Technical Specifications (TSs), Design Features Section 5.6.3. to read, "The spent fuel storage pool shall be limited to a storage capacity of no more than 1290 fuel assemblies."

Date of publication of individual notice in **Federal Register**: December 12, 1988 (53 FR 49945)

Expiration date of individual notice: January 11, 1989.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The

Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22 Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: July 20, 1988

Brief description of amendment: The amendment revised the Technical Specifications to specifically provide for a 1 gallon per minute limit on primary-to-secondary leak rate (total steam generator tube leakage).

Date of issuance: December 15, 1988.
Effective date: December 15, 1988.
Amendment No.: 115.
Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 7, 1988 (53 FR 34601). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 16, 1988, as supplemented on November 29, 1988.

Brief description of amendments: The proposed Technical Specification (TS) amendments added the definition, "Refueling Interval—At least once per 24 months," to Table 1.2 of the Units 1 and 2 TS Definition 1.22, "Frequency Notation."

Date of issuance: December 21, 1988.
Effective date: December 21, 1988.
Amendment Nos.: 133 and 114.
Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 19, 1988 (53 FR 40982). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: June 27, 1988.

Brief description of amendment: The amendment changes the Technical Specifications (TS) Tables 3.3.5.6–1, 3.3.5.6–2 and 4.3.5.6–1 to replace instrument tag number TS–CR–863 with TS–CIT–863–3. The change reflects an upgrading of instrumentation during a planned plant modification.

Date of issuance: December 20, 1988.
Effective date: December 20, 1988.
Amendment No.: 120.
Facility Operating License No. DPR–71: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46139). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: June 9, 1988.

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.3.5.2–1 and 4.3.5.2–1 to reflect changed equipment numbers to comply with 10 CFR Part 50, Appendix R, Section III.G, Alternative Shutdown Capabilities.

Date of issuance: December 20, 1988.
Effective date: December 20, 1988.
Amendment No.: 121.
Facility Operating License No. DPR–71: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46138). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. 50–456 and 50–457, Braidwood Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: November 26, 1986 and January 14, 1988.

Brief description of amendments: These amendments modified paragraph 2.F of License Nos. NPF–72 and NPF–77 to require compliance with the revised Physical Security Plan. This plan was updated to conform to the latest requirements of 10 CFR 73.55. Consistent with the provision of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: December 19, 1988.
Effective date: December 19, 1988.
Amendment Nos.: 13, 13.
Facility Operating License Nos. NPF–72 and NPF–77. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46139) and a Safeguards Evaluation Report dated December 19, 1988. The Commission's related evaluation of the amendments is contained in a letter to Commonwealth Edison Company dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County Connecticut; and Northeast Nuclear Energy Company, et al., Docket Nos. 50–245 and 50–336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of application for amendments: February 17, 1988.

Brief description of amendments: The Technical Specification changes concern the requirements for the minimum shift crew composition to recognize the acceptability of the use of qualified individuals in the dual-role of senior reactor operator/shift technical advisor position.

Date of issuance: December 19, 1988.
Effective date: December 19, 1988.
Amendment Nos.: 110, 27, 136.
Facility Operating License Nos. DPR–61, DPR–21 and DPR–65. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 7, 1988 (53 FR 34602). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 7, 1988.

Brief description of amendments: The amendments modified Section 6.2, "Organization" of the Technical Specifications to delete the offsite and onsite organization charts.

Date of issuance: December 20, 1988.
Effective date: December 20, 1988.
Amendment Nos.: 56 and 49.
Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46143). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: September 14, 1988.

Brief description of amendment: The amendment revised license condition 2.C.(8)(b) to allow an extension of time for resolution of the Safety Parameter Display System issue.

Date of issuance: December 28, 1988.
Effective date: December 28, 1988.
Amendment No.: 50.
Facility Operating License Nos. NPF–52. Amendment revised the Operating License.

Date of initial notice in **Federal Register**: October 19, 1988 (53 FR 40984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duquesne Light Company, Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: October 24, 1988, and supplemented by letter dated November 3, 1988.

Brief description of amendment: The amendment revises the schedules of a number of 18-month surveillances to permit performance of these surveillances to be postponed to the first refueling outage.

Date of issuance: December 19, 1988.
Effective date: December 19, 1988.
Amendment No.: 10.
Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 16, 1988 (53 FR 46144). The November 3, 1988 submittal provided additional clarifying information and did not change the determination of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50–334 and 50–412, Beaver Valley Power Station, Unit No. 1 and 2, Shippingport, Pennsylvania.

Date of application for amendment: January 27, 1988 and revised by letter dated July 26, 1988.

Brief description of amendment: The amendments clarify several action statements regarding reactor trip breakers in Table 3.3–1 of the Technical Specifications of each unit.

Date of issuance: December 19, 1988.
Effective date: December 19, 1988.
Amendment No.: 134 for Unit 1, 11 for Unit 2.
Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 7, 1988 (53 FR 34603). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida.

Date of application for amendments: June 23, 1988.

Brief description of amendments: The amendments changed Technical Specification 4.6.1.2, "Containment Leakage" by deleting the reference to ANSI/ANS Standard N45.4–1972. This change allows for use of the "mass point" method, which is described in ANSI/ANS Standard 56.8–1981 (revised 1987), for determination of containment leakage rates.

Date of Issuance: December 19, 1988.
Effective Date: December 19, 1988.
Amendment Nos.: 99 and 37.
Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 10, 1988 (53 FR 30132). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia, Avenue, Ft. Pierce, Florida 33450.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of application for amendment: October 20, 1988, as supplemented November 21, 1988.

Brief description of amendment: The amendment changed the control element assembly maximum drop time from 2.7 seconds to 3.1 seconds.

Date of Issuance: December 19, 1988.

Effective Date: December 19, 1988.

Amendment No.: 38.

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46144). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988. The November 21, 1988 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: September 23, 1988.

Description of amendment request: The proposed revision will change the number of gallons of fuel oil specified for the Division II diesel generator (1B).

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 13.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46146). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The proposed change will correct typographical errors and clarify existing requirements.

Date of issuance: December 21, 1988.

Effective date: December 21, 1988.

Amendment No.: 14.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2319). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 30, 1987.

Description of amendment request: The proposed change will clarify part "a" and "b" of Action 70 for Technical Specification Table 3.3.7.1-1.

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment No.: 16.

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: October 14, 1987.

Brief description of amendment: This amendment changed the operating license and the Technical Specifications to correct a typographical error in Operating License NPF-36 on page 6, subparagraph (8), to make the reference to 10 CFR 50.59 read 10 CFR 50.49, correct a valve designation, and correct a report title.

Date of issuance: December 16, 1988.

Effective date: December 16, 1988.

Amendment No.: 11.

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45888). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 19, 1988, as supplemented October 31, 1988, November 11, 1988 and December 7, 1988.

Brief description of amendment: The amendment adds a license condition authorizing the sale and leaseback by System Energy Resources, Inc. of a portion of its 90 percent ownership interest in Grand Gulf Nuclear Station, Unit 1.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 54.

Facility Operating License No. NPF-29. This amendment revises the License.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46148). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 20, 1988.

Brief description of amendment: The change modified the Technical Specifications (TS) as follows: (1) the maximum linear heat rate shown in TS Figure 3.2.1 was reduced from 15.8 to 14.0 Kw/ft, and (2) a factor of 1.115 was applied to the total planar radial peaking factor for reactor operation during Cycle 9 beyond a core average burnup of 10,000 MWD/MTU.

Date of issuance: December 19, 1988.

Effective date: December 19, 1988.

Amendment No.: 137.

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44254). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 5, 1988.

Brief description of amendment: The amendment changes Technical Specification (TS) 3/4.1.1.3, "Moderator Temperature Coefficient," to allow a more negative moderator temperature coefficient in the Limiting Condition for Operation, TS 3.1.1.3b, and in the associated Surveillance Requirement, TS 4.1.1.3b.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 29.

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46149). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 2, 1986, as supplemented January 9, and September 30, 1988.

Brief description of amendment: This amendment revises paragraph 3.C of the license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: December 20, 1988.

Effective date: December 20, 1988.

Amendment No.: 118.

Facility Operating License No. DPR-40. Amendment revised the License.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46149). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation Report dated December 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 10, 1988.

Brief description of amendments: The amendments authorize, for Unit 1 only, an exception to the requirements of Technical Specification 4.3.1.1, Table 4.3-1, Item 23, "Seismic Trip," until the next refueling outage (currently scheduled for October 1989).

Date of issuance: December 29, 1988.

Effective date: December 29, 1988.

Amendment Nos.: 33 and 32.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1988 (53 FR 47886). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 29, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988.

Brief description of amendments: These amendments reflect a modification to the diesel generator building carbon dioxide fire protection system (CARDOX) correcting design deficiencies by replacing the current CARDOX system controls and heat detectors with seismically qualified, safety related components.

Date of issuance: December 28, 1988.

Effective date: December 28, 1988.

Amendment Nos.: 137 and 139.

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 19, 1988 (53 FR 40994). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: October 13, 1988.

Brief description of amendment: The amendment modified the time allowed to recalibrate the linear power channels following a power reduction. It also makes a minor editorial correction.

Date of issuance: December 23, 1988.

Effective date: December 23, 1988.

Amendment No.: 66.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46154). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: October 14, 1988.

Brief description of amendment: The amendment required testing of the PCRV overpressure protection system in accordance with the ASME Code, Section XI.

Date of issuance: December 23, 1988.

Effective date: December 23, 1988.

Amendment No.: 67.

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 16, 1988 (53 FR 46156). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 19, 1988, as supplemented November 4, 1988.

Brief description of amendment: This amendment deletes the requirement to perform local leak rate tests (LLRT) on the decay heat removal and high pressure injection containment penetrations. The amendment also changes the surveillance period for the remaining LLRT.

Date of issuance: December 21, 1988.

Effective date: December 21, 1988.

Amendment No.: 101.

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 16, 1988 (53 FR 46159). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 3, 1988 (TS 247)

Brief description of amendments: The proposed amendments would modify Sections 3.11 and 4.11 of the current Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 Technical Specifications (TS). This change would align BFN activities to current industry fire protection practices and standards.

The TS are being revised to delete ambiguities and to clarify fire protection systems Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR). The LCOs have been added to improve and clarify operability requirements. The SRs are being added to provide clearer and better defined SRs to verify system operability.

Date of issuance: December 27, 1988.

Effective date: December 27, 1988, and shall be implemented within 60 days.

Amendments Nos.: 162, 159, 133.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 21, 1988 (53 FR 36674). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: April 22, 1985, supplemented July 31, 1986.

Brief description of amendment: The amendment revised the Technical Specifications to delete the isolation times specified in Table 3.6-2 for certain containment isolation valves. The amendment also corrected typographical errors relating to three valves and deleted redundant listings for two valves.

Date of issuance: December 27, 1988.

Effective date: December 27, 1988.

Amendment No.: 127.

Facility Operating License No. NPF-3. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 5, 1986 (51 FR 40282). The Commission's related evaluation of the amendment is contained in a letter dated December 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-442 Filed 1-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-15283; License No. 35-19048-01; EA 88-155]

Bill Miller, Inc. Henryetta, OK, Order Imposing Civil Monetary Penalty

I

Bill Miller, Inc., Henryetta, Oklahoma (the licensee) is the holder of Materials License No. 35-19048-01 issued by the Nuclear Regulatory Commission (NRC/Commission) on June 25, 1979, and amended last in its entirety on March 13, 1986. The license authorizes the licensee to perform industrial radiography.

II

Inspections of the licensee's activities were conducted on February 27, and May 11, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated September 13, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for certain of the violations. The licensee responded to the Notice by two letters dated October 11, and November 18, 1988.

In its response, the licensee did not contest the violations for which a civil penalty was proposed. However, the licensee did request that the proposed civil penalty be mitigated due to financial hardship. By letter dated November 9, 1988, the NRC provided the licensee with the opportunity to submit specific financial information on the

company's recent profits and losses and its net worth. The licensee submitted this information by letter dated November 18, 1988.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations for which a civil penalty was proposed occurred as stated, but that the civil penalty proposed in the Notice of Violation would constitute an excessive financial hardship for the licensee, and therefore should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 81, 161b, 182, and 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Four Thousand Dollars ($4,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. In the alternative, the civil penalty may be paid in 24 monthly installments which would include accrued interest. The licensee is to inform the Director, Office of Enforcement, within the 30 day period if it elects this alternative.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of Section IV of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: whether, on the basis of the admitted violations, this Order should be sustained.

Dated at Rockville, Maryland this 3 day of January 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On September 13, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Bill Miller Inc. (licensee) for violations identified during an NRC inspection. A civil penalty was proposed for certain of the violations identified. The licensee responded to the Notice by a letter dated October 11, 1988, and claimed that the proposed penalty would impose a financial hardship on the company. The licensee also provided statements of corporate financial status by letter dated November 18, 1988 to support its argument that the proposed civil penalty be mitigated because of financial hardship. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Violations Assessed a Civil Penalty

A. By License Condition 16, the licensee is required to follow procedures submitted with the license application. The licensee's Operating and Emergency Procedures Manual submitted with the license application dated September 13, 1985 requires, in Section III, Part 8.1.5, that direct surveillance of the area where a source is to be exposed must be conducted by the radiographer or his assistant in order to keep all personnel out of the area while the source is exposed.

Contrary to the above, surveillance by the licensee's radiographer and his assistant at the area in which industrial radiography was to be performed at the Wynnewood Refinery on February 25, 1988 was insufficient in that two individuals were in the area when the source was exposed.

B. 10 CFR 34.42 requires that areas in which radiography is being performed shall be conspicuously posted as required by 10 CFR 20.203(b) and (c)(1).

10 CFR 20.203(b) requires that each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION HIGH RADIATION AREA."

10 CFR 20.203(c)(1) requires that each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words "CAUTION RADIATION AREA."

Contrary to the above, at the Wynnewood Refinery on February 25, 1988, the licensee radiographer and assistant radiographer did not post the radiation area and the high radiation area in which industrial radiography was being performed.

C. 10 CFR 20.105(b) requires that no licensee shall possess, use, or transfer licensed material in such a manner as to create in any unrestricted area radiation levels which, if an individual were continuously present in the area, could result in the individual receiving a dose in excess of 2 millirems in any 1 hour. 10 CFR 20.3 defines an unrestricted area as any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation.

License Condition 16 requires that the licensee shall conduct its program in accordance with the statements, representations, and procedures submitted with the license application dated September 13, 1985, and the letter dated December 4, 1985. Section III, Part 8.1.2 of the licensee's Operating and Emergency Procedures Manual, submitted with the license application, requires the radiographer to rope off the boundaries of the area in which it has been calculated that the radiation levels would be 2mR/hr or greater.

Contrary to the above at the Wynnewood Refinery, on February 25, 1988, the licensee's radiographer used licensed material in such manner that two individuals who were present in an unrestricted area could have received between 200 and 450 millirems for the 14 seconds that the source was exposed, based on measurements and calculations made by the NRC inspector via the reenactment of the incident. The area was deemed to be unrestricted in that the radiographer and assistant radiographer did not rope off the area in which industrial radiography was being performed to establish a boundary within which the radiation level would be 2 mR/hr or greater.

Collectively the above violations have been categorized in the aggregate as a Severity Level II problem (Supplements IV and VI).

Summary of Licensee Response

The licensee, in its response, does not deny any of the violations for which a civil penalty was proposed. However, the licensee does request mitigation of the civil penalty based on the severe

economic burden the civil penalty would place on Bill Miller, Inc.

NRC Evaluation of Licensee's Request for Mitigation

The NRC Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of a civil penalty. The licensee's financial information submitted in its November 18, 1988 letter demonstrates that imposition of a civil penalty in the amount proposed would create a severe financial burden. Recognizing the current financial situation, the penalty is being reduced by 50 percent. The NRC also finds, consistent with its Enforcement Policy, that the imposition of the reduced civil penalty will not result in economic termination of the licensee's business or financial hindrance of the licensee's ability to safely conduct licensed activities.

NRC Conclusion

The NRC staff has carefully reviewed the licensee's response and the financial information submitted by the licensee, and has concluded that, in light of the licensee's financial situation, the proposed civil penalty should be mitigated by 50 percent to $4,000.

[FR Doc 89-561 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-382; EA 88-144]

Louisiana Power & Light Co., Waterford Steam Electric Station, Unit 3 License No. NPF-38; Order Imposing Civil Monetary Penalty

I

Louisiana Power & Light Co. (licensee) is the holder of Operating License No. NPF-38 issued by the Nuclear Regulatory Commission (NRC/Commission) on March 16, 1985. The license authorizes the licensee to operate the Waterford Steam Electric Station, Unit 3 in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted during May 12-20, 1988. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated August 18, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated October 14, 1988. In that response the licensee denied Violation A, admitted Violation B but disputed two statements in the violation, and requested a withdrawal of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and a copy to the NRC Resident Inspector at Waterford 3.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violations, this Order should be sustained.

For The Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

Appendix—Evaluations and Conclusions

On August 18, 1988, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection in May 1988. Louisiana Power and Light Company responded to the Notice on October 14, 1988. The licensee denied Violation A, admitted Violation B but disputed two statements in the violation, and requested a withdrawal of the proposed civil penalty. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of Violation A

Violation A

A. *Inadequate corrective actions.* criterion XVI of Appendix B to 10 CFR Part 50, requires, in part, that for significant conditions adverse to quality, measures shall be established to assure that the cause of the condition is determined and corrective action is taken to preclude repetition.

In Juy 1988, a loss of both shutdown cooling pumps occurred at Waterford 3, an event constituting a "significant condition adverse to quality." The licensee's measures established to preclude repetition of this event included specific commitments made in a September 21, 1987, response to Generic Letter 87-12, "Loss of Residual Heat Removal (RHR) While the Reactor Coolant System is Partially Filled." These measures as set forth in the September 21, 1987, response, included:

1. During part-loop operations, operators will utilize two independent and diverse RCS level measurement systems—the heated junction thermocouple (HJTC) system and the refueling level indication system (RLIS), and that the HJTC system level indication shall be monitored continuously while draining, and frequently while the RCS is partially drained.

2. "* * * when the reactor vessel head is not in place (or when preparing for head removal or replacement) the RCS water level is maintained several feet above the hot leg centerline. This precludes the possibility of losing SDC [shutdown cooling] flow due to vortexing."

3. "During installation, the tubing length of the RLIS was maintained to a minimum."

Contrary to the above, the licensee failed to take adequate corrective actions to preclude repetition of a significant condition adverse to quality in that, on May 12, 1988, at approximately 6:15 a.m. and again at 9:35 a.m., inaccurate reactor vessel water level indication resulted in vortexing, cavitation, and subsequent loss of the operational shutdown cooling pump. These events are repetitious of the occurrence in July 1986 (reported in LER 86-15) where a series of events, including inaccurate water level indication resulting from improper installation and care of the tygon tube instrument, resulted in vortexing, cavitation, and loss of both shutdown cooling pumps. The licensee's measures to prevent a recurrence of that condition, including the licensee's commitments in response to Generic Letter 87-12, were not fully implemented on May 12, 1988, in that the two independent means of level indication (HJTC and RLIS) were not both used when draining during part-loop operation, the RCS water level was not maintained several feet above the hot leg centerline when the reactor vessel head was not in place, and the RLIS tubing length was not maintained to a minimum when installed. Therefore, the measures were not adequate to prevent a similar condition from occurring.

Summary of Licensee's Response to Violation A

The licensee contests Violation A, as written, on the basis of the following arguments:

1. The May 1988 event is not a repetition of the July 1986 event.

2. Commitments made by Waterford 3 in response to Generic letter 87-12 are not a continuation of the corrective action for the July 1986 event.

3. The Generic Letter 87-12 commitments cited in Violation A were not commitments made by LP&L to the NRC.

The summary details of these three arguments are presented in the following paragraphs.

A. The May 1988 event is not a repetition of the July 1986 event

The licensee agrees with the NRC that the July 1986 extended loss of shutdown cooling event constituted a significant condition adverse to quality. In that event, two separate drain paths were being used to lower RCS level. Because the drain down rate was too high, the resulting vacuum in the RCS collapsed the RLIS tygon tube causing an inaccurate level indication (actual level was lower than indicated). Recognizing a problem with the level measurement, operators isolated one of the drain paths, overlooking the other. Operators began venting the RCS, and upon completion of the venting process, the RLIS indicated level fell to 9 feet (well below the hot leg). Since past local level indicators were suspect, and since the B LPSI pump was operating satisfactorily, operations personnel felt the RLIS indication of 9 feet was inaccurate. Shutdown cooling was lost when the operating shutdown cooling pump began to cavitate due to loss of pump suction because of the continued draindown from the other drain path. Shutdown cooling was lost for approximately 220 minutes (RCS hot leg temperature increased from 138 °F to 232 °F).

By contrast, LP&L characterizes the May 1988 event as brief cavitation of a low pressure safety injection (LPSI) pump which did not result in a loss of shutdown cooling due to correct operator actions and procedures. The licensee does acknowledge that certain design control and procedural implementation errors associated with the installation and operation of the newly installed RWLIS did occur. The licensee summarizes these errors as: (1) the failure to recognize the significance of RLIS design changes which allowed excess RLIS tubing and subsequent air entrainment; and (2) the failure to coordinate procedure changes (RCS drain down) with construction completion to ensure RWLIS/RLIS were properly placed in service.

Because the July 1986 event resulted in an extended loss of shutdown cooling and the May 1988 event resulted in only LPSI pump cavitations, the licensee argues that the May 1988 event was not a repetition of the July 1986 event. LP&L argues that similarity of events does not constitute repetition.

B. Commitments made in response to Generic Letter 87-12 are not a continuation of corrective action for the July 1986 event

The licensee argues that the corrective actions for the July 1986 event stand on their own, and that "commitments to Generic Letter 87-12 are immaterial because such commitments are not a continuation of corrective action from the July, 1986 event."

C. LP&L did not make, and fail to implement, the commitments as cited in the NOV

LP&L argues that the three Generic Letter 87-12 response statements cited in Violation A were not commitments. LP&L states that the Generic Letter 87-12 response was not intended to provide exhaustive detail for procedural steps, nor discuss all potential situations to which procedures could apply. As a result, LP&L states that there was never the intent or belief that a summary description could logically constitute a commitment.

With respect to the first response statement cited in Violation A, the licensee maintains that the company's Generic Letter 87-12 response generally summarizes some elements of applicable Waterford 3 procedures that existed at the time its response was written. However, it could not be construed as a commitment because to do so would preclude the licensee from ever using the improved RWLIS system. Additionally, LP&L states that because the Generic Letter 87-12 response statement, that the HJTC system shall be continuously monitored while draining and frequently while the RCS is partially drained, is only a summary description of then extant procedures, it does not cover all possible instances of applicabilty (i.e., there could be instances in which the HJTC would not be available for use during part-loop operations).

LP&L asserts that a similar argument can be made for the second Generic Letter 87-12 response statement cited in Violation A that the water level will be maintained above the hot leg centerline.

For the third response statement cited in Violation A, LP&L agrees that a deficiency existed in not identifying the excess RLIS tube as a potential cause of inaccurate level measurement. However, the licensee believes that this deficiency is adequately covered as a procedure violation in Violation B.

NRC Evaluation of Licensee's Response to Violation A

A. The NRC staff disagrees with the licensee's fundamental assertion that the dissimilarities between the 1986 and 1988 events preclude characterizing the 1988 events as a repetition of the 1986 event. The licensee appears to be focusing narrowly on the specific circumstances of each and, by doing so is overlooking the important elements that are common to each. The staff's evaluation of both the May 1988 event and the licensee's response to Violation A reveals that the May 1988 event was

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sufficiently repetitious of the most important elements of the July 1986 event. In both events, a loss of reactor vessel control resulted in LPSI pump cavitation due to vortexing. The only difference was in the manner in which level control was lost. Although level control was lost by different means, operator error, inadequate procedures, and lack of sufficient training contributed to the loss of level control in both instances.

In response to Violation A, LP&L notes that following the cavitation of the A LPSI pump during the May 1988 event, the B LPSI pump was vented and started with no problems occurring. LP&L fails to indicate, however that prior to starting the B LPSI pump, RCS level was restored to above the common suction point for both the A and B LPSI pumps by using the A high pressure safety injection (HPSI) pump. During the 20 minutes that transpired between stopping the A LPSI pump, restoring level with the A HPSI pump, and starting the B LPSI pump, RCS level was low enough that cavitation of the B LPSI pump could have been expected to have occurred if the operators had attempted to start the B LPSI pump prior to restoring RCS level with the A HPSI pump.

The NRC staff acknowledges that prompt operator action to start the A HPSI pump to restore level prevented a sustained loss of shutdown cooling. This procedural guidance to restore level with an HPSI pump was developed as a result of both the July 1986 event and Generic Letter 87–12. However, the NRC staff's concern is that a sustained loss of shutdown cooling was avoided, not because adequate preventive measures had been developed and were taken, but rather because sufficient mitigative measures were taken. The NRC staff concludes that had LP&L developed and properly implemented adequate preventive measures such as establishment and verification of adequate level indication, the licensee would not have had to rely on operators properly implementing actions for an off-normal event. Had the May 1988 event actually resulted in a sustained loss of shutdown cooling for a similar duration as the July 1986 event, NRC staff would have considered this is a more serious violation and an increase in the Severity Level of the violation would have been appropriate.

B. The NRC staff notes that the only element of proof necessary to establish a violation under Criteria XVI of Appendix B to 10 CFR Part 50 is to demonstrate that adequate corrective action has not been taken to preclude repetition of earlier known conditions adverse to quality. A violation for the May 1988 event was thus established by the fact that this event occurred following the July 1986 event which has previously been shown to be similar. In the instant matter, the NRC staff went even further than was necessary and also demonstrated that the licensee had not complied with the corrective actions listed in its response to Generic Letter 87–12 which the NRC staff concluded were in part taken to remedy causes of the July 1986 event.

The NRC staff disagrees with the licensee's conclusions that the corrective actions for the July 1986 event stand on their own and that the response to Generic Letter 87–12 is independent of the July 1986 event corrective actions. The intent of the July 1986 corrective action was to preclude a loss of shutdown cooling capability during part-loop operations. Actions resulting from Generic Letter 87–12 had the same purpose. Since the licensee's Generic Letter 87–12 task force concluded among other things, that improvements to procedures were needed to further reduce the chances of experiencing another sustained loss of shutdown cooling event, it must be concluded that the licensee understood that the July 1986 event corrective actions were not sufficient in scope to accomplish this. A review of the licensee's response to Generic Letter 87–12 reinforces this conclusion. As noted in LP&L's response, "* * * the scope of the [Generic Letter 87–12] task force review encompassed not only Generic Letter 87–12, but also previous NRC and industry critiques of applicable loss of shutdown cooling events including the July 1986 loss of shutdown cooling event at Waterford 3. Although reviews of such events had been conducted (improvements implemented) at Waterford 3 on a case-by-case basis in the past, the task force felt there was a benefit in performing a comprehensive review to integrate the previous efforts."

The NRC staff therefore finds that enhancements to the licensee's Procedure OP–1–003, "Reactor Coolant System Drain Down," were required as part of the corrective actions resulting from the July 1986 event. Further revisions to this same procedure were required following the licensee's task force review of Generic Letter 87–12 in order to further reduce the likelihood of experiencing future sustained losses of shutdown cooling capability with the RCS partially drained. The licensee's July 1986 event corrective actions were only sufficient enough to preclude loss of RCS level control under virtually the same conditions that occurred in July 1986. The Generic Letter 87–12 corrective actions were intended to more broadly address the effects and importance of RCS level control during part-loop operations. On this basis, the NRC staff concludes that the programmatic improvements described in Generic Letter 87–12 were a continuation of the corrective actions that occurred following the July 1986 sustained loss of shutdown cooling event at Waterford 3.

C. LP&L argues that the first Generic Letter 87–12 response statement cited in Violation A should not be construed as a commitment because if it were interpreted literally, the licensee could never conduct part-loop operations with an improved reactor vessel water level indicating system (i.e., the PWLIS) because cross checks of level could always have to be conducted by comparing the RLIS and the HJTC system. The NRC staff agrees with the licensee that a Generic Letter response is not meant to provide a detailed explanation of the licensee actions in response to a particular issue but rather is meant to provide a summary description of the actions. Such a summary would in turn provide the NRC staff with an appreciation of the licensee's approach to a particular problem. In this case a reasonable reading of the licensee's response to Generic Letter 87–12 is that the licensee intended to require that two independent methods of level indication be utilized when conducting part-loop operations. The individual methods of indication to be used can be changed at the licensee's discretion. If however, the licensee subsequently modifies its procedures to no longer require two independent level indications, it is expected that the NRC staff would be made aware of such a fundamental change. The licensee's reasoning fails to consider the key element of the programmatic enhancement that the NRC staff believed the licensee intended to implement, i.e., that two independent and diverse level measurement systems would always be used by the operators. The licensee's new RWLIS is not independent of the previously existing RLIS because the RLIS level sensing piping taps into the RWLIS level sensing piping. Since the RWLIS and RLIS are not independent of each other, either system would have to be used independently of the HJTC system (the only remaining level indicating system) in order to conduct part-loop operations with two independent level indicating systems. Notwithstanding the licensee's contention that a prerequisite to the

governing procedure (Procedure OP–1–003, Rev. 6, Reactor Coolant System Draindown) permits part-loop operations without the HJTC system in service, Step 6.4.8 of the same procedure clearly incorporates this programmatic improvement.

LP&L further contends that the first response statement to Generic Letter 87–12 cited in Violation A is composed of summary statements of then extant procedures that did not cover all possible instances of applicability. Specifically, the licensee cites a passage in Section 6.2.1 of their response that states "* * * the HJTC system is available as a reliable cross check for other RCS level indications when the reactors head is in place." The NRC staff agrees that there is no specific langauge in LP&L's response that commits to not performing part-loop operations when the HJTC system is not operable. However, it is the NRC staff's understanding that the second response statement cited in Violation A was intended to preclude the conduct of part-loop operations with the vessel head not in place. Since LP&L apparently intended to have the HJTC system in service when the reactor vessel head is in place, the first two response statements, when taken together, appear to preclude part-loop operations when the HJTC system is inoperable. However, notwithstanding the interpretation of these Generic Letter 87–12 response statements, it is the NRC staff's conclusion that LP&L had intended not to conduct part-loop operations under any circumstances without two independent and diverse means of reactor vessel water level indication available.

The implication in the licensee's discussion of the second response statement was that there could be conditions in which the reactor vessel head may not be in place while at the same time the reactor vessel water level may be drained down to a level at or near that of the hot leg centerline. LP&L provided no examples, however, of such possible conditions. In reading Section 6.2.2. "Temperature," of the licensee's response to Generic Letter 87–12, there does not appear to be a basis to infer that there could be any plausible exception for not maintaining reactor vessel water level several feet above the hot leg centerline when the reactor vessel head is not in place. In Section 6.2.2, the licensee discussed the importance of temperature indication in determining the approach to boiling and the need for determining when the containment should be isolated. The licensee stated in Sections 6.2.2 and 5.2.2 that when the vessel head is in place (except when preparing for head removal or installation) at least two core exit thermocouples (CETs) would be available for temperature indication. It is in this context that LP&L noted that reactor vessel water level would be maintained several feet above the hog leg centerline when CET information is not available (i.e., when the vessel head is not in place). The NRC staff strongly agrees with the sound reasoning of this position and could find no prudent reason for deviating from it. The NRC staff concludes that had the licensee revised OP–1–003, "Reactor Coolant System Drain Down," to include this programmatic enhancement as a precaution or limitation to the procedure, and correctly implemented such procedural guidance on May 12, 1988, the event would not have occurred because plant initial conditions would not have been set.

With respect to the third response statement specified in Violation A, the NRC staff agrees that the RLIS length "was maintained to a minimum" at the time of the response to Generic Letter 87–12. However, as a result of the subsequent RLIS modification necessitated by the installation of the new RWLIS, RLIS tubing was not maintained to a minimum. The NRC staff's concern in this instance is that while the licensee recognized the importance of minimizing tubing length when responding to the Generic Letter, that concern was not applied to a later situation where it was equally applicable. Had that been done, proper indication may have been available even though the backfill and walkdown procedures described in Violation B were not performed.

Restatement Violation B

Violation B

B. *Failure to follow procedures.* 10 CFR Part 50, Appendix B, Criterion V, requires, in part, that activities affecting quality be prescribed by documented instructions, procedures, or drawings. The activities shall be accomplished in accordance with these instructions, procedures, or drawings.

Pursuant to this requirement, Waterford 3 Operating Procedure OP–1–003, Revision 6, "Reactor Coolant System Drain Down," establishes, in part, the requirements for draining down the reactor coolant system (RCS) to the refueling water storage pool (RWSP):

1. Step 6.4.8 of Procedure OP–1–003, Revision 6, states that the plant staff will "Perform frequent cross checks of the RWLIS, RLIS (Tygon Tubing), if in service, and the HJTC level indication on QSPDS, during RCS drain down."

2. Step 6.4.6 of Attachment 8.4 of Procedure OP–1–003, Revision 6, requires the blowdown of water from the pressurizer reference leg.

3. Attachment 8.4 of Procedure OP–1–003, Revision 6, requires in part, a backfill and venting of the tubing in the refueling water level indicator system (RWLIS) to ensure that air is removed from the system.

4. Step 8.6.6.5 of Attachment 8.6 of Procedure OP–1–003, Revision 6, requires that the refueling level indicator of the refueling level indication system (RLIS) be inspected for any condition which could cause the refueling level indicator to give false indication.

Contrary to the above, on May 12, 1988, Procedure OP–1–003, Revision 6, was not followed in that:

1.a. During a drain-down of the RCS to the RWSP, no cross checks of reactor vessel water level were performed between the RWLIS indicators and the heated junction thermocouple (HJTC), water level indicator system indicators as required by Step 6.4.8 of Procedure OP–1–003, Revision 6. Further, at the time of the RCS drain-down, the HJTC water level indicator system was not operable.

1.b. During a second RCS drain-down of May 12, 1988, plant operators relied solely on reactor vessel water level indication provided by the RLIS, even though Step 6.4.8 of Procedure OP–1–003, Revision 6, requires that cross checks of the RLIS indications be made with the RWLIS indications.

2. The RWLIS level detector reference leg was apparently not blown down as required by Step 6.4.6 of Attachment 8.4 of Procedure OP–1–003, Revision 6, in that licensee personnel detected water in the reference leg subsequent to the commencement of the RCS drain down. The discovery of water in the RWLIS detector reference leg contributed to the licensee's decision to rely solely on the RLIS for reactor vessel water level indication.

3. RCS drain-down to part-loop was performed even though the RWLIS backfill and venting had not been performed as required by Attachment 8.4 of Procedure OP–1–003, Revision 6. Performance of the RWLIS backfill would have removed entrapped air which can cause false water level indication.

4. Even though the RLIS tubing was inspected prior to and during the RCS drain-down of May 12, 1988, it was not performed in accordance with Step 8.6.6.5 of Attachment 8.6 of Procedure OP–1–003, Revision 6, in that several

licensee personnel, initially, failed to detect upon inspection, that approximately 30 feet of excess RLIS hose contained entrapped air and consequently caused erroneously high RLIS reactor vessel water level indication.

Summary of Licensee's Response to Violation B

The licensee admits to Violation B, but takes issue with two of the violation statements. The licensee notes that no cross checks of the RLIS or RWLIS with the HOTC system are required because Prerequisite 3.3 of OP-1-003, Revision 6, states that "OSPDS HOTC level indications * * * are in service when the reactor vessel head is in place, except when preparing for head removal or replacement." The licensee was in the process of installing the reactor vessel head while conducting part-loop operations thereby obviating the need for having the HJTC system in service.

The licensee denies that the operators relied solely on RLIS indications during the second drain down. LP&L states that the second drain down was halted due to discrepancies between the RWLIS and the RLIS noted by operator cross checks.

NRC Evaluation of Licensee's Response to Violation B

The NRC staff agrees that Prerequisite 3.3 as currently stated in OP-1-003, Revision 6, "Reactor Coolant System Drain Down," allows entry into the procedure without an operable HJTC system when the reactor vessel head is not in place. The existence of this prerequisite is not by itself inappropriate provided that before drain down commences a second level indicator is operable. However, its existence without a later procedural step to place the system in operation is inappropriate for two reasons. First, the licensee's Generic Letter 87-12 programmatic improvement was intended to preclude draining down to the RCS hot leg centerline when the reactor vessel head is not in place. Second, step 6.4.8 of OP-1-003, Revision 6 could not have been implemented, as stated, on May 12, 1988 with the HJTC inoperable. The procedure at issue is subject to two interpretations. First, accepting that the prerequisite does not require HJTC to be operable when the head is being removed or installed because of the need to disconnect the HJTC, the procedure must presume it is operable prior to drain down in order to accomplish step 6.4.8. Under this reading the procedure was not followed in that the HJTC was not used in accordance with step 6.4.8. Alternatively, notwithstanding the prerequisite allowing HJTC to be out of service, the procedure can be considered inadequate because it is internally inconsistent with the requirement to use the HJTC. In either case, the procedure is not sufficiently clear for acceptable use. However, the staff, in finding the violation, utilized the first reading because it gives full credit to each step and is consistent with the response to the Generic Letter.

The NRC staff agrees that during the drain down that commenced at 9:13 a.m. on May 12, 1988, disparities between the RLIS and RWLIS level indicators led Waterford 3 operators to again stop the drain down of the RCS. However, in the NRC staff's review of this event, that drain down was considered the third of three periods of draining that occurred, with the first drain down commencing at approximately 3:09 a.m. on May 12 and, as discussed below, the second commencing at approximately 5:14 a.m. The Waterford 3 Independent Safety Evaluation Group (ISEG) noted in the Draft Assessment Report 111-88 that upon recommencing drain down at 5:14 a.m. on May 12, operators decided to use only the RLIS to continue the drain down that had started earlier that morning. As stated in the report, the operators were reluctant to rely on level indications from the RWLIS system since it had not been recalibrated after having found water in the reference leg. Finding water in the reference leg resulted in confusion over whether the instruments had been calibrated with the reference leg wet or dry. The RWLIS reference leg was not blown down as required by procedure, and it appears that discovery of water in the reference leg and the resulting confusion contributed to the course of events that led to the cavitation of the operable SDC pump. For these reasons the staff concludes that for the second drain down only the RLIS indicator was used.

Summary of Licensee's Request for Reclassification of NOV Severity Level and Withdrawal of Civil Penalty

The licensee argues that the May 12 event conditions do not meet the threshold for a Severity Level III violation because a loss of a required safety system never occurred. They agree that the procedural violations noted in Violation B clearly occurred and led to LPSI pump cavitations. However, LP&L argues that the results of these procedural violations are consistent with a Severity Level IV classification, i.e., failure to meet regulatory requirements that have more than minor safety or environmental significance. Consequently, LP&L requests that the NOV be reassigned as a Severity Level IV violation and the Civil Penalty be rescinded as not generally applicable to a Severity Level IV violation.

NRC Response to Licensee's Request for Reclassification of NOV Severity Level

Since the NRC staff does not agree with the licensee's denial of Violation A for reasons that have been previously stated in this Appendix, and since the licensee has made a qualified admission of Violation B, which the NRC staff has also previously addressed, it is concluded the violations occurred as stated. As indicated in Generic Letter 87-12 and recently reiterated in Generic Letter 88-17 the NRC staff concerns regarding the issue of decay heat removal in a pressurized water reactor with reduced reactor coolant system inventory have increased over the past several years. The articulation of those concerns in the above mentioned documents as well as in other issuances by the NRC staff make it clear that not only are such problems of more than minor concern but when it is considered that the violations in this case involved many of the factors involved in a past event, they are of significant concern and therefore properly classified at Severity Level III.

NRC Conclusion

The NRC staff concludes that the violations described in the August 18 Notice of Violations and Proposed Imposition of Civil Penalty occurred as stated. Accordingly, the proposed civil penalty in the amount of Fifty Thousand Dollars ($50,000) should be imposed.

FR Doc. 89-562 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-272 and 50-311]

Public Service Electric and Gas Co.; Withdrawal of Application For Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its November 19, 1985 (LCR 84-23) application for proposed amendments to Facility Operating Licenses Nos. DPR-70 and DRP-75 for the Salem, Generating Station, Units Nos. 1 and 2, located in Salem County, New Jersey.

The amendment requested deletion of Appendix B, the Environmental Technical Specifications (ETS), and the substitution of an Environmental Protection Plan (EPP) for the ETS.

The Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which was published in the **Federal Register** on July 2, 1986 (51 FR 24261).

For further details with request to this action, see the application for amendment dated November 19, 1985 (LCR 84-23) and the licensee's letter dated December 9, 1988 withdrawing the application for license amendment. The above documents are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 3rd day of January 1989.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-563 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271-OLA; ASLBP No. 87-547-02-LA]

Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), Docket No. 50-271-OLA, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr., in place of Administrative Judge Glenn O. Bright, who is no longer available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
James H. Carpenter
Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 4th day of January 1989.

[FR Doc. 89-564 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271-OLA-2; ASLBP No. 88-567-04-OLA]

Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), Docket No., 50-271-OLA-2, is hereby reconstituted by appointing Administrative Judge Gustave A. Linenberger, Jr., in place of Administrative Judge Glenn O. Bright, who is no longer available to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman
James H. Carpenter
Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 4th day of January 1989

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-565 Filed 1-10-89; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26421; File No. SR-MBS-88-15]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Approving Proposed Rule Change

On September 1, 1988, the MBS Clearing Corporation ("MBSCC") filed with the Commission a proposed rule change (File No. SR-MBS-88-15) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would impose a schedule of penalties on MBSCC participants ("Participants") who fail to make timely payment of their debit balances. The Commission published a notice and order granting accelerated temporary approval of the proposal in the **Federal Register** on November 4, 1988.[2] No comments were received. This order approves the proposal.

The proposed rule change imposes a schedule of penalties on Participants in the MBSCC Depository Division ("Depository Division") who fail to make timely payment of their debit balances. First, if payment of a Participant's debit balance is received after the Depository Division's 4:15 p.m. (EST) cutoff time, under the proposal Participants would be charged one of the following penalties:

Amount of payment	Penalty
(1) $50,000 or less	$50.
(2) $50,001 to $150,000.	$100.
(3) $150,001 to $1,000,000.	$250.
(4) More than $1,000,000.	$250 or the amount equal to one day's interest at the rate of 1% per annum, whichever is greater.

Second, if as a result of a late payment or nonpayment of a Participant's debit balance, the Depository Division is required to borrow or advance funds to cover the debit balance, the Depository Division would charge, in addition to interest, but in lieu of the penalty specified above, a penalty equal to the greater of $500 or one day's interest at 250 basis points (2.5%).

MBSCC states that the proposed penalties are consistent with section 17A of the Act in that they promote the prompt and accurate clearance and settlement of securities transactions among Participants and provide appropriate disciplinary action for violation of the provisions of the Depository Division rules.

The Commission believes that the proposal is consistent with the Act and in particular, section 17A(b)(3)(G).[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 26226 (October 28, 1988) 53 FR 44691.

[3] Section 17A(b)(3)(G) directs a clearing agency's rules to provide that its participants be appropriately disciplined for violation of any provision of the clearing agency's rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, or any other fitting sanction.

proposed penalties are adopted from Depository Division rules that were considered and discussed in the Commission order granting MBSCC temporary registration as a clearing agency.[4] The purpose of the proposal is to encourage timely payment of debit balances by Participants. The Commission believes that the proposed penalties are well suited to encourage such timely payment. Late payment of debit balances by Participants increases the risk of loss to MBSCC and its Participants because of the increased risk of default or insolvency by the delinquent Participant until the debit balance is paid. The Commission believes it important that Participants make timely payment of debit balances for this reason and that the proposal will encourage such a result.

In the event that a Participant is assessed a penalty for late payment of a debit balance, the Depository Division rules, consistent with section 17A(b)(3)(H),[5] provide Participants with an opportunity to appeal the assessment of the proposed penalty, allowing Participants to explain any mitigating circumstances. The penalty will not become effective until the period for appeal has lapsed and will be stayed during the pendency of the appeal. Appeals will be considered by a panel composed of three members of the Board of Directors. Decisions of a panel are reviewable by the Board of Directors.[6] The Commission believes that MBSCC's appeal process will provide penalized Participants with a fair opportunity to be heard.

It is therefore ordered, pursuant to section 19(b) of the Act, that MBSCC's proposed rule change (File No. SR–MBS–88–15) be, and thereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 5, 1989.

Jonathan Katz,

Secretary.

[FR Doc. 89–579 Filed 1–10–89; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 24046 (February 2, 1987) 52 FR 4218.

[5] Section 17A(b)(3)(H) directs that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

[6] *See* MBSCC Depository Division Rules, Article III, Rules 3 and 7.

[Release No. 34–26418; File No. SR–MSTC–88–8]

Self-Regulatory Organizations; Midwest Securities Trust Company; Proposed Rule Change and Order Granting Temporary Accelerated Approval

On December 2, 1988, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to enhance MSTC's File Transmission Service ("FTS") by allowing Depository Delivery Instructions ("DDI")[1] to be transmitted through FTS. Subsequently on January 3, 1989, MSTC amended its proposed rule change (SR–MSTC–88–8) so that it may be reviewed by the Commission pursuant to section 19(b)(2) of the Act. The Commission is publishing this notice and order to solicit comment on the proposed rule change and approve it on a temporary basis through March 31, 1989.

I. Description

The proposed rule change is designed to provide FTS users with a new method of submitting DDI instructions to MSTC. Currently, in order to submit DDI instructions to MSTC, participants must manually enter those instructions into their MSTC terminals or deliver computer tapes to MSTC. The proposal will allow participants to transmit DDI instructions directly from their computers to MSTC's computer. To transmit DDI instructions through the FTS system participants must write a computer program which extracts DDI information from their internal files and creates a new file of DDI information to be submitted to MSTC via FTS.[2]

MSTC has incorporated security features into the service which will prevent unauthorized users from submitting DDI instructions via FTS. To ensure the security of the system, prior to the submission of any DDI instructions, participants must obtain access codes from MSTC. MSTC will not process any transmissions submitted without the appropriate access codes. In MSTC's proposed rule filing, MSTC requests authorization for low volume users to use dial-up capability to submit DDI's through FTS to MSTC. MSTC however, will only accept DDI instructions from participants using dedicated telephone lines during the pilot period.

[1] The DDI service allows firms to transmit delivery instructions to deliver securities to other MSTC participants and non-MSTC participants.

[2] MSTC has developed a data entry format which participants must use to submit DDI information via FTS.

II. MSTC's Rationale

MSTC believes that the proposal is consistent with the Act in that it provides for the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation among persons engaged in such activities by providing an efficient mechanism for transmitting DDIs. The proposal provides a more efficient method of transmitting DDI information as it will allow firms to automatically create delivery instructions from in-house computer systems, thereby avoiding re-entry of DDI information into the system used to transmit information to MSTC. In addition, MSTC requests that the Commission accelerate the effective date of this proposal so that it may begin to operate the service on a pilot basis.

III. Request for Comments

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies of your comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. § 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–88–8.

IV. Temporary Approval

The Commission finds that there is good cause for approving a pilot program prior to the thirtieth day after publication in the **Federal Register**. MSTC's proposal is an enhancement of an approved service, FTS, which the Commission has determined was designed to improve the method of transmission of trade data and clearance and settlement information between MSTC and its participants.[3] The Commission believes that granting such approval will allow MSTC test the procedures, software, and hardware used to provide this service by offering it on a pilot basis for approximately 90 days. During that time, the Commission

[3] *See* Securities Exchange Act Release No. 25718 (May 18, 1988), 53 FR 19074.

will review the service's operation to determine whether it will grant permanent approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–MSTC–88–8) be, and hereby is, approved on a temporary basis through March 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–580 Filed 1–10–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26419; File No. SR–NYSE–88–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the New York Stock Exchange, Inc. ("Exchange" or "NYSE"), on October 18, 1988, submitted to the Securities and Exchange Commission ("Commission") a proposal to institute permanent guidelines to govern stock trading once the Exchange's circuit breaker and sidecar provisions have gone into effect.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 26206 (October 21, 1988), 53 FR 43498. No comments were received on the proposal.

The NYSE recently adopted Rule 80B and amended Rule 80A to implement certian procedures that will be activated during volatile market conditions.[4] In brief, Rule 80A involves routing into a separate file (the "sidecar" file) automated, program trading-related market orders in each of the NYSE-listed stocks comprising the Standard & Poor's 500 Stock Index ("S&P 500"). After five minutes in the sidecar file, orders will be compared, any order imbalances will be reported, and, if there is not sufficient trading interest to allow for an orderly execution of transactions in a stock, trading in that stock will halt. Rule 80A only will apply after the price of the primary S&P 500 futures contract traded on the Chicago Merchantile Exchange has declined 12 points from the previous trading day's close.[5]

The "circuit breaker" provisions of Rule 80B require a one-hour halt in the trading of all stocks, stock options, and stock index options on the NYSE if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from the previous day's closing value. Once trading has been reopened, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close.

The NYSE's proposed rule change includes guidelines to govern (1) mandatory trading halts and dissemination of price indications when Rule 80A is in effect, and (2) mandatory dissemination of price indications on all openings and on reopenings when Rule 80B is in effect.[6] In particular, during the five-minute period that Rule 80A is in effect and automated, program trading-related orders in the NYSE-listed stocks comprising the S&P 500 are diverted to a sidecar file, the Exchange believes that "market conditions may warrant a widening of normal quotation spreads in a particular stock."[7] In addition, the Exchange believes that during the five-minute period "reasonable trade variations should nonetheless take place" and Intermarket Trading System ("ITS")[8] commitments to trade "should receive an execution at the best available bid or offer * * * in accordance with reasonable trade-to-trade continuity".[9]

Under Rule 80A, trading in any sidecar stock will halt at the end of the five-minute period if there is not sufficient trading interest on the Exchange to allow for orderly executions in that stock. Under the current proposal, a trading halt and dissemination of a price indication would be mandatory for any stock if the next sale of such stock would be (1) more than one point from a last scale under $20; (2) more than two points from a last sale between $20 and $99 7/8; or (3) more than three points from a last sale of $100 or more. While a trading halt would not be mandatory on the basis of a 50,000 share imbalance at the end of the five-minute period, the size of any imbalance of 50,000 or more shares in any halted stock among the 50 highest-capitalized NYSE-listed stocks in the S&P 500 would be required to be disseminated.

As noted above, the Exchange has proposed guidelines to be effective prior to any opening and for the reopening of trading following a trading halt instituted pursuant to the circuit breaker provisions of NYSE Rule 80B. These guidelines would require dissemination of a price indication for an opening or Rule 80B reopening that would result in a price change constituting the lesser of 10% or three points from the prior NYSE close, or five points if the previous close was $100 or higher. Dissemination of a price indication would not be mandatory, however, if the resulting price change would be less than one point.

In support of its proposed guidelines to govern trading when the sidecar provisions of rule 80A are in effect, the Exchange cites the need to "provide guidance, in a volatile market, as to how specialists may quote their market during the five-minute sidecar period, when there may be some uncertainty as to the possible build-up of significant market imbalances * * *."[10] In addition, the NYSE notes its desire to "provide standard, uniform criteria (mandatory price indications) for disseminating market information where a significant price change appears likely once the sidecar period has ended."[11] In support of its proposal to require mandatory price indications on openings and Rule 80B reopenings, the Exchange argues that it must provide guidance to specialists and NYSE Floor Officials, "by means of standard, uniform criteria for dissemination of market information, where significant price changes occur on any opening of trading."[12]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The guidelines described herein were approved by the Commission on a temporary basis through December 31, 1988 in Securities Exchange Act Release No. 26207 (October 21, 1988), 53 FR 43500.

[4] NYSE Rule 80B and the amendment to Rule 80A were approved by the Commission and are described in detail in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[5] The amendment to Rule 80A replaced a former version of Rule 80A which also imposed restrictions on the use of automated NYSE order routing systems during times of market volatility. *See* Securities Exchange Act Release No. 25599 (April 19, 1988), 53 FR 13371.

[6] Current NYSE policy requires, and would continue to require, dissemination of a price indication upon any delayed opening or regulatory or nonregulatory trading halt, except for a trading halt put into effect pursuant to the circuit breaker provisions of Rule 80B.

[7] 53 FR at 43498. The Exchange guidelines described herein would be distributed to all NYSE members in an Information Memorandum. *See* 53 FR at 43499–500.

[8] ITS is a communication system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information.

[9] 53 FR at 43498.

[10] *Id.* at 53 FR at 43499.

[11] *Id.*

[12] *Id.* On days when the Rule 80B circuit breakers go into effect, the Exchange intends to treat as a delayed opening trading in a security that has not reopened one-half hour after the resumption of trading on the Exchange.

exchange, and, in particular, the requirements of section 6 [13] and the rules and regulations thereunder. In particular, the Exchange's proposed guidelines to govern trading once Rules 80A and 80B have gone into effect will provide specialists and other market participants with precise criteria to guide their activities during periods of acute market stress. The guidelines also should enhance the flow of stock price and order imbalance information, thereby facilitating trading in NYSE-listed stocks. In addition, the various mandatory trading halts included in the Exchange's guidelines should help prevent rapid declines in the prices of particularly volatile stocks by providing market participants with time to assess their trading activities in light of overall market trends. In sum, the NYSE's guidelines should enable it to better maintain fair and orderly markets during periods of peak market volatility.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change is adopted.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-581 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24801]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 5, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 30, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cedar Coal Company (70-7161)

Cedar Coal Company ("Cedar"), 40 Franklin Road, P.O. Box 2021, Roanoke, Virginia 24022, a subsidiary coal company of Appalachian Power Company, Inc., an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a), 10 and 13 of the Act and Rules 86, 90 and 91 thereunder.

By Commission order dated December 31, 1985 (HCAR No. 23973) Cedar was authorized to renovate, rebuild and modify major pieces of mining equipment at its Central Rebuild Shop ("Shop") both for associate companies and for non-associate companies. With respect to performing services for associate companies the order contained no expiration date; with respect to performing services for non-associate companies the order expired on December 31, 1988.

Cedar now requests authorization to provide such services for non-associate companies through December 31, 1991. Revenues from non-associate companies will not exceed in any calendar year revenues from associated companies. The revenue derived from providing services to non-associates would be used to reduce Shop operation costs (overheads) and thus reduce the rate charges by the Shop to associate companies.

Mississippi Power & Light Company (70-7325)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215-1640 have filed a post-effective amendment to their application-declaration subject to sections 6(a), 7, 9(a), 10 and 12(f) of the Act and Rule 43 thereunder.

By orders, dated December 24, 1986 (HCAR No. 24283) and June 10, 1988 (HCAR No. 24659), this Commission authorized MP&L to issue and sell to MSU, and MSU to purchase, from time to time through December 31, 1988, up to an aggregate of 2,609,000 additional shares of MP&L's authorized but unissued common stock, without nominal or par value, at a price approximately $23.00 per share, for an aggregate cash consideration not to exceed $60,007,000 ("Additional Shares").

At December 31, 1988, approximately 1,304,000 of the Additional Shares of MP&L had been sold to MSU for an aggregate cash consideration of approximately $30 million. Based upon MP&L's revised estimate of cash requirements for the period through December 31, 1989, it may be necessary for MP&L to issue and sell the remaining Additional Shares to MSU, from time to time during such period. Accordingly, MP&L requests authority through during which MP&L may issue and sell, and MSU may acquire, the remaining 1,305,000 Additional Shares for an aggregate cash consideration not to exceed $30,007,000.

New Orleans Public Service, Inc. (70-7350)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with the Commission a post-effective amendment to its application, as amended, pursuant to sections 6(a) (2) and 7 of the Act.

By order dated May 12, 1987 (HCAR No. 24387), NOPSI was authorized to establish a new Mortgage ("Mortgage") providing for the issuance of Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds") and to issue and sell to institutional investors, $75 million of an initial series of G&R Bonds, 10.95% Series due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture to the Mortgage, which, in relevant part, granted the holders of the 10.95% Bonds ("Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution had currently materially impaired or prospectively would materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages. On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative, and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption.

In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to exercise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988. However, NOPSI had insufficient funds available to redeem the G&R Bonds on August 26, 1988 because, according to NOPSI, the February 4th Resolution had a substantial and adverse effect upon its financial condition and cash flow.

In order to avoid redemption of the G&R Bonds, NOPSI sought and was granted authorization by supplemental order dated August 8, 1988 (HCAR No. 24712), to enter into an agreement with the Bondholders, whereby the Bondholders agreed to forbear from tendering their 10.95% Bonds on August 11, 1988 and NOPSI agreed, upon written notice from any Bondholder between November 24 and December 13, 1988, to purchase the 10.95% Bonds at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders did not have the right to give such notice, and NOPSI was not required to purchase any 10.95% Bonds, if an independent arbiter delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the 10.95% Bonds had ceased because of judicial or regulatory action. In addition, a Bondholder was entitled to revoke its notice of tender at any time prior to purchase of its G&R Bonds.

NOPSI now states that the independent arbiter did not deliver the certificate by November 23, 1988. Because NOPSI did not expect to have sufficient funds available to purchase the 10.95% Bonds on February 10, 1989 and because it could not be assured that one or more Bondholder would not tender the 10.95% Bonds for purchase, NOPSI, by letter dated November 25, 1988 to the Bondholders, proposed to enter into a one year extension of their existing agreement. Under the terms of the newly proposed agreement ("Agreement"), the Bondholders would forebear from tendering their 10.95% Bonds for purchase on February 10, 1989 and NOPSI would, subject to requisite regulatory approval, and upon written notice from any Bondholder between November 24, 1989 and December 13, 1989, purchase on February 9, 1990 the 10.95% Bonds held by such Bondholder, at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders would not have the right to such notice, and NOPSI would not be required to purchase any 10.95% Bonds, if an independent arbiter delivers a certificate to each Bondholders by November 23, 1989 stating that the impairment of NOPSI's ability to perform its obligations on the 10.95% Bonds has ceased because of judicial or regulatory action. In addition, the agreement provides that a Bondholder may revoke its notice of tender at any time prior to purchase of its 10.95% Bonds.

NOPSI now states that, from November 24, 1988 through December 13, 1988, it did not receive written notice from any Bondholder demanding redemption of the 10.95% Bonds on February 10, 1989. Accordingly, NOPSI seeks authorization to carry out the proposed Agreement with the Bondholders.

New Orleans Public Service, Inc. (70-7448)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application with this Commission pursuant to sections 6(a)(2) and 7 of the Act.

By order dated January 13, 1988 (HCAR No. 24559), NOPSI was authorized to and did issue and sell to institutional investors, $40 million of NOPSI's Rate Recovery General and Refunding Mortgage Bonds ("G&R Bonds"), 13.20% Series due February 1, 1991 ("13.20% Bonds"), 13.60% Series due February 1, 1993 ("13.60% Bonds"), and 13.90% Series due February 1, 1995 ("13.90% Bonds"), under a Second Supplemental Identure to NOPSI's General and Refunding Mortgage, as amended ("G&R Mortgage"). The G&R Mortgage granted the holders of the 13.20%, 13.60% and 13.90% Bonds (collectively, "Bondholders") the right to tender such G&R Bonds to NOPSI for redemption upon the occurrence of certain specified events.

On February 4, 1988, the Council of the City of New Orleans adopted a resolution ("February 4th Resolution") that required NOPSI to write off and not recover from its retail electric customers $135 million of its Grand Gulf Steam Electric Nuclear Generating Station, Unit No. 1 ("Grand Gulf 1") related costs, which had been deferred for future recovery from customers, in addition to $51.2 million of previously incurred Grand Gulf 1 related costs that NOPSI had absorbed as part of the Rate Settlement with the City of New Orleans, which Settlement provided for recovery by NOPSI of its allocated share of costs associated with capacity and energy from Grand Gulf 1. As a result, NOPSI was required by the terms of the G&R Mortgage to cause an independent arbiter to deliver to the Trustee a certificate indicating whether, in the independent arbiter's opinion, the February 4th Resolution has currently materially impaired or prospectively will materially impair NOPSI's ability to perform its obligations in respect of all G&R Bonds outstanding under the G&R Mortgages.

On June 24, 1988, the independent arbiter issued a certificate stating that, as to this issue, the opinion was affirmative and, thus, activated the Bondholders rights to tender their G&R Bonds for redemption. In accordance with the terms of the G&R Mortgage, on July 12, 1988, the Trustee notified the Bondholders of their right to tender their G&R Bonds for redemption; that is, that the Bondholders electing to execise this right were required to tender their G&R Bonds to the Trustee not later than August 11, 1988 and that NOPSI would be required to redeem all outstanding G&R Bonds so tendered on August 26, 1988. However, NOPSI had insufficient funds available to redeem the G&R Bonds on August 26, 1988 because, according to NOPSI, the February 4th Resolution had a substantial and adverse effect upon its financial condition and cash flow.

In order to avoid redemption of the G&R Bonds, NOPSI sought and was granted authorization by supplemental order dated August 8, 1988 (HCAR No.

[13] 15 U.S.C. 78f (1982).

[14] 15 U.S.C. 78s(b)(2) (1982).

24711), to enter into an agreement with the Bondholders. Under the terms of the agreement, the Bondholders agreed to forbear from tendering their G&R Bonds on August 11, 1988 and NOPSI agreed, upon written notice from any Bondholder between November 24 and December 13, 1988, to purchase, on February 10, 1989, the G&R Bonds held by such Bondholders at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders did not have the right to give such notice, and NOPSI was not required to purchase any G&R Bonds, if an independent arbiter delivered a certificate to each Bondholder on or prior to November 23, 1988 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds had ceased because of judicial or regulatory action. In addition, a Bondholder was entitled to revoke its notice of tender at any time prior to purchase of its G&R Bonds. None of the Bonds were tendered to NOPSI for redemption on August 26, 1988.

NOPSI now states that the independent arbiter did not deliver the cetificate by November 23, 1988. Because NOPSI did not expect to have sufficient funds available to purchase the G&R Bonds on February 10, 1989 and because it could not be assured that one or more Bondholder would not tender the G&R Bonds for purchase, NOPSI, by letter dated November 25, 1988 to the Bondholders, proposed to enter into one year extension of their existing agreement. Under the terms of the newly proposed agreement ("Agreement"), the Bondholders would forebear from tendering their G&R Bonds for purchase on February 10, 1989 and NOPSI would, subject to requisite regulatory approval, and upon written notice from any Bondholders between November 24, 1989 and December 13, 1989, purchase on February 9, 1990 the G&R Bonds held by such Bondholder, at a price of 100% of the principal amount thereof plus accrued interest to the date of purchase. However, the Bondholders will not have the right to such notice, and NOPSI will not be required to purchase any G&R Bonds, if an independent arbiter delivers a certificate to each Bondholders on or prior to November 23, 1989 stating that the impairment of NOPSI's ability to perform its obligations on the G&R Bonds has ceased because of judicial or regulatory action. In addition, a Bondholder may revoke its notice of tender at any time prior to purchase of its G&R Bonds.

NOPSI further states that, from November 24, 1988 through December 13, 1988, it did not receive written notice from any Bondholder demanding redemption of the G&R Bonds on February 10, 1989. Accordingly, NOPSI seeks authorization to carry out the proposed Agreement with the Bondholders.

Louisiana Power & Light Company, et al. (70–7602)

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174 have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), and 10 of the Act and Rule 43 thereunder.

LP&L proposes to issue and sell from time to time through December 31, 1989, and MSU proposes to acquire, an aggregate of up to 18,961,000 additional shares of LP&L's common stock, without nominal or par value, at a price per share of $6.59, for an aggregate cash consideration not to exceed $125 million. LP&L's Restated Articles of Incorporation, as amended ("Charter"), presently provide for 150 million authorized shares of common stock, of which 137,110,900 such shares are issued and outstanding and owned by MSU. Accordingly, LP&L proposes, by appropriate corporate action and with the consent of MSU, further to amend its Charter to increase the number of shares of its authorized common stock from 150 million to 250 million shares.

System Energy Resources, Inc. (70–7604)

System Energy Resources, Inc. ("SERI"), 188 East Capitol Street, One Jackson Place, Jackson, Mississippi 39201, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed an application pursuant to Sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, SERI is currently leasing a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf") from Port Gibson Energy, Inc. ("Gibson") (last approved, HCAR No. 24697, August 18, 1988), and from Prulease Inc. ("Prulease") (last approved, HCAR, No. 24591, February 29, 1988). In order to restructure its leasing arrangement, SERI now proposes to enter into a Lease Agreement ("Lease") for its Nuclear Fuel for Grand Gulf with River Fuel Trust #3 ("Trust"). The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, not in its individual capacity, but solely as trustee ("Trustee") and SERI, as beneficiary. The Trust will be specifically created for this restructuring by the Trustor.

It is proposed that the Trust will acquire the Nuclear Fuel owned by Givson and Prulease along with certain Nuclear Fuel owned by SERI. Promptly after such acquisition, SERI will terminate its Lease Agreement with Gibson and its Lease Agreement with Prulease. Gibson will terminate its Restated and Amended Credit Agreement with Union Bank of Switzerland, Houston Agency.

Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Grand Gulf, or SERI will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $180 million at any one time outstanding, although the Trust may make such payments of up to $185 million.

Under the Lease, SERI will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof. The term of the Lease will be the later to occur of (i) the final maturity date of one or more Secured Notes, defined below, on a date on which no other Secured Notes are outstanding, or (ii) February 28, 1994. The term shall automatically be extended for one additional year without the necessity of action by SERI or the Trust, unless either SERI or the Trust shall give notice to the other by February 1, 1992, or each succeeding February 1 up to the year 2037, of its desire to so terminate the term of the Lease on February 28, or, in the case of a leap year, February 29 of the second following year. In any event the Lease will terminate no later than February 28, 2039. Authorization is requested for additional extensions of the Lease through February 28, 2039, without seeking further Commission authorization prior to entering such extensions.

Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined in the Lease, equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactor and producing heat. When the Nuclear Fuel is not in the reactor and producing heat, SERI may elect to capitalize Quarterly Lease Charges or daily portions thereof so long as the commitment under, and defined in, the credit agreement between the Trust and certain commercial banks, and the aggregate principal amount of all Secured Notes outstanding exceeds the sum of (i) the Stipulated Loss Value, as defined in the Lease, of the Nuclear Fuel, (ii) the amount of such charges and (iii) $5 million. SERI may consequently, subject to the foregoing limitation, defer rental payments until those times during commercial operation when the Nuclear Fuel is in the reactor and producing heat in the production of electric energy.

Middle South Utilities, Inc. (70–7606)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

System Energy Resources, Inc. ("SERI"), a subsidiary of Middle South, has proposed by application in a companion filing, dated December 22, 1988 (S.E.C. File No. 70–7604), to enter into a lease ("Lease") with River Fuel Trust #3 ("Trust"), under which SERI would lease from the Trust nuclear fuel and facilities incident to its use ("Nuclear Fuel"). The Nuclear Fuel will be used in Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf 1").

In order to induce the Trust to enter into the Lease, it will be necessary for Middle South to guarantee, to the Trust, SERI's obligations under the Lease. Middle South proposes, therefore, to enter into a Guaranty ("Guaranty"), under which Middle South will guarantee to the Trust that SERI will perform its various obligations and covenants under the Lease. Middle South will agree that its obligations under the Guaranty will be unconditional and not subject to any set-off, counterclaim, offset or recoupment whatsoever.

The Trust will be formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, as trustee ("Trustee") and SERI, as beneficiary. The Trust will be specifically created for SERI's lease restructuring by the Trustor. Under the terms of the Lease, the Trust will make payments to suppliers, processors and manufactures necessary to provide Nuclear Fuel for Grand Gulf 1, or SERI will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially will be $180 million at any one time outstanding, although the Trust may make such payments of up to $185 million.

Under the Lease, SERI will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession of use thereof. The term of the Lease will be the later to occur of (i) the final maturity date of one or more Secured Notes, as defined in the Lease, on a date on which no other Secured Notes are outstanding, or (ii) February 28, 1994. It shall be automatically extended for one additional year without the necessity of action by SERI or the Trust, unless either the Trust or SERI shall give notice to the other by February 1, 1992, or each succeeding February 1 up to 2037, of its desire to so terminate the term of the Lease on February 28, or, in the case of a leap year, February 29 of the second following year. In any event, the Lease will terminate no later than February 28, 2039. Payments under the Lease will be payable quarterly and will include (A) a Quarterly Lease Charge, as defined in the Lease, which will include allocated operational and financing costs of the Trust, and (B) a Burn-Up Charge, as defined in the Lease, equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactor and producing heat.

Middle South has been advised by representatives of the Trust that the collateral agent ("Collateral Agent"), for certain parties to a Credit Agreement and certain Secured Note Agreements to be entered into by the Trust to finance its acquisition of Nuclear Fuel to be leased to SERI, will receive an assignment of the Trust's rights under the Guaranty, as well as an assignment of the rents and certain of the Trust's other rights under the Lease, pursuant to a Security and Collateral Agency Agreement. Middle South will acknowledge notice and agree to the terms of the assignment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 89–582 Filed 1–10–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Albany International Corp.—Common stock $.001 Par Value (File No. 7–4102)
Beazer PLC—American Depository Receipts (File No. 7–4103)
Coca-Cola Bottling Co. United Inc.—Class A, Common Stock $.01 Par Value (File No. 7–4104)
Coles Myer Ltd.—American Depository Receipts (File No. 7–4105)
Computerland Corp.—Class A, Common Stock $.001 Par Value (File No. 7–4106)
Sterling Chemicals Inc.—Common Stock $.01 Par Value (File No. 7–4107)
Tandycrafts Inc.—Common Stock $1.00 Par Value (File No. 7–4106)
VM Software Inc.—Common Stock $.01 Par Value (File No. 7–4109)
Compumat Inc.—Common Stock $.01 Par Value (File No. 7–4110)
Home Shopping Network—Common Stock $.01 Par Value (File No. 7–4111)
Cypress Semiconductor Corp.—Common Stock $.01 Par Value (File No. 7–4112)
First City Bancorporation of Texas, Inc.—$5.50 Conv. Pfd. Series B $.01 Par Value (File No. 7–4113)
Georgia Gulf Corp.—Common Stock $.05 Par Value (File No. 7–4114)
Gitano Group Inc.—Common Stock $.10 Par Value (File No. 7–4115)
Intertan, Inc.—Common Stock $1.00 Par Value (File No. 7–4116)
Longview Fibre Co.—Common Stock $7.50 Par Value (File No. 7–4117)
Medusa Corp.—Common Stock No Par Value (File No. 7–4118)
National City Corp.—Common Stock $4.00 Par Value (File No. 7–4119)
Racal Telecom PLC—American Depository Receipts (File No. 7–4120)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission.

450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-539 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Magma Copper Company—Class B Common Stock, $.01 Par Value (File No. 7-4133)
Moore Medical Corporation—Common Stock, $.01 Par Value (File No. 7-4134)
Santa Fe Pacific Pipeline Partners, L.P.—Preferred Depository Units (File No. 7-4135)
Illinois Central Transportation Co.—Common Stock, $.01 Par Value (File No. 7-4136)
Banco Central, S.A.—New American Depository Receipts, No Par Value (File No. 7-4137)
Golden Valley Microwave Foods, Inc.—Common Stock, $.01 Par Value (File No. 7-4138)
Hong Kong Telecommunications, Ltd.—American Depository Shares (File No. 7-4139)
USF&G Pacholder Fund—Common Stock, $.01 Par Value (File No. 7-4140)
Primerica Corporation—Common Stock, $.01 Par Value (File No. 7-4141)
The "Shell" Transport and Trading Company, PLC—Depository Receipts (File No. 7-4142)
Telecom * USA, Inc.—Common Stock, $.01 Par Value (File No. 7-4143)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-540 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 3, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust—Shares of Beneficial Interest (File No. 7-4121)
Dean Witter Government Income Trust—Shares of Beneficial Interest (File No. 7-4122)
MFS Government Markets Income Trust—Shares of Beneficial Interest (File No. 7-4123)
Nuveen Municipal Value Fund, Inc.—Common Stock, $0.01 Par Value (File No. 7-4124)
Prudential Strategic Income Fund Inc.—Shares of Beneficial Interest (File No. 7-4125)
Putnam Intermediate Government Income Trust—Shares of Beneficial Interest (File No. 7-4126)
Putnam Master Income Trust—Shares of Beneficial Interest (File No. 7-4127)
Putnam Master Intermediate Income Trust—Common Stock, No Par Value (File No. 7-4128)
Putnam Premier Income Trust—Shares of Beneficial Interest (File No. 7-4129)
Guilford Mills, Inc.—Common Stock, $0.02 Par Value (File No. 7-4130)
National Fuel Gas Company—Common Stock, No Par Value (File No. 7-4131)
Service Merchandise Company, Inc.—Common Stock, $0.05 Par Value (File No. 7-4132)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-541 Filed 1-10-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 5, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treausry Department Clearance Office, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0023.
Form Number: Treasury International Capital Form CM.
Type of Review: Extension.
Title: Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.
Description: This report is required by law and is designed to gather timely and accurate information of international capital movements by collecting data on dollar deposit and certificate of deposit claims held on banks abroad by non-banking enterprises, non-profit institutions and other specified U.S. persons.
Respondents: Businesses of other for-profit.
Estimated Number of Respondents: 175.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,050 hours.
OMB Number: 1505-0024.
Form Number: International Capital Form CQ-1; International Capital Form CQ-2.
Type of Review: Extension.
Title: Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.
Description: This report is required by law and is designed to collect timely accurate information on international capital movements including data on financial and commercial liabilities to and claims on, unaffiliated foreigners held by U.S. non-banking business enterprises, non-profit institutions and other U.S. specified persons.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 475.
Estimated Burden Hours Per Response: 4 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 7,600 hours.
Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 89-537 Filed 1-10-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 5, 1989

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treausry Department Clearance Office, Department of the Treasury, Room 224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 9117.
Type of Review: New Collection.
Title: Excise Tax Program Order Blank for Forms and Publications.
Description: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and information publications.
Respondents: Businesses or other for-profit, Small businesses or oganizations.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Response: 2 minutes.
Estimated Total Reporting Burden: 500 hours.
Clearance Officer: Garrick Shear (202) 535-5297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 89-538 Filed 1-10-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational And Cultural Activities

The United States Information Agency (USIA) announces two programs of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The programs are designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Latin American Journalists Exchange

The Office of Private Sector Programs proposes the development of two programs, each of which will bring ten journalists from Latin America to the United States for 28 days to give them a greater understanding of the theory and practice of journalism in this country. The target audiences for the first program is the English-speaking Caribbean, although English-speaking journalists from other countries in Latin America will also be included. This program will begin in May 1989. The second program should be conducted in Spanish, since it is aimed at Latin American journalists who are not fluent in English. This program will begin in late June or early July. The participants in both programs will be selected by USIA representatives abroad. The projects will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of journalism. American participants should include reporters, editors, news managers, and academic specialists in journalism. The program design should include a session in Washington, DC, as well as visit to a major news center, such as New York or Los Angeles, and placement in short-term journalism residencies in the surrounding area.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above projects successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Roy Glover—Latin American Journalists), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 3, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-571 Filed 1-10-89; 8:45 am]

BILLING CODE 8230-01-M

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and Chile and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Chilean Legislative Leaders

The Office of Private Sector Programs will assist in supporting an exchange that will bring ten potential future legislative leaders from Chile to the United States to provide them with an overview of the American legislative process. The participants will be selected by USIA representatives abroad. The project, scheduled to begin the first weekend in April of 1989 and to last twenty-one days, will be conceived and executed by a U.S. not-for-profit institution with expertise in state and federal legislative affairs in the United States. American participants should include legislators, legislative staff, and academic specialists in the field. The program design may include sessions in Washington, DC, as well as visits to one or two state legislatures. Boston, Albany, and Denver have been suggested as possible sites for visits.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Dr. Roy Glover: Chilean Legislative Leaders), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: January 4, 1989.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 89-572 Filed 1-10-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, January 17, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 9, 1989.

William W. Wiles,

Secretary of the Board.

FR Doc. 89-728 Filed 1-9-89; 3:12 pm]

BILLING CODE 6210-01-M

INTER-AMERICAN FOUNDATION BOARD

TIME AND DATE: 6:00-9:30 p.m., January 23, 1989.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the May 9-10, 1988, Board Meeting
4. Board Audit Committee Report
5. Old Business
6. New Business

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Dated: January 9, 1989.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 89-727 Filed 1-9-89; 3:08 pm]

BILLING CODE 7025-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The following item is deleted from the previously announced closed Board meeting (Federal Register, Vol. 54, No. 4, page 511, Friday, January 6, 1989) of the National Credit Union Administration on January 12, 1989.

Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9) (A)(ii), and (9) (B).

Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. ADP USERS Guide. Closed pursuant to exemption (2).

The meeting will be held at 11:30 a.m., in the Filene Board Room, 7th Floor, 1776 G. Street, NW., Washington, DC 20456.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board. Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 89-729 Filed 1-9-89; 3:12 pm]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, January 18, 1989.

PLACE: The Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Sinking of U.S. Fishing Vessel WAYWARD WIND in Gulf of Alaska near Kodiak Island, Alaska, January 18, 1988.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

January 9, 1989.

[FR Doc. 89-673 Filed 1-9-89; 12:45 pm]

BILLING CODE 7533-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, January 17, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints:
5. Inv. No. 701-TA-292 (Final) and 731-TA-400, 402, 403, and 406 (Final) (Thermostatically Controlled Appliance Plugs and Probe Thermostats Therefor from Canada, Japan, Malaysia, and Taiwan)—Briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

January 5, 1989.

[FR Doc. 89-605 Filed 1-6-89; 5:04 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 7
Wednesday, January 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Consultations With the Government of Costa Rica

Correction

In notice document 88-30023 beginning on page 52765 in the issue of Thursday, December 29, 1988, make the following correction:

On page 52765, in the 1st column, under **SUPPLEMENTARY INFORMATION**, in the 3rd paragraph, in the 24th line, "698,298 dozen" should read "698,289 dozen".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 239

[INS Number: 1037-88]

Immigration User Fee, Conforming Amendments

Correction

In rule document 89-5 beginning on page 100 in the issue of Wednesday, January 4, 1989, make the following correction:

§ 239.2 [Corrected]

On page 102, in the second column, in amendatory instruction 14, the fourth line should read, "paragraphs (c), (d), and (e) as (b), (c),".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Funds From Sources Other Than the Corporation

Correction

In proposed rule document 88-30239 beginning on page 46 in the issue of Tuesday, January 3, 1989, make the following correction:

On page 47, in the second column, in the first complete paragraph, the 19th line should read "(1985); Pub. L. No. 100–459, 102 Stat. 2223".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 20

International Mail Manual, Interim Regulations; Domestic Mail Manual, Miscellaneous Changes

Correction

In rule document 88-29903 beginning on page 52697 in the issue of Thursday, December 29, 1988, make the following corrections:

§ 20.2 [Corrected]

1. On page 52697, in the third column, in § 20.2(b), in the sixth line, "Room 8301" should read "Room 8401".

2. On the same page, in the same column, in amendatory instruction 4, in the first line, "§ 30.2" should read "§ 20.3".

BILLING CODE 1505-01-D

federal register

Wednesday
January 11, 1989

Part II

Environmental Protection Agency

40 CFR Parts 148, 268, and 271
Land Disposal Restrictions for Second Third Scheduled Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 268, and 271

[SWH-FRL-3485-7]

Land Disposal Restrictions for Second Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to RCRA section 3004(g)(5), EPA is proposing to prohibit the land disposal of certain untreated hazardous wastes listed in 40 CFR 268.11 (the second one-third of the schedule of restricted hazardous wastes, hereafter known as the Second Third). Today's action proposes treatment standards and prohibition effective dates for these wastes, as well as some of the wastes listed in §§ 268.10 and 268.12 (First Third and Third Third). The Agency is also proposing prohibition effective dates for these wastes when they are injected into deep underground wells regulated under 40 CFR 148. If these proposed actions are finalized, Second Third wastes can be land disposed after the applicable effective dates if the respective treatment standards are met or if disposal occurs in units that satisfy the statutory no migration standard.

DATE: Comments on this proposed rule must be submitted on or before February 27, 1989.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-89-LD10-FFFFP on your comments. The EPA RCRA Docket is located in the sub-basement, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone: 800-424-9346 (toll-free) or 382-3000 locally.

For general information on specific aspects of this proposed rule, contact Stephen Weil or Rhonda Craig, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For specific information on BDAT treatment standards, contact Jim Berlow or Bob April, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917. For specific information on the Underground Injection Control Program and hazardous waste injection wells, contact Bruce Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5508. For specific information on capacity determinations or national variances, contact Jo-Ann Bassi, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework
1. Statutory Requirements
2. Applicability to Injected Wastes
3. Solvents and Dioxins
4. California List Wastes
5. Disposal of Solvents, Dioxins, and California List Wastes in Injection Wells
6. Scheduled Wastes
7. Newly Identified and Listed Wastes
B. Regulatory Framework
1. Applicability
2. Treatment Standards
3. National Variances from the Effective Dates
4. Case-By-Case Extensions of the Effective Dates
5. "No Migration" Exemptions from the Restrictions
6. Variances from the Treatment Standards
7 Exemption for Treatment in Surface Impoundments
8. Storage of Prohibited Wastes
9. "Soft Hammer" Provisions
II. Summary of Today's Proposed Rule
A. Applicability of Proposed Treatment Standards
B. Best Demonstrated Available Technologies (BDAT)
C. Waste Analysis Requirements
D. Nationwide Variances from the Effective Date
E. Applicability of Today's Proposed Rule to Class I-H Hazardous Waste Injection Wells Regulated Under 40 CFR 148
F Treatment Standards for Prohibited Wastes that are Mixed with Non-Prohibited Wastes
III. Detailed Discussion of Today's Proposed Rule
A. Determination of Treatability Groups and Development of Treatment Standards
1 Waste Treatability Groups
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I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984 and the Land Disposal Restrictions Framework

1. Statutory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, prohibit the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection of solvent- and dioxin-containing hazardous wastes, wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)), and soil and debris resulting from CERCLA sections 104 and 106 response actions and RCRA corrective actions when the soil and debris contains listed spent solvent, dioxin, and California list hazardous wastes.

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in RCRA sections 3004 (d)(1), (e)(1) and (g)(5) is made.

For the purposes of the restrictions HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)). Therefore, because HSWA defines land disposal to include underground injection wells, disposal of hazardous wastes in injection wells is subject to the land disposal restrictions.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national variance from the statutory date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (or certain exceptions thereto). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels) are "removed for subsequent management within one year of the entry of the waste into the surface

impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j)).

2. Applicability to Injected Wastes

As noted above, disposal of hazardous wastes in injection wells is subject to the provisions of HSWA. The Agency has previously proposed and promulgated regulations pertaining to injected wastes separately from regulations addressing wastes disposed in surface facilities. The Agency chose this approach for several reasons. First, injection of hazardous wastes is controlled by two statutes, RCRA and the Safe Drinking Water Act (SDWA). The regulations governing injection of these wastes have been codified along with other regulations of the Underground Injection Control (UIC) program under the SDWA in Parts 124, 144, 145, 146 and 147 of the Code of Federal Regulations. EPA believes that it is useful to the regulated community and to the State regulators to have requirements regarding restrictions on hazardous waste injection located in the same portion of the Code of Federal Regulations as are other requirements pertaining to injection wells. Second, the statute established a separate schedule for the restrictions on injection of certain wastes.

3. Solvents and Dioxins

Effective November 8, 1986, HSWA prohibited land disposal (except by underground injection into deep wells) of dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 listed in 40 CFR 261.31. (RCRA section 3004 (e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)).

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) implementing RCRA section 3004(e). This rule not only established the general framework for the land disposal restrictions program, but also established treatment standards for the F001–F005 solvent wastes and F020–F023 and F026–F028 dioxin-containing wastes.

4. California List Wastes

Effective July 8, 1987, the statute prohibited further land disposal (except by deep well injection) of the following listed or identified wastes (RCRA section 3001) set out in RCRA sections 3004 (d)(1) and (d)(2) (42 U.S.C. 6924 (d)(1), (d)(2)).

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below: (i) Arsenic and/or compounds (as As) 500 mg/l; (ii) Cadmium and/or compounds (as Cd) 100 mg/l; (iii) Chromium (VI and/or compounds (as Cr VI)) 500 mg/l; (iv) Lead and/or compounds (as Pb) 500 mg/l; (v) Mercury and/or compounds (as Hg) 20 mg/l; (vi) Nickel and/or compounds (as Ni) 134 mg/l; (vii) Selenium and/or compounds (as Se) 100 mg/l; and (viii) Thallium and/or compounds (as Tl) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg.

On July 8, 1987, EPA promulgated a final rule (52 FR 25760) implementing RCRA section 3004(d). This rule established treatment standards for California list wastes containing PCBs and certain HOCs, and codified the statutory prohibition on liquid corrosive wastes. The statutory prohibition is in effect for the California list wastes containing free cyanides, metals, and the California list dilute HOC wastewaters.

5. Disposal of Solvents, Dioxins and California List Wastes in Injection Wells

Section 3004(f) of RCRA required that the Administrator prohibit the disposal of solvents, dioxins and California List wastes in deep wells, effective August 8, 1988, unless such disposal had been determined to be protective of human health and the environment for as long as the wastes remained hazardous or unless a variance had been granted under RCRA section 3004(h). On July 26, 1988, the Agency established effective dates for the prohibition on injection of solvents and dioxin wastes (53 FR 28118). In another regulation, effective August 8, 1988 and published August 16, 1988 in the **Federal Register**, the Agency established effective dates for the prohibition on injection of California List wastes (53 FR 30908).

6. Scheduled Wastes

The amendments required the Agency to prepare a schedule by November 8, 1986 for restricting the land disposal of all hazardous wastes, including underground injected wastes, listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984, by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first third or second third of the schedule, the waste may be disposed in a landfill or surface impoundment provided "such facility" is in compliance with the minimum technological requirements specified in RCRA section 3004(o) for new facilities (RCRA section 3004(g)(6)). (**Note.**—In the August 17, 1988 First Third final rule, EPA interpreted the term "such facility" in 3004(g)(6) to refer to the individual surface impoundment or landfill unit.) In addition, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste or until May 8, 1990, whichever is sooner. Other forms of land disposal, including underground injection, are not similarly restricted and may continue to be used for disposal of untreated wastes until EPA promulgates a treatment standard or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any scheduled hazardous waste by May 8, 1990, the waste is automatically prohibited from all forms of land disposal after that time unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g)(5), 42 U.S.C. 6924(g)(5)). (Also, the May 8, 1990 effective date may be extended under RCRA section 3004(h)(2) for certain Second Third and Third Third wastes, and until August 8, 1990 for certain First Third wastes.) On May 28, 1986, EPA promulgated the schedule for setting treatment standards for the listed and identified hazardous wastes (51 FR 19300). All wastes that are identified as hazardous by characteristic are scheduled in the Third Third, as required by RCRA. This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

For the scheduled wastes, the statute does not provide different deadlines for restriction of underground injected versus surface land disposed wastes. However, the Agency did propose and promulgate First Third regulations for surface disposed and injected wastes on separate dates. The First Third final rule, promulgated on August 8, 1988 and published in the **Federal Register** on August 17, 1988 (53 FR 31138), set out the conditions under which wastes included in the first one-third of the schedule of restricted hazardous wastes listed in 40 CFR 268.10 may continue to be land disposed (other than by injection). The final regulations published August 26, 1988 (53 FR 30908) include effective dates for the prohibition of injection of certain First Third wastes. In addition, the Agency has proposed effective dates for the prohibition on injection of another group of First Third wastes on October 26, 1988 (53 FR 41601). Today's notice proposes the conditions under which wastes included in the second one-third of the schedule of restricted hazardous wastes listed in 40 CFR 268.11 may continue to be land disposed. It applies to all forms of land disposal, including injection. It also proposes treatment standards for some restricted hazardous wastes listed in §§ 268.10 and 268.12 (First Third and Third Third wastes).

7. Newly Identified and Listed Wastes

RCRA requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

B. Regulatory Framework

By way of preface, we note that the following description of existing rules is for the readers' convenience, and is not intended to reopen any of these rules for public comment. The November 7, 1986 final rule (51 FR 40572) established the regulatory framework for implementing the land disposal restrictions program. Some changes to the framework were made in a July 8, 1987, final rule (52 FR 25760) that prohibited the land disposal of California list wastes, as well as in the August 17, 1988 final rule. Regulations specifying how the framework applies to injected wastes were promulgated July 26, 1988 (53 FR 28118). The following discussion summarizes the major provisions of the land disposal restrictions framework.

1. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the applicable effective dates are subject to the restrictions, but wastes land disposed prior to the effective dates are not required to be removed or exhumed for treatment (51 FR 40577). Similarly, only surface impoundments receiving restricted wastes after the applicable deadline are subject to the restrictions on treatment in surface impoundments contained in § 268.4 and 3005(j)(11). Also, the storage restrictions apply to wastes placed in storage after the effective dates.

The provisions of the land disposal restrictions program apply to wastes produced by generators of greater than 1,000 kilograms of hazardous waste as well as small quantity generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kilogram of acute hazardous waste) in a calendar month. However, wastes produced by small quantity generators of less than 100 kilograms of hazardous waste (or less than 1 kilogram of acute hazardous waste) per calendar month are conditionally exempt from RCRA, including the land disposal restrictions (see 40 CFR 268.1).

The land disposal restrictions apply to both interim status and permitted facilities. The requirements of the land disposal restrictions program supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C of RCRA. Therefore, even though the requirements may not be specified in the permit conditions, all permitted facilities are subject to the restrictions.

2. Treatment Standards

By each statutory deadline the Agency must establish the applicable treatment standards under 40 CFR Part 268 Subpart D for each restricted hazardous waste (RCRA section 3004(m)(1)). After the applicable effective dates, restricted wastes may be land disposed in Subtitle C facilities if they meet the treatment standards. If EPA does not promulgate treatment standards by the statutory deadlines, such wastes are prohibited from land disposal (with the exception of first-third and second-third ranked hazardous wastes, which are subject to the soft hammer provisions of RCRA section 3004(g)(6)).

A treatment standard is based on the performance of the best demonstrated available technology (BDAT) to treat the waste (51 FR 40578). EPA may establish treatment standards either as specific technologies or as performance standards based on the performance of BDAT technologies. Compliance with performance standards may be monitored by measuring the concentration level of the hazardous constituents (or in some circumstances, indicator pollutants) in the waste, treatment residual, or in the extract of the waste or treatment residual. When treatment standards are set as performance levels, the regulated community may use any technology not otherwise prohibited (such as impermissible dilution) to treat the waste to meet the treatment standard. Treaters thus are not limited to only those technologies considered in determining the treatment standard. However, when treatment standards are expressed as specific technologies, such technologies must be employed.

3. National Variances From the Effective Dates

The Agency has the authority to grant national variances from the statutory effective dates, not to exceed two years, if there is insufficient alternative protective treatment, recovery or disposal capacity for the wastes (RCRA section 3004(h)(2)). To make capacity determinations, EPA compares the nationally available alternative treatment, recovery, or protective disposal capacity at permitted and interim status facilities which will be in operation by the effective date with the quantity of restricted waste generated. If there is a significant shortage of such capacity nationwide, EPA will establish an alternative effective date based on the earliest date such capacity will be available. During the period such a

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capacity variance is in place, if the waste is disposed in a landfill or surface impoundment, such disposal may be made only in a unit meeting the minimum technological requirements of RCRA section 3004(o) (53 FR 31186 and § 268.5(h)(2)). It should be noted, however, that if a waste subject to a national capacity variance is treated to meet the applicable treatment standard, it may be disposed in a Subtitle C landfill or surface impoundment regardless of whether the unit meets minimum technological requirements.

4. Case-By-Case Extensions of the Effective Dates

The Agency will consider granting up to a one-year extension (renewable only once) of a ban effective date on a case-by-case basis. The requirements outlined in 40 CFR 268.5 must be satisfied, including a demonstration that adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste cannot reasonably be made available by the effective date due to circumstances beyond the applicant's control, and that the petitioner has entered into a binding contractual commitment to construct or otherwise provide such capacity. During the period that such a case-by-case extension is in place, the waste may be land disposed only in a unit meeting the minimum technological requirements of RCRA section 3004(o).

5. "No Migration" Exemptions From the Restrictions

EPA has the authority to allow the land disposal of a restricted hazardous waste which does not meet the treatment standard provided that the petitioner demonstrates that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (40 CFR 268.6). If a petition is granted, it can remain in effect for no longer than ten years for disposal in interim status land disposal units, and for no longer than the term of the RCRA permit for disposal in permitted units (40 CFR 268.6(h)).

Section 148.20 (promulgated on July 26, 1988, see 53 FR 28118) outlines in detail the Agency's plan for implementing the "no migration" provisions of RCRA with respect to injected wastes. Briefly, a petitioner is required, through modeling, to demonstrate that there is no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration can be made in one of two ways: the use of flow and transport models to show that injected fluids will not migrate vertically out of the injection zone for a period of 10,000 years; or, use of geochemical modeling to show that the waste is transformed so it will become nonhazardous at the edge of the injection zone. Also, a showing must be made that the well was in compliance with the substantive area of review, corrective action, and mechanical integrity requirements of Part 146.

6. Variances From the Treatment Standards

EPA established the variance from the treatment standard to account for those wastes that can not be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used (40 CFR 268.44). This variance is somewhat analogous to the fundamentally different factors variance in the Agency's Clean Water Act effluent limitations guidelines regulation. Among other things, petitions must demonstrate that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard and the waste cannot be treated to the level or by the method specified by the treatment standard (51 FR 40605). This variance procedure can result in the establishment of a new treatability group and corresponding treatment standard that applies to all wastes meeting the criteria of the new waste treatability group. A site-specific variance from the treatment standard may also be granted administratively (without rulemaking), but the variance has no generic applicability to other wastes at other sites (53 FR 31199).

7. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (40 CFR 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed for subsequent management within one year of entry into the impoundment and are not placed into any other surface impoundment. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with section 268.4 requirements.

8. Storage of Prohibited Wastes

Storage of prohibited wastes is prohibited except where storage is solely for the purpose of accumulating sufficient quantities of wastes to facilitate proper treatment, recovery, or disposal (40 CFR 268.50). A facility that stores a prohibited waste for more than one year bears the burden of proof that such storage is solely for this purpose. *Id.* EPA bears the burden of proof if the Agency believes that storage of a restricted waste by a facility for up to one year is not for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. *Id.*

9. The "Soft Hammer" Provisions

The First Third and Second Third wastes for which EPA has not promulgated treatment standards can continue to be disposed in landfill and surface impoundment units, provided certain demonstrations are made, and provided these units meet the minimum technology requirements of section 3004(o) (see 53 FR 31181, August 17, 1988), until May 8 1990, or until EPA promulgates treatment standards, whichever is sooner. Other types of land disposal are not restricted until EPA promulgates treatment standards or until May 8, 1990.

II. Summary of Today's Proposed Rule

Today's notice describes the Agency's proposed approach to implementing RCRA section 3004(g) requirements with respect to certain listed hazardous wastes included in 40 CFR 268.11 (as well as §§ 268.10 and 268.12). The Agency is required to promulgate regulations establishing conditions under which these Second Third wastes may be land disposed by the statutory deadline of June 8, 1989.

A. Applicability of Proposed Treatment Standards

Today the Agency is proposing treatment standards and effective dates for only certain Second Third wastes. Wastes listed in § 268.11 for which EPA does not establish treatment standards or effective dates will be subject to the "soft hammer" provisions that allow continued land disposal until May 8, 1990 or until treatment standards or extensions to the effective date are promulgated, whichever is sooner (40 CFR 268.8).

The Agency is also proposing treatment standards for certain First Third "soft hammer" wastes, as well as certain Third Third wastes, to become effective immediately upon promulgation. Although the few Third

Third wastes included in today's proposal were not originally scheduled to be regulated until May 8, 1990, the Agency is not precluded from proposing or promulgating treatment standards for any wastes ahead of schedule (see RCRA section 3004(g)(1), "Not later than * * *"). The treatment standards being proposed today will also apply to wastes that are disposed by deep well injection.

The Agency is proposing to amend the schedule so that certain Second Third wastewater residues, derived-from wastes, mixtures of hazardous/radioactive wastes are moved to the third third of the schedule, as was done in the First Third final rule (see 53 FR 31215, § 268.12 (b), (c), and (d)). The Agency is proposing to move wastewater residues resulting from well-designed and well-operated treatment methods (metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction) for which EPA has not promulgated wastewater treatment standards to the Third Third, in order that residues from substantial treatment of these "soft hammer" wastes may be further treated in land disposal units that do not meet minimum technology requirements. As was explained in the First Third final rule (53 FR 31184), the Agency finds justification for such action in that wastes that have undergone substantial treatment to levels that may ultimately satisfy treatment standards should not be precluded from further treatment in polishing or advanced biological treatment units (RCRA sections 3005 (j)(3) and (j)(13)) that are substantially protective of human health and the environment.

The Agency is also proposing to move leachate derived from treatment, storage, or disposal of Second Third wastes for which EPA did not promulgate wastewater treatment standards, and contaminated ground water that contains such wastes, to the Third Third. The Agency is taking this action, as was explained in the First Third final rule (53 FR 31184), because these wastes may be highly diluted so that treatment in RCRA section 3005 (j)(3) and (j)(13) impoundments may be appropriate.

Likewise, the Agency is proposing to move Second Third wastes that are mixed hazardous/radioactive wastes to the Third Third. As was explained in the First Third final rule (53 FR 31147), there are relatively small volumes of such waste mixtures being generated, so such waste is more appropriately addressed in the Third Third.

B. Best Demonstrated Available Technologies (BDAT)

Today's proposed rule defines the waste treatability groups by waste codes and identifies the Best Demonstrated Available Technology (BDAT) for each waste code (see Section III.A.). Treatment standards applicable to each treatability group are based on the performance levels achievable by the corresponding BDAT identified for each treatability group. Any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the concentration-based treatment standards. Where treatment standards are expressed as a technology, the waste must be treated using the specified technology prior to land disposal.

Following are tables listing BDAT for the wastes for which treatment standards are proposed in today's rule:

1. *Incineration is identified as BDAT for the waste codes:*

F010 >5% oil/grease	P041 nonwastewater
F024	P043 nonwastewater
K009 nonwastewater	P044 nonwastewater
K010 nonwastewater	P062 nonwastewater
K011 nonwastewater	P071
K013 nonwastewater	P085 nonwastewater
K014 nonwastewater	P089
K023	P094
K027 nonwastewater	P097
K028	P109 nonwastewater
K036 wastewater	P111 nonwastewater
K038 nonwastewater	U028
K039 nonwastewater	U058 nonwastewater
K040 nonwastewater	U089
K043	U087 nonwastewater
K093	U088
K094	U102
K113 nonwastewater	U107
K114 nonwastewater	U190
K115 nonwastewater	U221
K116 nonwastewater	U223
P039	U235
P040 nonwastewater	

2. *Carbon Adsorption is identified as BDAT for the waste codes:*

K027 wastewater	P062 wastewater
K113 wastewater	P085 wastewater
K114 wastewater	P109 wastewater
K115 wastewater	P111 wastewater
K116 wastewater	U058 wastewater
P040 wastewater	U087 wastewater
P041 wastewater	U221 wastewater
P043 wastewater	U223 wastewater
P044 wastewater	

3. *No Land Disposal Based on Recycling is identified as BDAT for the waste codes:*

K002 nonwastewater	K006 nonwastewater
K003 nonwastewater	K095 nonwastewater
K004 nonwastewater	K096 nonwastewater
K006 nonwastewater	

4. *No Land Disposal Based on No Generation is identified as BDAT for the waste codes:*

K005 nonwastewater	K029 nonwastewater
K007 nonwastewater	

5. *No Standards for the Second Third waste codes:*

K041	K098
K042	K105
K097	

6. *Electrolytic Oxidation followed by Alkaline Chlorination, Precipitation, Filtration, and Stabilization of Metals is identified as BDAT for the waste codes:*

F006	F019
F012	

7. *Wet Air Oxidation Followed by Precipitation and Filtration is Identified as BDAT for the waste codes:*

F007	P063
F008	P074
F009	P098
F011	P099
P013	P104
P021	P106
P029	P121

8. *Wet Air Oxidation followed by Biological Treatment is identified as BDAT for the waste codes:*

K011 wastewater	K014 wastewater
K013 wastewater	

C. Waste Analysis Requirements

The Agency is today proposing to incorporate the approach to waste analysis promulgated in the First Third final rule (53 FR 31146). Where BDAT is a destruction or removal technology, a total waste analysis is required because it is most appropriate for measuring such destruction or removal. The legislative history also indicates a strong preference for treatment that destroys hazardous constituents, (see, e.g., 130 Cong. Rec., 59179, daily ed. July 25, 1984, statement of Senator Chaffee), and the only reliable way to verify that destruction has occurred is to measure the total waste. Similarly, where BDAT is identified as an immobilization technology such as stabilization, analysis of a TCLP waste extract is required because it is the most appropriate measure of immobilization. In cases where both technologies are identified as BDAT, both types of waste analyses are required.

In order for the initial generator to determine whether his waste meets the applicable treatment standard as generated, he should analyze the total waste if a treatment standard is in § 268.41, or he should analyze a waste extract if the treatment standard is found in § 268.43 (see proposed

§ 268.34(f)). The generator may also make this determination based on his knowledge of the waste (see § 268.7(a)), provided there is a reasonable basis for doing so (for example, the generator uses so little of a key constituent that it could not be found in the waste at levels exceeding a treatment standard). The Agency has discussed this principle in past rulemakings, and is not reopening it for comment here.

The Agency notes that a mistake was made in § 268.33(g) of the regulatory language of the First Third final rule. The Agency inadvertently omitted language that allowed the initial waste generator to use knowledge of the waste for purposes of determining whether a hazardous waste exceeds the applicable treatment standards. It was not the intent of the Agency to change the waste analysis provision of § 268.7(a) to disallow use of generator knowledge of the waste. This error will be corrected in a technical correction notice for the First Third.

D. Nationwide Variances From the Effective Date

Due to lack of sufficient alternative protective treatment or recovery capacity, EPA is proposing a national capacity variance for soil and debris contaminated with some of the waste codes covered by today's notice. A variance is also proposed for certain wastes disposed by underground deep well injection.

Such determinations are based on a comparison of the volumes of wastes requiring treatment to the amount of treatment capacity available for such treatment (see Section III.B.1. and III.B.3.). Although EPA does not require that BDAT technologies be used to meet the applicable treatment standards, capacity is determined based on technologies identified as BDAT.

The Agency is proposing to grant a two-year national variance for soil and debris contaminated with wastes for which BDAT is incineration (see paragraph B. of this section) and for the following wastes that are disposed by means of underground injection:

1. Wastes Subject to a National Capacity Variance Until August 8, 1990 (or until capacity becomes available, whichever is earliest): F007, K011, K013, K014.

2. Wastes Subject to a National Capacity Variance Until June 8, 1991 (or until capacity becomes available, whichever is earliest): K009, K010.

E. Applicability of Today's Proposed Rule to Class I–H Hazardous Waste Injection Wells Regulated Under 40 CFR 148

The Agency has previously proposed and promulgated regulations and effective dates for underground injected hazardous wastes covered under RCRA sections 3004 (f) and (g) separately from regulations addressing wastes disposed in surface facilities. EPA is today addressing all methods of land disposal of wastes in today's proposal, including injection wells regulated jointly under the Safe Drinking Water Act and RCRA.

F. Treatment Standards for Prohibited Wastes that are Mixed with Non-Prohibited Wastes

One matter that has come to the Agency's attention concerns the status of prohibited wastes that are mixed with other wastes that are not prohibited, for example, nonhazardous wastes, or hazardous wastes that are not yet prohibited such as wastes in the third third of the Schedule or newly identified or listed wastes. The rules are clear that the prohibited wastes must still meet all applicable treatment standards. That is, prohibited wastes are not exempted from the land disposal prohibitions when they are mixed with other wastes (or any other materials, for that matter). Were this not the case, land disposal prohibitions would be without meaning since they could be evaded by the simple expedient of mixing with a non-prohibited waste.

Prohibited wastes are sometimes mixed with other materials in the course of treatment. If the prohibited waste is no longer capable of being treated to meet the treatment standard after mixing, it is possible that an improper form of treatment is occurring, i.e., one that makes the prohibited waste more difficult to treat. Certainly, intentional mixing that is intended to evade a treatment standard is impermissible. (See 52 FR 25766, July 8, 1987, "[a]rtificial aggregation points designed to avoid a prohibition certainly would not be considered legitimate * * *") EPA realizes and acknowledges, however, that mixing wastes can be a normal part of treatment. *Id.* Therefore, to the extent that such mixing occurs and can be determined to be a legitimate part of the treatment process, the mixture could be eligible for a treatability variance pursuant to § 268.44. Part of the demonstration, however, would be whether mixing has made the prohibited waste more difficult to treat, and if so, whether the treatment method utilized is still legitimate. (See response to comments number 10–U–1, page 411, RCRA LDR–9 docket, August 8, 1988.)

III. Detailed Discussion of Today's Proposed Rule

A. Determination of Treatability Groups and Development of Treatment Standards

Sections III.A.1. through III.A.11. of today's preamble present discussions on the determination of treatability groups and the development of treatment standards for RCRA hazardous wastes, including those identified as Second Third wastes. Sections III.A.1. through III.A.7. present an overview of the general procedures that the Agency follows for these determinations. The Agency is not reopening the issues presented in sections III.A.1. through III.A.7. for public comment, but is merely restating the Agency's positions on these issues.

In Section III.A.8. of today's preamble, the Agency is proposing treatment standards for many of the Second Third wastes, some of the First Third wastes (that have not been previously proposed), and several Third Third wastes. In addition, this section includes a discussion of the status of the development of standards for all Second Third wastes. Sections III.A.9. through III.A.11. present various approaches for developing treatment standards for all of the remaining wastes. The Agency is requesting comments and data that may be used in the development of the treatment standards for all wastes identified in sections III.A.8. through III.A.11. of this preamble.

1. Waste Treatability Groups

The Agency uses the individual listed waste codes as the starting point for developing waste treatability groups for all RCRA hazardous wastes. Where wastes represented by different codes appear to be able to be treated to similar concentrations using identical technologies the Agency combines the codes into one treatability group. Initial treatability group decisions are based primarily on whether the wastes are generated by similar industries or from similar processes. The Agency believes that such groupings can be based on limited data because of the high likelihood that the waste characteristics that affect treatment performance will be similar for these different wastes.

The treatment standards in today's proposed rule generally contain constituent concentrations for "wastewaters" and constituent concentrations for "nonwastewaters". The treatment standards apply to the prohibited waste as well as to all residuals generated by treating the original prohibited waste. Therefore, all

solids generated from treatment of a particular waste must meet the applicable nonwastewater treatment standards and all wastewaters generated from treatment of this waste must meet the wastewater treatment standards.

For purposes of this proposed rule, the Agency defines wastewaters as those wastes (listed wastes, wastes generated as a result of the mixture rule, or wastes generated as a result of the derived-from rule) that contain less than 1% total organic carbon (TOC) and less than 1% total suspended solids, except for those wastes identified as F001, F002, F003, F004, and F005. (See 51 FR 40579 for the definition of a solvent-water mixture). Those wastes, "mixture" wastes, or "derived-from" wastes, that do not meet these criteria are defined as nonwastewaters. It is not permissible to dilute or perform partial treatment on a waste in order to switch the applicability of a nonwastewater standard to a wastewater standard (or vice versa).

2. Identification of BDAT

A detailed discussion of the methodology for identification of BDAT is provided in the November 7, 1986 final rule (51 FR 40572). As the first step in the development of BDAT treatment standards, EPA screens the available treatment data for a particular treatability group with regard to the design and operation of the system, the quality assurance/quality control analyses of the data, and the analytical tests used to assess treatment performance. This screening recognizes the fact that the analytical test that best measures treatment performance depends on the treatment technology used (e.g., a total constituent analysis best measures the destruction of organics by incineration, the TCLP analysis best measures the immobilization of metal constituents by stabilization). EPA is able to emphasize the design and operation of the particular treatment systems because its field tests have been designed to gather detailed data to support these analyses.

In the next step, EPA adjusts all treated data values based on the analytical recovery, in order to take into account analytical interferences associated with the chemical makeup of the treated sample. For example, a treated residual data point of 0.2 mg/kg with an analytical recovery of 50 percent would be adjusted to 0.4 mg/kg. After adjusting the data, EPA averages the performance values for the various treatment operations. The mean values are then compared, using the analysis of variance test (ANOVA) described in the November 7, 1986 final rule (51 FR 40591), to determine if one technology performed significantly better than the other.

3. Compliance with Performance Standards

All of the treatment standards in today's proposed rule reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that the treatment level be achieved prior to land disposal. It generally does not require the use of any particular treatment technology. Today's proposal contains an exception to this general principle, based on difficulties with analysis of the treatment residue (see the discussion of K027 and related wastes below). While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit land disposal and treatment standards for K027 and related wastes, all treatment standards proposed today are expressed as concentration levels.

It is important to note that EPA's position on compliance with concentration-based performance standards and the identification of a technology as BDAT has sometimes been misinterpreted. The Agency emphasizes that the technologies identified as BDAT are simply those technologies which EPA utilized to develop the waste specific concentration-based performance standards. Any applicable treatment or recycling technology (or combination of technologies), unless prohibited (such as dilution), can be used to achieve these standards unless that technology is considered land disposal (such as land treatment).

For all organic constituents and total cyanides, treatment standards are based on the total constituent concentration found in the treated waste. Since these technologies are designed to destroy the hazardous organic constituents (and cyanides), the Agency maintains that the best measure of treatment performance is the one that reflects the extent to which the various organic compounds (and cyanides) have been destroyed. [Note: The land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) requires use of the TCLP value as a measure of performance. At the time that the treatment standards for F001–F005 were promulgated, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP was considered to be the best available measure of performance.]

In cases where treatment standards for metals are based on stabilization, the use of the TCLP is required as the measure of the performance of the treatment technology because the Agency maintains that the TCLP best reflects the extent to which the mobility of most metals can be chemically or physically minimized. Where treatment standards are based on multiple treatment processes due to the presence of organics and metals, the waste has to meet both total constituent concentrations for organics and TCLP concentrations for metals prior to land disposal.

4. Applicability of Treatment Standards to Treatment Residues Identified as "Derived-From" Wastes

In a number of instances in today's proposed rule, BDAT consists of an operation or series of treatment operations that generate additional waste residues. For example, BDAT for K011 is based on incineration followed by stabilization. Incineration generates two residues that may require further treatment, namely the ash residues and the scrubber waters. Treatment of the scrubber waters to remove metals may generate additional inorganic residues which may also require stabilization. Ultimately these additional wastes may be land disposed, so they must meet the same standards as the stabilized ash residues. With respect to these additional wastes, the Agency wishes to emphasize that all of the residues from treating the original listed wastes are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2). Consequently, all wastes generated in the course of treatment are prohibited from land disposal unless they satisfy the treatment standard or are otherwise exempted from the prohibition through a no-migration petition or by a capacity variance.

Tests have not been performed in all cases on wastes that can result from every part of the treatment train. However, the treatment standards are based on treatment of the most concentrated form of the waste, consequently, the Agency believes that the less concentrated wastes generated in the course of treatment can be treated to meet these standards.

In the First Third Final Rule (53 FR 31146–31150, August 17, 1988), the Agency presented its rationale for maintaining that landfill leachate is

derived from the wastes disposed in the landfill and that leachate must meet the appropriate wastewater treatment standards for all regulated constituents prior to land disposal.

Subsequent to promulgation of the First Third Final Rule, the Circuit Court of Appeals for the District of Columbia Circuit stayed the applicability of the First Third rule to leachate residues from treating such leachate and groundwater contaminated with leachate. (Order of August 18, 1988.) The Court clarified that other prohibited wastes that are mixed with leachate must still meet treatment standards "to the extent possible". (Order of September 23, 1988)

In today's rule, EPA solicits further comment on the issue of treatability of multi-source leachate. The Agency specifically solicits further data on interfering agents in multi-source leachate, including data on whether metals and organics may impede sequential treatment. The Agency also solicits data on multi-source leachate treatment capacity, although it notes that it has set in motion a means of alleviating practical problems due to drafting of permits in terms of specific waste codes. 53 FR 46474 (November 17, 1988).

Pending further study, therefore, the Second Third rule treatment standards and effective dates would also apply to leachate derived from these wastes.

5. Transfer of Treatment Standards

In today's proposed rule, some treatment standards are not based on testing the performance of BDAT on the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes on which testing was performed. EPA believes that transferring treatment performance data to establish treatment standards for untested wastes or constituents is technically valid when the untested wastes are generated from similar industries and/or similar processing steps or when the constituents have similar chemical and physical properties. Transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics.

In cases where only the industry is similar, EPA closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes through a two-step analysis. First, EPA reviews the available waste characteristic data to identify those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents (and other parameters) to select the treatment technology appropriate for a given waste. When an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, a more detailed list of constituents is analyzed that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process can be found in the BDAT background documents for each waste or waste treatability group.

6. No Land Disposal as the BDAT Treatment Standard

EPA is proposing a treatment standard of "No Land Disposal" for several wastes. This standard is analogous to the no discharge standard established as Best Available Technology (BAT) under the Clean Water Act's effluent guideline program. A "No Land Disposal" standard usually indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled without generating a prohibited residue; (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated and is not anticipated to be generated during a RCRA or CERCLA corrective action.

For any wastes having a proposed treatment standard of "No Land Disposal", EPA solicits comments on the potential for disposal of that particular waste. EPA is especially concerned with such standards because, once promulgated, these standards make it illegal to land dispose these wastes. Should it be revealed after promulgation of the "No Land Disposal Based on No Generation" treatment standard that these wastes are being generated and land disposed, the generator may apply for a variance from the treatment standard. The variance petition should clearly indicate that the waste is being generated contrary to EPA's original assessment, and should present treatment data to be used to establish a new treatment standard (40 CFR 268.44). However, during the period the variance is being processed, the waste may not be land disposed, notwithstanding the inaccuracy of the original assessment that the waste was not being generated. Should commenters provide information that one or more of the premises used to determine the "No Land Disposal" standard are not valid, the treatment standard may not be finalized and land disposal of the waste is usually subject to the "soft hammer" provisions. Prior to May 8, 1990, EPA intends to develop and propose treatment standards for these wastes. If no specific comments are received refuting the validity of the basis for the "No Land Disposal" standard, EPA generally proceeds with the promulgation of the standard as proposed.

The "No Land Disposal" standard does not imply that the waste is so extremely hazardous that it can not be safely land disposed or handled; rather, it means that there is no need to land dispose the waste because alternative forms of management exist.

Today's notice does not propose the treatment standard of "No Land Disposal" for any wastewaters. The basis of this standard, as previously proposed for other wastes, was that since no nonwastewater forms of certain listed wastes were being generated, no wastewater forms were being generated. However, the Agency now has information indicating that wastewater forms of many of the listed wastes are or can be generated as leachates from previous land disposal. Other wastewater forms of listed wastes that may be generated include those wastewaters being generated at CERCLA sites, during RCRA corrective actions, and as residuals from treatment processes such as dewatering. Since generation of wastewaters is anticipated to occur, the premise of no generation as a basis for the treatment standard of "No Land Disposal" is invalid.

7. Additional Considerations in Setting Treatment Standards

The Agency has decided to reiterate its response to certain comments received during the comment period for the First Third proposed rule regarding treatment standard development. This discussion is included in today's proposed rule solely for the sake of clarification. EPA is not reopening the comment period on these issues.

a. *Use of Extraction Procedure (EP) Toxicity Data.* The Agency believes that the results from use of the TCLP do not compare with EP results for all metals in all wastes, even though in some special instances, specific metals within specific waste matrices have been shown to yield statistically similar results using the TCLP and the EP. However, until a statistical relationship for specific constituents in treated wastes can be demonstrated, the Agency is reluctant to use data generated from the EP when calculating treatment standards.

Data to correlate EP and TCLP tests for certain stabilized wastes were submitted to the Agency. The preliminary analysis shows a correlation for some constituents in these specific stabilized wastes. Additional data submitted prior to the final rulemaking will be considered by the Agency in the development of the treatment standards provided they do not lack important information that is necessary for evaluation of the performance of the process. The data must represent a well operated treatment system. Typically data on stabilization technologies lack information on the type of binding agents used, the ratios of binder to waste, the leachability of the untreated waste, the setting and curing conditions, and the waste characteristics that are anticipated to affect performance of the technology. In addition, data generally lack specific paired analysis which would allow comparison of untreated samples with specific treated samples. This information is necessary to evaluate the effectiveness of the treatment and to assess the contribution of dilution by the reagents.

All performance data used (and not used) in calculating the proposed and final treatment standards will be placed in the administrative record for this rule. Relevant design and operating data claimed as Confidential Business Information will be treated as such by the Agency in the administrative record and cannot be disclosed to the public. All data that are not used for final rule development will be documented and justified in the background document and in the administrative record for each specific treatability group.

b. *Treatment Standards Based on Single Facility Data.* The Agency believes that the use of a small number of data sets from a single treatment facility can be representative of the treatment achieved by the particular treatment system. It is impossible for the Agency to sample every facility generating a particular waste or every treatment system treating the waste, thus the Agency established a procedure and methodology for selecting particular facilities and treatment systems that are considered well designed and operated for the determination of BDAT treatment standards (53 FR 31138). The Agency recognizes that there are certain variabilities inherent to every treatment system as well as variability in the wastes. In the calculation of the treatment standards, the Agency accounts for these by multiplying the mean of the treated data by a variability factor. This factor is derived utilizing a quantitative procedure that determines the statistical 99th percentile for the treatment standard. This results in the establishment of a treatment standard that is believed to be achievable 99 percent of the time by a well designed, well operated system.

c. *Demonstrated and Available Technologies.* EPA considers demonstrated technologies to be those that are used to treat the waste or constituent of interest (or those similar to the waste or constituent of interest) with regard to parameters that affect treatment selection. For example, EPA may consider basing a treatment standard on the performance of incineration if incineration is being used to treat that waste or constituent that is similar to it in terms of functional groups, boiling point, heat of combustion, and other physical/chemical characteristics that may affect the treatment performance. EPA also considers those physical technologies that are used to separate or otherwise process chemicals and other materials (i.e., filtration, dewatering, centrifugation, solvent extraction, etc). Some of these technologies clearly are applicable to waste treatment, since the wastes are similar to raw materials processed in industrial applications.

To decide whether demonstrated technologies may be considered "available," the Agency determines whether they (1) Are commercially available and (2) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste. EPA will only set treatment standards based on a technology that meets the above criteria. The determination of "available" is not dependent on sufficient treatment capacity, that is, determination of BDAT is not limited to only those treatment technologies which have sufficient treatment capacity.

d. *Selection of BDAT Constituents.* The Agency considered all BDAT list constituents present in the waste when establishing treatment standards. The rationale for selection of the regulated constituents can be found in the Background Document for each waste or waste treatability group. The Agency believes that it is not restricted to regulating only those constituents for which a waste is listed. Constituents that are not specifically listed on Appendix VIII can often be used as indicators of either the presence of other Appendix VIII constituents that have no analytical method or can be used as an indication of the effectiveness of a given technology. However, the Agency may choose not to regulate indicator constituents when performance standards can be established for other hazardous or nonhazardous constituents which will ensure that the constituent of concern will be effectively treated.

8. Treatment Investigations for all Second Third Wastes and Presentation of All Proposed Treatment Standards

This section of today's preamble presents a discussion of the status of treatment investigations for all Second Third wastes. Included in this section are all treatment standards that are being proposed in today's rule. This includes many of the Second Third wastes, some of the First Third wastes that are currently regulated under the "soft hammer" provisions, and some Third Third wastes that the Agency has decided to propose ahead of schedule. In this section and in section III.A.9. of today's rule, the listing description for each waste is provided for the convenience of the reader. This description is not intended to be a redefinition of any particular waste code description, nor is the Agency reopening the description for public comment. In a similar manner, the Agency has provided in parenthesis, the appropriate scheduling group (i.e., 1st, 2nd or 3rd Third) with each waste description.

For those Second Third wastes that the Agency is not proposing treatment standards in today's rule, the Agency presents the approach and options that the Agency is considering for establishing BDAT treatment standards. This discussion is intended to give advance notice to the regulated community and to provide an opportunity to comment on these approaches and to submit data that may help in developing such standards.

The Agency is specifically soliciting comments on the proposed treatment standards and the approach to developing treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the

treatment technologies including design and operating conditions.

a. *Cyanide Wastes.* Today, the Agency is proposing treatment standards for the majority of wastes containing cyanide. These wastes include several F and K wastes specifically generated by facilities in the metal finishing industry and by facilities engaged in the production of acrylonitrile. The Agency has identified two general treatability groups for the cyanide wastes, metal finishing wastes and wastes generated from the production of acrylonitrile. The treatment standards for cyanides and organic constituents in the wastes are based on testing performed by the Agency and industry submitted data using destruction technologies such as electrolytic oxidation, wet air oxidation, alkaline chlorination, and incineration. The treatment standards for metals are based on technologies such as precipitation, filtration, and stabilization. In addition, the Agency is proposing to transfer these performance data to other U and P waste containing cyanides. Also, the Agency is proposing a methodology to a develop treatment standards for the subcategory of D003 reactive waste identified as the reactive cyanide subcategory.

1. *Wastes from the Metal Finishing Industry.*

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (1st)

F007—Spent cyanide plating bath solutions from electroplating operations. (1st)

F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process. (1st)

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (1st)

F010—Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process. (2nd)

F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. (2nd)

F012—Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. (2nd)

F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. (1st)

As stated in the introduction, the Agency has defined two general treatability groups within the cyanide waste codes. One of these is comprised of cyanide wastes from the metal finishing industry. The wastes that are generated from the metal finishing industry primarily include wastes from electroplating and heat treating operations. The Agency believes that the wastes generated from these processes are similar—based on the waste characteristics—and therefore comprise one treatability group. Detailed technical description of the specific electroplating and heat treating processes, generation and waste characteristics of these wastes, and discussion of the applicable technologies can be found in the Background Document for Cyanide Wastes.

The Agency has developed three subcategories within the metal finishing treatability group: Metal Finishing Aqueous Liquids, Metal Finishing Organic Liquids, and Metal Finishing Sludges. Wastes in the Metal Finishing Aqueous Liquids Subcategory are typically generated as wastewaters, thereby having a total suspended solids and total organics concentration of less than one percent. The waste codes associated with this subcategory are F007, F008, F009, and F011. Wastes in the Metal Finishing Organic Liquids Subcategory are also generated as liquids, but exceed the 1% total organic content and are therefore considered nonwastewaters. The only waste code associated with this subcategory is F010. Although the listing for F010 describes it as a sludge, it is typically generated as a pumpable sludge that is considered to be a liquid by EPA's "paint filter test". Due to the high organic content in F010, the liquid physical characteristic of F010, and the resultant choices of applicable treatment technologies, EPA has decided to identify these F010 nonwastewaters as Metal Finishing Organic Liquids. Wastes in the Metal Finishing Sludges Subcategory are also generated as nonwastewaters, but have lower organic content. The treatment technologies applicable to these wastes are typically different from those applicable to F010 wastes. The waste codes associated with this subcategory are F006, F012, F019. Treatment residuals and other "derived-from" wastes from managing wastes in any of these three subcategories could be generated as either wastewaters or nonwastewaters, thus EPA is proposing standards for both wastewaters and nonwastewaters in all three subcategories.

i. *Applicable Technologies for Wastes Generated from the Metal Finishing Industry Treatability Group.* Within the metal finishing industry treatability group, the Agency believes that any commercial technology that destroys the organics and cyanide constituents in the waste is an applicable technology. The Agency has identified the following destruction technologies as applicable and demonstrated technologies for the organic and cyanide constituents in the waste generated from the metal finishing industry treatability group: electrolytic oxidation, alkaline chlorination, wet air oxidation, ultraviolet ozonation, oxidation with sulfur dioxide and air or potassium permanganate, high temperature hydrolysis, and incineration. The Agency believes that these technologies destroy the amenable cyanide concentration by converting the amenable cyanide to constituents such as carbon dioxide, nitrogen, and ammonia. The Agency believes that the complex cyanide constituents within the waste are more difficult to treat by these conventional technologies. The Agency believes that ion exchange and ultraviolet ozonation are technologies that may treat the complex cyanides in the waste. The Agency is soliciting comments and data on the use of these technologies or any other commercial technology that treat complex cyanide constituents in the waste. Also, the Agency has identified ion exchange as a potential recycling technology for the cyanide constituent within the wastes. Although the Agency does not believe that this technology has been demonstrated on a commercial basis, the Agency is soliciting comments and data on the use of ion exchange or any other technology for recycling cyanides.

The Agency does not believe that stabilization is an applicable technology for the treatment of amenable or complex cyanide constituent in wastes. The legislative history to section 3004(m) indicates that Congress intended that the "destruction of total cyanides would be required as a precondition to land disposal" (130 Congressional Record S9179, July 25, 1984, statement of Senator Chaffee).

Stabilization processes only reduce the leachability of constituents within a waste but do not destroy the constituent. The Agency believes that stabilization is geared toward stabilizing cationic species (such as some of the BDAT metals); therefore anionic species (such as cyanides) are not effectively stabilized.

For the metal constituents within the wastes, the Agency has identified as applicable technologies chemical precipitation followed by filtration and stabilization.

The Agency has examined treatment data for the three subcategories of the metal finishing industry. This treatment data was used to develop the BDAT treatment standards for amenable and total cyanide and BDAT metals. The Agency believes that the treatment data used to develop the treatment standards for the three subcategories within the metal finishing industry were obtained from well designed and well operated treatment systems. The Agency believes that any of the other applicable technologies can achieve similar treatment levels as the BDAT technologies as long as the treatment systems are well designed and well operated.

ii. *Regulated Constituents and Treatment Standards for the Wastes Generated from the Metal Finishing Industry Treatability Group.* The proposed regulated constituents and BDAT treatment standards for the wastes generated from the metal finishing industry treatability group are listed at the end of this table. The Agency believes that regulating these constituents will ensure that other BDAT list constituents will be effectively treated by the technologies determined to be BDAT. EPA's rationale for selecting the regulated constituents is presented in the BDAT Background Document for the Cyanide Waste Codes. Facilities must comply with these treatment standards prior to placement of these wastes in land disposal units. Those wastes that are generated naturally meet these standards are not prohibited from disposal in these units. Dilution to achieve these treatment levels is forbidden.

The treatment standard for the cyanide constituent is based on a total waste analysis for amenable and total cyanide concentration for two reasons. First, the Agency believes that by only regulating the amenable cyanide concentration, the complex-metal cyanides that are present in the wastes would not be regulated. Second, based on the review of the available treatment data, the Agency believes that the conventional cyanide treatment technologies do provide substantial treatment of the amenable and total cyanide concentration as measured by the Cyanide Amenable to Chlorination test in Method 9010 (EPA Publication SW-846). However, the Agency believes that these complex-metal cyanides can be treated further by adding another treatment step, (i.e. ozonation and ion exchange) in order to further reduce the concentration of the complex metal cyanides. The Agency is soliciting comments and treatment data for further reduction of the complex-metal cyanides.

As stated before, the Agency is regulating cyanide in the total waste analysis for amenable and total cyanide concentration. The Agency is proposing the total waste analysis for two reasons. One reason, as mentioned before, the Agency does not believe that stabilization is an applicable technology for wastes containing cyanides. The second reason is that the Agency is concerned that by performing the TCLP test under acidic conditions, there is a possibility of losing hydrogen cyanide gas which may produce lowered results. Also, the TCLP test is generally done during acidic conditions with zero headspace and EPA has concerns on the safety of this test as performed in the laboratory. Under acidic conditions, cyanides are converted to hydrogen cyanide, a highly toxic gas. While hydrogen cyanide is highly soluble, there exists a significant possibility of release of this gas during the TCLP extraction process. Uncontrolled releases in the laboratory could pose a health problem for the laboratory personnel. While the Agency believes that these potential releases can be safely accounted for in the laboratory with typical laboratory safety precautions and that the release from a relatively small analytical sample would be minimal, the Agency is concerned that the laboratory personnel may not be aware of the safety precautions that would be required during the extraction procedure. The Agency is soliciting comments from industry on the use of TCLP test for the testing of wastes containing significant levels of total cyanides.

iii. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Aqueous Liquids Subcategory (F007, F008, F009, and F011).* For the Metal Finishing Aqueous Liquid Subcategory, the Agency tested the technologies of electrolytic oxidation followed by alkaline chlorination and wet air oxidation. Also, the Agency examined data submitted by industry on the treatment of these wastes by alkaline chlorination, high temperature hydrolysis, and oxidation processes with the oxidizing agents such as potassium permanganate or sulfur dioxide and air.

The Agency is proposing BDAT treatment standards for amenable and total cyanide and metal constituents for the wastewater and nonwastewater. The wastewater treatment standard for the amenable and total cyanide constituents within the waste is based on BDAT as wet air oxidation. The wastewater treatment standards for the dissolved metal constituents are based on BDAT as chemical precipitation, filtration and sludge dewatering. For the nonwastewater treatment standards, the total and amenable cyanide and the metals treatment standards are based on a transfer from the performance data for the Metal Finishing Sludges Subcategory. The Agency believes that the nonwastewaters that are generated from treating these wastes have similar characteristics to the Metal Finishing Sludges. Therefore, the nonwastewater cyanide treatment standard is based on BDAT as electrolytic oxidation followed by alkaline chlorination and the treatment standards for the metals are based on chemical precipitation followed by filtration and stabilization. The dissolved metal nonwastewater treatment standards are based on BDAT as stabilization. The Agency must emphasize that the other applicable technologies for treating organics and cyanides can achieve the treatment standards as long as the treatment technologies are well designed and well operated.

iv. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Organic Liquid Subcategory (F010).* For the Metal Finishing Organic Liquids Subcategory, the only performance data that was available to the Agency is the treatment of this waste by incineration. Due to the high level of organics in these wastes, conventional aqueous cyanide treatment was not performed on these F010 wastes. Concentrations of cyanides were analyzed only in the ash residuals and not in the untreated organic liquid due to analytical difficulties. The Agency has determined that incineration is BDAT for the nonwastewater forms of these Metal Finishing Organic Liquids wastes. The wastewater treatment standards for this subcategory are based on the transfer of the performance of the wet air oxidation treatment system that was the BDAT for cyanide wastes in the Aqueous Metal Finishing Liquids Subcategory.

According to discussions with treaters and generators of F010 wastes, F010 can often exist as a bilayered waste. The treaters often separate an organic layer

from an aqueous layer. This F010 organic layer is what is typically incinerated. According to BDAT definitions, the F010 aqueous layer is considered to be a nonwastewater because the total organic content typically exceeds 1%. Treaters indicate that they can often treat this F010 by conventional cyanide treatment rather than by incineration. At this time, the Agency has not examined the efficiency of this separation process, but has instead proposed standards for all F010 wastes based on the incineration of the organic layer. The Agency believes that although the aqueous layer is typically generated as a nonwastewater, the separation process can be operated at an efficiency such that the aqueous layer can be generated as a wastewater rather than a nonwastewater. Thus, the wastewater treatment standard would apply rather than the nonwastewater standard. The Agency also believes that the generator is not precluded from separating these layers into the two different treatability groups.

For the nonwastewater treatment standards for this subcategory, the Agency is only proposing treatment standards for the total cyanide concentration within the waste due to the performance of incineration. The Agency believes that incineration can destroy the cyanide concentration to the nondetectable levels.

v. *Identification of BDAT and Regulated Constituents and Treatment Standards for the Metal Finishing Sludge Subcategory (F006, F012, F019).* Metal Finishing Sludges are considered nonwastewaters and are generated from a chemical precipitation treatment, which usually follows a cyanide oxidation treatment. The Agency has tested the treatment train of electrolytic oxidation followed by alkaline chlorination for the cyanide constituent in the waste and has tested the treatment train of chemical precipitation followed by filtration and stabilization for the metals within the solid residues. Based on the analysis of the data, the Agency has determined that BDAT for the pretreatment of cyanides in the Metal Finishing Sludges is electrolytic oxidation followed by alkaline chlorination, precipitation with lime and filtration. The Agency has determined that BDAT for the metals within the treatment sludges is stabilization.

The wastewaters and nonwastewaters treatment standards for the cyanide constituent in the Metal Finishing Sludge Subcategory are based on the performance of the treatment system of electrolytic oxidation followed by alkaline chlorination. The Metal Finishing Sludges nonwastewaters standards for the metal constituents are based on the performance of lime precipitation followed by filtration and stabilization. These standards are transferred from F006 to F012 and F019 nonwastewaters standards. In the Land Disposal Restrictions for the First Third Schedule Wastes Final Rule (53 FR 31138), the Agency reserved the BDAT treatment standards for cyanide in the F006 nonwastewaters. The Agency stated in this rule that the F006 treatment sludges may contain treatable levels of cyanide. As noted above, the Agency does not consider stabilization, which is BDAT for the metals in the F006 nonwastewaters, to be a demonstrated technology for the cyanides. The Agency believes that a pretreatment step, that incorporates a technology that destroys the cyanides, should be done before the stabilization of the metals. Therefore, the Agency is transferring the proposed BDAT treatment standards for cyanides in F006 nonwastewaters from the proposed treatment standards for F012 nonwastewaters. This BDAT cyanide treatment standard is based on total waste analysis for amenable and total cyanide concentrations. The Agency is not revising the metal standards for F006 nonwastewaters and is not reopening for comments the promulgated metals standards for F006 nonwastewaters.

BDAT TREATMENT STANDARDS METAL FINISHING LIQUIDS SUBCATEGORY FOR F007, F008, F009, AND F011

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING LIQUID SUBCATEGORY FOR F007, F008, F009, AND F011

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS ORGANIC METAL FINISHING LIQUID SUBCATEGORY F010

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	1.5	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS ORGANIC METAL FINISHING LIQUIDS SUBCATEGORY F010

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F006

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F006

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F012 AND F019

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Cadmium	(1)	0.066
Chromium	(1)	5.2
Lead	(1)	0.51
Nickel	(1)	0.32
Silver	(1)	0.072

[1] Not applicable.

BDAT TREATMENT STANDARDS METAL FINISHING SLUDGES SUBCATEGORY FOR F012 AND F019

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Chromium	0.32	(1)
Lead	0.04	(1)
Nickel	0.44	(1)

[1] Not applicable.

2. *Wastes from Acrylonitrile Production.*

K011—Bottom stream from the wastewater stripper in the production of acrylonitrile. (1st)

K013—Bottom stream from the acetonitrile column in the production of acrylonitrile. (1st)

K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile. (1st)

Another treatability group within the cyanide group is the waste generated from acrylonitrile production. The listed waste K011, K013, and K014 are within this treatability group. These wastes are considered to be organic nitrile wastes and are hazardous not only for the organic constituents but also for cyanide. The Agency believes that these wastes are classified in one treatability group because they are generated from the same industrial process and are not typically segregated when managed as hazardous waste.

The Agency estimates that there are 6 facilities that may generate these wastes. Detailed technical description of the acrylonitrile process and waste characterization of these wastes can be found in the BDAT Background Document for these wastes.

Acrylonitrile is produced by the Standard Oil ammoxidation process through the exothermic reaction of propylene, ammonia, and air in a fluidized-bed catalytic reactor at approximately 750–950 °F and 5 to 30 psig. The reaction product is quenched with water generating an absorber wastewater effluent and an acrylonitrile and acetonitrile product stream. These streams are separated and purified, generating product streams, heavy ends (K013, K014) and crude hydrogen cyanide. The acrylonitrile bottoms are usually combined with the aqueous effluent from the quench/absorption section and then steam stripped. The resulting aqueous effluent (K011) is combined with the acetonitrile purification bottoms and typically disposed via underground by injection.

Each of the acrylonitrile wastes contain organics such as acetonitrile, acrylonitrile, acrylamide, benzene, ethyl cyanide and pyridine. These wastes contain about 5000 ppm of cyanide and nickel.

The Agency recognizes any technology that destroys the organics and cyanide constituents in the waste is an applicable technology for this treatability group. The Agency has identified the following technologies as applicable technologies for this treatability group: incineration, critical fluids, wet air oxidation, and wet air oxidation followed by biological treatment. The Agency has also identified precipitation, filtration, and stabilization as applicable technologies for the metal constituents in the waste residues.

i. *Determination of BDAT for the nonwastewaters.* The Agency believes that each of the applicable technologies generate a nonwastewater residue. Incinerators generate an ash residue that, for the purpose of BDAT, are classified as nonwastewaters. The critical fluids technology generates a wastewater phase that may need further treatment which may generate a solid residue. Both wet air oxidation and wet air oxidation followed by biological treatment generate a solid residue.

The Agency has tested rotary kiln incineration and has examined industry submitted data using the treatment system of wet air oxidation and critical fluids for this treatability group. The Agency believes that both incineration and wet air oxidation are demonstrated technologies for the K011, K013, and K014 nonwastewaters treatability group. The Agency believes that the data submitted on the critical fluids treatment system is not a demonstrated process for this treatability group because the treatment data was for a bench scale operation. Therefore, the Agency believes that the demonstrated and available technologies for treating these wastes are incineration and wet air oxidation.

The Agency tested rotary kiln incineration at one facility that was generating in combination K011, K013, and K014 wastes. This waste was collected from the bottom of a surface impoundment. The Agency has also determined that the treatment train of rotary kiln incineration followed by stabilization as BDAT for the nonwastewaters residuals achieves a level of performance that represents treatment by BDAT.

ii. *Determination of BDAT for the wastewaters.* As stated before, each of the applicable technologies also generate a wastewater residue. The untreated waste that was tested by the Agency contained low level of organics and therefore the hazardous constituents were not detected in the scrubber waters. The Agency did not believe that a technical transfer of the scrubber water data generated from this test would be an appropriate transfer. The Agency performed pilot scale tests for the treatment of the K011, K013, K014 wastewaters. The performance of the wet air oxidation system The Agency determined that the wastewaters standards for this treatability group could be transferred from the performance of wet air oxidation followed by biological treatment that was developed by the Office of Water in the Effluent Guidelines Development Document for Effluent Limitations and Standards for the Organic Chemicals Plastics and Synthetic Fibers Point Source Category (40 CFR Part 414).

The Agency has developed treatment standards for the wastewaters based on the performance of the treatment train of wet air oxidation followed by biological treatment for the wastewater. EPA has determined that the treatment train consisting of wet air oxidation followed by biological treatment is

BDAT for the wastewaters for K011, K013, K014.

iii. *Regulated Constituents.* The proposed regulated constituents and BDAT treatment standards for the waste identified as K011, K013, K014 are listed in the table at the end of this section. The Agency believes that regulating these constituents will ensure that other BDAT List constituents will be effectively treated by the technologies determined to be BDAT.

Treatment standards for all of the organic constituents and cyanides are based on the analyses of total constituent concentration. Treatment standards for metal constituents are based on the TCLP analyses for all the waste identified as nonwastewaters.

The Agency is proposing a total cyanide treatment standard for the nonwastewaters. The Agency believes the performance of the treatment system can destroy the cyanide constituent to the nondetectable levels. For the metal constituents present in the ash, the Agency believes that stabilization is an applicable technology. Recently, the Agency received performance data for the stabilization of the metals within the incinerator ash. The Agency has not had an opportunity to review the data for the purpose of this proposal. Preliminary results indicate that for the three stabilization binders that were tested, the performance data showed that the treatment system was not effective. The Agency believes that stabilization is an applicable technology for the metal within the waste and solicits comments and data from industry on the use of this treatment technology for the metals within the waste.

The Agency is aware that the generators of these waste are disposing of the aqueous waste streams from the production by underground injection units. These aqueous waste stream are considered to be K011, K013, K014 due to the "derived from" rule. Before being disposed in a deep well injection unit, these waste must meet the BDAT treatment standards for the wastewaters or be disposed in a no migration unit.

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP(mg/l)
Acetonitrile	1.8	(1)
Acrylonitrile	1.4	(1)

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP(mg/l)
Acrylamides	23	(1)
Benzene	0.03	(1)
Cyanides (total)	57	(1)
Nickel	(1)	0.32

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K011, K013, AND K014

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acetonitrile	0.14	(1)
Acrylonitrile	0.14	(1)
Acrylamide	0.14	(1)
Benzene	0.14	(1)
Cyanides (total)	12	(1)
Cyanides (amenable)	1.3	(1)
Nickel	0.44	(1)

[1] Not applicable.

3. *Cyanide Wastes Designated as Either U or P Wastes.*

P013—Barium cyanide (3rd)
P021—Calcium cyanide (3rd)
P029—Copper cyanide (2nd)
P030—Soluble cyanides salts (NOS) (1st)
P063—Hydrogen cyanide (1st)
P074—Nickel cyanide (2nd)
P098—Potassium cyanide (2nd)
P099—Potassium silver cyanide (3rd)
P104—Silver cyanide (2nd)
P106—Sodium cyanide (2nd)
P121—Zinc cyanide (3rd)

Today, the Agency is proposing numerical treatment standards for the U and P waste codes listed above. These waste codes are typically generated from the metal finishing subcategory. These numerical standards are directly transferred from the proposed BDAT treatment standards for the cyanide F waste codes generated from the electroplating and heat treating operations. The Agency is proposing these numerical treatment standards in this section due to the similarity of the U and P waste codes to these cyanide F waste codes.

The Agency has determined that the constituents present in the U and P waste codes can be treated to the same performance levels as observed in the other waste for which EPA has developed treatment standards. EPA believes that transferring treatment performance for use in establishing treatment standards for untested wastes is valid technically in cases where the untested waste are generated from similar industries and similar processes.

These U and P cyanide compounds dissociate in aqueous conditions to form a soluble cyanide (CN^-) species and a soluble metallic (or alkalie earth) species. In particular, wastes identified as P030 are listed as "soluble cyanides salts, not otherwise specified (NOS)". Of all of the U and P cyanide waste codes, P030 is the most frequently used code. The Agency believes that the listing of these chemicals as "soluble" infers that they will dissociate in aqueous conditions to the cyanide ion. All of these U and P chemicals are typically used as components in either electroplating or heat treating baths.

Treatment standards for total cyanides and amenable cyanides are proposed for both nonwastewater and wastewater forms of all cyanide U and P waste codes. All of the proposed cyanide standards are directly transferred from the standards proposed for the Metal Finishing Aqueous Liquids treatability group (previously described in section III. A. 8. a. 1. of today's rule). The proposed treatment standards for the metals constituents within the particular U and P waste are also transferred from this treatability group. The Agency believes that the P wastes listed above have similar waste characteristics as the Metal Finishing Aqueous Liquids subcategory.

Treatment standards have been proposed for copper in wastes identified as P029 and for zinc standards in wastes identified as P121. In the final rule for the First Third wastes, the Agency did not promulgate standards that were proposed for these two constituents in other wastes. This was primarily because other metals were being regulated for those wastes. The Agency believes that by regulating the other metals, copper and zinc would be controlled. However, for P029 and P121, there are no other metals that the Agency has identified as necessarily present in P029 or P121 wastes. Therefore the Agency believes that these metal constituents should be regulated for these waste codes.

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	110	(1)
Cyanides (amenable)	0.064	(1)
Copper (P029 only)	(1)	0.71
Nickel (P074 only)	(1)	0.3
Silver (P099 and P104 only)	(1)	0.07
Zinc (P121 only)	(1)	0.086

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, AND P121

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cyanides (total)	12.	(2)
Cyanides (amenable).	1.3	(2)
Copper (P029 only).	0.42	(2)
Nickel (P074 only)	0.44	(2)
Silver (P099 and P104 only).	(1)	(2)
Zinc (P121 only)	(1)	(2)

[1] Reserved.
[2] Not applicable.

4. *Cyanide Wastes Designated as D003 Reactive.* Today, the Agency is not proposing BDAT treatment standards for the D003 waste code. However, the Agency is proposing a strategy for the development of the BDAT treatment standards for the cyanide waste designated as D003. The Agency is proposing a subcategory for D003 waste code identified as the D003 Reactive Cyanides Subcategory. [See section III.A.10.c.] According to 40 CFR Section 261.23(a)(5), a waste can be identified as a D003 waste when it is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in quantity sufficient to present a danger to human health or the environment.

The Agency is considering the proposal of treatment standards for nonwastewater and wastewater forms of D003 Reactive Cyanides based on the direct transfer of the total cyanides and amenable cyanides treatment standards of F007, F008, F009 and F011.

Information available to the Agency indicates that approximately 90% of the D003 wastes are generated from the electroplating and heat treating industries. In addition, commercial hazardous waste treaters have indicated that a high percentage of the cyanide wastes received by their facilities are typically identified as D003. These wastes are commonly treated by the same treatment technologies that are the basis for the proposed treatment standards for the F007, F008, F009 and F011 wastes. This gives further support for the transfer of the treatment standards.

b. *Wastes from Chlorinated Aliphatics Production.*

F024—Wastes including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. [This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 261.32]. (2nd)

1. *Introduction.* F024 is a listed waste that is generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating F024 can be found in the background document for the listing of this waste. The Agency estimates that there are approximately thirty facilities that manufacture chlorinated aliphatic hydrocarbons, having carbon content from one to five, that could potentially generate F024. These facilities are located in the South Central portion of the United States. A brief description of the processes which may generate the listed waste is given below.

The production of chlorinated aliphatic hydrocarbons, utilizing free radical catalyzed processes, typically involves three continuous steps; chlorination of hydrocarbon feedstocks followed by separation and purification of product streams, and separation and purification of the different compounds in the organic product stream.

Chlorocarbon or hydrocarbon feedstocks and a chlorine source (i.e., molecular chlorine) are fed into a series of chlorination reactors. In these reactors, the free radical conversions are normally catalyzed by either heat, a combination of heat and ultraviolet (UV) radiation, or chemicals, such as peroxides and $FeCl_3$. The reactions may be conducted in either the gaseous or liquid phase. The wastes associated with the reaction processes, i.e., reactor residues, tars, or periodic clean-out wastes are the listed waste F024. After the chlorination step, the effluent from the reactor is sent to a filtration unit where spent catalyst is removed. Spent catalysts are not F024 by virtue of the listing definition. Following filtration, the reactor effluent undergoes a product separation step where it is quenched or cooled and/or distilled to separate crude product from the unreacted feedstock as well as to prevent decomposition of the product. Unreacted feedstock is recycled to the reactors. Hydrochloric acid is normally a major by-product from the chlorination reactions and is subject to recovery either from vent gases generated from the reactor or from the cooling/quenching step. After the product separation step, the two-phase crude product stream may be sent to a series of washing, neutralization, and drying units for separation of the product (organic phase) from the acidic aqueous phase. Purification and separation of the different compounds in the organic product stream is further achieved by distillation. The distillation residues or heavy ends from these distillation columns are also the listed waste F024.

F024 wastes generally contain 5 percent water, 5 percent chlorinated organic constituents and 90 percent other nonchlorinated organic constituents. These wastes usually contain high levels of filterable solids. The technologies that the Agency has identified for treatment of these wastes are (1) incineration technologies, including rotary kiln and fluidized bed incineration, and (2) solvent extraction. Fluidized bed incineration or rotary kiln incineration is a destruction technology applicable to organic bearing wastes with solids concentrations that prevent use of liquid injection incineration. Solvent extraction removes organic constituents from a waste by exploiting the relatively high solubilities of these constituents in a particular solvent.

2. *Development of Standards.* For F024, the Agency has data characterizing hazardous constituents from twenty-six sampling and analysis activities at sixteen facilities conducted by EPA's hazardous waste listing program and EPA's land disposal restrictions program. EPA performed BDAT testing using rotary kiln incineration for four F024 wastes representing a broad range of wastes which meet the definition of F024. Six sample sets of analytical data are available for untreated wastes as well as treated wastewaters and nonwastewaters from the rotary kiln incineration testing. Operating data collected during this testing show that

the technology was properly operated; accordingly, all of the above described data were used in the development of BDAT treatment standards for organic constituents.

EPA does not have data that specifically reflect metals treatment in either F024 nonwastewaters or wastewaters. However, the Agency does have performance data on wastes that it believes are sufficiently similar to F024 such that the level of performance can be transferred. For nonwastewaters, these data consist of 3 treated data points for chromium and nickel representing the amount of these metals found in the TCLP leachate following stabilization treatment of K048/K051 incinerator ash residues at one facility. Operating data collected during this testing show that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards. For wastewaters, the Agency has 3 untreated and treated analyses for chromium and nickel. The data were collected by EPA from one facility using lime and sulfide precipitation followed by vacuum filtration. Operational data collected during this treatment testing indicate that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards. See Section III.A.5. of this proposed rule for a more detailed discussion related to the transfer of treatment standards and the background document for this waste code for a discussion of the justification of this transfer.

Characterization data for F024 indicate levels of lead in nonwastewaters at treatable quantities. The Agency is currently performing BDAT testing using stabilization of F024 incinerator ash residues. Depending on the results of this testing and the level of performance achieved, the Agency may establish a treatment standard for lead in F024 nonwastewaters and may adjust the nonwastewater standards for chromium and nickel.

EPA has determined that for BDAT List organics in F024 wastes, rotary kiln incineration achieves a level of performance that represents BDAT based on treatment performance data. The Agency believes, however, that a well designed and operated fluidized bed incinerator is an equivalent technology that will be capable of achieving the BDAT standards. Accordingly, EPA will use fluidized bed incineration in its estimates of available treatment capacity. For BDAT List metals in the incinerator ash, EPA has determined that stabilization achieves a level of performance that represents BDAT. For BDAT List metals in the wastewater, EPA has identified chemical precipitation followed by vacuum filtration as BDAT.

The Agency is aware of four facilities that use rotary kiln incineration to treat F024 wastes. Therefore, the Agency believes incineration is demonstrated to treat F024. Incineration followed by metals stabilization for the nonwastewater F024 and chemical precipitation followed by vacuum filtration for the wastewater F024 are judged to be available to treat F024 because (1) these technologies are commercially available or can be purchased from a proprietor, and (2) these technologies provide substantial reduction of both organic and metal hazardous constituents. For a detailed description of the reductions exhibited by treatment of these wastes, refer to the BDAT background document for this waste.

The proposed regulated constituents for F024 and the proposed treatment standards for wastewaters and nonwastewaters are presented in the table at the end of this section. For organic constituents, the standards are expressed as total constituent concentration, and for the metals, the standards reflect concentrations in the leachate developed by using the TCLP.

The Agency solicits data and information on the generation, waste characterization, and treatment of leachate and wastewater treatment residuals as well as stabilization treatment of metals in nonwastewater residuals that are specifically listed as F024.

BDAT TREATMENT STANDARD FOR F024

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/1)
2-Chloro-1,3-butadiene	0.014	(1)
3-Chloropropene	0.014	(1)
1,1-Dichloroethane	0.014	(1)
1,2-Dichloroethane	0.014	(1)
1,2-Dichloropropene	0.014	(1)
cis-1,3-Dichloropropene	0.014	(1)
trans-1,3-Dichloropropene	0.014	(1)
Bis(2-ethylhexyl)phthalate	1.8	(1)
Di-n-octyl phthalate	1.8	(1)
Hexachloroethane	1.8	(1)
Hexachlorodibenzo-furans	0.001	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)

(1) Not applicable.

BDAT TREATMENT STANDARD FOR F024—Continued

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)
Chromium (Total)	(1)	1.7
Nickel (Total)	(1)	0.048

(1) Not applicable.

BDAT TREATMENT STANDARDS FOR F024

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
2 Chloro-1,3-butadiene	0.28	(1)
3-Chloropropene	0.28	(1)
1,1-Dichloroethane	0.014	(1)
1,2-Dichloroethane	0.014	(1)
1,2-Dichloropropane	0.014	(1)
cis-1,3-Dichloropropene	0.014	(1)
trans-1,3-Dichloropropene	0.014	(1)
Bis(2-ethylhexyl) phthalate	0.036	(1)
Di-n-octyl phthalate	0.036	(1)
Hexachloroethane	0.036	(1)
Hexachlorodibenzo-furans	0.001	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)
Chromium (Total)	0.35	(1)
Nickel (Total)	0.47	(1)

(1) Not applicable.

c. *Wastes from Pigment Production.*

K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments. (3rd)

K003—Wastewater treatment sludge from the production of molybdate orange pigments. (3rd)

K004—Wastewater treatment sludge from the production of zinc yellow pigments. (1st)

K005—Wastewater treatment sludge from the production of chrome green pigments. (3rd)

K006—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated). (3rd)

K007—Wastewater treatment sludge from the production of iron blue pigments. (3rd)

K008—Oven residues from the production of chrome oxide green pigments. (1st)

K002, K003, K005, K006 and K007 are all Third Third Wastes that are generated from the production of pigments. These wastes were not originally scheduled to be promulgated until May 8, 1990. However, the statute (§ 3004(g)) does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule (and the schedule in §§ 268.10–268.12 itself says that wastes will be evaluated by a given date, indicating that the specified date is the latest time by which EPA must act), and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

In today's rule, the Agency is proposing to revise the "No Land Disposal Based on No Generation" treatment standard (previously promulgated for K004 and K008 nonwastewaters) based on recent information on generation and recycling of these wastes. The Agency is also proposing treatment standards for K002, K003 and K006 nonwastewaters based on total recycling and treatment standards for K005 and K007 nonwastewaters based on information indicating cessation of generation.

The Agency is proposing that these "No Land Disposal" treatment standards, whether based on recycling or no generation, only apply to K002, K003, K004, K005, K006, K007 and K008 nonwastewaters as generated (i.e., those wastes as defined in the original listing), and not to nonwastewater residues that may be potentially generated from management of wastes (i.e., "derived-from" nonwastewaters) generated prior to promulgation of the "No Land Disposal" standards.

A specific illustration of this applicability can be found in K008 for which recycling has been identified as BDAT. Leachate from land disposal units containing K008 previously generated also carries the label of K008 under the "derived-from" rule. These leachates could be treated for metals removal by precipitation and filtration prior to discharge. The filtered nonwastewater residuals would therefore also carry the code of K008 according to "derived-from" rule. In this case, EPA is proposing that the treatment standard of "No Land Disposal based on Recycling" would not be applicable to these nonwastewater forms of K008.

The Agency's primary rationale for not applying the "No Land Disposal" treatment standards to these residues (as well as other nonwastewaters that may be potentially generated from future remedial actions) is the concern over the differences in waste characteristics of these residues to the nonwastewaters as originally generated. The basis of the "No Land Disposal Based on Recycling" for K008 was based on the characteristics of the waste as generated. The Agency believes that it is highly likely that at least some portion of these "derived-from" K008 nonwastewaters may contain a sufficient quantity of impurities that would render it unsuitable for recycling.

Further, where the standard is "No Land Disposal Based on No Generation" for these wastes, it is obvious that if a "derived-from" nonwastewater is indeed generated, the basis for the applicability of the standard to that particular waste is no longer substantiated. Since the Agency anticipates that either of these scenarios have a reasonable potential for occurring for K002, K003, K004, K005, K006, K007, and K008 nonwastewaters, the Agency is proposing that the "No Land Disposal" standards do not apply to "derived-from" nonwastewaters. However, the Agency is specifically soliciting comment on the need for the development of treatment standards for K002, K003, K004, K005, K006, K007, and K008 "derived-from" nonwastewaters. The Agency must promulgate treatment standards for all remaining wastes by May 8, 1990, including these nonwastewater residues generated from the previous management of listed wastes.

The Agency has identified some facilities that are manufacturing the pigments associated with these listings but are not generating the listed wastes per se (most of the wastes are wastewater treatment residuals). EPA believes that this may be a result of source reduction techniques that result in compliance with the Clean Water Act without reliance on wastewater treatment that would generate the listed wastes. These wastewaters, while not the listed wastes, may be regulated as hazardous provided they exceed the EP Toxic metal limits or otherwise exhibit a characteristic of a hazardous waste and are managed outside exempt wastewater treatment tanks. EPA must establish treatment standards for all characteristic wastes by May 8, 1990. A discussion of EPA's strategy for establishing treatment standards for characteristic wastes can be found in later sections of this preamble.

1. *Nonwastewaters.* A treatment standard of "No Land Disposal Based on No Generation" for K004 nonwastewaters and K008 nonwastewaters was promulgated with the First Third wastes on August 8, 1988. During the current investigation of the other wastes from pigment production, the Agency has obtained information indicating that there are facilities that are manufacturing both zinc yellow and chrome green oxide pigments. Further, this information indicates that the oven residues (K008) generated in the production of chrome oxide green pigments are being generated but are being totally recycled. Similarly, the facilities which reported producing zinc yellow at the beginning of 1988 are not land disposing of any K004 wastes. One facility does not treat its process wastewaters and does not generate K004. Another facility is totally recycling all of its wastewater treatment residuals, including K004. To date, EPA has received no written comments on the treatment standard of "No Land Disposal Based on No Generation" for either K008 or K004. Presumably, this is because generators were not concerned over the need to land dispose this material. EPA's databases confirm this, in that no K004 or K008 wastes were reported land disposed in 1986. However, since the information obtained by the Agency refutes the basis for the standard, and for the sake of clarification, EPA is today proposing to revise the treatment standard of "No Land Disposal Based on No Generation" for K004 and K008 nonwastewaters to "No Land Disposal Based on Total Recycling".

The information obtained by the Agency indicates that chrome yellow and orange, molybdate orange, and chrome oxide green pigments are manufactured by a varying number of facilities. Wastewater treatment residuals from these facilities, if generated, would correspond to K002, K003, and K006, respectively. Of the facilities known to generate these wastes, one facility currently generates a wastewater treatment sludge that is a mixture of these wastes. The facility sometimes sells this mixture as is, mixes it with other pigments and then sells it, or recycles it back to the production process. The other facility currently treats its process wastewaters using lead compounds as precipitating agents, and ships the generated sludges to a secondary lead smelting facility for metals recovery. The Agency finds no reason that these types of recycling and/or recovery techniques cannot be used on all K002, K003, and K006 nonwastewaters. Therefore, the Agency is proposing a treatment standard of "No Land Disposal Based on Total Recycling".

Based on conversations with representatives of manufacturers of inorganic pigments and responses to EPA's § 3007 questionnaires, the Agency believes that the last company producing chrome green and iron blue pigments (corresponding to K005 and

K007 wastes), shut down production in 1987. Based on this information, the Agency is today proposing a treatment standard of "No Land Disposal Based on No Generation" for K005 and K007 nonwastewaters.

2. *Wastewaters.* The Agency is not proposing treatment standards for the wastewater forms of K004 or K008. Since these wastewaters were First Third wastes, their land disposal is restricted by the "soft hammer" provisions. At this time, the Agency is not proposing treatment standards for the wastewater forms of K002, K003, K005, K006 or K007 wastes. The Agency may develop such treatment standards prior to May 8, 1990, if there is an identified need for such standards (i.e. if wastewater forms of the listed waste are proven to be generated). Wastewater forms of these wastes are expected to be generated from only a few sources. Leachate collected from landfills and other land disposal units that contain previously disposed K002, K003, K005, K006 or K007 nonwastewaters carries the listing of that particular hazardous waste. The Agency is currently evaluating the possibility of transferring treatment performance data from wastes having similar physical and chemical characteristics that are believed to affect treatment performance. The Agency has identified several sources of chromium reduction, cyanide destruction, and metals precipitation/stabilization performance data which may be applicable.

If nonwastewater residuals are generated from treatment of these wastewaters, the residuals would also be considered to be the listed wastes, based on the derived-from rule, and would be required to meet the treatment standards for nonwastewaters. Currently, EPA is proceeding with proposing to establish treatment standards of "No Land Disposal" for K002, K003, K005, K006 or K007 nonwastewaters. However, as an option, it may decide to promulgate numerical standards based on a transfer of the nonwastewater standards from wastes with similar chemical and physical characteristics. This decision will be based on the perceived need for establishing numerical treatment standards for residuals from the treatment of leachate.

The Agency solicits data and information on the generation, waste characterization, and treatment of leachate and wastewater treatment residuals that are specifically listed as K002, K003, K005, K006 or K007 wastes.

BDAT Treatment Standard for K004 and K006 (Nonwastewaters)
NO LAND DISPOSAL BASED ON RECYCLING
BDAT Treatment Standard for K002, K003 and K006 (Nonwastewaters)
NO LAND DISPOSAL BASED ON RECYCLING
BDAT Treatment Standard for K005 and K007 (Nonwastewaters)
NO LAND DISPOSAL BASED ON NO GENERATION

d. *Wastes from Acetaldehyde Production.*

K009—Distillation bottoms from the production of acetaldehyde from ethylene. (2nd)

K010—Distillation side cuts from the production of acetaldehyde from ethylene. (2nd)

1. *Introduction.* K009 and K010 are listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are two domestic facilities that produce acetaldehyde from ethylene and could potentially generate the K009 and K010 wastes. These facilities are located in the Southern part of the United States.

The manufacturing process of acetaldehyde, as practiced in the United States, is the liquid phase oxidation of ethylene developed by Wacker-Chemie and Hoechst. One facility reports using 100% pure ethylene and the other a mixture of 90% ethylene and 10% ethanol. Ethylene is catalytically oxidized with air in dilute hydrochloric acid solution containing the chlorides of palladium (Pd) and copper (Cu) in a tubular reactor. The reaction products are flash evaporated and the product acetaldehyde passes overhead to the crude distillation column. The aqueous bottoms go to a reactor where the Pd catalyst is regenerated and recycled to the acetaldehyde reactor. The overhead from the crude distillation column is condensed; unreacted ethylene and light hydrocarbons (including a small amount of acetaldehyde) are vented. The crude acetaldehyde from the bottom of this column then goes to final distillation. This crude distillation column yields two wastes: the bottoms and the side cuts. The distillation bottoms (discharge wastewaters) containing high-boiling organic impurities leaves the still bottom which form the listed waste K009. The side cut stream consist of higher boiling organic and chlorinated organics is removed as a side stream higher up the column which form the listed waste K010.

2. *Development of Treatment Standards.* For waste codes K009 and K010, a careful review of waste generation, waste management practices, and waste characterization data was conducted to determine whether these waste codes could be combined into one or more waste treatability groups. Based on this review, K009 and K010 were established as two separate waste treatability groups.

Although these wastes are generated by similar processes the EPA has data showing that K009 wastes are typically less than one percent total organic carbon (TOC) and less than one percent total suspended solids (TSS) and therefore, as originally generated, are classified as wastewaters for the purpose of establishing BDAT. In contrast, EPA has received data showing that K010 wastes are typically over one percent TOC and therefore, as originally generated, are classified as nonwastewaters. Residuals generated from the treatment of either K009 or K010 would then be classified as wastewaters or nonwastewaters, depending on their appropriate characteristics of TOC and TSS. Although these wastes represent two different treatability groups, they are presented in this section because they are generated by the same industry. In addition, these wastes contain similar constituents and in relatively similar concentrations, the standards that EPA is proposing for K009 wastewaters are identical to those proposed for wastewaters derived from the treatment of K010 nonwastewaters (and vice versa).

i. *Wastewaters.* K009 contains treatable concentrations of BDAT list organics, such as, acrolein, acrylonitrile, benzene, chloroform, 1,1-dichloroethane, 2,4-dinitrophenol, ethyl acetate, ethyl methacrylate, methylene chloride, methyl chloride, and toluene. Non-BDAT organic constituents present at treatable concentrations include formaldehyde, acetyl chloride, chloral, paraldehyde, chloroacetaldehyde, and acetic acid. BDAT metals present in the waste at low concentration include chromium (total), mercury, and lead.

EPA has identified the following technologies as potentially applicable

for treatment of the K009 treatability group: (1) hydrolysis followed by biological treatment, followed by incineration of biomass; (2) hydrolysis followed by either carbon adsorption or steam stripping, followed by incineration; (3) biological treatment in combination with either steam stripping or activated carbon; (4) steam stripping followed by carbon adsorption; and (5) wet air oxidation followed by biological treatment. Also, EPA has identified the following technologies as potentially applicable for treatment of the K010 treatability group: (1) incineration, (2) fuel substitution, (3) solvent extraction followed by recovery or incineration of the contaminated solvent, and (4) recycle or reuse.

The technologies EPA has identified as an applicable treatment for the treatability group of K009 are believed to be capable of removing, concentrating, and/or destroying the organic hazardous constituents present in these wastes. For example, biological treatment, hydrolysis, and wet air oxidation are technologies known to treat wastewaters having relatively low concentrations of hazardous organic constituents. But these technologies, alone, are not candidates for BDAT because the treated residuals typically need to undergo further treatment such as incineration prior to disposal. For instance, a carbon adsorption column or a steam stripping may be used to remove hazardous organic constituents present in the treated wastewater effluents from these technologies. Typically, the presence of hazardous organic constituents in these technologies' treated effluents are a direct result of untreated constituents or undesirable reaction products. Detailed information regarding these technologies' applicability to treatment of hazardous organic wastewaters can be found in the *Guidance Document of Applicable Technologies for Listed Hazardous Wastes.*

The Agency has determined that out of two facilities generating the K009 wastes there is one facility currently treating these wastes via a proprietary hydrolysis process followed by biological treatment followed by rotary kiln incineration of biomass. The Agency has determined that out of two facilities generating the K010 wastes there is one facility currently treating these wastes via recycling. The facility recycling K010 wastes manages residues from recycling K010 as described above for K009. The Agency has determined that the other facility disposes of K009 and K010 wastes via underground injection wells.

A facility treating K009 wastewaters via a proprietary hydrolysis process submitted data on the treatment of K009 wastewaters. The Agency believes that hydrolysis alone is not a candidate for BDAT because the technology leaves behind significant amounts of hazardous organic constituents that require further treatment prior to disposal. This facility has informed the Agency that it intends to re-submit data pertinent to its hydrolysis process and other treatment trains applicable to K009 and K010 wastes. These data are expected to be available during the comment period of this rule.

EPA's Office of Water (OW) performance data supporting the development of rules for the Organic Chemicals, Plastic and Synthetic Fibers (OCPSF) industries was reviewed for possible application to K009 and K010. EPA determined that K009 and K010 wastewaters are already regulated, in part, under OCPSF final rules applicable to the Commodity Organic Chemicals (COC) industry subcategory (see 40 CFR Part 414, Subpart F, §§ 414.60–414.66). Additional relevant BAT limitations can be found in 40 CFR Part 414, Subparts I and J. BAT limitations were based on the treatment of wastewaters similar to K009 and K010 wastewaters. Further, each of the technologies or combination of technologies used in the BAT limitations are considered BDAT for K009 and K010 wastewaters because these technologies were demonstrated for wastewaters similar to K009 and K010 wastewaters. Therefore, EPA is numerical treatment standards for the organic constituents in K009 and K010 based on a transfer of a portion of the treatment performance data contained in the Office of Water OCPSF database.

The BAT effluent limitations are based on priority pollutant data and data from other industry plants with well-designed and well-operated BAT models. The concentration-based BAT effluent limitations hinge on the performance of the end-of-pipe treatment component (biological treatment for the end-of-pipe biological treatment subcategory and physical/chemical treatment for the non-end-of-pipe treatment subcategory) plus in-plant pretreatment technologies that remove pollutants prior to discharge to the end-of-pipe treatment system. The pretreatment technologies include steam stripping, activated carbon, hydroxide precipitation for metals, alkaline chlorination for cyanide, and in-plant biological treatment. The Agency believes these technologies represent BDAT candidates for treatment of the BDAT list hazardous organic constituents present in the K009 and K010 wastewaters because these technologies were determined to be well-designed and well-operated, substantially reduce the amount of organics, and these technologies are commercially available. In addition, EPA does not believe that the requirement that BAT be economically achievable would result in a different technology selection, in this case, under the criteria established for BDAT under HSWA.

OW determined that these BAT limitations are applicable to K009 and K010 wastewaters, one of the industrial process wastewaters that was sampled as part of OW efforts to characterize and to subcategorize OCPSF industries. Therefore, EPA is proposing to transfer some of these BAT effluent limitations as BDAT standards for K009 and K010 wastewaters.

The Agency is currently evaluating the validity and reliability of available analytical methods being employed to characterize some of the non-BDAT List organic constituents present in K009 and K010 wastes. The Agency is also evaluating the possibility of establishing a method, parameter, or constituent that could be used as either a surrogate or indicator of treatment of these non-BDAT List organics. Potential parameters under consideration are BOD, COD, TOC, total volatile content, total semivolatile content, and total chlorine content. The Agency does not expect these non-BDAT constituents to interfere or behave differently from the BDAT list constituents identified as constituents candidate for regulation in K009 wastewaters. However, the Agency solicits information that can substantiate the likelihood of these constituents to behave differently or to interfere with the treatment of other BDAT List organic constituents. If such data become available, the Agency may need either to defer regulation on these non-BDAT List constituents to a later date or to set additional requirements for K009 wastes.

If the reliability and validity of analytical methods cannot be determined prior to promulgation or 1990, the Agency would be unable to develop numerical treatment standards for these non-BDAT List constituents. Similarly, if the Agency fails to identify a surrogate parameter or indicator constituent that would account for either the destruction or removal of these non-BDAT list organic constituents, the Agency would be unable to set a surrogate parameter or indicator constituent that would indicate that treatment of these organic constituents

has been accomplished. As a result, the Agency may consider amending, at a later date, treatment standards established for the K009 to include a method of treatment such as either carbon adsorption or steam stripping of K009 wastewaters prior to land disposal.

In summary, the Agency is proposing treatment standards for K009 and K010 wastewaters based on the performance data that was used to support the OCPSF BAT effluent limitations applicable to COC industry subcategory. EPA has determined that treatment of K009 and K010 wastewaters in well designed and well operated biological treatment units, steam stripping units, and/or steam stripping followed by biological treatment units represents BDAT for wastewaters forms of K009 and K010. The regulated constituents, the treatment standards, and the treatment trains applicable to hazardous constituents in K009 and K010 wastewaters are listed at the end of this section.

ii. *Nonwastewaters.* K010 contains a total concentration of chlorinated organic compounds of approximately 20 ppm. Those chlorinated organics and other organics appear to be identical to those identified in K009. However, K010 has slightly higher concentrations of the chlorinated organic and the other organics. BDAT metals present in the waste above detection levels are chromium (total) and lead. K010 has a heat content of approximately 1,660 BTU/lb. K010 wastes as typically generated are in excess of one percent TOC and are classified as nonwastewaters. Therefore, based on waste generation and waste characteristics, K010 wastes are nonwastewaters and have been placed in a separate waste treatability group from K009 wastes.

One of the facilities submitting data has claimed that its K010 wastes are beneficially reused. Also, the facility reported that the recycling of K010 wastes results in a waste stream that is classified as a wastewater (i.e., containing <1% TSS and <1% TOC). Based on the information submitted by this facility, the Agency believes that this facility recycling of K010 wastes is a legitimate recycling practice that by no means should be interpreted as either evaporation or dilution of the restricted wastes in order to avoid regulation.

The technologies EPA has identified as an applicable treatment for the treatability group of K010 are believed to be capable of removing, concentrating, and/or destroying the organic hazardous constituents present in these wastes. EPA has identified incineration as a potential demonstrated treatment technology for organic hazardous constituents in K010. Fuel substitution involves the use of combustible organic wastes as substitutes for conventional fuels burned in high temperature industrial processes. In order for a waste to be a good candidate for a fuel substitute, the waste must have a reasonable high concentration of organic chemicals with sufficient heat content (BTU per pound). Also, it must have a relatively low concentration of noncombustible materials such as ash, water, metals, and chlorine. The Agency believes that burning of K010 wastes in a well designed and well operated high temperature industrial boiler or kiln attains the performance achievable by other thermal destruction units such as a fluidized bed, rotary kiln, and liquid injection incinerators.

The burning of K010 may result in incineration/fuel substitution scrubber waters. Ashes from the burning of K010 are not generated due to typical low ash contents. However, nonwastewater forms of K010, after incineration, may result from the treatment or filtration of the scrubber waters. Scrubber waters may need additional treatment prior to disposal in order to remove metals. Detailed information regarding these technologies applicability to treatment of hazardous organic nonwastewaters can be found in the *Guidance Document of Applicable Technologies for Listed Hazardous Wastes.*

The Agency has been unable to identify any facility using solvent extraction, prior to disposal or reuse, for treatment of K010 or wastes judged to be similar. However, the Agency believes this technology may be technically capable of recovery of valuable constituents from K010 prior to disposal. At least one facility reported recycling of K010 wastes and residues from these practice are reported to be co-treated with K009 wastes.

The Agency has data from rotary kiln incineration of K019 wastes which the Agency intends to propose to transfer as treatment standards for K009 and K010 nonwastewaters. Characterization data for K019 wastes show that K019 wastes have similar chlorinated organic hazardous constituents to those present in K010 nonwastewaters. The Agency believes that K019 is a waste more difficult to treat than K010 because K019 show higher concentrations of those chlorinated organic hazardous constituents found to be similar or more difficult to treat.

The Agency concluded that rotary kiln incineration of K019 wastes represented BDAT because the technology provided the best available treatment for K019 wastes. The Agency believes that is technically feasible to transfer the numerical treatment standards established for K019 to K009 and K010 nonwastewaters. Therefore, EPA is proposing numerical treatment standards for K010 nonwastewaters based on the performance of rotary kiln incineration for K019 wastes. Because K009 nonwastewaters are expected to contain similar hazardous organic constituents to those shown in K010 nonwastewaters, EPA is proposing that K009 nonwastewaters meet the same numerical treatment standards we are proposing today for K010 nonwastewaters. Detailed information of the Agency's rationale for selecting organics as constituents proposed for regulation is provided in the *Proposed BDAT Background Development Document for K009 and K010 Wastes.*

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represent BDAT for nonwastewater forms of K009 and K010 wastes. The regulated constituents and the treatment standards for nonwastewaters are listed at the end of this section.

BDAT TREATMENT STANDARDS FOR K009 AND K010

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroform	6.0	(1)
1,1-Dichloroethane	6.0	(1)
Methylene chloride	30.0	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K009 AND K010

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Acrolein	0.14	(1)
Chloroform	0.09	(1)
1,1-Dichloroethane	5.3	(1)
Ethyl methacrylate	0.18	(1)
Methylene chloride	0.03	(1)

[1] Not applicable.

TREATMENT TRAINS FOR K009 AND K010 WASTEWATERS

Constituent	Technology basis
Acrolein	Biological.
Chloroform	Biological plus Steam Stripping.
1,1-Dichloroethane	Steam Stripping.
Ethyl methacrylate	Biological.
Methylene chloride	Biological plus Steam Stripping.

[Note: The technologies shown are the basis of the treatment standard. They are not required to be used in meeting the treatment standards.]

e. *Wastes from the Production of Ethylene Dichloride and Nitrobenzene.*

K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. (2nd)

K025—Wastewaters generated from managing distillation bottoms from the production of nitrobenzene by the nitration of benzene. (2nd)

K019 and K025 wastes were originally scheduled to be examined as part of the Second Third wastes. Numerical treatment standards, based on the performance of incineration in a rotary kiln, for the wastewater and nonwastewater forms of K019 were proposed with the First Third wastes and promulgated on August 8, 1988. In addition, a treatment standard of "No Land Disposal Based on No Generation" for nonwastewater forms of K025 was also proposed and promulgated with the First Third wastes. A treatment standard of "No Land Disposal Based on No Generation" for wastewater forms of K025 was also proposed with the First Third wastes, but was not promulgated because the Agency determined that K025 wastewaters could be generated as leachate from previously land disposed K025 nonwastewaters (i.e., the basis of the standard, "no generation" of wastewaters, was not valid).

While EPA did not promulgate treatment standards for the K025 wastewaters on August 8, 1988, the "soft hammer" provisions did not apply because K025 wastes were originally scheduled with the Second Third wastes. Since the Agency is not proposing treatment standards for these wastewaters in today's rule and will not be able to promulgate any for them by the statutory deadline, land disposal of K025 wastewaters will now be restricted according to the "soft hammer" provisions in § 268.8.

EPA is presenting this information in today's preamble, as a matter of convenience, in order to show all existing and proposed treatment standards for the Second Third wastes. EPA is not reopening the comment period on the promulgated numerical treatment standards for K019 wastes or on the promulgated "No Land Disposal Based on No Generation" for K025 nonwastewater. The Agency has established variance procedures for those facilities that must land dispose these wastes and cannot meet the promulgated treatment standards. These variance procedures are outlined in 40 CFR 268.44.

f. *Wastes from Phthalic Anhydride Production.*

K023—Distillation light ends from the production of phthalic anhydride from naphthalene. (3rd)

K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene. (3rd)

K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene. (3rd)

K023, K093 and K094 are all Third Third Wastes that are generated from the production of phthalic anhydride. These wastes were not originally scheduled to be promulgated until May 8, 1990. However, the statute does not preclude EPA from prohibiting the land disposal of any given waste ahead of schedule and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

The Agency has data on the incineration of K024 nonwastewaters (distillation bottoms from the production of phthalic anhydride from naphthalene) that also contain phthalic anhydride. Treatment standards for K024 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988. These standards were based on the performance of incineration of K024 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to directly transfer these treatment standards to K023, K093 and K094.

The Agency has determined that the treatment standards for K024 may be transferred to these wastes because: (1) All of these wastes are generated from the production of phthalic anhydride; (2) All of these wastes appear to contain similar concentrations of phthalic anhydride, high BTU content, and low concentrations of BDAT metals; (3) Distillation residues generated from production processes using naphthalene (corresponding to K023 and K024 wastes) are expected to contain higher concentrations of less volatile constituents than the distillation residues generated from production processes using ortho-xylene (corresponding to K093 and K094 wastes). Since the constituents in K023 and K024 are less volatile, they are also less easily vaporized in a rotary kiln and subsequently destroyed; and (4) Distillation bottoms (K024) are expected to contain higher concentrations of less volatile constituents than the distillation light ends (K023). Again, since these constituents are less volatile, they are also less easily vaporized in a rotary kiln and subsequently destroyed.

Based on this analysis, the Agency has determined that K024 represents the most difficult to treat of the four wastes generated from the production of phthalic anhydride. Therefore, the Agency is proposing to transfer the performance data from the incinerations of K024 to the less difficult to treat K023, K093, and K094.

While the proposed treatment standards for K023, K093 and K094 are based on the performance of incineration of K024 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule. The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

The Agency has data that indicates that there are relatively few generators of K023, K093 and K094. Information also suggests that many of these wastes, as generated, are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of K023, K093 and K094. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K023, K093 and K094. EPA is proposing to directly transfer the K024 wastewater and nonwastewater treatment standards to K023, K093 and K094 wastewaters and nonwastewaters respectively. While phthalic anhydride is the primary hazardous constituent in K023, K024, K093 and K094, it is readily hydrolyzed by water to phthalic acid. Thus, phthalic anhydride cannot be directly analyzed. However, there is an analytical method for phthalic acid. Thus, the treatment standards for K024 wastewaters and nonwastewaters are based on analyses for phthalic acid. This constituent, although not listed as a

hazardous constituent in Part 261 Appendix VIII, was chosen as a surrogate compound for phthalic anhydride. The proposed treatment standards for K023, K093 and K094 wastes are based on analysis of total constituent concentration for phthalic acid and are listed in the tables at the end of this section.

BDAT TREATMENT STANDARDS FOR K023, K093 AND K094

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Phthalic acid	28	Not applicable.

BDAT TREATMENT STANDARDS FOR K023, K093 AND K094

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP (mg/l)
Phthalic acid	0.54	Not applicable.

g. *Wastes from the Production of Dinitrotoluene, Toluene Diamine and Toluene Diisocyanate.*

K027—Centrifuge and distillation residues from toluene diisocyanate production. (2nd)
K111—Product washwaters from the production of dinitrotoluene via nitration of toluene.
K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.
K113—Condensed liquid light ends from the purification of toluene diamine in the production of toluenediamine via hydrogenation of dinitroluene.
K114—Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.
K115—Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.
K116—Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.
U221—Toluenediamine. (lst)
U223—Toluene diisocyanate. (lst)

1. *Introduction.* K027, K111–K116, U221, and U223 are all listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are approximately eight facilities manufacturing dinitrotoluene (DNT), toluenediamine (TDA), and/or toluene diisocyanate (TDI) that could potentially generate these listed wastes. In addition, there are other facilities that may potentially generate U221 and U223 wastes. The facilities manufacturing DNT, TDA, and TDI are located in the Southern and Eastern parts of the United States.

The manufacturing process of TDI typically involves three continuous chemical processes: (1) Nitration of toluene to form DNT; (2) Hydrogenation of DNT to form TDA; and (3) Phosgenation of TDA to form TDI. Because the facilities generating these products have similar manufacturing processes and the respective wastes appear to contain similar chemical constituents, the Agency decided to investigate the feasibility of creating a minimum number of treatability groups for these wastes. EPA conducted a careful review of waste generation, waste management practices, and waste characterization data for these wastes. Based on this review, EPA believes that these wastes comprise two waste treatability groups: (1) the K027, K113–K116, U221, and U223 treatability group and (2) the K111 and K112 treatability group. The following two sections provide EPA's rationale for establishing these treatability groups and the development of treatment standards for each.

2. *Development of Standards for the K027, K113–K116, U221 and U223 Treatability Group.* K027 and K113–K116, as generated, are usually nonwastewaters containing high concentrations of aromatic organonitrogen compounds. Specifically, the Agency believes that K027 and K113–K115 are expected to contain high concentrations of TDA. Besides the organonitrogen compounds TDA and TDI, K116 is expected to contain high concentrations of chlorinated hydrocarbons such as carbon tetrachloride and phosgene. K027, K123, K114 and K116 are expected to contain, if any, very low concentrations of metals. However, available data show that K115, as originally generated, contains treatable concentrations of nickel (up to approximately 5%). The Agency has information showing that facilities generation K027 and K113–K116 usually either treat or dispose these wastes in the same or similar units.

Although the Agency lacks characterization data for the U221 and U223 wastes, the Agency believes that organic constituents present will consist mostly of TDA in U221 and of TDI in U223 wastes. Since TDI and TDA products are generated from similar manufacturing processes, EPA believes that any impurities in either commercial chemical products or off-specification chemical products meeting the listing criteria for U221 and U223 will consist of constituents similar to those typically shown or expected to be contained in K027, K115 and K116. As a result, the Agency expects U221 and U223 to show treatment characteristics similar to these K wastes. Information collected by the Agency indicates that both of these U wastes are amenable to the same treatment technologies that are applicable to these K wastes. Therefore, EPA placed U221 and U223 wastes into the same treatability group of these K wastes.

For nonwastewater forms of this treatability group, EPA has identified the following technologies as potentially applicable for treatment of the hazardous organic constituents contain in these wastes: (1) solvent extraction followed by recovery or incineration of the contaminated solvent; (2) recycle or reuse; (3) fuel substitution; and (4) incineration. EPA has identified stabilization as potentially applicable treatment of BDAT list metals contained in K115 only.

The Agency has been unable to identify any facility using solvent extraction for treatment of these wastes or any wastes that the Agency believes would be sufficiently similar to these wastes. At least one facility reported previous recycling of K027 wastes, but has since ceased this practice. One facility also reported recycling K113 and U223, but occasionally incinerates K113. EPA has thus determined that solvent extraction is not currently demonstrated for these nonwastewaters.

The Agency has determined that out of eight facilities generating these wastes, three facilities are currently incinerating these wastes. There are at least three facilities handling K027 and/or K113–K116 by fuel substitution in high temperature industrial boilers. Two facilities incinerating K027 reported treating K113–K115 or K116 by fuel substitution and one facility treating K027 by fuel substitution. Therefore, the Agency has determined that both fuel substitution and incineration are demonstrated for organic constituents present in these K wastes.

The burning of these nonwastewaters may result in incineration/fuel substitution scrubber waters that would be classified as wastewaters with the respective waste codes. The Agency believes that ashes from the burning of these wastes are not typically generated due to typical low ash contents. However, treatment or filtration of the scrubber waters may result in a treatment residual that would be classified as a nonwastewater with the respective waste codes. The majority of the facilities burning these wastes either by fuel substitution or incineration reported the generation of incineration scrubber waters.

For BDAT list metals, available characterization data show treatable concentrations of nickel in untreated K115 (up to approximately 5%). The Agency does not have characterization data for the concentration of nickel in K115 incineration treatment residuals, such as ashes, and sludges. The Agency believes that due to the high level of nickel in the untreated K115, the nonwastewater treatment residues of fuel substitution and incineration would require further treatment. As a result, the Agency is proposing to regulate nickel in K115 nonwastewaters. To do so, EPA examined its performance data for the First Third wastes and is proposing to transfer the nickel standards for F006 nonwastewaters (based on stabilization) to K115 nonwastewaters. This is because the Agency believes that nonwastewater residuals from the incineration and/or fuel substitution of K115 are amenable to stabilization treatment. Also, the Agency believes that none of the constituents present in these treatment residuals, if any, are likely to interfere with the treatment of nickel. EPA's rationale for developing the numerical standard applicable to K115 is provided in the BDAT background document for this treatability group.

At this time, EPA does not have any specific performance treatment data for the organics contained in any of the wastes in this treatability group nor has the Agency pursued any performance testing of any particular treatment process for these wastes. This is because EPA currently lacks analytical methods that can satisfactorily analyze for toluidine, TDI, TDA, and other major organic constituents (i.e., the constituents that would be selected for regulation due to their anticipated high concentrations in the untreated wastes) in complex waste matrices. Nor has the Agency been able to identify any method, parameters, or indicator constituents for the hazardous organic constituents present in these wastes. Therefore, the Agency believes that numerical BDAT treatment standards for the organic constituents present in these wastes cannot be developed at this time.

However, the Agency believes that incineration and fuel substitution are demonstrated and are the best technologies currently available to treat this treatability group. The Agency has data showing that incineration typically provides substantial reduction in concentration of most organic hazardous constituents in wastes. Typically, many can be reduced to nondetectable levels as measured in the residues from incineration (i.e., ash and scrubber water). EPA has data on incineration for a variety of organic compounds from many different regulatory programs.

Based on all of this information, EPA has determined that incineration and fuel substitution represent BDAT for K027, K113–K116, U221, and U223. First, the Agency has found that for all of the First Third wastes that were treated by incineration, the treatment levels achieved by incineration represented BDAT. Also, this determination has been demonstrated for well designed and well operated fuel substitution units from which EPA has developed treatment standards. Therefore, the Agency believes that if incineration and fuel substitution have been demonstrated to represent the best treatment for wastes with similar treatability characteristics or for wastes having organic hazardous constituents that are more difficult to incinerate, then incineration and fuel substitution are also demonstrated for these K wastes. Finally, EPA's records document the common use of incineration and fuel substitution as methods of treatment for these wastes.

As a result, EPA is proposing to specify using either incineration or fuel substitution as a method of treatment for these K wastes rather than a numerical standard. K115 wastes must comply with both: (1) Any of the methods of treatment requirements and (2) the numerical treatment standards proposed for nickel. The Agency believes that by specifying these technologies as methods of treatment the Agency fully complies with the land disposal restrictions mandated by Congress. This is because: (1) EPA has determined that the K wastes discussed in this section are amenable to incineration and (2) EPA has determined that these technologies represent BDAT for these K wastes. Treatment residuals from either incinerators or fuel substitution units burning of these K wastes are not prohibited from land disposal. The Agency believes that these treatment methods will provide a substantial reduction of the amount of hazardous organic constituents present in these wastes.

It is also important to point out that EPA requires that an incinerator burning RCRA hazardous wastes must meet the requirements specified in 40 CFR Part 264 Subpart O or Part 265 Subpart O. Compliance with 40 CFR Part 266 would have to be required for any hazardous waste burned for energy recovery in fuel substitution units. The Agency believes that these technologies are available because: (1) These technologies are commercially available or can be purchased from a proprietor and (2) these technologies achieve substantial reduction of organic hazardous constituents of wastes judged to be more difficult to treat than those organics in these K wastes.

For wastewater forms of wastes in this treatability group, EPA has identified carbon adsorption followed by incineration of the spent carbon as potentially applicable treatment technologies for the hazardous organic constituents contained in these wastewaters. EPA has identified chemical precipitation followed by filtration as a potentially applicable treatment technology for the BDAT list metals contained in K115 only.

Wastes in this treatability group, as originally generated, are typically classified as nonwastewaters. However, the Agency believes that wastewater forms of these wastes can result from either RCRA corrective actions or CERCLA remedial actions (e.g., leachate and contaminated ground water). Therefore, these types of wastewaters are also subject to the land disposal restrictions of HSWA according to 40 CFR 268.

EPA believes that any of the organonitrogen compounds contained in wastewater forms of this treatability group can easily be adsorbed on carbon. Available data suggest that the organonitrogen compounds comprising these wastes, as originally generated, are aromatic in nature and thus, their chemical structures and physical properties (e.g., high molecular weight) make them amenable to carbon adsorption treatment.

Therefore, EPA is proposing to specify carbon adsorption as a method of treatment for the organic constituents in wastewater forms of K027, K113–K116, U221, and U223. In addition, K115 wastewaters must comply with both: (1) The method of treatment requirement and (2) the numerical treatment standard proposed for nickel. The effluent wastewater from carbon

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adsorption of these wastewaters is not prohibited from land disposal (provided that the additional standards for nickel is subsequently achieved for those wastewaters identified as K115). However, the spent carbon resulting from this treatment process must comply with the nonwastewater standards applicable to these wastes.

The Agency does not have characterization data for the concentration of nickel in K115 incineration scrubber waters. However, the Agency believes that these wastewaters will contain treatable concentrations of nickel. As a result, the Agency is proposing to regulate nickel in K115 wastewaters. To do so, EPA examined its performance data for the First Third and determined that it is technically feasible to transfer the nickel standards the EPA established for other First Third wastewaters to K115 incineration wastewaters. This is because the Agency believes that the incineration and fuel substitution residuals being classified as K115 wastewaters are amenable to chemical precipitation (lime and sulfide) treatment followed by filtration (vacuum filtration). Also, the Agency believes that none of the hazardous constituents present in the K115 treatment residuals are likely to interfere with the treatability of nickel. EPA's rationale for developing the numerical standard applicable to K115 is provided in the background document for this treatability group.

3. *Deferral of Treatment Standards for the K111 and K112 Treatability Group.* The Agency has determined that K111 and K112 represent a separate waste treatability group. As generated, they are usually wastewaters containing low concentrations of organic compounds (less than 1% by weight) and very low concentrations of metals. In addition, these wastes are often co-disposed or co-treated in wastewater treatment systems.

For hazardous organic constituents in K111 and K112 wastewaters, EPA has identified the following technologies as potentially applicable: (1) biological treatment followed by incineration of the biomass; (2) carbon adsorption followed by incineration of the spent carbon; (3) chemical oxidation; and (4) solvent extraction followed either by incineration or recycling of the extracted organics. All of these treatment processes would generate nonwastewater residuals (e.g., spent biomass, spent carbon, and solvent extract, respectively) that may then be required to be incinerated in a fluidized bed, multiple hearth, or rotary kiln. EPA has been unable to identify a facility currently using solvent extraction for either K111 or K112 wastes.

The Agency has determined that out of eight facilities generating the K111 and K112 wastes, there are three facilities currently treating these wastes in biological treatment units and three facilities using carbon adsorption as either treatment or a polishing step prior to disposal.

Currently, EPA lacks performance treatment data from facilities currently treating these wastes either by biological treatment or carbon adsorption followed by incineration nor has EPA conducted any test to collect such data. This is because EPA has the same analytical problems already discussed for K027, K113–K116, U221, and U223.

At this time, EPA is not proposing any treatment standard for wastes identified as K111 and K112 wastewaters. Since these wastes were listed after the effective dates of the 1984 RCRA amendments, the agency believes that land disposal of these wastes is not subject to the "soft hammer" provisions. The Agency does not believe that incineration is applicable for K111 and K112 wastewaters; however, residues from treatment of K111 and K112 wastewaters that are identified as K111 and K112 nonwastewaters may require incineration prior to disposal.

BDAT Treatment Standard for K027, K113–K116, U221 and U223

(Nonwastewaters)

EITHER INCINERATION OR FUEL SUBSTITUTION—AS A METHOD OF TREATMENT

BDAT Treatment Standard for K027, K113–K116, U221 and U223

(Wastewaters)

CARBON ADSORPTION AS A METHOD OF TREATMENT

BDAT TREATMENT STANDARDS FOR K115

[Nonwastewaters]

Constituent	Maximum for any Single Grab Sample	
	Total composition (mg/kg)	TCLP (mg/l)
Nickel	Not applicable	0.32

BDAT TREATMENT STANDARDS FOR K115

[Wastewaters]

Constituent	Maximum for any Single Grab Sample	
	Total composition (mg/kg)	TCLP (mg/l)
Nickel	0.47	Not Applicable.

h. *Wastes from 1,1,1-Trichloroethane Production.*

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. (2nd)

K029—Waste from the product steam stripper in the production of 1,1,1-trichloroethane. (2nd)

K095—Distillation bottoms from the production of 1,1,1-trichloroethane. (2nd)

K096—Heavy ends from the heavy end column from the production of 1,1,1-trichloroethane. (2nd)

1. *Introduction.* K028, K029, K095, and K096 are listed wastes that are generated primarily by facilities in the organic chemicals manufacturing industry. Detailed technical descriptions of the specific production processes generating these wastes can be found in the background document for the listing of these wastes. The Agency estimates that there are approximately three facilities manufacturing 1,1,1-trichloroethane that could potentially generate these listed wastes. These facilities are located in the South Central portion of the United States.

2. *Standards for K028.* 1,1,1-Trichloroethane is produced commercially by the catalytic hydrochlorination of vinyl chloride. Vinyl chloride and hydrogen chloride are reacted in the presence of a ferric chloride catalyst to produce 1,1-dichloroethane as an intermediate chemical. The spent catalyst is separated from the product stream via filtration or distillation. This spent catalyst stream is the listed waste K028. The 1,1-dichloroethane intermediate is then reacted with chlorine gas to produce 1,1,1-trichloroethane.

K028 wastes generally contain greater than 50 percent chlorinated organics, with the balance of the waste comprised of heavy tars and spent ferric chloride catalyst. The waste generally contains high levels of filterable solids and has a moderate heating value. Consistent quantitative analysis of untreated K028 proved to be very difficult. Some of the problems were due to the volatility of the 1,1-dichloroethane, the reactivity of the residual ferric chloride catalyst, and the presence of tarry materials in the waste. It was particularly difficult to perform analyses for metals and solids content.

The Agency has identified incineration as an applicable technology for treatment of K028. While the Agency has been unable to obtain performance data based on incineration for K028, the Agency is aware of two facilities that are currently using rotary kiln incineration to treat K028 waste. Therefore, the Agency believes that incineration is demonstrated for K028. In addition, the Agency does have performance data on the incineration of K019 and F024. Characterization data from four sampling activities at three facilities show that K028 wastes have chemical and physical waste characteristics that are similar to those of K019 and F024 wastes: all three wastes having significant concentrations of two-carbon chlorinated organic compounds. Consistent with EPA's methodology for transfer of treatment standards, the Agency is proposing to transfer treatment data from rotary kiln incineration of waste code F024 for the organic constituents in K028. For the inorganic constituents in K028, the Agency is proposing to transfer treatment data from the ash stabilization of K048–K052 and treatment data from the lime and sulfide precipitation of K062. Details on the transfer of performance data and the development of treatment standards for K028 wastes can be found in the BDAT background document for this waste.

The Agency is proposing to transfer performance data for organic constituents in K028 from the incineration of F024. Incineration has been demonstrated to treat K028. The Agency also believes incineration is available because (1) it is commercially available or can be purchased from a proprietor, and (2) it provides substantial reduction of the concentration of organic hazardous constituents. The regulated constituents for K028 wastes and the treatment standards for wastewaters and nonwastewaters are listed at the end of this section.

3. *Standards for K029, K095 and K096.* Review of the available information indicates that K029, K095 and K096 as originally generated according to the listing, are usually nonwastewaters containing relatively high concentrations of chlorinated organics. EPA believes that these wastes may contain concentrations of halogenated organics such that they should already be restricted from land disposal according to the California List rule for Halogenated Organic Compounds (HOCs).

Available information indicates that many K029 wastes are no longer being generated and that K095 and K096 wastes are recycled. EPA is proposing a standard of "No Land Disposal Based on No Generation" for K029 nonwastewaters and "No Land Disposal Based on Recycling" for K095 and K096 nonwastewaters. The Agency is proposing that these "No Land Disposal" treatment standards, only apply to K029, K095 and K096 nonwastewaters as generated (i.e., those wastes as defined in the original listing), and not to nonwastewater residues that may be potentially generated from management of wastes (i.e., "derived-from" nonwastewaters) generated prior to promulgation of the "No Land Disposal" standards.

A specific illustration of this applicability for K095 and K096 for which recycling has been identified as BDAT is as follows: Leachate from land disposal units containing K095 previously generated also carries the label of K095 under the "derived-from" rule. These leachates could be treated by chemical oxidation, precipitation, filtration and/or carbon adsorption prior to discharge. The filtered nonwastewater residuals and the spent carbon would therefore also carry the code of K095 according to "derived-from" rule. In this case, EPA is proposing that the treatment standard of "No Land Disposal Based on Recycling" would not be applicable to these nonwastewater forms of K095.

The Agency's primary rationale for not applying the "No Land Disposal" treatment standards to these residues (as well as other nonwastewaters that may be potentially generated from future remedial actions) is the concern over the differences in waste characteristics of these residues to the nonwastewaters as originally generated. The basis of the "No Land Disposal Based on Recycling" for K095 and K096 was based on the characteristics of the waste as generated. The Agency believes that it is highly likely that at least some portion of these "derived-from" K095 and K096 nonwastewaters may contain a sufficient quantity of impurities that would render it unsuitable for recycling. Recent information suggests that one facility may frequently incinerate K096, as an option to recycling, and may be generating ash residuals that would be considered a "derived-from" nonwastewater residual that may require land disposal. The Agency believes that this ash would not resemble K096 as generated and would not be able to be recycled similar to other K096 wastes.

Further, where the standard is "No Land Disposal Based on No Generation" for K029 nonwastewaters, it is obvious that if a "derived-from" nonwastewater is indeed generated, the basis for the applicability of the standard to that particular waste is no longer substantiated.

Since the Agency anticipates that either of these scenarios have a reasonable potential for occurring for K029, K095 and K096 nonwastewaters, the Agency is proposing that the "No Land Disposal" standards do not apply to "derived-from" nonwastewaters. However, the Agency is specifically soliciting comment on the need for the development of treatment standards for K029, K095 and K096 "derived-from" nonwastewaters. The Agency must promulgate treatment standards for all remaining wastes by May 8, 1990, including these nonwastewater residues generated from the previous management of listed wastes. The Agency believes that numerical standards for these wastes could be developed based on transferring performance data for organics from the incineration of K019 or F024 wastes and transferring performance data for metals (in ash) from an appropriate metal-bearing waste.

As an option to the "No Land Disposal" standards, as well as the option of developing new standards for these "derived-from" K029, K095 and K096 nonwastewaters, the Agency may propose to establish numerical standards for all K029, K095 and K096 "derived-from" nonwastewaters based on a direct transfer of the standards being proposed for K028 wastes (i.e., the standards for all constituents proposed for K028 nonwastewaters would then be applicable to K029, K095 and K096 nonwastewaters).

At this time, the Agency is not proposing treatment standards for the wastewater forms of K029, K095 or K096 (including derived-from wastewaters). The Agency is uncertain that the nonwastewater forms of these wastes were ever previously land disposed. If not, then the Agency believes that there may be no need to develop such standards for "derived-from" K029, K095 and K096 wastewaters. The Agency will develop treatment standards prior to May 8, 1990, if there is an identified need for such standards (i.e. if "derived-from" wastewater forms of the listed waste are proven to be generated). The Agency is currently evaluating the possibility of transferring treatment performance data from K028 wastewaters for these "derived-from" K029, K095 and K096 wastewaters. The Agency has identified several sources of metals precipitation performance data which may be applicable to inorganic constituents.

BDAT TREATMENT STANDARDS FOR K028

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,1-Dichloroethane	0.014	(1)
trans-1,2-Dichloroethene	0.014	(1)
Hexachlorobutadiene	2.7	(1)
Hexachloroethane	1.8	(1)
Pentachloroethane	1.9	(1)
1,1,1,2-Tetrachloroethane	1.9	(1)
1,1,2,2-Tetrachloroethane	1.9	(1)
Tetrachloroethene	0.014	(1)
1,1,1-Trichloroethane	0.014	(1)
1,1,2-Trichloroethane	0.014	(1)
Chromium (total)	(1)	1.7
Nickel	(2)	0.048

[1] Not applicable.
[2] Applicable.

BDAT TREATMENT STANDARD FOR K028

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,1-Dichloroethane	0.014	(1)
trans-1,2-Dichloroethene	0.036	(1)
Hexachlorobutadiene	0.014	(1)
Hexachloroethane	0.036	(1)
Pentachloroethane	0.014	(1)
1,1,1,2-Tetrachloroethane	0.014	(1)
1,1,2,2-Tetrachloroethane	0.014	(1)
Tetrachloroethene	0.014	(1)
1,1,1-Trichloroethane	0.014	(1)
1,1,2-Trichloroethane	0.014	(1)
Cadmium	6.4	(1)
Chromium (total)	0.35	(1)

BDAT TREATMENT STANDARD FOR K028—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Lead	0.037	(1)
Nickel	0.47	(1)

[1] Not applicable.

BDAT Treatment Standard for K029

[Nonwastewaters]

NO LAND DISPOSAL BASED ON NO GENERATION

BDAT Treatment Standard for K095 and K096

[Nonwastewaters]

NO LAND DISPOSAL BASED ON RECYCLING

i. Wastes from Phorate Production.

K038—Wastewater from the washing and stripping of Phorate production. (2nd)
K039—Filter cake from the filtration of diethyl phosphorodithioic acid in the production of Phorate. (2nd)
K040—Wastewater treatment sludge from the production of Phorate. (2nd)

1. *Introduction.* K038, K039 and K040 are all Second Third wastes that are generated from the production of Phorate, an organophosphorus pesticide. Phorate is the primary constituent of concern in K038 and K040 and has the technical name, phosphorodithioic acid O,O-diethyl S-[(ethylthio) methyl] ester. The primary constituent of concern in K039 is diethyl phosphorodithioic acid. The Agency has data on the incineration of K037 nonwastewaters (wastewater treatment sludge from the production of Disulfoton) that contain the structurally similar organophosphorus pesticide, Disulfoton. The technical name for Disulfoton is phosphorodithioic acid O,O-diethyl S-[(ethylthio) ethyl] ester. The only structural difference between Disulfoton and Phorate is the additional methylene ($-CH_2-$) group in Disulfoton. This slight difference is believed to be insignificant with respect to the ability of the two pesticides to be incinerated. Numerical treatment standards for K037 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988, and are not being reopened for comment here. These standards were based on the performance of incineration of K037 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to transfer these treatment standards to K038 and K040. More information on the Agency's procedures for transferring treatment standards can be found in Section III.A.5 of this preamble as well as in the Background Document for these wastes.

2. *Development of Standards.* Currently, EPA has no approved method that can adequately analyze diethyl phosphorodithioic acid in treatment residues. In addition, EPA has not identified any organic constituents in K039 wastes that could be used as a surrogate or as an indicator compound in order to develop numerical standards for K039 wastes. Thus, EPA is proposing incineration as a BDAT treatment methodology for nonwastewater forms of K039. Since diethyl phosphorodithioic acid is structurally similar to Disulfoton and Phorate, EPA believes it can be effectively destroyed by incineration. While the proposed treatment standards for K038, K039 and K040 are all based on the performance of incineration of K037 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule.

Analysis of the elemental composition of Phorate reveals that the compound contains 11.90% phosphorus and 36.94% sulfur. Depending on the concentration of Phorate in the particular waste, emissions of the oxides of phosphorus and sulfur could be of concern during incineration. The Agency currently believes that hazardous waste combustion units that are equipped with air pollution control devices should be able to effectively control these acidic combustion products. The concentrations of Phorate and diethyl phosphorodithioic acid in K038, K039 and K040 wastes should be relatively low enough that the total concentration of phosphorus and sulfur in the waste will not result in excessive emissions of the respective oxides.

The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

For the wastewater forms of K039, EPA is proposing carbon adsorption as BDAT treatment methodology. EPA believes that diethyl phosphorodithioic acid in wastewater forms of K039 can easily be adsorbed on carbon due to the chemical and physical properties of the compound (such as its molecular weight, elemental composition, and structural form). The spent carbon would be considered by the Agency to be a nonwastewater form of K039 and would be required to be incinerated, as it is a nonwastewater subject to the specified method.

EPA received no comments on the numerical treatment standards for K037 when they were proposed and the Agency therefore promulgated the standards as proposed. To date, no requests for a variance from these standards have been received. The Agency has data that indicates that there are very few generators of K038 and K040, and in fact only one producer of K039 who also produces K038. Information also suggests that these wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of K038, K039 and K040. However, the Agency prefers to establish numerical standards whenever a transfer of standards from structurally similar compounds can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of K038, K039 and K040. EPA is proposing to regulate only Phorate in wastes identified as K038 and K040. The proposed BDAT treatment standards for these wastes are listed in the tables at the end of this section. Treatment standards for Phorate are based on analysis of total constituent concentration. As previously discussed, incineration as a treatment methodology is proposed as BDAT for K039 nonwastewaters, and carbon adsorption as a treatment methodology is proposed as BDAT for K039 wastewaters.

BDAT TREATMENT STANDARD FOR K038 AND K040

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phorate	0.1	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K038 AND K040

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Phorate	0.003	(1)

[1] Not applicable.

BDAT Treatment Standard for K039

[Nonwastewaters]

INCINERATION AS A METHOD

BDAT Treatment Standard for K039

[Wastewaters]

CARBON ADSORPTION AS A METHOD

j. Wastes from 2,4-D Production.

K043—2,6-Dichlorophenol wastes from the production of 2,4-D. (2nd)

1. *Introduction.* The listed waste K043 is generated at one facility in the U.S. during the production of 2,4-D. The waste consists of distillation bottoms from the purification of 2,4-dichlorophenol (2,4-DCP), a precursor to 2,4-D. This waste contains high concentrations of halogenated organics (greater than 0.1%) which already subject it to restriction from land disposal from the California List rule for Halogenated Organic Compounds (HOCs).

EPA has identified incineration as an applicable technology for this waste. The process of incineration thermally destroys (oxidizes) the organic constituents in the waste. The Agency recognizes any technology that destroys organics as an applicable technology for this waste.

There is data that suggest that all K043 waste is currently being treated by incineration. Characterization data for K043 waste indicates that the ash concentration is two percent. Therefore, ash residues are generated from the incineration process and, for the purpose of BDAT standards, are classified as nonwastewaters. Scrubber waters are generated as part of the air pollution control system and are classified as wastewaters. Both of these residues must meet the applicable BDAT treatment standards set, prior to placement in a land disposal unit (other than a no-migration unit).

2. *Development of Standards.* The EPA has received data on incineration of K043 waste from the sole generator. This data consists of two treatment data sets for scrubber water and one treatment data set for clarifier solids generated from incineration of K043 waste. EPA has determined that incineration achieves a level of performance that represents BDAT for K043 waste based on treatment performance data. The sole generator of K043 waste uses incineration to treat K043. Therefore, the Agency believes incineration is demonstrated to treat K043. This treatment system is judged to be available to treat K043 because (1) the treatment system is commercially available and (2) the system provides a substantial reduction in the concentration of the BDAT List organic constituents present in K043.

The proposed regulated constituents for K043 and the proposed treatment standards for wastewaters and nonwastewaters are presented in the table at the end of this section. The standards are expressed as total constituent concentrations.

While the Agency did not have treatment performance data for chlorinated dioxins and chlorinated dibenzofurans, it did have characterization data from the sole generator indicating the presence of several of these constituents in K043 waste at very low levels. The Agency also has data on six BDAT chlorinated dioxins and chlorinated dibenzofurans in untreated and treated K099 waste. This waste is generated at the same site as K043 waste, in the next step of the 2,4-D production process. The K099 data indicate concentration levels of less than 1 ppb for each of these six constituents in the treated waste. BDAT standards for these constituents were set at 1 ppb, which represents the analytical limit of detection for these constituents that can be routinely achieved. While K043 data for one of these constituents indicated its presence at a concentration greater than 1 ppb in the untreated waste, the Agency believes that this, as well as any other chlorinated dioxins and chlorinated dibenzofurans, can be effectively treated to levels below the 1 ppb analytical detection limit using rotary kiln incineration, which the Agency has determined to be BDAT for K043 waste. Therefore, because the Agency believes the K043 waste to be sufficiently similar and treatable as K099 waste, the Agency has transferred the BDAT standards for the six chlorinated dioxins and

chlorinated dibenzofurans regulated in K099 to K043. See Section III.A.5. of this proposed rule for a more detailed discussion related to the transfer of treatment standards.

Although the Agency does not have data on 2,4-D and 2,4,5-T in the K043 waste from the sole generator, it does have characterization data on these constituents from a former generator of K043 waste. This former generator used a different process to produce 2,4-D. The sole generator of K043 uses a two-step process to produce 2,4-D. The K043 waste is generated in the first step of this process following the production of 2,4-DCP, prior to production of 2,4-D. Therefore the Agency does not expect 2,.4-D and 2,4,5-T to be present in the K043 waste produced by the sole generator. For potential K043 waste produced by a different process, the Agency believes that the regulation of the proposed BDAT List constituents for K043 will ensure that these constituents will be effectively treated.

BDAT TREATMENT STANDARDS FOR K043

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
2,4-Dichlorophenol	0.38	(1)
2,6-Dichlorophenol	0.34	(1)
Pentachlorophenol	1.9	(1)
Tetrachloroethene	1.7	(1)
Tetrachlorophenols (Total)	0.68	(1)
2,4,5-Trichlorophenol	8.2	(1)
2,4,6-Trichlorophenol	7.8	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K043

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP(mg/l)
2,4-Dichlorophenol	0.06	(1)
2,6-Dichlorophenol	0.006	(1)
Pentachlorophenol	0.014	(1)
Tetrachloroethene	0.006	(1)
Tetrachlorophenols (Total)	0.02	(1)

BDAT TREATMENT STANDARDS FOR K043—Continued

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP(mg/l)
2,4,5-Trichlorophenol	0.025	(1)
2,4,6-Trichlorophenol	0.017	(1)
Hexachlorodibenzo-p-dioxins	0.001	(1)
Hexachlorodibenzo-furans	0.001	(1)
Pentachlorodibenzo-p-dioxins	0.001	(1)
Pentachlorodibenzo-furans	0.001	(1)
Tetrachlorodibenzo-p-dioxins	0.001	(1)
Tetrachlorodibenzo-furans	0.001	(1)

[1] Not applicable.

k. *Second Third K Wastes for Which No Standards Are Proposed.*

K041—Wastewater treatment sludge from the production of Toxaphene. (2nd)
K042—Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. (2nd)
K097—Vacuum stripper discharge from the Chlordane chlorinator in the production of Chlordane. (2nd)
K098—Untreated process wastewater from the production of Toxaphene. (2nd)
K105—Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes. (2nd)

The Agency has not completed its evaluation of BDAT for these wastes and is not proposing treatment standards at this time. RCRA 3004(g)(6) (42 USC 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if the facility meets certain statutory requirements and only until May 8, 1990. These requirements have been termed the "soft hammer" provisions. Since the Agency will not promulgate standards for K041, K042, K097, K098 and/or K105 wastes by their statutory deadline, land disposal of these wastes shall be regulated by the "soft hammer" provisions.

In other sections of this preamble, the Agency outlines the regulatory framework for management of these "soft hammer" wastes and discusses its interpretation of the terms "treatment", "facility", and "practical" as stated in RCRA 3004(g)(6).

The Agency believes that the majority of these wastes, as generated, are nonwastewaters (greater than 1.0% TOC) containing relatively high concentrations of chlorinated organics. In addition, EPA believes that the majority of these wastes contain high enough concentrations of halogenated organics (greater than 0.1%), that they should already be restricted from land disposal according to the California List rule for Halogenated Organic Compounds (HOCs).

Information available to the Agency indicate that generation of these wastes may have ceased. However, the Agency believes that there will be a need to develop numerical treatment standards for this treatability group because of the probability of requiring disposal for some of the out-of-date pesticides (as defined by § 261.33) and residues from previous management of these wastes. In order to reduce the number of anticipated variance petitions from this type of situation, EPA believes that numerical standards are the preferred option. The strategy for the transfer of standards is also discussed in the section discussing U and P Halogenated Organics Treatability Group.

1. *Toxaphene and Chlordane Wastes.* The Agency has determined that K041, K097 and K098 wastes are representatives of a treatability group that also includes wastes identified as D015, K032, K033, K034, P123 (Toxaphene) and U036 (Chlordane). This group of wastes contain varying concentrations of the multiple component halogenated pesticides toxaphene and/or chlordane. The reasoning behind this grouping can be found in the discussion of Multiple Component Halogenated Pesticides for U and P wastes.

EPA may also propose treatment standards based on the transfer of performance data from the incineration of PCBs (polychlorinated biphenyls). Toxaphene and Chlordane are similar to PCBs, in that they all are mixtures of many isomers of polyhalogenated organics. Typical analytical procedures for all three of these involve pattern recognition of these multiple components using GC/ECD analyses. The Agency has not completed the analysis of any of these data, and is not proposing standards for these wastes at this time.

2. *2,4,5-T Wastes.* While K042 wastes are from the production of 2,4,5-T, the listing appears to indicate that the wastes should be expected to contain tetrachlorobenzene. The Agency anticipates that numerical standards can be transferred from the development of standards for K105 (see the discussion of this waste that follows)

and possibly from the development from chlorinated phenolic wastes such as K043 or K099 (due to structural similarities of 2,4,5-T with the chlorinated phenolics contained in these wastes. The Agency questions whether a numerical standard for nonwastewaters is even necessary for these wastes and is soliciting comments on the possibility of establishing a "No Land Disposal Based on No Generation" for K042 wastes.

3. *Chlorobenzene Wastes.* K105 wastes, along with K085 wastes (distillation or fractionation column bottoms from the production of chlorobenzenes) are both listed wastes from the production of chlorobenzenes. K085 was originally scheduled for regulation with the First Third wastes. However, EPA did not propose or promulgate treatment standards for K085 wastes prior to August 8, 1988, due to the concern over the presence of greater than 50 ppm of Poly-Chlorinated Biphenyls (PCBs). The Office of Toxic Substances (OTS) currently requires waste containing greater than 50 ppm of PCBs to be incinerated in a TSCA approved PCB incinerator. OTS has some PCB test burn data at a facility that was also incinerating K085. EPA intends to develop standards for both K085 and K105 wastes based on transfer of PCB incineration performance data.

PCBs were often mixed with a mix of tri- and tetra-chlorobenzenes to form the mixtures that were used as PCB transformer fluids (Askarels). EPA anticipates proposing numerical treatment standards for the chlorobenzene constituents in K085 and K105 wastes as well as all chlorobenzene wastes based on direct transfer of incineration efficiencies for the chlorobenzenes contained in the PCB wastes. This information is currently considered TSCA confidential business information (CBI) and appropriate TSCA clearance procedures must be followed prior to use for matters involving only RCRA authority. Since these data will not be available in time for proposal of K085 or K105 with the Second Third wastes, land disposal of K085 wastes (as promulgated with the First Third wastes) shall continue to be regulated under the "soft hammer" provisions and K105 wastes will also be subject to these provisions.

If these data remains CBI, the Agency may not have sufficient time to develop a treatment standard for these wastes prior to May 8, 1990. The statutory requirements of RCRA referred to as the "hard hammer" will then restrict the waste from land disposal. However, if performance data on the incineration of K085 and other PCBs are submitted in response to this proposal as public information, there may be sufficient time to develop treatment standards prior to May 8, 1990. However, as an alternative, EPA may decide to allow the statutory provisions of the "hard hammer" to take effect, because 1986 data indicate that these wastes may no longer be land disposed. These data appear to conflict with the data submitted by the facility incinerating K085, since ash generated from incineration of K085, which remains K085 under the derived from rule, would be expected to require land disposal.

Other Organophosphorus Wastes.

K036—Still bottoms from toluene reclamation distillation in the production of Disulfoton (1st)
P039—Disulfoton (1st)
P040—Diethyl 2—pyrazinyl phosphorothioate (2nd)
P041—Diethyl-p-nitrophenyl phosphate (1st)
P043—Diisopropylfluorophosphate (2nd)
P044—Dimethoate (2nd)
P062—Hexaethyl tetraphosphate (2nd)
P071—Methyl parathion (1st)
P085—Octamethyl pyrophosphoramide (2nd)
P089—Parathion (1st)
P094—Phorate (1st)
P097 Famphur (1st)
P109—Tetraethyl dithiopyrophosphate (3rd)
P111—Tetraethyl pyrophosphate (2nd)
U058—Cyclophosphamide (2nd)
U087—O,O-Diethyl S-methyl dithiophosphate (3rd)
U235—tris-(2.3-Dibromopropyl) phosphate (2nd)

1. *Introduction.* EPA has grouped K036, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P097, P109, P111, U058, U087 and U235 wastes together due to similarities in structure and elemental content of the primary constituent of concern in each waste. All of the chemicals represented by these waste codes are organophosphorus compounds.

EPA has divided the U and P wastes into two groups. The first group includes P039, P071, P089, P094, P097 and U235. The Agency has determined that the organophosphorus chemicals represented by these codes are structurally similar to the organophosphorus pesticide, Disulfoton. Therefore, the Agency is proposing to directly transfer numerical standards from the incineration of K037 wastes (wastewater treatment sludge from the production of Disulfoton) to each of the individual U and P chemicals. Treatment standards for K037 wastewaters and nonwastewaters were promulgated on August 8, 1988. More information on the Agency's procedures for transferring treatment standards can be found in Section III.A.5 of this preamble as well as in the Background Document for these wastes.

2. *Development of Standards*—a. *Standards for P039, P071, P089, P094, P097 and U235.* The transfer of treatment standards for Disulfoton from K037 is particularly appropriate for P039 (Disulfoton) and for P094 (Phorate). The only structural difference between Phorate and Disulfoton is the additional methylene (-CH_2-) group in Disulfoton. This slight difference is believed to be insignificant with respect to the ability of the two pesticides to be incinerated. EPA thus believes the structural similarity is sufficient to support the transfer of standards. In addition, the Agency believes that Disulfoton is one of the most difficult organophosphorus chemicals in this entire group of organophorus compounds to incinerate. Given that Disulfoton can be effectively treated by incineration and that the chemicals in this group are structurally similar, the Agency believes that all the other wastes in this section can be effectively treated by incineration. Therefore, the Agency believes that the performance achievable by incineration represents BDAT for all of the above wastes and is proposing to transfer these standards to P039, P071, P089, P094, P097 and U235.

While the Agency believes that the K037 standards can be transferred to these wastes, it understands that a particular U or P waste may not contain the same constituents or concentration of the specific U or P chemical that were in the K037 waste that EPA incinerated. EPA also understands that the composition of U and P wastes can vary significantly. However, given the statutory time constraints that exist, the Agency cannot possibly test every single U and P chemical, nor can it be expected to account for this variability in waste characteristics. The Agency is therefore soliciting specific data on treatment of these wastes. The Agency also believes that the transfer of standards is the best alternative for these organophosphorus wastes.

b. Standards for P040, P041, P043, P044, P062, P085, P109, P111, U058 and U087. As with the first group of wastes, the Agency believes that incineration represents BDAT for these wastes. However, the Agency does not believe that numerical treatment standards can be established for these chemicals at this time. The major problem in establishing numerical standards for these chemicals is that EPA does Not currently have an analytical method that can analyze these chemicals in these treatment residues. In addition, EPA has not identified any organic constituents

in these wastes that could be used as a surrogate or as an indicator compound in order to develop numerical standards for these wastes. The Agency recognizes that there may be methods that may be used for the concentrated chemicals to verify purity and determine product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. As a result, a numerical treatment standard for these constituents is apparently not feasible. While there does not appear to be an approved method that is capable of detecting these compounds in incinerator ash, the Agency is investigating methods used by other EPA offices which may detect these compounds on food or in water. Since Section 3004(m) allows the Agency to establish either levels or methods of treatment, the Agency is proposing incineration as a method of treatment for this second group of U and P wastes. It is also important to point out that EPA requires that an incinerator burning any RCRA hazardous waste must meet the requirements specified in 40 CFR Part 264 Subpart O or Part 265 Subpart O.

P041, P043, P044 and P111 hydrolyze (break down quickly) in water making them difficult to analyze in wastewater forms of these wastes. Even though these compounds hydrolyze readily in water, the Agency lacks data on the effects of the hydrolysis products on the environment and does not have an approved analytical method to measure those products. Therefore, the Agency is not proposing hydrolysis as a method of treatment for these wastes. P062, U058, and P085 can only be analyzed by HPLC (High Pressure Liquid Chromatography). When compounds cannot be analyzed by GC, EPA is reluctant to transfer standards based on GC analysis unless practical equivalency can be demonstrated. In addition, since reference analytical compounds do not appear to be available for the chemicals represented by P040, P109 and U087, the Agency anticipates that problems with compliance and enforcement would preclude numerical standards from being proposed at this time.

As concentrated off-spec chemicals, most of the U and P wastes are toxic pesticides and contain relatively high levels of phosphorous and/or sulfur. Therefore, combustion units used for treating these wastes must be equipped with air pollution control devices that will control the combustion products of phosphorus and sulfur. Additionally, U058 (cyclophosphamide) and U235 (tris-[2,3-dibromopropyl] phosphate) are halogenated organic compounds. The elemental chlorine content of U058 is 27%, and the elemental bromine content of U235 is 69%. If concentrated, these wastes would be subject to the California list restrictions.

Carbon adsorption as a method of treatment for the wastewater forms of this second group of organophosphorus wastes is proposed as BDAT. The Agency believes that the wastewater forms of these wastes can easily be adsorbed due to the branched and ionic nature of their structures. After the adsorption, and before disposal, the carbon must be incinerated, and the standards for the nonwastewaters must be met.

The Agency believes that incineration and carbon adsorption are available because: (1) These technologies are commercially available or can be purchased from a proprietor and (2) these technologies achieve substantial reduction and removal of organic hazardous constituents in wastes judged to be more difficult to treat than those organics represented by these U and P chemicals.

Many of the U and P wastes can exist as concentrated off-spec chemicals. Depending on other constituents present, these forms of the wastes could potentially be dissolved in a suitable waste solvent and incinerated in a liquid injection system. However, EPA believes that in order to reduce the risk associated with dissolving these highly toxic chemicals, incineration in a rotary kiln may be a preferred choice of incineration unit (although this proposed rule allows any method of incineration). EPA is not precluding the dissolution of these chemicals. In cases where there is a significant volume of these chemicals, dissolution in a solvent may be necessary to reduce the emission of phosphorus and sulfur oxides or to increase the heat content (BTUs) of the waste in general. Due to the toxicity of these wastes, and the likelihood of phosphorus and sulfur oxide emissions, EPA is specifically requesting comment on the applicability of these wastes for fuel substitution.

The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these. In addition, because highly specialized recovery systems geared to the recovery of the specific pesticide would probably be required, it is unlikely that the Agency would consider proposing a treatment standard of "No Land Disposal Based on Recycling". The proposed rule, in any case, does not preclude recycling (provided the recycling does not involve burning as fuel or use constituting disposal; see § 261.33).

c. Standard for K036 wastewaters. On August 8, 1988, a treatment standard of "No Land Disposal Based on No Generation" was promulgated for nonwastewater forms of K036. While the same treatment standard was originally proposed for wastewater forms of K036, it was not promulgated because the Agency determined that K036 wastewaters could be generated as leachate from previously land disposed K036 (i.e., the basis of the standard, "no generation" of wastewaters, was not valid). Land disposal of K036 wastewaters is thus currently regulated under the "soft hammer" provisions. Although today's rule proposes standards for these wastewaters based on a direct transfer of numerical treatment standards from K037 wastewaters, the Agency is not reopening the comment period for the promulgated treatment standards for K036 nonwastewaters. The Agency has established variance procedures for those facilities that must land dispose these wastes and cannot meet the promulgated treatment standards. These procedures are outlined in other sections of today's rule.

BDAT TREATMENT STANDARDS FOR K036

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/l)	TCLP (mg/l)
Disulfoton	0.003	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P039, P071, P089, P094, P097 AND U235 RESPECTIVELY

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton (P039)	0.1	(1)
Methyl parathion (P071)	0.1	(1)
Parathion (P089)	0.1	(1)
Phorate (P094)	0.1	(1)
Famphur (P097)	0.1	(1)
tris-(2,3-Dibromopropyl) phosphate (U235)	0.1	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P039, P071, P089, P094, P097 AND U235 RESPECTIVELY

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton (P039)	0.003	(1)
Methyl parathion (P071)	0.003	(1)
Parathion (P089)	0.003	(1)
Phorate (P094)	0.003	(1)
Famphur (P097)	0.003	(1)
tris-(2,3-Dibromopropyl) phosphate (U235)	0.003	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Nonwastewaters]

INCINERATION AS A METHOD

BDAT TREATMENT STANDARDS FOR U AND P ORGANOPHOSPHORUS WASTES P040, P041, P043, P044, P062, P085, P109, P111, U058 AND U087

[Wastewaters]

CARBON ADSORPTION AS A METHOD

m. Phthalate U and P Wastes

U028—Bis-(2-ethylhexyl) phthalate (2nd)
U069—Di-n-butyl phthalate (3rd)
U088—Diethyl phthalate (3rd)
U102—Dimethyl phthalate (3rd)
U107—Di-n-octyl phthalate (2nd)
U190—Phthalic anhydride (3rd)

BDAT standards for all of these U and P wastes are proposed based on transfer of data on the performance of rotary kiln incineration for K024 nonwastewaters (distillation bottoms from the production of phthalic anhydride from naphthalene). Treatment standards for K024 wastewaters and nonwastewaters were promulgated with the First Third wastes on August 8, 1988. These standards were based on the performance of incineration of K024 nonwastewaters in a rotary kiln and the concentrations of hazardous constituents found in the ash and scrubber water residuals. In today's rule, the Agency is proposing to transfer these treatment standards to U028, U069, U088, U102, U107 and U190.

Except for U190 (i.e., phthalic anhydride; which forms phthalic acid by a simple reaction with water) all of these U and P wastes are esters of phthalic acid. These esters are commonly referred to as phthalates. The difference between these compounds is merely the number of methylene ($-CH_2-$) hydrocarbon groups on each ester group (i.e., diethyl phthalate has one more methylene on each ester group than dimethyl phthalate). EPA believes that these structural similarities, coupled with the fact that all of these compounds are anticipated to be easier to burn than phthalic acid, are sufficient evidence to support the transfer of the performance data for phthalic acid (from K024) to these individual U and P phthalates. Therefore, the Agency intends to propose treatment standards for each individual compound based on these data.

These U and P wastes are grouped as "phthalates" in order to solicit specific comments from manufacturers and users of phthalates regarding standards for these wastes. Several petitions have been submitted to EPA to remove certain phthalates from TSCA and SARA lists of hazardous materials. In addition, analyses for these constituents are often complicated by the high probability of cross-contamination by these constituents in the laboratory. They are common contaminants in plastics (such as plastic gloves used during the analyses) due to their presence as plasticizers.

While the proposed treatment standards for these U and P phthalate wastes are based on the performance of incineration of K024 in a rotary kiln, other treatment technologies such as fluidized bed incineration, fuel substitution units, biodegradation, and solvent extraction, that can achieve these standards are not precluded from use by this rule. Since all of these compounds consist only of carbon, hydrogen and oxygen, it is highly likely that these wastes could go to fuel substitution or to cement kilns as alternatives to incineration. The Agency is currently unaware of any alternative treatment or recycling technologies that have been examined specifically for these wastes and solicits data and comments on these.

EPA received no comments on the numerical treatment standards for K024. To date, no requests for a variance from these standards have been received. The Agency has data that indicate that there are relatively few generators of these U and P phthalate wastes. Information also suggests that most of these wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for the nonwastewater forms of those wastes that were not land disposed in 1986. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

EPA has determined that incineration in a rotary kiln will achieve a level of performance that represents the best demonstrated available treatment technology (BDAT) for nonwastewater forms of the U and P phthalate wastes. EPA promulgated treatment standards for K024 wastes based on analysis for phthalic acid and is proposing the same standards for wastes identified as K023, K093, and K094. While phthalic anhydride is the primary hazardous constituent in K023, K024, K093, and K094, it is readily hydrolyzed by water to phthalic acid. Thus, phthalic anhydride cannot be easily analyzed. However, there is an analytical method for phthalic acid. Thus, the treatment standards for K023, K024, K093, and K094 wastewaters and nonwastewaters are based on analyses for phthalic acid. This constituent, although not listed as a hazardous constituent in Part 261 Appendix VIII, was chosen as a surrogate compound for phthalic anhydride. EPA is also proposing the same BDAT treatment standards for wastes identified as U190, phthalic anhydride. The proposed standards for the other U and P phthalate wastes, are listed in the tables at the end of this section and are derived from a direct transfer of the numerical value for phthalic acid to the respective phthalate ester. The Agency believes that the relatively high numerical values for each individual phthalate will account for potential contamination problems (as previously discussed) that are anticipated from handling wastes that contain very high concentrations of these phthalates (i.e., the U and P wastes). All standards are based on analysis of total constituent concentration.

BDAT TREATMENT STANDARD FOR U AND P PHTHALATES U028, U069, U088, U102, U107 AND U190 RESPECTIVELY

[Nonwastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Bis-(2-ethylhexyl) phthalate (U028)	28	(1)
Di-n-butyl phthalate (U069)	28	(1)
Diethyl phthalate (U088)	28	(1)
Dimethyl phthalate (U102)	28	(1)
Di-n-octyl phthalate (U107)	28	(1)
Phthalic anhydride (U190) . . . (reported as phthalic acid)	28	(1)

[1] Not applicable.

BDAT TREATMENT STANDARD FOR U AND P PHTHALATES U028, U069, U088, U102, U107 AND U190 RESPECTIVELY

[Wastewaters]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Bis-(2-ethylhexyl) phthalate (U028)	0.54	(1)
Di-n-butyl phthalate (U069)	0.54	(1)
Diethyl phthalate (U088)	0.54	(1)
Dimethyl phthalate (U102)	0.54	(1)
Di-n-octyl phthalate (U107)	0.54	(1)
Phthalic anhydride (U190) . . . (reported as phthalic acid)	0.54	(1)

[1] Not applicable.

9. EPA's Strategy for Transferring Standards for All Remaining U and P Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for all of the remaining "U" and "P" wastes that have not been proposed to date or are proposed in other sections of today's preamble. This discussion is intended to give advance notice to the regulated community and to provide an opportunity to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this material with the heading "Comments on EPA's approach to remaining wastes".

The Agency is specifically soliciting comments on the approach to developing treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the treatment technologies including design and operating conditions.

a. Background and General Issues. Today's rule addresses several problems pertinent to the development of numerical treatment standards for "U" and "P" wastes [as defined in 40 CFR Section 261.33(e) and (f)]. In this section, the Agency presents options to resolve these problems. Other issues such as deficiencies in waste characterization, analytical complications, sporadic generation patterns, infrequent land disposal, potential necessity for dissolution prior to treatment, and difficulties in evaluation of recycling potential, are also presented.

The Agency believes that numerical treatment standards can be developed for the majority of "U" and "P" wastes based on existing data. EPA has grouped all of the "U" and "P" wastes into various treatability groups based on similarities in elemental composition (e.g., carbon, halogens and metals) and the presence of key functional groups (e.g., phenolics, esters, and amines) within the structure of the individual U or P chemical. In development of these treatability groups, the Agency also accounted for physical and chemical factors that are known to effect the selection of treatment alternatives and to effect the performance of the treatment, such as volatility and solubility. The use of the chemical (e.g. pesticides and pharmaceuticals) was also important in establishing these groups. By emphasizing the use of these chemicals, it allows the Agency to identify issues specific on these groups of chemicals, to target potential sources of data, and to solicit comments and data from specific industries and public interest groups.

1. Waste Characterization. Let us first examine the characteristics and nature of these wastes. EPA has designated a specific U or P waste code number referring to the specific chemical constituent associated with that code. EPA's listing sorts these wastes into two general hazard categories. Those wastes identified as P wastes are defined as "acute hazardous" wastes and those wastes identified as U wastes are defined as "toxic" wastes. The Agency has determined that these distinctions generally have no bearing on treatability nor do they contribute to the development of the treatability groups identified in this section.

As listed, these wastes are typically commercial products, off-specification species, container residues, or spill residues. These wastes can also exist as wastewater or nonwastewater treatment residues based on the derived-from or mixture rules. In addition, they are often identified as contents of lab packs. Within these lab packs, they have been identified as various complex mixtures of discarded concentrated chemicals, contaminated laboratory samples, old analytical laboratory standards and contaminated equipment.

EPA understands that the composition of these wastes can vary significantly. It recognizes that some U and P wastes may not contain the same constituents or concentration of the specific U or P chemical that was present in the waste from which numerical standards may be proposed to be transferred. However, given the statutory time constraints that exist, the Agency cannot possibly test every single U and P chemical nor can it expect to account for the anticipated variability in waste characteristics. The Agency believes that the transfer of data and development of numerical standards is the best alternative for these U and P wastes, with treatment variances available for exceptional cases, such as for wastes identified as contaminated soil and debris.

In order to comply with the land disposal restrictions requirements of HSWA, the Agency is considering proposing a method of treatment as opposed to a numerical treatment standard for wastes identified as contaminated equipment or debris. A detailed discussion regarding our rationale to specify a treatment technology is presented in the following section.

2. Analytical Complications. One significant problem with setting standards for U and P wastes is that for many, EPA does not have an analytical method that is approved by the Office of Solid Waste. For others, there are apparently no analytical methods that are known to exist. The Agency recognizes (that these compounds do exist and that there are methods that may be used for the concentrated chemicals to verify purity and determining product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. As a result, a numerical treatment standard for some of these constituents is apparently not feasible.

In addition, many of these chemicals either react or degrade with water or leaching solutions, preventing the direct measurement of the U or P constituent in treatment residues. Whenever possible, EPA considered the possibility of using the reaction products or degradation products to develop numerical standards for these wastes (e.g. cyanide for sodium cyanide and lead for lead phosphate). However, in some instances, there are apparently no "indicator" compounds that can be measured. An example of this problem is U223, toluene diisocyanate (TDI). Currently, EPA has no standard method to characterize TDI. TDI is a constituent that polymerizes very easily and hydrolyzes to become a toluene diamine (TDA) when reacted with water. Unfortunately, the Agency is unable to use TDA as an indicator of TDI presence, since EPA also lacks an approved standard method for TDA. The Agency, however, is currently examining available methods that would enable the characterization of TDI or identification of another indicator. If EPA is unable to develop a standard method or identify an indicator for TDI (U223), there will not be a way of verifying the performance of treatment based on analysis of treatment residues for TDI. Therefore, a numerical treatment standard for U223 may not be technically feasible. The Agency solicits information about analytical methods currently used by manufacturers and formulators for those U and P chemicals that EPA has no SW846 analytical methods.

3. Current Generation and Land Disposol Practices. The Agency has data that indicates that for some U and P wastes there may be relatively few generators. Information from the 1986 TSDR survey also suggests that some of these U and P wastes are not typically land disposed. The Agency considered proposing a treatment standard of "No Land Disposal Based on No Generation" for these. However, the Agency prefers to establish numerical standards whenever a transfer of standards can be reasonably performed.

This approach is particularly important for U and P wastes for several reasons. In particular, the sporadic nature of generation suggests that these wastes may be generated at any time and thus may require land disposal of treatment residues. While establishing a treatment standard of "No Land Disposal Based on No Generation", does provide an alternative of a petition for a variance to generators (see section III.A.6.), the Agency believes that there is a higher probability that a specific U or P waste may be sporadically generated rather than some of the F or K wastes for which the standard was originally developed. However, the Agency does believe that for some U and P wastes that have a very low probability of generation, this alternative may be feasible.

4. *Dissolution for Treatment.* Some of the discarded or off-specification U and P chemicals, when existing as concentrated chemicals or mixtures, in some circumstances, may be dissolved in a suitable solvent prior to treatment. Concentrated organic liquids and solids could be dissolved in an appropriate organic solvent (or waste solvent) and then incinerated in a liquid injection system. Concentrated inorganic chemicals and metal salts could be dissolved in water or acidic media and then be chemically oxidized or reduced, and precipitated as an insoluble salt.

EPA believes that to reduce the risk associated with dissolving these highly toxic chemicals, incineration of low volumes of these concentrated organic chemicals in a rotary kiln may be preferred. In addition, EPA is concerned about potential increases in waste volume due to this practice. However, EPA is not precluding the dissolution of these chemicals where this dissolution is environmentally the best practice. In cases where there is a significant volume of these chemicals, dissolution in a solvent may be necessary in order to reduce the acidic emission of halides or oxides of phosphorus, nitrogen, or sulfur. The dissolution may also be necessary to increase the heat content of the waste.

5. *Recycling Potential.* The Agency believes that recycling for some of the U and P wastes may be feasible. For example, an off-spec product can undergo further on-site processing rather than land disposal, can be sold as a low grade chemical product in the market, or can be exchanged as a raw material to other industries participating in a hazardous waste exchange program. Other U and P wastes may require further treatment prior to recycling (e.g., U and P wastes that tend to polymerize or solidify may need to be fluidized prior to reuse). Certain U and P wastes may not be amenable to recycling for a variety of reasons. The Agency solicits data and information to identify those U and P wastes amenable to recycling. EPA does not intend to preclude the recycling of any of these wastes.

b. Halogenoted Organics Treatability Groups. Many of the U and P wastes fall under a general treatability group of Halogenated Organics. Within this general group are six different individual treatability groups based primarily on similarities in their structure, their industrial use or generation, and the presence of certain functional groups. Various issues associated with each treatability group are discussed below. The U and P chemicals are grouped into chlorinated aliphatics, chlorinated phenols, single component halogenated pesticides, multiple component halogenated pesticides, chlorobenzene wastes, and miscellaneous halogenated organic wastes, which are presented in Table I through Table 6.

For the chlorinated aliphatics treatability group, EPA anticipates transferring performance data from the rotary kiln incineration of K019 or F024 wastes to these chemicals. The Agency believes that, since F024 wastes are specifically wastes from the production of chlorinated aliphatics and K019 contained high concentrations of many of the specific U and P chlorinated aliphatics, this transfer is justified.

The solubility of chlorinated phenols, which will affect wastewater treatment, depends heavily on the pH. Data available from the incineration of K043 wastes (from the production of 2,4-D) show the effectiveness of incineration for various halogenated phenolics. The Agency anticipates extrapolating data from K043 wastes to the other phenols.

Some of the single component halogenated pesticides listed in table 3 are no longer marketed or are banned from use. The Agency will analyze data available to the Office of Pesticides and Toxic Substances on the generation and treatment of these wastes.

The multiple component halogenated pesticide wastes are generally restricted and are produced for use outside of the United States. Treatment standards for wastes from the production of these multiple component halogenated pesticides are discussed elsewhere in this preamble. Treatment standards for P123 and U036 are expected to be similar to those promulgated for those wastes.

The Agency anticipates extrapolating performance data from incineration of PCB wastes to all chlorobenzenes. The PCBs burned in this test reflect the mixture of tri- and tetra-chlorobenzenes used in transformers (Askarels). Further

discussion of the transfer of this data can be found elsewhere in this preamble.

For the miscellaneous halogenated organic wastes, the Agency expects to transfer data from ethylene dibromide, due to its low heat of combustion. Because there is no other correlation which can be used for this broad category of wastes, the Agency believes that basing the treatment standard on one of the most difficult to incinerate wastes represents the best option. Halogens or hydrogen halides can be expected to be emitted from hazardous waste incinerators, but can be controlled by the use of scrubbers and other air pollution control equipment.

TABLE 1.—CHLORINATED ALIPHATIC WASTES

U044—Chloroform	(1st)
U074—1,4-Dichloro-2-butene	(1st)
U076—1,1-Dichloroethane	(3rd)
U077—1,2-Dichloroethane	(1st)
U078—1,1-Dichloroethylene	(1st)
U079—1,2-Dichloroethylene	(3rd)
U080—Methylene chloride	(2nd)
U083—1,2-Dichloropropane	(2nd)
U084—1,3-Dichloropropene	(3rd)
U131—Hexachloroethane	(2nd)
U184—Pentachloroethane	(3rd)
U208—1,1,1,2-Tetrachloroethane	(2nd)
U209—1,1,2,2-Tetrachloroethane	(1st)
U210—Tetrachloroethylene	(1st)
U211—Carbon tetrachloride	(1st)
U226—1,1,1-Trichloroethane	(1st)
U227—1,1,2-Trichloroethane	(1st)
U228—Trichloroethylene	(1st)
U243—Hexachloropropene	(3rd)

TABLE 2.—CHLORINATED PHENOLIC WASTES

U039—p-Chloro-m-cresol	(3rd)
U048—2-Chlorophenol	(3rd)
U081—2,4-Dichlorophenol	(3rd)
U082—2,6-Dichlorophenol	(3rd)
U240—2,4-D salts and esters	(3rd)

TABLE 3.—SINGLE COMPONENT HALOGENATED PESTICIDE WASTES

P004—Aldrin	(1st)
P037—Dieldrin	(1st)
P050—Endosulfan	(1st)
P051—Endrin	(3rd)
P057—2-Flouroacetamide	(2nd)
P058—Fluoracetic acid, sodium salt	(1st)
P059—Heptachlor	(1st)
P060—Isodrin	(2nd)
U038—Chlorobenzilate	(3rd)
U060—DDD	(2nd)
U061—DDT	(1st)
U062—Diallate	(2nd)
U066—1,2-Dibromo-3-chloropropane	(1st)
U097—Dimethylcarbomyl chloride	(2nd)
U128—Hexachlorobutadiene	(2nd)
U129—Lindane	(1st)
U130—Hexachlorocyclopentadiene	(1st)
U132—Hexachlorophene	(3rd)
U142—Kepone	(2nd)
U185—Pentachloronitrobenzene	(1st)
U247—Methoxychlor	(3rd)

TABLE 4.—MULTIPLE COMPONENT HALOGENATED PESTICIDE WASTES

P123—Toxaphene	(1st)
U036—Chlordane, technical	(1st)

TABLE 5.—CHLOROBENZENE WASTES

U037—Chlorobenzene	(1st)
U070—1,2-Dichlorobenzene	(2nd)
U071—1,3-Dichlorobenzene	(3rd)
U072—1,4-Dichlorobenzene	(3rd)
U183—Pentachlorobenzene	(3rd)
U207—1,2,4,5-Tetrachlorobenzene	(3rd)
U127—Hexachlorobenzene	(2nd)

TABLE 6.—MISCELLANEOUS HALOGENATED ORGANIC WASTES

P016—bis-(Chloromethyl) ether	(1st)
P017—Bromoacetone	(3rd)
P023—Chloroacetaldehyde	(3rd)
P024—p-Chloroaniline	(3rd)
P026—1-(o-Chlorophenyl) thiourea	(2nd)
P027—3-Chloropropionitrile	(2nd)
P028—Benzyl chloride	(3rd)
P118—Trichloromethanethiol	(3rd)
U006—Acetyl chloride	(3rd)
U017—Benzal chloride	(3rd)
U020—Benzenesulfonyl chloride	(2nd)
U024—bis-(2-Chloroethoxy) methane	(3rd)
U025—Dichloroethyl ether	(2nd)
U026—Chloronaphazine	(2nd)
U027—bis-(2-Chloroispropyl) ether	(3rd)
U030—4-Bromophenyl phenyl ether	(3rd)
U034—Trichloroacetaldehyde	(3rd)
U041—n-Chloro-2,3-epoxypropane	(1st)
U042—2-Chloroethyl vinyl ether	(3rd)
U046—Chloromethyl methyl ether	(1st)
U047—2-Chloronaphthalene	(2nd)
U049—4-Chloro-o-toluidine hydrochloride	(2nd)
U067—Ethylene dibromide	(1st)
U068—Dibromomethane	(3rd)
U073—3,3'-Dichlorobenzidine	(2nd)
U138—Iodomethane	(2nd)
U156—Methyl chlorocarbonate	(3rd)
U158—4,4-Methylene-bis-(2-chloroaniline)	(1st)
U192—Pronamide	(1st)
U222—o-Toluidine hydrochloride	(3rd)
U225—Bromoform	(3rd)

c. Combustible U and P Waste Treatability Groups. BDAT standards for these wastes are anticipated to be based on incineration data available to the Agency. Since these wastes have very high BTU values, they might be expected to be well suited for fuel substitution purposes. However, despite the fact that these compounds consist only of hydrogen and carbon and have a high heating value, some of these wastes may be unacceptable for fuel substitution due to their relatively high toxicity.

Data from the incineration of K024 (Distillation bottoms from the production of phthalic anhydride from naphthalene) is anticipated to be extrapolated to each individual polynuclear aromatic hydrocarbon. The structural similarities between these polynuclear aromatics are believed to be sufficient to support the transfer of these standards (i.e., they are hydrocarbons generally consisting of fused benzene rings). Detection limits for those compounds that have standard analytical methods will be checked against the data for K024 wastewaters and nonwastewaters. Information suggests that the majority of these waste codes are not typically land disposed and may not be generated. One option open to the Agency for these codes is "No Land Disposal based on No Generation". However, since U and P wastes are generated sporadically, the Agency prefers to determine numerical standards whenever a reasonable transfer of performance data can be supported.

It is doubtful that recycling is available for these wastes. Highly specialized recovery systems, geared to recovery of a specific compound, would probably be required. Polynuclear aromatic hydrocarbons are grouped together to solicit specific comments regarding their toxicity and its relation to the standards for these wastes. Standards for these wastes are anticipated to be complicated by the fact that these compounds are generally more toxic than most hazardous chemicals. In fact, some are listed as Class A carcinogens. In addition, analyses for these constituents are complicated by the possibility that these compounds are generated during the combustion process as products of incomplete combustion. Other hazardous and nonhazardous wastes may actually contribute to the formation of these constituents. Therefore, it may be difficult to establish BDAT standards for these compounds which may be generated during the incineration process.

TABLE 7.—AROMATIC AND POLYCYCLIC HYDROCARBON WASTES

U005—2-Acetylaminofluorene	(2nd)
U016—Benz(c)acridine	(1st)
U018—Benz(a)anthracene	(1st)
U019—Benzene	(1st)
U022—Benzo(a)pyrene	(1st)
U050—Chrysene	(1st)
U055—Cumene (isopropylbenzene)	(3rd)
U056—Cyclohexane	(3rd)
U063—Dibenzo(a,h)anthracene	(1st)
U064—1,2:7,8 Dibenzopyrene	(1st)
U094—7,12-Dimethyl benz[a]anthracene	(2nd)
U120—Fluoranthene	(3rd)
U137—Indeno(1,2,3-c,d)pyrene	(1st)
U157—3-Methylcholanthrene	(1st)
U165—Naphthalene	(2nd)
U220—Toluene (methyl benzene)	(1st)
U239—Xylenes (dimethyl benzenes)	(2nd)

TABLE 8.—OXYGENATED HYDROCARBON WASTES

U001—Acetaldehyde	(3rd)
U002—Acetone	(2nd)

TABLE 8.—OXYGENATED HYDROCARBON WASTES—Continued

U004—Acetophenone	(3rd)
U031—n-Butanol	(1st)
U051—Creosote	(1st)
U052—Cresols	(3rd)
U057—Cyclohexanone	(2nd)
U085—1,2:3,4-Diepoxybutane	(3rd)
U101—2,4-Dimethylphenol	(2nd)
U108—1,4-Dioxane	(1st)
U112—Ethyl acetate	(3rd)
U117—Ethyl ether	(3rd)
U122—Formaldehyde	(1st)
U123—Formic acid	(3rd)
U124—Furan	(1st)
U125—Furfural	(3rd)
U126—Glycidaldehyde	(3rd)
U140—Isobutanol	(2nd)
U147—Maleic anhydride	(2nd)
U154—Methanol	(1st)
U159—Methyl ethyl ketone	(1st)
U160—Methyl ethyl ketone peroxide	(3rd)
U161—Methyl isobutyl ketone	(2nd)
U166—1,4-Naphthoquinone	(3rd)
U182—Paraldehyde	(3rd)
U188—Phenol	(1st)
U197—p-Benzoquinone	(3rd)
U201—Resourcinol	(3rd)
U213—Tetrahydrofuran	(2nd)

d. Organo-Nitrogen and Organo-Sulfur Treatability Groups. This group of wastes includes the nonhalogenated pesticides, nitro-organics, amines, nitriles and other organics, and the organo-sulfur wastes. The Agency is currently investigating rotary kiln incineration as treatment for these wastes. The Agency is concerned, however, with nitrogen and sulfur emissions generated from the incineration of these wastes.

One significant problem with setting standards for the pesticide wastes is that EPA does not have an analytical method that is approved by the Office of Solid Waste. The Agency recognizes that these compounds do exist and that there may be methods that may be used for the concentrated chemicals to verify purity and determine product specifications. However, there are often no analytical procedures for the measurement of trace quantities of these chemicals either in environmental samples or in residues from treatment. The organo-sulfur and organo-nitrogen wastes are not easily analyzed by gas chromatographic (GC) methods, because the compounds are polar, highly branched, and have high molecular weights. They tend to stick on most columns, although special columns may be suitable. They may also thermally decompose in the GC. This may necessitate specifying a method of treatment rather than determining numerical standards for these wastes. These wastes are grouped here to solicit comment and data on their generation and treatment.

TABLE 9.—NONHALOGENATED PESTICIDE WASTES

P001—Warfarin (>0.3%)	(1st)
P018—Brucine	(1st)
P020—Dinoseb	(1st)
P045—Thiolanox	(3rd)
P066—Methomyl	(2nd)
P070—Aldicarb	(1st)
P072—1-Naphthyl-2-thiourea (Barrtu)	(2nd)
P088—Endothall	(3rd)
U011—Amitrole	(2nd)
U014—Auramine	(2nd)
U114—Ethylene bis-dithiocarbamic acid	(2nd)
U244—Thiram	(2nd)
U248—Warfarin (<0.3%)	(1st)

TABLE 10.—NITRO-ORGANICS

P034—2-Cyclohexyl-4,6-dinitrophenol	(3rd)
P047—4,6-Dinitro-o-cresol and salts	(3rd)
P048—2,4-Dinitrophenol	(1st)
P077—p-Nitroaniline	(3rd)
U105—2,4-Dinitrotoluene	(1st)
U106—2,6-Dinitrotoluene	(2nd)
U169—Nitrobenzene	(2nd)
U170—4-Nitrophenol	(2nd)
U171—2-Nitropropane	(1st)
U181—5-Nitro-o-toluidine	(3rd)
U234—sym-Trinitrobenzene	(3rd)

TABLE 11.—AMINES

P046—a,a-Dimethylphenethylamine	(3rd)
P082—N-Nitrosodimethylamine	(1st)
P084—N-Nitrosomethylvinylamine	(1st)
U012—Aniline	(1st)
U021—Benzidine	(2nd)
U091—3,3'-Dimethoxybenzidine	(3rd)
U092—Dimethyl amine	(2nd)
U093—p-Di,methylaminoazobenzene	(2nd)
U095—3,3'-Dimethylbenzidine	(2nd)
U110—Dipropylamine	(2nd)
U111—Di-n-propylnitrosoamine	(2nd)
U167—1-Naphthylamine	(3rd)
U168—2-Naphthylamine	(2nd)
U172—N-Nitroso-di-n-butylamine	(2nd)
U173—N-Nitroso-diethanolamine	(2nd)
U174—N-Nitroso-diethylamine	(2nd)
U179—N-Nitrosopiperidine	(2nd)
U180—N-Nitrosopyrrolidine	(1st)
U191—2-Picoline	(3rd)
U194—n-Propylamine	(3rd)
U196—Pyridine	(2nd)

TABLE 12.—NITRILES AND OTHER ORGANO-NITROGENS

P031—Cyanogen	(3rd)
P033—Cyanogen chloride	(3rd)
P069—Methyllactonitrile	(1st)
U246—Cyanogen bromide	(3rd)
P064—Isocyanic acid, methyl ester	(3rd)
P101—Propanenitrile/ethyl cyanide	(3rd)
U003—Acetonitrile	(2nd)
U148—Maleic hydrazide	(3rd)
U149—Malonitrile	(2nd)
U176—N-Nitroso-N-ethylurea	(2nd)
U177—N-Nitroso-N-methylurea	(1st)

TABLE 12.—NITRILES AND OTHER ORGANO-NITROGENS—Continued

U178—N-Nitroso-N-methylurethane	(2nd)
U236—Trypan blue	(3rd)
U238—Ethyl carbamate	(1st)

TABLE 13.—ORGANOSULFUR WASTES

P002—1-Acetyl 2-thiourea	(2nd)
P014—Benzene thiol (Thiophenol)	(2nd)
P022—carbon disulfide	(3rd)
P049—2,4-Dithiobiuret	(2nd)
P093—N-Phenylthiourea	(3rd)
P116—Thiosemicarbazide	(3rd)
U116—Ethylene thiourea	(2nd)
U119—Ethyl methane sulfonate	(2nd)
U193—1,3-Propane sultone	(2nd)
U218—Thioacetamide	(2nd)
U219—Thiourea	(1st)

e. Wastes of a Pharmaceutical Nature. Information strongly suggests that these wastes are not land disposed. The treatment standard of "No Land Disposal Based on No Generation" appears to be the best alternative for these wastes. Some of these wastes are experimental drugs which were never produced in volume. Others have pesticidal uses. They are grouped as "pharmaceutical in nature" in order to solicit specific comments from the pharmaceutical industry regarding standards for these wastes.

TABLE 14

P007—Muscimol (5-Aminoethyl 3-isoxazo-lol).	(2nd)
P008—4-Aminopyridine	(2nd)
P042—Epinephrine	(3rd)
P075—Nicotine and salts	(3rd)
P108—Strychnine and salts	(1st)
U010—Mitomycin C	(1st)
U015—Azaserine	(2nd)
U035—Chlorambucil	(2nd)
U059—Daunomycin	(2nd)
U089—Diethyl stilbestrol	(1st)
U090—Dihydrosafrole	(3rd)
U141—Isosafrole	(3rd)
U143—Lasiocarpine	(2nd)
U150—Melphalan	(2nd)
U155—Methapyrilene	(1st)
U163—N-Methyl N-nitro N-nitroguanidine	(2nd)
U164—Methylthiouracil	(2nd)
U187—Phenacetin	(3rd)
U200—Reserpine	(1st)
U202—Saccharin and salts	(3rd)
U203—Safrole	(2nd)
U206—Streptozotocin	(2nd)
U237—Uracil mustard	(1st)

f. Reactive Treatability Groups. These wastes are either highly reactive or explosive, or they are polymers, which also tend to be highly reactive. A good

example of reactive/explosive wastes under this group is P081 (nitroglycerin). EPA intends to propose a testing strategy for these wastes as a comprehensive strategy for all wastes that are reactive. These wastes pose a significant risk during handling due to their reactivity. This is reflected by the fact that there are no standard EPA methods for testing for reactivity. Because of the difficulties in handling and analyzing these wastes, the Agency may only propose a testing strategy with the Third Third and solicit data and comment. Specific discussion of the proposed strategy can be found in the section on Characteristic Wastes under D003 Reactive Wastes. Removing of the property of reactivity (deactivation) seems to be an applicable treatment for these wastes. Another option for the treatment of these wastes is incineration in a rotary kiln. The Agency believes that these wastes can be effectively treated by deactivation; however additional data is necessary to complete a full characterization of these wastes in terms of generation, waste characteristics, and current treatment and disposal practices.

TABLE 15.—POLYMERIC WASTES

P003—Acrolein	(2nd)
P005—Allyl alcohol	(1st)
P054—Ethyleneimine (Aziridine)	(2nd)
P067—2-Methylaziridine	(2nd)
P102—Propargyl alcohol	(1st)
U007—Acrylamide	(1st)
U008—Acrylic acid	(2nd)
U009—Acrylonitrile	(1st)
U053—Crotonaldehyde	(1st)
U113—Ethyl acrylate	(3rd)
U118—Ethyl methacrylate	(3rd)
U152—Methacrylonitrile	(3rd)
U162—Methyl methacrylate	(2nd)
U186—1,3-Pentadiene	(3rd)
U221—Toluenediamine	(1st)
U223—Toluene diisocyanate	(1st)

TABLE 16.—EXPLOSIVE OR HIGHLY REACTIVE WASTES

P006—Aluminum phosphide	(3rd)
P009—Ammonium picrate	(3rd)
P015—Beryllium dust	(1st)
P068—Methyl hydrazine	(1st)
P073—Nickel carbonyl	(3rd)
P081—Nitroglycerin	(1st)
P087—Osmium tetroxide	(1st)
P105—Sodium azide	(1st)
P107—Strontium sulfide	(2nd)
P112—Tetranitromethane	(2nd)
P122—Zinc phosphide (>10%)	(1st)
U023—Benzotrichloride	(2nd)
U086—N,N-Diethylhydrazine	(1st)
U096—a,a-Dimethyl benzyl hydroperoxide	(3rd)
U098—1,1-Dimethylhydrazine	(2nd)
U099—1,2-Dimethylhydrazine	(2nd)
U103—Dimethyl sulfate	(1st)
U109—1,2-Diphenylhydrazine	(2nd)
U133—Hydrazine	(1st)
U189—Phosphorus sulfide	(2nd)
U249—Zinc phosphide (<10%)	(1st)

g. Gaseous Waste Treatability Group. While many of these gases are highly toxic, it is unlikely that they will exist as wastes which require land disposal. The wastes listed below are typically found as gaseous materials when existing at high concentrations. Since it is difficult to "spill" a gas on soil or in water, it is unlikely that these wastes could exist as spill residues. While these compounds may exist as aqueous or organic solutions, the solutions may not be considered the listed product. The original listing specifically excluded chemical products that simply contained U or P constituents. However, EPA is concerned about the possibility that full containers of these wastes may have to be disposed of in a cleanup situation. EPA solicits comments from anyone who feels they may be land disposing these wastes or may have to do so in the future.

Information suggests that the majority of these waste codes are not typically land disposed and may not even be generated. The treatment standard of "No Land Disposal Based on No Generation" appears to be the best alternative for these wastes. The Agency has not yet identified any treatment technology for these wastes. They are grouped as "gases" in order to solicit comments specific to gases.

Numerical standards for these wastes would be complicated by the fact that these compounds are gases. While some analytical techniques do exist, the fact that they are gases complicates the analysis of treatment residuals. The sampling and analysis procedures for these constituents would have to minimize potential losses.

TABLE 17.—GASEOUS TREATABILITY GROUP

P056—Fluorine	(3rd)
P076—Nitric oxide	(3rd)
P078—Nitrogen dioxide	(3rd)
P095—Phosgene	(3rd)
P096—Phosphine	(3rd)
U029—Methyl bromide	(1st)
U033—Carbonyl fluoride	(3rd)
U043—Vinyl chloride	(1st)
U045—Chloromethane	(3rd)
U075—Dichlorodifluoromethane	(3rd)
U115—Ethylene oxide	(1st)
U121—Fluorotrichloromethane	(3rd)
U134—Hydrofluoric acid	(1st)
U135—Hydrogen sulfide	(2nd)
U153—Methanethiol	(3rd)

h. Metal Waste Treatability Group. This treatability group includes wastes containing metallic compounds. These compounds include metallic salts, organometallics, and bimetallic compounds.

Analytical methods generally measure only the toxic metal, and do not determine which compound the metal is in. For example, given a mixture of chromium nitrate and chromium sulfate, the method will measure chromium but not determine whether it is in the sulfate or nitrate form. Therefore, the Agency cannot promulgate treatment standards for the specific compound listed. The Agency intends to propose treatment standards as concentrations of the specific metal in the waste, either as a total constituent analysis or as concentration in the waste extract. The Agency believes that by regulating the metal, the hazards associated with these compounds will be controlled. For example, the Agency believes that by regulating total chromium in U032, calcium chromate, the hazards associated with that waste will be regulated. Note that in the case of P114, Thallium Selenite, treatment standards for both total thallium and total selenium would be necessary for regulating its concentration. There will be specific codes which require other considerations, such as P065, mercury fulminate, which also exhibits the characteristic of reactivity. These issues will be dealt with on a code specific basis. The Agency requests comment on the appropriateness of regulating only the toxic metal constituents in these wastes.

The Agency has several regulatory options for these wastes. Performance data is available from treatment of various F and K wastes, which contained these metals. The Agency intends to investigate the appropriateness of transferring this performance data to these wastes. Another option for these U & P wastes would be to determine the applicability of the characteristic levels of the "D wastes" as a performance standard.

While characterization data on the U & P forms of these wastes is limited, performance data from other wastes containing similar compounds and having similar waste characteristics which affect performance may be transferred in order to set performance standards.

Another problem is that many of these compounds will dissociate upon contact with water. This dissociation further complicates the ability to identify the specific compound listed. In cases where the compound dissociates in water, quantitative analysis for the metal constituent is believed to be an effective measure of the concentration of the compound.

With regard to specific metals: the Agency already possesses substantial data on the treatment of chromium in wastes. For U032, calcium chromate, a chromium standard would regulate the compound by assuring a certain concentration in the waste and/or leachate.

The behavior of mercury also causes treatment performance obstacles. First, mercury is a liquid at room temperature with appreciable vapor pressure. The Agency has performance data on stabilization techniques which imply that only low levels of mercury (<100 ppm) can be reduced in mobility. Since spills, off-spec materials, and container residues are expected to contain higher levels than this, it cannot be expected that these materials will be effectively immobilized by stabilization techniques.

TABLE 18.—METAL WASTES

P010—Arsenic acid	(1st)
P011—Arsenic (V) oxide	(1st)
P012—Arsenic (III) oxide	(1st)
P036—Dichlorophenylarsine	(1st)
P038—Diethylarsine	(3rd)
P065—Mercury Fulminate	(3rd)
P092—Phenylmercuric acetate	(1st)
P103—Selenourea	(3rd)
P110—Tetraethyl lead	(1st)
P113—Thallic oxide	(2nd)
P114—Thallium Selenite	(2nd)
P115—Thallium (I) sulfate	(1st)
P119—Ammonium vanadate	(3rd)
P120—Vanadium pentoxide	(1st)
U032—Calcium chromate	(2nd)
U136—Cacodylic acid	(3rd)
U144—Lead acetate	(2nd)
U145—Lead phosphate	(3rd)
U146—Lead subacetate	(2nd)
U151—Mercury	(1st)
U204—Selenious acid	(3rd)
U205—Selenium disulfide	(2nd)
U214—Thallium (I) acetate	(2nd)
U215—Thallium (I) carbonate	(2nd)
U216—Thallium (I) chloride	(2nd)
U217—Thallium (I) nitrate	(2nd)

10. EPA's Approach for Developing BDAT Treatment Standards for Characteristic Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for characteristic wastes. This discussion is intended to give advance notice to the regulated community and to provide an opportunity for it to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this section with the heading "Comments on EPA's approach to remaining wastes".

The criteria for identifying a waste as a characteristic hazardous waste are defined in 40 CFR 261.21 through 261.24. These criteria identify four major groups of characteristic wastes: Ignitable (D001); Corrosive (D002); Reactive (D003); and EP Toxic (D004–D017). Within each of these groups, there are several criteria that define the particular characteristic. These individual criteria were used as the basis for identifying treatability groups (subcategories) within each major characteristic group.

The format for implementing BDAT standards for characteristic wastes may be different than that used for other wastes. This is because of a difference in the nature of hazardous waste status for these wastes. Wastes that are hazardous because they exhibit a characteristic are no longer considered hazardous if they are treated so that they no longer exhibit any of the characteristics § 261.3 (c)(1) and (d)(1). It is possible that the use of available technologies will, for many of these wastes, result in a residual that no longer exhibits any of the characteristics. In this case, the waste is no longer subject to the requirements of Subtitle C of RCRA. However, in some cases, treatment to remove one characteristic may result in a residue which has a different characteristic, and thus requires further treatment. Note that if the waste or the residual is mixed with a listed hazardous waste, it is considered to be a hazardous waste even if treated to remove all characteristics.

The Agency believes that there are three major options for evaluating potential standards for any characteristic waste code or subcategory. The first option is for EPA to propose numerical and/or "No Land Disposal" treatment standards. The second option is to propose a method or sequence of methods of treatment as BDAT. The third option is to not establish any treatment standard and thereby allow the "hard hammer" to go into effect (resulting in a ban of land disposal of the waste). Although EPA initially took the position that identified hazardous wastes (i.e., those that are hazardous exclusively by virtue of exhibiting a characteristic) are not subject to the section 3004(g)(C) hard hammer, See 51 FR 1607 n.4. (Jan. 14, 1986), EPA no longer holds this view. The reference in section 3004(g)(6)(C) appears to encompass all wastes for which EPA has an obligation to establish treatment standards under paragraph (g)(5), which includes identified hazardous wastes. In addition, the legislative history is unambiguous that Congress intended EPA to include identified wastes (i.e., those identified as of the effective date of HSWA) under the hard hammer. H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. (1984). Selection of these options vary depending on the particular subcategory of characteristic waste within each of the four major groups. The following discussions present the various issues and possible regulatory alternatives for each subcategory.

a. *D001 Ignitable Wastes.* According to 40 CFR 261.21, there are four criteria for defining a waste as a D001 Ignitable Waste. Paraphrasing these criteria, a waste can be a D001 waste if: (1) it is a liquid with a flash point less than 140°F; or (2) it is not a liquid and is capable of causing fire through friction, absorption of moisture, or spontaneous chemical changes and, when ignited, burns vigorously and persistently; or (3) it is an ignitable compressed gas; or (4) it is an oxidizer.

EPA determined that these four criteria translated directly into four treatability groups for D001 wastes. The first treatability group is classified as the Ignitable Liquids Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(1). The second treatability group is classified as the Ignitable Reactives Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(2). The third treatability group is classified as the Ignitable Gases Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(3). The fourth treatability group is classified as the Oxidizers Subcategory and refers to those D001 wastes that exhibit the properties listed in § 261.21(a)(4).

D001 wastes in the Ignitable Liquids Subcategory are primarily organic liquids. These include unlisted solvents, paint thinners, contaminated oils and various organic hydrocarbons. The majority of all D001 wastes that are generated can be identified as Ignitable Liquids. These wastes are generated by almost every industry and represent a significant proportion of all hazardous wastes. Ignitable Liquids are already banned from disposal in landfills due to existing regulations on ignitable wastes and on liquid wastes. While these wastes are not typically placed in other land disposal units, it is possible that small amounts of certain water soluble D001 wastes in this subcategory have been or are being placed in surface impoundments for the purposes of biodegradation.

The Agency believes that most D001 Ignitable Liquids are already being treated by incineration, reused as a fuel substitute (due to their high BTU content) or recovered for reuse through processes such as distillation. This

subcategory of D001 wastes has been defined as hazardous due to its low flash point. This is due directly to the chemical and physical properties of the organics in the waste. Any thermal technology such as incineration and reuse as a fuel will completely remove this characteristic of low flash point by destroying these organics, thereby rendering the waste nonignitable. Based on the fact that these techniques remove the characteristic of ignitability, EPA is anticipating proposing a treatment standard of "No Land Disposal Based On Thermal Destruction" for D001 Ignitable Liquids Subcategory. This standard would not establish thermal destruction as a mandatory process for handling D001 Ignitable Liquids, but rather it would prevent placement of these wastes in land disposal units by indicating that there are existing alternatives for management of these wastes.

The Agency specifically does not want to preclude anyone from using distillation or other recovery techniques for these wastes. At the same time, the Agency does not believe that most of these wastes are necessarily recoverable by processes such as distillation. While these options may be preferable over thermal destruction for some of these D001 wastes, the end result of "No Land Disposal" is the same. The choice between thermal destruction and recovery may then be made by the generator or treater, based on economics and on the ability of the particular recovery system to handle the waste.

It is important to point out that the residues, if any, from all of thermal destruction processes may possibly be considered other hazardous wastes. In particular, these ash residues may exhibit the characteristic of EP Toxicity for metals.

Some D001 Ignitable Liquids have been shown to contain some organic constituents that are also constituents in F001–F005 solvents. The Agency could propose to transfer the standards for these constituents from the corresponding standards for F001–F005 solvents promulgated in the November 7, 1986 Solvent Rule (51 FR 40642). However, the Agency believes that this would create an unnecessary burden on the regulated community in several ways. The majority of D001 wastes in the Ignitable Liquids Subcategory probably do not contain these constituents and those generators of D001 wastes that do not have these constituents would then be required to perform a significant amount of unnecessary testing and certification.

D001 wastes in the Ignitable Reactives Subcategory are primarily inorganic solids or wastes containing reactive materials. These include materials such as reactive alkali metals or metaloids (such as sodium and potassium), calcium carbide slags, and phosphorus. All of these are very reactive with water and will generate gases that can ignite due to heat generated from the reaction with water. Other ignitable solids in this subcategory include metals such as magnesium and aluminum that can vigorously react with the oxygen in the air. There appears to be an overlap of this D001 subcategory with certain D003 reactive wastes. However, a close examination of the definitions in § 261.21(a)(2) for ignitable wastes and § 261.23(a) (2), (3) and (6) for reactive wastes reveals the distinction. The key difference is found in the phrase "* * * when ignited, burns vigorously and persistently." for ignitable wastes. This implies that the hazard is due primarily to the ignition potential rather than the extreme reactivity. D001 Ignitable Reactives are generated on a sporadic basis and generally in low volumes. They are not typically placed in surface impoundments due to the fire danger associated with their reactivity with water.

Some of these D001 wastes, such as calcium carbide slag, are often placed in specially designed units (some may be technically classified as waste piles by the Agency) for the purposes of controlled deactivation with water. Other wastes, such as those containing reactive alkali metals (sodium) are often open detonated. The Agency believes that these D001 Ignitable Reactives are being treated in a manner that renders the waste nonignitable.

Unlike the Ignitable Liquids, all of the known treatment processes for the Ignitable Reactives may result in significant amounts of solid residues. These residues may or may not exhibit the characteristic of EP Toxicity for metals. Further, the Agency believes that development of any numerical treatment standards, based on either chemical deactivation or open detonation, would be difficult because there is no known analytical test that is designed to measure the ignitability of these reactive materials nor is there a test that distinguishes the reactive chemical from the deactivated chemical (e.g. sodium).

Based on the fact that open detonation and controlled chemical deactivation will remove the characteristic of ignitability for the D001 Ignitable Reactives, EPA is considering proposing these technologies as methods of treatments, rather than establishing a numeric standard.

Another approach that the Agency may take is to propose a "No Land Disposal Based on Deactivation" standard for these wastes. By establishing this as a treatment standard, the Agency believes that the variance procedures could be used as a method of providing a more complete evaluation of the safety hazards associated with each individual deactivation or open detonation procedure at each facility.

The Agency is soliciting comments and data on the physical and chemical characterization of these D001 Ignitable Reactives as well as on the applicability of chemical deactivation and open detonation to these wastes. Facilities with wastes in this subcategory that are not amenable to these techniques should submit data and information on the characteristics of these wastes and the technical justification for why the technologies are not amenable to their wastes.

D001 wastes in the Oxidizers Subcategory are primarily inorganic. These include wastes such as waste peroxides, perchlorates and permanganates. These wastes must meet the definition of an oxidizer according to 49 CFR 173.151. For D001 wastes in the Oxidizers Subcategory deactivation with an appropriate chemical reagent to render the waste nonignitable appears to be the primary applicable treatment option. At this time, the Agency has very limited information on the generation and characterization of D001 wastes in this subcategory. While it is possible that certain aqueous solutions of these oxidizers may be useful in the treatment of other hazardous wastes, the Agency believes that these wastes should be deactivated (or used as treatment reagents) in tanks and not in surface impoundments, due to the potential release of heat and volatile organics during the oxidation/reduction reactions. Therefore, the Agency is considering proposing a treatment standard of "No Land Disposal Based on Deactivation" for D001 wastes in the Oxidizers Subcategory.

D001 wastes in the Ignitable Gases Subcategory are those that meet the definition of an ignitable compressed gas according to 49 CFR 173.300. At this time, the Agency has very limited information on the generation and characterization of D001 wastes in this subcategory. The Agency suspects that while these wastes may be generated, it is unlikely that they would require placement in any type of land disposal

unit. Therefore, the Agency is seriously considering allowing the "hard hammer" provision to take effect for this subcategory.

b. *D002 Corrosive Wastes.* According to 40 CFR 261.22, there are two criteria for defining a waste as a D002 Corrosive waste. Paraphrasing these criteria, a waste can be a D002 waste if: (1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5; or (2) it is a liquid and corrodes steel at a specified rate and temperature.

EPA determined that these criteria translated into three treatability groups for D002 wastes. The first two treatability groups are classified as the Acid Subcategory and the Alkaline Subcategory and refer to those D002 wastes that exhibit the properties listed in § 261.22(a)(1). The two subcategories are distinguishable by the listed pH specifications and the obvious difference in neutralization reagent requirements. The Acid Subcategory is defined as those with a pH of less than or equal to 2 and the Alkaline Subcategory is defined as those with a pH of greater than or equal to 12.5. Also by definition, D002 wastes in the Acid Subcategory and Alkaline Subcategory only include wastes which are considered to be "aqueous". This is due to the fact that standard pH measurement can only be performed in the presence of significant amounts of water (i.e., pH is the measure of the concentration of acidic hydronium ions in water). The third treatability group is classified as the Other Corrosives Subcategory and is defined as those D002 wastes that exhibit the corrosivity to steel as listed in § 261.22(a)(2). These often are nonaqueous corrosive wastes such as certain organic liquids.

D002 wastes in the Acid Subcategory typically include concentrated spent acids, acidic wastewaters, and spent acid strippers and cleaners. Similarly, those wastes in the Alkaline Subcategory typically include concentrated spent bases, alkaline wastewaters, and spent alkaline strippers and cleaners. The majority of all D002 wastes that are generated are in the Acid Subcategory. However, a good proportion of D002 wastes generated are in the Alkaline Subcategory (particularly the strippers and cleaners). Wastes from both of these subcategories are generated by almost every industry and represent a significant proportion of all hazardous wastes. Wastes in the Other Corrosives Subcategory are generated on a sporadic basis and generally in low volumes. The Agency suspects that these wastes are often identified as corrosive without performing the specified testing with steel (i.e., the corrosivity of the waste may be assumed due the presence of known corrosive constituents). This may also be due, in part, to the high cost of testing and to the difficulties in identifying laboratories that are experienced in the steel corrosion testing.

The Agency believes that most D002 wastes in both the Acid and Alkaline Subcategories are already being treated by neutralization. These subcategories have been defined as hazardous due to their extremes in pH. Any neutralization technology will completely remove this characteristic of pH; thereby rendering the waste noncorrosive. Some facilities generate waste streams which fluctuate from the Acid Subcategory to the Alkaline Subcategory depending upon what process they use on a given day. However, the Agency believes that these facilities can utilize the fluctuations in pH as a means of performing on-site neutralization.

Based on the fact that these techniques remove the characteristic of corrosivity, EPA is anticipating proposing a treatment standard of "No Land Disposal Based on Neutralization" for both of these subcategories of D002 wastes.

Under the California List restrictions, the Agency has already promulgated regulations for liquid wastes having a pH of less than or equal to 2.0, by codifying the statutory restriction § 268.32. Therefore, some commenters may question the need for establishing a standard. However, these restrictions only referred to these wastes as "Corrosive wastes" without specifically identifying them as D002 wastes and the statutory restriction did not specify neutralization as a required treatment standard. The Agency is considering clarifying this by specifically proposing the "No Land Disposal Based on Neutralization" for the D002 Acid Subcategory. In addition, there were no restrictions established for D002 Alkaline Subcategory and the Agency has some concerns that there may be issues raised by industry that this standard may not be applicable to all D002 wastes in the Alkaline Subcategory. By identifying these as two different subcategories, it allows for potential differences in the development of standards due to potential issues that have yet to be identified.

It is important to point out that the residues from all neutralization processes may possibly be considered other hazardous wastes. In particular, the neutralization sludge residues may exhibit the characteristic of EP Toxicity for metals.

Neutralization is a preferred option over simple dilution. While dilution, which is currently allowed as a means of eliminating a hazardous waste characteristic, it often requires copious quantities of water or wastewaters. In addition, "dilution" of a RCRA hazardous corrosive waste to a neutral pH (i.e., as defined using a pH between 6.0 and 8.5) is currently not required. In considering the treatment standard for D002 wastes in these two subcategories, the Agency considered the possibility of establishing a standard of neutrality for these wastes (i.e., pH 6.0 to 8.5). However, previous RCRA regulations specifically state that dilution is acceptable for corrosive characteristic wastes and that elementary neutralization can be performed without certain RCRA permitting procedures. Thus, EPA believes that it cannot establish a numerical pH standard for D002 wastes based on neutralization, but instead, can only require removal of the corrosive characteristic which, in the case of the Acid and Alkaline Subcategories, means adjusting the pH to between 2.0 and 12.5.

As an alternative to this standard for both of these subcategories, the Agency is considering the simple proposal of neutralization as a method of treatment. However, by establishing the standard of "No Land Disposal Based on Neutralization", the Agency believes that a variance from this standard could be considered for D002 wastes which for some reason or another could not be effectively neutralized. This may occur for some small quantities of corrosive materials that contained quantities of extremely toxic or otherwise hazardous chemicals that may cause an unnecessary risk during neutralization.

Recovery options for these concentrated corrosive wastes have been demonstrated for a variety of wastes. While these options may be preferred over neutralization, the end result of no land disposal is the same. The choice between neutralization and recovery may be made by the generator or a centralized treatment operation, according to the applicability and performance of a given type of acid/base recovery system.

The smallest volume of D002 wastes fall under the Other Corrosives Subcategory. The physical and chemical characteristics of this group of wastes vary greatly. Overall, the wastes may be aqueous or they may be primarily organic. In addition, there exists a large variety of corrosive chemicals that may be appearing as constituents in this type

of corrosive waste. Wastes containing these chemicals may corrode SAE 1020 steel depending on the concentration of these chemicals in the waste. Examples of chemicals that may contribute to this corrosivity include: ferric chloride, benzene sulfonyl chloride, benzotrichloride, acetyl chloride, formic acid, hydrofluoric acid, phenol, triethylamine, some catalysts, various resins, metal cleaners and etchants.

As noted above, dilution is allowed in order to remove the characteristic of corrosivity. For D002 wastes in the Other Corrosives Subcategory, deactivation by dilution appears to be an applicable treatment option. Other applicable treatment options include deactivation of the corrosive constituents of the waste with an appropriate chemical reagent to render the constituent noncorrosive. Incineration of D002 wastes that contain high concentrations of corrosive organics is a common practice. However, due to the great variety of corrosive organics that exist, the Agency does not believe that it should establish chemical specific standards based on incineration for these D002 wastes. Removal and recovery of either organic or inorganic corrosive constituents may also be applicable technologies which could render these wastes noncorrosive. Recovery could involve extraction of the corrosive constituents, until the waste itself was no longer considered corrosive (to steel).

Based on this information, EPA presently intends to propose a treatment standard of "No Land Disposal Based on Deactivation" for D002 wastes in the Other Corrosives Subcategory. By establishing this standard, the Agency believes that a variance from it could then be considered for D002 wastes which for some reason could not be effectively deactivated. Dilution of these wastes could be considered a viable deactivation procedure provided no other technique could be identified.

EPA is currently conducting laboratory analysis of a waste which exhibits the characteristic of corrosivity that falls in the Other Corrosives Subcategory. This waste is a spent catalyst which contains a high level of ferric chloride suspended in a chlorinated organic phase. The Agency is conducting tests to chemically deactivate the waste through dilution to the point where it no longer corrodes steel. The volume increase resulting from this deactivation by dilution will be assessed prior to proposal of any treatment standards.

The Agency is soliciting comments and data on the physical and chemical characterization of all three subcategories of DO02 wastes as well as on the applicability of dilution, chemical deactivation, and recovery to these wastes. Facilities with wastes in these subcategories which are not amenable to neutralization or deactivation techniques should submit data and information on the characteristics of these wastes and the technical justification for why they are not amenable to neutralization or deactivation.

c. D003 Reactive Wastes. According to 40 CFR 261.23, there are eight criteria for defining a waste as a D003 Reactive waste. Paraphrasing these criteria, a waste can be a D003 waste if: (1) it is unstable and readily undergoes violent changes without detonating; or (2) it reacts violently with water; or (3) it forms potentially explosive mixtures with water; or (4) when mixed with water, it generates toxic gases; or (5) it is a cyanide or sulfide bearing waste which under certain conditions can generate toxic gases; or (6) it is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or (7) it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or (8) it is a forbidden explosive, a Class A explosive, or a Class B explosive.

EPA determined that these eight criteria translated directly into five treatability groups for D003 wastes. The first treatability group is classified as the Reactive Cyanides Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(5) for cyanide. The second treatability group is classified as the Explosives Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(6) through 261.23(a)(8). The third treatability group is classified as the Water Reactive Subcategory and refers to those D003 wastes that exhibit the properties listed in §§ 261.23(a)(2) through 262.23(a)(4). The fourth treatability group is classified as the Reactive Sulfides Subcategory and refers to those DO03 wastes that exhibit the properties listed in § 261.23(a)(5) for sulfide. The fifth treatability group is classified as the Other Reactives Subcategory and refers to those D003 wastes that exhibit the properties listed in § 261.23(a)(l).

D003 wastes in the Reactive Cyanides Subcategory are by definition those cyanide bearing wastes that generate toxic gases (assumed to be HCN) when exposed to pH conditions between 2 and 12.5 in a sufficient quantity to present a danger to human health and the environment. These D003 wastes typically have been identified as being generated by the electroplating and metal finishing industries and include mixed cyanide salts, cyanide solutions and cyanide bearing sludges. The majority of the quantity of all D003 wastes that are generated can be identified as belonging to the Reactive Cyanides Subcategory.

Reactive cyanide wastes are already restricted from disposal in landfills due to existing regulations on reactive wastes. Under the California List restrictions, the statute already prohibits liquid wastes having a free cyanide concentrations in excess of 1,000 mg/kg (ppm), from being land disposed, as codified in $268.31. However, these restrictions only referred to these wastes as "Cyanide wastes" without specifically identifying them as D003 wastes or any of the other wastes listed for containing cyanides. The statutory restriction did not specify any treatment technology nor did it establish the 1,000 mg/kg as a "treatment standard". While these reactive cyanide wastes are not typically placed in most types of land disposal units, it is possible that some have been or are being placed in surface impoundments.

The Agency believes that most D003 Reactive Cyanides are already being treated by alkaline chlorination or electro-oxidation. This subcategory of D003 wastes has been defined as hazardous due to its reactive level of cyanides. This is due directly to the high concentrations of the cyanides in the waste. Any oxidation/reduction technology such as alkaline chlorination or electro-oxidation is believed to be able to lower the concentration of cyanide so that the waste would probably not contain reactive levels of cyanides, thereby removing the hazardous characteristic. One of the options that EPA is considering for establishing treatment standards for wastes in the D003 Reactive Cyanides Subcategory is the direct transfer of numerical treatment standards for total and amenable cyanides from cyanide wastes from electroplating, heat treating, or acrylonitrile production (See also, section III.A.8.a. of today's preamble).

D003 wastes in the Explosives Subcategory are by definition those wastes that are capable of detonation or explosive reaction under various conditions or are forbidden Class A, or Class B explosives (according to 49 CFR 173.52, .53, and .88 respectively). These typically have been identified as being generated by the explosives industry and the U.S. Department of Defense. While these wastes are not as frequently generated as the Reactive Cyanides, they are generated more often than all other reactive subcategories. Explosives are already restricted from disposal in landfills due to existing regulations on reactive wastes. While these explosive wastes are not typically placed in most types of land disposal units, it used to be a very common practice to open detonate these wastes. In fact, the Agency believes that most D003 wastes that are generated in the Explosives Subcategory are currently treated by either open detonation or incineration in specially designed units. By simple deduction this process would be expected to remove the explosive characteristic of the D003 waste.

Incineration of D003 wastes in the Explosives Subcategory also appears to be an applicable technology. However, this requires incineration units that are specially designed and fitted with certain explosion-proof equipment. These type of units are not typically found at commercial incineration facilities. The Agency is aware that these types of units are currently used for many of the Department of Defense explosive wastes and that there appears to be a trend to decrease the reliance on open detonation for these wastes. However, at this time, the Agency is only in the initial investigation of these issues for these explosive wastes (with respect to the development of treatment standards for the land disposal restrictions program). While incineration appears to be a feasible option, the Agency is currently considering chemical deactivation and open detonation for the development of a treatment standard for these wastes. The Agency notes that it is unlikely that the Agency would preclude incineration in these specialized units by developing a proposed standard based on either chemical deactivation or open detonation.

D003 wastes in the Water Reactive Subcategory can be either organic or inorganic in nature. All of these are either very reactive with water or can generate toxic or explosive gases with water. While one might anticipate that an apparent applicable treatment technology for these wastes would be to react the wastes with water, these reactions are often very vigorous and extremely difficult to control. The most common treatment for these wastes is actually open detonation. It is theorized that the reactive organic constituents are destroyed by the explosion and that the reactive inorganic constituents form less hazardous oxides or react with other chemicals in the explosion (such as moisture from the air). Wastes in the Water Reactive Subcategory are generated on a sporadic basis and generally in low volumes. These wastes are not typically placed in land disposal units and are certainly not typically placed in surface impoundments due to their violent reactivity with water.

An approach that the Agency is considering is to propose a "No Land Disposal Based on Deactivation" standard for the D003 reactive wastes in Explosives Subcategory and Water Reactives Subcategory. By establishing this as a treatment standard, the Agency believes that the variance procedures could be used as a method of providing a more complete evaluation of the safety hazards associated with each individual deactivation or open detonation procedure at each facility. This may be the preferred approach, in that; (1) It appears to provide more assurance of the protection of human health and the environment at each individual site by providing a more extensive technical evaluation by regulatory personnel; (2) it allows the wastes to be treated by any treatment technology that may be developed (such as specially designed incineration units); and (3) it also bans most forms of land disposal.

D003 wastes in the Reactive Sulfides Subcategory are by definition those sulfide bearing wastes that generate toxic gases (assumed to be H_2S) when exposed to pH conditions between 2 and 12.5 in a sufficient quantity to present a danger to human health and the environment. At this time, the Agency is only in the initial investigation of these issues for these reactive wastes (with respect to the development of treatment standards for the land disposal restrictions program). Treatment for sulfide wastes might be to chemically convert the reactive sulfides to inert sulfur, to insoluble metallic salts, or to soluble sulfates that can be removed or recovered. The Agency believes that some of these wastes may also be contaminated with organic sulfides known as mercaptans. These malodorous chemicals are believed to complicate the treatment of these reactive sulfide wastes. It is believed that these type of wastes have been particular treatment problems for the petroleum refining industry. The Agency is hereby soliciting waste characterization and treatment data that could be used to aid in the potential development of treatment standards for these wastes. Currently, the Agency has not approved a standard analytical method for testing either sulfides or reactive sulfides in hazardous wastes or in treatment residues. It is unlikely, therefore, that the Agency will be able to propose a numerical treatment standard for D003 wastes in this subcategory.

D003 wastes in the Other Reactives Subcategory can be either organic or inorganic in nature. Information suggests that these wastes are infrequently generated and probably in small quantities. These wastes do not appear to be placed in land disposal units. At this time, the Agency is only in the initial stages of investigation of these issues for these reactive wastes (with respect to the development of treatment standards for the land disposal restrictions program). In general, the Agency believes that these unstable wastes can either be incinerated in special units or open detonated. The Agency suspects that while these wastes may be generated, it is unlikely that they would require placement in any type of land disposal unit. Therefore, the Agency is seriously considering allowing the "hard hammer" provisions to take effect for this subcategory.

All of the known treatment processes for all of the five subcategories of D003 Reactive Wastes can result in significant amounts of solid residues. These residues may or may not exhibit the characteristic of EP Toxicity for metals. Instead of trying to establish metal standards for these residues, the Agency prefers to regulate land disposal of them only if they appear to be EP Toxic wastes. Thus, the Agency is currently not considering proposing standards for metals in the residues from the deactivation of D003 wastes.

Further, for all subcategories of D003 wastes except the Reactive Cyanides, the Agency believes that development of any numerical treatment standards, based on any of the appropriate deactivation techniques, would be difficult to develop because there is no known analytical test that is designed to measure the reactivity of these wastes nor is there a test that distinguishes the reactive chemical from the deactivated chemical (e.g. sodium).

The Agency is soliciting comments and data on the physical and chemical characterization of all five D003 subcategories as well as on the applicability of chemical deactivation, incineration, and open detonation to these wastes. Facilities with wastes in these subcategories that are not amenable to these techniques should submit data and information on the characteristics of these wastes and the technical justification for why the technologies are not amenable to their wastes.

d. EP Toxic Wastes. Paraphrasing the criteria in 40 CFR 261.24, a waste is

considered a characteristic EP Toxic waste provided that, the extract (using an approved extraction procedure referred to as the EP) from a representative sample of the waste contains any of the contaminants listed in § 261.24 Table I at a concentration equal to or greater than the respective value given in that table. A waste can be identified as an EP Toxic characteristic waste based on the concentration of one of eight different metals or six chlorinated pesticides.

The Agency examined these fourteen chemical constituents for similarities in treatability and determined that while there are two obvious major treatability groups of metals and of pesticides, the definition of separate treatability subcategories within these major groups could not be performed at this time. However, the Agency has determined that there are certain similarities in chemical and physical nature of the various metals and pesticides that appear to be the potential basis for future definition of treatability subcategories. This section of the preamble discusses these similarities and outlines only a few of the possible alternatives for developing treatment standards for these EP Toxic wastes.

1. Arsenic, Chromium and Selenium (D004, D007 and D010). While arsenic (D004), chromium (D007) and selenium (D010) all exhibit positive valence states, they show little tendency to exist as solitary cationic species in aqueous solutions. They typically exist in aqueous conditions as oxo-anions [i.e., arsenic appears as arsenite (AsO_3^{-}) and arsenate (AsO_4^{-3}), while chromium appears as chromate (CrO_4^{-2}) and dichromate ($Cr_2O_7^{-2}$)]. This behavior differs from that of other metals, in that other metals usually exhibit strong cationic behavior in aqueous conditions. Thus, selection and performance of various treatment technologies is often different for arsenic, selenium and chromium bearing wastes compared to wastes containing only other metal constituents.

Applicable treatment technologies that the Agency is considering for arsenic, selenium, and chromium wastes include: (1) Recycling/recovery technologies such as high temperature metals recycling, freeze concentration, and ion exchange; (2) chemical reduction (such as the conversion of hexavalent chromium to the trivalent state) using reagents such as sulfur dioxide, sodium bisulfite, sodium metabisulfite, sodium hydrosulfite, and/or ferrous sulfate; (3) chemical oxidation using reagents such as hypochlorite, chlorine, hydrogen peroxide, and/or potassium permanganate; (4) metals precipitation using a combination of lime and sulfide; and (5) specialized stabilization such as vitrification/molten glass stabilization or stabilization with additives such as red clays, silicates, and proprietary binders.

The Agency believes that recovery of arsenic, selenium, and chromium may be feasible for some wastes provided the metal has been first chemically converted to an easily recoverable form. Information regarding problems with recovery of arsenic from wastes is described in section III.A.11.a. of this preamble (i.e., a discussion of waste codes K031, K084, K101, and K102). Information suggests that recovery of elemental selenium out of certain types of scrap material is currently practiced in the United States, and it may be possible to extrapolate this technology to other forms of selenium wastes. Ion exchange has been reported to be effective for the recovery of chromium from wastewaters, and for purification of some chromic acid solutions. It has been reported that anionic exchange has been employed for the removal chromate and dichromate from some wastes. Evaporative recovery as well as freeze recovery are two concentration processes that have been suggested for recovery of chromium from rinsewaters and some other wastewaters. The Agency is requesting comments and data as to the applicability of these and any other recovery technologies for wastes containing EP Toxic concentrations of arsenic, chromium and/or selenium.

More extensive treatment trains appear to be necessary to treat some complex wastes such as wood preserving wastes and other wastes that are EP Toxic for both arsenic and chromium. Besides the reduction step for the hexavalent chromium, an additional oxidation step with reagents such as hydrogen peroxide or hypochlorite, may be necessary for the arsenic. The presence of organics and organo-metallic complexes would further complicate the treatment process. These may have to be oxidized or otherwise removed prior to conversion of the metals to their proper valence state for further metal treatment such as precipitation.

Precipitation of arsenic from wastewaters identified as D004 appears to be effective under certain alkaline conditions. Information regarding applicability and performance of lime versus sulfide precipitation for wastewaters containing arsenic is described in significantly greater detail in section III.A.11.a. of this preamble. In general, while typical lime and/or sulfide precipitation procedures (without the proper pretreatment steps) may be effective for removal of all three of these metals from wastewaters, the chemical state of these metals in the resultant treatment sludge may not be correct to minimize the leachability of these metals during land disposal. In addition, further treatment with typical cementitious stabilization may actually increase the leachability of these metals, if they are not in the proper chemical state.

The Agency attempted cement stabilization of wastes that contain high concentrations of arsenic (K031). The resultant data indicated that the leachability of arsenic from the treated residues increased by orders of magnitude over the leachability from the untreated wastes. Typically, chemical stabilization of sludges containing metals is partly based on the ability of the alkaline cementitious reagents to chemically bind the cationic metal species. The Agency believes that the increase in leachability of arsenic after stabilization is probably due to the increased solubility of various forms of arsenic at higher pH. In addition, this increase in leachability seems to be indicating that the arsenic is not being chemically bound by the stabilization reagents. While the Agency has not fully investigated these potential problems in solidification for high concentrations of selenium, some information suggests that these complications will occur.

Several alternatives to cementitious stabilization for arsenic, chromium and selenium wastes are currently under consideration by the Agency including vitrification or molten glass stabilization, the use of red clays containing alumina as additives to the stabilization process, and the use of other noncementitious proprietary binders for stabilization. The Agency is currently planning on conducting stabilization tests for certain arsenic and chromium wastes. However at this time, it has not established which wastes or which processes will be studied. The Agency is therefore, soliciting comments and data on these stabilization techniques for arsenic, selenium and chromium and is particularly interested in data for wastes (solid or liquid) with concentrations of these metals greater than 1% (by weight) as well as data for those wastes that are known to contain organo-complexes of these metals.

2. Cadmium, Lead and Mercury (D006, D008 and D009). Applicable treatment technologies that the Agency is considering for cadmium (D006), lead (D008), and mercury (D009) wastes include: (1) Recycling/recovery technologies such as acid leaching, high temperature metals recycling, and ion exchange; (2) chemical oxidation/reduction; (3) metals precipitation; (4) incineration of wastes high in organics; and (5) conventional and specialized stabilization processes with additives such as sulfides, silicates and proprietary binders.

The Agency currently has performance data on an acid leaching/chemical oxidation/filtration washing, as well as simple water washing and filtration, for nonwastewaters contaminated with mercury (i.e., K071 wastes). The Agency also has performance data on sulfide precipitation/filtration of mercury containing wastewaters. Currently, cementitious stabilization of mercury nonwastewaters has not been demonstrated as effective for mercury wastes. The Agency intends to analyze treatability groups for all mercury wastes to determine which portions of these performance data can be transferred to D009 nonwastewaters. For some other D009 nonwastewaters (such as wastes contaminated with liquid or elemental mercury), the Agency is considering retorting, amalgamation with zinc, and/or denuding of mercury amalgams to regenerate mercury and zinc. Along with investigating the potential transfer of existing performance data for these D009 nonwastewaters, the Agency intends to investigate chemical reduction of mercury contaminated wastewaters followed by retorting of the filtration residuals (K106). At this time, the Agency is actively pursuing possible testing of a K106 retort systems that may be applicable to other mercury wastes. The Agency solicits comment and data on the above listed treatment technologies for D009 wastes.

EPA has promulgated lead treatment standards for many listed wastes (both wastewaters and nonwastewaters). K062 is the primary source of wastewater treatment data for lead. In addition, the Agency has performance data on stabilization of F006, K061, and K062 nonwastewaters that contain various concentrations of lead. EPA has High Temperature Metal Recovery data on K061, and information indicating recovery of lead from F006, K002–K007, K069 and lead acid batteries. The data on F006 indicate that stabilization may often result in a treated waste that remains a EP Toxic waste for lead. This is particularly true, if the EP concentration is lowered for this contaminant. Thus, it appears that some (if not many) D008 wastes, when treated, will remain D008 wastes (albeit, wastes with much lower leachability). This appears to imply that the Agency should not allow the "hard hammer" provisions to take effect for D008 wastes.

Besides the wastes that can be effectively stabilized and those which are being sent to recovery facilities due to the high lead content, there appear to be several potential subcategories of EP Toxic lead wastes that may not be able to be readily treated by these technologies. Wastes which are mostly organic and contaminated with lead appear to represent a large portion of the number of D008 wastes. These include wastes from the removal of leaded paints from buildings, leaded paints and paint sludges, and analytical samples from lead testing programs. Organo-lead compounds such as tetraethyl lead (P110) may require pretreatment to break the organo-metallic bond prior to further treatment such as stabilization. Incineration or other thermal destruction may be possible for all of the organo-lead materials (including the paint wastes) provided these wastes can be thoroughly mixed with other wastes, so as to meet strict metals emissions standards for lead. The resultant ash would probably require an additional solidification step. Other inorganic nonwastewaters with concentrations of lead in the percent levels, such as lead dross, slag from secondary lead smelting, and residuals from K061 treatment, are sometimes being rejected by lead recovery facilities for various reasons. These high levels of lead and other contaminants are expected to pose significant problems with stabilization. The Agency is not aware of data in this area, and solicits any available.

EPA has performance data on stabilization of cadmium in F006 that is possibly transferable to other D006 electroplating wastes and to some D006 pigment wastes. Performance data for cadmium also exist for stabilization and high temperature metals recovery of K061 wastes. Low concentrations of cadmium appear to be effectively stabilized using conventional cementitious solidification processes. High levels of cadmium may be more amenable to recovery, although current practice shows little recovery of cadmium is currently practiced.

3. Barium and Silver (D005 and D011). The Agency does not have enough information at this time to fully characterize barium containing wastes (D005). It is believed that these wastes represent a very small volume of wastes. The Agency is investigating stabilization for these wastes. There is some data that suggest that when present as a sulfide these waste are not soluble and can be stabilized. However, barium is typically removed from wastewaters as barium sulfate. If the treatment sludge is a D005 waste and is high in barium sulfate, then conventional solidification processes may not be effective in reducing the leachability of these wastes. Cements that are designed for high sulfate content would be required. Currently, the Agency has no data for these type of wastes or for this type of solidification.

The Agency believes that silver containing wastes are not currently land disposed. These wastes, although believed to be small in volume, have a great potential for recovery/reuse because of their economic value. The Agency does not have enough data to fully characterize these wastes and is requesting comments on current treatment practices and waste generation. However, the Agency is anticipating proposing a standard of "No Land Disposal Based On Recovery" for silver containing wastes.

4. D012, D013, D014, D015, D016 and D017. The Agency believes that the majority of these wastes, when existing as untreated wastes, may contain high enough concentrations of their respective halogenated pesticide, that these wastes are already restricted from land disposal on the basis of application of the California List rule for Halogenated Organic Compounds (HOCs). Since the concentrated wastes (greater than 1% HOCs) are probably being incinerated, it is likely that the wastes really covered in this section are those wastes with concentrations of these pesticides between EP levels and 1%. Treatment technologies that the Agency has identified as applicable for treatment of these wastes are primarily incineration technologies including rotary kiln and fluidized bed. Some of these D012–D017 wastes are no longer generated because their use as a pesticide has been banned. Thus, the Agency may propose a "No Land Disposal Based on No Generation" for these wastes.

In considering the development of numerical treatment standards for these wastes, the regulated constituent for each of these wastes would be the individual pesticide for which the waste was listed. The Agency is considering to utilize a transfer of performance data for developing treatment standards from rotary kiln incineration of similar wastes. The strategy of this transfer would be similar to that that the Agency

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may propose for other chlorinated pesticide wastes such as K041, K098, U129, U247, U214, P051, and P123. The potential transfer strategy is outlined in the sections of today's preamble that correspond to the above wastes. If these numerical standards prove to be lower than the corresponding EP Toxic concentration, the Agency may then consider proposing a "No Land Disposal Based on Incineration" for these wastes or may decide to propose no treatment standard and thereby, allow the "hard hammer" provisions to take effect for these wastes. However, if the standards are above the corresponding EP Toxic concentration or if no leachability data on incineration ash can be developed for correlation to the EP concentrations, then the Agency probably will propose numerical standards for the D012–D017 wastes.

11. EPA's Approach for Developing BDAT Treatment Standards for all Remaining Listed Wastes

This section of today's preamble presents a discussion of the approaches and options that the Agency is considering for establishing BDAT treatment standards for the remaining listed "F" and "K" wastes that have not been proposed to date. This includes some First Third wastes for which land disposal remains regulated under the "soft hammer" provisions and some Third Third wastes for which EPA has just begun investigating treatment options. A synopsis of the status of ongoing treatment evaluations is also included. Overall, this discussion is intended to give advance notice to the regulated community and to provide an opportunity for it to comment on these approaches and to submit data that may help in developing such standards. At this time, the Agency is not proposing treatment standards for any of the wastes listed in this section. Please identify comments on this section with the heading "Comments on EPA's approach to remaining wastes".

The Agency is specifically soliciting comments on the approach to develop treatment standards for each of the individual wastes or treatability groups. Comments and data on specific treatment technologies for specific wastes or subcategories should include a description of the generation process or processes, complete chemical and physical analyses of the wastes and treatment residuals (including all appropriate QA/QC information), as well as technical descriptions of the treatment technologies and their optimum operating conditions. Facilities planning new tests may wish to communicate with EPA before testing.

a. First Third Wastes. Treatment standards for some First Third wastes were not promulgated by the statutory deadline, August 8, 1988. As required by the statute, these wastes have become regulated under the "soft hammer" provisions outlined elsewhere in this preamble. The Agency's interpretation of the applicability of the "soft hammer" provisions can be found in 53 FR 31146 (August 17, 1988). The following discussion provides a synopsis of the status of ongoing treatment evaluations for these wastes or groups of wastes.

1. F006–F009, F019, K011–K014, and K036. Section III.A.8A of today's rule proposes numerical treatment standards for wastewater and nonwastewater forms of F007, F008, F009, F019, K011, K013, and K014 as well as numerical treatment standards for cyanides in wastewater forms of F006. In addition, section III.A.8.n. of today's rule proposes a treatment standard for Disulfoton in wastewater forms of K036. Until these standards are promulgated for these First Third wastes, land disposal of them shall remain regulated according to the "soft hammer" provisions.

2. K004, K008, K021, K022, K036, K046, K060, and K061. While treatment standards for nonwastewaters forms of wastes identified as K004, K008, K021, K022, K036, K046 (Nonexplosive Subcategory), K060, and K061 were promulgated on August 8, 1988, no standards were promulgated for the wastewater forms of these wastes, nor are there any proposed in today's rule. In general, the Agency intends to develop numerical treatment standards based on treatment data that the Agency already possesses. In some cases, treatment standards for metals and some organics may be based on data obtained by the Agency's Office of Water for the National Pollution Discharge Elimination System (NPDES) program.

The Agency believes that hexavalent chromium and lead may be present in some of these wastewaters (such as K004, K008, K022, K046 and K061). Standards for chromium, lead and other metals may be developed based on a transfer of data from the treatment of K062 (spent pickle liquor). K062 standards were based on the performance of technologies that included hexavalent chromium reduction, metals precipitation and filtration followed by dewatering.

Information also suggests that cyanides may be potentially present in wastewaters identified as K004, K008 and K060. Standards for cyanides will most likely be based on performance data from the alkaline chlorination or electro-oxidation of electroplating and heat treating wastes (F006–F012 and F019) as outlined in section III.A.8A of today's preamble. While the Agency intends to use as much existing data as possible, it is not precluding the use of data supplied by industry in response to today's proposal nor is it precluding itself from obtaining new data.

3. K017 and K073. No standards have been promulgated for either wastewater or nonwastewater forms of K017 and K073 wastes. The Agency believes that, as generated, both of these wastes are nonwastewaters that contain relatively high concentrations of chlorinated organics. While the Agency believes that the nonwastewater forms of these two wastes are most likely already regulated by the California List prohibition on Halogenated Organic Compounds (HOCs), this prohibition only established incineration and fuel substitution as a method of treating HOCs and did not establish numerical treatment standards for particular halogenated organic constituents. For the organic constituents in K017 and K073 wastes, the Agency is considering the transfer of performance data from the incineration of K019 and/or F024 nonwastewaters. These wastes also contain high concentrations of other chlorinated organic constituents. The Agency does not intend to specifically perform analytical testing of the performance of incineration on either K017 or K073 wastes.

Because of the restrictions on land disposal of HOCs, the Agency anticipates that these two wastes are currently being destroyed thermally and is hereby soliciting data generated from this combustion that may aid in the development of treatment standards for these wastes.

A treatment standard of "No Land Disposal Based on No Generation" was originally proposed for K073 wastes in the April 8, 1988 **Federal Register**. In response to the proposal, one facility provided information that indicated that K073 wastes are still being generated. Since the basis for the proposed treatment standard was then considered invalid, the Agency did not promulgate the standard. The facility also indicated that the K073 wastes that were generated were also being incinerated. At this time, the Agency has not received any analytical data on the incineration of these wastes. Since the facility appears to be the only generator of K073 wastes and has also notified the Agency that it anticipates that it will cease generation prior to May 8, 1990 (due to a change in their production process), additional options that the

Agency is considering for K073 nonwastewaters is to allow the "hard hammer" provisions to become effective or to repropose the "No Land Disposal Based on No Generation". The Agency specifically solicits comment on these approaches.

4. K031, K084, K101, and K102. The Agency has determined that K031, K084 and K101/K102 (High Arsenic Subcategory) wastes represent one treatability group. Problems with establishing BDAT and treatment standards for these First Third wastes are based on the relatively high concentrations of arsenic in these wastes and the difficulties in treatment due to the toxicity and unique chemistry of arsenic. Arsenic presents particular treatment problems due to its nonmetallic behavior and its tendency to exist in these wastes as oxo-anions (ionic complexes containing oxygen and arsenic with an overall negative charge, such as arsenite and arsenate) and as organo-arsenical complexes. Metals typically exist in wastes as soluble cationic species (single metallic ions with a positive charge).

The Agency attempted stabilization of K031 wastes using Portland cement. The resultant data indicated that the leachability of arsenic from the treated residues increased by orders of magnitude over the leachability from the untreated wastes. Typically, chemical stabilization of sludges containing metals is partly based on the ability of the alkaline cementitious reagents to chemically bind the cationic metal species. The Agency believes that the increase in leachability of arsenic after stabilization is probably due to the increased solubility of various forms of arsenic at higher pH. In addition, this increase in leachability seems to be indicating that the arsenic is not being chemically bound by the stabilization reagents.

Several alternatives to cementitious stabilization for arsenical wastes are currently under consideration by the Agency including vitrification or molten glass stabilization, the use of red clays containing alumina as additives to the stabilization process, and the use of other noncementitious proprietary binders for stabilization. The Agency is currently planning on conducting stabilization tests for certain arsenic wastes. However at this time, it has not established which wastes or which processes will be studied. The Agency is therefore, soliciting comments and data on these stabilization techniques for arsenic and is particularly interested in data for wastes (solid or liquid) with arsenic concentrations greater than 1% (by weight) as well as data for those wastes that are known to contain organo-arsenicals.

For K084, K101 and K102 nonwastewaters, incineration followed by ash stabilization was originally identified as an applicable technology due to the high organic content of these wastes. Analyses of the wastes during sampling indicated that these wastes contained concentrations of total arsenic exceeding 1% by weight. Due to concerns over safe handling and potential air emission problems, the Agency did not continue performance testing of incineration of these high arsenic wastes. Other K101 and K102 wastes containing less than 1% arsenic were safely incinerated by EPA using specialized air pollution control devices, such as electrostatic precipitators or high efficiency wet scrubbers. Based on this testing, treatment standards for K101 and K102 wastes containing less than 1% total arsenic were promulgated on August 8, 1988. The Agency believes that incineration remains a viable treatment alternative for organo-arsenical wastes and organic wastes contaminated with inorganic arsenic for wastes with total arsenic concentrations under 1%.

For K084, K101, K102 and similar organo-arsenic wastes with greater than 1% total arsenic (e.g., P036, P038, U138 and some D004 wastes), EPA is also considering other organic destruction techniques such as chemical oxidation followed by stabilization of the inorganic residues. The Agency is requesting comments as to the applicability of these technologies to organo-arsenical wastes.

In establishing wastewater treatment standards for these arsenic wastes, the Agency believes that it must consider the physical and chemical state of the arsenic in the wastewater treatment residue and not just the efficiency of removal of the arsenic from the wastewater. Wastewater treatment for most metals is typically based on precipitation with anionic species such as hydroxide, sulfide, carbonate, phosphate or sometimes sulfate. Soluble arsenic species have been reported to be removed from wastewaters by using lime (calcium hydroxide) as a precipitant. However, lime precipitation for arsenic involves precipitation as a calcium salt rather than as a hydroxide (as with most other metals).

Sulfide "precipitation" using sodium sulfide or hydrogen sulfide as reagents has also been reported to be partially effective for the treatment of wastewaters containing arsenic in the form of arsenates, but relatively ineffective for arsenites. This treatment is believed to be the result of a chemical reaction of the arsenate anions with the sulfide anions resulting in the conversion of arsenic in the arsenate form to a relatively insoluble arsenic sulfide. While removal of arsenic with lime may be utilized for wastewaters, the reaction with sulfide and subsequent conversion to arsenic sulfide should result in a precipitate that is less soluble in water than the calcium salt (Calcium arsenate is slightly soluble in water, while arsenic sulfide is practically insoluble in water). However, while arsenic sulfide is insoluble in water under acid conditions, information appears to indicate that the leachability (or solubility) of the arsenic sulfide increases under alkaline conditions. At this time, the Agency has not completed its evaluation of the environmental benefits and/or trade-offs of requiring arsenic to be removed from wastewaters as a sulfide, as a calcium salt, or using some combination of both. The increase in removal efficiency with sulfide precipitation must be balanced against the potential for increased leachability under alkaline conditions. This increased leachability is a valid concern, in that, many operators of hazardous landfills may co-dispose all "metal" wastes and typical procedures are to add excess lime to prevent migration of the other metals. One possible solution to this problem is for the Agency to establish special requirements for the disposal of arsenic wastes as a type of incompatible waste. The Agency is specifically soliciting comments and data on all of these issues for arsenic wastes.

In studying the generation of K084 wastes, the Agency obtained information that suggests that some organo-arsenical compounds can be precipitated from wastewaters by simply increasing the pH due to variation in solubilities with pH. The Agency recognizes that this procedure may be effective for removal of the organo-arsenicals and perhaps certain additional inorganic arsenic complexes from wastewater. However, since this treatment generates a nonwastewater residue (K084) that contains high organics and high arsenic, the Agency is concerned that the treatment process has created a residual for which further treatment has not yet been identified (i.e., incineration may be considered risky and stabilization may be ineffective for the organo-arsenicals). The Agency believes that one possible solution to this problem is for the facility to change the treatment process for the wastewaters by adding a chemical

oxidation step that can effectively break the organo-arsenical bonds and thereby convert the organo-arsenicals to inorganic forms that may be effectively treated by specialized stabilization processes or possibly recovered.

The Agency is also considering high temperature metals recovery of arsenic wastes as well as other recovery processes, as alternatives to land disposal. Some of the wastes contain up to 26% arsenic indicating a high potential for recovery and reuse. High temperature metals recovery would probably require air pollution control devices, such as electrostatic precipitators or high efficiency wet scrubbers, on the recovery processes. This technology can be theoretically applicable to either organic or inorganic wastes containing arsenic. One problem with this approach is that the Agency has not been able to identify an existing high temperature metals recovery facility in the United States that can technically recover arsenic and is commercially available. The Agency also considered ion exchange as a potential recovery process for arsenic contaminated wastewaters. However, typical ion exchange recovery of metals is geared to recovery of cationic metal species. The Agency has not been able to identify any specific ion exchange technology designed to recover arsenic. The Agency solicits comments and data on the feasibility and/or effectiveness of recovery of arsenic from either wastewaters or nonwastewaters.

5. *K035 and K083.* The Agency believes that K035 and K083 wastes typically contain sufficient concentrations of organics with sufficient fuel content that these wastes can be used as fuel substitutes. A treatment standard for K083 nonwastewaters was originally proposed as "No Land Disposal Based on Recycling". The data available to the Agency indicated that some K083 wastes could be burned in a boiler without generation of ash residues. One commenter to the proposed standard responded that his facility was generating a K083 waste that did generate ash residues. The Agency promulgated the proposed standard for only those K083 wastes that contained less than 0.01% ash (i.e., the typical detection limit for ash content that infers that the waste has "no ash").

To date, no additional data on the K083 wastes that contain greater than 0.01% ash, have been submitted to the Agency by the facility. If data and information on this ash is not obtained by the Agency in time for proposal with the Third Third wastes, the Agency intends to propose a treatment standard for these K083 nonwastewaters by transferring performance data from the incineration of other wastes such as K001, K022, K087 and/or K103/K104. Wastewater standards may be proposed based on an analysis of the respective scrubber waters generated from incineration of these wastes or based on a transfer of wastewater treatment data from the NPDES program.

In a similar manner, the Agency intends to propose standards for K035 wastes based on a transfer of the same data. Currently, the Agency is gathering waste characterization data on K035 wastes in order to establish the applicability of transferring performance data from these wastes. There is also a possibility that K035 wastes are no longer generated. The Agency specifically solicits comments on the approach of establishing a treatment standard for K035 nonwastewaters (as generated) of "No Land Disposal Based on No Generation".

6. *K046.* Treatment standards based on solidification for K046 wastes in the Nonreactive Subcategory were promulgated by the Agency on August 8, 1988. The Agency is currently evaluating options for the treatment of the Reactive Subcategory of K046 wastes. The reactivity of these wastes is due to the presence of chemical constituents that can be explosive in certain situations. The typical treatment process for explosive wastes is either open detonation or specialized incineration.

One of the problems with open detonation of these reactive K046 wastes is that the waste contains significant concentrations of lead. During open detonation, this lead is released to the environment and typically contaminates the ground surrounding the open detonation site. One option that has been suggested by industry, is to allow open detonation followed by solidification of the surrounding soil, depending on the leachability of the lead from the soil. The Agency believes that development of numerical treatment standards based on open detonation appears to be a difficult process due to potential problems in developing analytical requirements for the surrounding soils, such as the frequency and location for sampling.

Incineration of K046 wastes in the Reactive Subcategory may also be applicable. However, this would require incineration units that are specially designed and fitted with certain explosion proof equipment. These type of units are not typically found at commercial incineration facilities. Currently, the Agency has not identified any information on the incineration of K046 wastes. While incineration appears to be a feasible option, the Agency is currently considering the performance of chemical deactivation processes for development of a treatment standard for these wastes. The Agency notes that it is unlikely that incineration in these specialized units would be precluded from use by the establishment of a standard based on chemical deactivation.

Chemical deactivation of the explosive constituents in the K046 wastes appears to be a potentially useful step in the development of treatment standards. Chemical deactivation is essentially a controlled chemical reaction that destroys the explosive constituents through oxidation/reduction processes thereby rendering the waste nonreactive. One problem with considering this process as BDAT is that the deactivation may have to take place prior to the generation of the K046, because K046 is listed as a wastewater treatment residue. However, if these wastes can technically be generated as nonreactive (i.e., not explosive), the Agency believes that a standard for K046 wastes in the Reactive Subcategory may not even be necessary. In considering this approach, the Agency may propose a "No Land Disposal Based on Deactivation" standard for these K046 wastes thereby forcing generators to deactivate their wastewaters prior to generation of a wastewater treatment residue (i.e., a K046 waste in the Nonreactive Subcategory). By establishing the standard of "No Land Disposal Based on Deactivation" for the Reactive Subcategory, the Agency believes that a variance from this standard could then be considered for wastes that for some reason could not be effectively deactivated. As an alternative, the Agency may simply propose the existing lead standard based on solidification for K046 Nonreactive Subcategory for the K046 Reactive Subcategory.

The Agency is soliciting comments and data on the physical and chemical characterization of K046 wastes in the Reactive Subcategory as well as on the applicability of chemical deactivation to these wastes. Facilities with wastes in this subcategory that are not amenable to deactivation techniques should submit data and information on the characteristics of these wastes and the technical justification for why they are not amenable to chemical deactivation.

7. *K069.* A treatment standard of "No Land Disposal Based on Recycling" was originally proposed for all K069 wastes.

One commenter responded that his facility generates a K069 waste that was not recyclable due to the significantly lower concentrations of lead (the constituent being recovered). Information supplied on the waste characteristics and the generation procedure confirmed that there is a significant difference between these wastes and that two treatability subcategories were necessary for these wastes. The Agency identified the commenter's waste as a K069 nonwastewater in the Calcium Sulfate Subcategory and did not promulgate the proposed treatment standard for that Subcategory. However, the proposed standard was promulgated for all other K069 nonwastewaters. The Agency identified these wastes as the Non Calcium Sulfate Subcategory of K069 nonwastewaters.

To date, no other facility has been identified as generating K069 nonwastewaters in the Calcium Sulfate Subcategory and the Agency is considering developing a treatment standard based on waste characterization data supplied by this facility. While EPA has not obtained any specific treatment data on this particular waste, it intends to propose numerical treatment standards based on a transfer of solidification data for another hazardous waste known to contain hazardous constituents similar to this subcategory of K069. In a similar manner, the Agency intends to transfer treatment standards for metals for K069 wastewaters for both subcategories.

The data on generation of the K069 wastes in the Calcium Sulfate Subcategory indicated that during the generation of this waste, excess lime is added to the K069 as it is being generated. This excess lime is expected to act as a stabilizing agent, with the resulting waste exhibiting a lower leachability than would be expected from a waste which was generated without the addition of excess lime. Characterization data of this waste also indicated a high level of sulfates in the waste. Sulfates have been identified by the Agency as a waste characteristic which affects treatment performance of some solidification processes. The data which the Agency is currently considering as potentially transferable contain relatively low concentrations of sulfates. However, transferring any of the existing solidification performance data to these K069 wastes is expected to result in a treatment standard that the Agency believes may be achievable simply by the current practice of addition of excess lime during generation.

8. *K085.* Treatment standards for K085 wastes were not proposed with the First Third wastes, because difficulties arose in the planned incineration of the waste. The Agency collected waste characterization data for K085 nonwastewaters that indicated the presence of polychlorinated biphenyls (PCBs) in concentrations greater than 50 ppm. The Toxic Substances Control Act (TSCA) requires that incineration of wastes with greater than 50 ppm of PCBs be performed at a facility that is specifically permitted under TSCA for incineration of PCBs. Incineration at an approved facility could not be arranged in time for proposal of treatment standards with the First Third wastes.

Since that time, EPA has identified existing data obtained by the Agency's Office of Toxic Substances (OTS) on the incineration of transformer fluids containing PCBs at a facility that also incinerates K085 wastes. Since transformer fluids were often comprised of a blend of concentrated PCBs with a mixture of chlorobenzenes, the Agency anticipates that this data will be useful in establishing numerical treatment standards for all chlorobenzene compounds and wastes from chlorobenzene production. This information is currently considered TSCA confidential business information (CBI) and appropriate TSCA clearance procedures must be followed prior to use of this data for RCRA regulations. This data was not available in time for development of treatment standards for K085 wastes for proposal with the Second Third wastes. It is not clear whether this data will be available for proposal even with the Third Third.

The Agency believes that, as generated, K085 wastes are nonwastewaters that are most likely already regulated by the California List prohibition on Halogenated Organic Compounds (HOCs). However, this prohibition only established incineration as a method of treating HOCs and did not establish numerical treatment standards for particular halogenated organic constituents. Because of the restrictions on land disposal of HOCs, the Agency anticipates that K085 wastes are currently being incinerated and is hereby soliciting data generated from this incineration that may aid in the development of treatment standards for these wastes.

9. *K086.* Treatment standards for wastewater and nonwastewater forms of K086 in the Solvent Washes Subcategory were promulgated with the First Thirds. No standards were proposed or promulgated for all other K086 wastes. These include wastes in the Solvent Sludges Subcategory and the Caustic/Water Washes and Sludges Subcategory.

Performance data on the treatment of K086 wastes in the Caustic and Water Wash Subcategory are currently being developed by the Agency's Office of Research and Development. EPA expects to promulgate treatment standards for the remaining K086 waste subcategories prior to May 8, 1990 based on this and other data available. If complications arise in the use of this data, the Agency may propose to transfer some or all of the existing K086 standards to the other K086 Subcategories.

10. *K106.* Treatment standards for K106 nonwastewaters have previously been proposed based on a recycling/recovery technique (retorting) for the recovery of mercury (the primary hazardous constituent). This standard was not promulgated because, at the time, there was insufficient information to transfer the standard for K106 from mercury sulfide ores and other mercury wastes that the Agency believed were similar to the K106 wastes. At the time of today's proposal, the Agency has not completed its evaluation of retorting for K106 wastes. However, the Agency still believes that retorting is a viable option for developing treatment standards for K106 nonwastewaters.

Retorting of ores typically involves roasting the mercury sulfide ores at elevated temperatures in the presence of oxygen. This roasting converts the mercury salts to elemental mercury. The mercury is vaporized, swept from the retort in the off-gases, and subsequently condensed for later reuse. Retorting has been demonstrated on other wastes with greater than 1% total mercury. A number of K106 generators currently operate mercury retorts on-site for various other wastes that contain mercury. At least one facility is retorting a K106 waste. However, this K106 is significantly different from other K106 wastes, in that it is being generated as elemental mercury.

The Agency encountered problems during analysis of the possible alternative treatment options for K106. These problems were primarily the result of the apparent inability of typical cementitious stabilization techniques to reduce the leachability of mercury. The Agency attempted stabilization of K106 wastes using Portland cement, lime and fly ash, and kiln dust. The resultant data indicated that the leachability of mercury in the treated residues increased by orders of magnitude over the leachability in the untreated wastes. The Agency believes that the increase in

leachability of mercury after stabilization is probably due to the increased solubility of mercury sulfide at higher pH. In addition, this increase in leachability may be indicating that the mercury is not being chemically bound by the stabilization reagents. Alternatives to cementitious stabilization for mercury wastes currently under consideration include the use of other proprietary binders such as silicates and sulfides. The Agency is soliciting comments and data on stabilization techniques for mercury and is particularly interested in data for wastes (solid or liquid) with mercury concentrations higher than 1%.

Sulfide precipitation has been identified as the most likely candidate for BDAT for K106 wastewaters. This process involves the conversion of soluble mercury to a relatively insoluble mercury sulfide. Elemental mercury is slightly soluble in water, while mercury sulfide is practically insoluble in water. While filtration of elemental mercury can be effective for wastewaters, the reaction with sulfide and subsequent conversion to mercuric sulfide should result in a precipitate that is less soluble in water than the residual containing elemental mercury. However, elemental mercury is more amenable to simple retort operations than a mercury sulfide filter cake, because oxygen is not required to roast the elemental mercury, and additional air pollution control devices are not required to remove the sulfur dioxide generated from sulfide roasting.

In addition, while mercuric sulfide is insoluble in water under acid conditions, information appears to indicate that the leachability (or solubility) of the mercuric sulfide may increase under alkaline conditions. At this time, the Agency has not completed its evaluation of the environmental benefits and/or trade-offs of requiring mercury to be removed from wastewaters as a sulfide or as elemental mercury. The increase in removal efficiency with sulfide precipitation must be balanced against the potential for increased leachability under alkaline conditions and a waste which is more difficult to recover. This increased leachability is a valid concern, in that many operators of hazardous landfills dispose of all "metal" wastes together, and typically add excess lime to prevent migration of the other metals. One possible solution to this problem is for the Agency to establish special requirements for the disposal of mercury wastes. The Agency is specifically soliciting comments and data on all of these issues for mercury wastes.

Along with investigating the appropriateness of transferring existing performance data, the Agency intends to investigate chemical reduction of wastewaters followed by retorting of the filtration residuals containing elemental mercury (K106), and/or retorting of other concentrated mercury wastes.

b. Third Third Wastes. In section III.A.8.f. of today's preamble, the Agency is proposing treatment standards for both wastewater and nonwastewater forms of K023, K093, and K094 based on a transfer of incineration data for K024 wastes. In section III.A.8.c. of today's preamble, the Agency is proposing treatment standards for the nonwastewater forms of K002, K003, K005, K006, and K007. All of these wastes are Third Third wastes that were not originally scheduled to be promulgated until May 8, 1990. However, the statute does not preclude EPA from prohibiting the land disposal of a given waste ahead of schedule and in fact compels the Agency to prohibit the land disposal of hazardous wastes as soon as possible.

The following discussion is a synopsis of the approaches and options that the Agency is considering for establishing BDAT treatment standards for all remaining Third Third "K" wastes. The Agency is specifically soliciting comments on the approach to develop treatment standards for each of the individual wastes or treatability groups. While no treatment standards are proposed for these wastes in today's rule, the Agency does anticipate proposing standards for them on the schedule for development of the Third Thirds.

No treatment standards are proposed in today's rule for the wastewater forms of K002, K003, K005, K006, and K007. These wastewaters are anticipated to contain metals and possibly cyanides. The Agency is currently evaluating the possibility of transferring treatment performance data for these wastewaters based on chromium reduction, cyanide destruction, and metals precipitation/stabilization using existing data.

K026 nonwastewaters are expected to contain various concentrations of organo-nitrogen compounds (e.g., methyl ethyl pyridines). Numerical treatment standards are anticipated to be developed and proposed based on a transfer of treatment data (primarily incineration data) for compounds such as acetonitrile, nitrobenzenes, nitroanilines, and pyridine from wastes such as F003, F005, K011, K013, K014, K103, or K104.

K032, K033, and K034 are all wastes from the production of the halogenated multiple component pesticide, Chlordane. Numerical treatment standards are anticipated to be developed and proposed based on a transfer of treatment data (primarily incineration data) for mixtures such as Toxaphene and PCBs from wastes such as K041, K097, K098, P123, and U036.

EPA has data that suggest some K026, K032, K033, and K034 wastes may no longer be generated. The Agency is also considering the proposal of "No Land Disposal Based on No Generation" for certain nonwastewater forms of these four wastes. A treatment standard of "No Land Disposal Based on No Generation" was promulgated on August 8, 1988 for the nonwastewater forms of K100. While no BDAT standards were proposed or promulgated for the wastewater forms of K100, the soft hammer provisions did not apply to these wastes because they were originally scheduled with the Third Third wastes. Wastewater treatment standards for K100 are anticipated to be developed similar to the wastewater standards for K069, because K100 was listed as a waste leaching solution from the acid leaching of K069 wastes.

B. "Soft Hammer" Applicable Treatment Standards

The Agency has not promulgated treatment standards for the First Third and Second Third wastes in Tables B.(a) and B.(b). RCRA section 3004(g)(6) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the August 8, 1988 or June 8, 1989 statutory deadlines, such waste may be land disposed in a landfill or surface impoundment only if the unit meets certain statutory requirements and only if the generator makes certain certifications. These requirements have been termed the "soft hammer" provisions (see 53 FR 31179–31186, August 17, 1988). If the Agency has not set treatment standards for any hazardous waste by May 8 1990, such waste is absolutely prohibited from all forms of land disposal unless a "no migration" petition has been granted.

EPA has identified several treatment technologies that are generally considered appropriate for the nonwastewater forms of these wastes. These technologies include: metal recovery, leaching/oxidation, metals stabilization, ash stabilization, chemical oxidation, biodegradation, incineration, PCB incineration, and open detonation/open burning. Treatment technologies generally considered appropriate for the wastewater forms of these wastes include: aqueous metal recovery, chromium reduction, metals precipitation, steam stripping, carbon adsorption, oxidation/reduction, chemical oxidation, biodegradation, incineration, and PCB incineration. The Agency is amending § 268.12 to include wastewater residues derived from the treatment of "soft hammer" wastes by certain processes, as well as leachate derived from the management of "soft hammer" wastes and "soft hammer" waste-contaminated groundwater. This action will allow these wastewater residues to be disposed in units not meeting minimum technological requirements and such resides will not be subject to the certification requirements of § 268.8.

The technologies are listed as general categories of technologies that EPA believes have a reasonable probability of application to the waste codes listed. These categories do not specify any particular type of technology (e.g., incineration can represent liquid incinerators, rotary kiln, or fluidized bed incinerators). The actual choice of a particular technology or even train of technologies depends on the physical and chemical characteristics of the specific waste. Specific selection of one technology depends on its functional design.

The Agency notes that many of these wastes, when existing as untreated wastes, are already prohibited from land disposal because they are California list wastes. Several of the organic hazardous wastes undoubtedly exceed the statutory levels for wastes containing halogenated organics (HOCs) and are thus subject to the HOC treatment standard. However, as was discussed in the August 17, 1988 final rule, treatment to comply with the California list prohibitions does not necessarily satisfy the "soft hammer" requirements of 40 CFR 268.8 and, in fact, the California list prohibitions represent the minimum treatment required for such "soft hammer" wastes prior to land dispoal (53 FR 31167). This principle applies in all cases except when the California list waste is subject to a statutory prohibition (such as California list metals). In the case of an overlap between a "soft hammer" waste and a California list statutory prohibition, the "soft hammer" provisions apply because they are potentially more protective. However, in no case may a waste be disposed of in excess of the California list prohibition levels.

The following tables are presented as an aid to generators seeking appropriate technologies to treat "soft hammer" F- and K-listed wastes. Several technologies are listed for each waste code, in descending order of preference. EPA notes that certain technologies are only appropriate for certain constituent types and that more than one treatment technology may be required (if practically available) to treat the different constituents of concern in the waste.

The Agency emphasizes that these tables are not to be considered as strict treatment guidelines. In general, however, EPA will use these tables in evaluating the demonstrations and certifications received for these wastes and is providing this information to aid the generator in determining the best practically available technology (if any) for treating his waste in compliance with § 268.8.

TABLE B. (A).–APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD NONWASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K041, K097, K098	Halogenated Organics	Incineration.
K042	Halogenated Organics	Incineration.
K105	PCBs/Halogen. Organ	PCB Incineration.
K017, K073	Halogenated Organics	Incineration, Biodegradation, Ash Stabilization.
K031, K084, K101 & K102/High Arsenic	Arsenic	Metals Recovery, Leaching/Oxidation, Metals Stabilization.
K046/explosive	Lead	Open Detonate/Burn, Oxidation of Explosive, Incineration, Metals Stabilization.
K069/CaSO4	Lead	Leaching/Oxidation, Metals Stabilization.
K085	Halogenated Organics & PCB's	PCB Incineration, Biodegradation, Ash Stabilization.
K035, K083, K086 solv. sludges caust. water	Organics and/or Metals	Incineration, Wet Air Oxidation, Biodegradation, Ash Stabilization.
K106	Mercury	Metals Recovery, Metals Stabilization.

TABLE B. (B).–APPROPRIATE TREATMENT TECHNOLOGIES FOR FIRST THIRD AND SECOND THIRD WASTEWATERS

RCRA waste code	Potential California list applicability	Primary applicable treatment technologies
K025	Halogenated Organics	Carbon Adsorption, Incineration.
K041, K097, K098	Halogenated Organics	Steam Stripping, Carbon Adsorption, Biodegradation.
K042	Halogenated Organics	Steam Stripping, Carbon Adsorption, Biodegradation.
K105	PCBs/Halog. Organics	Carbon Adsorption, Biodegradation, PCB Incineration.
K004, K006, K061/all	Chromium	Chromium Reduction, Metals Precipitation.
K017, K021, K073	Halogenated Organics	Steam Stripping, Carbon Adsorption, Chemical Oxidation, Biodegradation.
K022, K035, K060, K083	Unlikely to be Applicable	Steam Stripping, Carbon Adsorption, Chemical Oxidation, Biodegradation, Metals Precipitation.
K031, K046/nonexplosive, K069/all, K084, K106	Arsenic, Lead or Mercury	Oxidation/Reduction, Metals Precipitation.
K046/explosive	Lead	Oxidation of Explosive, Metals Precipitation.
K085	Halogenated Organics & PCB's	PCB Incineration, Biodegradation, Carbon Adsorption.
K086, solv. sludges caust. water	Halogenated Organics and/or Metals	Biodegradation, Carbon Adsorption, Chromium Reduction, Metals Precipitation.

C. Capacity Determinations

1. Determination of Alternative Capacity and Effective Dates for Surface Land Disposed Wastes for Which Treatment Standards Are Proposed

a. Total Quantity of Land Disposed Wastes. The capacity analyses for wastes for which EPA is today proposing treatment standards were performed using the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). EPA conducted the TSDR Survey during 1987 and early 1988 to obtain comprehensive data on hazardous waste management capacity and on volumes of hazardous waste being land disposed. Survey data are part of the record for this proposed rule, and are obtainable from the Agency's contractor (Versar, Inc.).

EPA estimated the total quantities of wastes addressed in today's proposal that are land disposed annually based on the results of the TSDR Survey. The quantities of waste by land disposal method are presented in Table III.C.1.(a). Some methods of land disposal, including utilization of salt domes and salt bed formations and underground caves and mines, are not addressed in the capacity analysis because of insufficient data on the types and volumes of wastes disposed by these methods.

The TSDR survey indicated that about 1,695 million gallons of the wastes for which standards are proposed today were land disposed in 1987. This includes less than 1 million gallons that were disposed in surface impoundments, and will therefore require alternative treatment capacity. Approximately 5 million gallons of the wastes addressed today were stored in surface impoundments and 9 million were stored in waste piles. These stored wastes will eventually be treated, recycled or permanently disposed in other units. To avoid double-counting, the volumes of wastes reported as being stored in surface impoundments or waste piles have not been included in the volume of wastes requiring alternative treatment capacity. After the applicable prohibition effective date for any waste, placement of prohibited wastes in waste piles or surface impoundments for purposes of storage is prohibited.

The 1987 TSDR Survey indicated that less than 1 million gallons per year of wastes addressed today were treated annually in surface impoundments that do not meet the minimum technology requirements. This amount should now be considerably less (indeed, zero) since the November 8, 1988 deadline for retrofitting surface impoundments has passed. The Agency assumes that this volume of waste is now being sent off-site for treatment. Therefore, this amount is included as treatment capacity required in today's proposed rule.

In addition, 6 million gallons are treated in waste piles, 17 million gallons are disposed in land treatment units or landfills, and 1,657 million gallons are underground injected; all of these wastes will require alternative treatment capacity.

b. Required Alternative Capacity for Surface Land Disposed Wastes. The Agency assessed the requirements resulting from today's proposal for alternative treatment capacity for land disposed wastes other than those which are underground injected. EPA first characterized the volumes of wastes for which treatment standards are being proposed, since these wastes require alternative treatment. Waste streams were characterized on the basis of land disposal method, waste code, and physical/chemical form. Using this information, the Agency determined which treatment technologies are applicable to the waste volumes and placed the wastes into treatability groups. The volumes of alternative treatment capacity that would be required when owners or operators comply with the land disposal restrictions being promulgated were then determined. Based on this analysis, the Agency estimates that today's rule could affect about 1,695 million gallons of wastes that are land disposed annually. Of this total, about 1,683 million gallons will require alternative treatment capacity, the remainder being stored. Wastes which are underground injected account for 1,657 million gallons. Determinations of alternative capacity and effective dates for these wastes are presented separately, following the discussion of surface land-disposed wastes.

As explained elsewhere in this preamble, EPA is, with limited exceptions, proposing treatment standards expressed as concentration limits based on the performance of the Best Demonstrated Available Technology (BDAT). Where EPA promulgates a performance standard rather than a method as the treatment standard, it is not required that the BDAT be used to achieve the concentration levels. However, the BDAT technologies, as described in Section III.A., were used as the basis for determining available capacity.

The volumes of surface land-disposed wastes that require alternative treatment/recycling capacity are presented in Table III.C.1.(b). This table includes only the quantities of wastes that require alternative commercial capacity; the volumes given do not include wastes that can be treated on-site by the generator. The Agency has included only BDAT treatment in its assessment of both off-site and on-site capacity. EPA develops BDAT such that a well-designed and well-operated treatment process should be capable of complying with the standards.

c. Capacity Currently Available and Effective Dates. Table III.C.1.(a) presents the volumes of wastes that require alternative treatment capacity, arranged according to the technology description of the alternative treatment required. The amount of capacity that is available in each case is also presented. Available capacity at commercial facilities was determined using the TSDR Survey. The available capacity presented below is the estimated capacity available prior to promulgation of this rule after subtracting the capacity required for surface land-disposed solvent wastes, surface disposed California List Halogenated Organic Compound (HOC) wastes, and surface disposed First Third wastes previously restricted from land disposal.

It is important to note that some of these wastes, because of their actual physical form, cannot meet treatment standards simply by using the technology identified as BDAT. These wastes must be treated through several steps, called a treatment train. The Agency assumed that the residuals in such cases will be treated using alternative technologies prior to land disposal; therefore, the total volumes reported were assigned to appropriate technologies.

Wastewater Treatment. Treatment standards proposed for cyanide-containing wastes F007, F008, F009, F011, P013, P021, P029, P030, P074, P098, P099, P104, P106, and P121 are based on wet air oxidation. The Agency has also identified alkaline chlorination followed by chemical precipitation as a technology which can be used to meet the treatment standard. For F006, F012, and F019, electrolytic oxidation followed by alkaline chlorination has been identified as BDAT. The treatment standards for metals in treatment residuals are based on stabilization. The Agency estimates that 5.0 million gallons per year of these wastes which have been surface land-disposed will require cyanide treatment as a result of today's proposed treatment standards.

After analyzing the new TSDR Survey data, the Agency has determined that sufficient commercial capacity does exist for the remainder of these wastes

(5 million gallons). Therefore, the Agency is not proposing to grant a national capacity extension for these wastes that are surface land disposed.

In the First Third Final Rule, the Agency set treatment standards for the metals in F006 nonwastewaters based on stabilization. In today's proposed rule, the Agency is proposing treatment standards for cyanides in F006 nonwastewaters based on the transfer of the proposed treatment standards for F012 nonwastewaters. The Agency believes that a pretreatment step to destroy the cyanides should be done before stabilization.

In the First Third Final Rule, the Agency estimated that 129 million gallons of F006 wastes would require alternative treatment. The Agency believes that these wastes are currently being pretreated for cyanides. Therefore, no additional capacity is believed to be required for F006 nonwastewaters because of today's proposed cyanide standards and a capacity variance is not being proposed.

Wastewater Treatment/Incineration. The treatment standards proposed for F010 wastes are based on incineration of the wastes with greater than 5% organics. The Agency estimates that <1 million gallons per year of F010 wastes will require incineration as a result of today's proposed rule.

After analyzing the TSDR Survey data, the Agency has determined that there is enough treatment capacity commercially available to incinerate the entire volume of F010 waste requiring alternative treatment. Therefore, the Agency is not proposing to grant a capacity extension to F010 wastes. Treatment standards proposed for K009 and K010 are based on incineration for nonwastewaters and, for wastewaters, steam stripping, biological treatment or steam stripping followed by biological treatment. The treatment standards for metals in treatment residuals are based on stabilization.

Treatment standards proposed for K011, K013, and K014 wastes are based on incineration followed by stabilization of residuals for nonwastewaters, and on wet air oxidation followed by biological treatment for wastewaters. These wastes will require incineration or wastewater treatment as a result of today's proposed treatment standards.

After analyzing the new TSDR Survey data, the Agency has determined that there is enough commercial incineration capacity available to treat the <1 million gallons of nonwastewater K011, K013, and K014 that is not underground injected. Therefore, the Agency is not proposing to grant a national capacity extension for K011, K013, and K014 wastes that are surface land-disposed.

For K027, K039, K113–K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223 wastes, the Agency is proposing to specify incineration as a method of treatment for nonwastewaters, and carbon adsorption as a method of treatment for wastewaters rather than developing numerical standards. Based on TSDR Survey data, the Agency estimates that 8 million gallons per year of surface land-disposed nonwastewaters will require incineration as a result of today's proposed treatment standards. No wastewaters were identified as requiring alternative treatment.

After analyzing the TSDR Survey data, the Agency has determined that there is enough commercial capacity available to treat the K027, K039, K113–K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223 wastes requiring alternative treatment. Therefore, the Agency is not proposing to grant a capacity extension for surface land disposal of these wastes.

No Land Disposal. The Agency is proposing a treatment standard of "no land disposal" for K005, K007, and K029 nonwastewaters, based on the belief that these wastes are no longer being generated. At this time, the Agency is not proposing treatment standards for the wastewater forms of K005, K007, and K029. The Agency may develop standards for these wastes prior to May 8, 1990 if there is an identified need for such standards.

The Agency is proposing a treatment standard of "no land disposal" for K002, K003, K004, K006, K008, K095, and K096 nonwastewaters, based on the belief that these wastes can be totally recycled. The Agency has obtained information for K002, K003, and K006 indicating that several facilities are selling mixtures of these wastes, recyling them back to the production process, or sending them to secondary lead smelting facilities for metals recovery. The Agency believes that these types of recycling and/or recovery techniques can be used for all K002, K003, and K006 nonwastewaters. The Agency estimates that a maximum of 1 million gallons per year of K002, K003, and K006 nonwastewaters may require commercial secondary lead smelting. Adequate capacity exists for this volume of waste; therefore, a capacity extension is not being proposed for nonwastewaters.

The Agency is basing the proposed treatment standard of "no land disposal" for K004, K008, K095 and K096 nonwastewaters on information obtained during BDAT sampling. The TSDR Survey indicates small volumes of K004 and K008 were reported to be land disposed in 1986. However, data obtained during the BDAT sampling visits indicates that these wastes now are being totally recycled; therefore, no alternative capacity is required and a capacity extension is not proposed.

At this time, the Agency is not proposing treatment standards for the wastewater forms of these wastes. The Agency may develop standards for K002, K003, K006, K095, and K096 wastewaters prior to May 8, 1990, if there is an identified need for such standards. Since K004 and K008 wastewaters are First Third wastes, their land disposal will continue to be restricted by the "soft hammer" provisions.

Incineration. Treatment standards proposed for F024, K023, K028, K036 wastewaters, K038, K040, K043, K093 K094, P039, P071, P089, P094, P097, U028, U069, U088, U102, U107, U190, and U235 are based on incineration. The treatment standards for metals in residuals from treatment of F024 and K028 are based on stabilization.

The treatment standards proposed for F024 and K043 are based on incineration performance data; the treatment standards proposed for K028 are based on the transfer of the incineration standards from F024; the treatment standards proposed for K036 wastewaters, K038, K040, P039, P071, P089, P094, P097, and U235 are based on the transfer of the incineration standards from K037; and the treatment standards proposed for K023, K093, K094, U028, U069, U088, U102, U107, and U190 are based on the transfer of the incineration standards from K024.

The Agency estimates the <1 million gallons of these wastes will require incineration as a result of today's proposed treatment standards. After analyzing the TSDR Survey data, the Agency has determined that there is enough incineration capacity commercially available to treat these wastes. Therefore, the Agency does not propose to grant a capacity extension for these wastes.

Wastes for Which Standards are Not Being Proposed. For today's proposed rule, the Agency is not proposing treatment standards for K025 wastewaters (treatment standards for nonwastewater K025 were promulgated in the First Third final rule), K041, K042, K097, K098, and K105. These wastes will be restricted from land disposal under the "soft hammer" provisions.

TABLE III.C.1.(a).—VOLUME OF LAND DISPOSED WASTES FOR WHICH STANDARDS ARE BEING PROPOSED

[Million gallons/year]

Storage:	
Waste piles	9
Surface impoundments	5
Treatment:	
Waste piles	6
Surface impoundments	<1
Disposal:	
Landfills	17
Land treatment	<1
Surface impoundments	<1
Underground injected	1,657
Total	1,695

TABLE III.C.1.(b)*.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND-DISPOSED WASTES

[Million gallons/year]

Waste code	Capacity required for surface land disposed wastes
First third wastes:	
F007	1.3
F008	2.7
F009	0.3
F019	9.5
K004	0.0
K008	0.0
K011	0.2
K013	0.1
K014	<0.4
K036	0.0
P030	<0.1
P039	<0.1
P041	0.0
P071	<0.1
P089	<0.1
P094	<0.1
P097	0.0
U221	0.3
U223	<0.1
Second third wastes:	
F010	0.2
F011	0.1
F012	0.1
F024	<0.1
K009	0.0
K010	0.0
K027	7.6
K028	0.0
K029	0.0
K038	0.0
K039	0.0
K040	0.0
K043	0.0
K095	0.0
K096	0.0
P029	0.0
P040	0.0
P043	0.0
P044	<0.1
P062	0.0
P074	0.0
P085	0.0
P098	<0.1
P104	0.0

TABLE III.C.1.(b)*.—REQUIRED ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND-DISPOSED WASTES—Continued

[Million gallons/year]

Waste code	Capacity required for surface land disposed wastes
P106	<0.1
P111	0.0
U028	<0.1
U058	0.0
U107	0.0
U235	0.0
Third third wastes:	
K002	0.4
K003	0.4
K005	0.0
K006	0.4
K007	0.4
K023	0.0
K093	<0.1
K094	<0.1
K013	0.0
P021	0.0
P099	0.0
P109	0.0
P121	0.0
U069	<0.1
U087	0.0
U088	0.0
U102	0.0
U190	<0.1
Newly listed wastes:	
K113	0.0
K114	0.0
K115	0.2
K116	0.0

* NOTE.—The volumes presented here include all types of treatment required (i.e., all phases of treatment trains, where applicable).

TABLE III.C.1.(c).—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES

[Million gallons/year]

Technology	Available	Required surface land disposed
Incineration:		
Liquids	216	<1
Solid/sludge	76	8
Wastewater treatment:		
Wet air oxidation or alkaline chlorination and chemical precipitation	91	5
Wet air oxidation and biological treatment	0	0
Hydrolysis and biological treatment or biological treatment and steam stripping	0	0
Carbon adsorption	2	0

TABLE III.C.1.(c).—ALTERNATIVE COMMERCIAL TREATMENT/RECYCLING CAPACITY FOR SURFACE LAND DISPOSED WASTES—Continued

[Million gallons/year]

Technology	Available	Required surface land disposed
Stabilization:	264	9
Secondary Smelting:	52	1

2. Contaminated Soil and Debris Capacity Variance

In today's rule, the Agency is granting a national capacity variance for certain contaminated soils for which treatment standards are based on incineration. For the purpose of determining whether a contaminated material is subject to this national variance, soil is defined as materials that are primarily geologic in origin such as silt, loam, or clay, and that are indigenous to the natural geological environment. In certain cases soils will be mixed with liquids or sludges. As was explained in the preamble of the solvents and dioxins final rule, the Agency considers liquid- or sludge-containing waste generated by a CERCLA response action, to be subject to the land disposal restriction requirements (51 FR 40583). However, the Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris (51 FR 40577).

Since the promulgation of the First Thirds rule, additional incineration capacity is believed to have become operational. The totals shown in Table III.C.1.(c) reflect this added capacity. However, the increases are overwhelmingly in capacity to burn sludges mixed with other combustible liquids.

Increases in rotary kiln incineration capacity—the type most appropriate for soil and debris—have been relatively small. EPA believes that capacity is still inadequate for incineration of contaminated soil and debris. Therefore, a 2-year national capacity variance is proposed for soil and debris contaminated with wastes for which BDAT is incineration.

3. Capacity Determinations for Underground Injected Wastes

The Agency is continuing to use a hierarchical approach in making decisions on adequacy of treatment capacity. As explained in previous preambles (52 FR 32450, August 27, 1887 and 53 FR 30912, August 16, 1988), EPA is allocating available capacity first to those wastes disposed in surface units, next to wastes resulting from CERCLA and RCRA cleanups, and finally, to injected wastes. Based on this approach, the Agency is proposing the following effective dates for injected wastes.

a. Effective Date Determinations for Scheduled Wastes for Which EPA Has Not Set Treatment Standards. The Agency has not proposed treatment standards for the wastes listed in Table III.C.3.(a) below. These wastes are not prohibited from land disposal by underground injection until the Agency sets treatment standards and effective dates, or until May 8, 1990.

b. Scheduled Wastes With Proposed Treatment Standards Which Current Data Indicate Are Not Being Injected. The wastes listed in Table III.C.3.(b) below are wastes for which standards are being proposed and which current data indicates are not being injected. Therefore, EPA is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected; if these wastes are injected, comment is requested on what quantities are being injected and what are their characteristics.

The Agency is aware that leachate gathered from leachate collection systems is frequently injected. Moreover, since a number of surface impoundments have recently stopped receiving hazardous wastes, those dilute wastes may be diverted to injection wells. Both the leachate and any wastes injected as a result of impoundments closing may contain wastes which have standards established, but for which the Agency has no data indicating whether the waste is injected. Therefore, the Agency has not evaluated whether a capacity extension is warranted. The Agency specifically requests comment on whether such wastes are injected, and on the quantities and characteristics of these wastes. Based on this data, the Agency may elect to promulgate the prohibition dates for injected wastes proposed today, or may establish new dates for all or some of the wastes.

EPA is proposing to set treatment standards for the nonwastewater components of K002 and K006, both Third Third wastes. The Agency has data indicating that these wastes are not being land disposed. EPA has not set BDAT for K002 or K006 wastewaters. These will remain Third Third wastes and will not be subject to "soft hammer" provisions. EPA is soliciting further comment on the disposal of K002 and K006 in injection wells.

c. Scheduled Wastes With Proposed Treatment Standards Which Current Data Indicate Are Being Injected. Table III.C.3.(c) lists those wastes with proposed treatment standards for which the Agency has data indicating that they are being injected underground. The Table summarizes the proposed effective dates for the prohibitions against the underground injection of wastes addressed in today's proposal.

(1) Capacity Determinations for Wastes Requiring Wastewater Treatment. The treatment standards for F007, F008, F009, F011, F012, F019 wastes (wastes from electroplating and heat treating), P029 (cooper cyanides), P030 (soluble cyanide salts), P063 (hydrogen cyanide), and P098 (potassium cyanide) wastes are based on wet air oxidation or on electrolytic oxidation, followed by alkaline chlorination. An estimated 132 million gallons per year of these wastes will require cyanide wastewater treatment. Of the 132 million gallons, approximately 127 million gallons are being disposed by underground injection. Table III.C.3.(c) gives the volumes of wastes injected for the indicated waste codes. These wastes may be injected in individual streams or as mixtures of wastes.

By comparing the volumes of injected wastes with available commerical treatment capacity, the Agency has determined that there is inadequate wastewater treatment capacity commerically available to treat the large volumes of F007 wastes that are injected. Therefore, the Agency is proposing to grant a national capacity extension for F007 wastes which are injected underground.

Over 91 million gallons per year of available alternate commercial treatment capacity has been identified for the low volumes of F008, F009, F011, F012, F019, P029, P030, and P098 wastes injected; therefore, no capacity extensions are proposed for these wastes. Since all of these are First Third wastes, the maximum extension available is to August 8, 1990 (see 51 FR 40573, November 7, 1986).

P063 wastes are reported in the TSDR survey only as part of mixed waste streams with K011, K013, and K014 wastes. When mixed waste streams are reported, but no breakdown of the volumes of the component wastes is given, the total volume is assumed to be divided equally among the components. This results in 174 million gallons being attributed to P063. The Agency believes that this is an extremely large volume for this waste code, and that the actual volume of P063 is much lower. As a result, EPA is not proposing to grant a capacity extension to P063. However, the Agency solicits comment on the volumes and characteristics of any P063 wastes being injected. Any new information will be evaluated and used in making a final determination on the need for a capacity extension for this waste.

(2) Capacity Determination for Injected Wastes Requiring Incineration. The treatment standards for P071 and P089 are based on the transfer of the incineration standards for K037 waste. Phthalate wastes U028, U088, U107, and U190 have treatment standards based on the transfer of the incineration standards for K024 wastes.

These wastes are currently injected in low volumes (see Table III.C.3.(c)), if at all. The Agency has determined that adequate treatment capacity exists for these wastes. Table III.C.1.(c) indicates that over 216 million gallons per year of commerical treatment capacity exists for liquid wastes requiring incineration. Therefore, no national capacity variances are proposed. These wastes will be banned from underground injection upon promulgation of this rule unless comments and data received indicate that a capacity extension is warranted.

(3) Capacity Determination for Injected K009 and K010 Wastes. The Agency is setting treatment standards for K009 and K010 based on incineration for nonwastewaters and biological treatment and/or steam stripping for wastewaters. The Agency has information indicating that approximately 54 million gallons per year of each of these wastes are being injected. Table III.C.1.(c) indicates that no alternate commercial treatment capacity is available for these wastes. The Agency is proposing to grant two-year national capacity extensions for both K009 and K010 waste codes. Also, the Agency solicits comment on whether additional volumes of K009 and K010 are being injected and, if so, the characteristics of those wastes.

(4) Capacity Determination for Injected K011, K013, and K014 Wastes. A significant volume of K011, K013, and K014 (wastes from acrylonitrile production) are currently being land disposed by underground injection. Treatment standards are based on incineration for nonwastewater components, and wet air oxidation (followed by biological treatment) for wastewaters.

The data indicate that neither adequate commercial incineration capacity for injected K011, K013, and K014 nonwastewaters (approximately 290 million gallons per year injected

versus 76 million gallons of available commerical treatment capacity) nor sufficient wet air oxidation capacity for the wastewater K011, K013, and K014 (829 million gallons per year injected versus 91 million gallons of available commerical treatment capacity) exists.

The Agency is, therefore, proposing to grant a national capacity extension for all K011, K013, and K014 wastes injected underground until August 8, 1990.

(5) Capacity Determination for Injected U221, U223, and P044 Wastes. Table III.C.3.(c) indicates that approximately 27 million gallons per year of U221 wastes are being injected underground, and additional volumes of U223, and P044 wastes are being injected in mixed waste streams.

Treatment standards are based on incineration for nonwastewater components, and on carbon adsorption for wastewaters. The data indicate that there is adequate treatment capacity for both nonwastewaters and wastewaters (see Table III.C.1.(c)). No national capacity extensions are proposed for U221, U223, or P044 wastes. The Agency solicits comment on the volumes and characteristics of any of these wastes that are being injected.

TABLE III.C.3.(A)

[Second Third Wastes For Which Treatment Standards Are Not Proposed]

K019, K025, K029, K041, K042, K097, K098, K105
P002, P003, P007, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114
U002, U003, U005, U008, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U112, U114, U116, U119, U127, U128, U131, U135, U138, U140, U143, U144, U146, U147, U149, U150, U181, U162, U163, U164, U165, U168, U169, U170, U172, U173, U174, U178, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U218, U217, U218, U239, U244

TABLE III.C.3.(B)

[Wastes for Which Treatment Standards Are Proposed Which Are *Not* Underground Injected]

FIRST THIRD
F006, K004 (nonwastewaters), K036 (wastewaters) P039, P041, P094, P097
SECOND THIRD
f010, F024
K027, K028, K029 (nonwastewaters), K038, K039, K040, K043

TABLE III.C.3.(B)—Continued

[Wastes for Which Treatment Standards Are Proposed Which Are *Not* Underground Injected]

K095 (nonwastewaters), K096 (nonwastewaters) P040, P043, P062, P074, P085, P104, P106, P111 U058, U235
THIRD THIRD
K002 (nonwastewaters), K003 (nonwastewaters) K005 (nonwastewaters), K006 (nonwastewaters) K007 (nonwastewaters), K023, K093, K094 P021, P099, P109, P121 U069, U087, U102
NEWLY LISTED WASTES
K113, K114, K115, K118

Table III.C.3.(C)

[Wastes With Treatment Standards Proposed Which *Are* Being Underground Injected]

Waste code	Volume of injected waste requiring treatment capacity
FIRST THIRD	
F007	*127.6
F008	*<0.1
F009	*<0.1
F019	<0.1
K011	*512.7
K013	*486.8
K014	*126.3
P030	<0.1
P063	184.3
P071	<0.1
P089	<0.1
U221	26.8
U223	*<0.1
SECOND THIRD	
F011	*0.0
F012	*0.0
K009	54.4
K010	54.4
P029	*<0.1
P044	*0.0
P098	<0.1
U028	*0.0
U107	*0.0
THIRD THIRD	
U088	*0.0
U190	*<0.1

*Indicate wastes are injected in mixed waste streams. Wastes with no volumes indicated may be injected as part of these mixed streams.

TABLE III.3.C.(D)

[Summary of Effective Dates for Underground Injected Wastes With Standards Proposed]

Waste	Proposed effective date
First Third:	
F007, K011, K014	August 8, 1990
F008, F009, F019, P030, P063, P071, P089, U221, U223	June 8, 1989

TABLE III.3.C.(D)—Continued

[Summary of Effective Dates for Underground Injected Wastes With Standards Proposed]

Waste	Proposed effective date
Second Third:	
K009, K010	June 8, 1991
F011, F012, P029, P044, P098, U026, U107	June 8, 1989
Third Third:	
U088, U190	June 8, 1989

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is proposed pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the promulgation of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The amendments being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requiste authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

C. State Implementation

The following four aspects of the framework established in the November 7, 1986, rule (51 FR 40572) affect State implementation of today's proposal and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators, treaters, storers, and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA is proposing to grant and rescind two-year national variances from the effective dates of the land disposal restrictions based on an analysis of available alternative treatment, recovery, or disposal capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective dates because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant waste-specific variances from treatment standards in cases where it can be demonstrated that the physical and/or chemical properties of the wastes differ significantly from wastes analyzed in developing the treatment standards, and the wastes cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action may be the establishment of a new waste treatability group. All wastes meeting the criteria of these new waste treatability group may also be subject to the treatment standard established by the variance. Granting such variances may have national impacts; therefore, this aspect of the program is not delegated to the States at this time.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes where it can be demonstrated that there will be no migration of hazardous constitutents for as long as the waste remains hazardous. States which have the authority to impose restrictions may be authorized under RCRA section 3006 to grant petitions for exemptions from the restrictions. Decisions on site-specific petitions do not require the national perspective required to restrict wastes or grant extensions. EPA will be handling "no migration" petitions at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the Agency's final decision on petitions in the Federal Register.

States are free to impose their own disposal restrictions if such actions are more stringent or broader in scope than the actions of Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such restrictions, the broader and more stringent State restrictions govern.

V. Effect of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, some generators might switch from land disposal of restricted Second Third wastes to discharge to publicly-owned treatment works (POTWs) in order to avoid incurring the costs of alternative treatment. In shifting from land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste genertors might illegally discharge their waste to surface waters without treatment, which could cause damage to the local ecosystem and potentially pose health risks from direct exposure or bioaccumulation.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface waters. However, the amount of Second Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

Management of some of the hazardous wastes included in today's proposed rulemaking could be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing, authorized dumpers until December 31, 1991, after which "* * * it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters * * *". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to Second Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. Therefore, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other source of air emissions, such as tanks and waste transfer and handling.

D. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

The land disposal restrictions may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). There are three primary areas in which these effects may occur.

One area that may be affected by the LDR is in the selection of treatment standards at the remedial action site. The cleanup standards set at CERCLA sits are risk-based, while on the other hand, treatment standards developed under the land disposal restrictions program are technology-based. Therefore, the technology-based treatment standards may be more stringent than the risk-based cleanup standards developed based on the CERCLA selection of remedy criteria.

Another area that may be affected is in the treatment of soil and debris contaminated with wastes restricted from land disposal. Contaminated soil and debris are a primary type of waste that must be remediated at most CERCLA sites. In many cases, the soil matrix is different from that of the industrial waste for which treatment standards are set. CERCLA site managers must either comply with the treatment standards or request and be granted a variance from the treatment standard (§ 268.44) or a "no-migration" variance (§ 268.6).

Finally, even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves excavation and subsequent disposal, the wastes are subject to the land disposal restrictions. If a waste is excavated from a unit, treated, and redisposed, "placement" of the waste in a land disposal unit has occurred and the treatment standard must be met. However, if the waste is capped in place, "placement" has not occurred and the treatment standard does not have to be met.

E. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of generators of pesticide waste that have heretofore been comparatively unaware of the land disposal restrictions may be regulated when today's proposed rulemaking is promulgated. This will require that the agency develop guidance materials and provide training on how to comply with the requirements of the land disposal restrictions.

Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide aplicators. The provisions of 40 CFR 262.70 exempt farmers from regulation under the land disposal restrictions program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. Subsequent to promulgation of today's proposed rule, these generators must comply with the requirements of the land disposal restrictions if they dispose a hazardous waste subject to treatment standards or "soft hammer" provisions.

F. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substance Control Act (TSCA) and RCRA.

Certain wastes listed as P and U contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA, whereas the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. Such a waste must go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed waste component prior to land disposal.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule to determine if it is a "major" regulation as defined by Executive Order No. 12291. For all major rules, the Agency is required by the Executive Order to conduct a Regulatory Impact Analysis, and by the Regulatory Flexibility Act to assess small business impacts. The cost and economic impact estimates serve, additionally, as measures of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's proposed rule is not a major rule. This section of the preamble discusses the results of the analyses of the proposed rule.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has conducted cost analysis and has concluded that the proposed rule is not a major rule. Annual costs to the economy are estimated at approximately $24.9 million to $32.4 million for wastes not injected underground and an additional $3.9 million for those injected underground.

3. Basic Approach

The Agency analyzed costs and benefits using the same approach and methodology that was used for the August 17, 1988 First Third final rule (53 FR 31138). The effects of the proposed rule were estimated by comparing post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline for all Second and Third Third wastes is defined as continued land disposal of wastes in units meeting minimum technological requirements. The baseline was not adjusted to reflect treatment requirements that would automatically occur in the absence of a rule after May 8, 1990.

The baseline for First Third wastes included in this rule is defined as treatment needed to comply with the First Third Land Disposal Restrictions rule or the soft hammer provisions that went into effect on August 8, 1988. This baseline corresponds to treatments evaluated under Alternative A Scenario 2 in the First Thirds RIA (53 FR 31138, August 17, 1988).

4. Results

a. Population and Affected Facilities. The proposed rule will affect 27 facilities. An additional 8 facilities would be affected by the soft hammer provisions that will take effect on June 8, 1989.

Only 20 injection facilities (with a total of 27 injection wells) will be required to either treat wastes or file "no migration" petitions. These facilities will not significantly contribute to compliance costs already incurred by injection well owners/operators managing California list and First Third wastes.

b. Costs. The standards promulgated by this proposed rule are estimated to cost industry $28.8 million per year. If there is not enough capacity to treat the wastes subject to the soft hammer provisions, the facilities may be able to continue managing their wastes in minimum technology units at no additional cost.

If treatment capacity is available, wastes subject to the soft hammer provisions would need to be treated. The Agency estimated the upper range costs of treating those wastes by assuming these wastes would be incinerated. This treatment could add as much as $7.5 million to the cost of the rule. Less costly forms of treatment would be available for the soft hammered wastes, which would reduce the cost.

In general, the Agency assumed that the least costly treatment would be selected. This assumption had negligible effects on the estimated costs except for the case of a mixed waste stream containing K027 and D007, a Third Third chromium waste. The Agency assumed that the mixed waste would be treated to comply with the proposed rule. The Agency also assumed that no treatment of the residual scrubber sludges to remove chromium would take place because treatment standards for D007 have not been promulgated. Promulgation of standards for D007 under the Third Third rule would increase costs for this mixed waste by approximately $28 million.

The additional volume of injected wastes attributable to the Second Third schedule is small by comparison to the volumes of wastes regulated by previous California list and First Third rulemakings. The Agency performed an analysis to assess the economic effect of associated compliance costs for Second Third wastes and found total compliance costs to be $3.9 million annually and petition costs are estimated at $0.1 million annually.

c. Economic Impacts. The economic impact analysis estimates that none of the affected facilities would be significantly affected by the proposed rule. None of the affected facilities is expected to close as a result of the rule.

d. Benefits. The benefits analysis estimated that the proposed rule would reduce the number of cancer cases by 0.07 and the number of exposures to noncarcinogenic chemicals above threshold levels by 555.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for Second Third wastes are likely to be understated.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for a proposed rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small businesses, small organizations, or small government jurisdictions is likely to experience financial distress based on the costs of the rule, then the agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal RFA. EPA evaluated the economic effect of the proposed rule, as required by the Regulatory Flexibility Act, and determined that no facilities would be significantly affected. The Administrator certifies that Part 268 and Part 148 will not have significant

economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Paperwork Reduction Act

All information collection requirements in this proposed rule were promulgated in previous land disposal restrictions rulemakings (other than those for the Underground Injection Control Program) and approved by the Office of Management and Budget at that time. Since there are no new information collection requirements being proposed today, an Information Collection Request has not been prepared.

For the Underground Injection Control Program, the information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Reporting and recordkeeping burden on the public for this collection is estimated at 745 hours for the respondents, with an average of 14 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR No. 370.09), contact Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 Street, SW., Washington, DC 20460 (202–382–2745); and Office of Management and Budget (Attn. Desk Officer, EPA), Paperwork Reduction Project (ICR No. 370.09), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's 1986 "National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey). The average quantity of waste contributed by generator facilities was obtained from EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981" (April 1984).

VII. Implementation of the Land Disposal Restrictions Program

The generator or owner/operator of a treatment, storage, and disposal facility must follow the waste management procedures specified in 40 CFR Part 268 which are applicable to the restricted hazardous wastes subject to the provisions in today's proposal. These wastes are listed in Subpart C of Part 268. The corresponding treatment standards and effective dates are found in Part 268 Subpart D. After the applicable effective date, a generator of a waste must determine, at the point of initial generation, if the waste meets the treatment standard. This determination can be made based on knowledge or analysis of the hazardous constituents in the waste, in the treatment residual, or in an extract of the waste or treatment residual. Waste analysis data and data supporting the generator's knowledge of the waste must be kept in the generator's files for five years.

A waste which meets the treatment standard or is the subject of a national variance, case-by-case extension, or "no migration" exemption can be land disposed. If the waste is subject to a national capacity variance or a case-by-case extension and is disposed in a landfill or surface impoundment, the disposal unit must meet the minimum technological requirements of RCRA 3005(o). The generator must satisfy the notification and certification requirements of 40 CFR 268.7(a) (2) and (3). The land disposal facility is required by 40 CFR 268.7(c) to keep a record of the notice and certification and verify that the treatment standard was met by testing according to the frequency specified in the facility's waste analysis plan.

A waste which does not naturally meet the treatment standard can be land disposed after treatment to meet the treatment standard. The generator must notify the treatment facility in accordance with 40 CFR 268.7(a)(1). The treatment facility must maintain a record of the notification and test the treated wastes according to the frequency specified in the facility's waste analysis plan. For treated wastes which meet the standard the treatment facility must provide the notice and certification required under 40 CFR 268.7(b) (1) and (2) to the land disposal facility. For treated wastes which do not meet the standard the treatment facility must comply with the notice requirements of 40 CFR 268.7(a)(1) if the waste will be managed at a different treatment facility.

VIII. Request for Data on Stabilization of Organic Constituents

The Agency is soliciting data showing the performance of stabilization technologies on organic waste constituents. These data should describe the treatment method and any relevant parameters, describe the feed and post-treatment concentrations of constituents (the BDAT list of constituents may be useful), describe the analytical methods used, and include appropriate QA/QC data. This data is being gathered for possible future use by the Agency. This is intended to give the regulated community an opportunity to provide data that may be used by EPA for future decisions on the viability of stabilization as a treatment alternative for organic wastes. Please identify these comments with the heading "Comments on Stabilization of Organics".

IX. References

(1) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Cyanide Wastes. F006 (Cyanide Only), F007–F012, F019, P012, P013, P021, P029, P030, P033, P063, P074, P098, P099, P104, P106, and P121, U246. December 1988.

(2) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K011, K013, and K014. December 1988.

(3) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K009 and K010. December 1988.

(4) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K043. December 1988.

(5) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Phthalate Waste, K023, K093, K094, U028, U069, U088, U102, U107, U190. December 1988.

(6) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Organophosphourous Waste, K038–K040, P039, P040, P041, P043, P044, P062, P071, P085, P089, P094, P097, P109, P111, U059, U067, and U235. December 1988.

(7) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Inorganic Pigment Waste, K002, K003, K005, K006, and K007. December 1988.

(8) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for K028. December 1988.

(9) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for F024. December 1988.

(10) U.S. EPA, "Best Demonstrated Available Technology (BDAT) for Waste from the Production of Dinitrotoluene, Toluenediamine, and Toluenediisocyanate. K027, K111–K116. December 1988.

(11) U.S. EPA, "Treatment Technology Background Document." December 1988.

(12) U.S. EPA, "Methodology for Developing Treatment Standards." December 1988.

(13) U.S. EPA, Memorandum From Ralph Bracelo, Jean Tulley to William Vocke "Results of Preliminary Analysis of Proposed Second Thirds Land Disposal Restrictions Rule December 19, 1988.

(14) U.S. EPA, "Background document for Second Third Wastes to Support 40 CFR 268 Land Disposal Restrictions Proposed Rule. Second Third Wastes Volumes, Characteristics, and Required and Available Treatment Capacity " December 1988.

(15) U.S. EPA, "Findings on Class I Hazardous Wells Affected by the Land Ban Rule." Temple, Barker and Sloane. December 1987.

(16) U.S. EPA, "Estimated Quantity of Extracted Ground Water—RCRA Facilities and CERCLA Sites: 1988–1990," ICF Incorporated. July 1988.

(17) U.S. EPA, "Evaluation of Availability of Alternate Treatment and Disposal Capacity for Injected Hazardous Wastes;" Tischler and Kocurek. October 1987.

(18) U.S. EPA, "Information Collection Request for the Proposed Hazardous Waste Disposal Restrictions for Class I Injection of Second Thirds List Wastes," Cadmus Group, Inc. November 1988.

(19) U.S. EPA, "Second and Third Thirds Cost Estimate," Cadmus Group, Inc. December 1988.

List of Subjects in 40 CFR Part 148, 268, and 271

Administrative practice and procedure, confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water pollution control, Water supply.

John Moore,

Acting Administrator.

Date: December 30, 1988.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

I. In Part 148:

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resources Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.14 which was proposed to be revised at 53 FR 43408, Oct. 26, 1988, would be further amended by redesignating proposed paragraphs (a) as paragraph (c), (b) as (d), and (c) as (e); by revising the introductory text of redesignated paragraph (e); and by adding new paragraphs (a) and (b) to read as follows:

§ 148.14 Waste specific prohibitions—First Third wastes.

(a) Effective June 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste codes F006 (cyanide), F008, F009, F019; the wastes specified in 40 CFR 261.32 as K004 (nonwastewater), K036 (wastewaters); and the wastes specified in 40 CFR 261.33 as P030, P039, P041, P063, P071, P089, P094, P097, U221 and U223 are prohibited from underground injection.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.31 as EPA Hazardous waste code F007; and the wastes specified in 40 CFR 261.32 as K011, K013, K014 are prohibited from underground injection.

* * * * *

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply:

* * * * *

3. Section 148.15 is added to read as follows:

§ 148.15 Waste specific prohibitions—Second Third wastes.

(a) Effective June 8, 1989, the waste specified in 40 CFR 261.31 as EPA Hazardous waste codes F010, F011, F012, F024; the wastes specified in 40 CFR 261.32 as K027, K028, K029 (nonwastewaters), K038, K039, K040, K043, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and wastes specified in 40 CFR 261.33 as P029, P040, P043, P044, P062, P074, P085, P098, P104, P106, P111, U028, U058, U107 and U235; are prohibited from underground injection.

(b) Effective June 8, 1991, the wastes specified in 40 CFR 261.32 as EPA hazardous waste codes K009 and K010 are prohibited from underground injection.

(c) The requirements of paragraph (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

4. Section 148.16 is added to read as follows:

§ 148.16 Waste specific prohibitions—Third Third wastes.

(a) Effective June 8, 1989, the wastes specified in 40 CFR 261.32 as EPA hazardous waste codes K002 (nonwastewaters), K003 (nonwastewaters), K005 (nonwastewaters), K006 (nonwastewaters), K007 (nonwastewaters), K023, K093, K094; and the wastes specified in 40 CFR 261.33 as P013, P021, P099, P109, P121, U069, U087, U088, U102, U190; are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part.

PART 268—LAND DISPOSAL RESTRICTIONS

I. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. Section 268.12 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 268.12 Indentification of wastes to be evaluated by May 8, 1990.

* * * * *

(b) Wastewater residues (less than 1% total organic carbon and less than 1% total suspended solids) resulting from the following well-designed and well-operated treatment methods for wastes listed in §§ 268.10 and 268.11 for which EPA has not promulgated wastewater treatment standards: metals recovery, metals precipitation, cyanide destruction, carbon adsorption, chemical oxidation, steam stripping, biodegradation, and incineration or other direct thermal destruction. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this Part still apply.

(c) Leachate derived from the treatment, storage or disposal of wastes listed in §§ 268.10 and 268.11 for which EPA has not promulgated wastewater treatment standards, and contaminated ground water that contains such wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.33 of this part still apply.

(d) Wastes listed in §§ 268.10 and 268.11 that are mixed hazardous/radioactive wastes. The treatment standards applicable to wastes prohibited under §§ 268.30–268.32 of this Part still apply.

Subpart C—Prohibitions on Land Disposal

3. Section 268.34 is added to read as follows:

§ 268.34 Waste specific prohibitions—Second Third Wastes.

(a) Effective June 8, 1989, the following First Third wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F006 (cyanide), F007 which are not underground injected; F008, F009, F019; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K004, K008; K011, K013 and K014 which are not underground injected; K036; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste Nos. P030, P039, P041, P063, P071, P089, P094, P097, U221 and U223 are prohibited from land disposal.

(b) Effective June 8, 1989, the following Second Third wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F010, F011, F012, F024; the wastes specified in 40 CFR 261.32 as K009 and K010 which are not underground injected; K027, K028, K029, K002 (nonwastewaters), K003 (nonwastewaters), K005 (nonwastewaters), K006 (nonwastewaters), K007 (nonwastewaters), K009, K010, K023, K027, K029 (nonwastewaters), K038, K039, K040, K043, K093, K094, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste Nos. P013, P021, P029, P030, P039, P040, P041, P043, P044, P062, P071, P074, P085, P089, P094, P097, P098, P099, P104, P106, P109, P111, P121, U028, U058, U069, U087, U088, U102, U107, U190, U221, U223, and U235 are prohibited from land disposal.

(c) Effective June 8, 1991, the wastes specified in 40 CFR 268.11 having a treatment standard in Subpart D of this part based on incineration and which are contaminated soil and debris are prohibited from land disposal.

(d) Between June 8, 1989 and June 8, 1991, wastes included in paragraph (b) of this section may be disposed of in a landfill or surface impoundment unit only if such unit is in compliance with the requirements specified in 268.5(h)(2).

(e) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this Part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(f) Between June 8, 1989 and May 8, 1990, the wastes specified in § 268.11 for which treatment standards under Subpart D of this Part are not applicable, including wastes which are subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under § 268.32 of this Part, but not including wastes subject to a treatment standard under § 268.42 of this Part, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(g) To determine whether a hazardous waste listed in §§ 268.10, 268.11, and 268.12 exceeds the applicable treatment standards specified in §§ 268.41 and 268.43, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

4. In § 268.41, Table CCWE is amended by deleting from the subtable for F006 nonwastewaters "Cyanides (Total) * * * Reserved", and by adding the following subtables to Table CCWE in alphabetical/numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

* * * * *	
F007, F008, F009, and F011 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072
* * * * *	
F012 and F019 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.066
Chromium (Total)	5.2
Lead	0.51
Nickel	0.32
Silver	0.072
* * * * *	
F024 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	1.7
Nickel	0.048
* * * * *	
K011, K013, and K014 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32
* * * * *	
K028 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Chromium (Total)	1.7
Nickel	0.048
* * * * *	
K115 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.32
* * * * *	
P029 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Copper	0.71
* * * * *	
P074 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Nickel	0.3
* * * * *	
P099 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.07
* * * * *	
P104 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Silver	0.07
* * * * *	
P121 nonwastewaters (see also Table CCW in § 268.43)	Concentration (in mg/l)
Zinc	0.086

5. In § 268.42, paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 268.42 Treatment standards expressed as specified technologies

(a) * * *

(3) the nonwastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be incinerated in accordance with the requirements of Part 264, Subpart O, or Part 265, Subpart O, or in boilers or industrial furnaces burning in accordance with applicable regulatory standards: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

(4) The wastewater form of the following hazardous wastes listed in §§ 268.10, 268.11, and 268.12 must be treated by carbon adsorption: K027, K039, K113, K114, K115, K116, P040, P041, P043, P044, P062, P085, P109, P111, U058, U087, U221, and U223.

* * * * *

6. In § 268.43, Table CCW is amended by revising the subtable for F006 nonwastewaters, and by adding the following subtables in alphabetical/numerical order by EPA hazardous waste number to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

F006 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064
* * * * *	
F006 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
* * * * *	
F007, F008, F009, and F011 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064
* * * * *	
F007, F008, F009, and F011 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44
* * * * *	
F010 nonwastewaters	Concentration (in mg/kg)
Cyanides (Total)	1.5
* * * * *	
F010 wastewaters	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
* * * * *	
F012 an F019 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanides (Total)	110
Cyanides (Amenable)	0.064

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

* * * * *	
F012 and F019 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Chromium (Total)	0.32
Lead	0.04
Nickel	0.44
* * * * *	
F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
2-Chloro-1,3-butadiene	0.014
3-Chloropropene	0.014
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	1.8
Di-n-octyl phthalate	1.8
Hexachloroethane	1.8
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001
* * * * *	
F024 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
2-Chloro-1,3-butadiene	0.28
3-Chloropropene	0.28
1,1-Dichloroethane	0.014
1,2-Dichloroethane	0.014
1,2-Dichloropropane	0.014
cis-1,3-Dichloropropene	0.014
trans-1,3-Dichloropropene	0.014
Bis(2-ethylhexyl)phthalate	0.036
Di-n-octyl phthalate	0.036
Hexachloroethane	0.036
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001
Chromium (Total)	0.35
Nickel	0.47
* * * * *	
K009 and K010 nonwastewaters	Concentration (in mg/kg)
Chloroform	6.0
1,1-Dichloroethane	6.0
Methylene chloride	30
* * * * *	
K009 and K010 wastewaters	Concentration (in mg/l)
Acrolein	0.14
Chloroform	0.09
1,1-Dichloroethane	5.3
Ethyl methacrylate	0.18
Methylene chloride	0.03
* * * * *	
K011, K013, and K014 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Acetonitrile	1.8
Acrylonitrile	1.4

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Acrylamide	23
Benzene	0.03
Cyanides (Total)	57
* * * * *	
K011, K013, and K014 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Acetonitrile	0.14
Acrylonitrile	0.14
Acrylamide	0.14
Benzene	0.14
Cyanides (Total)	12
Cyanides (Amenable)	1.3
Nickel	0.44
* * * * *	
K023, K093, and K094 nonwastewaters	Concentration (in/mg/kg)
Phthalic acid	28
* * * * *	
K023, K093, and K094 wastewaters	Concentration (in mg/l)
Phthalic acid	0.54
* * * * *	
K028 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
1,1-Dichloroethane	0.014
trans-1,2-Dichloroethene	0.014
Hexachlorobutadiene	2.7
Hexachloroethane	1.8
Pentachloroethane	1.9
1,1,1,2-Tetrachloroethane	1.9
1,1,2,2-Tetrachloroethane	1.9
Tetrachloroethene	0.014
1,1,1-Trichloroethane	0.014
1,1,2-Trichloroethane	0.014
* * * * *	
K028 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
1,1-Dichloroethane	0.014
trans-1,2-Dichloroethene	0.036
Hexachlorobutadiene	0.014
Hexachloroethane	0.036
Pentachloroethane	0.014
1,1,1,2-Tetrachloroethane	0.014
1,1,2,2-Tetrachloroethane	0.014
Tetrachloroethene	0.014
1,1,1-Trichloroethane	0.014
1,1,2-Trichloroethane	0.014
Cadmium	6.4
Chromium (Total)	0.35
Lead	0.037
Nickel	0.47
* * * * *	
K036 wastewaters	Concentration (in mg/l)
Disulfoton	0.003
* * * * *	
K038 and K040 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1
* * * * *	

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

K038 and K040 wastewaters	Concentration (in mg/l)
Phorate	0.003

K043 nonwastewaters	Concentration (in mg/kg)
2,4-Dichorophenol	0.38
2,6-Dichorophenol	0.34
Pentachlorophenol	1.9
Tetrachloroethene	1.7
Tetrachlorophenols (Total)	0.68
2,4,5-Trichlorophenol	8.2
2,4,6-Trichlorophenol	7.8
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

K043 wastewaters	Concentration (in mg/l)
2,4-Dichlorophenol	0.06
2,6-Dichlorophenol	0.006
Pentachlorophenol	0.014
Tetrachloroethene	0.006
Tetracholorophenols (Total)	0.02
2,4,5-Trichlorophenol	0.025
2,4,6-Trichlorophenol	0.017
Hexachlorodibenzo-p-dioxins	0.001
Hexachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
Tetrachlorodibenzo-furans	0.001

K115 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Nickel	0.47

P013 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P013 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

P021 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P021 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

P029 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P029 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Copper	0.42

P030 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P030 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

P039 nonwastewaters	Concentration (in mg/kg)
Disulfoton	0.1

P039 wastewaters	Concentration (in mg/l)
Disulfoton	0.003

P063 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P063 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

P071 nonwastewaters	Concentration (in mg/kg)
Methyl parathion	0.1

P071 wastewaters	Concentration (in mg/l)
Methyl parathion	0.003

P074 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P074 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Nickel	0.44

P089 nonwastewaters	Concentration (in mg/kg)
Parathion	0.1

P089 nonwastewaters	Concentration (in mg/l)
Parathion	0.003

P094 nonwastewaters	Concentration (in mg/kg)
Phorate	0.1

P094 wastewaters	Concentration (in mg/l)
Phorate	0.003

P097 nonwastewaters	Concentration (in mg/kg)
Famphur	0.1

P097 wastewaters	Concentration (in mg/l)
Famphur	0.003

P098 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P098 nonwastewaters	Concentration (in mg/l)
Cyanide (Total)	112
Cyanide (Amenable)	1.3

P099 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P099 wastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	112
Cyanide (Amenable)	1.3
Silver [1]	

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

P104 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P104 nonwastewaters (see also Table CCWE in § 268.41)	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Silver	[1]

P106 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P106 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3

P121 nonwastewaters	Concentration (in mg/kg)
Cyanide (Total)	110
Cyanide (Amenable)	0.064

P121 wastewaters	Concentration (in mg/l)
Cyanide (Total)	12
Cyanide (Amenable)	1.3
Zinc	[1]

U028 nonwastewaters	Concentration (in mg/kg)
Bis-(2-ethylhexyl) phthalate	28

U028 wastewaters	Concentration (in mg/l)
Bis-(2-ethylhexyl) phthalate	0.54

U069 nonwastewaters	Concentration (in mg/kg)
Di-n-butyl phthalate	28

U069 wastewaters	Concentration (in mg/l)
Di-n-butyl phthalate	0.54

U088 nonwastewaters	Concentration (in mg/kg)
Diethyl phthalate	28

U088 wastewaters	Concentration (in mg/l)
Diethyl phthalate	0.54

U102 nonwastewaters	Concentration (in mg/kg)
Dimethyl phthalate	28

U102 wastewaters	Concentration (in mg/l)
Dimethyl phthalate	0.54

U107 nonwastewaters	Concentration (in mg/kg)
Di-n-octyl phthalate	28

U107 wastewaters	Concentration (in mg/l)
Di-n-octyl phthalate	0.54

U190 nonwastewaters	Concentration (in mg/kg)
Phthalic anhydride (reported as Phthalic acid).	28

U190 wastewaters	Concentration (in mg/l)
Phthalic anhydride (reported as Phthalic acid).	0.54

U235 nonwastewaters	Concentration (in mg/kg)
tris-(2,3-Dibromopropyl) phosphate.	0.1

U235 wastewaters	Concentration (in mg/l)
tris-(2,3-Dibromopropyl) phosphate.	0.003

[1] Reserved.

No Land Disposal for:
K002—Nonwastewaters [Based on Recycling]
K003—Nonwastewaters [Based on Recycling]
K004—Nonwastewaters [Based on Recycling]
K005—Nonwastewaters [Based on No Generation]
K006—Nonwastewaters [Based on Recycling]

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K007—Nonwastewaters [Based on No Generation]
K008—Nonwastewaters [Based on Recycling]
K029—Nonwastewaters [Based on No Generation]
K095—Nonwastewaters [Based on Recycling]
K096—Nonwastewaters [Based on Recycling]
. . . . .

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FR reference	Effective date
. .	. .	. .	. .
[Insert date of final rule]	Land disposal restrictions for Second Third wastes.	[Insert FR reference]	June 8, 1989.
. .	. .	. .	. .

3. Section 271.1(j) is amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

(j) * * *

. . . . .

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective	Self-implementing provision	RCRA citation	**Federal Register** reference
. .	. .	. .	. .
June 8, 1989	Land disposal restrictions on ⅓ of scheduled wastes.	3004(g)(6)(A)	[Insert date of publications and page numbers].
. .	. .	. .	. .

[FR Doc. 89-296 Filed 1-10-89; 8:45 am]
BILLING CODE 6560-50-M

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

II. In Part 271:

1. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**:

§ 271.1 [Amended]

. . . . .

(j) * * *

federal register

Wednesday
January 11, 1989

Part III

Environmental Protection Agency

40 CFR Parts 166 and 168
Advertising of Unregistered Pesticides, Unregistered Uses of Registered Pesticides and FIFRA Section 24(c) Registrations; Final Interpretive Rule

ENVIRONMENTAL PROTECTION AGENCY

[OPP-120003A; FRL 3384-6]

40 CFR Parts 166 and 168

Advertising of Unregistered Pesticides, Unregistered Uses of Registered Pesticides and FIFRA Section 24(c) Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interpretive Rule.

SUMMARY: EPA regulates the distribution, sale, and offer for sale of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* (FIFRA). EPA will treat as unlawful under FIFRA section 12 the advertising of: (1) Any pesticide for a use authorized under a FIFRA section 5 experimental use permit; (2) any pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements that are targeted to the geographical areas covered by the exemption, that identify retail dealers who stock the product, and that state the limitations on the use authorized under the exemption; (3) any pesticide for a use authorized by a FIFRA section 24(c) special local need registration without a prominent notice of the limitations on use under the section 24(c) registration; (4) any other unregistered pesticide; or (5) any registered pesticide for any other use not permitted by its registration under FIFRA section 3 or 24(c). This regulation is being promulgated because of numerous instances of pesticide advertising that EPA believes to be false or misleading.

EFFECTIVE DATE: This rule will become effective March 13, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Franklin D. Gee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1120B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a proposed rule on July 3, 1986 (51 FR 24393) stating how the Agency proposed to interpret FIFRA with regard to advertisements concerning uses of pesticides not permitted by registrations issued under FIFRA section 3, including uses allowed by FIFRA section 5 experimental use permits or FIFRA section 18 emergency exemptions, uses of unregistered pesticides, use of a registered pesticide for any other unapproved use, and uses that are the subject of registrations under FIFRA section 24(c). The rationale for the proposed rule was given in the preamble to that proposal. Except as modified by this document, the reasoning set forth in that preamble applies to the final rule adopted today.

The proposed rule was published in the **Federal Register** under 40 CFR Parts 153 and 166. However, since Part 153 pertains to general statements of policy and interpretations under FIFRA, the provisions that proposed to add Subpart A, § 153.12 to Part 153 have been moved to new Part 168, Subpart B, § 168.22 in this final rule. EPA intends to place enforcement policies in this new Part 168.

In this preamble, the part and section numbers as proposed (Part 153, § 153.12) are used in the discussion of the comments. There have been no numbering changes to the Part 166 amendment.

II. Response to Comments

Comments on the proposed rule were received from nine organizations. The comments are available for public inspection at the Office of Pesticide Programs Reading Room, Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:00 a.m. to 4:00 p.m., Monday through Friday except legal holidays. The comments and Agency responses are discussed in Units II.A. through H.

A. Experimental Use Permits (EUP)

One commenter endorsed the Agency's proposal to treat as unlawful any advertising of a pesticide for an EUP use. However, another commenter favored allowing advertising for an EUP use if the advertisement states that use must be in accordance with the conditions of the EUP. This commenter also said that EPA Policy and Criteria Notice No. 2162.3 (1981) conceded that advertisements of experimental use permit pesticides are not unlawful.

The Agency disagrees with the comment that favored allowing advertising of an EUP. As stated in the preamble to the proposed rule, under agency regulations an application for an EUP must specifically identify participants, location of participants, and acreage involved prior to approval. Advertisement of EUPs thus serves no useful purpose, but could encourage the sale or use of a pesticide for an unauthorized use.

Policy and Criteria Notice No. 2162.3 (1981) was rescinded recently. That Notice did not "concede that advertisements of experimental use permit pesticides are not unlawful." The Notice said the following: (1) It is unlawful to advertise a use covered by an EUP if the product has any registered uses; (2) advertisements for products that have not yet been registered will not be the subject of enforcement action if the products are not available for sale; (3) ads that do not refer to the experimental use status of [unregistered and unavailable] products are not unlawful, but are discouraged as potentially misleading; and (4) advertisements for EUP products should be qualified.

The Agency's experience over the past six years indicates the need for changes in those interpretations. Thus, this rule sets forth EPA's current views.

One commenter expressed concern about the purported broadness of the Agency's interpretation regarding EUP uses. The commenter apparently thought that EPA meant to treat as unlawful the use of product testimonials from EUP participants in advertising that appears after product registration occurs.

In response, EPA advises that product testimonials from prior EUP participants appearing after a product is registered for the use in question would not be regarded as unlawful so long as testimonials used in the advertisements are consistent with approved uses and do not differ substantially from the claims of the final registration.

A commenter questioned whether the information in EUP technical bulletins can be considered as advertising.

The Agency would not regard distribution of EUP technical bulletins as unlawful if the information contained therein regarding the pesticide did not extend beyond that contained in EPA's approval, if the limitations on use were clearly specified, and if information in such bulletins did not otherwise promote sale or use of the pesticide.

Ideally, the Agency believes that EUP technical bulletins should be furnished only to persons signed on as EUP cooperators or participants. However, the Agency recognizes the difficulty of controlling the distribution of these bulletins.

B. Emergency Exemptions

With regard to advertising of a pesticide for a use authorized by a FIFRA section 18 emergency exemption, two commenters opposed the EPA proposal to treat as unlawful any advertisements not placed by the retail dealers who sell the pesticide. The commenters favored allowing the manufacturer to place advertisements. One commenter opposed any advertising of emergency exemptions.

The Agency disagrees with the commenter that opposed any advertising of emergency exemptions. When an emergency occurs, it is important that those affected receive helpful information to alleviate the situation. The major issue is confinement of the pesticide use to the geographical area of the emergency.

The Agency agrees with the commenters that oppose limiting advertisements of emergency exemptions to only those placed by retail dealers. After further consideration, the Agency believes that no purpose would be served by restrictions on who may place or sponsor the advertisements, as long as the other provisions of the regulation are followed.

C. Special Local Needs Registrations

There was only one comment on this subject. The commenter supported the Agency's proposal to treat advertisements of special local needs registrations as unlawful unless they comply with the limitations set forth. However, the commenter suggested that the requirement for use of 6-point type for the notice of restrictions in printed advertisements might be inadequate to catch users' attention.

The Agency believes that the 6-point type size requirement is adequate. By "printed advertisements" EPA means to refer to printed magazines, newspapers and similar materials, not to text in television ads, billboards, or other media unlike magazines or newspapers.

D. Unregistered Products

The Agency proposed to treat as unlawful the advertisement of unregistered pesticides, but to make an exception for the advertisement of unregistered pesticides that are not available for purchase by potential users anywhere in the United States. Several commenters supported this approach, while two commenters objected to allowing any advertisements of unregistered products, finding such an approach inconsistent with FIFRA's registration scheme.

After consideration of comments, EPA has decided to withdraw the exception for the advertisement of unregistered pesticides that are not available for purchase in the United States. As noted by the commenters, allowing advertising of unregistered pesticides is inconsistent with a statutory scheme which requires that pesticides be registered and that the marketing of these pesticides be based on claims evaluated by EPA in the registration process. Allowing the advertising of unregistered pesticides may subvert the registration process by encouraging demand for section 18 emergency exemptions. Further, under the rule as proposed, manufacturers could sponsor advertising containing unsubstantiated claims up to the day of registration even though following registration such advertising would be illegal under section 12(a)(1)(B). In sum, the potential for abuse under this exception to the ban on advertising of unregistered pesticides far exceeds any information benefits gained by users through the advertising of unapproved pesticides. Further, the Agency considers cancelled pesticide products to be unregistered. Therefore, the advertisements of a cancelled pesticide product, inconsistent with existing stock provisions of the cancellation order, is unlawful.

E. Unregistered Uses

A commenter opposed any restriction on advertisements of registered products for unregistered uses. The commenter argued that such advertisements would not lead to misuse if they are properly qualified.

The Agency disagrees with the commenter. The Agency feels strongly that ads for unregistered uses of a registered product are likely to result in misuse. A person who can buy a registered pesticide, and who sees an ad for an unregistered use of that pesticide, may be tempted not to wait until registration of the use before buying and using the pesticide product for that use.

The commenter also argued that the proposed rule was at odds with FIFRA section 2(ee) and the Agency's statement of policy under section 2(ee) (46 FR 51745, October 22, 1981). Also, the commenter noted that the Agency's Policy and Criteria Notice No. 2162.3 (1981) stated that such advertisements are lawful if they are properly qualified.

Regarding FIFRA section 2(ee), the commenter raised a valid point. As a matter of policy, EPA generally has permitted a person to advertise FIFRA section 2(ee) uses even if they are not uses that have been registered. EPA, however, has explicitly limited this policy from extending to advertising for antimicrobial pesticide products targeted for use on human pathogens. 51 FR 19174 (1986). Further, advertisements made under FIFRA section 2(ee)(1) pertaining to changes in the amount of diluent used in applying pesticides for forestry or agricultural purposes must be made in accordance with the Advisory Opinion issued in the **Federal Register** on March 3, 1981 (46 FR 14965). The final interpretive rule has been amended to exclude those uses permitted by FIFRA section 2(ee) subject to the above-noted policy.

Policy and Criteria Notice No. 2162.3 (1981) was rescinded recently since it is in certain respects inconsistent with, and has been superseded by, this final rule.

It should be noted that the Agency considers cancelled pesticide uses as being unregistered uses of a registered pesticide product. Therefore, the advertisements of cancelled uses of a registered pesticide product, inconsistent with existing stock provisions of the cancellation order, is unlawful.

F. Advertisements in Medio Which Reach Pesticide Users in Other Countries

The preamble to the proposed rule requested comments on the advisability of regulation of advertisements that may reach users in another country where the use advertised is not authorized. Two commenters argued that such regulation would be beyond EPA's jurisdiction and would be unworkable. After further consideration, the Agency has decided not to attempt to address this subject further at this time.

G. First Amendment Issues

Two commenters suggested in general terms that the rule as proposed might violate the First Amendment to the U.S. Constitution because it does not address a substantial government interest, is not the least intrusive means for implementing the government interest, or both. One of those comments suggested that the judicious use of increased civil penalties against blatant violators of EPA's prior policy would be less intrusive. One commenter submitted detailed arguments in support of the Agency's authority to regulate pesticide advertising and was of the opinion that the rule complied with the First Amendment.

For the reasons set forth in the preamble to the proposed rule, EPA believes that the rule promulgated today complies with the First Amendment and the judicial decisions interpreting it. The two general comments suggesting that the rule would pose First Amendment problems do not purport to explain why that preamble discussion is incorrect. The preamble noted both the nature of the government's interest and the manner in which the restrictions were tailored to be as unrestrictive as practicable in view of that interest.

H. General Comments

1. A commenter requested that the Agency consider if and how the rule would affect publication of factual data and reports in scientific journals relative to experimental use permits, unregistered products, or unregistered uses.

It is not the Agency's intent to restrict the dissemination of scientific information to the scientific community. In this regard, the Agency does not consider the publication in scientific journals of articles reporting on scientific studies to be advertising. At the same time, however, it should be noted that if a person uses a scientific journal article in an advertising campaign, claims made in the journal article may properly be treated as if they were made originally by the person who placed the advertisement. See the decision of the EPA Administrative Law Judge in the recent FIFRA civil penalty proceeding entitled *In re Sporicidin International*, No. FIFRA 88–H–02, slip op. at 37 n. 30 (November 1, 1988).

2. A commenter expressed concern that answering questions about a pending label at a growers' meeting could be construed as "suggesting or recommending" the use of a product.

Generally, giving oral answers at a growers' meeting is not considered to be advertising. This rule only applies to advertisements. In another regulation issued under FIFRA, EPA has defined advertising as: (1) Brochures, pamphlets, circulars, and similar material offered to purchasers at the point of sale or by direct mail; (2) newspapers, magazines, newsletters and other material in circulation or available to the public; (3) advertisements on broadcast media such as radio and television; (4) telephone advertising; and (5) billboards and posters. 53 FR 15987 (May 4, 1988).

It is important to note, however, that this rule does not describe the universe of acts that are unlawful under sections 12(a)(1)(A) and 12(a)(1)(B). These sections are not limited to advertising. Sections 12(a)(1) (A) and (B) make it unlawful for any person to offer for sale any pesticide if it is unregistered, or any registered pesticide if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. In some circumstances, oral statements at a growers' meeting could be viewed as an offer for sale (section 12(a)(1)(A)) or a claim made as part of distribution or sale of a registered product (section 12(a)(1)(B)). Any person making such statements could be subject to the proscriptions in sections 12(a)(1)(A) or 12(a)(1)(B). For example, oral recommendations for unregistered uses of a pesticide (except for uses authorized by FIFRA section 2(ee)) made by a person with financial interest in that pesticide is regarded by EPA as a violation of FIFRA section 12(a)(1)(B).

For the purpose of FIFRA section 12(a)(2)(B), EPA believes that claims made in the kinds of advertising covered by this interpretative rule are "part of [the] distribution or sale" of the pesticide to which the advertising relates. The rule limits its coverage to advertisements that (1) are placed by persons who are in the pesticide business *and* (2) recommend or suggest the purchase of pesticides for certain purposes. FIFRA does not grant EPA plenary authority to regulate advertising as such, and it is arguable that there can be advertising that is separate from and not a part of the distribution of sale of a pesticide (see, e.g., the discussion of these matters in *In re Sporicidin International*, No. FIFRA 88–H–02, Slip op. at 41–43 (Nov. 1, 1988)). In this rule, EPA is not seeking to define the outer reaches of its FIFRA jurisdiction over advertising claims, but merely to state clearly its position with regard to claims in advertising that are made "to induce the * * * sale and use" of a pesticide and that therefore are a part of the distribution or sale of the pesticide. Id. at 43.

3. A commenter indicated that the "recommend or suggest" language in § 153.12(b) of the proposal is vague and ambiguous, and recommended the phrase "promote the commercial purchase or use of" instead.

The Agency is not convinced that the phrase "promote" is clearer or more specific than the phrase "recommend or suggest." The commenter's real concern (as ascertained by telephone inquiry) was that the Agency should not attempt to prohibit ads that are designed to encourage farmers to enlist as cooperators in EUP programs in which the holder of the EUP plans to sell the pesticide to the cooperator farmer. The commenter argues that these sales are not on a "commercial" scale, but are merely designed to lower the cost of the EUP effort and, perhaps, to help the EUP holder to determine whether the cooperators think the EUP product is cost-effective. EPA does not intend to discourage such ads designed merely to solicit cooperation in EUP testing, whether or not cooperators will have to purchase the product, as long as the pesticide is not mentioned in the ad.

4. A commenter expressed concern that the language of proposed § 153.12(a) would prohibit "placing" ads with an ad agency and that the act of placing the advertisement with an ad agency could subject the industry to enforcement action.

The Agency disagrees with this interpretation. Section 153.12(a) makes it clear that to be covered by the rule, the ad must actually appear in an advertising medium to which users or the general public have access. The words in question were intended to make clear the class of persons—persons in the pesticide business who, directly or through others, cause ads to appear in public advertising media—who would be deemed to have violated FIFRA. No violation would result if an ad did not appear or if, when it appeared, it conformed to the rule.

It is also important to note that the use of the phrase "place or sponsor" is meant to capture not only the action of originally causing the advertisement to appear but those actions taken subsequently to continue the publication of the advertisement. Thus, an advertisement "placed" before the effective date of this rule would become subject to the rule after it became effective upon the taking of any action to "sponsor" continued publication of the advertisement.

III. Statutory Requirements

In accordance with FIFRA section 25, EPA provided the FIFRA Scientific Advisory Panel (SAP), the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition and Forestry of the Senate with copies of this rule. The FIFRA Scientific Advisory Panel waived its right to review and comment on the rule. The Department of Agriculture reiterated its comment made at the proposed stage of this rule. That is, the Department has no difficulty with the rule but hopes the Agency will take great care before withdrawing a section 18 emergency exemption so as to avoid punishing the user by removing the pest control tool because of some violation committed by a pesticide company. EPA agrees with the Department's comment. No comments were received from either of the Congressional Committees.

IV. Procedural Matters and Required Regulatory Reviews

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. A "major" rule is one which has an annual effect of $100 million or more, or results in a major increase in costs or prices, or has significant adverse effects on economic activities. The Agency has reviewed this regulation and concludes that this rule will not have an annual effect of $100 million, and will not result in a major increase in costs or prices or have significant adverse effects on economic activities.

This rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This interpretive rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Parts 166 and 168

Advertising, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: December 30, 1988.

John A. Moore,

Acting Administrator.

Therefore, Subchapter E of 40 CFR Chapter I is amended as follows:

PART 16—EXEMPTION OF FEDERAL AND STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

1. In Part 166:

a. The authority citation for Part 166 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

b. By revising § 166.7 to read as follows:

§ 166.7 User notification; advertising.

(a) A State or Federal agency that obtains an exemption may notify eligible users of the availability of the exempted pesticide(s) through user groups, retail dealers, and other means. Notification may include distributing copies of the section 18 approval letter, labeling, or other information to eligible persons.

(b) As set forth more fully in § 168.22 of this chapter, EPA interprets FIFRA sections 12(a)(1) (A) and (B) as making it unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to advertise the pesticide for any use authorized by an emergency exemption, except for advertisements that are placed in media that address only persons in the geographical area to which the exemption applies, state the name and address of one or more retail dealers where users may buy the pesticide, and contain a prominent notice of the limitations on use under the emergency exemption. EPA may withdraw an exemption if the use of the pesticide covered by the exemption is advertised unlawfully.

2. By adding Part 168 consisting at this time of Subpart A, General Provisions, which is reserved, and Subpart B containing § 168.22, to read as follows:

PART 168—STATEMENTS OF ENFORCEMENT POLICIES AND INTERPRETATIONS

Subpart A—General Provisions [Reserved]

Subpart B—Advertising

Sec.

168.22 Advertising of unregistered pesticides, unregistered uses of registered pesticides and FIFRA section 24(c) registrations.

Authority: 7 U.S.C. 136–136y.

Subpart B—Advertising

§ 168.22 Advertising of unregistered pesticides, unregistered uses of registered pesticides and FIFRA section 24(c) registrations.

(a) FIFRA sections 12(a)(1) (A) and (B) make it unlawful for any person to "offer for sale" any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

(b) EPA regards it as unlawful for any person who distributes, sells, offers for sale, holds for sale, ships, delivers for shipment, or receives and (having so received) delivers or offers to deliver any pesticide, to place or sponsor advertisements which recommend or suggest the purchase or use of:

(1) Any pesticide for a use authorized under a FIFRA section 5 experimental use permit (EUP).

(2) Any pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements that:

(i) Are placed in media which address primarily persons in the geographical area to which the exemption applies.

(ii) State the name and address of one or more retail dealers who stock the pesticide.

(iii) Contain a prominent notice of the limitations on use under the section 18 emergency exemption.

(3) Any pesticide for any use authorized only by a FIFRA section 24(c) special local need registration, unless the advertisement contains a prominent notice of the limitations on use under the section 24(c) registrations.

(4) Any unregistered pesticide for any use unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section.

(5) A registered pesticide product for an unregistered use, unless the advertisement is one permitted by paragraph (b) (2) or (3) of this section. However, as a matter of policy, the Agency will not regard as unlawful the advertisement of uses permitted by FIFRA section 2(ee) provided the product is not an antimicrobial pesticide targeted against human pathogens (see 51 FR 19174; May 28, 1986).

(c) For purposes of paragraph (b) of this section, a "prominent notice of the limitations on use" is one which sets forth the limitations on use in a manner reasonably likely to be understood by persons to whom the advertisement is addressed. For printed advertising, this criterion will be met by a legend in 6-point or larger type.

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January 11, 1989

Part IV

Commodity Futures Trading Commission

17 CFR Part 34

Hybrid and Related Instruments; Proposed Rule and Statutory Interpretation

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt regulations concerning certain "hybrid" instruments that combine characteristics of commodity options contracts with debt or depository interests. The development of hybrid instruments with commodity-related components has raised questions concerning the status of such instruments under the Commodity Exchange Act ("CEA" or "Act") and Commission regulations. The proposed rules would establish an exemption from CFTC regulations under the CEA for hybrid instruments with limited commodity option components, based upon the limited nature of the option component and deference to other existing regulatory standards applicable to the noncommodity component of such instruments. In addition, the proposed rules would establish a notice requirement for hybrid instruments qualifying for the proposed exemption. The Commission is also publishing, in a companion release, a statutory interpretation that is intended to clarify the status of certain other categories of hybrid instruments.

DATE: Comments must be submitted on or before February 27, 1989.

ADDRESS: Comments should be submitted to the Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Robert Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254–8955, David Merrill, Senior Assistant General Counsel, telephone (202) 254–9880, or Eugene Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Burden: The public reporting burden for this collection of information is estimated to average ten minutes per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503.

I. Background

The Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, vests the Commission with jurisdiction over, among other things, "accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' * * *.)" 7 U.S.C. 2. Section 4c of the Act generally permits the trading of commodity options only subject to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of community options without the requirement of exchange trading under such terms and conditions as the Commission may prescribe. 7 U.S.C. 6c(b), 6c(c).[1] CFTC regulations, 17 CFR 1 *et seq.*, require that, with narrowly defined exceptions, all transactions in commodity options be executed on or subject to the rules of contract markets (exchanges) designated by the CFTC. Currently, Commission regulations permit two categories of commodity options to be traded other than on designated contract markets: Dealer options and trade options.[2] In addition, the Commission has authority to exempt particular option transactions from certain aspects of its rules by rule or order [3] and to authorize the domestic offer and sale of options executed on a foreign exchange.[4]

The recent development of hybrid instruments that couple elements of futures or commodity option contracts with debt or depository obligations or other interests that are not otherwise subject to regulation under the Act reflects commercial interest in offering to the public instruments that are indexed to the price of a commodity through transactions that take place other than on designated contract markets. Such instruments may entail certain of the risks of commodity futures or option transactions but would be offered and sold over-the-counter or on securities exchanges. Thus, they would not be subject to certain protections, which specifically address commodity-related risks, afforded participants in transactions effected on or pursuant to the rule of CFTC-designated exchange markets.

In issuing the Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments) ("Advance Notice"), 52 FR 47022 (December 11, 1987), the Commission recognized that the proliferation of hybrid instruments incorporating futures or commodity option elements in innovative formats has caused uncertainty as to the regulatory status of such instruments. The Commission believes that these marketplace developments and concomitant uncertainly concerning their regulatory implications must be carefully addressed to ensure that existing regulatory structure do not unnecessarily retard growth and innovation or fail to provide protections responsive to market developments. The Commission has therefore instituted this rulemaking as a means of assuring that hybrid instruments with an option component are addressed in a manner that is consistent with the CEA and applicable regulations while permitting, to the extent possible, growth and innovation in rapidly developing markets.

Under this proposal, hybrid instruments that have limited option components, that are subject to an alternative regulatory framework, and that satisfy certain additional requirements, may be offered and sold pursuant to the alternate regulatory scheme. Under this approach, the regulatory agency responsible for oversight of the commodity-independent component of a hybrid instrument would exercise regulatory responsibility for the entire instrument.

In order to assure that the agencies responsible for monitoring such instruments are sensitive to the commodity-related risks which may not otherwise be common to the instruments that they regulate, the CFTC has consulted with the federal regulatory authorities responsible for oversight of securities and banking transactions and expects to continue to work with such agencies. In these discussions, the Commission has noted, among other things: the importance of adequate disclosure to the public of risks of hybrid instruments which may differ from typical investment risks; enforcement problems that may be associated with fraudulent sales of commodity-related interests;[5] and the risks to issuers and the public posed by substantial commodity price movements. As a result of these efforts, the agencies with regulatory responsibility for issuers of commodity-related hybrid instruments affected by this proposal have indicated that they will review their regulations and consider the adequacy of the protections afforded in such areas as risk disclosures, sales practices, and financial soundness of the transactions.[6]

The current proposal also reflects the Commission's experience in reviewing proposed offerings of hybrid instruments on a case-by-case basis. Specifically, the Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of instruments through a series of published "no-action" letters, employing certain of the standards set forth in the Advance Notice. For example, the staff has granted no-action relief with respect to proposed offerings of foreign currency-linked debt instruments, where the instrument's principal amount was indexed to a foreign currency on no more than a one-to-one basis, the instrument bore an above-market rate of interest, and other specified conditions were satisfied. Subsequently, the Commission established a notice procedure whereby issuers of foreign currency-linked instruments may establish eligibility for no-action relief without securing specific prior Commission approval if they can confirm that the proposed offering complies with the conditions to no-action relief set forth in such letters.[7]

No-action relief has been issued with respect to other hybrid instruments, including debentures bearing fixed annual interest in excess of 35% of the estimated annual yield at the time of issuance for a comparable pure debt instrument and also providing for additional payments, capped at a fixed amount, related to any increase in the price of natural gas over an established base price;[8] and to certificates of deposit subject to insurance by the Federal Deposit Insurance Corporation ("FDIC") with interest payable at maturity indexed, in part, to the spot price of gold and bearing a fixed rate of interest equal to at least 35% of the estimated annual yield at the time of issuance for a comparable instrument.[9]

Finally, this proposal reflects the Commission's careful review and analysis of comments received in response to the Advance Notice.

II. History of the Rulemaking

A. The Advance Notice

On December 8, 1987, the Commission approved for publication in the **Federal Register** an Advance Notice of Proposed Rulemaking concerning the regulation of hybrid and related instruments.[10] The Advance Notice set forth a framework designed to provide simplified regulatory treatment on a prospective basis for certain categories of commodity-related hybrid instruments. This proposed framework addressed:

(1) a category of Hybrid instruments with *de minimis* futures or option characteristics, as to which a jurisdictional exclusion was proposed; [11]

(2) a class of hybrid instruments characterized as predominantly debt obligations, bank deposits, or other transactions that possess only incidental commodity option elements, and that are subject to adequate regulation by another regulatory authority, as to which a regulatory exemption, upon conditions, was proposed; [12]

(3) certain commercial transactions that would constitute forward contracts [13] but for

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[1] Section 4c(f) of the Act provides, however, that the Act shall not be deemed to govern or apply "to any transaction in an option on foreign currency traded *on* a national securities exchange." 7 U.S.C. 6c(f) (emphasis added).

[2] Dealer options are options granted by a person who was in the business of granting options on a physical commodity and in the business of buying, selling, producing or otherwise using that commodity as of May 1, 1978 and who satisfies certain net worth and other requirements of Commission rules. 7 U.S.C. 6c(d)(1); 17 CFR 32.12 (1988). Trade options are options (other than options on domestic agricultural commodities enumerated in Section 2(a)(1)(A) of the Act) offered by a person who "has a reasonable basis to believe that the option is offered to a producer, processor or commercial user of, or a merchant handling, the commodity underlying the option, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." Rule 32.4(a), 17 CFR 32.4(a) (1988).

[3] Commission Rule 32.4(b) states that the Commission "may, by order, upon written request or upon its own motion, exempt any * * * person, either unconditionally or on a temporary or other conditional basis," except as to options on enumerated agricultural commodities, from the general ban on off-exchange options "if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption." 17 CFR 32.4(b) (1988).

[4] Commission Rule 30.3(a), 17 CFR 30.3(a) (1988). Pursuant to Rule 30.3(a), the Commission has authorized certain option contracts traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange, and the Montreal Exchange to be offered and sold to persons located in the United States (53 FR 28828, 28832 and 28840, respectively, (July 29, 1988)).

[5] Fraudulent and other unlawful practices historically have affected the sale of commodity options. Such practices were among the factors leading to the enactment of the Commodity Exchange Act of 1936 (Pub. L. No. 74–675, § 5, 49 Stat. 1494 (1936)) which, among other things, prohibited options trading in agricultural commodities then regulated under the Grain Futures Trading Act of 1922. Fraudulent activities in non-agricultural commodities, most notably in the late 1960's and early to mid-1970's, resulted in the Commission's ban of all options trading in 1978. 43 FR 16153 (April 17, 1978) (*see* 43 FR at 16161 for a summary of the Commission's enforcement difficulties in regulating commodity option transactions). The Commission's options ban was codified by Congress in the Futures Trading Act of 1978, 92 Stat. 867, and options trading subsequent thereto has been permitted only under carefully controlled conditions. Domestic exchange-traded commodity option transactions are governed by Part 33 of the Commission's regulations. *See, e.g.*, 46 FR 54500 (November 3, 1981) for a discussion of the Commission's domestic exchange-traded options regulations.

[6] The Commission has received correspondence from the staffs of the Securities and Exchange Commission ("SEC"), the Board of Governors of the Federal Reserve Board, and the Office of the Comptroller of the Currency reviewing their respective regulatory frameworks as applicable in these areas and recognizing their oversight responsibilities with respect to hybrid instruments. *See* Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, to Marshall E. Hanbury, and Paula A. Tosini, Co-Chairmen, Task Force on Off-Exchange Instruments, CFTC, dated November 18, 1988; Letter from Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System to Robert J. Mackay, Chief of Staff, CFTC, dated November 21, 1988; Letter from J. Michael Shepherd, Senior Deputy Comptroller, Corporate and Economic Programs, Office of the Comptroller of the Currency, to Robert Mackay, Chief of Staff, CFTC, dated December 14, 1988.

[7] CFTC Advisory No. 39–88, June 23, 1988 (Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,282); CFTC Advisory No. 45–88, July 18, 1988 (Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,284); and CFTC Advisory No. 48–88, July 26, 1988 (Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,285).

[8] Commission Advisory No. 63–88, September 21, 1988 (Interpretative Letter dated September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,320).

[9] Commission Advisory No. 66–88, September 28, 1988 (Interpretative Letter dated September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶24,321). In addition, by letters dated September 30 and November 2, 1988, the Task Force on Off-Exchange Instruments determined that it would not recommend the initiation of enforcement action under Section 4c of the Act, 7 U.S.C. 6c (1982), based upon the issuance of notes in two separate offerings which provided, among other things, for a non-commodity related return equal to at least 35% of the estimated annual yield at the time of issuance for a comparable pure debt or depository instrument and a commodity-related return based upon changes in the price of specified metals.

[10] 52 FR 47022 (December 11, 1987). The Advance Notice provided for a comment period of 60 days. This period was subsequently extended for an additional 60 days and expired on April 11, 1988. 53 FR 2510 (January 28, 1988).

[11] Such instruments are addressed in the statutory interpretation set forth in the Commission's companion **Federal Register** release of this date.

[12] Certain hybrid instruments with option components are addressed in this release.

[13] Section 2(a)(1)(A) of the Act, 7 U.S.C. 2, excludes from the Commission's jurisdiction "any sale of any cash commodity for deferred shipment or delivery."

the lack of delivery as the normal culmination of the transaction, as to which a generic no-action position was proposed; [14]

(4) commodity options proposed to be offered by a private grantor either separately or in conjunction with debt obligations in a public offering registered with the SEC, but which would thereafter be traded exclusively on a designated commodity exchange, which would be fully subject to the Act and CFTC regulations; [15] and

(5) instruments not specifically addressed by the proposed regulatory framework, as to which case-by-case review would be provided.[16]

B. Summary of Comments on the Advance Notice

1. In General

The Commission received 56 comment letters on the proposal: five from domestic contract markets; thirteen from banking institutions; four from federal and state regulatory agencies; seven from industry or professional associations; nine from oil companies and companies trading oil and petroleum products; eight from law firms and individuals lawyers; one from a stockholder-owned government-chartered corporation; one from a commodity trading advisor and commodity pool operator; one from a floor trading and market-maker partnership; five from broker-dealer/futures commission merchants and investment banks; one from a financial broker active in brokering swaps; and one from a trading company active in the commodities markets. A substantial proportion of the comments received in response to the Advance Notice addressed the scope of the Act's forward contract exclusion, a subject beyond the scope of this release. However, the jurisdictional exclusion proposed in the Advance Notice, which is addressed in the interpretive statement issued contemporaneously herewith, and the proposed regulatory exemption also received extensive comment.

A wide range of commenters addressing the proposed jurisdictional exclusion and regulatory exemption commended the Commission for endeavoring to clarify the law applicable to off-exchange commodity-related instruments. The commenters expressed widely divergent views, however, as to the appropriate regulatory treatment of such instruments. A number of commenters asserted that the Commission's principal function is to regulate exchange-traded futures and options and criticized the Advance Notice as an expansive assertion of jurisdiction that could impede legitimate off-exchange commercial transactions. These and other commenters contended that the off-exchange markets addressed by the Commission's proposal have not been marked by fraud, manipulation or other abuses and that CFTC regulation of such markets is therefore unwarranted. Further, a number of banks and investment firms contended that the regulatory framework proposed by the Commission could have significant anticompetitive effects upon domestic capital markets.

Conversely, other commenters, including the five futures exchanges that commented on the Advance Notice, stressed the Act's express mandate that futures transactions be conducted exclusively on approved exchange markets and urged the Commission to proceed cautiously in order to avoid abandoning its statutory jurisdiction and diluting the customer and market protections established by Congress in the CEA. Several exchange commenters cited the historical experience of customer fraud and financial failures in unregulated markets and stressed the potentially adverse effects of unregulated off-exchange markets upon regulated exchange markets.

Commenters also extensively addressed the degree to which regulatory frameworks other than the CEA and Commission regulations are applicable to hybrid instruments and should be viewed as exclusive of Commission jurisdiction. A consortium of banks, for example, argued that Congress did not intend to accord the CFTC jurisdiction over banking activities permissible under the federal banking laws, reasoning that a comprehensive regulatory framework already exists for the regulation of such conduct. A contrary view, however, was expressed by commenters who contended that Congress did not intend to permit potentially divergent regulatory frameworks to supplant the CEA's single, comprehensive regulatory framework for futures and options transactions. A number of commenters urged the Commission to consult with other federal regulators on the appropriate regulation of hybrid financial products.

2. Proposed Jurisdictional Exclusion for Hybrid Instruments With De Minimis Futures or Option Characteristics

Commenters disagreed as to the benefits of the jurisdictional exclusion for hybrid instruments with *de minimis* futures or option characteristics proposed in the Advance Notice. Among those commenters who specifically addressed the *de minimis* jurisdictional exclusion, certain contract markets and an insurance industry trade group voiced specific support for the general concept of an exclusion. Ten commenters opposed the creation of a particularized list of excluded instruments, primarily on the ground that any specific itemization of excluded instruments could cause uncertainty as to whether instruments not specifically enumerated remained subject to Commission regulation. Several of these commenters asserted that the instruments specifically addressed in the proposed jurisdictional exclusion, such as certain annuities, pensions, adjustable rate mortgages, employment agreements and lease contracts,[17] generally have not been viewed as futures or commodity option contracts and that their exclusion by rulemaking is therefore unnecessary.[18] Other commenters noted that any express listing would require continual updating and that each new product would have to be referred to the Commission for a determination. However, a number of commenters, including an insurance industry trade association, savings institutions and swap dealers, requested that products specific to their industries be expressly excluded from Commission regulation.[19]

Three futures exchanges supported the proposed requirement that an excluded instrument include an underlying contractual obligation that serves an independent commercial purpose and that the transaction be entered into other than for speculative, hedging or investment purposes. Several other commenters opposed such a requirement, however, on the ground that the proposed restriction is unclear and overbroad in that the Commission's jurisdiction does not reach all commodity-related transactions entered into for speculative, hedging or investment purposes.

3. Proposed Regulatory Exemption for "Otherwise-Regulated" Hybrid Instruments With Incidential Option Components

The Advance Notice proposed a safe harbor exemptive procedure for hybrid instruments which contain only incidental commodity option components and are subject to an adequate alternative regualtory framework. Several commenters addressed the appropriateness of the safe harbor approach proposed by the Commission. Two commenters supported the use of a safe harbor. Several futures exchanges opposed the proposed safe harbor approach, contending, for example, that such an exemption would fragment the regulatory responsibility for policing futures-related transactions and compromise the Act's regulatory integrity. Some commenters stated that Commission deference to multiple analogous regulatory frameworks may conflict with Congressional intent and promote a complex, multitiered regulatory environment which would encourage business to shop for the least restrictive regulatory system or to operate in the regulatory gaps. By contrast, other commenters stated that instruments covered by the safe harbor exemption are beyond the Commission's jurisdiction and that the criteria for exemption are too restrictive, contending that only a few products could meet such criteria and that adoption of the safe harbor would adversely affect the capital formation process and inhibit the development of new products. Comments addressed to specific proposed conditions to the exemption are discussed below.

Incidential Commodity Option Characteristics. The Advance Notice proposed several standards to identify hybrid instruments possessing "incidental" commodity option components: Minimum term to maturity of three years; minimum annual yield independent of the commodity-related component of the transaction equal to at least 35% of the estimated annual yield at the time of issuance for comparable pure debt or depository instrument issued by the same issuer; a maximum average potential commodity-related return of 20% on an annualized basis; and use of the commodity component of the hybrid instrument in a principal line of business of the issuer.

Minimum Term. Commenters who addressed the proposed term to maturity requirement generally agreed that a three-year minimum term was unnecessarily restrictive and expressed concern that hybrid instruments satisfying the requirement would not be readily marketable. Some commenters noted that the markets for bank deposits, for example, are predominantly for instruments with shorter than three-year terms. Others added that corporations have business needs for short-term financing and that a minimum three-year term would diminish flexibility in product development. One commenter expressed the opinion that even a minimum term of eighteen months would mean that affected hybrid instruments could not be hedged effectively with currently traded futures contracts. Another commenter stated that a six-month term to maturity would be sufficient to preclude abuse of the regulatory exemption by speculators.

Minimum Commodity-Independent Yield. Five commenters (a futures exchange, two law firms and two investment banking firms) addressed the proposed minimum commodity-independent yield.

Several of these commenters agreed that such a requirement was not inappropriate but disagreed as to where the standard should be drawn, suggesting figures both higher and lower than the proposed 35% requirement. One commenter stated that the proposed 35% requirement is reasonable provided that there is no maximum commodity-based return. Others recommended that to facilitate compliance, the minimum yield should be based on the best rate available in any market (foreign or domestic) for a similar loan or debt instrument of the same term. These commenters added that any regulation promulgated with respect to yield should specify the manner in which yield is to be calculated and address the effect on such calculation of an initial fee charged to the purchaser of a hybrid instrument. One commenter expressed the view that the imposition of a minimum non-commodity yield is overly restrictive and unworkable as in many instances it may be impossible to identify a comparable instrument.

Maximum Commodity-Based Return. With respect to the proposed maximum 20% annualized commodity-based return, several FCM/broker-dealer and investment firm commenters argued that such a restriction would unduly inhibit product development. One such commenter argued that a 20% ceiling on a hybrid instrument's commodity-based return ignores yield volatility differences among commodities, that to impose a commodity-based yield restriction may render such instruments virtually unmarketable, and that in determining the predominant character of a hybrid instrument, the Commission should focus solely upon the instrument's non-commodity yield. A futures exchange supported the use of a quantitative standard to determine whether the option component of a hybrid instrument is incidental but objected that the Commission's proposed standard actually permitted "non-predominant" option components as well as incidental option components. This commenter urged that the maximum commodity-based return be determined based upon an interest-rate sensitive measure, such as twice the average return on the most recent five-year Treasury note auction.

Line of Business. Commenters who addressed the proposed line of business requirement generally opposed such a requirement, contending, variously, that: (1) The requirement would unduly restrict the universe of potential users by preventing many financial institutions from qualifying for the exemption; (2) the requirement would not promote customer protection; (3) a hedging requirement in lieu of the requirement would protect customers and not restrain capital formation; (4) SEC regulations provide adequate customer protections and thus negate the need for the requirement; (5) the requirement is irrelevant to the predominance test; and (6) the requirement cannot be applied to inflation-indexed notes. One commenter added that if such a requirement were adopted, it should be limited to a condition that the commodity interest be incidental to some aspect of the hybrid issuer's business.

Performance Criteria. The Advance Notice requested comment on two performance standards—minimum $100 million net worth and cover—intended to address the ability of the issuer of an exempted hybrid instrument to satisfy the commodity-related obligations created by such instruments. The Commission invited commenters to address not only the appropriateness of such performance criteria but also whether an appropriate investment grade rating by a nationally-recognized bond rating service or compliance with requirements imposed by another federal regulatory framework would be acceptable substitutes.

Net Worth. A contract market and a commodity trading advisor expressed support for a net worth requirement. The contract market contended that a minimum net worth requirement was an essential precaution to ensure that

[14] The Commission intends to address the issues raised in the Advance Notice concerning the scope of the forward contract jurisdictional exclusion by separate release at a later date.

[15] For example, on August 25, 1988, the Commission designated the AMEX Commodities Corporation as a contract market in gold bullion warrants. *See* Memorandum of the Division of Trading and Markets dated August 19, 1988.

[16] Case-by-case review is addresed in Section IV, *infra*.

[17] *See* 52 FR at 47022, at 47024.

[18] The Advance Notice proposal was prompted in part, however, by inquiries received by the Commission's staff concerning the status of instruments such as those proposed for exclusion.

[19] For example, an insurance industry trade association stated that all insurance and annuity products should be excluded because any indexing features of such products are subordinate and inextricably linked to another non-transferable financial interest, the indexed component of such products cannot be separately traded, and such products do not raise consumer protection or market integrity concerns.

issuers would be able to perform their obligations. The commodity trading advisor stated that although a minimum net worth standard is appropriate, an investment grade rating by a leading bond rating service should be considered to be an acceptable alternative. Seven commenters objected to the net worth requirement. Essentially, such commenters contended that a net worth requirement would be unduly restrictive and would not necessarily reflect an investment grade rating by a national debt rating agency or other indicia of creditworthiness. Several commenters contended that a net worth requirement would impose, in effect, a merit review procedure on debt securities, which traditionally have not been subject to such review under the federal securities laws.[20] Some commenters claimed that such "merit-based" review would inhibit capital formation. The SEC, several broker-dealers and an investment bank noted that because a company's financial status may be analyzed by reference to a combination of factors and financial benchmarks, the use of one static standard such as net worth could be overly restrictive and potentially not reflective of the economic status of an issuer.

The common alternative advanced by commenters who specifically objected to the net worth requirement was disclosure of data which would enable investors to make an independent evaluation of the offering. Such commenters principally advocated reliance upon the disclosure requirements of the federal securities laws to provide investors with the information necessary to analyze the issuer's creditworthiness.

Several commenters, including a commodity trading advisor, a futures industry trade association and an insurance industry trade association, favored reliance upon an investment grade rating by a leading bond rating service in place of a net worth requirement. However, a futures exchange contended that an investment grade rating by a leading bond rating service would be an inadequate substitute for the net worth requirement.

Finally, a law firm suggested that issuers that qualify for listing on the New York Stock Exchange or American Stock Exchange should be deemed eligible for the exemption and that the test should be applied only at the time of issuance.[21] In comparison, a futures exchange contended that the Commission should monitor for continued compliance with the net worth requirement by requiring filing of year-end financial statements and should require an issuer to notify the Commission of any material changes in financial condition.

Cover. Eight commenters specifically addressed the cover requirement. Two commenters (a futures exchange and a bank) agreed that a cover requirement was a reasonable and necessary precaution to insure that issuers are able to perform their obligations. Six commenters, however, opposed the imposition of a cover requirement, essentially for the reasons cited in opposition to the proposed net worth requirement.[22] Essentially, commenters who objected to a cover requirement preferred that the Commission rely upon the disclosure requirements of federal securities laws to provide investors with information sufficient to enable them to assess the risks of hybrid transactions.

Four commenters made specific recommendations concerning the nature of any cover requirement to be adopted by the Commission. One such commenter, a futures exchange, stated that the issuer should obtain cover either through physical inventory or in the exchange futures or option markets. Three commenters suggested that if a cover requirement were adopted, the Commission should expand the scope of permissible cover to include all commercially reasonable methods, such as letters of credit, hedging contracts, insurance, or transactions with affiliates.[23] One commenter stated that the Commission should not limit the concept of cover to the generic commodity that is the subject of the commodity component of the hybrid instrument. A bank noted that if a three-year minimum term is required, covering hybrid-related commodity exposure will be difficult for many commodities, as it may not be possible to eliminate commodity price risks through the purchase of options or futures contracts.

"Otherwise-Regulated" Transactions. In issuing the Advance Notice, the Commission noted that a principal rationale for the proposed exemption was to relieve issuers of hybrid instruments that are adequately regulated by another regulatory authority from duplicative regulatory requirements. The Commission therefore requested comment upon what altenative regulatory frameworks should be considered sufficient to establish that a transaction is "otherwise-regulated." As noted previously, a number of commenters expressed the general view that instruments subject to regulation under the federal banking or securities laws should not be subject to regulation under the CEA and Commission regulations and that the CFTC lacked authority to regulate such instruments. Some commenters argued that the Commission's suggestion that the alternate regulatory framework should be "analogous to that provided by the Commission was unduly restrictive and that, apart from registration requirements under the Securities Act of 1933, substantially equivalent treatment to that provided by the CEA and Commission regulations is unlikely to be applicable.

Marketing of the Hybrid Instrument. Four commenters addressed the Commission's proposals to condition the Commission's proposals to condition the availability of exemptive treatment upon the issuer's representation that the hybrid instrument will not be marked to the public as having the beneficial characteristics of futures contracts or commodity options. A futures exchange expressed approval of the proposed marketing restriction. Other commenters stated that it should be permissible for insurers, underwriters, and sales agents to discuss the hybrid instrument's

[20] Comparisons between the regulatory framework proposed in the Advance Notice and "merit review" would appear to be misplaced. Merit regulation typically refers to state law provisions empowering the administrators of state securities laws (so-called "Blue Sky" laws) to deny securities registration under such state laws based upon the administrator's qualitative assessment of the proposed transaction's "fairness." *See, e.g.* section 306 of the Uniform Securities Act (the model Blue Sky statute) pursuant to which registration may be denied based upon, among other reasons, a determination that the offering would operate as a fraud upon purchasers or would provide unreasonable or excessive promoters' discounts, commissions or other compensation. *See also* section 25140 of the California Corporation Code, which allows the Commissioner of Corporations to deny registration if the proposed plan of business and issuance of securities is not "fair, just and equitable" or if the applicant is not believed to transact its business fairly and honestly.

[21] The law firm noted that the original listing requirement for the New York Stock Exchange is at least $18 million of net tangible assets and that of the American Stock Exchange is $4 million of net worth (*citing* New York Stock Exchange Listed Company Manual, Section 102.01 and American Stock Exchange Company Guide, Section 101(a)).

[22] The SEC also contended that the cover requirement was unrelated to the economic structure of most hybrid instruments, which typically involve cash settlement as opposed to physical delivery of the commodity. However, the proposed cover requirement was designed to provide assurance of the issuer's ability to satisfy obligations related to commodity price movements for which cover would be meaningful without regard to the form of settlement of the instrument.

[23] For purposes of the Commission's net capital rule, letters of credit, insurance and transactions with affiliates are not specifically enumerated as acceptable cover. *See* 17 CFR 1.17(j)(1) (1988). Although upon request, the Commission may recognize nonenumerated transactions as cover, the Commission has, consistent with federal securities regulations, been guided by the concept of liquidity contained in the net capital rule generally

indexing features so long as no misrepresentation is made as to the character or regulatory status of the instrument. In addition, some commenters expressed the view that such discussions with customers may be mandatory under the disclosure requirements of the banking or securities laws or necessary under common law fraud principles. One commenter suggested that the marketing restriction should be subject to the disclosure requirements otherwise applicable to the issuer and to the issuer's determination as to what is required for full and fair disclosure.

Minimum Unit Price. The Commission also proposed in the Advance Notice to condition exemptive treatment upon the issuer's representation that the minimum unit price of the offering would be $20,000. A futures exchange supported the requirement, believing that it would enhance the likelihood that potential offerees will be financially secure and sophisticated. A commodity trading advisor/commodity pool operator contended that the minimum should be higher if the objective is customer protection. However, the eight commenters addressing this condition who opposed the minimum unit price requirement generally expressed concern that such a requirement would have a detrimental effect on marketing, trading, liquidity and customer participation in the hybrid instrument markets. Several commenters pointed out that a large number of hybrid instruments will be subject to the securities laws, including the suitability requirements imposed on broker-dealers, requirements which they contended provide a better safeguard as to the ability of an investor to bear the risk of investment than the proposed minimum unit size. A private law firm opposed the minimum unit price requirement on the ground that it had no relevance to the "predominance" inquiry or to an "otherwise-regulated" condition.

Required Disclosure. One futures exchange supported the proposed requirement that issuers of exempt instruments disclose their exempt status and recommended that the Commission expand the requirement to include written disclosure of the risks inherent in the option component of the hybrid instrument in accordance with existing disclosure requirements for exchange-traded options. Other commenters argued for expansion of the disclosure requirement to include a statement that the Commission has not reviewed or passed upon the merits of the offering and that a purchaser would not have remedies available under the commodities laws. One commenter proposed that the Commission prohibit any statements indicating that the Commission is regulating the instrument rather than require disclosure of its exempt status.

Special Calls. The Advance Notice proposal also included a requirement that issuers of exempt hybrid instruments agree to submit to special calls for information to demonstrate compliance with the conditions to exempt status. Three commenters addressed the special calls requirement. A futures exchange and a law firm supported the proposal as a method to enable the Commission to monitor compliance with the conditions for exemption but suggested that this condition not require the retroactive compilation of data or subject the issuer to surprise inspections. In contrast, a broker-dealer opposed such a procedure as unnecessary.

Exemption Procedure. The exemption proposed in the Advance Notice would have been made available based upon a self-executing filing by proposed issuers containing representations establishing compliance with the conditions of exempt status. Two commenters argued that advance notice to the Commission would be inappropriate because the proposed offering typically will not be priced nor an interest rate be selected until immediately before the offering is made. A broker-dealer opposed the filing procedure, contending that it would only unnecessarily complicate offerings. A law firm expressed support for a filing procedure as a satisfactory means of claiming the benefits of any rule. Two other commenters suggested that, in making such filings, issuers should be able to rely conclusively on an opinion from an investment banking firm that the requirements for exemption have been satisfied.

Three futures exchanges opposed the proposed self-executing nature of the exemption, contending that a review period is essential to permit the Commission to verify whether the exemption eligibility criteria are met. These commenters contended that it would be unfair to permit hybrid instruments to be exempted from Commission regulation automatically upon the filing of a notice of eligibility when exchange proposals for new contracts undergo extensive Commission review and suggested that the Commission publish filings for exemption in the **Federal Register** and seek public comment on such filings.

Hybrids Offered by Governmental and Quasi-Governmentol Entities. Commenters were divided in their views as to the proposed comity exemption for hybrid instruments issued or offered by federal or state authorities, quasi-governmental authorities, and certain international agencies. Two commenters, one of which was a quasi-governmental agency, expressed approval of the proposed exemption. These commenters suggested that the Commission should establish a safe harbor to exempt those obligations enumerated as municipal and governmental securities under the Securities Exchange Act of 1934.[24] Those commenters opposing the exemption expressed concern as to the potentially unfair competitive advantage that would accrue under the proposed exemption to hybrid instruments issued or offered by governmental or quasi-governmental entities. These commenters contended that the Commission should not abdicate its oversight functions with respect to hybrid instruments offered by state or quasi-governmental entities, particularly as some of these entities may compete with private sector issuers.

III. The Proposed Regulations

A. In General

The proposed rules would establish an exemptive framework, largely based upon deference to existing regulatory standards affecting the noncommodity component of such instruments, for hybrid instruments with limited option components. The Commission believes that the proposed rules, if adopted, will complement and expand "no-action" relief accorded heretofore in the context of the Commission staff's review of proposed offerings. The proposed rules will permit additional innovative uses of commodity-indexing subject to limited conditions designed to afford assurance of the financial soundness of such transactions and appropriate regulatory oversight thereof.

As discussed previously, this proposal is predicated upon the applicability of other federal regulatory frameworks to affected instruments and upon recognition by the relevant federal regulators that the special risks and distinctive characteristics of commondity-related hybrid transactions can be addressed under their respective regulatory frameworks. This proposal also accords with the views of numerous commenters on the Advance Notice who advocated that the Commission defer to other regulatory frameworks applicable

[24] Securities Exchange Act of 1934 section 3(a)(42), 15 U.S.C. 78c(a)(42) (Supp. 1988).

to such instruments and who cautioned against adoption by the Commission of restrictive exemptive criteria that could impede capital formation. This proposal further reflects the Commission's continuing endeavor to coordinate and harmonize its regulatory framework with the regulatory frameworks of other federal regulators in a manner consistent with Congressional intent and the public interest.[26]

The Commission is proposing exemptive criteria that principally depend upon the regulated or exempt status of the hybrid instrument under the federal securities and banking laws and upon the satisfaction of one of five alternate performance criteria, which include investment grade rating, minimum net worth, cover, and, in the case of bank issues, FDIC insurance or investment grade ratings for outstanding debt instruments of the same bank. The Commission believes that these alternate criteria provide some comfort as to the financial soundness of affected hybrid transaction, while affording hybrid issuers substantial flexiblity. The Commission therefore believes that this proposal strikes a reasonable balance between the legitimate interests of market participants in employing commodity-related interests in conjunction with capital formation and commercial activities and the policy concerns reflected in the CEA.

B. Synopsis of the Proposed Regulations

Definitions. Section 34.1 of the proposed rules sets forth definitions of the terms "commodity," "hybrid instrument," "commodity-dependent payment," "commodity-independent payment," and other terms used in the proposed rules. Proposed § 34.1(a) would define "commodity" to include all commodities within the meaning of section 2(a)(1)(A) of the CEA. The statutory definition of "commodity" includes not only specifically enumerated agricultural commodities but also "also other goods and articles, except onions * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in." 7 U.S.C. 2. Consequently, references in the proposed rules to commodity-indexing would encompass indexing to intangible "services, rights, and interests" as well as to physical commodities.

The proposed definition of "hybrid instrument" set forth in § 34.1(b) is drafted to include debt or depository instruments [28] having a commodity component that is not severable from the instrument as a whole. The definition is designed to make clear that "hybrid instruments" are interests that combine non-severable option or futures-like interests with other interests.[27] This means, for example, that if detachable commodity interest is offered in conjunction with a debt instrument or if the maturity of the commodity interest exceeds that of the debt instrument, the unit comprising the commodity and debt interests would not consititute a "hybrid instrument" under the proposed rules, and the commodity interest would be fully subject to the requirements of the Act and Commission regulations. This definition accords with the treatment proposed in the Advance Notice for option instruments directly on a commodity offered by a private grantor, separately or in conjunction with debt obligations, in a public offering registered with the SEC but that would in either case thereafter be traded exclusively on a designated futures exchange.[28]

Proposed § 34.1(c) defines "commodity-independent payment" as "any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity." Proposed § 34.1(d) defines "commodity-dependent payment" as the converse of "commodity-independent payment," that is, as any payment pursuant to a hybrid instrument "resulting from indexing to, or calculation by reference to, the price of a commodity." Consequently, a hybrid's commodity component would include that portion of the principal or interest, or both, of a debt or depository instrument that is indexed to the price of a commodity. Thus, this definition confirms that an indexing mechanism need not be confined to any particular component of a hybrid instrument, thereby permitting flexibility in the design of such instrument's provided that the commodity component is not severable from the instrument as a whole. Proposed § 34.1(e) defines "commodity option based payment" to include any commodity-dependent payment in which the commodity indexing results in the indexing of payments for commodity price changes either above or below the indexing reference price but not both.

Proposed § 34.1(f) defines "implied option premium" as the issue price of a hybrid instrument with commodity option components less the present discounted value of the instrument's commodity-independent payments.[29] The applicable discount rate is the annual yield at the time of issuance for a comparable non-hybrid debt or depository instrument of a similar term issued by the same or a comparable issuer.

Proposed Regulatory Exemption for Certain Hybrid Instruments with Commodity Option Components. The Commission is proposing an exemption from regulation for a class of hybrid instruments with limited option commodity components. The proposed exemption, which would appear at § 34.2(a), would apply to hybrid instruments for which an appropriate degree of federal oversight exists and would be conditioned upon compliance with one of a number of alternative performance criteria designed to provide assurance of the financial integrity of such transactions.

Under proposed § 34.2(a), eligible debt securities would be limited to securities registered in accordance with the Securities Act of 1933 ("1933 Act") or qualifying for specified exemptions from registration. Eligible exempt debt securities would include: Debt securities issued in private offerings pursuant to

[26] *See, e.g.*, Commission Regulation §1.17, 17 CFR 1.17 (Minimum financial requirements for broker-dealer/futures commission merchants); Commission Regulation § 4.5, 17 CFR 4.5 (1988) (Exclusion from the definition of commodity pool operator for certain otherwise-regulated persons); Interim Report of the Working Group on Financial Markets (May 1988).

[27] Even though hybrid instruments may include futures-like interests, this exemptive procedure only applies to hybrid instruments with option components.

[28] *See* 52 FR 47028.

[29] For example, consider an oil-indexed note issued at par when the spot price of oil is $20 per barrel with a maturity of 5 years, a principal amount of $1000 and interest of 3% per annum. At maturity, the purchaser receives the principal plus an additional payment equal to the oil price at maturity in excess of $30 but not exceeding $50 multiplied by 100 barrels. [The commodity-dependent payment is indexed on more than a one-to-one basis since any positive price change is multiplied by 100 barrels instead of 50 barrels.] If we assume the same issuer would pay 9% per annum for a conventional debt instrument of the same maturity, then the implied option premium is equal to:

Discount rate = 9% per annum

Issue price = $1000

Present discounted value of the commodity-independent payments =

$$\frac{\$1000}{[1.09]^5} + \frac{30 \times 1 - [1/(1.09)^5]}{.09} = \$766.62$$

Implied option premium = $1000 − 766.62 = $233.38

$$\frac{\text{Implied option premium}}{\text{Issue price}} = \frac{\$233.38}{\$1000} = 23.3\%$$

The Commission will accept the underwriter's good-faith estimate of what the issuer's debt rate would be for a comparable fixed income instrument.

SEC Regulation 506, 17 CFR Part 506 (1988); exempt debt securities under section 3(a)(2) of the 1933 Act that are issued or guaranteed by the United States, the District of Columbia, any state of the United States, or any political subdivision or public instrumentality thereof, or by any bank that is a member of the FDIC; commercial paper exempt from registration under section 3(a)(3) of the 1933 Act; and insurance policies and annuity contracts subject to state regulation and exempt from registration under section 3(a)(8) of the 1933 Act. The Commission's intention is to make the exemption available with respect to: (1) Hybrid debt securities that are issued in connection with registered offerings and thus are subject to the full range of 1933 Act protections; (2) hybrid debt instruments that are issued pursuant to exemptions from the 1933 Act that provide other indicia of soundness, such as the exemption for government issues; or (3) transactions as to which such protections generally should be unnecessary, such as sales of commercial paper.[30] Time deposits offered by an FDIC-member bank would also constitute eligible instruments under § 34.2(a)(1) due to the applicability of federal regulation to the offering bank.

Under proposed § 34.2(a)(2), the commodity component of exempted instruments would be subject to a maximum implied option premium of 40% of the issue price of the instruments. As previously noted, the term "implied option premium" would be defined in proposed § 34.1(f) as the issue price of the instrument less the present, or discounted, value of the instrument's commodity-independent payments.[31] Under this standard, those instruments which have implied option premiums greater than 40% of the instrument's total price at issuance would be ineligible for exemption under the proposed regulations.[32]

The Commission also proposes to condition the availability of exemptive relief under proposed § 34.2(a) to transactions which satisfy one of five alternate "performance criteria" designed to provide further assurance of the ability of the offeror of the hybrid instrument to satisfy its obligations under the instrument. As set forth in proposed § 34.2(a)(3), these criteria would streamline the performance criteria set forth in the Advance Notice by making minimum net worth and cover requirements alternative rather than cumulative requirements and by providing additional means of satisfying the performance condition. Thus, under proposed § 34.2(a)(3), the issuer or instrument must comply with *one* of the following requirements: (i) The instrument has been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; (ii) the issuer maintains at least $100 million in net worth; (iii) the issuer maintains cover equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity that is the subject of the commodity component of the instrument); [33] or in the case of a bank issuer: (iv) Other outstanding debt instruments offered by the same bank have been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; or (v) the instrument is subject to FDIC insurance.

The § 34.2 exemption would be conditioned upon compliance with a prohibition against marketing of the instrument as a futures contract or a commodity option or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of futures contracts or commodity options. This restriction would prevent marketing representations that would be inconsistent with what the Commission believes to be the character of such instruments and with the proposed regulatory treatment of such instruments. Such representations could potentially mislead purchasers as to the essential nature of the instruments, their legal status and the form of regulatory supervision to which they are subject.

The exception for disclosures that are purely descriptive in nature and necessary to disclose fairly the operation of the instrument or that are required by federal securities laws or other disclosure requirements makes express what the Commission believed to be implicit in the marketing restriction proposed in the Advance Notice. However, a number of commenters expressed concern that the proposed prohibition upon marketing of hybrid instruments as having the beneficial characteristics of futures or commodity options contracts could result in issuers failing to provide a full description of the operation of the instrument or to make required disclosures. Therefore, the Commission has sought to make clear in proposed § 34.2(a)(4) that objective descriptive data necessary to full disclosure are not prohibited. The Commission believes that proposed § 34.2(a)(4) balances the need to prevent misleading characterizations of the nature of exempted instruments with the objective of assuring meaningful disclosure of the actual operation and risks of such instruments.

Proposed § 34.2(a)(5) would preclude settlement of an exempted hybrid instrument by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This provision would preclude only settlement in delivery instruments specifically defined as such in exchange rules. It would not preclude settlement in the form of a commodity that is of deliverable grade or quality under exchange rules. Thus, for example, an exempted instrument may be settled in the commodity meeting the delivery standards of an exchange futures contract for that commodity but may not be settled in an exchange-approved warehouse receipt for that commodity. The Commission believes that this requirement will not interfere with the ability of issuers to elect physical delivery alternatives to cash settlement but will protect against interference with deliverable supplies for settlement of designated futures or option contracts and potential congestion and price manipulation in such markets.

Proposed § 34.2(b) states that the Commission may, upon written petition, grant such further exemptions with respect to hybrid instruments as it determines are not contrary to the

[30] In addition, for example, proposed § 34.2(a) incorporates the 1933 Act's exemption for insurance policies "issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia." This approach is based both upon the character of such interests as primarily non-investment vehicles as well as upon the existence of a state regulatory structure applicable to a field historically viewed as sufficiently addressed by state regulation. In addition, as noted by an insurance trade association in commenting upon the Advance Notice, such products are generally non-transferable, individually negotiated contracts. *See also* 52 FR 47022, at 47024.

[31] *See* footnote 29 *supra*.

[32] If the proposed exemption were to be extended to granted options in addition to purchased options, the maximum implied option premium criterion would be required to be framed in terms of the absolute value of the implied option premium and, in addition, establishment of a ceiling on maximum loss might be appropriate. The Commission requests comment as to the appropriateness of extending the proposed exemption to granted options and the conditions pursuant to which such options should be permitted.

[33] The Commission requests comment whether there are other performance criteria in addition to those proposed which also should be considered sufficient to qualify an issuer.

public interest. This provision reflects the Commission's existing authority under Section 4c(b) of the Act, 7 U.S.C. 6c(b), to prescribe by rule, regulation or order the terms and conditions pursuant to which commodity option transactions may occur. As drafted, proposed § 34.2(b) is broader than current Rule 32.4(b), which provides that the Commission may by order exempt any person from any provision of Part 32 *except* §§ 32.2, 32.8 and 32.9,[34] if it finds such exemption not contrary to the public interest. Proposed § 34.2(b) potentially would permit case-by-case exemptive relief from all Commission regulations applicable to option transactions. The Commission believes that the broader exemptive relief contemplated in proposed § 34.2(b) is appropriate in the context of hybrid transactions which, in contrast to the non-hybrid interests addressed by Rule 32.4(b), contain option elements in combination with a debt or depository interest not otherwise subject to Commission regulation.

Proposed Notice Requirement for Exempted Option Hybrids. The Commission is also proposing a notice requirement, applicable to offerings of exempted option hybrid instruments where the price used for determining the settlement of such instruments' commodity component is based on prices reported on a designated contract market. In these limited circumstances, proposed § 34.3 would require the issuer to provide the Commission with written notice, within five business days of the effective date of the offering, of: (i) The name, address, and telephone number of the issuer and of a designated contact person for such issuer; (ii) the maturity date and authorized or anticipated size of the offering; and (iii) a copy of the prospectus, offering document or other written description of the instrument provided to actual or prospective purchasers thereof. This notice procedure would facilitate the Commission's market surveillance efforts by providing information relevant to available cash market supplies. This proposed notice requirement is restricted to the very limited situation in which the exempted hybrid may directly impinge upon exchange-traded markets because its price is based upon prices reported on a designated contract market. The notice requirement applies only with respect to hybrid instruments exempted pursuant to § 34.2 whose settlement prices are based upon prices reported on a designated contract market. The Commission believes that this notice procedure will assist it in discharging its market surveillance responsibilities, which are critical to the detection and prevention of market manipulations, and will serve as an adjunct to the Commission's large trader reporting system, which has been praised as a model for effective market surveillance. This requirement would supplant the notice of eligibility filing requirement and special call procedure proposed in the Advance Notice, both of which were criticized by some commenters as unnecessarily burdensome.

[34] Rule 32.2 precludes off-exchange option transactions on enumerated agricultural commodities. Rules 32.8 and 32.9 relate, respectively, to unlawful representations and fraud in connection with commodity option transactions.

IV. Case-By-Case Review of Other Jurisdictional Issues

This proposal is intended to facilitate legitimate market developments in a field distinguished by innovation and rapid growth. Nevertheless, as the Commission recognized in the Advance Notice, no exemptive bright lines can be expected to address all hybrid instruments which may be appropriate for exemptive treatment. Consequently, the Commission proposes to continue to review on a case-by-case basis, in appropriate circumstances, proposed offerings not addressed by the proposed rules.[35] In this context, proposed § 34.2(b) would expressly recognize the Commission's discretion to grant particularized exemptions, as warranted, to hybrid instruments with option components. Such particularized review would permit the resolution of issues that are not susceptible to generalized treatment, accommodate product innovation, and permit more limited relief in cases that would not qualify for a categorical exemption.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the PRA the Commission has submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. Persons wishing to comment on the information which would be required by this proposed rule should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

As previously noted, proposed § 34.3 imposes a filing requirement only with respect to hybrid instruments whose settlement price is based upon prices reported on a designated contract market. These filings will provide the Commission with information concerning transactions that may have a significant impact upon designated contract markets and will facilitate the effective performance of the Commission's surveillance responsibilities under the CEA. The Commission estimates that the one-time filing requirement, when applicable will require no more than ten minutes per response to prepare. Although the number of potential filers cannot be determined prospectively, based upon the Commission's staff experience with notice filings under recent hybrid instrument advisories, it is estimated that approximately thirty notices would be filed in one year pursuant to proposed Rule 34.3 by issuers such as corporations, government-chartered corporations and banks.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization," 5 U.S.C. 601(6).[36] In defining a "small business," the RFA adopts the definition of "small business concern" in Section 3 of the Small Business Act, 5 U.S.C. 601(3). However, an agency, after consultation with the Office of Advocacy of the SBA, may establish its own definition of a "small business." 5 U.S.C. 601(3).

As a threshold matter, the Commission notes that the proposed rules, if adopted, are not intended to introduce any new prohibitions but, rather, to clarify existing law and to provide exemptive relief from existing

[35] In addition, during the pendency of this rulemaking, the Commission plans to continue to address proposed offerings on a case-by-case basis under the auspices of the Task Force on Off-Exchange Instruments. *See* Section I, *supra*.

[36] "Small organization," as used in the RFA, means a "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration for small organizations. Agencies are expressly authorized to establish their own definitions of small organization. (*Id.*)

regulatory requirements. The current rulemaking would permit a broad class of hybrid instruments with option components to be traded without compliance with the pre-existing statutory and regulatory requirements that commodity interests be traded on or subject to the rules of a designated exchange market. By providing objective standards for exemption from regulation, the proposals will relieve issuers of regulatory constraints under the CEA and Commission regulations. To the extent that a new notification procedure is established, that procedure entails insignificant cost and burden. The Commission anticipates that the proposed rules will dispel uncertainty concerning the appropriate regulatory requirements for various types of commodity-related hybrid instruments and thereby facilitate rather than impede novel forms of financial transactions while at the same time fulfilling the statutory mandates of the CEA.

The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets,[37] futures commission merchants,[38] registered commodity pool operators[39] and large traders[40] should not be considered small entities for purposes of the RFA. With respect to commodity trading advisors, floor brokers and introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some of such entities should be considered to be small entities and, in the event of such a finding, that it would analyze the economic impact on them of the proposed rule.[41]

The Commission notes that the notification procedure for the proposed regulatory exemption (proposed § 34.3), would apply generally to any issuer of hybrid instruments with commodity option-dependent payments which are referenced to a futures price on a designated contract market and does not specifically implicate any Commission registrant, large trader or contract market in their status as such. As the Commission's prior determinations may not address all entities potentially affected by the proposed exemption, the RFA's definition of small business may be relevant. Section 3 of the Small Business Act, 15 U.S.C. 632, essentially provides a three-part definition of "small business concern": One that is independently owned and operated; which is not dominant in its field; and which falls within the size standards regarding dollar volume of business and/or number of employees established by the Administrator of the Small Business Administration ("SBA").[42] The current size standards of the SBA are set forth in 13 CFR 121.2 (1988), which classifies businesses by industry categories (standard industrial classifications or "SIC"), such as mining, manufacturing, transportation, finance, insurance and real estate, and by reference to a maximum number of employees or annual receipts. These SIC standards are further modified by criteria specific to the SBA program pursuant to which a business is seeking assistance.[43] As previously noted by the Commission when it proposed its own definitions of small entities with respect to entities regulated by the Commission, SBA definitions of small businesses are clearly limited in their usefulness for Commission purposes.[44]

While the SIC classifications would be of assistance for a defined group of hybrid instrument issuers, the inability to identify potential issuers lessens somewhat the usefulness of the SIC categories for purposes of addressing the RFA implications of the proposed exemption. For example, although certain "heavy industries" appear to be categorized as small businesses if they employ less than 500 employees, [45] and certain "service" industries are small businesses if their annual revenue is less than $3.5 million,[46] other industry categories, such as finance, insurance and real estate, are considered small businesses only if their assets are less than $100 million.[47]

Based upon the Commission's experience with issuers who have sought no-action relief or filed notices pursuant to published Commission advisories concerning hybrid instruments, the Commission anticipates that most issuers would not constitute "small businesses." [48] Of course, it is possible that firms defined as small businesses under section 3 of the Small Business Act could issue commodity-related hybrid instruments and thus be affected by the proposed rules. While the Commission does not believe that such issuers will constitute a significant portion of total issuers of hybrid instruments, the Commission believes that even if such were the case, the rules would not have a significant economic impact.

The Commission notes that the proposed rules would not require burdensome legal, accounting, consulting or expert costs. The determination of whether an offering would qualify for the proposed exemption requires minimal analysis of data that will be self-evident to the issuer. In making this determination, the issuer would be permitted to rely upon the underwriter's good faith opinion as to the offering's compliance with the quantitative conditions to exemptive treatment. In those limited cases in which the issuer must file a notice with the Commission (*i.e.*, when the settlement price is based upon prices reported on a designated contract market), the Commission notes that the information required to be disclosed in the filing notice is minimal, will be known to the issuer, and will not require any data compilation or analysis. Indeed, for those issuers which are required to comply with the registration requirements of the Securities Act of 1933, the prospectus requested by the Commission will have been generated in the first instance by the issuer in order

[37] 47 FR 18618 (April 30, 1982).

[38] *Id.* at 18619.

[39] *Id.*

[40] *Id.* at 18620.

[41] *Id.* commodity trading advisors and floor brokers); 48 FR 35249, 35278 (August 3, 1983) (introducing brokers).

[42] 15 U.S.C. 632(a)(1) provides in part: For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: Provided, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business* * *.

[43] *See* 13 CFR 121.4 (1988) (small business for financial programs) and 13 CFR 121.5 (1988) (small business for Government procurement).

[44] *See* 46 FR 23940 n.3 (April 29, 1981).

[45] 13 CFR 121.2 (1988) (Table 1–B. Mining, D. Manufacturing).

[46] *Id.* (Table 1–I. Services).

[47] *Id.* (Table 1–H. Finance, Insurance and Real Estate). For example, federally-charted banks and savings institutions are small businesses if their assets are less than $100 million.

[48] All such petitioners for relief were either major corporations, government-chartered corporations or large banks and all had assets approaching or in excess of $100 million. The Commission further notes that under SEC Rule 157, 17 CFR 230.157, issuers of securities are considered to be small entities for purposes of the RFA if their total assets are $5 million or less and the proposed offering does not exceed $5 million. Under such criteria, all of the petitioners who have sought regulatory relief or filed under hybrid advisory procedures with the Commission also would not be small entities under SEC Rule 157.

to comply with the mandatory disclosure requirements of the 1933 Act. The other information requirements, *e.g.*, name and address of the issuer and offering size, are *de minimis*.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission invites comment from any firm which believes that these rules, as proposed, would have a significant economic impact on its operations.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid instruments.

For the reasons set forth above, new Part 34 is proposed to be added to Title 17 of the Code of Federal Regulations, to read as follows:

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.
34.1 Definitions.
34.2 Option Hybrid exemption.
34.3 Option Hybrid notice requirement.

Authority: 7 U.S.C. 2, 6c and 12a.

§ 34.1 Definitions.

(a) *Commodity.* Commodity means a commodity within the meaning of section 2(a)(1)(A) of the Commodity Exchange Act.

(b) *Hybrid Instrument.* Hybrid instrument means a debt or depository instrument with a commodity-dependent payment that is not severable therefrom.

(c) *Commodity-Independent Payment.* Commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to, or calculation by reference to, the price of a commodity.

(d) *Commodity-Dependent Payment.* Commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity Option Based Payment.* Commodity option based payment means any commodity-dependent payment in which the commodity price indexing or referencing results in the indexing of payments for commodity prices either above or below the indexing reference price but not both.

(f) *Implied Option Premium.* Implied option premium means the issue price of a hybrid instrument with commodity based option payments less the present, or discounted, value of the commodity-independent payments. The discount rate to be used in determining the present value is the annual yield at the time of issuance for a comparable non-hybrid debt or depository instrument of a similar term issued by the same or a comparable issuer.

§ 34.2 Option hybrid exemption.

(a) A hybrid instrument whose only commodity-dependent payments are commodity option based payments is exempt from regulation under the Commodity Exchange Act, except as provided in § 34.3 of this part, if:

(1) The instrument is:

(i) A security within the meaning of section 2(1) of the Securities Act of 1933 which is registered in accordance with section 5 of the Securities Act of 1933;

(ii) An exempt security under sections 3(a)(3) or 3(a)(8) of the Securities Act of 1933;

(iii) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by the United States, any territory of the United States, the District of Columbia or any state of the United States, or any political subdivision or public instrumentality thereof;

(iv) An exempt security under section 3(a)(2) of the Securities Act of 1933 that is issued or guaranteed by a bank that is a member of the Federal Deposit Insurance Corporation;

(v) A security that is exempt from registration pursuant to § 230.506 of this title; or

(vi) A time deposit within the meaning of 12 CFR 204.2(c)(1) offered by a bank that is a member of the Federal Deposit Insurance Corporation and marketed and sold directly to a customer or through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934 and applicable regulations;

(2) The value of the implied option premium is no greater than 40% of the issue price of the instrument;

(3) The issuer or instrument satisfies one of the following requirements:

(i) The instrument has been rated in one of the three highest categories by at least two nationally recognized investment rating organizations;

(ii) The issuer maintains at least $100 million in net worth;

(iii) The issuer maintains cover, consisting of the physical commodity or futures, forward, or option contracts for the commodity, equal to the amount of its commitments to deliver, to take delivery of, or to pay the cash value of, the commodity (or a change in the price of the commodity) that is the subject of the commodity component of the instrument; or, in the case of an issuer that is a bank:

(iv) Other outstanding debt instruments offered by the same bank have been rated in one of the three highest categories by at least two nationally recognized investment rating organizations; or

(v) The instrument is subject to insurance by the Federal Deposit Insurance Corporation;

(4) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(5) The instrument does not provide for settlement in the form of a delivery instrument, for example, an exchange-approved warehouse receipt or shipping certificate, specified in the rules of a designated contract market.

(b) The Commission may, based upon written petition, grant such further exemptions with respect to hybrid instruments subject to this section as it determines are not contrary to the public interest.

§ 34.3 Option hybrid notice requirement.

Where the price used for determining the settlement of the commodity-dependent payments of an option hybrid instrument exempted pursuant to § 34.2 is based on prices reported on a designated contract market, the issuer shall provide the Commission in writing, within five business days of the effective date of the offering of the instrument:

(a) The name, address, and telephone number of the issuer and of a designated contact person for such issuer;

(b) The maturity date and authorized or expected size of the offering; and

(c) A copy of the prospectus, offering document or other written description of the instrument provided to actual or prospective purchasers thereof.

Issued in Washington, DC, on January 5, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-477 Filed 1-10-89; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Certain Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory interpretation and request for comments.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is issuing this interpretation regarding certain hybrid instruments that combine characteristics of futures contracts or commodity options with debt or depository interests. The development of such hybrid instruments with commodity-related components has raised questions concerning the status of such instruments under the Commodity Exchange Act, as amended ("Act" or "CEA"), 7 U.S.C. 1, *et seq.*, and Commission regulations. Through this interpretation, the Commission is recognizing an exclusion from regulation under the Act and Commission regulations for those categories of hybrid instruments that meet the criteria specified below. In a separate release, the Commission also is proposing an exemption for other types of hybrid instruments having commodity option features.

ADDRESS: Any comments concerning this interpretation should be submitted to the Office of Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, telephone (202) 254-9880; Eugene J. Moriarty, Director, Research Section, Division of Economic Analysis, telephone (202) 254-6990; or Robert H. Rosenfeld, Attorney, Division of Trading and Markets, telephone (202) 254-8955, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act vests the Commission with jurisdiction over "transactions involving contracts of sale of a commodity for future delivery"[1] and "accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' * * *) * * *." 7 U.S.C. 2. Section 4(a) of the Act makes it "unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of * * * or otherwise deal[] in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery" that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a).[2] Section 4c of the Act generally permits the trading of commodity options only pursuant to regulations issued by the Commission and grants the Commission the authority to permit the offer and sale of commodity options without the requirement of exchange trading "under such terms and conditions as the Commission may prescribe." 7 U.S.C. 6c(b), 6c(c).[3]

The development of hybrid instruments that couple elements of futures contracts or commodity options with debt or depository obligations is a recent phenomenon. This development reflects commercial interest in offering instruments that are indexed to or have a return that is otherwise calculated by reference to the price of a commodity through transactions that take place other than on designated futures or option exchanges. The development of these hybrid instruments with commodity-related components has given rise to uncertainty concerning the treatment of such instruments by the Commission under the CEA and Commission regulations.[4]

In determining whether a transaction constitutes a futures or options contract, the Commission assesses the transaction as a whole with a critical eye toward its underlying purpose.[5] Through this interpretation, the Commission is stating its view that certain categories of hybrid instruments are not within the coverage of the Act and Commission regulations. The Commission's interpretations addresses those hybrid instruments that are debt securities within the meaning of section 2(1) of the Securities Act of 1933, or time deposits within the meaning of 12 CFR 204.2(c)(1) offered by a bank that is a Federal Deposit Insurance Corporation ("FDIC") member and marketed and sold directly to a customer.[6] Treatment under this interpretation is limited to such hybrid instruments that are bona fide debt or depository instruments and that: (1) Are indexed to a commodity on no greater than a one-to-one basis; (2) limit the maximum loss on the instrument; (3) have a significant commodity-independent yield [7]; (4) do not have a commodity component that is severable from the debt or depository instrument; (5) do not call for delivery of a commodity by means of an instrument specified in the rules of a designated contract market; and (6) are not marketed as being or having the characteristics of a futures contract or commodity option.[8] These additional criteria are discussed below.

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[1] The Act provides that the term "future delivery" does not include any sale of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. This interpretation does not address the scope or content of that exclusion.

[2] This prohibition does not apply to contracts "made on or subject to the rules of a board of trade, exchange, or market located outside the United States * * *." 7 U.S.C. 6(a).

[3] Section 4c(f) of the Act provides, however, that the Act shall not be deemed to govern or apply "to any transaction in an option on foreign currency traded *on* a national securities exchange." 7 U.S.C. 6c(f). (Emphasis added).

[4] The Task Force on Off-Exchange Instruments, in letters dated September 30 and November 2, 1988, determined that it would not recommend the initiation of enforcement action under section 4c of the Act, 7 U.S.C. 6c (1982), based upon the issuance of notes by two different companies. *See also, e.g.*, CFTC Advisory No. 39-88, June 23, 1988 (Interpretative Letter No. 88-10); CFTC Advisory No. 45-88, July 19, 1988 (Interpretative Letter No. 88-11); CFTC Advisory No. 48-88, July 26, 1988 (Interpretative Letter No. 88-12); CFTC Advisory No. 63-88, September 21, 1988 (Interpretative Letter No. 88-14); and CFTC Advisory No. 66-88, September 28, 1988 (Interpretative Letter No. 88-15).

[5] *See, e.g., CFTC v. Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982) (transactions held to be futures contracts).

[6] Under this interpretation, instruments having returns indexed to or calculated on the basis of the price of a commodity that are not bona fide debt or depository instruments will not be viewed as hybrid instruments even though they incorporate some features common to securities or depository instruments.

[7] The term commodity-independent yield means the yield to maturity on the hybrid instrument due solely to commodity-independent payments. As used herein, the term commodity-independent payment means any payment pursuant to a hybrid instrument that does not result from indexing to or calculation by reference to the price of a commodity. In addition, as used herein, the term commodity-dependent payment means any payment pursuant to a hybrid instrument resulting from indexing to or calculation by reference to the price of a commodity.

[8] The approach contained in this interpretation is consistent with Commission and court precedent analyzing the characteristics of futures contracts and commodity options in other contexts. *See, e.g., Co Petro Marketing Group; Precious Metals Associates, Inc. v. CFTC*, 620 F.2d 900 (1st Cir. 1980); *CFTC v. Wellington Precious Metals, Inc.*, No. 85-3565-Civ-ATKINS (S.D. Fla. July 12, 1988); *CFTC v. American Metal Exchange Corp.*, 693 F. Supp. 168 (D.N.J. 1988) (appeal pending); *CFTC v. Trinity Metals Exchange*, No. 85-1482-CV-W-3 (W.D. Mo. Jan 21, 1986); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1146 (S.D.N.Y. 1979); *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669 (S.D.N.Y. 1979); *In re First National Monetary Corp.*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985); *In re Stovall*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979).

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First, the instrument's commodity-dependent payments must be no greater than on a one-to-one basis. This means that for hybrid instruments offering a coupon or interest rate indexed to or calculated by reference to the price of a commodity, the percentage change in such coupon or interest rate for any payment period may not exceed the percentage change in the commodity price to which the coupon or interest payment is indexed. For hybrid instruments having a face value so indexed or calculated, the percentage change in the commodity-dependent payment may not exceed the percentage change in the commodity price to which the face value is indexed, provided, however, that the commodity-dependent payment must be adjusted for any repayments of the face value prior to maturity. In the case of hybrid instruments having a face value *and* a coupon or interest so indexed or calculated, the percentage change in each of the commodity-dependent payments must meet the applicable requirements stated above. Under this test, for example, the change in the value of a commodity-dependent payment which is indexed to the face amount of an instrument may not exceed the change in the value of an amount of the commodity whose value at the time of issuance equals the face amount of the instrument.[9]

Second, the maximum loss of the purchaser on the commodity-dependent component must be limited as described below. In the case of a hybrid instrument offering a coupon or interest indexed to or calculated by referenece to the price of a commodity, the maximum loss of each coupon or interest payment may not exceed the commodity-indepenent interest. In the case of a hybrid instrument with a face value so indexed or calculated, the maximum loss of the purchaser may not exceed the face value or purchase price of the instrument, whichever is greater. In the case of a hybrid instrument having both a coupon or interest and face value so indexed or calculated, the maximum loss may not exceed the respective limits stated above. In any event, the issuer must receive full payment for the instrument upon its issuance, and the provisions of the instrument cannot require a purchaser or any holder to pay additional "out-of-pocket" funds or consideration during the life of the instrument or at its maturity.

Third, in order to limit the commodity-dependent yield, the commodity-independent yield must equal at least 50%, but no more than 150%, of the estimated annual yield at the time of issuance for a comparable non-hybird debt or depository instrument issued by the same or a similar issuer.[10] As a result of this requirement, for example, no more than half of the issue price of a hybrid coupon par bond of long maturity would be attributable to the value of its commodity-dependent component.[11] In addition, the commodity-independent yield paid over the life of the instrumenmt would be at least one half of what would be paid on a conventional debt or depository instrument.[12]

This interpretation is not applicable to any instrument that would permit the commodity-dependent component to be traded separately.[13] For example, instruments in which the commodity-dependent component has a longer maturity than the commodity-independent component would not be covered by this interpretation.

In addition, this interpretation does not apply to hybrid instruments which settle by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This limitation would not interfere with the ability of issuers to develop hybrid instruments with physical delivery alternatives to cash settlement, but provides some protection against interference with deliverable supplies for settlement of designated futures or option contracts.[14]

This interpretation also would not apply to hybrid instruments that are marketed as being or having the characteristics of a futures contract or a commodity option, except to the extent necessary to describe the operation of the instrument or to comply with applicable disclosure requirements. The Commission believes that this marketing limitation balances the need to prevent misleading characterizations of the nature of these instruments against the objective of assuring meaningful disclosure of their actual operation and risks.

Through this interpretation, the Commission is extending the type of analysis underlying the *de minimis* category suggested in its Advance Notice of Proposed Rulemaking (Regulation of Hybrid and Related Instruments) ("Advance Notice"), 52 FR 47022 (Dec. 11, 1987) to a broader class of commodity-related instruments.[15] As such, this interpretation continues the Commission's ongoing efforts to coordinate and harmonize its regulatory framework with those of other federal regulators in a manner consistent with Congressional intent and the public interest.[16]

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[9] *See* CFTC Advisory No. 39–86, June 23, 1986 (Interpretative Letter No. 86–10, at p. 4), in which the Commission's Off-Exchange Task Force granted no-action relief with respect to proposed offering of foreign currency-linked debt instruments, where, among other things, the instrument's face value indexed to the yen on no more than a one-to-one basis. The no-action letter stated that these notes provided both an interest payment denominated in dollars and repayment of principal based on yen value "such that the Notes provide a fixed interest payment together with a principal return resembling, in many respects, a yen-denominated bond which, when converted into dollars, reflects the prevailing exchange rate."

[10] Examples of the operation of the commodity-independent yield criterion and other elements of this statement are contained in the attachment to this interpretation.

[11] Application of this standard under the assumption of an interest rate of 10% means that coupon instruments issued at par with up to a one year maturity could have commodity components which account for approximately 5% of the issue price; such instruments with a maturity of five years could have commodity components which account for approximately 20% of the issue price; and such instruments with a maturity of ten years could have commodity components which account for approximately 30% of the issue price.

[12] For hybrid instruments designed to afford a real rate of return through indexing to the Consumer Price Index or other broadly based inflation measures, the estimated annual yield of a comparable non-hybrid instrument would be the estimated real rate of interest, calculated as the bond-equivalent yeild of the most recently issued one-year Treasury bill less the most recently announced annualized percentage change in the Consumer Price Index.

[13] However, options on securities are excluded from Commission regulation. 7 U.S.C. 2a(1).

[14] Such protection against interference with deliverable supplies is vital to the prevention of price manipulation on designated contract markets, which is central to the Commission's regulatory mission. *See* 7 U.S.C. 5, 7, 7a, 9, and 13(b).

[15] As discussed in the Advance Notice, the Commission is of the view that, in general, non-transferable annuities or pensions derived from an employment relationship that are indexed to a commodity or group of commodities, as well as adjustable rate mortgages, employment agreements, leases and similar agreements, are beyond the purview of the CEA and Commission regulations. Further, the Commission is of the view that, in general, lending or deposit instruments in which the interest payments are measured by reference to published interest rates or indices of interest rates such as the prime rate, the London Interbank Offer Rate (LIBOR), and Treasury bill rates are beyond the purview of the Act and Commission regulations. Moreover, while this statutory interpretation does not expressly discuss loans offered by FDIC member banks, the Commission believes that commerical loans, that is, bank loans directly to a commercial customer for the purpose of providing funds for use by the customer in its business (*See Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, 474 U.S. 361 (1985)) as well as loans to foreign governments or political subdivisions thereof, would be beyond the purview of the CEA and Commission regulations.

[16] *See, e.g.*, Commission Regulation 1.17, 17 CFR 1.17 (1988) (Minimum financial requirements for broker/dealer futures commission merchants);

Continued

This interpretation is intended to clarify that hybrid instruments which provide a commodity-linked return and meet the criteria described above are, when viewed as a whole, more appropriately treated as debt securities or bank depository instruments rather than as commodity futures or commodity option contracts. Issuers of hybrid debt securities instruments would be subject to the Securities Act of 1933 and, as such, would be required either to comply with applicable registration requirements or to qualify for an exemption therefrom. Hybrid bank offerings would be subject to the requirements imposed on the FDIC-Insured offering bank by its Federal regulators.[17]

The Commission is interested in receiving the written views of any interested persons concerning this interpretation. Such views may be submitted to the Commission at the address set forth above. Prior to the effective date of this interpretation, the Commission will not take any enforcement action regarding offerings which meet the criteria set forth above. The Commission also will continue to consider relief on a case-by-case basis for instruments not addressed in this interpretation.[18] This interpretation supersedes the procedures established by Commission Advisories 48–88 (July 26, 1988) and 56–88 (August 19, 1988).

Issued in Washington, DC, on January 5, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Attachment—Examples of Hybrid Instruments Meeting the Criteria of the Interpretative Statement

I. Introduction

Provided below are analyses of two hybrid instruments under the following criteria discussed in the interpretative statement: One-to-One Indexing, Maximum Loss, Commodity-Independent Yield, and Non-Severability. As discussed in that statement, any instrument which satisfies these criteria also must satisfy the interpretation's other criteria to be treated as excluded from the CFTC's jurisdiction. Section II of this attachment illustrates an instrument with its face value indexed to a foreign exchange rate while Section III illustrates an instrument with its interest payment indexed to the price of gold.

II. Bond Whose Face Value is Indexed to a Foreign Exchange Rate

The instrument to be examined in this example has the following characteristics: (1) The face value is $1000 and the instrument is issued at par; (2) the coupon is 12% per annum of the $1000 face value;[1] (3) assuming a spot exchange rate at issuance of one British pound equal to two U.S. dollars, *i.e.*, L1=$2, the face value of the bond is adjusted by the change in the dollar value of 500 British pounds, *i.e.*, $1000/$2 per L=500L, from the price of pounds at the time of issuance to maturity; (4) any downward adjustment to the face value cannot exceed the amount of the face value ($1000); (5) the instrument's commodity component is not severable. Based upon the above, the *commodity-independent payment* consists of a fixed coupon payment per annum of $120 and, at maturity, the face value of $1000. The *commodity-dependent payment*, which constitutes the embedded futures-like component, may be represented as follows:

Commodity-dependent payment=$L500\times(\$/L_{mat}-\$2/L)$[2] Thus, the coupon, face value, and commodity-dependent payments at maturity may be represented, respectively, as follows: $120+\$1000+L500\times(\$/L_{mat}-L\ \$2/L)$.

One-to-One Indexing

The description of the instrument's commodity adjustment satisfies the one-to-one indexing criterion: A 1% change in the dollar-pound exchange rate changes the commodity-dependent payment by an amount equal to 1% of the $1000 face value. Assume that at maturity there is a 1% rise in the value of the pound vis-a-vis the dollar, *i.e.*, 1L=$2.02. As a result, the commodity-dependent payment at maturity equals the following:

$$L500\times(\$2.02/L-\$2/L)=L500\times\frac{\$.02}{L}=\$10$$

This $10 adjustment to face value, therefore, corresponds to a 1% change as a percentage of face value *i.e.*, $1000×.01=$10.

Maximum Loss

The description of the instrument also prohibits a loss greater than the face value. Essentially, a complete loss of the face value requires a change in the exchange rate such that the pound declines to zero dollars. In this case, the commodity-dependent payment would be equal to −$1000. Therefore, the repayment at maturity is zero dollars because the $1000 return of face value is offset by the −$1000 commodity-dependent payment. Note that the instrument as constructed provides for a coupon payment of $120, nonetheless.

Commodity-Independent Yield

The coupon payment associated with the instrument is 12% of the face value. Since it has been assumed that the same or a similar issuer of a comparable non-hybrid bond would issue such an instrument with a 10% yield, the hybrid instrument's coupon is 120% of that estimated yield. Hence, the criterion that the commodity-independent yield be within the range of 50% to 150% of the estimated yield at the time of issuance is satisfied.

Non-Severable Commodity Component

By its terms, the instrument examined cannot be severed into a separate commodity component and non-commodity component. It is important to recognize that, even though the analysis conceptually decomposes the instrument into component parts, the component parts cannot be decomposed subsequent to or at issuance.

Commission Regulation § 4.5, 17 CFR 4.5 (1988) (Exclusion from the definition of commodity pool operator for certain otherwise-regulated persons); Interim Report of the Working Group on Financial Markets (May 1988).

[17] The Commission has received correspondence from the staffs of the Securities and Exchange Commission ("SEC"), the Board of Governor of the Federal Reserve System, and the Office of the Comptroller of the Currency reviewing their respective regulatory frameworks as applicable in these areas and recognizing their oversight responsibilities with respect to hybrid instruments. *See* Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporations Finance, SEC, to Marshall E. Hanbury, and Paula A. Tosini, Co-Chairmen, Task Force of Off-Exchange Instruments, CFTC, dated November 18, 1988; Letter from Michael Bradfield, General Counsel, Board of Governors of the Federal Reserve System to Robert J. Mackay, Chief of Staff, CFTC, dated November 21, 1988; Letter from J. Michael Shepherd, Senior Deputy Comptroller, Corporate and Economic Programs, Office of the Comptroller of the Currency, to Robert Mackay, Chief of Staff, CFTC, dated December 14, 1988.

[18] The Commission will address swap transactions and other interests in later releases.

[1] It is assumed that a conventional bond by the same or similar issuer would have a 10% coupon.

[2] If, instead, the exchange rate at issuance were assumed to be L1=$3, then the commodity-dependent payment would be: $1000/$3 per $L=L333.33\times(\$/L_{mat}-\$3/L)$.

III. Depository Instrument Whose Interest Payment is Indexed to the Price of Gold

The instrument to be examined in this example is as follows: (1) The deposited amount or face value is $1000, and the instrument is issued at par; (2) the interest yield is 8% per annum of the deposited amount or face value;[3] (3) the commodity-dependent interest payment is obtained by dividing the commodity-independent interest payment by $500. This quantity is then multiplied by the difference between the spot price of gold at the time of the interest payment and $500, if the spot price of gold exceeds $500; otherwise, there is no adjustment; (4) the commodity-dependent payment cannot result in a loss that is more than the commodity-independent interest payment; (5) the commodity component and non-commodity component are not severable.

Based upon the above, the commodity-independent payment consists of a fixed interest payment of $80 and the face value of $1000 at maturity (*i.e.*, year end). For such a depository instrument, the commodity-dependent payment, which constitutes the embedded option-like component, may be represented at $80 multiplied by the difference between the spot price of gold at the time of the interest payment and $500 divided by $500, if the spot price of gold exceeds $500. If the spot price of gold is less than or equal to $500, the commodity-dependent payment is equal to zero. Thus, the adjusted interest payment is: $80 + commodity-dependent payment, and the total payment at maturity is: $1000 + $80 + commodity-dependent payment.

One-to-One

The instrument described above satisfies the one-to-one criterion because the indexing feature adjusts the commodity-dependent interest payment as a percentage of the commodity-independent interest payment by the same rate of change as that of the price of gold. That is, a 1% rise in the spot price of gold results in an $.80 commodity-dependent interest payment, which is 1% of the commodity-independent interest payment of $80. To illustrate, assume that the price of gold at issuance is $500. Suppose that by the interest payment date the spot price of gold increases by 1% to $505. As a result, the commodity-dependent interest payment is as follows:

$$\$80 \times (\$505 - \$500)/\$500 = \$.80$$

This $.80 commodity-dependent payment corresponds to 1% of the commodity-independent interest payment, *i.e.*, $80 × .01 = $.80.

Maximum Loss

The description of the instrument prohibits a reduction in the interest payment. The adjustment formula only allows increases in payments based on changes in the price of gold since the commodity component is option-like. Accordingly, the description of the instrument states that an adjustment cannot reduce the fixed interest payment.

Commodity-Independent Yield

The instrument provides an 8% per annum interest payment. This fixed interest payment equals 80% of the assumed normal interest payment of 10%. As a result, the commodity-independent yield of the depository instrument is within the range of the 50% to 150% commodity-independent yield criterion.

Non-Severable Commodity Component

The instrument as defined, although examined conceptually by its constituent parts, cannot be severed subsequent to or at issuance.

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[3] The time to maturity is assumed to be one year with the interest paid at year end. In addition, the same or a similarly situated issuer of a one-year $1000 deposit is assumed to pay 10% per annum.

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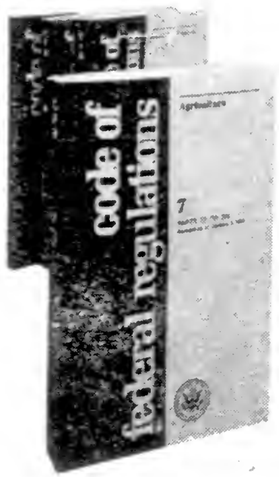
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Title 3—

The President

Proclamation 5931 of January 9, 1989

National Sanctity of Human Life Day, 1989

By the President of the United States of America

A Proclamation

Reverence for human life and recognition of the sanctity of individual life are among the defining characteristics of a just civil order. For century upon century, mankind has struggled to establish such principles in law—not merely as right ideas confirmable by experience, but as self-evident truths that provide the only possible basis for the creation of durable political institutions. Age after age of wars and persecutions, serfdom and slavery, have left bitter reminders of the consequences that everywhere follow a failure to recognize the fundamental dignity and equality of human beings in the sight of God.

Our Nation was born in the midst of a struggle in which these principles were the real field of battle. The United States of America was founded by visionary people who believed, and said forthrightly, that the test of any just political system lay in whether it affirmed the unalienable rights endowed by God, rights that no civil authority was ever free to deny or contravene. In this context, it is no wonder then that the first right proclaimed by our Founders in the Declaration of Independence was that of life, and that the care of human life and happiness, as Jefferson declared in words now inscribed on the marble walls of our national Memorial to him, was held to be the first and only legitimate object of good government.

Today our Nation, economically prosperous and at peace, bears a fresh, dark wound upon its conscience, a wound created by a stark deviation from the course of our national journey. Contrary to the purpose of law, to the character of medicine, to the habit of charity, and to the spirit of our founding, abortion has become routinized in America. No one can mistake abortion for the gentle art of healing. Each day in our land the promise of life is stolen from thousands of the unborn, the first flower of their unique existence crushed forever. But, as many philosophers have pointed out, the effects of such acts of violence are just as profound on those who perform them as on those who undergo them.

Americans are a generous and kindhearted people, a people who strive to strengthen and preserve those delicate bonds of affection that unite the human family and give safe harbor to all its members. We often fail in our tenderness and mercy; but it is not in our nature to choose failure. Rather, we are a people who thirst after justice and will give our all to achieve it and defend it. Most particularly, we are a people who will not settle for a national policy that each year condemns 1.5 million unborn children to an early death and consigns their mothers to exploitation and emptiness. We must and we will answer abortion with loving alternatives like adoption, and we will ensure that our laws preserve and protect the innocent unborn from destruction.

In 1989 America can make a New Beginning as a champion of the most basic civil right of all. We can, as is written in Deuteronomy, choose life, so that we and our descendants may live.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, January 22, 1989, as National

Sanctity of Human Life Day. I call upon all Americans to reflect on their heritage as a free people under God and the duty incumbent upon each of us to recognize the personhood of every individual and to defend the life of every innocent person from the moment of conception until natural death. Let us gather in homes and places of worship during this sixth annual observance of National Sanctity of Human Life Day to offer reparation for the appalling tragedy of abortion and to rededicate ourselves to works of charity and justice in behalf of America's unborn children and their mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89-834
Filed 1-10-89; 12:19 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 8
Thursday, January 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 88-191]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Oregon from a modified accredited state to an accredited-free state. This action is necessary because we have determined that Oregon meets the criteria for designation as an accredited-free state.

DATES: Interim rule effective January 12, 1989. Consolidation will be given only to comments postmarked or received on or before March 13, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-191. Comments received may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases Staff, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7717.

SUPPLEMENTARY INFORMATION:

Background

The tuberculosis regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free states, modified accredited states, or nonmodified accredited states. The criteria for determining the status of states (the term state is defined to mean any state, territory, the District of Columbia, or Puerto Rico) or portions of states are contained in a document captioned "Uniform Methods and Rules-Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations by incorporation by reference. The status of either states or portions of states is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Oregon was designated in § 77.1 of the regulations as a modified accredited state. However, Oregon now meets the requirements for designation as an accredited-free state. Therefore, we are amending the regulations by removing Oregon from the list of modified accredited states in § 77.1 and adding it to the list of accredited-free states in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Oregon as an accredited-free state. This action will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison, since some prospective buyers prefer to buy cattle and bison from accredited-free states.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these conditions, and because this rule removes a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective less than 30 days after publication in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The groups affected by this action will be certain livestock owners in Oregon, as well as buyers and importers of Oregon cattle. Changing the status of Oregon will improve the marketability of cattle and bison from Oregon, since some prospective cattle and bison buyers prefer to buy from accredited-free states. This will result in a beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or

recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, 9 CFR Part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Oregon".

3. In § 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Oregon" immediately after "Oklahoma".

Done at Washington, DC, this 9th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–738 Filed 1–11–89; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 78

[Docket No. 88–204]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class C to Class B.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective September 29, 1988 (53 FR 37988–37989, Docket Number 88–144), we changed the brucellosis status of Louisiana by removing it from the list of Class C states in § 78.41(d) and adding to the list of Class B states in § 78.41(c). Comments on the interim rule were required to be postmarked or received on or before November 28, 1988. We did not receive any comments. The facts presented in the interim rule still provide the basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Louisiana from Class C to Class B reduces certain testing and other requirements governing the interstate movement of cattle from Louisiana. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Also, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action are certain herd owners in Louisiana, as well as out-of-state buyers of Louisiana cattle. Approximately 53,000 cattle are tested for brucellosis in Louisiana each year. Under Class C status, nonvaccinated female cattle born before January 1, 1984 must have two negative brucellosis tests before being moved interstate. Under Class B status, these cattle do not require a second negative brucellosis test. Cattle that would not require this second test under Class B status comprise approximately 10 percent (or 5,300 animals) of the 53,000 cattle tested for brucellosis in Louisiana each year. Since each test costs an average of $7, the state's cattle industry could realize an estimated savings of $37,000 yearly.

We have therefore determined that changing Louisiana's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR Part 78 that was published at 53 FR 37988–37989 on September 29, 1988.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of January 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–674 Filed 1–11–89; 8:45 am]

BILLING CODE 3410–34–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships

AGENCY: Farm Credit Administration.

ACTION: Final rule and affirmation of interim rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts in final form amendments to the regulations relating to conservatorships and receiverships, but does not respond to the portion of the proposed amendment to § 611.1156(b)(1) relating to the definition of insolvency. The final rule implements provisions of the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987 (Pub. L. 100–233), by permitting the FCA to confirm that insolvency exists through means other than examination; by deleting regulations providing specific direction to the receiver of an association in selling loans; by providing for the protection of equities owned by Farm Credit System (System) borrowers during a receivership; by permitting a System bank or association in receivership to issue preferred stock to the Farm Credit System Financial Assistance Corporation; by making technical changes to eliminate confusion regarding the implementation of joint and several liability on Systemwide and consolidated obligations; and by requiring that certain powers be exercised by the FCA Board as opposed to the FCA or the Chairman of the FCA Board. Comments from the public have been considered and clarifying changes have been made to the proposed rule.

DATE: This regulation shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 (703) 883–4251, TDD (703) 883–4444

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 (703) 883–4020, TDD (703) 883–4444

SUPPLEMENTARY INFORMATION: On May 12, 1988 (53 FR 16934) and October 31, 1988 (53 FR 43897), the FCA published for public comment proposed regulations relating to conservatorships and receiverships set forth in 12 CFR Part 611. The comment period for these proposed regulations closed on June 13, 1988, and November 21, 1988, respectively. Additionally, on May 24, 1988, the FCA published certain aspects of the amendments proposed on May 12, 1988, as interim regulations. 53 FR 18810. This action was taken to clarify the legal requirements applicable to receiverships and conservatorships because two System institutions had recently been placed in receivership by the FCA Board. The comment period on the interim regulations closed on June 23, 1988. In this document, the FCA Board responds to the comments received on these proposed and interim regulations and adopts the interim regulations as final regulations without change.

The amendments proposed on May 12, 1988, included revisions to conform 12 CFR Part 611 to the requirements of the Agricultural Credit Act of 1987 (1987 Act) by providing for the protection of equities owned by System borrowers during a receivership; by permitting a System bank or association in receivership to issue preferred stock to the Farm Credit System Financial Assistance Corporation; by making technical changes to eliminate confusion regarding the implementation of joint and several liability on Systemwide and consolidated obligations; and by requiring that certain powers be exercised by the FCA Board as opposed to the FCA or the Chairman of the FCA Board. The FCA received comments on these proposed amendments and the related interim regulations from the Farm Credit Corporation of America (FCCA). The Farm Credit Bank of Baltimore (FCBB) also submitted a comment in which it generally concurred with the FCCA's comments.

Both the FCCA and the FCBB concurred with the change to § 611.1174(c) published in the proposed and interim regulations which deleted provisions relating to the assignment of joint and several liability. While generally concurring with the other amendments proposed on May 12, 1988, the FCCA commented that proposed § 611.1156(a) "* * * exceeds statutory authority in suggesting that an Assistance Board request to FCA 'to initiate action to appoint a receiver' must be conditioned upon an FCA determination that grounds for appointment exist." In response to this comment, the FCA Board has revised § 611.1156(a) to clarify that the Farm Credit System Assistance Board (Assistance Board) could make such a request prior to an FCA determination that grounds exist for the appointment of a receiver. The FCCA also inquired whether the sale of loan assets by receivers of System institutions would be subject to the borrower rights provisions of the Farm Credit Act of 1971, as amended (Act), and the regulations promulgated pursuant to these provisions. This question is discussed in the preamble to recently promulgated borrower rights regulations. 53 FR 35434 (September 14, 1988).

Additionally, the FCCA requested the FCA to publish for comment proposed regulations dealing with the authority of bank receivers to sell loan assets to non-System lenders. The FCA has addressed this concern in further amendments to 12 CFR Part 611 published on October 31, 1988. These proposed amendments related to the sale and transfer of loans of a System institution in receivership and the definition of insolvency stated in § 611.1156(b)(1). The proposed revisions to § 611.1156(b)(1), contained in the implementing regulations for § 4.12(b)(1) of the Act, would also permit the FCA to confirm that an institution is insolvent through means other than examination. The FCA received comments on these additional amendments from the FCCA. The FCBB, the Farm Credit Bank of Louisville and the Louisville Bank for Cooperatives submitted comments in which they concurred with the FCCA's comments.

The FCA did not receive any comments on the proposed amendment dealing with the authority of bank receivers to sell loan assets to non-System lenders. While the FCCA concurred with the proposed amendment to § 611.1156(b)(1) permitting the FCA to confirm that insolvency exists through means other than examination, the FCCA objected to the proposed revision to § 611.1156(b)(1) insofar as it defines insolvency as existing when a System institution is about to exhaust its permanent capital, and treats eligible borrower stock as a liability instead of as equity. In response to these concerns, the FCA Board now adopts only the amendment to § 611.1156(b)(1) permitting the FCA to confirm that insolvency exists through means other than examination and does not yet respond to the portion of the proposed rule relating to the definition of insolvency.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as set forth below and all other authority citations throughout Part 611 are removed.

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203.

2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart K—Appointment of Conservators and Receivers

§ 611.1155 [Amended]

2. Section 611.1155 is amended by adding the word "Board" after "Farm Credit Administration" in the first sentence.

3. Section 611.1156 is amended by revising paragraphs (a) and (b)(1); by adding the word "Board" after "Farm Credit Administration" each place it appears in paragraphs (b)(4) and (b)(5); and by adding a new paragraph (b)(6) to read as follows:

§ 611.1156 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, at its discretion, appoint a conservator or receiver for such institution. Further, the Farm Credit System Financial Assistance Board may request the Farm Credit Administration Board to appoint a receiver and, if one or more of the conditions set forth in paragraph (b) of this section are met, as determined by the Farm Credit Administration, may direct the Farm Credit Administration Board to appoint a conservator.

(b) * * *

(1) The institution is insolvent. For purposes of this paragraph, "insolvent" means that the FCA has confirmed that the assets of the institution are less than its obligations to its creditors and others, including its members.

* * * * *

(6) The institution is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Act) issued by the institution individually, or on which it is primarily liable.

§ 611.1157 [Amended]

4. Section 611.1157(a) is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second, third, fourth, and fifth place it appears; paragraph (b) of § 611.1157 is amended by removing the words "Chairman of the" in the first sentence and adding the word "Board" after "Farm Credit Administration" the second place it appears

§ 611.1158 [Amended]

5. Section 611.1158 is amended by adding the word "Board" after "Farm Credit Administration" each place it appears.

Subpart L—Liquidation of Associations

§ 611.1160 [Amended]

6. Section 611.1160(a) is amended by adding the word "Board" after "Farm Credit Administration" and removing the word "Chairman" and adding in its place the word "Board"; paragraph (b) is amended by adding the word "Board" after "Farm Credit Administration"; paragraph (e) is amended by adding the word "Board" after "Farm Credit Administration" the second place it appears and by removing the word "Chairman" and adding in its place the "Board"; paragraph (f) and (g) are amended by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

§ 611.1161 [Amended]

7. Section 611.1161 is amended by adding the word "Board" after "Farm Credit Administration" first place it appears in the introductory paragraph; paragraph (s) is amended by adding the word "Board" after "Farm Credit Administration".

8. Section 611.1162(b) is amended by adding the word "Board" after "Farm Credit Administration"; and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1162 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing above shall affect the authority of an association in receivership to issue preferred stock in accordance with Title VI of the Act.

§ 611.1165 [Removed and reserved]

9. Section 611.1165 removed and reserved.

§§ 611.1166, 611.1167 and 611.1168 [Redesignated as §§ 611.1167 611.168 and 611.1169]

10. Sections 611.1166, 611.1167, and 611.1168 are redesignated as §§ 611.1167, 611.1168, and 611.1169, and a new § 611.1166 is added to read as follows:

§ 611.1166 Uninsured accounts.

Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

11. Newly redesignated 611.1167(a)(4) is amended by adding the word "Board" after "Farm Credit Administration" and by adding a new paragraph (d) to read as follows:

§ 611.1167 Priority of claims.

* * * * *

(d) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

12. Newly redesignated § 611.1168(a) is amended by adding the word "Board" after "Farm Credit Administration"; and by revising paragraph (b) to read as follows:

§ 611.1168 Inventory, examination, audit and reports to stockholders.

* * * * *

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

* * * * *

§ 611.1169 [Amended]

13. Newly redesignated § 611.1169 is amended by removing the words "Chairman of the" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the first and second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

Subpart M—Liquidation of Banks

14. Section 611.1170 is amended in paragraphs (a) and (b) by adding the word "Board" after "Farm Credit Administration"; and in paragraphs (a), (e), (f), and (g) by removing the word "Chairman" and adding in its place the word "Board" each place it appears.

15. Section 611. 1170 is amended by revising paragraph (h) to read as follows:

§ 611.1170 Appointment of receiver.

* * * * *

(h) For purposes of this subpart the term "bank" will include all banks, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

16. Section 611. 1172 is amended by adding "Board" after "Farm Credit Administration" in paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 611.1172 Preservation of equity.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing in this section shall affect the authority of a bank in receivership to issue preferred stock in accordance with Title VI of the Act.

17. Section 611. 1174 is amended by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively; newly redesignated paragraph (d) is amended by removing the references to "(d)" and adding in their place, "(c)"; by revising newly redesignated paragraph (c)(5); and by adding new paragraph (f) to read as follows:

§ 611.1174 Creditors' claims and priority of claims.

* * * * *

(c) * * *

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other System banks arising from their payments pursuant to section 4.4 of the Act.

* * * * *

(f) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of that Act.

18. Section 611.1175 is amended by revising paragraph (b) to read as follows:

§ 611.1175 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

* * * * *

§ 611.1176 [Amended]

19. Section 611.1176 is amended by removing the word "Chairman" and adding in its place, the word "Board" in the first sentence; by adding the word "Board" after "Farm Credit Administration" the second place it appears; and by removing the words "pursuant to § 617.7090 of this chapter" in the third sentence.

Subpart N—Conservators and Conservatorships of Banks and Associations

20. Section 611.1180 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administation"; and in paragraphs (d) and (e) by removing the word "Chairman" and adding in its place the word "Board"; and paragraph (f) is revised to read as follows:

§ 611.1180 Appointment of a conservator.

* * * * *

(f) For purposes of this subpart "System institution" will mean all banks, associations, service corporations chartered under Title IV of the Act, the Federal Agricultural Mortgage Corporation, the Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

§ 611.1181 [Amended]

21. Section 611.1181 is amended in paragraphs (b) and (c)(1) by adding the word "Board" after "Farm Credit Administration".

22. Section 611.1182 is amended in paragraph (a) by adding the word "Board" after "Farm Credit Administration" the first place it occurs and by revising paragraph (b) to read as follows:

§ 611.1182 Inventory, examination, audit, and reports to stockholders.

* * * * *

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

* * * * *

Date: January 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–778 Filed 1–11–89; 8:45 am]

BILLING CODE 6701–05–M

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12 CFR Parts 612, 614, 615 and 618

Personnel Administration; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Interim rule; request for comments.

SUMMARY: In accordance with various Farm Credit Administration (FCA) regulations, Farm Credit institutions (institutions) are currently required to submit certain proposed policies, procedures, programs, and activities to FCA for its approval prior to the institution implementing such policies, procedures, programs and activities. These submissions by the institutions to FCA are referred to collectively herein as "prior approvals". The FCA Board has determined that certain prior approvals are unnecessary in light of recent amendments to the Farm Credit Act of 1971 and Congressional intent, and are inconsistent with FCA's role as an arm's length regulator. The FCA adopts an interim rule eliminating the prior approval portions of the regulations set forth below. Thus, effective immediately, institutions are no longer required to submit to the FCA certain prior approvals as more specifically discussed below. Elimination of these prior approvals does not relieve the institutions of their responsibility to develop and implement such policies, procedures, programs and activities and to operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations. The institutions and such policies, procedures, programs, and activities continue to be subject to examination by the FCA. The FCA solicits comments on the amendments to the regulations.

DATE: This regulation is effective January 6, 1989. Written comments must be submitted on or before March 6, 1989.

ADDRESS: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the

Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: John C. Moore, Deputy Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. (703) 883–4402 TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA Board has determined that certain prior approvals are unnecessary in light of recent amendments to the Farm Credit Act of 1971 and Congressional intent, and are inconsistent with FCA's role as an arm's length regulator. Accordingly, the FCA adopts an interim rule amending certain regulations by eliminating prior approval language from the regulations. The effect of the amendments to the regulations listed below is that institutions are no longer required to submit the relevant proposed policies, procedures, programs, and activities to the FCA for its prior approval. The prior approvals are deleted to conform the regulations to amendments to the Act and to comply with Congressional intent as evidenced by such amendments. Accordingly, it is the judgment of the FCA Board that the language concerning the prior approvals which is delineated below should be eliminated from the relevant regulations effective immediately.

The Agricultural Credit Act of 1987 (1987 Amendments) which amended the Act specifically eliminated the following prior approvals from the statute: (1) Loss-sharing agreements between and among banks for cooperatives (BCs) and between and among Farm Credit banks (FCBs); (2) the making of "other investments" by FCBs and of certain specific investments by BCs; (3) foreign investments by BCs; and (4) BC deposits for international trade. Public Law 100–233, section 802. Accordingly, the prior approval language in 12 CFR 614.4340(a); 615.5135(b); 615.5143; and 615.5190(b) is eliminated to conform the regulations to the 1987 Amendments. Since the 1987 Amendments eliminated the loss-sharing prior approvals for FCBs and BCs which are the subject matter of 12 CFR 614.4340(a), the FCA Board has interpreted Congressional intent to require eliminating these prior approval for associations as well.

The Farm Credit Amendments Act of 1985 and the Farm Credit Act Amendments of 1986 (1985 and 1986 Amendments) eliminated the following prior approvals from the Act: (1) Bank interest rates and policies; and (2) production credit association (PCA) loans that bear interest rates as determined by the relevant FICB board. Public Law 99–509, section 1033 and Pub. L. 99–205, section 205(b). Since the 1985 and 1986 Amendments specifically eliminated these prior approvals, the FCA has interpreted Congressional intent to require that prior approvals of bank and PCA interest rate programs be eliminated as well. Accordingly, the prior approval language in 12 CFR 614.4280; 614.4320; and 614.4321 is eliminated to conform the regulations to the 1985 and 1986 Amendments.

Consistent with FCA's interpretation of the intent of Congress as evidenced by the deletion of the specific prior approvals discussed above, FCA eliminates from the following regulations the prior approval language which is not specifically required by statute or necessary at this time to ensure FCA's role as an arm's length regulator: 12 CFR 612.2150(a); 612.2150(c); 612.2160(a); 614.4345; 614.4460; 614.4511; 615.5040; 615.5104; and 618.8060.

The FCA Board has determined that it is necessary to implement these amendments to the regulations as quickly as possible to conform the regulations to statutory changes and to Congressional intent. In addition, by eliminating these prior approvals immediately, FCA is emphasizing that institutions are clearly responsible for developing and implementing the relevant policies, procedures, programs and activities, while FCA will continue to examine such matters. Thus, immediate implementation assists FCA in further establishing and fulfilling its role as an arm's length regulator. Furthermore, since these regulations relieve restrictions, the FCA Board finds that notice and public comment prior to the effective date of this rule are impracticable, unnecessary, and contrary to the public interest in this instance. *See* 5 U.S.C. 553(b)(B). For the reasons stated immediately above, the FCA Board, pursuant to 5 U.S.C. 553(d)(1) and 12 U.S.C. 2252(c)(2), finds good cause to make this regulation effective in less than 30 days.

List of Subjects in 12 CFR Parts 612, 614, 615 and 618

Accounting, Agriculture, Archives and records, Banks, Banking, Conflict of Interest, Credit, Foreign trade, Government securities, Insurance, Investments, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

As stated in the preamble, Parts 612, 614, 615 and 618 of Chapter VI, Title 12, Code of Federal Regulations, is amended as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for Part 612 continues to read as follows:

Authority: Secs. 5.9 and 5.17; 12 U.S.C. 2243 and 2252.

Subpart B—Standards of Conduct for Directors, Officers, and Employees

§ 612.2150 Employees—prohibited acts.

2. Section 612.2150 is amended by removing the words "and approved by the Farm Credit Administration" in the last sentence of paragraph (a); and in the introductory text of paragraph (c) by removing the words "which have been approved by the Farm Credit Administration".

§ 612.2160 Bank and service organization policies and procedures.

3. Section 612.2160 is amended by removing the words "and shall submit the policies, guidelines, and procedures to the Farm Credit Administration for approval" in the last sentence of paragraph (a).

PART 614—LOAN POLICIES AND OPERATIONS

4. The authority citation for Part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

Subpart G—Interest Rates and Charges

§ 614.4280 Interest rates.

5. Section 614.4280 is amended by removing the designation for paragraph (a); by removing the words "with the approval of the Farm Credit Administration" in the first sentence of paragraph (a); and by removing paragraph (b).

§ 614.4320 Production credit associations.

6. Section 614.4320 is amended by removing the words "and approved by the Farm Credit Administration" in the first sentence.

§ 614.4321 Interest rate programs.

7. Section 614.4321 is amended by removing the last sentence of the introductory paragraph.

Subpart I—Loss-Sharing Agreement

§ 614.4340 General.

8. Section 614.4340 is amended by removing the words "and with the prior written approval of the Farm Credit Administration," in the first sentence of paragraph (a).

§ 614.4345 Guaranty Agreements.

9. Section 614.4345 is amended by removing the words "with approval of the Farm Credit Administration," and capitalizing the word "Guaranty".

Subpart M—Loan Approval Requirements

§ 614.4460 Loan approval responsibility.

10. Section 614.4460 is amended by removing the words "establishment of a policy under which such loans are to be submitted to the Farm Credit Administration for prior approval," in the second sentence of the introductory text; by removing the words "and the Farm Credit Administration" in the third sentence of the introductory text and also, at the end of the third sentence of the introductory text by removing the words "with a copy to the Farm Credit Administration for post review"; and in paragraphs (f)(1) and (f)(3) by removing the words "and approved by the Farm Credit Administration".

Subpart N—Loan Servicing Requirements

§ 614.4511 Federal land bank association compensation.

11. Section 614.4511 is amended by removing the words "and the Farm Credit Administration" in the first sentence.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

12. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 8.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

Subpart A—Funding

§ 615.5040 Borrowings from financial institutions other than commercial banks.

13. Section 615.5040 is amended by removing the words "only with the approval of the Farm Credit Administration".

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

§ 615.5104 Debt policy.

14. Section 615.5104 is amended by removing the words "subject to approval by the Farm Credit Administration,".

Subpart D—Other Funding

§ 615.5135 Investment policy.

15. Section 615.5135 is amended by removing the words "subject to the approval of the Farm Credit Administration," in the first sentence of the introductory text of paragraph (b).

Subpart E—Investments

§ 615.5143 Banks for cooperatives.

16. Section 615.5143 is amended by removing the words "and approved by the Farm Credit Administration" in the first sentence.

Subpart G—Deposit of Funds

§ 615.5190 General.

17. Section 615.5190 is amended by removing the words "and approved by the Farm Credit Administration" in the first sentence of paragraph (b).

PART 618—GENERAL PROVISIONS

18. The authority citation for Part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart C—Leasing

§ 618.8060 Leasing limitations.

19. Section 618.8060 is amended by removing the words "and the Farm Credit Administration".

Date: January 8, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–780 Filed 1–11–89; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: On November 8, 1988, the Farm Credit Administration (FCA) deferred the following portions of the borrower rights regulations: (1) That portion of 12 CFR 614.4367(c)(1) which states "* * *, including the effective interest rate;" and (2) paragraph (d)(1) of 12 CFR 614.4367. 53 FR 45073. FCA adopts and publishes a final regulation concerning these previously deferred portions of the borrower rights regulations on disclosures of changes in the effective interest rate.

The final regulation eliminates the previous requirement that qualified lenders disclose the new effective interest rate when such new rate has resulted from an adjustment in the stated contract rate. However, when the stated contract rate is adjusted, borrowers must still be provided with the following disclosures: the new contract rate, the date that the rate is effective, and a statement of any factors other than standard adjustment factors which were taken into account in establishing the new rate. 12 CFR 614.4367(c). In addition, when there has been a change in the amount of stock or participation certificates which borrowers are required to own that modifies the effective interest rate, the final regulation requires that institutions disclose the impact on the new effective interest rate by disclosing *either* the new effective rate, *or* by a representative example.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT: Andrea J. Cali, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On September 14, 1988, FCA published final regulations under Parts 614, 615, and 618 on borrower rights (53 FR 35427), which became effective on October 14, 1988 (53 FR 45073). The borrower rights include, among others, certain disclosure requirements on borrowers' loans specified in the Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987 (the Act).

After publication of the final borrower rights regulations, FCA received comments on two portions of the disclosure regulations concerning the effective interest rate. Specifically, the two portions of the regulations required disclosure of the new effective interest rate when the rate has been modified due to: (1) A change in the stated contract rate, or (2) a change in the stock or participation certificates which borrowers must own. Farm Credit System institutions (institutions) expressed concern that, at the time, they were unable to comply with these portions of the regulations and that to

attain compliance in the future would create unnecessary costs for the institutions and not represent meaningful disclosure to borrowers. The institutions explained the main problem as the lack of information in their computer data bases on loan origination fees. *See* 53 FR 45101–45102. In light of these concerns, FCA deferred the two portions of the disclosure regulations and published a supplemental proposed rule and resolicitation of comments concerning disclosures of changes in the effective interest rate (53 FR 45073 and 45101). FCA received comments from three Farm Credit Banks (FCBs), four other institutions, the National Farmers Union (NFU), and the Farm Credit Corporation of America (FCCA) in response to the resolicitation of comments. All comments were considered in writing the final regulation.

The FCCA and one institution commented that since section 4.13(a) of the Act requires disclosures "not later than the time of the loan closing," the subject changes in the effective interest rate which occur *after* loan closing, need not be disclosed by the lenders. Although these commenters recognized that even if section 4.13(a)(4) of the Act (which requires disclosure of "any change in the interest rate") might be interpreted as requiring disclosures *after* loan closing, they asserted that the Act only requires such disclosure of changes in the stated contract rate, not the effective interest rate. Based on this statutory interpretation, FCCA asserted that 12 CFR 614.4367(d) should be eliminated in its entirety. FCA does not agree with this interpretation of the Act. The Act obviously provides for disclosures after loan closing. *See* section 4.13(a)(4) of the Act. In addition, borrowers are entitled to meaningful and timely disclosure and the need for such disclosure does not cease after loan closing.

While further discussing 12 CFR 614.4367(d), FCCA set forth its own interpretation of this section. Section (d) of 12 CFR 614.4367 states, "Each *qualified lender* that takes any action which changes the amount of stock or participation certificates which borrowers are required to own * * *" shall make the appropriate disclosures. (Emphasis added.) Accordingly, FCCA reasoned that any stock changes that the borrower/stockholders, themselves, have authorized (*e.g.*, merger votes which may include stock "ranges") are exempt from the disclosure requirements set forth in 12 CFR 614.4367(d). FCA disagrees with this interpretation. First, the fact that stockholders vote on a merger that may result in a change in the stock or participation certificate requirement, does not mean that the resulting change does *not* constitute action by a qualified lender for the purposes of disclosing the impact of the change in the stock or participate certificate requirement. Although a majority of the borrower/stockholders must authorize the merger plan, the institution's board of directors must also approve the plan. 12 U.S.C. 2279a, 2279b–2, 2279f, and 2279f–1. Thus, the action cannot be characterized as "borrower/stockholder action," as opposed to "institution action" for the purposes of avoiding compliance with 12 CFR 614.4367(d). Second, the purpose of the disclosure regulations is to provide timely and meaningful disclosure to borrowers. This, even if an action were considered to be "borrower/stockholder action," as well as "institution action," the information that is provided to stockholders during a merger transaction, for example, is not necessarily the same information that must be provided pursuant to 12 CFR 614.4367(d) to attain meaningful disclosure. *See* the discussion below. Finally, FCCA has incorrectly focused on the merger, not the change in the stock or participation certificate requirement. It is the change, and not the merger that triggers the disclosure requirements of 12 CFR 614.4367(d).

In their comments, the FCCA, institutions, and the NFU compared FCA's disclosure regulations with those imposed on other financial institutions. As was discussed by some of the commenters, the Federal Reserve Board's implementing regulations for the Consumer Credit Protection Act (the "Truth in Lending Act" or TILA) (12 CFR Part 226) do not require similar subsequent disclosures of changes in the annual percentage rate (APR) for variable rate transactions. Regulations to which other financial institutions are subject, may be useful for comparison. However, comparisons of FCA disclosure regulations to TILA disclosure requirements may not necessarily be instructive since agricultural lending is specifically exempt from TILA. *See* CFR 226.3. Also, since other lenders are not similar in all respects to Farm Credit System (System) lenders, FCA regulations cannot necessarily mirror such other regulations. Although it is beneficial to examine the treatment of APR disclosures, it must be recognized that the effective interest rate is distinctive. For example, in order to calculate the rate, one must include the impact of the amount of stock or participation certificates which borrowers must own, which is not applicable when determining an APR.

In addition to examining the Act and other similar regulations, two major factors were considered in writing the final regulation. Throughout the development of the borrower rights regulations, FCA balanced the rights to which borrowers are entitled against unnecessary costs to the institutions. In this instance, the expense that institutions will incur because of the disclosures must be balanced against the borrowers' right to meaningful disclosure. These two main considerations were discussed by most of the commenters.

The FCCA and the institutions assert that compliance with the deferred portions of the regulations would result in exorbitant costs. Figures from $160,000 for one district to $3,865,000 for the entire System were quoted in the comments. Although the NFU stated that lenders should not be burdened with complex calculations, particularly when the cost involved in providing these calculations would eventually be borne by the borrower, the organization expressed the belief that the administrative burden created by such disclosures may not be as great as lenders claim. Since the institutions must now include loan origination fees in the initial calculations and disclosures concerning the effective interest rate, there is merit to this view. *See* 12 U.S.C. 2199(a)(3). In any event, potential, as well as actual, costs to the lenders (where these can be determined) must be examined and balanced against the meaningfulness of these disclosures.

Most commenters stated that subsequent disclosure (*i.e.*, occurring after loan closing) of the new effective interest rate when there has been a change in the rate due either to a modification of the stated contract rate or the amount of stock or participation certificates which borrowers must own, would not provide meaningful disclosure to borrowers. In addition, these same commenters stated that such disclosure would create unnecessary costs for the lenders. Most commenters stated that such disclosure is not meaningful because it requires lenders to provide the subsequent effective interest rate, including the impact of the loan origination charges again after the time of loan closing. However, as the commenters explained, the loan origination charge is a one-time fee that is only relevant to the time of loan closing when a borrower needs such information to determine the true cost of the loan. The commenters further asserted that since the fee is non-refundable, any subsequent disclosures concerning the fee do not have an effect on any decision that the borrower may make. FCA recognizes thaat subsequent disclosures (when there has been a change in the stated contract rate) concerning loan origination fees will not necessarily affect a borrower's action. However, whenever an institution assesses additional loan origination fees (*e.g.*, perhaps during a loan or rate renegotiation), FCA considers this to be a new transaction subject to the disclosure requirements found in 12 CFR 614.4367(a).

The NFU found some benefit, in general, in subsequent disclosures of effective interest rates; one institution found benefit in such disclosures only after the stock or participation certificate purchase requirement had been changed, but not after a change in the stated contract rate. Taking these views into account, FCA determines that while meaningful disclosure requires certain notifications concerning the effective interest rate after a change in the stock or participation certificate requirement, it does not require notification of the new effective interest rate that has been modified due to a change in the stated contract rate.

At the time that the stated contract rate has been adjusted, the information that the borrower needs to make an informed decision is the new stated contract rate, as well as the other information that is required to be disclosed by 12 CFR 614.4367(c). Notification of the intitial disclosures at the time of loan closing pursuant to 12 CFR 614.4367(a), and notification of the new stated contract rate once there has been a change in such a rate is adequate.

However, meaningful disclosure concerning a change in the stock or participation certificate requirement requires *at least* notification of the impact of that change on the effective interest rate. FCA agrees with the institution that commented that a "mid-stream" change in the stock or participation certificate requirement, particularly an increase, is of material significance to a borrower. Since the borrower has refinancing options available, a modification of the stock or participation certificate requirement which directly impacts the effective interest rate, may affect a borrower's decision or action. FCA believes that not only does meaningful disclosure require notification of such a change, but in addition it requires that the borrower be notified of the impact on the effective interest rate, since the stock or participation certificate requirement is an integral component of the effective interest rate.

The question then becomes how such disclosure is to be attained. The commenters who recognized the need for such disclosure stated that it is not necessary to provide borrowers with the actual new rate. Rather, they stated that meaningful disclosure may be attained by providing borrowers with a representative example. The NFU suggested that meaningful disclosure may be achieved by providing a borrower with either a standardized example or with a formula so that the borrower can perform his own calculations, provided that the lenders are available to assist the borrower in making such calculations, when the borrower so desires. FCA believes that lenders may provide either a representative example (provided the example is of similar loan type to the actual loan and represents a reasonable, likely change) or the actual new rate to achieve meaningful disclosure and the final regulation has been written accordingly.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, Part 614 of Chapter VI of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252; sec. 413 of Pub. L. 110–233.

2. Section 614.4367 is amended by revising paragraphs (c)(1) and (d)(1) to read as follows:

§ 614.4367 Required disclosures—in general.

* * * * *

(c) * * *

(1) The new interest rate on the loan;

* * * * *

(d) * * *

(1) The impact on the effective interest rate by disclosing the new effective interest rate or by a representative example;

* * * * *

Dated: January 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–779 Filed 1–11–89; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Parts 614, 620 and 621

Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts final regulations relating to the Federal Agricultural Mortgage Corporation (FAMC) established by the Agricultural Credit Act of 1987 (Pub. L. 100–233) (1987 Act). The regulations address the content of FAMC's annual report, the examination of FAMC, and the authority of Farm Credit System (System) banks and associations to originate loans for sale to agricultural mortgage marketing facilities (certified facilities or poolers) or to act as certified facilities.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

George D. Irwin, Assistant Deputy Director, Office of Financial Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4054.

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA. 22102–5090, (703) 883–4020, (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 11, 1988, the FCA Board published for public comment proposed regulations (53 FR 39609) implementing Title VII of the 1987 Act which added a new Title VIII to the Farm Credit Act of 1971. New Title VIII establishes FAMC as a System institution which will provide a guarantee to investors of the repayment of principal and interest on securities that are backed by, or that represent interests in, certain agricultural real estate loans. The proposed regulations addressed the

content of FAMC's annual report, the examination of FAMC, and the authority of System banks and associations to originate loans for sale to certified facilities and to act as certified facilities.

The comment period closed on November 10, 1988. The FCA received comments from the Farm Credit Corporation of America (FCCA), from the Federal Agricultural Mortgage Corporation, from the American Bankers Association (ABA), and from an attorney in private practice. The Farm Credit Bank of Baltimore also submitted a comment in which it generally concurred with the FCCA's comments. The FCA Board has carefully analyzed and considered those comments that address the proposed regulations, as described in more detail in the following discussion.

In its comments, the FCCA stated that proposed § 614.4910 correctly states the authority of System banks and associations to originate loans for sale to certified facilities and to act as certified facilities. However, to conform the proposed regulation to the terminology used in section 8.5 of the 1971 Act, FCCA suggested that § 614.4910 be revised to state that a System bank or association must be "certified" rather than "designated" by FAMC in order to operate as a certified facility. A minor technical change has been made to § 614.4910 to incorporate this suggestion. FCCA did not provide comment on Parts 620 and 621 which deal with accounting and reporting requirements and the content of FAMC's annual report, respectively, on the basis that these were "more appropriately left to the FAMC management and Board."

The ABA's comments supported the concept of full disclosure in accordance with those rules of the Securities and Exchange Commission (SEC) referenced in the proposed regulations. However, regarding the proposal that FAMC's annual report consist of certain forms and reports prepared according to SEC requirements, the ABA suggested that FCA more clearly indicate which of these documents relating to certified facilities are to be included in FAMC's annual report. FCA believes that the incorporation of SEC requirements by reference provides a clear indication. Since FAMC is a recently established corporation, it is too early to assess whether these referenced reporting requirements can be narrowed or modified without eliminating information needed by FCA to monitor FAMC's safe and sound operation. As noted in the preamble to the proposed regulation, FCA may adjust these requirements in the future if its regulatory experience indicates that such adjustment is necessary to provide for safe and sound operations. 53 FR 39609 (1988).

While FAMC characterized the proposed regulations as "a fair and appropriate use of the authority of the Farm Credit Administration," it suggested several revisions. FAMC suggested that proposed § 621.20(a) be revised to permit FAMC's offering circular to be substituted for the requirement of a filing a registration statement prepared according to the specifications of the Securities Act of 1933 (Securities Act). This suggestion has not been incorporated into the final regulation. To properly monitor the safe and sound operation of FAMC, including the contingent liability of FAMC on its outstanding guarantees, it is necessary to specify the content of the filing made by FAMC with FCA, and the reference to SEC requirements provides this specification. Since counsel to FAMC is of the opinion that FAMC is exempt from the registration requirements of the Securities Act, content requirements would not exist for the document submitted to FCA pursuant to § 621.20(a) if this specification were deleted without substitution of other content requirements.

With respect to poolers, FAMC commented that the requirement that the annual report include those reports that poolers have filed or would have filed under the Securities Exchange Act of 1934 (Exchange Act) is "overreaching and burdensome," for those poolers not otherwise required to file with SEC under the Exchange Act. According to FAMC, adequate information is available from either the Securities Act registration statement, or, where no registration statement is required, from the offering circular used in issuing FAMC-guaranteed securities. FCA believes that a need exists for information throughout the time an FAMC guarantee is outstanding on any security backed by a loan pool. Disclosure pursuant to the Securities Act, however, relates primarily to information as it exists at the time a security is initially guaranteed. It is the Exchange Act which deals with disclosure after a security has been issued and guaranteed. Therefore, to delete the requirement for Exchange Act reporting would not satisfy the need to monitor the quality of loan pools backing a security subsequent to the date a FAMC guarantee is obtained. Accordingly, the requirement for reporting consistent with the Exchange Act is retained in the final regulation. Moreover, the reporting burden on poolers as a group is minimized by requiring them to file reports based on SEC requirements. As FAMC acknowledges in its comments, "many" of the poolers will be subject to the Exchange Act, and only in "rare instances" will Securities Act registration not be required. *See also* FAMC Offering Circular, pg. 28 (November 23, 1988) (stating that poolers are not exempt from either Securities Act or Exchange Act reporting for mortgage-backed securities).

A final comment made by FAMC was that the requirement in § 620.40 that it prepare and distribute an annual report to shareholders is unnecessary since the Exchange Act already requires FAMC to undertake this activity. In addition, FAMC suggested deletion of the requirement in § 620.40 that the annual report be provided to shareholders "within 90 days of the end of its fiscal year." The final regulation retains § 620.40 to ensure that shareholders receive an annual report in a timely manner. Moreover, 90 days is the same time period imposed upon other System institutions for distribution of annual reports to their shareholders. 12 CFR 620.2(a).

The comment from the attorney in private practice addressed § 621.20(d), which requires a legend to appear on the first page of FAMC's annual report stating that FCA has not reviewed the report. This individual expressed concern that this statement implied that FCA was unwilling to review FAMC's annual report. In fact, the purpose of this legend is simply to make the public aware that FCA does not review or approve the report prior to the time it is made available to the public. Section 621.22(a) expressly prohibits any false or misleading statements in, or material omissions from, FAMC's annual report, and § 621.20(b) requires a report from an independent public accountant to be made a part of the annual report. If violations of this regulation occur, § 621.22(c) specifically provides that an enforcement action may be taken by FCA. Finally, other technical changes and minor clarifications have been made, including substituting the word "completeness" for "relevance" in § 621.20(d).

List of Subjects in 12 CFR Parts 614, 620 and 621

Accounting, Agriculture, Banks, banking, Credit, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, Parts 614, 620 and 621 of Chapter VI, Title 12 of the Code of Federal Regulations are amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233.

2. Part 614 is amended by adding a new Subpart R to read as follows:

Subpart R—Secondary Market Authorities

§ 614.4910 Basic authorities.

(a) Any bank or association of the Farm Credit System, except a bank for cooperatives, with direct lending authority may originate agricultural real estate loans for sale to one or more certified agricultural mortgage marketing facilities under Title VIII of the Act.

(b) Any bank or association of the Farm Credit System, except a bank for cooperatives, may operate as an agricultural mortgage marketing facility under Title VIII of the Act, either acting alone or jointly with other banks and/or associations, if so certified by the Federal Agricultural Mortgage Corporation.

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for Part 620 is revised to read as set forth below and all other authority citations throughout Part 620 are removed.

Authority: Sec. 5.17, 5.19, 8.11; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233.

4. Part 620 is amended by adding a new Subpart E to read as follows:

Subpart E—Report to Shareholders of Federal Agricultural Mortgage Corporation

§ 620.40 Content of report to shareholders of Federal Agricultural Mortgage Corporation.

The Federal Agricultural Mortgage Corporation shall prepare and distribute to its shareholders, within 90 days of the end of its fiscal year, the equivalent of the annual report to shareholders required by section 14 of the Securities Exchange Act of 1934, as described in Part 621, Subpart C of these regulations.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

5. The authority citation for Part 621 continues to read as set forth below and all other authority citations throughout Part 621 are removed.

Authority: Secs. 5.17, 8.11; 12 U.S.C. 2252, 2279aa–11.

Subpart B—Reports of Condition and Performance

6. Section 621.10 is amended by revising paragraph (a) to read as follows:

§ 621.10 Applicability and purpose.

(a) Each institution of the Farm Credit System, including the Federal Agricultural Mortgage Corporation, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

* * * * *

7. Section 621.11 is revised to read as follows:

§ 621.11 Content and standards—general rules.

Each institution of the Farm Credit System, including the Federal Agricultural Mortgage Corporation, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

8. Part 621 is amended by adding a new Subpart C to read as follows:

Subpart C—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

Sec.

621.20 Form and content.
621.21 Delivery.
621.22 Prohibited conduct and penalties.
621.23 Safe harbor provision.
621.24 Other periodic reports.

§ 621.20 Form and content.

The annual report of condition to be prepared by the Federal Agricultural Mortgage Corporation (FAMC) shall consist of the following:

(a) For both the stock issued by FAMC and the securities issued by certified facilities which are guaranteed by FAMC:

(1) The forms for registration (17 CFR Part 239) that FAMC and certified facilities have filed or would have filed if required to register under the Securities Act of 1933 (Securities Act);

(2) The forms for registration, the annual and current reports filed with the Securities and Exchange Commission (SEC), the annual report to security holders, and the statements of directors, officers, and principal shareholders required by sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934 (Exchange Act), prepared on the appropriate SEC forms (17 CFR Part 249), that FAMC and cetified facilities have filed or would have filed under the Exchange Act if FAMC and the certified facilities were required to make these filings;

(3) Where a form to be submitted pursuant to paragraphs (a) (1) or (2) of this section specifies that the information required by an item in the SEC Regulation S–K (17 CFR Part 229) or S–X (17 CFR Part 210) should be furnished, such information shall be included; and

(b) The report of the independent public accountant required by section 8.11(c) of the Act;

(c) In addition to the infromation expressly required by this section, such additional material information as to make the required statements not misleading.

(d) The following legend to be included on the first page of the annual report of condition in capital letters and bold face type, to advise the public that the Farm Credit Administration has not reviewed the information contained therein: "*This annual report of condition has not been reviewed, or confirmed for accuracy or completeness, by the Farm Credit Administration.*"

§ 621.21 Delivery.

(a) Three complete copies of the annual report shall be filed with the Chief Examiner, Farm Credit Administration, within 90 days after the end of the fiscal year covered by the report. Each annual report shall include

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a certification of correctness which meets the requirements of § 621.12.

(b) FAMC, on receiving a request for an annual report of condtion, shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in § 621.20.

§ 621.22 Prohibited conduct and penalties.

(a) The FAMC and each officer, director, employee, agent or other person participating in the affairs of FAMC shall not, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual report of condition, or omit or cause the omission of pertinent or required information in the annual report of condition; or

(2) Represent that the Farm Credit Administration, or any employee thereof, has passed upon the accuracy or completeness of the annual report of condition.

(b) For purposes of this section, a person "participating in the affairs of FAMC" includes, but is not limited to, any person who provides or reviews information contained in, or directly or indirectly assists in the preparation of, the annual report of condition.

(c) Conduct which violates paragraph (a) of this section also may serve as the basis for enforcement action by the Farm Credit Administration under Title V, Part C, of the Act. This includes, but is not limited to, the assessment of civil money penalties against FAMC or any officer, director, employee, agent or other person participating in the affairs of FAMC who violates this section.

§ 621.23 Safe harbor provision.

The provisions of § 621.22(c) shall apply to all parts of the annual report of condition, including statements concerning future economic performance, management's plans and objectives for future operations, and financial forecasts, except that § 621.22(c) shall not apply to such forward-looking statements when it is shown by the person involved or FAMC that such statements were included with a reasonable basis or in good faith.

§ 621.24 Other periodic reports.

The provisions of Subpart C shall apply to quarterly and such other periodic reports that FAMC may elect to prepare.

Date: January 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-777 Filed 1-11-89; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: On April 5, 1988 the Farm Credit Administration Board (Board) proposed amendments to Subparts A, B, C, and O of Part 615, which govern the funding of Farm Credit System (System) institutions by means of issuance of securities. The proposed amendments were necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which was enacted on January 6, 1988. The Board determined that these amendments to the regulations should be proposed for public comment and after receiving some comments, on September 28, 1988, resolicited comments. The comment period established by the resolicitation of comments ended on November 4, 1988. After reviewing the proposed rule in the light of comments received, and incorporating changes which reflect comments received, the Board adopts a final rule.

EFFECTIVE DATE: This regulation shall become effective upon the expiration of 30 days from publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Larry W. Edwards, Director, Special Examination Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4225, TDD (703) 883-4444

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The present amendments (53 FR 16963, May 12, 1988, 53 FR 39099, October 5, 1988) are necessary to conform the regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100-233, which was enacted on January 6, 1988. On April 5, 1988 the Board proposed amendments to Subparts A, B, C, and O of Part 615, and requested public comment. Comments were received from the Farm Credit System banks in the Springfield, Baltimore and Texas Districts, the Central Bank for Cooperatives, and the Farm Credit Corporation of America. After reviewing the proposed rule and incorporating changes reflecting comments received, on September 28, 1988 the Board resolicited comments on the proposed rule. In response to the resolicitation of comments, comments were received from the Farm Credit System banks in the Louisville and Baltimore Districts. The Board now adopts a final rule.

Subpart A of Part 615 contains regulations that define the funding activities of the banks of the Farm Credit System and the role of the Federal Farm Credit Banks Funding Corporation (Funding Corporation). The only comment concerning proposed amendments to the regulations contained in Subpart A was received in response to the resolicitation of comments, from the Farm Credit Banks of Louisville (Louisville), which commented that § 615.5030(a) needed to be reworded in order to make it clear that each bank's board must authorize that bank's commercial borrowing. Since the System bank's boards of directors cannot act jointly in one resolution, the Board believes the meaning to be clear, but revises the wording to make that meaning more explicit. In addition, the Board revises the wording of § 615.5010(a) to more closely follow the wording of § 4.9 of the Act.

Subpart B of Part 615 contains regulations concerning the collateral required to support obligations issued by Farm Credit System banks. Comments concerning proposed amendments to Subpart B were initially received from the Farm Credit Corporation of America (FCCA) and the Farm Credit System banks in the Springfield District. In addition, in response to the resolicitation of comments, comments were received from the Farm Credit System banks in the Louisville District.

FCCA commented that proposed § 615.5050 might be read to imply a requirement that promissory notes given in conventional banking transactions be collateralized. Regulations of Subpart B of Part 615 are meant to protect investors in bonds, notes, debentures, and similar obligations by setting minimum standards for collateral required to support those types of obligations issued by Farm Credit System banks. These standards are not meant to require that all credit extended to a Farm Credit System institution from whatever source be similarly collateralized, nor to restrict commercial banks and other creditors from making their own credit decisions in private lending transactions. Accordingly, § 615.5050(a) has been revised to delete the words "all other known and recorded liabilities."

In addition, in response to the resolicitation of comments, Louisville, noting that the Farm Credit System Financial Assistance Corporation (FAC) is issuing uncollateralized debt, commented that § 615.5050(a) should be revised to permit the Farm Credit System to issue uncollateratized securities. However, § 4.3(c) of the Act requires that "any note, bond, debenture or similar obligation" issued by any Farm Credit System bank be collateralized. The Agricultural Credit Act of 1987 amended § 4.3(c) of the Act by deleting the words "long-term," making it clear that all obligations issued by Farm Credit System banks, regardless of maturity, must be collateralized. FAC is not a Farm Credit System bank, subject to the collateral requirements of § 615.5050(a), but, rather, is expressly authorized by § 6.26 of the Act to issue "uncollateralized bonds, notes, debentures, and similar obligations." Farm Credit System banks are not authorized to issue uncollateralized securities. Accordingly, the Board does not make the suggested revision to § 615.5050(a).

Finally, the wording of § 615.5050(a) has been revised to more closely follow the wording of section 4.3(c) of the Act, and to provide that cash equivalents approved by the Farm Credit Administration may serve as collateral.

The Farm Credit System banks in the Springfield District (Springfield commented concerning proposed § 615.5050(c). Springfield suggested that the collateral value of loans and acquired property should be their "net value less allowance for losses," and that the reference to "recovery value" in § 615.5050(c)(2) should be replaced with "net realizable value." Section 615.6050(c) is now being revised to clarify the method for determining the value of collateral. The terms "recovery value" and "investment value" are eliminated. The revised § 615.5050(c)(1) provides that, in general, the collateral value of a loan is the unpaid balance of the loan, less any appropriate allowance for losses. Revised § 615.5050(c)(2) provides that the collateral value of loans in the process of liquidation or foreclosure, judgments, and sales contracts is the unpaid balance of the loans, judgments or contracts, less any appropriate allowance for losses. Revised § 615.5050(c)(3) provides that the collateral value of a restructured loan is the unpaid balance of the loan, less any appropriate allowance for losses. Section 615.5050(c)(4) is redesignated as § 615.5050(c)(5) and a new § 615.5050(c)(4) provides that the collateral value of property acquired in the liquidation of loans is the book value, determined in accordance with generally accepted accounting practices adjusted for any allowance for losses. In order to accurately reflect the value of the collateral, the allowance for losses must be updated on an ongoing basis.

In response to the resolicitation of comments, Louisville commented that § 615.5050(c)(4) does not specify the collateral value of acquired property sold or otherwise disposed of. Section 615.5050(c)(2), as revised, provides for the valuation of all sales contracts, including sales contracts for acquired property, if such sales are financed by the bank.

FCCA suggested that the proposed regulation could be read to eliminate secured interbank loans from eligible collateral. In response to the comment, the Board is adding § 615.5050(c)(6) to specifically state that a secured interbank loan may serve as collateral for obligations issued by the bank making such loan, provided that the loan is adequately secured by assets which, if held by the lending bank, would have been eligible collateral. In computing its eligible collateral, the borrowing bank is prohibited from counting the assets securing the loan. A new § 615.5045 provides definitions for "cost," "market value," "secured interbank loan," and "unpaid balance," as these terms are used in subpart B.

In response to the resolicitation of comments, Louisville commented that § 615.05050(c)(5), which excludes from collateral the excess of any loan over the "maximum amount authorized under the Act or Part 614 of these regulations," should be revised to exclude the excess of any loan over the maximum amount authorized under the Act and "those provisions of the regulations strictly adhering to the amounts set by the Act." Section 4.3(c) of the Act requires that each Farm Credit System bank hold as collateral "notes and obligations representing *loans made under this Act*" (emphasis added). That portion of a loan which exceeds maximum limitations contained in the Act or in any FCA regulation made pursuant to the Act, is properly excluded from collateral. The Board does not make the suggested revision, as the regulations conform to the provisions of the Act.

FCCA commented that the words "or association" should be added after the word "bank" each time it appears in § 615.5060(a). FCCA also suggested that a reference to section 1.7(a) of the Act be added. The Board is making these revisions in the language of § 615.5060(a) to clarify that the entire paragraph is meant to apply not only to banks, but also to those associations which may have direct real estate lending authority.

Louisville requested that a *de minimis* exception for small real estate mortgage loans be added to § 615.5060(a). Section 1.10 of the Act requires that real estate mortgage loans be secured by a first lien. Section 615.5060(a) provides a grace period for obtaining evidence of the first lien. Although the Board believes it is appropriate to continue to provide such a grace period for obtaining evidence of the first lien, the Board does not feel it is appropriate to dilute the statutory requirement that a first lien exist.

Subpart C of Part 615 contains regulations governing the issuance of notes, bonds, debentures, and similar obligations by Farm Credit System institutions. Subpart C was revised to reflect new responsibilities of the Funding Corporation which were previously exercised by the Farm Credit System finance committee. Comments were received from the Farm Credit System banks in the Baltimore District, the Farm Credit System banks in the Texas District, the Central Bank for Cooperatives, and FCCA concerning the proposed amendments to regulations contained in Subpart C.

FCCA indicated concern that reference to sales of securities to "members of the general public" in § 615.5100 (a) through (c) might be interpreted to preclude private placement of securities. The Board agrees and has deleted the references in § 615.5100 to "members of the general public."

Section 615.5101(b) requires that each debt obligation be authorized by a resolution of the board of directors of the issuing Farm Credit System banks. FCCA expressed concern that this regulation could be read to require that the banks adopt a specific resolution for each issue of debt. At present, each bank's board of directors authorizes Systemwide obligations by a periodic resolution which states a maximum amount of obligations which may be issued. The proposed regulation does not require a change in this practice, but does require that each obligation of whatever kind be authorized by an appropriate resolution of the board of directors of each issuing bank. The frequency of resolutions consistent with the duty of directors or exercise their judgment effectively is left to the determination of the board of directors of the issuing bank. The introductory

paragraph of the proposed regulation is clarified by deleting the words "issuance of" and inserting an exception referring to the provisions of section 4.2(e) of the Act.

Section 615.5101(e)(1) requires consultation by Farm Credit System representatives with the Secretary of Treasury. FCCA suggested that, in order to avoid uncertainty, FCA should, in its regulation, expressly designate the Funding Corporation as the Farm Credit System's representative for this purpose. The FCA Board does not agree with the FCCA suggestion. The decision whether to delegate this responsibility to the Funding Corporation is a management decision for the Farm Credit System banks.

The Farm Credit System banks in the Texas District and the Central Bank for Cooperative raised a concern that § 615.5102(a) might be read to imply that the Funding Corporation has authority to approve the amount, maturities, rates of interest, terms and conditions of individual bank obligations. The FCA Board amends § 615.5102(a) to clarify that this aspects of the Funding Corporation's authority is limited to joint, consolidated and Systemwide obligations.

The Farm Credit System banks in the Texas District (Texas) also expressed concern that the revision of § 615.5102(a) not imply that the Funding Corporation has absolute authority over the funding operations of individuals banks. Texas points out that the former law provided that the finance committees determined each bank's participation in joint, consolidated and Systemwide debt issues. Texas suggested that the phrase "taking into consideration the needs of the individual System banks" be added after the word "Act." The Board does not make this revision of § 615.5102(a), but does revise the wording of § 615.5101(a) to make these provisions more consistent. Section 615.5102(a), as originally proposed, basically restates § 4.9. Section 4.9 of the Act and § 615.5102(a) both include the words "acting for the banks of the Farm Credit System." Sensitivity to the needs of the banks is also built into the Funding Corporation's structure, since four of the members of its board of directors are required to be current or former directors of System banks, and three are required to be Chief Executive Officers or presidents of Farm Credit System banks. Section 615.5102 was not meant to change the relationship of the Funding Corporation with the Farm Credit System banks. It is not the intent of this section of the regulation to further define the relationship that exists between the Funding Corporation and the Farm Credit System banks. Although it is correct that the Funding Corporation does not have absolute authority over the funding of the banks, the amendment of § 615.5102(a) suggested by Texas is deemed unnecessary in light of the overall tenor of this section. Furthermore, it is to be noted that § 4.9(b)(2) of the Act provides that the Funding Corporation shall, with Farm Credit Administration approval, establish "conditions of participation" in issuances of joint, consolidated or Systemwide obligations. If a bank were to fail to meet such conditions, it could be excluded from participation in such issuances.

The FCCA requests clarification of §§ 615.5101(d) and 615.5102(c), which require FCA approval of each issue of debt. FCCA is concerned that these sections might be interpreted to preclude the current FCA method of approving guidelines for sales of daily discount notes. At present, the Farm Credit System banks utilize several different marketing strategies, each requiring different FCA approval methods to provide necessary program monitoring and to enable the Funding Corporation to market the debt instruments. The Board believes that the method of FCA's approval should continue to have flexibility to adjust to the Farm Credit System banks' funding program and does not prescribe in § 615.5101 or § 615.5102 only one method of FCA approval of the issuance of securities.

In order to clarify FCA approval responsibility for all debt issues, the Board is revising § 615.5101(d) to eliminate the cross-reference to § 615.5102.

The Farm Credit System banks in the Baltimore District commented initially that proposed changes in Part 615 did not appear to affect the mode of operations of its Puerto Rican subsidiary and the Farm Credit Bank of Baltimore submitted the same comment in response to the resolicitation of comments. Both comments were addressed to the application of the regulation to a particular institution. The Board does not express any opinion about such comments. Each Farm Credit institution must determine for itself how the proposed regulation affects it.

Subpart O of Part 615 contains regulations governing the form in which Farm Credit securities may be issued. FCCA suggested that the listing of denominations in § 615.5450 is more reflective of definitive securities than a mature book-entry system. The Board agrees that specific mention of denominations other than a minimum denomination is unnecessary. However, consistent with a book-entry system, a minimum multiple amount is specified. The revised regulation deletes paragraph (b) of the proposed regulation and redesignates paragraphs (c) and (d) as paragraphs (b) and (c). FCCA commented that § 615.5450(b) (as redesignated) should be revised to provide for issuance of consolidated notes, debentures or similar obligations, as well as consolidated bonds, in book-entry form. The Board is making this revision in § 615.5450(b) and a similar revision in § 615.5450(a), in order to standardize procedures for issuance of Systemwide and consolidated debt securities in book-entry form.

It is unnecessary to add additional language to § 615.5450(c) (as redesignated), as suggested by FCCA, in order to permit delegation of approval of issuance of securities in definitive form, since such authority may generally be delegated.

Finally, the Board has made other minor editorial and technical changes in the regulations contained in Subparts A, B, C, and O of Part 615.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 3.11, 3.25, 4.3, 4.9, 4.14B, 5.9, 5.17, 6.20, 6.26, 12 U.S.C. 2132, 2146, 2154, 2160, 2202b, 2243, 2252, 2278b, 2278b–6; Sec. 301(a) of Pub. L. 100–233.

Subpart A—Funding

2. Section 615.5000, 615.5010, and 615.5030 of Part 615 are revised to read as follows:

§ 615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

§ 615.5010 Funding Corporation.

(a) The Funding Corporation shall issue, market, and handle the obligations of the banks issued under section 4.2 (b) through (d) of the Act and interbank or intersystem flow of funds as may from time to time be required, and, upon request of the banks, shall handle investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of such obligations through the Funding Corporation by negotiation, offer, bid, or syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(B) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

§ 615.5030 Borrowings from commercial banks.

(a) Each System bank board, by resolution, shall authorize all commercial bank borrowings by that System bank.

(b) The Financial Assistance Corporation may borrow from commercial banks with the approval of the Farm Credit Administration.

3. Subpart B of Part 615, consisting of §§ 615.5045 through 615.5090, is revised to read as follows:

Subpart B—Collateral

615.5045 Definitions.
615.5050 Collateral requirements.
615.5060 Special collateral requirement.
615.5090 Reduction in carrying value of collateral.

Subpart B—Collateral

§ 615.5045 Definitions.

(a) "Cost" means the actual amount paid for any asset.

(b) "Market value" means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) "Unpaid balance" means total principal and accrued interest owed.

(d) "Secured interbank loan" means a loan from one Farm Credit System bank to another Farm Credit System bank, secured by assets of the borrowing Farm Credit System bank.

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents approved by the Farm Credit Administration, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or Part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans, computed as provided in § 615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under § 615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§ 615.5060 Special collateral requirement.

(a) If the counsel for a System bank or association has determined, in writing, that bank or association procedures provide sufficient safeguards to assure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien, or its equivalent, on the borrower's interest in the primary real estate security, an attorney-lien certification need not be obtained at the time a note is accepted for collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of loan closing, unless, before the end of such period, an attorney has certified that the interest of the bank or association in the primary real estate security for the loan is a first lien on the borrower's interest or its equivalent from a security standpoint.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

§ 615.5090 Reduction in carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

4. Sections 615.5100, 615.5101, and 615.5102 are revised to read as follows:

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;

(c) Systemwide obligations, together with other banks of the System; and

(d) Investment bonds to the authorized purchases subject to the limitations contained in the regulations set forth in Subpart D.

§ 615.5101 Requirements for issuance.

Except as provided in section 4.2(e) of the Act, each debt obligation shall meet the following requirements:

(a) Each debt obligation shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefor is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in Subaprt B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secrtary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

§ 615.5102 Issuance of debt obligations through the Funding Corporation.

(a) The amount, maturities, rates or interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation established pursuant to section 4.9 of the Act, acting for the banks of the System, subject to the approval of the Farm Credit Administration in accordance with § 615.5102.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

5. Section 615.5105 is amended by revising paragraph (b) to read as follows:

§ 615.5105 Consolidated Systemwide notes.

* * * * *

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

* * * * *

Subpart O—Issuance of Farm Credit Securities

6. Section 615.5450 is revised to read as follows:

§ 615.5450 Book entry and definitive notes and bonds.

(a) The System banks operating under the same title of the Army may issue consolidated notes, bonds, debentures, and other similar obligations dated on or after January 1, 1978, in book-entry form, in denominations of $1,000 or multiples thereof. There are still outstanding consolidated bonds of the Federal land banks dated before January 1, 1979, in definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000.

(b) The System banks may issue consolidated Systemwide notes, bonds, debentures, or other similar obligations in book-entry form, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

(c) Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Funding Corporation and as approved by the Chairman of the Farm Credit Administration.

§§ 615.5451 through 615.5453 [Removed and reserved]

7. Sections 615.5451 through 615.5453 are removed and reserved.

8. Sections 615.5460 is amended by revising paragraphs (b) and (c) to read as follows:

§ 615.5460 Definition of terms for book-entry issuance of Farm Credit securities.

* * * * *

(b) "Banks of the Farm Credit System" means all of the Farm Credit Banks or all the banks for cooperatives, or all of the banks of the System.

(c) "Farm Credit securities" means consolidated notes, bonds, debentures, or other similar obligations of the System banks and Systemwide notes, bonds, debentures, or similar obligations issued under the Farm Credit Act of 1971, or laws repealed thereby, the completion and delivery of which is or has been undertaken by a Reserve Bank as agent of the banks of the System.

* * * * *

§ 615.5497 [Removed and reserved]

6. Section 615.5497 is removed and reserved.

Date: January 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-781 Filed 1-11-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9200]

Removatron International Corp. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order prohibits, among other things, the Boston, Mass. sellers of an electronic device called "Removatron", from making unsubstantiated claims about the product and requires clinical testing as substantiation for future permanency claims.

DATES: Complaint issued September 30, 1985. Final Order issued November 4, 1988.[1]

FOR FURTHER INFORMATION CONTACT: David Fitzgerald, FTC/H-403, Washington, DC 20580. (202) 326-3206.

SUPPLEMENTARY INFORMATION: In the Matter of Removatron International Corporation and Frederick E. Goodman. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10-5 Knowingly by advertising agent; § 13.85 Government approval, action, connection or standards; § 13.85-35 Government endorsement; § 13.170 Qualities or properties of product or service; § 13.170-28 Depilatory; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Claiming Or Using Endorsements Or Testimonials Falsely Or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; § 13.330-90 United States Government: § 13.330-90(g) Federal Communications Commission. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1632 Government endorsement or recommendation; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly Or Deceptively, To Make Material Disclosure: § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Hair-removal devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Final Order

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

In the matter of Removatron International Corporation, a corporation, and Frederick E. Goodman, individually and as an officer of Removatron International Corporation.

I.

It is ordered that Respondents Removatron International Corporation, a corporation, its successors and assigns, and its officers, and Respondent Frederick E. Goodman, individually and as an officer of Removatron International Corporation, and Respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, labeling, advertising, offering for sale, sale or distribution of the Removatron epilator or any other hair removal device, as "device" is defined in the Federal Trade Commission Act, or other hair removal product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in any manner, directly or by implication, that:

A. Any such hair removal device or other hair removal product, or any treatment employing any such device, will or may achieve permanent hair removal or hair removal on a long-term and not temporary basis, or is otherwise effective, using those words or words of similar import or meaning, unless, at the time of the making of such representation, Respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation; provided, however, that for purposes of this Order, "competent and reliable scientific evidence" is defined as adequate and well-controlled, double-blind clinical testing conforming to acceptable designs and protocols and conducted by a person or persons qualified by training and experience to conduct such testing.

B. The Removatron device or any other RFE tweezer-type epilation device or any treatment employing any such device is intended to or is able to remove hair, using those words or words of similar import or meaning, unless the representations clearly and conspicuously disclose the following statement:

"IMPORTANT: There is no reliable evidence that [name of device treatments] provides anything more than *temporory* hair removal"; provided, however, that in any written materials this disclosure shall be in typeface at least as large as the largest typeface in the label, advertising, or any document, and in any multipage documents the disclosure shall appear on the cover or first page, and provided further that this provision shall terminate after five (5) years from the date on which this Order becomes effective.

C. The Removatron device or any other RFE tweezer-type epilation device, or any treatment employing such device, is FCC-approved, using those words or words of similar import or meaning, unless the representations clearly and conspicuously disclose that the FCC has only approved the use of a certain radio frequency by such device and has not approved the safety or effectiveness of such device or the safety or effectiveness of any treatment employing such device.

II

It is further ordered that Respondent Removatron International Corporation, a corporation, its successors and assigns, and its officers, and Respondent Frederick E. Goodman, individually and as an officer of Removatron International Corporation, and Respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, labeling, advertising, offering for sale, sale or distribution of the Removatron epilator or any other hair removal device, as "device" is defined in the Federal Trade Commission Act, or other hair removal product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

III

It is further ordered that Respondents shall: Within ninety (90) days after the date of service of this Order, send by first-class mail, a copy of this Order and a notice that the purchaser shall immediately cease using any Removatron advertising or promotional materials containing representations prohibited by parts I and II of this Order, to each purchaser of any of Respondents' hair removal devices since January 1, 1976, who is identifiable from Respondents' sales records, testimonial letters, mailing lists or other documents containing an address or telephone number for that purchaser. Such advertising and promotional materials include, but are not limited to, any writing, audio tape or other material which employs such words as "permanent," "effective," "forever," "long-term," or "words," or which compares the device to electrolysis or distinguishes it from temporary hair removal devices or products.

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Statements, etc. are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

IV

It is further ordered that Respondents, their successors and assigns, shall maintain for at least three (3) years from the date of the last dissemination of each representation which is subject to this Order, and make available to the Federal Trade Commission upon request, complete and accurate records demonstrating compliance with this Order, including but not limited to the following:

A. Advertisements and labeling and promotional materials for any hair removal device or other hair removal product, and such records as will show when and where each advertisement was published;

B. Tests, studies, surveys, affidavits, letters, complaints, articles or other materials substantiating, contradicting, or otherwise relevant to the validity of any such representation;

C. Such business records as will demonstrate notification to purchasers pursuant to paragraph III of this Order; and

D. Sales invoices or such other business records as will disclose the name, address, and date of purchase for each purchaser of a hair removal device from Respondents.

V

It is further ordered that Respondents shall distribute a copy of this Order to all present and future personnel, agents and representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this Order and that Respondents shall secure from each person a signed and dated statement acknowledging receipt of said Order.

VI

It is further ordered that Respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate Respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any change in the corporation which may affect compliance obligations arising out of this Order.

VII

It is further ordered that, for a period of ten (10) years from the date of service of this Order, the individual Respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment involving the advertising, offering for sale or sale of any hair removal device or other hair removal product, or any treatment employing such device or other product, and with each such notice include his new business address and a statement of the nature of the business or employment in which he is newly engaged as well as a description of his duties and responsibilities in connection with such business or employment.

By the Commission, Commissioners Azcuenaga and Strenio concurring in part and dissenting in part.

Donald S. Clark,

Secretary.

[FR Doc. 89-723 Filed 1-11-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 88N-0308]

Patient Labeling Requirements for Progestational Drug Products; Technical Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its requirements in its regulation for labeling directed to the patient for progestational drug products. This action will update the regulation to reflect changes made in the NDA Rewrite and changes in the revised guideline texts for professional and patient labeling for prescription progestational drug products, which are published elsewhere in this issue of the **Federal Register**.

DATES: Effective January 12, 1989; written comments by February 13, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA adopted comprehensive new regulations governing the submission and review of new drug and antibiotic applications ("the NDA Rewrite"). Among other changes, the NDA Rewrite revised and renumbered the section regarding supplements for changes that may be made before FDA approval of new drug applications (NDA's) (formerly 21 CFR 314.8, now 21 CFR 314.70). The agency is now revising the regulation for patient labeling for progestational drug products (21 CFR 310.516(g)) to reflect this change.

The current requirement for patient labeling for progestational drug products was published as part of a drug efficacy study implementation (DESI) notice in the **Federal Register** of July 22, 1977 (42 FR 37646).

Elsewhere in this issue of the **Federal Register**, FDA is publishing revised guideline labeling texts for progestational drug products. Therefore, the agency is revising § 310.516(f) by removing reference to the previous guideline labeling. This regulation does not impose new substantive requirements but merely represents a minor technical revision of the labeling regulations already in place. The revision is intended to assist both NDA holders and FDA in processing labeling submitted for progestational drug products. Thus, the agency has determined for good cause that notice, public procedure, and delayed effective date are impracticable, unnecessary, and contrary to the public interest. However, to allow interested persons an opportunity to comment on this final rule, FDA is providing a 30-day comment period.

This final rule becomes effective on January 12, 1989. If comments are received which necessitate further changes, FDA will publish a revised regulation.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), the agency has carefully analyzed the economic consequences of this final rule. This final rule is merely an editorial amendment of an existing rule that will have no economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Comments

Interested persons may, on or before February 13, 1989, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments, modificiations, or revisions to the final rule are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049-1053 as amended, 52 Stat. 1055-1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057-1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.516 is amended by revising paragraphs (f) and (g) to read as follows:

§ 310.516 Progestational drug products; labeling directed to the patient.

* * * * *

(f) The Food and Drug Administration has available guideline patient labeling for progestational drug products that includes information responsive to all items specified in paragraph (b) of this section. This labeling was published in a separate notice appearing in the **Federal Register** of January 12, 1989. Any person may rely on this labeling as complying with paragraph (b) of this section.

(g) Holders of approved new drug applications for progestational drug products that are subject to the requirements of this section shall submit supplements under § 314.70(c) of this chapter to provide for the labeling required by paragraph (a) of this section.

Dated: December 23, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-712 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Piperazine Adipate Powder; Piperazine Adipate Tablet

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting the approval of two new animal drug applications (NADA's) held by Carson Chemicals, Inc. The NADA's provide for (1) use of piperazine adipate powder as an anthelmintic in horses, dogs, and cats, and (2) use of piperazine adipate tablets as anthelmintics in dogs, puppies, cats, and kittens. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of two NADA's sponsored by Carson Chemicals, Inc., P.O. Box 466, New Castle, IN 47362-0466. NADA 9-821 provides for use of piperazine adipate tablets as an anthelmintic in dogs, puppies, cats, kittens, and NADA 9-951 provides for use of piperazine adipate powder as an anthelmintic in drinking water, feed, or as a drench in horses, dogs, and cats. Because the firm is no longer the sponsor of any approved NADA's, 21 CFR 510.600(c) is amended by removing the firm's name and drug labeler code from the list of sponsors of approved NADA's. This document also removes 21 CFR 520.1801a(d) and 520.1801c, which reflect the approvals.

List of Subjects

21 CFR Port 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry "Carson Chemicals, Inc." and in paragraph (c)(2) by removing the entry "011769."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1801a [Amended]

4. Section 520.1801a *Piperazine adipate powder* is amended by removing paragraph (d) and reserving it.

§ 520.1801c [Removed]

5. Section 520.1801c *Piperazine adipate tablet* is removed and reserved.

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-629 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Triethanolamine Polypeptide Oleate-Condensate Otic Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of a new animal drug application (NADA) held by the Purdue Frederick Co. The NADA provides for use of triethanolamine polypeptide oleate-condensate otic solution in dogs and cats to help remove excess or

impacted earwax. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 12–817 at the sponsor's request.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA 12–817 sponsored by the Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856. The NADA provides for use of Cerumenex-V Drops (triethanolamine polypeptide oleate-condensate otic solution) in dogs and cats to help remove excess or impacted earwax. As required by the withdrawal of approval, this document removes 21 CFR 524.2542.

In addition, because the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600 is amended by removing the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing "The Purdue Frederick Co." and in paragraph (c)(2) by removing "000034."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.2542 [Removed]

4. Section 524.2542 *Triethanolamine polypeptide oleate-condensate otic solution* is removed.

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–630 Filed 1–11–89; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Dichlorophene and Toluene Capsules, Trifluomeprazine Tablets, Pyrilamine Maleate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) sponsored by Norden Laboratories, Inc. The NADA's provide for use of Paracide (dichlorophene/toluene) Capsules, Nortran (trifluomeprazine) Tables, and Histosol (pyrilamine maleate) Injectable. Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's at the request of the sponsor.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of Norden Laboratories' NADA's 7–404, 12–746, and 45–628. NADA 7–404 provides for use of Histosol (pyrilamine maleate) Injectable in horses for treating conditions in which antihistaminic therapy may alleviate some signs of disease. NADA 12–746 provides for use of Nortran (trifluomeprazine) Tablets in dogs for tranquilization and chemical restraint. NADA 45–628 provides for use of Paracide (dichlorophene/toluene) Capsules in dogs and cats as an anthelmintic. As required by the withdrawal of approval, this document removes the sponsor's drug labeler code from 21 CFR 520.580(b)(1) and 522.2063(b). In addition, this document removes 21 CFR 520.2560.

List of Subjects in 21 CFR Parts 520 and 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, Parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.580 [Amended]

2. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "011519."

§ 520.2560 [Removed]

3. Section 520.2560 *Trifluomeprazine tablets* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

4. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.2063 [Amended]

5. Section 522.2063 *Pyrilamine maleate injection* is amended in paragraph (b) by removing the phrase "Nos. 000061 and 011519" and replacing it with "No. 000061."

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–631 Filed 1–11–89; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of an NADA from G.D. Searle and Co. to CEVA Laboratories, Inc.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1415.

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 7101 College Boulevard, Suite 610, Overland Park, KS 66210, has informed FDA that it is now sponsor of NADA 97–037 (Syncro-Mate-B®—norgestomet implant and estradiol valerate/norgestomet injectable solution), formerly held by G. D. Searle and Co. The sponsor change was confimed by G. D. Searle and Co. CEVA Laboratories, Inc., is sponsor of approved NADA 134–930, which is codified in 21 CFR 522.850(b) and provides for the same drug for the same conditions of use. The agency is amending 21 CFR 522.850(b) to reflect the change in sponsor.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.850 [Amended]

2. Section 522.850 *Estradiol valerate and norgestomet in combination* is amended in paragraph (b) by removing the phrase "000014 and".

Dated: January 4, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89–632 Filed 1–11–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: On April 7, 1988, Treasury published in the Federal Register (53 FR 11513) proposed amendments to the Bank Secrecy Act regulations regarding the retention of player rating records and certain computer information by casinos. After review of the comments received, Treasury is issuing a final rule that adopts the original proposals, with one minor change in wording.

EFFECTIVE DATE: The amendments are effective as of February 13, 1989.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311–5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5312(a)(2)(U), the Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. *See* 31 CFR 103.11(g)(7). The Secretary has imposed particular recordkeeping requirements on these casinos. *See* 31 CFR 103.36.

The notice published in the Federal Register on April 7, 1988 (53 FR 11513) proposed two amendments to the current recordkeeping requirements. Treasury is adopting the proposals as a final rule. The second enumerated amendment provides that casinos subject to the Bank Secrecy Act regulations must retain the records which they use for monitoring their customers' gaming activity. A minor change in wording has been made to the second amendment. In maintaining the same word used elsewhere in the regulations, the word "player's" has been deleted, and the word "customer's" has been substituted therefor.

The third enumerated amendment adds a requirement that casinos which input, retain, or store information on computer disk, tape, or other machine-readable media must retain such information in machine-readable form. The third amendment goes on to require that casinos retain the indexes, books, file descriptions, programs, and similar materials which would enable a person readily to access and review the records that are required to be made and retained under the Bank Secrecy Act regulations and are kept in machine-readable form. In accordance with § 103.38(d) of the regulations, the machine-readable media and accompanying indexes, books, etc. must be kept for a period of five years.

Pursuant to these new amendments, if a casino keeps track of a customer's gaming activity by inputting all or some of the data from a "rating card" (see "Discussion of Comments," below) on that player into a computer, even for a short period of time, such data must be retained in machine-readable form. For purposes of the final rule, the term "machine-readable" means capable of being read by the automated data processing system used by the casino. The data may be transferred to other computer disks, magnetic tapes, or machine-readable media and may be retained off-line.

It is emphasized that the final rule requires neither the rating of players nor the purchase or rental of automated data processing systems to comply with the recordkeeping requirements of §§ 103.33 and 103.36. Otherwise stated, the rule requires rating records to be retained, if they are made, and requires computer information to be retained, if such information contains, in whole or in part, a record required to be made and kept under the Bank Secrecy Act regulations.

Discussion of Comments

Few comments on the proposed amendments were received. Comments regarding the second enumerated amendment generally attempted to caution Treasury about the inexactness of the documents which casinos use to monitor their customers' gaming activity. These documents, which casinos must retain for a period of five years under the new rule, are frequently referred to as "player rating forms," "player rating records," or "player rating cards." They are used to keep track of customers' play, and ultimately become internal marketing tools for the casinos.

Treasury concludes that the records overall are sufficiently accurate to use them for Bank Secrecy Act purposes. Given the lack of other records which would reflect cash activity of customers on the casino floor, Treasury finds a high degree of criminal, tax, and regulatory utility in the retention of rating forms. Treasury expresses no opinion, explicitly or implicitly, as to their accuracy for any other purpose.

The Internal Revenue Service, in performing compliance examinations pursuant to 31 CFR 103.46, can be expected to review player rating forms to determine whether reports, as required under § 103.22(a)(2), have been filed. If, in the course of an examination, a player rating card that reflects a cash buy-in exceeding $10,000 on one customer is discovered, Treasury would expect that a report on that transaction has been filed. It would be incongruous for the casino to argue that it need not treat the rating record made by its employee as determinative of whether it should have filed a report, on the ground that the record might have been inaccurate. The point is that the casino has in its possession evidence that one of its employees, a rater, had perceived that a customer engaged in a transaction exceeding $10,000 in currency. In sum, Treasury expects casinos to file reports on all transactions they believe involve more than $10,000, as reflected in the retained rating records.

The third enumerated amendment is intended to lessen significantly the amount of time in reviewing specific records required of casinos under the Bank Secrecy Act regulations for compliance examination and law enforcement purposes. Comments regarding this amendment dealt with the costs and burdens of reprogramming automated data processing systems and of providing information from the systems to Bank Secrecy Act compliance examiners and enforcement personnel. Some commenters incorrectly assumed that the information must be retained in a fashion that would make the information "most easily" retrievable, *e.g.*, chronologically, by player's name, etc., when it is requested during an examination or pursuant to a § 103.61 administrative summons.

The proposed rule did not, and was not intended to, suggest the manner in which the information is to be retained. The proposed rule, and now the final rule, simply state that, if a Bank Secrecy Act record, in whole or in part, is input into, or stored or retained in, an automated data processing system, that record (or portion thereof) must be retained in machine-readable form. It is the corresponding requirement—that pertinent indexes, books, programs, record layouts, file description, etc. be retained—which permits ready access to the machine-readable information. Any reprogramming needed to meet these requirements is viewed as minimal by Treasury.

The information and accompanying indexes, programs, file descriptions, etc., must be kept for five years. One commenter suggested that it might need 130 reels of magnetic tape to maintain five years of player rating information. According to the commenter, if player rating information over a five year period were requested on a named customer, the casino's own computer would have to be devoted to processing all 130 reels, thereby detracting its devotion to in-house business use.

It is expected that, as they have in the past, Internal Revenue Service personnel involved in Bank Secrecy Act examinations and enforcement and the casinos will be able to reach mutually acceptable terms on the time and manner of retrieving computer information in this rather extreme case. A goal would be to obtain the information as expeditiously as possible, with the least inconvenience to the casino. Also, it is important to consider that, if necessary, the reels and pertinent documentation may be obtained by a § 103.61 summons, removed from the casino, then processed by the government agents themselves.

One commenter suggested that, without requiring a specified manner of storing the computer information (*e.g.*, by date, customer name, etc.), thereby commensurately requiring processing of numerous reels, Treasury has ignored the requirement that the Bank Secrecy Act records be "readily accessible." Treasury disagrees. Again, certain accompanying information (instructions, programs, record layouts, etc.) that exists when the computer information is prepared makes the computer information readily accessible. Still, Treasury would not discourage any casino from keeping its computer information in a manner that is more readily accessible than other manners. It is assumed that each casino would balance the costs and burdens of developing more readily accessible records against the costs and burdens of running various numbers of reels to provide requested information, or providing the machine-readable media for the examiners themselves to process off-site.

Finally, regardless of the manner in which the stored computer information is organized, virtually any computer retention format would make Bank Secrecy Act records far more readily accessible than they currently are, *i.e.*, by pouring through the great volumes of paper records themselves.

Conclusion

For the reasons discussed above, the amendments are adopted as proposed, except that, in the second amendment, the word "player's" is deleted, and the word "customer's" is substituted therefor.

Executive Order 12291

This final rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control no. 1505–0067. The estimated annual burden associated with the collection of information in this rule is approximately 4.1 hours per recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220, and to the Office of Management and Budget, Washington, D.C., 20503, Attention: Desk Officer for the Departmental Offices, Department of the Treasury.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegation, Banks, banking, Currency, Foreign banking, Investigation, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

31 CFR Part 103 is amended as set forth below.

PART 103—[AMENDED]

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. No. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829(b), 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. Section 103.36 is amended by adding a new paragraph (b)(8) to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

* * * * *

(b) * * *

(8) All records which are prepared or used by a casino to monitor a customer's gaming activity.

* * * * *

3. Section 103.36 is further amended by adding at the end a new paragraph (c) to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

* * * * *

(c)(1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by § 103.33 or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in § 103.33 and this section and that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

Dated: December 8, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–695 Filed 1–11–89; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS INGRAHAM

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has (1) determined that USS INGRAHAM (FFG–61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval frigate, and (2) has directed that certain corrections be made to the tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400 Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS INGRAHAM (FFG–61) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the arc of visibility of the forward masthead light; Annex I, section 2(a)(i), pertaining to the height above the hull of the forward masthead light; and Annex 1, section 3(b), pertaining to the horizontal relationship of the sidelights to the forward masthead light, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that USS INGRAHAM (FFG–61) is a member of the FFG 7 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS INGRAHAM (FFG–61).

Notice is also provided that the Under Secretary of the Navy has determined that the existing tables of 32 CFR 706.2 should be revised to correct certain errors contained therein.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on USS INGRAHAM (FFG–61) in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by removing the following ships:

USS LAWRENCE	DG–4
USS SPRAGUE	FFG–16
USS LEWIS B. FULLER	FFG–23
USS VANDERGRIFT	FFG–48
USS AFFRAY	MSO–511
(blank)	NR–1
USS SAM HOUSTON	SSBN–609
USS JOHN MARSHALL	SSBN–611
USS RHODE ISLAND	SSBN–730

3. Table One of § 706.2 is amended by adding the following ships:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, section 2(a)(i), Annex I
USS LAWRENCE	DDG-4	2.45
USS LEWIS B. PULLER	FFG-23	1.6
USS VANDEGRIFT	FFG-48	1.6
USS INGRAHAM	FFG-61	1.37
USS AFFRAY	MSO-511	3.5
NR-1	NR-1	2.7
USS SAM HOUSTON	SSN-609	3.73
USS JOHN MARSHALL	SSN-611	3.73
USS HENRY M. JACKSON	SSBN-730	3.70

4. Table Four of § 706.2 is amended by removing from the existing paragraph 7 the following ships:

USS JOHN A. MORRE	FFG-19
USS LEWIS B. PULLER	FFG-23
USS VANDERGRIFT	FFG-48

5. Table Four of § 706.2 is amended by adding to the existing paragraph 7 the following ships:

USS JOHN A. MOORE	FFG-19
USS LEWIS B. PULLER	FFG-23
USS VANDERGRIFT	FFG-48
USS INGRAHAM	FFG-61

6. Table Four of § 706.2 is amended by removing from the existing paragraph 8 the following ships:

USS LEWIS B. FULLER	FFG-16	
USS VANDERGRIFT	FFG-48	
USS CLIFTON SPRAGUE	FFG-16	
USS JOHN A. MORRE	FFG-19	(*Second* listing *only*)
USS ANTRIM	FFG-20	
USS FLATLEY	FFG-21	(*Second* listing *only*)

7. Table Four of § 706.2 is amended by adding to the existing paragraph 8 the following ships:

Vessel	Number	Distance of side-lights forward of masthead light in meters
USS JOHN A. MOORE	FFG-19	2.75
USS FLATLEY	FFG-21	2.75
USS LEWIS B. PULLER	FFG-23	2.75
USS VANDEGRIFT	FFG-48	2.75

Vessel	Number	Distance of side-lights forward of masthead light in meters
USS INGRAHAM	FFG-61	2.19

Date: December 27, 1988.
Approved:
H. Lawrence Garrett, III,
Under Secretary of the Navy.
Date: January 5, 1988.

[FR Doc. 89-616 Filed 1-11-89; 8:45 am]
BILLING CODE 3810-AE-M

Department of the Air Force

32 CFR Part 863

Leasing USAF Aircraft and Related Equipment to Nongovernment Organizations

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: This part outlines USAF policies and procedures for the provision of leasing USAF aircraft and related equipment to nongovernment organizations. It establishes the responsibilities for evaluating lease requests, obtaining necessary approvals, and negotiating and administering lease agreements. It is intended to accelerate the evaluation, approval and negotiation processes associated with these lease requests.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Kattner, SAF/AQCM, Washington, DC 20330-1000, telephone (202) 695-4982.

SUPPLEMENTARY INFORMATION: The Department of the Air Force published this proposed rule in the **Federal Register** on November 14, 1988 (53 FR 45777). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 863

Aircraft, Government contracts, Government property.

Therefore, 32 CFR, Chapter VII, Subchapter F, is amended to add Part 863 to read as follows:

PART 863—LEASING USAF AIRCRAFT AND RELATED EQUIPMENT TO NONGOVERNMENT ORGANIZATIONS

Sec.
863.0 Purpose.

Subpart A—Policy and Responsibilities

863.1 Leasing policy.
863.2 SAF/AQ responsibilities.
863.3 AFSC responsibilities.
863.4 AFLC responsibilities.

Subpart B—Basic Terms and Conditions

863.5 Authorized uses.
863.6 Lease charges.
863.7 No cost to the USG.
863.8 Risk of loss.
863.9 Indemnification of the USG.
863.10 Maintenance responsibilties.
863.11 Inspection responsibilities.
863.12 USG support.
863.13 Terminating the lease agreement.
863.14 DSAA and State Department approvals.
863.15 Flights for dignitaries.
863.16 Air show participation plan clause.

Subpart C—Lease Requests and Evaluation

863.17 Request initiation.
863.18 SPO or ALC.
863.19 HQ AFSC or HQ AFLC.

Subpart D—Coordination and Approval Process

863.20 Air Staff coordination.
863.21 Secretariat approval process.
863.22 Processing time.

Subpart E—Lease Negotiation and Administration

863.23 AFSC lease negotiation.
863.24 AFLC lease negotiation.
863.25 Delegation of lease administration.
863.26 Lessee compliance.
863.27 Lessee payments.

Authority: 10 U.S.C. 2667.

Note.—This part is derived from Air Force Regulation (AFR) 70-10.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 863.0 Purpose.

This part outlines United States Air Force (USAF) policies and procedures for leasing USAF aircraft and related equipment to nongovernment organizations (such as, American manufacturers) under 10 U.S.C. 2667. The intended uses of the leased assets might include, but are not necessarily limited to, participation in national and international trade or air shows, foreign military sales or direct foreign sales demonstrations, independent research and development efforts by defense firms, and direct or indirect support of United States Government (USG) contracts. This part does not apply to military leases of USG property to foreign governments or international organizations (such as, North Atlantic Treaty Organization) under Chapter 6 of the Arms Export Control Act. This part establishes the responsibilities for evaluating lease requests, obtaining approvals, and negotiating and administering the lease agreements. This part applies to the Office of the Secretary of the Air Force, the Air Staff, Air Force Systems Command (AFSC), and Air Force Logistics Command (AFLC). This part requires coordination with the USAF operational commands, the Air Force Reserve, and the Air National Guard when their assets are under consideration for lease. It implements DOD Instructions 7230.7, January 29, 1985 (32 CFR Part 288), and 7230.8, June 9, 1976.

Subpart A—Policy and Responsibilities

§ 863.1 Leasing policy.

10 U.S.C. 2667 provides the Secretary of the Air Force the authority to lease assets under the control of the USAF to nongovernment organizations. When the Secretary considers it advantageous for the United States, leases may be approved under such terms and conditions the Secretary considers will promote the national defense or be in the public interest. The statute provides that the property must be under the control of the department; not for the time needed for public use; and not excess property. Typically, the USAF does not lease assets which are otherwise available from commercial sources.

§ 863.2 SAF/AQ responsibilities.

(a) The Secretary of the Air Force delegated the statutory authority to approve leases to the Assistant Secretary of the Air Force for Acquisition (SAF/AQ). Since final leasing authority rests at the secretariat level, field and staff elements must take care not to preempt or prejudice the Secretary's authority to determine

whether a proposed lease is advantageous to the United States and what terms and conditions will be considered as promoting the national defense or being in the public interest.

(b) SAF/AQ determines whether a lease request from a nongovernment organization or from a command on behalf of a nongovernment organization meets the general guidelines of this part. Furthermore, SAF/AQ ensures that the Air Staff (HQ USAF/LE, PR, XO, CC), the Office of the Secretary of the Air Force (SAF/AC, PA, GC), Defense Security Assistance Agency (DSAA), and USAF operational commands, the Air Force Reserve, or Air National Guard when their assets are potential lease candidates have coordinated, as necessary, before recommending that SAF/AQ sign a Determination and Finding (D&F). This document designates which command, normally AFSC or AFLC, will negotiate and execute the lease agreement and outlines the basic terms and conditions which must be contained in the lease. SAF/AQ makes the determination if it is unclear whether AFSC or AFLC should assume a particular leasing action. The determination and finding format for authority to lease United States government property is shown below.

Determination and Finding Format

The Department of the Air Force (USAF) proposes to lease aircraft to for a period. (Describe the details of the proposed lease activity.) As consideration for the lease, the lease will contain the following additional terms and conditions:

(1) The leased property shall not be transferred, encumbered, or used for other purposes without the written consent of the Secretary of the Air Force.

(2) The leased property shall be furnished "as is" without any warranty, express or implied, as to serviceability, fitness for use, or other matters.

(3) The lessee shall pay the United States Government (USG) all rent, costs, and charges associated with the use of the leased property while under lease according to 32 CFR Part 288 and this Determination and Finding.

(4) The lessee shall maintain the leased property during the term of the lease in a safe and serviceable condition according to prescribed USAF standards or pay the full cost of any such maintenance accomplished by the USG.

(5) Support provided by the USG, if any, shall be on a noninterference, reimbursable basis, including use of support aircraft, equipment, and facilities. The availability of such support, and the computation of any associated charges or costs, will be according to applicable Department of Defense directives and instructions and USAF regulations and manuals.

(6) The lessee shall be responsible for all costs relating to the leased property during the term of the lease including, without limitation, expenses of operation, maintenance, display, demonstration, ferrying, transportation, support, and protection.

(7) The lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract, except to the extent authorized under the Federal Acquisition Regulations.

Optional (7) Except as otherwise authorized under the Federal Acquisition Regulations, the lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract except for DOD contracts expressly requiring use of the leased property and then only to the extent that such costs are properly allocable to such contracts and reimbursable according to the terms thereof. Costs charged to the USG respecting the leased property under any such contracts will not exceed the lessee's costs under the lease.

(8) The lessee shall assume the risk of loss, damage, or destruction to the leased property. The risk will be covered by insurance on the depreciated value of the property or, with the USG's approval, the lessee may be self-insured.

(9) The lessee shall indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss and liability (whether in tort or contract) which might arise in connection with the lease because of: (a) Injury or death of personnel of the USG, the lessee, or third parties; and (b) damage to or destruction of property of the lessee or third parties, and leased property, support equipment, or other property of the USG. The lessee shall obtain insurance adequate to cover all such liabilities.

(10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition.

Optional (10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition and configuration as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition or configuration, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition and pre-lease configuration.

(11) The lease may be revocable by the USAF at any time. The lease may be terminated by the lessee at any time upon 15 days prior written notice, subject to the lessee's residual responsibilities under the lease (to return leased property, to pay all costs resulting from the lease, to indemnify and hold harmless the USG, etc.).

(12) The lessee shall assume responsibility that may be imposed by other Government agencies for certification and registration of the leased property and for payment of any taxes or other charges thereon.

Optional (13) During the term of the lease, the lease status of the leased property may be interrupted from time to time by the USAF and the property made available for other USG activities under USG contracts with the lessee. During such periods, the property will revert to Government-Furnished Property status under the applicable USG contract. Any doubt as to the status of the leased property at any particular time will be resolved in favor of lease status.

Optional (14) The lessee shall secure necessary Defense Security Assistance Agency and State Department clearances prior to commencement of any demonstration or evaluation flights for representatives of foreign governments.

Optional (15) Orientation flights for United States Congressional and news media representatives and orientation and evaluation flights for foreign nationals shall be subject to approval according to Department of Defense Regulation 4515.13R.

Optional (16) The lessee planning to fly leased aircraft at the air show shall prepare an air show plan for the USAF's approval which provides information on: scheduled use of the leased property; qualifications and duties of lessee personnel attending the air show; intended and contingency flight profiles; provisions for ensuring adequate preflight crew rest and for ensuring proper preflight briefings and postflight debriefings; and provisions for obtaining a visual record, and flight data recorder coverage (if aircraft is so equipped) of practice and show flight demonstrations, and orientation flights. USG approval of, or involvement in, such plan shall not diminish the lessee's assumption of risk of loss and liability in connection with the lease.

Pursuant to Title 10, United States Code, Section 2667, I find that the property to be leased is under the control of the USAF; it is not excess property as defined by Section 472 of Title 40, United States Code; but it is not for the time needed for public use. I consider the above described lease of such property to be advantageous to the United States and such terms to be in the public interest.

The Commander, , or designee, is authorized to execute a lease according to this Determination and Finding.

§ 863.3 AFSC responsibilities.

AFSC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee desires to lease an asset being acquired or managed by a System Program Office (SPO), that SPO evaluates the lease request, makes its recommendation to HQ AFSC/PKC, and negotiates the lease agreement, if approved by SAF/AQ.

§ 863.4 AFLC responsibilities.

AFLC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee requests the lease of an asset managed by AFLC or an asset under the control of any of the USAF operational commands, the AFLC Air Logistics Center (ALC) most familiar with the asset evaluates the lease request and makes its recommendation to HQ AFLC/PM. The Wright-Patterson Contracting Center (WPCC) negotiates the lease agreement, if approved by SAF/AQ.

Subpart B—Basic Terms and Conditions

§ 863.5 Authorized uses.

The lease agreement will specify what uses may be made of the leased property. The authorized uses of the leased property need not support a USG contract or requirement. The lease may limit or specify the location of lease performance.

§ 863.6 Lease charges.

(a) Lease charges are comprised of rent, reimbursement of any out of pocket expense to the USG, and other costs which the lessee must pay according to the terms of the lease. Pursuant to 32 CFR Part 288, User Charges, rent must include charges for depreciation and interest on investment. These charges may be assessed on a daily, monthly, or yearly basis as determined appropriate by the cotnracting officer. For example, if the lease period is short term or if the leased property is being modified in such a way as to preclude its return to the USAF for immediate use to satisfy a USG mission requirement, charge rent during the entire lease term. However, if the lease period is long term and lease activities are actually intermittent rather than continuous, charge rent only during those times the leased property is actually in use by the lessee or unavailable for USAF use. (*Note.*—Periods of use are defined in the lease.)

(b) It may be appropriate to assess flying-hour charges if an aircraft is leased. Flying hour charges can be assessed for depot maintenance, replenishment spares, base support, etc., depending on the leasing situation. If an operational aircraft is leased, payment of depot maintenance and replenishment spares charges would be in order. If the lessee is authorized under the lease to obtain spare parts from the supply system, the lessee should either pay the spares flying-hour charges or reimburse the USG the cost of the spare part plus the cost of providing it.

(c) Leases should include a charge for general and administrative expenses of the USG. The contracting officer should assess a charge of 10 percent of all other lease charges to recoup the USG's general and administrative expenses.

(d) SAF/ACCS sets depreciation, interest on investment, and flying-hour charges. When the specific item to be leased is identified, these rates may be based on supplemental information from the SPO or ALC as to the property's acquisition cost, replacement cost, age, major modifications, salvage value, etc. When the specific item is not identified or actual costs are unknown, use reasonable estimates. The contracting officer is authorized to communicate directly with SAF/ACCS in determining rental charges. Also assess rent for pieces of support equipment which the lessee may require to support the major items of leased property. In such cases, SAF/ACCS may recommend the use of the rates set forth in the Use and Charges clause in the Federal Acquisition Regulation for rental computation.

(e) When the lease activity being pursued by the lessee is of particular interest to the USG, the contracting officer may arrange to receive a technical report from the lessee. The value of the report, as established by the contracting officer, can represent a credit against rental charges otherwise due under the lease. Such a credit must not exceed the rental charges owed by the lessee.

§ 8637. No cost to the USG.

The lessee is responsible for all rent, costs and charges relating to the leased property during the lease. Generally, the lessee may not include any charges or costs resulting from the lease directly or indirectly in any USG contract or subcontract. Exceptions may be approved for contracts for foreign military sales, for independent research and development costs, international air show costs and in other limited cases where specific USG contracts or programs benefit from the lease activities or when otherwise authorized by law.

§ 863.8 Risk of loss.

The lessee must agree to assume the risk of loss, damage, or destruction of the leased property during the period of the lease. This applies when equipment or an aircraft is leased whether a lessee or USAF operator or pilot is operating the equipment or acting as pilot in command. The lessee must obtain insurance to cover the insurable value of the leased property, unless the contracting officer agrees that the lessee may be self-insured.

§ 863.9 Indemnification of the USG.

The lessee must agree to hold harmless and indemnify the USG, its agents, employees, and officers from any and all loss and liability. The lessee must obtain insurance adequate to cover all such liabilities.

§ 863.10 Maintenance responsibilities.

The lessee must maintain the leased property during the lease period according to standards established by the USG or pay the cost of maintenance accomplished by the USG.

§ 863.11 Inspection responsibilities.

The contracting officer should ensure appropriate inspections are performed by contract administration services personnel or others during lease performance and by the activity receiving the property after lease performance to determine whether the lessee maintained and leased property according to USAF standards.

§ 863.12 USG support.

Any support provided the lessee by the USG will be on a noninterference, cost-reimbursable basis. This applies to material, facilities, support aircraft, and crewmembers.

§ 863.13 Terminating the lease agreement.

The USG may terminate the lease at any time and at no cost. The lessee may terminate the lease upon prior written notice to the contracting officer and subject to its residual responsibilities under the lease (payment of charges, return of the leased property, etc.). In long-term leases it may be appropriate to provide for periodic interruptions of the lease so the leased property can be returned to the USG to satisfy its requirements.

§ 863.14 DSAA and State Department approvals.

When a lessee poroposes to demonstrate the leased property to representatives of foreign governments or international organizations or to participate in international air shows, the lessee must secure DSAA approval and obtain export license clearance from the State Department. If the lessee knows the details of the proposed demonstration or evaluation at the time the lease request is submitted, SAF/AQ will obtain DSAA coordination when processing the lease request to the SAF/AQ for approval. If these details are unknown at the time of the lease request, then the lessee must obtain DSAA approval by separate request through HQ USAF/PRI (Directorate of International Programs) channels.

§ 863.15 Flights for dignitaries.

The lessee must get prior approval for flights if one of the authorized uses of a leased aircraft is orientation flights for foreign nationals or dignitaries, including members of Congress and representatives of the US news media (see DOD Regulation 4515.13R).

§ 863.16 Air show participation plan clause.

Leases authorizing participation in an international air show must contain a provision requiring the lessee to obtain prior USAF approval of its plans for conducting flight operations and providing adequate crew rest. The provision also requires the lessee to describe its demonstration flight profiles. Leases for international air shows require compliance with Part 862 of this chapter. The Air Show Participation Plan clause is shown below.

Air Show Participation Plan Clause

(a) Prior to any flight performed for demonstration, exhibition, practice, or evaluation purposes at a scheduled international air show as authorized elsewhere in this lease, the Lessee shall obtain the approval of the Director of Operations and Readiness, Headquarters, USAF (AF/XOO), for an Air Show Participation Plan covering the following:

(1) Detailed schedule of planned use of the leased aircraft.

(2) The name (or names) and qualifications of the pilot (or pilots) who are scheduled to fly the aircraft in practice, deployment or redeployment, and air show flights.

(3) Specific information on the qualifications of other crewmembers who may be needed.

(4) The names, qualifications, and exact duties of contractor supervisory personnel who may take part in any way in the management and control of the USAF aircraft while it is leased.

(5) The intended flight profiles planned for:

(i) Favorable weather conditions (specify favorable weather conditions for subject aircraft).

(ii) Weather conditions less than favorable but above the air show minimums, AFRs 60–16 and 60–18, and the aircraft handbook (Technical Order) limitations.

(iii) Alternate modified profiles for both weather conditions that would be flown if air show authorities limit flight time due to scheduling problems.

(6) Provisions for ensuring adequate preflight crew rest for the pilot (or pilots) and other crewmembers. This must include the way in which the flightcrews (pilots) will be isolated from potential marketing or other pressures that may be expected in the internal air show environment.

(7) Specific schedule and attendees at preflight planning, preflight briefings, and postflight debriefings.

(8) Provisions for providing a visual record of all practice flights and air show demonstrations (16mm film or three-fourth inch video tape).

(9) Provisions for providing maximum flight data recorder coverage (if subject aircraft is normally flight data recorder equipped) of all practice flights and air show flight demonstrations.

(10) Provisions for ensuring the pilot who flies the aircraft wears suitable flight clothing for maneuvers to be performed (such as, anti-g suit).

(11) The Air Show Participation Plan as submitted for such required approval shall specify each nonstandard configuration of the aircraft to be leased and shall list each item of equipment or stores intended to be incorporated in or used to support the leased aircraft that is not part of the USAF standard equipment or approved stores list.

(b) Lessee's initial proposal and any revised proposals for such Air Show Participation Plan are to be submitted to the cognizant Systems Program Office or Plant Representative Office according to Part 862 of this chapter.

(c) The provisions of such Air Show Participation Plan as so approved shall be complied with by the Lessee as regards all air show demonstrations, exhibition, and evaluation flights performed with the leased property during the term of this lease, at or in the general vicinity of the air show location, and shall also be complied with regarding all practice and pilot qualification flights performed during the term of this lease in preparation for such demonstration, exhibition, or evaluation flights.

(d) The Lessee shall permit the Contract Monitor or a delegate, as appointed by the United States Government (USG) for this lease, to monitor air show participation under this lease, and to have access to the leased aircraft during the entire period of air show participation and during all periods of practice or qualification for such air show participation as authorized under this lease, together with access to the maintenance and staging areas used for such participation or practice.

(e) The Contract Monitor shall be considered an element of USAF support, the costs of which are charged to the Lessee as lease support costs.

(f) The Lessee shall submit to the Contracting Officer, within thirty days after the completion of such air show participation authorized under this lease, a lease completion report outlining and explaining any problems encountered in and during the performance of the lease as regards such aircraft practice and participation flights, together with recommended procedures and procedural changes to improve the safety of USAF aircraft leased for air show participation under future leases. If no such problems are encountered, a negative report shall be submitted. The Lessee shall also, upon the written request of the Contracting Officer, and at no cost to the USG under this lease, provide the USG with copies (duplicate) of all visual record and of the flight recorder data of all practice flights and air show demonstrations as called for in the foregoing paragraphs.

(g) The Lessee shall also advise the cognizant System Program Director of its proposed participation in static displays or flights demonstrations at the air show, and shall ensure that appropriate Lessee personnel are available, at the time and place designated by the System Program Director, to receive a cautionary prebriefing on the military security requirements and other sensitive areas related to the leased aircraft and equipment.

(h) It is mutually understood and agreed that the sole purpose of this clause is to give the USG full knowledge of the intended use of the leased property and an opportunity to observe the Lessee's compliance with its proposed plan. Lessee acknowledges and agrees that the USG makes no warranty that the approve plan is safe and that the USG assumes no risk of loss or liability to third parties that may arise despite the Lessee's adherence to the approve plan. This clause creates no exceptions to the Lessee's obligations to assume risk of loss and third party liability, including obtaining insurance, as set out fully in the clauses elsewhere in this lease.

Subpart C—Lease Requests and Evaluation

§ 863.17 Request initiation.

The prospective lessee initiates the lease request and submits it to the appropriate SPO or ALC responsible for the items described under the lease. The lease request must contain, as a minimum, the following information:

(a) Identification of the property to be leased (including tail numbers or part numbers, if known).

(b) Purpose of the lease.

(c) Proposed start date and duration.

(d) Proposed location(s) of the lease activity.

(e) Expected benefits to the lessee.

(f) Expected benefits to the USG.

(g) Statement as to nonavailability of suitable commercial items.

(h) Other pertinent facts (flights for dignitaries, for example).

§ 863.18 SPO or ALC.

When the SPO or ALC receives a request to lease USAF assets, they evaluate the request for the benefits to the USG and the lessee and the availability of the property during the proposed lease period. Also, they address the appropriateness of the intended use of the property and any limitations on reservations which should be imposed on such use. If the property requested for lease is assigned to an operational command, the SPO or ALC coordinates with that command then sends the request through contracting channels to command headquarters.

§ 863.19 HQ AFSC or HQ AFLC.

Command headquarters review each lease request and prepare a draft Secretarial D&F. The command then forwards the lease package consisting of the lease request, the D&F, and other supporting data with an endorsement to SAF/AQC for approval. The command forwards lease packages requesting participation in an international air show to HQ USAF/XOO (with an information copy to SAF/AQC).

Subpart D—Coordination and Approval Process

§ 863.20 Air Staff coordination.

Coordination requirements depend on the intended use of the leased items and whether the items are developmental or operational. SAF/AQC coordinates with HQ USAF/XOO, PRI, and LEY, as necessary. SAF/AQC coordinates with HQ USAF/PRP on the use of aerospace vehicles counted in the USAF inventory. If the proposed lease is for participation in an international air show, follow Part 862 of this chapter. **Note:** HQ USAF/XOO approves the lessee's international air show plans, including flight profiles. HQ USAF/PRI coordinates on requests involving demonstrations of leased property to representatives of foreign governments.

§ 863.21 Secretariat approval process.

Secretariat coordination and approval involves offices of diverse responsibilities. SAF/PA coordinates on air show lease requests. SAF/ACCS reviews all requests and provides rental charge guidance to the contracting officer. The DSAA approves all requests involving potential sales to foreign governments and organizations. In all cases SAF/GC reviews lease requests and D&Fs. SAF/AQ gives final approval on all lease requests.

§ 863.22 Processing time.

The coordination and approval process for a routine lease request usually takes four weeks. Prospective lessees and the commands should plan on a minimum of four weeks for approval of the D&F once a lease request reaches the SAF/AQC. Lease requests received with insufficient lead time may be returned without action.

Subpart E—Lease Negotiation and Administration

§ 863.23 AFSC lease negotiation.

The AFSC SPO responsible for an item which is approved for lease must negotiate the lease according to the signed D&F. The office which negotiates a lease is also responsible for amending it and recommending renewal, if appropriate. The SPO is also responsible for working with SAF/ACCS to determine the appropriate lease charges.

§ 863.24 AFLC lease negotiation.

WPCC negotiates leases of equipment no longer being acquired by AFSC. WPPC also amends leases and recommends renewal, if appropriate. The Secretarial D&F sets the basic terms and conditions which must be incorporated into the lease. WPCC works with SAF/ACCS to establish the proper lease charges.

§ 863.25 Delegation of lease administration.

After negotiation, the SPO or WPCC delegates the lease to the cognizant contract administration office for administration. However, if the lease is to be performed overseas, the contracting officer may retain administration.

§ 863.26 Lessee compliance.

The contract administration activity must make sure that the lessee is complying with all the terms and conditions of the lease. The lessee must follow maintenance requirements, obtain necessary approvals keep use records upon which rental charges may be calculated, and pay rental and other charges according to the lease agreement.

§ 863.27 Lessee payments.

Payments for rental (including depreciation and interest on investment) must be returned to miscellaneous receipts of the US Treasury. Payments for flying-hour charges and reimbursement for support or services provided by the USG may be credited to the appropriation of the activity to which the leased property is assigned or which provided the support or service. If the lessee is authorized to obtain material from the supply system, it can only be provided on an as available, reimbursable basis. The contracting officer provides instructions to the lessee and appropriate accounting and finance office on handling payments.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-618 Filed 1-11-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-77]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the United States Marine Corps, the Coast Guard is issuing a temporary rule to govern the operation of the drawbridge across the Atlantic Intracoastal Waterway, mile 240.7, at Camp Lejeune, North Carolina. This rule is being issued to limit bridge openings during daylight hours in order to allow the contractor for the Marine Corps, owner of the bridge, to make structural repairs to the bridge, while still providing for the reasonable needs of navigation.

Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from January 2, 1989, to February 10, 1989, unless amended or terminated before that date. Comments on the temporary rule must be received on or before January 20, 1989.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Temporary Rule

At the request of the United States Marine Corps, owner of the drawbridge at Camp Lejeune, North Carolina, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Atlantic Intracoastal Waterway, mile 240.7, at Camp Lejeune. The contractor for the

work has indicated that closed periods will be necessary during daylight hours in order to accomplish additional structural repair work to correct deficiencies noted during earlier repair periods. In order to replace the worn parts of machinery the bridge must remain in the closed position. The work is scheduled to begin on January 2, 1989, and to be completed by February 10, 1989. The Marine Corps has requested that the drawbridge remain closed from January 2, 1989, to January 6, 1989, Monday through Friday, 24-hours a day with bad weather dates of January 9, 1989, to January 13, 1989. They also have requested two four-hour closures daily, Monday through Friday, January 9, 1989, to February 10, 1989, with openings between 12:00 noon and 1:00 p.m. for vessels waiting to pass through the bridge.

The two major commercial waterway users known to transit this portion of the AICWW have been contacted. They have expressed their objections to the bridge being closed for 5 days, and have inquired as to whether the drawbridge could be opened at least once a day. It was explained to them that once the large shaft that moves the gears is removed, it will be impossible for the draw to open. The other waterway users that require openings of this drawbridge are recreational boaters. Due to the repair schedule occurring in January and February, very few boaters will be inconvenienced, since the boating season tapers off in late November.

Since these repairs are necessary to the maintenance of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days. Publishing a notice of proposed rulemaking and delaying the effective date is impractical, since the winter months are the opportune time to do this work.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary rule is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). While the temporary rule may have some economic impact on commercial navigation, the impact is expected to be minimal. Therefore, a full regulatory evaluation is considered unnecessary. This conclusion is based on the fact that the major commercial waterway users have been notified of the bridge closure in order to schedule their transits around the closed periods.

Since the economic impact of this temporary rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

1. The authority citation in Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. A new paragraph (b)(7) is temporarily added to § 117.821 to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach, North Carolina.

* * * * *

(b) * * *

(7) The Camp Lejeune bridge, mile 240.7, near Jacksonville, NC, shall open on signal, except that:

(i) The draw need not open from 6:00 a.m., January 2, 1989, to 5:00 p.m. January 6, 1989.

(ii) In the event of inclement weather affecting the ability to conduct repairs during the period January 2–6, 1989, the draw need not open from January 9, 1989 to January 13, 1989.

(iii) From January 9, 1989, to February 10, 1989, the draw need not open from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m., Monday through Fridays.

* * * * *

This rule is effective from January 2, 1989, until February 10, 1989, or until the scheduled repairs are completed, whichever occurs first.

Dated: January 5, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–745 Filed 1–11–89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[FCC 88-342]

Commission Policy Regarding Terrain Shielding in the Evaluation of Television Translator, Television Booster and Low Power Television Applications

AGENCY: Federal Communications Commission.

ACTION: Petition for partial reconsideration of policy statement.

SUMMARY: This action affirms the waiver policy guidelines adopted by the Commission in the Policy Statement regarding the consideration of terrain shielding in the Low Power Television Service with the limited modification that Low Power Television Service applications requesting waiver of the application acceptance standard will be identified on Commission Public Notices announcing proposed grants in order to give notice to parties interested in filing petitions to deny.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson, Low Power Television Branch, FCC, telephone (202) 632–3894.

SUPPLEMENTARY INFORMATION: The Policy Statement was published on May 2, 1988 at 53 FR 15557.

Memorandum Opinion and Order

Adopted: October 27, 1988. *Released:* December 15, 1988.

By the Commission:

1. The Commission has under consideration a Petition for Partial Reconsideration filed May 26, 1988, by the Association of Maximum Service Telecasters, Inc. and the National Association of Broadcasters ("Petitioners") of the Commission action taken in a *Policy Statement*, 3 FCC Rcd 2664 (1988).

2. In this *Policy Statement*, the Commission established a limited waiver policy regarding the consideration of terrain shielding in the Low Power Television Service ("LPTV").[1] We set forth general guidelines on when we would consider terrain shielding requests to waive the LPTV application acceptance standards and provided general guidance for the submission of such requests. To summarize, waivers must be secured where proposed LPTV facilities would

[1] All references to "LPTV" include television translators and television boosters, unless otherwise specified.

be predicted, under these standards, to cause prohibited interference to authorized full-service television, television translator and low power television stations. Such requests must be supported by a terrain study showing that the proposed facility would not be likely to interfere at the protected contour of such stations because of the intervening terrain. Alternatively, a less rigorous terrain showing is acceptable when the licensee, permittee or applicant of a potentially affected station [2] assents to the waiver in a written statement attesting to its belief that terrain shielding would preclude objectionable interference. The *Policy Statement* did not propose standards for incorporating terrain shielding into regular application processing procedures. Rather, it provided for the submission of terrain profiles to be evaluated by the Commission staff on a case-by-case basis. Consideration of terrain shielding is limited to those applications that are not mutually exclusive with other applications, where mutual exclusivity is determined by the interference protection criteria in § 74.707 of the Commission's Rules. Terrain shielding is not taken into account in deciding whether two applications are mutually exclusive. It is not considered when raised for the first time by applicants in petitions for reconsideration or applications for review of staff actions. Finally, LPTV permits and licenses issued pursuant to terrain waivers are expressly conditioned to remind licensees and permittees of their responsibility to eliminate any interference caused to those stations predicted to receive interference without terrain consideration.

3. While the Petitioners generally support our more flexible terrain policy and its safeguards against interference, they fault the *Policy Statement* for not disclosing specific methods to be used by the Commission staff in its evaluation of terrain studies. They acknowledge the difficulty in selecting standard methodology because of the wide variability of terrain effects on interference predictions. Nevertheless, they seek further clarification concerning methods, models and formulas that are used in staff evaluations. They contend that our case-by-case treatment of terrain, without standard methods, is haphazard and could possibly result in the erosion of the technical quality of television service. They suggest, therefore, that it is premature to implement our LPTV terrain policy until uniform prediction standards can be developed in a rulemaking proceeding.

4. We agree with the Petitioners that there is generally merit in having standards for predicting the effects of terrain on signal propagation, and the Commission has an ongoing effort in this regard. Uniform prediction standards would obviate the need for a case-by-case waiver policy and lessen the administrative impact of specialized staff evaluations. Nevertheless, we do not believe that the public interest would be served by further delaying any consideration of terrain shielding pending the completion of a possibly lengthy rulemaking proceeding.[3] The *Policy Statement* expressed our reasons for adopting and implementing a limited waiver policy. Our experience with application processing has convinced us that it is very difficult to authorize additional television translator or LPTV service in certain areas of the country without consideration of terrain shielding, particularly in parts of the Rocky Mountain states. Repeated attempts to file acceptable applications in some of these areas have failed. The expressed desire for additional television service and our mandate to provide for this service wherever possible fully justify our limited consideration of terrain shielding at this time.

5. We are confident that our terrain policy will not result in interference to existing television reception. The provisions in the *Policy Statement* and the secondary status of all stations in the LPTV service are ample safeguards against this. First, we have limited the scope of our terrain waiver policy and described in as much detail as possible guidelines for the submission of terrain waiver showings. Second, the approval of a waiver request at the acceptance stage of application processing means only that the application can be proposed for grant in a Commission Public Notice. Interested parties then have an opportunity to file a petition to deny the application, disputing the applicant's terrain waiver submission. The grant of an application with a waiver is not made until the issues and materials presented in such petitions are fully considered. Finally, as noted above, LPTV permits and licenses with terrain waivers are granted with the express condition that LPTV operators must eliminate any objectionable interference caused to the potentially affected stations.

6. Our case-by-case evaluation of the terrain waiver showings will not depend solely on the use of a single standard prediction method. It affords the administrative flexibility to select from among available prediction models one that applies to the topographic features in each case.[4] Our evaluation considers all information provided by the applicant, *e.g.*, letters of assent, terrain profiles and any related analysis and any additional information we may request of applicants such as topographic maps. Ultimately, the decision to grant an application involving a terrain waiver rests on engineering analysis, taking into account all pertinent information, including interference studies filed with any petitions to deny. The first step in the evaluation is a determination that an applicant's terrain submission includes a sufficient number of well-placed terrain profiles to enable analysis over the entire sector of the protected contour where interference is predicted, without terrain shielding. Applicants are directed to provide additional profiles deemed necessary for the evaluation. The nature of the profile analysis depends on the conditions depicted by the profile; for example, the height and slope of terrain obstructions and the distances between the proposed LPTV antenna site, another station's protected contour and the obstruction. In the least difficult cases, where the site is located on or near the base of a large mountain between it and the protected contour, determinations of signal blockage might be made by inspection of the terrain profile. The more difficult cases involve close inspection of the profile in order to select an applicable analytical model and to determine the relevant input

[2] Potentially affected stations include authorized full-service television, low power television and television translator stations, and those proposed in earlier filed LPTV or translator applications that are cut-off from further competing applications. *See Policy Statement*, 3 FCC Rcd at 2665.

[3] Over the years, the Commission has engaged in studies of the effects of terrain irregularities on signal propagation; however, it has not reached the stage of commencing a rulemaking proceeding from which to establish terrain prediction standards.

[4] For example, the following references treat the effects of radio wave propagation over irregular terrain: Bullington, K. (1947), "Radio propagation at frequencies above 30 megacycles," Proc. IRE 35, p. 1122; Rice, P.L., A.G. Longley, K.A. Norton and A.P. Barsis (1967), "Transmission loss predictions for tropospheric communication circuits," NBS Tech. Note 101, Vols. I and II (revised); Longley, A.G. and P.L. Rice (1968), "Prediction of tropospheric radio transmission loss over irregular terrain—a Computer Method-1968," ESSA Tech. Report ERL 79—ITS 67; Hufford, G.A., A.G. Longley and W.A. Kissick (1982), "A guide to the use of the ITS irregular terrain model in the area prediction mode," NTIA Report 82–100. In addition, § 73.684 of the Commission's Rules describes a prediction method based on terrain roughness. Prediction methods found in other reference materials may also be used in the evaluation of terrain showings.

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parameters of the model. The output normally is either a predicted field strength at the protected contour or a terrain obstruction loss, from which this field strength can be calculated. In some cases, a second prediction method may be used to confirm the conclusion of the first. The analysis also will include a comparison of our findings and those in an applicant's terrain study and, at a later stage of processing, the findings in petitions to deny alleging predicted interference from the proposed facility. Our analysis will, of course, be part of the public record and available for scrutiny. Finally, most of the terrain waiver requests submitted in the June 1988 LPTV application filing window involve antenna site locations in those mountainous areas, where, prior to the establishment of the LPTV service, thousands of noninterfering television translator stations were authorized on the basis of similar engineering analysis. In view of these factors, we believe that our determination not to specify an evaluation method will not result in degraded television reception.

7. In addition, the Petitioners ask that our LPTV terrain shielding policy be modified in certain respects.[5] First, they suggest a two-step process to assist the Commission in developing a full record before granting waivers of the acceptance standards. They ask that LPTV applicants be required to give notice of their waiver requests to all potentially affected stations and, second, that our Public Notices identify applications for which waivers of the acceptance standards have been requested. We agree with the second suggestion and will identify these applications on our notices announcing acceptance and proposed grant. This should give adequate notice to parties interested in filing petitions to deny. However, we will not require LPTV applicants to notify potentially affected stations in advance of or concurrent with the filing of their applications. Such a requirement is unnecessary given our decision to identify terrain waiver applications in our Public Notices. We also believe that, generally, applicants will seek to strengthen their waiver showings by attempting to obtain the assent of potentially affected stations and, thus, give voluntary notice of their intentions. Also, we do not wish to impose an additional burden on all applicants who believe that a terrain waiver is necessary, since not all applications with waiver requests will fall under the limited scope of our policy and will not be considered; *i.e.*, applications that are mutually exclusive with other applications and those applications that meet our acceptance standards without the need to consider terrain shielding.

8. Second, the Petitioners take issue with our provision for a less rigorous terrain study in cases where assent has been obtained, contending that assent alone is not sufficient to demonstrate the prevention of interference to the viewers of the assenting station. The Petitioners ask that we require the more rigorous study (accurately depicted terrain profiles) whether or not assent has been obtained. We disagree and affirm our view that, generally, a potentially affected station's belief that interference would not be likely to occur should weigh sufficiently to eliminate the need for an elaborate terrain study. Where assent is obtained, the less rigorous study serves to demonstrate the general character of existing terrain conditions, indicating the presence of mountains or other natural terrain conditions between the proposed LPTV facility and the protected contour of the assenting station. We would view the licensee of a station predicted to receive interference as a highly interested party, concerned about the preservation of the quality of its signal. It would be in the self-interest of a station licensee to assess carefully the prospect of interference from a proposed LPTV facility before giving its concurrence that interference would not be likely to occur. In our view, this informed judgment of an interested party, with knowledge of local terrain conditions, should generally suffice as adequate support for the waiver. Under these circumstances, the additional burden involved in submitting the more rigorous terrain study is not justified. In any event, we note that our provisions pertaining to assent and less stringent terrain waiver study are policy guidelines which do not bind us from requiring, at our discretion, a more extensive terrain study where the facts warrant.

9. Finally, although requested by the Petitioners, we will not require disclosure or a certification by the LPTV applicant that payments have or have not been made to the assenting station. Broadcast stations may incur various expenses in deciding whether or not to give assent, particularly in evaluating the likelihood of objectionable interference. We will not second-guess a station's intentions in passing these expenses to the party seeking the assent. We view this as a private matter to be negotiated among the parties, and we will not review, nor require disclosure of the financial terms of assent agreements, if any. We do not believe that disclosure of payments is necessary to ensure that viewers are not adversely affected. We again emphasize that a broadcast station's assent in no way absolves LPTV licensees of their responsibility to eliminate any objectionable interference caused to the viewers of the assenting station. *See* § 74.703(b) of the Commission's Rules. In this regard, we note that a broadcast station's assent to an LPTV station's terrain proposal will not be dispositive of interference issues. The Commission, either on its own motion or through the complaint process, remains ready to examine each case to ensure that viewers will not be affected adversely by objectionable interference. Regardless of the terms of any private agreement, the Commission will enforce its interference rules. We note that our decision is limited to circumstances involving terrain shielding for a secondary service and does not sanction the concept of "negotiating" for interference rights in other contexts.

10. In summary, our *Policy Statement* adopted reasonable guidelines for the submission and evaluation of terrain-related waiver requests, which, we believe, are sufficient to insure against the interference concerns raised by the Petitioners. Therefore, except as noted, we are not persuaded by Petitioners' arguments that the changes requested in their petition would serve the public interest, and we affirm the provisions adopted in the *Policy Statement*.

11. Accordingly, it is ordered, That the Petition For Partial Reconsideration filed by the Association of Maximum Service Telecasters, Inc., and the National Association of Broadcasters, is granted insofar as Commission Notices of proposed LPTV grants will identify applications requesting waiver of the acceptance standards, and is denied in all other respects.

[5] The Petitioners submit that terrain shielding arguments should not be accepted for the first time in response to petitions to deny or informal objectives because this practice would unjustifiably shift the "burden of proof" from the applicant requesting a terrain shielding waiver to the potentially affected station. All LPTV applications proposed for grant must either meet or seek waiver of the acceptance standards for interference protection. Therefore, the Petitioners evidently are referring to interference issues not covered by these standards, such as alleged interference beyond the standard protected signal contours. An LPTV applicant has the right, under section 309(d)(1) of the Communications Act of 1934, as amended, to file an opposition rebutting the arguments raised in a petition to deny. An applicant should be permitted to introduce any argument necessary to defend the grantability of its application. In this context, terrain shielding arguments have never been disallowed, and we find no reason to do so now.

12. It is further ordered, That copies of this Memorandum Opinion and Order shall be sent Certified Mail-Return Receipt Requested to the parties named herein.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 89-645 Filed 1-11-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 0

[FCC 88-391]

Revision of the Delegations of Authority to Chief, Private Radio Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a rule to increase the delegations of authority to Chief, Private Radio Bureau. The Chief, Private Radio Bureau, is given the authority to make nonsubstantive changes and minor clarifying and conforming changes to the Rules relating to the private radio services.

EFFECTIVE DATE: December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Terry Romine, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

1. The Commission's *Order*, adopted December 2, 1988, and released amends the delegations of authority to the Chief, Private Radio Bureau to include the authority to make nonsubstantive changes and minor clarifying and conforming changes to our Rules relating to the private radio services.

2. The delegations of authority to the Chief, Private Radio Bureau are found in §§ 0.331 through 0.337 of the Commission's Rules, 47 CFR 0.331–0.337. Structurally, the delegations of authority are similar to those of the other chiefs of the operating bureaus. Bureau chiefs are permitted to exercise all functions described in the relevant function section of 47 CFR Part 0, Subpart A, except for specified functions that can be performed only by the Commission. The proscribed actions, for the most part, involve matters raising novel questions of law, fact, or policy. Where there is established precedent, however, the bureau chiefs are free to act. By amending the delegations to the Chief, Private Radio Bureau to allow nonsubstantive changes to the Rules as well as minor clarifying and conforming changes to be made without Commission action, the Commission and the Private Radio Bureau will be able to carry out the provisions of the Communications Act more efficiently and effectively.

3. Prior notice and comment procedures are not required because the amendments herein pertain only to internal agency procedures and practices. *See* 5 U.S.C. 553(b)(A), 47 CFR 1.412(b)(5).

4. Since a Notice of Proposed Rule Making is not required, the Regulatory Flexibility Act, Pub. L. 93-354, does not apply.

5. Authority for this action is contained in sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1), and 303(r).

6. In view of the above, it is ordered that Part 0 of the Commission's Rules is amended as set forth below.

7. It is further ordered that because it deals only with internal Commission practice and procedure this Order is effective upon Adoption by the Commission. *See* 5 U.S.C. 553(d), 47 CFR 1.427(b).

List of Subjects in 47 CFR Part 0

Federal Communications Commission organization and functions.

Amendatory Text

A. Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

8. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

9. Section 0.331 is amended by revising paragraph (a)(1) to read as follows:

§ 0.331 Authority delegated.

(a) * * *

(1) Notices of proposed rule making and of inquiry, final orders in rule making proceedings and inquiry proceedings, and reports arising from any of the foregoing, except such orders involving nonsubstantive revisions to the rules, or orders involving changes clarifying a rule based on established Commission precedent, or conforming one rule within Part 1, Subpart F, and Parts 80 through 97 with another rule, or conforming any of these rules to formally adopted international convention or agreement where novel questions of policy or law are not involved.

* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 89-644 Filed 1-11-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 1

[General Docket 87-551; FCC 88-401]

Amendment of Part 1 of the Commission's Rules Concerning Radiofrequency Radiation Compliance of FM Booster Stations

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This item amends Part 1 of the Commission's Rules and Regulations to minimize potential environmental impact from FM booster stations. Previously such stations were categorically excluded from the provisions of § 1.1307(b) of the Commission's Rules dealing with compliance with radiofrequency radiation health and safety standards. This exclusion was based on the relatively low power limitations that formerly applied for FM boosters. However, as a result of a 1987 Commission action, FM boosters can now transmit using powers of up to 20 kilowatts, and a categorical exclusion from § 1.1307(b) is, therefore, no longer warranted. This amendment adds Part 74, Subpart L, to the list of rule parts to which § 1.1307(b) applies. FM translators still subject to the lower power limitations (1 or 10 watts) will continue to be categorically excluded. This amendment has been adopted as part of the Commission's responsibilities under the National Environmental Policy Act of 1969 to minimize environmental impact from FCC-regulated facilities.

EFFECTIVE DATE: March 6, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8169.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, General Docket 87-551, FCC 88-401, Adopted December 9, 1988, and Released December 29, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may

also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Public reporting burden for this collection of information is estimated to vary from 1 to 24 hours per response with an average of 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Summary of Report and Order

1. Under the terms of the National Environmental Policy Act (NEPA), the Commission is required to ensure appropriate environmental evaluation of actions it takes that may significantly affect the human environment. The Commission has previously adopted rules (47 CFR 1.1301 *et seq.*) to provide for environmental processing of applications for facilities that might have environmental impact.

2. One of the major categories of potential environmental impact from FCC-regulated services is possible human exposure to radiofrequency (RF) radiation from transmitting sources. Therefore, in 1985, the Commission adopted a *Report and Order* (50 FR 11151, 1985) to provide specifically for routine evaluation for environmental RF radiation from certain FCC-authorized facilities and services. This was followed by a *Second Report and Order* (52 FR 13240, 1987) further defining FCC policy and providing for categorical exclusion of certain facilities. The Commission's policy on compliance with RF radiation standards is set out in § 1.1307(b) of the Rules.

3. FM booster stations are a special class of FM translators that retransmit signals of a full service FM broadcast station to areas normally unable to receive satisfactory service due to terrain obstructions. Until 1987, FM booster stations were limited to output powers of 10 watts or less. However, the Commission adopted a *Report and Order* (52 FR 31398, 1987) amending part 74 of the FCC's Rules to permit substantial increases in power for these stations.

4. FM translators, including booster stations, were previously categorically excluded from evaluation for RF radiation under § 1.1307(b) based on the previous lower power limitations. However, because of the relaxation in power limitations it appeared that a categorical exclusion was no longer warranted. Allowable output powers can now be as high as 20 kilowatts. Therefore, we previously proposed (52 FR 49032, 1987) to add Subpart L, Part 74, of the Rules to the list of rule sections to which § 1.1307(b) applies.

5. This *Report and Order* amends § 1.1307(b) to provide for of evaluation of environmental RF radiation from FM booster stations licensed under Part 74, Subpart L. FM translator stations whose power levels continue to be limited to 10 watts or less will not be affected by this rule amendment and will continue to be categorically excluded from § 1.1307(b).

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Ordering Clauses

Accordingly, it is ordered that, effective March 6, 1989, Part 1 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as set forth below and that this amendment will be applicable to applications filed on or after this effective date.

This action is taken pursuant to the provisions of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

List of Subjects in 47 CFR Part 1

Practice and procedure, National Environmental Policy Act, Radiofrequency radiation.

Rule Changes

Part 1, Chapter I, of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

2. In § 1.1307, the note in paragraph (b) is revised as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note to paragraph (b): Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A, C, and L (FM boosters only)), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other Parts, Subparts, or sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraph (c) or (d) of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–646 Filed 1–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–378, RM–5927]

Radio Broadcasting Services; Saint Robert, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 243A to Saint Robert, Missouri, in response to a petition for Reconsideration filed by Keven A. Barton ("petitioner"). A Report and Order was issued in this proceeding on April 29, 1988 dismissing the rule making for lack of interest. According to petitioner timely comments were filed but never received by the Commission. Petitioner's late filed comments have been accepted for the purpose of allotting FM Channel 243A to Saint Robert, Missouri, as that community's first FM Broadcast station. The coordinates for Channel 243A are 37–49–41 and 92–10–39. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989; the window period for filing applications will open on February 14, 1989; and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–378, adopted November 16, 1988, and released December 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri is amended by adding Saint Robert, Channel 243A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–651 Filed 1–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–326; RM–5778]

Radio Broadcasting Services; Ephrata, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 222C2 for Channel 240A at Ephrata, Washington, and modifies the license of Station KGDN(FM) to specify operation on the higher class channel, as that community's first wide coverage area FM service at the request of Read Broadcasting. In addition, this document allots Channel 230C2 to Ephrata, as a second local FM service, at the request of Randy Boruff. Both channels can be allotted in compliance with § 73.207 of the Commission's Rules. The current transmitter site of Station KGDN(FM) can be used for the upgrade at coordinates 47–19–14 and 119–34–21. Channel 230C2 requires a site restriction of 10.9 kilometers (6.8 miles) south of the community at coordinates 47–13–16 and 119–31–12. Concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications for Channel 230C2 at Ephrata, Washington, will open on February 14, 1989, and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–326, adopted November 30, 1988, and released January 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by adding Channels 222C2 and 230C2 and deleting Channel 240A at Ephrata.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–650 Filed 1–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

MM [Docket No. 88–169; RM–6216]

Radio Broadcasting Services; Burns, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270C2 to Burns, Wyoming, as that community's first FM service, at the request of Gary Albarez. A site restriction of 12.5 kilometers (7.8 miles) southwest of the city is required at coordinates 41–07–05 and 104–28–08. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will be open on February 14, 1989, and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–169, adopted November 30, 1988, and released January 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Wyoming, by adding Channel 270C2 at Burns.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–649 Filed 1–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–168, RM–6217]

Radio Broadcasting Services; Pine Bluffs, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C2 to Pine Bluffs, Wyoming, as that community's first FM service, at the request of Robert Jason. The allotment can be made consistent with the Commission's minimum spacing requirements at reference coordinates 41–10–42 and 104–03–48. With this action, this proceeding is terminated.

DATES: Effective February 13, 1989. The window period for filing applications will open on February 14, 1989, and close on March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–168, adopted November 30, 1988, and released January 3, 1989. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wyoming, by adding Pine Bluffs, Channel 287C2.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-648 Filed 1-11-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 8
Thursday, January 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 862 3085]

Alamo Rent-A-Car, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Fort Lauderdale, Fla. rental company to disclose charges that are mandatory or are not reasonably avoidable to every consumer who inquires about the prices.

DATES: Comments must be received on or before March 13, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael J. Bloom, New York Regional Office, Federal Trade Commission, 2243 Federal Bldg., 26 Federal Plaza, New York, NY 10278. (212) 264-1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Automobiles, Rental cars, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Alamo Rent-A-Car, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between Alamo Rent-A-Car, Inc., by its duly authorized officers, and its attorneys and counsel for the Federal Trade Commission that:

1. Proposed respondent Alamo Rent-A-Car, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its headquarters located at 110 South East Sixth Street, Fort Lauderdale, Florida 33301.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered that respondent Alamo Rent-A-Car, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

B. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers.

C. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges sought to be imposed in connection with a contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

II.

It is further ordered that respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future operating divisions, subsidiaries, franchisees, dealers, and managerial employees.

III.

It is further ordered that, for a period of ten (10) years, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

IV.

It is further ordered that respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Alamo Rent-A-Car, Inc. ("Alamo").

The proposed consent order has been placed on public record for sixty (60) days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations as to the price of car rentals made by Alamo's agents in response to consumer inquiries. Consumers generally receive price representations when they call Alamo's "800" number for information and to make reservations. The Commission's complaint charges that the price representations made by Alamo's telephone agents often deceive consumers because they omit certain applicable charges, thus substantially understating the actual cost of renting a vehicle.

Specifically, the complaint charges that in oral presentations in response to consumers' telephone inquiries to Alamo's "800" number, Alamo's agents have, in numerous instances, stated prices for Alamo's car rental services without disclosing the existence and amount of a mandatory fuel charge, and the existence and amount of a mandatory airport surcharge or fee. The airport surcharge or fee is imposed on consumers who travel from certain airport locations to one of Alamo's rental stations in one of Alamo's shuttle vehicles.

The complaint further states that the existence and amounts of an applicable fuel charge and airport surcharge would be material to consumers. The representation of a price for a contemplated rental, in connection with a discussion or inquiry, without disclosure of these charges is an unfair or deceptive act or practice.

The consent order contains provisions designed to remedy these deceptive omissions of applicable charges. Part I of the order essentially requires that Alamo cease and desist from failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are not reasonably avoidable by consumers. The order further provides that Alamo cease and desist from failing to disclose, in connection with any consumer inquiry as to price, all fuel charges that are not reasonably avoidable by consumers. Similarly, the order provisions require that Alamo cease and desist from failing to disclose, in connection with any discussion of inquiry relating to the price of a rental, any other charges sought to be imposed in connection with the rental that are mandatory or are not reasonably avoidable by consumers.

Part II of the order requires Alamo, for a period of three (3) years, to distribute a copy of the order to all present and future operating divisions, subsidiaries, franchisees, dealers, and managerial employees.

Part IV requires Alamo to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-724 Filed 1-11-89; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 305

Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Appliance Energy Conservation Amendments of 1988 [1] ("NAECA 88") was enacted on June 28, 1988. Its purposes are to increase energy efficiency in the nation and to reduce the regulatory burden on the fluorescent lamp industry by establishing a single federal standard for the minimum energy efficiency of fluorescent lamp ballasts.

NAECA 88 adds fluorescent ballasts to the list of appliances in the Energy Policy and Conservation Act ("EPCA"), as amended by the National Appliance Energy Conservation Act of 1987 ("NAECA 87"),[2] for which the Department of Energy ("DOE") must establish minimum efficiency standards. In addition, NAECA 88 requires DOE to establish ballast testing procedures and requires the Commission to promulgate ballast labeling requirements.

In today's Notice, the Federal Trade Commission ("the Commission") seeks comment on a proposal to add fluorescent lamp ballasts to the list of products covered by the Commission's Appliance Labeling Rule ("the Rule"),[3] and related disclosure requirements.

DATES: Written comments must be submitted on or before February 13, 1989.

Persons desiring a public hearing on the proposed amendments should advise the Presiding Officer by no later than February 2, 1989. If hearings are scheduled, the date and time of the hearings, as well as the date for submission of prepared witness statements and exhibits, will be announced in a subsequent Notice.

ADDRESS: Written comments and requests for public hearings should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202-326-3642. Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

Fluorescent lamp ballasts are electrical devices that start and operate fluorescent lamps. Ballasts operate at various levels of energy efficiency. The standards set in NAECA 88 will phase out the least efficient ballasts. The remaining ballasts, which all manufacturers make, are typically ten to fifteen percent more efficient. The more efficient ballasts run cooler, last longer and deliver the same quantity and quality of light.

Since it is estimated that approximately ten percent of the nation's electricity is consumed by fluorescent lighting, most of which is installed in office and institutional buildings,[4] there is a tremendous opportunity for energy savings. The American Council for an Energy Efficient Economy ("ACEEE") in Washington, DC, estimates that there are over fifty million new ballasts sold each year. Each higher efficiency ballast saves ten to twenty-four watts. ACEEE estimates that NAECA 88 will reduce the need for new electric generating capacity by 7,000 megawatts.

The initial cost of the more efficient ballasts is slightly higher, and the typical payback will take approximately two years. But ACEEE estimates that, because ballasts last from twelve to fifteen years, NAECA 88 will save consumers eleven billion dollars by the year 2000 and sixteen billion dollars by the year 2010. There will be additional savings because of the reduced cooling load in buildings and the reduced need to build new power plants.

NAECA 88 Requirements

Standards and Testing

NAECA 88 amends EPCA/NAECA 87 [5] by establishing minimum energy efficiency standards for fluorescent lamp ballasts. The standards will apply only to the four most commonly used fluorescent lamp ballasts, which make up approximately 85% of the ballast market.[6] The standards will take effect in phases, with manufacturers of ballasts having to comply with respect to ballasts manufactured after January 1, 1990, sold after April 1, 1990 or incorporated into lamps by April 1, 1991. NAECA 88 also directs DOE to establish a testing procedure for ballasts. The labeling rules the FTC must prescribe, however, are not dependent upon DOE's promulgation of this procedure.

Labeling

NAECA 88 directs the Federal Trade Commission to amend the Appliance Labeling Rule to require disclosure that ballasts meet the minimum efficiency standards set by NAECA 88. The legislation specifically requires that the disclosure be in the form of a capital letter "E" printed within a circle on the ballast and on the packaging of the ballast or the lamp containing the ballast.[7] Further, NAECA 1988 gives the Commission the option to require that any information required on the label also be disclosed in any printed matter displayed or distributed at the point of sale of such ballasts. Sec. 2(d)(3), 102 Stat. 673.

The Commission is required by the statute to have the amendments in place by July 1, 1989. The rule, however, will only apply to products manufactured on or after January 1, 1990. Under section 336(a) of EPCA,[8] the Commission must prescribe amendments to its Appliance Labeling Rule in accordance with the notice-and-comment requirements of section 553 of the Administrative Procedure Act,[9] except that interested persons must be afforded an opportunity for a hearing.

Proposed Amendments

Although NAECA 88 adds fluorescent lamp ballasts to the list of covered products under EPCA, its substantive requirements are significantly more limited than those for the other products covered by the Rule. To prevent the new status of fluorescent lamp ballasts as a "covered product" from triggering other requirements of the existing Rule, the Commission proposes a number of minor amendments to adjust the Rule. These minor amendments, which reconcile the Rule's existing labeling requirements with the simplified approach taken with fluorescent lamp ballasts, are to the following sections of the Rule:

Section 305.1(a) Scope of the Regulations in this Part
Section 305.2 (n), (o) and (p) Definitions
Section 305.3(j) Description of Covered Products to Which This Part Applies
Section 305.4(e)(2) Prohibited Acts
Section 305.5 and (i) Determinations of Estimated Annual Energy Cost and Energy Efficiency Rating
Section 305.10(a) Ranges of Estimated Annual Energy Costs and Energy Efficiency Ratings
Section 305.16 Required Testing by Designated Laboratory
Section 305.18 (i) and (j) When the Rule Takes Effect.

The minor changes to these sections are identified in Section C of this Notice, which contains the text of the proposed amendments. A discussion of the substantive amendments and other substantive considerations appears below.

Section 305.8 Submission of Data

Section 326 of EPCA, which is unchanged by the NAECA 88 amendments, requires manufacturers of covered products to submit to the Commission "relevant" energy usage data and starting serial numbers pertaining to their products.[10] These

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[1] Pub. L. 100-357, 102 Stat. 671.

[2] 42 U.S.C. 6291 *et seq.*

[3] 16 CFR Part 305.

[4] S. Rep. No. 100-345, 100th Cong., 2d Sess. 2 (1988).

[5] NAECA 87 set minimum energy efficiency standards for 11 major home appliances and preempted any state standards for those products.

[6] The ballasts affected are those that operate at a nominal input voltage of 120 or 277 volts, with an input current frequency of 60 Hertz, and are for use with one (or two) F40T12 lamps (40 watts, 48 by one and one-half inches), two F96T12 lamps (75 watts, 96 by one and one-half inches) or two F96T12HO lamps (110 watts, 96 by one and one-half inches).

[7] (B) The Commission shall prescribe labeling rules under this section applicable to the covered products specified in paragraph (13) of section 322(a) and to which standards are applicable under section 325. Such rules shall provide that the labeling of any fluorescent lamp ballast manufactured on or after January 1, 1990, will indicate conspicuously, in a manner prescribed by the Commission under subsection (b) by July 1, 1989, a capital letter "E" printed within a circle on the ballast and on the packaging of the ballast or of the luminaire into which the ballast has been incorporated. Sec. 2(d)(1), 102 Stat. 672.

[8] 42 U.S.C. 6306.

[9] 5 U.S.C. 553.

[10] The requirement for reporting starting serial numbers is found in section 326(b)(1) [42 U.S.C.

Continued

requirements are repeated in § 305.8 of the Rule. The Commission uses this information to establish and maintain the ranges of comparability and for enforcement purposes with respect to the household appliances presently covered by the Rule.

The Commission proposes excluding manufacturers of fluorescent lamp ballasts from these requirements because the Commission has been told by industry sources that these products do not have serial numbers and because the Commission believes that energy usage information for these products is not "relevant," as contemplated by the statute. The Commission has concluded that the information would not be "relevant" for two reasons. First, the labels for fluorescent lamp ballasts will not disclose ranges for these products, since the statutory labeling requirement does not include the disclosure of ranges, so the information would not be used for compiling ranges. Second, in this situation, the information probably would not be very helpful to the Commission for law enforcement purposes. Congress anticipated the possibility that, prior to the January 1, 1990, manufacturing cutoff date, some manufacturers might legally produce and "stockpile" ballasts that do not comply with the standards for sale after the amendments take effect. To limit this, the minimum efficiency standards to be set by DOE will apply to all fluorescent lamp ballasts sold on or after April 1, 1990 or incoporated into luminaires on or after April 1, 1991.

To ensure that there are no other reasons for manufacturers of these products to submit energy usage data to the Commission, the Commission seeks comment on whether, and for what reason, such submissions should be made. The Commission is also interested in receiving suggestions on what method to use to determine the date of manufacture of fluorescent lamp ballasts for enforcement purposes, since the use of starting serial numbers (which can be used with other products covered by the Commission's Rule) will not be possible with fluorescent lamp ballasts.

Section 305.11(d) Labeling for Covered Products

The Commission has added a new subsection—§ 305.11(d)—to the section on labeling in order to set out the manner in which the encircled capital "E" logo must be disclosed. The proposed language contains no references to the specific size or style of the lettering to be used for two reasons. First, section 324(a)(2)(B) of EPCA (as amended by NAECA 88) indicates only that fluorescent lamp ballasts are to be labeled "conspicuously" in a manner prescribed by the Commission." The statute does not specifically require the Commission to specify items such as type size and face. Second, these products are seldom seen or purchased by consumers, and since the disclosure itself communicates no comparative numerical information, extremely specific regulatory requirements seem unnecessary.

For these reasons, the Commission has drafted the regulation to incorporate the statutory criterion of a "conspicuous" disclosure coupled with several options as to how and where the disclosure must be made. Since all fluorescent lamp ballasts are labeled with a stick-on label that discloses the UL mark, the manufacturer's name, a catalog number, a wiring diagram, voltage, Hertz and other information, most manufacturers will probably take the option of disclosing the logo on the label. The other options are using a separate label or indelibly stamping the ballast itself. The disclosure must be made on the surface of the ballast that is normally labeled, and in color-contrasting ink.

The requirement for disclosing the logo on packaging for individual ballasts and luminaires parallels the disclosure requirements for ballasts themselves. The disclosure must be made on the surface on which printing normally appears, and may be in the form of a separate label or an addition to an existing label, or printing or an indelible stamp on the package itself. If the package contains printing on more than one surface, the label must appear on the surface that contains the product's specifications. The Commission has learned that the majority of fluorescent lamp ballasts and luminaires are packaged by the pallet load, usually wrapped in plastic sheeting, or "shrink-wrap." Such loads are often accompanied by documentation under the shrink-wrap that contains descriptive product information. To ensure that the logo is disclosed conspicuously under these circumstances, this proposed section requires that the logo appear "conspicuously" on the packaging, the shrink-wrap and the accompanying documentation. Again, the options for the method of disclosure are a separate label, printing or stamping with indelible ink.

Since the Commission's gathering of information relating to this industry's practices concerning packaging and marketing is only in the preliminary stage, the Commission seeks comment on the appropriateness of the disclosure approach taken in this section. Specifically, the Commission is asking for comments on whether the requirement should be more specific as to the size, design and placement of the logo, and if so, what specifications would be appropriate. The Commission also solicits information about all aspects of the packaging of these products and is interested in receiving suggestions concerning the most effective method of labeling the packages.

Section 305.13 Promotional Materiol Displayed or Distributed at Point of Sale

The NAECA 88 amendments do not affect the Commission's authority to require certain disclosures in connection with the use, by manufacturers of covered products, of point-of-sale promotional materials. As noted above, the Commission has been informed that fluorescent lamp ballasts and luminaires containing them are infrequently bought at retail and promotional materials are rarely, if ever, used. Therefore, the Commission has excluded manufacturers of these products from the requirements of § 305.13 of the Rule, even though section 324(c)(4) of EPCA grants the Commission the authority to include them.

In order to confirm that these products are not sold through the use of such promotional materials, however, the Commission wishes to know whether, and to what extent, such materials are used by the industry.

Section 305.14 Catalogs

Section 326(a) of EPCA, which is unaffected by NAECA 88, requires that if a manufacturer of a covered product advertises the product in a catalog, the catalog must display all the information required on the label, unless otherwise required by the Commisison. The Commission has learned that these products are sold to builders, distributors and retailers through catalogs. The Commission has, therefore, included manufacturers of fluorescent lamp ballasts in the requirements of this section of the Rule, and ballast manufacturers must display the logo in connection with the product description for each covered ballast they include in their catalogs.

Section A—Invitation To Comment

All interested persons are hereby notified that they may comment on any

6296(b)(1)] and the requirement for reporting relevant energy consumption data is found in section 326(b)(4) [42 U.S.C. 6296(b)(4)].

issue of fact, law or policy that may have bearing upon the proposed rules. While the Commission welcomes comments on any aspect of the proposed rules, there are questions that appear at the end of the discussions of the proposed amendments themselves. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rules being discussed.

The Commission requests that commenters provide representative factual data. Individual firms' experiences are relevant to the extent they typify industry experience, in general, or that of similar-sized firms. Comments opposing the proposed rules or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rules. Comments should be supported by a full discussion of all the relevant facts and/or be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting these proposed rules as final rules, consideration will be given to any written comments timely submitted to the Presiding Officer and on the record of the hearing, if one is held. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

Section B—Public Hearings

Persons desiring a public hearing on the proposed amendments should notify the Presiding Officer by no later than February 2, 1989. If there is interest in a hearing, it will take place in Room 532 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Northwest, Washington, DC, at a time and date that will be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify will be required to submit to the Presiding Officer a complete statement in advance. This will be entered into the record in full. However, as a general rule, oral statements should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. Further instructions to witnesses will be contained in the notice announcing the hearing.

Section C—Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Henry B. Cabell, the Presiding Officer, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a rule will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

Section D—Post-Comment-Period or Post-Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearing, or the close of the comment period if no hearing is held, to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions that are essential additional written comments, rather than rebuttal. If a hearing is held, the 20-day rebuttal period will commence when the final transcript of the hearing is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, staff will analyze the evidence on the record and prepare and submit a recommendation for the final rule.

Section E—Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this document because it is believed the amendments, if promulgated, "will not have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605).

The requirement that lamp ballasts and lamp ballast packaging bear the encircled "E" logo is statutorily imposed and the proposed regulations will impose few additional costs. The statutory disclosure requirement itself will result in only minimal cost to the industry.

Because these changes are not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, the Commission believes that a regulatory analysis is unnecessary. This conclusion is based on information presently available to the Commission and its staff. The Commission requests any information on whether the amendments proposed today would have a significant economic impact on a substantial number of small entities. After receiving comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified, under the provisions of section 5 of the Regulatory Flexibilty Act (5 U.S.C. 605(b)), that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section F—Paperwork Reduction Act

The amendments proposed today are not subject to the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3518, because they do not contain disclosure or reporting requirements that constitute the "collection of information" as defined by the rule implementing the PRA. This is because the all of the information that must be disclosed (the encircled "E") is provided by the government and the industry does not have the collect information in order to develop the disclosure.[11]

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Section G—Proposed Amendments

For the reasons set forth in the preamble, the Commission proposes to amend Title 16, Part 305 of the Code of Federal Regulations as follows:

PART 305—RULES FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES

1. The authority citation for Part 305 is revised to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988).

[11] "The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within th[e] definition [of information collection]." 5 CFR 1320.7(c)(2) (1988).

42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. It is proposed that § 305.1(a) be revised to read as follows:

§ 305.1 Scope of the regulations in this part.

* * * * *

(a) Labeling the products with information indicating their estimated annual energy costs or energy efficiency ratings, and related information or their compliance with applicable standards under section 325 of the Energy Policy and Convesrvation Act, 42 U.S.C. 6295.

* * * * *

3 It is further proposed that § 305.2(n) and (o) be revised, and that § 305.2 be amended by the addition of a new paragraph (p), to read as follows:

§ 305.2 Definitions.

* * * * *

(n) "Consumer appliance product" means any "consumer product," as identified in section 322 of the Act (42 U.S.C. 6292).

(o) "Covered product" means any consumer appliance product defined in § 305.3 of the rule.

(p) "Luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

4. It is further proposed that § 305.3 be amended by the addition of a new paragraph (j) to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(j) "Fluorescent lamp ballast" means a device that is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

5. It is further proposed that § 305.4(e)(2) be revised to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, except central air conditioners, pulse combustion and condensing furnances, and fluorescent lamp ballasts, if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner, pulse combustion furnace or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its manufacture was completed prior to January 1, 1990.

* * * * *

6. It is further proposed that § 305.5 be amended by revising the introductory text and by adding a new paragraph (i), to read as follows:

§ 305.5 Determinations of estimated annual energy cost and energy efficient rating.

Procedures for determining the estimated annual energy costs, the energy efficiency ratings and the power and efficacy factors of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

* * * * *

(i) Fluorescent lamp ballasts—§ 430.22(q).

7. It is further proposed that the first sentence of § 305.8(a) be revised to read as follows:

§ 305.8 Submission of data.

(a) Each manufacturer of a covered product, except manufacturers of fluorescent lamp ballasts, shall submit to the Commission, not later than January 21, 1980 (for manufacturers of central air conditioners and pulse combustion and condensing furnaces, the submission date shall be two months after publication of a final, amended rule covering those products), a report listing the estimated annual energy cost (for refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, and clothes washers) or the energy efficiency rating (for room air conditioners, central air conditioners and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. * * *

* * * * *

8. It is further proposed that the first sentence of § 305.10(a) be revised to read as follows:

§ 305.10 Ranges of estimated annual energy costs and energy efficiency ratings.

(a) The range of estimated annual energy costs or range of energy efficiency ratings for each covered product (except fluorescent lamp ballasts) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the products. * * *

* * * * *

9. It is further proposed that § 305.11 be amended by the addition of a new paragraph (d) to read as follows:

§ 305.11 Labeling for covered products.

* * * * *

(d) *Fluorescent Lamp Ballasts and Luminaires*—(1) *Contents.* Fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, shall be marked conspicuously with a capital letter "E" printed within a circle. Packaging for such fluorescent lamp ballasts, as well as packaging for luminaires into which they are incorporated, shall also be marked with a capital letter "E" printed within a circle.

(2) *Product Labeling.* The encircles capital "E" on fluorescent lamp ballasts must appear conspicuously, in color-contrasting ink, on the surface that is normally labeled. It may be printed on the label that normally appears on the fluorescent lamp ballast, printed on a separate label, or stamped indelibly on the surface of the fluorescent lamp ballast.

(3) *Package Labeling.* For purposes of labeling under this section, packaging for such fluorescent lamp ballasts and the luminaires into which they are incorporated consists of the plastic sheeting, or "shrink-wrap," covering pallet loads of fluorescent lamp ballasts or luminaires as well as any containers in which such fluorescent lamp ballasts or the luminaires into which they are incorporated are marketed individually or in small numbers. The encircled capital "E" on packages containing fluorescent lamp ballasts or the luminaires into which they are incorporated must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital "E" may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads, the encircled capital "E" must appear conspicuously, in color-contrasting ink, on the plastic sheeting as well as on any documentation that would normally accompany such a pallet load. The encircled capital "E" may appear on a label affixed to the sheeting or may be indelibly stamped on the sheeting. It may be printed on the documentation, printed on a separate label that is stuck to the documentation or indelibly stamped on the documentation.

10. It is further proposed that the introductory text of § 305.13(a) be revised to read as follows:

§ 305.13 Promotional material displayed or distributed at point of sale.

(a) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts) shall clearly and conspicuously include in such printed material the following required disclosure:

* * * * *

11. It is further proposed that § 305.14 be amended by revising the introductory text of paragraph (a), and by adding a new paragraph (c), to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product (except fluorescent lamp ballasts) in a catalog, from which it may be purchased by cash, charge account or credit terms, shall include in such catalog, on each page that lists a covered product, the following information required to be disclosed on the label:

* * * * *

(c) Any manufacturer, distributor, retailer, or private labeler who advertises fluorescent lamp ballasts that are "covered products," as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, in a catalog, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such fluorescent lamp ballasts, a capital letter "E" printed within a circle.

12. It is further proposed that the first sentence of § 305.16 be revised to read as follows:

§ 305.16 . Required testing and designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy cost or energy efficiency rating disclosed on the label or fact sheet, or as required by § 305.14, or the representation made by the encircled capital "E" label that the product is in compliance with applicable standards in section 325 of the Act, is accurate.

* * * * *

13. It is further proposed that § 305.18 be amended by the redesignation of paragraph (i) to (j), and the addition of a new paragraph (i), to read as follows (Paragraph (j) is republished for the convenience of the reader).:

§ 305.18 When the rules take effect.

* * * * *

(i) All requirements pertaining to fluorescent lamp ballasts take effect for all new covered products on which manufacture is completed on or after January 1, 1990. All requirements pertaining to luminaries into which covered fluorescent lamp ballasts have been incorporated take effect on January 1, 1990.

(j) All other requirements of this rule except those in section 305.4(d) take effect on May 19, 1980.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-722 Filed 1-11-89; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Proposed Exemption of Medroxyprogesterone Acetate Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to allow medroxyprogesterone acetate (MPA) tablets to be marketed in packages that are not child-resistant. Child-resistant packaging currently is required because these substances are oral prescription drugs. This drug is proposed to be exempted because of its low toxicity. The drug is used for the treatment of female hormonal imbalance disorders.

DATE: Comments on the proposal should be submitted not later than March 13, 1989.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland, telephone (301) 492-6800.

All public documents that the Commission has concerning this proceeding may be inspected at, or copies obtained from, the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Virginia White, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Among other substances, oral prescription drugs intended for human use are subject to child-resistant packaging requirements issued under the Poison Prevention Packaging Act of 1970 ("the PPPA"), 15 U.S.C. 1471-1476 (16 CFR 1700.14(a)(10)). By letter dated February 22, 1988, the Upjohn Company petitioned the Commission to exempt its medroxyprogesterone acetate ("MPA") tablets from these child-resistant packaging requirements (Petition PP 88-1). MPA, a progestin, is a prescription hormonal drug used for the treatment of a variety of female hormonal imbalance disorders.

The Commission has previously proposed an exemption for MPA tablets in mnemonic packages [1] that contain no more than 100 milligrams of the drug (53 FR 41202 (October 20, 1988)). That proposal was in response to a petition from Ayerst Laboratories (Petition PP 87-3). The later Upjohn Company petition, if granted and issued, would exempt all package types for MPA tablets and remove the maximum amount to which the exemption sought by Ayerst Laboratories would apply.

As justification for the present exemption request, the Upjohn Company submitted evidence of the low oral toxicity of progestins and data showing the absence of acute toxicity from ingestion of progestins by young children. The petitioner also cited data that the Commission used as the basis for previous exemptions of other progestin drugs.

B. Human Experience and Toxicity Data

Data from the Food and Drug Administration ("FDA") National Clearinghouse for Poison Control Centers for the years 1978 through 1984 show a total of 78 reported ingestions of MPA by children under age five. Three of the cases reported symptoms; one case resulted in a hospital visit with no reported symptoms.

For the period of 1978 through August 1987, the Commission's CAP (Children and Poisoning) data base shows five cases of MPA ingestions by children under five treated in hospital emergency rooms. All were treated and released.

[1] A mnemonic package is any package designed for the administration of one dosage unit at a time and incorporating any feature which serves to remind the user to take the dosage at specified intervals throughout the period during which the medication is to be administered.

A literature review and a review of FDA Adverse Drug Reaction Reports revealed no reports of death or serious injury to children under age five following acute ingestion of MPA.

Information on the median lethal dosage (LD–50) of MPA, as well as other progestins, is scant because of the extremely low toxicity of these compounds. Reported oral toxicity tests conducted in rats with MPA resulted in no deaths or toxic symptoms even with doses of MPA as high as 10,000 mg/kilogram.

The Commission's Directorate for Health Sciences evaluated this petition and concluded that, because of the low order of toxicity of progestins, removing the limitation on the permissible amount of MPA per exempted package will not pose a risk of serious injury to young children due to accidental ingestion. Available data indicate that a one-time ingestion of MPA by a child is not likely to result in either acute or chronic health effects.

Long-term therapeutic administration of progestin compounds has been shown to lead to an increased risk of various blood-clotting disorders in women. These compounds can also damage the fetus. There is, however, no evidence that such effects would be expected from a single ingestion by a child.

Oral progestins, including MPA, have been available for the past 40 years. The low toxicity of hormonal drugs is well established. In 1984, the Commission exempted estrogen and progestin oral contraceptives from special packaging requirements (49 FR 44455). The Commission concluded that the extensive human experience data available at the time provided no evidence of either acute or chronic health effects associated with accidental ingestion of oral contraceptives. In spite of the high frequency of ingestion of oral contraceptives, the frequency of either acute or long-term injury was one of the lowest for any class of drugs.

The FDA concluded that estrogens and progestins could probably be classified as akin to nontoxic because it would be virtually impossible for a child to ingest an amount approaching what might be considered a lethal dose. These data suggest that the frequency of acute injury from accidental ingestion of these hormones will remain low. Based on these same considerations, the Commission granted exemptions for norethindrone acetate tablets (a progestin) and conjugated estrogens tablets in 1984 (49 FR 50386 (December 28, 1984)).

Based on a review of available human and animal data, the Commission preliminarily concludes that progestins have a low order of acute toxicity. Accidental ingestion by children would, therefore, pose a minimal threat of illness or injury.

C. Action On The Petition

After considering the available information, the Commission preliminarily concluded that the degree and nature of the hazard to children presented by the availability of medroxyprogesterone acetate tablets are such that special packaging is not required to proctect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance. Accordingly, the Commission voted to grant the petition. Therefore, the Commission proposes below to amend 16 CFR 1700.14(a)(10) to exempt medroxyprogesterone acetate tablets from requirements for child-resistant packaging.

D. Regulatory Flexibility Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The exemption proposed below will have the effect of giving the manufacturers of the exempted products the option of packaging their product in an additional manner. This product is marketed by a small number of large firms; the overall effect of the proposed exemption on costs or competition is expected to be negligible. The Commission knows of no small manufacturers or other entities that would likely be significantly affected.

Accordingly, the Commission concludes that this exemption will not have any significant economic effect on a substantial number of small entities.

E. Environmental Considerations

The Commission's regulations governing the environmental review procedures state, at 16 CFR 1021.5(c)(3), that exemption of products from requirements for child-resistant packaging under the PPPA normally has little or no potential for affecting the human environment. The Commission does not foresee any special or unusual circumstances surrounding the proposed issue below. For this reason, the Commission concludes that neither an environmental assessment nor an environmental impact statement is required in this proceeding.

F. Effective Date

Since the rule issued below provides for an exemption, the provision of 5 U.S.C. 553(c) requiring a delay in the effective date is inapplicable. Accordingly, the rule shall become effective upon publication of the final rule in the **Federal Register**.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

Conclusion

For the reasons given above, the Commission proposes to amend Title 16 of the Code of Federal Regulations to read as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. A new § 1700.14(a)(10)(xix) is added to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) * * *

(xix) Medroxyprogesterone acetate tablets.

Dated: January 5, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–681 Filed 1–11–89; 8:15 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–491–87]

Public Hearing on Proposed Regulations; Corporate Distributions and Certain Nonrecognition Exchanges and Other Transfers and Withholding

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations providing rules for the exchange, distribution, or transfer of U.S. real property interests without recognition of gain under the Foreign Investment in Real Property Tax Act of 1980. The regulations also treat interests in certain partnerships as entirely U.S. real property interests for purposes of withholding on the proceeds from dispositions of such interests. In addition, the regulations provide rules with respect to the treatment of interests in publicly traded corporations.

DATES: The public hearing will be held on Wednesday, March 1, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, February 15, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:CORP:T.R (INTL–491–87), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone, 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that add new §§ 1.897–4AT, 1.897–5T, 1.897–6T, 1.897–7T, 1.897–8T and 1.897–9T relating to corporate distributions and certain nonrecognition exchanges, and new §§ 1.1445–9T, 1.1445–10T, and 1.1445–11T relating to certain withholding provisions, all in the context of the Foreign Investment in Real Property Tax Act (FIRPTA). The proposed regulations appeared in the **Federal Register** for Thursday, May 5, 1988 (53 FR 16233).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than February 15, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–721 Filed 1–11–89; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–3504–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Perox, Incorporated, Sharon, Pennsylvania, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until February 27, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by January 27, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–89–PXEP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–

9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Perox's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evalutation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the agency determined that, because Perox utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Perox, Incorporated, Sharon, Pennsylvania.

1. Petition for Exclusion

Perox, Incorporated (Perox), located in Sharon, Pennsylvania, operates a spent hydrochloric acid pickle liquor regeneration plant for spent pickle liquor generated solely from steel finishing operations at Sharon Steel Corporation. Perox petitioned the Agency to exclude its iron oxide, produced as a by-product from the regeneration of spent pickle liquor, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. EPA Hazardous Waste No. K062 is also classified as a corrosive waste under 40 CFR § 261.30.

Perox petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Perox also believes that its iron oxide is non-hazardous because the constituents of concern, although present in the waste, are in an essentially immobile form. Perox further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Perox's petition.

2. Background

Perox petitioned the Agency to exclude its iron oxide waste on March 27, 1986 and subsequently provided additional information to complete its petition. In support of its petition, Perox submitted (1) a detailed description of its hydrochloric acid regeneration process, including schematic diagrams; (2) total constituent and EP toxicity test results of the iron oxide for the EP toxic metals and nickel; (3) analytical results of total cyanide; (4) iron oxide analysis data (*e.g.*, inorganic compounds, density and particle size measurements) for a six-month period; and (5) results from characteristics testing for ignitability, corrosivity, and reactivity.

Perox's regeneration process involves the separation of waste iron oxide from spent hydrochloric acid pickle liquor. Hydrochloric acid is used to remove mill scale and iron oxide rust from various steel products. During pickling, ferrous chloride forms in the pickle liquor. When this iron salt accumulates to the extent that the acid is no longer useful for pickling, the spent acid must be replenished or regenerated.

The resulting spent hydrochloric acid pickle liquor is regenerated using a "spray roaster" process. In this process, waste pickle liquor is sprayed in a spray roaster, where ferrous chloride is converted to ferric oxide and hydrochloric acid in the vapor phase. Temperatures in the roaster vary between 700 and 2,800 °F. Iron oxide precipitate is discharged from the base of the roaster and is transferred to a storage site. Hydrochloric acid is absorbed in the process water and recycled to the pickling line. The iron oxide precipitate is either milled and blended with other higher grade iron oxide and marketed as a raw material, or it is occasionally sent off site to a local hazardous waste landfill.

To collect representative samples from processes like Perox's, petitioners are normally requested to collect a minimum of four composite samples composed of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

Perox presented analytical data on four composite iron oxide samples. Each composite sample was composed of four grab samples of iron oxide collected from the roaster on each sampling date. The grab samples were collected at 2-hour intervals on July 19, 1984, July 20, 1984, July 21, 1984 and July 22, 1984. Perox claims that all samples collected are representative of any variation in the concentrations of the listed and non-listed constituents of concern because the hydrochloric acid regeneration process used at the facility is operated in a consistent manner. To support this claim, Perox provided data from a six-month compositional study of the iron oxide. As part of the study, Perox analyzed 86 waste samples for a number of metallic oxides (including lead and chromium oxide), density and particle size measurements. These study data show that the chromium oxide and lead oxide varied only from below detection to 0.0133 and 0.017 percent by weight, respectively.

As noted earlier, Perox accepts spent hydrochloric acid solely from steel finishing operations at Sharon Steel Corporation. Perox notes that any variations in steel are due only to variations in the carbon, silica and/or sulfur content of the steel. No significant variations occur with respect to any other hazardous or non-hazardous constituent. Perox further claims that no other wastes are mixed with the pickle liquor before it is sent to the regeneration plant. Thus, although Perox only collected four composite samples of the iron oxide over a period of one week (*i.e.*, petitioners are normally requested to collect samples over a period of at least one month), EPA believes that these four samples, in conjunction with the six-month iron oxide composition information, are capable of characterizing constituent concentrations in the iron oxide.

3. Agency Analysis

Perox used test methods from "Test Methods for Evalutating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (second edition) to evaluate the iron oxide samples. SW-846 Methods 7060 through 7760 were used to quantify the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the EP toxic metals and nickel in the iron oxide. Method 9040 was used to quantify the total cyanide content of the iron oxide. Method 1310 was used to determine the extraction procedure (EP) leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals and nickel in the iron oxide.

Perox did not analyze the iron oxide for total sulfides. However, due to the processes involved, the Agency does not believe that sulfides would be present in the waste. The combination of the acid from the spent pickle liquor and the high temperatures in the roaster (700–2,800 °F) would drive off any sulfides present in the iron oxide during the regeneration process.

Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, and cyanide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. Detection limits represent the lowest concentrations quantifiable by Perox, when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) IRON OXIDE

Constituents	Total constituent concentrations
Arsenic	1.1
Barium	200
Cadmium	10
Chromium	1,550
Lead	260
Mercury	0.45
Nickel	270
Selenium	ND (0.5)
Silver	110
Cyanide	ND (0.5)

ND: Not Detected. Denotes concentrations below the detection limits shown in the parentheses.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM) IRON OXIDE

Constituents	EP leachate concentrations
Arsenic	ND (0.005)
Barium	0.4
Cadmium	ND (0.01)
Chromium	0.16
Lead	0.02
Mercury	ND (0.001)
Selenium	ND (0.005)
Silver	ND (0.01)
Nickel	0.67
Cyanide	[1] 0.025

ND: Not Detected. Denotes concentrations below the detection limits shown in the parentheses.
[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent. "<" is used because cyanide was not detected in the total constituent analysis.

Wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. As such, the presence of those constituents would not be assessed using the standard EP leachate procedure. See SW–846 Method 1330. For wastes with more than one percent total oil and grease, the EP analyses must be modified in accordance with the Oily Waste EP methodology.

Perox did not analyze the iron oxide for total oil and grease content. However, the Agency does not believe the total oil and grease levels in the waste would be of concern due to the high temperatures (700–2, 800 °F) in the spray roaster. The high temperatures would either vaporize or oxidize any oil or grease present in the waste. Furthermore, staff under contract to EPA (see discussion in Section 4) tested Perox's waste for oil and grease and detected only 0.0004 percent (4 ppm) oil and grease in the iron oxide. See SW–846 Method 1330.

Perox provided test data indicating that the iron oxide does not exhibit the properties of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Perox submitted a signed certification stating that, based on current annual waste generation, their maximum annual generation rate of iron oxide is 4,800 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Perox's certified estimate of 4,800 tons (approximately 4,800 cubic yards).

The Agency has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to Perox. The results of this visit, including chemical analyses of waste samples from Perox, are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for iron oxide wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste, particularly since Perox plans to dispose of this waste in an off-site landfill. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of VHS model as applied to the evaluation of Perox's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Perox's iron oxide (see Table 2). The Agency's evaluation, using Perox's estimate of 4,800 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, cadmium, mercury, selenium, and silver) from Perox's waste because they were not detected in the EP extract using the appropriate SW–846 analytical methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) IRON OXIDE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Barium	0.063	1.0
Chromium	0.025	0.05
Lead	0.003	0.05
Nickel	0.105	0.5
Cyanide	0.004	0.7

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The iron oxide exhibited barium, chromium, lead, nickel, and cyanide levels at the compliance point below the health-based levels used in delisting-decision making. Furthermore, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm because the maximum reported concentration of total cyanide in the waste is less than 0.5 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the regeneration process is likely to volatilize any sulfides that might be present in the iron oxide, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing Perox's processes, that no other hazardous constituents of concern are being used by Perox and that no other constituents of concern are likely to be present or formed as reaction products or by-products in Perox's waste. In addition, based on test results provided by Perox, pursuant to 40 CFR 260.22, the Agency does not believe that Perox's waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity. Ignitability is not expected to be a problem because the iron oxide is the product of a high temperature (700–2,800 °F) roasting process. Corrosivity is not expected to be a problem because the iron oxide is not a liquid. Reactivity is not expected to be a problem because the iron oxide is not believed to contain reactive cyanide or reactive sulfide above the Agency's thresholds for these constituents. See 40 CFR 261.21, 261.22, and 261.23, respectively.

On April 28, 1987, staff under contract to the Agency conducted a site visit to Perox as part of the Agency's spot-check sampling and analysis program. Four samples of iron oxide were taken from the spray roaster and the storage silo at the facility: One sample was collected directly into a wide-mouth jar as the iron oxide fell from the roaster; one sample was taken from the silo by inserting a sampling tool into the pipe at the silo entry port; and two samples were taken from the base of the silo by a Perox employee and transferred to wide mouth jars and two vials. The samples were analyzed according to EPA test methods by a laboratory under contract to EPA. EP toxicity analyses of the EP toxic metals were conducted using SW–846 Method 1310. Total cyanide was analyzed using SW–846 Method 9010. Analytical difficulties were encountered during total metal analyses of the spot-check samples. These data, therefore, were not considered in the Agency's review of Perox's petition. (See the RCRA public docket for today's notice for more detail.) The samples were evaluated according to routine spot-check procedure for the presence of Priority Pollutant organics using SW–846 Methods 8270, 8080, and 8240. Other hazardous constituents (*e.g.*, those listed in 40 CFR Part 261, Appendix VIII) were not analyzed because the iron oxide is not expected to contain any organics. No organic constituents of concern were detected in the samples.

Table 4 presents the maximum reported EP leachate concentrations values of the EP toxic metals, antimony, beryllium, nickel, and cyanide.

TABLE 4.—MAXIMUM EP LEACHATE CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES IRON OXIDE

Constituents	*EP leachate concentrations*
Antimony	ND (0.25)
Arsenic	ND (0.25)
Barium	ND (2)
Beryllium	ND (0.005)
Cadmium	ND (0.05)
Chromium	ND (0.2)
Lead	ND (0.25)
Mercury	ND (0.001)
Nickel	0.53
Selenium	ND (0.02)
Silver	ND (0.0025)
Cyanide	<0.012 [1]

ND: Not Detected. Denotes concentrations below the detection limits shown in the parentheses.
[1] See footnote 1 to Table 2.

Comparison of Perox's EP leachate data with the Agency's spot-sampling EP leachate data shows little variation in the constituent concentrations reported; both sets of analyses results indicate that the iron oxide waste contains non-detectable or insignificant concentrations of leachable metals.

The leachable concentrations of nickel and cyanide, when evaluated using the VHS model, produced compliance-point concentrations below their respective regulatory levels, as seen in Table. 5.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES IRON OXIDE

Constituents	*Compliance-point concentrations*	Levels of regulatory concern [1]
Nickel	0.063	0.5
Cyanide	0.002	0.7

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, selenium, or silver) from Perox's iron oxide, because they were not detected (see Table 4). None of these constituents, therefore, is of regulatory concern.

5. Conclusion

The Agency believes that Perox has successfully demonstrated that the regeneration process used at its facility renders the KO62 waste non-hazardous.

The Agency believes that the four samples collected by Perox from the roaster, in conjunction with the six-month iron oxide composition information, were non-biased and adequately represent any variations that may occur in the iron oxide. Data from Perox's six-month compositional study showed that the chromium oxide and lead oxide varied only from below detection to 0.0133 and 0.017 percent by weight, respectively. Furthermore, Perox notes that the spent hydrochloric acid is accepted only from Sharon Steel Corporation, and that no other wastes are mixed with the acid prior to shipment to Perox for regeneration. Based on the information and on the data from the six-month compositional study, the Agency believes that the samples of iron oxide collected and analyzed reflect the day-to-day variations in Perox's regeneration process. The Agency, therefore, is proposing that Perox's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Perox, Incorporated, located in Sharon, Pennsylvania, for its iron oxide described in its petition as EPA Hazardous Waste No. KO62, if the proposed rule becomes effective, the iron oxide would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, this exclusion will apply only to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or regeneration processes are altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. Chapter 35) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: January 3, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under Sections 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
•	•	•
Perox, Inc	Sharon, PA	Iron oxide (EPA Hazardous Waste No. K062) generated from a spent hydrochloric acid pickle liquor regeneration plant for spent pickle liquor generated from steel finishing operations. This exclusion was published on [insert date of final rule's publication in the **Federal Register**].
•	•	•

[FR Doc. 89–702 Filed 1–11–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

Public Health, Safety and Comfort; Amendment of Regulations on Rules of Conduct of Visitors to the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking action addresses the increasing incidence of cultivation, manufacture, delivery, distribution, trafficking or possession of controlled substances taking place on the public lands by including them among the actions on public lands which are subject to criminal penalties.

DATE: Comments should be submitted by February 13, 1989. Comments received or postmarked after the above date may not be considered in the decision making process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m. EST) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Walter Johnson, (202) 653–8815.

SUPPLEMENTARY INFORMATION: When regulations establishing actions which would be subject to criminal penalties were originally promulgated, the drug problem had not spread to the public lands. Since that time, law enforcement employees as well as other employees of the Bureau of Land Management have been encountering increasing incidents of cultivation, manufacture, delivery, distribution, trafficking or possesion of controlled substances. Such illegal activity affects the proper management and use of the public lands. This rulemaking allows Bureau of Land Management law enforcement employees to address these violations of law appropriately as they carry out their other law enforcement duties.

The principal author of this proposed rulemaking is Walter Johnson, Chief, Law Enforcement and Resource Protection Operations Staff, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 43 CFR Part 8360

Penalties, Public lands, Recreation and recreation areas.

For the reasons set out above, it is proposed to amend Subpart 8365, Group 8300, Chapter II of the Code of **Federal Register** as set forth below.

PART 8360—[AMENDED]

1. The authority citation for Part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.* 43 U.S.C. 3152, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–62, 16 U.S.C. 1241 *et seq.*

2. Section 8365.1–4 is amended by redesignating the text of the section as paragraph (a) and by redesignating paragraphs (a) through (f) as paragraphs (a)(1) through (6) respectively and adding paragraph (b) to read:

§ 8365.1–4 Public health, safety and comfort.

• • • • •

(b) No person shall engage in the following activities on the public lands:

(1) Cultivating, manufacturing, delivering, distributing or trafficking a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11 through 1308.15, except when distribution is made by a licensed practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship; or

(2) Possessing a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11 through 1308.15, unless such substance was obtained, either directly or pursuant to a valid prescription or order or as otherwise allowed by Federal or State law, by the possessor from a licensed practitioner acting in the course of professional practice.

Michael A. Poling,

Acting Assistant Secretary of the Interior.

December 2, 1988.

[FR Doc. 89–613 Filed 1–11–89; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88–387]

Amendment of the Commission's Environmental Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission instituted this rulemaking proceeding (General Docket No. 88–387, 53 FR 34558) to reconcile its responsibilities under the National Environmental Policy Act of 1969 with its licensing procedures for facilities for which no authorization is required prior to construction. Comments and reply comments were due October 3, 1988 and October 18, 1988, respectively.

Due to an error, some of the pleadings were not placed in the Commission's Docket Branch files. Thus, the commenters who previously filed in this proceeding are requested to resubmit a copy of their pleadings with the Secretary's Office. In addition, because some comments were not placed in the public file, the Commission is affording parties an additional opportunity to submit reply comments within the time period specified below.

DATES: Comments must be re-submitted on or before January 19, 1989. Reply comments must be submitted on or before February 3, 1989.

ADDRESS: Office of Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, (202) 632–6990.

December 29, 1988.

Changes to Pleading Schedule in Gen. Docket No. 88–387, Amendment of the Commission's Environmental Rules

The Commission recently instituted a rulemaking proceeding, Amendment of the Commission's Environmental Rules, General Docket No. 88–387, 53 FR 34558, to reconcile its responsibilities under the National Environmental Policy Act of 1969 with its licensing procedures for facilities for which no authorization is required prior to construction. Comments and reply comments were due October 3, 1988 and October 18, 1988, respectively.

Due to an error, some of the pleadings filed in this proceeding were not placed in the Commission's Docket Branch files. To ensure that the Commission's records are complete and that all pleadings in this proceeding are considered, commenters who previously filed pleadings in this proceeding are requested to resubmit a copy of their pleadings with the Secretary's Officer within seven days of the publication of this Notice in the **Federal Register.** In addition, because some comments were not placed in the public file, we are providing an additional period for reply comments of 15 days after the due date for the re-filed comments.

For further information, contact A. Holly Berland, (202) 632–6990.

By the General Counsel.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–639 Filed 1–11–89; 8:45 am]

BILLING CODE 6712–01–M

BEST COPY AVAILABLE

47 CFR Part 73

[MM Docket No. 88-583, RM-6429]

Radio Broadcasting Services; Meeker, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of James H. Hicks, proposing the allotment of FM Channel 233A to Meeker, Colorado, as that community's first local FM broadcast service. Reference coordinates used for proposed Channel 233A at Meeker are 40-02-24 and 107-55-00.

DATES: Comments must be filed on or before February 21, 1989, and reply comments on or before March 8, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., Farrand, Cooper, Metzler & Bruiniers, P.O. Box 7329, San Francisco, CA 94120.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-583 adopted November 30, 1988, and released January 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-640 Filed 1-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-582, RM-6443]

Radio Broadcasting Services; Morehead, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brad-Lee-Todd Corporation, proposing to allot Channel 242A to Morehead, Kentucky, as its second local FM service, at coordinates 38-11-37 and 83-24-16, with a site restriction.

DATES: Comments must be filed on or before February 21, 1989, and reply comments on or before March 8, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James G. Hedrick, President, Brad-Lee-Todd Corporation, 1057 Cresent Drive, Wheelersburg, OH 45694 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-582, adopted November 30, 1988, and released January 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-641 Filed 1-11-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 54, No. 8

Thursday, January 12, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This notice affirms the determination of the Secretary of Agriculture that the support price for milk containing 3.67 percent milkfat shall be continued at $10.60 per hundredweight (cwt.) for the period January 1 through March 31, 1989. The prices at which butter, cheese and nonfat dry milk will be purchased by the Commodity Credit Corporation (CCC) in order to support the price of milk at that level were published on January 8, 1988, in the **Federal Register** (53 FR 544) and will continue in effect until further notice.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5747 South Building, P.O. Box 2415, Washington, DC 20013, (202)-447-3385.

The Final Regulatory Impact Analysis regarding this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS-USDA, P.O. Box 2415, Washington, DC 20013: (202)-447-7601.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The Title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to the level of price support and prices paid to producers of milk. The price of milk is supported pursuant to section 201(d) of the Agricultural Act of 1949. Section 102 of the Food Security Act of 1985 (Pub. L. 99-198) provides that the notice and rulemaking provisions of Section 553 of Title 5, United States Code, shall not apply with respect to the implementation by the Secretary of Agriculture of section 201(d) of the 1949 Act, including determinations made regarding the level of price support for milk.

It has been determined by an environmental evaluation that the determination set forth in this notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with section 201 of the 1949 Act, the Secretary of Agriculture, through CCC, supports the price of milk through purchases of milk and milk products; specifically, through the purchase of butter, nonfat dry milk and cheese.

Section 201(d)(1)(D) of the 1949 Act provides that, if for any of the calendar years 1988, 1989, and 1990 the level of CCC purchases under the milk price support program of milk and the products of milk (less sales under section 407 of the 1949 Act for unrestricted use) as estimated by the Secretary on January 1 of such calendar year would exceed 5,000,000,000 pounds (milk equivalent), the Secretary of Agriculture on January 1 of such calendar year, shall reduce, by 50 cents, the rate of price support for milk in effect on such date.

Section 201(d)(1)(E) of the 1949 Act provides that, if for any of those same calendar years the level of net CCC purchases under the milk price support program of milk and the products of milk as estimated by the Secretary on January 1 of such calendar year, would not exceed 2,500,000,000 pounds (milk equivalent), the Secretary shall, as of that date, increase by 50 cents the rate of price support for milk in effect on such date.

Section 102(a) of the Disaster Assistance Act of 1988 (Pub. L. 100-387) amended section 201(d)(1)(D) of the 1949 Act, by deleting the authority of the Secretary to reduce the price support level for milk on January 1, 1989. The Secretary's authority under section 201(d)(1)(E) of the 1949 Act to increase the price support level for milk on that date if estimated purchases of milk and milk products under the milk price support program (less sales under section 407 for unrestricted use) for the calendar year would not exceed 2.5 billion pounds was not changed. Section 102(b) of the 1988 Act also provides that, notwithstanding the provisions of the 1949 Act as previously amended, the rate of price support for milk in effect as of April 1, 1989 would be increased by 50 cents for the period April 1, 1989 through June 30, 1989.

The milk price support level through December 31, 1988, was $10.60 per cwt. for milk containing 3.67 percent milkfat. That level was affirmed in a notice published in the **Federal Register** on January 8, 1988 (53 FR 543). Based on current data it has been estimated that net CCC purchases of milk and milk products under the milk price support program during calendar year 1989 would, without an adjustment on January 1, 1989, exceed 2.5 billion pounds (milk equivalent). Therefore, the price support level for milk is not increased for the period January 1, 1989 through March 31, 1989, and will remain at $10.60 per cwt. for milk containing 3.67 percent milkfat. It has further been determined that the prices CCC will pay for milk and products of milk to support milk containing 3.67 percent milkfat, at a level of $10.60 per cwt., shall remain at those levels set forth in the January 8, 1988 notice. Those purchase prices are subject to such additional terms and conditions as CCC may announce.

New purchase prices to implement the temporary increase in the level of price

support that is required as of April 1, 1989, will be announced at a later time.

Determinations

It has been determined that:

(1) Estimated CCC purchases of milk and milk products under the milk price support program during calendar year 1989 (less sales of milk and milk products for unrestricted use by the CCC for that period in accordance with section 407 of the 1949 Act) will exceed 2.5 billion pounds milk equivalent.

(2) The level of price support for the period January 1 through March 31, 1989, shall be $10.60 per cwt. for milk containing 3.67 percent milkfat.

(3) The purchase of butter, cheese and nonfat dry milk, at the prices set forth in the notice published on January 8, 1988, in the **Federal Register** (53 FR 544) will support the price of milk at a rate equivalent to $10.60 per cwt. for milk containing 3.67 percent milkfat.

(4) Further terms and conditions for CCC price-support purchases of butter, cheese, and nonfat dry milk will be set forth in CCC purchase announcements for such purchases.

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended, 63 Stat. 1042, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 62 Stat. 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on January 6, 1989.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 89-610 Filed 1-11-89; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Finding of No Significant Impact; Coyote Creek Critical Area Treatment RC&D Measure, AZ

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service procedures (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Coyote Creek Critical Area Treatment RC&D Measure, Apache, Arizona.

FOR FURTHER INFORMATION CONTACT: Charles R. Adams, State Conservationist, Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona 85012, telephone (602) 241-2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles R. Adams, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns stabilizing eroding gullies and headcuts on 89 miles of watercourses. Range condition will be improved with grazing systems, water distribution and resource monitoring systems. Range improvement will stablize sheet erosion and slow rapid run-off. Netwire diversions, rock barriers and earthfill dams will be used to stablize the gullies. Bank sloping and seeding and tree planting will also be done.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bart Ambrose.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

("This activity is listed in the catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials").

Charles R. Adams,

State Conservationist.

[FR Doc. 89-679 Filed 1-11-89; 8:45 am]

BILLING CODE 3410-16-M

Finding of No Significant Impact; Greenway Critical Area Treatment RC&D Measure, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Greenway Critical Area Treatment RC&D Measure, Yakima County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, West 920 Riverside, Room 360, Spokane, Washington 99201-1060; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This project concerns a plan to minimize the potential dangers and damages of severe erosion induced by flooding by improving stability of an area approximately one mile north of the community of Yakima, Yakima County, Washington. The area to be protected by the proposed project is approximately six acres in size. The area is used as the north entrance to the Yakima River Greenway by people who use the greenway and river for recreation activities.

The planned works of improvement will retain the area in a near-natural state. The area will be planted to nonirrigated grasses, native wild flowers and forbs. The homesite to the north of the site will be screened from view by a single row windbreak of hybrid poplar. Supplemental irrigation will be provided the first two to three years to insure establishment of the windbreak and seeded areas.

This objective agrees with the USDA National Program for Soil and Water Conservation, Soil and Water Resource Conservation Act of 1977 (RCA) and the Yakima-Kittitas Resource, Conservation and Development Area Plan.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource, Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: January 5, 1989.

Lynn A. Brown,

State Conservationist.

[FR Doc. 89-680 Filed 1-11-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: National Clearinghouse for Single Audit Reports.

Form Number: SAC-1.

Agency Approval Number: 0607-0518.

Type of Request: Revision.

Burden: 300 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: 6 minutes.

Needs and Uses: Audit reports of each State and local government receiving $100,000 in Federal financial assistance are required to comply with the Single Audit Act of 1984.

Affected Public: State or local government.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 9, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-737 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-357-802]

Postponement of Final Antidumping Duty Determination; Light-Walled Welded Rectangular Carbon Steel Tubing From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from respondent Laminfer S.A. to postpone the final antidumping duty determination in this case pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our final determination as to whether sales of light-walled welded rectangular carbon steel tubing from Argentina have occurred at less than fair value until not later than March 31, 1989.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Richard Capwell, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: 202/377-3818 (Letort) or 202/377-2312 (Capwell).

SUPPLEMENTARY INFORMATION: On November 21, 1988, we published a notice in the **Federal Register** announcing our preliminary determination that light-walled welded rectangular carbon steel tubing from Argentina was being, or was likely to be, sold in the United States at less than fair value (53 FR 46898).

On January 5, 1989, respondent Laminfer S.A. (Laminfer) requested a 60-day postponement of the deadline for the final determination in this case. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request. Laminfer accounts for virtually all exports of the subject merchandise from Argentina. Accordingly, we are postponing the date of the final determination until not late than March 31, 1989.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

January 6, 1989.

[FR Doc. 89-731 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held February 15, 1989, 9:00 a.m. to 3:00 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Open session: 9:00—11:45 a.m. Briefing by Commerce officials on matters relating to export control. Selected reports by Committee chairpersons.

Executive sessions: 1:30—3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, dealing with the classified materials listed in 5 U.S.C. 552b (c) (1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Sharon Gongwer, (202) 377-3856.

Date: January 4, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-716 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Academy of Sciences; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Committee on Evaluation of the Safety of Fishery Products of the Institute of Medicine's Food and Nutrition Board will hold a public meeting to solicit scientific information and comments pertaining to health effects of marine and freshwater fishery products (both domestic and imported) available to the consumer due to microbial and chemical contamination. The Committee will consider improvements of the current system of seafood surveillance and will make recommendations for improving quality control measures. Registration for the meeting is free and no preregistration is required.

DATES: The meeting will be held January 31, 1989, at 10:00 a.m. Individuals who wish to make a presentation or submit material for the Committee's consideration should forward written statements by January 16, 1989.

ADDRESSES: The meeting will be held at the National Academy of Sciences Auditorium, 2101 Constitution Avenue, NW., Washington, DC 20418. Attendees are asked to register at the C Street entrance (parking unavailable).

Written statements should be sent to Dr. Farid E. Ahmed at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Farid E. Ahmed, 202-334-2673.

Dated: January 6, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-707 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team (STT), will convene a public meeting at the Pacific Council's office (address below), on January 30, 1989, to complete drafting the annual report to the Pacific Council entitled "Review of 1987 Ocean Salmon Fisheries." A public comment period is scheduled for February 1, 1989, at 3 p.m. The public meeting will continue through the remainder of the week.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: January 6, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-782 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in India

January 9, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: January 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing export visa arrangement between the Governments of the United States and India is being amended to permit entry of merchandise accompanied by visa issued for newly merged Categories 300/301.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 44 FR 68504, published on November 29, 1979.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 9, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Effective on January 21, 1989 you are directed to permit entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) of merchandise in Categories 300 and 301 exported on and after January 21, 1989 for which the Government of India has issued visas either as merged categories or the correct category corresponding to the actual shipment. Therefore, for example, Categories 300 and 301 may be visaed as Categories 300/301, or if the shipment consist solely of Category 300 merchandise, the shipment may be visaed as Category 300, but not Category 301.

Goods exported prior to January 21, 1989 and visaed as Categories 300/301 shall be denied entry.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-715 Filed 1-11-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 27, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped. Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. It represents a modification to a notice that appeared in this publication on November 28, 1988, on page 47850. That notice included information on the proposed addition to Procurement List 1989, November 15, 1988 (53 FR 46018), of three inking pads: 7510-00-224-7676; 7510-00-526-1741; 7510-00-526-1742.

After considering various factors associated with the proposed additions, it was determined that it would be more appropriate at this time to consider the addition of only two of the three inking pads proposed previously. The purpose of this notice is to provide interested persons an opportunity to submit comments on the possible impact of adding only two of the three inking pads: Inking Pad: 7510-00-224-7676; 7510-00-526-1741.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the two inking pads listed above from workshops for the blind and other severely handicapped.

Because the possible addition of these two inking pads (as well as a third pad no longer under consideration) was announced previously, interested parties have already had a 30-day period in which to submit comments on the possible impact of the proposed actions. In fact, comments have already been received from the current contractor for both pads and a past contractor for one of the pads. Because of the prior opportunity to comment and the nature of the modification announced with this notice, the time period provided for additional comment on this matter is limited to 15 days.

Beverly L. Milkman,

Executive Directors.

[FR Doc. 89-720 Filed 1-11-89; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 89-C0004]

Club Car, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Club Car, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 27, 1989.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

Date: January 4, 1989.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

In the matter of Club Car, Inc., a corporation.

1. This Settlement Agreement and Order, entered into between Club Car, Inc. a corporation (hereinafter, "Club Car"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

2. The provisions of this Agreement and Order shall apply to Club Car and to each of its successors and assigns.

I. The Parties

3. Club Car is a corporation organized and existing under the laws of the State of Georgia, with its principal corporate offices located at 4152 Washington Road, Augusta, Georgia.

4. Club Car has manufactured certain electric golf cars identified further in paragraph 7 below (hereinafter, golf cars), (a) for sale to consumers for use in or around a permanent or temporary household or residence, in recreation or otherwise or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. Club Car indicates that it sells golf cars primarily to golf courses to transport golfers around the golf course, with only a small secondary market to consumers for their personal use. These golf cars are "consumer products" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

5. Club Car manufactured and sold the golf cars directly and through authorized dealers throughout the United States. Club Car, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a) (1), (4) and (11) of the CPSC, 15 U.S.C. 2052(a) (1), (4) and (11).

6. The "staff" is the staff of the Consumer Product Safety Commision, an independent regulatory Commission of the United States of America (hereinafter "Commission") created pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended 15 U.S.C. 2053.

II. The Product

7. Club Car manufactured and distributed approximately 100,000 electric golf cars from March 1978 through October 1985. The Club Car electric golf cars are powered by six 6-volt batteries wired in series. These batteries, and the accompanying electrical wiring, are located directly below the seat of the car. The seat may be lifted to service the batteries and the electric wiring. A battery charger normally accompanies each car sold. The battery charger is connected to the car by means of a male plug inserted into a female receptacle located on the body of the car, below the seat.

III. Staff Allegations of a Defect in the Golf Car Charging System and of the Failure by Club Car to Comply with the Reporting Requirements of Section 15 (b) of the CPSA

8. The golf car electric charging system in place in certain of the cars manufactured between 1978 and 1985 contain design defects. In some circumstances, the male prongs of the charger plug may make poor contact with the golf car receptacle. In some cases the wires within the charger plug break at the point of connection with the male prongs. The result of the presence of these defects can be overheating during the battery charging process at the plug/receptacle connection. The overheating condition can result in a fire during charging in certain circumstances.

9. During the period 1979 through October 1985 Club Car received many complaints from its customers describing the unsatisfactory performance of the direct current (DC) electrical recharging plug and the DC receptacle. In some of those complaints, the customers alleged malfunctioning at the plug/receptacle connection which could result in overheating at that connection. Large numbers of plugs and receptacles were returned by Club Car customers for warranty replacements.

10. During the period 1981 through October 1985, a number of fires were reported to and investigated by Club Car. Club Car alleges that the fires often destroyed the evidence so that the fire's cause or ignition source could not be conclusively determined. However, many of these fires appeared to have occured during recharging of the Club Car electric golf car and may have involved overheating at the plug/receptacle connection. Some fires involved extensive property damage due to fire and, in some cases, the entire fleet of golf cars was destroyed.

11. In a Club Car Service Bulletin dated December 17, 1985, Club Car "users" were advised that certain battery charger cord sets and plugs may be defective and that newly designed cord sets, plugs and receptacles were available at no charge.

12. In a Club Car Service Bulletin dated April 22, 1986, "owners and operators" of Club Car electric golf carts were informed of the free cord set, plug and receptacle replacement program. Failure to heed the warning in the Bulletin could result in "personal injury or property damage."

13. Club Car had received sufficient information no later than December 1985, to reasonably support the conclusion that at least certain Club Car electric golf cars contained defects which could create a substantial product hazard. The company never reported such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

IV. Allegations of Club Car

14. Club Car denies the staff allegations with respect to its electric golf cars and charging equipment. It further and specifically denies that its electric golf cars or charging equipment contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies any obligation to report information to the Commission under section 15(a) of the CPSA, 15 U.S.C. 2064(b), with respect to these electric golf cars.

V. Agreement of the Parties

15. Club Car and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

16. Club Car agrees to pay the Commission a civil penalty in the amount of $225,000.00 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on Club Car. This payment is made in settlement of allegations by the staff that Club Car violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to electric golf cars manufactured by Club Car between 1978 and 1985.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has issued.

18. Upon final acceptance of this Settlement Agreement by the Commission, Club Car knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occured, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the produre set forth in 15 CFR § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date if is published in the **Federal Register**, in accordance with 16 CFR 1118.29(f).

20. This Settlement is binding upon the Commission and Club Car and, with the exception of Club Car's successors and assigns, does not bind or limit others not party to this Settlement Agreement.

21. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S. 2051 *et seq.*, and that a violation of the Oder will subject Club Car to appropriate legal action.

22. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Club Car, Inc.

Andrew S. Krulwich,

Counsel to Club Car, Inc.

Consented to on behalf of the CPSC staff by:

Dated: January 3, 1989.

William J. Moore, Jr.,

Triol Attorney, Division of Administrative Litigotion, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that Club Car, Inc. shall pay, within 30 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $225,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 3rd day of January, 1989.

By Order of the Commission.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-662 Filed 1-11-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 5, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aerospace Applications of Superconductors will meet on Feb. 7, 89 from 6:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to draft a report on their findings. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-683 Filed 1-11-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

U.S. Military Academy, Chief of Staff's Special Commission on Honor Code and Honor System; Partially Closed Meeting

Subject: Partially Closed Meeting to Review the Honor Code and Honor System at the U.S. Military Academy.

Name of Panel: Chief of Staff's Special Commission to Review the Honor Code and Honor System at the U.S. Military Academy.

Date: 24 January 1989.

Place: U.S. Court of Military Appeals, 5th and E Streets, NW., Washington, DC.

Summary of Agenda:

Date/Time	Open-Closed to Public	Discussion Items
24 Jan/0900-1200.	Closed	Panel reports with preliminary findings on individual cadet cases.
24 Jan/1330-1500.	Open	Presentation to the Commission from interested parties.
24 Jan/1500-1630.	Closed	Discussion of draft report.

Notes:
1. The public may attend the meeting marked "Open".
2. The morning meeting is "Closed" to the public due to privacy act restrictions. Specific honor cases will be reviewed by the panel. The afternoon meeting is "Closed" to the public to preclude premature disclosure of Commission findings and recommendations to the Chief of Staff, Army.
3. The basis for the closed portions of the meeting is paragraph 6 and 9(b) of section 552b(c), Title 5, U.S. Code.

Point of Contact: Executive Secretary, LTC James O. Younts III, 695-1983.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer With the Federal Register.

[FR Doc. 89-873 Filed 1-10-89; 4:35 pm]

BILLING CODE 3710-08-M

Military Traffic Management Command, Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 26 January 1989 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of this symposium is to provide a public forum for the discussion of matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 12 January 1989.

Dated: December 21, 1988.

Joseph R Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 89-886 Filed 1-10-89; 4:36 pm]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Debris Clearance Project in the Snake and Gros Ventre Rivers, Jackson Hole, Teton County, WY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The Walla Walla District Corps of Engineers proposes to conduct a debris clearance project in the Snake and Gros Ventre Rivers in Jackson Hole, Wyoming. This action is necessary to protect levees which have been constructed along the rivers. Removal of the debris will restore channel carrying capacity and reduce deflection of water into the levees.

FOR FURTHER INFORMATION CONTACT: Comments concerning the project and DEIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, Washington 99362-9265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522-6626.

SUPPLEMENTARY INFORMATION:

1. This project is located along the Snake and Gros Ventre Rivers in Jackson Hole, Teton County, Wyoming. Land use in this area has been changing from primarily livestock grazing to recreational and residential development. The rivers in the area are highly braided and tend to spread out during high flows, causing flooding. To prevent flood damage, the Corps of Engineers and state and local entities built a series of levees along the Snake from River Mile 961.5 (on the opposite side of the river from Grand Teton National Park) to River Mile 944 and along the Gros Ventre from the mouth upstream to the Grand Teton National Park boundary. High flows in the Snake and Gros Ventre Rivers in the spring of 1986 deposited large quantities of woody debris in the river channels. Most of the debris consists of large dead cottonwood trees that settled on gravel bars after high flows receded. The large quantity of debris has reduced the channel carrying capacity, thereby increasing the potential for damage to the levees and subsequent flooding of areas protected by the levees. Gravel, sand, silt, and more trees and woody debris collect around the deposited debris, enhancing the formation of new gravel bars and islands. The debris and gravel bars redirect river flow patterns and often cause the river to flow directly into the levees, causing additional damage to the levee system at relatively low flows. This type of damage occurred during the spring of 1988 when flows were at a two-year level. In a letter dated July 31, 1986, the Teton County Commissioners asked the Corps to perform a clearing and snagging operation to alleviate the flood damage potential to the levees. The project went through several modifications until September 1988 when it was designated as an emergency action under Pub. L. 84-99, Flood Control and Coastal Emergencies. Because of the immediate need to complete the project before winter weather shut work down and spring runoff produced flooding, the Corps performed abbreviated environmental coordination over the telephone with Federal and state agencies and the county. Based on the information obtained through the telephone conversations, the Corps prepared a Finding of No Significant Impact (FONSI) and distributed it to the public and agencies. There were strong objections to the FONSI and the project, primarily from the local chapter of Trout Unlimited and from the Cheyenne office of Wyoming Department of Game and Fish, because of possible significant adverse impacts to cutthroat trout and nesting Canada geese. The county, in a letter to the Corps, withdrew its support for the project until additional environmental studies were performed. The Corps subsequently decided that an environmental impact statement was needed before the project could be accomplished.

2. Alternatives to be investigated include:

A—No action
B—Alternative removal methods:
1. Skidders and dozers (preferred)
2. Helicopter removal
3. Highlead removal
C—Alternative disposal methods:
1. Burn debris (preferred)
2. Bury debris
3. Chip debris
D—Quantities to be removed:
1. Remove all debris from levees and within channel.

2. Remove all debris from levees and within channel above annual flow level (preferred).

3. Same as 2), except leave additional debris in channel at 200-foot intervals and within 20 feet of annual flow channel.

4. Significant issues to be addressed in the DEIS include effects of the alternatives on fisheries, wildlife, endangered species, socioeconomics,

and cultural resources. The project will be reviewed under all applicable Federal, state, and local statutes.

5. Affected Federal, state, and local agencies, affected Indian tribes, and other interested organizations and parties are invited to participate in scoping for the DEIS. A formal scoping meeting is planned for mid-January 1989. The actual date and meeting place have not yet been determined.

6. The DEIS should be available on or about March 31, 1989.

Dated: December 19, 1988.

James A. Walter,

LTC, CE, Commanding.

[FR Doc. 89-685 Filed 1-11-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet February 6–7, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interst of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: January 5, 1989.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 89-614 Filed 1-11-89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations will meet on January 31–February 1, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on January 31; and commence at 8:30 a.m. and terminate at 4:30 p.m. on February 1, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to an assessment of the mine/countermine threat and current capabilities and limitations, and an evaluation of the technological approaches to detection, neutralization, marking and reporting problems. The agenda will include discussions on amphibious concepts, operations and doctrine, an assessment of the threat, applicable technologies and systems, and investment strategy. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: January 5, 1989.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 89-615 Filed 1-11-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 27 and 28, 1989.

ADDRESS: The Palm Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research, and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); 20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will meet in West Palm Beach, Florida on January 27 and 28, 1989. The Board will meet from 8:30 a.m. until the completion of business on January 27, 1989 and from 8:30 a.m. to 3:30 p.m. on January 28, 1989. The proposed agenda includes Board consideration and action on reports of subcommittees working on organizational and staffing issues and agenda setting matters.

On January 27, a portion of the meeting will be closed to the public. From 2:00 p.m. to 5:00 p.m. on January 27, 1989 the meeting will be closed to the public for discussion of NAEP policy issues on which the Board's advice or discisions are needed in early 1989. The premature disclosure of these policy issues would significantly frustrate implementation of a proposed agency action. This portion of the meeting on January 27, 1989 will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(9)(B). If the proposed action, pertinent to matters being considered by the Board, is taken on or before January 27, 1989, this portion of the meeting of the National Assessment Governing Board will be open to the public.

On January 28, a portion of the meeting will be closed to the public. From 10:00 a.m. to 2:00 p.m. on January 28, 1989 the Board will review and consider applications for the position of Staff Director submitted in response to announcements in the press. Discussion will concern the qualifications of specific individuals for the position of Staff Director. Discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session and it will relate solely to the internal personnel rules and practices of an agency. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c) (2) and (6)).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting. Records are kept of all Board proceedings, and until a permanent office site for the Boerd has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: January 9, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-697 Filed 1-11-89; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of a subcommittee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 26, 1989.

ADDRESS: The Palm Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Educational Research, and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); 20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

A subcommittee of the National Assessment Governing Board will meet in West Palm Beach on January 26, 1989 from 2:00 p.m. to 5:00 p.m. The proposed agenda includes the identification of National Assessment of Educational Progress (NAEP) policy issues that the full Board must consider and on which the Board's advice or decisions are needed in early 1989. The premature disclosure of these policy issues would significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C. The meeting of the subcommittee will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–163; 5 U.S.C. Appendix 2) and the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 522b(c) (9)(B). However, if proposed agency action, pertinent to matters being considered by the Board, occurs on or before January 26, 1989, the meeting of this subcommittee will be open to the public.

A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting. Until a permanent office site for the Board has been established, this summary is available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: January 9, 1989.

Patricia Hines,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-698 Filed 1-11-89; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of a subcommittee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 26, 1989.

ADDRESS: The Palm Hotel, 630 Clearwater Park Road, West Palm Beach, Florida 33401.

FOR FURTHER INFORMATION CONTACT: Eunice E. Henderson, Designated Federal Official, Office of Assistant Secretary for Education Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 602C, Washington, DC 20208, Telephone: (202) 357–6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act

(GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); 20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Education Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

A subcommittee of the National Assessment Governing Board will meet in West Palm Beach, Florida on January 26, 1989 from 6:00 p.m. to 9:00 p.m. The proposed agenda includes the review and consideration of applications for the position of Staff Director submitted in response to announcements in the press. Discussion will concern the qualifications of specific individuals for the position of Staff Director. Discussion will touch up on matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session and it will relate solely to the internal personnel rules and practices of an agency. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C. The meeting of the subcommittee will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–163; 5 U.S.C. Appendix 2) and the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(2) and (6)). A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of this meeting.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: January 9, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–699 Filed 1–11–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88–60–NG]

Gas Masters, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas from Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Gas Masters, Inc. (GMI), blanket authorization to import natural gas from Canada and Mexico. The order issued in ERA Docket No. 88–60–NG authorizes GMI to import up to 100 Bcf over a two-year period for sales in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 89–740 Filed 1–11–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–146–000 et al.]

Public Service Electric & Gas Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Electric & Gas Company

[Docket No. ER89–146–000]

January 3, 1989.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on December 23, 1988, tendered for filing an agreement for the sale of limited term power to New England Power Company (NEP). Pursuant to the agreement PSE&G commenced selling on November 1, 1988 and will sell to NEP capacity and system power from time to time as scheduled by NEP.

PSE&G requests the Commission to waive its notice requirements to permit the Sale of Limited Term Power Agreement to become effective as of the commencement of the transaction, November 1, 1988. Copies of the filing have been served upon NEP.

Comment date: January 17, 1989, in accordance with Standards Paragraph E at the end of this notice.

2. MSU System Services, Inc.

[Docket No. ER89–143–000]

January 3, 1989.

Take notice that on December 23, 1988, MSU System Services Inc. (SSI), as agent for Louisiana Power & Light Company (LP&L) tendered for filing an Interchange Agreement between of Lafayette, Louisiana (Lafayette) and LP&L (Interchange Agreement), and two letter agreements for the sale of economy energy to Lafayette from LP&L (Letter Agreements).

SSI requests an effective date of March 1, 1988 for the Interchange Agreement, March 5, 1988 for the First Letter Agreement and August 21, 1988 for the Second Letter Agreement. SSI requests waiver of the Commission's notice requirements.

Comment date: January 17, 1989, in accordance with standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket Nos. ER81–179–027 and ER81–179–026]

January 3, 1989.

Take notice that on December 16, 1988, Arizona Public Service Company (APS or Company) tendered for filing a Compliance Refund Report implementing the terms of a Settlement Agreement concerning certain potential refund amounts at issue as authorized by the Commission's Acceptance Letter dated December 1, 1988. The applicable refunds were made to the affected customers on December 16, 1988.

Copies of this filing have been served on the affected customers and the Arizona Corporation Commission.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Michigan Power Company

[Docket No. ER88–142–001]

January 3, 1989.

Take notice that on December 12, 1988, Michigan Power Company (Michigan Power) tendered for filing, in compliance with the Commission's order of January 31, 1988 in Docket No. ER88–142–000, proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to the City of Dowagiac, Michigan and the Village of Paw Paw, Michigan. The proposed change in resale rates will decrease Michigan Power's annual revenues from the City of Dowagiac by $86,199 and from the Village of Paw Paw by $67,543 for the period commencing December 22, 1987 and ending December 31, 1988 and will decrease Michigan Power's annual revenues from the City of Dowagiac by $117,649 and from the Village of Paw Paw by $88,624 for the period commencing January 1, 1989, based on a twelve month test period ended December 31, 1988 from rates in effect prior to December 22, 1987. The purpose of the present rate decrease filing is to reflect in Michigan Power's rates for the sale of power to the City of Dowagiac and the Village of Paw Paw reductions, approved by the Commission in Docket No. ER88–30–000, in the wholesale electric rates paid by Michigan Power to Indiana Michigan Electric Company.

Michigan Power requests that these rate changes be made effective as of December 22, 1987 and January 1, 1989.

Copies of the filing were served upon the City of Dowagiac, the Village of Paw Paw and the Michigan Public Service Commission.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER89–145–000]

January 3, 1989.

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on December 23, 1988 tendered for filing an agreement for the sale of limited term power to Northeast Utilities Service Company's affiliates, the Connecticut Light and Power Company and Western Massachusetts Electric Company (NU Companies). Pursuant to the agreement PSE&G commenced selling on November 1, 1988 and will sell to the NU Companies capacity and system power from time to time as scheduled by the NU Companies.

PSE&G requests the Commission waive its notice requirements to permit the Sale of Limited Term Power Agreement to become effective as of the commencement of the transaction, November 1, 1988. Copies of the filing have been served upon the NU Companies.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Riley Energy Systems of Lisbon, Corporation

[Docket No. QF88–505–000]

January 4, 1989.

On December 20, 1988 Riley Energy Systems of Lisbon, Corporation (Applicant), of 5 Neponset Street, Worcester, Massachusetts 01606 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lisbon, Connecticut. The facility will consist of two (2) 250 tons per day waste to energy trains utilizing a mass burn system. The net electric power production capacity will be approximately 12,700 kilowatts. The primary energy source will be biomass in the form of municipal solid waste. Propane will be used for start-up and shutdown, however, such usage will not exceed 6.1% of the total energy input of the facility during any calendar year. Construction of the facility is scheduled to begin in the Spring of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER89–94–000]

January 4, 1989.

Take notice that on November 28, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a revision to Rate Schedule FERC No. 29. This rate schedule covers an agreement between PG&E and Pacific Power & Light Company (PP&L) for mutual provision of services, dated September 20, 1967. The revision is a letter agreement between the parties dated August 7, 1973, which modifes PG&E's obligation to return energy banked by PP&L with PG&E.

PG&E has requested waivers to allow the letter agreement to be effective as of December 1, 1972.

Copies of this filing were served upon PP&L and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection at PG&E's General Office in San Francisco.

Comment date: January 13, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Gas and Electric Company

[Docket No. ES89–12–000]

January 5, 1989.

Take notice that on December 28, 1988, Kansas Gas and Electric Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to 400,000 shares of common stock, without par value. The securities are to be issued from time to time pursuant to the Applicant's Employee Stock Ownership Plan.

Comment date: January 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER87–365–003]

January 5, 1989.

Take notice that on December 29, 1988, Southern California Edison Company (SCE) tendered for filing a Compliance Refund Report in compliance with the Commission's Order of December 1, 1988.

Comment date: January 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Centel Corporation

[Docket No. ES89–13–000]

January 5, 1989.

Take notice that on December 29, 1988, Centel Corporation (the Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to 2,500,000 shares of its common stock, $2.50 par value, to be issued in connection with its Sixteenth Employee Stock Purchase Program, its Management Incentive Plan, its Stock Option Plan, and its Director Stock Option Plan.

Comment date: January 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER89-127-000]

January 5, 1989.

Take notice that on December 16, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Cancellation of Service Schedule F to the Interconnection Agreement between PNM and the City of Farmington, New Mexico (City)—PNM Rate Schedule FERC No. 51, Supplement No. 6.

PNM requests that the notice requirements be waived to permit Service Schedule F to be terminated as of April 30, 1983.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER89-126-000]

January 5, 1989.

Take notice that on December 16, 1988, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Cancellation of the Letter Agreement dated April 6, 1981 between PNM and the Division of Colorado River Resources (DCRR)—PNM Rate Schedule FERC No. 42.

PNM requests that the notice requirements be waived to permit this Letter Agreement to be terminated as of September 30, 1981.

Comment date: January 17, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER89-119-000]

January 5, 1989.

Take notice that on December 15, 1988, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Twenty-One to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Utilities Commission, City of New Smyrna Beach, Florida (Rate Schedule FERC No. 59).

FPL states that under Amendment Number Twenty-One, FPL will transmit power and energy for Utilities Commission, City of New Smyrna Beach, Florida as required in the implementation of certain interchange arrangements with Tampa Electric Company.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment be made effective on January 1, 1989. FPL states that copies of the filing were served on Utilities Commission, City of New Smyrna Beach, Florida.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Enserch Development Corporation and Encogen Four Partners, Ltd.

[Docket No. QF89-106-000]

January 5, 1989.

On December 23, 1988, Enserch Development Corporation and Encogen Four Partners, Ltd. (Encogen) of Two World Trade Center, New York, New York 10048-0752 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the American Brass Company in Buffalo, New York. The facility will consist of a combustion turbine generator, a heat recovery steam generator and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used for process and thermal applications at the American Brass Company. The maximum net electric power production capacity of the facility will be 67 MW. Primary source of energy will be natural gas with distillate oil as backup fuel. Installation of the facility is scheduled to commence in the third quarter of 1989.

The facility will be owned and operated by Encogen, a Texas limited partnership. The general partner will be Enserch Development Corporation, a Texas corporation. The limited partners will be PSDS Energy Incorporated, a Delaware corporation, and American Brass Company, L.P., a Delaware limited partnership.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-744 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-930-003]

Power Resources, Inc., Big Spring; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

January 10, 1989.

On December 30, 1988, Power Resources, Inc. (Applicant), of Five Post Oak Park, Suite 1400, Houston, Texas 77027, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Big Spring topping-cycle cogeneration facility is located at the Fina Oil and Chemical Company in Big Spring, Texas. The facility will consist of two combustion turbine-generators, two heat recovery steam generators and an extraction/condensing steam turbine-generator. The thermal energy recovered from the facility will be used in the oil refining process. The primary energy source will be natural gas and refinery off-gas.

The original application was filed on July 17, 1986 and was granted on October 10, 1986; 37 FERC ¶ 62,030 (1986). The first recertification was filed on December 18, 1986 and was granted on March 16, 1987; 38 FERC ¶ 62,244 (1987). The instant recertification is requested due to increase in net electric power production capacity from 224.2 MW to 252 MW and change in the address of the Applicant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-767 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2999-002 et al.]

Union Pacific Resources Co. et al.; Applications for Certificates, Abandonment of Service and Amendment of Certifications [1]

January 10, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2999-002 D, 12-8-88	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101-0007.	Tennessee Gas Pipeline Company, LaReforma Field, Starr County, Texas.	(1)
G-5214-003 D, 11-30-88	Sohio Petroleum Company, P.O. Box 4587 Houston, TX 77210.	Tennessee Gas Pipeline Company, Six Parish Field, Calcasieu and Davis Parishes, Louisiana.	(2)
G-5668-000 D, 11-30-88	Sohio Petroleum Company	Texas Gas Transmission Corporation, South Lewisburg Field, Acadia and St. Landry Parishes, Louisiana.	(2)
G-7230-001 B, 12-5-88	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	Northern Natural Gas Company, Division of Enron Corp. Guyman-Hugoton Field, Texas County, Oklahoma.	(3)
G-9947-002 D, 12-6-88	Tenneco Oil Company	Natural Gas Pipeline Company of America, Camrick Field, Texas and Beaver Counties, Oklahoma.	(4)
G-11481-000 D, 12-9-88	Union Pacific Resources Corporation	Texas Eastern Transmission Corporation, Chapman Ranch Field, Nueces County, Texas.	(1)
G-11580-000 D, 11-30-88	Sohio Petroleum Company	Northern Natural Gas Company, Division of Enron Corp., Eumont Field, Lea County, New Mexico.	(2)
G-17791-000 D, 11-30-88	Sohio Petroleum Company	ANR Pipeline Company, Mocane-Laverne Field, Harper County, Oklahoma.	(2)
G-18449-000 D, 12-13-88	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Company, Jalmat and Langlie-Mattix Fields, Lea County, New Mexico.	(5)
CI60-738-000 D, 12-1-88	Tenneco Oil Company	Panhandle Eastern Pipeline Company, Seiling NE Field, Major, *et al.*, Counties, Oklahoma.	(6)
CI62-535-000 D, 11-30-88	Sohio Petroleum Company	El Paso Natural Gas Company, Ignacio Blanco Field, La Plata County, Colorado.	(2)
CI66-332-000 D, 12-14-88	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253-3725.	Tennessee Gas Pipeline Company, West Delta 52 Field, Offshore Louisiana.	(7)
CI67-79-000 B, 12-1-88	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, Peek S. Field, Ellis County, Oklahoma.	(8)
CI71-83-000 D, 11-30-88	Sohio Petroleum Company	Panhandle Eastern Pipe Line Company, Northeast Keenan Field, Woodward County, Oklahoma.	(2)
CI71-595-001 E, 12-2-88	Amoco Production Company, P.O. Box 50879, New Orleans, LA 70150.	Tennessee Gas Pipeline Company, East Cameron Blocks 261 and 264, Offshore Louisiana.	(9)
CI74-352-001 D, 12-8-88	Union Pacific Resources Company	Southern Natural Gas Company, Unknown Pass Field, Orleans Parish, Louisiana.	(1)
CI76-713-001 D, 12-8-88	Union Pacific Resources Company	El Paso Natural Gas Company, East Carlsbad and Burton Flat Fields, Eddy County, New Mexico.	(1)
CI77-114-004 D, 12-13-88	Sun Exploration and Production Company	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	(5)
CI78-33-007 D, 12-5-88	Amoco Production Company, P.O. Box 3092, Houston, TX 77253.	El Paso Natural Gas Company, Empire South Morrow Field, Eddy County, New Mexico.	(10)
CI82-297-002 CI82-296-001 E, D, 12-5-88.	Diamond Shamrock Offshore Partners Limited Partnership, 717 N. Harwood Street, Dallas, TX 75201.	Panhandle Eastern Pipe Line Company, Block A-542, High Island Area, Offshore Texas.	(11)
CI82-298-001 CI82-299-001 E, D, 12-2-88.	Diamond Shamrock Offshore Partners Limited Partnership.	Trunkline Gas Company, Block A-542, High Island Area, Offshore Texas.	(12)
CI89-112-000 (CI64-1075) D, 11-29-88.	Tenneco Oil Company	Tennessee Gas Pipeline Company, Heyser Field, Calhoun and Victoria Counties, Texas.	(13)
CI89-115-000 (G-11450) D, 11-30-88	Sohio Petroleum Company	Florida Gas Transmission Company, Grosse Tete Field, West Baton Rouge Parish, Louisiana.	(2)
CI89-116-000 (CI65-1050) D, 11-30-88.	Sohio Petroleum Company	Lone Star Gas Company, a Division of Enserch Corporation, East Washington Field, McClain County, Oklahoma.	(2)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-117-000 (CI68-2263) D, 11-30-88.	Sohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, Washington Field, St. Landry Parish, Louisiana.	(1)
CI89-118-000 (CI65-1153) D, 11-30-88.	Sohio Petroleum Company	Tennessee Gas Pipeline Company, South Pass, Block 24 Field, Plaquemines Parish, Louisiana.	(2)
CI89-119-000 (G-9491) D, 11-30-88	Sohio Petroleum Company	Texas Eastern Transmission Corporation, Nordheim Field, DeWitt County, Texas.	(3)
CI89-120-000 (CI71-287) D, 11-30-88	Sohio Petroleum Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	(2)
CI89-121-000 (G-3784) D, 11-30-88	Sohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, Greta Field, Refugio County, Texas.	(2)
CI89-122-000 (CI62-883) D, 11-30-88	Sohio Petroleum Company	El Paso Natural Gas Company, Bakke Field, Andrews County, Texas.	(2)
CI89-123-000 (G-18957) D, 11-30-88	Sohio Petroleum Company	El Paso Natural Gas Company, Eumont Field, Lea County, New Mexico.	(2)
CI89-124-000 (CI62-337) D, 11-30-88	Sohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, West Kaplan Field, Vermilion Parish, Louisiana.	(2)
CI89-125-000 (CI78-565) D, 11-30-88	Sohio Petroleum Company	ANR Pipeline Company, Putman Field, Dewey County, Oklahoma.	(2)
CI89-126-000 (CI61-618) D, 11-30-88	Sohio Petroleum Company	Natural Gas Pipeline Company of America, N.E. Thompsonville Field, Webb County, Texas.	(2)
CI89-127-000 (CI71-460) D, 11-30-88	Sohio Petroleum Company	Northern Natural Gas Company, Division of Enron Corp., Puckett Field, Pecos County, Texas.	(2)
CI89-128-000 (CI77-175) D, 11-30-88	Sohio Petroleum Company	El Paso Natural Gas Company, Drinkard Field, Lea County, New Mexico.	(2)
CI89-129-000 (CI75-644) D, 11-30-88	Sohio Petroleum Company	Northern Natural Gas Company, Division of Enron Corp., Drinkard Field, Lea County, New Mexico.	(2)
CI89-130-000 (CI63-125) D, 11-30-88	Sohio Petroleum Company	Northern Natural Gas Company, Division of Enron Corp., Northeast Camrick Field, Beaver County, Oklahoma.	(2)
CI89-131-000 (CI65-104) D, 11-30-88	Sohio Petroleum Company	Panhandle Eastern Pipeline Company, Putman Field, Dewey County, Oklahoma.	(2)
CI89-132-000 (G-4602) D, 11-30-88	Sohio Petroleum Company	Texas Gas Transmission Corporation, South Lewisburg Field, Acadia and St. Landry Parishes, Louisiana.	(2)
CI89-133-000 (CI65-684) D, 11-30-88	Sohio Petroleum Company	ANR Pipeline Company, Putman Field, Dewey County, Oklahoma.	(2)
CI89-134-000 (CI66-193) D, 11-30-88	Sohio Petroleum Company	Texas Eastern Transmission Corporation, Delhi Field, Franklin and Madison Parishes, Louisiana.	(2)
CI89-135-000 (CI64-213) D, 11-30-88	Sohio Petroleum Company	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	(2)
CI89-136-000 (CI66-44) (CI66-193) D, 11-30-88.	Sohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, Johnson Bayou Field, Cameron Parish, Louisiana.	(2)
CI89-137-000 (CI79-9) D, 11-30-88	SSohio Petroleum Company	Williams Gas Supply, Colorow Gulch, Rio Blanco County, Colorado.	(3)
CI89-138-000 (G-3784) D, 11-30-88	SSohio Petroleum Company	United Gas Pipe Line Company, Barnell Field, Bee, Kansas and Goliad Counties, Texas.	(2)
CI89-139-000 (G-5928) D, 11-30-88	Sohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, Egan Field, Acadia Parish, Louisiana.	(2)
CI89-140-000 (CI61-780) D, 11-30-88	Sohio Petroleum Company	Oxy Cities Service NGL, Inc., Northeast Waynoka Field, Woods County, Oklahoma.	(2)
CI89-141-000 (CI60-489) D, 11-30-88	Sohio Petroleum Company	Southern Natural Gas Company, Felice Bayou-West Field, Plaquemines Parish, Louisiana.	(2)
CI89-142-000 (CI70-750) D, 11-30-88	SSohio Petroleum Company	Transcontinental Gas Pipe Line Corporation, Egan Field, Acadia Parish, Louisiana.	(2)
CI89-143-000 (CI65-175) D, 11-30-88	Sohio Petroleum Company	Northern Natural Gas Company, Division of Enron Corp., Drinkard Field, Lea County, New Mexico.	(2)
CI89-144-000 (G-17906) D, 11-30-88	Sohio Petroleum Company	Apache Gas Corporation, Ingham Field, Crockett County, Texas.	(2)
CI89-146-000 (CI64-1047) B, 12-1-88	Tenneco Oil Company	Texas Eastern Transmission Company, Meyersville Field, DeWitt County, Texas.	(14)
CI89-147-000 (CI79-362) D, 12-1-88 [17].	Sohio Petroleum Company	Colorado Interstate Gas Company, Keyes Field, Cimarron County, Oklahoma.	(4)
CI89-148-000 (CI65-1168) B, 12-1-88	Sohio Petroleum Company	Florida Gas Transmission Company, McGrill Ranch Field, Kennedy County, Texas.	(15)
CI89-149-000 (CI63-1504) D, 12-1-88	Sohio Petroleum Company	Arkla Energy Resources, a division of Arkla, Inc., SE Custer Field, Custer County, Oklahoma.	(4)
CI89-151-000 A, 12-5-88	Sun Exploration and Production Company	Transcontinental Gas Pipe Line Corporation, West Tuleta Field Bee County, Texas.	(19)
CI89-153-000 E, 12-5-88	Amoco Production Company	Williams Natural Gas Company, Hugoton Field, Finney County, Kansas.	(20)
CI89-155-000 (G-10478) D, 12-5-88	Tenneco Oil Company	Panhandle Eastern Pipe Line Company, Bernstein Field, Hansford County, Texas.	(21)
CI89-157-000 (CI64-1068) D, 12-5-88	Sohio Petroleum Company	Texas Eastern Transmission Corporation, Waskom (Cotton Valley) Field, Harrison and Panola Counties, Texas.	(22)
CI89-158-000 (CI64-1049) D, 12-5-88	Sohio Petroleum Company	Arkla Energy Resources, a division of Arkla, Inc., Waskom Field, Caddo Parish, Louisiana.	(23)
CI89-159-000 (G-17949) D, 12-5-88	Sohio Petroleum Company	Williams Natural Gas Company, Medicine Lodge N. Pool Field, Barber County, Kansas.	(23)
CI89-160-000 (G-2896) B, 12-1-88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Panhandle Eastern Pipe Line Company, West Panhandle Field, Moore County, Texas.	(24)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-161-000 B, 12-2-88	Horizon Oil & Gas Company, P.O. Box 1020, Dallas, TX 75221.	Panhandle Eastern Pipe Line Company, Greenwood Field, Baca County, Colorado.	(25)
CI89-167-000 (CI64-1028) D, 12-8-88	Tenneco Oil Company	Texas Eastern Transmission Corporation, Delhi Field, Richmond Parish, Louisiana.	(26)
CI89-170-000 (CI70-972) D, 12-8-88	Mobil Producing Texas & New Mexico Inc., 12450 Greenspoint Drive, Houston, TX 77060-1991.	Transwestern Pipeline Company, South Carlsbad Field, Eddy County, New Mexico.	(27)
CI89-171-000 (CI62-1216) D, 12-7-88	Tenneco Oil Company	Texas Eastern Transmission Corporation, May Field, Kleberg County, Texas.	(26)
CI89-172-000 (CI67-584) B, 12-8-88	Union Pacific Resources Company	Northern Natural Gas Company, Division of Enron Corp., N.E. Catesby Field, Woodward and Ellis Counties, Oklahoma.	(29)
CI89-173-000 (CI78-902) D, 12-9-88	Union Pacific Company	Mississippi River Transmission Corporation, Leatherman Creek Field, Claiborne Parish, Louisiana.	(1)
CI89-174-000 (G-17179) D, 12-9-88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of Enron Corp., Mertzon Field, Inon County, Texas.	(30)
CI89-175-000 (CI62-412) B, 12-9-88	Chevron U.S.A. Inc.	United Gas Pipe Line Company, Hollywood Field, Terrebonne Parish, Louisiana.	(31)
CI89-176-000 (CI64-1059) B, 12-9-88	Tenneco Oil Company	Texas Eastern Transmission Corporation, Doehrman, et al. Field, DeWitt County, Texas.	(32)
CI89-177-000 (CI68-621) D, 12-12-88	Tenneco Oil Company	Tennessee Gas Pipeline Company, Bethany Field, Panola County, Texas.	(33)
CI89-178-000 (CI79-363) B, 12-14-88	Tenneco Oil Company	El Paso Natural Gas Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(34)

[1] By assignment executed October 1, 1988, Applicant assigned its interest in certain acreage to Bristol Resources 1987-1 Acquisition Program, effectve October 1, 1988.
[2] By assignment executed October 6, 1988, Applicant assigned certain interests to Presidio Oil Company, effective October 1, 1988.
[3] The J.W. Webb #1 well was plugged and abandoned and the lease surrendered to landowners. By assignment executed May 2, 1988, Applicant assigned certain interests to Maple Properties Corporation, effective December 1, 1987.
[4] By assignment executed May 2, 1988, Applicant assigned its interest in certain acreage to Maple Properties Corporation, effective December 1, 1987
[5] By assignment executed November 30, 1988, Applicant assigned certain acreage to Hal J. Rasmussen and The Williams Partnership.
[6] By respective assignments executed July 24, 1986, December 15, 1986, February 19, 1987, and November 15, 1985, Applicant assigned certain interests to Alexander Energy Corporation, Vita Oil Company, Unit Corporation and Redgate Petroleum, Inc., effective June 1, 1986, December 1, 1986, January 1, 1987, and December 1, 1985.
[7] Applicant assigned certain acreage to American Land & Exploration, Inc., effective October 1, 1987.
[8] Applicant states that the well was plugged and abandoned, effective April 3, 1982.
[9] Effective July 1, 1987, Applicant acquired certain interests from Tenneco Oil Company.
[10] Applicant assigned certain acreage to Nortex Corporation, effective March 1, 1988.
[11] Effective October 1, 1988, Applicant acquired certain interests from Zapata Exploration Company previously covered under certificates issued in Docket Nos. CI82-297-000 and CI82-296-001. Applicant requests that the interests covered under the certificate in Docket No. CI82-296-001 be deleted from that certificate and be added to the certificate in Docket No. CI82-297-000 and that the two rate schedules be consolidated.
[12] Effective October 1, 1988, Applicant acquired certain interests from Zapata Exploration Company previously covered under certificates issued in Docket Nos. CI82-298-000 and CI82-299-001. Applicant requests that the interests covered under the certificate in Docket No. CI82-299-001 be deleted from that certificate and added to the certificate in Docket No. CI82-298-000 and that the two related rate schedules be consolidated.
[13] By assignment executed April 4, 1988, Applicant assigned its interest in certain acreage to Paul F. Barnhart, L. Irvin Barnhart, Paul F. Barnhart, Jr., Paul F. Barnhart, Trustee and Velda B. Evans, effective January 1, 1988. By a separate assignment effective January 1, 1988, Applicant assigned its remaining interest in certain acreage to Fina Oil and Chemical Company.
[14] Applicant states that the well was plugged and abandoned and the lease was surrendered.
[15] Applicant states that the lease was surrendered.
[16] Not used.
[17] Additional information received December 13, 1988.
[18] Not used.
[19] Applicant is filing to cover its own interests previously covered under Union Texas Petroleum Company's certificate in Docket No. CI71-798 and related FERC Gas Rate Schedule No. 104.
[20] Effective November 1, 1986, Applicant acquired certain interests from Northern Pump Company, *et al.*
[21] By assignments executed June 25, 1982, and May 2, 1988, Applicant assigned certain interests to Spur Petroleum, Inc., and Maple Properties Corporation
[22] Applicant assigned certain acreage to Marshall Exploration Inc., effective November 1, 1986.
[23] Applicant assigned certain acreage to Pickrell Drilling Company, Inc., effective August 1, 1987.
[24] Applicant states that the wells were plugged and abandoned. By assignments dated February 16, 1977, and August 28, 1980, Applicant assigned its interests in certain acreage to R.L. Losure, T.C. Losure and Losure Petroleum.
[25] Applicant states that the Jenkins #1-26 well was plugged and abandoned.
[26] By assignment executed May 4, 1988, Applicant assigned certain acreage to Murphy Oil USA, Inc.
[27] By assignment executed May 31, 1988, Applicant assigned certain acreage to Petrus Oil Company, effective June 1, 1988.
[28] By assignment executed April 4, 1988, Applicant assigned its interest in certain acreage to OXY USA, Inc., effective November 1, 1987.
[29] Applicant states that certain leases were dropped from the contract due to cessation of production. By assignment executed January 16, 1987, Applicant's predecessor-in-interest, Champlin Petroleum Company, assigned its interest in certain acreage to Joe A. Huitt, effective December 1, 1986. By assignment executed September 29, 1988, Applicant assigned its interest in the remaining acreage to Bristol Resources 1987-1 Acquisition Program, effective October 1, 1988
[30] Applicant assigned certain acreage to Hondo Oil & Gas Company effective January 1, 1987.
[31] Applicant states that some of its reserves were depleted and some leases expired in January 1983. Effective June 18, 1986, Applicant assigned certain acreage to DAC Oil Corporation.
[32] Applicant states that certain leases were surrendered. By assignments executed July 25, 1977, and June 24, 1976, Applicant assigned certain interests to Ragars Oil and Gas Company and Robert B. Thompson, respectively.
[33] By assignments executed April 1, 1982, and June 10, 1985, Applicant assigned certain acreage to Eli Rebich and Vernon E. Faulconer, respectively
[34] Applicant states that the well was plugged and abandoned and that Applicant did not retain any lease rights.
FILING CODE; A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 89-768 Filed 1-11-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-482-000 et al.]

Northwest Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP89-482-000]

January 5, 1989.

Take notice that on December 22, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed at Docket No. CP89-482-000, a request pursuant to §§ 157.205, 157.211, 157,212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 157.212 and 157.216) for authorization to construct, operate and to abandon certain natural gas facilities and to reallocate natural gas service to facilitate sales and deliveries to The Washington Water Power Company

(Water Power), an existing customer, under Northwest's blanket authorization issued in Docket No. CP82-433-000, all as more fully set forth in the request which is on file with the Commission and open top public inspection.

Northwest states that Water Power requested that additional service be provided at Northwest's McGuire, Idaho delivery point to Water Power, so that Water Power could provide service to a new customer in that area, IMS Inc., an aluminum smelting company. It is stated that Water Power notified Northwest that it wanted to shift 27,000 therms of its maximum daily delivery quantity (MDDQ) under Rate Schedule ODL-1 from the Bunker Hill, Idaho delivery point to the McGuire Idaho delivery point. It is further stated that the proposed reduction in volumes delivered at Bunker Hill would not jeopardize Water Power's ability to serve the existing and projected requirement of its customers in that service area.

The reallocated MDDQ which Northwest proposes to provide at the affected meter stations is set forth below:

	Existing MDDQ (Therms)	Proposed MDDQ (Therms)
Bunker Hill	64,780	37,780
McGuire	7,700	34,770
Total	72,480	72,480

In order to provide the proposed increased deliveries at McGuire, Northwest proposes to construct and operate a new McGuire Meter Station adjacent to the existing McGuire Meter Station located in Section 32, Township 51 North, Range 5 West in Kootenai County, Idaho. The new metering station will consist of a 4-inch, 600 pound hot tap valve assembly, a 250,000 Btu per hour line heater with by-pass valving, a skid mounted regulatory manifold, a dual 6-inch turbine meter station and appurtenant facilities.

Northwest estimates that the total cost of the proposed facilities will be approximately $132,220. Northwest also proposes that, upon completion of construction and the placement into service of the new meter station, the old McGuire Meter Station will be abandoned and the facilities removed. The estimated cost of removal of these facilities is $5,000.

It is stated that Water Power has agreed to reimburse Northwest for all direct costs associated with the construction of the new meter station and abandonment of the old station, excluding Northwest labor charges. Such costs are expected to equal $101,320. Finally, Northwest advises that Water Power has also agreed to reimburse Northwest approximately $33,828 to compensate for the income tax impact of the contribution in aid of construction.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Pacific Gas Transmission Company

[Docket No. CP89-460-000]

January 5, 1989.

Take notice that on December 20, 1988, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP89-460-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing PGT to build and operate facilities and authorizing the interstate transportation of natural gas transported for certain utilities located in the Pacific Northwest, the intermountain region and in Southern California (Customers), all as more fully set forth in the request on file with the commission and open to public inspection.

The proposed facilities, PGT states, would complete the looping of PGT's existing pipeline within its existing right-of-way (installation of a new pipeline parallel to and interconnecting with the existing pipeline): Pacific Gas and Electric Company (PG&E) will also expand its California facilities to deliver gas to southern California Customers. PGT states that it intends to provide only firm transportation service on these new, incremental facilities.

PGT states that it seeks authorization to construct and operate facilities that would allow approximately 710 MMcf/d of natural gas to be received at Kingsgate, British Columbia and, on an average annual basis, approximately 150 MMcf/d would be delivered to the existing interconnection with Northwest Pipeline Corporation (Northwest) at Stanfield, Oregon and approximately 600 MMcf/d would be delivered to the existing interconnection with PG&E near Malin, Oregon.

Of the 600 MMcf/d which would be transported between Stanfield and Malin, PGT states that 60 MMcf/d will be volumes which PGT currently transports between Kingsgate and Stanfield for its existing customer, Pacific Interstate Transmission Company (PITCO), and for which PGT herein seeks a change in delivery point from Stanfield to Malin. To the extent that Customer demand warrants it, PGT states that it may supplement this filing by expanding the capacity of the facilities proposed herein or by adding other delivery points along the proposed route in the Pacific Northwest.

Between the International Boundary and Stanfield, PGT states that it would install approximately 104 miles of 42-inch diameter pipeline looping. South of Stanfield, PGT states that it would install approximately 326 miles of 36-inch diameter pipeline looping to Malin, where PGT's system interconnects with that of PG&E.

The proposed project also includes looping of the PG&E intrastate pipelines within the State of Califonia. The proposed 36-inch looping would continue for 294 miles on PG&E's system to a terminus near Brentwood, California, PGT states. PG&E would also install an additional 120 miles of 36-inch looping south of Brentwood, paralleling the existing Stanpac No. 2 Pipeline to Panoche Station, PGT adds. PGT states that PG&E would seek appropriate certificate authorization from the California Public Utilities Commission for such facilities.

PGT states it is negotiating firm transportation service arrangements for the proposed service with PITCO as well as with several large southern California utilities: Southern California Gas Company (SoCal), Southern California Edison Company, San Diego Gas and Electric Company, the Los Angeles Department of Water and Power, and the City of Long Beach. PGT states that it is also negotiating similar firm transportation arrangements with a number of gas distribution utilities in the Pacific Northwest and the intermountain region: Cascade Natural Gas Corporation, IGI Resources, Inc., Northwest Natural Gas Company, Washington Natural Gas Company, and Washington Water Power Company. These firm transportation Customers, PGT states, would be responsible for obtaining natural gas supplies in Canada and obtaining the requisite Canadian export and U.S import authorizations. This project is intended solely to serve the transportation needs of these utility Customers, PGT states.

PGT states that the Canadian gas purchased by the Customers would be transported to the international

Boundary near Kingsgate, through additional pipeline expansions in Alberta and southeastern British Columbia. PGT states that it expects to utilize 100 percent of this capacity for firm transportation service. Therefore, PGT states, no interruptible transportation service is offered by this application and PGT is not currently seeking a blanket "open access" certificate.

PGT states that PG&E, expanding its facilities as necessary, would deliver thermally equivalent volumes, adjusted for fuel and line loss, to southern California at the major intrastate interconnection of the PG&E and SoCal Gas systems at the Kern River Station, near Bakersfield, California. After receipt of gas at the Kern River Station from PG&E, SoCal gas would provide intrastate transportation for the customers in southern California, PGT states. In the Pacific Northwest and intermountain region, PGT states that after receipt of transported gas at the point of interconnection with Northwest's existing system at Stanfield, Customers would be responsible for redelivery of such gas to their own distribution systems.

PGT states that its existing compressor stations would be used with centrifugal compressor aerodynamic assembly changes on five existing units and compressor replacement at ten existing stations, PGT states. PGT states that existing metering facilities would be expanded to allow for increased flows.

PGT states that total capital costs, including allowance for funds used during construction, for PGT's portion of the proposed project are estimated, on a 1988 cost basis, at $470,116,000. PGT states that it proposes conventional financing with a projected mix of 70 percent debt and 30 percent equity capital. PGT proposes to depreciate these new facilities based on a 30-year economic life. PGT states that it does not request "cost-of-service" rate treatment for its proposed project.

PGT states that the costs for the proposed transportation services include only incremental costs and do not include any costs of PGT's existing pipeline system. Under this cost allocation proposal, PGT states that its existing customers bear no cost responsibility for the new facilities or services and have no risk of exposure to any cost responsibility in the event the facilities are underutilized.

PGT states that it proposes to provide new firm transportation service, based on the incremental cost of the Expansion Project, via new Rate Schedules T-3 and T-4. Rate Schedule T-3 is for firm transportation service for gas received at Kingsgate, or Stanfield, and delivered to Malin. Rate Schedule T-4 is for firm transportation service for gas received at Kingsgate, and delivered to Stanfield.

PGT states that the proposed rate structure consists of a two-part monthly reservation charge using a D-1 and D-2 component, each designed to recover 50 percent of the total fixed cost of the expansion based upon a maximum daily and annual delivery quantities, respectively. No usage charge or commodity charge is proposed. PGT also requests the authority to negotiate individual reservation charges which may be lower than the maximum. Customers agreeing to pay a lower reservation charge would then pay a usage charge equal to the difference between the maximum reservation charge stated in this application and the negotiated reservation charge, PGT adds. PGT states that firm transportation priorities would be based on the present value of the Customer's per unit reservation charge.

PGT states its proposed rates as follows:

Pro forma rate schedule	Monthly reservation charges	D-1	D-2
T-3:			
Kingsgate, British Columbia to Malin, Oregon	$5.070356	$0.196118	
Stanfield, Oregon	2.774103	0.107301	
T-4: Kingsgate, British Columbia to Stanfield, Oregon	2.296257	0.088818	

PGT states that it projects that on or about November 30, 1993, it would begin deliveries for the Customers, assuming the receipt of all necessary regulatory approvals and the completion of necessary preconstruction activities in time to allow construction to begin in early 1992.

Comment date: January 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-497-000]

January 5, 1989.

Take notice that on December 28, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-497-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Nerco Oil and Gas, Inc. (Nerco), under the authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Nerco, a marketer and producer of natural gas, pursuant to a transportation agreement dated November 28, 1988 (contract no. T1-21-1641). United proposes to transport on a peak day up to 77,250 MMBtu; on an average day up to 77,250 MMBtu; and on an annual basis 28,196,250 MMBtu of natural gas for Nerco. United proposes to receive the subject gas from Nerco at an existing interconnection in Black Lake Field, Natchitoches Parish, Louisiana, for redelivery to existing points of interconnection in Ouachita Parish and Rapides Parish, Louisiana. It is alleged that Nerco would pay United the effective rate contained in United's rate schedule ITS, or such other rates as may be just and reasonable and acceptable to United. United avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. United commenced such self-implementing service on December 15, 1988, as reported in Docket No. ST89-1304-000.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP89-490-000]

January 5, 1989.

Take notice that on December 28, 1988, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonet, Houston, Texas 77251-1642, filed in Docket No. CP89-490-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to provide additional delivery points and reassign volumes of gas delivered to Kansas Power and Light Company (KP&L), an existing jurisdictional sales customer of Panhandle, under the certificate issued in Docket No. CP86-585-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to add three existing delivery points to its Rate Schedule G-3 sales agreement with

KP&L. It is stated that these three delivery points were deleted from the Rate Schedule G–2 sales agreement with KP&L. Panhandle states that the subject points are as follows: (1) The Stillwell point located in Johnson City, Kansas; (2) the 159th and State Line point located in Johnson County, Kansas; and (3) the Kansas State Line delivery point.[1]

Panhandle states that it has sufficient capacity to make the deliveries to the subject delivery points without detriment or disadvantage to its existing customers. No new facilities are proposed. Panhandle indicates that the total maximum delivery obligations to KP&L under the Rate Schedule G–3 sales agreement would remain at 12,510 Mcf per day for firm service, as shown below.

Affected delivery point	Volume (Mcf/d)		Difference
	Previous	Current	
Osawatomie	3,041	2,361	(680)
Paola	4,202	3,202	(1,000)
Stillwell		1,000	1,000
159th & State Line		600	600
Kansas State Line		80	80
Subtotal	7,243	7,243	
Other points	5,267	5,267	
Total	12,510	12,510	

Comment date: February 21,1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89–494–000]

January 5, 1989.

Take notice that on December 28, 1988, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–494–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Natural Gas Clearinghouse (NGC), under the authorization issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for NGC, a marketer of natural gas, pursuant to a transportation agreement dated November 28, 1988 (contract no. T1–21–1977). The term of the transportation agreement is for a primary term of one month from the date of first delivery of gas and shall continue in effect month-to-month thereafter until terminated. United proposes to transport on a peak day up to 103,000 MMBtu; on an average day up to 103,000 MMBtu; and on an annual basis 37,595,000 MMBtu of natural gas for NGC. United proposes to receive the subject gas from NGC at an existing interconnection in Black Lake Field, Natchitoches Parish, Louisiana, for redelivery to three existing delivery points in Ouachita Parish, Louisiana. It is alleged that NGC would pay United the effective rate contained in United's rate schedule ITS, or such other rates as may be just and reasonable and acceptable to United. United avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. United commenced such self-implementing service on December 15, 1988, as reported in Docket No. ST89–1305–000.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Alabama-Tennessee Natural Gas Company

[Docket Nos. CP87–46–004, CP87–400–002, and CP88–56–003]

January 5, 1989.

Take notice that on December 21, 1988, Alabama-Tennessee Natural Gas Company (Petitioner), P.O. Box 918, Florence, Alabama, 35631, filed in Docket Nos. CP87–46–004, CP87–400–002, and CP88–56–003, a petition to amend the orders issued on March 16, 1987, February 22, 1988, and April 27, 1988, in the captioned dockets, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension in the term of the limited-term certificates issued in such dockets, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioner states that the Commission, by its orders issuing the above certificates, authorized Petitioner to transport volumes of natural gas on an interruptible basis for Tennessee Valley Authority (TVA) for use at its Muscle Shoals, Alabama, National Fertilizer Development Center (Docket No. CP87–46), for Reynolds Metals Company and Southern Reclamation Company (Reynolds) for use at its plant near Listerhill, Alabama (Docket No. CP87–400), and for the City of Decatur, Alabama (Decatur) for resale to its customers (Docket No. CP88–56). Petitioner states that it has received requests from TVA, Reynolds and Decatur, to continue the transportation service after the expiration of the existing certificate authorization. Petitioner also states that it desires to continue to make interruptible transportation service available on its pipeline system to TVA, Reynolds and Decatur.

Petitioner therefore requests that the limited-term certificates issued in the captioned proceedings be extended for a limited term ending as follows:

Docket No. CP87–46 on March 10, 1990.
Docket No. CP87–400 on February 22, 1990.
Docket No. CP88–56 on April 27, 1990.

Petitioner asserts that no other changes or modifications in the exisiting authorized services are proposed.

Comment date: January 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP89–519–000]

January 6, 1989.

Take notice that on December 30, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–519–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Cominco American Incorporated (Cominco), an end-user, under the blanket certificate issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated October 31, 1988, under its Rate Schedule TF–1, it proposes to transport up to 10,000 Mcf per day of natural gas for Cominco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A." CIG states that it would receive the gas at existing points on its system located in Colorado, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, in Hutchinson County, Texas.

CIG advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–841–000. CIG further advises that it would transport 9,000 Mcf on an average day and 3,285 MMcf annually.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Mid-Louisiana Gas Company

[Docket No. CP89–506–000]

January 6, 1989.

Take notice that on December 29, 1988, Mid-Louisiana Gas Company (Mid-Louisiana) 5251 DTC Parkway, Englewood, Colorado 80111, filed in Docket No. CP89–508–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide a transportation service for Wintershall Corporation (Wintershall), its parent, under Mid-Louisiana's blanket certificate issued in Docket No. CP86–214–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated October 16, 1988, it proposes to transport natural gas for Wintershall from receipt points located in the Monroe, Vixen, Luna and Irene production fields of Louisiana and from Eugene Island Block 18, West Cameron Block 32 and the Grand Bay Receiving Station located offshore Louisiana. The gas would be delivered on behalf of Wintershall at points of interconnection between the facilities of Mid-Louisiana and Transcontinental Gas Pipeline Company in Ethel, Louisiana and between Mid-Louisiana and ANR Pipeline Company at Eugene Island Block 34, offshore Louisiana. Peak day and average day transportation quantities are both expected to be 50,000 MMBtu, which would result in an annual transportation quantity of 18,250,000 MMBtu. Mid-Louisiana advises that the service commenced November 19, 1988, as reported in Docket No. ST89–1398–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP89–506–000]

January 6, 1989.

Take notice that on December 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–506–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide a transportation service for The Kansas Power and Light Company (KPL), under WNG's blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG requests authorization to transport, on a firm basis, up to a maximum of 24,825 MMBtu of natural gas per day for KPL from various receipt points in Kansas, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Kansas, Missouri, Nebraska and Oklahoma. WNG anticipates transporting 24,825 MMBtu on average and peak days, which would result in 9,061,125 MMBtu being transported annually. WNG states that the transportation service commended on November 1, 1988, as reported in Docket No. ST89–1154–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP89–521–000]

January 6, 1989.

Take notice that on December 30, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–521–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide a firm transportation service for Cominco American Incorporated (Cominco), an end-user, under the blanket certificate issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated October 31, 1988, under its Rate Schedule TF–1, it proposes to transport up to 5,000 Mcf per day of natural gas for Cominco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at an existing point on its system located in Sweetwater County, Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, in Hutchinson County, Texas.

CIG advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89–1356–000. CIG further advises that it would transport 4,500 Mcf on an average day and 1,642 MMcf annually.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Colorado Interstate Gas Company

[Docket No. CP89–520–000]

January 6, 1989.

Take notice that on December 30, 1988, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–520–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Cominco American Incorporated (Cominco), an end-user, under the blanket certificate issued in Docket No. CP86–589–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on

[1] Panhandle explains that it is concurrently filing an application with the Commission under section 7(b) of the Natural Gas Act seeking partial abandonment of sales contract demand and deletion of sales to delivery points from its Rate Schedule G–2 sales agreement with KP&L. It is stated that in such application, sales from three of the delivery points deleted from the Rate Schedule G–2 sales agreement are being added to the Rate Schedule G–3 sales agreement.

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file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated October 31, 1988, under its Rate Schedule TF-1, it proposes to transport up to 10,000 Mcf per day of natural gas for Cominco from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A". CIG states that it would receive the gas at an existing point on its system located in Sweetwater County, Wyoming, and that it would transport and redeliver the gas, less fuel gas and lost and unaccounted-for gas, in Hutchinson County, Texas.

CIG advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-839-000. CIG further advises that it would transport 9,000 Mcf on an average day and 3,285 MMcf annually.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-656 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS67-37-001 et al.]

M.A. Hanna Co., Tri-Service Drilling Co. et al.; Applications for Small Producer Certificates [1]

January 10, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 24, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS67-37-001	[1] 11-30-88	M.A. Hanna Co., (Tri-Service Drilling Co.), 214 West Texas, Suite 1200, Midland, TX 79701.
CS71-178-000	[2] 10-21-88	Graham-Michaelis Drilling Co. and Graham-Michaelis Corp., (Graham-Michaelis Drilling Co.), P.O. Box 247, Wichita, KS 67201.
CS88-99-000	[3] 9-26-88	TBA Petroleum, Inc., Gale Thompson and Karen Bowles, Rt. 1, Box 113, Erick, OK 73645.
CS89-9-000	11-29-88	Devon Energy Corp., 1500 Mid-America Tower, 20 North Broadway, Oklahoma City, OK 73102-8260.
CS89-10-000	11-29-88	Greenhill Petroleum Corp., 141 Union Boulevard, Suite 475, Lakewood, CO 80226.
CS89-11-000	12-5-88	Rice Oil Co., 1301 East Scharbauer St., Hobbs, NM 88240.
CS89-12-0100	12-20-88	John T. (Tom) Hull, P.O. Box 1268, Pawhuska, OK 74056.

[1] By letter dated November 15, 1988, Applicant requests that the name of M.A. Hanna Company be recognized as small producer certificate holder in Docket No. CS67-37 in lieu of Tri-Service Drilling Company.

[2] By letter dated October 19, 1988, as supplemented by letter dated November 21, 1988, Applicant requests to add Graham-Michaelis Corporation as small producer certificate coholder in Docket No. CS71-178, along with Graham-Michaelis Drilling Company.

[3] Additional material received December 6, 1988.

[FR Doc. 89-769 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. CP89-510-000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

January 4, 1989.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP89-510-000]

Take notice that on December 29, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP-89-510-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for PSI, Inc. and Utilicorp United, Inc. (PSI/Utilicorp), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for PSI/Utilicorp, a marketer, on an interruptible basis, pursuant to a transportation agreement dated October 1, 1988. Williams explains that service commenced October 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1151-000. Williams further explains that the peak day quantity would be 250,000 MMBtu, the average day quantity would be 250,000 MMBtu, and that the annual quantity would be 91,250,000 MMBtu. Williams explains that it would receive natural gas for the account of PSI/Utilicorp at receipt points located in Kansas, Colorado, Missouri, Texas, Wyoming, and Oklahoma and would redeliver the gas at various delivery points in Kansas, Missouri, Oklahoma, Texas and Wyoming.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-492-000]

January 4, 1989.

Take notice that on December 28, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-492-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for PSI, pursuant to an interruptible transportation service agreement dated September 20, 1988. The transportation agreement is effective through the end of September 1988, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 1000,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision of Natural's Rate Schedule ITS); on an average day up to 10,000 MMBtu; and on an annual basis 3,650,000 MMBtu of natural gas for PSI. Natural proposes to receive the subject gas at various points located in the states of Arkansas, Illinois, Indiana, Kansas, Louisiana (including Offshore Louisiana), New Mexico, Oklahoma, and Texas. It is stated that the points of delivery are located in the states of Indiana and Texas. The ultimate consumers are: High Plains Natural Gas Company, City of Canadian Light Plant, Phillips Petroleum, Northern Indiana Public Service Company, Air Prod. & Chem. Inc., Allis Chalmers Mfg. Co., Am. General Corp., American Can Co., American Cyanamid Co., American Home Foods, American Maize Products, American Steel Forys, Amoco Oil Co., Austenal Microcast Div., Bendix Corp., Bethlehem Steel Corp., Blaw Knox F & Mill Inc., Budd Co., Bunge Corp., C.J. Wood Co., Celotex Corp., Central Soya Co. Inc., Commonwealth Edison 2nd, Corning Glass Works, Culver Ed Foundation, Dalton Foundries, Dana Corp.-Ft. Wayne Div., Dodge Mfg. Corp., E.I. Dupont De Nemours. Elkhart General Hosp., Energy Cooperative Inc., Essex-International, Falstaff Brewing Corp., Federated Metals Corp., Fort Wayne State Sanpol, G.A.T.X., General Electric Co.-Taylor St., General Tire & Rubber, Georgia Pacific Corp., Gladieux Refinery, Glidden-Durkee Div., Globe Industries, Goshen Milk Div., Griffith Food Prod. Inc., Grissom Air Force Base, Hammond Lead Prod., Harbison Walker Refract, Ind. Fuel & Asphalt, Indiana Fore & Mach Co., Inland Steel Co., International Harvester, Joslyn Steel, Kaiser Alum. And Chem. Corp., Keyes Fibre Co.., Lake Country Commissioners, Laketon Asphalt, Laporte Hosptial, Lasalle Steel Co., Lehigh Portland Cemt. Co., Lever Brothers, Linde Co., Luvis Bros. Co. Inc., Mason Metals Co. Inc., Memorial Hospital of Sb, Metallurgical Proc. Corp., Midwest Steel Div. of National Steel, Miles Laboratories Inc., N. American Rockwell Corp., N.I.R. Corp., National Can Corp., Owens Corning Fibreglass, Packaging Corp. of America, Parkview Memorial Hospital, Peter Echrich and Sons, Phelps Dodge Copper, Porter Memorial Hospital, R.R. Donneley & Sons, Roll Coater Inc., Screw & Bolt Corp. of America, Simmons Co., St. Anthony's Hospital, St. Catherine's Hospital, St. Margaret Hospital, Standard Forging Corp., Stauffer Chemical Corp., Themark Corp., Terrington Co. Inc., US Gypsum Co., US Reduction Co., Union Carbide Linde Div., Union Drawn Republic ST., Union Tank Car Co., United States Steel Corp., Univ. Notre Dame Power House, Valpariso University, Vulcan Metals, Wabash Smelting, Westville Oil & Mfg. Inc., Wheelbrator Corp., White Farm Equipment Co., Wilson Foods Corp., Winamac Steel Products, Wylain Inc., Youngstown Steel & Tubing Co. and Zollner Corp. Natural Avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on November 1, 1988, as reported in Docket No. ST89-1465-000.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP89-505-000]

Take notice that on December 29, 1988, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-505-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for PSI, Inc. (PSI), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for PSI, a marketer, on a firm basis, pursuant to a transportation agreement dated November 1, 1988. Williams explains that service commenced November 1, 1988, under § 284.223(a) of the Commission's

Regulations, as reported in Docket No. ST89–1155–000. Williams further explains that the peak day quantity would be 2,167 MMBtu, the average day quantity would be 2,167 MMBtu, and that the annual quantity would be 790,955 MMBtu. Williams explains that it would receive natural gas for PSI's account at receipt points located in Kansas, Missouri, Texas, Wyoming, and Oklahoma and would redeliver the gas for PSI's account at various delivery points in Kansas.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Mitchell Marketing Company, et al.

[Docket No. CI89–150–000, et al.]

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Docket No. and date filed	Applicant
CI89–150–000 12–5–88	Mitchell Marketing Co. 2001 Timberloch Place, The Woodlands, TX 77380.
CI89–169–000 12–7–88	Graham Energy Marketing Corp., 109 Northpark Blvd., P.O. Box 3134, Covington, LA 70434–3134.

Comment date: January 18, 1989, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89–747 Filed 1–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–20–000 and TM89–6–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 9, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 3, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be Effective March 1, 1989

Thirtieth Revised Sheet No. 201

Proposed to be Effective February 1, 1989

Twenty-fourth Revised Sheet No. 205
Fifteenth Revised Sheet No. 214

Algonquin states that pursuant to Section 17 of the General Terms and Conditions, it is filing Thirtieth Revised Sheet No. 201 as part of its Annual Purchased Gas Adjustment ("Annual PGA") to update its latest estimated cost of purchased gas, as more fully set forth in the instant filing. The proposed effective date for Thirtieth Revised Sheet No. 201 is March 1, 1989.

Algonquin states that the rate changes in the Annual PGA represent a projected increase in Algonquin's purchased gas costs of approximately $4.3 million for the three month period beginning March 1, 1989, for Rate Schedules F–1, WS–1, E–1, and I–1.

Algonquin states that it is filing Twenty-fourth Revised Sheet No. 205 and Fifteenth Revised Sheet No. 214 to track changes made by its pipeline supplier, Texas Eastern, in the rates underlying Algonquin's Rate Schedules F–4 and SS–III, respectively. The changes in Rate Schedule F–4 reflect a decrease of $1.113 per MMBtu in the Demand component and an increase of $0.192 in the Commodity component. The change in rate Schedule SS–III reflects a decrease in the Non-FDDQ Withdrawal charge of $0.0108 per MMBtu. The proposed effective date of Twenty-fourth Revised Sheet No. 205 and Fifteenth Revised Sheet No. 214 is February 1, 1989.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard, or to protest said filing should file a motion to intervene, or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests in Docket No. TA89–1–20–000 should be filed on or before January 31, 1989, and all such motions or protests in Docket No. TM89–6–20–000 should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 89–748 Filed 1–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 9, 1989

Take notice that ANR Pipeline Company ("ANR"), on December 29, 1988, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effecive February 1, 1989:

Nineteenth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

ANR states Nineteenth Revised Sheet No. 18 shows a 16.65¢ per dekatherm (dth) increase in the gas cost component of the commodity rate of ANR's CD–1/MC–1 Rate Schedules, a decrease of $0.099 in the monthly D–1 demand rate and a reduction of .93¢ in the D–2 demand rate applicable to the CD–1/MC–1 Rate Schedules. The instant filing further reflects an increase in ANR's one-part rate applicable to Rate Schedules SGS–1 of 13.88¢ per dth.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–749 Filed 1–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–211–004]

CNG Transmission Corp.; Compliance Filing and Motion

January 6, 1989.

Take notice that CNG Transmission Corporation ("CNG") on December 30, 1988, tendered for filing Fifth Revised Sheet No. 31, Third Revised Sheet No. 32, Second Revised Sheet No. 33, Alternate Fifth Revised Sheet No. 31, Alternate Third Revised Sheet No. 32 and Alternate Second Revised Sheet No. 33, all to Original Volume No. 1 of CNG's FERC Gas Tariff, to become effective January 1, 1989, subject to refund. Also take notice that CNG moved to make the revised tariff sheets effective on January 1, 1989, at the close of the suspension period in this case.

CNG states that the proposed alternate tariff sheets comply with the Commission's suspension order issued August 1, 1988, as amended on rehearing, and that the primary tariff sheets reflect a voluntary reduction in rates from the compliance filing level.

Copies of the filing were served upon CNG's jurisdictional customers, parties to Docket No. RP88–211–000 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–657 Filed 1–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–3–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 30, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective February 1, 1989:

One hundred and thirty-second Revised Sheet No. 16
Twentieth Revised Sheet No. 16A2
Thirth-seventh Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and thirty-second Revised Sheet No. 16 reflect an overall increase of 1.15¢ per Dth in the Commodity rate, and decreases of $.249 per Dth in the Demand-1 rate and 3.59¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Eighteenth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .03¢ per Dth.

Columbia states that these tariff sheets reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) The one-month continuation of certain surcharges which were accepted by the Commission on February 26, 1988 to be effective during the 12-month period March 1, 1988 through February 28, 1989; and

(3) A Transportation Fuel Charge Adjustment.

In addition, Columbia states that it has entered into revised service agreements which significantly modify its prior service agreements with Texas Eastern Transmission Corporation (Texas Eastern). However, because the new service agreements are subject to the terms and conditions contained in a Commission approved settlement in Docket Nos. RP85–177, *et al.*, which has yet to become effective, the rate impact of the new service arrangements with Texas Eastern is not reflected in the instant PGA. However, Columbia requested the Commission to grant certain waivers in connection with costs incurred under the revised Texas Eastern service agreements. Specifically, waivers related to converted sales service and standby charges as set forth in the revised agreements.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–658 Filed 1–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–012]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 30, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1989:

Eighteenth Revised Sheet No. 16B
Eighth Revised Sheet No. 16B1
Eighth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket No. RP88–187 in which Columbia

established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to revise and supplement its earlier filings to permit it to flow through take-or-pay and contract reformation costs to be billed to it by (i) Texas Gas Transmission Corporation pursuant to the Federal Energy Regulatory Commission's (Commission) order issued on December 8, 1988 in Docket Nos. RP88-177 and RP88-230, (ii) Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the Commission's orders on issued December 5, 1988 in Docket No. RP88-241 and on December 8, 1988 in Docket No. RP88-240, and (iii) Panhandle pursuant to the Commission's orders issued on November 25, 1988 in Docket Nos. RP89-9 and RP89-10.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-659 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that on December 30, 1988, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective February 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

59th Revised Sheet No. 128

FGT states that these tariff sheets are filed in accordance with § 154.308 of the Commission's Regulations and pursuant to Section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ89-2-34-000, effective November 1, 1988.

FGT states that the effect of the purchased gas cost reduction being filed represents an increase of 1.550 cents/therm for Rate Schedules G and I and .44 cents/Mcf for Rate Schedule T-3 as measured against FGT's Quarterly PGA filing in Docket No. TQ89-2-34-000 effective November 1, 1988.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-660 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

January 6, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 29, 1988, tendered for filing Eighteenth Revised Sheet Nos. 57(i) and 57(ii), Nineteenth Revised Sheet Nos. 57(i) and 57(ii) and Sixth Revised Sheet No. 57(v) to Great Lakes Gas Transmission Company's ("Great Lakes") FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets reflect PGA rates for the months February, March and April, 1989 as required by Commission Order No. 483, dated November 10, 1987, and Great Lakes' FERC Gas Tariff.

Great Lakes states that Eighteenth Revised Sheet Nos. 57(i) and 57(ii), proposed to be effective February 1, 1989, reflect a surcharge rate which expires on February 28, 1989. Nineteenth Revised Sheet Nos. 57(i) and 57(ii) are enclosed in order to reflect the termination of the surcharge and are proposed to be effective on March 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-661 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-45-000]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

January 9, 1989.

Take notice that on December 30, 1988, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City") 245 Yorkland Boulevard, North York, Ontario, Canada MJ2 1R1, tendered for filing a revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff to be effective February 1, 1989:

Original Volume No. 1

First Revised Thirty-First Revised Sheet No. 4

Inter-City states that this revised tariff sheet is filed as Inter-City's quarterly PGA pursuant to Order Nos. 483 and 483-A. The revised tariff sheet reflects a commodity rate of $1.48 per MMBtu in Inter-City's Eastern Zone and of $2.51 per MMBtu in Inter-City's one-part rate for the Western Zone.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who has previously filed a motion to intervene in this proceeding is not required to file a futher motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-750 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP72-110-047]

Iowa-Illinois Gas and Electric Co.; Filing

January 9, 1989.

Take notice that on December 30, 1988, Iowa-Illinois Gas and Electric Company (Iowa-Illinois) filed a petition for waiver of the provisions of the requirements of § 385.2011 of the Commission's Regulations.

Iowa-Illinois states that it is unable to comply with the electronic data reporting requirements as they pertain to FERC Form No. 2/2A. Iowa-Illinois states that its FERC Form No. 2/2A is due April 30, 1989 and cannot acquire the computer development capability in time to comply. Iowa-Illinois alleges that the acquisition of such computer development capability would cause severe economic hardship. Accordingly, Iowa-Illinois requests a waiver for the maximum period of one year from the filing requirement to file Form No. 2/2A on electronic media as it does not have, and is unable to acquire, the computer development capability to timely file the information required.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-751 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

January 9, 1989.

Take notice that on December 30, 1988, Midwestern Gas Transmission Company (Midwestern) filed Thirty-Sixth and Thirty-Seventh Revised Sheets No. 6 to Original Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1989 and February 1, 1989 respectively.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Thirty-Seventh Revised Sheet No. 6 consist of a (5.56) cents per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a ($.79) per dekatherm adjustment applicable to the Demand D-1 component. Midwestern states that Thirty-Sixth Revised Sheet No. 6 is being filed to incorporate changes filed in Docket Nos. RP89-36 and TQ89-3-5.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-752 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-47-000]

MIGC Inc.; Proposed Gas Adjustment Rate Change

January 9, 1989.

Take notice that on December 30, 1988, MIGC, Inc. (MIGC) tendered for filing Fifty-First Revised Sheet No. 32 to its FERC Gas Tariff Original Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its third quarterly purchased gas cost adjustment (PGA) filing pursuant to the Commission's revised PGA regulations and the revised PGA provisions of MIGC's tariff, as approved in Docket No. RP88-143-000. The revised tariff sheet is proposed to become effective February 1, 1989.

MIGC states Fifty-First Revised Sheet No. 32 included in the filing reflects a quarterly PGA increase of $.0021 per MMBtu. MIGC states that the proposed quarterly PGA increase of $.0021 reflects a current adjustment of $.0021 per MMBtu effective February 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-753 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that National Fuel Gas Supply Corporation ("National"), on December 30, 1988, tendered for filing proposed changes in its FERC Gas Tariffs, First Revised Volume Nos. 1 and 2. The proposed changes would increase revenues from jurisdictional sales and service by approximately $1,500,000 based on the twelve-month period ended September 30, 1988, as adjusted.

National states that its sales have declined to a level that prohibits its opportunity to earn its allowed return on equity. Further, National states that the increased revenues are required to recoup increased costs incurred in operating and maintaining its system.

National states that the proposed rates reflect an overall rate of return 11.93 percent which is, National states, is the minimum just and reasonable rate of return necessary at this time.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, New Jersey, and Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Procedural Rules (18 CFR 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-662 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-16-001]

National Fuel Gas Supply Corp.; Filing

January 6, 1989.

Take notice that on December 28, 1988, National Fuel Gas Supply Corporation (National) filed Substitute Second Revised Sheet No. 72-B (Page 3 of 3) to its FERC Gas Tariff, First Revised Volume No. 1, to be effective January 1, 1989.

National states that in its December 9, 1988 filing, it incorrectly referenced Transcontinental Gas Pipe Line Corporation. National states that the correct caption should read CNG Transmission Corporation.

National state that copies of this correction have been mailed to all of its customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-754 Filed 1-11-89; 8:45 am]

BILL CODE 6717-01-M

[Docket No. RP89-47-000]

Natural Gas Pipeline Co. of America; Change in PGA Tariff Procedure

(January 6, 1989).

Take notice that on December 29, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective January 1, 1989.

Fourth Revised Sheet Nos. 121C and 121D

Second Revised Sheet Nos. 121E and 121F

Natural states the purpose of the instant filing is to amend the PGA Carrying Charge calculation set out in ¶18.85 of the General Terms and Conditions of Natural's tariff. Natural requests waiver of the Regulations to reflect the use of Natural's Temporary LIFO Valuation Account balance in lieu of the rolling weighted average method stated in the Regulations to reflect a cash-based Account 191 for carrying charge calculation purposes only.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Stree, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-663 Filed 1-11-89; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-014]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

January 9, 1989.

Take notice that on December 30, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet Nos. 165 and 166 and Second Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective February 1, 1989.

Natural states that the filing is made for the purpose of recovering fifty percent of the jurisdictional portion of an additional $41 million of take-or-pay buyout and buydown and contract reformation costs (transition costs) incurred since Natural's previous filing made on October 31, 1988 under Docket No. RP88-94-010. The instant filing includes carrying charges accrued for the months of December, 1988 and January, 1989 on those amounts for which recovery has already been sought and granted under Docket Nos. RP88-94-005 and RP88-94-010.

Natural states that its filing includes revised tariff language which will (1) reflect the Commission's recent Order No. 500-F which extended the sunset date to March 31, 1989; and (2) provide for an extension of the March 31, 1989 sunset date for the recovery of transition costs related to purchase contracts in litigation or arbitration at that date. Finally, Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective February 1, 1989.

A copy of the filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 220426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-756 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-26-000]

Natural Gas Pipeline Co. of America; Change in PGA Tariff Procedure

January 9, 1989.

Take notice that on December 30, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective March 1, 1989.

Seventy-eighth Revised Sheet No. 5
Forty-third Revised Sheet No. 5A
Seventeenth Revised Sheet No. 5B
Nineteenth Revised Sheet No. 5C

Natural states the purpose of the instant filing is to implement Natural's Purchased Gas Adjustment (PGA) unit rate adjustment calculated pursuant to Section 18 of the General Terms and Conditions of Natural's FERC Gas Tariff, Third Revised Volume No. 1. This filing constitutes Natural's first annual PGA filing in accordance with the Commission's Regulations governing PGA filings as promulgated by Order Nos. 483 and 483-A. The rate adjustments herein relating to the ongoing gas cost component of Natural's rate reflect projected gas costs and sales for the three months beginning March 1, 1989. The above listed tariff sheets reflect Natural's as-filed rates as adjusted in Natural's motion filing on December 21, 1988 to comply with the Docket No. RP88-209 Suspension Order, 44 FERC ¶ 61,176 (1988) (Motion Rates) and to further reduce overall cost of service.

Natural also submits for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, six (6) copies each of the following tariff sheets to be effective March 1, 1989.

Alternate Seventy-eighth Revised Sheet No. 5
Alternate Forty-third Revised Sheet No. 5A
Alternate Seventeenth Revised Sheet No. 5B
Alternate Nineteenth Revised Sheet No. 5C

Natural states that this set of tariff sheets reflects rates from the Docket No. RP88-209 Stipulation and Agreement Pertaining to Interim Rate Reduction (Interim Settlement).

Natural states that on Dec. 21, 1988, it submitted tariff sheets reflecting the Motion and Interim Settlement rates for Docket No. RP88-209 for Commission approval to be effective January 1, 1989. The two sets of tariff sheets submitted herein reflect these rates and which set will become effective is dependent upon Commission action in Docket No. RP88-209.

Natural states that the overall effect on its ongoing purchased gas cost is to decrease Natural's DMQ-1 commodity charge by 102.04¢, and to increase Natural DMQ-1 demand and entitlement charges by $.02 and .39¢, respectively. No demand charge adjustment is required under the Interim Settlement rates. No change has been made to Natural's currently effectively commodity surcharge rate in either the Motion or Interim Settlement rates. Natural has also included a credit demand surcharge rate of $.14 in both the Motion and Interim Settlement rates. Appropriate adjustments have been made with respect to Natural's other sales rate schedules.

A copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-755 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-13-026 and RP88-47-015]

Northwest Pipeline Corp.; Filing

January 6, 1989.

Take notice that on December 30, 1988, Northwest Pipeline Corporation (Northwest) filed First Amended Second Revised Sheet No. 311 to its FERC Gas Tariff, Original Volume No. 1-A.

Northwest states that this filing is in compliance with the Commission's letter order dated December 1, 1988, which required deletion of any language "which may limit shippers' rights under the priority conversions provision."

Northwest states that it does not intend to "limit shippers' rights under the priority conversions provision." Northwest states that it does believe that all requests for modifications to existing firm transportation agreements must be treated on a first-come, first-served basis, subject to available pipeline capacity and capacity at requested receipt and delivery points, regardless of whether the firm transportation agreement being modified originally resulted from a conversion of sales contract demand to firm transportation or from a separate request.

Northwest requests waivers to permit an effective date of June 10, 1988 for the revised sheet, which is the effective date for the other sheets previously accepted for filing.

Northwest states that copies of this filing are being served on all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-757 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

January 6, 1989.

Take notice that Paiute Pipeline Company (Paiute), on December 30, 1988, tendered for filing pursuant to Part 154 of the Commission's regulations, a Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served under rate schedules affected by and subject to the PGA provisions contained in Section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1.

Paiute states that it tendered First Amended Third Revised Sheet No. 10 which reflected a decrease in annual demand charges of $6,728,333 in aggregate and an increase of 2.445 cents per therm in commodity rates compared with those in effect on November 1, 1988. In determining its projected purchased gas costs included in this filing, Paiute has utilized rates filed by Northwest Pipeline Corporation (Northwest) on December 2, 1988 in Docket No. TQ89-3-37-000 to be effective January 1, 1989. If the rates proposed by Northwest are revised for any reason, Paiute reserves the right to submit a substitute sheet to track the Northwest revision.

Paiute states that it has excluded firm transportation demand charges in determining the projected purchase gas costs included in its filing. In its Order issued October 31, 1988 at Docket No. TA89-1-41-000, the Commission granted Paiute waiver of § 154.302(j) for an interim period until February 1, 1989, the scheduled effective date of Paiute's section 4(e) filing at Docket No. RP88-227-000.

Paiute states that one of Paiute's suppliers, Natural Gas Clearinghouse Inc. (NGC), purchases both domestic and Canadian gas supplies for resale to Paiute and bills Paiute for such sales on a one-part basis. Since Paiute's payments to NGC are based on a one-part rate, Paiute has included these purchases in determining its projected purchased gas costs included in this filing, pursuant to the Commission's Order issued October 31, 1988 at Docket No. TA89-1-41-000.

The proposed effective date for the tendered tariff sheet is February 1, 1989.

Copies of the filing were served on Paiute's jurisdictional sales customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-664 Filed 1-11-89 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

January 9, 1989.

Take notice that on December 30, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventieth Revised Sheet No. 3-A
Forty-Seventh Revised Sheet No. 3-B.

The proposed effective date of these revised tariff sheets is March 1, 1989.

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (96.48¢) per Dt, which includes:

(1) A (30.82¢) per Dt decrease in the projected purchased gas cost component;

(2) A (66.86¢) per Dt decrease in the surcharge of recover the Current Deferred Account Balance at October 31, 1988 and related carrying charges; and

(3) A 1.20¢ per Dt increase pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith reflect the following changes to Panhandle's D_1 and D_2 demand rates:

(1) An increase of $0.40 for D_1 pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $0.33 for D_1 and an increase of 0.73¢ for D_2 pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective March 1, 1989.

Panhandle states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 395.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests would be filed on or before January 31, 1989. Protests will be considered by the Commission in January 31, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-758 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2425 Virginia]

Potomac Edison Co.; Intent To File an Application for a New License

January 6, 1989.

Take notice that on December 14, 1988, Potomac Edison Company, the existing licensee for the Luray/Newport Hydroelectic Project No. 2425, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 18 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2425 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the South Fork of the Shenandoah River in Page County, Virginia. The Luray development principal works include a concrete buttress dam, about 525 feet long and 18.5 feet high; a reservoir of 125 acres and a powerhouse with an installed capacity of 1,600 kW. The Newport development includes a concrete buttress dam, about 453 feet long and 24 feet high; a reservoir of 102 acres; and a powerhouse with an installed capacity of 1,400 kW. The total project capacity is 3,000 kW. Each development has a transmission line connection and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Downsville Pike, Hagerstown, MD 21740.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-759 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2391, Virginia]

Potomac Edison Co.; Intent To File an Application for a New License

January 6, 1989.

Take notice that on December 14, 1988, Potomac Edison Company, the existing licensee for the Warren Hydro Station Hydroelectric Project No. 2391, filed a notice of intent to file an application for a new license, pursuant to section 15b(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2391 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located at the Shenandoah River in Warren County, Virginia. The Warren Hydro Station principal works include a concrete dam; a headrace, about 350 feet long; a powerhouse with an installed capacity of 750 kW; a tailrace; a transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Downsville Pike, Hagerstown, MD 21740.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-760 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2515, West Virginia]

Potomac Edison Co.; Intent To File an Application for a New License

January 6, 1989.

Take notice that on December 14, 1988, Potomac Edison Company, the existing licensee for the Harper's Ferry Hydroelectric Project No. 2515, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2515 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located in the Potomac River in Jefferson County, West Virginia. The Harper's Ferry Project principal works include an 18-foot-high 1,700-foot-long concrete capped log and stone dam; a 4,500-foot-long headrace channel; a powerhouse with an installed capacity of 600 kW; a tailrace; a transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Downsville Pike, Hagerstown, MD 21740.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-761 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-191-000]

Shell Gas Pipeline Co.; Petition for Declaratory Order

January 6, 1989.

Take notice that on December 20, 1988, Shell Gas Pipeline Company (Shell Gas) filed a petition requesting the Commission to disclaim jurisdiction over certain natural gas facilities that petitioner intends to construct offshore Louisiana on the Outer Continental Shelf (OCS). Petitioner proposes to construct a line that will deliver substantial amounts of gas from a corporate affiliate's production platform in Main Pass Block 252, to an interconnection with a jurisdictional pipeline, which will transport the gas onshore to a processing plant. Petitioner contends that the facilities are gathering and production facilities under section 1(b) of the Natural Gas Act (NGA) and are, therefore, exempt from Commission jurisdiction and the certificate requirements of the NGA.

Petitioner states that the primary function of the proposed line will be to deliver raw gas from the production platform to a jurisdictional pipeline for transportation ashore to a processing plant, where natural gas liquids and liquefiables will be extracted. Residue gas will be sold at the tailgate, and may be moved through one or more of the "Mobile Bay Pipeline Projects" to be considered by the Commission in Docket No. CP88-570-000. Petitioner requests expedited consideration, in part because of the relationship of the subject facilities to the proceedings in Docket No. CP88-570-000.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 15 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-762 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-267-004

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that on December 30, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheet to its FERC Gas Tariff to be effective October 1, 1988:

Revised Substitute Original Sheet No. 40.

South Georgia states that the proposed tariff sheet is being submitted in compliance with the Commission's order of December 20, 1988 in Docket No. RP88-267-002, South Georgia's proceeding to flow through take-or-pay buy-out and buy-down charges allocated to it by Southern Natural Gas Company. The aforesaid tariff sheet reflects revised charges based upon the inclusion of interruptible customers in the cost allocation calculations and revisions to South Georgia's allocation methodology utilizing the same base and deficiency periods as its upstream pipeline supplier, Southern Natural Gas Company.

South Georgia states that copies of the filing were mailed to all of its jurisdictional purchasers and interested state commissions, as well as the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 285.211 or 385.214). All such motions to protest should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-665 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1651-010]

Swift Creek Power Co. Inc.; Application for Approval of a Contract for the Sale of Power for a Period Extending Beyond the Term of License

January 6, 1989.

Take notice that on August 25, 1988, Swift Creek Power, Inc. (Swift Creek), pursuant to section 22 of the Federal Power Act (FPA), 16 U.S.C. 815, filed an application for Commission approval of contract for the sale of power from Smith Creek's licensed Upper and Lower Swift Creek Hydroelectric Project No. 1651 to Idaho Power Company, for a period extending beyond the 1992 expiration date of the project license. Swift Creek's Project No. 1651 is located on Swift Creek, partially within the Bridger-Teton National Forest, in Lincoln County, Wyoming. Correspondence to Smith Creek regarding the application should be addressed to McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005 and E. Farley Eskelson, President, Swift Creek Power Company, Inc., 100 Lindbergh Plaza 2, 5160 Wiley Post Way, Salt Lake City, Utah 84116.

Section 22 of the FPA provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and of the public-service commission or other similar authority in the state in which the sale or delivery of power is made. Swift Creek indicates in its application that in order to get permanent financing for a proposed project rehabilitation it will require Commission approval of a power sale contract with a 25-year term extending beyond the 1992 expiration of the project license. Swift Creek states that it will also pursuant to section 22 of the FPA seek the Idaho Public Utility Commission's (IPUC) approval of the contract and that it will provide the Commission with a copy of its application for IPUC approval.

Comments, Protests, or Motions To Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 352.210, 352.211, 352.214. In determining the appropriate action to take, the Commission will consider all the protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motion to intervene must be filed on or before February 10, 1989. The Commission's address is: 825 North Capitol Street, NE., Washington, DC 20426. The proposed contract and the application for contract approval are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-763 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-007]

Tennessee Gas Pipeline Co.; Filing of Changes in Rates

January 6, 1989.

Take notice that on December 30, 1988, Tennessee Gas Pipeline Company (Tennessee) tendered for filing certain tariff sheets to its FERC Gas Tariff pursuant to the Commission's August 31 and October 31, 1988 orders in the referenced proceeding, to be effective February 1, 1989. *Tennessee Gas Pipeline Company*, 44 FERC Para. 61,321, *order on reh'g*, 45 FERC Para. 61,135.

Tennessee states that the revised tariff sheets reflect the following changes required by the August 31 and October 31, 1988 orders:

1. A reduction in Tennessee's claimed cost of service to account for the elimination of the costs of facilities not placed in service by February 1, 1989.

2. The elimination of standby sales service.

3. D_2 nominations submitted by its firm sales and transportation customers.

Additionally, Tennessee states that pursuant to the Commission's October 6 and December 20, 1988 orders in Docket Nos. RP82-121-000, *et al.* (*Tennessee Gas Pipeline Company* 45 FERC ¶61,031, *reh'g granted in part*, 45 FERC ¶———— (December 20, 1988), the following changes have also been reflected in this filing:

1. A 100% load factor rate for interruptible sales under Rate Schedule R.

2. The Opinion No. 352, single centroid Mcf-mile method of allocation of mileage related transmission costs.

3. A one-part rate based on an imputed load factor of 60% for full requirements customers under Rate Schedule GS.

4. The use of peak-day deliveries to allocate downstream commodity transmission costs to storage services.

The revised tariff sheets also reflect Tennessee's Annual Average Cost of Purchased Gas and the Surcharge for Amortizing the Unrecovered Gas Cost Account as well as the latest GRI and Annual Charge Adjustments, as shown in Tennessee's October 31, 1988 filing in Docket No. TA89-1-9 to be effective on January 1, 1989.

Although Tennessee does not believe any waivers are necessary for the Commission to accept the revised tariff sheets to be effective February 1, 1989, Tennessee requests that the Commission grant any waivers it deems necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-666 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 30, 1988 tendered for filing certain tariff sheets as part of its FERC Gas Tariff.

Texas Eastern states that the purpose of this filing is to revise, pursuant to § 154.305(c)(4) of the Commission's December 2, 1988 (December 2 Filing) annual PGA filing in Docket No. TA89-1-17-000 which is proposed to be effective February 1, 1989.

Texas Eastern states that in compliance with Order No. 483A (page 5) this revision filing is being made in the quarterly format specified by FERC Form No. 542-PGA, consisting of a report containing detailed computations which clearly show the derivation of the current adjustment to be applied to Texas Eastern's effective rates, with the 9-track computer tape format for formal filing with the Commission.

Texas Eastern states that the PGA rate changes proposed to be effective on February 1, 1989 as a result of the combined impact of the December 2 Filing and this revision filing consist of PGA decreases of $.420/dth in the Demand-1 component of Texas Eastern's sales rates and $.0121/dth in the Demand-2 component and an increase of $.3205/dth in the commodity component pursuant to section 23 of Texas Eastern's tariff based upon Texas Eastern's best projection of cost of purchased gas for the period February 1, 1989 through April 30, 1989 as required by § 154.305(c) of the Commission's Regulations and a surcharge rate to amortize the current deferral subaccount balance in Account 191 as of September 30, 1988 over the 12-month period beginning on Feburary 1, 1989 as required by § 154.305(d) of the Commission's Regulations.

Texas Eastern states that the purpose of this revision is to reflect the impact of certain additional supplies for which Texas Eastern has negotiated contracts since the time of the original filing of its annual PGA on December 2, 1988, to reflect projected purchases from United Gas Pipe Line Company, and to reflect the most current prices for gas purchases including rate changes for pipeline suppliers as well as price renegotiations that have been finalized with producer suppliers since the December 2 Filing.

Texas Eastern states that underlying the calculations for the Purchased Gas Cost Adjustment proposed in this filing, (Section 23 of Texas Eastern's General Terms and Conditions) and the EPC Adjustment (Section 26 of Texas Eastern's General Terms and Conditions) as proposed in the December 2 Filing, is the assumption that the Commission will approve and make effective as of or prior to February 1, 1989 Texas Eastern's Compliance Filing of October 26, 1988 in Docket No. RP85-177 *et al.* This assumption has a significant impact on the rate levels proposed in this filing. As a result, in case timely approval of such October 26, 1988 Compliance Filing is not forthcoming, Texas Eastern filed certain tariff sheets as a part of its FERC Gas Tariffs, Fifth Revised Volume No. 1 and Original Volume No. 2, in lieu of the tariff sheets proposed for filing above.

Texas Eastern states that the changes reflected in these alternate tariff sheets consist of (1) utilization of the Base Tariff Rates from Texas Eastern's motion filing of August 31, 1988 in Docket No. RP88-67 and (2) recalculated EPC adjustments under section 26 of Texas Eastern's tariff based upon the difference in Base ELectric Power Cost Units between the RP88-67 Motion and the October 26, 1988 Compliance Filing.

The proposed effective date of the above tariff sheets is February 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Copies have also been mailed to all current Rate Schedule IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-667 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-58-000]

Texas Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

January 9, 1989.

Take notice that on January 3, 1989, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets are to be effective February 1, 1989 and March 1, 1989, respectively.

Twenty-Third Revised Sheet No. 4a
Twenty-Fourth Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twenty-Third Revised Sheet No. 4a reflects a net increase in the rate after cumulative adjustment to 177.19¢/Mcf with a current rate Surcharge Adjustment of 9.04¢/Mcf yielding a proposed total rate of 215.70¢/Mcf (at 14.65 psia) to be effective February 1, 1989. The Twenty-Fourth Revised Sheet No. 4a to be

effective March 1, 1989, removes the surcharge adjustment and reflects a rate after cumulative adjustment of 177.19¢/Mcf yielding a proposed total rate of 206.66¢/Mcf (at 14.65 psia).

Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-764 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-18-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 29, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Fourteenth Revised Sheet No. 10
Substitute Fourteenth Revised Sheet No. 10A.

Texas Gas states that these tariff sheets reflect revisions to the projected purchased gas costs contained in the Annual PGA, Docket No. TA89-1-18-000, filed December 1, 1988, pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective February 1, 1989.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-668 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-141-011]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1989.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 29, 1988, tendered for filing Second Revised Sheet Nos. 22 and 29 to its FERC Gas Tariff, Original Volume No. 1.

Texas Gas states that these tariff sheets are in compliance with the Commission Order Denying Rehearing issued December 7, 1988 whereby Texas Gas's minimum commodity bill under Rate Schedules CD and CDL was eliminated pursuant to Commission Order Affirming in Part and Reversing in Part Initial Decision and eliminating Minimum Bill which was issued on October 6, 1988.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-669 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes

January 9, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on January 3, 1989, Fifty-Fifth Revised Sheet No. 12, Fifty-Second Revised Sheet No. 15, and Eleventh Revised Sheet No. 15-A to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective February 1, 1989.

Transco states that these tariff sheets reflect an overall rate increase as compared to the currently effective rates of 42.5 cents per dt in the commodity charge under the CD, G, OG, PS, E, ACQ and S-2 Rate Schedules.

Transco states that the increase of 42.5 cents per dt is comprised of (1) a 40.1 cents per dt increase related to the current gas cost portion of commodity rates and (2) a 2.4 cents per dt increase in the Special Transition Gas Cost Surcharge. The instant PGA filing reflects a projected average cost of gas of 282.66 cents/dt for the quarterly period February 1, 1989 through April 30, 1989.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours in Transco's main office.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-765 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 9, 1989.

Take notice that Williams Natural Gas Company (WNG) on December 30, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Tenth Revised Sheet No. 6
Substitute Ninth Revised Sheet No. 7

A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective February 1, 1989, to reflect a $.1141 per Mcf increase in the Cumulative Adjustment.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-766 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

January 6, 1989.

Take notice that on December 30, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Second Revised Fifteenth Revised Sheet No. 10

Original Volume No. 1-A

Second Revised Tenth Revised Sheet No. 11
Second Revised Thirteenth Revised Sheet No. 12
First Revised Substitute Second Revised Sheet No. 97A

Original Volume No. 1-B

Second Revised Third Revised Sheet No. 10
Second Revised Third Revised Sheet No. 11

Original Volume No. 2

First Revised Seventeenth Revised Sheet No. 10
First Revised Eighth Revised Sheet No. 11B

The Company requests an effective date for the tariff sheets of February 1, 1989.

Williston Basin states Second Revised Fifteenth Revised Sheet No. 10 (First Revised Volume No. 1) reflects an increase in the Cumulative Gas Cost Adjustment applicable to Rate Schedule G-1, SGS-1 and E-1 of 7.687 cents per dkt as compared to the Cumulative Gas Cost Adjustment contained in the Company's September 30, 1988 PGA filing in Docket No. TQ89-1-49-000.

Williston Basin states that it submits First Revised Seventeenth Revised Sheet No. 10 (Original Volume No. 2) reflecting a 7.687 cents per dkt increase in the Cumulative Gas Cost Adjustment for Rate Schedule X-1 as compared to the Cumulative Gas Cost Adjustment contained in the Company's September 30, 1988 annual PGA filing in Docket No. TQ-1-49-000.

The balance of the tariff sheets included in the instant filing reflect a decrease of .229 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's November 29, 1988 filing in Docket No. TQ89-1-49-001. Such decrease in the fuel reimbursement charge is a result of a change in Williston Basin's current cost of purchased gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1989. Protsts will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 89-670 Filed 1-11-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44522; FRL-3505-2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on biphenyl (CAS No. 92-52-4), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for biphenyl was submitted by the Chevron Environmental Health Center Inc. pursuant to a test rule at 40 CFR 799.925. It was received by EPA on December 13, 1988. The submission describes the biphenyl oyster shell deposition test. Environmental effects testing is required by this test rule.

Biphenyl is used primarily to produce dye carriers, heat transfer fluids and alkylated biphenyls.

EPA has initiated its review and evaluation process for this data

submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44522). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Room. NE–G004, 401 M Street., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 28, 1988.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–703 Filed 1–11–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–62071; FRL–3505–1]

Receipt of Application for Approval To Dispose of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application.

SUMMARY: EPA Headquarters has received an application from International Technology Corporation (IT), Knoxville, Tennessee, for nationwide approval to dispose of polychlorinated biphenyls (PCBs) using their transportable alternative thermal system. This approval process is done under the authority of section 6(e) of the Toxic Subtances Control Act (TSCA). EPA is notifying interested persons of the request, and comments may be submitted.

DATE: Comments must be received by February 13, 1989.

ADDRESS: Three copies of written comments should be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room. L–100, 401 M Street, SW., Washington, DC 20460.

Comments should bear the identifying notation OPTS–62071. The application (without confidential business information) and comments received in response to this notice are available for public inspection and copying in Rm. NE–G004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room. EB–44, 401 M Street, SW., Washington, DC 20460, (202–554–1404), TDD–(202–554–0551).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.60(e), the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances (OPTS) share the approval authority for permitting alternative PCB disposal technologies. A Regional Administrator determines whether to approve an application when the disposal will take place in that region only or, in the case of research and development (R and D), and PCB disposal methods involving less than 500 pounds of PCB material. The Assistant Administrator for OPTS determines whether to approve applications for mobile and other types of PCB disposal technologies that may be operated in more than one region or, in the case of R and D, on disposal methods involving 500 pounds or more of material. Notwithstanding, the Assistant Administrator for OPTS may delegate the authority to review and approve any aspect of a disposal system to OPTS staff or to a Regional Administrator. The rationale for permit approval authority is discussed in "Polychlorinated Biphenyls (PCBs); Procedural Amendment of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval," published in the **Federal Register** of March 30, 1983 (48 FR 13161).

In general, EPA may approve alternatives methods of PCB disposal if they achieve a level of performance equivalent to an incinerator approved under 40 CFR 761.70 or a high efficiency boiler approved under 40 CFR 761.60 and will not present an unreasonable risk of injury to health or the environment. EPA also imposes some protective conditions requiring the application to address such items as testing of all gaseous, liquid, and solid effluent streams for PCBs and any other contaminants which may potentially contribute to the environmental risk of operating the disposal unit. To obtain a permit for an alternative method of PCB disposal, the applicant must supply detailed technical descriptions and drawings of the site, process and control equipment, monitoring and sampling methods, quality assurance plan, and emergency and contingency measures, as well as a full discussion of all cleanup and closure procedures.

When EPA Headquarters receives a permit application, it reviews the application and determines if the permit application is complete. If the application is not acceptable, EPA lists its deficiencies in a letter to the applicant and the applicant can remedy the application. If the application is acceptable, a determination is made whether a process demonstration is needed. If one is needed, the applicant must submit a demonstration test plan to the Agency. After receipt of the process demonstration test plan, EPA either approves, requires modification or additions to the process demonstration test plan, or disapproves it and notifies the applicant. Once the Agency accepts a process demonstration test plan, a demonstration test approval is issued by EPA. As part of this approval, the applicant will be required to give advance written notice of at least 30 days to the EPA regional office and State and local governments where the process demonstration will take place. This 30-day period provides the public an opportunity to discuss local issues related to the planned disposal operation and provides the EPA regional office with information necessary for effective monitoring for compliance with the demonstration approval. If the application cannot be approved because the process demonstration test fails, the problems with the process demonstration are addressed on a case-by-case basis.

EPA will grant or deny approval for full scale operation based on a review of the application package, demonstration test results, and other submitted information. Approval for operation will contain special conditions that EPA finds necessary to protect human health or the environment. It also requires compliance with all applicable State, local, or other Federal requirements. The PCB disposal approval decision process (from receipt of the permit application to issuance of a final approval) generally can take from 6 months to 1 year, depending on the quality of information submitted by the applicant and the complexities involved. If a permit is issued for more than one site, 30-day notice is required before operation may begin at any site other than where the process demonstration took place.

The application from IT is for nationwide permission to operate a transportable alternative thermal system for the destruction of PCB-contaminated soils and sludges. All demonstration tests for the system will take place at IT's Environmental Technology Development Center in Oak Ridge, Tennesse.

In determining whether to approve this application, EPA will take into consideration, along with other factors, the comments received on the application.

Dated: January 5, 1989.

Martin P. Halper

Director, Exposure Evaluation Division, Office of Toxic Substances.

[FR Doc. 89–705 Filed 1–11–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51723; FRL–3505–3]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-seven such PMNs and provides a summary of each.

DATES: Close of review periods:

P 89–181, 89–182—March 12, 1989.
P 89–183, 89–184—March 13, 1989.
P 89–185, 89–186, 89–187—March 14, 1989.
P 89–188, 89–189, 89–190—March 15, 1989.
P 89–191, 89–192—March 18, 1989.
P 89–193—March 12, 1989.
P 89–194, 89–195, 89–196, 89–179—March 19, 1989.
P 89–198, 89–199, 89–200, 89–201—December 29, 1988.
P 89–204, 89–205, 89–206, 89–207, 89–208, 89–209, 89–210, 89–211—March 21, 1989.
P 89–212, 89–213—December 29, 1989.
P 89–214, 89–215, 89–216—March 22, 1989.
P 89–217, March 26, 1989.
P 89–218, 89–219, 89–220, 89–221 89–222, 89–223, 89–224, 89–225—March 22, 1989.
P 89–227, 89–228—March 26, 1989.
P 89–229, 89–230—March 27, 1989.

Written comments by:

P 89–181, 89–182—February 10, 1989.
P 89–183, 89–184—February 11, 1989.
P 89–185, 89–186, 89–187—February 12, 1989.
P 89–188, 89–189, 89–190—February 13, 1989.
P 89–191, 89–192—February 16, 1989.
P 89–193—February 10, 1989.
P 89–194, 89–195, 89–196, 89–197—February 17, 1989.
P 89–198, 89–199, 89–200, 89–201—November 29, 1988.
P 89–204, 89–205, 89–206 89–207, 89–208, 89–209, 89–210 89–211—February 19, 1989.
P 89–212, 89–213—November 29, 1988.
P 89–214, 89–215, 89–216—February 20, 1989.
P 89–217—February 24, 1989.
P 89–218, 89–219, 89–220, 89–221, 89–222, 89–223, 89–224, 89–225—February 20, 1989.
P 89–227, 89–228—February 24, 1989.
P 89–229,, 89–230—February 25, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS–51723]" and the specific PMN number should be sent to: Document Control Office (TS–790) Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW,. Room 201 East Tower, Washington, DC 20460 (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency Rm. E–611, 401 M Street, SW, Washington, D.C. 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 89–181

Manufacturer. Confidential.

Chemical. (G) Modified epoxy acrylate.

Use/Production. (G) Binder. Prod. range: Confidential.

P 89–182

Manufacturer. Minnesota Mining & Manufacturing Co.

Chemical. (G) Substituted urethane.

Use/Production. (G) Isolated intermediate for coating; destructive use. Prod. range: Confidential.

P 89–183

Manufacturer. Toray Industries (America) Inc.

Chemical. (S) -2,3-dihydroxybutanedioic acid-bis(1-methylethyl) ester.

Use/Production. (S) Catalyst for asymmetric epoxidation. Prod. range: 2,000–10,000 kg/yr.

P 89–184

Manufacturer. Confidential.

Chemical. (G) Alkylbenzene sulfonic acid salt.

Use/Production. (G) Dispersive use. Prod range: Confidential.

Toxicity Data. Acute oral toxicity: LD50< 5 g/kg species (rat). Acute dermal toxicity: LD50 < 5 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: Slight species (rabbit).

P 89–185

Manufacturer. Confidential.

Chemical. (G) Substituted alkenoic amide, polymer with alkylalkenoates.

Use/Production. (G) Pigment binder. Prod. range: Confidential.

P 89–186

Importer. Rohm and Haas Company.

Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.

Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (rat). Acute dermal toxicity: LD50 2 g/kg species (rabbit). Static acute toxicity: LC50 >1,000 mg/l time species (rainbow trout). Eye irritation: Moderate species (rabbit). Skin irritation: Moderate species (rabbit). Skin sensitization: negative species (guinea pig).

P 89–187

Importer. Rohm and Haas Company.

Chemical. (G) Alkyl methacrylate copolymer.

Use/Import. (G) Additive for petroleum oil products. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (rat). Acute dermal toxicity: LD50 >2 g/kg species (rabbit). Static acute toxicity: LD50 >1,000 mg/l time species (rainbow trout). Eye irritation: Moderate species (rabbit). Skin irritation: Moderate species (rabbit). Skin sensitization: Negative species (guinea pig).

P 89–188

Manufacturer. Confidential.

Chemical. (G) Vinyl alcohol acrylic acid copolymer.

Use/Production. (G) Water absorbing sealant. Prod. range: Confidential.

P 89–189

Manufacturer. Confidential.

Chemical. (G) Aryl novolac resin.

Use/Production. (G) Resin as a raw material. Prod. range: Confidential.

P 89-190

Manufacturer. Rohm and Haas Company.
Chemical. (G) Vinyl heterocycle alkyl methacrylate copolymer.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5 g/kg species (rat). Acute dermal toxicity: LD50 >2 g/kg species (rabbit). Static acute toxicity: LC50 >1,000 mg/1 time species (rainbow trout). Eye irritation: Moderate species (rabbit). Skin irritation: Moderate species (Rabbit). Skin sensitization: Positive species (guinea pig).

P 89-191

Importer. Confidential.
Chemical. (G) Acrylic ester.
Use/Import. (G) Acrylic polymer for open nondisperive use. Import range: Confidential.

P 89-192

Importer. Confidential.
Chemical. (S) Aluminum chloride hydroxide sulfate.
Use/Import: (S) Coagulant for water treatment. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 11.8 mg/kg species (rat). Static acute toxicity: LC50 220 ppm times 24 h species (daphnia). Eye irritation: Slight species (rabbit). Skin irritation: Negligible species (rabbit). Mutagencity: Negative.

P 89-193

Manufacturer. Confidential.
Chemical. (G) Polyester with neopentyl glycol.
Use/Production. (G) Coating with an open use. Prod. range: 30,000–78,000 kg/yr.

P 89-194

Manufacturer. Confidential.
Chemical. (G) Alkenes reaction products with 2,5-furandione and substituted alkyl amines.
Use/Production. (G) Surface active agent: Prod. range: Confidential.

P 89-195

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polyphosphonic acid-alkaline salt mixture.
Use/Production. (G) Dye bath additive. Prod. range: Confidential.

P 89-196

Manufacturer. Alkaril Chemicals, Inc.
Chemical. (G) Alkyl glyceryl ethers and condensates.
Use/Production. (G) Fiber additive. Prod. range: Confidential.

P 89-197

Manufacturer. Confidential.
Chemical. (S) Polymer of ethylene; 1-butene; and 1-octene.
Use/Import. (S) Film for packaging. Import range: Confidential.

P 89-198

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Additive used in plastic industry. Prod. range: Confidential.

P 89-199

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Additive used in plastic industry. Prod. range: Confidential.

P 89-200

Manufacturer. Confidential.
Chemical. (S) Polyester resin.
Use/Production. (G) Additive used in plastic industry. Prod. range: Confidential.

P 89-201

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Additive in plastic industry. Prod. range: Confidential.

P 89-204

Manufacturer. Confidential.
Chemical. (G) Aromatic aliphatic poliester.
Use/Production. (G) Industrially used in coating with open use. Prod. range: 20,000–60,000 kg/yr.

P 89-205

Manufacturer. Minnesota Mining & Manufacturing Co.
Chemical. (G) Styrene containing acrylate polymer.
Use/Production. (S) Adhesive or tape. Prod. range: Confidential.

P 89-206

Manufacturer. Ciba-Geigy Corporation.
Chemical. (S) 1, 3, 5-Triazine-2,4-diamine,6-chloro-N-(1,2-dimethylpropyl)-N'-ethyl.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1869 mg/kg species (Rat). Acute dermal toxicity: LD50 3,100 mg/kg species(Rabbit). Inhalation toxicity: LC50> 710 mg/m3 species (Rat). Eye irritation: none species (Rabbit). Skin irritation: Slight species (Rabbit). Skin sensitization: Positive species (Guinea pig).

P 89-207

Manufacturer. Ciba-Geigy Corporation.
Chemicol. (S) 1,3,5-Triazine-2,4-diamine,6-chloro-N-methyl-N'-(1-methylethyl).
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1869 mg/kg species (Rat). Acute dermal toxicity: LD50 > 3,100 mg/kg species(Rabbit). Inhalation toxicity: LC50 > 710 mg/m3 species(Rat). Skin irritation: Negligible species (Rabbit). Skin sensitization: Positive species (Guinea pig).

P 89-208

Manufacturer. Monsanto Company.
Chemical. (G) Pyridine carboxylate.
Use/Production. (G) Manufacturing, process intermediate chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 3,550 mg/kg species (Rat). Acute dermal toxicity: LD50 5010 mg/kg species (Rabbit). Eye irritation: Slight species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 89-209

Manufacturer. Monsanto Company.
Chemical. (G) Pyridine carboxylic acid.
Use/Production. (G) Manufacturing, process intermediate chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,010 mg/kg species (Rat). Acute dermal toxicity: LD50 > 5,010 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: Negligible species(Rabbit).

P 89-210

Manufacturer. Monsanto Company.
Chemical. (G) Pyradine carbonylchloride.
Use/Production. (G) Manufacturing, process intermediate chemical. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 5,010 mg/kg species (Rat). Acute dermal toxicity: LD50 2,000–5,010 mg/kg species (Rabbit). Eye irritation: Slight species(Rabbit). Skin irritation: Slight species (Rabbit).

P 89-211

Manufacturer. ARCO Chemical Company.
Chemical. (S) 2-Methyl-1,3-Propanediol.
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: none species(Rabbit). Skin irritation: Negligible species (Rabbit).

P 89-212

Manufacturer. Confidential.
Chemical. (G) Trifluoromethane sulfonate ester.
Use/Production. (G) Integrated circuit manufacture. Prod. range: Confidential.
Toxicity Data. Skin irritation: negligible species(Rabbit). Skin sensitization: Positive species (Guinea pig).

P 89-213

Manufacturer. Confidential.
Chemical. (G) Polystyrene copolymer.
Use/Production. (G) Integrated circuit manufacture. Prod. range: Confidential.
Toxicity Data. Skin irritation: negligible species(Rabbit). Skin sensitization: Negative species (Guinea pig).

P 89-214

Manufacturer. SICPA Securink Corporation.
Chemical. (G) Alkyd resin.
Use-Production. (S) Manufacture of printing inks. Prod. range. Confidential.

P 89-215

Manufacturer. SICPA Securink Corporation.
Chemical. (G) Intaglio varnish.
Use-Production. (S) Manufacture of printing inks. Prod. range. Confidential.

P 89-216

Manufacturer. SICPA Securink Corporation.
Chemical. (G) Intaglio varnish.
Use/Production. (S) Manufacture of printing inks. Prod. range: Confidential.

P 89-217

Manufacturer. Baker Performance Chemicals Incorporated.
Chemical. (G) Thiocarbamate potassium salt.
Use/Production. (S) Water clarifier. Prod. range: Confidential.

P 89-218

Manufacturer. Alkaril Chemicals, Inc.
Chemical. (G) Guerbet alcohol ester.
Use/Production. (G) Thermoplastic lubricant intermediate. Prod. range: Confidential.

P 89-219

Manufacturer. Alkaril Chemicals, Inc.
Chemical. (G) Guerbet diester.
Use/Production. (S) Internal lubricant for use in manufacture of polycarbonate sheets. Prod. range: Confidential.

P 89-220

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted aminophenyl (chloroheterocycle).
Use/Production. (G) Chemical intermediate. Prod. range: 2,000–8,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: Moderate species (Rabbit). Skin irritation: Slight species (Guinea pig). Skin sensitization: Negative species (Guinea pig).

P 89-221

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted nitrophenyl (chloroheterocycle).
Use/Production. (G) Chemical intermediate. Prod. range: 2,000–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: Slight species (Guinea pig). Skin sensitization: Negative species (Guinea pig).

P 89-222

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted phenylheterocyclic acid, derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 7,000–18,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Skin irritation: Slight species (Guinea pig).

P 89-223

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted nitrophenylheterocyclic acid.
Use/Production. (G) Chemical intermediate. Prod. range: 6,000–18,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Skin irritation: Slight species (Guinea pig).

P 89-224

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted nitrophenylheterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 5,000–12,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: Slight species (Rabbit). Skin irritation: Slight species (Guinea pig). Skin sensitization: Negative species (Guinea pig).

P 89-225

Manufacturer. Confidential.
Chemical. (G) Bis-substituted-phenol.
Use/Production. (G) Pressure sensitive agent. Prod range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: None species (Rabbit). Skin irritation: Negligible species (Rabbit).

P 89-227

Manufacturer. Enzyme Bio-Systems, Ltd.
Microorganism. (G) *Bacillus subtilis* was modified using recombinant DNA techniques to contain an intra-generic amylase gene. Fragments of inter-generic vectors were also introduced into this strain.
Use/Production. This microorganism will be used for the biosynthesis of an enzyme: *Alpha* amylase. Prod. range: Confidential.
Test data. Pathogenicity and toxicity testing showed no adverse effects of the production strain or the enzyme on the mammalian species tested. For the production strain, pathogenicity studies by intraperitoneal or oral intubation to mice showed no pathogenic potential. Toxicity testing of the production strain was also performed and showed no cytotoxicity against Vero cells in 7 days in culture. The production strain used to make the enzyme is asporogenic.
Exposure. Workers in laboratory and production areas.
Environmental Release/Disposal. During production, live cells are maintained in closed vessels. At the end of the production cycle, cells are inactivated in the production vessels. Disposal of cell waste: Solid wastes will be discharged to a permitted landfill. The liquid waste is discharged to a pretreatment facility shared by other industries. Air emissions are filtered through NIH validated sterile air filters or through a cyclone separator scrubber system that traps and inactivates the organisms using a caustic/chlorine solution. Airborne emissions are anticipated to be incidental particulates.

P 89-228

Importer. Confidential.
Chemical. (S) 2-Propenoic acid, monoester with 1, 2-propanediol, polymer with chloroethene.
Use/Import. (S) Paint vehicle. Import range: 12,000–48,000 kg/yr.

89-229

Importer. Hoechst Celanese Corporation.

Chemical. (G) Di-substituted naphthalene sulfonic acid.

Use/Import. (S) Dyestuff for cellusosic fibers. Import range: 1,200–3,600 kg/yr.

Toxicity Data. Skin irritation: Negligible species (Rabbit). Mutagenicity: Negative.

P 89-230

Manufacturer. Confidential.

Chemical. (S) 2-methylpentamethylenediamine 1,4-cyclohexanediamethanol; isophthalic acid; zinc oxide.

Use/Production. (G) Industrial. Prod. range: 200,000-375,000 kg/yr.

Date: January 5, 1989.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-704 Filed 1-11-89; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Order Appointing Receiver of the Richmond Production Credit Association

ACTION: Notice.

SUMMARY: Pursuant to the provisions of section 4.12(a) of the Farm Credit Act of 1971, as amended (1971 Act), 12 U.S.C. 2183(a) and 12 CFR 611.1160, the Farm Credit Administration (FCA) Board hereby appoints James C. Larson (Receiver), an individual with a business address of P.O. Box 923, San Andreas, California 95249, as Receiver of the Richmond Production Credit Association, P.O. Box 2, Sugar Land, Texas 77487-0002 (Institution). The FCA Board takes this action following the receipt of a request to appoint a receiver for the Richmond Production Credit Association by the Association's Board of Directors which voted on November 8, 1988, to voluntarily liquidate. The Receiver shall take possession of all assets of the Institution, wind up its business operations, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to its stockholders in accordance with the 1971 Act, FCA regulations, the FCA Receivership Manual, and this Order and any amendment hereto. In his capacity as receiver, James C. Larson, as agent for the FCA, is granted possession of all of the assets of the Institution and is empowered to execute, acknowledge, and deliver any instrument necessary for any authorized purposes and such instruments are valid and effectual as if they had been executed by the Institution's officers by authority of its board of directors. The Order authorizes James C. Larson to sign any and all documents as Receiver and to delegate signatory authority to any employee of the Institution-in-receivership.

Dated: January 6, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-776 Filed 1-11-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 28, 1988.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0330.

Title: Part 62, Applications to Hold Interlocking Directorates.

Action: Extension.

Respondents: Individuals, businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 30 responses; 60 total hours; avg. 2 hours each.

Needs and Uses: Information is used by the Commission to ensure that interlocking directorates among cummunications common carriers will not have an anticompetitive impact in the telecommunications industry.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-637 Filed 1-11-89; 8:45 am]

BILLING CODE 6712-01-M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Publ. L. 95-454), Chairman Dennis R. Patrick has appointed the following SES members to the Executive Resources and Performance Review Board:

Edward J. Minkel—Managing Director, Chairman
Richard M. Smith—Chief, Field Operations Bureau
Alex D. Felker—Chief, Mass Media Bureau
Diane S. Killory—General Counsel
Gerald W. Brock—Chief, Common Carrier Bureau
Ralph A. Haller—Chief, Private Radio Bureau.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-638 Filed 1-11-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 232-011225

Title: Benargus/Autoship Space Charter Agreement

Parties: K/S Benargus A/S & Co. ("Benargus"); Autoship, Inc. ("Autoship")

Synopsis: The proposed agreement would permit Autoship to charter space aboard any United States-flag vessels (up to a maximum of four vessels) owned, operated or chartered by Benargus in the trade between U.S. East Coast ports and all points via such ports, and Atlantic ports in Spain, Portugal, France, Belgium, Netherlands, West Germany, Denmark, Norway, Sweden, Finland, Poland and East Germany, ports in the United Kingdom and Ireland, and all points via such ports.

By Order of the Federal Maritime Commission.

Dated: January 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-606 Filed 1-11-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Rical Express, Inc., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Rical Express, Inc., 9400 W. Foster/Suite 100, Chicago, IL 60656; Officers: Ricky C.K. Leung, President; Mr. Calvin Ng, Stockholder; Charles Ozburn, Sec./Vice Pres./Treas.

Cargo U.K., Inc., 4694 Aviation Parkway, #H, Atlanta, GA 30349; Officers: Roger Harold Botting, President; Regina Jacqueline Botting, Sec./Treas.

Pacific Relocating Services, Inc., 1415 W. Torrance Blvd., Torrance, CA 90501; Officers: Henry A. Pontes, President; Earl M. Herrmann, Vice President; Louis R. Petrili, Sec./Treas.

International Commerce and Transportation, Inc., 2215 Harbor Blvd., Houston, TX 77020; Officers: Elizabeth Sue Kenley, President; Josephine Wells Cummins, Sec./Treas.

Hallmark Intermodal, Inc., 3400 McIntosh Rd., Port Everglades, FL 33316; Officers: Joseph V. Maquez, President; Dina Mizner, Vice President/Sec./Treas.

Ship and Strap, Inc., 7262 NW. 70th St., Miami, Fl 33166; Officers: Clyde J. Barrett, President Jose L. Ceballos, Vice President/Sales Patrick O'Brien, Vice President/Ops.

Ransar International, Inc., 1034 Jericho Turnpike, Smithtown, NY 11787; Officer: Fortunato C. Rana, President

Logistic Distribution Systems USA Inc., 433 Blair Road, Avenel, New Jersey 07001; Officers: Salvatore Salomone, President/Director; Riccardo Del Mastro, Asst. Vice Pres.; Nisith Mitra, Treasurer; George M. Pavia, Secretary; Bruno Bigi, Director; Masssimo Petrozzi, Director

Product Transportation Group, Inc., 370 Adams Street, Newark, New Jersey 07114-2902; Officers: Michael R. Ryan, President/Director; Arthur Menzel, Vice President/Director; Allan J. Leonard, Sec.-Treas./Dir.; Anthony LaFortenzza, Vice President

ARI Shipping Corporation dba International Freight Forwarders, 156 Fifth Ave., #420, New York, NY 10010; Officers: Ilan Fidler, President; Carol Polishuk, Vice President; Paul Polishuk, Treasurer

International Freight Forwarders of Tampa, Inc., 333 Falkenburg Rd., Suite A116, Tampa, Fl 33619; Officers: Deborah L. Page, President; Charles H. Fallen, Vice President; Richard L. Kimes, Vice President

Daniel C. Griffith (Sampler & Analysts) U.S.A., Inc., 131 North Tatar, Pasadena, TX 77501; Officers: Stephen C. Fitzer, President/Director; Noel B. Manning, Sec./Treas.; Francis Holmes, Director; Jerome P. Clark, Director

Shandorry Freight Forwarding, Inc., 3700 Koppers St., Baltimore, MD 21227; Officers: Kenneth Eugene Milner, Pres./Dir.; Michael Daly, Vice Pres.; Marie Milner, Sec.

Intermar Steamship Corporation; 80 Business Park Dr., #104; Armonk, NY 10504; Officer: Joshua Podell, President

By the Federal Maritime Commission.

Dated: January 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-609 Filed 1-11-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 6, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with revision, of the following report:

Report Title: Pretest of the 1989 Survey of Consumer Finances.

Agency Form Number: FR 3058.

OMB Docket Number: 7100-0238.

Frequency: One-time.

Reporters: Sample of households nationwide.

Annual reporting hours: 63.

Estimated Average Hours Per Response: 3/4 hour.

Estimated Number of Respondents: 50.

Small businesses are not affected.

General Description of Report: This information collection is voluntary (12 U.S.C. 225a, 1828(c), 1842 and 1843). No problem of confidentiality arises since names and other characteristics that would permit personal identification of respondents will not be provided to survey sponsors.

This pretest will allow the testing of quetions anticipated for the 1989 Survey of Consumer Finances to collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. households. The pretest will consist of in-person interviews from a sample of approximately 50 households.

Board of Governors of the Federal Reserve System, January 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-623 Filed 1-11-89; 8:45 am]

BILLING CODE 6210-01-M

Annapolis Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

BEST COPY AVAILABLE

Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 3, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Annapolis Bancshares, Inc.*, Annapolis, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Annapolis, in organization, Annapolis, Maryland, a *de novo* bank.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc.89-624 Filed 1-11-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Employees' Profit-Sharing Plan of United States Trust Company of New York and Affiliated Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 26, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Employees' Profit-Sharing Plan of United States Trust Company of New York and Affiliated Companies*, New York, New York; to acquire 18 percent of the voting shares of U.S. Trust Company, New York, New York, and thereby indirectly acquire United States Company of New York, New York.

2. *Charles L. Whigham*, Newark, New Jersey; to acquire 30.91 percent of the voting share of City National Bancshares Corporation, Newark, New Jersey, and thereby indirectly acquire City National Bank of New Jersey, Newark, New Jersey.

Board of Governors of the Federal Reserve System, January 6, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-625 Filed 1-11-89; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage in Various Securities, Foreign Exchange and Financial Advisory Activities; The Nippon Credit Bank, Ltd., Tokyo, Japan

The Nippon Credit Bank, Ltd., Tokyo, Japan, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) (2) and (3) of the Board's Regulation Y (12 CFR 225.23(a) (2) and (3)), to acquire a company in organization ("Newco") and thereby engage in a number of securities, foreign exchange and financial advisory activities, some of which have not been previously approved by the Board.

Previously Approved Activities

Applicant proposes to engage through Newco in the following activities that have been previously approved:

(1) Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335 ("bank-eligible securities") pursuant to 12 CFR 225.25(b)(16) and engaging in activities incidental thereto, including repurchase and reverse repurchase transactions on bank-eligible securities, collateralized borrowing and lending of such securities, clearing and settling bank-eligible securities transactions, and providing accounting, record keeping and other ancillary services to counterparties that do not maintain accounts with clearing agencies, pursuant to 12 CFR 225.21(a)(2) and in accordance with *The Long-Term Credit Bank of Japan*, 74 Federal Reserve Bulletin 573 (1988);

(2) Purchasing and selling futures, forward and options contracts for bank-eligible securities for hedging purposes in accordance with 12 CFR 225.142; *Midland Bank, PLC*, 74 Federal Reserve Bulletin 577 (1988); and *Security Pacific Corporation*, 70 Federal Reserve Bulletin 238 (1984);

(3) Acting an introducing broker with respect to transactions in exchange-traded futures and options contracts on bank-eligible securities and foreign exchange pursuant to *The Long-Term Credit Bank of Japan, supra; The Sanwa Bank, Limited*, 74 Federal reserve Bulletin 578 (1988); *Sovran Financial Corporation*, 72 Federal Reserve Bulletin 146 (1986); *Security Pacific Corporation, supra;* and as a component of Futures Commission Merchants under 12 CFR 225.25(b)(18);

(4) Dealing in foreign exchange pursuant to *The Long-Term Credit Bank of Japan, supra;* and *Standard and Chartered Banking Corporation*, 38 FR 27552 (1973);

(5) Providing transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures, including the arrangement for execution of forward contracts on foreign exchange, and for the execution of foreign exchange transactions pursuant to 12 CFR 225.25(b)(17);

(6) Providing, on an explicit fee basis, discretionary management of short-term monies for a small number of institutional customers pursuant to *Sovran Financial Corporation*, 73 Federal Reserve Bulletin 744 (1987); and *J.P. Morgan & Co., Incorporated*, 73 Federal Reserve Bulletin 810 (1987);

(7) Providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies, primarily in conjunction with and as an incident to its proposed bank-eligible activities but also providing such advice and research with respect to a customer's entire portfolio of bank-eligible securities and in the context of specific transactions involving bank-eligible securities, as well as advice with respect to securities other than bank-eligible securities pursuant to 12 CFR 225.25(b)(4) (iii) and (iv); *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988); *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988); and *Manufactures Hanover Corporation*, 70 Federal Reserve Bulletin 661 (1984);

(8) Providing financial advice to state and local governments pursuant to 12 CFR 225.25(b)(4)(v) and *Texas Commerce Bancshares, Inc.* 72 Federal Reserve Bulletin 803 (1986);

(9) Providing advice in connection with the structuring of and arranging for interest rate and currency "swaps", interest rate "caps" and similar transactions pursuant to *SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); and *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987);

(10) Providing advice for unaffiliated institutional customers in connection with merger, acquisition, divestiture and financing transactions and valuations and fairness opinions in connection with merger, acquisition, and similar transactions pursuant to *The Royal Bank of Canada, supra; SunTrust Banks, Inc., supra; The Bank of Nova Scotia, supra; Signet Banking Corporation, supra; Security Pacific Corporation;* and *Sovran Financial Corporation, supra;* and

(11) Purchasing and selling municipal revenue bonds as agent under certain limited circumstances and pursuant to *Sovran Financial Corporation, supra.*

Activities Not Previously Approved

Applicant has also applied to purchase and sell futures, forward and options contracts for foreign exchange for its own account for hedging purposes and to provide transactional services for such activities. Applicant contends that the permissibility of such trading is supported by 12 CFR 225.142; *Midland Bank, PLC, supra;* and *Security Pacific Corporation, supra.* Applicant requests, however, suspension of the Board's consideration of this proposed activity until after the Board has made its decision on a pending application to so engage in this activity.

Applicant contends that its proposed acquisition of Newco will provide Newco with access to Applicant's financial strengths and Applicant's expertise in developing more efficient financial services. Applicant submits that the proposal will not result in adverse effects and will, in fact, add a new competitor to provide services that are important to the funding of the operations of the United States government and to the stability of financial markets.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 10, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 6, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-627 Filed 1-11-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Research To Improve the Accuracy of Long-Term Forecasts of the Social Security and Medicare Trust Funds; Applications for Grants

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States, public, non-profit, and for-profit organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research relating relating to predicting long-term costs and income for the Old Age and Survivors Insurance (OASI), Disability Insurance (DI), and Health Insurance (HI) Trust Funds. The Boards of Trustees, which include the Secretaries of the Departments of Health and Human Services, Labor, and Treasury and two public trustees, annually agree on economic, demographic, and other assumptions to forecast the size of the OASI, DI, and HI trust funds.

The assumptions chosen and methodologies developed are often used by private insurance firms, Federal, State and local governments, and private researchers for a variety of purposes.

Successful applicants must be willing to participate in an ASPE-sponsored conference in Washington, DC, to be held in the spring of 1990. The conference will serve as a forum for discussion of important issues related to trust fund forecasts, and will enable researchers to share their results with others.

The following paragraphs describe the general area of interest in greater detail by enumerating high priority areas of research. The questions they contain are intended as illustrations of specific concerns. Applications should be for projects that address one or more of the priority areas discussed below; other, closely-related issues may also be included if they are shown to be relevant to the general areas of interest.

A. The high priority research areas for which applications for the proposed program of research are most desired are as follows:

1. *Productivity and real wage growth.* Explaning the decline in American productivity and forecasting future rates of productivity and wage growth are economic issues with major implications for trust fund forecasts. There are several issues that should be addressed.

(a) Increased integration of the U.S. economy into world markets has had an important short-run impact, and may affect long-term productivity growth.

(b) One unresolved issue involves the choice of part time-periods as a basis for forecasts of productivity and real wage growth.

(c) New forecasts of immigration and of human and physical capital growth may imply different forecasts of productivity growth.

(d) Other explanations for the productivity slowdown, including "statistical myopia" may be worth exploring.

2. *Immigration.* Important changes in immigration law with the passage of the Immigration Reform and Control Act of 1986 and in the global political and economic environment may imply dramatic changes in the pattern of immigration. It may be useful to incorporate these changes formally in projecting the number and employment characteristics of immigrants. Furthermore, immigration will affect overall fertility rates, earnings, and other aspects of the trust fund forecast. New data may permit the examination of these and related issues, such as the relationship between illegal immigration and benefit payments.

3. *Uncertainty, confidence intervols, and long-term forecasts.* Questions in this area include:

(a) Is there greater uncertainty in the projection of some variables than others? How important are these variables to the accuracy of the trust fund projections?

(b) Do the policy consequences differ depending on whether the system is in surplus or deficit and the size of the projected imbalance? Would more formal means (e.g. a loss-function approach) be helpful in taking into account possible asymmetric costs of projection errors?

(c) Should formal means be used to incorporate the greater uncertainty of distant-year forecasts compared with the forecast for years in the not-so-distant future? How could confidence intervals be established for the projections? Is the current practice of using 75 years as the long-term projection reasonable?

4. *The future labor force*—(a) *Women in the labor force.* The earnings and labor force participation of women, given the dramatic changes in the past twenty years, is an area where forecasts could be improved with better knowledge of current behavior. In particular, improved projections of women's *lifetime* labor force participation patterns and the male/female earnings differential would be useful in forecasting revenues, the number and types of beneficiaries, as well as the level of benefits. The effects of reduced fertility and increased divorce rates are important considerations in modeling and predicting women's earnings and labor force participation rates. For example, actual or anticipated divorce may increase labor force participation; increased labor market experience in turn could lead to higher wage rates as well as increased lifetime earnings.

(b) *Older workers.* The current pattern of substantial pre-age 65 retirement may be dramatically influenced by changes in the demographic and economic environment, and by shifting government and employer policies. Do participation-rate forecasts accurately reflect current expectations in these areas?

Other areas, including fertility and mortality assumptions, the rate of inflation, interest rates, and the rate of return on capital, division of compensation between money wages and fringe benefits, and the internal consistency of assumptions could be candidates for supported research. However, preference will be given to well-designed research in the high priority areas.

Details about the assumptions, methods, and acturial estimates are contained in Actuarial Studies published by the Office of the Actuary, Social Security Administration, and are available upon request from that office. Interested parties can request the latest actuarial studies on economic and demographic projections, e.g., *OASDI Long-Range Beneficiary Projection: 1987* (Actuarial Study No. 100), *Economic Projections for OASDIHI Cost and Income Estimates: 1987* (Actuarial Study No. 101), *Social Security Area Population Projections: 1988* (Actuarial Study No. 102). Write to: Office of Actuary, Social Security Administration, Room 700, Altmeyer Bldg., Baltimore, Maryland 21235. phone: (301)–965–3015

1. Products

The applicant should present a schedule for delivery of interim progress reports and a final report. It is expected that the final report will include: (1) Analysis of past trends for the variable; (2) well-developed explanations of the historical experience; (3) empirical tests of these explanations; and (4) forecasts of future trends based on the analysis.

2. Potential Users

The research is expected to be useful to the Trustees in choosing the assumptions and/or to the actuaries in refining the methodologies used to make their predictions. Professionals in actuarial science, demography, economics, sociology, and related fields are potential users of the results. Because many of those who will be interested in this research lack advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. This will involve the submission of a separate, non-technical executive summary.

3. Types of Projects Excluded

Because of the nature of the work, projects from local service delivery organizations will not be funded.

4. Content and Organization of the Applications

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a statement of the issue(s) being examined, the probable direction the research will take, a discussion of some of the likely hypotheses to be tested, and a discussion of possible data sources to test the hypotheses. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), Code of Federal Regulations, Revised as of October 1, 1987.

2. "Administration of Grants" (45 CFR Part 74), Code of Federal Regulations, Revised as of October 1, 1987.

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about April 15, 1989; however some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. It is expected that projects will be completed within a nine-to-twelve-month period. Longer projects will not be considered as the grantees are expected to present their results at an ASPE-sponsored conference in the spring of 1990.

D. Statement of Funds Available

1. $150,000 has been set aside for grants to be awarded in Fiscal Year 1989 by the Assistant Secretary for Planning and Evaluation as a result of this announcement. In addition, the Department of Labor, Assistant Secretary for Policy is expected to provide an additional $30,000. Applications may be for any amount, but it is expected that most awards will be for single projects of no more than $50,000.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on complete demonstration of that outside funding.

2. Funds may be obligated fully at the time of award of these grants or incrementally.

3. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 25 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for improving the accuracy of long-term trust fund forecasts. (25 points)

b. *Clarity and Understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results (15 points)

c. *Research Strategy.* The appropriateness and soundness of the research design and modeling strategy. Probability of successful completion of the study. (40 points)

d. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (20 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than March 14, 1989, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than March 14, 1988, as evidenced by a receipt from the commercial carrier.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 a.m. and 4:30 p.m., Washington, DC, time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on March 15, 1989.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed on the check list of the application.

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201. Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after January 15, 1989. *Important*—Application for Federal Assistance (Standard Form 424) must be submitted on new form revised 4/88.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

Date: January 5, 1989.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 89–675 Filed 1–11–89; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Services Demonstration Grants for Severely Mentally Ill Adults; Community Services Demonstration Projects

AGENCY: National Institute of Mental Health, HHS.

ACTION: Notice of restricted eligibility.

SUMMARY: The National Institute of Mental Health (NIMH) announces the availability of Mental Health Services Demonstration Grants for adults with severe, long-term mental illness. These grants will be made under the authority of section 520A of the Public Health Service (PHS) Act which authorizes funds for demonstrations of mental health services for the long-term, severely mentally ill population.

The goal of this program is to respond to the needs of long-term, severely mentally ill adults by supporting the demonstration and evaluation of various approaches to providing three key service components: Case management services, community crisis response services, and psychiatric rehabilitation services.

In fiscal year 1989, NIMH will fund a total of approximately 8 to 12 projects averaging $250,000 to $300,000 per year in the three service areas. NIMH is limiting potential applicants for demonstrations under this announcement to State mental health authorities. There are three reasons for this eligibility restriction. First, because multiple agencies and providers are generally involved in implementing these demonstration initiatives, centralized State assistance is needed to assure that sufficient resources will be allocated to the project and appropriate staff and organizations will be involved. The State mental health authorities are best qualified to undertake this coordination function, since they oversee a wide range of mental health service providers. Prior NIMH demonstration efforts under section 504(f) of the PHS Act (NIMH Community Support Program (CSP) and Child and Adolescent Service Systems Program (CASSP)) have shown the State mental

health authorities to be extremely effective in coordinating community-based services.

Second, a related Federal initiative focused on the long-term mentally ill population, authorized under Pub. L. 99-660, The State Comprehensive Mental Health Planning Act, requires State governments to coordinate services for these persons. The service demonstrations supported through the grant will facilitate State efforts to plan and implement effective, coordinated services for the long-term mentally ill population. Finally, if the programs stimulated through these grants are to survive beyond the grant period, it is probable that the main source of funding will come from State mental health authorities and other related State human service agencies. Based on previous program experience, involving States in the demonstration projects greatly increases the probability that they will provide continuation funding for the new services.

In making application for assistance, the State mental health authority must designate the type of grant (CSP Community Services Demonstration Projects). Each State may submit only one application for a grant.

For a copy of the Request for Proposals (RFA, MH-88-11) or additional program guidance, potential applicants should contact: Neal Brown, Chief, Community Support and Advocacy Branch, Division of Education and Service Systems Liaison, National Institute of Mental Health, 5600 Fishers Lane, Room 11C-22, Rockville, Maryland 20857, Telephone: (301) 443-3653.

The Catalog of Federal Domestic Assistance number for this program is 13.125.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-622 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-20-M

New Techniques Small Grants for Alcohol Researchers

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Notice of limited competition.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces a request for applications entitled, "New Techniques Small Grants for Alcohol Researchers." Due to the rapid emergence of new research technology, the ability of some established investigators in the alcohol community to pursue new directions has been impaired by the lack of experience in the most current technology. The purpose of this small grant program is to provide an opportunity for established alcohol researchers to acquire personal expertise in the utilization of specialized techniques applicable to alcoholism research. The award is for 3 to 6 months and a maximum of $35,000. This is a one time announcement. About 5 to 10 awards will be made in FY 1989. The awards will be made under the authority of sections 301 and 510 of the Public Health Service Act (42 U.S.C. 241 and 290bb) The Catalog of Federal Domestic Assistance Number is 13.273. NIAAA is limiting competition to current grantees and investigators who have had NIAAA grants within the past 3 years. This restriction will enable active alcohol researchers to update their research skills and will increase the likelihood of the techniques being applied to alcohol research.

CONTACT: Additional information may be obtained from: Helen M. Chao, Ph.D., Chief, Biomedical Research Branch, Division of Basic Research, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, Room 14C-20, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4223.

Betty J. Cook,

Acting Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-686 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-20-M

Mental Health Services Demonstration Grants for Severely Mentally Ill Adults; Community Services Demonstration Projects

AGENCY: National Institute of Mental Health, HHS.

ACTION: Notice of restricted eligibility.

SUMMARY: The National Institute of Mental Health (NIMH) announces the availability of Mental Health Services Demonstration Grants for adults with severe, long-term mental illness. These grants will be made under the authority of section 520A of the Public Health Service (PHS) Act which authorizes funds for demonstrations of mental health services for the long-term, severely mentally ill population.

The goal of this program is to respond to the needs of long-term, severely mentally ill adults by supporting the demonstration and evaluation of various approaches to providing three key service components: Case management services, community crisis response services, and psychiatric rehabilitation services.

In fiscal year 1989, NIMH will fund a total of approximately 8 to 12 projects averaging $250,000 to $300,000 per year in the three service areas. NIMH is limiting potential applicants for demonstrations under this announcement to State mental health authorities. There are three reasons for this eligibility restriction. First, because multiple agencies and providers are generally involved in implementing these demonstration initiatives, centralized State assistance is needed to assure that sufficient resources will be allocated to the project and appropriate staff and organizations will be involved. The State mental health authorities are best qualified to undertake this coordination function, since they oversee a wide range of mental health service providers. Prior NIMH demonstration efforts under section 504(f) of the PHS Act (NIMH Community Support Program (CSP) and Child and Adolescent Service Systems Program (CASSP)) have shown the State mental health authorities to be extremely effective in coordinating community-based services.

Second, a related Federal initative focused on the long-term mentally ill population, authorized under Pub. L. 99-660, The State Comprehensive Mental Health Planning Act, requires State governments to coordinate services for these persons. The service demonstrations supported through the grant will facilitate State efforts to plan and implement effective, coordinated services for the long-term mentally ill population. Finally, if the programs stimulated through these grants are to survive beyond the grant period, it is probable that the main source of funding will come from State mental health authorities and other related State human service agencies. Based on previous program experience, involving States in the demonstration projects greatly increases the probability that they will provide continuation funding for the new services.

In making application for assistance, the State mental health authority must designate the type of grant (CSP Community Services Demonstration Projects). Each State may submit only one application for a grant.

For a copy of the request for Proposals (RFA, MH-88-11) or additional program guidance, potential applicants should contact: Neal Brown, Chief Community Support and Advocacy Branch, Division of Education and Service Systems Liaison, National Institute of Mental Health, 5600 Fishers Lane, Room 11C-22,

Rockville, Maryland 20857, Telephone: (301) 443-3653.

The Catalog of Federal Domestic Assistance number for this program is 13.125.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-621 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Carson Chemicals, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by Carson Chemicals, Inc. The NADA's provide for anthelmintic use of piperazine adipate powder in horses, dogs, and cats, and piperazine adipate tablets in dogs, puppies, cats, and kittens. The firm requested the withdrawal of approvals.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Carson Chemicals, Inc., P.O. Box 466, New Castle, IN 47362-0466, is the sponsor of two NADA's. NADA 9-821, approved March 15, 1955, provides for anthelmintic use of Asca-Trol #3 (piperazine adipate tablets) in dogs, puppies, cats, and kittens. NADA 9-951, approved May 18, 1955, provides for anthelmintic use of piperazine dipate powder (100 percent) in drinking water, feed, or as a drench in horses, dogs, and cats.

By letters dated February 18, 1988, the sponsor requested the withdrawal of approvals because the products are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that the approval of NADA's 9-821 and 9-951 and all supplements thereto is hereby withdrawn, effective January 23, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the entries for "Carson Chemicals, Inc." and its drug sponsor/labeler code from the list of sponsors of approved NADA's in 21 CFR 510.600(c)(1) and (c)(2), and removing 21 CFR 520.1801a(d) and 520.1801c and reserving them.

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-633 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

Norden Laboratories, Inc.; Withdrawal of Approval of NADA'S

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Norden Laboratorites, Inc. The firm requested the withdrawal of approvals.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, NE 68501, is the sponsor of the following NADA's:

1. NADA 7-404 provides for use of Histosol (pyrilamine maleate) Injectable in horses for treating conditions in which antihistaminic therapy may alleviate some signs of disease. The NADA was approved on May 9, 1950.

2. NADA 12-746 provides for use of Nortran (trifluomeprazine) Tablets in dogs for tranquilization and chemical restraint. The NADA was approved on October 3, 1972.

3. NADA 45-628 provides for use of Paracide (dichlorophene/toluene) Capsules in dogs and cats as an anthelmintic. The NADA was approved on March 18, 1972.

By letter of January 13, 1988, the sponsor requested withdrawal of approval of the above-mentioned NADA's because the products have not been manufactured or marketed for several years.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 7-404, 12-746, and 45-628 and all supplements thereto is hereby withdrawn, effective January 23, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the sponsor's drug labeler code No. "011519" from 21 CFR 520.480(b)(1) and 522.2063(b). In addition, 21 CFR 520.2560 is being removed.

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine

[FR Doc. 89-634 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

The Purdue Frederick Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by the Purdue Frederick Co. The NADA provides for use of triethanolamine polypeptide oleate-condensate otic solution in dogs and cats for removal of earwax. The firm requested the withdrawal of approval.

EFFECTIVE DATE: January 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856, is the sponsor of NADA 12-817 which provides for use of Cerumenex-V Drops (triethanolamine polypeptide oleate-condensate) in dogs and cats to help remove excess or impacted earwax. The NADA was originally approved on November 17, 1972.

In a letter dated April 5, 1988, the sponsor requested the withdrawal of approval because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 12-817 and all supplements thereto is hereby withdrawn, effective January 23, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing the entry for "The Purdue

Frederick Co." from the list of sponsors of approved NADA's in 21 CFR 510.600(c)(1), the drug labeler code No. "000034" from 21 CFR 510.600(c)(2), and 21 CFR 524.2542.

Dated: January 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-635 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0007]

Drug Export; Factor IX, Purified

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp., has filed an application requesting approval for the export of the biological product Factor IX, Purified to West Germany.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Factor IX, Purified, to West Germany. Factor IX, Purified is a concentrate derived from Factor IX Complex powder, and as a finished product is intended for therapeutic use in hemophilia B patients who would be at risk of thromboembolic episodes after treatment with Factor IX Complex preparations. The application was received and filed in the Center for Biologics Evaluation and Research on December 15, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 23, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: December 23, 1988.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89-714 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0006]

Drug Export; Procaterol Hydrochloride Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parke-Davis has filed an application requesting approval for the export of the human drug Procaterol Hydrochloride Tablets to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice of the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Parke-Davis Pharmaceutical Research Division, Warner-Lambert Co., 2800 Plymouth Rd., Ann Arbor, MI 48105-2430, has filed an application requesting approval for the export of the drug Procaterol Hydrochloride Tablets, to Canada. This drug product is to be used as a bronchodilator. The application was received and filed in the Center for Drug Evaluation and Research on December 22, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 23, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 3, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-636 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88D-0125]

Guideline Labeling Texts for Progestational Drug Products for Human Use

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing the revised guideline texts for professional and patient labeling for prescription progestational drug products. The revised texts reflect important new information about progestational drug products. Any person may rely upon the revised texts in meeting labeling requirements for these drug products. The revised texts apply only to progestational drug products subject to the requirements of 21 CFR 310.516 and not to progestogen-containing oral contraceptive drug products, which are subject to regulation under 21 CFR 310.501. Elsewhere in this nature of the **Federal Register**, FDA is amending its regulation for labeling for progestational drug products to reflect these revised guideline texts.

EFFECTIVE DATE: Effective January 12, 1989, interested persons may adopt the revised labeling guideline texts for progestational drug products and rely on them to meet FDA's professional labeling requirement for a boxed warning, and the patient labeling requirement for progestational drug products set forth in 21 CFR 310.516.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: This notice contains revised guideline texts for professional and patient labeling for progestational drug products.

FDA is charged with assuring that drugs are safe and effective for their intended uses and that a drug's labeling provides adequate information for such uses and is not false or misleading. The full disclosure of information to physicians and, where appropriate, labeling directed to patients concerning the benefits and risks of drug use is an important element in the discharge of that responsibility. The statutory scheme anticipates that new information concerning the safety and effectiveness of marketed drugs may require, for example, that FDA prescribe changes in product labeling to reveal limitations on use or warn of previously unanticipated hazards.

Guideline texts for professional and patient labeling were previously published in a July 22, 1977 (42 FR 37646 through 37648), Drug Efficacy Study Implementation notice establishing the conditions for the safe and effective use of these drugs. The notice required that professional labeling for progestational products be revised to reflect reports in the scientific literature about the possible teratogenicity of such products. In particular, the notice required that profesional labeling contained a boxed warning recommending against the use of progestational products during the first 4 months of pregnancy. The boxed warning discussed the potential problems associated with progestational drug use in pregnancy, noting, in part, that "* * * [s]everal reports suggest an association between intrauterine exposure to female sex hormones and congenital anomalies, including congenital heart defects and limb reduction defects * * *."

The July 1977 notice also contained a guideline text for patient labeling reflecting the same information about the use of progestational products in pregnancy. Patient labeling for progestational drug products was initially required in a rule published in the **Federal Register** of October 13, 1978 (43 FR 47178). This is currently codified at 21 CFR 310.516. The regulation requires that patients be provided with information about the benefits and risks of progestational drug use, including information about the potential teratogenicity of such drug products.

New information about the potential teratogenicit of progestational drugs has prompted the agency to revise the guideline professional and patient labeling texts for progestational drug products. This notice revised the guideline texts by (1) deleting the warning about possible congenital heart defects and limb reduction defects, and (2) adding a warning stating that the use of progestational drugs in pregnancy may cause certain genital abnormalities. The revisions are based on a number of studies reported in the scientific literature since 1977 and on further evaluation and analysis of previously reported data.

Like the current labeling for progestational products, the revised texts continue to warn against the use of progestational products during the first 4 months of pregnancy.

The revisions are the product of the combined efforts of FDA scientists in the Center for Drug Evaluation and Research and the members of FDA's Advisory Committee on Fertility and Maternal Health Drugs. In developing the guideline texts, FDA also considered reports in the published literature regarding effects on the fetus of exposure in utero to progestational agents and a citizen petition filed by the National Women's Health Network.

This notice publishes in full the revised guideline texts for progestational drug products. It should be emphasized that these revised guideline texts apply only to progestational drug products subject to the requirements of § 310.516, and not to progestogen-containing oral contraceptive drug products, which are subject to regulation under § 310.501.

The revised guideline texts are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows the guideline texts is assured that his or her conduct is acceptable to the agency. FDA advises that compliance with the professional labeling guideline texts for progestational drug products can be relied on by manufacturers in meeting pertinent professional labeling requirements (21 CFR Part 201). Also, compliance with the patient labeling guideline texts satisfies the requirements of § 310.516. The guideline texts can be relied upon by any person to meet these specific regulatory requirements. Under the provisions of 21 CFR 314.70, a holder of an approved application for a new drug is required to submit a supplemental application to obtain approval for a change in the text of professional labeling or patient labeling. However, under § 314.70(c), these guideline labeling texts may be used before approval of supplements covering the revisions, provided a supplement for the changes is submitted

at the time the changes are made. An applicant may choose to use a labeling text that is different than the guidelines. If an applicant chooses to depart from a guideline, the applicant should first discuss the matter further with the agency to prevent expenditures of money and effort for labeling that the agency may later determine to be unacceptable.

The patient labeling texts published in this notice comply with the patient labeling requirement in § 310.516 and can be relied upon by manufacturers, packers, and distributors to meet those requirements.

Effective January 12, 1989, a person may adopt the guideline texts for progestational drug products that are the subject of this notice.

Interested persons may submit written comments on these guideline texts to the Dockets Management Branch (address above). Comments will be considered in determining whether future changes to the guidelines are necessary. Two copies should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The guidelines and comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Guideline Professional Labeling Text for Progestational Drug Products—Boxed Warning

The professional labeling for such products should continue to include under the Contraindications section the following contraindictation:

As a diagnostic test for pregnancy.

The professional labeling should continue to contain a Boxed Warning, revised as follows:

The Use of (Name of Drug) During the First 4 Months of Pregnancy Is Not Recommended

Progestational agents have been used beginning with the first trimester of pregnancy in an attempt to prevent habitual abortion. There is no adequate evidence that such use is effective when such drugs are given during the first 4 months of pregnancy. Furthermore, in the vast majority of women, the cause of abortion is a defective ovum, which progestational agents could not be expected to influence. In addition, the use of progestational agents, with their uterine-relaxant properties, in patients with fertilized defective ova may cause a delay in spontaneous abortion. Therefore, the use of such drugs during the first 4 months of pregnancy is not recommended.

Several reports suggest an association between intrauterine exposure to progestational drugs in the first trimester of pregnancy and genital abnormalities in male and female fetuses. The risk of hypospadias, 5 to 8 per 1,000 male births in the general population, may be approximately doubled with exposure to these drugs. There are insufficient data to quantify the risk to exposed female fetuses, but insofar as some of these drugs induce mild virilization of the external genitalia of the female fetus, and because of the increased association of hypospadias in the male fetus, it is prudent to avoid the use of these drugs during the first trimester of pregnancy.

If the patient is exposed to (name of drug) during the first 4 months of pregnancy or if she becomes pregnant while taking this drug, she should be apprised of the potential risks to the fetus.

Patient Labeling for Progestational Drug Products

The kind of information to be contained in the patient labeling is specified in § 310.516. This notice contains a text that can be used to meet the requirements of the regulation. The text of such patient labeling is revised as follows:

Guideline Patient Labeling Text for (Name of Drug) Warning for Women

Progesterone or progesterone-like drugs have been used to prevent miscarriage in the first few months of pregnancy. No adequate evidence is available to show that they are effective for this purpose. Furthermore, most cases of early miscarriage are due to causes which could not be helped by these drugs.

There is an increased risk of minor birth defects in children whose mothers take this drug during the first 4 months of pregnancy. Several reports suggest an association between mothers who take these drugs in the first trimester of pregnancy and genital abnormalities in male and female babies. The risk to the male baby is the possibility of being born with a condition in which the opening of the penis is on the underside rather than the tip of the penis (hypospadias). Hypospadias occurs in about 5 to 8 per 1,000 male births and is about doubled with exposure to these drugs. There is not enough information to quantify the risk to exposed female fetuses, but enlargement of the clitoris and fusion of the labia may occur, although rarely.

Therefore, since drugs of this type may induce mild masculinization of the external genitalia of the female fetus, as well as hypospadias in the male fetus, it is wise to avoid using the drug during the first trimester of pregnancy.

These drugs have been used as a test for pregnancy but such use is no longer considered safe because of possible damage to a developing baby. Also, more rapid methods for testing for pregnancy are now available.

If you take (name of drug) and later find you were pregnant when you took it, be sure to discuss this with your doctor as soon as possible.

Dated: December 23, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-713 Filed 1-11-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-486-PN]

Medicare Program; Inherent Reasonableness for Home Dialysis Supplies and Equipment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice, we propose to establish a special reasonable charge payment limit for home dialysis equipment and supplies. The proposal is intended to prevent excessive payment for these items.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on March 13, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-486-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-486-PN. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Bob Niemann, (301) 966-4569.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Section 1842(b)(3) of the Social Security Act (Act) requires that all payments under Part B of the Medicare program must be reasonable.

Reasonable charge determinations under Part B are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally the lowest of—(1) the actual charge; (2) the customary charge made by a particular physician or supplier; or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. An economic index limits the annual increases in prevailing charges only for physicians' services. However, an inflation-indexed charge limitation applies to all nonphysician services and items paid on a reasonable charge basis.

This standard method of determining the reasonable charge for service can, in some instances, result in payments that may not be reasonable. When this occurs, section 1842(b)(8) of the Act authorizes the Secretary to adopt special reasonable charge limits.

The regulations at 42 CFR 405.502 (a)(7) and (g) implement the statute and set forth factors to be considered and procedures to be followed in establishing special reasonable charge limits. The regulations specify that we may set a limit if we determine that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges. The limits may be in the form of either a specific dollar amount or a special method to be used in determining reasonable charges to be allowed for a particular service or category of service.

The regulations at § 405.502(g)(1)(i) provide examples of circumstances which may result in grossly excessive charges. These include but are not limited to following circumstances:

- The marketplace is not competitive.
- Medicare is the primary source for payment.
- The charges involve the use of new technology for which an extensive charge history does not exist.
- The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition or supplier costs.
- Prevailing charges in a locality are grossly in excess of prevailing charges in other localities.
- Charges are grossly in excess of acquisition or production costs.

The regulations further specify, at § 405.502(g)(3), that we publish in the **Federal Register** a proposed notice and a final notice of any national limit before it is adopted. Section 405.502(g)(3) also provides that the notices set forth the criteria and circumstances, if any, under which a specific exceptions process to the special limit would be established.

B. Home Dialysis Equipment and Supplies

Traditionally, the term "home dialysis" has always meant an arrangement whereby the patient is trained for home dialysis in an approved ESRD facility and subsequently dialyzes himself or herself at home with the aid of a trained partner. A relatively new development in the provision of dialysis services is staff-assisted home dialysis. In "staff-assisted" home dialysis, the patient is not trained for home dialysis because the dialysis treatment is performed entirely by a staff member from a facility or supplier of dialysis equipment. The services performed by the staff member are not Medicare-covered services; however, the supplies and equipment furnished to an eligible Medicare beneficiary generally are covered.

There are two methods of payment for home dialysis supplies and equipment under Medicare. Under Method I (also called the composite rate), the same rate is paid to approved dialysis facilities for dialysis provided in the home as is paid for dialysis provided in the facility. The facility is responsible for furnishing (directly or indirectly) all items and home dialysis support services necessary for the patient to dialyze at home. Program payment for all these items and services is included under the composite rate.

Under Method II (also called direct dealing), payment is made on a fee-for-service basis. Support services furnished by an approved dialysis facility are paid for by the Medicare intermediary. (For hospital-based facilities, these services are paid on the basis of cost; for independent facilities, on the basis of charges related to cost.) Claims for supplies and equipment are paid by the carrier to beneficiaries or, in the case of assigned claims, to the supplier, on the basis of reasonable charges.

The beneficiary is given the option of payment methods. If he or she elects to change the method of payment, generally the change in the method of payment for home dialysis (that is, from Method I to Method II or vice versa) is effective January 1 of the year after the calendar year in which the change was elected.

II. Provisions of This Notice

We have determined that the standard methodology for determining reasonable charges for home dialysis equipment and supplies reimbursed under Method II results in charges that are grossly excessive. Charges are grossly in excess of acquisition costs. We believe this occurs in part because Medicare is the primary source for payment. In accordance with the procedures described in § 405.502(g), we are proposing to establish an upper limit on the amount of payment we make for home dialysis equipment and supplies.

A. Circumstances Requiring a Limit

In order to determine the cost of home dialysis, HCFA selected a random sample of dialysis facilities to be audited. Medicare intermediaries (or, in some cases, subcontractors of intermediaries) and the Office of the Inspector General (OIG) conducted audits of those ESRD facilities in the fall of 1983 (see 51 FR 29411). The data gathered in those audits suggest that charges made for home dialysis supplies and equipment are disproportionate to actual acquisition, maintenance, and repair costs, and that suppliers may not be competing among themselves for business from Medicare beneficiaries. These data show that Medicare carriers are allowing aggregate charges that are substantially in excess of the composite rate paid to Medicare approved dialysis facilities for the same items. Moreover, because the composite rate paid to dialysis facilities covers additional costs incurred by those facilities that are not incurred by suppliers (for example, home dialysis support services, certain laboratory tests, facility overhead), this is a clear indication that dialysis facilities are paying suppliers substantially less than the Medicare carriers' prevailing charge in the same area for the same products.

Also, the OIG, in its recent report on CAPD, "Payments for Continuous Ambulatory Peritoneal Dialysis Supplies" (CIN: A-09-87-00108), states that Medicare carriers pay 75 percent more than ESRD facilities or suppliers related to them for CAPD supplies. This study consisted of onsite reviews of all 9 suppliers of CAPD supplies in HCFA regions IX (consisting of California, Nevada, Arizona, Hawaii, Guam, and Samoa) and X (consisting of Washington, Oregon, Idaho, and Alaska), and 4 dialysis units located in Veterans Administration hospitals. Most of these suppliers were related to a dialysis facility by ownership or control. This study showed similar results to the audits referred to above. The average amount paid by dialysis facilities, or by suppliers related to them, for CAPD supplies for their home dialysis patients, was approximately $1200 per month. The manufacturers of these supplies also supplied Medicare beneficiaries on whose behalf they billed the Medicare

program directly under Method II. However, the average charge to Medicare was about 75 percent higher than the charge to facilities or to suppliers related to them for the same items.

Currently, 71 percent of all home dialysis patients have elected Method I, and the average Medicare allowed charge per patient is approximately $1550 per month. The remainder of Medicare home dialysis patients' claims for supplies and equipment are paid under Method II. Method II claims can range from $2100 to over $3000 per month for supplies and equipment for each patient. This is more than twice the allowed average charge under Method I. We believe that this is inappropriate and that Congress' intent in authorizing Method II (through section 1881(b)(2)(A) of the Act) was to afford the beneficiary the option of obtaining home dialysis equipment and supplies directly from a supplier (rather than through a dialysis facility) if he or she chooses to do so. The intent was not to undermine the otherwise mandated composite rate by providing an alternative reimbursement system that would result in program payments that are twice as much as the composite rate.

Payment limits may be set (notwithstanding the reasonable charge limits that would otherwise apply) under certain circumstances. Examples of these circumstances are found at 42 CFR 405.502(g)(1). In the case of home dialysis equipment and supplies, two of those circumstances apply, that is: (1) Medicare is the primary payer (over ninety percent of the end stage renal disease (ESRD) patients in the country are covered under Medicare); and (2) when carriers use Method II to compute charges for home dialysis equipment and supplies, the charges are grossly in excess of acquisition costs. Many Medicare carriers have already taken steps to deal with this problem under their independent authority. This notice is not intended to interfere with these carrier actions. Rather, it will result in a national maximum limit for all carriers. Carriers would continue to have the responsibility and authority under § 405.502(g) to establish lower payment allowances than this national limit. Section 405.502(g) allows a carrier to establish special reasonable charge limits if it determines that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges. Section 405.502(g)(4) sets forth the procedures carriers must follow to inform affected suppliers of the special limits.

B. Proposed Limit

This notice would require Medicare carriers to set their maximum allowed charge for home dialysis equipment and supplies paid under Method II at the lower of—

1. The national maximum allowable charge as described below; or
2. The limit determined by the carrier, taking local practices into account, in accordance with the procedures in 42 CFR 405.502(g)(4).

The national maximum allowable charge for home dialysis supplies and equipment under Medicare would be computed by taking the average number of dialysis treatments for the applicable billing period (12.4 per month, 3.1 per week, .4429 per day) and multiplying it by the national average composite rate for independent dialysis facilities (currently $125). The composite rate is considered to be a reasonable limit for several reasons: (1) It was derived only after exhaustive research, audits, and public comment on the methodology; (2) approximately 71 percent of all home dialysis patients are under the composite rate; and (3) the proposed rate is sufficient to cover the cost of all supplies and services furnished to beneficiaries receiving infacility dialysis.

The national maximum limit would not relieve the individual carriers of their ongoing responsibility to set their payment allowance at a lower amount, if appropriate. To that end, carriers would determine whether the principles of inherent reasonableness substantiate the national maximum limit in the areas under their jurisdiction. Carriers may do this by checking with dialysis facilities for the prices they are charged by suppliers of home dialysis equipment and supplies, and comparing these charges to the amounts suppliers are charging the carriers directly for the same items. Carriers may wish to refer to the OIG's recent report on CAPD, "Payments for Continuous Ambulatory Peritoneal Dialysis Supplies" (CIN: A–09–87–00108), in which a similar but broader approach was used. Carriers should bear in mind that the audits of ESRD facilities referred to above (see 51 FR 29411) showed that the cost of home dialysis is $96.18 per treatment. These costs reflect the fact that suppliers charge facilities less than they charge the Medicare program directly through Method II for the same items. Furthermore, these costs include additional costs (for example, home dialysis support services and facility overhead) that suppliers do not incur.

When a Medicare carrier makes a reduction in charges based on this notice, the carrier would notify all affected beneficiaries (beneficiaries who have elected Method II and on whose behalf the carrier has paid benefits under Method II) and all affected Method II suppliers. The notice would state that payment would be reduced for supplies or equipment furnished on or after 45 days after the date of the letter notifying beneficiaries and suppliers of the reduction. The notice would also state that the beneficiary would have the option, during the period beginning with the date of the notification and ending with December 31 of that year, to change to Method I with an immediate effective date. This option would be provided in order to help beneficiaries whose Method II suppliers may not continue to accept assignment or who may not provide supplies at the reduced rate. Only beneficiaries and suppliers who had submitted a claim for home dialysis supplies or equipment by the time this notice is published in final would be notified. Beneficiaries and suppliers submitting their first claims after publication of the final notice would not require notification of the reduction, since they would have never been paid at the higher rate.

C. Illustrations

The effect of the provisions of this proposed notice is illustrated in the following examples—

Example 1

Beneficiary A is a home hemodialysis patient. The carrier receives a claim on her behalf from a single supplier for all home dialysis supplies and equipment furnished to her for the month of January: Declotting equipment (HCPCS code A4810), hemodialysis supply kit (A4820), labor charges for home dialysis repair (A4840), kidney dialysis delivery machine (E1510), heparin infusion pump (E1520), and a reverse osmosis water purification system (E1610). This claim is representative of one month's supplies and equipment rental. The special reasonable charge limit for all of these home dialysis items would be $1550, a figure arrived at by taking the average number of dialysis treatments in a month (12.4), and multiplying it by the national average composite rate for independent dialysis facilities (currently $125). It would not be reasonble to allow any additional amount for any other costs the supplier might incur in dealing directly with a Medicare carrier as opposed to receiving payment through individual dialysis facilities. This is because the composite rate paid by the Medicare intermediary includes additional costs incurred by facilities that are not incurred by suppliers, and these additional costs adequately offset any possible additional supplier costs.

Example 2

Beneficiary B is a home dialysis patient on continuous ambulatory peritoneal dialysis (CAPD). The carrier receives a claim on behalf of the beneficiary from ABC supplier for a CAPD supply kit (HCPCS code A4900) for the month of April. This claim represents one month of supplies, and, because the modality is CAPD, no equipment is involved. The payment limit would be equal to $1550, a figure arrived at by multiplying the national average composite rate for independent dialysis facilities (currently $125) by 12.4 treatments per month. The factor 12.4 is used even though CAPD is not furnished in discrete sessions because program rules (48 FR 21272–3) establish a payment equivalence between CAPD and hemodialysis. Under the composite rate, CAPD is paid on a daily or a weekly basis. Thus, under the special payment limit, a facility's weekly payment rate (7 calendar days) for a CAPD patient would be 3.1 times its composite rate for a single hemodialysis treatment. The weekly rate is bsed on the equivalency of one week of CAPD to one week of hemodialysis, an equivalency set forth when we originally implemented the composite rate (see 48 FR 21272–3, published on May 11, 1983).

Example 3

Beneficiary C is a bome hemodialysis patient. The carrier receives the following claims on ber behalf from different suppliers. These claims are representative of one month of services:

Code	Description	Prevailing charge
A4802	Hemodialysis supply kit	$1,000
A4860	Storage tanks	200
A4680	Activated carbon filters	60
A4690	Dialyzers (1 month's supply)	700
E1560	Blood leak detector	10
E1510	Kidney dialysis delivery machine.	600
E1520	Heparin infusion pump	100
E1610	Reverse osmosis water purification system.	200
E1620	Blood pump	100
	Total	2,970

The national average composite rate for independent dialysis facilities is currently $1550 per month, a figure determined by multiplying the average number of dialysis treatments in a month (12.4) by the national average composite rate for independent dialysis facilities (currently $125). Thus, the total charge of $2970 is 1.83 times greater than the composite rate and should be reduced to a reasonable total. The carrier would then compare these charges against (1) the charges for similar supplies and equipment used by home or, if appropriate, infacility, patients who are treated by facilities under the composite rate; or (2) other prevailing charges in other carrier areas where the carrier has made the comparison described in (1) to determine the amount by which each individual prevailing charge should be decreased in order to achieve the correct total charge ($1550 in this example). As long as the aggregate specific reasonable charge limit is not exceeded, the carrier has discretion to apportion individual reductions in prevailing charges.

D. Exceptions Process

The provisions of the regulations under which this limit on reasonable charges is being issued (§ 405.502(g)) state that the proposed notice will set forth the criteria and circumstances under which a carrier may grant an exception to the limit. While we are not proposing to establish any special exceptions policy in this notice, carriers do have the authority under § 405.506 to reimburse additional amounts if there are unusual circumstances or medical complications requiring additional charge, if it is acceptable medical practice in the locality to make an extra charge in these cases.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to publish a regulatory impact analysis for regulations and other documents that are likely to meet the criteria for a major notice. A major notice is one that would result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have determined that none of the criteria of E.O. 12291 have been met and therefore, a regulatory impact analysis is not required.

B. Regulotory Flexibility Act

We prepare and publish a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for notices unless the Secretary certifies that the notices would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all ESRD facilities and suppliers to be small entities. Since this proposed notice would have significant economic impact on some small entities, we have prepared a regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

1. Affected Entities

We expect suppliers of ESRD equipment and medical supplies, ESRD facilities and beneficiaries to be affected by this regulation. (We expect that some Method II patients will return to facilities for all items and services.) However, we do not have sufficient data to predict exactly which suppliers and facilities would be most affected by this notice nor the magnitude of the impact upon specific suppliers and facilities.

If the Method II form of reimbursement is left unchecked, we expect that the patient population choosing Method II reimbursement would grow due to effective advertising on the part of suppliers who have an economic incentive to encourage the choice of Method II. We believe that as a result of this notice, we would be removing any economic incentives to use Method II reinbursement. Thus, program expenditures would not increase.

a. *Suppliers.* Suppliers would be affected to a greater or lesser degree depending upon the extent of reimbursement they currently receive through Method II for equipment and medical supplies. Some suppliers are likely to experience a reduction in payments as a result of the application of the upper payment limit. The extent of the impact on supplier income would be affected by such factors as the availability of other payment sources (for example, other health insurance held by the beneficiary and its payment limits) and the extent to which a supplier's income is derived from ESRD equipment and supplies furnished under Method II. Possible responses on the part of the suppliers may be to raise charges for other items and services, reduce the number of claims for which they are willing to accept assignment, or not continue to supply this particular line of equipment and supplies. Because of the number of dialysis facilities participating in the program, we do not believe this will adversely affect beneficiary access to these items and services.

We estimate that the proposed upper limit would result in the following savings to the Federal government and potential reductions in reimbursement to some suppliers.

SAVINGS ESTIMATES

Fiscal year	Savings in millions [1]
1989	$30
1990	10
1991	5
1992	5
1993	5

[1] Rounded to nearest $5 million.

In deriving these figures, we used the assumption that Method II reimbursement would equal $2500 per patient monthly. Additionally, we included an inflation factor and a growth rate factor to reflect the growth in the number of patients receiving dialysis treatment. We also used the assumption that the number of beneficiaries choosing reimbursement under Method II would be a constant percentage of the total dialysis population.

In addition, in calculating these savings, we offset against the national savings estimates attributable to the proposed notice the estimated savings resulting from the special reasonable charge limits that some carriers are already applying in accordance with the provisions of §405.502(g).

We also note that there are exceptions to this payment methodology permitted under § 405.506 to reimburse additional amounts if there are unusual circumstances or medical complications requiring additional time, effort, or expense that support an additional charge.

b. *Facilities.* As of June 1988, there were 667 hospital-based ESRD facilities and 1002 independent ESRD facilities. If some suppliers make a management decision not to provide the equipment and supplies to some or all the beneficiaries they previously provided, we would expect that those beneficiaries would elect to receive services or equipment through hospital or independent facilities or perhaps from other suppliers willing to accept assignment or to charge no more than the upper payment limit. Thus, it is possible that facilities would experience some increased demand for services.

c. *Beneficiaries.* Beneficiaries would be affected by the imposition of the upper payment limit for services. We estimate that this notice would affect the majority of the approximately 5,300 current Method II beneficiaries. These beneficiaries represent approximately five percent of the total population receiving renal dialysis. Under the proposed upper limit, many beneficiaries could experience a decrease in coinsurance because Medicare's reasonable charge would be reduced. In those cases where Medicaid pays the coninsurance for Medicare patients who are also Medicaid-eligible, Medicaid may also show a decrease in program expenditures. Some of the alternatives suppliers may choose that could affect beneficiaries are that they may raise charges for other items and services, reduce the number of claims for which they are willing to accept assignment, or not continue to supply home dialysis equipment and supplies. However, as explained in section I.B. of this preamble, beneficiaries would be given sufficient notice and reasonable time to change to a different reimbursement methodology if they choose to do so. They also could elect to switch to dialysis treatment in a facility.

2. Conclusion

We believe that the overall benefits to society from this proposed notice more than offset any resulting liabilities. For the most part, we expect that the result would be reduced payment to certain suppliers.

The primary benefit expected to result from this proposed notice is the anticipated reduction in the cost to the Medicare program for ESRD equipment and medical supplies. As a result, additional Trust Fund monies would be available for quality health care for Medicare beneficiaries. If, as anticipated, the costs to the Medicare program are reduced, then beneficiary coinsurance liability would also be reduced.

The application of the upper payment limit to equipment and supplies is expected to produce substantial economic benefits, eliminating wide variations in Medicare payment for virtually identical equipment and supplies, and limiting upward pricing trends in the health care marketplace.

IV. Other Required Information

A. Response to Comments

Because of the large number of items of Correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

B. Paperwork Reduction Act

This proposed notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

(Sections 1842(b) (8) and (9), and 1881 of the Social Security Act (42 U.S.C. 1395u(b) (8) and (9), and 139rr; 42 CFR 405.502 (a)(7) and (g)); (Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: November 4, 1988.

William L. Roper,

Administrator, Health Care, Financing Administration.

Approved: November 22, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89-369 Filed 1-11-89; 8:45 am]

BILLING CODE 4120-01-M

Medicaid Program; Hearing; Reconsideration of Disapproval of a Portion of a Nebraska State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 8, 1989, in Kansas City, Missouri to reconsider our decision to disapprove a portion of Nebraska State Plan Amendment 88-7.

DATE: Closing date: Requests to participate in the hearing as a party must be received by the Docket Clerk (on or before January 27, 1989).

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of Nebraska State Plan Amendment 88-7.

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Nebraska SPA 88-7 revised Medicaid eligibility and posteligibility policies for a person who is institutionalized or receiving home and community based services.

The issues in this matter are whether the proposed spousal and family allowances on pages 4 and 5 of Attachment 2.6-A and the proposed policy for transferring a portion of couple's combined resources to the community spouse on Supplement 5 to Attachment 2.6-A violate section 1902(a)(17) of the Social Security Act and Federal Regulations at 42 CFR 435.733(c) (2) and (3) and 42 CFR 435.735(c) (2) and (3). Another issue is whether the proposed changes are approvable under section 303 of the Medicare Catastrophic Coverage Act of 1988 (MCCA) or are protected by the moratorium under section 2373(c) of the Deficit Reduction Act of 1984 as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987.

Until recently, States could not use methodologies in determining financial eligibility that were more liberal than the methodologies used in the most closely-related cash assistance program (in this case, the Supplemental Security Income (SSI) program.) This prescription was derived from the requirement in section 1902(a)(10) of the Social Security Act that States (with certain specified exceptions) use SSI requirements and methodologies to determine eligibility for the aged, blind, and disabled categorically needy and medically needy, respectively.

On July 1, 1988, section 303 of the Medicare Catastrophic Coverage Act of 1988 was enacted permitting States to use more liberal methodologies in additional cases. Section 303(a) added section 1924 to the Social Security Act. Section 1924 is designed to avoid the impoverishment of the spouse of an institutionalized person in order for the person to receive medical assistance. The amendment generally would permit one-half of the couple's combined resources, up to $60,000, to be transferred to the community spouse and, thus, not considered in determining the institutionalized spouse's eligibility for Medicaid. However, the amendment does not become effective until October 1, 1989.

Section 303(e)(5), effective October 1, 1982, added section 1902(r)(2)(A) to the Social Security Act, permitting States to use methodologies for the aged, blind, and disabled that are more liberal than those under SSI for all eligibility groups except those for whom Medicaid eligibility is based upon the receipt of SSI benefits or on deemed receipt of SSI benefits.

Section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA) as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 enacted a moratorium on adverse Departmental fiscal actions against States.

Under the moratorium provision, the Secretary is prohibited from taking disallowance, compliance, penalty or other regulatory action against States because a plan (or its operation) uses eligibility standards (other than income and resources limitations) and methodologies that the Secretary finds to be more liberal than required under section 1902(a)(10)(A)(ii) (IV), (V), or (VI) or section 1902(a)(10)(C) of the Social Security Act. *However, the use of more liberal policies may not result in a recipient's income exceeding FFP limits.*

The moratorium provision does not prevent the Secretary from disapproving moratorium plan amendments as part of the official State plan. The provision merely permits States, without fiscal penalties, to use more liberal eligibility criteria during the moratorium period (from October 1, 1981, until February 17, 1989) while Congress considers whether Medicaid rules should be tied to the eligibility rules of the cash assistance programs.

Eligibility Rules

Nebraska's proposed change in eligibility rules is to permit a qualified person, together with his or her spouse who is neither eligible for Medicaid nor institutionalized, to assign one-half of the couple's combined resources, up to $25,000, to the spouse. Resources so assigned would not be considered in determining the qualified person's eligibility for Medicaid. This results in the use of a methodology that is more liberal than that under the SSI program in determining Medicaid eligibility for certain persons based upon resources. HCFA found this change, though permitted by section 303(a) of the Medicare Catastrophic Coverage Act of 1988, not to be approvable under that provision. This is because the provision only becomes effective on October 1, 1989, and then, is only effective with respect to individuals who begin continuous periods of institutionalization on or after September 30, 1989.

Section 1902(r) of the Act permits the use of more liberal methodologies. However, under section 1902(a)(17) of the Social Security Act, eligibility requirements must be comparable for each categorical group within the eligibility group (in this case, the aged, blind, or disabled). Because the amendment did not apply to all members within each group, HCFA disapproved it.

The comparability requirements of section 1902(a)(17) also apply to groups covered by the DEFRA moratorium. The DEFRA moratorium only protects States from fiscal sanctions which derive from violations of certain sections of section 1902(a)(10). Because it does not protect States from the consequences arising from the use of methodologies in a manner contrary to the comparability requirements of section 1902(a)(17), HCFA found that the amendment did not qualify for protection under the moratorium.

Posteligibility Rules

Nebraska's proposed changes in posteligibility rules relate to the computation of an institutionalized person's income that is applicable toward the cost of his or her care. The State proposes to:

- Increase the deduction for an institutionalized person's personal needs to include, in certain cases, a higher earned income exclusion;
- Increase the monthly deduction for the maintenance of the noninstitutionalized spouse from $354 to $475, with the present rate reflecting the State's categorically-needy income level for the aged, blind, and disabled;
- Increase the monthly deduction for the maintenance of family members, in the case of families and children, from $375 for one or two persons and $75 for each additional person to $475 each, with the present rates reflecting the State's medically-needy income level.

The proposed increase in the personal needs deduction to cover the higher earned income exclusion was approved. The proposed increases in the spousal and family maintenance allowances were disapproved. The regulations at 42 CFR 435.733(a) (2) and (3) and 42 CFR 435.735(c) (2) and (3) relate the maximum permissible allowances in a 209(b) State to the higher of the State's categorically-needy or medically-needy income level. The proposed rates exceed these limits.

HCFA determined that the moratorium cannot be used to override

the regulatory limits on spousal and family maintenance allowances. The moratorium prohibits certain adverse actions against States because they are applying more liberal financial *eligibility* standards and methods than specified in section 1902(a)(10) of the Act. However, the income deductions for spousal and family allowances are *not* a part of the State's *eligibility* methodology. Rather, they are part of the state's *posteligibility* methodology for determining the amount of income which an institutionalized individual will be expected to contribute toward the cost of his or her care.

Section 1924(d) of the Social Security Act, added by section 303(a) of the Medicare Catastrophic Coverage Act of 1988, relates the maximum permissible allowances to the poverty line. This new limit might accommodate the State's proposed increases. However, as stated above, section 1924 does not become effective until September 30, 1989, and, thus, HCFA concluded that it does not provide the State the benefit of its provisions at this time.

The notice to Nebraska announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Kermit R. McMurry,
Director, Department of Social Services, P.O. Box 95026, Lincoln, Nebraska 68509–5026

Dear Mr. McMurry: I am advising you that your request for reconsideration of the decision to disapprove a portion of Nebraska State plan amendment 88–7 was received on December 7, 1988. This amendment proposes a revision to Medicaid eligibility and posteligibility policies for a person who is institutionalized or receiving home and community based services.

There are two issues in this matter. The first issue is whether the proposed spousal and family allowances on pages 4 and 5 of Attachment 2.6–A and the proposed policy for transferring a portion of a couple's combined resources to the community spouse in Supplement 5 to Attachment 2.6–A violate section 1902(a)(17) of the Social Security Act and Federal regulations at 42 CFR 435.733(c)(2) and (3) and 42 CFR 435.735(c)(2) and (3). The second issue is whether the proposed changes are approvable under section 303 of the Medicare Catastrophic Coverage Act of 1988 or are protected by the moratorium under section 2373(c) of the Deficit Reduction Act of 1984 as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987.

I am scheduling a hearing on your request to be held on February 8, 1989, at 10 a.m. in Room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

William L. Roper, M.D.,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program NO. 13.714, Medicaid Assistance Program)

Dated: January 6, 1989.

William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 89–730 Filed 1–11–89; 8:45 am]
BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Great Lakes Coastal Barrier Act of 1988; Availability of Draft Maps of Undeveloped Coastal Barriers Along the Shore Areas of the Great Lakes

AGENCY: Department of the Interior.
ACTION: Notice of availability.

SUMMARY: Under the provisions of Pub. L. 100–707, the Secretary of the Interior is required to make recommendations to the Congress and prepare maps identifying undeveloped, unprotected coastal barriers along the Great Lakes shoreline appropriate for inclusion in the Coastal Barrier Resources System (System). The final maps will be transmitted to Congress and Congress will determine which areas to include in the System. This notice is to announce the availability of draft maps for public review and comments prior to transmittal of the final maps to Congress.

DATE: Comments should be received no later than February 6, 1989.

ADDRESS: Great Lakes Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—473, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dr. Albert G. Greene, Jr., Great Lakes Coastal Barriers Coordinator, National Park Service, Washington, DC 20013–7127, (202) 343–5881.

SUPPLEMENTARY INFORMATION: On November 23, 1988, President Reagan signed into law the Disaster Relief and Emergency Assistance Amendments Act (Pub. L. 100–707). Section 204 of the Act, entitled "Great Lakes Coastal Barrier Act of 1988," amends section 4 of the Coastal Barrier Resources Act of 1982 (CBRA) to expand the Coastal Barrier Resources System to include "those undeveloped coastal barriers along the shore areas of the Great Lakes that are designated by Congress by law after considering the recommendations of the Secretary."

Section 4 of the CBRA established a Coastal Barrier Resources System (System) of 186 undeveloped coastal barrier units along the shorelines of the Atlantic Ocean and the Gulf of Mexico. Sections 5 and 6 of the CBRA prohibit all new Federal expenditures and financial assistance within units of the System unless specifically excepted by the CBRA.

For further information and clarification on CBRA restrictions see the October 6, 1983, **Federal Register** (48 FR 45664).

The Great Lakes Coastal Barrier Act requires the Secretary of the Interior, within 3 months of enactment, to recommend to Congress and prepare maps identifying the boundaries of undeveloped coastal barriers along the shore areas of the Great Lakes that the Secretary considers appropriate for inclusion in the System. Before recommending any undeveloped coastal barrier units, the Secretary is required to update and consider the draft inventory maps issued for public comment in January 1985 and consult with and provide opportunity for comment by appropriate U.S. Government agencies, State agencies of the States bordering the Great Lakes, and the public.

This notice invites comment on the draft maps. Under the 1988 Act, the Secretary may not recommend for inclusion in the System any areas that are publicly owned and protected by Federal, State, or local government law, or held by a privately owned organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. The limitations on the use of Federal expenditures or financial assistance within those units designated by Congress will not apply to existing highways located within the State of Michigan.

The criteria used for delineating the undeveloped coastal barriers on the draft maps are those set forth in the Coastal Barrier Resources Act of 1982 and the March 4, 1985, **Federal Register** (42 FR 8698). The draft maps have been revised from those issued in 1985 based on aerial photography specifically taken for this study and comments received during the 1985 comment period. Areas that are protected by Federal, State, or local laws or held by a privately owned organization for recreational or natural resource conservation purposes have been deleted.

Since 117 areas delineated on 88 maps have been identified as meeting the criteria, it is impractical to publish the maps or list the unit designations in this notice.

To facilitate public review, anyone interested in receiving individual maps or learning the nearest location at which they may review a set of maps may call the National Park Service at (202) 343–5881 between the hours of 8:00 a.m. and 4:00 p.m. EST Monday through Friday.

The original maps may be inspected at, and hand delivered comments may be taken to the National Park Service, Room 3327, Main Interior Building, 1800 C Street NW., Washington, DC.

Date: January 9, 1989.

Susan Recce Lamson,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–732 Filed 1–11–89; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[CA–060–09–4410–08]

Intent for 1989 Amendment Review of the California Desert Plan

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management is initiating the 1989 Review of the California Desert Conservation Area Plan in accordance with the amendment procedures outlined in Chapter 7 of the Plan. The purpose of this review is to consider the need for possible amendments to the Plan based on requests from individuals, public and private organizations, and the Bureau's own observations.

DATE: Proposed amendments are being accepted from the public until March 10, 1989.

ADDRESS: For further information contact: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: Requests for amendments or changes in the California Desert Plan are now being accepted from public agencies, interested individuals, and organizations. Supporting nationale should be provided for each proposed change. Requests will be considered in light of the following criteria:

(1) Is the proposed amendment based on new data not considered when the Plan was developed?

(2) Does the information represent a change in legal or regulatory mandate?

(3) Is the supporting detail sufficient and the problem clearly stated so that the request can be considered?

(4) Does the information represent a formal change in State or local government or agency plan?

The California Desert District Advisory Council will review the suggested amendments at its public meeting on or about March 30–31, 1989 in Riverside, California. This meeting will serve as a scoping meeting for the environmental document to be prepared on the amendments.

Please send your comments and proposals to the following address: 1989 Plan Amendments, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507.

Dated: January 6, 1989.

Gerald E. Hillier,
District Manager.

[FR Doc. 89–725 Filed 1–11–89; 8:45 am]
BILLING CODE 4310–40–M

[ID–030–09–4830–12]

Idaho Falls District Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.
ACTION: Meeting of the Idaho Falls District Advisory Board.

SUMMARY: The Idaho Falls District Advisory Board will meet Thursday, February 23, 1989. Notice of this meeting is in accordance with Pub. L. 92–463. The meeting will begin at 9:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments will be accepted from 9:30 a.m. to 10:00 a.m.

The agenda of this meeting includes, but is not limited to: Election of officers, District highlights, noxious weed program, Blackfoot River fence, and project funding to include both 8100 projects and Advisory Board projects.

Detailed minutes of the Board meeting will be maintained in the District office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

DATE: February 23, 1989.

ADDRESSES: Written comments should be submitted to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Bernie Jansen, A.D.M. Operations, Telephone (208) 529–1020.

Dated: December 28, 1988.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 89–677 Filed 1–11–89; 8:45 am]
BILLING CODE 4310–66–M

[OR–030–08–2120–11–GP8–023]

Motor Vehicles; Area Closure to Off-Road Vehicle Use: Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of area closure to off-road vehicle use.

SUMMARY: The following order, affecting approximately 507 acres of public land in T. 9 S., R. 41 E., W.M., sections 5 and 6, was issued on December 13, 1988.

The operation of off-road vehicles in this area poses a significant threat to cultural resources, specifically the National Historic Oregon Trail. Furthermore, off-road vehicle use has caused adverse impacts to soils, vegetation and scenic resources, resulting in increased reclamation costs within the area. Under the authority of 43 CFR 8341.2(a), the above described public lands are limited to off-road vehicle use. Vehicle use of the area is restricted to identified roads.

Persons exempt from this order shall include emergency services personnel, law enforcement personnel, persons performing the official administrative functions of the Bureau of Land Management, and persons acting under specific authorizations granted by the Bureau of Land Management.

This area vehicle limitation shall remain in effect until further notice.

DATE: Effective December 13, 1988.

ADDRESS: Baker Resource Area, 1550 Dewey Avenue, P.O. Box 987, Baker, OR 97814.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

Jack D. Albright,
Area Manager.

[FR Doc. 89–687; Filed 1–11–89; 8:45 am]
BILLING CODE 4301–33–M

[WY-920-09-4111-15; WYW30484]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 5, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW30484 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and not less than 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (3) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW30484 effective September 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89-688 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-22-M

[AZ-050-09-4212-11; AZA-23406]

Realty Action, Lease of Lands; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) and the regulations established by 43 CFR Parts 2740 and 2910.

T. 15 N., R. 19 W. Gila and Salt River Meridian, Arizona,
Sec. 6, S½SE¼SW¼SE¼, containing 5 acres more or less.

This notice terminates the segregation established by Federal Register Notice AZ-050-07-4212-13; A-22311 published in Vol. 52, No. 115, page 22855 dated June 16, 1987, which proposed an exchange of the subject lands.

The Desert Hills Fire Department has applied to lease the above described lands for public purposes. The Fire Department proposes to use these lands to construct a fire station.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including location under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective 60 days from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Dated: January 5, 1989.

Herman L. Kast,

Yuma District Manager.

[FR Doc. 89-689 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-09-4212-11; N-41262]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Clark County, NV

The following described public land in Laughlin, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,
Sec. 15, S½NW¼.
Aggregating 80.00 acres (gross)

This parcel of land contains approximately 80.00 acres. The Clark County School District intends to use the land for a school site. The Bureau of Land Management will prepare the required documents which include Environmental Assessment/Land Report, cultural resources report/survey, and mineral report. A final determination on the application will not be made until completion of these reports. The lands have been identified for disposal in the Clark County Management Framework Plan. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area. The purpose of this notice is to classify the lands and is not authorization for any surface disturbing activities.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the Federal Register.

Dated: January 3, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-690 Filed 1-11-89 8:45 am]

BILLING CODE 4310-HC-M

[UT-020-09-4212-13; U-53696]

Realty Action; Exchange of Public Lands in Tooele County, UT

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 6 S., R. 6 W., SLM.,
Section 10: N½NE¼;
Section 11: NW¼, N½SW¼, SE¼SW¼.
Comprising 360.00 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Dennis D. and Shirley O. Andrus:

T. 6 S., R. 7 W., SLM.
Section 18: Lots 2-4;
Section 19: Lots 1, 2.
T. 6 S., R. 6 W., SLM.
Section 24: N½NE¼, SE¼NE¼.
Comprising 319.83 acres of private lands.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for livestock grazing. The exchange would create a more logical and efficient land management pattern. The acquisition of the water rights on the offered lands will benefit the range resource as well as providing water for wildlife. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Dennis D. and Shirley O. Andrus of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservation: A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945 (1982).

Publication of this notice segregates the public lands from the operation of all other public land laws, including the general mining laws, for a period of 2 years from the date of first publication.

Further information concerning the exchange, including the EA, is available for review at the Salt Lake District Office.

For a period of 45 days from the date of first publication, interested parties may submit comments to Salt Lake District Office, 2370 S. 2300 W., Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 89-691 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on Protection of the Endangered California Least Tern and Light-Footed Clapper Rail at the Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach, Orange County, CA

AGENCIES: (Joint EIS): U.S. Department of the Interior, Fish and Wildlife Service (Lead Agency), and U.S. Department of the Navy.

ACTION: Notice of intent and meeting.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) and the U.S. Department of the Navy (Navy) intend to gather information necessary for the preparation of a joint Environmental Impact Statement (EIS) for the protection of the endangered California least tern and light-footed clapper rail at the Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach, Orange County, California. A public scoping meeting to solicit comments from all interested parties regarding the scope and content of the EIS will also be held. This notice is being furnished pursuant to the National Environmental Policy Act's (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

Scoping Meeting Information: A public meeting will be held from 7:00 p.m. to 9:00 p.m., at the Seal Beach City Hall, 211 8th Street, Seal Beach, California, 90740, on Thursday, February 2, 1989. Persons wishing to participate in the scoping meeting are encouraged to contact the Public Affairs Officer at the Naval Weapons Station-Seal Beach (address and phone listed below), as soon as possible. Interested agencies, organizations, and individuals are encouraged to attend the scoping meeting to identify and discuss major issues, concerns, and opportunities that should be addressed in the EIS. Interested parties are reminded that the primary purpose of the scoping process is to identify, rather than debate the significant issues related to the proposed action. Those persons providing oral presentations at the scoping meeting are requested to provide a written copy of their statement to agency representatives.

FOR FURTHER INFORMATION CONTACT: Ms. Tracey Schwarze Public Affairs Officer, Code 01P, U.S. Navy, Naval Weapons Station, Seal Beach, California 90740-5000, (213) 594-7214.

Written Comments Information: Written comments should be received by February 15, 1989. Written comments will also be accepted at the scoping meeting in Seal Beach.

ADDRESS WRITTEN COMMENTS TO: Mr. Charles J. Houghten, Natural Resource Specialist, Refuges and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825.

SUPPLEMENTARY INFORMATION: The Service and the Navy propose to examine alternatives for the protection of the endangered California least tern and light-footed clapper rail at Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach. The purpose of this EIS is to satisfy the requirements of NEPA and the U.S. Court of Appeals for the Ninth Circuit, which has held that the 1986 Environmental Assessment prepared by the service for control of the red fox at Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach was inadequate. See *Animal Lovers Volunteer Association, Inc., v. Carlucci, Secretary of Defense, et al.*, 86-6428 9th Cir. 1988. The EIS will provide Service and Navy decisionmakers with a comprehensive analysis of alternative actions. Furthermore, the EIS will provide the rationale for selecting the best management actions and techniques which could be implemented or continued at the Seal Beach National Wildlife Refuge and Naval Weapons Station-Seal Beach to ensure the protection and enhancement of the endangered species and other wildlife, while minimizing impacts to other resources.

The purpose of and the need for action is the protection of the endangered California least tern, and the endangered light-foot clapper rail at Seal Beach National Wildlife Refuge/Naval Weapons Station-Seal Beach. The implementation of actions to protect these two endangered species is necessary due to the species' limited habitat, environmental factors, and particularly predation of these birds and their nests by red fox, thereby seriously limiting the possibility of a stable or growing population of these endangered species. The EIS will address various measures which afford protection of these two endangered species at Seal Beach National Wildlife Refuge/Naval Weapons Station-Seal Beach. The EIS will also address efforts which may assist in the overall recovery of these endangered species as mandated by the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended. A principal focus of the EIS will be on

predation problems and predator control techniques.

Alternatives will be examined for their potential benefits and impacts to other wildlife resources, including predators such as the red fox. Impacts on Navy operations, and the surrounding environment, including potential social impacts such as the presence and observation of red fox in surrounding neighborhoods will also be analyzed.

The Service and the Navy urge all interested parties to provide comments regarding the scope of this EIS, the alternatives to be developed, and the potential significant environmental impacts which may occur from the implementation of alternative actions. The ideas and concerns of interested parties may be expressed at the scoping meeting or provided in writing to the address listed above. Written comments must be received by the Service by February 15, 1989.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, 42 U.S.C. 4371, *et seq.*, NEPA Regulations, 40 CFR Part 1500, *et seq.*, other appropriate Federal regulations, and Service and Navy policy for compliance with those regulations.

It is estimated that a Draft EIS will be made available for public review and comment during June 1989.

Dated: January 6, 1989.

David L. McMollen,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 89-653 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9408, Block 248, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on January 5, 1989. Comments must be received within 15 days of the publication date of this Notice for 15 days after the Coastal Management Section receive a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, what the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 6, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-692 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7802, Block 94, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on January 3, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Lousiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 4, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-693 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Amendment to the 1976 Master Plan; Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area; CA, Availability of Draft Finding of no Significant Impact

SUMMARY: The National Park Service proposes to implement a minerals management plan for the Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, California, in accordance with Alternative A as described in the Amendment To The 1976 Master Plan and Environmental Assessment. The availability of the Amendment and Assessment was announced in the **Federal Register** on September 8, 1988 and the public review ended on October 31, 1988. Alternative A provides for 4% of the Whiskeytown Unit to remain open for mineral leasing. Two other alternatives were considered including no action or retaining the present 60% of the Unit open for mineral leasing, and the complete closure of the Unit to mineral leasing.

In accordance with the Council on Environmental Quality regulations at 40 CFR 1501.4(e)(2)(i), a draft Finding of No Significant Impact (FONSI) is being made available for public review for a period of 30 days from the date of this notice. Copies of the draft FONSI and Amendment To The 1976 Master Plan/ Environmental Assessment are available for inspection from the Superintendent, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, P.O. Box 188, Whiskeytown, CA 96095.

Date: January 4, 1989.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 89-717 Filed 1-11-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 283X)]

CSX Transportation, Inc.; Abandonment Exemption in Nicholas and Fayette Counties, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 3.4-mile line of railroad between milepost 0.0 at Open Fork Jct., WV, and milepost 3.4 at Bentree, WV, in Nicholas and Fayette Counties, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over the lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 11, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 1, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rotenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 17, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 89-711 Filed 1-11-89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environemnta) concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; United States v. Armco Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 29, 1988, a proposed Consent Decree in *United States* v. *Armco Inc.*, Civil No. 87-2221, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises from a civil action filed on October 19, 1987 under the Clean Water Act, 33 U.S.C. 1251 *et seq.* The complaint alleged that Armco, Inc. ("Armco"), a specialty steel manufacturing plant in

BEST COPY AVAILABLE

Butler, Pennsylvania, has been in violation of the discharge limitations and other terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1362, and seeks injunctive relief and civil penalties. The Consent Decree provides for payment of an $800,000 civil penalty, the performance of an environmental assessment of the wastewater treatment facilities at the plant by an independent consultant and the implementation of all recommended measures to improve wastewater treatment at the plant.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Armco Inc.*, DJ Ref. 90-5-1-1-2944.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-620 Filed 1-11-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Spokane, WA, et al.

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on January 9, 1989, a proposed consent decree in *United States, et al.* v. *County of Spokane, et al.*, Civil Action No. C89-033-RJM, was lodged with the United States District Court for the Eastern District of Washington. The complaint filed by the United States alleged that the County of Spokane is the owner and operator of the Colbert Landfill and that Key Tronic Corp. generated and arranged for the transportation or disposal of hazardous substances at the Landfill; that there have been releases of hazardous substances into the environment at the facility; that the releases have caused the United States to incur response costs; that the Administrator of the U.S. Environmental Protection Agency (EPA) has determined that there is or may be an imminent and substantial endangerment to the public health, welfare or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendants to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases.

The consent decree requires the County of Spokane to implement the remedy selected by EPA. Key Tronic Corp. will contribute to the cost of implementing the remedy. In addition, the decree provides for payment of costs incurred by EPA in responding to releases of hazardous substances at the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *County of Spokane, et al.*, D.J. Ref. No. 90-11-2-359. The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Washington, 851 U.S. Courthouse, West 920 Riverside, Spokane, Washington; at the Region X Office of the Environment Protection Agency, 1200 Sixth Avenue, Seattle, Washington; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to *United States* v. *County of Spokane, et al.*, D.J. Ref. No. 90-11-2-359, and enclose a check in the amount of $17.80 payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-849 Filed 1-11-89; 8:45 am]

BILLING CODE 4401-01-M

Antitrust Division

National Cooperative Research Act of 1984; West Agro, Inc.; Iodophors Joint Venture

Notice is hereby given that, on December 13, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), West Agro, Incorporated—Iodophors Joint Venture ("Joint Venture") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint Venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Lonza, Inc. has become a member of the Joint Venture.

No other changes have been made in either the membership or plannèd activity of the Joint Venture.

On December 15, 1987, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988, 53 FR 1074, as corrected by 53 FR 4232. On May 24, 1988, the Joint Venture filed an additional written notification, in response to which the Department published a notice in the **Federal Register** on June 13, 1988, 53 FR 22059.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-617 Filed 1-11-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Knoll Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 7, 1988, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance hydrocodone (9193).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than February 13, 1989.

Dated: January 9, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-718 Filed 1-11-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-106]

National Environmental Policy Act; Availability of Draft Environmental Impact Statement; Galileo Mission (Tier 2)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the draft Environmental Impact Statement (EIS) for the Galileo Mission (Tier 2). Comments on the EIS and on matters set forth therein are solicited from and may be submitted by State and local agencies and members of the public. Comments should be submitted to Dr. Dudley G. McConnell, NASA HQs/Code EL, Washington, DC 20546. Comments must be received within 45 days of the Environmental Protection Agency Notice of Availability in order to be considered in the preparation of the final EIS. Copies of the draft statement may be obtained or examined at any of the following locations:

(a) NASA HQs Public Documents Room (Room 126), 600 Independence Avenue, SW., Washington, DC 20546.

(b) NASA/Ames Research Center, Building 201, Room 17, Moffett Field, CA 94035.

(c) NASA/Ames Research Center, Dryden Flight Research Facility, Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(d) NASA/Goddard Space Flight Center, Building 8, Room 150, Greenbelt, MD 20771.

(e) NASA/Johnson Space Center, Building 1, Room 136, Houston, TX 77058.

(f) NASA/Kennedy Space Center, HQs Bldg., Room 1207, Kennedy Space Center, FL 32899.

(g) NASA/Langley Research Center, Bldg. 1219, Room 304, Hampton, VA 23665.

(h) NASA/Lewis Research Center (Administration Bldg., Room 120, 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA/Marshall Space Flight Center, Bldg. 4200, Room G-11, Huntsville, AL 35812.

(j) NASA/John C. Stennis Space Center, Bldg. 1100, Room A-213, Stennis Space Center, MS 39529.

(k) Jet Propulsion Laboratory, Bldg. 180, Room 600, 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA/Goddard Space Flight Center, Wallops Flight Facility, Library Bldg., Room E-105, Wallops Island, VA 23337.

Dated: December 29, 1988.

Billie J. McGarvey,

Assistant Associate Administrator for Facilities Management.

[FR Doc. 89-606 Filed 1-11-89; 8:45 am]

BILLING CODE 7510-01-M

[89-02]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and Information Systems Subcommittee.

Date and time: January 31, 1989, 8:30 a.m. to 5 p.m., and February 1, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESS: NASA Headquarters, Room 226B, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Committee is chaired by Mr. Donald G. MacLellan and is composed of 7 members. The meeting will be open to the public up to the capacity of the room (approximately 15 including Committee members).

Type of Meeting: Open.

Agenda: Tuesday, January 31

8:30 a.m.—Introduction and Opening Remarks.

8:45 a.m.—Division Goals, Organization, FY 1990 Budget, Plans and Issues.

9:30 a.m.—Communications and Information Systems New Initiatives: Information Systems Strategic Planning Project (ISSP), NASA Research Announcement (NRA) for Communications Technology, NRA for Information Systems, and International Interface for Information Systems.

1:30 p.m.—Project Overviews.

3:45 p.m.—Development of Subcommittee Plans.

5 p.m.—Adjourn.

Wednesday, February 1

8:30 a.m.—Project Overviews.

10:30 a.m.—Radio Science/Propagation: Optical Communications, Data Management and Archiving.

10:45 a.m.—Subcommittee Networking Plans.

12 Noon—Scientific Computing and Future Plans.

12:30—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-607 Filed 1-11-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

January 4, 1989.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 9-10, 1989.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 9-10, 1989, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial of financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on February 9, 1989, will be as follows:

Committee Meetings

8:30-9:30 a.m.—Coffee for Council Members—Room 527 (Open to the Public)

9:30-10:30 a.m.—Committee Meetings—Policy Discussion

Education Programs—Room 730

Fellowship Programs—Room 316-2

General Programs—Room 415

Research Programs/Preservation Grants—Room 315

State Programs/Challenge Grants—Room M-07

10:30 a.m. until adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

(Closed to the Public)

Discussion of Jefferson Lecture Nominees and Review of Frankel Awards

1:30 p.m. until—Joint Meeting of State and General Committees to review Frankel Awards—Room 415

3:00 p.m. until adjourned—Jefferson Lecture Committee—Room 430

The morning session on February 10, 1989, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meetng will be served from 8:30-9:00 a.m.)

Minutes of the Previsous Meeting

Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Application Report and Matching Report

E. Status of Fiscal Year 1989 Funds

F. Drug Free Workplace Regulations

G. Committee Reports on Policy and General Matters

1. Education Programs
2. Fellowship Programs
3. Research Programs
4. Preservation Programs
5. General Programs
6. State Programs
7. Challenge Grants
8. Jefferson Lecture
9. Frankel Award

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen M. McCleary,

Advisory Committee Monagement Officer.

[FR Doc. 89-694 Filed 1-11-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co., and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Southern California Edison Company, *et al.*, (the licensees), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", states that air locks that have been opened during periods when containment integrity is not required by the plant's technical specifications shall be tested at the end of such periods at not less than Pa (calculated peak containment pressure for design-basis events). The licensees have requested a partial exemption from this requirement. The licensees propose to conduct the above test only when maintenance has been conducted that could affect the sealing capability of the air lock door seals. Otherwise, the air lock would be tested at least every six months at Pa (49.4 psig) and also within 72 hours after each closing at 10 psig test pressure.

The Need for the Proposed Action

The proposed exemption is required to allow the licensees to revise the air lock testing requirements as described above.

Environmental Impacts of the Proposed Action

The NRC staff has completed its safety evaluation of licensees' request and has concluded that (1) under the conditions described, the door seal test of 10 psig is sufficient to demonstrate the continuing integrity of the air lock and (2) the licensees proposed alternative method accomplishes the intent of the regulation.

The proposed action would not involve a significant change in: the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed exemption does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts asociated with the proposed exemption.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on September 7, 1988 (53 FR 34611). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed aciton, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensees' request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated March 20, 1987, as supplemented July 22, 1988 which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 6th day of January, 1989.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-708 Filed 1-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co.; The Connecticut Light and Power Co. and The Western Massachusetts Electric Co., Millstone Nuclear Power Station, Unit No. 2; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by Northeast Nuclear Energy Company (NNECO/licensee), an amendment to Facility Operating License No. DPR-65, issued to the licensee for operation of Millstone Nuclear Power Station, Unit No. 2, located in the Town of Waterford, Connecticut.

One proposed change to the Technical Specification (TS) contained in NNECO's September 30, 1988 application for licensee amendment, was found to be unacceptable. The proposed change addresses the surveillance program to be undertaken following a plant shutdown resulting from high primary-to-secondary leakage per TS 4.4.5.1.3. The proposed TS change would delete the requirement for a general steam generator tube inspection, per TS Table 4.4-6, and institute an inspection aimed specifically at detecting and repairing the source of the leakage. It is our position that the existence of a leaking steam generator tube may suggest a more widespread problem that can only be investigated via the normal sample inspection specified in TS Table 4.4-6.

Accordingly, the NRC staff has denied NNECO's proposed change to TS 4.4.5.1.3.

The other provision of the amendment relating to TS 4.4.5.1.4.a.8 request has been approved by Amendment No. 138 dated January 3, 1989. Notice of Issuance of that amendment will be published in the Commission's biweekly **Federal Register** notice.

The licensee was notified of the Commission's denial of the proposed TS change by the letter transmitting Amendment No. 138.

By February 13, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 30, 1988, and (2) the letter to the licensee with the Commission's Safety Evaluation dated January 3, 1989, issued with Amendment No. 138 to DPR-65.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 3rd day of January 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nucleor Reactor Regulation.

[FR Doc. 89-709 Filed 1-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated December 8, 1988.

The proposed amendment is a request to revise Appendix A Technical Specifications to incorporate Limiting Conditions for Operation and Surveillance requirements for the revised Auxiliary Feedwater System (AFWS). To eliminate single failure susceptibilities in the AFWS, a third pump will be added. The revised system configuration will consist of two trains, with the new pump on one train and the existing two pumps on the other train. The new system will start automatically with a lead train providing the necessary decay heat removal capability, and the second train remaining in standby to provide flow should a malfunction occur on the lead train. To preclude exceeding water hammer limits, train interlocks and mechanical flow restrictors will be incorporated into the new design. In addition, the minimum volume of water required to be available in the AFW storage tank would be changed from 150,000 gallons to 190,000 gallons.

By February 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of January, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-710 Filed 1-11-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Calendar Year 1989 Contribution Rate Under the Railroad Unemployment Insurance Act

Pursuant to Pub. L. 100-647, except for commuter railroads, the contribution rate to finance the railroad unemployment insurance program for calendar year 1989 shall be 8.0 percent of an employee's monthly wages calculated on the basis of section 1(i) of the Act. In calendar year 1989, the monthly compensation base under section 1(i) is $710. Public commuter railroads will be informed of their individual contributions directly by the Railroad Retirement Board. Such contributions shall be based on the amount of benefits paid by the Board to the employees of each commuter railroad, plus an amount equal to 0.65 percent of the monthly compensation paid for services rendered by each employee in a calendar month up to the monthly compensation base of $710.

By Authority of the Board.
Dated: December 28, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-719 Filed 1-11-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26420; File No. SR-Amex-88-33]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange Relating to Exchange Fee Increases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is increasing option transaction charges, option clearance charges, and various floor fees imposed on members and member organizations. The schedule of fee increases is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is increasing a number of charges imposed on members and member organizations. Transaction charges for index options will increase from $.15 to $.20 per contract for customer trades where the premium is under $1.00 and from $.30 to $.40 per contract for customer trades where the premium is equal to or greater than $1.00. Proprietary trades will increase from $.06 to $.08 per contract.

Option comparison charges are being increased from $.004 to $.04 per contract side for agency business and from $.004 to $.02 for professional business. The options keypunch charge is being raised from $.11 to $.50 per card.

All floor fees imposed on members and member organizations are being raised, including the floor facilities fee, post privilege fee, floor wire fee, booth rental fees, clerk fees, and various telephone fees.

The fees proposed to be changed for the most part have not been increased since 1977, and in some cases since 1975. Nevertheless, the Exchange's costs in providing trading support facilities and services have increased during this time well beyond the capacity of floor fees to fund them. While even at the increased levels trading support services are not fully funded by fees, the proposed increases attempt to assure that users of the various services provided by the Exchange pay a fair share toward their cost. While the percentage increases are large in some cases, the new fee levels are equal to or below fees charged by other equity and options exchanges for similar facilities and services.

In the case of the options comparison charge, it is proposed that the Exchange charge a differential between agency and proprietary comparison. This is reflective of Amex's other options charges which have always included such a differential, and of members' increased per trade costs as a result of payment of the other facilities and service fees. The new agency comparison charge is equal to that of the CBOE.

The proposed floor fee increases are to be implemented in two phases, the first to commence January 1, 1989, and the second January 1, 1990. The phasing is an attempt to spread the financial impact of the charges over a period of time which will minimize hardship on smaller member firms.

(2) Basis

The Exchange fee increases are consistent with section 6(b) of the Act in general and further the objectives of section 6(b)(4) in particular in that they are intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange fee increases will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the Exchange's fee increases.

III. Conclusion and Date of Effectiveness of the Proposed Rule Change

The Commission finds that the proposed increase in the Exchange's 1988 and 1989 options and floor fees is reasonable and consistent with section 6(b)(4) of the Act. Although in some cases the increases are substantial when compared to current fees, we note that the designated fees have remained unchanged at their current levels since 1977. At the same time, the Exchange notes that the costs of providing trading support facilities and services have increased during this period beyond the capacity of the Exchange's current floor fees to adequately cover the costs. Accordingly, the proposed fee increase is designed to ensure that the Exchange recovers more of the costs associated with providing services and that users of the facilities and services pay a fair share toward their costs. In approving

this proposal, we have reviewed the total fee increase that will be implemented in two parts (January 1, 1989 and January 1, 1990) over the next year. In implementing the total increase over the course of a year, we believe that the Amex should achieve its desired objective of minimizing the impact the fee increase will have on smaller member firms. Further, the incremental increases should provide all member firms sufficient time to incorporate the 1990 fees into their budgeting and planning process. For the reasons noted above, we find that the proposed fee increase is reasonable and consistent with the Act.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted by February 2, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 5, 1989.

[FR Doc. 89–676 Filed 1–11–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26429; File No. SR–NASD–89–1]

Self-Regulatory Organizations; Notice of Rule Change by National Association of Securities Dealers, Inc. Relating to Automated Submission of Trading Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing herewith proposed amendments to Schedule D and Schedule H of the NASD By-Laws. The proposed amendments will require members to submit certain customer and proprietary trading information in an automated format to the NASD. The following is the full text of the proposed rule changes. New language is italicized.

Part VI, Section 4, Schedule D to the NASD By-Laws

* * * * *

(d) *Automated Submission of Trading Data. A member shall submit the trade data specified below in automated format as may be prescribed by the NASD from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the NASD:*

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

(a) Clearing house number, or alpha symbol as used by the member submitting the data;

(b) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) on the opposite side of the transaction;

(c) Identifying symbol assigned to the security;

(d) Date transaction was executed;

(e) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale and if an options contract whether open long or short or close long or short;

(f) Transaction price;

(g) Account number; and

(h) Market center where transaction was executed.

(2) If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:

(a) Data elements (a) through (h) as contained in paragraph (1) above; and

(b) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).

(c) If transaction was effected for a member broker-dealer customer, whether the broker-dealer was acting as principal or agent on the transaction or transactions that are the subject of the NASD's request.

(3) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by the NASD.

(4) The NASD may grant exceptions from the requirement that the data prescribed in paragraphs (1) and (2) above be submitted to the NASD in an automated format, in such cases and for such time periods as it deems appropriate.

* * * * *

Schedule H

* * * * *

Section 3—Automated Submission of Trade Data

Each member shall submit the trade data specified in Part VI, Section 4, Schedule D to the NASD By-Laws in automated format as may be prescribed by the NASD from time to time with respect to any transaction or transactions involving non-NASDAQ securities that are the subject of a request for information made by the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amendments will provide for the automated submission of trading data by member firms to the NASD. A universal automated format for the transmission of firm's proprietary and customer transaction data has been developed by the Intermarket Surveillance Group and the Securities Industry Association at the request of the Securities and Exchange Commission ("SEC" or "Commission"). Currently, customer and proprietary trading data is submitted manually by member firms to the NASD (commonly referred to as "blue sheet information"). In addition, in response to trade data requests, members often submit a variety of data formats other than the standard blue sheet format to the NASD. The current manual blue sheeting process has created substantial processing burdens for the NASD. The automated format could enable market surveillance analysts to evaluate blue sheet information quickly and thoroughly.

The proposed rules provide that the NASD may require the submission in an automated format of certain information for transactions involving proprietary trades. Among the items of information that may be submitted by the member firms pursuant to the proposed rule changes are the symbol of the clearing house for the member submitting the information, the clearing house symbol on the opposite side of the transaction, the identifying symbol assigned to the security, and the date the transaction was executed. In addition, with respect to transactions effected for a customer's account, the proposed rules require that the member submit in an automated format the data elements required for proprietary trades, plus additional information identifying the customer. Further, the proposed rule changes mandate that a member must disclose whether a broker-dealer customer was acting as principal or agent on the transaction. Finally, the proposed rules provide that the NASD may require the submission of additional information in automated format and permits the NASD to grant exceptions to the rules' provisions on a case-by-case basis where appropriate.

The proposed rule changes will require member firms to submit the same information that is currently requested by the NASD in an automated format prescribed by the NASD. For example, members that are NASDAQ subscribers will be required to use their NASDAQ/Harris Terminals, NASDAQ Workstations, or authorized foreign-terminal emulations to submit the data elements requested by the NASD.

The proposed rule should not impose a significant regulatory burden on larger member firms. Because smaller member firms, however, may have greater difficulties in adopting the automated reporting requirement format, the proposed rule authorizes the NASD to grant exceptions to the rules' provisions where it deems appropriate.

The NASD believes that the implementation of the proposed rule amendments will facilitate the collection and storage of trade data elements in connection with the NASD's surveillance of the over-the-counter market more rapidly and effectively than under the current system. As such, the NASD believes that the proposed rule changes are consistent with the provisions of section 15A(b)(6) under the Act because the proposed new rule amendments are "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–89–1 and should be submitted by February 2, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: January 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–733 Filed 1–11–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26428; File No. SR–NYSE–88–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Extension of Public Comment Period of Proposed Rule Change Relating to Extensions of Time for Payment or Delivery of Securities

On November 16, 1988, the New York Stock Exchange, Inc. ("NYSE") submitted a proposed rule change to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder, to require all member organizations for which the NYSE has been appointed the designated examining authority by the Commission pursuant to Rule 17d–1 under the Act to submit requests for extensions of time for payment or delivery of securities to the NYSE. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26341, December 5, 1988) and by publication in

the **Federal Register** (53 FR 49808, December 9, 1988).

The NYSE, on January 6, 1989, consented to an extension of the period for public comment on the proposed rule change until January 31, 1989.[1]

The Commission hereby extends the period for public comment on the proposed rule change until January 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-734 Filed 1-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26427; File No. SR-NYSE-88-39 and SR-NYSE-88-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Extension of Public Comment Period

On December 12, 1988 and December 19, 1988 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish listing standards for constituent securities of common stock (NYSE-88-39), and to provide an exception from paragraph (c)(3) of Rule 19c-4 under the Act regarding the meaning, administration or enforcement of Rule 19c-4 with respect to constituent securities of common stock (NYSE-88-40). Notice of SR-NYSE-88-39 was provided in Securities Exchange Act Release No. 26383, Dec. 21, 1988 (53 FR 52554, Dec. 28, 1988). Notice of SR-NYSE-88-40 was provided in Securities Exchange Act Release No. 26390, Dec. 23, 1988 (53 FR 53113, Dec. 30, 1988).

The NYSE has consented to an extension of the period for public comment on both proposals until February 3, 1989 (a 14 day extension for NYSE-88-40 and a 16 day extension for NYSE-88-39).

The Commission hereby extends the period for public comment on the proposed rule changes until February 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Date: January 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-736 Filed 1-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26426; File No. SR-PSE-87-1]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

On January 27, 1987, the Pacific Stock Exchange, Inc. "PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow a summary sanction to be issued against a party for a position limit violation.

The proposed rule change was noticed in Securities Exchange Act Release No. 24670 (July 2, 1987), 52 FR 26112 (July 10, 1987). No comments were received by the Commission on the proposed rule change.

The PSE proposes to amend its position limit rule to provide for summary sanction procedures for position limit violations. The Exchange states that the purpose of the proposed rule change is to reduce the inordinate amount of time that is spent on formal disciplinary actions for position limit violations, especially in light of the objective nature of such actions. At present, when one of the Committees that reviews position limit violations ("Committee")[3] determines that a member, firm, or customer has violated the Exchange's position limit rule, it must authorize the issuance of a complaint against the person or organization alleged to have committed a violation ("respondent"), wait for an answer to the complaint, and then either hold a hearing on the matter or settle the matter after receipt of an offer of settlement. The Exchange states that the respondent, in most position limit cases, either does not answer the compliant, wherein a default is issued, or asks the Committee for appropriate settlement guidelines, but only after the matter has proceeded as a formal disciplinary action. Rarely has the respondent ever contested the allegations of violating the position limit rule.

The Exchange has determined that it could save a substantial amount of time by summarily issuing a sanction against a party for a position limit violation. The proposed summary procedure will be implemented in the following way. Upon discovery by the Exchange staff of a possible position limit violation, the party believed to be in violation will be informed, by letter, of the Exchange's intent to bring the matter to the attention of the Committee and will be given an opportunity to produce a written response that will be read by the Committee at the same time the Committee first reviews the staff report, prior to any Committee determination. If the Committee determines that a violation of the position limit rule has occurred, it may issue an appropriate sanction, using the fine schedule guidelines for position limit violations established by the PSE's Ethics and Business Conduct Committee.[4] The party that receives that sanction has the right to appeal the decision of the Committee or the sanction imposed by the Committee and request a hearing or review pursuant to Section 11 of Exchange Rule XX (Hearings and Review of Actions Other Than Disciplinary Actions or Arbitrations).[5]

The Exchange states that this procedure is substantially similar to the Exchange's simplified procedure for the disposition of minor rule violations ("Procedure"). Minor rule violations under the Procedure include (1) any act or omission tending to disrupt the orderly conduct of business on the floor of which causes serious interference with the personal comfort or safety of other persons on the floor, and (2) any failure of a member or member organization to comply with any on-floor or off-floor operational procedures established by the Exchange. A member who receives a sanction under the Procedure is served with a written notice setting forth the rule(s) allegedly violated, the act or omission constituting each such violation, the fine for each violation, and the date by which such determination becomes final and such fine becomes due and payable or such determination must be contested.[6] A member receiving such a sanction under the Procedure is afforded the opportunity to submit a response to the Exchange under section 11 of Exchange Rule XX. The charge is then referred to the appropriate committee at the same time that the committee first reviews the sanction, but prior to the committee's determination of the matters.

The summary position limit violation procedure is intended to deal with those violations that are considered to be either of an incidental nature or that do not involve members with recurring position limit violations. If the Committee believes that the violation did not meet those requirements, or if other circumstances made the violation more complicated, the Committee would retain the right to proceed with a formal disciplinary action rather than issuing a summary sanction.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[7] and the rules and regulations thereunder. In particular, the summary sanction procedure for position limit violations will help to create a more efficient regulatory procedure while providing adequate due process protection for members believed to be in violation of the position limit role. More specifically, the Commission finds that the summary sanction procedure is consistent with section 6(d)(1) of the Act, which describes what an exchange must do in order to comply with due process in any disciplinary proceeding.[8] Prior to any Committee action, members are notified of the Exchange's intention to being the matter to the attention of the Committee and are given an opportunity to submit a response to the Exchange staff's report to the Committee. The Commission believes this procedure, for a technical rule such as position limits, provides members an adequate opportunity to present their defense to the charges before the Committee makes a determination in the matter. This is especially true in light of the PSE's assertion that respondents rarely contest the allegations in a position limit proceeding. Moreover, should the Committee determine that a violation of the position limit rule has occurred, the party aggrieved by the determination has a right to have the complained-of action reviewed, and has a further right to review by application to the Board of Governors.

The Commission believes that the PSE's summary sanction procedure will faciliate the Exchange's ability to comply with its obligations as a self-regulatory organization to surveil and regulate its market. The proposal will permit the Exchange to allocate its limited resources to other surveillance and compliance matters of a more complicated nature or that are more difficult to prove. Because this summary sanction procedure is not included within PSE's minor rule violation plan,[9] however, the PSE will be required to file promptly with the Commission notice of any disciplinary action taken under the summary sanction procedure as required by paragraph (c)(1) of Rule 19d-1 under the Act.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: January 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-735 Filed 1-11-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] Telephone conversation between Edward Kwalwasser, Senior Vice President, NYSE, and Howard Kramer, Assistant Director, Commission, on January 6, 1989.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] The Options Floor Trading Committee reviews position limit violations of members who trade on the floor; the Ethics and Business Conduct Committee reviews upstairs firms' position limit violations.

[5] *See* letters from Craig R. Carberry, Director, Options Compliance, PSE, to Mary Revell, Esq., Division of Market Regulation, Commission, dated November 21, 1988 and January 5, 1989.

[6] Section 11 provides procedures for persons aggrieved by Exchange action taken pursuant to the Rules of the Exchange wherein a member has received a fine or sanction from Exchange actions other than formal disciplinary actions or arbitrations. Section 11 provides parties with an opportunity to be heard and/or to have the complained-of action reviewed by a hearing panel, and with a right to review by application to the Board of Governors.

[7] *See* Securities Exchange Act Release No. 22653 (November 21, 1985), 50 FR 48852, approving the PSE's establishment of a simplified procedure for the disposition of minor rule violations.

[8] 15 U.S.C. 78f (1982).

[9] 15 U.S.C. 78d(1) (1982).

[10] Pursuant to paragraph (c)(2) of Rule 19d-1 under the Act, any disciplinary action taken by a self-regulatory organization ("SRO") for violation of an SRO rule that has been designated a minor rule pursuant to a minor rule violation plan may be reported on a periodic, as opposed to immediate, basis. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838.

[11] 17 CFR 240.19d-1 (1988).

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(1)(12) (1988).

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting; Rhode Island

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Providence, will hold a public meeting at 9:00 a.m. on Thursday, February 9, 1989 at the Rhode Island Hospital Trust Bank, 28th Floor, Rhode Island Hospital Trust Tower, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the Office of the District Director, U.S. Small Business Administration, Providence District Office, 380 Westminister Mall, Providence, Rhode Island 02903, 401/528-4580.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 4, 1989.

[FR Doc. 89-654 Filed 1-11-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes February 14, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10089–N	Phillips Petroleum Co., Bartlesville, OK.	49 CFR 173.206(a)	To authorize shipment of Potassium metal classed as a flammable solid in non-DOT cylinders similar to the DOT specification 4BW cylinders except that they are constructed of Type 304, 316 and 347 stainless steel. (Modes 1, 2, and 3.)
10101–N	Liquid Carbonic Specialty Gas Corporation Chicago, IL.	49 CFR 173.34(e)	To discontinue the prefill hammer test on 3A and 3AA cylinders used exclusively for oxygen, nitrogen, argon, helium, hydrogen, and mixtures of these gases with carbon dioxide. (Mode 1.)
10102–N	ENPAC Corp., Jacksonville, FL	49 CFR 173.3(c) Part 173 Subparts D, E, F, H.	To authorize manufacture, marking, and sale of non-DOT specification, polyethylene 20 gallon containers for shipment of those hazardous materials presently authorized for shipment in a DOT spec. 21C drum and hazardous materials in damaged or leaking packages. (Modes 1, 2, and 3.)
10103–N	General Motors Corp., Warren, MI	49 CFR Parts 100–177	To authorize shipment of a sodium azide-based air bag module, classed as an explosive Power Device Class C, packaged in a foam molded polyethylene copolymers on a high density polyethylene pallet contained by stretch wrapping as an unregulated item. (Mode 1.)
10104–N	Bowater Bulk Packaging Limited, West Yorkshire England.	49 CFR 173.182	To manufacture, mark and sell non-DOT specification flexible intermediate bulk containers constructed of woven polypropylene fabric not to exceed 2200 pounds capacity for shipment of ammonium nitrate fertilizer, classed as an oxidizer. (Modes 1, 2, and 3.)

Note.—Application 10088–N, Hedwin Corporation, Baltimore, Md., published in the December 19, 1988 **Federal Register**, Volume 53, No. 243 on Page 51026 is corrected to include rail freight and cargo vessel as requested modes of transportation.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–741 Filed 1–11–89; 8:45 am]

BILLING CODE 4910–60–M

Applications For Renewal Or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regualtions (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only.

Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes January 27, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2000–X	Union Carbide Industrial Gases, Inc., Danbury, CT.	2000
3095–X	Dowell Schlumberger, Inc., Tulsa, OK.	3095
3667–X	Groendyke Transport, Inc., Enid, OK.	3667
4338–X	Stauffer Chemical Co., Shelton, CT.	4338
4453–X	Brandywine Explosives & Supply, Inc., Lexington, KY.	4453
4453–X	Quick Supply Co., Des Moines, IA.	4453
4803–X	Dowell Schlumberger, Inc., Tulsa, OK.	4803
5600–X	Amoco Oil Co., Whiting, IN	5600
6126–X	Rhone-Poulenc Inc., Princeton, NJ.	6126
6126–X	Monsanto Agricultural Co., St. Louis, MO.	6126
6614–X	Cellasto Plastics Corp., Marshall, MI.	6614
6614–X	Esbro Chemical, Redwood, CA.	6614
6614–X	Jones Chemicals, Inc., Caledonia, NY.	6614
6614–X	Continental Chemical Co., Sacramento, CA.	6614
6874–X	Degussa Corp., Ridgefield Park, NJ [1].	6874
7413–X	Chilton Metal Products Division, Chilton, WI.	7413
7451–X	Union Carbide Corp., Danbury, CT.	7451
7625–X	Hydrite Chemical Co., Milwaukee, WI.	7625
7628–X	Allied-Signal Inc., Morristown, NJ.	7628
7721–X	Applied Companies, San Fernando, CA.	7721
7835–X	Wilson Oxygen and Supply, Inc., Austin, TN.	7835
7835–X	Airco, The Boc Group, Inc., Murray Hill, NJ.	7835
7835–X	General Air Service & Supply, Denver, CO.	7835
8099–X	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	8099
8196–X	Compagnie des Containers Reservoirs, Paris, France.	8196
8214–X	Morton Thiokol, Inc., Ogden, UT [2].	8214
8225–X	Hoover Group, Inc., Beatrice, NE [3].	8225
8232–X	Compagnie des Containers Reservoirs, Paris, France.	8232
8451–X	IRECO Inc., Salt Lake City, UT.	8451
8569–X	General Dynamics Corp., Fort Worth Division, Fort Worth, TX.	8569

Application No.	Applicant	Renewal of exemption
8571–X	EM Science, Cincinnati, OH	8571
8692–X	Mitsubishi International Corp., New York, NY.	8692
8723–X	Atlas Power Co., Dallas, TX [4].	8723
8802–X	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	8802
8815–X	Atlas Powder Co., Dallas, TX.	8815
8938–X	Cryogenic Services, Inc., Canton, GA [5].	8938
8971–X	Western Atlas International, Inc., Houston, TX.	8971
8995–X	Worum Chemical Co., St. Paul, MN.	8995
8995–X	Olin Corp., Stamford, CT	8995
9019–X	Completion Services, Inc., Lafayette, LA.	9019
9034–X	Airco—The BOC Group, Inc., Murray Hill, NJ.	9034
9116–X	Hoover Group, Inc., Beatrice, NE [6].	9116
9150–X	Hoover Group, Inc., Beatrice, NE [7].	9150
9275–X	Hercules, Inc., Wilmington, DE.	9275
9343–X	Aluminum Company of America, Pittsburgh, PA.	9343
9372–X	Halliburton Logging Services, Inc., Houston, TX.	9372
9374–X	Poly Processing Co., Inc., Monroe, LA.	9374
9408–X	Ethyl Corp., Baton Rouge, LA.	9408
9413–X	EM Science, Cincinnati, OH	9413
9443–X	Hercules, Inc., Wilmington, DE.	9443
9486–X	Byer, Inc., Chester, WV	9486
9710–X	Union Carbide Corp., Linde Division, Danbury, CT.	9710
9785–X	Independent Container Line Ltd., Richmond, VA.	9785
9785–X	Hapag-Lloyd (America) Inc., Staten Island, NY.	9785
9785–X	Atlantic Container Line, Elizabeth, NJ.	9785
9785–X	Sea-Land Service, Inc., Elizabeth, NJ.	9785
9811–X	Container Products Corp., Wilmington, NC [8].	9811
9833	Wacker Chems. (USA), Inc. and Wacker-Chemie GmbH, Munich 22, West Germany, CT–X.	9833
9963–X	Railcar Maintenance Co., San Francisco, CA.	9963

[1] To authorize the increase of shipping weight to 1,000 kg (2,205 pounds) in each box instead of up to 2,000 pounds.

[2] To modify packaging to allow a void area at the base and increase the weight by 1½ inches.

[3] To authorize use of new high density polyethylene resin Paxon 7004 in the manufacture of the 8225 tanks.

[4] To authorize oxidizers as additional commodities for shipment under DOT–E 8723.

[5] To authorize the addition of a welded cylinder (CSI PLC–450–HP) for use in liquefied carbon dioxide service.

[6] To authorize the use of new Paxon 7004 polyethylene resin and to reduce the minimum wall thickness from 0.375 to 0.230 for tanks built.

[7] To authorize use of a new highly density polyethylene resin in the tank manufacture.

[8] To authorize use of a "T-Bolt" closure.

Application No.	Applicant	Parties to exemption
2000–P	Linde Gases of New England, West Hartford, CT.	2000
2000–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	2000
2000–P	UNIGAS, Inc., Ponce, PR	2000
2000–P	Linde Gases of Florida, Inc., Tampa, FL.	2000
2000–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	2000
2000–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	2000
2582–P	Linde Gases of New England, West Hartford, CT.	2582
2582–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	2582
2582–P	Linde Gases of Florida, Inc., Tampa, FL.	2582
2582–P	Linde Gases of the Midwest, Inc., Hillside, IL.	2582
2582–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	2582
3004–P	Linde Gases of the Midwest, Inc., Hillside, IL.	3004
3004–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	3004
3004–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	3004
3004–P	UNIGAS, Inc., Ponce, PR	3004
3004–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	3004
3004–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	3004
3004–P	Linde Gases of New England, Inc., West Hartford, CT.	3004
3004–P	Union Carbide Industrial Gases, Inc., Danburg, CT.	3004
3004–P	Linde Puerto Rico, Inc., Gurabo, PR.	3004
3004–P	Linde Gases of the West, Oakland, CA.	3004
3004–P	GenEx, Ltd., Des Moines, IA	3004
4575–P	Linde Gases of New England, Inc., West Hartford, CT.	4575
4575–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	4575
4575–P	UNIGAS, Inc., Ponce, PR	4575
4575–P	Linde Gases of Florida, Inc., Tampa, FL.	4575
4575–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	4575
4575–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	4575
4575–P	Linde Gases of the Midwest, Inc., Hillside, IL.	4575
4575–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	4575
4575–P	Linde Gases of the West, Oakland, CA.	4575
4884–P	Linde Gases of New England, Inc., West Hartford, CT.	4884
4884–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	4884
4884–P	UNIGAS, Inc., Ponce, PR	4884
4884–P	Linde Gases of Florida, Inc., Tampa, FL.	4884
4884–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	4884
4884–P	Linde Gases of the Midwest, Inc., Hillside, IL.	4884
4884–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	4884
4884–P	Linde Gases of the West, Oakland, CA.	4884
5643–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	5643
5923–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	5923
5923–P	Linde Gases of Florida, Inc., Tampa, FL.	5923
5923–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	5923
5923–P	Linde Gases of the Midwest, Inc., Hillside, IL.	5923
5923–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	5923
5923–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	5923
5923–P	Linde Gases of New England, Inc., West Hartford, CT.	5923
5923–P	Union Carbide Industrial Gases, Inc., Danburg, CT.	5923
5923–P	Linde Gases of the West, Oakland, CA.	5923
6349–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6349
6530–P	Linde Puerto Rico, Inc., Gurabo, PR.	6530
6530–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6530
6530–P	Linde Gases of the West, Oakland, CA.	6530
6530–P	Linde Gases of New England, Inc., West Hartford, CT.	6530
6530–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6530
6530–P	UNIGAS, Inc., Ponce, PR	6530
6530–P	Linde Gases of Florida, Inc., Tampa, FL.	6530
6530–P	Linde Gases of the Midwest, Inc., Hillside, IL.	6530
6530–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	6530
6530–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6530
6530–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	6530
6530–P	GenEx, Ltd., Des Moines, IA	6530
6543–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6543
6543–P	Linde Gases of the West, Oakland, CA.	6543
6543–P	Linde Gases of New England, Inc., West Hartford, CT.	6543
6543–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6543
6543–P	Linde Gases of Florida, Inc., Tampa, FL.	6543
6543–P	Linde Gases of the Midwest, Inc., Hillside, IL.	6543
6543–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6543
6691–P	Linde Puerto Rico, Inc., Gurabo, PR.	6691
6691–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6691
6691–P	Linde Gases of the West, Oakland, CA.	6691
6691–P	Linde Gases of New England, Inc., West Hartford, CT.	6691
6691–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6691

Application No.	Applicant	Parties to exemption
6691–P	UNIGAS, Inc., Ponce, PR	6691
6691–P	Linde Gases of Florida, Inc., Tampa, FL.	6691
6691–P	Linde Gases of the Midwest, Inc., Hillside, IL.	6691
6691–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	6691
6691–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6691
6691–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	6691
6691–P	GenEx, Ltd., Des Moines, IA	6691
6695–P	Atochem Inc., Chemical Division, Glen Rock, NJ.	6695
6765–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6765
6765–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6765
6765–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6765
6805–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	6805
6805–P	Linde Gases of the West, Oakland, CA.	6805
6805–P	Linde Gases of New England, Inc., West Hartford, CT.	6805
6805–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	6805
6805–P	UNIGAS, Inc., Ponce, PR	6805
6805–P	Linde Gases of Florida, Inc., Tampa, FL.	6805
6805–P	Linde Gases of the Midwest, Inc., Hillside, IL.	6805
6805–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	6805
6805–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	6805
6932–P	Atochem Inc., Chemical Division, Glen Rock, NJ.	6932
7052–P	Delta Environmental Consultants, Inc., Tampa, FL.	7052
7052–P	The Bob Fournet Co., Lafayette, LA.	7052
7268–P	Linde Puerto Rico, Inc., Gurabo, PR.	7268
7268–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	7268
7268–P	Linde Gases of the West, Oakland, CA.	7268
7268–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	7268
7268–P	UNIGAS, Inc., Ponce, PR	7268
7268–P	Linde Gases of the Midwest, Inc., Hillside, IL.	7268
7268–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	7268
7268–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	7268
7268–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	7268
7268–P	Linde Gases of New England, Inc., West Hartford, CT.	7268
7274–P	Linde Puerto Rico, Inc., Gurabo, PR.	7274
7274–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	7274
7274–P	UNIGAS, Inc., Ponce, PR	7274
7274–P	Linde Gases of the Midwest, Inc., Hillside, IL.	7274
7274–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	7274
7274–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	7274
7274–P	Linde Gases of New England, Inc., West Hartford, CT.	7274
7285–P	Atochem Inc., Chemical Division, Glen Rock, NJ.	7285
7451–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	7451
7451–P	Linde Gases of the Midwest, Inc., Hillside, IL.	7451
7451–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	7451
7451–P	Linde Gases of New England, Inc., West Hartford, CT.	7451
7607–P	On-Site Instruments, Columbus, OH.	7607
7835–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	7835
7835–P	Linde Gases of the West, Oakland, CA.	7835
7835–P	Linde Gases of Florida, Inc., Tampa, FL.	7835
7835–P	UNIGAS, Inc., Ponce, PR	7835
7835–P	Linde Gases of the Midwest, Inc., Hillside, IL.	7835
7835–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	7835
7835–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	7835
7835–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	7835
7835–P	Linde Gases of New England, Inc., West Hartford, CT.	7835
7835–P	GenEx, Ltd., Des Moines, IA	7835
7846–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	7846
7846–P	Linde Gases of the West, Oakland, CA.	7846
7846–P	UNIGAS, Inc., Ponce, PR	7846
7846–P	Linde Gases of the Midwest, Inc., Hillside, IL.	7846
7846–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	7846
7846–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	7846
7846–P	Linde Gases of New England, Inc., West Hartford, CT.	7846
8013–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8013
8013–P	Linde Gases of the West, Oakland, CA.	8013
8013–P	Linde Gases of the Midwest, Inc., Hillside, IL.	8013
8013–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	8013
8013–P	Linde Gases of New England, Inc., West Hartford, CT.	8013
8013–P	Linde Gases of Florida, Inc., Tampa, FL.	8013
8013–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	8013
8013–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	8013
8013–P	UNIGAS, Inc., Ponce, PR	8013
8013–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	8013
8156–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8156
8156–P	Linde Gases of the West, Oakland, CA.	8156
8156–P	Linde Gases of the Midwest, Inc., Hillside, IL.	8156
8156–P	Linde Gases of New England, Inc., West Hartford, CT.	8156
8156–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	8156
8156–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	8156
8156–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	8156
8156–P	GenEx, Ltd., Des Moines, IA	8156
8445–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8445
8518–P	Pacific Petroleum Corp., Orcutt, CA.	8518
8526–P	Overnite Transportation Co., Richmond, VA.	8526
8556–P	Linde Puerto Rico, Inc., Gurabo, PR.	8556
8556–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8556
8556–P	Linde Gases of the West, Oakland, CA.	8556
8556–P	Linde Gases of New England, Inc., West Hartford, CT.	8556
8556–P	Linde Gases of Florida, Inc., Tampa, FL.	8556
8556–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	8556
8556–P	UNIGAS, Inc., Ponce, PR	8556
8556–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	8556
8698–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8698
8862–P	Linde Puerto Rico, Inc., Gurabo, PR.	8862
8862–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8862
8862–P	Linde Gases of the West, Oakland, CA.	8862
8862–P	Linde Gases of the Midwest, Inc., Hillside, IL.	8862
8862–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	8862
8862–P	Linde Gases of New England, Inc., West Hartford, CT.	8862
8862–P	Linde Gases of Florida, Inc., Tampa, FL.	8862
8862–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	8862
8862–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	8862
8862–P	UNIGAS, Inc., Ponce, PR	8862
8862–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	8862
8862–P	GenEx, Ltd., Des Moines, IA	8862
8915–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8915
8915–P	Linde Gases of the West, Oakland, CA.	8915
8915–P	Linde Gases of the Midwest, Inc., Hillside, IL.	8915
8915–P	Linde Gases of New England, Inc., West Hartford, CT.	8915
8915–P	Linde Gases of Florida, Inc., Tampa, FL.	8915

Application No.	Applicant	Parties to exemption
8915–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	8915
8915–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	8915
8915–P	UNIGAS, Inc., Ponce, PR	8915
8923–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	8923
8944–P	Linde Gases of the West, Oakland, CA.	8944
8944–P	Linde Gases of New England, Inc., West Hartford, CT.	8944
8944–P	Linde Gases of Florida, Inc., Tampa, FL.	8944
8988–P	Owen Oil Tools, Inc., Fort Worth, TX.	8988
9034–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9034
9034–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	9034
9034–P	UNIGAS, Inc., Ponce, PR	9034
9034–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	9034
9034–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	9034
9034–P	Linde Gases of the West, Oakland, CA.	9034
9034–P	Linde Gases of New England, Inc., West Hartford, CT.	9034
9034–P	Linde Gases of Florida, Inc., Tampa, FL.	9034
9034–P	Linde Gases of the Midwest, Inc., Hillside, IL.	9034
9034–P	GenEx, Ltd., Des Moines, IA	9034
9047–P	Linde Puerto Rico, Inc., Gurabo, PR.	9047
9047–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9047
9047–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	9047
9047–P	UNIGAS, Inc., Ponce, PR	9047
9047–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	9047
9047–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	9047
9047–P	Linde Gases of the West, Oakland, CA.	9047
9047–P	Linde Gases of New England, Inc., West Hartford, CT.	9047
9047–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	9047
9047–P	Linde Gases of Florida, Inc., Tampa, FL.	9047
9047–P	Linde Gases of the Midwest, Inc., Hillside, IL.	9047
9047–P	GenEx, Ltd., Des Moines, IA	9047
9275–P	Fries & Fries, Cincinnati, OH	9275
9414–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9414
9414–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	9414
9414–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	9414
9414–P	Linde Gases of the West, Oakland, CA.	9414
9414–P	Linde Gases of New England, Inc., West Hartford, CT.	9414
9414–P	Linde Gases of Florida, Inc., Tampa, FL.	9414
9414–P	Linde Gases of the Midwest, Inc., Hillside, IL.	9414
9414–P	GenEx, Ltd., Des Moines, IA	9414
9436–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9436
9507–P	Linde Puerto Rico, Inc., Gurabo, PR.	9507
9507–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9507
9507–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	9507
9507–P	UNIGAS, Inc., Ponce, PR	9507
9507–P	Linde Gases of the Southeast, Inc., Wilmington, NC.	9507
9507–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	9507
9507–P	Linde Gases of the West, Oakland, CA.	9507
9507–P	Linde Gases of New England, Inc., West Hartford, CT.	9507
9507–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	9507
9507–P	Linde Gases of Florida, Inc., Tampa, FL.	9507
9507–P	MG Industries, Valley Forge, PA.	9507
9690–P	Tri-River Chemical Co., Inc., Pasco, WA.	9690
9769–P	Rollins Environmental Services (FS) Inc., Wilmington, DE [1].	9769
9785–P	Puerto Rico Marine Management, Inc., San Juan, PR.	9785
9916–P	Petrolite Corp., St. Louis, MO.	9916
9946–P	Union Carbide Industrial Gases, Inc., Danbury, CT.	9946
9946–P	Linde Gases of Southern California, Inc., Santa Ana, CA.	9946
9946–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ.	9946
9946–P	Linde Gases of New England, Inc., West Hartford, CT.	9946
9946–P	Linde Gases of Florida, Inc., Tampa, FL.	9946
9946–P	Linde Gases of the Midwest, Inc., Hillside, IL.	9946
9946–P	Linde Gases of the West, Oakland, CA.	9946
9953–P	National Starch and Chemical Corp., Bridgewater, NJ.	9953
10089–P	Callergy Chemical Co., Pittsburgh, PA.	10089

[1] To authorize shipment by rail of "lab-packs."

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

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BILLING CODE 4910–60–M

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July-September 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
868–X	DOT–E 868	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.3(a), 173.7(a), 174.10, 174.104(f), 174.8, 177.801, 177.806(a).	To authorize exceptions to requirements for carrier inspection of manufacture, vehicle, loading, etc. for transportation of Class A and B explosives loaded by Department of Defense shippers in DOT Specification containers. (Modes 1 and 2.)
2582–P	DOT–E 2582	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to exemption 2582. (Modes 1, 2, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3121-X	DOT-E 3121	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.336(a), 177.841(b)	To authorize a packaging arrangement that is similar to currently authorized packaging except a rupture disk assembly has been added. (Mode 1.)
3121-X	DOT-E 3121	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.336(a), 177.841(b)	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
3142-X	DOT-E 3142	U.S. Department of Energy, Washington, DC.	49 CFR 173.24(a)(1)	To authorize shipment of nonflammable compressed gases in DOT Specification 3A1800 or 3A2000 cylinders, from which a controlled flow of gas is released to a leak calibration apparatus. (Modes 1 and 2.)
3167-X	DOT-E 3167	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119(m), 173.21(b), 173.218, 173.221(a)(3).	To authorize modification of the prescribed packaging that consists of cutting holes at the top and bottom of each face of the fiberboard overpack to improve air circulation. (Mode 1.)
3167-X	DOT-E 3167	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119(m), 173.21(b), 173.218, 173.221(a)(3).	To authorize shipment of flammable liquids or organic peroxides in various non-DOT and DOT Specification containers. (Mode 1.)
3167-X	DOT-E 3167	Silor Optical of Florida, Inc., St. Petersburg, FL.	49 CFR 173.119(m), 173.21(b), 173.218, 173.221(a)(3).	To authorize shipment of flammable liquids or organic peroxides in various non-DOT and DOT Specification containers. (Mode 1.)
3768-X	DOT-E 3768	Vanchem, Inc., Lockport, NY	49 CFR 173.119, 173.245, 173.288	To authorize use of DOT Specification MC-304, MC-307 and MC-312 cargo tanks, for transportation of certain flammable and corrosive liquids. (Mode 1.)
4588-X	DOT-E 4588	U.S. Department of Energy, Washington, DC.	49 CFR 173.65(a)	To authorize use of packaging not presently prescribed for certain high explosives. (Mode 1.)
4734-X	DOT-E 4734	General Electric Company—Silicone Products Div., Waterford, NY.	49 CFR 173.119(m), 173.135(a)(9), 173.136(a)(8), 173.260(a)(8).	To authorize use of modified DOT Specification MC-331 cargo tanks, for transportation of certain flammable liquids and corrosive materials. (Mode 1.)
4850-P	DOT-E 4850	Austin Powder Co., Cleveland, OH	49 CFR 173.100(cc), 175.3	To become a party to exemption 4850. (Modes 1, 2, and 3.)
5248-P	DOT-E 5248	Magnavox Government and Industrial Electronics Co., Fort Wayne, IN.	49 CFR 173.431(a), 175.3	To become a party to exemption 5248. (Modes 1, 2, and 4.)
5248-X	DOT-E 5248	3M, New Brighton, MN	49 CFR 173.431(a), 175.3	To authorize shipment of a certain quantity of polonium-210 in any DOT Specification approved outer Type A packaging. (Modes 1, 2, and 4.)
5493-X	DOT-E 5493	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 172.504(a), 173.314(c)	To authorize shipment of hydrogen sulfide in DOT Specification 105A600W tank cars. (Mode 2.)
5600-P	DOT-E 5600	Bandgap Technology Corp., Broomfield, CO.	49 CFR 175.3, Part 173, Subparts D, F, G.	To become a party to exemption 5600. (Modes 1, 2, and 4.)
5649-X	DOT-E 5649	Great Lakes Chemical Corp., Adrian, MI.	49 CFR 173.154(a)	To authorize shipment of an oxidizer, in non-DOT specification polypropylene or polyethylene bags. (Modes 1 and 2.)
5704-X	DOT-E 5704	IRECO, Inc., Salt Lake City, UT	49 CFR 173.62, 173.93(e)	To authorize transport of certain Class A and B explosives in prescribed non-DOT specification steel drums. (Modes 1, 2, and 3.)
5704-P	DOT-E 5704	Olin Corp., East Alton, IL	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704 (Modes 1, 2, and 3.)
5820-X	DOT-E 5820	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315(a)	To authorize shipment of nonflammable gases in non-DOT specification IMO Type 5 portable tanks. (Modes 1, 2, and 3.)
5948-X	DOT-E 5948	U.S. Department of Energy, Washington, DC.	49 CFR 173.116, 173.417, 173.467	To authorize shipment of packaged radioactive waste materials in ATMX 500 or 600 rail cars. (Mode 2.)
6016-X	DOT-E 6016	Magnolia Welding Supply Co., Houston, TX.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6016-X	DOT-E 6016	Strate Welding Supply Co., Inc., Buffalo, NY.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6071-X	DOT-E 6071	Walter Kidde, Wilson, NC	49 CFR 173.304, 173.305, 175.3	To authorize use of non-DOT specification pressure vessels, for transportation of nonflammable compressed gases. (Modes 1, 2, 4, and 5.)
6117-X	DOT-E 6117	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 172.504, 173.314(c)	To authorize transport of hydrogen sulfide in DOT Specification 105A600W tank car tanks or proposed DOT Specification 120A600W tank car tanks. (Mode 2.).
6250-X	DOT-E 6250	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.89, 173.79, 173.87, 173.92, 173.94, 176.83, 177.848.	To authorize shipment of partially dis-assembled aircraft with explosive components (ejection seat and canopy related devices) remaining installed. (Modes 1 and 3.)
6267-X	DOT-E 6267	Hydrotech Chemical Corp. Marietta, GA.	49 CFR 173.154, 173.217(a)	To authorize use of DOT Specification 12B corrugated fiberboard boxes with inside polyethylene bottles and non-DOT specification double-faced fiberboard boxes, for transportation of certain oxidizing materials. (Modes 1, 2, and 3.)
6293-)	DOT-E 6293	Olin Corp., East Alton, IL	49 CFR 173.21(b), 173.248	To authorize transport of certain corrosive liquids, in DOT Specification MC-311 or MC-312 tank motor vehicles. (Mode 1.)
6293-X	DOT-E 6293	Hercules, Inc., Wilmington, DE	49 CFR 173.21(b), 173.248	To authorize transport of certain corrosive liquids, in DOT Specification MC-311 or MC-312 tank motor vehicles. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6296-X	DOT-E 6296	UNIROYAL Chemical Company, Inc., Bethany, CT.	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specifcation 44D multi-wall paper bags. (Modes 1 and 2.)
6296-X	DOT-E 6296	American Cyanamid Co., Wayne, NJ.	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specifcation 44D multi-wall paper bags. (Modes 1 and 2.)
6296-X	DOT-E 6296	Phone-Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specifcation 44D multi-wall paper bags. (Modes 1 and 2.)
6296-X	DOT-E 6296	Rhone-Poulenc Inc., Monmouth Junction, NJ.	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specifcation 44D multi-wall paper bags. (Modes 1 and 2.)
6349-X	DOT-E 6349	Airco Industrial Gases, New Jersey, NJ.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification insulated, containerized portable tanks, for shipment of certain flammable and nonflammable gases. (Modes 1, 2, and 3.)
6369-X	DOT-E 6369	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.346(a)(10), 173.347(a)(2), 173.352(a)(4), 173.374(a).	To authorize use of AAR proposed DOT Specification 120A300W and 120A400W tank car tanks, for transportation of certain Class B poisonous liquids. (Mode 2.)
6418-X	DOT-E 6418	J.R. Simplot Co., Pocatello, ID	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
6442-X	DOT-E 6442	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.53(k), 173.87	To authorize transport of a 155mm high explosive projectile containing either a corrosive or flammable liquid in metal cannister with an inner polyethylene container. (Modes 1 and 2.)
6472-X	DOT-E 6472	Morton Thiokol, Inc., Ogden, UT	49 CFR 173.91	To authorize use of non-DOT specification polystyrene containers, for transportation of certain Class B explosives. (Modes 1, 2, and 3.)
6530-X	DOT-E 6530	AGL Welding Supply Company, Inc., Clifton, NJ.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1 and 2.)
6538-X	DOT-E 6538	Hanco International, Inc., Miami, FL	49 CFR 173.304(d)(3)(ii), 178.33	To authorize use of a non-DOT specifcation inside nonrefillable metal container, for transportation of a certain flammable gas. (Modes 1 and 3.)
6543-X	DOT-E 6543	Solkatronic Chemicals, Inc., Fairfield, NJ.	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
6543-X	DOT-E 6543	Corning Glass Works, Corning, NY	49 CFR 173.119, 173.135(a)(6), 173.136(a)(5), 173.245, 173.247, 173.271, 175.3.	To authorize shipment of certain corrosive and flammable liquids in non-DOT specification 16 gauge, Type 304 stainless steel cylinders and/or 14 gauge Type 316 stainless steel cylinders. (Modes 1, 2, 3, and 4.)
6610-X	DOT-E 6610	Catalyst Resources, Inc., Elyria, OH.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC-307 cargo tanks (Modes 1 and 2.)
6610-X	DOT-E 6610	ARCO Chemical Co., Pasadena, TX.	49 CFR 173.221	To authorize shipment of an organic peroxide in DOT Specification 111A100W6 tank cars and MC-307 cargo tanks. (Modes 1 and 2.)
6626-P	DOT-E 6626	Strate Welding Supply Co., Inc. Buffalo, NY.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (Modes 1, 2, 3, 4, and 5.)
6670-X	DOT-E 6670	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.301(d), 173.302	To authorize shipment of tetrafluoromethane, in DOT Specification 3A2400, 3AA2400, 3AX2400 and 3AAX2400 cylinders. (Mode 1.)
6670-X	DOT-E 6670	Airco, The BOC Group, Inc., Murray Hill, NJ.	49 CFR 173.301(d), 173.302	To authorize shipment of tetrafluoromethane, in DOT Specification 3A2400, 3AA2400, 3AX2400 and 3AAX2400 cylinders. (Mode 1.)
6691-X	DOT-E 6691	Union Carbide Corp., Linde Division, Danbury, CT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To correct the address referenced for the holder. (Modes 1, 2, 3, 4, and 5.)
6695-X	DOT-E 6695	Arbel-Fauvet-Rail, Dousi, Cedex, France.	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of certain nonflammable compressed gases. (Modes 1, 2, and 3.)
6724-X	DOT-E 6724	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.89, 175.3	To authorize transport of caseless ammunition in an inside fiberboard box with egg crate separations and overpacked in a non-DOT specification strong wooden box. (Modes 1 and 4.)
6762-X	DOT-E 6762	Taylor Technologies, Inc., Sparks, MD.	49 CFR 173.286(b)(2), 175.3	To authorize transport of chemical kits in plastic inside bottles, packed in plastic overpacked in fiberboard boxes. (Modes 1, 2, 3, and 4.)
6874-X	DOT-E 6874	Degussa Corp., Ridgefield Park, NJ	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, and 3.)
6908-X	DOT-E 6908	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3, 178.65.	To authorize certain variances from the specifications for DOT Specification 39 cylinders, used to transport certain non-flammable gases. (Modes 1, 2, 3, and 4.)
6922-X	DOT-E 6922	Halocarbon Products Corp., North Augusta, SC.	49 CFR 173.314(c), 179.300-15	To authorize use of a DOT Specification 106A500-X multi-unit tank car tank, for shipment of certain compressed gases. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6927-X	DOT-E 6927	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.353	To authorize use of a non-DOT specification portable tank, for transportation of certain Class B poisonous liquids. (Modes 1, 2, and 3.)
6927-X	DOT-E 6927	Bromine Compounds, Ltd., Beer-Sheva, Israel 84101.	49 CFR 173.353	To authorize rail freight as an additional mode of transportation. (Modes 1, 2, and 3.)
6944-X	DOT-E 6944	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(L)(1)	To authorize transport of a liquid high explosive in a specially designed stainless steel desiccator. (Mode 1.)
6971-X	DOT-E 6971	Accu-Standard, Inc., New Haven, CT.	49 CFR Parts 100-199	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, and 5.)
6999-X	DOT-E 6999	U.S. Department of Defense, Falls Church, VA.	49 CFR 176 120(b)	To authorize cargo loading hatches of vessels being loaded with military explosives to remain open overnight under certain conditions. (Mode 3.)
7026-X	DOT-E 7026	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 176.47.	To authorize manufacture, marking and sale of non-DOT specification welded steel pressure vessel for transportation of a compressed gas. (Modes 1, 2, 4, 5.)
7041-X	DOT-E 7041	Ethyl Corp., Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7052-X	DOT-E 7052	Engineered Assemblies Corp., Clifton, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Allen-Bradley Co., Milwaukee, WI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Lockheed Aeronautical Systems Co., Burbank, CA.	49 CFR 172.101, 172.420, 175.3	To become a party to exemptions 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Tracor Applied Sciences, Inc., Rockville, MD.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Tauber Electronics, Inc., San Diego, CA.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	DigiCourse, Inc., Harahan, LA	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Beta Phase, Inc., Menlo Park, CA	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	3M, St. Paul, MN	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7052-P	DOT-E 7052	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052 (Modes 1, 2, 3, and 4.)
7096-X	DOT-E 7096	Fike Corp., Blue Springs, Mo.	49 CFR 173.304(a)(1), 178.55	To authorize shipment of bromotrifluoromethane (Freon 1301) in non-DOT specification cylinders, fabricated in accordance with DOT Specificarton 4B240ET with certain exceptions. (Modes 1, 2, and 3.)
7097-X	DOT-E 7097	Plant Products Corp., Vero Beach, FL.	49 CFR 173.377(f)	To authorize shipment of dry mixtures of parathion and tetraethyl dithio pyrophosphate from specification packing requirements. (Mode 1.)
7247-X	DOT-E 7247	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29-11(c)(19), 146.29-75(b)(2).	To authorize a bulkhead in the lower hold of a vessel separating military explosives from general cargo to be secured on 4 inch by 6 inch uprights, in lieu of the required 6 by 6 inch uprights. (Mode 3.)
7268-X	DOT-E 7268	Union Carbide Corp., Danbury, CT	49 CFR 173.304(a)(1)	To authorize use of a DOT Specification 39 nonrefillable cylinder, for shipment of a nonflammable compressed gas. (Modes 1, 2, and 3.)
7455-P	DOT-E 7455	Austin Powder Co., Cleveland, OH	49 CFR 176.177(g), 176.177(h), 176.177(n), 176.177(q), 176.177(r), 176.410(e).	To become a party to exemption 7455 (Mode 3.)
7466-X	DOT-E 7466	Firmenich Inc., Princeton, NJ	49 CFR 173.119(a)(7), 175.3	To authorize shipment of certain flammable liquid mixtures, in a spun 99-percent pure aluminum can, overpacked in a corrugated fiberboard box. (Modes 1, 2, 3, and 4.)
7573-X	DOT-E 7573	U.S. Department of Defense, Falls Church, VA.	49 CFR Part 107, Subpart B, Part 172, Part 175.	To authorize transport of aircraft loaded with military explosives and ammunition and other hazardous materials forbidden or in quantities greater than allowed for cargo-only aircraft. (Mode 4.)
7607-P	DOT-E 7607	Hanson Engineers, Inc. Springfield, IL.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	I.T. Corp., Torrance, CA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Wapora, Inc., Atlanta, GA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Response Rentals, Rochester, NY	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Hydrometrics, Inc., Helena, MT	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Betz Murdock and Converse Inc. (BMC), Plymouth Meeting, PA.	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7616-X	DOT-E 7616	Atchison, Topeka and Santa Fe Ry. Co., Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to accept telephonic and electronic data exchange information from shippers and to prepare and certify information on shipping papers on behalf of the shipper for the acceptance of hazardous materials. (Mode 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7616-X	DOT-E 7616	Southern Pacific Transportation Co., San Francisco, CA.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize carrier to accept telephonic and electronic data exchange information from shippers and to prepare and certify information on shipping papers on behalf of the shipper for the acceptance of hazardous materials. (Mode 2.)
7648-X	DOT-E 7648	Sunwest Aviation, Ogden, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(i), 175.3, 175.35(a).	To authorize carriage of aerial illuminating flares for testing purposes in cargo-only aircraft. (Mode 4.)
7650-X	DOT-E 7650	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315	To authorize use of non-DOT specification vaccum insulated steel portable tanks, for shipment of certain nonflammable compressed gases. (Mode 1 and 3.)
7654-P	DOT-E 7654	Eastman Kodak Co., Rochester, NY.	49 CFR 173.119(f)	To become a party to exemption 7654. (Mode 1 and 2.)
7700-P	DOT-E 7700	U.S. Department of Agriculture, Forest Service, Washington, DC.	49 CFR 175.310(d)	To become a party to exemption 7700. (Mode 5.)
7719-X	DOT-E 7719	Turner Division of Cooper Group, Sycamore, IL.	49 CFR 173.304, 175.3, 178.65	To authorize use of brazed DOT Specification 39 cylinders, for transportation of methylacetylene propadiene, stabilized. (Mode 1, 2, and 4.)
7767-X	DOT-E 7767	Walter Kidde, Wilson, NC	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize manufacture, marking and sale of non-DOT specification welded steel cylinders, for transportation of nonflammable compressed gases. (Mode 1, 2, 3, 4, and 5.)
7823-X	DOT-E 7823	Allied Corp., Morristown, NJ	49 CFR 173.246	To authorize transport of iodine pentafluoride in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW with certain exceptions. (Mode 1, 2, and 3.)
7835-P	DOT-E 7835	Sunox Inc., Charlotte, NC	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7835-P	DOT-E 7835	American Welding Supply San Jose, CA.	49 CFR 177.848, Part 107 Appen. B(1).	To become a party to exemption 7835. (Mode 1.)
7840-X	DOT-E 7840	Douglas Aircraft Co., Long Beach, CA.	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflamable compressed gas, in the same non-DOT specification fiberboard shipping container. (Mode 1, 2, 3, 4, and 5.)
7840-X	DOT-E 7840	General Dynamics Corp., Fort Worth, TX.	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Mode 1, 2, 3, 4, and 5.)
7840-X	DOT-E 7840	Weber Aircraft, Burbank, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, and 5.)
7840-X	DOT-E 7840	Weber Aircraft, Inc., Burbank, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, and 5.)
7873-X	DOT-E 7873	Bromine Compounds, Ltd., Beer Sheva, Israel.	49 CFR 173.353a	To authorize rail freight as an additional mode of transportation. (Modes 1, 2, and 3).
7876-P	DOT-E 7876	Mallinckrodt, Inc., Paris, KY	49 CFR 173.299(a), 175.3	To become a party to exemption 7876. (Modes 1, 2, 3, and 4.)
7946-P	DOT-E 7946	Imaging and Sensing Technology Corp., Horsehead, NY.	49 CFR 173.306(b)(4), 175.3	To become a party to exemption 7946. (Modes 1, 2, 3, 4, and 5.)
8003-X	DOT-E 8003	Pennwalt Corp., Buffalo, NY	49 CFR 173.154(a)(14)	To authorize use of one-gallon, open-head polyethylene containers inside a DOT Specification 12B box, for transportation of organic peroxides. (Modes 1 and 3.)
8016-X	DOT-E 8016	U.S. Department of Agriculture, Forest Service, Washington, DC.	49 CFR 175.3, 175.30, 175.35, 175.40, 175.75, 175.85.	To authorize transport of detonating cord and exploding bridge wire detonators in passenger-carrying aircraft and helicopters. (Mode 5.)
8023-X	DOT-E 8023	EFI Corp., d/b/a EFIC, San Jose, CA.	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8023-X	DOT-E 8023	Acurex Corp., Mountain View, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic hoop wrapped cylinders, for shipment of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8035-X	DOT-E 8035	Western Atlas International, Houston, TX.	49 CFR 173.100(v), 173.112, 175.3	To authorize transport of limited quantities of certain propellant explosives in a plastic tube packed in a DOT Specification 12B fiberboard box. (Modes 1, 2, 3, and 4.)
8051-X	DOT-E 8051	Mauser Packaging, Ltd., Litchfield, CT.	49 CFR 178.19, Part 173, Subpart D, E, F, H, Subpart K.	To authorize manufacture, marking and sale of non-DOT specification polyethylene drums of not over 220 liter capacity, for shipment of corrosive liquids and oxidizers. (Modes 1, 2, and 3.)
8060-X	DOT-E 8060	Parlefer S.A.R.L., Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, and 3.)
8060-X	DOT-E 8060	SLEMI, Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMC Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8060-X	DOT-E 8060	Arbel-Fauvet-Rail, Douai, Cedex, France.	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, and 3.)
8060-X	DOT-E 8060	American Chrome & Chemicals, Inc., Corpus Christi, TX.	49 CFR 173.164	To authorize transport of dry chromic acid in DOT-105A300W tank car which has been converted to DOT-111A100W1; a DOT-103AW tank car converted to DOT-103W; a DOT-111A1,00W2 tank car converted to DOT-111A100W1; or a true DOT-111A100W1 tank car. (Mode 2.)
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(d), 173.302(d), 173.34(d), 175.3.	To authorize a greater service life, from 5 years to 15 years, or a greater number of pressurizations, for 200 to 300, for the exempted packaging. (Modes 1, 2, and 4.)
8141-X	DOT-E 8141	Boeing Aerospace Co., Seattle, WA.	49 CFR 172.101, 173.206, 173.247	To authorize transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride packed in non-DOT specification wooden boxes. (Modes 1 and 3.)
8141-X	DOT-E 8141	Altus Corp., San Jose, CA	49 CFR 172.101, 173.206, 173.247	To authorize transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride packed in non-DOT specification wooden boxes. (Modes 1 and 3.)
8141-P	DOT-E 8141	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 172.101, 173.206, 173.247	To become a party to exemption 8141. (Modes 1 and 3.)
8214-X	DOT-E 8214	Morton Thiokol, Inc.—Automotive Products, Ogden, UT.	49 CFR 173.153, 173.154, 175.3	To authorize an additional packaging for shipment of inflators and modules for passive restraint systems, described as Flammable solid n.o.s., class as Flammable solid. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Volkswagen of America, Inc., Troy, MI.	49 CFR 173.153, 173.154, 175.3	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8214-P	DOT-E 8214	Chrysler Motors Corp., Center Line, MI.	49 CFR 173.153, 173.154, 175.3	To become a party to exemption 8214. (Modes 1, 2, 3, and 4.)
8230-X	DOT-E 8230	G. Frederick Smith Chemical Co., Columbus, OH.	49 CFR 173.268(b)(6), 173.269(a)(4).	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, and 4.)
8236-X	DOT-E 8236	Talley Automotive Products, Inc., Mesa, AZ.	49 CFR 173.153, 173.154, 175.3	To authorize transport of a passive restraint system, and of the inflator therefor, containing a class B explosive as a flammable solid. (Modes 1, 2, 3, and 4.)
8239-P	DOT-E 8239	Imaging and Sensing Technology Corp., Horseheads, NY.	49 CFR 172.101 Column 6(a), 172.101 Column 6(b), 173.302, 175.3.	To become a party to exemption 8239. (Modes 1, 2, 3, 4, and 5.)
8362-X	DOT-E 8362	Altus Corp., San Jose, CA	49 CFR 172.101, 173.206, 173.247	To authorize shipment of batteries containing lithium metal and thionyl chloride in a rigid metal structure of aluminum steel and components which secure the location of each of the 30 cell units, packed in a sturdy wooden box bolted to the base support plate of the internal metal structure. (Modes 1, and 2.)
8397-X	DOT-E 8397	Mauser Packaging, Ltd., Litchfield, CT.	49 CFR 173.154, 173.160, 173.191, 173.217, 173.245b, 173.945, 178.16.	To authorize manufacture, marking and sale of non-DOT specification, nonreusable, molded polyethylene drums with fully removable head, for transportation of various dry hazardous materials. (Modes 1, 2, and 3.)
8407-X	DOT-E 8407	Occidental Chemical Corp., Dallas, TX.	49 CFR 173.245, Part 172, Subpart C.	To authorize transport within plant over public highway, various waste residues, classed as corrosives liquids, n.o.s., without shipping papers, in non-DOT specification portable tanks. (Mode 1.)
8431-X	DOT-E 8431	The Dow Chemical Co., Midland, MI.	49 CFR 173.294(a)(2), 179.202-18	To authorize shipment of monochloroacetic acid solution in DOT Specification 111A100W6 insulated tank cars. (Mode 2.)
8439-X	DOT-E 8439	Walter Kidde, Wilson, NC	49 CFR 173.302, 173.304, 175.3, 178.53.	To authorize manufacture, marking and sale of non-DOT specification cylinders complying with DOT Specification 4DS, with certain exceptions, for shipment of various nonflammable compressed gases. (Modes 1, 2, 3, 4, and 5.)
8450-X	DOT-E 8450	Atlantic Research Corp., Camden, AR.	49 CFR 173.92	To authorize transport of rocket motors without igniters, in non-DOT Specification polyethylene containers. (Mode 1.)
8451-X	DOT-E 8451	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Hercules Inc., Wilmington, DE	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	GOEX, Inc., Cleburne, TX	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8451-X	DOT-E 8451	Unidynamics/Phoenix, Inc., Phoenix, AZ.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Monongahela Power Co., Fairmont, WV.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Ethyl Corp., Baton Rouge, LA	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Morton Thiokol, Inc., Aerospace Group, Brigham City, UT.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Atlas Powder Co., Dallas, TX	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Olin Chemicals Group, Research Center, Stamford, CT.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Quantic Industries, Inc., San Carlos, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Lockheed Missiles & Space Company, Inc., Palo Alto, CA.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Hercules Aerospace Co., Magna, UT.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-P	DOT-E 8451	Schlumberger Well Services, Rosharon, TX.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Honeywell, Inc., Hopkins, MN	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 8451	Boeing Aerospace, Seattle, WA	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8451-X	DOT-E 84151	Stresau Laboratory, Inc., Spooner, WI.	49 CFR 173.65, 173.86(e), 175.3	To authorize transport of not more than 25 grams of high explosives and pryotechnic material in a special shipping container, classed as Class C explosive. (Modes 1, 2, and 4.)
8489-X	DOT-E 8489	Degussa Corp., Ridgefield, NJ	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2,200 pounds each. (Modes 1, 2, and 3.)
8489-X	DOT-E 8489	FMC Corp., Philadelphia, PA	49 CFR 173.154, 173.182, 173.217, 173.245b.	To authorize shipment of certain oxidizers, a poison B, waste arsenical mixture, and a corrosive material in collapsible polyethylene-lined, woven polypropylene bags having a capacity not exceeding 2,200 pounds each. (Modes 1, 2, and 3.)
8516-P	DOT-E 8516	Austin Powder Co., Cleveland, OH	49 CFR 176.83(b)	To become a party to exemption 8516. (Mode 3.)
8518-P	DOT-E 8518	Denver Truck Sales, Commerce City, CO.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8526-P	DOT-E 8526	Stoops Express, Inc., Anderson, IN	49 CFR 177.834(L)(2)(i)	To become a party to exemption 8526. (Mode 1.)
8526-X	DOT-E 8526	Rohm and Haas Co., Philadelphia, PA.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8526-X	DOT-E 8526	Key Way Transport, Inc., Baltimore, MD.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8526–X	DOT–E 8526	The ServiceMaster Co., LP., Downers Grove, IL.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8526–X	DOT–E 8526	National Starch and Chemical Corp., Bridgewater, NJ.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases, in temperature controlled equipment. (Mode 1.)
8538–X	DOT–E 8538	Hercules, Inc., Wilmington, DE	49 CFR 173.62, 178.177	To authorize transport of liquid high explosives in DOT Specification 15M containers in which the inner copper containers and the rubber boots have been replaced with polyethylene containers. (Mode 1.)
8538–X	DOT–E 8538	Atlas Powder Co., Dallas, TX	49 CFR 173.62, 178.177	To authorize transport of liquid high explosives in DOT Specification 15M containers in which the inner copper containers and the rubber boots have been replaced with polyethylene containers. (Mode 1.)
8545–X	DOT–E 8545	Hercules, Inc., Wilmington, DE	49 CFR 173.62	To authorize transport to limited quantities of liquid high explosives in polyethylene bottles packed in a DOT Specification 37A drum, overpacked in a DOT Specification 15A wooden box. (Mode 1.)
8554–P	DOT–E 8554	Geenen Explosives, Inc., Kaukauna, WI.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–P	DOT–E 8554	Ramac Explosives of Pennsylvania, Inc., Allentown, PA.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–P	DOT–E 8554	Cherokee Products, Inc., Jefferson City, TN.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.).
8554–P	DOT–E 8554	Maurer & Scott Sales Inc., Douglassville, PA.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–P	DOT–E 8554	Blasting Supplies Co., Inc., Douglassville, PA.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–P	DOT–E 8554	Maurer & Scott Inc., Douglassville, PA.	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–P	DOT–E 8554	PEPIN-IRECO Inc., Ishpeming, MI	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To become a party to exemption 8554. (Modes 1 and 2.)
8554–X	DOT–E 8554	IRECO, Inc., Salt Lake City, UT	49 CFR 173.114a, 173.154, 173.93, 178.341–5, 178.342–5, 178.343–5.	To authorize transport of propellant explosives, blasting agents and oxidizers, in a DOT Specification MC–306, MC–307 and MC–312 cargo tanks. (Modes 1 and 2.)
8555–X	DOT–E 8555	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To renew and to authorize an additional rocket motor configuration. (Modes 1 and 2.)
8555–X	DOT–E 8555	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize rail as an additional mode of transportation and to incorporate provision from Approval BA–3078 into the exemption. (Modes 1 and 2.)
8570–X	DOT–E 8570	Snyder Industries, Inc., Lincoln, NE	49 CFR 173.118a, 173.119, 173.266, 176.340, 176.19, 176.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molede, crosslinked or non-crosslinked, polyethylene portable tank, for shipment of corrosive liquids, flammable liquids, combustible liquids or an oxidizer. (Modes 1, 2, and 3.)
8579–P	DOT–E 8579	Austin Powder Co., Cleveland, OH	49 CFR 176.410(d)	To become a party to exemption 8579. (Mode 3.)
8582–P	DOT–E 8582	Soo Line RR. Co., Minneapolis, MN	49 CFR Parts 100–177	To become a party to exemption 8582. (Mode 1.)
8716–P	DOT–E 8716	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.28(m)	To become a party to exemption 8716. (Mode 1.)
8723–X	DOT–E 8723	Harrison Explosives, Inc., Allentown, PA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8723–X	DOT–E 8723	IRECO, Inc., Salt Lake City, UT	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8723–X	DOT–E 8723	Atlas Powder Co., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8723–X	DOT–E 8723	Austin Powder Co., Cleveland, OH	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8723–X	DOT–E 8723	PEPIN-IRECO Inc., Ishpeming, MI	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1 and 3.)
8723–X	DOT–E 8723	Pacific Powder Co., Olympia, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8723–X	DOT–E 8723	Pacco, Inc., Tenino, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of non-DOT specification motor vehicles and portable tanks, for bulk shipment of certain blasting agents. (Modes 1 and 3.)
8733–X	DOT–E 8733	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315	To authorize the reporting of shipments, incidents, and accidents in the renewal application instead of every six months. (Modes 1 and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8733–X	DOT–E 8733	ICI Americas, Inc., Wilmington, DE	49 CFR 173.315	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
8741–X	DOT–E 8741	Alpha Aviation, Inc., Dallas, TX	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
8789–X	DOT–E 8789	Turner Co., Sycamore, IL	49 CFR 173.304, 175.3	To authorize manufacture, marking and sale of non-DOT specification small, low pressure cylinders with certain exceptions, for transportation of flammable gases. (Mode 1.)
8809–X	DOT–E 8809	Sonoco Fibre Drum Inc., Lombard, IL.	49 CFR 178.225, Part 173	To authorize manufacture, marking and sale of non-DOT specification fibre drum overpacks for 15-gal capacity inner polyethylene container, similar to DOT–21P/2U except top head is molded polyolefin polymer secured to drum by wire stitches for shipment of commodities authorized in DOT–21P/2U composite. (Mode 1, 2, and 3.)
8817–X	DOT–E 8817	General Chemical Corp., Parsippany, NJ.	49 CFR 173.274(a)(1), Note 1	To authorize shipment of fluorosulfonic acid in non-DOT specification acid-resistant screw cap glass bottles, overpacked in metal cans, packed in a DOT Specification 15A, 15B, 15C, 16A, or 19A wooden box. (Modes 1, 2, and 3.)
8826–X	DOT–E 8826	Phoenix Air, Marietta, GA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize renewal and an alternative notification procedure to provide the FAA with advance notice of an operation. (Mode 4.)
8839–X	DOT–E 8839	Poly Processing Co., Inc., Monroe, LA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks for the shipment of flammable liquids, corrosive liquids, an oxidizer, and a blasting agent. (Modes 1, 2, and 3.)
8839–X	DOT–E 8839	Poly Cal Plastics, Inc., French Camp, CA.	49 CFR 172.101, 173.114a(h)(3), 173.266, 173.268, 176.415, 176.83, 178.19, Part 173, Subpart D, F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks for the shipment of flammable liquids, corrosive liquids, an oxidizer, and a blasting agent. (Modes 1, 2, and 3.)
8860–X	DOT–E 8860	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.31(c), Retest Table 1, Retest Table 1.	To authorize use of DOT Specification 103CW and 103EW tank cars with extended retest periods, for transportation of certain corrosive materials and oxidizers. (Mode 2.)
8861–X	DOT–E 8861	Hoover Group, Inc., Beatrice, NE	49 CFR 173.119(m), 173.346, 173.349, 173.352.	To authorize manufacture, marking and sale of DOT Specification 57 portable tanks, for shipment of various flammable liquids which are also corrosive or poison and certain Class B poison liquids. (Modes 1, and 2.)
8865–X	DOT–E 8865	Carleton Technologies, Inc., East Aurora, NY.	49 CFR 173.302(a)(4), 175.3	To authorize use of nonrefillable, non-DOT specification cylinders, for transportation of a nonflammable gas. (Modes 1, 2, and 4.)
8877–P	DOT–E 8877	Image Technology, Tempe, AR	49 CFR 173.119, 173.245	To become a party to exemption 8877. (Modes 1, 2, and 3.)
8877–P	DOT–E 8877	Hi Pure Chemicals, Inc., Nazareth, PA.	49 CFR 173.119, 173.245	To become a party to exemption 8877. (Modes 1, 2, and 3.)
8877–P	DOT–E 8877	Olin Hunt Specialty Products, Inc., West Patterson, NJ.	49 CFR 173.119, 173.245	To become a party to exemption 8877. (Modes 1, 2, and 3.)
8878–X	DOT–E 8878	Corning Glass Works, Corning, NY	49 CFR 173.245	To authorize shipment of germanium tetrachloride, corrosive liquid, n.o.s., in glass containers of less than 3 gallon capacity, surrounded by vermiculite placed in a cylindrical steel overpack, packed six to a compartmented wooden box. (Mode 1.)
8878–X	DOT–E 8878	Amalgamet Canada—Division of Premetalco, Inc., Toronto, ON, CN.	49 CFR 173.245	To authorize shipment of germanium tetrachloride, corrosive liquid, n.o.s., in glass containers of less than 3 gallon capacity, surrounded by vermiculite placed in a cylindrical steel overpack, packed six to a compartmented wooden box. (Mode 1.)
8878–X	DOT–E 8878	Preussag Pure Metals GmbH, Langelsheim, West Germany.	49 CFR 173.245	To authorize shipment of germanium tetrachloride, corrosive liquid, n.o.s., in glass containers of less than 3 gallon capacity, surrounded by vermiculite placed in a cylindrical steel overpack, packed six to a compartmented wooden box. (Mode 1.)
8891–X	DOT–E 8891	BIC Corp., Milford, CT	49 CFR 173.21, 173.306	To authorize not more than two cigarette lighters containing flammable gas to be packed in the same inner container, overpacked in corrugated fiberboard boxes. (Modes 1 and 2.)
8893–X	DOT–E 8893	Atlas Powder Co., Dallas, TX	49 CFR 172.101	To authorize transport of a mixture containing, by weight, 10% trimethylolethane trinitrate and 90% methanol, in DOT Specification drums. (Mode 1.)
8911–X	DOT–E 8911	Olin Corp., East Alton, IL	49 CFR 173.101	To authorize shipment of scrap, guillotined small arms ammunition loosely packed in non-DOT specification, nonreusable, closed-top wooden crates fiberboard boxes, or aluminum bins in truck load lots to an incinerator for disposal. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8913-X	DOT-E 8913	Eurotainer, S.A., Paris, France	49 CFR 173.119(a)(25)	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of flammable liquids. (Modes 1, 2, and 3.)
8920-X	DOT-E 8920	Applied Cos., San Fernando, CA	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure nonrefillable cylinders in military weapons systems only, for transportation of nonflammable, liquefied gases. (Modes 1, 2, and 4.)
8921-X	DOT-E 8921	Hoover Group, Inc., Beatrice, NE	49 CFR 173.118a, 173.119, 173.125, 173.266, 176.340, Part 173, Subpart F.	To authorize manufacture, marking and sale of a nonreusable, non-DOT specification polyethylene portable tank enclosed in a steel jacket, wire cage or a fiberboard overpack, for shipment of corrosive liquids, flammable liquids, combustible liquids or an oxidizer. (Modes 1, 2, and 3.)
8931-X	DOT-E 8931	C-I-L, Inc., North York, Ontario, Canada.	49 CFR 173.272, 179.201-1	To authorize removal of restriction for origination and destination points for DOT Specification 111A100W2 tank cars containing sulfuric acid shipped in unit trains configuration. (Mode 2.)
8943-X	DOT-E 8943	BASF Corp., Chemicals Division, Parsippany, NJ.	49 CFR 173.154	To authorize shipment of a polyol filter cake classed as a flammable solid, in a non-DOT specification open top, metal cargo carrying box. (Mode 1.)
8963-X	DOT-E 8963	Atlantic Research Corp., Gainesville, VA.	49 CFR 173.898(e)(2)(ii)	To authorize transport of a rocket motor in a propulsive state, in a DOT Specification 15A wooden box. (Mode 1.)
8970-X	DOT-E 8970	WR Metals Industries, Inc., Wheat Ridge, CO.	49 CFR 173.368	To authorize shipment of arsenical dust, in a non-DOT specification cylindrical steel container. (Modes 1 and 2.)
9001-X	DOT-E 9001	T.I. Chesterfield, Ltd., Derbyshire, England.	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders complying in part with DOT Specification 3T, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, and 4.)
9015-X	DOT-E 9015	Monsanto Co., Saint Louis, MO	49 CFR 173.217	To amend exemption to include any manufacturer's non-DOT specification packaging, to increase the weight limit to 3000 lbs., and to allow shipments in full container loads in stack trains. (Modes 1, 2, and 3.)
9052-X	DOT-E 9052	Chemical Handling Equipment Co., Inc., Toledo, OH.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, Part 173, Subpart F.	To authorize an additional overpack, constructed on steel reinforced polyethylene, with or without bottom outlet. (Modes 1, 2, and 3.)
9061-X	DOT-E 9061	Leonard Joseph Co., & Safesport Manufacturing Co., Denver, CO.	49 CFR 172.504, 173.178	To authorize shipment of a small quantity of a flammable solid labeled Flammable Solid and Dangerous When Wet but without a Flammable Solid W placard on the vehicle. (Modes 1 and 2.)
9066-P	DOT-E 9066	Volkswagen of America, Inc., Troy, MI.	49 CFR 173.154, 175.3	To become a party to exemption 9066. (Modes 1, 2, 3, and 4.)
9101-P	DOT-E 9101	GE Astro Space Div., formerly RCA Astro, Electronic Princeton, NJ.	49 CFR 172.101 Column 6(b), 173.92, 175.30.	To become a party to exemption 9101. (Mode 4.)
9106-X	DOT-E 9106	Kitty Hawk Airways, Inc., DFW INT'L Airport, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9181-P	DOT-E 9181	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.206, 173.21, 173.247	To become a party to exemption 9181 (Mode 1.)
9182-X	DOT-E 9182	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 173.53(g), 175.30	To authorize transport of explosive pest repellant devices, in plastic boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 2, and 4.)
9213-X	DOT-E 9213	Bulk-Pack, Inc., West Monroe, LA	49 CFR 173.178, 173.182, 173.217, 173.245b, 173.375.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of certain hazardous materials. (Modes 1, 2, and 3.)
9222-X	DOT-E 9222	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.154	To authorize use of non-DOT specification metal tanks, for transportation of a flammable solid. (Mode 1.)
9232-X	DOT-E 9232	U.S. Department of Defense, Falls Church, VA.	49 CFR Part 107, Subpart B, Parts 172 and 175.	To authorize renewal and to amend the exemption to provide for alternative air carriers and to reword certain provisions for accuracy. (Modes 4 and 5.)
9235-X	DOT-E 9235	Bennett Industries, Peotone, IL	49 CFR 178.116-.6	To authorize manufacture, marking and sale of non-DOT specification steel drums of 24-gauge thickness and six-gallon capacity, to be used in place of 24 gauge, five-gallon capacity, DOT Specification 17E steel drums, for transportation of various hazardous materials. (Modes 1, 2, and 3.)
9253-X	DOT-E 9253	Wiva Verpakkingen B.V., Oosterhout, Netherlands.	49 CFR 173.119, 173.125, 173.256, 173.262(b), 173.266(a), 173.266(b), Part 173, Subpart F.	To authorize manufacture, marking and sale of DOT Specification 34 drums of 55-gallon capacity, for transportation of certain corroive liquid and an oxidizer. (Modes 1, 2, and 3.)
9256-X	DOT-E 9256	U.S. Department of Energy, Washington, DC.	49 CFR 173.86, 175.30, 46 CFR 146.20-13, Part 107, Appendix B, Subpart B(1).	To ship new explosives under a tentative hazard classification to test facilities without marking them as laboratory samples and without being accompanied by a qualified explosives handler. (Modes 1, 2, 3, and 4.)
9263-X	DOT-E 9263	Liquid Air Corp., Walnut Creek, CA	49 CFR 172.101, 173.316	To authorize transport of a flammable cryogenic liquid, in DOT Specification 4L 200 cylinders. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9270-X	DOT-E 9270	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.264(b)(2), 179.101-1(a).	To authorize shipment of hydrogen flouride, in DOT Specification 112A400W tank cars stenciled DOT Specification 112A200W. (Mode 2.)
9271-P	DOT-E 9271	Florida East Coast Railway Co., St. Augustine, FL.	49 CFR 174.90	To become a party to exemption 9271. (Mode 2.)
9277-X	DOT-E 9277	American Cyanamid Co., Wayne, NJ.	49 CFR 173.377(j)	To authorize shipment of organic phosphate compound mixture, dry. Class B poison, in non-DOT specification five-ply natural kraft multiwall bags of 50 pounds capacity having a minimum total basis weight of 250 pounds. (Modes 1 and 2.)
9277-X	DOT-E 9277	FMC Corp., Philadelphia, PA	49 CFR 173.377(j)	To authorize shipment of organic phosphate compound mixture, dry, Class B poison, in non-DOT specification five-ply natural kraft multiwall bags of 50 pounds capacity having a minimum total basis weight of 250 pounds. (Modes 1 and 2.)
9277-X	DOT-E 9277	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	49 CFR 173.377(j)	To authorize shipment of organic phosphate compound mixture, dry, Class B poison, in non-DOT specification five-ply natural kraft multiwall bags of 50 pounds capacity having a minimum total basis weight of 250 pounds. (Modes 1 and 2.)
9277-X	DOT-E 9277	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 173.377(j)	To authorize shipment of organic phosphate compound mixture, dry, Class B poison, in non-DOT specification five-ply natural kraft multiwall bags of 50 pounds capacity having a minimum total basis weight of 250 pounds. (Modes 1 and 2.)
9282-X	DOT-E 9282	Halocrabon Products Corp., North Augusta, SC.	49 CFR 173.314(c)	To authorize use of DOT Specification 110A800W multi-unit tank car tanks for shipment of trifluoroethylene. (Modes 1, 2, and 3.)
9286-X	DOT-E 9286	Sonoco Fibre Drum Inc., Lombard, IL.	49 CFR 178.224	To authorize manufacture, marking and sale of non-DOT specification fiber drums, similar to DOT Specification 21C except for capacity of not over 75 gallons instead of 55-gallons, for net weight of not over 250 pounds, for transportation of various hazardous materials. (Modes 1, 2, and 3.)
9287-X	DOT-E 9287	Shell Pipe Line Corp., Houston, TX	49 CFR 173.119, 173.304, 173.315	To authorize use of non-DOT specification containers, for transportation of flammable liquids and gases. (Mode 1.)
9290-X	DOT-E 9290	Mauser Packaging, Ltd., Litchfield, CT.	49 CFR 178.134	To authorize manufacture, marking and sale of 15 gallon steel overpacks similar to DOT 3M except for a slight reduction in wall thickness with polyethylene liner meeting DOT 2SL except for marking for shipment of those commodities authorized in DOT 37M/2SL. (Modes 1, 2, and 3.)
9296-X	DOT-E 9296	Honeywell, Inc., Minneapolis, MN	49 CFR 172.500, 173.202	To authorize transport of limited quantities of liquid sodium potassium alloy packaging bearing the DANGEROUS WHEN WET label in motor vehicles and rail cars which are not placarded FLAMMABLE SOLID W. (Modes 1 and 2.)
9307-X	DOT-E 9307	Better Methods, Inc., Paterson, NJ	49 CFR 173.119(b)(4)	To authorize shipment of methyl alcohol in inside metal containers of two-gallon capacity, overpacked three to a DOT Specification 12B fiberboard box. (Mode 1.)
9331-X	DOT-E 9331	Hoechst Celanese Corp., Somerville, NJ.	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions in water, in DOT Specification MC-306 and MC-307 cargo tanks. (Mode 1.)
9331-X	DOT-E 9331	Olin Chemicals, Stamford, CT	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions in water, in DOT Specification MC-306 and MC-307 cargo tanks. (Mode 1.)
9364-X	DOT-E 9364	Platte Chemical Co., Greeley, CO	49 CFR 173.359	To authorize methyl parathion, classed as poison B liquid, as an additional material for shipment in the prescribed packaging. (Mode 1.)
9380-X	DOT-E 9380	ARCO Pipe Line Co., Independence, KS.	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container described as a mechanical displacement meter prover mounted on a truck chassis, for transportation of hydrocarbon products. (Mode 1.)
9386-X	DOT-E 9386	Pacific Scientific, HTL Division, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize an additional material of construction for a non-DOT specification cylinder in which nitrogen, classed as nonflammable gas, is shipped. (Modes 1, 2, 4, and 5.)
9416-X	DOT-E 9416	CIBA-GEIGY Corp., Ardsley, NY	49 CFR 173.359	To authorize shipment via cargo vessel. (Modes 1 and 2.)
9416-P	DOT-E 9416	Platte Chemical Co., Greeley, CO	49 CFR 173.359	To become a party to exemption 9416. (Modes 1 and 2.)
9424-X	DOT-E 9424	VTG Vereinigte Tanklager und Transportmittel GmbH, Hamburg, West Germany.	49 CFR 173.315, 178.245	To authorize use of a non-DOT specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, and 3.)
9481-X	DOT-E 9481	C-I-L, Inc., North York, ON	49 CFR 173.77	To authorize transport of PETN wet with 25% water in plastic bags packed in fiber board boxes instead of metal drums. (Mode 1.)
9501-X	DOT-E 9501	Hughes Aircraft Co., Los Angeles, CA.	49 CFR 173.302, 175.3	To authorize transport of a potassium hydroxide solution and hydrogen gas under pressure to be shipped in a non-DOT specification compressed gas cylinder constructed of Inconel. (Modes 1, 3, and 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9508-X	DOT-E 9508	Callery Chemical Co., Pittsburgh, PA.	49 CFR 173.202(a)(3), 173.34(e), 175.3.	To authorize use of a DOT Specification 4BW240 cylinder that is retested decennially instead of quinquenially, for transportation of a flammable solid, that is dangerous when wet. (Modes 1, 2, 3, and 4.)
9517-X	DOT-E 9517	Conroe Aviation Service, Inc., Conroe, TX.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for air shipment or in quantities greater than those prescribed for shipment by air. (Mode 4.)
9551-X	DOT-E 9551	Connie Kalitta Services, Inc., Ypsilanti, MI.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of Class A, B and C explosives that are not permitted for air shipment or in quantities greater than those prescribed for shipment by air. (Mode 4.)
9566-X	DOT-E 9566	United Technologies Corp., San Jose, CA.	49 CFR 173.88, 173.92, 177.834(L)(1).	To authorize transport in temperature controlled equipment, of a rocket motor in packaging authorized by DOD, and in a propulsive state. (Mode 1.)
9569-X	DOT-E 9569	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids in an unlined tin can overpacked in a 29-gauge non-DOT removable lug cover, unlined steel pail of three and one-half gallon capacity, also containing a non-hazardous resin mix. (Modes 1, 2, 3, and 4.)
9581-X	DOT-E 9581	RAMP Industries, Inc., Denver, CO	49 CFR 173.416(e)	To authorize transport of solid radioactive material in concrete filled DOT Specification 17C or DOT Specification 17H steel drum with the DOT Specification 2R or DOT Specification 55 on its geometric center must fit snuggly in the cavity of the DOT-20WC wooden protection jacket. (Mode 1.)
9595-X	DOT-E9595	IRECO, Inc., Salt Lake City, UT	49 CFR 173.64, 173.86	To authorize transport of certain unapproved Class A explosives for disposal in packagings not presently authorized for Class A explosives, in metal or fiber drums not exceeding 55-gallon capacity with liners consisting of two polyethylene leak-proof bags. (Mode 1.)
9606-P	DOT-E 9606	Austin Powder Co., Cleveland, OH	49 CFR 173.66(b)	To become a party to exemption 9606. (Modes 1 and 3.)
9609-X	DOT-E 9609	Applied Co., San Fernando, CA	49 CFR 173.302(a), 175.3, 178.65	To authorize manufacture, marking and sale of welded non-DOT specification non-reusable, non-refillable steel toroidal pressure vessel for a military system. (Modes 1, 2, and 4.)
9610-X	DOT-E 9610	Honeywell, Inc., New Brighton, MN	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), Part 107, Appendix B, Parts 171-189.	To authorize transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (Modes 1 and 2.)
9611-X	DOT-E 9611	Buco Budenbender GmbH & Co., Niederndorf, West Germany.	49 CFR 171.12(c), 178.116(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness (19 gauge), to be used in place of 20/18 gauge, 55-gallon capacity DOT-17E drums. (Modes 1, 2, and 3.)
9616-X	DOT-E 9616	James Russell Engineering Works, Inc., Boston (Dorchester), MA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To authorize manufacture, marking and sale of non-DOT specification portable tanks, designed and constructed in accordance with Section VIII of the ASME Code, for transportation of nonflammable refrigerated (cryogenic) liquid. (Modes 1 and 3.)
9617-X	DOT-E 9617	Explosives Technologies International, Inc., Wilmington, DE.	49 CFR 177.848(f), Part 107, Appendix B(1).	To authorize transport of a specially defined detonating cord on the same motor vehicle with Class A and C detonators. (Mode 1.)
9623-X	DOT-E 9623	Austin Powder Co., Cleveland, OH	49 CFR 177.835(c)(3)	To authorize transport of blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9623-X	DOT-E 9623	Atlas Powder Co., Dallas, TX	49 CFR 177.835(c)(3)	To authorize transport of blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9623-X	DOT-E 9623	ETI Explosives Technologies International Inc., Wilmington, DE.	49 CFR 177.835(c)(3)	To authorize transport of blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9623-X	DOT-E 9623	Buckely Powder Co., Englewood, Co.	49 CFR 177.835(c)(3)	To authorize transport of blasting agent or an oxidizer in a DOT Specification MC-306 or MC-307 cargo tank with a storage box containing Class A explosives mounted directly behind the tractor cab. (Mode 1.)
9628-X	DOT-E 9628	Degussa Corp., Ridgefield Park, NJ	49 CFR 173.245(b)	To authorize use of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of 1,000 kilos (approximately 2200 pounds) each, and top and botton outlets, for shipment of a corrosive solid. (Mode 1, 2, and 3.)
9629-X	DOT-E 9629	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.304(b)	To authorize transport of vinylidene fluoride in DOT Specification cylinders at filling densities which will result in the cylinders being liquid full below 130 degrees Fahrenheit. (Mode 1.)
9632-X	DOT-E 9632	Arbel-Fauvet-Rail, Douai, Cedex, France.	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9634-X	DOT-E 9634	Luxfer U.S.A. Ltd., Riverside, CA	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3.	To authorize manufacture, marking and sale of non-DOT specifications fiber reinforced plastic, full composite cylinders, for shipment of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, and 4.)
9642-X	DOT-E 9642	Allied-Signal Inc., Morristown, NJ	49 CFR 173.245(a)	To authorize use of DOT Specification 106A500X and 110A500W multi-unit tank car tanks for a liquid mixture that is corresive to skin only and poisonous. (Modes 1, and 2.)
9643-X	DOT-E 9643	Eastman Kodak Co., Rochester, NY.	49 CFR 172.300, 172.400, 177.848, Part 178.	To authorize transport of certain hazardous materials over 0.8 miles of public highway exempted from DOT requirements for package marking, labeling, specification packaging and segregation. (Mode 1.)
9646-X	DOT-E 9646	U.S. Department of Defense, Falls Church, VA.	49 CFR 174.81	To authorize transport by rail of freight shipping containers loaded with combinations of packages of Class A, B and C explosive and a corrosive liquid, not authorized in 49 CFR 174.81. (Mode 2.)
9649-X	DOT-E 9649	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.421(b), 173.421(d), 173.424(b), 173.424(c).	To authorize radiation levels slightly higher than normally allowed for limited quantity radioactive materials and relief from certain marking requirements for the depleted uranium component of the packages. (Modes 1, 2, and 3.)
9655-X	DOT-E 9655	Chevron U.S.A., Inc., El Segundo, CA.	49 CFR 173.245b	To authorize use of a 3,930 gallon capacity, non-DOT specification steel portable bin, for transportation of a corrosive solid. (Mode 1.)
9659-X	DOT-E 9659	Compositek Corp., Brea, CA	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3, 177.812.	To authorize mixtures of nonflammable gases, all of which are presently authorized, as additional materials. (Modes 1, 2, 3, 4, and 5.)
9659-X	DOT-E 9659	Compositek Corp., Brea, CA	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3, 177.812.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinder, for transportation of certain flammable and nonflamamable compressed gases. (Modes 1, 2, 3, 4, and 5.)
9659-X	DOT-E 9659	Compositek Corp., Brea, CA	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3, 177.812.	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinder, for transportation of certain flammable and nonflamamable compressed gases. (Modes 1, 2, 3, 4, and 5.)
9686-X	DOT-E 9686	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35a, Part 173, Subpart F.	To authorize shipment of nitric acid (71% concentration or less), classed as an oxidizer in the non-DOT specification composite polyethylene and plastic, portable tank. (Modes 1 and 2.)
9688-P	DOT-E 9688	Whittaker-Yardney Power Systems, Waltham, MA.	49 CFR 173.247	To become a party to exemption 9688 (Mode 1.)
9694-X	DOT-E 9694	All Pure Chemical Co., Inc., Tracy, CA.	49 CFR 173.315(i)(13), 173.33(f)(9), 173.33(h)(5)(i).	To authorize an alternative value assembly for the exempted cargo tank. (Mode 1.)
9696-X	DOT-E 9696	Fluoroware, Inc., Chaska, MN	49 CFR 173.119, 173.268, 173.299, 178.19, 178.35, 178.35a, Part 173, Subpart F.	To authorize shipment of nitric acid (71% concentration or less), classed as an oxidizer in the non-DOT specification composite polyethylene and plastic, portable tanks. (Modes 1 and 2.)
9750-P	DOT-E 9750	Austin Powder Co., Cleveland, OH	49 CFR 173.154(a)(18)	To become a party to exemption 9750. (Mode 1.)
9763-X	DOT-E 9763	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.247, 173.302(a), 173.328(a).	To authorize cargo vessel as an additional mode of transportation. (Mode 1.)
9768-X	DOT-E 9768	Defense Technology and Procurement Agency, Berne, Switzerland.	49 CFR 172.101, 173.57, 173.79, 173.93, 175.3.	To authorize two additional shipments of certain Class A and Class B explosives and an additional air carrier for these shipments. (Mode 4.)
9769-P	DOT-E 9769	Rollins Chempak, Inc., Wilmington, DE.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1 and 3.)
9780-X	DOT-E 9780	Majestic Lubricating Co., Tulsa, OK	49 CFR 173.119(a)(27)	To authorize shipment of four additional materials classed as flammable liquid in the approved packaging. (Mode 1.)
9785-P	DOT-E 9785	Nedlloyd Lines, Atlanta, GA	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9785-P	DOT-E 9785	Zim-American Israeli Shipping Company, Inc., New York, NY.	49 CFR 173.30, 176.11, 176.83	To become a party to exemption 9785. (Modes 1, 2, and 3.)
9816-X	DOT-E 9816	Amrex Chemical Co., Inc., Binghamton, NY.	49 CFR 173.277(a)(9)	To authorize shipment of hypochlorite solutions, more than 7 percent available chlorine by weight, in non-DOT specification cargo tanks. (Mode 1.)
9816-X	DOT-E 9816	Amrex Chemical Co., Inc., Binghamton, NY.	49 CFR 173.277(a)(9)	To authorize shipment of hypochlorite solutions, more than 7 percent available chlorine by weight, in non-DOT specification cargo tanks. (Mode 1.)
9851-X	DOT-E 9851	Trans World Airlines, Inc., Kansas City, MO.	49 CFR Parts 100-199	To modify packaging configurations. (Mode 5.)
9878-X	DOT-E 9878	Tennessee Eastman Co., Kingsport, TN.	49 CFR 173.365(a)(2)	To authorize shipment of a solid waste, classed as a Class B poison, contained in 55-gallon capacity, DOT specification 17C drums. (Mode 1.)
9951-X	DOT-E 9951	General Defense Corp. York, PA	49 CFR 173.56(b), 173.56(c)(1), 173.86(b).	To authorize shipment of explosive projectiles, Class A explosives in specially designed military packaging. (Modes 1 and 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9956-X	DOT-E 9956	Dixie Petro-Chem, Inc., Houston, TX.	49 CFR 173.277(a)(9), 178.340, 178.343.	To authorize shipment of hypochlorite solution in an unlined non-DOT specification cargo tank constructed of titanium. (Mode 1.)
9961-X	DOT-E 9961	Brown Measurement Co., Inc., Kilgore, TX.	49 CFR 173.119, 173.304, 173.315	To reissue an exemption, originally issued on an emergency basis, that authorizes manufacture, mark and sell of non-DOT containers identified as meter provers to ship hydrocarbon products. (Mode 1.)
9977-X	DOT-E 9977	Hercules Aerospace Co., Magna, UT.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To authorize transport of rocket motors in a propulsive state, with igniters installed. (Mode 1.)
9977-P	DOT-E 9977	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	49 CFR 173.88(e)(2)(ii), 173.92(a)(i), 173.92(b).	To become a party to exemption 9977. (Mode 1.)

NEW EXEMPTIONS

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemptions thereof
9793-N	DOT-E 9793	Pressure Vessels of Puerto Rico Inc., San Juan, PR.	49 CFR 173.34(1), Subparagraphs 1, 2, 3, Part 107, Appendix B.	To authorize rebuilding and selling of DOT Specification 4BW cylinders in accordance with the procedures prescribed within the exemption. (Modes 1, 2, 3, 4, and 5.)
9819-N	DOT-E 9819	Halliburton Co., Duncan, OK	49 CFR 173.119, 178.253, Part 173, Subpart F.	To authorize shipment of flammable liquids and corrosive liquids in non-DOT specification stainless steel portable tanks. (Mode 1.)
9830-N	DOT-E 9830	Worthington Cylinders, Columbus, OH.	49 CFR 173.302(a), 173.304(a), 173.304(d), 175.3, 178.51-10(a), 178.51-11, 178.51-19, 178.51-20, 178.51-5.	To authorize manufacture, mark and sale of non-DOT specification stainless steel cylinders to transport those materials authorized in DOT Specification 4BA cylinders. (Modes 1, 2, 3, and 4.)
9884-N	DOT-E 9884	Puritan-Bennett Corp., Indianapolis, IN.	49 CFR 173.316, 175.3, 178.57-2, 178.57-8.	To authorize manufacture, marking and sale of a non-DOT specification insulated cylinder conforming with DOT 4L specification, for transportation of cryogenic liquids. (Modes 1 and 5.)
9887-N	DOT-E 9887	Offshore Marine Engineering Ltd., West Midlands, England.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(H), 177.840, 178.338 add.	To authorize manufacture, marking and sale of insulated, non-specification portable tanks, for shipment of refrigerated helium and refrigerated hydrogen. (Modes 1, 2, and 3.)
9920-N	DOT-E 9920	Tri-Wall Inc., Shrewsbury, NJ	49 CFR 173.245b, 173.365	To authorize manufacture, marking and sale of nonreusable, fiberboard bulk boxes made of triple-wall corrugated fiberboard having an inside lining of 0.006-inch minimum thickness polyethylene film, for shipment of waste corrosive solids or poison B solids. (Mode 1.)
9929-N	DOT-E 9929	Morton Thiokol, Inc.—Elkton Division, Elkton, MD.	49 CFR 172.101, 173.92	To authorize transport of rocket motors in packaging that exceeds the weight prescribed in the Department's Hazardous Materials Regulations. (Modes 1 and 4.)
9933-N	DOT-E 9933	Mobay Corp., Pittsburgh, PA	49 CFR 173.245	To authorize shipment of corrosive, poisonous liquid in non-DOT specification plastic-coated glass carboy enclosed in an expanded polystyrene overpack. (Mode 1.)
9934-N	DOT-E 9934	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.274, 175.3	To authorize shipment of corrosive liquids in non-DOT specification teflon bottles packed in non-DOT specification fiberboard boxes. (Modes 1 and 4.)
9938-N	DOT-E 9938	Explosive Technology, Fairfield, CA	49 CFR 173.65(a)(4)	To authorize transport of Class A explosives in a DOT Specification 15A wooden box exceeding the weight limitation of 140 pounds prescribed in 49 CFR 173.65(a)(4). (Mode 1.)
9939-N	DOT-E 9939	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101, table column (6)(b), 173.92.	To authorize transport of a rocket motor in packaging not authorized in 49 CFR 173.92, and authorizes a gross weight in excess of 550 pounds by cargo-only aircraft. (Modes 1 and 4.)
9947-N	DOT-E 9947	Sonoco Products Co., Hartsville, SC.	49 CFR 173.132	To authorize use of a plastic packaging in place of a fiberboard packaging authorized in 49 CFR 173.132(b), for transportation of adhesives and cements. (Modes 1 and 2.)
9948-N	DOT-E 9948	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.123, 173.31(d)	To authorize one-time shipment of ethyl chloride, in ICC-106450 Specification multi-unit tank car tanks, for removal of contents, testing and reconditioning or scrapping. (Mode 1.)
9949-N	DOT-E 9949	Olin Rocket Research Co., Redmond, WA.	49 CFR 173.87	To authorize transport of two types of Class C explosives in the same outside packaging with other nonhazardous materials. (Mode 1.)
9951-N	DOT-E 9951	General Defense Corp., York, PA	49 CFR 173.56(b), 173.56(c)(1), 173.86(b).	To authorize shipment of Explosive projectile, Class A explosive, in a specially designed package (pallet top, skidded bottom configuration). (Modes 1 and 2.)

NEW EXEMPTIONS—Continued

Application no.	Exemption no.	Applicant	Regulation(s) affected	Nature of exemptions thereof
9953-N	DOT-E 9953	North Star Transport, Inc., Eagan, MN.	49 CFR 177.834(L)(2)(i)	To authorize shipment of flammable liquids and/or flammable gases in temperature controlled equipment. (Mode 1.)
9968-N	DOT-E 9968	Moli Energy, Ltd., Burnaby, BC, Canada.	49 CFR 173.206, 175.3, 175.85, Part 107, Appendix B.	To authorize transport of a limited number of certain lithium batteries on passenger-carrying aircraft. (Modes 1, 2, 3, and 4.)
9973-N	DOT-E 9973	Morton Thiokol, Inc.—Ordnance Operations, Shreveport, LA.	49 CFR 173.56	To authorize transport of Explosive projectile with fuzes assembled in a non-DOT specification fiberboard tube. (Mode 1.)
9976-N	DOT-E 9976	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.304(a)(2), 175.3	To authorize shipment of anhydrous ammonia in nonrefillable non-DOT specification containers described as variable conductance heat pipes. (Modes 1 and 4.)
9983-N	DOT-E 9983	Explosive Technology, Fairfield, CA	49 CFR 173.65(a)(4)	To authorize shipment of a High Explosive in a DOT Specification 15A wooden box with a maximum gross weight of 400 pounds. (Mode 1.)
9993-N	DOT-E 9993	Goex, Inc., Cleburne, TX	49 CFR 172.101, 175.30	To authorize transport of a fire extinguisher device containing 20 grams of a Class C explosive. (Modes 1, 2, 4, and 5.)
9997-N	DOT-E 9997	Hodgdon Powder Co., Inc., Shawnee Mission, KS.	49 CFR 173.107, 173.87	To authorize transport of a kit containing smokeless powder for small arms, percussion caps and nonhazardous articles such as lead balls and bore cleaner, packed in non-DOT specification corrugated fiberboard boxes. (Modes 1 and 3.)
8366-N	DOT-E 10016	Ecolab Inc., Eagan, MN	49 CFR 178.19, Part 173, Subparts D, F.	To authorize shipment of liquid hazardous materials in a removable head polyethylene drum of five gallon capacity, without overpack. (Modes 1, 2 and 3.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 6418-X	DOT-E 6418	Farmer's Supply Co-operative, Inc., Ontario, OR.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 6418-X	DOT-E 6418	The McGregor Co., Colfax, WA	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 6418-X	DOT-E 6418	Nexus Ag Chemicals, Inc., Quincy, WA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 6418-X	DOT-E 6418	Quincy Farm Chemicals, Inc., Quincy, WA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 6418-X	DOT-E 6418	Cenex Land O Lake, Vancouver, WA.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310 or MC-312 steel cargo tanks for transportation of Class B poisonous liquids. (Mode 1.)
EE 6874-X	DOT-E 6874	Mitsui & Co. (U.S.A.), Inc., New York, NY.	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, and 3.)
EE 7052-P	DOT-E 7052	Hitachi-Maxell, Ltd., Tokyo, Japan	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
EE 7052-X	DOT-E 7052	Maxell Corp. of America, Fair Lawn, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as flammable solid. (Modes 1, 2, 3, and 4.)
EE 7991-X	DOT-E 7991	Burlington Northern Railroad Co., Fort Worth, TX.	49 CFR Parts 100-177	To authorize transport of railway track torpedoes and fusees in flagging kits of specified construction. (Mode 1.)
EE 8009-X	DOT-E 8009	Pressure Transport, Inc., Austin, TX.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
EE 8009-X	DOT-E 8009	....do	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1.)
EE 8453-X	DOT-E 8453	Columbus Powder Co., Columbus, IN.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Modes 1 and 3.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8518–P	DOT–E 8518	Coast Vacuum Truck Service, Inc., Santa Maria, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
EE 8582–X	DOT–E 8582	Atchison, Topeka & Santa Fe Railway Co., Chicago, IL.	49 CFR Parts 100–177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
EE 8885–X	DOT–E 8885	Coppe Industries, Inc., Manomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethylene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (Modes 1, 2, 3, and 4.)
EE 8898–X	DOT–E 8898	Petrolane Gas Service, Anchorage, AL.	49 CFR 173.315	To authorize use of a non-DOT specification ASME Code stamped portable tank, for transportation of liquefied compressed gases. (Modes 1 and 3.)
EE 8898–X	DOT–E 8898	Petrolane Gas Service, Limited Partnership, Anchorage, AL.	49 CFR 173.315	To authorize use of a non-DOT specification ASME Code stamped portable tank, for transportation of liquefied compressed gases. (Modes 1 and 3.)
EE 8898–X	DOT–E 8898	....do....	49 CFR 173.315	To authorize use of a non-DOT specification ASME Code stamped portable tank, for transportation of liquefied compressed gases. (Modes 1 and 3.)
EE 9226–X	DOT–E 9226	Southern California Chemical Co., Inc., Santa Fe Springs, CA.	49 CFR 173.245, 173.263, 178.340, 178.343.	To authorize transport of solution of aqua ammonia, copper sulfate, cupric chloride, ferric chloride and hydrochloric acid, in non-DOT specification cargo tanks. (Mode 1.)
EE 9331–X	DOT–E 9331	Rio Linda Chemical Co., Sacramento, CA.	49 CFR 173.263(a)(10)	To authorize shipment of sodium chlorite solutions in water, in DOT Specification MC–306 and MC–307 cargo tanks. (Mode 1.)
EE 9699–N	DOT–E 9699	Williams International, Walled Lake, MI.	49 CFR 173.102, 173.82, 175.3	To authorize transport of an empty turbine engine with four Class C explosive devices attached to it in a non-DOT specification packaging. (Modes 1 and 4.)
EE 9967–N	DOT–E 9967	Korean Air Lines Co., Ltd., Los Angeles, CA.	49 CFR 172.101 table, column (6)(b), 173.30.	To authorize shipment of certain explosives which are forbidden for transportation by air or are in quantities greater than prescribed for air transportation. (Mode 4.)
EE 10011–N	DOT–E 10011	The U.S. Customs Service, Baltimore, MD.	49 CFR 173.51(b), 173.86(b)	To authorize a one-time shipment of unclassified explosives by motor vehicles. (Mode 1.)
EE 10012–N	DOT–E 10012	BP Chemicals International, Cleveland, OH.	49 CFR 173.314(f)	To authorize a one-time shipment of propylene, during the summer months, in DOT Specification 112J400W tank car tanks which were originally loaded using the winter filling density. (Mode 2.)
EE 10013–N	DOT–E 10013	Public Service Co. of Colorado, Denver, CO.	49 CFR 173.273	To authorize a one-time shipment of Waste sulfur trioxide in an 85-gallon metal salvage drum. (Model 1.)
EE 10014–N	DOT–E 10014	Dow Chemical Co., Plaquemine, LA.	49 CFR 173.29(c)(2), 179.100–15, 179.102–2.	To authorize a one-time shipment of a tank car which contains a residue of chlorine with a defective safety valve equipped with a chlorine "C" kit. (Mode 2.)
EE 10033–N	DOT–E 10033	Epichem, Inc., Bethlehem, PA	49 CFR 173.134	To authorize shipment of two non-DOT specification stainless steel cylinders containing a flammable liquid overpacked in DOT Specification 17C drums. (Mode 1.)
EE 10053–N	DOT–E 10053	LCP Chemical Corp., Edison, NJ	49 CFR 173.31(b), 173.31(c)	To authorize a one-time shipment of chlorine in a DOT Specification 105A500W tank car tanks over due for tank and safety valve retest. (Mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9153–X	The Dow Chemical Co., Freeport, TX.	49 CFR 172.101, 173.93(a)(10).	To reclassify and ship a certain Class A propellant explosive as Class B explosive when packaged in specific non-DOT specification fiber drums. (Mode 1.)
9726–N	Abbott Laboratories, North Chicago, IL.	49 CFR 173.388	To authorize an alternative label other than as prescribed in 49 CFR for products containing hepatitis antigen, an etiologic agent. (Modes 1,4.)

Denials

9128–N Request by Sky Cab, Inc. East Brunswick, NJ to authorize the carrier to perform the radiation measurements for transport index designation of overpack, rather than the person initially offering the packages contained therein denied July 13, 1988.

9787–N Request by Rheem Manufacturing Company Linden, NJ to authorize the manufacture of a polyethylene open head drum for the shipment of black powder and low explosives denied July 11, 1988.

9826–N Request by Composite Container Corporation—Kentucky Louisville, KY to authorize the manufacture of polyethylene drums for shipment of black powder and certain other Class A and B explosives denied July 11, 1988.

9887–N Request by Offshore Marine Engineering Limited West Midlands, England to authorize manufacture, mark and sell insulated, nonspecification portable tanks, for shipment of refrigerated hellum and refrigerated hydrogen denied September 8, 1988.

9966–N Request by Olin Corporation—Defense Systems Group East Alton, IL to authorize certain military cartridges as small ammunition, Class C explosives denied September 8, 1988.

Issued in Washington, DC on January 3, 1989.

J. Suzanne Hedgepeth,

Chief Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–743 Filed 1–11–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series No. 1–89]

Treasury Notes of January 15, 1996, Series E–1996;

January 5, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of January 15, 1996, Series E–1996 (CUSIP No. 912827 XB 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 17, 1989, and will accrue interest from that date, payable on a semiannual basis on July 15, 1989, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, January 11, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 10, 1989, and received no later than Tuesday, January 17, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the

Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in § 3.5. must be made or completed on or before Tuesday, January 17, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, January 12, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 17, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3 The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-823 Filed 1-10-89; 10:55 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Workshop for Regional Interview Committee Chairpersons of the Fulbright Teacher Exchange Program

The United States Information Agency is interested in securing the services of a private non-profit educational organization to coordinate and implement a two and one-half day conference in September of 1989 for the chairpersons of the Fulbright Teacher Exchange Program's 69 Regional Interview Committees. Such organizations must be located in the Washington, DC metropolitan area. Interested organizations should contact USIA by January [1], 1989 for application information. Please contact Ava Smith at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 484-2556.

Guy Story Brown,

Director, Office of Adodemic Programs.

Date: January 3, 1989.

[FR Doc. 89-726 Filed 1-11-89; 8:45 am]

BILLING CODE 8230-01-M

[1] Due date will be 10 working days from the date this notice is published.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 8
Thursday, January 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 52915, Thursday, December 29, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, January 9, 1989.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: January 9, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This notice issued Janury 9, 1989.

[FR Doc. 89-816 Filed 1-10-89; 11:07 am]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

[Federal Register Number 89-245]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 12, 1989, 10:00 a.m.

By direction of the Federal Election Commission, the Open Meeting scheduled for January 12, 1989 is cancelled

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-826 Filed 1-10-89; 11:06 am]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 5, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 12, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mid-Continent Resources, Inc.*, Docket No. WEST 85-19. (Issues include whether the judge properly vacated a section 104(b) withdrawal order.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-868 Filed 1-10-89; 3:43 pm]

BILLING CODE 6735-01-M

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m. on Friday, January 20, 1989, and continue until 1:00 p.m.

PLACE: The Embassy Suites Raleigh Hotel, 4700 Creedmoor Road, Renaissance Room, Raleigh, North Carolina 27617.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   December 17-18, 1987
   January 28-29, 1988
   November 18, 1988
3. Consideration of Proposed Revisions to Part 1609, Fee Generating Cases

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: January 10, 1989.

Maureen R. Bozell,

Secretary.

[FR Doc. 89-850 Filed 1-10-89; 3:24 pm]

BILLING CODE 7050-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Thursday, January 12, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 522b (c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED:

(1) Personnel matters
(2) Selection of Regional Directors for Region 1—Boston, Massachusetts and Region 13—Chicago, Illinois
(3) Internal Casehandling Procedures

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, January 9, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-867 Filed 1-10-89; 3:38 pm]

BILLING CODE 7545-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 2:30 p.m.—Wednesday, January 18, 1989.

PLACE: National Credit Union Administration, 1776 G Street, NW., Sixth Floor Board Meeting Room, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary, 376-2400.

AGENDA:

1. Approval of Officers' Salaries; and
2. Recommendation to the Board of Directors on Officers' Merit Awards.

Carol J. McCabe,

Secretary.

[FR Doc. 89-827 Filed 1-10-89; 11:09 am]

BILLING CODE 7570-02-M

Corrections

Federal Register
Vol. 54, No. 8
Thursday, January 12, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing

Correction

In rule document 88-14219 beginning on page 24224 in the issue of Monday, June 27, 1988, make the following corrections:

970.5204-22 [Corrected]

1. On page 24232, in the first column, in section 970.5204-22(f), in the fourth line, "purchase" should read "purchases".

2. On the same page, in the second column, in the table of contents, in the entry for section 970.7104-31, in the second line, "subcontractor's" should read "subcontractors'".

3. On the same page, in the same column, in the table of contents, in the entry for section 970.7104-37, in the second line, "sources" should read "resources".

970.7101 [Corrected]

4. On the same page, in the third column, in section 970.7101(c), in the first line, "Completion" should read "Competition".

970.7103 [Corrected]

5. On page 24233, in the 1st column, in section 970.7103, in the 1st paragraph, in the 11th line, "system" should read "systems".

6. On the same page, in the third column, in section 970.7103(c)(3)(vii), in the seventh line, "costs" should read "cost".

970.7104-30 [Corrected]

7. On page 24238, in the first column, the section heading for section 970.7104-30 should read as it appears above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-09-4212-12: WYW1144131]

Realty Action; Exchange; Wyoming

Correction

In notice document 88-30064 appearing on page 53076 in the issue of Friday, December 30, 1988, make the following correction:

In the second column, under "T. 47., R. 60 W.," the first line should read "Sec. 9, NE¼, E½NW¼;".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 9 and 73

Reorganization of Functions Within the Office of Administration and Resources Management and Minor Corrective Amendments

Correction

In rule document 88-29763 beginning on page 52993 in the issue of Friday, December 30, 1988, make the following correction:

On page 52993, in the first column, the **EFFECTIVE DATE** should read "December 30, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 121, and 135

[Docket No. 25148; Amdt. Nos. 61-81, 63-25, 65-32, 121-201 and 135-26]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

Correction

In rule document 88-26609 beginning on page 47024 in the issue of Monday, November 21, 1988, make the following corrections:

1. On page 47026, in the 1st column, in the 1st complete paragraph, in the 13th line, "DHHA" should read "DHHS".

2. On the same page, in the 3rd column, in the 19th line from the bottom, "casual" should read "causal".

3. On page 47027, in the 2nd column, in the 1st complete paragraph, in the 12th line, "Primary" should read "primary".

4. On page 47028, in the first column, in the seventh line from the bottom, insert an open bracket after "seizure".

5. On the same page, in the 3rd column, in the 16th line from the bottom, "45" should read "445".

6. On page 47029, in the first column, in the second paragraph of quoted material, in the ninth line, "risk" should read "risks".

7. On the same page, in the 2nd column, in the 1st complete paragraph, in the 15th line, "*Executive*" should read "*Executives*".

8. On page 47034, in the first column, in the first complete paragraph, in the second to the last line, the second "ineffective" should read "inefficient".

9. On page 47036, in the 1st column, in the last paragraph, in the 15th line, "has" should read "have".

10. On the same page, in the third column, in the third complete paragraph, in the sixth line, "NSTB" should read "NTSB".

11. On page 47038, in the 3rd column, in the 1st complete paragraph, in the 2nd line, "require" should read "required" and in the 17th line, "than" should read "that".

12. On page 47039, in the 2nd column, in the last paragraph, in the 12th line, before "should" insert "for rehabilitation and subsequent reemployment".

13. On page 47040, in the 1st column, in the last paragraph, in the 20th line, "sensitive" was misspelled.

14. On page 47041, in the second column, in the second complete paragraph, in the second line, "be" should read "the".

15. On page 47042, in the first column, in the last paragraph, in the sixth line, "freelance" was misspelled.

16. On the same page, in the 2nd column, in the first complete paragraph, in the 17th, 18th and 19th lines, remove "listed by this final rule and those entities or individuals,".

17. On page 47044, in the second column, in the first complete paragraph, in the ninth line, "issue" should read "issued".

18. On the same page, in the third column, in the first complete paragraph, in the first line, "this" should read "his".

19. On page 47046, in the second column, in the last paragraph, in the fourth line from the bottom, "continually" was misspelled.

20. On page 47047, in the second column, in the first complete paragraph, in the ninth line, "submit" was misspelled.

21. On page 47048, in the 3rd column, in the second complete paragraph, in the 11th line, "NPRW" should read "NPRM".

22. On page 47053, in the 2nd column, in the 1st complete paragraph, in the 17th line, "cost" should read "costs".

§ 65.23 [Corrected]

23. On page 47056, in the third column, in § 65.23(b)(1), in the fourth line, "date that" should read "date of".

Appendix to Part 121—[Corrected]

24. On page 47059, in the second column, in Appendix I, in designated paragraph 2, in the sixth line, "is" should read "if".

25. On page 47060, in the second column, in Appendix I, in designated paragraph 5, in the last two lines, "the effective date of the rule" should read "December 21, 1988".

BILLING CODE 1505-01-D

federal register

Thursday
January 12, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 25

Airplane Cabin Fire Protection; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. 25774; Notice No. 89-1]

RIN 2120-AB22

Airplane Cabin Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes amendments of the Federal Aviation Regulations (FAR) which would provide for improved cabin fire protection for transport category airplanes by requiring: (1) Each lavatory to be equipped with a smoke detector system which provides warning to the cockpit or to the passenger cabin crew; (2) each lavatory trash receptacle to be equipped with a fire extinguisher which discharges automatically upon the occurrence of a fire within the receptacle; (3) the number of hand fire extinguishers in the cabins of airplanes with passenger seating capacities greater than 200 to be increased; and (4) a specified number of the hand fire extinguishers in the cabin to contain Halon 1211 or equivalent as the extinguishing agent. These safety protections are currently required for operation of airplanes used in air carrier service, but not for the full range of transport category airplanes such as those used for executive transportation. This notice also proposes to require each transport category airplane manufactured after a specified date to incorporate these improvements. These proposals are needed to respond to investigations of inflight fires and an inspection survey of the U.S. air carrier fleet, and are needed to increase protection against possible inflight fires.

DATES: Comments must be received on or before July 10, 1989.

ADDRESSES: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked: Docket No. 25774. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM-114), Transport Standards Staff, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; Telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in triplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received.

All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25774." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This notice is the latest in a series of FAA actions to enhance cabin fire safety in transport category airplanes. Following an inflight fire which originated in a lavatory area, the FAA issued four Airworthiness Directives (AD) to require specific improvements in cabin fire protection. Airworthiness Directive 74-08-09 (39 FR 12998; April 10, 1974), applicable to all transport category airplanes, requires 1,000 hour periodic inspections and repairs, as necessary, of all lavatory trash receptacles to ensure fire containment capability. It also requires preflight briefings informing passengers not to smoke in lavatories, and the installation of ashtrays near lavatory entrances and no-smoking signs on each side of the lavatory doors. Subsequent to issuance of the AD, § 25.853 of the FAR was amended to incorporate these requirements for ashtrays and no-smoking signs. Section 121.571 of the FAR was adopted to require that passengers be given briefings regarding smoking. Three additional AD's, 74-21-03 (39 FR 36466; October 10, 1974), 75-02-04 and 75-02-05 (39 FR 13555; January 24, 1975), were issued for specific airplane models, requiring inspection and repair of lavatory electrical components and modification of lavatory trash receptacles to ensure fire containment. Together, the AD actions were intended to eliminate likely ignition sources, end smoking in lavatories, and provide fire-safe trash receptacles in the event that fire occurs in a receptacle despite these precautions.

In addition to these AD actions, an FAA-contracted study was conducted to consider the feasibility of a total cabin integrated fire management system. This study included analysis of fire-related accident and incident data taken over a 10-year period, a survey of available technology, and analysis of fire detection, monitoring and extinguishing options for all areas of a typical wide-body passenger cabin. The results of this study are contained in DOT Report No. FAA-RD-76-54, Feasibility and Tradeoffs of a Transport Fuselage Fire Management System, dated June 1976, available from the National Technical Information Service (NTIS), Springfield, Virginia 22151. While the study did provide useful data concerning fire protection, features of the integrated system, such as fire detectors, were not adopted at the time because the AD actions were considered to have provided adequate fire protection.

Subsequent to the AD actions, there were two cabin fires which indicated that additional measures were needed to enhance protection against such fires. One of the fires occurred in flight near Cincinnati, Ohio, on June 2, 1983, and resulted in 23 fatalities. The other occurred on the ground at Tampa International Airport in Florida on June 25, 1983, and resulted in evacuation of the airplane with no injuries or loss of life. Following the fires, the FAA conducted an inspection survey of the fire containment capabilities of lavatory trash receptacles in the U.S. air carrier fleet. The survey was conducted to determine the effectiveness of previous FAA actions to correct deficiencies in fire protection and to determine whether or not those corrective actions provide adequate fire safety. The survey revealed that the fire containment capabilities of trash receptacles were compromised by the wear and tear typical of service. Considering the seriousness of inflight cabin fires, an expanded approach to fire protection was considered necessary.

In regard to extinguishment of inflight cabin fires, § 25.851 currently specifies that one conveniently located hand fire extinguisher must be provided for each airplane with a passenger capacity of 7 through 30; two must be provided for each airplane with a passenger capacity of 31 through 60; and three are required for each airplane with a passenger capacity of 61 or more. These standards were adopted in 1958 when the largest airplanes in service had passenger capacities of less than 100, and those under development were not expected to exceed 200 passengers. Since that time, the size of commercial transport airplanes has increased dramatically. For example, certain versions of the Boeing 747 have been certificated under Part 25 for a maximum of 660 passengers. Service experience has shown that three extinguishing are insufficient for large transport airplanes; and, as a matter of practicality, most operators of the large transport airplanes currently in service have elected to install more than three extinguishers in such airplanes.

The FAA has also conducted cabin fire extinguishers tests using various types of hand extinguishers. These tests demonstrated that for a fire in a large airplane cabin, extinguishers containing Halon 1211 (bromochloro-difluoromethane. $CBrClF_2$) are safe from the standpoint of toxicity, and far more effective in range and knockdown capability than other extinguishers currently in service. The results of these tests are contained in DOT Report No. DOT/FAA/CT-82-111, Inflight Aircraft Seat Fire Extinguishing Tests (Cabin Hazard Measurement), dated December 1982. A copy of this report has been placed in the Rules Docket and is available for inspection. A copy may be purchased from NTIS. Halon 1211 extinguishers have their greatest effectiveness of Class B and C fires; however, those with 9 pounds or greater capacity are also rated for Class A fires. (Fire classes are as defined in the National Fire Protection Association Standard 10.) Halon 1211 extinguishers are not to be used for Class D (burning metal) fires. Although not rated for Class A fires, such extinguishers with less than 9 pounds capacity have been shown to be effective in extinguishing surface Class A fires. Halon 1211 extinguishers are especially useful for combatting flammable fluid fires, such as those that might be caused by terrorist activities. Under the air carrier airworthiness surveillance program, the FAA issued a general notice (GENOT), dated November 29, 1980, to inspectors and air carrier operators encouraging the voluntary installation of at least two Halon 1211 extinguishers in each airplane.

Subsequent to the above action, the FAA adopted Admendment 121-185 (50 FR 12726; March 29, 1985) applicable to airplanes used in air carrier service under the provisions of Part 121 of this Chapter. This amendment requires (1) the installation of a smoke detection system, or equivalent, in each lavatory after October 29, 1986. (2) a built-in fire extinguisher for each lavatory disposal receptacle after April 29, 1987, (3) additional hand fire extinguishers for airplanes with passenger seating capacities of 30 or fewer and 60 or more after October 29, 1985, and (4) at least two of the required hand fire extinguishers to contain Halon 1211, or equivalent, as the fire extinguishing agent after April 29, 1986.

Discussion

Although Amendment 121-185 provides improved cabin fire protection for transport category airplanes used in air carrier service, it does not apply to other transport category airplanes, such r as those used for executive transportation. Mandatory retrofit of such other airplanes to incorporate these improvements is not considered justifiable from an economic standpoint; however, it does appear that such improvements are warranted for future transport category airplanes. Accordingly, this notice proposes to amend Part 25 of the FAR to require these improvements for airplanes for which application for type certificate is made after the effective date of the amendment. In addition, Part 21 would also be amended to require these improvements for all transport category airplanes manufactured after a date one year after the effective date of the amendment, regardless of when the application for type certificate was made. The compliance time of one year is necessary for airplanes not already required to comply under the provisions of Part 121 to provide sufficient time in which to make the necessary design changes, procure the required materials and parts, and introduce the modifications into production.

Section 25.851 would be amended to require additional extinguishers for the passenger compartments of airplanes with passenger capacities greater than 200. (Part 25 currently requires the same number of extinguishers for passenger capacities of 61 through 200 as is now required by Part 121.) The maximum capacity presently envisioned is 700. Should larger airplanes be presented for certification in the future, additional standards in the form of special conditions may be warranted. Similarly, additional standards may be warranted for airplanes with nonstandard interior arrangements in which the minimum number of extinguishers does not provide ready access to an extinguisher in each area of the cabin.

As noted above, Halon 1211 has demonstrated superior performance in combatting cabin fires, particularly surface fires. Some of the required hand fire extinguishers would, therefore, have to contain this agent or equivalent. For an airplane with a passenger capacity that is more than 30, but less than 61, at least one of the two required passenger compartment extinguishers would have to contain Halon 1211, or equivalent. For an airplane with a larger passenger capacity, at least two of the required passenger compartment extinguishers must contain Halon 1211, or equivalent.

Section 25.851 presently requires one hand fire extinguisher conveniently located in the pilot compartment. This extinguisher is in addition to any extinguisher required for a passenger compartment.

Section 25.851 currently specifies that a readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo or baggage compartment. While Class E compartments are not required to be accessible to crewmembers in flight, the proposed amendment to § 25.851 would require a readily accessible hand fire extinguisher for any Class E

compartment that is accessible in flight. In addition, a hand fire extinguisher would be required for each galley located above or below the passenger compartment because the extinguishers located in the passenger compartment are not readily available at those locations.

Due to an apparent editorial error, § 25.851(b) currently implies that the requirements of that paragraph do not apply to fire extinguishment systems which are installed in addition to those required by the minimum standards of Part 25. Whether a fire extinguishment system installed in an airplane is required by the regulations or is installed on a voluntary basis is obviously irrelevant insofar as potential hazards to the occupants are concerned. Accordingly, § 25.851(b) would be changed to correct this error. In addition, minor changes are proposed in the format of § 25.851 which are clarifying in nature only.

This notice proposes a new § 25.854 which would require transport category airplanes to be equipped with smoke detectors and with increased fire extinguishment capabilities for lavatories, which have been shown by experience to be more critical for fire protection than other areas of the cabin.

Smoke detector systems would be required in lavatories. While lavatories have a lower smoke and fire incidence rate than galleys, they are more sensitive from a fire detection standpoint for several reasons. They are more often unattended, they are closed from view by a door, and they contain ventilation systems designed to keep odors, and thus sensory smoke detection, away from the passenger cabin. In addition, galleys are generally occupied only by trained flight attendants. Lavatories, on the other hand, are frequented by the general traveling public, some of whom may not be conscious of the hazards of smoking in the lavatory. As part of the smoke detector systems, a warning light would be required in the cockpit, or a warning light or audio warning would be required in the passenger cabin which provides a clear and unmistakable signal, readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the flight. Because the lavatory smoke detectors would serve to enhance the present capability of the crewmembers to visually detect fires in the cabin and would not serve as primary detection systems, such as those used in isolated cargo compartments, it would be unnecessary for the detectors to meet all of the performance and environmental requirements in Technical Standard Order (TSO) No. C1b, which are now applicable to the type of primary detectors used in isolated cargo compartments. Service experience has shown that nearly all lavatory fires are detected by cabin personnel early enough to allow prompt control and extinguishment. Thus, a commercially available smoke detector, such as the type commonly used in residential buildings, which is demonstrated to serve its intended function as installed, could be considered adequate under the proposals.

Lavatory trash receptacles would be equipped with automatic fire extinguishers. These could be small extinguishant-charged bulbs with thermal fuse plugs, as are currently used in trash receptacles in a number of transport airplanes.

As proposed, the lavatory smoke detectors and automatic fire extinguishers would be required in addition to the fire containment capability currently required for lavatory trash receptacles because, as indicated by the inspection survey referenced earlier, fire containment capability is subject to deterioration in service, and additional measures of fire protection may be necessary. The automatic fire extinguishers would counter a fire as quickly as possible at its inception and would be a practicable means of keeping response time to a minimum, which is a key principle of fire protection in general. The smoke detectors would be a necessary complement to the extinguishers to enable crewmembers to quickly detect a fire and determine if additional actions, such as use of hand extinguishers, are necessary to control the fire and prevent rekindling. The requirement for trash receptacle fire containment capability would be retained since containment capability, degraded or not, delays the propagation of fire and provides a needed incremental measure of fire protection.

As proposed, the cabin fire safety improvements contained in this notice would apply to transport category airplanes in general, including the smaller airplanes designed specifically for executive transportation. Due to their relatively small size, the executive airplanes would not be affected by the proposals to increase the number of hand fire extinguishers in airplanes with passenger capacities greater than 200 and to use Halon-filled extinguishers in airplanes with passenger capacities greater than 30. Such airplanes would, however, have to comply with the proposed lavatory fire protection requirements. Many of these airplanes have small lavatories with very limited occupant space and small trash receptacles. In addition, the lavatories in these airplanes are not frequented by the general public. Comments are especially requested concerning the need for and the appropriateness of the proposed lavatory fire protection requirements for these airplanes.

Regulatory Evaluation

I. Cost Benefit Analysis

The FAA proposes to amend Part 25 of the FAR to require improved inflight cabin fire protective measures for transport category airplanes for which application for type certification is made after the effective date of the amendment. The proposed amendment would require that (1) each lavatory be equipped with a smoke detector system, (2) each lavatory trash receptacle be equipped with an automatic discharge fire extinguisher system, (3) more hand fire extinguishers be provided in the passenger compartment of airplanes with more than 200 seats, on a ratio of one fire extinguisher per additional 100 seats, and (4) that one or two of the required passenger compartment hand fire extinguishers, as specified, contain Halon 1211 or equivalent as the extinguishing agent. In addition, the FAA proposes to amend Part 21 of the FAR to require each transport category airplane manufactured after [a date one year after the effective date of the amendment] to incorporate the improved inflight cabin fire protective measures, regardless of the date of application for type certificate.

These proposals respond to findings resulting from investigations of inflight cabin fires and an FAA survey designed to determine the effectiveness of fire safety requirements in the current U.S. air carrier fleet. These findings clearly indicate that inflight cabin fire protective measures need to be improved. Similar requirements have recently been adopted for airplanes operated in air carrier service under the provisions of Part 121.

The benefits of the smoke detector and fire extinguisher proposal are the prospective reduction in fatalities, injuries, and property damage resulting from fires originating in the lavatories and other areas in the passenger cabin. Estimating these benefits quantitatively is difficult because of the limited number of inflight cabin fire accidents and the necessity for using judgement in determining the effectiveness of the proposals in dealing with accidents that involve cabin fires. There have been few major cabin fire accidents worldwide; however, when such accidents have occurred, the losses have been catastrophic.

Estimating the benefits, as well as the costs, of the proposals is further complicated by the difficulty of accurately predicting the types and numbers of new or significantly modified airplanes that will be certificated under Part 25 in the future. In this analysis, the FAA, therefore, compares benefits to costs on a per airplane basis. This method results in a relevant presentation of this relationship between benefits and costs while avoiding prediction of the types and numbers of new airplanes that would be certificated under Part 25.

Because each of the fire protection measures proposed in this notice is currently required under Part 121, air carriers operating under the provisions of Part 121 already have to comply regardless of whether or not these proposals are adopted. The majority of all airplanes type certificated under Part 25 will be operated under Part 121; therefore, few costs would be attributable to the proposals contained in this notice. Nevertheless, the FAA is evaluating the costs of these proposals to demonstrate that these measures are cost beneficial.

Benefits

Only those fires believed to have originated in the passenger cabin are relevant to this analysis. Post-crash fires, flight deck fires, belly cargo fires, fires aboard freighter airplanes, and all other fires that did not originate in the passenger cabin were excluded in establishing this base line. Only two major cabin fire accidents which meet this criterion have occurred in worldwide operations in the last 15 years. They were the Varig Boeing 707 fire at Paris, France, in July 1973, and the Air Canada McDonnell Douglas DC–9 fire at Cincinnati, Ohio in June 1983. Two other fires which could be considered significant were the 1979 Pakistani 707 and the 1980 Saudi Lockheed L–1011. Evidence regarding the origin of the Pakistani 707 fire is not clear; therefore, that accident was discounted for conservatism. The Saudi L–1011 fire is not considered in the analysis because it may have originated in the cargo hold rather than the cabin.

The two accidents considered in this analysis suggest an average historical rate of two catastrophic cabin fire accidents during a 15 year period. Although this historical rate reflects worldwide operations, forecast growth in the activity of U.S. carriers during the future 15-year period considered in this analysis is sufficient to make the exposure of future U.S. air carrier operations comparable to the exposure of historic worldwide operations. An estimate of two catastrophic cabin fire accidents per 15 years has, therefore, been adopted for developing the benefits in this analysis.

To determine the benefits which will result from preventing an accident, it is necessary to estimate the average costs expected to be associated with that accident.

In its FAA Aviation Forecast published in 1987, the FAA predicts that the average number of seats in an airplane used in air carrier domestic operations will be 171 in 1996 which is the midpoint in the 15 year study horizon. The load factor is estimated to be 61 percent and, therefore, the average number of passengers per flight is expected to be 103. Allowing for flight deck and cabin crew, the FAA estimates that an average of 108 persons will be carried on a typical transport category airplane. Note that this is a conservative estimate since it does not take into account the greater number of passengers per airplane in international operations.

The FAA estimates fatalities from future inflight cabin fire related accidents by applying the average proportional fatalities from the two historic accidents as follows: the Varig Boeing 707 and the Air Canada DC–9 accidents had fatality rates of 100 percent and 50 percent respectively. Thus, the average fatality rate for these accidents was 75 percent. Applying this rate to the average number of persons aboard a transport category airplane yields an estimated 81 fatalities per accident. For the purpose of analysis, the FAA uses a minimum economic value for a human life of $1,000,000. This is the accepted minimum value used by economists in government policy analysis. Therefore, the estimated fatality loss is $81,000,000. An airplane with 171 seats is estimated to cost about $34,000,000, i.e., $200,000 per seat. If the airplane is destroyed halfway through its life, the loss is estimated to be $17,000,000. The total loss to society due to an accident is, therefore, $98,000,000. Discounting this value as a uniform series over the 15-year period of the airplane to allow for the random nature of such accidents at the 10 percent interest rate prescribed by OMB yields an average accident cost of $49.7 million. This will be the average benefit realized for every accident prevented by the proposed rulemaking. To calculate the benefits per airplane, the present value of an accident times the number of accidents divided by the number of airplanes in 1996 is calculated. The FAA forecasts that there will be 3990 airplanes in the air carrier fleet in 1996. The average benefits per airplane are, therefore, $24,900 (two accidents times $49.7 million per accident divided by 3,990 airplanes).

Given the probability of an accident and the cost associated with that accident, it is necessary to consider the probability that an accident will occur in an area of the cabin where each of the protective measures proposed in this notice would be operative, and should such a fire scenario occur, what would be the effectiveness of a particular protective measure in preventing that accident.

Benefits for Lavatory Safety Devices

Developing estimates to the benefits attributable to the lavatory smoke detectors and to the automatic fire extinguishers in the lavatory trash receptacles requires that some allocation be made of those potential future accidents which would be expected to originate in a lavatory. These potential accidents need to be allocated further into those where the smoke detector would be the piece of protective equipment relied upon to prevent the accident, and those that would rely upon the automatic fire extinguisher in the trash receptacle.

In both of the catastrophic accidents cited above, the fire appears to have originated in a lavatory. It would, however, be unrealistic to assume that all catastrophic cabin fire accidents would necessarily originate in lavatories in the future. Service Difficulty Reports (SDR), maintained by the FAA's National Safety Data Branch in Oklahoma City, indicate that only 12.1 percent of in-cabin smoke and fire incidents occur in lavatories. The SDR data indicate that the vast majority of these incidents, 64.3 percent, occur in airplane galleys, and the remaining 23.6 percent occur in other areas of the cabin. Although none of the catastrophic cabin fires experienced to date are believed to have originated outside of a lavatory, some allowance must be made for the possibility that a major cabin fire could originate in one of the locations where 87.9 percent of the smoke and fire incidents historically have occurred. A strong indication of the particularly insidious nature of lavatory fires is, however, that both of the catastrophic accidents experienced to date have originated where a relatively small minority of the incidents occur. This reflects the fact that fires in closed lavatory compartments are more likely

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to go undetected than in other areas of the cabin.

In the judgement of the FAA, which is based on accident and incident data over a prolonged period of time, the vast majority of fatal cabin fire accidents would originate in lavatories, but some future fatal accidents could be expected to originate in galleys or other areas of the cabin. For purposes of this analysis, FAA assumes that over time an average of 80 percent of all random catastrophic cabin fire accidents would originate in lavatories and the remaining 20 percent would originate elsewhere in the cabin.

Of the two previous accidents involving lavatory fires, the Varig Boeing 707 accident was attributed to a fire originating in the trash receptacle. In its accident report the National Transportation Safety Board does not make a precise determination of the fire's origin. The evidence indicates, however, that (1) the fire propagated through the lavatory vanity, (2) initially the direction of airflow vented smoke overboard and permitted the fire to burn undetected, and (3) smoke became noticeable in the open area of the lavatory when the fire penetrated the lavatory liner. These findings suggest that approximately half of potential accidents involving lavatory fires would occur where the automatically activating trash receptacle fire extinguishers would be the primary means of defense, and the other half of these potential accidents would occur in other areas of the lavatory where the smoke detector would be the significant defensive measure. The automatically activating fire extinguishers can only be effective, however, if the door of the trash receptacle seals properly; otherwise the extinguishant dissipates, and its fire-suppressant capabilities are lost. The inspection survey, discussed previously, reveals that the fire-containment capabilities of a trash receptacle can become compromised by the wear and tear of typical service. In these instances, the lavatory smoke detector would be the principal piece of equipment in preventing a trash receptacle fire incident from becoming a major accident. Further, a review of the SDR data concerning the fire incidents that have occurred in the lavatory indicates that for every incident originating in the trash receptacle, there are slightly more than two incidents that have originated in other areas of the lavatory. Typically, they are electrical in origin; and frequently involving the flush pump motor. For these reasons, FAA considers that the lavatory smoke detector will be the operative piece of equipment in preventing potential lavatory fires more often than will the trash receptacle extinguisher. The FAA has, therefore, assumed that of the 80 percent of all potential fire accidents expected to originate in the lavatory, an average of 45 percent of all potential accidents will involve the smoke detector as the protective equipment relied upon to prevent a major accident from developing, and only 35 percent of all potential accidents will involve the trash receptacle fire extinguisher.

Estimates must also be made concerning the effectiveness of the particular piece of equipment in preventing an accident in those random combinations of circumstances where all existing safeguards have failed and, in the absence of the proposed preventive measures, a major cabin fire accident would occur. The FAA assumes that, given such circumstances where the lavatory smoke detector would be the relevant device, a catastrophic accident could be averted an average of 50 percent of the time. The FAA assumes that the average effectiveness of the trash receptacle will be 75 percent. The FAA expects the automatic fire extinguisher to be relatively more effective than the smoke detector in those circumstances where it is the primary means of protection because of the simplicity of its operation.

The benefits of a smoke detector would, therefore, be $5,600 per airplane ($24,900 in accident avoidance benefits per airplane times 45 percent of the total occurrences times 50 percent effectiveness), and the benefits of the trash receptacle fire extinguisher would be $6,500 ($24,900 in accident avoidance benefits per airplane times 35 percent of the total occurrences times 75 percent of effectiveness).

Benefits of the Halon 1211 Fire Extinguisher in the Cabin

The potential benefits of the Halon 1211 fire extinguisher proposals have been estimated in a manner similar to the lavatory fire prevention proposals. As stated previously, FAA has assumed that over a prolonged period of time, an average of 80 percent of passenger cabin fires would involve the lavatory, and the remaining 20 percent of potential catastrophic cabin fire accidents would involve either the galley or other general areas of the passenger cabin not previously specified. The FAA estimates that the proportion of potential cabin fire accidents where the Halon 1211 fire extinguishers will be the critical preventive measures will be about 8 percent. The relatively higher proportion allocated to the galley area reflects the fact that the majority of all passenger cabin fire incidents, 64.3 percent, occur in airplane galleys. Further, many airplane galleys are less visible because they are not located on the main deck of the cabin. The remaining portion of potential catastrophic accidents represents fire scenarios where the Halon 1211 extinguisher would be the critical protective piece of equipment. Although the Halon extinguisher is a state-of-the-art hand fire extinguisher which is effective against all classes of fires, its primary advantage over existing extinguishers is that it is especially effective against fires that involve volatile liquids. Because the Halon extinguishers are typically lighter than the extinguishers they would replace, there would also be a fuel savings that would be sufficient to offset the procurement costs. This offset will be discussed in greater detail in the costs section.

Finally, estimates must be made concerning the effectiveness of the Halon 1211 fire extinguishers when given a situation in which all existing safeguards have failed and the proposed protective measure would be the last line of defense. The FAA has estimated an average effectiveness of 50 percent for this proposal.

The benefits of the Halon 1211 fire extinguishers would be $990 ($24,900 in accident avoidance benefits per airplane times 8 percent it being the relevant device times 50 percent its effectiveness).

Costs

As noted above, estimating the costs of the proposal to amend Part 25 is complicated by the uncertainty inherent in predicting the number of new airplane designs that will be type certified in the future, when these airplanes will be type certificated, and how many will be produced. As a result, the costs are estimated on a unit basis. They also have been discounted on the basis of a 15 year life and a 10 percent discount rate. In addition, the expected number of lavatories in newly designed airplanes is assumed to be the same as those in a Boeing Model 767. The Model 767 is used as the prototype of future transport category airplanes because it is considered to be the approximate median size of such airplanes.

Cost of Lavatory Smoke Detectors

The FAA estimates that the cost of installing smoke detectors would be $50 each, including the cost of the unit itself. The FAA assume that each lavatory would be equipped with its own smoke detector. Such detectors would not have to meet all of the requirements of a technical standard order applicable to primary detection systems because they would serve essentially as backup to flight attendants and not as primary detection systems, such as those used in isolated cargo compartments. Commercially available smoke detectors of the type commonly used in residential buildings, have been demonstrated to function properly when installed in an airplane lavatory and would be considered suitable for compliance with the proposed standards.

The Model 767 has five lavatories. Thus five lavatory smoke detectors would have to be installed in each airplane, on the average, resulting in a cost of $250 per airplane. Each additional pound of weight in a transport category airplane is assumed to result in an average additional fuel consumption of 15 gallons per year. Based on a fuel price of 70 cents per gallon, each detectors would result in an average additional cost of about $3 per year since it would weigh about one quarter of a pound. Maintenance costs for the smoke detectors would be $85 per unit per year, based on an average wage rate of $40 per hour and a ten percent replacement cost factor for the units. Thus, the average total present value cost per airplane for lavatory smoke detector would be $3,600 (five units times $50 per unit, plus five units times $88 per year variable cost times 7.606 the discount factor for a uniform annual series).

Cost of Automatically Activating Fire Extinguishers

The costs of the proposed lavatory trash receptacle fire extinguishers, which would be capable of discharging automatically upon the occurrence of a fire, have been estimated in a manner similar to that used to estimate smoke detector costs. Each automatic extinguisher would cost $300 including installation. Thus, an airplane with five lavatories would require five automatic extinguishers at a total cost of $1500.

The proposed automatic extinguishers weigh about one pound. At the previously stated fuel consumption rate of 15 gallons per pound per year, the automatic extinguishers would require 75 additional gallons per airplane per year. At 70 cents per gallon, the present value fuel cost for these extinguishers would come to $400, using the 7.606 discount factor.

Maintenance of automatic fire extinguishers is relatively simple, involving only periodic weighing of units to determine if they remain charged. Assuming that each extingusher would be inspected twice a year, that each inspection would take 20 minutes of labor at $40 per hour, the present value of labor is $1000. Units would be expected to be replaced at a yearly rate of 5 percent or an expense of $75 per year having a present value of $570. The total of all present value costs associated with the automatic lavatory fire extinguisher system is, therefore, estimated to be $3,470 per airplane.

Cost of Requiring Two Halon 1211 Fire Hand Extinguishers in the Passenger Cabin

The FAA considers that this proposal would not result in any additional costs. The Halon 1211 extinguishers would merely replace a like number of other types of extinguishers. The Halon 1211 extinguisher costs about $40, about the same as the average cost of other types of extinguishers. The Halon 1211 extinguishers are slightly more expensive to maintain than other types of extinguishers since they require an additional $10 per extinguisher to recharge; however, they are about 3 pounds lighter than other types of extinguishers. As a result, the installation of these extinguishers would generate fuel cost savings which would more than offset the additional maintenance costs.

Comparison of Costs and Benefits

As noted previously, lavatory smoke detectors are estimated to have $5,600 in benefits per airplane. Since the costs of these detectors would be $3,600 the benefit to cost ratio would be about 1.6 to 1.

The FAA projects the installation of automatic fire extinguishers in lavatory trash receptacles to generate $6,500 in benefits per airplane, at a cost of $3,470. The benefit to cost ratio would, therefore, be 1.9 to 1.

The Halon 1211 proposal is not expected to generate any net costs since the savings in fuel costs from the lighter weight of this extinguisher would more than offset any other costs. The benefits are expected to be $990 per airplane. This proposal would, therefore have a postive benefit to cost ratio.

The proposal to increase the number of available hand fire extinguishers in relation to increased passenger seats on new airplanes would not generate any additional costs because it is consistent with current industry practices. For the same reason, no additional benefits would result.

International Trade Impact Analysis

The proposals would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. Airplanes imported from foreign manufacturers would have to meet U.S. requirements, and thus would gain no competitive advantage. The proposed safety feature would not have to be installed in airplanes exported to foreign countries by U.S. manufacturers if the foreign country does not require them. Foreign manufacturers would, therefore, gain no competitive advantages in this regard.

II. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

All of the rules proposed in this notice would affect the manufacturers of commercial transport category airplanes who would produce new airplanes under Part 25. None of these manufacturers are considered as small entities in accordance with FAA criteria which state that a small manufacturer is one with 75 employees or less. Because these proposals do not have "a significant economic impact on a substantial number of small entities," no review is required in this regard by the RFA.

These proposals are not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers, industry, or Federal, State, or local government agencies. Accordingly, it has been determined that this is not a major regulatory action under Executive Order 12291.

A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been placed in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Federalism Implications

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et. seq.*) which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the FAA proposes to amend Parts 21 and 25 of the Federal Aviation Regulations (FAR), 14 CFR Parts 21 and 25, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) [Revised Pub. L. 97–449, January 12, 1983.]

2. By amending § 21.183 by adding a new paragraph (f) to read as follows:

§ 21.183 Issue of standard airworthiness certificate for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

(f) *Cabin safety requirements.* Notwithstanding all other provisions of this section, the provisions of §§ 25.851 and 25.854 of this Chapter in effect on [the effective date of the amendment] must be complied with for the issuance of a standard airworthiness certificate for each transport category airplane manufactured after [a date one year after the effective date of the amendment].

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 49 CFR 1.47(a).

4. By revising § 25.851(a), the introductory text of paragraph (b), and paragraph (b)(1), to read as follows:

§ 25.851 Fire extinguishers.

(a) *Hand fire extinguishers.* (1) The following minimum number of hand fire extinguishers must be conveniently located and evenly distributed in passenger compartments.

Passenger capacity	Number of extinguishers
7 through 30	1
31 through 60	2
61 through 200	3
201 through 300	4
301 through 400	5
401 through 500	6
501 through 600	7
601 or more	8

(2) At least one hand fire extinguisher must be conveniently located in the pilot compartment.

(3) At least one readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo or baggage compartment and in each Class E cargo or baggage compartment that is accessible to crewmembers in flight.

(4) At least one hand fire extinguisher must be located in, or readily accessible for use in, each galley located above or below the passenger compartment.

(5) Each hand fire extinguisher must be approved.

(6) At least one of the required fire extinguishers located in the passenger compartment of an airplane with a passenger capacity of at least 31 and not more than 60, and at least two of the fire extinguishers located in the passenger compartment of an airplane with a passenger capacity of 61 or more must contain Halon 1211 (bromochlorodifluoromethane $CBrClF_2$), or equivalent, as the extinguishing agent. The type of extinguishing agent used in any other extinguisher required by this section must be appropriate for the kinds of fires likely to occur where used.

(7) The quantity of extinguishing agent used in each extinguisher required by this section must be appropriate for the kinds of fires likely to occur where used.

(8) Each extinguisher intended for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentration.

(b) *Built-in fire extinguishers.* If a built-in fire extinguisher system is provided:

(1) The capacity must be adequate for any fire likely to occur in the compartment where used, considering the volume of the compartment and the ventilation rate; and

* * * * * *

5. By adding a new § 25.854 to read as follows:

§ 25.854 Lavatory fire protection.

(a) Each lavatory must be equipped with a smoke detector system or equivalent that provides a warning light in the cockpit, or provides a warning light or audio warning in the passenger cabin which would be readily detected by a flight attendant.

(b) Each lavatory must be equipped with a built-in fire extinguisher for each disposal receptacle for towels, paper, or waste, located within the lavatory. The extinguisher must be designed to discharge automatically into each disposal receptacle upon occurrence of a fire in that receptacle.

Issued in Washington, DC on January 5, 1989.

Melvin C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89–588 Filed 1–11–89; 8:45 am]

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federal register

Thursday
January 12, 1989

Part III

Environmental Protection Agency

40 CFR Parts 122, 123 and 130
National Pollutant Discharge Elimination System; Surface Water Toxics Control Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123 and 130

[FRL-3431-1]

National Pollutant Discharge Elimination System; Surface Water Toxics Control Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's action proposes to amend Parts 122, 123, and 130 of EPA's regulations. The proposed regulations clarify EPA's surface water toxics control program, and incorporate section 308(a) of the Water Quality Act of 1987 into EPA's toxics control program. Section 308(a) of the Water Quality Act added section 304(l) to the Clean Water Act (hereafter referred to as section 304(l)). Section 304(l) requires the States to identify those waters that are adversely affected by toxic, conventional, and nonconventional pollutants, and requires the States to prepare individual control strategies that will control point source discharges of toxic pollutants. The States must submit lists of waters and individual control strategies to EPA for review, and if EPA disapproves a State's decision with respect to a list or an individual control strategy, then EPA must implement the requirements of section 304(l) in cooperation with the State. EPA and the States must accomplish the tasks in section 304(l) according to an ambitious series of deadlines. Today's proposed rules will strengthen State and Federal controls over discharges of toxic pollutants, and will assist EPA and the States in satisfying the requirements of section 304(l) of the CWA.

DATE: EPA will accept comments from the public until February 13, 1989.

ADDRESSES: Submit comments to Paul Connor, Program Development Branch, Office of Water Enforcement and Permits, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public record for this proposed regulation is available at the EPA library, M2904, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Paul Connor, Program Development Branch, Office of Water Enforcement and Permits, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9537, or Judith Leckrone, Monitoring and Data Support Division, Office of Water Regulations and Standards, (WH-553), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7056.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are issued under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.*

II. Background

EPA's surface water toxics control program uses several key terms. For the convenience of the reader and for the purposes of this preamble, these terms are described as follows:

"Narrative standard" refers to a narrative water quality standard adopted by a State under section 303(c) of the Clean Water Act. All States have adopted a narrative standard that prohibits the discharge of toxic pollutants in toxic amounts.

"Priority pollutant" refers to the 126 pollutants described at 44 FR 34393 (1979), as amended by 46 FR 2266 (1981), and 46 FR 10723 (1981). The 126 priority pollutants are derived from the 65 classes of compounds listed at 40 CFR 401.15.

"Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) of the CWA. EPA has listed 65 classes of compounds under section 307(a)(1) of the CWA, and these 65 classes are listed at 40 CFR 401.15.

"Toxics" refers to any pollutant or combination of pollutants which causes toxicity to aquatic life or terrestrial life, or causes adverse human health impacts.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly with a toxicity test. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. Like biochemical oxygen demand (BOD), which is also a biological measurement, toxicity can be limited in an NPDES permit.

A. EPA's Surface Water Toxics Control Program

EPA has described its surface water toxics control program in several documents. These descriptions are not repeated here, but the reader is referred to these documents for more information on EPA's approach for controlling discharges of toxic pollutants. On March 9, 1984, EPA published a document called "Development of Water Quality-Based Permit Limitations for Toxic Pollutants: National Policy" 49 FR 9016 (1984). The policy emphasizes EPA's integrated approach in the NPDES permit program for assessing and controlling the discharge of toxic pollutants to the nation's surface waters.

Two preambles to EPA's rulemakings also describe EPA's surface water toxics control strategy. The preamble to EPA's NPDES regulations (45 FR 33520 (1980)) emphasizes that NPDES permits must contain limitations reflecting the most stringent of technology-based or water quality-based controls for toxic pollutants. The second preamble discussion (49 FR 37998 (1984)) emphasizes the need to establish effluent limitations in NPDES permits to control toxic pollutants. This preamble also describes several regulations in Part 122 that require dischargers to identify and report the presence of toxic pollutants in discharges.

EPA's regulations also reflect the Agency's surface water toxics control strategy. Part 131 of EPA's regulations describes the process for developing, reviewing, revising, and approving State water quality standards. Part 122 describes the general NPDES permit regulations, and these regulations require NPDES permits to include conditions necessary to achieve water quality standards. Part 125 describes the technology-based methods for controlling toxic pollutants. Part 129 contains effluent standards for certain toxic pollutants, and Part 130 describes EPA's program for identifying waters affected by toxic pollutants.

EPA has also developed standard procedures, policies, and guidance documents necessary to support the toxics control program. The "Water Quality Standards Handbook" (October 1983), describes how to develop water quality standards and describes the procedures that a State should follow in adopting water quality standards. (The Handbook is available from the Criteria and Standards Division (WH-585), U.S. EPA, 401 M Street SW., Washington, DC 20460.) Two important guidance documents that support EPA's toxics control program are the "Technical Support Document for Water Quality-Based Toxics Control," (TSD), EPA 440/4-85-032, September, 1985, and the "Permit Writer's Guide to Water Quality-Based Permitting," (EPA 440/4-87-005, July 1987. (Both documents are available from the Permits Division (EN-336), U.S. EPA, 401 M Street SW., Washington, DC, 20460.) The Technical Support Document (TSD) provides a detailed technical explanation of biological and chemical techniques to assess and control toxic pollutants and toxicity. The TSD explains how to assess aquatic toxicity and how to calculate the risk to human health of an effluent, explains wasteload allocation modeling, and explains the equations for deriving water quality-based effluent limits. The Permit Writers Guide gives State and Federal NPDES permit writers a step-by-step methodology for deriving water quality-based effluent limits for toxic pollutants and toxicity.

B. Section 304(l) and its Relationship to EPA's Surface Water Toxics Control Program

Section 304(l) of the CWA reinforces EPA's on-going program to identify and control discharges of toxics. Section 304(l) requires the States to submit four lists to EPA for review and approval on or before February 4, 1989. The statutory language of section 304(l) requires the listing of waters for which water quality standards will not be achieved due "* * * to discharges from point sources of any toxic pollutants listed pursuant to section 307(a); * * *." The toxic pollutants identified under section 307(a) of the CWA refer to categories and classes of pollutants that can include thousands of compounds. EPA's water quality criteria and effluent guidelines focus on a list of 126 "priority pollutants" which are common, widely used chemicals for which toxicological data are available. Therefore, EPA will address the 126 priority pollutants for the purposes of implementing section 304(l), and will use this term when describing the regulatory requirements governing the control of toxic pollutants under section 304(l) of the CWA.

The four lists required by section 304(l) are described as follows, and are identified by their corresponding paragraphs in section 304(l)(1):

1. (A)(i)—A list of those waters in the State which, after application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain water quality standards for priority pollutants adopted under section 303(c)(2)(B) of the CWA;

2. (A)(ii)—A list of all waters which, after application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

3. (B)—A list of those waters which, after application of technology-based effluent limits, the State does not expect will achieve applicable water quality standards, due entirely or substantially to point source discharges of priority pollutants;

4. (C)—A list of the point sources of priority pollutants which are believed to be preventing or impairing water quality for waters on the (B) list, and the amount of each priority pollutant discharged by each point source.

The listing requirements of section 304(l)(1) are similar to the requirements of section 303(d) of the CWA and to EPA's regulations at 40 CFR 130.7 and 130.10 which require the States to submit to EPA a ranked list of "water quality limited segments." As part of the existing reporting requirements in Part 130, the States must submit to EPA a list of waterbodies for which technology-based effluent limits are not stringent enough to attain or maintain water quality standards. Because the requirements of section 304(l)(1) are similar to the requirements of section 303(d), EPA is incorporating the listing requirements of section 304(l)(1) into Part 130. These regulations are discussed in more detail in section III.B of this preamble.

In addition to the listing requirements under section 304(l)(1), the States must prepare an individual control strategy (ICS) for all water segments on the (B) list. (The definition of an ICS is discussed in more detail in section III.C of this preamble.) An ICS must require reductions in the discharge of priority pollutants from point sources on the (C) list, which reductions are sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve applicable water quality standards as soon as possible but not later than three years after establishment of the ICS. Where EPA approves a State submittal, the deadline for compliance is as soon as possible but not later than June 4, 1992. Where EPA disapproves a State submittal and promulgates an ICS in lieu of a State, the deadline for compliance is as soon as possible but not later than June 4, 1993.

All ICSs are due to EPA, from States approved by EPA to administer the NPDES program, by February 4, 1989. EPA must approve or disapprove the lists and ICSs by June 4, 1989. When EPA disapproves an ICS, EPA must implement section 304(l)(1) "in cooperation with such State and after notice and opportunity for public comment," by June 4, 1990.

A State's obligation to prepare and submit an ICS to EPA is similar to an approved NPDES State's obligation to prepare NPDES permits and submit the permits to EPA for review. However, section 304(l) establishes new deadlines and procedures for issuing and reviewing some NPDES permits. (Many NPDES permits are not subject to section 304(l). Permits that are not subject to section 304(l) should receive the same priority for reissuance or oversight that the permits would receive regardless of section 304(l).)

Today's proposed rulemaking is one of several EPA actions to implement section 304(l). In March 1988, EPA issued guidance entitled "Implementation of Requirements Under § 304(l) of the Clear Water Act, as Amended" (March, 1988). (EPA published a notice of availability for the guidance on March 18, 1988, and the

document is available by writing to the Permits Division, Office of Water (EN–336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.) Until EPA promulgates final regulations under section 304(l), this proposed rulemaking will serve as guidance that supplements EPA's guidance of March 1988 on section 304(l).

EPA has promulgated a final codification rule that incorporated into EPA's regulations the provisions of the WQA relating to the NPDES program and section 304(l). The codification rule is available from the Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–9545. The codification rule placed the statutory language of paragraphs (A), (B), and (C) of section 304(l) into 40 CFR 130.10(d). The codification rule also placed section 304(l)(1)(D) and sections 304(l) (2) and (3) into 40 CFR 123.46. These new paragraphs require States to submit lists of waters and individual control strategies to EPA for review. Today's proposed rules supplement the codification rule by defining key terms in section 304(l) and describing Federal and State responsibilities under section 304(l).

C. Purpose and Summary of Today's Proposed Regulations

The purpose of today's proposed rules is to reinforce EPA's surface water toxics control program, and to specify in more detail the requirements of section 304(l). Section 304(l) does not change the direction of EPA's surface water toxics control program, but rather, establishes ambitious deadlines by which EPA and the States must identify and control priority pollutants. While EPA's toxics control policies require control of all toxic pollutants, including but not limited to toxicity and the priority pollutants, the WQA reflects Congress' intent that priority pollutants be addressed on a rapid schedule. After the deadlines of section 304(l) pass, EPA and the States must continue the toxics control program by determining the presence of toxic pollutants in effluents and receiving waters, developing the necessary policies and regulations to control toxic pollutants and toxicity, and establishing effluent limits in permits.

Today's proposed regulations amend three parts of the CFR. Changes to EPA's surface water toxics control program are located in Parts 122 and 123 of the CFR. Part 130 incorporates the proposed regulations for listing waters under section 304(l)(1) (A)–(C), and the proposed regulations for individual control strategies prepared under section 304(l) are located in Part 123.

1. Changes to EPA's Surface Water Toxics Control Program

EPA is proposing several amendments to § 122.44(d). The proposed changes to § 122.44(d) describe the procedures the permitting authority shall use to determine whether an NPDES permit must include a water quality-based effluent limit. The proposed regulations also address the procedures for deriving effluent limits from State narrative or numeric water quality standards. EPA is also proposing to amend paragraph (e) of § 122.44 to clarify that limits to control toxics can include water quality-based limits on conventional and nonconventional pollutants, as well as limits on toxic pollutants. Finally, EPA is proposing to amend the criteria for State program withdrawal in 40 CFR Part 123. These proposed regulations are described in section III.A of this preamble.

2. Changes to 40 CFR Part 130

Today's regulations amend Part 130 to incorporate the listing requirements of section 304(l)(1). Today's amendments to Part 130 incorporate the listing format introduced by section 304(l) into the listing requirements of section 303(d), and make the lists of water and pollutants part of the section 305(b) reports submitted biennially by the State to EPA. (The proposed regulations also establish procedures for EPA's review and approval or disapproval of the lists prepared under section 304(l)). These regulations are described in sections III.B and III.D of this preamble.

3. Changes to 40 CFR Part 123

The proposed changes to Part 123 establish procedures for EPA's approval and disapproval of the ICSs prepared under section 304(l). Today's proposed rules provide for public participation in reviewing the ICSs, and also establish the criteria EPA will use to evaluate the adequacy of ICSs. These proposed regulations are discussed more fully in sections III.C and III.D of this preamble.

EPA believes that today's proposed rules and preamble will assist the States and the public at large in developing a better understanding of EPA's surface water toxics control program. Today's rulemaking will also ensure that the activities carried out under section 304(l) will be consistent with EPA's statutory obligations and national policy for controlling toxic pollutants and whole effluent toxicity.

III. Section-by-Section Analysis

This section discusses today's proposed rules in four parts. Part A describes proposed regulations that amend and clarify EPA's existing surface water toxics control program. Part B describes the requirements for identifying and listing waterbodies under paragraph l of section 304(l). Part C discusses the requirements for preparing and reviewing ICSs, and Part D discusses the procedures for reviewing and approving or disapproving the lists and ICSs.

A. Changes to EPA's Surface Water Toxics Control Program

1. Amendments to 40 CFR 122.44

Two of the most important components of EPA's surface water toxics control program are the development and implementation of water quality-based permit limits. The permitting authority (either EPA or a State approved by EPA to administer the NPDES program) uses water quality-based limits when effluent limits more stringent than technology-based limits are necessary to attain or maintain water quality standards. Although section 301(b)(1)(C) of the CWA requires NPDES permits to achieve the effluent limits necessary to attain and maintain water quality standards, the existing NPDES regulations do not describe the procedures for developing water quality-based effluent limits. This section explains today's proposed regulations for developing water quality-based effluent limits.

EPA uses an integrated approach to water quality-based permitting. The integrated approach includes both biological and chemical testing procedures for characterizing effluents and developing effluent limits. EPA's integrated approach to water quality-based permitting is explained more fully in the Technical Support Document and in EPA's National Policy of March 9, 1984 which are described in section II.A of this preamble.

Although EPA has issued detailed guidance on the integrated approach to water quality-based permitting, EPA's NPDES regulations discuss water quality-based effluent limits only in general terms related to achieving water quality standards. Today's proposed regulations will establish minimum consistent procedures for the States, EPA, and the regulated community, to identify those permits that must have water quality-based effluent limits, and to develop water quality-based limits.

a. *A Definition for Whole Effluent Toxicity.* Today's proposed regulations add a definition for "whole effluent toxicity" to the definitions in 40 CFR 122.2. Whole effluent toxicity is defined as the aggregate toxic effect of an effluent measured directly with a toxicity test. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. The proposed definition is the same definition used in the TSD.

EPA is proposing a definition for whole effluent toxicity because controls for whole effluent toxicity are an essential component of EPA's integrated approach to toxics control. Where controls on individual pollutants do not adequately protect water quality, assessing and controlling whole effluent toxicity is necessary to reduce or eliminate the toxic impact of the effluent. The regulations proposed for § 122.44(d) and (e) in today's rulemaking use the term whole effluent toxicity, and a definition for the term will assist the public in better understanding how controls on whole effluent toxicity are used in EPA's surface water toxics control program.

b. *Narrative Water Quality Standards.* Today's proposed amendments to § 122.44(d) add language to paragraph (d)(1). Paragraph (d) requires NPDES permits to contain effluent limits more stringent than technology-based limits, where more stringent limits are necessary to "achieve water quality standards established under section 303 of the CWA." Today's proposed language amends paragraph (d)(1) to clarify that effluent limits established under paragraph (d) must achieve any State narrative water quality standard as well as numeric water qualtity standards.

c. *Developing Water Quality-Based Effluent Limits.* Today's rulemaking proposes five new subparagraphs for § 122.44(d)(1). The subparagraphs describe the procedures for determining whether a discharge is causing or contributing to a violation of a water quality standard, identify those permits that must have water quality-based effluent limits, and describe several principles for developing water quality-based effluent limits. The Agency has determined that additional clarification of § 122.44(d) is necessary to implement the national water quality-based toxics control program and to implement the recommendations of EPA's national policy, 49 FR 9016 (1984).

The proposed subparagraphs that amend § 122.44(d)(1) are intended to describe procedures for implementing existing State water quality standards and are not intended to suggest that States change existing standards. Section 303(c)(2)(B) of the CWA, as amended, addresses State review and adoption of water quality standards for toxic pollutants listed pursuant to section 307(a)(1) of the CWA. EPA has prepared guidance on section 303(c)(2) which is available from: Criteria and Standards Division (WH–585), Office of Water, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Proposed subparagraph (i) of § 122.44(d)(1) concerns the procedures for determining excursions, or the reasonable potential for excursions, above applicable water quality standards. To determine whether a discharge has a reasonable potential for causing an excursion above a water quality standard, and thus requires a water quality-based effluent limit, the permitting authority must use reliable and consistent procedures. Although the procedures can vary considerably from one State to another, most such procedures account for any dilution of the effluent in the receiving water, after considering mixing zones if applicable, any contributions of the pollutant from upstream point and nonpoint sources, the variability of the pollutant in the effluent, and, when evaluating whole effluent toxicity, the sensitivity of the test species to toxicity testing. Generally, if there is a great deal of dilution of the effluent in the receiving water, then it is less likely that the discharge will cause a violation of a water quality standard.

Similarly, the uncertainty caused by limited data on the concentration of a pollutant in an effluent results in a larger margin of error when determining whether a discharge causes or has the reasonable potential to cause an excursion above a water quality standard. Unless effluent variability is adequately considered, the permitting authority may make erroneous decisions concerning whether to develop permit limitations for a pollutant. Toxicity testing must account for species sensitivity because different test species exhibit different sensitivities to the same effluent.

Subparagraph (i) addresses discharges that cause or have the reasonable potential to cause violations of water quality standards. Because the concentration of a pollutant in an effluent and in the receiving water can vary considerably, it is necessary to address discharges that have the reasonable potential to violate water quality standards. EPA requires water quality-based effluent limits for these discharges in order to ensure compliance with section 301(b)(1)(C) which requires NPDES permits to achieve applicable water quality standards.

Subparagraph (i) should assist the permitting authority in determining whether it is necessary, under Federal regulations, to establish limits for a pollutant. Note, however, that this determination is different from calculating water quality-based effluent limits. Effluent data are not necessary to calculate water quality-based effluent limits: Water quality-based effluent limits may be derived from the water quality standard and available dilution. Effluent data are required only for determining whether a pollutant exists in an effluent at a concentration which is high enough that EPA would require a limit in the NPDES permit.

Proposed subparagraph (ii) of § 122.44(d)(1) provides that a permit must contain water quality-based effluent limits when the permitting authority determines that a discharge causes or has the reasonable potential to cause an excursion above a water quality standard. The proposed rule requires effluent limits for the individual pollutant (where the pollutant is regulated by a State numeric water quality standard) and for whole effluent toxicity (where toxicity is regulated by a numeric State water quality standard). (See proposed subparagraph (iii) for the circumstances under which a permitting authority may forego limits on whole effluent toxicity.) Although the existing NPDES regulations require the effluent limits in a permit to achieve applicable water quality standards, today's proposed regulations specify for the first time that the permitting authority must establish effluent limits for a pollutant if the discharge of the pollutant exceeds a water quality standard.

Proposed subparagraph (iii) requires the permitting authority to establish permit limits on whole effluent toxicity when the discharger causes or has the reasonable potential to cause an excursion above a State's narrative water quality standard. The combination of subparagraphs (ii) and (iii) allow the permitting authority to control toxic discharges by using the appropriate combination of chemical-specific effluent limits and whole effluent toxicity limits.

Proposed subparagraph (iii) allows the permitting authority to choose not to develop whole effluent toxicity limits where the permitting authority can demonstrate that chemical-specific limits will attain and maintain applicable water quality standards, including narrative water quality standards. One method for making this demonstration would be to use toxicity

testing to show that the effluent has no acute or chronic toxic effects on aquatic life.

Proposed subparagraph (iv) addresses the situation in which a State has not adopted a numeric water quality criterion for a toxic, conventional, or nonconventional pollutant that is known to adversely affect or threaten human health or aquatic life. In this situation the permitting authority does not have a numeric criterion to use for deriving a water quality-based effluent limit. The proposed regulation requires the permitting authority to address the discharge of the pollutant using two options. The first option allows the permitting authority to establish permit limits using EPA's Water Quality Criteria guidance documents, if EPA has published a criteria document for the pollutant pursuant to section 304(a) of the CWA. (EPA criteria documents provide a comprehensive summary of available data on the effects of a pollutant, and include maximum ambient concentrations that protect aquatic life and human health.) In the absence of a State numeric criterion for a pollutant, the permitting authority would use the appropriate EPA Water Quality Criteria document to calculate effluent limits for the pollutant in order to comply with applicable State narrative water quality standards (*e.g.*, "no toxics in toxic amounts").

The second option in today's proposed regulations, for controlling a pollutant when a State has not adopted a water quality criterion for the pollutant, allows the permitting authority to establish permit limits using a numeric criterion which the permitting authority demonstrates is protective of aquatic life and human health. When using this approach, States may derive values different from the values in the EPA's water quality criteria documents to reflect site-specific factors, including predicted local human consumption of aquatic foods, as well as the State's determination of an appropriate risk level, and any more recent scientific data that may not be included in EPA's criteria documents. Under this option the permitting authority should use all available scientific information on the effect of a pollutant on human health and aquatic life. Available information includes but is not limited to, risk assessments, exposure data, and site-specific water quality parameters.

Although today's proposed regulations include only two options, EPA is soliciting comment on another option which would allow the establishment of effluent limits on pollutants other than the toxicant of concern such as an indicator parameter. An indicator parameter could be a conventional pollutant like total suspended solids (TSS), the control of which may be tied to a concomitant decrease in metals concentration. In such a case, the permitting authority would have to demonstrate that compliance with a limitation on the indicator parameter or other effluent limit would ensure the control of the toxicant of concern to a level that would attain and maintain applicable State narrative water quality standards, and will protect aquatic life and human health. This demonstration would be made by the State by calculating a criterion pursuant to option 1 or 2 above for the toxicant of concern and a subsequent showing that the effluent limit on the indicator parameter will control the toxicant of concern to the level of the criterion calculated.

EPA is proposing the two options in subparagraph (iv) in order to set permit limits to control discharges (in the absence of State numerical water quality standards for all pollutants of concern) that adversely affect water quality, while at the same time, giving the permitting authority sufficient flexibility to account for site-specific impacts on aquatic life or human health. EPA requests comment on the two options in proposed subparagraph (iv) of § 122.44(d)(1), and the third approach described in this preamble.

The final changes to § 122.44(d)(1) are in proposed subparagraph (v). This proposed subparagraph describes two requirements that the permitting authority must use to derive water quality-based effluent limits.

The first requirement provides that water quality-based effluent limits shall be derived from water quality standards. Under section 303(c) of the CWA, and Part 131 of EPA's regulations, a State must adopt water quality standards (including an antidegradation policy), and submit the standards to EPA for review. Although Part 131 describes the process for adopting and reviewing water quality standards, EPA's permitting regulations in Part 122 do not specify that water quality-based effluent limits must be derived from water quality standards. The proposed language in paragraph (v) clarifies this requirement of the NPDES permitting regulations.

The second requirement in proposed subparagraph (v) for deriving water quality-based effluent limits, is that the water quality-based effluent limits must be consistent with wasteload allocations (WLAs) developed and approved in accordance with 40 CFR 130.7 if a WLA is available for the discharge. A wasteload allocation is defined at 40 CFR 130.2 and reflects the portion of a receiving water's loading capacity that is allocated to a point source. The requirement to use approved wasteload allocations for water quality-based permit limits is implied in current § 122.44(d) because paragraph (d) requires effluent limits to meet water quality standards. Today's proposed language clarifies EPA's existing regulations by stating that when WLAs are available, they must be used to translate water quality standards into NPDES permit limits. Although proposed subparagraph (v) requires the permitting authority to use a wasteload allocation if one has been approved, today's proposed rule does not allow the permitting authority to delay developing and issuing a permit if a wasteload allocation has not already been developed and approved.

Deriving water quality-based effluent limits from water quality standards is the only reliable method for developing water quality-based effluent limits that protect aquatic life and human health. Pursuant to section 303(c) of the CWA, the States adopt water quality standards, and then, under section 303(d), develop total maximum daily loads (TMDLs) to attain and maintain the water quality standards. The TMDLs are used to derive a wasteload allocation for individual pollutants discharged from a point source. This process results in effluent limits that protect aquatic life and human health because the limits are derived from water quality standards.

Proposed subparagraph (v) does not prescribe detailed procedures for developing water quality-based effluent limits. Rather, the proposed regulations prescribe minimum requirements for developing water quality-based effluent limits, and at the same time, give the permitting authority the flexibility to determine the appropriate procedures for developing water quality-based effluent limits. Today's proposed rule clarifies that all water quality-based effluent limits must be derived using procedures that are consistent with today's proposed requirements in § 122.44(d)(1)(v).

d. *Limitations on Toxic Pollutants and Sources of Toxicity.* The final change to § 122.44 proposes to amend paragraph (e). EPA is adding the term "sources of toxicity" to the title of paragraph (e). This change reflects EPA's current approach for controlling toxic pollutants and other pollutants (whether conventional or nonconventional) that cause toxicity.

EPA is redesignating existing paragraph (e)(2) as paragraph (e)(3) and is adding a new paragraph (e)(2) which provides that an NPDES permit must limit any pollutant (whether conventional, nonconventional, or toxic), including whole effluent toxicity, that is or may be discharged at a level that causes or has the reasonable potential to cause an excursion above any water quality standard, including State narrative water quality standards. Today's proposal clarifies that paragraph (e) applies to any pollutant, not just toxic pollutants, and applies to excursions above narrative water quality standards, not just numeric limits in State water quality standards.

Proposed paragraph (e)(2) is necessary because any pollutant regulated under the CWA can adversely affect water quality. The proposed paragraph specifies that NPDES permits must establish limits on any pollutant, where necessary to attain and maintain applicable water quality standards. The proposed paragraph also emphasizes the importance of narrative water quality standards. Narrative standards have the same force and effect as other State water quality standards. Today's proposed regulations emphasize that narrative standards must be implemented, where necessary to satisfy the requirements of section 301(b)(1)(C), and to achieve the goals of the CWA.

EPA is amending redesignated paragraph (e)(3) to clarify that limitations established under § 122.44 (b), or (d), may be satisfied by a combination of limits on whole effluent toxicity and limits on one or more other pollutants.

Today's proposed regulations provide for limits on whole effluent toxicity because such limits are often necessary to attain and maintain water quality standards. Effluent limits on toxic, conventional, and nonconventional pollutants may be insufficient to attain and maintain all applicable water quality standards. In these cases limits on whole effluent toxicity should be used to ensure that all applicable water quality standards are achieved.

The proposed paragraph is consistent with EPA's integrated approach to water quality-based permitting, and reflects the language in proposed paragraph (e)(2) which requires effluent limits on any pollutant, and which may require limits on whole effluent toxicity, necessary to achieve water quality standards.

2. State NPDES Program Requirements

The States play a major role in controlling discharges of pollutants to surface waters. The States' role is especially important in those States authorized under section 402(b) of the CWA to carry out the NPDES program. An authorized State carries the primary responsibility for implementing a surface water toxics control program. This section describes proposed amendments to 40 CFR 123.63. The amendments clarify EPA's authority to withdraw a State's NPDES program if the State fails to develop an adequate program for developing water quality-based effluent limits in NPDES permits.

The proposed changes focus on how well a State's NPDES permits protect water quality. If other elements of a State's surface water toxics control program adversely affect the quality of NPDES permit limits, then EPA may include other program elements in its evaluation of a State's NPDES program. For example, if a State fails to use consistent and defensible procedures for developing water quality-based effluent limits, EPA would consider this deficiency when evaluating a State's NPDES program.

EPA is adding this criteria to § 123.63(a) because it is essential for all authorized States to operate effective toxics control programs. An adequate State regulatory program for developing water quality-based effluent limits in NPDES permits should be an integral part of each approved State's NPDES program. EPA requests comments on the proposed criterion in § 123.63 relating to a States program for controlling toxic pollutants.

B. Identification of Waters

Section III.A of this preamble discussed the proposed rules for strengthening EPA's ongoing surface water toxics control program. The remainder of this preamble discusses the requirements of section 304(l) of the CWA and how EPA is incorporating these requirements into EPA's toxics control program. This section (III.B) discusses how EPA and the States will administer the listing requirements of section 304(l), and incorporate them into the ongoing water quality assessment program.

The rules proposed today address two distinct but related actions with regard to the four lists. The first action is the submittal of the lists by the States to EPA on or before February 4, 1989, as required by section 304(l)(1) of the CWA; and the second is the biennial submission of lists to EPA under the authority of sections 303(d) and 305(b) of the CWA. After a description of the lists, the requirements for the initial submittal will be discussed in the next section of this preamble, followed by a discussion of the biennial submission of lists.

1. Description of the Four Lists

The four lists required by section 304(l)(1), paragraphs (A)(i), (A)(ii), (B), and (C) are described below; first, by their statutory language and then followed with a brief clarification of what EPA expects States to include on the lists.

Note, as explained in Section II.B of this preamble, that EPA is implementing section 304(l) listing and control requirements by relying on the priority pollutants rather than the thousands of pollutants potentially encompassed by the term toxic pollutants.

For more information about the lists, see EPA's guidance entitled Implementation of Requirements Under section 304(l) of the Clean Water Act, as Amended (March, 1988).

Paragraph (A)(i) of section 304(l)(1) requires a list of those waters in each State which, after application of technology-based effluent limits, "cannot reasonably be anticipated to attain or maintain water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of the CWA," due to priority pollutants. Section 303(c)(2)(B) refers to the adoption by the States of numeric criteria into their water quality standards for section 307(a) toxic pollutants. Therefore, the (A)(i) list includes only those waters where numeric water quality standards for priority pollutants are not achieved, or are not expected to be achieved due to either point or nonpoint sources of pollution. These are water quality standards which have been reviewed, revised and adopted by the State. Waters impaired by chlorine and ammonia are not included on this list because they are not priority pollutants governed by the section 304(l) requirements which regulate section 307(a) toxic pollutants.

Paragraph (A)(ii) of section 304(l)(1) requires a list of those waters within each State which, after the application of technology-based effluent limitations, "cannot reasonably be anticipated to attain or maintain that water quality which shall assure the protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of shellfish, fish and wildlife, and allow recreational activities in and on the water." EPA interprets this to mean that the State must create a comprehensive list of waters that are impaired or are expected to be impaired by point or nonpoint source discharges of toxic.

conventional, or nonconventional pollutants. This list should include all waters not meeting the goals of the CWA after the application of technology-based effluent limitations, regardless of whether or not a State has adopted numeric water quality standards. This includes waters which are classified for uses that do not meet the "fishable and swimmable" goals of the Act.

Paragraph (B) of section 304(l)(1) requires a list of those waters within each State for "which the State does not expect the applicable standard under section 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a)" of the CWA. This list must include all waters which can not achieve either the numeric or narrative water quality standard for a priority pollutant due entirely or substantially to discharges from point sources after application of BAT, pretreatment and new source performance standards. Waters impaired by discharges of chlorine and ammonia are not included on this list since they are not one of the priority pollutants. (Such waters would qualify for the (A)(ii) list.) Waters where impairment is due to discharges of whole effluent toxicity are included on the paragraph (B) list only when the toxicity is due in whole or in part to one or more of the priority pollutants. (Waters where whole effluent toxicity is observed, but is not attributable to a priority pollutant, are to be included on the paragraph (A)(ii) list.)

For all the waters listed on the paragraph (B) list, the State must identify the point sources discharging the priority pollutant(s) as described below and provide individual control strategies for each point source. (See section III.C. of this preamble for more information on Individual Control Strategies.)

Proposed interpretations of the terms "applicable standard," and "due entirely or substantially to discharges from point source," which appear in the statutory language of section 304(l)(1)(B), are discussed in the next section (section III.B.2) of this preamble.

Paragraph (C) of section 304(l) describes the fourth list required to be submitted by the States to EPA. It requires, for each of the segments included on the paragraph (B) list, "a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source." EPA interprets this paragraph to mean that for each water on the paragraph (B) list, the State must list each point source within its jurisdiction that is discharging the priority pollutant(s) to the water which is listed, and the amount of each priority pollutant discharged by each such source. Individual control strategies are to be prepared for each point source discharger on the paragraph (C) list.

Note that every State, as defined by EPA at 40 CFR 122.2, is required to submit lists of waters, sources and amounts whether or not the State is authorized by EPA to administer the NPDES program. However, States that are not approved by EPA to administer the NPDES program are not required to submit ICSs to EPA because an ICS will be, in nearly all cases, a draft of final NPDES permit.

2. Explanation of Terms Used in Section 304(l)(1)(B)

Paragraph (B) of section 304(l)(1) introduces two terms that EPA believes need further interpretation and explanation to ensure consistency among States when preparing the list required by this paragraph. These terms are "applicable standard," and "due entirely or substantially to disharges from point sources." Proposed § 130.10(d) (4) and (5) of today's amendments contain these proposed interpretations.

(a) *Applicable Standard.* For the purposes of listing waters under paragraph (B) of section 304(l)(1), proposed § 130.10(d)(4) interprets the "applicable standard" to mean numeric criteria within State water quality standards for priority pollutants. Further, where State numeric criteria for priority pollutants are not established, EPA proposes to interpret the applicable standard to mean the narrative standard for toxicity (e.g., "no toxics in toxic amounts") where the narrative standard may be violated due to a priority pollutant. Therefore, in the absence of adopted numeric criteria for a priority pollutant, the narrative standard would be used as the basis for listing under section 304(l)(1)(B) by applying EPA national water quality criteria on a chemical-by-chemical basis.

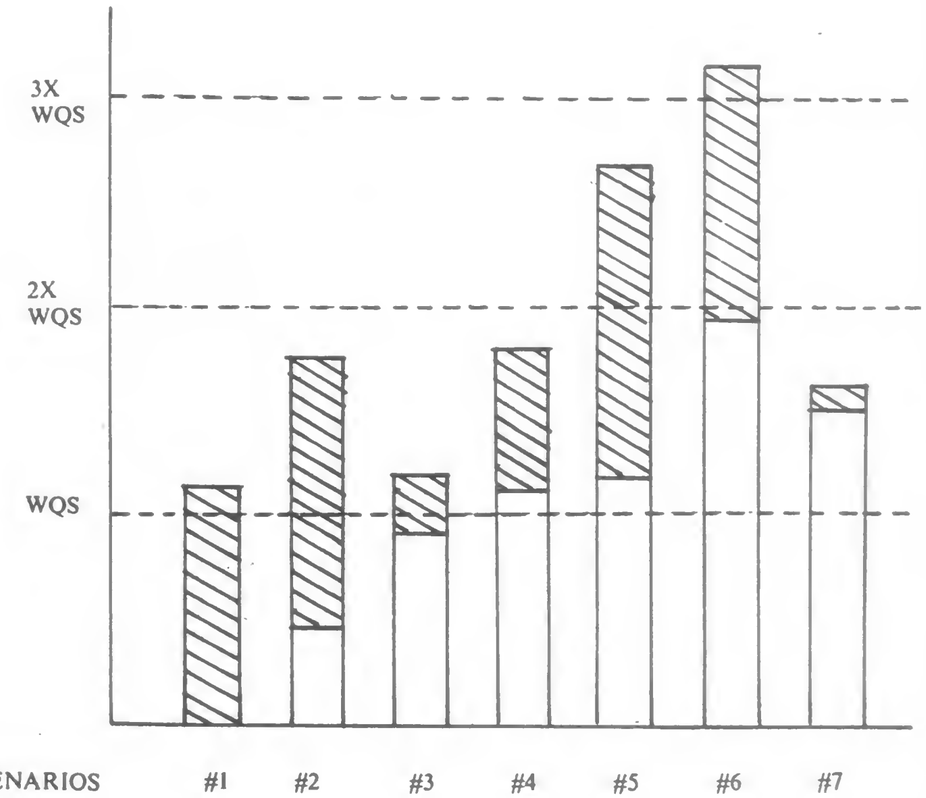
EPA is proposing this requirement in today's amendments because of the absence of State numeric water quality criteria for a priority pollutant, EPA national water quality criteria provide a national uniform baseline by which each of the States may judge if a water is impaired and therefore should be listed. Without this requirement, many waters impaired by priority pollutants could not be listed because some States would lack any benchmark against which to evaluate its waters.

(b) *Due Entirely or Substantially to Discharges from Point Sources.* EPA is proposing in today's amendments, at paragraph 130.10(d)(5), three conditions that would require a water to be listed under paragraph (B) of section 304(l)(1) because the applicable water quality standard is not expected to be met "due entirely or substantially to discharges from point sources." These three conditions are listed below.

(Note: Each condition is followed by numbers which refer to the "discharge scenarios" illustrated in Exhibit A. Scenarios numbered one through six meet one or more of the three conditions below and therefore should be included on the paragraph (B) list. Scenario number seven would not be included on the paragraph (B) list. These scenarios illustrate only a few examples of possible discharge situations. They are included here as guidelines for the States for developing their paragraph (B) list.)

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EXHIBIT A: Illustration for determining if the concentration of a §307(a) toxic pollutant is entirely or substantially due to discharges from point sources



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In making the determination of whether a water meets one or more of these conditions, a State should use the critical design flow as established by approved EPA guidance or regulation (for example, EPA's Technical Support Document for Water Quality-based Toxics Control).

Also, when a State evaluates whether a water is impaired "due intirely or substantially to discharges from point sources" the evaluation must be based only on the contribution of one priority pollutant at a time from the point sources, and only for priority pollutants. Therefore, a water quality problem due to a pollutant which is not a priority pollutant may not be taken into account when determining whether a water should or should not be listed on the paragraph (B) list for priority pollutants. For example, if a water does not meet the water quality standard due to chromium from point source contributions, and the water does not meet the water quality standard due to phosphorous from either point or nonpoint sources, the State must list this water on the (B) list. EPA does not want the States to delay controlling a priority pollutant from a point source even if a water still needs controls on other pollutants or other sources.

If a water meets one or more of the conditions below then it must appear on a State's section 304(l)(1)(B) list:

(a) Initial or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a priority pollutant (Scenarios 1, 2, 3) *or*;

(b) The discharge of a priority pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, would be sufficient to cause a violation of the applicable water quality standard for the priority pollutant (Scenarios 1, 2, 5, 6) *or*;

(c) The contribution of a priority pollutant from one or more point sources is large enough that the applicable water quality standard for that priority pollutant is threatened and additional point source controls are needed to limit the discharge of the pollutant (Scenario 4).

The third condition (c) is included to allow States and EPA to list a water where the point source contribution of a priority pollutant is very large but not large enough to violate the water quality standard alone. As a matter of equity, EPA believes that these waters should be listed and ICSs written for the point source(s) contributing the priority pollutant(s). For example, without this condition, scenario #4 would not be required to be listed even though there is a much larger contribution than scenario #3 which is required to be listed under condition (a). EPA is soliciting comments on whether condition (c) should be included as a condition for listing.

EPA is proposing these three conditions to ensure consistency among Regions and States in how they decide which waters to list. Further, since the Clean Water Act requires listing based on compliance or noncompliance with water quality standards, EPA chose these three conditions so that a State lists a water based on its relationship to a water quality standard.

For the purposes of interpreting the term "due entirely or substantially to discharges from point sources," any discharge which meets the definition of a point source under 40 CFR 122.2 must be considered as such, including discharges from combined sewer overflows and discharges from stormwater drains. In addition, water quality impairments due to in-place sediments contaminated by a priority pollutant discharged by an active and operating point source subject to section 402(a) of the CWA must be listed under paragraph (B) of section 304(l) and the discharge must be listed under paragraph (C). If the sediments have been contaminated with a priority pollutant from a facility or site which is no longer in operation or is abandoned, and therefore cannot be issued an NPDES permit, the water does not have to be listed on the paragraph (B) list if that is the only point source of a priority pollutant, since the impairment is no longer due to a point source subject to section 402(a) of the CWA. However, if there are other point sources discharging the priority pollutant, the water must be listed.

3. Preparation and Review of the Lists

The CWA requires the States to submit the four section 304(l)(1) lists to EPA for review and approval on or before February 4, 1989. Section 130.10(d), promulgated as part of EPA's codification rule for the Water Quality Act, already requires this submission, along with the requirement that these lists be reviewed and approved or disapproved by EPA.

In addition to proposed paragraphs (4) and (5) discussed above, today's proposed rules also add paragraphs (6) through (11) to § 130.10(d). Paragraphs (6) and (7) describe the data that each State must use in developing the lists, and the documentation that each must provide to EPA when submitting lists to EPA. Proposed paragraph (8) describes the basis upon which EPA will approve or disapprove a State's lists. Paragraphs (6) through (8) are discussed in this section of the preamble. New paragraphs (9), (10) and (11) discuss public notice and comment procedures and are discussed in section III.D.2 of this preamble.

(a) *Use of Existing and Readily Available Data.* Because EPA believes that States should build on the work that has already been done in the continuous process of assessing water quality, EPA is proposing in today's amendments that States use existing and readily available data when they develop their lists. Also, the ambitious deadlines of the CWA require EPA to forgo a requirement for lengthy monitoring designs and extensive collection of new data and to rely on existing and readily available data. The proposal that States rely on existing and readily available data appears in proposed § 130.10(d)(6).

To assist States in deciding what existing and readily available data they should rely on, EPA is proposing sixteen categories of waters about which, as a minimum, each State must assemble and evaluate all existing and readily available data. These categories of waters are described in proposed § 130.10(d)(6). EPA considers the existing and readily available information and data about the categories of waters described in § 130.10(d)(6) to be the minimum data and information that a State should assemble and evaluate when preparing lists. States should obtain any other additional data and information needed to identify and determine as accurately as possible which waters and point sources to list. (Existing and readily available data about these categories of waters would also be required by today's proposed amendments to be used, as a minimum, for the development of lists for the biennial submissions under sections 303(d) and 305(b) of the CWA. Biennial submissions of lists are discussed later in this preamble.)

These categories were developed after consultation with EPA Regional Office staff and reflect what EPA considers the minimum existing and readily available water quality data and information that a State and EPA can reasonably obtain. This existing data includes data that States should have developed in the course of reviewing and revising water quality standards, evaluating needs for technology-based or water quality-based controls, developing total maximum daily loads (TMDLs), wasteload allocations and load allocations (WLAs/LAs), issuing permits, and monitoring to determine the effectiveness of pollution controls. Furthermore, EPA is requiring that the States assemble and evaluate this minimum existing and readily available data because it encourages cooperation and communication among the many Federal, State and local government agencies and private organizations that collect, analyze or report water quality data and information.

EPA is proposing that these specific waters be evaluated for the purposes of section 304(l) because either they are waters which have been reported by the State or other government or private sector agencies as failing to meet water quality standards or as having a high potential for not meeting water quality standards, or they are waters which receive point source discharges. EPA believes that if a State evaluates all waters in these categories it will identify virtually all waters that should be listed.

Information and data about the categories of waters described in § 130.10(d) are of two general types. The first is existing and readily available data and reports from Federal, State, local and private sectors. The second is dilution calculation results generated by EPA and the States for use as a screening tool. These two types of information are discussed below.

There are many existing lists, reports and assessments that provide valuable information to States when identifying and preparing lists of waters. New subparagraph § 130.10(d)(6) designates the minimum specific information and reports which each State must assemble and evaluate in order to identify waters that meet the section 304(l) statutory requirements for listing. These include State section 305(b) reports, Clean Lakes Assessments, the section 319 Nonpoint Source Assessments and the National Priority List prepared under CERCLA, among others. Beyond waters identified by these specific reports, the proposed amendments would require the State to obtain any existing and readily available data about other specific waters which should be considered for listing on one or more of the lists required by section 304(l); for example, waters where fishing bans and recreational restrictions are in effect and waters which have had repeated fishkills. Appendix B of the Final Guidance for Implementation of Requirements under section 304(l) of the Clean Water Act as Amended (March 1988) lists other available data sources that should be consulted.

The second general type of information that EPA is proposing that the States consider, as a minimum, is screening information developed using dilution calculations. Dilution calculations should be conducted to indicate possible exceedances of numeric criteria within State water quality standards (or EPA criteria where State numeric criteria are not available). Dilution calculations should be performed for, but not limited to, all point source discharges of priority pollutants, ammonia and chlorine to help identify waters and dischargers for listing on any of the lists. At a minimum, waters with primary industrial major and minor point source dischargers, major municipal point source dischargers, and waters with federal major point source dischargers must be screened for expected criteria exceedances by performing dilution calculations using site-specific data or, if necessary, data based on national estimates.

EPA emphasizes that to list a water on the paragraph (B) list, that the State does not necessarily have to have enough data to indicate exactly which point source or sources may be causing any observed criteria exceedances or use impairments. It is enough that the data indicate that the applicable water quality standards are not being achieved due entirely or substantially to discharges from point sources. After identifying the water for listing on the paragraph (B) list, the State should then obtain as much discharger-specific data as necessary to identify the dischargers which may be causing the criteria exceedances.

Where ambient data on criteria exceedances are being used to identify waters, the State should use the criteria for designated use support outlined in Figure 1 of EPA's Guidelines for the Preparation of the 1988 State Water Quality Assessment (305(b)) Report. Figure 1 provides guidelines to States in determining the degree to which waters are supporting their designated uses on the basis of frequency of criteria exceedances and comparison of mean value to criteria.

EPA is soliciting comments on the above proposed data requirements being added to § 130.10(d).

(b) *Documentation of Data and Methodologies.* Proposed paragraph § 130.10(d)(7) requires that each State submit to EPA, together with its lists of waters and sources, documentation of all data and methodologies used by the State to develop the lists.

Proposed subparagraph (i) of (d)(7) requires each State to submit a description of the methodology used by the State to develop each of the lists of waters and point sources required by section 304(l). This description of methodology should include assumptions and criteria used by the State when reviewing and analyzing data and information.

Proposed subparagraph (ii) requires the State to provide a description of the data and information used by the State, specifically including which of the categories of waters described in paragraph (d)(6) were used. If a State does not assemble and evaluate data about one of these categories, subparagraph (iii) requires the State to provide as part of its documentation the rationale for deciding not to do so.

Proposed subparagraph (iv) requires the State to provide any other information that the Regional Administrator requests in order to review the State's submission of lists. Specifically, proposed subparagraph (iv) requires a State, if EPA requests, to demonstrate good cause for not including a water or discharger on one or more of the required section 304(l)(1) lists.

"Good cause" may include, but is not limited to, the following:

- More recent or more accurate data.
- More sophisticated water quality modeling,
- Flaws in the original analysis that led to the water being identified in one of the categories, or
- Changes in conditions, e.g., new control equipment, or elimination of discharges.

EPA is proposing these documentation requirements because a Regional Administrator's office may not maintain all the available water quality and discharger data for all of its States. Therefore, part of the review by EPA of a State's submission must necessarily include a review of the data, assumptions and criteria used by the State for listing waters and point sources to ensure that they are consistent with the regulatory requirements for listing. For example, a State's documentation should reflect that the State considered stormwater drains as a point source when determining whether a water is impaired due entirely or substantially to discharges from point sources.

EPA requests comments on the proposed requirements for documentation by a State.

(c) *Review of Lists by EPA.* Section 304(l) requires that all States submit all four lists described above to EPA no later than February 4, 1989. Upon receiving the lists from each State, the Regional Administrator is required to review and then approve or disapprove each State's lists.

In order for EPA to complete its review of a State's lists, the State must

have met the data and documentation requirements in proposed paragraphs (6) and (7). The Regional Administrator will approve each list if the State has met the regulatory requirements for listing under 40 CFR 130.10, and disapprove each list that does not.

If, after reviewing the State lists, available data and any required documentation, the Regional Administrator is satisfied that the State has identified and appropriately listed all waters, then EPA will approve the lists. (See Section III.D of the preamble for a discussion of approval and disapproval procedures.)

4. Biennial Submission of Lists under Section 303(d) and Section 305(b) of the CWA

(a) *Authority to Require Biennial Submission of Lists.* Even before the Water Quality Act of 1987, sections 303(d) and 305(b) of the CWA and implementing regulations required States to identify and list certain waters and pollutants and to report these lists to EPA for review and approval. Therefore, under these two sections of the Act, EPA is proposing today to require States to continue the work begun under the section 304(l) initiative for identifying, listing and reporting waters. The lists required under section 304(l)(1) are similar to the lists required under section 303(d).

Section 303(d) gives EPA the authority to require each State to identify and list the waters within its jurisdiction that do not achieve or are not expected to achieve water quality standards, and to require the State to develop Total Maximum Daily Loads (TMDLs) for these waters under section 303(d). The States must also identify the pollutants preventing the attainment of water quality standards. Section 303(d) also gives EPA the authority to review and approve or disapprove the lists of waters and TMDLs prepared by a State.

Section 305(b) of the CWA requires each State to submit to EPA, biennially, "a description of the water quality of all navigable waters in such State," and a determination of whether a State's waters meet EPA water quality criteria prepared under section 304(a) of the CWA. EPA believes that the lists of water quality limited segments and pollutants required under section 303(d) are important descriptive elements of the water quality of a State. Therefore, EPA is proposing today that, beginning with the 1990 section 305(b) reports, States should report these lists of waters and pollutants required to be identified under section 303(d) and reported to EPA in the format similar to section 304(l) in these biennial reports. EPA requests comments on its proposal to require biennial submission of lists similar to those introduced by section 304(l)(1) of the CWA.

In addition, EPA is proposing today that the State assessments of the quality of all publicly-owned lakes required under section 314(a)(2) of the CWA also be submitted biennially in the section 305(b) reports.

Not only does EPA have the legal authority to require a biennial submission of lists, but there are practical reasons for incorporating the lists introduced by section 304(l) and section 314(a) into the biennial section 305(b) reports. After the States, in cooperation with EPA, have prepared the initial list of waters and facilities it is important for States to continue the newly focused monitoring and assessment efforts begun under section 304(l) and section 314(a).

As EPA and the States develop new data and information after February 4, 1989, waterbodies that have toxicity problems may be identified for the first time. Therefore, EPA is committed to working with the States to identify all waters affected by toxic and other pollutants. In order to identify all such waters and to protect threatened waters, it is necessary to continue the process begun by sections 304(l) and 314(a).

(b) *Proposed Amendments to 40 CFR Part 130.* In order to ensure that waters, pollutants and sources continue to be properly and uniformly identified and reported, EPA is proposing today to amend CFR Part 130 to incorporate some of the identification, listing and reporting requirements introduced by section 304(l) of the CWA. Part 130 currently includes the regulations for section 303(d) and section 305(b) of the CWA.

The following discussion will briefly describe the major requirements of sections 303(d), 305(b) and 304(l), and how the proposed amendments to Part 130 would incorporate and continue some of the elements of section 304(l).

Identification of waters not meeting water quality standards. Both sections 304(l) and 303(d) require the identification of waters not meeting applicable water quality standards.

40 CFR 130.7 now requires the States to identify those water quality limited segments still requiring wasteload allocations and load allocations (WLAs/LAs) and total maximum daily loads (TMDLs). Water quality limited segments are waters which do not or are not expected to meet water quality based standards after the application of Best Available Technology (BAT), pretreatment and new source performance standards, or after any other local, State or Federal pollution control requirement including best management practices.

This requirement to identify water quality limited segments is very similar to the requirements at section 304(l)(1)(A)(i) and (B). These paragraphs require the identification of waters which meet the above definition of water quality limited segments. But section 304(l) specifically requires each State to identify waters that do not meet applicable numeric or narrative water quality standards for priority pollutants, after the application of BAT, pretreatment and new source performance standards. (See section B.1 of this preamble for a detailed description of which waters are required to be identified by section 304(l)(1).)

The proposed amendments to 40 CFR Part 130 would require that each State continue to identify those waters not achieving or not expected to achieve numeric or narrative water quality standards for priority pollutants required by section 304(l)—along with those waters not achieving or not expected to achieve applicable water quality standards for any other pollutant as currently required by section 303(d).

Under today's proposed amendments to section 130.7(b)(2), all of these waters would be reported in a three-list format for listing waters similar to the one introduced by section 304(l). These lists would fulfill the section 303(d) requirements for identifying and reporting certain waters.

Today's proposed amendments to Part 130 include the same interpretation of "applicable standard" and the phrase "due entirely or substantially to discharges from point sources" that is proposed today for the identification and listing of waters under section 304(l)(1)(B). These terms and definitions apply only to the list required under proposed § 130.7(b)(2)(ii). (See earlier discussion in Section III.B.1.)

Identification of waters not meeting the fishable and swimmable goals of the Act. In addition to identifying and listing waters which do not achieve applicable water quality standards, section 304(l) also requires that each State identify and list waters that do not meet the "fishable and swimmable" goals of the Clean Water Act after the application of BAT, pretreatment, and new source performance standards. (These goals are "protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and * * * recreational activities in and on the water.")

Section 303(d) does not include this requirement for each State to identify, list and report waters not meeting the fishable and swimmable goals of the Act, and therefore this element of section 304(l) is not being incorporated into Part 130 by today's proposed amendments. However, under its section 305(b) authority, EPA can and does require that these waters be identified and reported by each State to EPA in its biennial report. Therefore, these waters must continue to be identified and reported every two years in section 305(b) reports even though they are not required under section 303(d) authority or by today's proposed amendments to § 130.7.

Data requirements for identifying waters. Currently section 303(d) and Part 130 include no specific requirements on what data a State must assemble and evaluate for identifying waters. However, today's proposed amendments would establish such requirements. They incorporate into Part 130 the same data requirements for biennial submission of lists as those proposed today for the 1989 submission of 304(l) lists.

These proposed amendments to Part 130 would require that at a minimum the States assemble and evaluate all the existing and readily available water quality data about the categories of waters described in the proposed § 130.10(d)(6) when identifying waters required to be listed pursuant to section 303(d). (See earlier discussion in section III.2 of this preamble on using these same categories to prepare lists of waters under section 304(l).)

In addition, today's proposed amendments would require that each State submit with its lists of water documentation of the decision methodologies the State employed and the data it reviewed when developing its lists. The proposed amendments also include that if a State creates lists which are not based upon the assembly and evaluation of data and information about waters in all of the categories in § 130.10(d)(6), the State must provide to the Regional Administrator a rationale for the decision not to do so. A specific rationale must be provided for each category not used.

In addition, proposed subparagraph (iv) requires the State to provide any other information that the Regional Administrator requests in order to review the State's submission of lists. Specifically, proposed subparagraph (iv) requires a State, if EPA requests, to demonstrate good cause for not including on one or more of the required section 303(d) lists a specific waterbody or segment.

These requirements for using minimum existing and readily available data about the categories of waters, providing documentation and specific rationales, and demonstrating good cause are the same requirements being proposed today for developing and reporting of the lists required by section 304(l) in February 1989. (See section III.2 of this preamble for a detailed discussion of these requirements.) These proposed amendments to Part 130 appear in § 130.7(b)(2).

EPA is proposing that these requirements be the same for two reasons. First, since the section 303(d) lists under today's proposed regulations would be very similar to the section 304(1) lists submitted in February 1989, EPA believes it is important that they be developed and reviewed on the same basis. Second, EPA believes that these requirements will encourage each State to continually improve its monitoring and assessment programs so that every biennial submission of lists reflects continually updated data.

Identification of sources and pollutants. Section 304(l)(l) requires for every water listed pursuant to paragraph (B), that each State identify the point sources discharging the priority pollutant into the water, and the amount of such pollutant being discharged. Existing Part 130 does not require any such identification of sources and amounts, only the identification of pollutants.

However, in order for EPA and the States to set priorities and to establish control requirements in the NPDES program, EPA believes that States should continue the work started by section 304(l) of identifying point sources of priority pollutants which cause or contribute to water quality standards violations or impairments. Therefore, EPA proposes today to amend § 130.7(b)(3) to require the identification by States of point sources of priority pollutants for waters listed pursuant to § 130.7(b)(2)(ii). This paragraph requires the same list of waters required by section 304(l)(1)(B). The State would not be required to submit this list of sources to EPA as part of its section 305(b) reports, but must still submit it to EPA under separate cover no less frequently than every two years.

EPA will maintain the existing requirement in § 130.7 that for all the waters identified that the State must identify the pollutants which are preventing or are expected to prevent the achievement of applicable water quality standards. This list should be submitted biennially as part of the State's section 305(b) report.

Reporting lists of waters and lake assessments. Section 303(d) and existing § 130.7 currently require each State to submit its lists of water quality limited segments "from time to time." EPA is proposing today to change this schedule for submission to a schedule that would require each State to report to EPA its lists of waters, pollutants and sources no less frequently than every two years. The lists of waters and pollutants would be submitted biennially as part of the State's section 305(b) reports, and the list of sources would be submitted to EPA biennially in the section 305(b) report or under separate cover.

Since the section 305(b) reports must include a description of the State's water quality, EPA believes it would be appropriate and beneficial for each State report to include the section 303(d) lists of waters and pollutants. Regular submission of these lists would allow for more orderly and accurate assessment of each State's progress in meeting water quality program goals. These proposed amendments appear at §§ 130.7(d)(l) and 130.8(b)(5).

In addition, today's proposed amendments add paragraph (6) to § 130.8 to require that lake water quality assessments be submitted biennially as part of each State's section 305(b) report. Section 314(a)(2) of the CWA requires that each State submit biennially to EPA an assessment of the water quality of all publicly-owned lakes. The specific elements of the required assessment are outlined in section 314(a)(1) and include a list and description of those publicly-owned lakes for which uses are known to be impaired, a description of the status and trends of the water quality of each publicly-owned lake, the nature and extent of pollution loadings from point and nonpoint sources and the extent to which the use of each lake is impaired as a result of such pollution. The assessment must also include a description of the methods and procedures needed to control sources of pollution, restore the lake water quality, mitigate the harmful effects of high acidity, and remove toxic metals and other toxic substances mobilized by high acidity.

Priority ranking of waters. Existing § 130.7 requires each State to rank waters identified in order of priority for control actions. When setting priorities, a State must consider the uses of the waters identified and the severity of the pollution. The State should also take into account such factors as the need to improve National Pollutant Discharge Elimination System (NPDES) permit limits, the need for nonpoint source

controls, priority Clean Lake projects and pending State Revolving Loan Fund decisions.

Today's proposed amendments would not change this requirement that each State establish a priority ranking for the waters identified and listed pursuant to section 303(d) and reported biennially in section 305(b) reports.

Developing WLAs/LAs and TMDLs. EPA is not changing the requirement in § 130.7(c) that the States prepare wasteload allocations (WLAs), load allocations (LAs) and total maximum daily loads (TMDLs) for each waterbody identified and listed pursuant to section 303(d).

Review and approval of lists submitted biennially. Section 130.7 and section 303(d) currently require that the Regional Administrator either approve or disapprove lists of waters, WLAs/LAs and TMDLs no later than 30 days after submission by the State. EPA will continue to review and approve or disapprove lists submitted pursuant to section 303(d) and reported in section 305(b) reports. However, the existing regulations do not include specific conditions or requirements that a State must meet in order for each list to be approved.

Therefore, today's proposed amendments to § 130.7(d) would add specific conditions for approval of lists by EPA. These conditions are identical to the ones proposed today as review conditions for the section 304(l) lists. Since today's proposed amendments to § 130.7 would continue the work initiated by section 304(l), it is important that the proposed biennial submissions of lists of waters be reviewed on a basis consistent with review of the section 304(l) lists. These proposed amendments appear at § 130.7(d)(2).

Under today's proposed amendments, in order for EPA to complete its review of a State's lists, the State must have met the data and documentation requirements in proposed paragraphs (6) and (7). The Regional Administrator will approve each list if it meets the regulatory requirements for listing under 40 CFR 130.7, and disapprove each list that does not.

If, after reviewing the State lists, available data and any required documentation, the Regional Administrator is satisfied that the State has identified and appropriately listed all waters, then EPA will approve the lists.

Today's proposed amendments maintain the 30 day review and approval period of section 303(d).

EPA emphasizes that to gain approval for the list required under § 130.7(b)(2)(1), the State must have revised it to reflect the State's most recent triennial review of water quality standards. The list required under § 130.7(b)(2)(1) is a list of waters which do not or are not expected to achieve numeric water quality standards for priority pollutants. Therefore, it is important that as a State revises its water quality standards every three years, as required by section 303(c)(2)(B), that it subsequently identifies waters which do not achieve or are not expected to achieve the new or revised water quality standards.

(c). *A Proposal for a "Two-List" Format for Biennial Submissions.* Instead of continuing to use the section 304(l) format of three lists for the biennial submissions, EPA is considering simplifying the reporting of water quality-limited segments under section 303(d) to only two lists of waters. One list would include all waters not achieving or expected to achieve applicable water quality standards (including standards for whole effluent toxicity) due to any discharges of a priority pollutant, ammonia or chlorine from either point or nonpoint sources. The other list would be of waters not achieving or not expected to achieve water quality standards due to all pollutants from either point or nonpoint sources. (The first list described, the "toxics list," would be a subset of the second list.) The applicable water quality standard would continue to be defined, as it is now for section 304(l), as any State numeric or narrative standard of EPA criteria in the absence of State standards.

The rationale for using two lists instead of three is that the distinctions among the three lists required by section 304(l)(1) are subtle and can be confusing. Furthermore, the section 304(l) format focuses on identifying priority pollutants discharged from point sources. Though these specific pollutants cause many of the nation's water quality problems, whole effluent toxicity, point source discharges of ammonia and chlorine, and discharges from nonpoint sources continue to cause major water quality problems. By using this two-list format, EPA would hope to encourage States to identify and prioritize for control all of their water quality problems, along with continuing the section 304(l) initiative to identify and control priority pollutants.

EPA is soliciting comments on requiring only two lists of waters under section 303(d) authority. Informally, this proposal has received favorable responses. If normal comments are also as favorable, it is likely that EPA will require a two-list, rather than a three-list format in the final rule without further opportunity to comment.

C. Individual Control Strategies

In addition to the four lists required by section 304(l)(1), the States must prepare and submit to EPA an individual control strategy (ICS) for each point source on the (C) list. This section describes the minimum requirements of an ICS.

EPA has codified sections 304(l)(1)(D), 304(1)(2), and 304(l)(3) of the CWA into a new section in Part 123–§ 123.46. Section 123.46(a) requires the States to submit ICSs to EPA on or before February 4, 1989, and § 123.46(b) requires EPA to approve or disapprove the ICSs by June 4, 1989. (The codification rule uses the term "Administrator" because the rule adheres closely to the language of section 304(l). However, EPA has now delegated the Administrator's obligations under section 304(l) to the Regional Administrators. Therefore, today's proposed regulations use the term "Regional Administrator.")

Where EPA disapproves an ICS, EPA must prepare the ICS in cooperation with the State. Today's proposed rules add four new paragraphs to § 123.46. Proposed paragraph (c) defines an ICS. Proposed paragraph (d) describes the petitions submitted under section 304(l)(3). Proposed paragraph (e) describes the procedures EPA will use to approve or disapprove ICSs, and proposed paragraph (f) establishes the criteria that EPA will use to evaluate an ICS.

1. Description of an Individual Control Strategy

Section 304(l)(1)(D) provides that an individual control strategy must "* * * produce a reduction in the discharge of toxic pollutants from point sources * * *" identified under section 304(l)(1)(C), which is "* * * sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy." These elements of an individual control strategy are codifed at 40 CFR 123.46(a).

Today's proposed definition of an ICS includes a final NPDES permit, a draft NPDES permit with a schedule for issuing a final permit, or, for an on-site response action under CERCLA, the decision document for the response action. The following preamble discussion describes each of these elements of the proposed definition in more detail.

EPA has determined that, for most point source discharges to meet the requirements of section 304(l), an ICS should consist of a final NPDES permit for each point source on the (C) list, plus supporting documentation that such permits have adequately considered the impact from the other discharges on the identified segment. A sufficient ICS, therefore, consists of the controls which are developed (NPDES permit limitations and a schedule for achieving such limitations if they cannot be achieved upon permit issuance) and documentation which shows that the controls selected are appropriate and adequate (*i.e.*, fact sheets with information on total maximum daily loads and waterload allocations).

EPA believes this is the correct interpretation of the term "individual control strategy" because paragraph (D) of section 304(l) states that an ICS must reduce discharges of toxic pollutants through "effluent limitations under section 402" of the CWA. Section 402 of the CWA establishes the NPDES program, and the effluent limitations in NPDES permits are the primary control mechanism that EPA and the States use to reduce point source discharges of pollutants. By inserting a reference to the NPDES program in paragraph (D) EPA believes that Congress intended for an NPDES permit to be the primary element of an ICS.

Where a State demonstrates that a final permit cannot be issued by February 4, 1989, a draft permit and supporting documentation may be accepted as an ICS. However, such a draft permit must be accompanied by a schedule indicating that the final permit will be issued on or before February 4, 1990.

EPA's definition of an ICS includes draft permits because the description of an ICS in section 304(l)(1)(D) allows for such an interpretation, and because it is unrealistic to expect final NPDES permits to be prepared for every point source on the (C) lists within the ambitious deadlines of section 304(l). Water quality-based effluent limits can be technically difficult to prepare and are often subject to extensive public comment during the permit development process. Today's proposal to include draft permits in the definition of an ICS requires the permitting authority to prepare the effluent limitations required by section 304(l)(1)(D), but at the same time, gives the States the necessary flexibility to meet the ambitious deadlines of section 304(l).

A draft permit prepared as an ICS under section 304(l) must be issued as a final permit within one year of establishment of the ICS. (This one-year period is consistent with the language in section 304(l)(3) which establishes a one year period for implementing the provisions of section 304(l) with respect to disapproved ICSs.) Therefore, if a State submits a draft permit to EPA on or before February 4, 1989, the ICS must be issued as a final NPDES permit on or before February 4, 1990. Although the one-year time period reduces the time available to the permittee to meet the deadlines in section 304(l), the one-year time period for issuing final NPDES permits will, nonetheless, allow the permittee sufficient time to achieve applicable water quality standards before the June 4, 1992 deadline in section 304(l). In the case of State-issued ICSs, the one year time period allows EPA to exercise its authority under section 304(l)(2) if a State fails to issue a final NPDES permit within the one year time period. In the case of EPA-issued ICSs, the ICS may be a draft permit, and like the States, EPA would also have up to one year in which to issue a final NPDES permit.

Where EPA approves a draft permit as an ICS, EPA's approval is conditioned on the State's meeting the schedule for issuing the final permit. If a State fails to meet the schedule for issuing the final permit, then EPA may exercise its authority to disapprove the ICS and implement section 304(l).

It is possible that some CERCLA sites will be subject to section 304(l) because these sites can be point source discharges of a priority pollutant. If a CERCLA site qualifies for the (C) list under section 304(l), then the site must also satisfy section 304(l)(1)(D) relating to ICSs. For "off-site" response actions, the CERCLA site discharger must obtain an NPDES permit, and will therefore satisfy section 304(l) in the same way as other point sources subject to section 304(l)(1)(C). For "on-site" actions however, the discharger must meet all "applicable or relevant and appropriate requirements" of the CWA, but is exempt under section 121 of CERCLA from the procedural requirements of the NPDES permitting process. Therefore, on-site actions that are subject to section 304(l) will satisfy paragraph (D) of section 304(l) through compliance with applicable or relevant and appropriate requirements under the CWA, as described in the decision document for that on-site response action. Although EPA expects that there will be few CERCLA sites subject to section 304(l), EPA emphasizes that the ICS for any such CERCLA site is subject to the deadlines in section 304(l). The proposed definition of an ICS at § 123.46(c) includes CERCLA decision documents for on-site response actions. EPA solicits comment on this approach for CERCLA sites that are subject to section 304(l)(1)(D).

EPA considered, but rejected, other interpretations of the term "individual control strategy." A water quality management plan prepared under 40 CFR 130.6 cannot be an ICS because these plans are not directly enforceable (although they are binding on the States) and cannot ensure, by themselves, that limitations will be achieved within the deadlines under section 304(l). Enforcement orders and consent decrees, by themselves, are not adequate substitutes for ICSs. However, an enforcement order or judicial decree based on a final and sufficient NPDES permit may accompany an ICS, provided the ICS satisfies all applicable provisions of section 304(l) of the CWA.

The requirement in section 304(l)(1)(D) that an ICS establish effluent limits under section 402 of the CWA, and therefore consist of an NPDES permit, raises several issues when implementing section 304(l). The remainder of section III.C.1 of this preamble discusses the issues that arise from EPA's definition of an ICS.

An NPDES permit usually becomes effective 30 days after a final decision to issue or modify the permit unless an evidentiary hearing is requested under 40 CFR 124.74. Evidentiary hearings can delay the effective date of the permit. Because these potential delays could jeopardize the ability of EPA and the States to meet the deadlines in section 304(l), and because a final permit reflects the final decision of the permitting authority with respect to the permit, EPA will accept a final (but not necessarily effective) NPDES permit as an ICS.

Another issue arising from the definition of an ICS is the role of States that are not approved by EPA to administer the NPDES program. This issue arises directly from an inconsistency in the language of section 304(l). The statute requires States to prepare "effluent limitations under section 402" of the CWA, but some States are not approved by EPA to prepare such limitations. EPA believes the preferred approach for resolving this internal inconsistency in section 304(l) is to require non-approved States to fulfill the same obligations under section 304(l) that they fulfill under the NPDES program. A State that is not approved by EPA to administer the NPDES program will fulfill its obligations under section 304(l)(1)(D) by preparing and submitting wasteload allocations to the Regional Offices for EPA review and approval. Under the NPDES program, non-

approved States assist EPA in issuing permits by providing EPA with background information, wasteload allocations, and certifications under section 401 of the CWA. EPA uses the wasteload allocations to prepare the NPDES permits for the State. The role of non-approved States with respect to ICSs will be the same as their role with respect to NPDES permits. Non-approved States are responsible for preparing wasteload allocations for each point source on the (C) list. It should be emphasized that non-approved States must prepare and submit the required information to EPA within the deadlines of section 304(l). The Regional Offices will prepare and issue, in cooperation with non-approved States, final NPDES permits in the State. EPA's notice of approval and disapproval will use the same format in approved and non-approved States. Although EPA is responsible for issuing the ICSs in non-approved States, EPA is not responsible for preparing the four lists required by section 304(l)(1) in non-approved States. All States, whether approved or non-approved, must submit the four lists to EPA.

Section 304(l) establishes a three year deadline for achieving water quality standards, whereas section 301(b)(1)(C) requires water quality standards to be met by July 1, 1977. The different deadlines in the two sections raise the question of how the two sections interact. EPA believes that Congress did not intend for section 304(l) to repeal the July 1977 deadline in section 301(b)(1)(C). Rather, Congress recognized that permittees will need a reasonable amount of time, not to exceed three years, to comply with new effluent limits that are necessary to achieve new water quality standards, or reinterpretations of existing water quality standards. On the other hand, there is no indication that Congress intended for section 304(1) to be an extension for permittees who have already failed to comply with effluent limitations. Therefore, where effluent limits are based on water quality standards adopted after July 1977, or based on new interpretations of existing standards, the permit may include a compliance schedule. Also, where new effluent limits will require construction or other activities (*e.g.*, wastewater treatment system optimization, pretreatment program implementation, etc.) an ICS may include a compliance schedule for such activities. However, an ICS may not extend a compliance schedule for achieving effluent limits if the permittee has already failed to abide by the compliance schedule. The reason for this distinction is that section 304(l) requires that water quality standards be met "as soon as possible." If a permit already includes a compliance schedule, then the permitting authority has already given the permittee a reasonable time to comply with effluent limits and therefore achieve water quality standards. Where a permit includes a compliance schedule for attaining effluent limits necessary to achieve water quality standards, the compliance schedule usually represents the most expeditious time frame for achieving water quality standards. Therefore, where a compliance schedule has not been met, the ICS cannot extend the schedule. Rather, an enforcement order may be required as part of the ICS.

In addition, it may be necessary to revise technology-based controls to reflect new effluent guidelines or other new information on available controls. If these requirements cannot be met immediately, they may also be addressed by a compliance schedule in an ICS provided the compliance schedule is consistent with current regulations regarding the inclusion of compliance schedules in permits.

It is possible that some permittees may not meet the effluent limits in their NPDES permits on or before the deadline in section 304(l) for achieving applicable water quality standards. For example, the treatment technology may not be immediately available to reduce the discharge of a priority pollutant to the levels necessary to protect aquatic life and human health. In such cases, the NPDES permit may contain a schedule of compliance that leads to compliance with section 304(l) and other requirements of the CWA. (Note, however, that a schedule of compliance must require compliance no later than applicable statutory deadlines.)

If the permittee does not achieve effluent limits within the time specified in the permit (but no later than the applicable deadline in section 304(l)), the CWA provides for a range of enforcement actions. These actions are provided for in section 309 of the CWA and include, administrative orders, administrative penalty orders, and civil or criminal judicial actions. The appropriate enforcement response is determined on a case-by-case basis. In limited cases in the past, EPA has issued administrative orders concurrently with an NPDES permit where the effluent limits are effective immediately upon permit issuance. Factors which are considered when determining the appropriate enforcement response include but are not limited to: The potential impact of the discharge on human health or the environment; the compliance history of the permittee; and any good faith efforts by the permittee to achieve compliance. EPA solicits comment on the best approach for issuing and enforcing permits that cannot meet the deadlines in section 304(l) for achieving applicable water quality standards.

EPA recognizes that there may be situations where compliance with applicable water quality standards will require ICSs for a number of point sources on a stream segment, or may require nonpoint source controls. More than one point source may contribute the same priority pollutant to a waterbody identified on the "B" list, and therefore, controls on only one point source may not achieve water quality standards. In other cases where there are significant loadings of a toxic pollutant from nonpoint sources, effluent limits for the point sources, by themselves, may not attain and maintain applicable water quality standards. (See the discussion of the phrase "entirely or substantially" in section III.B.1 of this preamble.) In these cases, it is EPA's position that an ICS may satisfy the language in paragraph (D) of section 304(l), and in proposed § 123.46(c) (which require the ICS to achieve water quality standards), if the effluent limits for the point source are consistent with a wasteload allocation for the point source. This approach allows the permitting authority to develop an ICS for each point source that, together with other point or nonpoint source controls, is designed to attain and maintain applicable water quality standards. This approach is also consistent with EPA's existing surface water toxics control program, in which each point source is obligated to reduce its contribution of a pollutant according to its wasteload allocation. The result of this approach should be substantial reductions in point source contributions of priority pollutants, which is consistent with Congress' intent in enacting section 304(l).

Where a waterbody on the (B) list has a significant nonpoint source of a priority pollutant that could impede progress toward achieving water quality standards, EPA and the States should address the nonpoint source using all available authorities including State and local authorities and section 319 of the CWA. (Note that where point and nonpoint sources on the same waterbody contribute different priority pollutants, the degree of nonpoint source contributions will not affect the decision whether to list the water under paragraph B of section 304(l)(1). For more information see the discussion of the (B) list in section III.B of this preamble.)

Nonpoint sources are part of the process of developing water quality-based effluent limits for point sources because nonpoint sources are considered when developing TMDLs and WLAs under section 303(d) of the CWA. EPA emphasizes that nonpoint source controls can make significant improvements in water quality. For many waters, the most significant sources of pollutants are nonpoint sources. Furthermore, nonpoint source controls are, in some cases, more cost-effective than point source controls. The wasteload allocation process gives States the flexibility to allocate wasteloads among various points and nonpoint sources on an affected waterbody, in order to maximize environmental benefits while keeping control costs to a minimum. Thus where possible, WPA encourages the States to use nonpoint source controls to meet the objectives of section 304(l) of the CWA.

Section III.B.1 of this preamble explains that a waterbody may qualify for the (B) list if the source of the priority pollutant is sediment deposited or contaminated by an active point source subject to section 402 of the CWA. For example, the effluent from an active point source discharge may contain priority pollutants that are deposited as sediments in the receiving water, or the effluent may contaminate existing sediment in the receiving water. In such cases the sediment can interfere with the designated use of the water, and the releases can cause excursions above applicable water quality standards. Where contaminated sediment is caused by an active point source, it is EPA's position that the point source is responsible for the priority pollutants. It is EPA's goal that the ICSs for these active point sources achieve applicable water quality standards within the timeframes of section 304(l). However, because controls for in-place sediments raise unique problems for the NPDES program, an ICS for such a point source should, wherever possible, prevent additional accumulation or contamination of the sediments that are the source of the toxic pollutant.

Under EPA's interpretation of section 304(l) all permits, including final or effective permits for point sources subject to section 304(l)(1)(C) must be included in the review required by section 304(l). It is EPA's position that section 304(l) gives EPA the authority to reopen a permit before the term of the permit expires regardless of whether the permit has a reopener clause. The authority to reopen final and effective permits is indicated by the language in section 304(l) that requires an ICS to "establish [ ] * * * effluent limitations under section 402." EPA's authority under section 304(l) to reopen final and effective permits is also supported by the fact that the alternatives to reopening permits do not necessarily meet the requirements of section 304(l)(1)(D). The alternatives are: (1) Allow ICSs to be unenforceable plans that might incorporate limitations under section 402 at some later time; (2) omit certain point sources from the section 304(l) process because the permits for these point sources are not due for review under 40 CFR 123.44; or (3) wait until a permit expires (possibly after the deadlines in section 304(l)) to change the terms of the permit. None of these alternatives would satisfy the requirement that ICSs attain water quality standards by the deadlines in section 304(l). Therefore, EPA will review, and possibly disapprove under section 304(l), final or effective permits, regardless of whether the permit has a reopener clause.

In enacting section 304(l) Congress mandated that EPA and the States act expeditiously to control point sources of priority pollutants. Congress established, in section 304(l), a new process for reviewing permits. To implement section 304(l), EPA will use existing procedures where possible. However, EPA will use the section 304(l) process where pre-existing regulatory procedures are inconsistent with the section 304(l) review process. For example, EPA's regulations at 40 CFR 123.44 describe the procedures for EPA's objections to permits prepared by the States. (Section 402 of the CWA establishes conditions that are prerequisites to EPA's authority to issue permits in approved States. For example, section 402 requires an approved State to submit a permit to EPA for review and requires EPA to object in writing within ninety days, as prerequisites to EPA's authority to issue the permit.) Although the procedures under section 304(l) provide an equivalent opportunity for State-EPA cooperation in the development of permits, section 304(l) also gives EPA the authority to issue permits where the State fails to issue permits that satisfy section 304(l). Under the existing regulations the State submits a proposed permit to EPA, and EPA then has 90 days to object to the terms of the permit. After EPA's objection, the State has 90 days to request a public hearing or to re-submit the permit to EPA. If EPA grants a public hearing, the State may re-submit the permit within 30 days after the Administrator issues the post-hearing decision. If the State does not re-submit the permit within the time limits in § 123.44, the exclusive authority to issue the permit passes to EPA. These procedures are not appropriate for the section 304(l) review process. First, EPA must review final or effective permits in the ICS review process, not just draft or proposed permits. Second, section 304(l) gives EPA a specific deadline by which to review an ICS, not the 90 days provided for in § 123.44. Third, section 304(l) makes no provision for the State to resubmit a disapproved ICS. Rather, section 304(l) directs EPA to work in cooperation with the State in preparing and implementing EPA's ICSs. Finally, section 304(l) requires EPA to provide for public notice and an opportunity to comment on the ICSs, not just an opportunity to request a hearing as provided under § 123.44. Taken as a whole the ICS review process is inconsistent with the permit review process under § 123.44. Therefore EPA will not use the permit review and objection procedures set forth in Part 123 when reviewing ICSs. Instead, EPA will review and approve or disapprove an ICS using the criteria and procedures set forth in today's proposed amendments to 40 CFR 123.46.

For disapproved ICSs, EPA will use existing procedures to issue these ICSs. After EPA disapproves an ICS that is a draft or final NPDES permit, the Agency will use the procedures described in 40 CFR Part 124 to issue a final ICS. If EPA disapproves a decision document for an on-site response action under CERCLA, the Agency will use the procedures under CERCLA for issuing these ICSs.

EPA expects that many of the ICSs that are subject to section 304(l) will be final State-issued permits that EPA has previously reviewed under 40 CFR Part 123. When a State submits an ICS to EPA for review under section 304(l), any previous EPA decision to not object to the permit under Part 123 does not waive EPA's authority to review and approve or disapprove the ICS under section 304(l). If EPA reviewed a permit under Part 123, EPA reserves the right to review the same permit under the provisions of section 304(l).

2. Technical Review Criteria

Section 304(l) requires an ICS to achieve applicable water quality standards as soon as possible but not later than three years after the ICS is established. Although this language establishes a general standard for evaluating an ICS, the language says little about the permit conditions

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necessary to ensure that applicable water quality standards will be achieved. EPA is proposing review criteria in 40 CFR 123.46(f) that will assist the Regions, States, and regulated community in evaluating whether an ICS meets the requirements of section 304(l).

The criteria that EPA will use to review ICSs are the same as the criteria EPA uses to review the water quality-based effluent limits for any permit. Section III.A of this preamble discusses proposed amendments to § 122.44 (d) and (e). These proposed amendments describe how to establish water quality-based effluent limits in NPDES permits. Effluent limits derived from water quality standards must satisfy the proposed language for § 122.44 (d) and (e). The proposed regulations at § 123.46(f), provide that ICSs shall be reviewed according to the criteria in § 122.44 (d) and (e). EPA is also amending § 123.44(c) to incorporate the review criteria for ICSs into EPA's criteria for reviewing other permits not subject to section 304(l). Section 123.44(c) enumerates the criteria that EPA may use to review State-issued permits. By using the same criteria for reviewing ICSs and for reviewing permits that are not subject to section 304(l), EPA is insuring consistency in reviewing the technical adequacy of these two categories of permits.

Where EPA disapproves an ICS, section 304(l)(3) requires EPA to implement section 304(l) in a manner which will achieve applicable water quality standards on or before June 4, 1993. A final permit issued after EPA disapproves the permit under section 304(l) must include language in the fact sheet or statement of basis that identifies the permit as an ICS that satisfies the requirements of section 304(l) of the CWA. This requirement is similar to the language in draft permits subject to section 304(l) which identifies the permit as an ICS. The language in the final permit will identify for the public and the regulated community those ICSs which satisfy the requirements of section 304(l).

D. EPA Review of Lists and Individual Control Strategies

Section 304(l) requires EPA to review and approve or disapprove the lists and ICSs submitted by a State. If a State fails to submit the lists or ICSs, or if a State submits inadequate lists or ICSs, then EPA must disapprove the lists or ICSs. Section 304(l)(2) gives EPA 120 days to approve or disapprove a State's submittal, and where EPA disapproves a list or ICS, section 304(l)(3) requires EPA to implement section 304(l)(1) on or before June 4, 1990. Today's proposed rules establish the same review procedures for the lists and for the ICSs. (Note, however, that the regulations describing the notice and comment procedures for the lists are separate from the regulations for the ICSs because Part 130 addresses State lists of waters, and Part 123 addresses EPA review of permits.)

The procedures described in this section are necessary because the time frame in EPA's existing procedures for reviewing similar State submittals are different from the deadlines established by section 304(l). For example, section 303(d) of the CWA and EPA's implementing regulations at § 130.7 include procedures for reviewing State submittals of "Water quality limited segments" under section 303(d) of the CWA. It is unrealistic for the Regional Administrator to review the lists submitted under section 304(l) within the 30 days allowed by section 303(d).

The first step in the review process occurs when a State submits its lists and ICSs to the appropriate Regional Office for review. The States' deadline for submitting the lists and ICSs is February 4, 1989, and the Regional Offices must approve or disapprove the lists and ICSs by June 4, 1989. EPA's deadline for approving or disapproving the lists and ICSs is June 4, 1989 and does not change if a State submits its lists or ICSs before February 4, 1989. If a State submits its lists and ICSs after the February 4, 1989 deadline, then it will be difficult for EPA to meet the June 4, 1989 deadline for approving or disapproving a State's submittal.

1. Partial Approval and Disapproval of State Submittals

Section 304(l) gives EPA the discretion to approve or disapprove an entire list of waters or facilities, or to approve or disapprove individual waters of the list, or individual point sources on the (C) list. EPA has the same discretion to approve or disapprove one or more ICSs. The basis for this conclusion is the requirement in section 304(l) that EPA implement the listing and ICS requirements of the statute where the State fails to submit an ICS in accordance with paragraph (l). Submission of an ICS in accordance with paragraph (l) includes listing the water where appropriate, and preparing an adequate ICS. For simplicity EPA has decided to refer to approvals or disapprovals of a listed waterbody rather than an entire list of waterbodies.

As described in section III.B.1 of this preamble, section 304(l) requires each State to submit three lists of waters to EPA. EPA will review each waterbody on each of the three lists. If the waterbody meets the criteria described in the proposed regulations at § 130.10(d) of today's rulemaking, then EPA will approve the State's decision to list that waterbody. If EPA identifies a waterbody that qualifies for one or more of the three lists of waters, and the State had not included the waterbody on the appropriate list(s), then EPA will disapprove the State's decision to not list the waterbody under the applicable paragraph(s) in its notice of approval and disapproval. For example, if a State included a waterbody on the (A)(i) list, but not on the (B) list, and if EPA determined that the waterbody qualified for both lists, then EPA would approve the decision to list the waterbody on the (A)(i) list, but would disapprove the State's decision to not list the waterbody under the (B) list. Another example is where a State does not include a waterbody on any of the three lists, but EPA determines that the waterbody qualifies for one or more of the lists. EPA would disapprove the State's decision to not list the waterbody under each paragraph for which the waterbody qualifies.

EPA also has the authority to disapprove the listing of a waterbody by a State if the waterbody does not qualify for the list. For example, if the State includes a waterbody on the (B) list, and EPA determines that the waterbody does not qualify for the (B) list, EPA would disapprove the State's listing of the waterbody on the B list, and indicate this decision in EPA's notice of approval or disapproval.

EPA will also review each point source on the (C) list. EPA will approve the listing of each point source that meets the criteria in section 304(l)(1)(C). EPA will disapprove the listing of any point source that does not satisfy section 304(l)(1)(C), and will disapprove a State's decision to not list any point source that meets the criteria in paragraph C of section 304(l)(1).

Like EPA's review of individual waters, EPA will review each ICS, and will approve each ICS submitted by a State that meets the requirements of an ICS. EPA will also disapprove a State's decision to not submit an ICS if EPA determines that the State should have included the ICS in its submittal to EPA. The notice of approval and disapproval, explained in the following section, will include EPA's decisions with respect to each water, point source, and ICS.

2. Public Notice of Approval or Disapproval

Under section 304(l)(3) of the CWA, if a State fails to submit one or more waters or ICSs, or if EPA disapproves one or more waters or ICSs, then EPA will implement the requirements of section 304(l)(1) after notice and opportunity for public comment. This section describes the public participation procedures necessary when EPA implements section 304(l). Today's proposed regulations on public participation amend § 130.10(d) (relating to lists of waters), and § 123.46(c) (relating to ICSs).

EPA intends to rely, to the extent possible, on State public participation procedures. EPA encourages the States to provide for full public participation when developing their lists and ICSs under section 304(l). State public participation procedures must, at a minimum, provide for public notice and an opportunity to comment on the State's lists and ICSs. Parts 25 and 124 of EPA's regulations describe procedures for public notice and comment that States may use under section 304(l). The 120-day comment period in section 304(l)(3) does not apply to States because section 304(l)(3) applies only when EPA disapproves one or more ICSs. Where a State does provide adequate public participation on the lists and ICSs, and where the Regional Administrator approves all of a State's decisions with respect to the lists and ICSs, today's proposed regulations give the Regional Administrator the discretion to forego an additional round of notice and comment on the lists and ICSs.

Where the Regional Administrator determines that a State did not provide for adequate notice and opportunity to comment on the lists and ICSs, EPA's notice of approval or disapproval must include all approvals and disapprovals. Such notice would include all of EPA's approvals and disapprovals for all waters and ICSs subject to section 304(l).

If a State provides for adequate public participation, but the Regional Administrator disapproves any of a State's decisions with respect to the waters, point sources, or ICSs, then EPA's notice must include each of the Agency's disapprovals. In this case it is not necessary for the notice to include EPA's approvals of a State's decisions under section 304(l). However, the Regional Administrator has the discretion to include EPA's approvals in the notice provided under section 304(l). (*See* proposed 40 CFR 123.46(e) and 130.10(d)(7).)

The proposed rules require the Regional Offices to mail a copy of the notice to the State Director, to each permittee identified as a point source under section 304(l)(1)(C), and to every interested person on the mailing list maintained by the Regional Office. (Interested persons may contact the appropriate Regional Office for more information about the mailing lists maintained in each Region.) The proposed rule also requires the Regional Administrator to publish a notice of availability in a daily or weekly newspaper with State-wide circulation. (*See* proposed 40 CFR 123.46(e) and 130.10(d)(7).) The notice of availability tells the public where to obtain copies of EPA's notice of approval or disapproval. Under today's proposed rules, public participation for the lists and ICSs occurs at the same time, and the Regional Offices will probably use the same notice for the lists and ICSs.

EPA considered notice in the **Federal Register** as an alternative to today's proposal. However, a **Federal Register** notice does not necessarily provide actual notice to the parties involved, whereas a direct mailing to the interested parties provides actual notice. A **Federal Register** notice takes more time to prepare and publish than notification by mail. Finally, a notice in the **Federal Register** is not necessarily appropriate because the lists are primarily of State-wide concern.

EPA considered providing notice and an opportunity for comment on a State's submittal before issuing a notice of approval or disapproval. EPA rejected this approach because such notice is not required under section 304(l) and because the ambitious deadlines in section 304(l) preclude public notice and comment before EPA approves or disapproves a State's lists and ICSs. EPA solicits comment on the methods that should be used for providing notice of the approvals and disapprovals.

a. *Contents of EPA's Notice of Approval or Disapproval.* Today's proposed amendments to § 123.46 and to § 130.10(d) describe the contents of the public notice provided under section 304(l). If the Regional Office combines the notice for the lists and ICSs, then each notice would include the following:

1. The name and address of the EPA office that reviews the State's submittals.

2. A brief description of the 304(l) process. For example, the notice should describe the requirement to identify point sources of toxic pollutants, and should discuss EPA's review of the State's submittal.

3. A list of the waters disapproved under paragraph (A)(i), (A)(ii), and (B), and a short finding that the waters do not meet the applicable review criteria.

4. A list of point sources disapproved under paragraph (C) of section 304(l)(1), and a short finding that the point sources do not satisfy the criteria of paragraph (C).

5. A list of ICSs disapproved under paragraph (D) of section 304(l)(1) and a short finding that the ICSs do not meet the applicable review criteria.

6. If the Regional Administrator determines that a State did not provide adequate public notice and an opportunity to comment on the waters, point sources, or ICSs prepared under section 304(l), or if the Regional Administrator chooses to exercise his or her discretion, a list of approvals and a short finding that the approved waters, point sources, or ICSs meet the applicable review criteria.

7. The name, address, and telephone number of the person at the Regional Office from whom interested parties may obtain more information.

8. The location where interested persons may examine EPA's records of approval or disapproval.

9. Notice that written petitions or comments are due within 120 days.

The contents of these notices are similar to the notices given under 40 CFR 124.10. EPA believes that by using existing procedures wherever possible the agency will minimize the administrative burden of implementing section 304(l).

EPA's notice of approval or disapproval allows 120 days for public comment. The 120-day comment period coincides with the 120 days described in section 304(l)(3), which allows interested persons to petition EPA to list additional waters. Under section 304(l)(3), EPA will consider for listing any navigable water for which any person submits a petition to EPA. Under the statute, interested persons must submit petitions on or before October 4, 1989. Today's proposed rule uses the same 120-day period for receiving petitions and for taking comments on EPA's notice of approval and disapproval. EPA chose to provide a 120-day comment period because it would be impractical to close the public comment period on the notice of approval or disapproval before the statutory deadline for petitions. If EPA closed the comment period before October 4, 1989, it is possible that the Agency would receive petitions for additional listings after the close of public comments. EPA solicits comments on the appropriate notice and comment procedures under section 304(l).

b. *Public Hearings.* EPA is not proposing new regulations for public hearings under section 304(l). The 120-day comment period allows sufficient public involvement in reviewing EPA's decisions with respect to the lists and

ICSs. Furthermore, new regulations for public hearings are not necessary because the Regional Administrator may hold a public hearing if he or she finds a significant degree of public interest in the State's submittal. EPA is soliciting comment on the need for public hearings.

c. *Petitions for Additional Listings.* Under section 304(l)(3), EPA must consider petitions from the public for additional listings of navigable waters. Petitions are due within 120 days after disapproval under section 304(l)(3), and should be submitted to the appropriate Regional Administrator. A petition must identify a waterbody with sufficient detail so that EPA is able to determine the location and boundaries of the waterbody. For example, the petition could identify the waterbody using the name and number assigned to the waterbody by EPA's REACH file. The REACH file is a data base on the nation's surface waters, and the information is available from EPA's Regional Offices. Another method for identifying a waterbody is to use the common name for the waterbody, and give the geographic boundaries for the water. The petition must also identify the list or lists for which the waterbody qualifies, and the petition must explain why the waterbody satisfies the criteria for the list or lists. EPA needs this information to evaluate the petition. If EPA has data that show the water should be listed, and the State has not listed the water, then EPA will disapprove the State's failure to list the water.

Petitions submitted to EPA pursuant to section 304(l)(3) are limited to adding waters to one or more of the three lists of waters prepared under section 304(l)(1). Under section 304(l)(3), an interested party may not petition EPA to delete a water, point source, or ICS from the lists prepared under section 304(l). The relevant language describing petitions under section 304(l)(3) limits the petitions to navigable waters "* * * for listing under [section 304(l)]," and does not discuss deleting waters, point sources, or ICSs from the lists prepared under section 304(l). As a result of the statutory language, the public may submit petitions only for adding waters to one or more lists of waters prepared under section 304(l).

d. *Response to Comments and Petitions.* After the close of the public comment period on October 4, 1989, the Regional Offices will provide, not later than January 4, 1990, a response to the comments and petitions received. The response to comments will be given in the same manner as the first notice. The contents of the response to comments are the same as the first notice of approval or disapproval except for the following changes:

1. The lists of disapproved waters, point sources, and ICSs must reflect any changes made pursuant to comments or petitions received.

2. A brief summary of major comments and petitions received, and EPA's response to the comment or petition.

3. A brief description of the subsequent steps in the 304(l) process. For example, the point sources on the (C) list will require ICSs such that water quality standards will be met by the applicable deadline in section 304(l).

Interested persons will have an additional opportunity to comment on disapproved ICSs. Where EPA disapproves an ICS because it does not meet the requirements of section 304(l), or because the State failed to submit the ICS to EPA for review, section 304(l) requires EPA to prepare an ICS in cooperation with the State after notice and an opportunity to comment. The public notice requirements of section 304(l)(3) will be fulfilled by the public notice procedures followed by EPA or the State when issuing the permit that will constitute the ICS. If EPA disapproves one or more ICSs, then EPA or the State may modify, revoke and reissue, or terminate that ICS using the procedures in 40 CFR Part 124. The procedures in Part 124 require the permitting authority to provide for public notice and an opportunity to comment before issuing a final permit. Therefore, if the permitting authority modifies, revokes and reissues, or terminates a disapproved ICS, the permitting authority must provide for public notice and an opportunity to comment. Judicial review of a disapproved ICS under section 509(b) of the CWA is not available until EPA makes a final decision with respect to the NPDES permit under Part 124 of EPA's regulations. At any time after the Regional Administrator disapproves an ICS (or conditionally approves a draft permit as an ICS), the Regional Office may submit a written notification to the State that the Regional Office intends to issue the ICS. Upon mailing the notification to the State, exclusive authority to issue the permit passes to EPA. This issue is addressed in today's proposed regulations at 40 CFR 123.46(f). EPA is proposing this regulation to clarify the time at which exclusive authority to issue ICSs passes to EPA under section 304(l).

IV. Regulatory Analysis

A. Executive Order 12291

Under section 3(b) of Executive Order 12291 the agency must judge whether a regulation is major and thus subject to the requirements of a Regulatory Impact Analysis. The proposed regulation published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. EPA submitted this regulation to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1490) and a copy may be obtained from Rick Westlund, Information Policy Branch, U.S. EPA, 401 M Street, SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2706.

The public reporting burden for this collection of information is approximately 730 hours per response for the listing requirements of these proposed regulations, and approximately one hour per response for the preparation of permit issuance schedules. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. EPA, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal agencies must, when developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This analysis is unnecessary, however, where the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. The agency has concluded that this rule will not have a significant economic effect on a substantial number of small entities because today's rulemaking proposes no new requirements for the regulated community. Today's proposed regulations merely establish the procedures for implementing section 304(l) of the CWA, and clarify certain elements of EPA's surface water toxics control program.

List of Subjects

40 CFR Part 122

EPA administered permit programs: The National Pollutant Discharge Elimination System.

40 CFR Part 123

State program requirements.

40 CFR Part 130

Water quality planning and management.

Date: January 4, 1989.

Lee M. Thomas,

Administrator.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 122.2 is amended by adding a new definition as follows:

§ 122.2 Definitions.

* * * * *

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

3. Paragraph (d)(1) of § 122.44 is revised to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(d) * * *

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative standards for water quality.

(i) When determining whether a discharge causes or has the reasonable potential to cause an in-stream excursion above a narrative or numeric State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(ii) When the permitting authority determines, using the procedures in paragraph (d)(1)(i) of this section, that a discharge causes or has the reasonable potential to cause an in-stream excursion above the allowable ambient concentration for a State numeric water quality standard, the permit must contain effluent limits for the individual pollutant (where the pollutant is regulated by a State numeric water quality standard) and for whole effluent toxicity (where whole effluent toxicity is regulated by a numeric State water quality standard).

(iii) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(i) of this section, and using toxicity testing data or other information, that a discharge causes or has the reasonable potential to cause, an in-stream excursion above the allowable ambient concentration for a State narrative water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(i) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(iv) Where a State has not established a water quality standard for a specific chemical pollutant that is known to adversely affect or threaten human health or aquatic life, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish permit limits, on a case-by-case basis, using EPA's Water Quality Criteria; or

(B) establish permit limits using a numeric criterion for the pollutant which the permitting authority demonstrates is protective of aquatic life and human health. Such criteria may be derived using the procedures described in EPA's Water Quality Standards Handbook, October 1983, or from an acceptable State criteria development procedure which employs all information available to the State including risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents.

(v) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) effluent limits developed to protect a narrative water quality standard, a numeric water quality standard, or both standards, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

* * * * *

4. The introductory text of paragraph (e) of § 122.44 is revised to read as follows:

* * * * *

(e) *Toxic pollutants and sources of toxicity.* Limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraphs (e)(1) and (e)(2) of this section. Limitations will be established in accordance with paragraph (e)(2) and (e)(3) of this section. An explanation of the development of these limitations shall be included the fact sheet under § 124.56(b)(1)(i).

* * * * *

5. Paragraph (e)(1) of § 122.44 is revised, paragraph (e)(2) of § 122.44 is redesignated as paragraph (e)(3), a new paragraph (e)(2) is added, and redesignated paragraph (e)(3) is amended by adding (iii) as follows:

(e) * * *

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g) (7) or (10) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements

appropriate to the permittee under § 125.3(c).

(2) Limitations must control all pollutants (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause or have the reasonable potential to cause an excursion above any State water quality standard, including State narrative standards for water quality.

(3) * * *

(iii) Limitations on whole effluent toxicity which control the combined toxic effects of two or more pollutants. (If the discharge has the potential to adversely affect human health, and if limitations on whole effluent toxicity do not adequately protect against all human health impacts, then limitations on the appropriate specific chemicals must be used to address the potential human health impacts.)

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.44 is amended by adding paragraph (c)(8) to read as follows:

§ 123.44 EPA review of and objections to State permits.

* * * * *

(c) * * *

(8) The effluent limits of a permit fail to satisfy the requirements of 40 CFR 122.44(d).

* * * * *

3. Paragraphs (c), (d), (e), and (f) are added to § 123.46 as follows:

§ 123.46 Individual control strategies.

* * * * *

(c) For the purposes of this section the term individual control strategy, as set forth in section 304(l) of the CWA, means a final NPDES permit with supporting documentation showing that applicable water quality standards will be met not later than three years after the individual control strategy is established. Where a State is unable to issue a final permit on or before February 4, 1989, an individual control strategy may be a draft permit with an attached schedule (provided the State meets the schedule for issuing the final permit) indicating that the permit will be issued on or before February 4, 1990. If a point source that is subject to section 304(l)(1)(C) of the CWA is also subject to an on-site response action under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et seq.*), an individual control strategy may be the decision document (which incorporates the applicable or relevant and appropriate requirements under the CWA) prepared under section 104 or 106 of CERCLA to address the release or threatened release of hazardous substances to the environment.

(d) A petition submitted pursuant to section 304(l)(3) of the CWA must be submitted to the appropriate Regional Administrator. Petitions must identify a waterbody in sufficient detail so that EPA is able to determine the location and boundaries of the waterbody. Petitions must also identify the list or lists for which the waterbody qualifies, and petitions must explain why the waterbody satisfies the criteria for the list or lists.

(e) If the Regional Administrator disapproves one or more individual control strategies, or if a State fails to provide adequate public notice and an opportunity to comment on the ICSs, then, not later than June 4, 1989, the Regional Administrator shall give a notice of approval or disapproval of the individual control strategies submitted by each State pursuant to this section as follows:

(1) The Regional Administrator shall distribute the notice of approval or disapproval given under this paragraph to the appropriate State Director, to each permittee identified in the notice, and to every interested person on the mailing list maintained by the Regional Administrator. The Regional Administrator shall also publish a notice of availability, in a daily or weekly newspaper with State-wide circulation, for the notice of approval or disapproval.

(2) The notice of approval or disapproval given under this paragraph shall include the following:

(i) The name and address of the EPA office that reviews the State's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of ICSs disapproved under this section and a finding that the ICSs will not meet all applicable review criteria under this section and section 304(l) of the CWA.

(iv) If the Regional Administrator determines that a State did not provide adequate public notice and an opportunity to comment on the waters, point sources, or ICSs prepared pursuant to section 304(l), or if the Regional Administrator chooses to exercise his or her discretion, a list of the ICSs approved under this section, and a finding that the ICSs satisfy all applicable review criteria.

(v) The location where interested persons may examine EPA's records of approval and disapproval.

(vi) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vii) Notice that written petitions or comments are due within 120 days.

(3) Not later than January 4, 1990, the Regional Offices shall issue a response to petitions or comments received under section 304(l). The response to comments shall be given in the same manner as the notice described in paragraph (e)(ii) of this section except for the following changes:

(i) The lists of ICSs must reflect any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the 304(l) process.

(f) EPA shall review, and approve or disapprove, the individual control strategies prepared under section 304(l) of the CWA, using the applicable criteria set forth in section 304(l) of the CWA, and in 40 CFR Part 122, including § 122.44 (d) and (e). At any time after the Regional Administrator disapproves an ICS (or conditionally approves a draft permit as an ICS), the Regional Office may submit a written notification to the State that the Regional Office intends to issue the ICS. Upon mailing the notification, exclusive authority to issue the permit passes to EPA.

(4) Section 123.63 is amended by adding paragraph (a)(5) to read as follows:

§ 123.63 Criteria for withdrawal of State programs.

* * * * *

(a) * * *

(5) Where the State fails to develop an adequate regulatory program for developing water quality-based effluent limits in NPDES permits.

* * * * *

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for Part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 130.7 is amended by redesignating paragraph (b)(2) as paragraph (b)(10), adding new paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9); by revising the first sentence of paragraph (d)(1); and by adding new paragraphs (d)(2) and (d)(3) to read as follows:

§ 130.7 Identification and listing of waters and development of total maximum daily loads (TMDL).

* * * * *

(b) * * *

(2) Each State shall divide the waters required to be identified by paragraph (b)(1) of this section into three lists as described below:

(i) Waters within the State which cannot reasonably be anticipated to attain or maintain water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(C)(2)(B) of the CWA, due to toxic pollutants;

(ii) Waters in the State for which the State does not expect the applicable standard under section 303 of the CWA will be achieved due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a) of the Clean Water Act;

(iii) All other waters identified under paragraph (b)(1) of this section.

(3) For the purposes of listing waters under § 130.7(b)(2)(ii), "applicable standard" means a numeric criterion for a toxic pollutant within State water quality standards. Where a State numeric criterion for a toxic pollutant is not established in State water quality standards, for the purposes of listing waters "applicable standard" means the State narrative water quality standard (e.g., "no toxics in toxic amounts") interpreted by applying the EPA national water quality criteria on a chemical-by-chemical basis.

(4) If a water meets one or more of the three conditions listed below it meets the requirements for being listed under § 130.7(b)(2)(ii) on the grounds that the applicable standard is not achieved or expected to be achieved due entirely or substantially to discharges from point sources.

(i) Initial or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a toxic pollutant *or;*

(ii) The discharge of a toxic pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, would be sufficient to cause a violation of the applicable water quality standard for the toxic pollutant *or;*

(iii) The contribution of a toxic pollutant from one or more point sources is large enough that the applicable water quality standard for that toxic pollutant is threatened and additional point source controls are needed to limit the discharge of the toxic pollutant.

(5) Each State shall assemble and evaluate all existing and readily available water quality-related data and information and each State shall develop the lists required by § 130.7(b)(2) based upon this data and information. At a minimum, all existing and readily available water quality-related data and information includes all of the categories of waters listed in § 130.10(d)(6).

(6) Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not to list waters as required by § 130.7(b)(2). This documentation shall be submitted to the Regional Administrator together with the lists required by § 130.7(b)(2) and shall include as a minimum:

(i) A description of the methodology used to develop each list; and

(ii) A description of the data and information used to identify waters, including a description of the data and information used by the State as required by § 130.7(b)(5) and described in § 130.10(d)(6); and

(iii) A rationale for any decision to not use any one of the categories of existing and readily available data required by § 130.7(b)(5) and described in § 130.10(b)(6); and

(iv) Any other information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on one or more lists. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.10(d)(6); or changes in conditions, e.g., new control equipment, or elimination of discharges.

(7) The State shall establish a priority ranking for such water quality limited segments identified and listed pursuant to paragraph (b) of this section taking into account the severity of the pollution and the uses to be made of such waters.

(8) For each segment of each list of waters required under paragraph (b)(2) of this section, the State shall identify each pollutant causing or expected to cause violations of the water quality standards.

(9) For each segment of navigable waters included on the list required pursuant to § 130.7(b)(2)(ii), the State shall identify the specific point sources discharging any toxic pollutant which is believed to be preventing or impairing the water quality. The State shall submit a list of these point sources to EPA no less frequently than every two years.

* * * * *

(d) *Submission and EPA approval.* (1) Each State shall submit biennially for approval to the Regional Administrator the lists of waters and pollutants required under paragraph (b) of this section. The lists of waters and pollutants shall be submitted to EPA in the biennial water quality report required by § 130.8 of this part and section 305(b) of the CWA.

* * * * *

(2) The Regional Administrator shall approve or disapprove each list required by § 130.7(b)(2). The Regional Administrator shall approve each list under § 130.7(b)(2) only if it meets the requirements of § 130.7(b)(2) and if the State has met the requirements of § 130.7 (b)(5) and (b)(6).

(3) Each State shall submit to EPA no less frequently than every two years the list of point sources required under § 130.7(b)(9). The list of sources may be included in the State's biennial section 305(b) report under § 130.8 of this part or submitted to EPA under separate cover.

* * * * *

3. Section 130.8 is amended by adding paragraphs (b) (5) and (6) to read as follows:

§ 130.8 Water quality report.

* * * * *

(b) * * *

(5) The lists of waters and pollutants required under § 130.7(b). These lists fulfill the requirements for listing under section 303(d) of the CWA and are subject to the review and approval procedures of that section of the Act.

(6) An assessment of the water quality of all publicly owned lakes, including the status and trends of such water quality as specifically outlined in section 314(a)(1) of the Clean Water Act.

* * * * *

4. Section 130.10 is amended by adding paragraphs (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (d)(10), and (d)(11) to read as follows:

§ 130.10 State submittals to EPA.

* * * * *

(4) For the purposes of listing waters under § 130.10(d)(2), "applicable standard" means a numeric criterion for a toxic pollutant within State water quality standards. Where a State numeric criterion for a toxic pollutant is not established in State water quality standards, for the purposes of listing waters "applicable standard" means the State narrative water quality standard (e.g., "no toxics in toxic amounts") interpreted by applying the EPA national water quality criteria on a chemical-by-chemical basis.

(5) If a water meets one or more of the three conditions listed below it meets the requirements for being listed under

§ 130.10(d)(2) on the grounds that the applicable standard is not achieved or expected to be achieved due entirely or substantially to discharges from point sources.

(i) Initial or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a toxic pollutant *or;*

(ii) The discharge of a toxic pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, would be sufficient to cause a violation of the applicable water quality standard for the toxic pollutant *or;*

(iii) The contribution of a toxic pollutant from one or more point sources is large enough that the applicable water quality standard for that toxic pollutant may be exceeded and additional point source controls are needed to limit the discharge of the toxic pollutant.

(6) Each State shall assemble and evaluate all existing and readily available water quality-related data and information and each State shall develop the lists required by paragraphs (d) (1), (2), and (3) of this section based upon this data and information. At a minimum, all existing and readily available water quality-related data and information includes all of the following categories of waters:

(i) Waters where fishing or shellfish bans and/or advisories are currently in effect or are anticipated.

(ii) Waters where there have been repeated fishkills or where abnormalities (cancers, lesions, tumors, etc.) have been observed in fish or other aquatic life during the last ten years.

(iii) Waters where there are restrictions on water sports or recreational contact.

(iv) Waters identified by the State in its most recent State section 305(b) report as either "partially achieving" or "not achieving" designated uses.

(v) Waters identified by the States and reported to EPA as waters needing water quality-based controls.

(vi) Waters identified by the State as priority waterbodies. (State Water Quality Management plans often include priority waterbody lists which are those waters that most need water pollution control decisions to achieve water quality goals.)

(vii) Waters where ambient data indicate potential criteria exceedances due to toxic pollutants from primary industries.

(viii) Waters for which effluent toxicity test results indicate possible violations of State water quality standards, including narrative "free from" criteria or EPA criteria where State standards are not available.

(ix) Waters with primary industrial major dischargers where dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based on estimates of BAT levels from effluent guidelines development documents, NPDES permit application data (e.g., Form 2C), Discharge Monitoring Reports (DMRs), or other available information.

(x) Waters with municipal major dischargers requiring pretreatment where dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon data from NPDES permit applications (e.g., Form 2A), Discharger Monitoring Reports (DMRs), or other available information.

(xi) Waters with facilities not included in the previous two categories such as municipal majors, and minors having water quality impacts where dilution analyses indicate exceedances of State water quality standards (or EPA criteria where State standards are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon estimates of BAT levels from effluent guideline development documents, NPDES permit application data, Discharge Monitoring Reports, (DMRs), or other available information.

(xii) Waters classified for uses that will not support the "fishable/swimmable" goal of the Clean Water Act.

(xiii) Waters where ambient toxicity or adverse water quality conditions have been reported by local, State, EPA or other Federal Agencies, the private sector, public interest groups, or universities. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the U.S. Department of Agriculture Extension Service, the National Oceanic and Atmospheric Administration, the U.S. Geological Society, and the U.S. Fish and Wildlife Service are good sources of field research and activities.

(xiv) Waters identified as having impaired or threatened designated uses in the Clean Lake Assessments conducted under section 314 of the Clean Water Act.

(xv) Waters identified as impaired by nonpoint sources in the 1985 *America's Clean Water: State Nonpoint Source Assessments* (Association of State and Interstate Water Pollution Control Administrators (ASIWPCA)) or waters identified as impaired or threatened in the nonpoint source assessments submitted by States to EPA under section 319 of the Clean Water Act.

(xvi) Surface waters impaired by pollutants from hazardous waste sites on the National Priority List prepared under section 105(8)(A) of CERCLA.

(7) Each State shall provide documentation to the Regional Administrator to support the State's determination to list or not to list waters as required by paragraphs (d)(1), (d)(2), and (d)(3) of this section. This documentation shall be submitted to the Regional Administrator together with the lists required by paragraphs (d)(1), (d)(2), and (d)(3) of this section and shall include as a minimum:

(i) A description of the methodology used to develop each list; and

(ii) A description of the data and information used to identify waters and sources including a description of the data and information used by the State as required by paragraph (d)(6) of this section; and

(iii) A rationale for any decision to not use any one of the categories of existing and readily available data required by paragraph (d)(6) of this section; and

(iv) Any other information requested by the Regional Administrator. Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on one or more lists. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in § 130.10(d)(6); or changes in conditions, e.g., new control equipment, or elimination of discharges.

(8) The Regional Administrator shall approve or disapprove each list required by paragraphs (d)(1), (d)(2), and (d)(3) of this section no later than June 4, 1989. The Regional Administrator shall approve each list required under paragraphs (d)(1), (d)(2) and (d)(3) of this section only if it meets the regulatory requirements for listing under paragraphs (d)(1), (d)(2), and (d)(3) of this section and if the State has met all the requirements of paragraphs (d)(6) and (d)(7) of this section.

(9) If a State fails to submit lists in accordance with paragraph (d) of this section or the Regional Administrator does not approve the lists submitted by such State in accordance with this paragraph, then not later than June 4, 1990, the Regional Administrator, in cooperation with such State, shall implement the requirements of CWA section 304(l)(1) in such State.

(10) If the Regional Administrator disapproves a State's decision with respect to one or more of the waters required under paragraphs (d) (1), (2), and (3) of this section, or one or more of the individual control strategies required pursuant to section 304(l)(1)(D), then not later than June 4, 1989, the Regional Administrator shall give a notice of approval of disapproval of the lists submitted by each State pursuant to this paragraph. The notice shall include the following:

(i) The name and address of the EPA office that reviews the State's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of waters, point sources and pollutants disapproved under this paragraph.

(iv) If the Regional Administrator determines that a State did not provide adequate public notice and an opportunity to comment on the lists prepared under this section, or if the Regional Administrator chooses to exercise his or her discretion, a list of waters, point sources, or pollutants approved under this paragraph.

(v) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vi) Notice that written petitions or comments are due within 120 days.

(11) Not later than January 4, 1990, the Regional Office shall issue a response to petitions or comments received under paragraph (d)(10) of this section. Notice shall be given in the same manner as the notice descried in paragraph (10) of this section, except for the following changes:

(i) The lists of waters, point sources and pollutants must reflect any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the section 304(l) process shall be included.

[FR Doc. 89-423 Filed 1-11-89; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 683]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 683 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 13 through January 19, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 683 (§ 907.983) is effective for the period January 13, 1989, through January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC., 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on January 10, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a nine to two vote, a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that supply and demand has improved, especially on the smaller sizes.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.983 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.983 Navel Orange Regulation 683.

The quantity of navel oranges grown in California and Arizona which may be handled during the period January 13, 1989, through January 19, 1989, are established as follows:

(a) District 1: 1,320,000 cartons;
(b) District 2: 180,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: January 11, 1989.

Charles R. Brader,
Director, Fruit and Vegetable Division.

[FR Doc. 89–875 Filed 1–11–89; 3:47 pm]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 648]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 648 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 295,000 cartons during the period January 15 through January 21, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 648 (§ 910.948) is effective for the period January 15 through January 21, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on January 10, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.948 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.948 Lemon Regulation 648.

The quantity of lemons grown in California and Arizona which may be handled during the period January 15, 1989, through January 21, 1989, is established at 295,000 cartons.

Dated: January 11, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-974 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-02-M

Foreign Agricultural Service

7 CFR Part 1560

Calculation of Factors Which Contribute to the Determination of Whether To Impose a Temporary Duty on Canadian Fresh Fruits and Vegetables in Accordance With the United States-Canada Free-Trade Agreement Implementation Act of 1988

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the procedures by which the Foreign Agricultural Service (FAS) will monitor the import prices of certain Canadian fresh fruits and vegetables in accordance with section 301(a) of the United States-Canada Free-Agreement Implementation Act of 1988.

DATES: Effective on January 1, 1989, the date the United States-Canada Free-Trade Agreement enters into force. See Supplementary Information. Comments must be received on or before February 13, 1989.

ADDRESSES: Comments may be mailed to the Inter-America Branch, Foreign Agricultural Service/International Trade Policy, Room 5506 South Building, United States Department of Agriculture, Washington, DC 20250. Copies of all written comments received will be available for examination by interested persons at the above address during regular business hours (8:30 a.m.-5:00 p.m. weekdays).

FOR FURTHER INFORMATION CONTACT: Richard Petges, Inter-America Branch, FAS/ITP, Room 5506 South Building, United States Department of Agriculture, Washington, DC 20250. (202) 382-1338.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "non-major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An environmental impact statement has not been prepared since FAS is excluded from the requirements to prepare procedures implementing the National Environmental Policy Act in accordance with 7 CFR 1b.4.

This action will not increase the federal paperwork burden for individuals, small businesses and others. Furthermore, since this interim rule is part of the implementation of a bilateral trade agreement between the United States and Canada, it involves a foreign affairs function of the United States. Consequently, FAS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this action and the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply to this interim rule.

Background

On January 2, 1988, President Reagan notified Congress of his intent to enter into the United States-Canada Free-Trade Agreement (FTA). Pursuant to the FTA, the United States and Canada will each eliminate their tariffs on each other's goods within ten years of the FTA's entry into force. However, Article 702 of the FTA provides that select fresh fruits and vegetables will be eligible for a special duty snap-back. This provision is being implemented in U.S. law pursuant to section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988. Under certain specified conditions, the United States may, during the twenty years following the Agreement's entry into force, temporarily restore the duty on imports of designated Canadian fresh fruits and vegetables. This rule elucidates the procedures that will be used by FAS to monitor the prices of the fresh fruits and vegetables imported from Canada that are eligible for the temporary duty and to notify the Secretary of Agriculture that the conditions outlined in Article 702 of the FTA for imposing such a duty for a particular fresh fruit or vegetable have been met.

These regulations are being promulgated to be effective upon the entry into force of the FTA. Article 2105 of the FTA provides that the FTA enters into force "on January 1, 1989 upon an exchange of diplomatic notes certifying the completion of necessary legal procedures by each Party." The Office of the United States Trade Representative will confirm in a **Federal Register** notice the precise date of the FTA's entry into force.[1]

List of Subject in 7 CFR Part 1560

Procedures to monitor Canadian fresh fruit and vegetable imports.

Accordingly, this interim rule amends Title 7 of the Code of Federal Regulations by adding Part 1560 as follows:

PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS

Sec.
1560.1 Scope.
1560.2 Definitions.
1560.3 Determination of fresh fruit or vegetable.
1560.4 Calculation of Data to Support Imposition of Temporary Duty.
1560.5 Calculation of Data to Support Removal of Temporary Duty.

Authority: Sections 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (102 Stat. 1855 and 1865-67).

§ 1560.1 Scope.

This Part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

§ 1560.2 Definitions.

The following definitions shall be applicable to this part:

(a) "Administrator" means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) "Average Monthly Import Price" means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) "Average Planted Acreage" means the average of the annual planted acreage in the U.S. for a particular fresh fruit or vegetable for the preceding five years excluding the years with the highest and lowest acreages based on available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) "Canadian fresh fruit or vegetable" means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) "Corresponding Five-Year Average Monthly Import Price" for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) "F.O.B. Point of Shipment Price in Canada" means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) "Fresh Fruit or Vegetable" means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) "HS heading" means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01	Potatoes, fresh or chilled.
07.02	Tomatoes, fresh or chilled.
07.03	Onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled.
07.04	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05	Lettuce (lactica sativa) and chicory (cichorium spp.), fresh or chilled.
07.06	Carrots, salad beets or beetroot, salsify, celenac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07	Cucumbers and gherkins, fresh or chilled.

[1] See U.S. Trade Representative document published January 6, 1989 (54 FR 505).

HS tariff heading	Description
07.08	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09	Other vegetables (excluding truffles), fresh or chilled.
08.06.10	Grapes, fresh.
08.06.20	Pears and quinces, fresh.
08.09	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
08.10	Other fruit (excluding cranberries and blueberries), fresh.

(i) "Import Price" means the unit value based on data available from the U.S. Customs Service of a particular Canadian fresh fruit or vegetable imported into the U.S. from Canada taking into account any other relevant data, as necessary.

(j) "Secretary" means the Secretary of Agriculture.

(k) "United States" means the United States Customs Territory which includes the fifty states, the District of Columbia and Puerto Rico.

(l) "Wine Grape" means grapes of labrusca, vinifera or hybrid vinifera varieties used for making wine.

(m) "Working Day" means a day which falls on a Monday through Friday, excluding holidays observed by the United States Government and days in which the U.S. Customs Service is not operating.

§ 1560.3 Determination of fresh fruit or vegetable.

The specific group of articles that will be monitored as a particular fresh fruit or vegetable will be determined based on the practicability of monitoring at the eight digit subheading level of the Harmonized Tariff Schedule of the United States. The determination of practicability will be made by the Administrator taking into account: (a) The availability of reliable volume and price data on imports from Canada and data on U.S. planted acreage, (b) market differentiation for the group of articles, and (c) such other factors as the Administrator determines to be appropriate.

§ 1560.4 Calculation of data to support imposition of temporary duty.

The Administrator will inform the Secretary when the following conditions are met with respect to a particular fresh fruit or vegetable imported into the United States from Canada:

(a) If for each of five consecutive working days the import price of the fresh fruit or vegetable is below ninety percent of the corresponding five-year average monthly import price for such fresh fruit or vegetable excluding the years with the highest and lowest corresponding monthly import price; and

(b) The planted acreage in the United States for such fresh fruit or vegetable based on the most recent data available is no higher than the average planted acreage over the preceding five years excluding the years with the highest and lowest planted acreages. For the purposes of calculating any planted acreage increase attributed directly to a reduction in wine grape planted acreage existing on October 4, 1987 shall be excluded.

§ 1560.5 Calculation of data to support removal of temporary duty.

During the time a temporary duty on a particular fresh fruit or vegetable is imposed pursuant to section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the Administrator will inform the Secretary if the F.O.B. point of shipment price in Canada of such fresh fruit or vegetable exceeds, for five consecutive working days, ninety percent of the corresponding five-year average monthly import price excluding the years with the highest and lowest average corresponding monthly import price, adjusted to an F.O.B. point of shipment price, if necessary, for that fresh fruit or vegetable.

Signed at Washington, DC, on the 30th day of December 1988.

Thomas O. Kay,

Administrator, Foreign Agricultural Service.

[FR Doc. 89-920 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-10-M

Food Safety and Inspection Service

9 CFR Parts 350 and 352

[Docket No. 86-043F]

Voluntary Inspection of Exotic Animals

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adopting regulations to provide for voluntary inspection concerning certain exotic animals under the Agricultural Marketing Act of 1946, as amended. This rule amends Part 352 of the regulations promulgated under that Act, which provides voluntary inspection concerning American bison, catalo, and cattalo, to provide for voluntary ante-mortem, post-mortem, and products inspection of elk, deer, antelope, reindeer and water buffalo in the same manner as is presently performed for American bison. A triangular brand will be applied to exotic animal carcasses, meat and meat food products inspected and passed by authorized USDA or State employees in official exotic animal establishments. The rule will facilitate the sale and export of exotic animal carcasses, meat, and meat food products of the additional animals.

EFFECTIVE DATE: February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major rule" under Executive Order 12291. This final rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions: or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Currently less than 2,000 exotic animals are slaughtered annually compared to over 32,000,000 cattle slaughtered in fiscal year 1986. It is not expected that the number of exotic animals slaughtered annually will substantially increase. In addition, since this is a voluntary fee-for-service program, producers must decide if the ability to market a federally inspected product offsets the resulting costs of inspection.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, (5 U.S.C. 601). Since the voluntary inspection service for some exotic animals, with the exception of American bison, catalo, and cattalo, is not yet provided, FSIS does not have specific information on how many small entities may be affected by this final rule. However, FSIS believes that those producers of exotic animals who would be interested in participating in this voluntary inspection service are small in actual numbers and are small businesses. This assumption is based on the limited number of commercially raised exotic animals and the size of the herds of the animals now being commercially produced in the United States. This rule is expected to have an impact on all exotic animal producers who wish to have their products federally inspected because it will enable such producers to market their products as federally inspected. In determining whether to participate in this voluntary program, each producer decides if the ability to market a federally inspected product offsets the resulting costs of inspection. In addition, FSIS believes that a substantial number of those establishments which may choose to participate in the program, that is, agree to use their establishments for the preparation under official inspection of carcasses, meat, and products of exotic animals, will also be small businesses. This assumption is based on the fact that the locations where exotic animals are commercially produced are generally in remote areas where few large establishments are located. Each establishment will decide if such use of its facility and equipment is economically advantageous.

Background

The Agricultural Marketing Act of 1946, as amended, provides the Secretary of Agriculture with the authority to furnish a voluntary inspection service, on a fee basis, for exotic animals (7 U.S.C. 1622). Under Parts 350 and 352 of the regulations (9 CFR Parts 350 and 352) promulgated under that Act, the Department provides inspection and certification services for reindeer and American bison, catalo, and cattalo, respectively. These inspection services enable persons to have ante-mortem and post-mortem inspection performed on these exotic animals. The inspected and passed meat is branded with a USDA mark of inspection and can be sold interstate or exported.

The increasing consumer demand for exotic animal meat and the increasing number of exotic animals being raised for food prompted exotic animal producers to request the adoption of similar regulations for the inspection and marking of these animals and their meat products as are currently provided for American bison, catalo, and cattalo.

Therefore, on February 24, 1988, FSIS published a proposed rule (53 FR 5387) to add other exotic animal species to Part 352 which provided only for the voluntary inspection of American bison, catalo, and cattalo. FSIS proposed to add elk, deer, antelope, and water buffalo to Part 352 and to transfer reindeer from Part 350 to Part 352 to consolidate the provisions for voluntary inspection of all exotic animals. To avoid confusion, FSIS proposed to redefine buffalo as animals belonging to the buffalo family and bison as animals belonging to the bison family.

This final rule allows the following three alternative locations for ante-mortem inspection of reindeer, elk, deer, antelope, and water buffalo, which are presently allowed for American bison, catalo, and cattalo: (1) in the field in a designated area of an owner's premises; (2) on an appropriate transport vehicle at an official exotic animal establishment; and (3) in ante-mortem pens at an official exotic animal establishment. The ante-mortem inspection performed on reindeer, elk, deer, antelope, water buffalo, and bison which is either in the field or on a transport vehicle will be dependent on the adequacy and safety of the particular situation. Humane handling of exotic animals during ante-mortem inspection will be in accordance with § 313.2 of the Federal meat inspection regulations (9 CFR 313.2) which prescribes various methods of humane slaughter.

The post-mortem inspection procedure will be performed in an official exotic animal establishment by a USDA inspector or an inspector of a cooperating State, with the post-mortem disposition determined by the authorized veterinarian. The final rule allows the utilization of Federal and State meat inspection personnel for ante-mortem and post-mortem inspection of reindeer, elk, deer, antelope, water buffalo, and bison.

The triangular brand was designed not only to identify inspected and passed bison and bison meat food products under FSIS's voluntary inspection service, but was also designed to identify meat of other exotic animals approved for inspection at a future date. The triangular brand will be applied to these specific exotic animal carcasses, meat and meat food products inspected and passed by authorized USDA or State employees in an official exotic animal establishment. The ordering and manufacture of the triangular brand will be in accordance with the provisions contained in § 317.3(c) of the Federal meat inspection regulations (9 CFR 317.3).

Discussion of Comments

The Agency received eight comments in response to the proposal. Four commenters supported the proposal; four opposed it. One of the four opposing commenters provided no additional comment. The remaining three opposing commenters felt the proposal would permit the slaughter of game animals, thereby encouraging poaching in the wild which would decrease the numbers of such animals.

The Agency wishes to emphasize that the proposal was a result of requests from exotic animal producers (persons who are involved in the raising and/or marketing of exotic animals for commercial purposes) that the Agency provide Federal inspection of the slaughter and other preparation of elk, deer, antelope, reindeer and water buffalo. The rule provides for ante-mortem inspection (inspection before slaughter) by an FSIS inspector at a producer's premises, on a transport vehicle, or at an official exotic animal establishment. With regard to exotic animals in the wild, it would be very difficult if not impossible to trap and remove an exotic animal from the wild without tranquilizing the animal. Because animals which have been treated with tranquilizers are not permitted for slaughter, any person who attempted such action would gain nothing for their efforts. Therefore, this regulation would have no affect on poaching.

For the reasons discussed in the preamble, FSIS is amending Parts 350 and 352 of the Federal meat inspection regulations as follows:

Final Rule

List of Subjects in 9 CFR Parts 350 and 352

Meat inspection, Voluntary inspection, Exotic animals, Food labeling.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

1. The authority citation for Part 350 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

§ 350.2 [Amended]

2. Paragraph (j) of § 350.2 is removed and reserved.

§ 350.3 [Amended]

3. Paragraph (d) of § 350.3 is removed and reserved.

4. The authority citation for Part 352 continues to read as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

5. The title of Part 352 is revised to read as follows:

PART 352—EXOTIC ANIMALS; VOLUNTARY INSPECTION

6. The Table of Contents of Part 352 is revised to read as follows:

Sec.
352.1 Definitions.
352.2 Type of service available.
352.3 Application by official exotic animal establishment for inspection service.
352.4 Application for ante-mortem inspection service in the field.
352.5 Fees and charges.
352.6 Denial or withrawal of inspection service.
352.7 Marking inspected products.
352.8 Time of inspection in the field and in an official exotic animal establishment.
352.9 Report of inspection work.
352.10 Ante-mortem inspection.
352.11 Post-mortem inspection.
352.12 Disposal of diseased or otherwise adulterated carcasses and parts.
352.13 Handling and disposal of condemned or other inedible exotic animal products at official exotic animal establishments.
352.14 Entry into official establishments; reinspection and preparation of products.
352.15 Records, registration and reports.
352.16 Exports.
352.17 Transportation.
352.18 Cooperation of States in Federal programs.

7. Section 352.1 is revised to read as follows:

§ 352.1 Definitions.

The definitions in § 301.2, not otherwise defined in this part, are incorporated into this part. In addition to those definitions, the following definitions will be applicable to the regulations in this part.

(a) "Act" means the applicable provisions of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 *et seq.*).

(b) "Acceptable" means suitable for the purpose intended and acceptable to the Food Safety and Inspection Service.

(c) "Antelope" means any animal belonging to the antelope family.

(d) "Applicant" means any interested party who requests any inspection service.

(e) "Bison" means any American bison or catalo or cattalo.

(f)"Buffalo" means any animal belonging to the buffalo family.

(g) "Catalo" or "Cattalo" means any hybrid animal with American bison appearance resulting from direct crossbreeding of American bison and cattle.

(h) "Condition" means any condition, including, but not limited to, the state of preservation, cleanliness, or soundness of any product or the processing, handling, or packaging which may affect such product.

(i) "Condition and wholesomeness" means the condition of any product, its healthfulness and fitness for human food.

(j) "Deer" means any member of the deer family.

(k) "Exotic animal" means any reindeer, elk, deer, antelope, water buffalo or bison.

(l) "Elk" means any American elk.

(m) "Exotic animal inspection service" means the personnel who are engaged in the administration, application, and direction of exotic animal inspection programs and services pursuant to the regulations in this part.

(n) "Exotic animal producer" means any interested party that engages in the raising and/or marketing of an exotic animal for commercial purposes.

(o) "Field ante-mortem inspection" means the ante-mortem inspection of an exotic animal away from the official exotic animal establishment's premises.

(p) "Field designated area" means any designated area on the applicant's premises, approved by the Regional Director, where field ante-mortem inspection is to be performed.

(q) "Identify" means to apply official identification to products or containers.

(r) "Inspection" means any inspection by an inspector to determine, in accordance with regulations in this part, (1) the condition and wholesomeness of an exotic animal, or (2) the condition and wholesomeness of edible product of an exotic animal at any state of the preparation or packaging in the official plant where inspected and certified, or (3) the condition and wholesomeness of any previously inspected and certified product of an exotic animal if such product has not lost its identity as an inspected and certified product.

(s) "Interested party" means any person financially interested in a transaction involving any inspection.

(t) "Official exotic animal establishment" means any slaughtering, cutting, boning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this part.

(u) "Official device" means a stamping appliance, branding device, stencil printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or packaging material.

(v) "Official identification" means any symbol, stamp, label or seal indicating that the product has been officially inspected and/or indicating the condition of the product approved and authorized by the Administrator to be affixed to any product, or affixed to or printed on the packaging material of any product.

(w) "Program" means the Voluntary Exotic Animal Inspection Program of the Food Safety and Inspection Service.

(x) "Reindeer" means any reindeer commonly referred to as caribou.

(y) "Transport vehicle" means any vehicle used to transport an exotic animal.

(z) "Veterinarian" means an authorized veterinarian of the Program employed by the Department or any cooperating State who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

(aa) "Water buffalo" means any Asiatic water buffalo, commonly referred to as carabao; and the water buffalo of India, commonly referred to as the Indian buffalo.

8. Section 352.2 is revised to read as follows:

§ 352.2 Type of service available.

Upon application, in accordance with § 352.3, § 352.4, and § 352.5, the following type of service may be furnished under the regulations in this part:

(a) Voluntary Inspection Service. An inspection and certification service for wholesomeness relating to the slaughter and processing of exotic animals and the processing of exotic animal products. All provisions of this part shall apply to the slaughter of exotic animals, and the preparation, labeling, and certification of the exotic animal meat and exotic animal products processed under this exotic animal inspection service.

(b) Only exotic animals which have had ante–mortem inspection as described under this part and which are processed in official exotic animal establishments in accordance with this part may be marked inspected and passed.

(c) Exotic animals, exotic animal meat and meat food products shall be handled in an official exotic animal establishment to ensure separation and identity of the exotic animal or exotic animal meat and meat food products until they are shipped from the official exotic animal establishment to prevent commingling with other species.

9. Section 352.3 is revised to read as follows:

§ 352.3 Application by official exotic animal establishment for inspection services.

(a) Any person desiring to process an exotic animal, exotic animal carcasses, exotic animal meat and meat food products in an establishment under exotic animal inspection service must receive approval of such establishment and facilities as an official exotic animal establishment prior to the rendition of such service. An application for inspection service to be rendered in an official exotic animal establishment shall be approved in accordance with the provisions contained in §§ 304.1 and 304.2 of Subchapter A of this Chapter.

(b) Initial survey. When an application has been filed for exotic animal inspection service, the Regional Director or designee, shall examine the establishment, premises, and facilities.

10. Section 352.4 is revised to read as follows:

§ 352.4 Application for ante-mortem inspection service in the field.

Any exotic animal producer desiring field ante-mortem exotic animal inspection service must receive approval of the field ante-mortem designated area from the Regional Director or designee prior to the rendition of such service. An application seeking approval of the designated area for ante-mortem inspection shall be obtained from the Regional Director, and completed and submitted to the Regional Director.

(a) An initial application for field ante-mortem exotic animal inspection service shall be made by an official exotic animal establishment to the Regional Director. Subsequent requests shall be made by the official exotic animal establishment on behalf of an exotic animal producer to the Regional Director in one of the following manners: (1) telephone, (2) telegraph, (3) mail, or (4) in person as determined by the Regional Director.

(b) Upon receipt of the completed application, the Regional Director or designee shall examine the field ante-mortem designated area and facilities for approval of the designated area.

(c) All fees involved for the approval of the designated area, including but not limited to any travel, per diem costs, and time required to perform such approval services, shall be paid directly by the applicant to the Regional Director.

11. Section 352.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 352.6 Denial or withdrawal of inspection service.

(a) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing by the appropriate Regional Director: (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure of payment for service; (3) in case the application or request relates to exotic animals or exotic animal products which are not eligible for service under this part; (4) for failure to maintain the designated area or the plant in a state of repair approved by the Service; (5) for the use of operating procedures which are not in accordance with the regulations of this part; (6) for alterations of buildings, facilities, or equipment which cannot be approved under the regulations in this part. Notice of such rejection, denial, or withdrawal, and the reasons therefore, shall promptly be given to the person involved. The applicant or recipient shall be notified of such decision to reject an application or request for service or to deny or withdraw the benefits of the service, and the reasons therefor, in writing in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. Such decision shall be effective upon such oral or written notification, whichever is earlier, to the applicant or recipient. If such notification is oral, the person making such decision shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the applicant or recipient in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(b) *For disciplinary reasons—Basis for denial or withdrawal.* An application or request for service may be denied, or the benefits of the service may be withdrawn from, any person or entity who, or whose officer, employee or agent in the scope of his employment or agency: (1) Has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under this part; (2) has given or attempted to give, as a loan or for any other purpose, any money, favor or other thing of value, to any employee or agent of the Department or a cooperating State authorized to perform any function under this part; (3) has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee or agent of the Department or cooperating State in the performance of his or her duties under this part by intimidation, threats, assaults, abuse, or any other improper means; (4) has knowingly represented that any exotic animal carcass, or exotic animal product, has been officially inspected and passed by an authorized inspector under this part, when it had not, in fact, been so inspected; (5) has been convicted of more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged good, or fraud in connection with transactions in food, or any felony; *Provided*, an application or a request for service made in the name of a person or entity otherwise eligible for service under the regulations may be denied, or the benefits of the service may be withdrawn, from such a person or entity in case the service is or would be performed at a location operated by a person or entity, from whom the benefits of the service are currently being denied or have been withdrawn under this part; or by a person or entity having an officer, director, partner, manager or substantial investor from whom the benefits of service under this part are currently being denied or have been withdrawn under this part, and who has any authority with respect to the location where service is or would be performed; or in case the service is or would be performed with respect to any exotic animal or exotic animal product in which any person or entity, from whom the benefits of service are currently being denied or have been withdrawn under this part, has contract or other financial interest.

* * * * *

12. Section 352.7 is amended by revising the introductory text and paragraphs (a) and (b)(1) to read as follows:

§ 352.7 Marking inspected products.

Wording and form of inspection mark. Except as otherwise authorized by the Administrator, the inspection mark applied to inspected and passed exotic animal carcasses, meat or meat food products under this part shall include wording as follows: "Inspected and Passed by U.S. Department of Agriculture." This wording shall be contained within a triangle in the form

and arrangement shown in this section. The establishment number of the official establishment shall be included in the triangle unless it appears elsewhere on the packaging material. Ordering and manufacture of the triangle brand shall be in accordance with the provisions in 9 CFR 317.3(c) of the Federal meat inspection regulations. The Administrator may approve the use of abbreviations of such inspection mark, and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark or approved abbreviation shall be applied, under the supervision of the inspector, to the inspected and passed edible product, packaging material, immediate container or shipping container. When the inspection mark or approved abbreviation is used on packaging material, immediate container or shipping container, it shall be printed on such material or container or on a label to be affixed to the packaging material or container. The name and address of the packer or distributor of such product shall be printed on the packaging material or label. The inspection marks may be stenciled on the container, and when the inspection mark is so stenciled, the name and address of the packer or distributor may be applied by the use of a stencil or rubber stamp. The name and address of the packer or distributor, if prominently shown elsewhere on the packaging material or container, may be omitted from insert labels which bear an official identification if the applicable establishment number is shown.

(a) The inspection mark to be applied to inspected and passed carcasses and parts of carcasses of an exotic animal, and products as therefrom approved by the Administrator, shall be in the form and arrangement as indicated in the example below.[1] The establishment number of the official establishment shall be set forth if it does not appear on the packaging material or container.

(1) For application to exotic animal carcasses, primal parts and cuts therefrom, exotic animal livers, exotic animal tongues, and exotic animal hearts.



(2) For application to exotic animal calf carcasses.



(3) For application to exotic animal tails.



(4) For application to burlap, muslin, cheesecloth, heavy paper, or other acceptable material that encloses carcasses or parts of carcasses.

(b) The official inspection mark to be shown on all labels.[1] (1) For inspected and passed products of an exotic animal shall be in the following form, except that it need not be of the size illustrated, provided that it is a sufficient size and of such color as to be conspicuously displayed and readily legible and the same proportions of letter size and boldness are maintained as illustrated:





* * * * *

13. Section 352.8 is revised to read as follows:

§ 352.8 Time of inspection in the field and in an official exotic animal establishment.

The official exotic animal establishment on behalf of the applicant shall notify the Regional Director or designee, in advance, of the hours when such inspection is desired. Inspection personnel shall have access at all times to every part of any field ante-mortem inspection area and/or official exotic

[1] The number "38" is given as an example only. The establishment number of the official exotic animal establishment where the product is prepared shall be used in lieu thereof.

[1] The number "38" is given as an example only. The establishment number of the official exotic animal establishment where the product is prepared shall be used in lieu thereof.

animal establishment to which they are assigned.

14. Section 352.9 is revised to read as follows:

§ 352.9 Report of inspection work.

Reports of the work of inspection carried on within the field ante-mortem inspection area of an exotic animal producer's premises and/or official exotic animal establishment shall be forwarded to the Administrator by the ante-mortem inspector. The applicant for such inspection shall furnish to the Administrator such information as may be required on forms provided by the Administrator.

15. Section 352.10 is revised to read as follows:

§ 352.10 Ante-mortem inspection.

An ante-mortem inspection of an exotic animal shall, where and to the extent considered necessary by the Administrator and under such instructions as he may issue from time to time, be made on the day of slaughter of an exotic animal, in one of the following listed ways or as determined by the Administrator. Humane handling of an exotic animal during ante-mortem inspection shall be in accordance with the provisions contained in 9 CFR 313.2. Immediately after the animal is stunned or killed, it shall be shackled, hoisted, stuck and bled.

(a) To be performed on an exotic animal in the field in a designated area of an exotic animal producer's premises.

(1) Reindeer, elk, deer, antelope, bison and water buffalo are eligible for field ante-mortem inspection. The field ante-mortem designated area must be approved by the Regional Director or designee prior to rendition of the service.

(2) Any person who desires to receive field ante-mortem inspection must provide:

(i) Notification from an official exotic animal establishment to the Regional Director or designee.

(ii) A field ante-mortem designated area.

(iii) A stunning/slaughtering area which is in a condition that minimizes the possibility of soiling the animal when stunned/slaughtered and bled as determined by the inspector.

(iv) A transport vehicle that is as sanitary as practicable as determined by the inspector.

(3) The ante-mortem inspector shall determine the acceptableness and safety of performing field ante-mortem inspection. If, in the opinion of the ante-mortem inspector, an unsafe circumstance exists at the time of field ante-mortem inspection, the service shall be denied.

(4) An exotic animal that, in the ante-mortem inspector's opinion, does not pass ante-mortem inspection must be withheld from slaughter.

(5) Stunning to render the animal unconscious shall be in accordance with 9 CFR 313.15 or 313.16.

(6) All stunned/slaughtered and bled exotic animals shall be tagged with a "U.S. Suspect" tag in an ear by the ante-mortem inspector or designee prior to loading on the transport vehicle.

(7) The transport of intact exotic animal carcasses to an official exotic animal establishment for post-mortem inspection shall be as expedient as possible, and must be within the same day as field slaughter.

(8) Ante-mortem cards (Form MP 402-2) shall be filled out by the ante-mortem inspector. One copy is to be retained by the ante-mortem inspector. The other copy shall accompany the transport vehicle to the official exotic animal establishment and shall be delivered to the post-mortem veterinarian.

(9) The ante-mortem inspector shall supervise all phases of field ante-mortem inspection.

(b) To be performed on exotic animals that are inside of the transport vehicle at an official exotic animal establishment.

(1) Reindeer, elk, deer, antelope, bison, and water buffalo are eligible for transport vehicle inspection.

(2) The ante-mortem inspector shall remain outside the transport vehicle while performing ante-mortem inspection.

(3) The person requesting transport vehicle inspection must provide a transport vehicle that is as sanitary as practicable and that would safely and thoroughly permit the inspection of an exotic animal from outside of the transport vehicle as determined by the inspector.

(4) The ante-mortem inspector shall determine the adequacy and safety of performing ante-mortem inspection. If, in the ante-mortem inspector's opinion, the transport vehicle is not adequate or safe to perform ante-mortem inspection, the service shall be denied.

(c) To be performed in pens at official exotic animal establishments. The inspection shall be conducted in accordance with the provisions contained in 9 CFR Part 309.

16. Section 352.11 is revised to read as follows:

§ 352.11 Post-mortem inspection.

(a) Post-mortem inspection of reindeer, elk, deer, antelope, bison and water buffalo shall be conducted in accordance with the provisions contained in 9 CFR Part 310 or as determined by the Administrator.

(b) The post-mortem examination of field ante-mortem-inspected exotic animals must occur in the shortest length of time practicable and on the day that field ante-mortem inspection is performed to minimize the changes in the carcass which can affect the post-mortem examination, disposition and wholesomeness of the carcass and its parts.

(c) The post-mortem veterinarian shall inspect and make the disposition of all incoming "U.S. Suspect" tagged exotic animals.

17. The title of § 352.13 is revised to read as follows:

§ 352.13 Handling and disposal of condemned or other inedible exotic animal products at official exotic animal establishments.

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-896 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 1

[Docket No. 89-1]

Investment Securities Regulation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is amending 12 CFR Part 1 to make two nonsubstantive changes in the regulation. The first change in the regulation incorporates the existing statutory authority of national banks to underwrite and deal in obligations of the African Development Bank, the Inter-American Investment Corporation, and other Type II securities listed in 12 U.S.C. 24(Seventh). The second change deletes from the regulation an outdated and unnecessary provision describing procedures for banks to request rulings by OCC.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Horace Sneed, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency,

Washington, DC 20219 (202–447–1880); Owen Carney, Director, Investment Securities, Office of the Comptroller of the Currency, Washington, DC 20219 (202–447–1901).

SUPPLEMENTARY INFORMATION:

Background

This rule updates the OCC's investment securities regulation, 12 CFR Part 1 ("Regulation"), to reflect national banks' existing powers with respect to obligations of the African Development Bank. In the African Development Bank Act, Congress amended section 16 of the Glass-Steagall Act, 12 U.S.C. 24(Seventh), to include obligations of the African Development Bank among those obligations, commonly referred to as "Type II Securities," that banks may underwrite and deal in, and that are eligible for national banks to purchase for their own accounts subject to a limitation of ten percent of capital and surplus on the amount that may be held per obligor. *See* African Development Bank Act, Pub. L. No. 97–35, section 1342(a), 95 Stat. 357, 743 (1981). Congress' provision of the described authority was not conditioned on the OCC's adoption of an implementing regulation. Therefore, our revision of the Regulation to specifically include African Development Bank obligations as Type II Securities does not alter banks' existing securities underwriting, dealing, or investment authority. *See* Interpretive Letter 392 from Robert L. Clarke, Comptroller of the Currency (June 25, 1987), *reprinted in* Fed. Banking L. Rep. (CCH) ¶85,616 (recognizing that national banks may exercise the subject authority regarding African Development Bank obligations pursuant to 12 U.S.C. 24(Seventh) prior to OCC revision of the Regulation).

Similarly, this action updates the Regulation to reflect national banks' existing powers with respect to obligations of the Inter-American Investment Corporation. In the Foreign Assistance and Related Appropriations Act, 1985, Congress amended 12 U.S.C. 24(Seventh) to include obligations of the Inter-American Investment Corporation as Type II Securities without requiring an implementing regulation by OCC. *See* Foreign Assistance and Related Appropriations Act, 1985, Pub. L. No. 98–473, Title I, 98 Stat. 1837, 1885 (1984) (enacting Title II of S. 2416, as introduced in the Senate on March 13, 1984); S. 2416, 98th Cong., 2d Sess. section 211(a), 130 Cong. Rec. S2622–3 (daily ed. March 13, 1984) (containing provision that was enacted to amend 12 U.S.C. 24(Seventh) as described). Therefore, our revision of the Regulation to specifically include Inter-American Investment Corporation obligations as Type II Securities does not alter banks' existing securities underwriting, dealing, or investment authority.

We are also revising the Regulation by deleting an outdated and unnecessary provision that describes procedures for banks to request rulings on matters pertaining to the Regulation. The subject provision, 12 CFR 1.9, requires that banks send their requests to the Deputy Comptroller for Bank Operations—a position that no longer exists—and to include sufficient facts and analysis to enable the OCC to make a determination. Rather than revise § 1.9 to direct requests to a current OCC official, we are removing the section from the Regulation because there is no need to continue the requirement that requests be directed to one official or to remind banks to accompany their requests with appropriate information. Banks may therefore submit requests for rulings regarding the Regulation in accordance with ordinary practices for requesting OCC legal opinions. The deletion of § 1.9 is not expected to affect the OCC's processing or banks' submission of requests regarding the Regulation.

Technical Explanation of Revisions

Currently, 12 CFR 1.3(d) defines "Type II Security" by describing such securities as those obligations that banks may deal in, underwrite, and purchase subject to a ten percent limitation, and then enumerates specific examples of such obligations. We are amending § 1.3(d) to specifically include African Development Bank and Inter-American Investment Corporation obligations among the enumerated Type II Securities and to include a generic reference to all Type II securities listed in 12 U.S.C. 24(Seventh). No revision is required for 12 CFR 1.5, which describes the qualitative standards applicable to purchases of Type II Securities for a bank's own account, or for 12 CFR 1.7, which describes the ten percent quantitative limitation on holdings of Type II Securities, since those sections refer to all Type II Securities generically rather than enumerating particular Type II Securities. We are amending the description of banks' authority to underwrite and deal in Type II Securities at 12 CFR 1.6 to remove that section's current enumeration of particular Type II Securities to which the underwriting and dealing authority applies, and adding a generic reference to all Type II Securities so that § 1.6 will not require updating to reflect any future additions of Type II Securities by Congress.

Finally, we are removing the provision at 12 CFR 1.9 for requesting OCC rulings on the Regulation. To reflect the removal of § 1.9, we are deleting the existing references to that section from 12 CFR 1.4 and 1.100(b). We are also changing the numbering of the sections that follow § 1.9 to reflect the removal of that section. Specifically, §§ 1.10, 1.11 and 1.12 are being renumbered as §§ 1.09, 1.10 and 1.11, respectively. The existing cross-reference at 12 CFR 1.4 to § 1.11 is being changed to cross-reference § 1.10 to reflect the described renumbering.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*, it has been determined that this proposed rule, if issued as a final rule, would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Pursuant to Executive Order 12291, it has been determined that this proposed rule, if issued as a final rule, would not have an annual effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; and would not have an adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Adoption Without Notice and Comment and Reason for Immediate Effective Date

Publication for notice and comment and delayed effectiveness as set forth in the Administrative Procedure Act, 5 U.S.C. 553, are not required. The amendments made by this final rule are technical in nature and have no substantive effect on the banking industry or the public.

List of Subjects in 12 CFR Part 1

African Development Bank, Inter-American Investment Corporation, National banks' investment securities, Type II securities.

Authority and Issuance

For the reasons set forth in the preamble, Part 1 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 1—INVESTMENT SECURITIES REGULATION

1. The authority citation for 12 CFR Part 1 is revised to read as follows:

Authority: Paragraph Seventh of R.S. 5136, as amended, 12 U.S.C. 24(Seventh); 12 U.S.C. 93a.

2. Part 1 is amended by revising §§ 1.3(d), 1.4, 1.6, and 1.100(b); by removing § 1.9; by redesignating §§ 1.10, 1.11, and 1.12 as §§ 1.9, 1.10, and 1.11; and by revising newly redesignated § 1.10(b) to read as follows:

§ 1.3 Definitions.

* * * * *

(d) The term "Type II security" means a security that a bank may deal in, underwrite, purchase, and sell for its own account, subject to a 10-percent limitation. These include obligations of the International Bank for Reconstruction and Development, Inter-American Development Bank, the Asian Development Bank, the African Development Bank, Inter-American Investment Corporation, and the Tennessee Valley Authority, obligations issued by any State or political subdivision or any agency of a State or a political subdivision for housing, university, or dormitory purposes, and other obligations listed in paragraph Seventh of 12 U.S.C. 24.

* * * * *

§ 1.4 Type I securities; standards for authorized transactions.

Type I securities are not subject to the limitations and restrictions contained in 12 U.S.C. 24 or in this Part other than §§ 1.3(c), 1.3(g), 1.4, 1.6, and 1.10. Consequently, a bank may deal in, underwrite, purchase, and sell for its own account a security of Type I subject only to the exercise of prudent banking judgment. Prudence will require such determinations as are appropriate for the type of transaction involved. For the purpose of underwriting or investment, prudence will also require a consideration of the resources and obligations of the obligor and a determination that the obligor possesses resources sufficient to provide for all required payments in connection with the obligations.

§ 1.6 Type II securities; authority to deal in and underwrite.

A bank may deal in and underwrite Type II securities pursuant to 12 U.S.C. 24(Seventh).

§ 1.10 Amortization of premiums.

* * * * *

(b) Provide for a program to amortize the premium paid or that portion of premium remaining after the writedown required by § 1.9 so that such premium or portion thereof shall be entirely extinguished at or before the maturity of the security.

* * * * *

§ 1.100 Eligibility of securities for purchase, dealing in, and underwriting by national banks; general guidelines.

* * * * *

(b) The general guidelines are issued to assist national banks and bank counsel in independently applying the relevant law. Due to their summary character, the guidelines are not exclusive or exhaustive. For instance, the guidelines do not provide guidance in evaluating issues which, because of their unique or complex characteristics, are not susceptible to generalization. Neither do the guidelines address novel legal problems which are not reflected in the past rulings. In encountering such complex or novel issues, national banks may wish to request a specific ruling. The general guidelines will be reviewed and amended periodically to reflect new rulings.

Date: January 6, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–696 Filed 1–12–89; 8:45 am]

BILLING CODE 4810–33–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Construction Industries, Surveying and Mapping Services; and Refuse and Garbage Collection Services

AGENCY: Small Business Administration.

ACTION: Notice of retention of current size standards in compliance with Pub. L. 100–656.

SUMMARY: This notice announces to the public that the Small Business Administration (SBA) will not promulgate lower size standards as previously proposed for the Construction, Surveying and Mapping Services and Refuse and Garbage Collection Industries. The current size standards for these industries will remain in effect as mandated by Pub. L. 100–656.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, 1441 L Street, NW.—Room 601, Washington, DC 20416, Tele. (202) 653–6373.

SUPPLEMENTARY INFORMATION: Section 921(f) of Pub. L.'s 99–591 and 99–661 directed the Small Business Administration (SBA) to lower its size standards for the construction industries, surveying and mapping, and refuse and garbage collection services if the total dollar value of small business set-aside and SBA's Minority Small Business and Capital Ownership Development Assistance (section 8(a)) Program awards for these activities annually exceed 30 percent of the dollar value of overall Federal procurements for these activities. In compliance with these laws, SBA published in the **Federal Register** proposals to lower the size standards for the construction industries on December 17, 1987 (52 FR 47937) and to lower the size standards for surveying and mapping services as well as refuse and garbage collection services on August 15, 1988 (53 FR 30689, 30691). These proposals each provided for a 60-day comment period.

On November 15, 1988, President Reagan signed the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656). Title VII of this act repeals the requirements to lower the size standards as provided in Pub. L. 99–591 and Pub. L. 99–661. In lieu of revised size standards, a small business competitiveness demonstration program is to be put into effect for 4 years by nine Federal Agencies. Section 732 of the act requires current size standards for the affected industries to be retained during this demonstration program.

Dated: January 4, 1989.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 89–824 Filed 1–12–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Separation of Functions; Civil Penalty Demonstration Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of separation of functions.

SUMMARY: This notice advises the public of how the separation of functions under the Rules of Practice in FAA Civil Penalty Actions will be implemented within the Office of the Chief Counsel. Under 14 CFR 13.203(b), the Chief Counsel advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker in civil penalty actions not exceeding $50,000. In that function he will be assisted by the Assistant Chief Counsel for Litigation.

EFFECTIVE DATE: January 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Office of the Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3661.

SUPPLEMENTARY INFORMATION: On August 31, 1988, the Federal Aviation Administration (FAA) issued its Rules of Practice for FAA Civil Penalty Actions (53 FR 34646; September 7, 1988). The rules provide detailed procedures for on-the-record hearings required in civil penalty actions not exceeding $50,000, pursuant to the Civil Penalty Assessment Demonstration Program established by Congress in Pub. L. 100–223. Among other things, the rules provide that an agency attorney involved in the prosecution of a civil penalty action will not be participate in or advise the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker under these rules, except as a witness or counsel in the proceedings, after a notice of proposed civil penalty has been issued (14 CFR 13.203(b)). In addition, the rules provide that the Chief Counsel will not perform prosecutorial functions in a civil penalty action or supervise the agency attorney in the performance of prosecutorial functions after a notice of proposed civil penalty has been issued in a particular case (14 CFR 13.203(c)). Thus, the Chief Counsel will not perform the dual functions of advising the FAA decisionmaker and prosecuting, or supervising the prosecution of, a civil penalty action after a notice of proposed civil penalty has been issued in that case.

Section 13.203(d) of the rules identifies the Chief Counsel or the delegate of the Chief Counsel as the person who will advise the FAA decisionmaker regarding an initial decision or any appeal of an initial decision to the decisionmaker. In order to implement the separation of functions contained in the procedural rules, the Chief Counsel will be assisted in the advisory function under § 13.203(d) by the Assistant Chief Counsel for Litigation and his staff. Consequently, in the performance of such assistance, the Assistant Chief Counsel for Litigation and his staff will not perform prosecutorial functions. In accordance with §§ 13.202 and 13.203(a), prosecutorial functions will be performed by other agency attorneys, supervised by the Assistant Chief Counsel for Regulations and Enforcement or by the Assistant Chief Counsel for the Regions and Centers, and by the Deputy Chief Counsel.

Issued in Washington, DC, on January 10, 1989.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 89–897 Filed 1–10–89; 5:10 pm]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–71–AD; Amdt. 39–6106]

Airworthiness Directives; BFGoodrich (or Former Company Name Sargent Industries, Pico Division) 7-Man Liferaft, P/N 100102–( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BFGoodrich 7-Man Liferafts, P/N 100102–( ), which requires replacement of certain inflation gas cylinders. This amendment is prompted by a report that three cylinders were found which had leaked to 0 psi while in the packed state. This condition, if not corrected, could lead to a situation where the raft would not be available for use in an aircraft ditching. These liferafts would most likely be used in helicopters or transport airplanes.

EFFECTIVE DATE: February 13, 1989.

ADDRESS: The applicable service information may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988–5336.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of certain BFGoodrich 7-man liferaft inflation gas cylinders, was published in the **Federal Register** on August 18, 1988 (53 FR 31364).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received. Both commenters supported the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 100 cylinders would be affected by this AD, that it would take approximately 3 manhours per cylinder to remove and replace an unsatisfactory cylinder, and that the average labor cost would be $40 per manhour. BFGoodrich will provide replacement cylinders at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per liferaft ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

BFGoodrich (Sargent Industries, Pico Division): Applies to BFGoodrich (or former company name Sargent Industries, PicO Division) 7-man liferaft, P/N 100102–( ). This liferaft is approved under Technical Standard Order C70.

Note.—These liferafts would most likely be used in helicopters or transport category airplanes.

Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate cylinders which may leak due to certain material used in their fabrication, accomplish the following:

A. Inspect the liferafts to determine the cylinder part number (P/N). If the liferaft contains a P/N 630104–205 cylinder with a serial number listed in BFGoodrich Alert Bulletin No. 130101–25A–203, dated March 29, 1988, the cylinder must be replaced prior to further flight, in accordance with that service bulletin.

Note.—The BFGoodrich service bulletin lists the raft P/N and S/N on which the cylinders were originally installed.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to BFGoodrich Aircraft Evacuation Systems, 3414 South Fifth Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective February 13, 1989.

Issued in Seattle, Washington, on December 23, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–789 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–141–AD; Amdt. 39–6114]

Airworthiness Directives: Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which requires the installation of screws and nuts with two separate locking devices in the forward and aft quadrant cable stops in the rudder control system. This amendment is prompted by reports that the single locking device on the cable stop retention screw and nut in the rudder control system is inadequate in the event of a single failure. A dual locking system has been shown to be necessary to provide an adequate level of safety. This condition, if not corrected, could lead to loss of control of the airplane while in flight or landing.

EFFECTIVE DATE: February 22, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Aerospatiale Model ATR–42 series airplanes, which requires the installation of screws and nuts with two separate locking devices in the forward and aft quadrant cable stops in the rudder control system, was published in the **Federal Register** on October 20, 1988 (53 FR 41186).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,600.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($160). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42 series airplanes, as listed in Aerospatiale Service Bulletin ATR42–27–0027, Revision 2, dated June 27, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of rudder control, accomplish the following:

A. Within 60 days after the effective date of this AD, install screws and nuts having two separate locking devices in the forward and aft quadrant cable stops in the rudder control system, in accordance with Aerospatiale Service Bulletin ATR42–27–0027, Revision 2, dated June 27, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance

Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 22, 1989.

Issued in Seattle, Washington, on January 4, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-788 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ASW-63; Amdt. 39-6112]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on Bell Model 204B, 205A, 205A-1, and 212 helicopters. The AD is needed to prevent main rotor mast and trunnion fatigue failures which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter.

DATES: *Effective Date:* February 11, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which establishes a mandatory fatigue retirement life limit on main rotor masts and trunnions used on Bell Model 204B, 205A, 205A-1, and 212 helicopters was published in the **Federal Register** (FR 11678) on April 8, 1988.

The proposal was prompted by results of the manufacturer's fatigue stress tests and fatigue analysis of the main rotor mast and trunnion under ground-air-ground (GAG) and repeated heavy lift (RHL) loading conditions. The FAA concluded from the tests and analysis that these components can no longer be operated with an unlimited service life and must be removed after a specified time in service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter recommends that the FAA establish the time in service of the main rotor mast and trunnion based on flight hours or RHL cycles, but not both. The FAA disagrees since normal flight operations and RHL operations cause fatigue damaging stress levels and, therefore, should both be considered when determining the allowable time in service. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 821 aircraft. It is anticipated that 5 helicopters per year will require replacement of the main rotor mast and trunnion at an annual cost of approximately $51,250 for five helicopters. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Model 204B, 205A, 205A-1, and 212 helicopters certificated in any category. (Airworthiness Docket No. 87-ASW-63)

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor mast, P/N 204-011-450 (all dash numbers), and main rotor trunnion, P/N 204-011-105-001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for the main rotor mast, P/N 204-011-450 (all dash numbers), and main rotor trunnion, P/N 204-011-105-001, and record the time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each each from the date the mast and trunnion were installed.

(b) For masts and trunnions with more than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service within the next 100 hours' time in service.

(c) For masts and trunnions with less than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service at 15,000 hours' time in service.

(d) If the mast and trunnion are installed on the Model 205A or 205A-1 and used for high frequency external load operations, the time in service must be determined as follows:

(1) For 1 to 20 external load lift events per hour, 1 hour time in service must be entered on the historical service record.

(2) For 21 or more external load lift events per hour, 2 hours' time in service must be entered on the historical service record.

(e) If the mast and trunnion are installed on the Model 212 and used for high frequency external load operations, the time in service must be determined as follows:

(1) For 1 to 9 external load lift events per hour, 2 hours' time in service must be entered on the historical service record.

(2) For 10 to 17 external load lift events per hour, 3 hours' time in service must be entered on the historical service record.

(3) For 18 or more external load life events per hour, 5 hours' time in service must be entered on the historical service record.

(f) Compliance with Bell Helicopter Textron, Inc., Alert Service Bulletins 204-87-15, Rev. A, dated 8/21/87, 205-87-26, Rev. A, dated 8/21/87; or 212-87-44, Rev. A, dated 8/21/87, as applicable, is an acceptable means of compliance with this AD.

(g) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

This amendment becomes effective February 11, 1989.

Issued in Fort Worth, Texas, on December 28, 1988.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-792 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-198-AD; Amdt. 39-6113]

Airworthiness Directives: Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 757 series airplanes equipped with Pratt and Whitney engines, which requires periodic inspections for cracking of the strut attach fuse pins, and replacement of the pins, if necessary. This amendment is prompted by reports of cracks found in the fuse pins during a strut modification. This condition, if not corrected, could result in a strut and engine separating from the wing.

EFFECTIVE DATE: February 3, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: One operator has reported finding 15 cracked engine strut midspar fuse pins on 14 Boeing Model 757 series airplanes while accomplishing an engine and strut vibration isolation modification on airplanes equipped with Pratt and Whitney (PW) engines. Cracked fuse pins have been found on left and right struts and on both the inboard and outboard midspar fittings. It has been determined that the cracks were initiated and propagated by fatigue. Cracked fuse pins can result in separation of the strut and engine from the wing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-54A0019, dated December 1, 1988, which describes procedures for inspection of the fuse pins for cracks, and replacement of the pins, if necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires periodic fuse pins inspections on all Model 757 series airplanes equipped with PW engines, and replacement of the fuse pins if cracks are found, in accordance with the service bulletin previously described.

The manufacturer has advised FAA that a modification is under development which, if installed, will preclude the unsafe condition addressed in this AD action. Once this modification is available, the FAA may consider further rulemaking to address it.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 757 series airplanes equipped with Pratt and Whitney engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation, accomplish the following:

A. Prior to the accumulation of 4,000 flight hours or 3,800 landings, whichever occurs first; or within the next 30 days after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 4,000 flight hours or 3,800 landings, whichever occurs first; perform an eddy current inspection of the engine strut midspar fuse pins for cracks, in accordance with Boeing Alert Service Bulletin 757-54A0019, dated December 1, 1988.

B. Replace cracked fuse pins with serviceable fuse pins prior to further flight, in accordance with Boeing Alert Service Bulletin, 757-54A0019, dated December 1, 1988. Replacement of cracked fuse pins with new fuse pins does not terminate the requirement to continue to inspect in accordance with paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 3, 1989.

Issued in Seattle, Washington, on January 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-793 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-197-AD; Amdt. 39-6107]

Airworthiness Directives: Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of de Havilland Model DHC-8-100 series airplanes by individual telegrams. This AD requires inspection of the left and right elevator output quadrant levers for correct installation, and replacement of any incorrectly assembled or damaged parts found. This action is prompted by reports of an incorrectly installed elevator quadrant lever and a deformed rod in a prototype Model DHC-8-300 series airplane, which has an elevator control system similar to the Model DHC-8-100 series. This condition, if not corrected, could result in jamming of the control system and could subsequently compromise the pilot's ability to control the airplane during critical flight regimes.

DATES: Effective January 27, 1989.

This AD was effective earlier to all recipients of telegraphic AD T88-24-51, dated December 9, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Aerospace Engineer, New York Aircraft Certification Office (ANE-172), FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: On December 9, 1988, the FAA issued telegraphic AD T88-24-51, applicable to de Havilland Model DHC-8-100 series airplanes, which requires a visual inspection of the left and right elevator output quadrant lever for correct installation, and replacement of any incorrectly assembled or damaged parts with serviceable parts prior to further flight. That action was prompted by the finding of an elevator output quadrant lever installed in reverse in a prototype Model DHC-8-300 airplane. This incorrect installation caused the elevator control rod to deform. This condition, if not corrected, could result in jamming or loss of the elevator control, and could compromise the pilot's control of the airplane during critical flight regimes. Model DHC-8-100 series airplanes have a similar elevator control system to Model DHC-8-300 planes and, therefore, may be subject to this same problem.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Transport Canada, which is the airworthiness authority of Canada, has issued Telegraphic AD CF-88-25 addressing this same subject.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing Canada, de Havilland Division: Applies to Model DHC-8-100 series airplanes, Serial Numbers 1 through 126, certificated in any category. Compliance is required within the next 50 hours time-in-service, unless previously accomplished.

To preclude the possibility of deformation or jamming of the elevator control system, accomplish the following:

A. Remove inspection panels 121 BL and 121 BR or the floor panel in flight compartment aft of center console, and inspect the elevator control quadrant levers, Item 160/Part Numbers 82710146-101 (left side) and 82710146-102 (right side), for correct installation. Ensure that the curved portion of each lever points forward.

B. If both left and right levers curve forward, no further action is necessary and the inspection panels may be reinstalled.

C. If either lever curves rearward, inspect the associated push rod for evidence of bending or binding. Replace, prior to further flight, any incorrectly installed levers and damaged push rods with new or serviceable units, as applicable.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, New York Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective January 27, 1989.

It was effective earlier to all recipients of Telegraphic AD T88-24-51, issued December 9, 1988.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-785 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-116-AD; Amdt. 39-6111]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which requires structural inspections of the mechanical wing flap control system and repair or replacement, as necessary. This amendment is prompted by a structural reevaluation of the entire flap control system, which identified certain significant structural components which need to be inspected for damage, including corrosion and cracking, to assure the continued airworthiness of the flap system. Corrosion or cracking in components of the wing flap control system, if not detected and corrected, could compromise the structural integrity of the flap system.

EFFECTIVE DATE: February 17, 1989.

ADDRESSES: The applicable service information may be obtained from Contrucciones Aeronautics S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to CASA Model C-212 series airplanes, which requires structural inspections of the mechanical wing flap control system and repair or replacement, as necessary, was published in the Federal Register on October 20, 1988 (53 FR 41188).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 11 manhours per airplanes to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $26,840.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determind that this final rule does not have sufficient federalism implications to warrant the preperation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation in not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, CASA Model C-212 series airplane are operated by small entities. A final evaluaton has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required as indicated below, unless previously accomplished.

To ensure continuing structural integrity of the wing flap control system, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that will provide for inspection of the wing flap control system in accordance with CASA Document COM. 212-206, Revision 1, dated May 20, 1988. The non-destructive inspection techniques set forth in the CASA C-212 non-destructive procedures (27-50-01 through 27-50-05) provide

acceptable methods for accomplishing the inspections required by this AD. All inspection results, positive or negative, must be reported to CASA Product Support, in accordance with instructions in the CASA Flap Control System Inspection Document. This Supplemental Structural Inspection (SSI) is to be repeated at intervals not to exceed 4,000 landings.

B. Cracked structure or damaged components detected during the inspection required by paragraph A., above, must be replaced prior to further flight, in accordance with CASA Document Com. 212–206, Revision 1, dated May 20, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A, Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 17, 1989.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–790 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–ANE–44; Amdt. 39–6103]

Airworthiness Directives; Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 Radial Tires

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires early removal of Goodyear 32x8.8R16, 10PR, P/N 328Q08G2 radial tires installed on, but not limited to, ATR–42 aircraft. The AD is needed to prevent tire failure which could cause an unsafe takeoff or landing condition.

DATES: *Effective*—February 12, 1989.

Compliance—As required in the body of the AD.

ADDRESSES: The applicable Service Bulletin (SB) may be obtained from Goodyear S.A., Colmar-Berg, Luxembourg.

A copy of the applicable SB is contained in the Rules Docket, Docket No. 88–ANE–44, Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7103.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been at least 13 tire failures due to the use of an incorrect compound material in the tire carcass during manufacture. Premature tire failures such as those experienced could cause an unsafe takeoff and/or landing possibly leading to extensive aircraft damage. Since this condition is likely to exist or develop on other tires of the same type design, an AD is being issued which requires early removal of certain serial dated Goodyear 32x8.8R16, 10PR, P/N 328Q08G2, radial tires installed on, but not limited to, ATR–42 aircraft.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation only involves approximately 900 tires and will cost approximately $360,000.00. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Goodyear: Applies to 32x8.8R16, 10PR, P/N 328Q08G2 radial tires, with serial dates between 8060Gxxx and 8320Gxxx, inclusive, installed on, but not limited to, ATR–42 aircraft.

Compliance is required within 14 days after the effective date of this AD, unless already accomplished.

To prevent tire failure, accomplish the following:

(a) Remove from service all tires which have accumulated more than 300 landings. On tires for which no landing record has been maintained, remove when the center grooves measure 0.15 in. (4mm), or less, in any location on the circumference of the tire, and replace with serviceable tires.

Notes: (1) Tires with serial dates between 8060Gxxx and 8320Gxxx, inclusive, may be used as replacements subject to the restrictions of paragraph (a) above. Tires with serial dates prior to 8060Gxxx and after 8320xxx are approved without restrictions.

(2) Goodyear Alert Service Bulletin 32–001, dated December 5, 1988, applies to this AD.

(3) Investigation is continuing and this AD may be amended in light of the results of the investigation.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7103.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft

Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7103, may adjust the compliance time specified in this AD.

This amendment becomes effective on February 12, 1989.

Issued in Burlington, Massachusetts, on December 29, 1988.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–786 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–112–AD; Amdt. 39–6105]

Airworthiness Directives: Gulfstream Aerospace Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Gulfstream Model G–IV series airplanes, which currently requires discontinuing all autopilot/flight director instrument landing system (ILS) operations, and disabling of the approach mode in the autopilot/flight director. This amendment adds an optional modification which, if installed, removes the restrictions on the use of the autopilot/flight director established by the existing AD, and reestablishes normal ILS operations. This amendment also limits the applicability of the AD to airplanes, Serial Numbers 1000 through 1059 only. This action is prompted by recent modifications to the design of the Sperry/Honeywell SPZ–8000 flight guidance computer (FGC), which have corrected the deficiencies addressed in the existing AD.

EFFECTIVE DATE: February 13, 1989.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, Aerospace Engineer, Atlanta Aircraft Certification Office, Systems and Equipment Branch, ACE–130A, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3020.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regultions to revise AD 88–02–01, Amendment 39–5849 (53 FR 3737; February 9, 1988), applicable to Gulfstream Model G–IV series airplanes, to provide for an optional terminating action that would permit normal autopilot/flight director ILS operations to be resumed, and to limit the applicability of the existing AD, was published in the **Federal Register** on August 31, 1988 (53 FR 33499).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the Notice.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD. It will take approximately 4 manhours per airplane to accomplish the optional terminating modification, at an average labor cost of $40 per manhour. There is no charge for modification parts. Based on these figures, the total cost impact of this AD on those U.S. operators who accomplish the optional terminating action is established to be $160 per airplane.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because this action does not impose a requirement, but provides an optional means of compliance with an existing regulation. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88–02–01, Amendment 39–5849 (53 FR 3737; February 9, 1988), by revising the applicability statement and adding a new paragraph F., as follows:

Gulfstream Aerospace: Applies to Model G–IV series airplanes, Serial Numbers 1000 through 1059, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the potential display and use of hazardously misleading information from the flight guidance computer (FGC) during an ILS approach, accomplish the following:

A. Prior to further flight, add the following to the limitations section of the airplane flight manual (AFM) and notify all crewmembers. This may be accomplished by inserting a copy of this AD in the AFM:

"ILS approaches utilizing the flight director and/or autopilot are prohibited."

B. Prior to further flight, affix an appropriate placard(s) on the instrument panel in full view of both crewmembers, stating:

"FLIGHT DIRECTOR/COUPLED ILS APPROACHES PROHIBITED."

C. Prior to further flight, affix an appropriate placard to the Approach Mode Arm (APR) switch on the autopilot control panel stating:

"USE PROHIBITED."

D. Within 15 days after the effective date of this AD, disable the approach mode in the autopilot/flight director in a manner approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

BEST COPY AVAILABLE

F. Installation of the modification of the autopilot/radio altimeter in accordance with Gulfstream Aerospace Aircraft Service Change (ASC) #53A, dated May 12, 1988, constitutes terminating action for the requirements of paragraphs A. through D., above.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective February 13, 1989.

Issued in Seattle, Washington, on December 23, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Northwest Mountain Region.

[FR Doc. 89–784 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–181–AD; Amdt. 39–6116]

Airworthiness Directives: Honeywell, Inc., Sperry FMZ–800 Flight Management System, as Installed in, but Not Limited to, Gulfstream Model G–IV and Canadair Model CL–601 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to any aircraft equipped with certain Honeywell, Inc., Sperry FMZ–800 Flight Management Systems (FMS) using triple inertial reference systems (IRS) as navigation sensors. This AD requires operation of the third IRS in the attitude mode on entire flights when intending to cross the 180 degree meridian. This amendment is prompted by reports of FMS navigation position jumps as high as 300 nautical miles when crossing the 180 degree meridian. This condition, if not corrected, could result in aircraft navigation outside the assigned airspace.

EFFECTIVE DATE: February 6, 1989.

ADDRESSES: There is no applicable service information.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Peters, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–133L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5353.

SUPPLEMENTARY INFORMATION: An aircraft operator, whose aircraft was equipped with dual Honeywell, Sperry FMZ–800 Flight Management Systems (FMS) and triple inertial reference systems (IRS), reported an FMS position jump after crossing the 180 degree meridian. Investigation revealed that the position jump was caused by a design error in the part of the FMS's navigation computer that determines present position when the system is receiving position information from three IRS. The investigation also revealed that these navigation computers operate satisfactorily when the system is receiving position information from two or fewer IRS, and that aircraft equipped with three IRS can prevent the FMS position jump by operation of the third IRS in the attitude mode (by selecting "ATT" using the appropriate third IRS mode select switch).

The magnitude of the inadvertent position jump can be as high as 300 nautical miles, either due east or due west from the aircraft's actual position. The FMS outputs navigation information to the aircraft's course deviation indicator, flight director, and autopilot. Such an FMS position jump, if not corrected, could cause the aircraft to be navigated off-course. Continued use of the erroneous data could cause the aircraft to be navigated outside its assigned airspace.

Since this condition is likely to exist on aircraft equipped with the deficient Honeywell, Inc., Sperry FMZ–800 FMS navigation computers and triple IRS, this AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) or the FAA-approved Airplane Flight Manual Supplement (AFMS) to require that the third IRS be operated in the attitude mode on flights intending to cross the 180 degree meridian.

Honeywell has produced a family of FMS navigation computers, only some of which include the subject design error. This AD applies to any aircraft equipped with three IRS, and one or more of the deficient FMS navigation computers. The deficient navigation computers can be identified by the navigation computer's part number or the navigation computer's software configuration as indicated on the FMS control display unit (CDU).

This AD also provides for an optional terminating action which consists of replacing certain software in the deficient navigation computers with modified software. Although this action is currently optional, the FAA may consider further rulemaking action to require the replacement of the deficient computers in all affected aircraft.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in an aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Honeywell, Inc.: Applies to Sperry FMZ–800 Flight Management System (FMS) navigation computers, part numbers 7004402–801, –811, or –832, if the FMS's are interfaced with and configured for the use of navigation data from triple inertial reference systems. These FMS navigation computers are known to be installed in, but not limited to Gulfstream Model G–IV and Canadair Model CL–601 series airplanes. Compliance required as indicated, unless previously accomplished.

To prevent FMS position jumps while crossing the 180 degree meridian, accomplish the following:

A. Within 15 days after the effective date of this AD, add the following to the Limitations Section of the FAA-Approved Airplane Flight Manual (AFM), or FAA-approved Airplane Flight Manual Supplement (AFMS). This may be accomplished by inserting a copy of this AD in the AFM or AFMS.

IF FLIGHT ACROSS THE 180 DEGREE MERIDIAN IS INTENDED, THE THIRD INERTIAL REFERENCE SYSTEM MUST BE OPERATED IN THE "ATT" MODE.

B. The required AFM or AFMS limitation, required by paragraph A., above, may be removed and the third IRS may be operated normally when the aircraft's FMS navigation computers are replaced, as follows:

1. Replace Honeywell P/N 7004402–801 (software configuration DEL–8N) computers with P/N 7004402–803 (software configuration DEL 10J), –804 –806, or –906 (software configuration NZ–8804) computers;

2. Replace Honeywell P/N 7004402–811 (software configuration DEL–9S) computers with P/N 7004402–813 or –903 (software configuration DEL 10P) computers;

3. Replace Honeywell P/N 7004402–832 (software configuration DEL–9T) with P/N 7004402–833 or –804 (software configuration NZ–8801) computers.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective February 6, 1989.

Issued in Seattle, Washington, on January 4, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–787 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–113–AD; Amdt. 39–6110]

Airworthiness Directives: Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Shorts Model SD3–60 series airplanes, which requires repetitive inspections of the engine power control cables, and replacement of the cable(s), if necessary. This amendment is prompted by reports of frayed or damaged wires in the power control cables. This condition, if not corrected, could lead to loss of engine power or loss of the pilot's control of engine power during flight, which could result in a forced engine shutdown. This amendment also provides for an optional terminating action for the required repetitive inspections.

EFFECTIVE DATE: February 17, 1989.

ADDRESSES: The applicable service information may be obtained from Short Brothers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive, applicable to Model SD3–60 series airplanes, to require repetitive inspections of the engine power control cables, and replacement of the cable(s), if necessary, was published in the **Federal Register** on September 13, 1988 (53 FR 35322).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but noted that there is a Revision 1 to Service Bulletin SD360–76–08, dated October 12, 1988, and recommended that this revision be reflected in the final rule. The FAA concurs and has revised the final rule to reflect Revision 1 as an alternate service information reference for the inspection procedures.

Since issuance of the Notice, Short Brothers has issued Service Bulletin SD360–76–09, dated October 1988, which describes procedures to replace the power control cables and pulleys. Such replacement terminates the need for the repetitive inspections. Accordingly, a new paragraph C. has been added to the final rule to indicate that the required repetitive inspections may be terminated following completion of the replacement of the power control cables and pulleys, in accordance with that service bulletin.

In addition, while the applicability statement in the Notice specified airplanes "as listed in Service Bulletin SD360–76–08," that service bulletin applies to "all SD3–60 aircraft." Therefore, the applicability statement of the final rule has been revised to apply to all Model SD3–60 series airplanes.

The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 78 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $124,800.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation

is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, Accpositive or negative, on a substantial number of small entities because few, if any, Shorts Model SD3-60 are operated by small entities. A final evaluaton has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers: Applies to all Model SD3-60 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of engine power during flight, accomplish the following:

A. Prior to the accumulation of 1,200 flight hours or within 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,200 flight hours, inspect the engine power control cables for broken wires, in accordance with Shorts Service Bulletin SD360-76-08, dated May 9, 1988, or Revision 1, dated October 12, 1988.

B. If four or more broken wires are detected in any 24-inch length of cable during the inspection required by paragraph A., above, replace the cable with an airworthy cable assembly prior to further flight, and repeat the inspections required by paragraph A., at intervals not to exceed 1,200 flight hours.

C. The repetitive inspections required by paragraphs A. and B., above, may be terminated following completion of the replacement of the power control cables and pulleys, in accordance with Shorts Model SD3-60 Service Bulletin SD360-76-09, dated October 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishemnt of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brotbers, PLC, Service Representative, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 17, 1989.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-791 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-12]

Control Zone Establishment and Transition Area Alteration; Wilmington, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish a control zone area and alter the existing transition airspace near Wilmington, OH. Airborne Express hub operations take place nightly, Monday through Friday between 2300 to 0700 hours local time. Aircraft arrivals and departures during these hours are highly concentrated.

During these peak hours of operations in the vicinity of Airborne Airpark Airport, especially during marginal Visual Flight Rule (VFR) weather conditions, the number of VFR flights has increased. The FAA believes this mix between Instrument Flight Rule (IFR) and VFR aircraft is a degradation of air safety.

The intent of this action is to enhance safety for all potential users of this airspace. The establishment of a control zone will segregate aircraft using approach procedures in IFR conditions from other aircraft operating under VFR weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 25, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone and alter the existing transition area near Wilmington, OH (53 FR 27870).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Five comments were received including Gail Lewis, Director Airspace, Aircraft Owners and Pilots Association (AOPA); Messrs. David Beam, Clinton County Airport Authority; Don Brown; Robert McLane, Highland County Airport Authority; and Ed Wright. Four of the commenters objected to the proposed action and one commenter offered recommendations.

All five comments expressed concerns that the proposal would negatively affect other area airports. The primary airports of concern include Clinton County, Barnett, and Hollister. Although it appears that Clinton County Airport borders the zone, in actuality the airport is outside the zone by a statute mile and will be minimally affected by this proposal. Barnett and Hollister are the only airports located within the proposed control zone. The FAA found that accommodations could be made for Hollister Airport by using a one mile cutout without compromising safety. No provisions could be made for Barnett since it underlies the Final Approach Area of the VOR RWY 04 Standard Instrument Approach Procedure.

Three commenters objected to the proposal because of the potential impact it would have on general aviation during daylight hours. These commenters stated that many aircraft are not radio equipped, and that a hardship would result in obtaining clearances when the control zone is effective. The FAA believes that these commenters were not cognizant of the fact that the control zone would only be operational at night. The proposed control zone was never intended to be effective 24 hours a day, nor during daylight hours.

The intent is to enhance safety during the nightly hours of Airborne Express hub operations and the control zone is only in effect during IFR weather conditions. In Notices of Proposed Rulemaking (NPRM) the phrase "The control zone is effective during specific dates and times established in advance by a Notice to Airmen * * * " is commonly used for the establishment of part-time control zones. In order to alleviate concerns of a 24-hour a day zone at Wilmington, OH, this rule includes the specific days and times the control zone is effective.

In addition to the above, one of the commenters stated that the control zone would have a negative economic and regulatory impact; the zone was not justifiable for training purposes; was inappropriate in terms of size and geographic layout; and, that Notices to Airmen (NOTAM's) are issued during Airborne Express hub operation hours and are working well.

The FAA believes the economic and regulatory effect to be minimal since the zone will be effective at night and only during periods when weather conditions are below three (3) miles visibility and/or 1000' ceiling. We agree that training does not justify the establishment for the control zone. The zone is solely based on enhancing safety during Airborne's hub operations. The size of the zone is based on data from the Flight Standards Division, and the type of aircraft flying in and out of the airport. From this information the zone is designed to protect all Standard Instrument Approach Procedures (SIAPs) at the airport. The NOTAM process is strictly for temporary situations and not intended for permanency. The NOTAM process does not allow for the advantage of a graphic on a chart.

There were other comments which were non-aeronautical in substance which were not made a part of this study.

Because there would be no significant impact on the operation and use of underlying airports, the FAA believes that the economic and regulatory impact effects of this action will be minimal.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone area and modifies the existing transition area airspace near Wilmington, OH.

This control zone is necessary to enhance safety due to the increasing number of VFR flights in the vicinity of Airborne Airpark Airport, Wilmington, OH, during marginal and below VFR weather conditions and while air traffic operations are at peak activity.

The FAA believes this control zone will reduce the risk of midair collisions and promote the efficient control of air traffic. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Airborne Airpark Airport and with 4.25 statute miles each side of the 040 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles northeast of the airport; and within 4.25 statute miles each side of the 214 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles southwest of the airport excluding that portion of airspace within a 1-mile radius of Hollister Field Airport, Wilmington, OH (lat. 39°26'15" N., long. 83°42'30" W.). The control zone will be effective from 2300 to 0700 hours, local time, Monday through Friday.

The present transition area is being modified to accommodate existing SIAPs to Airborne Airpark Airport. The modification consists of reducing the 10 mile radius to an 8.5 mile radius and adding an extension from the radius to 13 miles northeast of the airport. The width of the extension includes 5.25 miles each side of the Midwest VOR 040 radial.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Wilmington, OH [New]

Within a 5 mile radius of Airborne Airpark Airport, Wilmington, OH (lat. 39°25'46" N., long. 83°47'58" W.); and within 4.25 miles each side of the 040 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles northeast of the Airborne Airpark Airport; and within 4.25 miles each side of the 214 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles southwest of the Airborne Airpark Airport excluding that portion of airspace within a 1-mile radius of Hollister Field Airport, Wilmington, OH (lat. 39°26'15" N., long. 83°42'30" W.). This control zone is effective from 2300 to 0700 hours, local time, Monday through Friday.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Wilmington, OH [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Airborne Airpark Airport, Wilmington, OH (lat. 39°25'46" N., long. 83°47'58" W.); and within 5.25 miles each side of the 040 Midwest VOR radial, extending from the 8.5 mile radius to 13 miles northeast of Airborne Airpark Airport.

Issued in Des Plaines, Illinois, on December 21, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-794 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25771; Amdt. No. 1391]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 6, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b) (2)).

. . . *Effective April 6, 1989*

Valdez, AK—Valdez, LDA/DME-C, Amdt. 2
Casper, WY—Natrona County Intl, VOR/DME RWY 3, Amdt. 3
Casper, WY—Natrona County Intl, VOR/DME or TACAN RWY 21, Amdt. 7
Casper, WY—Natrona County Intl, ILS RWY 3, Amdt. 4

. . . *Effective March 9, 1989*

Fort Huachuca-Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, LOC RWY 26, Amdt. 1, CANCELLED
Magnolia, AR—Magnolia Muni, NDB RWY 35, Amdt. 2, CANCELLED
Magnolia, AR—Magnolia Muni, NDB RWY 35, Orig.
St. Augustine, FL—St. Augustine, VOR RWY 13, Amdt. 4
Atlanta, GA—Dekalb-Peachtree, VOR/DME RWY 34, Orig., CANCELLED
Waycross, GA—Waycross-Ware County, NDB RWY 18, Amdt. 5

Mount Airy, NC—Mount Airy/Surry County, NDB-A, Amdt. 2
Whiteville, NC—Columbus County Muni, NDB RWY 5, Amdt. 3
Charleston, SC—Charleston AFB/Intl, VOR/DME or TACAN RWY 3, Amdt. 12
Charleston, SC—Charleston AFB/Intl, VOR/DME or TACAN RWY 15, Amdt. 13
Charleston, SC—Charleston AFB/Intl, VOR/DME or TACAN RWY 21, Amdt. 12
Charleston, SC—Charleston AFB/Intl, VOR/DME or TACAN RWY 33, Amdt. 12
Charleston, SC—Charleston AFB/Intl, RADAR-1, Amdt. 15

. . . *Effective February 9, 1989*

Windsor Locks, CT—Bradley Intl, VOR RWY 15, Orig.
Muncie, IN—Delaware County-Johnson Field, NDB RWY 32, Amdt. 10
Muncie, IN—Delaware County-Johnson Field, ILS RWY 32, Amdt. 7
Baltimore, MD—Martin State, NDB RWY 14, Amdt. 6
Baltimore, MD—Martin State, NDB RWY 32, Amdt. 6
Falls City, NE—Brenner Field, NDB-A, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 28, Amdt. 19
Cleveland, OH—Cleveland-Hopkins Intl, RADAR-1, Amdt. 31
Cleveland, OH—Cleveland-Hopkins Intl, RNAV RWY 10, Amdt. 10

. . . *Effective December 23, 1988*

Baltimore, MD—Martin State, VOR/DME or TACAN 1 RWY 14, Amdt. 4
Baltimore, MD—Martin State, ILS RWY 32, Amdt. 2
Baltimore, MD—Martin State, RNAV RWY 14, Amdt. 3

[FR Doc. 89-795 Filed 1-12-89; 8:45am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 777

[Docket No. 81269-8269]

Exports of Certain Alaska Crude Oil to Canada

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: Section 777.6(d)(1) of the Export Administration Regulations (EAR) permits the export of crude oil for use or consumption in Canada, except for crude oil transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (Alaska crude oil) and crude oil from the Naval Petroleum Reserves. This rule amends that section of the EAR to authorize the export of 50,000 barrels per day of Alaska crude oil to Canada. The amendment made by this rule implements Annex 902.5 of the United States-Canada Free-Trade Agreement which became effective on January 1, 1989.

EFFECTIVE DATES: This rule is effective January 13, 1989. Comments must be received by February 13, 1989.

ADDRESSES: Written comments (six copies) should be sent to: Rodney A. Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Room 1600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Rodney A. Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-8171.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1988, President Reagan signed the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Pub. L. 100-449). Section 305 of that Act implements Annex 902.5(3) of the United States-Canada Free-Trade Agreement that deals with trade in energy goods, including a provision to export up to 50,000 barrels per day of Alaska North Slope crude oil. In order to implement this provision, section 305(a) amends section 7(d) of the Export Administration Act of 1979, as amended, to permit the export to Canada of 50,000 barrels per day of crude oil that has been transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act. In addition, on December 31, 1988, President Reagan made certain findings and determinations under four other statutes that restrict exports of crude oil, specifically: section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212); section 28(u) of the Mineral Leasing Act, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (30 U.S.C. 185(u)); section 28 of the Outer Continental Shelf Lands Act (43 U.S.C. 1354); and 10 U.S.C. 7430(e).

The Statement of Administrative Action that accompanied the Free-Trade Agreement to the Congress contained a description of all the actions that would be taken to implement the crude oil provision, including a change in the EAR to allow petroleum (crude or products) to be exported, even in the absence of proof that the petroleum is not commingled with products of the Naval Petroleum Reserves.

This interim rule amends § 777.6 of the Export Administration Regulations to provide for the licensing of the 50,000 barrels per day to Canada to be distributed quarterly among applicants on a pro rata basis. In accordance with the implementation Act, this interim rule requires that any ocean transportation of Alaska crude oil authorization under this rule be by vessels documented under section 12106 of Title 46, United States Code. Furthermore, this interim rule provides that an application must be submitted on Form BXA-622P, that an applicant must have title to or a contract to purchase the quantity stated on the application, that licensed quantities for four calendar quarters may be combined into one or more shipments, ant that the applicant cannot transfer the license to another person.

This rule establishes procedures and time limits for filing applications and the procedures to followed in approving quantities for export by applicants. For each calendar quarter, applications may be filed in February, May, August, and November preceding the quarter for which authorization will be requested. Applications will be issued prior to the beginning of a quarter. For the First Quarter of 1989, applications will be accepted until February 1, 1989. Validated licenses will be issued by February 15, 1989. The quantities authorized will be computed based on the total amount of oil permitted by this rule for the period February 15 through March 31.

The interim rule also contains a provision to ensure that petroleum exports are not disallowed because of lack of proof that those exports are not derived from or commingled with petroleum from the Naval Petroleum Reserves.

This rule is being issued in interim form to permit timely implementation of the terms of the Agreement, while providing for public comment prior to the development of the final regulations. Comments are encouraged on all aspects of this rule. Comments are particularly requested concerning the method for determining the quantity to be authorized for each validated license and how licensed quantities should be determined when a pro-rata share would be less than an economical shipment quantity.

Rulemaking Requirements and Invitation to Comment

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the

requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule contains a collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0027. The public reporting burden to apply for a short supply crude oil license is estimated to average 4 hours. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230 and to the Office of Management and Budget Paperwork Reduction Projects, 0694–0005 and 0694–0027, Washington, DC 20503.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these requirements because it involves a foreign affairs function of the United States in that it implements a part of the United States-Canada Free-Trade Agreement.

This rule is not subject to the requirements of section 13(b) of the Export Administration Act because it is not imposing new controls. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close February 13, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

5. This interim rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 777

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, and Reporting and recordkeeping requirements.

Accordingly, Part 777 of the Export Administration Regulations (15 CFR Parts 768 through 799) is amended as follows:

PART 777—[AMENDED]

1. The authority citation for 15 CFR Part 777 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, by Pub. L. 100–180 of December 4, 1987, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 100–449 of September 28, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757), July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1985 (42 U.S.C. 6212), as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1978 (41 FR 15825, April 15, 1976), as amended; secs. 201(1) and 201(11)(e), Pub. L. 94–258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 25189, June 18, 1985) and December 31, 1988 (54 FR 271, January 5, 1989); and sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)).

2. In § 777.6, paragraph (d) is amended by revising the introductory text, by revising the NOTE that follows paragraph (d)(1)(i)(B), and by adding a new paragraph (d)(1)(x), as follows:

§ 777.6 Petroleum and petroleum products.

* * * * *

(d) *Issuance of Export Licenses.* Petroleum Commodity Groups, as identified in the following paragraphs, are defined in Supplement No. 2 to Part 777. Submit each application for a validated license to export a commodity from one of these groups to: Office of Export Licensing, ATTN: Short Supply, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

Include with each license application the documentation required by § 777.6(e). Applications will be considered subject to the appropriate provisions of this section.

(1) * * *

(i) * * *

(B) * * *

Note: Paragraphs 777.6(d)(1) (ii) through (vii) and (x) below apply to all crude oil, including Alaska North Slope crude oil.

* * * * *

(x) Exports of Certain Alaska Crude Oil to Canada. The Group A commodity will be exported under the following conditions:

(A) The commodity is domestically produced, has been transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans Alaska Pipeline Authorization Act (43 U.S.C. 1652), and is being exported to Canada for consumption, in Canada;

(B) Any ocean transportation of the commodity will be made by vessels documented for United States coastwise trade under 46 U.S.C. 12106. Only barge voyages between the State of Washington and Vancouver, British Columbia, and comparable barge movements across waters between the U.S. and Canada may be excluded from this requirement. The Department of Commerce will determine, in consultation with the Maritime Administration, whether such transportation is "ocean" transportation; *and*

(C) The export complies with the provisions contained in paragraph (f) of this section.

* * * * *

3. In § 777.6, paragraph (e)(2), is amended by revising the introductory text and the introductory text of the affidavit and by removing paragraph (d) of the affidavit and footnote 3 as follows:

§ 777.6 Petroleum and petroleum products.

* * * * *

(e) *Documentation.* * * *

(1) * * *

(2) A sworn affidavit, signed by an authorized representative of the exporter, reading as follows (insert paragraph (a) or (b), as appropriate, and paragraph (c)):

AFFIDAVIT

"I, _____
(Name)

_____
(Title)
of _____
(Company)
HEREBY CERTIFY that to the best of my knowledge and belief the

_____
(Quantity)
bbls of _____
(Commodity)

* * * * *

4. In § 777.6, paragraph (f) is added to read as follows:

§ 777.6 Petroleum and petroleum products.

* * * * *

(f) *Exports of Certain Alaska Crude Oil Pursuant to § 777.6(d)(1)(x).* An average of no more than 50,000 barrels per day of Alaska crude oil transported by pipeline over a right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act for use or consumption in Canada will be authorized as follows:

(1) Authorization to export such Alaska crude oil will be granted on a quarterly basis. Applications will be accepted by the Office of Export Licensing *no earlier* than two months prior to the beginning of the calendar quarter in question, but must be received *no later* than the first day of the month preceding the calendar quarter. For example, for the calendar quarter beginning April 1 and ending June 30, applications will be accepted beginning February 1, but must be received no later than March 1.

(2) The quantity stated on each application must be the total number of barrels for the quarter—not a per day rate. This quantity must not exceed 50,000 barrels times the number of calendar days in the quarter.

(3) Each application shall include support documents providing evidence that the applicant has either:

(i) Title to the quantity of barrels stated in the application *or*

(ii) A contract to purchase the quantity of barrels stated in the application.

(4) The quantity of barrels authorized on each validated license for export during the calendar quarter will be determined by the Office of Export Licensing as a prorated amount based on:

(i) The number of licenses issued for the quarter;

(ii) The quantity requested on each license application; *and*

(iii) The total number of barrels that may be exported by all license holders during the quarter (50,000 barrels per day multiplied by the number of calendar days during the quarter).

(5) Applicant may combine their licensed quantities for as many as four consecutive calendar quarters into one or more shipments, *provided* that the validity period of none of the affected licenses has expired.

* * * * *

Dated: January 10, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89–902 Filed 1–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 80858–8262]

Direct Investment Surveys; Change in Reporting Requirements for the Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends 15 CFR Part 806 by changing the reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The survey is a mandatory survey conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act.

Under a proposed rule published earlier in the **Federal Register**, BEA had planned to raise the exemption level for the BE–15 survey—the level below which reports are not required—from $10 million to $20 million. Since publication of the proposed rule, BEA has received public comment opposing the raising of the exemption level. Under this final rule, the exemption level for the survey will remain at $10 million, but, in order to keep the reporting burden to a minimum, a short form will be instituted for reporting by foreign-owned U.S. affiliates between the $10 and $20 million levels.

EFFECTIVE DATE: This rule will be effective February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: In the September 20, 1988, **Federal Register**, Volume 53, No. 182, 53 FR 36468, the Bureau of Economic Analysis published a notice of proposed rulemaking to raise the exemption level for the BE–15, Annual Survey of Foreign Direct Investment in the United States, from $10 million to $20 million, primarily to minimize the burden on respondents. Thereafter, a number of letters commenting on the proposed rule were received by BEA. One letter supported the increase in the exemption level on the grounds that it would have reduced the survey reporting burden without causing significant loss of data. The other letters opposed the increase in the exemption level on the grounds that it would have resulted in a deterioration of the database.

Because large affiliates account for a very high percentage of the foreign direct investment universe in value terms, the increase in the exemption level would not have significantly reduced the reliability of the data overall or for the vast majority of country, industry, and State cells published. However, it could have adversely affected the data for certain countries, industries, and States in which small investments account for a

significant share of the total. The additional data collected under a $10 million exemption level would ensure that the quality of the data in these cells is maintained. Thus, after careful consideration of the comments received, BEA has decided to leave the exemption level at $10 million, but, in an effort to keep the reporting burden to a minimum, to institute a short form for reporting by affiliates in the $10 to $20 million range.

The exemption level for a given survey is the level of a U.S. affiliate's assets, sales, or net income below which reporting is not required. (A U.S. affiliate is a U.S. business enterprise in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities if an incorported business enterprise or an equivalent interest if an unincorporated business enterprise.)

The BE–15 annual survey is part of BEA's regular data collection program for foreign direct investment in the United States. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108).

This rule will be effective with the BE–15 survey covering a U.S. affiliate's fiscal year ending during 1988. The 1988 forms will be mailed out in March 1989 and will be due May 31, 1989. The last BE–15 survey conducted covered the year 1986. (A BE–15 survey is not conducted in a year, such as 1987, when a BE–12 benchmark survey is conducted.)

BEA estimates that 5,100 U.S. affiliates will be required to file the BE–15 survey. Of these, 3,300 will be required to file the long form and 1,800 will be required to file the short form.

The public reporting burden for the long form is estimated to vary from 2 to 685 hours per response, with an average of 9 hours per response, and the burden for the short form is estimated to vary from 1 to 2 hours per response, with an average of 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0608–0034), Washington, DC 20503.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0606–0034).

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. U.S. affiliates below the $10 million level are exempt from reporting in the survey. In addition, in order to keep the reporting burden on smaller entities to a minimum, a short form is being instituted for affiliates in the $10 to $20 million range. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, Foreign direct investment in the United States, Reporting and recordkeeping requirements.

Dated: December 20, 1988.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—[AMENDED]

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 806.15 is amended by revising paragraph (i) to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(i) *Annual report form.* BE–15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a bank, exceeding an exemption level of $10,000,000. A long form, Form BE–15(LF), must be filed by each nonbank U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $20,000,000 (positive or negative); a short form, Form BE–15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds $10,000,000 but no one item exceeds $20,000,000 (positive or negative). U.S. affiliates that are banks are exempt from the reporting requirements of this survey.

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[FR Doc. 89–831 Filed 1–12–89; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Levamisole Resinate and Famphur Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: In the Federal Register of June 24, 1988 (53 FR 23756), the Food and Drug Administration (FDA) published a document which amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The NADA provides for use of a paste containing levamisole resinate and famphur for treating cattle infected with certain worms, grubs, and lice. FDA is amending the Regulation for the paste so that its warning statement will be consistent with those of the other levamisole drug products.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 24, 1988 (53 FR 23756), FDA published a document which amended the animal drug regulations to reflect approval of NADA 139–858 filed by American Cyanamid Co. The NADA provides for the use of a paste containing levamisole resinate and famphur for treating cattle infected with specified worms, grubs, and lice.

The regulation reflecting approval of the paste contains the warning statement "Do not use in lactating or dry dairy cows within 10 days of freshening." However, regulations covering several other levamisole-containing drug products contain statements warning against use of the drugs in dairy animals of breeding age. Accordingly, the regulation for the paste is being amended in 21 CFR 520.1242g(f)(3) so that its warning statement will be consistent with those of the other drug products.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1242g [Amended]

2. Section 520.1242g. *Levamisole resinate and famphur paste* is amended in paragraph (f)(3) by removing the fourth sentence which reads "Do not use in lactating or dry dairy cows within 10 days of freshening." and adding in its place "Do not administer to dairy animals of breeding age."

Dated: January 9, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89–833 Filed 1–12–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 94

[108.880]

International Child Abduction

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule adds a Part 94 to 22 CFR for the purpose of setting forth the functions of the U.S. "Central Authority" under the 1980 Hague Convention between the United States and other countries on the Civil Aspects of International Child Abduction. The functions of a "Central Authority" are enumerated in the Convention and further defined in federal implementing legislation. The purpose of this regulation is to explain in non-technical terms how the U.S. "Central Authority" will function.

EFFECTIVE DATE: Final rule effective July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Carmen A. DiPlacido, Director, Office of Citizens Consular Services, 202–647–3666.

SUPPLEMENTARY INFORMATION: The Department of State published in 53 FR 23608 of June 23, 1988 an interim rule to provide an opportunity for comment prior to the entry into force of the Convention.

We have received no comments, and are therefore adopting the interim as the final rule with the effective date of July 1, 1988 as originally published.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, and, for the purposes of certification required by the Regulatory Flexibility Act, will not have an impact on small business entities. The collection of information requirements contained in the rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 94

International child abduction.

For the reasons set forth in the preamble, Part 94, added as an interim rule on June 23, 1988, (53 FR 23608) is adopted as final without change.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

December 23, 1988.

[FR Doc. 89–619 Filed 1–12–89; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 626

[FHWA Docket No. 87–16]

RIN 2125–AA88

Pavement Policy for Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the regulation on pavement design policy and procedures in order to set forth a policy to select, design, and manage Federal-aid highway pavements in a cost-effective manner and to identify pavement work eligible for Federal-aid funding. The revisions will require each State Highway Agency (SHA) to have a Pavement Management System (PMS) that is acceptable to the FHWA and is based on concepts described in American Association of State Highway and Transportation Officials (AASHTO) publications including its 1985 "Guidelines on Pavement Management." Each SHA will be required to have a process that is acceptable to FHWA for the type selection and design of new or reconstructed pavement structures. Each SHA will also be required to have a pavement rehabilitation selection process that is acceptable to FHWA and that includes identification of candidate solutions and a methodology for structural design. The revisions will replace the existing regulation to assure that appropriate practices and procedures are utilized by the SHAs in order to promote safe and cost-effective pavements.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Norman J. Van Ness, Director, Office of Highway Operations, (202) 366–0341 or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366–1383. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Pavement design policy and procedures for Federal-aid highway projects are contained in 23 CFR Part 626. The standards, policies, standard specifications, guides, and references (publications) that are approved by the FHWA for application on all Federal-aid highway projects are listed in 23 CFR Part 625. The standards, policies, and standard specifications for pavement

design are cited in § 625.4(a)(11). Part 626 currently approves and incorporates by reference the publication entitled the "American Association of State Highway and Transportation Officials (AASHTO) Interim Guide for Design of Pavement Structures, 1972," Chapter III Revised 1981, for application on Federal-aid projects. On May 7, 1986 (51 FR 16830), the list of publications contained in Part 625 was revised and updated. In order to accurately differentiate between those publications establishing Federal standards and those containing guidance and information, a new section entitled "Guides and references" was added to Part 625. For those publications that provide informational and guidance material only, the incorporation by reference was withdrawn and the publication citation was placed in the new guide and reference section. By the May 7, 1986, final rule, an additional publication entitled "Guidelines on Pavement Management, AASHTO 1985" (Pavement Management Guide) was added as a reference at § 625.5(a)(7). To be consistent with the May 7, 1986, policy on reference citations, the FHWA will add the 1986 publication entitled "AASHTO Guide for Design of Pavement Structures" (1986 Guide) to § 625.5(a), "Guides and references." The AASHTO views the Pavement Management Guide and the 1986 Guide as information and guidance materials and not as technical policies and standards. The FHWA shares this view and is revising Part 626. A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on January 26, 1988, (53 FR 2041) in which the FHWA requested comments on the proposed regulation. Originally comments were to be received by April 25, 1988; however, pursuant to a request received, the comment period was extended to May 27, 1988, by notice published in the **Federal Register** on April 11, 1988, (53 FR 11875).

Discussion of Comments

Sixty-nine written comments were received in the docket. Of the sixty-nine comments, thirty-six were from SHAs, fourteen were from county and city highway agencies, three were from local planning organizations and sixteen from other public and private organizations or individuals. The majority of comments received, including those from AASHTO, support both the intent and content of the proposed policy. The following summarizes the comments, suggestions and actions taken.

Several commenters expressed concern that the 1986 "AASHTO Guide for Design of Pavement Structures" (1986 Guide) was being mandated as a standard. It was never the intent of the FHWA to mandate the use of 1986 Guide. The FHWA recognizes that there are several acceptable pavement design procedures. The States may use the design procedures outlined in the 1986 Guide or they may use other pavement design procedures that either by past performance or by support from research are satisfactory for the pertinent conditions.

A number of commenters addressed PMS technical issues, many of which were discussed in the supplementary information section of the proposed rule. Most of these comments stated that the FHWA should not be too prescriptive regarding the detailed features and analysis procedures to be contained in a PMS. As explained in the following paragraphs, it is the intent of this policy that SHAs develop a PMS tailored to their specific needs and circumstances. The listing of key features included in the supplementary information to the proposed rule is intended to demonstrate typical processes and scope of PMSs. The "Pavement Management Guide" is cited as guidance, and along with other PMS-related materials will be used as reference material for determining the acceptability of an SHA's PMS. The FHWA will allow flexibility to SHAs in the development of their PMS.

A number of commenters stated that a complete detailed inventory, including information on pavement materials and structural composition, represents a great amount of effort and should not be required. The statement concerning detailed inventory was part of the discussion on the "Pavement Management Guide" concepts, and as such represents guidance on good practice in PMS development, but it is not a required part of a PMS. The use of inventories with extensive information such as layer types, thicknesses, material properties, etc. can be very valuable within a PMS; particularly when conducting investigations into the performance of a range of design parameters. It may be appropriate to collect and store this information on higher-order routes only where reliability is more critical and loads are more extensive. One commenter stated that the policy should distinguish between network level and project level data needs. The FHWA considers both levels to be important; however, the SHAs will have the flexibility to determine the appropriate data requirements for each level.

One commenter stated that traffic control devices such as edge and center lines should be included as part of the PMS data elements. The FHWA intent regarding the PMS requirement is restricted to achievement of safe, cost-effective structural and ride quality performance of the pavement. There is nothing to prevent an SHA from including items such as edge and center lines, signs, guardrail, etc. in a more complete inventory. While the FHWA recognizes the benefits that can be obtained from such data, it is not appropriate to require it as part of the PMS.

Section 626.3 as published in the notice of proposed rulemaking contained ten definitions. A few commenters suggested that the definitions be the same as those used by AASHTO. This was accomplished to the extent believed prudent. The definition for "analysis period" was changed to more closely conform to the ASSHTO definition. The definition for "pavement structure" remains the same as the AASHTO definition. Several commenters objected to the inclusion of user costs in the definition of "life cycle cost." They pointed out that there is substantial disagreement in the highway industry regarding the make-up of user costs, as well as considerable disagreement in the literature regarding the specific magnitudes of these costs. It is recognized that the current state-of-the-art includes many uncertainties which may have an unrealistic or unbalanced effect on life cycle cost analyses. Because the definition of "analysis period" was revised, thus eliminating the reference to life cycle costs, and because of these uncertainties relating to user costs, the definition of "life cycle cost" has been deleted. The definitions for "low volume road" and "pavement design" have also been eliminated, as they have become unnecessary. The definition for "pavement maintenance" has been modified to: "all routine actions, both responsive and preventative, which are taken by a State or other parties to preserve the pavement structure including joints, drainage, surface, and shoulders, as necessary for its safe and efficient utilization." The definition for "pavement management" has been replaced with a definition for "pavement management system", as the concept of an all-inclusive pavement management has been removed. One commenter questioned the use of the phrase "* * * finding optimum strategies * * *" within the definition of pavement management (now pavement management system). The commenter stated that optimizing a product implies that some aspect of the product will be maximized; yet, the parameter to be optimized (such as

years of life or pavement condition) is not specified in the definition. The FHWA agrees that this pharase is somewhat ambiguous, and has replaced "optimum" with "cost-effective" in the definition of PMS. The definitions for "pavement performance period", "pavement reconstruction", and "pavement rehabilitation" remain unchanged.

Section 626.5(a) published in the proposed rulemaking required that each SHA have a PMS approved by the FHWA. Several commenters stated that it is not necessary to require that SHAs have PMS, or that it is not the role of the FHWA to mandate implementation of such a system. One commenter went further to state that these requirements were contrary to the Administration's "new Federalism," wherein States are to be given as much flexibility as possible when expending Federal funds. On the other hand, most of the commenters took a very positive view of the PMS requirement and the role of the FHWA, and endorsed the proposed rule. The FHWA continues to believe that it is appropriate to require that SHA's have a system that will help assure that the Federal investment is used in a way that protects safety and provides cost-effective pavement life cycles. General guidelines on the various features of a PMS are not considered sufficient. Only a complete PMS will enable an SHA to effectively produce the full range of information needed to assist decisionmakers. To better define the FHWA role, the requirement that a PMS be "approved by FHWA" has been changed to "acceptable to FHWA." The goal is to have each SHA implement a PMS which will be used in the State's decisionmaking process. It is not the intent to produce voluminous documentation for FHWA approval. The new language encourages each SHA to design a PMS tailored to its own needs, and to work with the FHWA during the development process to assure that it will be capable of providing the desired products.

Most of the local agency commenters, and a number of SHAs, indicated that the rule should not require the PMS to include Federal-aid routes under city and county jurisdiction. The FHWA never intended that this be the case. The FHWA's original statement that "each SHA shall have a pavement management system * * *" assumed that the PMS would be limited to routes under SHA jurisdiction. The final rule clearifies this by adding the phrase "* * * under its jurisdiction" to the sentence. Several commenters on this issue went on to state the significant benefits of local-level PMSs, and the value of some level of coordination between SHA and local-level systems. The FHWA agrees with these comments, and a sentence expressing the desirability of a local PMS for pavements under local jurisdiction has been added.

Section 626.5(a) of the proposed rulemaking also stated that the PMS was to be implemented within 4 years from the effective date of this regulation. Several commenters indicated that more than 4 years would be required to implement a PMS. In order to restrict required actions to areas of highest Federal interest, the final rule requires that only rural arterial and urban principal arterial routes under SHA jursidiction must be a part of the PMS. Rural arterial routes are defined as those routes having a functional classification of Interestate, Other Principal Arterial, or Minor Arterial. Urban principal arterial routes are defined as those routes having a functional classification of Interstate, Other principal Arterial, and Other Freeways and Expressways. The SHAs are encouraged to expand coverage to other routes, but it is not a requirement. With the PMS coverage limited to only the more important routes, the 4 year period is considered to be reasonable and appropriate. In addition, the requirement that a PMS be "implemented" in 4 years has been changed to "operational" within 4 years. This was done in recognition that some components of a PMS may not be fully implemented in 4 years, especially those which may require several years' worth of performance data. The FHWA would expect that the framework and basic procedures of a PMS would be in-place and operational within the 4 year period.

A few commenters complained that the pavement management requirement would necessitate significant expenditures for the purchasing of equipment and the measuring of pavement condition and distress. Many States have already purchased highly sophisticated pavement condition measuring devices such as profile-measuring equipment and video distress gathering systems. Significant productivity, accuracy, and repeatability benefits can be gained from using these systems, and they are continually being improved. However, the FHWA recognizes that acceptable PMSs can be developed without the use of these systems, and they are not required as part of SHA's PMSs. The SHA's are provided the flexibility necessary to develop a practical and implementable PMS acceptable to the FHWA, within reasonable resource levels.

Section 626.5(b) of the proposed rulemaking prescribed policy for the design of new, reconstructed, and rehabilitated pavements. Based on the number of comments received, it became apparent that this section should be split into two paragraphs for purposes of clarification. Section 626.5(b) now prescribes policy for the design of new and reconstructed pavements, whereas § 626.5(c) prescribes policy for the design of rehabilitated pavements.

Section 626.5(b) of the proposed rulemaking required that a comprehensive payment type selection and design process for new, reconstructed, and rehabilitated pavements be included as part of the PMS. Several commenters stated that pavement design should not be required as part of the functional responsibility of a PMS, or in the same SHA organizational element as a PMS. Others stated that the PMS should not decide the final design alternative. One commenter stated that the rule erroneously implied that States center their entire pavement strategy on data and reports generated from the PMS. The FHWA agrees with these comments. It is not the intent to change State organizational structures or to require that the PMS itself include final pavement design functions. A PMS is best characterized as a tool for decisionmakers to consult for information, which is then combined with engineering judgment and other factors in reaching decisions. It is clear that the characterization of pavement management as encompassing "all the activities involved in the planning, design, construction, maintenance, evaluation, and rehabilitation of pavements" is too extensive when translating to existing SHA organizational lines of authority and functions. While the FHWA believes that this concept is valid when viewing SHA functions as a whole, it is certainly not the FHWA's intent that this rule needlessly disrupt current operating procedures. Accordingly, the FHWA is not requiring that the final pavement type selection and design processes be part of the PMS. Instead, each SHA will be required to have a type selection and design process which is acceptable to the FHWA. However, the type selection and design analytical processes should be coordinated with the PMS process, and draw upon and use the inventory and performance data which is contained in the PMS database.

Section 626.5(b) also required that an analysis period of at least 30 years be used for all projects except that a shorter period may be used for low volume roads. Many commenters objected to the mandatory 30 year analysis period and the term "low volume" roads as a threshold for a shorter analysis period. They felt that 30 years was an arbitrary number. Most agencies did not have the historic performance data to make an economic analysis of several alternatives for a 30 year period. Because of these concerns, the policy has been revised and the low volume road threshold eliminated. The 30-year analysis period was originally established to ensure that at least one rehabilitation operation was included during the economic analysis. This section was reworded to require that the analysis period include an initial performance period, plus at least one rehabilitation operation. The reference to a shorter analysis period for low volume roads was eliminated, as it is considered to be no longer necessary.

Section 626.5(b) also required that an engineering and economic analysis of an appropriate range of strategies be performed for all new, reconstructed, and rehabilitated pavements. For existing pavements, the analysis should include both reconstruction and rehabilitation alternatives. Several commenters stated that requiring an economic analysis for the design of all rehabilitated pavements would not be practical, as it would generate unnecessary paperwork. The FHWA agrees that this would be the case for minor rehabilitation projects, where the corrective strategy is obvious. The policy no longer requires an economic analysis of alternative actions for all rehabilitation projects. However, in order to obtain the goal of achieving the best return possible for the money expended, it is considered essential that major rehabilitation projects include an economic analysis. For projects involving rehabilitated pavements, an engineering and an economic analysis of alternative rehabilitation strategies will be required if the pavement is approaching terminal serviceability and exhibiting significant structural deficiencies. Alternative rehabilitation strategies should include both reconstruction and rehabilitation alternatives. The analysis period used shall be the same for all alternatives. If an existing pavement structure is sound and the cost to restore serviceability is minor when compared to the cost of a new pavement structure or major rehabilitation, an engineering and economic analysis of alternative actions may not be necessary.

Section 626.5(c) as published in the proposed rulemaking required that each project involving construction of a pavement have a skid resistant surface. It also required all pavement rehabilitation and reconstruction projects to incorporate other cost-effective opportunities to enhance safety. Several commenters requested that the reference to skid resistance surface be deleted, whereas one commenter requested that specific skid values be provided. It is felt that the existing FHWA policy and technical guidance on this subject are adequate. No revisions were made to the safety section of the policy, but it is now referenced under § 626.5(d).

One commenter criticized the FHWA proposal for not providing uniform performance standards for pavements. In particular, the commenter cited the lack of a threshold for coefficients of friction and the absence of performance criteria for maintained levels of skid resistance. According to this commenter, the FHWA is acting irresponsibly from a safety standpoint by basing the skid resistance requirement on subjective factors. The FHWA disagrees with this comment. Imposing numerical requirements for minimum skid resistance would create many legal difficulties. Such requirements would impose a severe financial burden on all agencies involved in construction of pavements under the Federal-aid highway program. Many city and county agencies would be forced to discontinue construction of Federal-aid projects, creating a financial hardship for them. Many other cities and counties, to avoid the legal ramifications resulting whenever a pavement failed to meet the requirements, would also decide to stop using Federal-aid funds. On the resulting non-Federal-aid projects, officials would not have to comply with any minimum skid resistance values included in the pavement policy. In addition, although most projects are designed with safety in mind, the FHWA recognizes that reasonable opportunities to enhance safety are sometimes overlooked. Under the new pavement policy, State and local officials developing Federal-aid projects would have to comply with § 626.5(d), which would ensure that other opportunities to enhance safety are considered. By causing many of these officials to forego Federal-aid, incorporating minimum requirements to increase skid resistance would have the opposite effect. These non-Federal-aid projects would not be covered by the skid resistance requirements or § 626.5(d). Overall safety would be significantly less than if Federal-aid funds were used and the projects were developed in accordance with the proposed rulemaking and other Federal-aid requirements. Thus, this commenter's recommendation was not adopted. The FHWA believes that existing policies and technical guidance are adequate.

Proposed § 626.7(a) required that the design of new and reconstructed pavements be based on the approved pavement management system. As discussed previously, several commenters indicated that pavement design should not be placed by mandate under the organizational responsibility of a PMS, or that the PMS should not decide the design alternative. Section 626.5(b) was subsequently modified to require that each SHA have a design process acceptable to the FHWA. The inclusion of this design process within the PMS is optional. Section 626.7(a) is thus being modified to provide consistency with § 626.5(b) by requiring that the design of new and reconstructed pavements be based on the SHA's pavement type selection and pavement design processes.

Proposed § 626.7(b) required that the design of rehabilitated pavements both be a cost-effective solution based on the approved PMS and provide a minimum performance period of 8-years. Longer performance periods were recommended on high type, high volume facilities, especially where traffic disruption costs were significant. A provision for exceptions to the 8-year minimum performance period was provided, when supported by historical performance data and economic analyses. This section received a large number of comments.

Several commenters stated that requiring a detailed economic analysis of alternative actions for the design of all rehabilitated pavements would not be practical, as it would generate unnecessary paperwork. This is felt to be the case in many minor rehabilitation projects, where the corrective strategy is obvious. Therefore, in those cases where the existing pavement structure is sound and the cost to restore serviceability is minor when compared to the cost of a new pavement structure, a detailed economic analysis is not necessary. However, as discussed previously, in order to obtain the goal of achieving the best return possible for the money expended, it is considered essential that major rehabilitation projects include an economic analysis of the alternative actions. Section 626.5(c) has been modified to require an economic analysis for major rehabilitation projects as part of the pavement rehabilitation selection process, which must be acceptable to the FHWA. Since these analyses are part of the process, it is no longer necessary to refer to them under § 626.7(b).

As discussed previously, several commenters responded that the design of rehabilitated pavements should not be a required element of a PMS. Section 626.5(c) has been modified to require that each SHA have a pavement rehabilitation selection process that is acceptable to the FHWA. This selection process shall include a methodology for structural design. The inclusion of this design process within the PMS is optional. Section 626.7(b) has thus been modified to conform with § 626.5(c) by eliminating the requirement that the design be based on the PMS.

Several commenters suggested that the minimum performance period of 8 years was too restrictive and recommended that it be shortened. As discussed previously, the proposed rulemaking addressed all Federal-aid systems, whereas § 626.5(a) has been revised so that only rural arterials and urban principal arterials are covered by a SHA's PMS. While all of these routes are to be included in the PMS, it is recognized that some routes are far more important than others. Section 626.7(b) has subsequently been modified to require a minimum performance period of 8-years only for rehabilitation projects on routes classified as Interstate, Other Principal Arterials (both rural and urban), and Other Freeways and Expressways, regardless of jurisdiction. For all other Federal-aid pavement rehabilitation projects, a minimum performance period of 5 years may be allowed.

As a result of the above change, the lower order of the Federal-aid system is now subject to the 5-year minimum performance period for rehabilitation projects. There is no provision for exceptions to the 5-year performance period. Shorter term strategies on these types of roadways are considered maintenance. Exceptions may be granted to the 8-year performance period on a project-by-project basis.

Proposed § 626.7(c) required that pavement maintenance not be eligible for Federal-aid funding. No comments were received, and this section was not modified.

Based on a further review and consideration of comments received, the FHWA is establishing a policy which will ensure that SHAs utilize appropriate practices and procedures to provide safe and cost-effective pavements. The SHAs will have a PMS that is acceptable to the FHWA and that covers the more major routes under their jurisdiction. The PMS shall be operational within four years. Each SHA will be required to have a process that is acceptable to the FHWA for the type selection and design of new and reconstructed pavement structures. Each SHA will also be required to have a pavement rehabilitation selection process that is acceptable to the FHWA and that includes identification of candidate solutions and a methodology for structural design.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant rgulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of these revisions will be minimal. This determination is based on the fact that the SHAs will be required to merely formalize the pavement management processes that are currently being followed. In addition, the basic design criteria for pavement design remains essentially unchanged. The material contained in the publications "Guidelines on Pavement Management, AASHTO 1985" and the 1986 "AASHTO Guide for Design of Pavement Structures" is not in fact a policy or standard, but simply provides guidance for use at the discretion of the designer. The SHAs will be allowed to continue to use the same basic pavement design procedures based on past performances. Variation from present practices and technical criteria will not be significant. As stated in the preamble, the preparation of a Pavement Management System (PMS) should not place any undue burdens on the States' resources. As a practical matter, most SHAs have informally been establishing a procedure for the selection and design of new pavement structures and rehabilitation strategies. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping requirements that are included in the proposed regulation will be submitted for approval to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 626

Grant programs—transportation, Highways and roads, Pavement policy, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA hereby amends Chapter I of Title 23, Code of Federal Regulations, Part 626 as set forth below.

Issued on January 5, 1989.

Robert E. Farris,

Federal Highway Administrator.

The FHWA is revising 23 CFR Part 626 as follows:

PART 626—PAVEMENT POLICY

Sec.

626.1 Purpose.
626.3 Definitions.
626.5 Policy.
626.7 Eligibility.

Authority: 23 U.S.C. 101(e), 109, and 315; 49 CFR 1.48(b).

§ 626.1 Purpose.

To set forth a policy to select, design, and manage Federal-aid highway pavements in a cost-effective manner and identify pavement work eligible for Federal-aid funding.

§ 626.3 Definitions.

(a) "Analysis period." The period of time for which the economic analysis is to be made.

(b) "Pavement maintenance." All routine actions, both responsive and preventative, which are taken by the State or other parties to preserve the pavement structure, including joints, drainage, surface, and shoulders, as necessary for its safe and efficient utilization.

(c) "Pavement management system." A set of tools or methods that assist

decisionmakers in finding cost-effective strategies for providing, evaluating and maintaining pavements in a serviceable condition.

(d) "Pavement performance period." The period of time that a newly constructed, rehabilitated or reconstructed pavement will perform before reaching its terminal serviceability. This may also be referred to as service life.

(e) "Pavement reconstruction." Construction of the equivalent of a new pavement structure which usually involves complete removal and replacement of the existing pavement structure including new and/or recycled materials.

(f) "Pavement rehabilitation." Resurfacing, restoration, and rehabilitation (3R) work undertaken to restore serviceability and to extend the service life of an existing facility. This may include partial recycling of the existing pavement, placement of additional surface materials or other work necessary to return an existing pavement, including shoulders, to a condition of structural or functional adequacy.

(g) "Pavement structure." A combination of a subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

§ 626.5 Policy.

(a) *Pavement Management System.* Each State highway agency (SHA) shall have a pavement management system (PMS) that is acceptable to the FHWA and is based on concepts described in American Association of State Highway and Transportation Officials publications including its 1985 "Guidelines on Pavement Management." The SHA's PMS shall cover all Rural Arterial (Interstate, other Principal Arterials and Minor Arterials) and Urban Principal Arterial (Interstate, other Freeways and Expressways, and Other Principal Arterials) routes under its jurisdiction. The expansion of a SHA's PMS to include all rural and urban arterials, regardless of jurisdiction, is desirable. The development of a local PMS for pavements under local jurisdiction is also desirable. The SHA's PMS shall be operational within a reasonable period of time, not to exceed 4 years from January 13, 1989.

(b) *Pavement Design—New and Reconstructed Pavements.* Each SHA shall have a process that is acceptable to the FHWA for the type selection and design of new and reconstructed pavement structures. The type selection process shall include an engineering and economic analysis for alternate designs. The analysis period selected shall be the same for all alternates being considered.

(c) *Pavement Design—Rehabilitated Pavements.* Each SHA shall have a pavement rehabilitation selection process that is acceptable to the FHWA and that includes identification of candidate solutions and a methodology for structural design. For pavements approaching terminal serviceability and exhibiting significant structural deficiencies, the process shall include procedures for making an engineering and economic analysis of alternative rehabilitation strategies. These alternative rehabilitation strategies should include both reconstruction and rehabilitation alternatives.

(d) *Safety.* Each project involving construction of a pavement shall have a skid resistant surface. Pavement rehabilitation and reconstruction projects shall also incorporate other cost-effective opportunities to enhance safety as required by 23 CFR 625.2.

§ 626.7 Eligibility.

(a) *New and Reconstructed Pavements.* To be eligible for Federal-aid funding, the design of new and reconstructed pavement structures shall be a cost-effective solution based on the State's pavement type selection and pavement design processes.

(b) *Rehabilitated (3R) Pavements.* To be eligible for Federal-aid funding, the design of rehabilitation pavement projects on routes classified as Interstate, Other Principal Arterials (rural and urban), and Other Freeways and Expressways, regardless of jurisdiction, shall provide for a performance period of at least 8 years. The FHWA may approve exceptions to the 8-year performance requirement when the State's historical performance data indicate that a lesser period would be appropriate. A minimum performance period of 5 years may be approved for all other Federal-aid pavement rehabilitation projects.

(c) *Pavement Maintenance.* Pavement maintenance as defined under 23 CFR 626.3(b) is not eligible for Federal-aid funding.

[FR Doc. 89-875 Filed 1-12-89; 8:45 am]
BILLING CODE 4910-22-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in January 1989.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8823 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, *i.e.*, a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premium rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in January 1989. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
. . . . .	
January 1989	7.21

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC on this 10th day of January 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-851 Filed 1-12-89; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1989.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

. . . . . .

(c) *Interest rates.*

For valuation dates occurring in the month:	The values of I_k are:															
	I_1	I_2	I_3	I_4	I_5	I_6	I_7	I_8	I_9	I_{10}	I_{11}	I_{12}	I_{13}	I_{14}	I_{15}	I_w
•		•		•		•		•			•			•		
February 1989.....	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 5th day of January 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-852 Filed 1-12-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Stay of final rule provision.

SUMMARY: MSHA published a final rule for safety standards for explosives and blasting in underground coal mines on November 18, 1988, to take effect January 17, 1989. After further Agency analysis and review of public comments, MSHA has determined that the effective date of 30 CFR 75.1325(b) should be stayed.

DATES: The final rule takes effect January 17, 1989 except that the effective date of § 75.1325(b) is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Introduction and Rulemaking Background

On November 18, 1988 (53 FR 46768), MSHA published a final rule addressing explosives and blasting in underground coal mines. The final rule is effective January 17, 1989. The Agency has recently received questions regarding firing procedures in 30 CFR 75.1325(b). Paragraph (b) addresses blasting of the face in a working place and limits such blasting to a single face at a time. During the rulemaking process, MSHA received conflicting comments from the mining public on single face versus multiface blasting. Some commenters stated that multiface blasting should be prohibited. Others stated that up to three faces could be safely blasted so long as each face had a separate kerf and no more than a total of 20 shots were fired in a round.

However, none of the commenters provided substantive information to support their views. Further, the statistical data currently available to MSHA do not address the occurrence of accidents or injuries resulting from or caused by this practice. Because of the additional comments from the mining public, the Agency's limited information, the lack of definitive Agency statistics and the inconclusive rulemaking record, MSHA believes that multiface blasting requires further study. As a result, MSHA is reconsidering the issue of single versus multiface blasting in a working place and is staying § 75.1325(b) to permit the Agency to gain additional information on this issue. After additional analysis, MSHA will repropose rules addressing this issue and allow further public comment.

Therefore, the effective date of § 75.1325(b) of the final rule is stayed. The Agency anticipates the publication of a reproposal as soon as its analysis is completed.

Date: January 11, 1989.

Roy L. Bernard,

Acting Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Subpart N, Part 75, Chapter I, Title 30, Code of Federal Regulations is amended as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

§ 75.1325 [Amended]

2. Section 75.1325(b) is stayed until further notice.

[FR Doc. 89-1015 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDS-88-53]

Drawbridge Operation Regulations; Trent River, New Bern, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Trent River at mile 0.0 on U.S. 70 in New Bern, North Carolina, by further restricting the number of bridge openings during weekday rush hours. This change is being made to alleviate vehicular traffic congestion caused by the steady increase in recreational traffic on the Trent River during the boating season and the resulting increase in bridge openings. The Coast Guard is making similar changes to the regulations governing the operation of the drawbridge across the Neuse River, mile 33.7, in New Bern, North Carolina. The changes to this regulation are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on February 13, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704-5004, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On September 20, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (53 FR 36472) concerning the bridge across the Trent River in New Bern, North Carolina. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated September 16, 1988. In the notice of proposed rulemaking, interested persons were given until November 4, 1988, to submit comments. In the public notice, interested persons were given until October 21, 1988, to submit comments. Four comments were received.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Comments

The North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, requested that the drawbridge across the Trent River at mile 0.0 on U.S. 70 in New Bern, North Carolina, be regulated to restrict openings from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, with the exception of an opening at 7:30 a.m. and at 5:00 p.m. for any vessels waiting to pass through the bridge. The request also included the preservation of the current requirement that from May 24 to September 8, on Sundays and Federal holidays, drawbridge openings be restricted from 2:00 p.m. to 7:00 p.m., except for openings at 4:00 p.m. and 6:00 p.m. for any vessels waiting to pass. This request was made as a result of the steady increase in pleasure craft traffic on the Trent River, resulting in excessive draw openings, which are causing vehicular traffic congestion. The marina upstream from the Trent River drawbridge is also adding to the increase in bridge openings.

A proposed rule restricting drawbridge openings during the requested time frame was published in the **Federal Register** (53 FR 36472) on September 20, 1988, and the proposal was announced in a Public Notice dated September 16, 1988. Comments were solicited through November 4, 1988, and four comments were received. One comment supported the extended weekday morning and afternoon closures. The other three comments opposed further restrictions to the Trent River drawbridge.

One commentor believed that further restrictions to the drawbridge were unnecessary and that they would have a negative impact on waterfront businesses that depend on pleasure boat traffic. He stated that due to a high-rise bridge located ½ mile from the drawbridge, extending the hours during morning and afternoon rush hours was not warranted since the high-rise bridge also could be used to cross the Trent River. After considering the points raised by this commentor, the Coast Guard has concluded that extending the rush hour restricted periods will not have a significant negative impact on waterfront businesses serving the boating public. Although each restricted period will now last two hours, no boater will have to wait more than an hour for a bridge opening, because the Coast Guard has provided for an opening in the midst of each rush hour period to allow accumulated vessels to pass. Thus, the maximum waiting period for vessels remains the same as in the prior regulations. The other two comments were received from a private boatowner and the Fairfield Harbour Yacht Club opposing the Sunday and Federal holiday restrictions that begin on May 24 and run through September 8. These comments have been considered and it is felt that continuing the May 24 through September 8 restrictions for drawbridge openings on Sundays and Federal holidays should inconvenience boaters very little. This restriction was initially published in the **Federal Register** (37 FR 5295) on March 14, 1972, and for sixteen years it has remained in effect without objection. Consequently, the Coast Guard believes these restrictions are not unduly burdensome, and this provision shall remain untouched in the final rule.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although the rule does impact both the town of New Bern and the State of North Carolina, specifically the Department of Transportation which operates the bridge, the effect on state and local operations is minimal and entirely positive.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation. In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.843(a) is revised to read as follows:

§ 117.843 Trent River.

(a) The draw of the U.S. 70 bridge, mile 0.0, at New Bern:

(1) Need not open from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, for pleasure vessels. However, the draw shall open at 7:30 a.m. and 5:00 p.m. for any vessel waiting to pass.

(2) Need not open from 2:00 p.m. to 7:00 p.m. from May 24 through September 8, on Sundays and Federal holidays, for pleasure vessels. However, the draw shall open at 4:00 p.m. and 6:00 p.m. for any vessel waiting to pass.

(3) Shall always open on signal for public vessels of the United States, State or local vessels used for public safety, tugs with tows, and vessels in distress.

(4) Shall open on signal at all other times.

• • • • •

Dated: January 4, 1989.

A. D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-746 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6821]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date

shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472. (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1988, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1988. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office of the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
Arkansas	Pea Ridge, city of	Benton	050361	Jan. 18, 1989.
Louisiana	Simmesport, town of	Avoyelles	220025	Do.
New Mexico	Unincorporated areas	Eddy	350120	Do.
Oklahoma	Heavener, city of	LeFlore	400090	Do.
Do	Meeker, town of	Lincoln	400404	Do.
Do	Wister, town of	LeFlore	400095	Do.
Texas	Alamo, city of	Hidalgo	480335	Do.
Do	Austin, city of	Travis	480624	Do.
Do	Unincorporated areas	Burnet	481209	Do.
Do	Cibolo, city of	Guadalupe	480267	Do.
Do	Unincorporated areas	Kerr	480419	Do.
Do	Piney Point Village, city of	Harris	480308	Do.
Do	Poth, city of	Wilson	480672	Do.
Do	Rising Star, city of	Eastland	480795	Do.
Do	Wilmer, city of	Dallas	480190	Do.
Do	Woodbranch, village of	Montgomery	480694	Do.
Do	Bayview, town of	Cameron	480102	Do.
Oregon	Ashland, city of	Jackson	410090	Feb. 2, 1989.
Do	Burns, city of	Harney Co	410084	Do.
Do	Carlton, city of	Yamhill	410251	Do.
Do	Cascade Locks, city of	Hood River	410087	Do.
Do	Chiloquin, city of	Klamath	410111	Do.
Do	Coos Bay, city of	Coos	410044	Do.
Do	Dayville, city of	Grant	410076	Do.
Do	Detroit, city of	Marion	410157	Do.
Do	Unincorporated areas	Douglas	410059	Do.
Do	Dundee, city of	Yamhill	410253	Do.
Do	Dunes City, city of	Lane	410262	Do.
Do	Unincorporated areas	Grant	410074	Do.
Do	Heppner, city of	Morrow	410175	Do.
Do	Hines, city of	Harney	410085	Do.
Do	Hood River, city of	Hood River	410088	Do.
Do	Lakeside, city of	Coos	410278	Do.
Do	Lakeview, city of	Lake	410116	Do.
Do	Lexington, city of	Morrow	410176	Do.
Do	Milwaukie, city of	Clackamas	410019	Do.
Do	Monroe, city of	Benton	410010	Do.
Do	Monument, city of	Grant	410079	Do.
Do	Unincorporated areas	Morrow	410173	Do.
Do	Mt. Angel, city of	Marion	410165	Do.
Do	North Powder, city of	Union	410221	Do.
Do	Powers, city of	Coos	410049	Do.
Do	Sandy, city of	Clackamas	410023	Do.
Do	Shady Cove, city of	Jackson	410099	Do.
Do	Summerville, city of	Union	410222	Do.
Do	Sweet Home, city of	Linn	410146	Do.
Do	Union, city of	Union	410223	Do.
Do	Woodburn, city of	Marion	410172	Do.
Do	Unincorporated areas	Yamhill	410249	Do.

Issued: January 9, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–844 Filed 1–12–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88–16]

Service Contracts; Correction of Clerical or Administrative Errors

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is adopting a Final Rule that will allow parties to service contracts filed with the Commission to correct clerical or administrative errors in the essential terms of such contracts. Parties seeking this relief must file their requests within 45 days of the contract's initial filing with the Commission and must include a supporting affidavit and other relevant documents. This procedure will enable contract parties to correct legitimate errors, something which had been previously precluded by Commission rule.

EFFECTIVE DATE: January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573. (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") initiated this proceeding by publishing a Proposed Rule in the **Federal Register** on June 24, 1988 (53 FR 23776). The Proposed Rule would have amended § 581.7 of the Commission's existing service contract regulations (46 CFR Part 581) to allow corrections to the essential terms of a service contract in the event of a clearly demonstrated clerical or administrative error. Both parties to the service contract could request relief within 30 days of a contract being filed with the Commission. Such requests would have to include, *inter alia,* (1) a transmittal letter, (2) a corrected copy of the essential terms, (3) relevant documents, and (4) notarized affidavits from each party attesting with specificity to the circumstances giving rise to the clerical or administrative error. In addition, the Proposed Rule would have required that essential terms corrected pursuant to this procedure be made available to similarly situated shippers for a period of 30 days from the date the Commission approved a request.

Comments on the Proposed Rule were received from: (1) Sea-Land Service, Inc.; (2) U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference, Gulf-European Freight Association, and North Europe-U.S. Gulf Freight Association ("NEC"); (3) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference ("Japan Conferences"); (4) Asia North America Eastbound Rate Agreement ("ANERA"), Mediterranean North Pacific Coast Freight Conference, and U.S. Atlantic & Gulf/Australia-New Zealand Conference ("Conferences"); (5) American President Lines, Ltd. ("APL"); (6) Atlantic & Gulf/West Coast of South America Conference ("AG/WCSAC"); (7) E. I. Du Pont De Nemours & Company ("Du Pont"); (8) EAC Transport Pacific Centre Ltd. A/S; (9) EAC Transpacific Service; and (10) Johnson ScanStar.

Summary of comments

Most commenters generally support the Proposed Rule, although several do so on the condition that certain changes be made. One carrier, Sea-Land, contends that the Proposed Rule is unnecessary, but also suggests certain changes, if the Commission decides to go forward and issue a final rule. Specific comments are addressed below.

Sea-Land's primary objection to the Proposed Rule is its alleged potential susceptibility to abuse. Sea-Land believes that there are too few clerical errors in service contracts to warrant a procedure that could be misused. Sea-Land questions the need for the Proposed Rule based upon its experience as a member of ANERA. It notes that out of approximately 600 ANERA service contracts, "only six involved problematic technical errors * * *." Sea-Land also expresses reservations about the Commission's ability to distinguish between genuine technical errors and disguised, commercially-motivated essential terms modifications.

The Japan Conferences, while recognizing the need for the Proposed Rule, express similar concerns. They suggest therefore that the final rule should contain sufficient safeguards to protect against its misuse. At a minimum, they propose that a copy of all requests for service contract corrections be directed to the Commission's Bureau of Trade Monitoring ("BTM") for review and, if warranted, investigation. In addition, they suggest that BTM should maintain a record of all requests so that it can

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monitor trends and patterns in such filings which might indicate misuse of the correction process.

NEC contends that the provision of the Proposed Rule affording similarly situated shippers an opportunity to avail themselves of corrected essential terms not previously available to them should be deleted because it presents too great a potential for misuse of the service contract process. NEC argues that it could force conferences and carriers to offer shipping terms in a potentially different commercial context than when the contract terms were originally offered.

The Conferences also express strong opposition to the requirement that a corrected service contract be opened up to the shipping public for any further eligibility period, since the commercial circumstances "within which a contract is negotiated and signed may be radically different 90 or more days later." The Conferences contend that:

> • • • the only "winners" under a rule opening up a contract to a second "me-too" round because of clerical errors would be those shippers who would perceive a windfall by virtue of having an opportunity to "me-too" a contract which, although not originally attractive, becomes so because of changing market conditions.

Such a provision is viewed by the Conferences as a disincentive for carriers to correct errors in a service contract. The Conferences, NEC, and Sea-Land recommend that only those similarly situated shippers that have "me too'd" a service contract during its initial 30-day period of availability should be permitted to "me too" corrected essential terms during a second availability period.

Sea-Land suggests that, at the same time a technical correction is made in an original service contract, it should be required that it be made in an identical fashion to any "me too" contracts secured in the initial 30-day window. It also would expand the Proposed Rule to give "me too" shippers a unilateral option to terminate within the same period in the event that a "me too" shipper believes itself to be disadvantaged by an inadvertent error in the contract.

The Conferences argue that shipments that moved prior to such a cancellation should not be subject to re-rating or penalty. They propose that such a cancellation be treated as "a mutual termination of contract" rather than a unilateral decision by the shipper. The Conferences further recommend that the rule be generally clarified to address the treatment of "me too" shippers to the original contract.

With the exception of Sea-Land and Du Pont, all of the commenters express concern over the limited period of time allowed for the submission of requests to correct service contracts. Suggested alternative periods in which to submit requests range from 60 days to the duration of the contract. Several commenters cite practical experience with service contracts covering hundreds of points and commodities for which errors may not be detected until specific cargo moves and reveals an error, and possibly not until an accounting for a shipment is made. The commenters aver that there is a substantial likelihood that service contract errors covered by the Proposed Rule will not be detected within 30 days of the contract filing date and that the limited request period may therefore curtail the usefulness of the modification authority. Moreover, it is argued that the Proposed Rule's requirement of "extensive supporting documentation," combined with geographic and possible language problems, may make the 30-day request period even more unrealistic.

NEC contends that materials required to be submitted with a request for relief are "unnecessarily cumulative, overly formalistic, unduly burdensome and otherwise in need of repair." Sea-Land, APL and the Japan Conferences express similar views. Sea-Land suggests that one clear exposition of facts in the form of a detailed affidavit with appended supporting documents necessary to supplement the affidavit, corrected page(s), and a brief transmittal letter should fully satisfy the Commission's needs. APL questions the need for notarized affidavits, arguing that the procedure is "unduly formalistic." Rather than sworn statements from *each* party to the contract, the Japan Conferences propose that corrections be permitted "• • • upon the sworn statement of the designated official of a conference or carrier with a requirement that the statement be served upon shipper signatory at the time it is filed with the FMC." The Japan Conferences maintain that the difficulty in obtaining affidavits from foreign shippers coupled with language barriers, may potentially bar requests because a shipper signatory's affidavit may not be received in time. They further state that because the conference/carrier signatory is the responsible repository for the service contract records, it would be in the best position, in consultation with the shipper signatories, to explain the error. NEC also suggests that the requirements "should be overhauled and streamlined," and provides certain detailed suggestions for changes.

The Japan Conferences raise one additional issue that was not specifically contemplated by the Proposed Rule. In framing the Proposed Rule, the Commission assumed that the essential terms that are stated in a service contract would be mirrored in the essential terms publication and that consequently any clerical or administrative error in the essential terms of the service contract would be reflected in the essential terms publication. The Japan Conferences raise the possibility that although the service contract essential terms might contain clerical or administrative errors, the essential terms publication might accurately reflect the intentions of the parties. They suggest that corrections of such errors should be allowed at any time and that similarly situated shippers should not have a right to a new 30-day period of availability under such circumstances.

APL, Du Pont, and AG/WCSAC have proposed changes in the Proposed Rule to expand the scope of the proceeding. They suggest that parties to a contract be permitted to add additional commodities, ports and points, or make any other prospective modifications at any time during the contract term.

Discussion

In light of the fact that the essential terms of a service contract cannot generally be amended during the term of the contract,[1] the Commission continues to believe that a procedure which allows the parties to correct inadvertent errors is warranted. The Commission further believes that any such procedure should be structured to enable it to distinguish between legitimate requests and commercially motivated requests. The Commission will, therefore, adopt a Final Rule permitting the correction of clerical or administrative errors in service contracts, but modified as indicated below. These changes should result in an even more workable and efficient procedure for dealing with errors in service contracts.

The Proposed Rule required that the transmittal letter "explain with specificity the modified essential terms and the circumstances giving rise to the clerical or administrative error." In addition, notarized affidavits were required from each party also attesting to the circumstances surrounding the clerical or administrative error. The Commission agrees with certain commenters that the transmittal letter need not restate information already required to be stated in affidavit form. Instead, it is sufficient for the transmittal letter to identify the purpose of the submission and provide information to identify the service contract in question. The Proposed Rule will be modified accordingly.

The Commission also agrees that notarizing already sworn statement may be legally redundant and unnecessary to the validity of the affidavit. Therefore, the Final Rule deletes any additional notary requirement.

Many commenters contend that 30 days is not a sufficient period within which to detect errors and meet the proposed filing requirements. The Commission notes that it is incumbent on the parties, particularly the contract filer, to ensure that a contract is error free prior to filing. Nevertheless, the Commission also recognizes that, despite the parties diligence, there may be a mistake that is not discovered immediately after filing. Moreover, the complexities of international transactions may delay the discovery of some mistakes. The Commission will therefore extend the filing period from 30 to 45 days. Given today's telecommunication and computer technologies, and particularly improved telefax capabilities, 45 days should be more than adequate. The more limited than requested 45-day filing period should also serve as an incentive for the parties to carefully review their contracts prior to filing them with the Commission.

Some of the commenters request that they be relieved from filing two affidavits, *i.e.*, one from the carrier and one from the shipper. This requirement had been initially proposed to limit potential abuses. If both shipper and carrier had to swear to the facts supporting the application, there would be less likelihood that one party could file or pressure another to file an application on grounds *other* than clerical or administrative error. However, after considering the comments, the Commission has determined that two fully detailed affidavits may not be absolutely necessary. The Commission also believes, however, that both parties to the contract, not just the filing party, should support the request. This can be accomplished simply if the non-filing party to the request submits a statement that it concurs in the filing party's application. Accordingly, the Final Rule will permit a single affidavit and a concurring statement from the other party to the contract.

The Proposed Rule would have provided a new, 30-day window for "me too" shippers to take advantage of the corrected service contract's essential terms. This was intended to afford an opportunity for a similarly situated shipper to avail itself of the corrected essential terms that were not publicly available during the initial 30-day "me too" period. Several commenters have opposed this second, 30-day period on the ground that the economic circumstances existing when the Commission approves a request, may be different than those that existed at the time of the negotiation and execution of the original service contract. Notwithstanding this concern, the Commission believes that the 1984 Act contemplates that the corrected essential terms be made available to shippers who may have availed themselves of the original contract, if its essential terms had been correctly published. However, given the fact that the contract's existence and general terms have already been made known to the public by the time the Commission grants a request for relief, the Commission does not find it necessary to provide the public an additional 30-day availability period. The Final Rule, therefore, provides a more limited 15-day window for "me too" shippers to take advantage of the corrected essential terms, except in the situation described below.[2]

The Japan Conferences have proposed the elimination of the second "me too" period where the clerical or administrative error in the confidentially filed service contract does not also appear in the essential terms' publication. As indicated above, the second "me too" period is intended to provide notice to shippers of the corrected essential terms that were made available to the original party to the contract but which were unavailable to the general shipping public during the initial, 30-day period because of clerical or administrative error. If the original essential terms publication somehow contains the correct essential terms, the shipping public originally received adequate notice of the essential terms given to the original shipper. Accordingly, there is no reason to provide for a second "me too" period, if the Commission subsequently approves a request to correct the essential terms as stated in the contract. Therefore, the Final Rule eliminates the second "me too" period where the error only appears in the contract and not also in the essential terms publication.

Some commenters also raise the issue of how shippers who previously "me too'd" an erroneous contract should be treated. The Commission believes that, at a minimum, an original, "me too" shipper should have the same opportunity to adopt the corrected essential terms as all other similarly situated shippers. However, if an original "me too" shipper is somehow disadvantaged by the correction, it should be able to elect not to adopt the changes and continue to operate under its original contract. The Proposed Rule will be modified accordingly.

In the interest of clarity, the Final Rule has been reorganized and reworded. In addition, the Commission is requiring all requests for relief to be submitted in duplicate in order to facilitate and expedite their processing.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Rule will not have a significant economic impact on a substantial number of small organization units, and small governmental jurisdictions.

This Rule will become effective in 15 days rather than 30 days because it relieves a restriction previously contained in the Commission's service contract regulations.

List of Subjects in 46 CFR Part 581

Administrative practice and procedure; Contracts; Maritime carriers; Rates and fares.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8 and 17 of the Shipping Act of 1984, Part 581 of Title 46, Code of Federal Regulations, is amended as follows.

PART 581—[AMENDED]

The authority citation for Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

[1] Those comments suggesting that the Proposed Rule be expanded to permit prospective modification of any terms of a service contract are beyond the scope of this proceeding.

[2] As indicated in the Proposed Rule, the Commission intends to resolve requests for relief within 30 days of their receipt.

2. Section 581.7 is amended by redesignating paragraph (b) as (c), and by revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 581.7 Modification, termination or breach not covered by the contract.

* * * * *

(a) *Modifications.* The essential terms originally set forth in a service contract may not be amended but may be corrected pursuant to paragraph (b) of this section.

(b) *Corrections.* (1) Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the service contract to be corrected;

(ii) A copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(2)(i) If the request is granted, the carrier or conference shall file the corrected contract provisions and a corrected statement of essential terms and those corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected contract. The provisions of § 581.6(b)(2)–(4) shall otherwise apply.

(ii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(iii) The provisions of paragraph (b)(2)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms publication.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-845 Filed 1-12-89; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 54, No. 9
Friday, January 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 352, 354, 355, 362, 381, and 391

[Docket No. 88-017P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to increase fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees would primarily reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970. In addition, as a "housekeeping" measure, the dollar amounts for the services currently specified in Parts 307, 350, 351, 352, 354, 355, 362, and 381 would be transferred to a new Part 391 (9 CFR Part 391).

DATE: Comments must be received by January 30, 1989.

ADDRESS: Send written comments to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L. West, (202) 447-3367. (see also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number located in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. West so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; and increases in those costs due to an increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1989 pay raise of 4.1 percent for Federal employees, increased costs of the retirement system in 1989, and increased health insurance and travel costs, FSIS proposes to increase the fees relating to such services.

In addition, as a "housekeeping" measure, FSIS is proposing to transfer the dollar amounts currently specified in 9 CFR Parts 307, 350, 351, 352, 354, 355, 362, and 381 to a new Part 391 (9 CFR Part 391). However, the provisions for the fees to be charged by FSIS for the services specified herein would remain as currently codified in the Code of Federal Regulations. As the dollar amounts for the services provided herein may change at least annually, by consolidating these amounts into a separate Part 391, the Agency would only need to amend one Part instead of eight different Parts of the CFR each time the rates for such services are revised.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs, which are not a part of the mandatory inspection service, are recoverable by the Government.

Currently, § 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate of $24.68 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS will be reimbursed for the cost of poultry inspection on holidays or on an overtime basis at the rate of $24.68 per inspector hour. These fees would be increased to $25.88 per inspector hour.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $21.16 per inspector hour (§§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5). The overtime and holiday hourly rate is currently $24.68. The rate for laboratory services is currently $43.80 per hour. The hourly rates for these services would be revised to $23.60, $25.88, and $42.88, respectively. Also these dollar amounts would be transferred to a new Part 391 (9 CFR Part 391). In addition §§ 307.6(a), 354.107, and 381.39(a) would be amended to reference the fees contained in the new Part 391.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat Inspection, Reimbursable services, Voluntary inspection; Certification service.

9 CFR Part 351

Meat inspection, Reimbursable services, Technical animal fats.

9 CFR Part 352

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 354

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 355

Meat inspection, Reimbursable services; Certified products.

9 CFR Part 362

Poultry products inspection, Reimbursable services; Voluntary poultry inspection.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

9 CFR Part 391

Meat inspection, Poultry products inspection, Fees and charges.

Accordingly, the Federal meat and poultry products inspection regulations would be amended as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 621, 695; 7 CFR 2.17 (g) and (i), 2.55.

2. Section 307.5(a) would be revised to read as follows:

§ 370.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

3. Section 307.6(a) would be revised to read as follows:

§ 307.6 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 307.5(a) and at the rates specified in § 391.3, in increments of quarter hours. For billing purposes, 8 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Program employee.

* * * * *

PART 350—[AMENDED]

4. The authority citation for Part 350 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

5. Section 350.7(c) would be revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such services. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

6. The authority citation for Part 351 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

7. Section 351.8 would be revised to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rates specified in §§ 391.2 and 391.3 respectively for base time, and for overtime, travel, and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

8. Section 351.9(a) would be revised to read as follows:

§ 351.9 Charges or examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 352—[AMENDED]

9. The authority citation for Part 352 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

10. Section 352.5(c) would be revised to read as follows:

§ 352.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rates specified in § 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 354—[AMENDED]

11. The authority citation for Part 354 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

12. Section 354.101 (b) and (c) would be revised to read as follows:

354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rates shall be as specified in §§ 391.2 and 391.3 respectively for base time and for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be at the rate specified in §§ 391.4 for that part which is not covered under the base time, overtime, and/or holiday costs.

13. Section 354.107 would be revised to read as follows:

§ 354.107 Continuous inspection performed on a resident basis.

The charges for inspection of rabbits and products thereof shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 when the inspection service is performed on a continuous year-round resident basis and the services of an inspector or inspectors are required 4 or more hours per day. When the services of an inspector are required on an intermittent basis, the charges shall be those provided for in § 354.101(b) and specified by hourly rates in §§ 391.2 and 391.3 plus the travel expense and other charges provided for in § 354.106.

PART 355—[AMENDED]

14. The authority citation for Part 355 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 6 CFR 2.17(g) and (i), 2.55.

15. Section 355.12 would be revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime, including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

16. The authority citation for Part 362 reads as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

17. Section 362.5(c) would be revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

18. The authority citation for Part 381 would be revised to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended; 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

19. Section 381.38 (a) would be revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall reimburse the Program, at the rate specified in § 391.3, for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

20. Section 381.39 would be revised to read as follows:

§ 381.39 Basis of billing for overtime and holiday service.

(a) Each recipient of overtime or holiday inspection service, or both, shall be billed as provided for in § 381.38(a) and at the rate specified in § 391.3, in increments of quarter hours. For billing purposes, 8 or more minutes shall be considered a full quarter hour. Billing will be for each quarter hour of service rendered by each Inspection Service employee.

* * * * *

21. A new Part 391 (9 CFR Part 391) would be added to Subchapter D to to read as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

Sec.

391.1 Scope and purpose.
391.2 Base time rate.
391.3 Overtime and holiday rate.
391.4 Laboratory services rate.

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17(g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1624.

§ 391.1 Scope and purpose.

Fees shall be charged by the Agency for certain specified inspection services provided on a holiday, on an overtime basis, and/or which are voluntary inspection services.

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to sections 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $23.60 per hour, per Program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to sections 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $25.88 per hour, per Program employee.

§ 391.4 **Laboratory services rate.**

The rate for laboratory services provided pursuant to sections 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $42.88 per hour, per Program employee.

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-840 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 310

[Docket No. 86-012-P]

Use of Air During Slaughter Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to provide for the approval of several procedures which have been field tested and found acceptable for the inflation of carcasses and parts of carcasses with compressed air injected during dressing operations to facilitate head skinning and the removal of hides and foot hair. This proposal would permit the use of these methods in official establishments without requiring further testing or additional written approval.

DATE: Comments must be received on or before: March 14, 1989.

ADDRESS: Written comments to: Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with the foreign-based enterprises in domestic or export markets. This proposal would provide official slaughtering establishments with voluntary alternate procedures for use during slaughter operations, by permitting approved methods of injecting compressed air to facilitate head skinning and the removal of hides and foot hair.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The proposal would relieve a current regulatory restriction with respect to the use of air injection into carcasses and parts of carcasses. If promulgated, it would provide all official slaughtering establishments with voluntary alternate procedures for use during slaughter operations, by permitting approved methods of compressed air injection without imposing additional requirements.

Paperwork Requirements

This proposal would require that establishments who wish to test new procedures for the use of air, submit requests to FSIS for approval. (This paperwork requirement will be submitted to the Office of Management and Budget for approval.)

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office. Please include the docket number that appears in the heading of this document. All comments submitted in response to this proposal will be made available for public viewing in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Section 310.13 of the Federal meat inspection regulations [9 CFR 310.13] provides, in part, that carcasses or parts of carcasses shall not be inflated with air. The original intent in disallowing the use of air was to aid in the prevention of adulterated carcasses or parts of carcasses. In particular, the insanitary use of injected air may contaminate the carcass or part or mask abnormal conditions. Section 1(m)(4) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(4)) provides that any carcass, part thereof, meat or meat food product is adulterated "if it has been prepared * * * under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. * * *" If the air were unclean or if there were a contaminated injection procedure, the carcass might become contaminated. Additionally, it was felt that the presence of air in subcutaneous tissues could mask an abnormal condition such as a gas-producing bacterial infection. Section 1(m)(8) of the FMIA (21 U.S.C. 601(m)(8)) provides that any carcass, part thereof, meat or meat food product is adulterated "* * * if damage or inferiority has been concealed in any manner; * * *" Such adulteration could occur by filling out hollows in the animal carcass to make the animal appear of better quality. Thus, FSIS prohibited the use of air to inflate carcasses or parts of carcasses on the basis that the air may be used in an insanitary manner or may mask abnormal conditions, resulting in product adulteration under the FMIA.

Recently, several establishments requested permission to use injected air for hide removal. FSIS determined, at that time, that if establishments could demonstrate that the use of air would result in wholesome, unadulterated meat products, such additional procedures could allow more efficient dressing operations for slaughter establishments. Therefore, FSIS has permitted, on an experimental basis and under close FSIS monitoring, various uses of air during the dressing operations at several establishments. These uses included:

(1) Compressed air injected into cattle feet to facilitate the removal of hair from feet intended for human consumption.

(2) Compressed air injected into the skull of an animal in conjunction with a captive bolt stunner to aid in holding the animal still during the bleeding operation so that fewer injuries to establishment employees would occur.

(3) Compressed air injected under the skin of cattle heads to facilitate head skinning prior to the use of a down hide-puller.

(4) Compressed air injected into the abdominal cavity of swine to facilitate the skinning operation and to minimize the loss of body fat.

Many cattle slaughter establishments are currently requesting authorization to use air injection for hide removal. These establishments wish to accomplish three things: first, reduce equipment and carcass damage by reducing the amount of tension which must be applied to remove the hide from the head and neck with a down hide-puller; second, prevent damage to the hide in the removal process; and third, reduce contamination of the head when the hide is removed intact.

The above described uses, after field testing, were found to be acceptable. The sanitary injection of air did not mask abnormal carcass conditions and did not contaminate carcasses or parts. Microbiological testing has proven that air injection can be sanitary. The Agency now believes that air injection can be performed in a sanitary manner by a procedure that includes air filtration and injection needle disinfection. Air filtration would consist of not less than two stages. An initial stage of filtration would occur at or near the use point and would consist of an aerosol or coalescing filter, capable of filtration to not more than 0.75 micron, for the removal of oil and water. A subsequent stage of filtration would occur at or near the point of needle hose attachment to the air line and would be a particulate filter, capable of filtration to not more than 0.3 micron. The injection needle would be disinfected by placement in water that is not less than 180 °F. for at least 10 seconds immediately prior to each injection. Therefore, the Administrator believes it is now appropriate to propose to amend the Federal meat inspection regulations to approve the use of injected air as listed in the cited examples.

The proposed rule would allow permanent approval of only the compressed air injection activities in the examples listed above. Any official establishment interested in the use of air for other than the proposed approved methods would be required to submit a request for experimental testing of any unapproved procedure to FSIS for approval, prior to its use. These requests must state the purpose of the use of air, a detailed description of the procedure, and evidence that the procedure can be performed in a sanitary manner. Final approval of an acceptable new proposed method would be obtained by modifying, through rulemaking procedures, the Federal regulations to include the new method.

List of Subjects in 9 CFR Part 310

Meat Inspection, Post-mortem inspection.

For reasons set out in the preamble, Title 9, Part 310 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 310—POST-MORTEM INSPECTION

1. The authority citation for 9 CFR Part 310 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254(b).

2. Section 310.13 would be revised in its entirety to read as follows:

§ 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a)(1) Establishments shall not inflate carcasses or parts of carcasses with air, except as set forth in paragraph (a)(2) of this section.

(2)(i) Any establishment slaughtering livestock that wishes to inflate carcasses or parts thereof with air, using procedures other than the approved methods listed below, shall submit a request for approval for experimental testing to the Administrator. Such a request shall include the purpose of the use of air, a detailed description of the procedure for injecting the air and evidence that the procedure can be performed in a sanitary manner.

(ii) The Administrator shall evaluate newly submitted procedures for the use of air. If the Administrator determines that any such procedure will likely result in wholesome, unadulterated meat product, then the Administrator shall approve experimental testing of the new procedure. In any situation where the Administrator finds a submitted procedure to be unlikely to result in wholesome, unadulterated meat product, the Administrator shall send written notification to the establishment of the denial of such approval. The establishment may re-submit for evaluation a testing procedure that has been denied, provided that modifications have been made to address the original reason for denial. The establishment also shall be afforded an opportunity to submit a written statement in response to the notification of denial. In those instances where there is a conflict of facts, a hearing, under applicable rules of practice, will be held to resolve the conflict.

(iii) Final approval of an acceptable new proposed method shall be effectuated by modifying, through rulemaking procedures, the Federal regulations to include the new method. Uses for which approval is granted are:

(A) Compressed air injection of cattle feet to facilitate removal of hair from feet intended for human consumption;

(B) Compressed air injection to facilitate hide removal, especially of the head; or

(C) Compressed air injection into the skull in conjunction with a captive bolt stunner to hold the animal still for dressing operations.

The method of compressed air injection shall be a sanitary procedure that includes air filtration and injection needle disinfection. Air filtration shall consist of not less than two stages. An initial stage of filtration shall occur at or near the use point and shall consist of an aerosol or coalescing filter, capable of filtration to not more than 0.75 micron, for the removal of oil and water. A subsequent stage of filtration shall occur at or near the point of needle hose attachment to the air line and shall be a particular filter, capable of filtration to not more than 0.3 micron. The injection needle shall be disinfected by placement in water that is not less than 180 °F for at least 10 seconds immediately prior to each injection.

(b) Transferring the caul or other fat from a fat to a lean carcass is prohibited.

Done in Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-895 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 318

[Docket No. 80-019P]

Immersion Cured and Dry Cured Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; withdrawal of previous proposed rule.

SUMMARY: The Food Safety and Inspection Service is proposing to amend the Federal meat inspection regulations to prohibit the use of nitrate in the preparation of immersion cured bacon and dry cured bacon. The proposed rule would limit nitrite to 120 parts per million (ppm) going into immersion cured bacon bellies and to 200 ppm going into dry cured bacon bellies. The principal effect of this proposed rule would be to reduce the formation of nitrosamines in bacon by prohibiting the use of nitrate in the production of immersion cured and dry cured bacon. The use of nitrate is already prohibited in pumped bacon. This proposed rule would also withdraw the previous proposal, published June 7, 1980 [45 FR 43425], on the same subject and correct two typographical errors in § 318.7(c)(4) concerning the quantitation of nitrite in cured products.

A recent innovation in bacon manufacturing has been the introduction of massaged bacon. In recognition of the similarity, FSIS proposes to apply the pumped bacon requirements to massaged bacon.

DATE: Comments must be received on or before March 14, 1989.

ADDRESS: Written comments may be sent to the Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator also has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). There are approximately 200 establishments now producing either dry cured, immersion cured or massaged bacon products. All of these establishments would be subject to this proposed rule. Of these 200 establishments, 5 produce either massaged or immersion cured bacon and the remaining 195 produce dry cured bacon. The majority of these 200 establishments can be considered as small entities, because they produce a low volume of bacon products per establishment. Preliminary information from an Agricultural Research Service survey begun in mid-1986 and not yet completed indicates that the majority of establishments which produce dry cured bacon no longer use nitrate in their cure. Thus, the majority of affected establishments are now operating in compliance with the proposed requirements on use of nitrate. The few establishments which are still using nitrate as part of their curing process would be required to eliminate its use but could substitute nitrite to achieve the same technical effect. There is no significant cost difference between the purchase of nitrate or nitrite. Limiting the amount of nitrite that may be used in the product is expected to have a positive affect on producers as they will be able to use less nitrite and thus save on the cost of purchasing nitrite.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The use of nitrate in the curing of meat can be traced back several hundred years. In the early 1900's, chemists and meat scientists began to understand some of the mechanisms of the nitrate curing process. Nitrate's principal role is as a source of nitrite which fixes the characteristic pink color in cured meat products. In recognition of this color fixing role played by nitrite [1] in the curing process, the Department approved its direct use to reduce dependence on the unreliable conversion of nitrate to nitrite. Subsequently, nitrite was found to have additional benefits which increased shelflife and safety of cured meats. Nitrite retards rancidity and inhibits the growth of some bacteria.

The use of nitrite and nitrate in the curing of meat has been an area of concern to the Department for several years since it was learned that nitrite, when combined with secondary and tertiary amines under appropriate conditions, can form nitrosamines.

Nitrosamines are formed during the high heat of some cooking processes such as frying. Bacon containing confirmable levels of nitrosamines is an adulterated product. Many of the nitrosamines, including those found in fried bacon, have been demonstrated to be carcinogenic to laboratory animals.[2] If confirmable levels of nitrosamines are verified by gas liquid chromotography/mass spectrometry analysis (GLC/MS), the entire lot is disposed of in a manner to assure that nitrosamines will not form when the product is cooked. This may include incorporation of the uncooked bacon as an ingredient in another food product, provided it is processed in a manner to preclude the formation of nitrosamines.

Bacon may be produced by any of three principal curing methods. Most bacon, about 98 percent, is prepared by injecting or tumbling a curing solution containing water, salt, flavorings and nitrite into pork bellies so that there is an immediate penetration of the cure into the muscle tissues. This is referred to as pumped bacon. The other two percent are divided between immersion cured and dry cured bacon. Immersion cured bacon is prepared by placing pork bellies in vats and then either covering them with the curing solution or permitting the natural tissue fluids extracted by the cure to cover the bacon. Dry cured bacon is produced by rubbing a dry mixture of salt, flavorings and nitrite onto the surface of each pork belly. The dry cure must be dissolved by the natural tissue fluids and allowed to diffuse throughout the meat. The curing time is shortest for pumped bacon and longest for dry cured bacon.

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for assuring that meat and meat food products distributed to consumers are wholesome and not adulterated (21 U.S.C. 602). Section 8 of the FMIA (21 U.S.C. 606) directs the Secretary, through inspectors, to examine all meat food products prepared for distribution in commerce in any slaughtering, meat canning, salting, packing, rendering, or similar establishment. Inspectors shall mark or label as "Inspected and passed" all such products found to be not adulterated and "Inspected and condemned" all such products found to be adulterated within the meaning of section 1(m) of the FMIA (21 U.S.C. 601(m)).

Section 1(m) of the FMIA defines an adulterated product, in part, as product that " * * * bears or contains any poisonous or deleterious substance which may render it injurious to health * * * " (21 U.S.C. 601(m)(1)).

[1] As used in this document, the term "nitrite" refers to either sodium nitrite or potassium nitrite. However, unless specifically noted otherwise, quantity declarations are stated on the basis of the sodium salt. A conversion to approximate potassium salt equivalent is accomplished by multiplying by 1.23.

[2] Preussman, R., Schmohl, D. & Eisenbrand, G. (1977) Carcinogenicity of N-nitrosopyrrolidine: dose study in rats. *Z. Krebsforsh 90* 161-166.

In response to the finding of nitrosamines in bacon, the Department published a final regulation, in 1978, prohibiting the use of nitrate in pumped bacon, limiting the amount of ingoing nitrite in pumped bacon to 120 ppm, and requiring that sodium ascorbate or sodium erythorbate be used at 550 ppm (43 FR 20992) (9 CFR 318.7(b)). Sodium ascorbate and sodium erythorbate are considered to be nitrosamine inhibitors and thus, capable of decreasing nitrosamine formation in bacon. Since that time, an active sampling and nitrosamine testing program for pumped bacon has been in effect. In addition, the Department provided in 1986 two alternative procedures for controlling the levels of nitrite added to pumped bacon. First, as part of an FSIS approved quality control (QC) program, establishments are allowed to reduce ingoing sodium nitrite levels to 100 ppm (or 123 ppm potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate. The second alternative, also as part of an FSIS approved QC program, allows establishments to add sodium nitrite at a level between 40 and 80 ppm (or 49 to 99 ppm potassium nitrite) with 550 ppm sodium ascorbate or sodium erythorbate plus sugar and starter cultures (lactic acid producing bacteria). In 1985 and 1986, the Department authorized the use of alpha-tocopherol as an additional nitrosamine inhibitor in pumped bacon (50 FR 27573, 51 FR 35630).

Although FSIS did not address the levels of nitrites and nitrates in dry cured products in the rulemaking proceedings concerning pumped bacon, FSIS did begin research on the issue of nitrosamines in dry cured products.

1. In a 1976 market basket survey, the Food and Drug Administration tested one sample of dry cured bacon. No nitrosamines were detected; however, formulation of the cure and processing procedures were unknown.

2. In October 1977, FSIS published a notice (42 FR 55628) requesting information as to whether carcinogenic nitrosamines are formed in cured meat products as a result of ordinary conditions of processing and/or preparation for consumption. The Nitrite Safety Council, an organization composed of representatives from several meat processor trade associations, submitted data [3] in response to this request. The data consisted of the analytical results from 15 samples of dry cured bacon collected and analyzed by the Nitrite Safety Council. Of these samples, 13 had been cured with nitrite, or nitrite and nitrate in combination. The ingoing range was from .027 ounces of nitrite alone per 100 pounds of meat to 3 ounces of nitrate plus 1 ounce of nitrite per 100 pounds of meat. One of the other two samples received the maximum allowable amount of sodium nitrate (3.5 ounces per 100 pounds of meat) but no nitrite. Nitrosamines were not found at confirmable levels in this sample. In the 13 samples in which nitrite had been used in processing, findings by the mineral oil vacuum distillation and thermal energy analyzer (TEA) screening test ranged from undetectable to 180 parts per billion (ppb) of nitrosopyrrolidine (a carcinogenic nitrosamine). Seven of the 13 findings indicated that carcinogenic nitrosamines were present at levels of 10 ppb or greater.

The Department monitored the collection and preparation of the samples analyzed by the Council. In addition, the Department analyzed companion samples to those tested by the Council. These monitoring results, including successful confirmation in all cases attempted, established the validity of the data submitted by the Council.

3. To get additional information on the occurrence of nitrosamines in bacon made with dry curing materials, the Department, in 1978, tested 39 additional bacon samples.[4] The results of the screening tests ranged from undetectable to 199 ppb. In 18 of the 39 samples, there were levels of carcinogenic nitrosamines widely recognized by scientists as confirmable. Three of these samples were selected as part of a nine-sample confirmation effort for TEA results. In all three cases, the presence of carcinogenic nitrosamines was confirmed.

4. Finally, in 1979, the Nitrite Safety Council reported additional data as part of a small study [5] to determine the effect of reducing ingoing nitrite to 120 ppm and adding sodium erythorbate as a nitrosamine inhibitor in pork bellies. The study was conducted in four cooperating processing establishments. Analyses of the samples were limited to a TEA screening of 10 individual pork bellies from one establishment and three 10-belly composite samples each from a different establishment. Analyses of these pork bellies revealed the presence of nitrosamines from 4 to 16 ppb in the individual bellies and 8 to 18 ppb in the composite belly samples. Although the Council reported that the results indicate that acceptable dry cured bacon with a very low potential for nitrosamine formation can be produced by using reduced levels of added sodium nitrite coupled with sodium erythorbate, the study was too small to permit the Department to draw any firm conclusions. However, nitrosamines were found in one of the composite samples.

As can be seen from the foregoing data, the incidence of confirmable levels of nitrosamines in bacon prepared with dry curing materials appeared high. Therefore, FSIS on June 27, 1980, published a proposed rule (45 FR 43425) to regulate production procedures for dry cured bacon. The proposal would have established a monitoring program and specific requirements for water activity and salt content. Most of the 117 commenters opposed the proposed rule because they believed the proposed water activity and salt content would make the product unsalable. Commenters also believe the monitoring program would result in many small processors closing. The commenters asserted that the cost of having a private laboratory test the product would exceed the value of the product. The alternative would be to have the Department perform the tests. It would take longer to get results, and the processors would not have enough storage capacity to continue production and remain in business.

Following publication of the proposal in 1980, FSIS formed an expert task force to study the manufacture of dry cured bacon. The task force initiated a survey [6] of dry cured bacon producers to gather information on the current production practices. Producers were asked to voluntarily submit formulations and samples of dry cured product for laboratory testing. Of the 143 samples which were submitted, 135 were tested by the Department. The samples were analyzed for residual nitrite and nitrate, salt, moisture, nitrosamines, pH, fat, protein, and water activity. As a result of these analyses, the Department determined that residual nitrite was the most important contributing factor to the presence of detectable nitrosamines. The task force prepared guidelines in 1983 for the manufacture of dry cured bacon. The guidelines recommend that manufacturers carefully control nitrite by (1) accurately measuring the amount added, (2) adding no more than 200 ppm

[3] A copy of this data is available for public inspection in the office of the FSIS Hearing Clerk.

[4] The 39 bacon samples were part of a larger survey conducted by the Department on dry cured hams, pork shoulders, and bacon.

[5] A copy of this study is available for public inspection in the office of the FSIS Hearing Clerk.

[6] A copy of this survey report is available for public inspection in the office of the FSIS Hearing Clerk

of nitrite and (3) adding no nitrate. In addition, the guidelines recommended that bellies should be sorted according to weight and thickness; that bellies should not be cured for more than 7 days per inch of thickness at 36–43 °F.; and that bellies should be cured with the skin off and not processed to excessive dryness.

Although the 1980 survey was not intended to include immersion cured bacon, six samples were received which had been cured by this method. Five of the six samples had nitrosopyrrolidine levels greater than 10 ppb, and three of these samples had levels greater than 20 ppb. These data indicate that immersion cured bacon also has a significant potential for nitrosamine formation. To verify these findings and assess the nitrosamine levels in immersion cured bacon an additional survey was done in 1980. This survey tested 59 samples of regular immersion cured bacon. Forty-nine percent of these samples had nitrosamine values equal to or greater than 17 ppb. This survey confirmed that immersion cured bacon has a potential for nitrosamine formation which is associated with residual nitrite in the raw product.

In 1986, FSIS requested research by the Agricultural Research Service (ARS) to evaluate processing practices that the task force survey identified as significantly affecting the nitrosamine levels. ARS selected establishments from the 1980 FSIS survey whose processes would be likely to produce detectable nitrosamines. However, this research was conducted after those establishments had received copies of the task forces' recommended guidelines. Preliminary information indicates that most of the establishments had amended their processes, no longer used nitrate, and had no detectable nitrosamines. The final report has been submitted for publication.

In view of the comments on the previous proposal and the information developed by the 1980 task force survey, FSIS is withdrawing the proposed rule published on June 27, 1980 (45 FR 43425), and is proposing to permit the manufacture of immersion cured and dry cured bacon made with accurately controlled reduced amounts of nitrite and no nitrate. It has been shown that nitrosamine formation in bacon is directly dependent on levels of residual nitrite left in the bacon after the curing process. By accurately controlling the amount of nitrite added during the curing process, the residual nitrite should be low enough to minimize any nitrosamine formation.

The Agency has decided not to propose a laboratory monitoring test system for immersion cured and dry cured bacon at this time. The production schedules of immersion cured and dry cured bacon producers can be intermittent and unpredictable. This makes the sample collection required by any statistical monitoring system difficult for these products. Instead, FSIS personnel will, through inplant observations and control of formulation, verify that immersion cured bacon and dry cured bacon are wholesome and are being produced in accordance with these regulations.

A recent innovation in bacon manufacturing has been the introduction of massaged bacon. In this process pork bellies are placed in drums with the curing solution and tumbled until the cure is absorbed. All of the curing solution is incorporated into the bacon. As such, it is similar to pumped bacon where the curing solution is injected into the pork belly. In recognizing the similarity between these two products, FSIS proposes to treat them the same and apply the pumped bacon requirements to massaged bacon.

Effect of This Proposal

This proposal would clarify § 318.7(b) of the Federal meat inspection regulations (9 CFR 318.7(b)) so that the provisions of the regulation which pertain only to pumped bacon [9 CFR 318.7(b)(1)) would be so designated because the requirements pertaining to bacon made with dry curing materials are different. Immersion cured bacon requirements would also be shown separately with the use of ingoing nitrite at 120 ppm, or an equivalent amount of potassium nitrite (148 ppm). These are the same amounts as for pumped bacon. Since the cure ingredients are already in solution surrounding the pork bellies, diffusion of the nitrite into the product is facilitated.

For dry cured bacon, the manner by which dry curing materials enter the pork bellies is essentially one of absorption. For dry cured bacon, nitrite would be limited to 200 ppm going into the product. To accurately control the amount of nitrite in the product and because of the variability of the conversion of nitrate to nitrite, the use of nitrate would be prohibited in both immersion cured bacon and dry cured bacon as it now is in pumped bacon.

In proposing this rule, FSIS is aware of the need to minimize economic disruption and, at the same time, meet consumer expectation. Therefore, it will continue to work with industry groups to assist in identifying those production methods and/or procedures that will result in a product in compliance with the Federal Meat Inspection Act; i.e., a product that does not contain confirmable levels of carcinogenic nitrosamines. If this proposal is issued as a final rule, as successful methods are identified, FSIS will provide technical guidance to those industry members who request help in instituting them.

Other Modifications: In the preparation of this proposal, two typographical errors were discovered in the chart in § 318.7(c)(4) of the regulations (9 CFR 318.7(c)(4)). In each instance the word "nitrate" should be "nitrite". Accordingly, this proposal would correct those errors.

Proposal

For reasons set forth in the preamble, Title 9, Subchapter A, Part 318, of the Code of Federal Regulations is proposed to be amended as set forth below:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*) unless otherwise noted.

2. Section 318.7(b) would be amended by revising the introductory text and the beginning phrase of paragraph (b)(1), and by adding new paragraphs (b) (5) and (b) (8) to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(b) Requirements for the use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon. Nitrates shall not be used in curing bacon.

(1) *Pumped bacon.* with respect to bacon injected with curing ingredients and massaged bacon (pumped bacon):

* * *

* * * * *

(5) *Immersion cured bacon.* Immersion cured bacon may be placed in a brine solution containing salt, nitrite and flavoring material or in a container with salt, nitrite and flavoring material. Sodium nitrite shall not exceed 120 ppm ingoing or an equivalent amount of potassium nitrite (148 ppm ingoing) based on the actual or estimated skin-free green weight of the bacon bellies.

(8) *Bacon made with dry curing materials.* With respect to bacon made with dry curing materials, the product shall be cured by applying a premeasured amount of cure mixture to the bacon belly surfaces, completely covering the surfaces. Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

§ 318.7 [Amended]

3. Section 318.7(b)(2) would be amended by changing each reference to the word "bacon" to read "pumped bacon".

4. In the chart in § 318.7(c)(4), the listing for the curing agent sodium or potassium nitrite for the purpose to fix color would be corrected by changing "nitrate" in the last sentence under "Substance" to read "nitrite" and by changing "sodium nitrate" in the next to last sentence under "Amount" to read "sodium nitrite."

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-900 Filed 1-12-89; 9:45 am]

BILLING CODE 3410-DM-M

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9 CFR Parts 327 and 381

[Docket No. 88-013P]

Importation of Meat and Poultry Products; Refused Entry Product

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations regarding the handling of imported products which have been refused entry into the United States. The proposal would add a provisio to the regulations that any such products exported to another country and returned to the United States would be subject to detention in accordance with section 402 of the Federal Meat Inspection Act (FMIA) or section 19 of the Poultry Products Inspection Act (PPIA) and to seizure and condemnation in accordance with section 403 of the FMIA or section 20 of the PPIA. This proposed rule is necessary specifically to provide that such products are subject to administrative detention and judicial seizure and condemnation as authorized under the Acts.

DATE: Comments must be received on or before March 14, 1989.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171—South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.) Oral comments as provided under the PPIA to: Patrick J. Clerkin, (202) 447–5604.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Compliance Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington DC 20250, (202) 447–5604.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Current regulations prevent the distribution into human food channels of those meat or poultry products offered for importation into the United States from foreign countries and subsequently refused entry. The regulations further prohibit the reimportation of such product into the United States. Although the regulations currently do not so state, FSIS has authority under the FMIA and the PPIA to take the necessary steps to preclude the distribution in the United States of any refused entry product that has been returned to the United States. This proposal would not adopt new policy, but would merely specify actions currently authorized under the Acts which provide for the administrative detention and the judicial seizure and condemnation of product, in commerce, which is adulterated or misbranded or otherwise in violation of the FMIA or PPIA. As such, no new requirements would be placed on foreign or domestic markets.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule merely clarifies the regulations to reflect authority established under the Acts with respect to the administrative detention and judicial seizure and condemnation of meat or poultry products that are adulterated or misbranded or otherwise in violation of the FMIA or PPIA.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office specifying the docket number which appears in the heading of this document. Any person desiring opportunity for oral presentation of views as provided under the PPIA must make such request to Patrick J. Clerkin so that arrangements may be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Section 20(a) of the FMIA (21 U.S.C. 620) provides that "No carcasses, parts of carcasses, meat or meat food products * * * which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all * * * other provisions of the Act and regulations issued thereunder * * *." Section 20(b) of the FMIA further provides that "The Secretary may prescribe the terms and conditions for the destruction of all such articles which are imported contrary to this section unless (1) they are exported by the owner or consignee within the time fixed therefor by the Secretary, or (2) in the case of articles which are not in compliance with the Act solely because of misbranding, such articles are brought into compliance with the Act under supervision of authorized representatives of the Secretary." Section 17 (a) and (b) of the PPIA (21 U.S.C. 466) contains similar language for poultry and poultry products, except that no provision is made for poultry products that do not comply because of misbranding to be brought into compliance.

Section 402 of the FMIA (21 U.S.C. 672) provides that "Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any

dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative."

Section 403(a) of the FMIA (21 U.S.C. 673) provides that "Any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine, that is being transported in commerce or otherwise subject to title I or II of this Act, or is held for sale in the United States after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Act, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this Act, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court as provided in section 404 of this Act within the jurisdiction of which the article or animal is found." Sections 19 and 20(a) of the PPIA (21 U.S.C. 467b) contain similar provisions for poultry and poultry products.

Part 327 of the Federal meat inspection regulations (9 CFR Part 327) and Subpart T of the poultry products inspection regulations (9 CFR Part 381, Subpart T) prescribe the requirements for meat and poultry products offered for importation into the United States as authorized by the FMIA and PPIA. Such products offered for importation from any foreign country are inspected by departmental inspectors before they are entered into the United States. The inspectors report their findings to the Director of Customs at the port of entry where such products were offered for admission into the United States.

If any such products are identified as "U.S. Refused Entry", the inspector requests the Director of Customs to refuse admission of the product and to direct the owner or consignee of the refused entry product to export such product within 45 days. The owner or consignee may opt not to reexport the product, but rather may, within the 45-day period, either destroy the product under departmental supervision or convert the product into animal food. As previously discussed, the FMIA contains an exception to this rule that provides that any meat food product which has been refused entry solely because of misbranding may be brought into compliance with the Act under departmental supervision. This exemption is also provided in § 327.13(a)(4) of the Federal meat inspection regulations (9 CFR 327.13(a)(4)).

If the owner or consignee does not take appropriate action within the specified time period, the Acts and regulations authorize the Secretary to destroy the product for human food purposes (9 CFR 327.13(a)(6) and 381.202(a)(5)). This is necessary to prevent adulterated or misbranded product from entering into U.S. commerce.

Section 327.13(a)(7) of the Federal meat inspection regulations and § 381.202(a)(6) of the poultry products inspection regulations prohibit the return to the United States of product which had been refused entry and exported to another country (9 CFR 327.13(a)(7) and 381.202(a)(6)). If such product is returned to the United States, FSIS is authorized under the FMIA and PPIA to administratively detain the product pursuant to section 402 of the FMIA or section 19 of the PPIA, to preclude its distribution in commerce and seek judicial seizure and condemnation of such product in accordance with section 403 of the FMIA or section 20 of the PPIA. The current regulations, however, do not specify that such refused entry product is subject to detention and judicial seizure and condemnation under the law. To clarify the regulations in this regard, FSIS is proposing to amend §§ 327.13 and 381.202 of the Federal meat and poultry products inspection regulations, specifically to provide that such returned, refused entry product shall be subject to administrative detention and judicial seizure and condemnation.

Proposed Rule

List of Subjects

9 CFR Part 327

Meat inspection, Imported products.

9 CFR Part 381

Poultry products inspection, Imported products.

For the reasons set out in the preamble, Title 9, Parts 327 and 381 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 327—[AMENDED]

1. The authority citation for Part 327 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Section 327.13 would be amended by adding a sentence at the end of paragraph (a)(7) to read as follows:

§ 327.13 Foreign products offered for importation; reporting of findings to customs; handling of articles refused entry.

(a) * * *

(7) * * * Any such product so returned to the United States shall be subject to administration detention in accordance with section 402 of the Act, and seizure and condemnation in accordance with section 403 of the Act.

* * * * *

PART 381—[AMENDED]

3. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 381.202 would be amended by adding a sentence at the end of paragraph (a)(6) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

(a) * * *

(6) * * * Any such product so returned to the United States shall be subject to administrative detention in accordance with section 19 of the Act, and seizure and condemnation in accordance with section 20 of the Act.

* * * * *

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-898 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 381

[Docket No. 87-016P]

Binder Consisting of Sodium Alginate, Calcium Carbonate, Lactic Acid and Calcium Lactate in Ground and Formed Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the poultry products inspection regulations to permit the use of a dry mixture of sodium alginate, lactic acid, calcium lactate, and calcium carbonate to produce an edible binder for addition to ground and formed poultry products. The Food and Drug Administration (FDA) has determined that these substances are generally recognized as safe (GRAS) for use in foods separately or in a dry mixture. FSIS has determined that it is now appropriate to propose to add sodium alginate, calcium carbonate, lactic acid, and calcium lactate as a binding mixture to the list of acceptable binders for use in ground and formed poultry products. This dry mixture would be used as a binder in ground and formed poultry products and would enable these poultry products to be marketed in a raw state as well as in a cooked state. Formed poultry products contained this binding mixture would be labeled to denote that they are "formed" and the binding mixture ingredients would be listed in the product name.

DATE: Comments must be received on February 13, 1989.

ADDRESS: Written comments to: Policy Office, Attn. Linda Carey, FSIS Hearing Clerk, Room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Ashland L. Clemons at Area Code (202) 447-6042.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Acting Director, Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in increased costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule provides for the use of a mixture consisting of sodium alginate, calcium carbonate, lactic acid, and calcium lactate as binders in raw or cooked poultry products. The added mixture may not exceed 1.55 percent of the product formulation. The mixture must be added in dry form as an edible binder in ground poultry products. This action will enable poultry producers to use a wider variety of binders, resulting in more variety of poultry products. The use of binder mixture in poultry products is voluntary.

Effect On Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking will impose no new requirements on industry; rather, it will permit the poultry industry to use a new type of binder which allows raw or cooked pieces of ground poultry to cohere. Costs for equipment may be reduced due to elimination of usual freezing, tempering, and/or precooking prior to or after portioning. The formed poultry product containing this mixture as a binder can be conveniently portioned, packaged, and marketed as a refrigerated raw poultry food product, a frozen raw poultry food product, or precooked and marketed refrigerated or frozen. Use of the binding mixture in formed poultry is voluntary.

Background

The Agency has been petitioned by Colorado State University Research Foundation, Fort Collins, Colorado, to amend the poultry products inspection regulations to allow the use of a mixture consisting of sodium alginate, calcium carbonate, lactic acid, and calcium lactate in a dry binding mixture for addition to various raw or cooked formed poultry products.

Currently, poultry processors use advanced technology to produce formed poultry products from fresh ground poultry resembling fresh, intact muscles. These formed poultry products are marketed either frozen or pre-cooked to retain textural and structural integrity. The algin/calcium gelation mechanism, which results from the addition of the dry mixture to the formulation, allows formed poultry product to be processed without any further need for addition of sodium chloride or phosphate salts. These poultry products would possess binding properties in raw as well as in the cooked, refrigerated state. The process involves reducing poultry product pieces to the appropriate particle size, depending on desired product attributes. In the course of the process, dry non-poultry product ingredients are added during mixing of poultry product pieces. The mixed ingredients, including the mixture of sodium alginate, calcium carbonate, lactic acid, and calcium lactate, could then be formed by molding or stuffing in the desired shape. After the gel has set, the raw product may be portioned and packaged. Other options are precooking and freezing or freezing the raw product.

The petitioner has supplied analytical data at FSIS's request supporting its claims that wholesomeness is not affected when poultry products are processed with this binding mixture. The quantity of dry mixture required to bind poultry pieces is not more than 1.55 percent of the total product formulation. Analytical data are available free of charge from the Standards and Labeling Division at the address given under **"FOR FURTHER INFORMATION CONTACT."**

Sodium alginate (algin), which is the sodium salt of algenic acid, is listed in the poultry products inspection regulations and can be used at a level sufficient for purpose to extend and to stabilize various poultry products. FDA regulations list sodium alginate as an affirmed GRAS substance and it is used as a stabilizer and thickener at a 1.00 percent level in "other food" categories (21 CFR 184.1724).

Lactic acid is listed in the poultry products inspection regulations at a level sufficient for purpose as an acidifier when used in various poultry products. FDA regulations list lactic acid as an affirmed GRAS substance, and it is used in food with no limitation other than current good manufacturing practice (21 CFR 184.1061).

Calcium lactate, which is a calcium salt of lactic acid, presently is not listed in the poultry products inspection regulations, but it is listed as an affirmed GRAS substance in FDA regulations and could be used in the "all other" food categories with conditions of use limited to a stabilizer and thickener (21 CFR 184.1207).

Calcium carbonate is not listed in the poultry products inspection regulations, but it is listed as an affirmed GRAS substance in the FDA regulations, and could be used in food without limitation

other than good manufacturing practice (21 CFR 184.1191).

The use of sodium alginate, lactic acid, calcium lactate, and calcium carbonate to produce calcium alginate as a binder in formed meat food products has been permitted since September 17, 1986, in accordance with amendments to the Federal meat inspection regulations (9 CFR 318.7(c)(4)). Calcium alginate is also listed as an affirmed GRAS substance in the FDA regulations and could be used in the "all other" food categories as a stabilizer and thickener (21 CFR 184.1187). The added mixture for producing calcium alginate as a binder matrix in meat food products may not exceed 1.5 percent of the product at formulation. FSIS has determined after a review of the available data and information that the added mixture for poultry products should be increased to 1.55 percent of the product at formulation. This difference in use levels results from the fact that there are different soluble proteins in meat and poultry, that is, the soluble protein in poultry necessitates a slight increase in the total mixture level to achieve the same binding effect. The individual ingredient use levels in the matrix for poultry would be limited as follows: (1) Sodium alginate—not more than 0.8 percent; (2) calcium carbonate—not more than 0.15 percent; and (3) lactic acid and calcium lactate—not more than 0.6 percent.

FDA has advised FSIS that it considers the mixture of these substances as GRAS when the total mixture of such substances is dispersed in a dry form into the formulation and the mixture does not exceed 1.55 percent of the product formulation. At this level of use and under prescribed conditions, there will be only a minimal reaction to produce calcium alginate as a binding compound. If the dry mixture is dispersed in water prior to application to poultry food products, calcium alginate could be produced at a higher amount that could be in conflict with the FDA GRAS standard for its use level (21 CFR 184.1187). However, monitoring to assure that the mixture is only added in its dry form will be included as part of the inspector's routine duties.

The Administrator concurs with FDA's conclusions regarding the safety of these substances for their proposed use. He also finds that information provided by the petitioner and the research data available to the Agency indicate that (1) the proposed use of these substances as a dry mixture, as described, will be used at the lowest level necessary to accomplish the technical effect and will be in compliance with applicable FDA requirements, (2) the use of the mixture will be functional and suitable for the product intended, (3) the substances will be used at the lowest level necessary to accomplish their intended technical effects, and (4) the use of these substances will not render products in which they are used adulterated, misbranded, or otherwise not in accordance with the requirements of the Poultry Products Inspection Act.

Therefore, FSIS is proposing to amend the table of approved substances in the poultry products inspection regulations (9 CFR 381.147(f)(4)) to include the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate in a dry mixture to form an edible binder matrix in raw or cooked ground and formed poultry products.

FSIS is also proposing to amend the labeling provisions in the poultry products inspection regulations (9 CFR 381.129) to require a qualifying statement contiguous to the product name identifying the presence of these substances when they are used as a binding mixture. This is being done in order that the product will not be misbranded under the terms of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*).

Proposed Rule

List of Subjects in 9 CFR Part 381

Food labeling, Poultry and poultry products, Food additives.

For the reasons explained in the preamble, Part 381 would be amended as set forth below.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*, Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 381.129 would be amended by adding a new paragraph (d) to read as follows:

§ 381.129 False or misleading labeling or containers.

* * * * *

(d) When sodium alginate, calcium carbonate, lactic acid, and calcium lactate are used together in a dry binding matrix in ground and formed poultry products, as permitted in § 381.147 of this subchapter, there shall appear on the label contiguous to the product name, a statement to indicate the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.

3. Section 381.147 would be amended by adding sodium alginate, calcium carbonate, lactic acid, and calcium lactate as one entry to Table 1. This entry is placed in alphabetical order under the class of substances entitled "Binders and Extenders."

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *
(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Binders and Extenders	A mixture of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.	To bind poultry pieces	Ground and formed raw or cooked poultry pieces.	Sodium alginate not more than 0.8%, calcium carbonate not more than 0.15%, lactic acid and calcium lactate not more than 0.6% of product formulation. Added mixture may not exceed 1.55% of product at formulation. The mixture must be added in dry form.

* * * * *

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-899 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-1569]

Issuance and Subordinated Debt Securities

Date: December 30, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") or the "Corporation"), is proposing to amend its regulations relating to the issuance of subordinated debt securities by insured institutions 12 CFR 563.8-1. The proposed changes are intended primarily to codify certain interpretations of the rule and to make technical revisions in the rule to accommodate recent legislation. In addition, the Board proposes to modify the bases for supervisory objection to approval of a subordinated debt application now found at 12 CFR 563.8-1(b)(2) by authorizing the Office of Regulatory Activities of the Federal Home Loan Bank System ("Office of Regulatory Actitivies") to develop guidelines to specify the bases for supervisory objection to the issuance of subordinated debt. The Board would then expect to limit the imposition of non-standard conditions in subordinated debt approvals. Accordingly, the Board proposes to delete certain of the bases for supervisory objection currently specified in the regulation, some of which have become obsolete, and to direct the Office of Regulatory Activities to prepare and promulgate guidelines that would specify supervisory bases for objection to subordinated debt applications, in order to implement the general standards contained in the proposed regulation.

Further, the Board proposes to give the Principal Supervisory Agents ("PSAs") authority to deny as well as to approve subordinated debt applications. Coupled with this new authority, the regulation would include an appeal process designed to provide "final agency action."

Finally, the Board is proposing and soliciting comment on a set of standard conditions that would be applicable to approvals of applications to include subordinated debt in regulatory capital. Except in highly unusual circumstances or where supervisory objections are raised based on the guidelines developed by the Office of Regulatory Activities in effect at that time, the Board would expect that such standard conditions would be the only conditions imposed by the Board or its delegates on the approval of subordinated debt applications.

The Board is of the view that in the current regulatory and economic climate, subordinated debt is a viable and acceptable adjunct to regulatory capital under appropriate circumstances, and the Board reaffirms its intention to continue to allow subordinated debt issued pursuant to 12 CFR 563.8-1 to be included in the regulatory capital of an insured institution under 12 CFR 561.13.

DATE: Comments must be received on or before March 14, 1989.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 801 17th Street, NW., Washington, DC 20552.

FOR MORE INFORMATION CONTACT: Paul D. Glenn, Attorney, (202) 377-6203, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377-6459, Office of General Counsel; Cindy Miller, Financial Analyst, (202) 377-7492, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robyn Dennis, Financial Analyst, (202) 778-2660; or John F. Robinson, Director, Policy Analysis, (202) 778-2509, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

Since 1973, the Board, as operating head of the FSLIC, has permitted insured institutions to include as part of their regulatory capital the proceeds of the sale of subordinated debt securities issued pursuant to 12 CFR 563.8-1. Initially, insured institutions were permitted to include as regulatory capital the principal amount of such debt securities up to a limit of 20 percent of their capital requirements. In 1982, the Board amended its regulations to allow insured institutions to include the full amount of the proceeds of the sale of subordinated debt securities having a remaining maturity in excess of one year as part of their capital and statutory reserve requirements.[1] On April 18, 1985, the Board further amended §§ 563.8-1 and 561.13 of the Insurance Regulations (the definition of regulatory capital) to require that the amount of qualifying subordinated debt with a remaining period to maturity of less than seven years that may be included as regulatory capital must be reduced annually pursuant to an amortization schedule set forth in § 561.13.[2] The principal rationale underlying the Board's decision to allow the inclusion in regulatory capital of the proceeds of the sale of subordinated debt securities issued under 12 CFR 563.8-1 is that subordinated debt has some of the characteristics of other types of permanent capital and reduces the risks to the FSLIC. The Board continues to be of the view that subordinated debt may serve as a viable and acceptable component of regulatory capital under appropriate circumstances.

On August 10, 1987, the President signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including the recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory process. As required by CEBA, the Board on October 9, 1987 promulgated Applications Processing Guidelines as part of 12 CFR 571.12. The present regulatory proposal is necessitated in part of CEBA, the new guidelines (12 CFR 571.12), and also reflects an additional three years of experience with the subordinated debt regulation.

B. Discussion of the Proposals

1. Issuance of Guidelines

The Board desires to update and provide a mechanism to clarify and keep current the bases for supervisory objection to applications to include subordinated debt in regulatory capital of insured institutions, and to increase efficiency in approving applications to include subordinated debt issues as part of regulatory capital. Accordingly, the Board proposes to delegate additional authority to the PSAs to approve or

[1] *See* Resolution No. 82-581, (August 26, 1982). Under Generally Accepted Accounting Principles ("GAAP"), subordinated debt is treated as a liability.

[2] *See* Resolution No. 85-292, 50 FR 20550 (May 17, 1985).

deny subordinated debt applications and has directed the Federal Home Loan Bank System's Office of Regulatory Activities ("Office of Regulatory Activities") to establish and administer Guidelines to be applied by the PSAs in assessing supervisory considerations presented by subordinated debt applications under § 563.8–1.[3]

In keeping with the Board's desire to have uniform national supervisory policies, the Office of Regulatory Activities, under the Board's oversight, would establish Guidelines for the PSAs to apply in exercising authority to be delegated to them in considering subordinated debt applications. These Guidelines will identify supervisory factors that PSAs may use in considering whether to approve or deny an application. Some of the current bases for supervisory objections now set forth at CFR 563.8–1(b)(2) are obsolete and will be revised and/or expanded into Guidelines. These Guidelines will be illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The format of Guidelines will allow for increased flexibility in future modifications, as needed. The Office of Regulatory Activities will be able in the future to change the Guidelines as circumstances warrant, without the necessity for notice and comment rulemaking.

2. Defaults and Other Events Providing for Mandatory Prepayment of Principal

One of the factors considered in the processing of a subordinated debt application is whether the issuance of the subordinated debt securities and any related transactions will result in a transfer of risk from the FSLIC to parties other than insured institutions. *See* 12 CFR 563.8–1(b)(3). The Board, on the basis of this provision, has objected to the inclusion in subordinated debt instruments of terms that provide for mandatory redemption of the debt or for events of default (which could give rise to acceleration of maturity of the principal of the debt) based on changes in control of the obligor (known in anti-takeover parlance as a "poisoned put"), or a failure of the obligor to comply with maintenance and operating convenants which were believed to be unreasonable in the circumstances. In this connection, the Board notes that one of the bases for permitting an insured institution to incluse an amount equal to the proceeds of the sale of subordinated debt securities in its regulatory capital is that the issuance of such securities represents a relatively long term commitment of capital to the insured institution. For this reason, the Board has not approved subordinated debt applications where the subordinated debt securities (or the indentures pursuant to which they were proposed to be issued) included provisions that might unduly accelerate payment of the debt prior to scheduled maturities, because such provisions could subject the FSLIC to a significant risk of precipitious decline in an institution's regulatory capital. The Board recognizes, however, that to effect a successful public offering of debt securities, the securities, or the indentures pursuant to which they are issued, must include provisions that the investment community has come to accept as customary in offerings of such type, to the extent such provisions can be included without frustrating the purpose of the subordinated debt regulation. Thus, although provisions that require acceleration of maturity (through declaration, mandatory prepayments, or otherwise) following a change of control of the obligor will continue to be objectionable, the Board will not object to subordinated debt applications solely because the terms of the securities (or related indentures) include events of default such as failure to make timely payment of interest and principal, failure to comply with reasonable and customary financial maintenance and operating covenants, and certain events of bankruptcy. Appropriate revisions to add clarifying language to 12 CFR 563.8–1(b)(3) will address this consideration.

3. Voluntary Prepayments

The subordinated debt regulation provides that payment of principal may not be accelerated without approval of the FSLIC, if, after giving effect to such accelerated payment, the insured institution obligor would fail to meet its regulatory capital requirement. 12 CFR 563.8–1(d)(1)(iv). The Board has consistently taken the position that if any mandatory prepayment (such as payment upon acceleration of maturity following an event of default) is restricted to this extent, *a fortiori* any voluntary prepayment should be similarly restricted. A revision in 12 CFR 563.8–1(d)(1)(iv) is proposed to reflect this long-standing interpretive position.

4. Issuance of Subordinated Debt Securities Pursuant to an Indenture

The Trust Indenture Act of 1939, as amended, ("TIA") 15 U.S.C. 77aaa–77bbbb, which, by its terms is inapplicable to securities issued by insured institutions, and the Rules nad Regulations under the TIA provide, generally, that any debt securities offered and sold to the public by a single obligor in an amount in excess of $2,000,000 in any consecutive twelve month period must be issued pursuant to an indenture and that debt securities which are publicly offered and sold by the same obligor in an amount exceeding $5,000,000 in any consecutive thirty-sixty month period must be issued pursuant to an indenture that is "qualified" under the TIA. See 17 CFR 260.4(a)(1) and 260.4(a)(2). Although the TIA specifies in considerable detail the provisions which must be included in a qualified indenture (which required provisions relate principally to the qualifications, duties and powers of the trustee, the duties of the obligor, and the rights of the holders of the debt securities) neither the TIA nor the rules promulgated thereunder set forth any requirements with respect to the provisions of a non-qualified indenture. The Securities and Exchange Commission, however, for many years, has taken the position that any indenture must, at a minimum, provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and provide some reasonable procedures for the collective enforcement of the rights of the holders of the debt securities.

The Board's experience has been that most publicly offered issues of subordinated debt securities of any significant size by insured institutions are offered and sold through underwriters, and in such cases the securities are invariably issued pursuant to an indenture that includes all or substantially all of the provisions that would be required to be included in an indenture qualified under the TIA. The use of an indenture in connection with the issuance of subordinated debt securities can be beneficial, since certain of the terms included in such an indenture may provide a framework of financial discipline for the obligor, which in some cases may further the interests of the FSLIC. Further, it may be more efficient and workable for the insured institution obligor to deal with a trustee (whole actions may be subject to ratification by the holders of a specified majority in principal amount of the debt securities) if the debtor should desire to amend the terms of the securities or to obtain a waiver of any convenants provided therein, or in the related indenture, rather than to contend with a large number of individual security holders. Nevertheless, the Board is aware that the requirement to use an indenture will result in additional expense to certain issuing institutions.

The Board requests comments as to whether subordinated debt securities issued pursuant to 12 CFR 563.8–1 should be required to be issued pursuant to an indenture. In addition, the Board requests commenters to address whether it would be desirable to provide only for the appointment of a trustee other than the obligor or an affiliate of the obligor and for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities publicly offered and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 or whether the indenture should also include the provisions that would be required in an indenture to be qualified under the TIA if the aggregate amount of debt securities publicly offered and sold by the same obligor in any consecutive thirty-six month period exceeds $5,000,000.

5. Reports

The Board proposes to add another sentence to the requirement in 12 CFR 563.8–1(h) that an insured institution must file a report with the Board 30 days after completion of the sale of subordinated debt securities. This sentence would clarify that the amount to be included in regulatory capital is an amount *net* of all expenses incurred in connection with the sale of the subordinated debt securities. This revised provision will require the issuing institution to specify the actual amount of the proceeds from the sale of the subordinated debt securities that the institution intends to include in its regulatory capital.

6. Delegations of Authority to Principal Supervisory Agents

Presently, PSAs are authorized to approve applications filed pursuant to 12 CFR 563.8–1 unless such applications involve significant issues of law or policy upon which the Board has not taken a formal position, or unless an offering circular will be required in connection with the public offering and sale of the securities which are the subject of any such application. The Board now proposes to eliminate the requirement that an application be forwarded to Washington solely because an offering circular is involved and proposes further to give the PSAs authority to deny applications as well as to approve them, subject to an appeal process. Applicants must be aware, however, that even though the PSA under the proposed regulatory amendments could approve a subordinated debt application where securities are to be sold pursuant to an offering circular even if such offering circular has not yet been declared effective, PSA approval would be conditioned upon the offering circular in the form declared effective not disclosing any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the subordinated debt application.

To clarify further the regulation concerning delegations of authority in accordance with current practice, the Board proposes to delegate authority to exercise discretion to approve or deny requests for extensions of time requested pursuant to 12 CFR 563.8–1(g) to whomever is authorized to approve an application. Such extensions of time could be granted for a period of time of up to six months. All such extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

7. Appeals

In connection with the proposed delegation of authority to the PSAs to deny applications under 12 CFR 563.8–1, the Board proposes to institute an appeal process for the further consideration of denials of applications by the PSAs. This appeal process is modeled after the appeal process for applications relating to acquisitions of control of insured institutions found at 12 CFR 574.8(a)(4). In essence, the appeal process will require any applicant wishing to appeal a determination by the PSA to file with the Office of District Banks, within 30 days of the PSA's determination, a written request for review describing with specificity the action appealed from and the relief sought. The filing of such a request will be necessary to seek judicial review of an initial determination.

The Director of the Office of District Banks, with the concurrence of the Executive Director of the Office of Regulatory Activities, and the General Counsel or their designees shall consider appeals from denials by the PSAs unless the Director of the Office of District Banks in his or her sole discretion determines to refer the appeal to the Board on the basis that the appeal involves policy considerations that warrant resolution by the Board. In the event that the Director of the Office of District Banks fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities and the General Counsel, the Director of the Office of District Banks shall present the matter to the Board.

8. Standard Conditions of Approval

The Board is also proposing an Appendix to the proposed subordinated debt regulation. The Appendix contains a set of standard conditions that will be applicable to all approvals of subordinated debt applications. The Board anticipates that such conditions will, except in rare cases, be the only conditions applied to subordinated debt approvals. Other conditions would be imposed only where one or more of the bases for supervisory objection specified in the Guidelines to be developed by the Office of Regulatory Activities are present and where such non-standard conditions are necessary to address the areas of concern that would otherwise form a basis for denial of the application. These standard conditions of approval also will apply to any subordinated debt application that is approved automatically pursuant to the Board's Applications Processing Guidelines, 12 CFR 571.12.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. Reasons, Objectives, and Legal Basis Underlying the Proposed Rule

These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. Small Entities to Which the Proposed Rule Would Apply

The proposed rule would apply to all FSLIC-insured institutions without regard to size.

3. Impact of the Proposed Rule on Small Entities

The Board believes that the proposed revision to procedures for processing subordinated debt securities applications will not have a disparate effect on small entities. To the extent that under the revised regulations small entities will more likely be able to file their applications at their district Federal Home Loan Bank, the impact of the proposal will be liberalizing.

[3] In its release No. 87–1298 dated December 22, 1987, the Board similarly authorized the Office of Regulatory Activities to develop guidelines for administering the Board's new rule providing for individual minimum capital requirements. *See* 12 CFR 563.14.

4. Overlapping or Conflicting Federal Rules

There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. Alternatives to the Proposed Rule

In the above **SUPPLEMENTARY INFORMATION**, the Board is soliciting comment on the rule as proposed.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724—1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.8–1 by revising paragraphs (b)(2), (b)(3), and (d)(1)(iv); by revising paragraphs (e), (h), and (i); and by adding new paragraphs (j) and (k), and an Appendix to § 563.8–1 to read as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.*

* * * * *

(2) Whether in the opinion of the Corporation, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. Under the Board's oversight, the Federal Home Loan Bank System's Office of Regulatory Activities ("Office of Regulatory Activities") shall establish Guidelines for the Principal Supervisory Agents to apply in exercising authority delegated to them in considering applications under this § 563.8–1. These Guidelines shall identify supervisory bases that Principal Supervisory Agents may use to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Executive Director of the Office of Regulatory Activities may modify such Guidelines from time to time as he or she deems appropriate.

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions. In this connection, the issuance of subordinated debt securities shall not be deemed to result in a sufficient transfer of risk from the Corporation if such securities or any indenture or related agreement pursuant to which they are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of the obligor's failure to make timely payment of interest and principal, its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and events of default relating to certain events of bankruptcy.

* * * * *

(d) * * *

(1) * * *

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the Corporation, if after giving effect to such payment the institution would fail to meet the regulatory capital requirements of § 563.13; and

* * * * *

(e) *Filing of Application.* The application for approval of the issuance of subordinated debt securities under this section is filed with the Corporation by transmitting the original and three copies of the application and all supporting documents to the institution's Principal Supervisory Agent.

* * * * *

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution. The institution's report shall clearly state the amount of subordinated debt, net of all expenses, that the institution intends to be counted as regulatory capital.

(i) *Delegation of authority.* Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the Principal Supervisory Agent is authorized:

(1) To approve an application filed pursuant to this section, if it is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) *Appeals.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (i) of this section may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided in this section, the applicant must file a written request for review with the Office of District Banks stating the applicant's desire to appeal the Principal Supervisory Agent's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Office of District Banks, Applications Division, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. One copy of such request should be addressed to the attention of "Office of District Banks"; one copy to the attention of "Office of General Counsel, Corporate and Securities Division"; and one copy to the attention of "Office of Regulatory Activities, Corporate Activities Section". Also, one copy shall be sent to the appropriate Principal Supervisory Agent. The Principal Supervisory Agent shall thereupon forward to the Office of District Banks his record or a copy thereof used as a basis for his determination together with any other information believed by the Principal Supervisory Agent to be helpful in reviewing his determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Principal Supervisory Agent is waived. A timely filing of a request for review with the Office of District Banks in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, and his or her designee, the Director of the Office of District Banks shall decide each appeal from a denial of an application under 12 CFR 563.8–1 by a Principal Supervisory Agent. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Corporation. If the Director of the Office of District Banks in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Corporation, the Director shall submit the application to the Corporation for its determination. In the event that the Director fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director shall present the matter to the Corporation for its determination.

(k) *Conditions of approval.* Approvals of subordinated debt applications shall be subject to the conditions set forth in the Appendix to this section.

Appendix A to § 563.8–1—Conditions of Approval of Subordinated Debt Applications

1. Where securities are to be sold pursuant to an offering circular required to be filed with the Corporation pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

2. The applicant shall submit to the Supervisory Agent, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt securities;

3. The applicant shall submit to the Supervisory Agent no later than 30 days from the completion of the sale of the securities, the items required by § 563.8–1(h) of the Insurance Regulations and the following additional items:

(a) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement governing the issuance of the securities; and

(b) A certificate from the principal executive officer of the applicant which states that to the best of his knowledge none of the securities issued pursuant to the subject application were sold to any institution whose accounts are insured by the FSLIC, or a corporate affiliate thereof, except as permitted by § 563.8–1 of the Insurance Regulations;

4. That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Federal Home Loan Bank.

5. The applicant shall submit an application and receive prior written approval of the Principal Supervisory Agent for any post-approval amendment to the subordinated debt securities or any related indenture if:

(a) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the Insurance Regulations as may then be in effect or would result in a transfer of risk to the applicant or the FSLIC; and

(b) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment.

6. The applicant shall submit to the Supervisory Agent promptly after execution, one copy of each post-approval amendment to the securities or the related indenture, and if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89–522 Filed 1–12–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–179–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary; and modifications. This proposal is prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than March 15, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–179–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substances of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

BEST COPY AVAILABLE

by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On October 27, 1988, the FAA issued AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), which requires inspection for cracks, corrosion, and delamination of the fuselage lap joints on certain Boeing Model 737 airplanes. Early Model 727 airplanes used the same cold bonding technique for the fuselage lap joints and have experienced the same delamination as has occurred on the Model 737 (which was addressed in AD 88-22-11). This delamination, when it occurs in fuselage skin below a certain thickness, can result in fatigue cracking initiating at the fastener countersink hole. Disbonded lap joints are also vulnerable to corrosion, which increases the probability of skin cracking. This condition, if not corrected, could result in rapid decompression of the airplane.

Other design differences, however, make the Model 727 much more tolerant of cold bonding failures. The Model 727's outer skin is thicker than the Model 737, making it less susceptible to fatigue cracking. In addition, the size and spacing of the tearstraps differ, reducing the potential for widespread fuselage cracking. As with the Model 737, later Model 727 airplanes incorporated design changes which eliminated this failure mode. A doubler was added to the upper skin with a much improved bonding process and a non-bonded sealant was used in the skin splice. Also, detail design of the Boeing Model 727 airplane fuselage structure below the floor has resulted in less cracking and, when cracks are found, the cracks have been shorter than the cracking experienced at the lap joints in the crown of the fuselage at stringers S-4 and S-10.

Since this condition is likely to exist or develop on other airplanes of this same type design, this proposed rule would require eddy current inspection and terminating preventative modifications only on the S-4 and S-10 upper stringers. The remaining lap splices would be required to be visually inspected at intervals of 15 months and repaired as necessary.

The proposed terminating preventative modification consists of installation of protruding head fasteners in the upper fastener row of the lap splice at stringers S-4 and S-10. The FAA may consider further rulemaking to require modification of other fastener rows on stringers S-4 and S-10. With the exception of the lap splice limitations, this modification is identical to the modification proposed in NPRM docket 88-NM-160-AD (53 FR 44163; November 1, 1988), for Model 737 airplanes. In that Notice, the FAA stated that the modification was required because the continued airworthiness of airplanes with widespread cracking could not be assured over the long term by inspection because of the large number of required inspections and the human factor difficulties associated with the repetitious nature of the inspections. Since fatigue is a progressive phenomenon it tends to be more severe in airplanes with a larger number of pressurization cycles. The modification compliance schedule was, therefore, proposed to prioritize airplanes with a larger number of pressurization cycles.

The FAA has determined that terminating preventative modifications are necessary on the Model 727 for the same reasons, and that Model 727 airplanes with more advanced cracking and corrosion should be modified first. Model 727 service experience, however, does not clearly show that cracking severity is directly related to pressure cycles. The FAA, therefore specifically requests comments on the proposed modification schedule which would require that all airplanes be modified within 4 years after the effective date of the final rule. The FAA is proposing a 4-year modification requirement because service experience and the more fatigue-tolerant design of the Model 727 would not require the same type of graduated schedule proposed in NPRM Docket 88-NM-160-AD for the Model 737. The FAA requests comments regarding the need for an aggressive modification schedule which prioritizes airplanes with more advanced cracking and corrosion, and, in conjunction with this prioritization, will further consider relaxing the modification deadline for airplanes that exhibit minimal damage.

The visual and eddy current inspections proposed in this Notice must be conducted in an environment that does not inhibit clear view of the fastener head. Accordingly, this proposed rule would require that, prior to inspection, paint be removed using an approved chemical stripper, or that the fasteners be clearly visible through the paint and no more than two coats of paint are on the airplane. This proposal is equivalent to the requirements of AD 88-22-11, issued for similar inspections on the Model 737 series airplanes. The two-coat paint criteria was developed by the FAA as a reliable objective standard to minimize improper use of inspection equipment and enhance detection of cracks. However, the FAA specifically requests comments intended to develop other inspection standards that would reliably define acceptable surface conditions and assure the most accurate possible inspection results, without requiring unnecessary paint stripping.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974, which describes the inspection for delamination, corrosion, or cracking and repair, if necessary, of all fuselage lap joints between body station (BS) 259 and BS 1183 and modification of the fuselage skin longitudinal lap joints S-4 and S-10. This Notice cites this revision to the service bulletin for the instructions for accomplishing the proposed inspection and repair/modification requirements. The service bulletin is currently being revised by the manufacturer; the FAA will review the new revision, and if approved, may also include it in the final rule as a reference for accomplishment instructions.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,432 manhours per airplane to accomplish all of the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,700,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration porposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplished the following:

A. Within the next 2,500 landings or 1 year after the effective date of this AD, whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 2,000 landings or 2 years; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the skin at fuselage lap joints S-4 and S-10 from body station (BS) 259 to BS 1183, in accordance with Part II of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974. If any cracks are detected, repair prior to further flight in accordance with paragraph C. of Part II of the Accomplishment Instructions of the service bulletin.

B. Within the next 6 months after the effective date of this AD, unless accomplished within the last 9 months, or prior to the accumulation of 28,000 landings, whichever occurs later; and thereafter at intervals not to exceed 15 months; perform a detailed external visual inspection of the lap joints listed in paragraph A., above, and all other fuselage lap joints between BS 259 and BS 1183, for cracks and evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, and loose fasteners. Adequate lighting must be used for this inspection, and, if necessary, inspection aids such as a mirror and 10X glass. Repair cracks, corrosion, and delamination in accordance with paragraph C., below.

C. 1. If cracks or corrosion are detected at lap splices, prior to further flight, perform a HFEC inspection for cracks in the affected lap joint along the complete panel length. Repair cracks prior to further flight in accordance with paragraph C. of Part II of Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974. If delamination is found at any lap joint, repair prior to further flight, in accordance with Part IV of the Accomplishment Instructions of the service bulletin.

2. If corrosion is found as a result of the visual external inspection required by paragraph B., above, prior to further flight, conduct a low frequency eddy current (LFEC) inspection, in accordance with Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974, of the lap joint along the complete panel length to determine corrosion depth. If corrosion does not exceed 10% of the skin thickness, repeat the LFEC inspection at intervals not to exceed 2,000 landings for 6 months, whichever occurs first, until repair is accomplished. If corrosion exceeds 10% of skin thickness, repair prior to further flight, in accordance with Part I, paragraph B., of the Accomplishment Instructions of Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974.

D. To conduct the inspections required in this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible and that no more than two coats of paint are on the airplane skin.

E. Within the next 4 years after the effective date of this AD, or within 4 years after the accumulation of 28,000 landings, whichever occurs later, modify fuselage skin lap joints at S-4 and S-10 by replacing the upper row of fasteners with protruding head fasteners, in accordance with Part IV, One Row Standard Fastener Repair, of Boeing Service Bulletin 727-53-72, Revision 4, dated February 8, 1974. After oversizing holes and before fastener installation, perform a HFEC inspection of the hole to assure it is crack free. This constitutes termination action for the repetitive HFEC inspections required by paragraph A., above, at S-4 and S-10.

F. Blind fasteners installed in the lap joints are to be used as an interim repair only, and replaced with protruding head solid fasteners within 3,000 landings following installation. Repairs installed with blind fasteners prior to the effective date of this AD must be inspected for loose or missing fasteners within 1,000 landings after the effective date of this AD, and all upper row fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 landings after the effective date of the AD.

G. Within 10 days after the completion of any inspection required by the AD, report a complete description of the location and size of all cracks and corrosion found, along with aircraft serial number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, ANM-100S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received with the appropriate service document from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 4, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-797 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-187-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require installation of a placard, inspection of the aft right lavatory partition beam to ensure structural integrity, and repair, if necessary. This proposal is prompted by reports of an inadvertent saw cut made in an aft right lavatory partition beam during the production installation of a ceiling panel. This condition, if not corrected, could lead to failure of the

partition beam to provide adequate strength for the lavatory-mounted occupied flight attendant seat when subjected to flight or emergency landing conditions.

DATES: Comments must be received no later than February 28, 1989.

ADDRESSES: Sent comments on the proposal in duplicate to Federal Aviation Administation, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-187-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-187-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The manufacturer reported that, during the production installation of a ceiling panel on certain Boeing Model 737 series airplanes, an inadvertent saw cut has been made in some of the aft right lavatory partition beams. This partition beam is a critical support of the occupied flight attendant seat installed on the lavatory and, if cut, may not meet the structural requirements for flight or emergency landing conditions.

The FAA has reviewed and approved Boeing Service Bulletin 737-25-1231, dated July 7, 1988, which describes procedures for the inspection of the aft right lavatory partition beam for an inadvertent saw cut within specific limits, and repair, if necessary.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require installation of a placard, inspection of the aft right lavatory partition beam within specific limits, and repair, if necessary, in accordance with the service bulletin previously mentioned. If the saw cut exceeds the limit specified in the service bulletin previously mentioned, repair would be required in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

There are approximately 80 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The placard may be manufactured locally and the cost is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,200.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as identified in Boeing Service Bulletin 737-25-1231, dated July 7, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the occupied flight attendant seat mounted on the aft right lavatory during flight and emergency landing conditions, accomplish the following:

A. Within 30 days after the effective date of this AD, install a placard on the aft right lavatory-mounted flight attendant seat, stating: "NO OCCUPANCY". This placard may be removed once the terminating action of paragraph B. of this AD has been accomplished.

B. Within 6 months after the effective date of this AD, inspect the aft right lavatory partition beam for an inadvertent saw cut, and repair, if necessary, in accordance with Boeing Service Bulletin 737-25-1231, dated July 7, 1988; or if the saw cut exceeds the limit specified in the service bulletin, repair in a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Report all inadvertent saw cuts detected during the inspection required by paragraph B., above, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within seven days after completion of the inspection.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 23, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-800 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-184-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which would require repetitive inspections for chafing between the number two engine throttle cable and an adjacent right wing front spar bracket. This proposal is prompted by one report of a throttle cable failure and additional reports of a significant number of the cables inspected and found to be worn or frayed. This condition, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control.

DATES: Comments must be received no later than March 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-184-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-184-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of a Boeing Model 737-300 series airplane reported a separation of the number two engine throttle cable after 4,215 flight hours. This report prompted Boeing to conduct a survey of control cable wear on Model 737-200 and 737-300 airplanes. During the course of this survey, several incidents of wear on the number two throttle cable were found on Boeing Model 737-300 airplanes. Sixteen operators responded to the Boeing survey, with the inspection results of 96 airplanes. Number two engine throttle cable wear was reported on 20 Model 737-300 airplanes, and 9 cables were within acceptable wear limits. The remaining 76 airplanes showed no cable wear, although 11 airplanes were reported as showing evidence of contact/wear on the adjacent right wing front spar bracket.

It has been determined that chafing between the number two throttle cable and adjacent right wing front spar bracket (Station 124) is caused by air flow between the right leading edge flaps and front spar on Model 737-300 airplanes. This airflow produces a harmonic disturbance that excites the number two engine throttle cable. This condition, if not corrected, could eventually result in throttle cable separation and subsequent loss of throttle control.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for chafing between the number two engine throttle cable and adjacent right wing front spar bracket every 1,000 hours, and replacement of the cable, if necessary. Boeing Commercial Airplanes is preparing a service bulletin which will contain a structural design change to the number two engine throttle cable system. If this service bulletin is approved and available subsequent to the issuance of this NPRM, the FAA may consider referencing it in the final rule as an approved method of compliance.

There are approximately 500 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship

between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, equipped with CFM International CFM56-3 series engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, accomplish the following:

A. Prior to the accumulation of 150 flight hours after the effective date of this AD and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shut-off cable pulley bracket near the right wing front spar station 124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in Section 20-30-31 of the Model 737 Maintenance Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-799 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-146-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, which would require periodic inspections and cleaning of the cavity over the wing center section. This proposal is prompted by reports of inadequate drainage which apparently is caused by an inordinate quantity of debris and foreign material collecting in the cavity area. This situation has lead to accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing. Ice in the aileron control system can result in reduced lateral control capability.

DATES: Comments must be received no later than March 9, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-146-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

This proposal is prompted by reports of numerous occurrences of binding in the aileron control system on Model 747 series airplanes. The cause of the binding is the accumulation of ice on the aileron control system in the wing landing gear wheel well area. This ice is caused by water condensing and accumulating in the wing center section as a result of obstructed drains. Water then leaks onto the aileron control system and freezes. This ice on the aileron control system has resulted in reduced aileron control capability.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require periodic inspections and cleaning of the cavity over the wing center section and its drains on all Model 747 series airplanes.

There are approximately 700 Model 747 series airplanes in the worldwide fleet. It is estimated that 260 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $93,600.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent reduced lateral control caused by icing of the aileron control cables, accomplish the following:

A. Within the next 12 months after the effective date of this AD, unless already accomplished within the last 3 months, and thereafter at intervals not to exceed 15 months, perform the following:

1. Gain access to wing center section cavity.

2. Remove all debris and foreign material, clean the wing center section cavity, and verify all drains are open and clean.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on December 30, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-796 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-188-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 757 airplanes, which would require modifications to the Takeoff Configuration Warning System (TOCWS) to provide redundant Flap/Slat Electronic Unit (FSEU) inputs. This action is prompted by reports of false warnings which have occurred during application of takeoff power and during takeoff roll. This condition, if not corrected, could lead to aborted takeoffs at high speed due to a takeoff configuration false warning.

DATES: Comments must be received no later than February 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-188-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Victor F. Sokoloski, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1937. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900, Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-188-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Takeoff Configuration Warning System (TOCWS) for the Boeing 757 is incorporated in circuitry within the Warning Electronics Unit (WEU) and utilizes data from the Flap/Slat Electronics Unit (FSEU). The WEU receives a trailing edge (TE) flap input from FSEU #1 and a leading edge (LE) slat input from FSEU #2. There have been reports of false warnings issued by the TOCWS as a result of random intermittent loss of either of these signals. The false warnings have resulted in aborted takeoffs, in at least

one instance with ground speeds in excess of 100 knots. This condition, if not corrected, could lead to aborted takeoffs at high speeds, as a result of a takeoff configuration false warning.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-27A0063 dated March 20, 1985, and Revision 1, dated May 17, 1985, which describes the modification procedures necessary to provide redundant FSEU inputs to the TOCWS on certain Boeing 757 series airplanes. This input redundancy will prevent the interruption of a signal from one FSEU causing a false takeoff warning.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the FSEU wiring of the TOCWS, in accordance with the service bulletin previously mentioned.

There are approximately 58 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 28 Model 757 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 757 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 89.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes specified in Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985, certificated in any category.

Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent the occurrence of takeoff configuration false warnings, accomplish the following:

A. Modify the circuitry of the Takeoff Configuration Warning Systems (TOCWS) in accordance with the Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 23, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-802 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-168-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 series airplanes, which currently requires eddy current and ultrasonic inspections of the main landing gear support beams (manacle beam), and repair, if necessary. That action was prompted by a report of the collapse of a right main landing gear in service, attributed to stress corrosion cracking. This proposal would require additional maintenance actions and changes to some of the repetitive inspection intervals, and would provide an alternate means of compliance which terminates the need for the repetitive inspections. This action is prompted by further assessment of components associated with the main landing gear support beams, which identified the need for additional maintenance requirements. This condition, if not corrected, could lead to collapse of the main landing gear.

DATES: Comments must be received no later than March 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-168-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace PLC, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Murginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-168-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On June 15, 1987, FAA issued AD 87-13-03, Amendment 39-5654 (52 FR 23943; June 26, 1987), applicable to Model BAC 1-11 series airplanes, which requires eddy current and ultrasonic inspections of the main landing gear support beams (manacle beam), and repair, if necessary. That action was prompted by a report of the collapse of a right main landing gear. That failure was attributed to stress corrosion cracking.

Since issuance of that AD, the manufacturer has conducted further assessment of the production characteristics of the beams and has identified the necessity for additional and more frequent inspections of the main landing gear support beams in order to identify and correct stress corrosion cracking in a more timely manner.

British Aerospace has issued Alert Service Bulletin 57-A-PM6000, Issue Number 2, dated February 17, 1988, which describes additional procedures for inspection of the main landing gear support beam on which BAe Modification PM3070 has been accomplished, and changes the repetitive inspection intervals. The service bulletin introduces a new main support beam (Modification PM5928), which, if installed, terminates the need for the repetitive inspections. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would supersede AD 87-13-03 to require additional maintenance actions relating to the inspection of the main landing gear support beam, and repair, if necessary, in accordance with the service bulletin previously described. This action would also provide for an optional terminating action as installation of a new support beam.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800. (The cost for the optional new main support beam is estimated to be $90,000 per airplane.)

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model BAC 1-11 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87-13-03, Amendment 39-5654 (52 FR 23943; June 26, 1987), with the following new airworthiness directive:

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, on which British Aerospace (BAe) main landing gear support structure Modification PM3070 is installed and Modification PM5928 has not been installed, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of a main landing gear, accomplish the following:

A. Perform initial and repetitive ultrasonic and eddy current inspections of the main landing gear support beams at initial times and repetitive intervals shown in Table 1 of this AD using procedures in BAe Alert Service Bulletin 57-A-PM6000, Issue 2, dated February 17, 1988.

TABLE I

Airplane identification	Modification PM6000 accomplishment status	Initial inspection compliance time	Repetitive compliance time interval after initial inspection
Serial numbers up to and including 402	Not accomplished	Whichever occurs later: —within 300 landings after July 30, 1987, (the effective date of AD 87-13-03, Amendment 39-5654; or —within 3 years since installation of new left and right main support beams	Ultrasonic Inspection: at intervals not to exceed 12 months. Eddy current inspections: at intervals not to exceed 36 months.
Serial numbers 403 and subsequent	Not accomplished	Whichever occurs later: —Within the next 300 landings after July 30, 1987 (the effective date AD 87-13-03, Amendment 39-5654); or —within 6 years since new; or —within 6 years since installation of new left and right main support beams	Ultrasonic inspections: at intervals not to exceed 12 months. Eddy current inspection: at intervals not to exceed 36 months.
For all A/P's on which Mod. PM6000 is accomplished prior to assembly of main support beam into wing.	Accomplished	Whichever occurs later: —Within 8 years since new; or —Within 8 years since new right and left main support beams are installed	ULtrasonic inspection: at intervals not to exceed 2 years.
For all A/P's on which Mod. PM6000 is accomplished after assembly of main support beam into wing.	Accomplished	Within 2 years after installation of Modification PM6000	Ultrasonic inspection: at intervals not to exceed 2 years.

B. Cracks in the main landing gear main support beam must be repaired, prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Installation of main support beam, part number ED03-5007/8 (Modification PM5928) constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-798 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-171-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes equipped with LH or RH Nose Landing Gear Upper Drag Link Assembly, Part Numbers (P/N) 5716882-1, -501, -503, 5717011-1, -501, or -503

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-8 series airplanes, which would require inspection of the LH and RH nose landing gear (NLG) upper drag link assembly for fatigue cracking and undersized drag link lower lug stiffening web, and modification or replacement, if necessary. This proposal is prompted by three reported failures of the link assembly which resulted in the collapse of the nose landing gear and damage to the nose landing gear and adjacent structure. This condition, if not corrected, could result in collapse of the nose landing gear during ground handling, takeoff, or landing.

DATES: Comments must be received no later than March 7, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-171-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CL-100 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-171-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Three operators of McDonnell Douglas DC-8 series airplanes have reported three instances of failure of the nose landing gear (NLG) left upper drag link assembly. All three failures occurred on push-back from the gate prior to flight and resulted in the collapse of the NLG and damage to the NLG and adjacent structure. These airplanes had logged between 15,498 and 45,690 flight hours. Investigation by the manufacturer revealed that all three failures were due to metal fatigue, and that two of the failures involved undersized drag link lower lug stiffening web. Fatigue cracking of the NLG left or right upper drag link assembly, if left undetected, could propagate and cause the assembly to fail, resulting in collapse of NLG during ground handling, takeoff, or landing.

The FAA has reviewed and approved McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987, which describes procedures for inspection of the upper drag link assemblies for cracks and possible undersized drag link lower lug stiffening web, and modification or replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require inspection of both LH and RH drag link assembly (P/N(s) 5716882-1, -501, or -503, and 5717011-1, -501, or -503) for cracks and possible undersized drag link lower lug stiffening web, and modification or replacement, if necessary, in accordance with the service bulletin previously mentioned.

There are approximately 350 Model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7.6 manhours per airplane to inspect for undersized nose landing gear upper drag link lower lug stiffening web and cracks, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $77,824 for the initial inspection cycle.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($304). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8 series airplanes, equipped with LH or RH nose landing gear (NLG) upper drag link assembly, P/N(s) 5716882-1, -501, -503, 5717011-1, -501, or -503, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of nose landing gear during ground handling, takeoff, or landing, due to fatigue failure of the LH or RH nose landing gear (NLG) upper drag link lower lug, accomplish the following:

A. Within the next 400 landings after the effective date of this AD, unless already accomplished within the last 400 landings, conduct a magnetic particle or dye penetrant inspection of the LH and RH nose landing gear upper drag link assembly, and measure the lower lug stiffening web for minimum thickness, in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987.

1. If cracks are found, or if the minimum web thickness measures .100" or less, before further flight, remove and replace the assembly in accordance with paragraph B. or D. of this AD.

2. If no cracks are found and the minimum web thickness measures greater than .100", repeat the inspection in accordance with paragraph A. of this AD at intervals not to exceed 200 landings, unless reworked in accordance with paragraph C. of this AD, or replaced in accordance with paragraph B. or D. of this AD.

B. If the drag link assembly is replaced with a new assembly not modified in accordance with McDonnell Douglas Service Bulletin 32-178, dated May 22, 1988, upon the accumulation of 4,000 landings on the new assembly, perform the initial inspections in accordance with paragraph A. of this AD, and repeat these inspections at intervals not to exceed 200 landings.

C. If the drag link assembly is modified in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, issued May 22, 1987, upon the accumulation of 800 landings on the modified assembly, perform the initial inspection in accordance with paragraph A. of this AD, and repeat these inspections at intervals not to exceed 200 landings.

D. Replacement of both LH and RH nose landing gear upper drag link assemblies with P/N 5716882-505 and 5717011-505, or modification of the drag link assembly in accordance with McDonnell Douglas DC-8 Service Bulletin 32-178, dated May 22, 1987, and reidentification of the drag link assembly as SR08328002-3, -5, -7, -9, -11, or -13, as applicable, constitutes terminating action for the inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle,

Washington, or at 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-801 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-165-AD

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped With Main Landing Gear Attach Fitting, Part Numbers 5611425-1 Through -508

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-8 series airplanes, which would require visual inspections of the left and right main landing gear (MLG) attach fittings for cracks, and, as necessary, rework and replacement. This proposal is prompted by two incidents where cracks were not detected and grew beyond the allowable crack length. This condition, if not corrected, could result in collapse of the MLG during takeoff or landing.

DATES: Comments must be received no later than March 13, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-165-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-165-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Fifteen operators of McDonnell Douglas Model DC-8 series airplanes have reported numerous instances of cracking found in both the left (LH) and right (RH) main landing gear (MLG) attach fittings. Cracks have been reported on airplanes having logged between 15,910 and 40,427 flight hours, and have been attributed to stress corrosion. Two recent incidents have been reported where stress corrosion cracks have led to failure of the main landing gear fittings.

Stress corrosion cracking of the LH or RH MLG attach fitting, if undetected, could propagate and cause the fitting to fail. This condition, if not corrected, could result in severe structural damage, and lead to collapse of a MLG during takeoff or landing.

The FAA has reviewed and approved McDonnell Douglas DC-8 Service Bulletin 57-94, Revision 1, dated June 23, 1987, which describes procedures for inspection for cracks, and, as necessary, rework and replacement of the MLG attach fittings, P/Ns 5611425-1 through -508.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks, and, as necessary, rework and replacement of both the LH and RH MLG attach fittings in accordance with the McDonnell Douglas service bulletin previously described. Replacement of any cracked fitting with the appropriate replacement fitting would constitute terminating action for the inspection requirements of the AD.

There are approximately 350 McDonnell Douglas Model DC-8 series airplanes in the worldwide fleet. It is estimated that 256 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.0 manhours per airplane to inspect both the LH and RH MLG attach fittings for cracks, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,480 for the required initial inspection.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-8 series airplanes, equipped with left (LH) or right (RH) main landing gear (MLG) attach fitting, P/N(s) 5611425-1 through -508, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent severe structural damage to the airplane during takeoff or landing due to stress corrosion failure of the MLG attach fittings, accomplish the following:

A. Within the next 12 calendar months after the effective date of this AD, unless already accomplished within the last 12 calendar months, and thereafter at intervals not to exceed 24 calendar months, except as provided below, perform a visual inspection of the MLG attach fittings for cracks at locations in accordance with Figure 1. of McDonnell Douglas DC-8 Service Bulletin 57-94, Revision 1, dated June 23, 1987 (hereafter referred to as the Service Bulletin).

B. If no cracks are found, apply LPS-3 corrosion inhibiting oil to the fitting in accordance with the Service Bulletin, and repeat inspections for cracks in accordance with paragraph A. of this AD.

C. If cracks are found, accomplish the following:

1. If cracks are located in area 1 or 3, as defined in Figure 1. of the Service Bulletin, before further flight, replace the fitting, P/N(s) 5611425-1, -2, -501, -502, -503, -504, -505, -506, -507, or -508, with respective P/N(s) 5893930-1, -2, -1, -2, -509, -510, -507, -508, -505, or -506.

2. If cracks are located in area 2, as defined in Figure 1. of the Service Bulletin, accomplish the following:

a. If cracks are within limits as prescribed by Figure 1. of the Service Bulletin, apply LPS-3 corrosion inhibiting oil to the fitting in accordance with the Service Bulletin, and repeat visual inspections for crack development at intervals not to exceed 7 calendar days, in accordance with the Service Bulletin.

b. If cracks exceed limits as prescribed by Figure 1. of the Service Bulletin, replace the fitting in accordance with paragraph C.1. of this AD before further flight.

D. Replacement of the fittings in accordance with paragraph C.1. of this AD constitutes terminating action for the inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publication, CL-100 (54-60).

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on Janaury 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-804 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-186-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, Including Model MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airwothiness directive (AD), applicable to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, including Model MD-88, and C-9 (Military) series airplanes, equipped with hinged evacuation slide covers, which would require replacement of the evacuation slide girt bar forward stowage clip on forward emergency exit doors. This proposal is prompted by reports of the evacuation slide girt inadvertently catching on the evacuation slide girt bar forward stowage clip. This condition, if not corrected, could prevent the emergency exit from being opened, which could jeopardize the safe evaucation of the airplane.

DATES: Comments must be received no later than March 9, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-186-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-186-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Three instances have been reported where the emergency exit evacuation slide girt on McDonnell Douglas DC-9 series airplanes became entrapped during evacuation slide deployment at the forward emergency exit door. The evacuation slide girt deflected upward upon initial movement of the exit door and wrapped over the top of the evacuation slide girt bar forward

stowage clip, which is located o the hinged evacuation slide cover. This prevents the evacuation slide cover from opening and, in the worst case, could prevent the emergency exit door from being opened. This condition, if not corrected, could result in an unusable emergency exit, which could jeopardize the safe evacuation of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A25–299, Revision 1, dated September 23, 1988, which describes replacement of the evacuation slide girt bar forward stowage clip with a newly-designed evacuation slide girt bar stowage clip that will eliminate the possibility of the emergency exit being unusable due to the evacuation slide girt catching on the evacuation slide girt bar stowage clip.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the evacuation slide girt bar forward stowage clip in accordance with the service bulletin previously described.

There are approximately 1,500 Model DC–9 series, Model DC–9–80 series, including Model MD–88, and C–9 (Military) series airplanes in the worldwide fleet. It is estimated that 160 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated to be $100 per aircraft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $28,800.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC–9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 Series, Model DC–9–80 series, including Model MD–88, and C–9 (Military) series airplanes, equipped with hinged evacuation slide cover assemblies, as listed in McDonnell Douglas Alert Service Bulletin A25–299, Revision 1, dated September 23, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the possibility of an unusable emergency exit, accomplish the following:

A. Within 6 months after the effective date of this AD, replace the evacuation slide girt bar forward stowage clip in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A25–299, Revision 1, dated September 23, 1988.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, CL–100 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 30, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directive, Aircraft Certification Service.

[FR Doc. 89–803 Filed 1–12–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9204]

PPG Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Pittsburgh, Pa. manufacturer and seller to obtain prior approval before acquiring any interest in a company that makes aircraft transparencies, if that company does more than $750,000 in sales in the U.S., and to provide the FTC prior notice before making other acquisitions.

DATE: Comments must be received on or before March 14, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James C. Egan, Jr., FTC/S–2308, Washington, DC 20580. (202) 326–2886.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Aircraft transparencies, Windows, Windshields, Trade practices.

Agreement Containing Consent Order

The agreement herein, by and between PPG Industries, Inc. ("PPG"), a corporation, by its duly authorized officer, and their attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agreeing that:

1. PPG is a corporation organized under the laws of Pennsylvania with its executive office at One PPG Place, Pittsburgh, Pennsylvania 15272.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of Section 7 of the Clayton Act, as amended, and has filed an answser to said complaint denying said charges.

3. PPG admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. PPG waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant this agreement; and,

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify PPG in which event it will take such action as it may consider appropriate, or the Commission may enter this Order as final disposition of this matter.

6. This agreement is for settlement purposes only and does not constitute an admission by PPG that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to PPG, (1) issue its decision containing this Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, this Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. This Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to PPG's address as stated in this agreement shall constitute service. PPG waives any right it may have to any other manner of service. The complaint may be used in construing the terms of this Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. PPG has read the Order contemplated hereby. PPG understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

For purposes of this Order, the following definitions shall apply:

"PPG" means PPG Industries, Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

II.

It is ordered that for a period commencing on the date this Order becomes final and continuing for ten (10) years from the date this Order becomes final, PPG shall not acquire, without the prior approval of the Commission, directly or indirectly, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of aircraft transparencies, and which has sold more than $750,000 of aircraft transparencies in the United States in the twelve months ending on the date of the offer or agreement to acquire the stock, share capital, equity interest, or assets of such company.

III.

It is further ordered that any successor corporation to PPG shall be bound by this Order to the same extent as PPG; further PPG shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of such subsidiaries or any other change that may affect compliance obligations arising out of the Order.

IV.

It is further ordered that for so long as this Order is in effect, PPG shall notify the Commission at least sixty (60) days in advance of any proposed acquisition by it of the stock, share capital, equity interest or assets of any company engaged in the manufacture or sale of aircraft transparencies and having direct sales of such aircraft transparencies in the United States for which prior Commission approval is not required; *provided*, however, that this provision shall not require PPG to notify the Commission of any acquisition that must be reported pursuant to the Hart-Scott-Rodino Act, 15 U.S.C. 18a.

V.

It is further ordered that PPG shall within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement containing a proposed consent order from PPG Industries, Inc., concerning PPG's proposed acquisition of Swedlow, Inc., its competitor in the aircraft transparency business. The proposed order requires PPG to seek prior approval for certain mergers or acquisitions for a period of ten (10) years.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

In August of 1985, PPG proposed to acquire Swedlow and merge the two companies' transparency operations. On January 6, 1986, the Federal Trade Commission filed a preliminary injunction action against PPG in the United States District Court for the

District of Columbia to enjoin the proposed merger. Ultimately, the Commission won an injunction in the United States Court of Appeals for the District of Columbia Circuit.

On January 29, 1986, the Commission issued a complaint against PPG Industries, Inc. and Swedlow, Inc. which alleges that PPG's proposed acquisition of Swedlow violates Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended. The complaint alleges that both PPG and Swedlow are actual and potential competitors in the United States and the free world in the various aircraft transparency markets. The complaint alleges that the markets are highly concentrated and that the barriers to entry into the manufacture and sale of the products are significant. The complaint alleges that the effects of the proposed acquisition would be to: (1) Eliminate actual and potential competition between PPG and Swedlow and between Swedlow and others in the markets; (2) significantly increase the already high levels of concentration in the markets; (3) create a firm whose share of the markets is so high as to lead to dominant firm status; and (4) enhance the possibility of collusion or interdependent coordination among the remaining firms in the markets. The complaint charges that the proposed acquisition, if consummated, constitutes violations of section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended.

The first paragraph of the proposed order defines PPG assets covered by the order. Paragraph II bans PPG from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any stock, share capital, or assets of any manufacturer or seller of aircraft transparencies that has annual sales of transparencies of more than $750,000 in the United States. The federal courts found that the relevant geographic market in which to assess the competitive effects of the proposed acquisition was the United States; thus, the order is appropriately limited to the acquisition of firms selling in the United States. Coverage under the order is also limited to firms with annual sales in the United States in excess of $750,000. Within the context of the markets at issue, the acquisition of a firm with sales below this level would be unlikely to lessen competition. This provision lasts ten (10) years from the date the order becomes final.

Paragraph III of the proposed order requires that any successor corporation to PPG shall be bound by this order to the same extent as PPG, and that PPG is required to notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of such subsidiaries or any other change that may effect compliance obligations arising out of the order.

Paragraph IV of the proposed order requires PPG to notify the Commission at least sixty (60) days in advance of any proposed acquisition by PPG of the stock, share capital, equity interest or assets of any manufacturer or seller of aircraft transparencies for which prior Commission approval would not be required. Paragraph V of the proposed order requires PPG to file with the Commission within sixty (60) days of service of the order a written report setting forth the manner and form in which they have complied with the proposed order.

The agreement is for settlement purposes only and does not constitute an admission by PPG that the law has been violated as alleged in said copy of the complaint issued by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-830 Filed 1-12-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Revision of Valuation Regulations Governing Gas Sales Under Percentage-of-Proceeds Contacts

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking, extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Notice of Proposed Rulemaking for a revision of a valuation regulations governing gas sales under percentage-of-proceeds contracts which was published in the **Federal Register** on December 15, 1988 (53 FR 50422). In response to requests for additional time, the MMS will extend the comment period from January 17, 1989, to February 3, 1989.

DATES: Comments must be received by 4:00 p.m. m.s.t. February 3, 1989.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 326-3432.

Date: January 10, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-928 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter, referred to as the "Arkansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to restriction on financial interest of State employees, fish and wildlife information, individual civil penalties, the replanting of trees and shrubs as a normal husbandry practice, and measurement of revegetation success on prime farmland. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t. February 13, 1989. If requested, a public hearing on the proposed amendment will be held on February 7, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on January 30, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 562-7444.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, The Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** [45 FR 77003]. Subsequent actions concerning Arkansas' program and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Proposed Amendment

By letter-dated December 22, 1988, (administrative record No. 346) Arkansas submitted a proposed amendment to its program pursuant to SMCRA. Arkansas submitted a portion of the proposed amendment in response to an August 18, 1988, letter that OSMRE sent in accordance with 30 CFR 732.17(c). The regulations that Arkansas proposes to amend in response to this letter are: Arkansas Surface Coal Mining and Reclamation Code 705.11, 705.13, 705.15, 780.16, 784.21, 816.97, 817.97, 846.1, 848.5, 846.12, 846.14, 846.17, and 846.18. The remaining portion of the proposed amendment was submitted in response to an April 17, 1985 letter that OSMRE sent in accordance with 30 CFR 732.17(c), and to satisfy required program amendments at 30 CFR 904.12(b), 904.16(a), and 904.16(b). The regulations that Arkansas proposed to amend are: Arkansas Surface Coal Mining and Reclamation Code 816.116, 816.117, and 1000(50).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m., c.s.t. on January 30, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: January 8, 1989.

[FR Doc. 89-864 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 950

Wyoming Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to allow the construction of bluffs as final reclamation features where such features will enhance post-mining land uses for the benefit of wildlife and livestock.

This notice sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t. February 13,

1989. If requested, a public hearing on the proposed amendment will be held on February 7, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on January 30, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 265–5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, (307) 265–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and/or 950.16.

II. Proposed Amendment

By letter dated December 13, 1988, (administrative record No. WY 11–1), Wyoming submitted a proposed amendment to its program pursuant to SMCRA. The proposed amendment defines and provides for approval of bluffs as final reclamation features if it is determined that the bluff-type features will enhance the post-mining land use. Governmental agencies and the public would be provided the opportunity for review of and comment on any applicant's bluff proposal prior to Wyoming approving or disapproving it. Approved bluff-type features would have to be designed and constructed to meet safety, stability, reclamation, and land use planning criteria specified in the proposed amendment.

The proposed amendment requires that approval of bluff-type features be made in accordance with the fish and wildlife protection performance standards of the approved State program.

The regulations that Wyoming proposes to amend are: Wyoming Department of Environmental Quality, Land Quality Division, Rules and Regulations, September 1, 1986.

Chapter I. Section 2. Definitions.

Chapter II. Section 3(b)(i)(B)(VIII) Permit Applications. Special application content requirements for surface coal mining operations.

Chapter IV. Section 2(b)(ii)(A). General environmental protection performance standards. Soft rock surface mining.

Chapter IV. Section 3(a)(v). Special environmental protection performance standards applicable to surface coal mining and reclamation operations. Backfilling, grading, and contouring.

Chapter IV. Section 3(a)(x). Special environmental protection performance standards applicable to surface coal mining and reclamation operations. Backfilling, grading, and contouring.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.s.t. on January 30, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: January 5, 1989.

[FR Doc. 89–832 Filed 1–12–89; 8:45 am]

BILLING CODE 4310–05–M

Notices

Federal Register
Vol. 54, No. 9
Friday, January 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Advisory Committee on Procedures Under the U.S.-Canada Free Trade Agreement; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given that the Advisory Committee on Administrative Procedures under the U.S.-Canada Free Trade Agreement of the Administrative Conference of the United States has scheduled a seminar to discuss certain administrative and procedural issues arising from implementation of the proposed Free Trade Agreement.

The Administrative Conference has undertaken a project on implementing certain dispute resolution procedures under the proposed U.S.-Canada Free Trade Agreement ("FTA"). The FTA, which is intended to reduce tariffs and other trade barriers between the two nations, establishes several new dispute resolution mechanisms, including binational panelists for binding review of actions by federal agencies relating to antidumping and countervailing duty disputes.

The seminar will deal with procedural issues in implementing these dispute resolution systems under the FTA, rather than the merits of the Agreement. It will focus on procedure issues affecting the fairness or efficiency of the process, useful approaches to operating rosters of panelists, and operation of the FTA Commission and U.S. Secretariat. The Conference plans to have two panels, a morning panel exploring issues in implementing Chapter 19's antidumping/countervailing duty binational panels and an afternoon panel looking at disputes under Chapter 18 and establishment of administrative dispute handling processes. Panelists will include representatives of serveral agencies, the bar, academia, and other experts.

Date: Friday, February 10, 1989, from 9:00 a.m. until 5:00 p.m.

Location: U.S. Department of State, Loy Henderson Room, First Floor, 2201 C Street NW., Washington, DC 20520.

Public Participation: While the seminar is open to the interested public, security requirements necessitate that we furnish a list of attendees to the Department of State well before the actual seminar date. *Persons wishing to attend must notify the contact person at least ten days prior to the seminar; i.e., no later than January 31, 1989.* The committee chairman or panel moderators may permit members of the public to present very brief oral statements. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (202) 254–7020.

Jeffrey S. Lubbers,

Research Director.

January 11, 1989.

[FR Doc. 89–1012 Filed 1–12–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: March 28–29, 1989.

Time: 8:30 a.m.–5 p.m., March 28. 8:30 a.m.–Noon, March 29.

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560. Done at Beltsville, Maryland, this 3rd day of January 1989.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 89–841 Filed 1–12–89; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Western Livestock Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of 1989 grazing fees.

SUMMARY: The fee for grazing livestock on certain specified National Forest System lands in the 16 contiguous Western States will be $1.86 per head month for the 1989 grazing year.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Edward R. Frandsen, Natural Resource Specialist, Range Management Staff, Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090–6090, (703) 235–8141.

SUPPLEMENTARY INFORMATION: Grazing fees for the use and occupancy of the National Forests and Land Utilization Projects in the 16 Western States, and the Crooked River and Curlew National Grasslands are established and collected annually by the Forest Service under the authority of the Organic Act of June 4, 1897, (16 U.S.C. 473–475, 477–482, 551), the Bankhead-Jones Farm Tenant Act of July 22, 1937, (7 U.S.C. 1010–1012), and Executive Order 12548 of February 14, 1986. The 16 contiguous Western States are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

The formula for establishing the annual grazing fee for these lands is set

forth in regulations at 36 CFR 222.51. Fee adjustments are based on three indexes-private grazing land lease rates added to the price livestock producers receive for the sale of beef cattle less the cost of livestock production. Based on the application of these combined indices to a 1966 base fair market value of $1.23 per head month, the agency will issue bills to grazing permittees in the affected States for 1989 grazing fees at a rate of $1.86 per head month, an increase of thirty-two cents. The increase results from an increase in the prices farmers and ranchers received for beef cattle in 1988, as well as an increase in private grazing land lease rates in most of the States involved.

Date: January 10, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-859 Filed 1-12-89; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, it has been determined that the renewal of the General Advisory Committee is necessary and is in the public interest. This determination follows consultation with the General Services Administration (GSA) pursuant to section 14(a) of the Federal Advisory Committee Act and the GSA Final Rule on Federal Advisory Committee Management.

Authority for this advisory committee shall expire January 5, 1991 unless continuance is formally determined to be in the public interest.

Dated: January 5, 1989.

William F. Burns,

Director.

[FR Doc. 89-911 Filed 1-12-89; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: The 1990 Census of the United States.
Form Numbers: Agency—D-1, 1(s), 2, 2(s), 1A, 2A, 3, 3(s), 4, 4(s), 14, 20A, 20B, 20A(s), 20B(s), 21, 23, 25, 25(s), 31; OMB—0607-0628.
Type of Request: Revision of a currently approved collection.
Burden: 106,000,000 respondents; 27,432,032 reporting hours.
Average Time Per Response: 14 to 43 minutes.
Needes and Uses: OMB approved this survey in July 1988. The revision is in response to two legislative actions that directed Census to use prelisted response categories with check boxes for Asian and Pacific Islander population groups.
Affected Public: Individuals or households.
Frequency: One time.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3171, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20530.

Dated: January 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-910 Filed 1-12-89; 8:45 am]

BILLING CODE 3510-01-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: 1990 Census: Developmental Research on the Enumeration of the Homeless Population.
Form Number: S-592 through S-599.
Agency Approval Number: None.
Type of Request: New.
Burden: 246 hours.
Number of Respondents: 1,220.
Avg Hours Per Response: 12 minutes.
Needs and Uses: This survey is a component of the Research on Homelessness project and involves interviewing homeless individuals and gathering information on facilities that provide services to the homeless. A series of small-scale tests and a full-scale experimental test of two alternative methods for counting the homeless against a control method will be used.
Affected Public: Individuals or households State or local governments Non-profit institutions.
Frequency: One-time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-911 Filed 1-12-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-614-503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on lamb meat from New Zealand. We preliminarily determine the total bounty or grant to be NZ$0.30/lb. during the period April 1, 1986 through March 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 21882) the final results of its last countervailing duty administrative review of lamb meat from New Zealand. On September 29, 1987, the New Zealand Meat Producers Board requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on October 20, 1987 (52 FR 38952). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of lamb meat from New Zealand. During the review period, such merchandise was classifiable under item 106.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20 and 0204.43.20.

The review covers the period April 1, 1986 through March 31, 1987 and eight programs. Three companies exported lamb meat to the United States during the period of review.

Analysis of Programs

(1) *Export Market Development Taxation Incentive (EMDTI)* Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtained market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. During the period of review, the tax credit was 69 percent of the total qualifying expenditures, and the normal corporate tax rate in New Zealand was 48 percent. Because the program is limited to exporters, we preliminarily determine that it confers an export bounty or grant. Two exporters claimed EMDTI tax credits for lamb meat exports to the United States on their tax returns filed during the review period.

Since exporters may claim a tax credit equal to 69 percent of the qualifying expenditures but may not deduct these expenditures from income, which is taxable at 48 percent, the net benefit to the exporters is 21 percent of the qualifying expenditures. To calculate the benefit, we took 21 percent of each exporter's qualifying expenditures relating to lamb meat exports to the United States and allocated that amount over its total volume of lamb meat exports to the United States during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total lamb meat exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be NZ$0.14/lb. for the period of review.

For the fiscal year ending March 31, 1988, the New Zealand Government decreased the tax credit to 64 percent. Consequently, the net benefit to exporters is 16 percent of qualifying expenditures relating to lamb meat exports. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be 5.40 percent *ad volorem*. (For an explanation of the change to collecting cash deposits of estimated countervailing duties on an *ad valorem* basis *see, Final Results of Countervailing Duty Administrative Review: Lamb Meat from New Zealand* (53 FR 21882, June 10, 1988)).

(2) Export Performance Taxation Incentive (EPTI)

Under the EPTI, exporters were entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under Section 156A of the Income Tax Act of 1976. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. Lamb meat falls under category D, for which the corresponding rate was 1.925 percent for the fiscal year ending March 1987. All three exporters claimed EPTI credits on their tax returns filed during the review period. Because this program is limited to exporters, we preliminarily determine that it confers an export bounty or grant.

We calculated the benefit from this program on a credit-as-earned basis, using the applicable EPTI rate on exports made during the review period. *See, Final Affirmative Countervailing Duty Determination: Certain Steel Wire Nails from New Zealand* (52 FR 37196, October 5, 1987). We multiplied the EPTI rate by each company's corresponding export sales of lamb meat to the United States and divided that result by each company's total volume of lamb meat exports to the United States during the period of review. We then weight-averaged the resulting benefits by each company's proportion of total lamb meat exports to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be NZ$0.03/lb. for the review period.

In our last review, we determined that the EPTI rate on exports shipped since April 1, 1987 is zero. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

(3) Livestock Incentive Scheme

The Livestock Incentive Scheme was introduced in 1976 and is administered by the Rural Banking and Finance Corporation. The program was set up to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, may opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program.

Because benefits under this program are available only to farmers with livestock herds, we preliminarily determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore confers a bounty or grant.

To calculate the benefit received from the loan option portion of the program, we treated the loan amounts forgiven as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate

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chosen was the average interest rate on overdrafts during the review period. For the loans that have not yet been forgiven, we treated the loan amounts as one-year, interest-free loans and measured the benefit using the interest rate described above as our benchmark. The benefit from the tax option was determined by multiplying the amount of the tax deduction used during the review period by the corporate tax rate. We added the value of the benefits from the loan and tax portions of the program and multiplied the result by a factor determined to represent the value of lamb as a percentage of total livestock production. We then divided that result by the total value of lamb products sold during the review period. On this basis, we preliminarily determine the benefit from this program to be NZ$0.006/lb. during the period of review. For purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be 0.69 percent *ad valorem*.

(4) Meat Producers Board Price Support Scheme (MPBPS)

The MPBPS was established to insulate meat producers from fluctuations in market prices and to guarantee them a minimum return on export sales of their products. The scheme was administered by the Meat Producers Board ("the Board") and the Meat Export Prices Committee. It was financed through the Meat Income Stabilization Account ("MISA"), an overdraft account maintained by the Board at the Reserve Bank of New Zealand.

The Board had four primary sources of funds: (1) A levy set by the Board and collected by processors from lamb, sheep, and cattle growers at the time of slaughter; (2) return on investments; (3) short-term borrowings from commercial lenders in New Zealand and overseas; and (4) advances from the Meat Industry Reserve Account ("MIRA"). However, during the review period, disbursements from the MISA account were funded by advances from the government's MIRA account.

The Board had two methods for supporting the price of meat if the market price fell below the schedule price: (1) The Board could purchase meat at the schedule price; or (2) the farmer could sell lamb meat at the market price and then receive a deficiency payment equal to the difference between the market price and the schedule price. In both cases, the funds used to support the price were drawn from the MISA.

We do not consider funds for minimum price support payments provided by producer levies to constitute a bounty or grant within the meaning of the countervailing duty law. However, this program also provides government funds to the Board to guarantee producers a minimum return on export sales on terms that are not available from commercial sources. Therefore, we preliminarily determine that the portion of the payments represented by government funds confers an export bounty or grant within the meaning of the countervailing duty law.

We calculated the benefit from this program by dividing the value of the government's contributions to the MISA account attributable to lamb meat during the period of review by the total volume of lamb exported. On this basis, we preliminarily determine the benefit from this program to be NZ$0.12/lb. during the period of review.

In our last review, we determined that the Meat Producers Board Price Support Scheme was terminated effective March 30, 1987. Therefore, for purposes of cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

(5) Other Programs

We also examined the following programs and preliminarily determine that lamb meat exporters did not use them:

(a) Export Programme Suspensory Loan Scheme
(b) Export Suspensory Loan Scheme
(c) Regional Development Suspensory Loan Scheme
(d) Supplementary Minimum Prices Scheme (SMP)/Lump-Sum Scheme

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be NZ$0.30/lb. during the period of April 1, 1986 through March 31, 1987.

The Department intends to instruct the Customs Service to assess countervailing duties of NZ$0.30/lb. on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1988 and exported on or before March 31, 1987.

Because of the termination of the EPTI and the MPBPS, and changes to the EMDTI program, the rate for cash deposit purposes decreased from NZ$0.30/lb. (equivalent to 15.99 percent *ad valorem*) to 6.09 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 6.09 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,
Assistant Secretary for Import Administration.

Date: January 6, 1989.

[FR Doc. 89-865 Filed 1-12-89; 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: Department of Commerce.

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-AE015."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #88-00015, which was issued on December 12, 1988 (53 FR 51294, December 21, 1988).

Applicant: The Ferrous Scrap Export Association ("FSEA") Contact: Richard G. Slattery, legal counsel Telephone: 202/662-6000.

Application #: 88-AE015.

Date Deemed Submitted: January 9, 1989.

Summary of Application

FSEA seeks to amend its certificate to:

1. Add "financing" to Export Trade Facilitation Services.

2. Add "the United States International Trade Commission" to the list of administrative agencies appearing in paragraph 1 (j) of Export Trade Activities and Methods of Operation.

Date: January 10, 1989.

Thomas H. Stillman,
Director, Office of Export Trading Comopny Affairs.

[FR Doc. 89-985 Filed 1-12-89; 8:45 am]
BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the Bank of Ponce From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmosphere Administration, Commerce.

ACTION: Notice of dismissal.

On January 27, 1988, the Bank of Ponce (Appellant) filed with the Department of Commerce (Department) a notice of appeal under section 307(c)(3)(A) of the Coastal Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal rose from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that its proposal to deposit fill material to build new parking facilities in San Juan, Puerto Rico would be consistent with Puerto Rico's management program.

By a letter dated November 9, 1988, the PRPB informed the Department that the Appellant has revised the project such that the PRPB now concurs in its consistency with Puerto Rico's coastal management program. Accordingly, the Department dismissed the appeal on December 19, 1988 for good cause pursuant to 15 CFR 930.128. That dismissal bars the Appellant from filing another appeal from the PRPB's objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmosphere Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.429 Coastal Zone Mangement Program Assistance)

Date: January 6, 1989.

B. Ken Burton,
Assistant Secretary for Oceans and Atmosphere.

FR Doc. 89-828 Filed 1-12-89; 8:45 am]
BILLING CODE 3510-08-M

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

Time and Date: Meeting will convene at 1:00 p.m. January 31, 1989, and adjourn at 12:00 noon, February 2, 1989.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, DC.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters to be Considered: January 31, 1989, 1:00-5:15 p.m., priorities for NOAA Fisheries, Marine Mammal Protection Act Amendments of 1988, king mackerel, North Pacific fisheries management issues, and reports from the Interstate Fisheries Commissions.

February 1, 1989, 8:30 a.m.-5:30 p.m., enforcement activities, National Audubon Society report on NOAA Fisheries, marine recreational fisheries action plan, interjurisdictional fishery policy, seafood inspection, litigation report, and budget review. February 2, 1989, 8:30 a.m.-12:00 noon, budget review and review of committee recommendations.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff-Fisheries, Office of Legislative Affairs, NOAA, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 427-2259.

Date: January 9, 1989.

William Matuszeski,
Executive Director, National Marine Fisheries Service, NOAA.

[FR Doc. 89-822 Filed 1-12-89; 8:45 am]
BILLING CODE 3510-01-M

[Modification No. 1 to Permit No. 520]

Marine Mammals; Modification of Permit; Northeast Fisheries Center, NMFS (P77 #14)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 520 issued the Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts 02543, on August 28, 1985 (50 FR 36133) is modified in the following manner:

Section B.5. is added:

5. Notwithstanding the restrictions in General Condition C.2.a., the marine mammals authorized in section A above may be collected during the period between the enactment of Pub. L. 100-711 and the date the

exemption system required by that law becomes effective.

Because the Permit Holder has waived the right to a hearing, this modification becomes effective upon date of publication in the **Federal Register.**

This modification is necessary in order to allow continued research on marine mammals taken incidentally in foreign fishing and joint venture operations in the Exclusive Economic Zone between the period after the enactment of Pub. L. 100–711 and the date the exemption system required by that law becomes effective. This authorization is in keeping with the National Marine Fisheries Service Enforcement Policy for Takings of Marine Mammals Incidental to Commercial Fishing (53 FR 49214). Only animals taken and killed incidental to fishing operations will be sampled, enabling research to be conducted without adversely affecting the population.

Documents in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910.

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: January 9, 1989.

FR Doc. 89–783 Filed 1–12–89; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; Polysciences, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to POLYSCIENCES, Inc., having a place of business in Warrington, PA 18976, an exclusive license in the United States to practice the invention entitled "*Simple and Rapid Method for Detection of Virulent Yersinia enterocoliticia*" U.S. Patent Application Serial Number 7–140,501. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephone (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–884 Filed 1–12–89; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement list 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (53 FR 46645) of proposed additions to Procurement List 1989, which was published on November 14, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Table Leg
7110–00–NSH–0023
Binder, Looseleaf, Flight Crew
7510–00–240–6012

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–853 Filed 1–12–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before February 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORAMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Wrench, Pipe
5120–00–277–1485
5120–00–277–1486
5120–00–277–1461
Stone, Artificial Dental
6520–00–116–1472 (Requirements for Department of Defense only)
6520–00–557–7015

Folder, File
7530–00–205–3613
7530–00–290–2009
7530–00–634–1785
7530–00–985–7009
7530–00–985–7010

Towel, Paper
7920–00–823–9772 (GSA Regions 2, 8, 9 and 10)
Decoration Set, Air Force Achievement Medal
8455–01–122–0120
Decoration Set, Commendation Medal, Navy and Marine Corps
8455–00–680–0617

Service

Laundry Service (Excluding Dry Cleaning and Rental), Uniformed Services, University of the Health Sciences, F. Edward Hebert School of Medicine, Bethesda, Maryland

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–854 Filed 1–12–89; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Approval of Voluntary Standard for All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Commission approval of a draft voluntary standard for all-terrain vehicles ("ATVs").

SUMMARY: On April 28, 1988, the United States District Court for the District of Columbia approved consent decrees between the Commission and the major members of the ATV industry. One of the provisions of the decrees was that the industry parties to the decrees would attempt in good faith to reach agreement on voluntary standards for ATVs, satisfactory to the Commission, within four months of the Court's approval of the final consent decrees.

In this notice, the Commission announces that it has considered the voluntary standard drafted by a committee consisting of the five major distributors of ATVs pursuant to the terms of the consent decrees. Because 3-wheel ATVs are excluded from this standard, the prohibition on marketing of 3-wheel ATVs provided in the consent decrees will continue. The standard includes configuration requirements for service brakes, mechanical suspension, parking brakes, engine stop switch, clutch controls, throttle control, gear shift control, neutral indicator, reverse indicator, carry bar, flag pole bracket, manual fuel shutoff control, handlebars, operator foot environment, lighting equipment, spark arrestor, tire labeling, tire pressure gauge, vehicle security, and owner's manual. In addition, the standard contains pitch stability requirements and performance requirements for service and parking brakes. With respect to two categories of youth vehicles, the standard provides for maximum speeds in both limited and unlimited modes of operation. The industry, through the Specialty Vehicle Institute of America ("SVIA") submitted this standard for canvass ballot approval as an American National Standards Institute ("ANSI") American National Standard by letter dated December 15, 1988.

While the voluntary standard submitted to ANSI does not directly address the issue of lateral stability, each of the five distributors agreed separately not to market ATVs in the future that have lateral stability coefficients lower than the lowest value in that distributor's current production. In addition, the industry has indicated that it will engage in an 18-month effort to develop a dynamic performance standard to address the lateral stability characteristics of ATVs.

These actions by the industry are in addition to the other detailed provisions of the consent decrees, which will regulate the ATV industry's actions for at least ten years with respect to age recommendations, labels, manuals, point-of-purchase materials, advertising, training, and other subjects. Together, the draft voluntary standard and the separate industry agreements concerning lateral stability constitute the "voluntary standard" envisioned by the consent decrees. After considering these proposals by the industry, the Commission concluded [1] that the "voluntary standard" submitted by the industry is satisfactory. In making this determination, the Commission specifically reserved its rights under the consent decrees to institute certain enforcement or rulemaking proceedings in the future.

The Commission encourages interested members of the public to comment on the ATV standard as the standard undergoes ANSI consideration and to send copies of such comments to the Commission's staff so that the Commission can be alerted if any unforeseen problems arise.

DATES: Comments on the ATV voluntary standard are due to SVIA by March 15, 1989.

ADDRESSES: To participate in the consideration of this standard under the ANSI process, contact Mr. J.C. DeLaney, Manager, Technical Programs, SVIA, 2 Jenner Street, Suite 150, Irvine, CA 92718–3820.

Copies of comments that have been sent to SVIA on the ATV voluntary standard may be sent, for the information of the Commission's staff, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Carl Blechschmidt, Program Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

Background

The Commission for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are 3- and 4-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking ("ANPR") in the **Federal Register.** 50 FR 231139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs

[1] Chairman Terrence Scanlon and Commissioner Carol Dawson voted to find the voluntary standard satisfactory. Commissioner Anne Graham dissented. Each Commissioner filed one or more statements concerning his or her vote that are available from the Office of the Secretary.

and solicited comments on a number of issues.

On December 30, 1987, The Commission and the major members of the ATV industry filed preliminary consent decrees in *United States v. American Honda Motor Co., Inc., et al.*, Civil Action No. 87–3525, in the United States District Court for the District Court of Columbia. The preliminary consent decrees contained provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed fnal consent decrees, which are filed on March 14, 1988. Both the preliminary consent decrees and the final consent decrees, which were approved by the Court on April 28, 1988, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees. A summary of the extensive provisions of the consent decrees is included as Appendix 2 to this notice.

In order to expedite the development of a voluntary standard by the industry, the Commission staff forwarded, on January 27, 1988, proposed provisions that could be considered for inclusion in the voluntary standard. The staff noted, however, that these were to be considered merely as a starting point for the development of a standard and that one acceptable to the Commission would need to address additional areas. In the discussion below of the standard that was ultimately developed by the industry, the instances where the standard set forth in this notice differs significantly from the staff's proposed standard are noted.

The Specialty Vehicle Institute of America ("SVIA") had been accredited in 1985 by the American National Standards Institute (ANSI) as a sponsor to use the ANSI canvass procedures for consensus development of a voluntary standard for ATVs, and SVIA was chosen by the five companies that are party to the consent decrees to coordinate the development of the standard provided for in the consent decrees. The standard was developed by a voluntary standards committee consisting of representatives from each of the five companies involved. All of the voluntary standards committee working group meetings and plenary sessions were open to the public, in keeping with the Commission's regulations on voluntary standards participation and public meetings.

The first meeting of the voluntary standards committee after the signing of the consent decrees was on May 4, 1988. Five technical working groups were formed under the committee to address various sections of the standard. The working group meetings were held in California, with technical representatives from each manufacturer attending. Working group meetings took place on May 19–20, June 15–16, July 20–21, and August 24–25. There were also plenary meetings of the voluntary standards committee in Washington, DC, to report on progress of the technical working groups. Voluntary standards committee plenary meetings (in addition to the May 4 meeting) were held on June 2, June 30, July 28, and September 14. As indicated above, all meetings were open to the public; the meetings also were listed in the CPSC Public Calendar, and the voluntary standards committee plenary meetings were announced by **Federal Register** notices. The standard developed by the industry was submitted to the Commission on September 26, 1988, and is reproduced below as Appendix 1 to this notice.

Although the text of the document submitted to the ANSI canvass procedure does not contain an provision addressing the important area of lateral stability, the industry did submit a plan to develop criteria and dynamic testing procedures during the next 18 months. The Commission's staff originally had proposed that the standard contain a provision for lateral stability requiring that ATVs have a lateral stability coefficient ("K_{st}"), developed to reflect the lateral stability characteristics of the ATV, of at least [−] 1.0. The staff prefers the lateral stability coefficient provision to a steady-state turn performance test, which the staff believes is an inappropriate methodology for determining the lateral stability characteristics of an ATV because the rider can influence the results of the test. The industry, on the other hand, contends that the rider-active nature of ATV operation, the broad range of terrain over which ATVs are intended to operate, and the lack of accident data that are sufficient to detemine whether there is a correlation between accident rate and lateral stability coefficient for current production vehicles do not permit a conclusion that the lateral stability coefficient is an appropriate measure of an ATV's safety in this regard.

In order to arrive at an agreement in this area, the industry proposed that each of the distributors would not market any ATVs with a lateral stability coefficient (K_{st}) lower than the K_{st} embodied in the model of the manufacturer that has the lowest K_{st} in current production. This in effect would ensure that all ATVs produced in the future will have a K_{st} of about 0.89 or greater. This proposal would be considered interim, pending either the development of a test acceptable to the Commission or the acquisition of data to show whether different or more stringent criteria are appropriate. The issue of lateral stability is discussed further in the following section of this notice, which discusses the requirements agreed to by the industry.

The Commission considers that the draft voluntary standard that has been submitted to ANSI, together with the separate agreements with the distributors concerning minimum lateral stability coefficients, constitute the "voluntary standard" developed by the industry pursuant to the consent decrees. On October 28, 1988, the Commission met and voted to find the voluntary standard and agreement on lateral stability satisfactory. In reaching this determination, the Commission considered only the substantive agreements reached; the Commission did not necessarily agree with the ratioale or disclaimers stated by the industry for certain provisions of the voluntary standard. (See the discussion of pitch stability and mechanical suspension in the Foreword to the industry's standard in Appendix 1 for examples of statements with which the Commission disagrees.)

The estimated number of ATV-related injuries treated in hospital emergency rooms increased between 1982 and 1985 and peaked at 86,000 in 1986. It decreased to 77,000 in 1987. Estimates based on current predictions of shipments show that injuries are likely to continue to decline, to 33,000 in 1992. This figure does not include any injury reduction that may occur due to the implementation of the voluntary standard and the consent decree.

For the period from 1982 to September of 1988, the Commission received reports of 1186 deaths from ATV-related incidents; 301 of these occurred in 1986, and 264 occurred in 1987. Although there has been no discernible change in the fatality rate with the introduction of the 4-wheel ATVs over the past several years, the predicted decrease in shipments should result in a 33 percent decrease in the number of ATVs in use by 1992, with a corresponding reduction in deaths. Again, this figure does not include any reduction in deaths that may occur as a result of the implementation of the voluntary standard and the consent decrees. The effect of the voluntary standard on injuries and deaths, to the extent current data permit such estimates, is discussed in Section I of this notice.

Provisions of the Voluntary Standard

The voluntary standard (Appendix 1) is composed of major sections on Equipment and Configuration Requirements, Youth Vehicle Requirements, Service Brake Performance, Parking Brake Performance, and Pitch Stability. This draft standard includes requirements for all areas the staff has identified as important for ATV safety and for which requirements can be formulated at this time, except for lateral stability (resistance to sideways tipover). Industry has offered an interim way to insure a specified minimum level of lateral stability. These items are discussed in more detail below.

A. Equipment and Configuration Requirements

The 20 items specified in this section place certain constraints on specific components of the vehicle. A few of the items are not related to safety concerns of CPSC, but are felt by industry to be necessary. Most of these requirements are already being met in current production.

1. *Service brake.* This requirement specifies that all ATVs will have both front and rear brakes and standardizes their controls. Some previously-manufactured ATVs lacked front brakes and, therefore, had very poor braking performance. In addition, it is unsafe to stop an ATV from rolling backward on a hill be using only the rear brake. It is necessary that the vehicle has front brakes for this purpose.

2. *Parking brake.* This provision requires a parking brake. Parking brakes are necessary for emergency operation of ATVs on steep slopes.

3. *Engine stop switch.* This provision standardizes the operation and location of the engine stop switch. CPSC originally had some concerns about the possibility of inadvertent actuation of the switch, but the industry believes this is no longer a concern; currently available data do not show that additional requirements for this are needed.

4. *Clutch control.* This provision specifies certain operational, location, and labeling requirements for the clutch control.

5. *Throttle control.* This provision specifies location and operational characteristics for the throttle control and contains special requirements for certain utility operations.

6. *Gear shift control.* This provision specifies location and operation of the gear shift control. CPSC staff had asked for an additional requirement for the shift pattern intended to prevent inadvertent selection of neutral under hazardous conditions. The industry believes this to be unnecessary, mechanically complex, and likely to introduce other problems, including hazards under some conditions of utility use. While the Commission's staff still views having neutral at a half position between first and second as a desirable feature, it concluded that this requirement was not essential for an adequate standard.

7. *Neutral indicator.* This provision requires an indicator to show when the vehicle's transmission is in neutral. This should help prevent inadvertent acceleration should the operator start the vehicle while it is in gear or leave the vehicle idling in gear. The original CPSC staff proposal required that all ATVs except those with manual clutches have a readily visible indicator to tell the operator when the machine is in neutral. A further exception was made for vehicles that have an interlock to prevent them from being started in gear. This exclusion is appropriate for the problem of starting while in gear, but it does not address the possibility of inadvertent acceleration of a vehicle idling in gear. This was accepted nevertheless, because it is not clear how prevalent this latter problem is or how effective the neutral indicator actually would be to prevent it.

8. *Reverse indicator.* This is a requirement for a device to indicate to the operator that the vehicle is in reverse gear.

9. *Carry bar.* This consists of design requirements for a handle located at the rear of the seat, which industry included to allow lifting or moving of the vehicle. CPSC recognizes a further safety function of this device in that it may prevent or lessen rearward overturn of the vehicle because it provides an additional support point at the rear. The carry bar is required to be located so that it does not allow the vehicle to rotate rearward beyond the vertical position. This reflects the current design practice, which CPSC staff believes significantly reduces the extent of rear pitchover.

10. *Flag pole bracket.* This provision standardizes a fitting for installation of a conspicuity flag.

11. *Manual fuel shutoff control.* This provision standardizes operation of the fuel shutoff valve.

12. *Handlebars.* This provision specifies certain requirements for the handlebars to reduce impact and cutting injuries should the operator strike this area of the ATV. CPSC staff had asked for further requirements to reduce protrusions above the level of the handlebars and to require handlebar mounted controls to deflect out of the way readily if impacted. Industry argued that such restrictions were vaguely defined and that adequate protection is currently provided. CPSC staff has accepted the current requirement as satisfactory but believes that further improvements should be pursued in the future.

13. *Operator foot environment.* This provision controls the presence, location, and extent of shielding to reduce the possibility of the operator's feet coming into contact with the rear tire. Such contact, both of operators' and passengers' feet, is not uncommon, resulting in leg and foot injuries.

14. *Lighting equipment.* This provision requires a headlight and taillight for all but Youth model ATVs. Youth ATVs may not be equipped with lights, because operation of ATVs by children at night is discouraged for safety reasons. CPSC staff had argued for lighting performance (such as brightness) requirements, but the industry argued that such requirements are complex, not currently available, and not needed.

15. *Spark arrestor.* This provision meets United States Department of Agriculture requirements for exhaust spark arrestors.

16. *Tires.* This provision contains labeling requirements for ATV tires to provide information concerning air pressure and other designations. Staff had raised concerns that the existing warning message concerning maximum air pressure to be used in installing the tire on the wheel rim may be misconstrued by operators as indicating the recommended operational pressure. Since the "bead-seating" pressure referred to is substantially higher than safe operational pressure, such confusion could result in a hazardous vehicle condition. The industry responded to these concerns and has worked with the Rubber Manufacturers Association for appropriate requirements. While there are still some concerns over possible labeling misinterpretation, the requirement is acceptable.

17. *Tire pressure gauge.* The special low-pressure tires used on ATVs require a special tire pressure gauge, and this provision requires that the vehicle comes with a gauge and a place for carrying it.

18. *Security.* This provision requires a key and lock, or some equivalent device, to prevent unauthorized use of the vehicle.

19. *Owner's manual.* The owner's manual contains numerous safety messages in addition to other

information, and this provision requires that the manufacturer provide the manual and a place on the ATV to carry it.

20. *Mechanical suspension.* Inadequate suspension can result in excessive bounce and pitch of the vehicle, and excessive pitch, particularly at lower speeds, can readily result in the rider being thrown forward off the vehicle. This design requirement specifies that all ATVs will have mechanical suspension components (*i.e.*, springs and shock absorbers) for all wheels, and that at least two inches of suspension movement will be provided. CPSC engineers argued for a performance requirement instead of the two-inch travel design requirement, because a performance requirement could dictate a given amount of energy-absorbing capability regardless of other variables. A large and heavy vehicle with only two inches of suspension movement (or travel) could be inadequate in its ability to absorb shocks from hitting bumps and ditches.

The industry argued that, in fact, the design requirement resulted in sufficient performance capability. They argued that once they have made the decision to include mechanical suspension, there is no reason for them to produce one with inadequate levels of performance. Furthermore, the injury data did not appear to support the argument for a minimum level of suspension performance. The Commission believes that the industry's rationale for this provision, which states that mechanical suspension is provided to increase operator comfort and to assist in reducing fatigue, is inadequate because it does not identify any safety rationale.

B. Service Brake Performance

This section ensures that the vehicle is capable of generating at least a 0.6g deceleration due to the application of the brakes. This level of braking is consistent with the maximum capability of the tires on concrete and results in a high level of braking capability. The procedures and criterion are essentially identical to the CPSC proposal and are satisfactory. Because related braking standards for other vehicles, such as the Federal Motor Vehicle Safety Standards for motorcycles, contain a number of additional specifications, including thermal fade (effectiveness of the brakes under sustained use) and wet fade (effectiveness of the brakes when wet), the CPSC staff felt that such provisions should be included. The industry has provided a rationale stating that the additional requirements are unnecessary due to the properties of contemporary brake materials and the different usage patterns of the vehicles.

C. Parking Brake Performance

This section specifies the test procedure and acceptance criterion of parking brake performance. The parking brake must be capable of restraining a fully-loaded vehicle while parked on a 30-percent slope facing both the uphill and downhill directions.

The parking brake is considered necessary to the safe operation of the vehicle on very steep slopes where the operator must dismount to regain control of the vehicle. As the vehicles are capable of climbing hills of 30°–35°, CPSC had proposed a requirement that the parking brake be capable of holding the vehicle at that level. Therefore, the CPSC proposal was for a performance test on a 60-percent slope (equivalent to approximately 31°). The industry argued that this requirement was too stringent and was unrealistic. Although the test slope employed is much less steep than that proposed by CPSC staff, the requirement to perform the test facing both uphill and downhill increases the severity of the test, but not to the level of the CPSC staff proposal. This test will require some improvements in currently produced vehicles. Since inadequate parking brakes cannot be shown by available data to cause a significant number of injuries, the Commission concluded that insisting on still more stringent criteria is not justified at this time.

D. Pitch Stability

This requirement assures a minimum resistance to rearward overturn. CPSC staff has been aware of a high number, and apparently high severity, of injuries resulting from rearward overturn, particularly during operation on hills. Vehicles with higher stability characteristics are less likely to overturn, and CPSC had proposed a calculated pitch stability coefficient value (K_p) of 1.1, which was related to static stability on a typically steep slope. The proposal was ultimately accepted by the industry in essentially the form proposed by CPSC, with two key modifications. The industry engineers proposed adoption of a simplified procedure for determining the height of the test vehicle's center of gravity, which is a major variable in the computation of the stability coefficient. The proposed method requires less elaborate equipment than the procedure proposed by CPSC, which was based on a practice recommended by the Society of Automotive Engineers. The industry also lowered the pitch coefficient, K_p, to 1.0. This value was accepted by CPSC because the minimum lateral stability coefficient, or K_{st}, accepted by CPSC would force the actual levels of K_p above the $K_p = 1.0$ value. This is based on the relationship that exists between lateral stability and pitch stability. Thus, the pitch stability criterion will in fact be exceeded in practice. As a practical matter, this criterion is higher than the K_p values exhibited by machines that previously had been of concern, and, in addition, actual K_p values are commonly above 1.1. Therefore, while the standard did not adopt the value CPSC staff proposed, the level accepted should be adequate to address safety concerns.

E. Lateral Stability

The standard contains no procedure or criterion for determining adequate levels of lateral stability, or resistance to sideways rollover. The CPSC position has been that increasing the stability of the vehicle is critical to the safety of the operator, because rollover is the typical result of loss of control and there is no secondary rollover protection available to the operator.

The stability coefficient, K_{st}, is a generalized measure of the vehicle's resistance to sideways rollover. To give an analogy, it is a calculation that indicates that a low, wide table is harder to knock over than a tall, narrow one. K_{st} provides a measure of one of the several factors that determine the limits of control when making a turn on an ATV. The standard proposed by CPSC specified a requirement of $K_{st} = 1.0$. This is not to say that lateral stability is the only factor involved in determining the control limits, nor that setting $K_{st} = 1.0$ would eliminate rollover injuries. It is one factor which gives better control to the operator, and it is directly related to the most prevalent pattern of injury.

The industry position has been that K_{st} is a static measure that is not related to safety and that does not account for all the other factors that determine whether a vehicle will turn over. They have proposed several tests that they claim represent real-life conditions and are thus more accurate in determining lateral control limits. The difficulty with this, from the CPSC staff's point of view, is that the "dynamic" tests proposed by the industry include significant effects or rider control and other factors which mask the effects of vehicle stability characteristics.

As explained above, the industry did not agree that this measure of stability (K_{st}) was relevant to a dynamic accident scenario on highly rider-active vehicles. The industry believes that only a dynamic test can adequately address lateral stability performance; however, no dynamic test acceptable to CPSC staff exists at this time. In an attempt to achieve an agreement with the Commission in this area, however, the industry offered to address lateral stability on an interim basis in the following manner:

1. The standard will apply to 4-wheel ATVs only; 3-wheel ATVs therefore will continue to be precluded from the marketplace under the provisions of the consent decrees.

2. Each of the five companies, while disagreeing on the appropriateness of a static criterion in defining lateral stability, agreed not to manufacture in the future any ATV with a stability factor (K_{st}) less than the lowest factor in that company's current production models.

3. Each manufacturer supplied the Commission staff with information relevant to a determination of what this agreement would mean with respect to K_{st} values as to that manufacturer.

The Commission staff tested currently marketed ATVs and, based on all available information, concluded that current ATVs will meet or exceed a K_{st} of 0.89. In the context of the limited data currently available on the relationship between K_{st} and lateral-stability-related accident rates, the Commission determined that a K_{st} level of 0.89 or higher provides an acceptable interim minimum level of stability. Currently available injury data do not permit reliable estimates of any injury reductions that could result from K_{st} values higher than 0.89, which was an important consideration in the Commission's acceptance of the interim minimum level of lateral stability.

The present draft standard will be processed under the ANSI canvass procedures for a consensus American National Standard. As discussed above, it is the stated intent of the industry Voluntary Standards Committee to pursue the research and testing necessary to develop a dynamic test for lateral stability, acceptable to the Commission, that could be added to the standard at some future date. Although, as explained above, the Commission's staff has doubts about the probable success of this effort, it will monitor this work.

Commission staff also will proceed with the injury data collection and analysis and technical work necessary to issue a notice of proposed rulemaking (NPR) for lateral stability, if that should become necessary.

In evaluating the adequacy of this interim proposal to address lateral stability, the Commission considered the following additional factors. First, the voluntary standard submitted applies only to 4-wheel ATVs. Therefore, the provision of the final consent decrees that the industry will not make 3-wheel ATVs unless they meet a voluntary standard acceptable to the Commission continues to prevent the marketing of 3-wheel ATVs, which present a risk of injury about twice that of 4-wheelers. Data from 1985 available to the Commission indicate that 3-wheel ATVs are approximately twice as likely to be involved in accidents than are 4-wheel ATVs and that this difference in accident rates can be correlated to the difference in K_{st} between these two classes of vehicles. Thus, the fact that 3-wheel ATVs will not be on the market will go part way toward satisfying the concern that motivated the staff's proposal for a minimum K_{st} of 1.0.

Also, as explained above, the information available to the Commission shows that the lowest K_{st} for any model ATV produced currently is 0.89. The lowest K_{st} models produced by the four other manufacturers have coefficients higher than that figure. Furthermore, these are minimum figures; the manufacturers currently produce other models with K_{st} values higher than their respective minimums, and there is no reason to believe that this will not continue in the future. Thus, it appears that the typical ATV now on the market would have a K_{st} approaching 1.0. The range for the 1985 or earlier model four-wheelers tested by CPSC staff was 0.87 to 1.08.

In 1985, most ATVs being used by consumers, and therefore most ATVs involved in the high numbers of injuries and deaths at that time, were 3-wheelers. The 3-wheelers tested by CPSC staff typically had stability factors of between 0.54 to 0.59. This is a substantial difference from the 0.89 mininum stability factor for 4-wheelers required by the interim agreement.

The Commission's staff has measured the K_{st} for machines that it believes have the lowest values. The results of these tests have been communicated to each company, and the Commission expects each company, as a condition of the approval of the voluntary standard and the agreement on lateral stability, to make no ATV with a K_{st} below that of the example of the manufacturer's model tested by the staff.

As to transient handling quality, the Commission agrees that an adequate test to measure the transient handling of an ATV could not have been developed during the four-month period envisioned by the final consent decrees. The Commission, however, encourages the industry to pursue the development of criteria to ensure that ATVs have adequate transient handling characteristics as part of the industry effort to develop a standard for lateral stability.

While further deaths and injuries with 4-wheeled ATVs should be, and are, a matter of concern, the Commission currently lacks sufficient data to establish clearly that these injuries and deaths are due to any deficiency in the design of the vehicles that is not already addressed in the standard and agreement the industry has submitted.

In view of this lack of data on the benefit of a more stringent standard, it is reasonable to consider the proffered agreement as satisfactory unless and until additional data establish that another course is preferable. However, the Commission could later proceed with mandatory requirements for lateral stability if it obtains the additional data required to support such a requirement.

There have been suggestions that the Commission could require that ATVs be labeled with their K_{st} values and an explanation be provided of how that value compares to the values for other available ATVs. However, the Commission concludes that this would not achieve the intended result. Such labeling might even mislead consumers into believing that they were purchasing a safer vehicle, when with other factors taken to consideration (i.e., steering, engine size, suspension, etc.), it is possible that a vehicle with a slightly lower numerical lateral stability factor might be the safer one. In addition, describing K_{st} accurately on a tag or label would be highly technical and difficult for consumers to understand. Also, current data do not demonstrate a significant difference in risk of injury between K_{st} values of 0.89 and 1.00, and such labeling would dilute the other important safety messages on the vehicles that are required by the consent decrees.

F. Youth Vehicle Requirements

The draft standard defines four categories of all-terrain vehicles, including two subcategories of youth model ATVs. These are the Y–6 Category ATV, intended for use by children age 6 and older, and the Y–12 Category ATV, intended for use by children age 12 and older. The Commission previously had found that children under age 12 lack the cognitive and physical development to operate a motorized vehicle safely.

While the Y–6 and Y–12 ATVs are subject to all the provisions of the standard, the Youth Vehicle Requirements contain some additional specifications regarding speed limitations for these vehicles. The draft

ATV standard specifies restricted maximum speeds of 10 mph for Y-6 and 15 mph for Y-12, with unrestricted maximum speeds (with any restrictor or limiter removed or adjusted for maximum) of 15 mph for Y-6 and 30 mph for Y-12 ATVs. These requirements are less stringent than the speed limitations imposed by the Society of Automotive Engineers Recommended Practice for children's snowmobiles, the only comparable vehicle voluntary standard known to CPSC. (The snowmobile standard limits maximum speeds to 8 mph for Group 1—ages 6 and older—and 15 mph for Group 2—ages 10 and older.)

The consent decree specifically reserves the Commission's right to proceed with mandatory action against youth model ATVs. However, the Commission's data base contains little information on the injuries sustained by children riding these vehicles, due to the small number of such vehicles in the sample. It is possible that if child-size ATVs are not available, more children will ride larger ATVs, an option known to be dangerous. More important, however, is the fact that the industry presently is not making these vehicles. For these reasons, it is not feasible for the Commission to take mandatory action regarding youth model ATVs at this time.

G. Effective Date

Industry compliance with the lateral stability factor agreement begins with current production. Therefore, the industry agreement on lateral stability is effective now and for all future production. The CPSC staff's experience shows that the higher lateral stability values currently in production produce correspondingly higher pitch stability values. Therefore, the staff believes that the pitch stability criteria are also currently met. Service brake requirements and most of the configuration requirements also are met by currently-produced vehicles.

A few ATV models will need added suspension systems, neutral indicators, improved parking brakes, added or changed tire sidewall labeling, or operator foot environment changes. While some of these can be incorporated rather quickly, like the improved parking brakes or neutral indicator, the labeling requirements for tires and footguard design and tooling will take much longer. Industry's stated compliance goal is December 31, 1989.

H. Areas Not Addressed by the Standard

The consent decrees bind the five companies to take actions in the areas of labels on the ATVs, owner's manuals, operator training, and advertising. Since these areas are covered by the court order, they are not subject to any changes, without further judicial action, either as a result of consideration of the voluntary standard or subsequent consensus deliberations by ANSI. Therefore, these areas were not addressed in the voluntary standard, to the extent they are included in the consent decrees.

I. Injury Reduction Attributable to the Standard

Currently available data indicate that the injury rate of 4-wheel ATVs is about half that of the previously manufactured 3-wheel ATVs. The death rates for accidents with 4-wheelers and with 3-wheelers appear to be approximately the same. While no 3-wheel ATVs are manufactured by the five companies that are party to the consent decrees, adoption of the voluntary standard by ANSI could discourage other companies from manufacturing 3-wheel ATVs. Also, the agreement ensures that 4-wheel ATVs with a K_{α} lower than that of current production will not be produced in the future by the five companies.

The additional footguards or shields required by the standard to prevent the foot from being caught under the rear wheel should result in an additional reduction in injuries of about 5 percent.

Currently available data do not permit estimates of the effectiveness of the remainder of the provisions of the standard. Similarly, the available data do not permit any estimate of the extent to which more stringent requirements in the standard might result in any additional reduction in injuries.

How the Voluntary Standard Relates to the ANPR

As discussed earlier, the voluntary standard and lateral stability agreement that the Commission accepted are part of several important measures taken by the Commission during the past few years to address risks of injury associated with ATVs. On May 31, 1985, the Commission published an advance notice of proposed rulemaking ("ANPR") setting forth a proposed course of action aimed at reducing risks from ATVs. 50 FR 23139. On December 12, 1986, the Commission recommended that the Department of Justice file a lawsuit against the ATV industry under Section 12 of the Consumer Product Safety Act, 15 U.S.C. 2061. That action led to the entry of two final consent decrees, which were approved by the United States District Court for the District of Columbia on April 28, 1988. These consent decrees include detailed provisions (outlined in Appendix 2 to this notice) that will regulate the ATV industry's actions for at least ten years with respect to age recommendations, labels, manuals, point-of-purchase materials, advertising, training, and other subjects. The requirements in the decrees can be changed only by further judicial action, and violations of the consent decrees can be addressed by the civil contempt power exercised by the Federal courts. The Commission will carefully monitor the industry's compliance with the terms of the consent decrees.

As discussed above, the final consent decrees and the voluntary standard both contain provisions addressing ATV risks in ways that had not been agreed upon when the Commission issued its advance notice of proposed rulemaking ("ANPR"). Accordingly, the Commission explains below how it views the applicability of the ANPR to the current situation.

In view of the comprehensive regulatory requirements imposed by the final consent decrees, and based on the industry's compliance record to date, the Commission has concluded that the final consent decrees have contributed toward the reduction of the unreasonable risks of injury identified in the ANPR that are addressed in the decrees, that there will be substantial compliance by the industry with the standards or requirements in the final consent decrees, and that such compliance will continue to reduce risk of injury in the future. Accordingly, with respect to the specific subjects regulated by the final consent decrees, the Commission concludes that mandatory rulemaking is no longer necessary, since requirements relating to ATVs in the area covered by the decrees are now fully enforceable by the courts and can be changed only by further judicial action. The Commission specifically reserves its rights under the decrees to institute certain enforcement or rulemaking proceedings in the future and intends to refrain, for a reasonable time, from publishing a notice of proposed rulemaking with respect to the lateral stability of ATVs.

With respect to ATV voluntary standards, the Commission will defer rulemaking in the areas now covered by the voluntary standards, except for lateral stability and youth models, for a period sufficient for the ANSI canvassing process to be conducted. If the voluntary standards are approved as an ANSI standard in substantially the same form as that considered by the Commission, the Commission anticipates it will then determine that no further rulemaking in those areas will be necessary. Whether further rulemaking activity by the Commission will be necessary in the area of lateral stability depends on whether a satisfactory voluntary standard is developed or whether additional data will show that some other type of action would adequately address this risk.

Conclusion

The Commission encourages the public to comment on the ATV standard as it undergoes ANSI consideration and to send copies of such comments to CPSC staff so that the Commission can be alerted if any unforeseen problems arise.

Dated: January 10, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—Four Wheel All Terrain Vehicles (ANSI/SVIA 1–1988)

December, 1988.

Foreword

This Foreword is for information and clarification only. It is not part of American National Standard (insert standard number).

This standard for four wheel all-terrain vehicles (ATVs) has been developed by members of the Specialty Vehicle Institute of America (SVIA) and Polaris Industries in fulfillment of their commitment to "attempt in good faith to reach agreement on voluntary standards satisfactory to the Consumer Product Safety Commission within four months" of April 28, 1988, the effective date of the final consent decree in *United States v. American Honda Motor Co., et al.* and *United States v. Poloris Industries, L.P.*

Although much of the final work in developing this standard has been accomplished in the above time period, work on the standard commenced in 1985. An initial draft of the standard, which dealt primarily with vehicle equipment and configuration, was developed later that year. Substantial work was devoted thereafter to revising this draft and to developing a second phase of the standard to deal with the more complex area of performance-related vehicle characteristics.

As a result of these efforts, this voluntary standard addresses a wide range of design, configuration and performance aspects of ATVs, including, among other items, requirements for service and parking brakes, mechanical suspension, clutch and gearshift controls, engine and fuel cutoff devices, throttle controls, lighting, tires, operator foot environment, service and parking brake performance, and pitch stability. Additional requirements, which address maximum speed capability and speed limiting devices, are included for youth-sized vehicles.

The industry members are not aware of any comparably extensive effort having ever been successfully made with respect to any other off-road vehicle. The breadth and complexity of this voluntary standards undertaking, the absence of reliable accident data and analysis, and the existence of substantial differences of opinion over difficult technical issues, particularly with regard to performance-related criteria, created substantial difficulties in drafting a standard. The participating industry members and the CPSC had to reach negotiated, compromise positions with regard to a number of items, which are discussed in more detail below. The industry members believe that resolution of these issues, despite the above constraints, reflects the high degree of government-industry cooperation that was essential to development of this standard.

With respect to pitch stability, the participating industry members believe that use of static procedures to test and establish criteria is not representative of actual operating conditions. Nor has there been any analysis which indicates that static stability criteria have any significant relation to ATV accident or injury causation or frequency. Nonetheless, in an effort to reach a satisfactory resolution of this issue and notwithstanding the industry's reservations regarding use of static stability criteria with respect to pitch stability, the participating industry members have agreed with the CPSC to adopt a static stability measurement and value which reflects current model production.

The suspension standard also represents a negotiated position. Most industry members view suspension primarily as a matter involving rider comfort. Moreover, there was an absence of accident data and analysis correlating accidents and injuries to the presence or absence of mechanical suspension. The parties were unable to generate appropriate dynamic tests to evaluate the advantages or disadvantages of mechanical suspension on the wide range of vehicle models subject to the standard. As a result of the absence of a suitable dynamic test procedure with respect to suspension, the participating industry members and the CPSC staff have agreed to implement a simple mechanical suspension design criterion as part of the vehicle configuration section of the standard.

Suggestions for improvement of this standard will be welcome. They should be addressed to the Specialty Vehicle Institute of America, No. 2 Jenner Street, Suite 150, Irvine, California 92718–3800.

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 Appendix A

1. Scope

This standard establishes requirements for equipment, configuration, and performance of four wheel all terrain vehicles.

2. Definitions

All terrain vehicle (ATV). Any motorized off-highway vehicle 50 in (1270 mm) or less in overall width, with an unladen dry weight of 600 lb (275 kg) or less, designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and

handlebars for steering control, and intended for use by a single operator and no passenger. Width and weight shall be exclusive of accessories and optional equipment. ATVs are subdivided into four categories as follows:

Category G (General Use Model) ATV: An ATV intended for general recreational and utility use:

Category S (Sport Model) ATV: An ATV intended for recreational use by experienced operators only:

Category U (Utility Model) ATV: An ATV intended primarily for utility use.

Category Y (Youth-Model) ATV: An ATV intended for recreational off-road use under adult supervision by operators under age 16. Youth model ATVs can further be categorized as follows:

Category Y–6 ATV: A Category Y–6 ATV is a youth model ATV which is intended for use by children age 6 and older.

Category Y–12 ATV: A Category Y–12 ATV is a youth model ATV which is intended for use by children age 12 and older.

Accessory. An object or device that is affixed to the vehicle after its manufacture. It is not essential to the vehicle's basic operation, but it changes its styling, convenience, utility, or effectiveness.

Brake lever or handle. A hand-operated control which, when actuated, causes the brakes to be applied.

Brake pedal. A foot-operated control which, when actuated, causes the brakes to be applied.

Carry bar. A rigid fixture mounted at the rear of the ATV. It can be used for lifting or moving the vehicle.

Clutch lever. The hand control that engages and disengages a manual clutch.

Deceleration. The rate of change of vehicle speed from the point of initial brake application to the point where the vehicle stops.

Electric starter. The electric motor of a vehicle that cranks the engine for starting. Also called the engine starter.

Engine displacement. The volume swept by a piston moving from bottom dead center to top dead center, multiplied by the number of cylinders.

Engine stop switch. A device used to interrupt engine ignition.

Flag pole. A long, thin, semirigid, vertical pole with a brightly colored pennant, usually red or orange, on the top end, which attaches at the rear of the vehicle.

Flag pole bracket. A rigid attachment point for mounting a flag pole.

Footrest. A structural support for the operator's foot. Footrests include footpegs and footboards.

Gearshift control. A control for selecting among a number of sets of transmission gears. Also called a shift lever.

Handlebar. A device used for steering and rider support and as a place to mount hand-operated controls.

Handlebar crossbar. A rigid member which attaches to and connects the left and right sides of the handlebar.

Ignition system. The system in a spark-ignited internal combustion engine that ignites the mixture by producing a spark.

Key-operated security system. A method of rendering an ATV inoperable unless the correct key is used.

Left hand. This designation refers to the orientation of the vehicle relative to the operator when seated in the operator's position facing forward.

Low pressure tire. A tire designed for off-road use on all terrain vehicles, and having a recommended tire pressure of no more than 10 psi (0.7 kgf/cm^2).

Manual clutch. A device activated by the operator to disengage the engine from the transmission. See clutch lever definition.

Manual fuel shutoff control. A manual device designed to turn the fuel flow from the fuel tank on and off.

May. This word is understood to be permissive.

Mechanical suspension. A system which permits vertical motion of an ATV wheel relative to the chassis and provides spring and damping forces.

Neutral. A designated position where there is no direct mechanical connection between transmission input and output.

Neutral indicator. A light or other means of indicating when an ATV transmission is in the neutral position.

Operator. The person who is exercising control over the motion of the vehicle. Also called the rider.

Owner's manual. A publication, supplied by the manufacturer as part of the vehicle, which provides information and instruction regarding use, operation, care, and maintenance of the vehicle.

Parking brake. A brake system which, after actuation, holds one or more brakes continuously in an applied position without further action.

Power take-off (PTO). An external drive mechanism on an ATV to provide rotational power to accessories or for other purposes.

Right hand. This designation refers to the orientation of the vehicle relative to the operator when seated in the operator's position facing forward.

Service brake. The primary brake system used for slowing and stopping a vehicle. ATVs may have more than one service brake.

Shall. This word is understood to be mandatory.

Should. This word is understood to be advisory.

Spark arrester. Any device which is designed to trap or destroy exhaust particles.

Speed limiting device. A device intended to limit the maximum speed of a vehicle.

Stopping distance (S). The straight line distance, measured along the ground, from the point of actuation of the brake to the final stopping point of the vehicle, as measured from the same point on the vehicle.

Test operator. The person who is exercising control over the ATV under test. The test operator shall be skilled at ATV operation and shall be familiar with the ATV under test and the test being conducted.

Throttle control. A control which is located on the handlebar and is used to control vehicle speed.

Transmission. A device for transmitting power at more than one set of speed and torque ratios.

Vehicle load capacity. The highest load, including the operator's weight, recommended by the manufacturer to be carried by a vehicle in its "as manufactured" condition. This does not include the vehicle weight.

Wheelbase (L). The longitudinal distance from the center of the front axle to the center of the rear axle.

Wheel travel. The total displacement of the wheel between full droop and full bump.

3. Vehicle Equipment and Configuration

3.1 Service brakes. All ATV shall have either independently-operated front and rear brakes, or front and rear brakes that are operated by a single control, or both. These brakes shall meet the requirements of 5.3.

3.1.1 Independently-operated front brakes. Independently-operated front brakes shall be operated by a level which is located on the right side of the handlebar and is operable without removing the hand from the handlebar.

3.1.2 Independently-operated rear brakes. Independently-operated rear brakes shall be operated by either a pedal which is located near the right footrest and is operable by the right foot or by a lever which is located on the left side of the handlebar and is operable without removing the hand from the handlebar, or by both.

3.1.3 Simultaneously-operated front and rear brakes. Simultaneously-operated front and rear brakes shall be operated by either a pedal which is located near the right footrest and is operable by the right foot or by a lever which is located on the left side of the handlebar and is operable without removing the hand from the handlebar, or by both.

3.2 Parking brake. All ATVs shall have a parking brake or device capable of holding the vehicle stationary under prescribed conditions. The parking brake or device shall meet the requirements of 6.3.

3.3 Mechanical suspension. All ATVs shall have mechanical suspension for all wheels. Each wheel shall have a minimum wheel travel of 2 in (50 mm). Springing and damping properties shall be provided by components other than the tire.

3.4 Engine stop switch. All ATVs shall have an engine stop switch which is mounted on the left handlebar and is operable by the thumb without removing the hand from the handlebar.

3.4.1 Operation. This switch shall not require the operator to hold it in the off position to stop the engine.

3.4.2 Color of device. The switch operating device shall be orange or red.

3.5 Manual clutch control. All ATVs equipped with a manual clutch shall have a clutch lever which is located on the left side of handlebar and is operable without removing the hand from the handlebar.

3.6 Additional clutch control for utility vehicles. All ATVs of Category U ("Utility") that have a power take-off (PTO) or other device requiring fixed engine or vehicle speed, and a clutch control for engagement and disengagement of the PTO or other device, shall have the control located convenient to the oeprator. Control movement shall be forward or upward, or both, for engagement, and rearward or downward, or both, for disengagement. A durable label clearly identifying the positions for engagement and disengagement for the PTO or other device shall be provided.

3.7 Throttle control. All ATVs shall be equipped with a means of controlling engine speed through a throttle control. The throttle control shall be located on the right side of the handlebar and shall be operable without removing the hand from the handlebar.

3.7.1 Operation. The throttle control shall be self-closing to an idle position upon release of the operator's hand from the control.

3.7.2 Options for utility vehicles with PTO or other device. All ATVs of Category U ("Utility") that have a power take-off (PTO) or other device requiring fixed engine or vehicle speed, and a clutch control for engagement and disengagement of the PTO or other device, may be equipped with a throttle control which does not meet the location requirements of 3.7 or the return to-idle requirement of 3.7.1 provided that it meets the requirements of 3.7.2.1 through 3.7.2.4.

3.7.2.1 Operation of engine speed control. An engine speed control for the PTO or other device shall be operable only when the PTO or other device is in operation.

3.7.2.2 Direction of motion. The direction of motion for such throttle control for the PTO or other device shall be forward or upward, or both, to increase speed, and rearward or downward, or both, to decrease speed or to stop.

3.7.2.3 Automatic stopping. A means shall be provided to automatically stop the PTO or other device, or to stop the engine, when the operator leaves the normal seated operating position of the ATV while the PTO or other device is operating and the transmission is in gear.

3.7.2.4 Stationary operation. A means may be provided to allow use of the PTO or other device while the ATV is stationary and the operator is not in the normal seated operating position. Such means shall automatically return to the operational mode of 3.7.2.3 when the transmission is placed in gear.

3.8 Gear shift control.

3.8.1 Location of gear shift control. All ATVs equipped with a gearshift control shall have the control located so as to be operable by the operator's left foot. Controls for selecting only the neutral position, for selecting reverse gears, or for selecting alternative overall transmission ranges may be located differently.

3.8.2 Operation of gear shift control. An upward motion of the operator's toe shall shift the transmission towards higher (lower numerical gear ratio) gears, and a downward motion towards lower gears. If three or more gears are provided it shall not be possible to shift from the highest gear directly to the lowest gear, or vice versa. Controls for selecting only the neutral position, for selecting reverse gears, or for selecting alternative overall transmission ranges may be operated differently.

3.9 Neutral indicator. All ATVs with a neutral position, except those equipped with a manual clutch, shall have either a neutral indicator readily visible to the operator when seated on the vehicle or a means to prevent starting of the vehicle unless the transmission is in the neutral position. The indicator, if provided, shall be activated whenever the ignition system is on and the transmission is in neutral.

3.10 Reverse indicator. All ATVs with a reverse position shall have a reverse indicator readily visible to the operator when seated on the vehicle. The indicator shall be activated whenever the engine is running and the transmission is in reverse.

3.11 Carry bar. All ATVs shall be equipped with a carry bar or equivalent device located at the rear of the seat to facilitate manual lifting or moving of the ATV. The carry bar shall be designed and located such that when the ATV is standing on its rear wheels and the carry bar, on level ground, the plane defined by the centers of the front and rear wheels shall not pass beyond an angle 90 degrees to the ground.

3.12 Flag pole bracket. All ATVs shall have a flag pole bracket at the rear of the vehicle that provides a rigid mounting location for a flag pole having a 0.5 in (13 mm) diameter mounting shaft.

3.13 Manual fuel-shutoff control. If an ATV is equipped with a manual fuel-shutoff control, the device shall be operable as follows:

(1) "On"—control downward.

(2) "Off"—control forward (if control rotates around a transverse axis) or horizontal—left or right (if control rotates around a longitudinal axis).

(3) "Reserve on"—control upward (if provided).

3.14 Handlebars. The handlebar and its mounting shall present no rigid materials with an edge radius of less than 0.125 in (3.2 mm) that may be contacted by a probe in the form of a 6.5 in (165 mm) diameter sphere. The probe shall be introduced to the handlebar mounting area. It shall not be possible to touch any part of any edge which has a radius of less than 0.125 in (3.2 mm) with any part of the probe. Handlebar cross bars, if provided, shall be padded.

3.15 Operator foot environment. All ATVs shall have a structure or other design feature wich meets the requirements below.

3.15.1 Test procedure. Compliance shall be determined by introduction of a probe, whose end is a rigid flat plane surface 3 in (75 mm) in diameter, in the prescribed direction to the zones as described in 3.15.2 and 3.15.3 and as shown in Figures 1 and 2 respectively.

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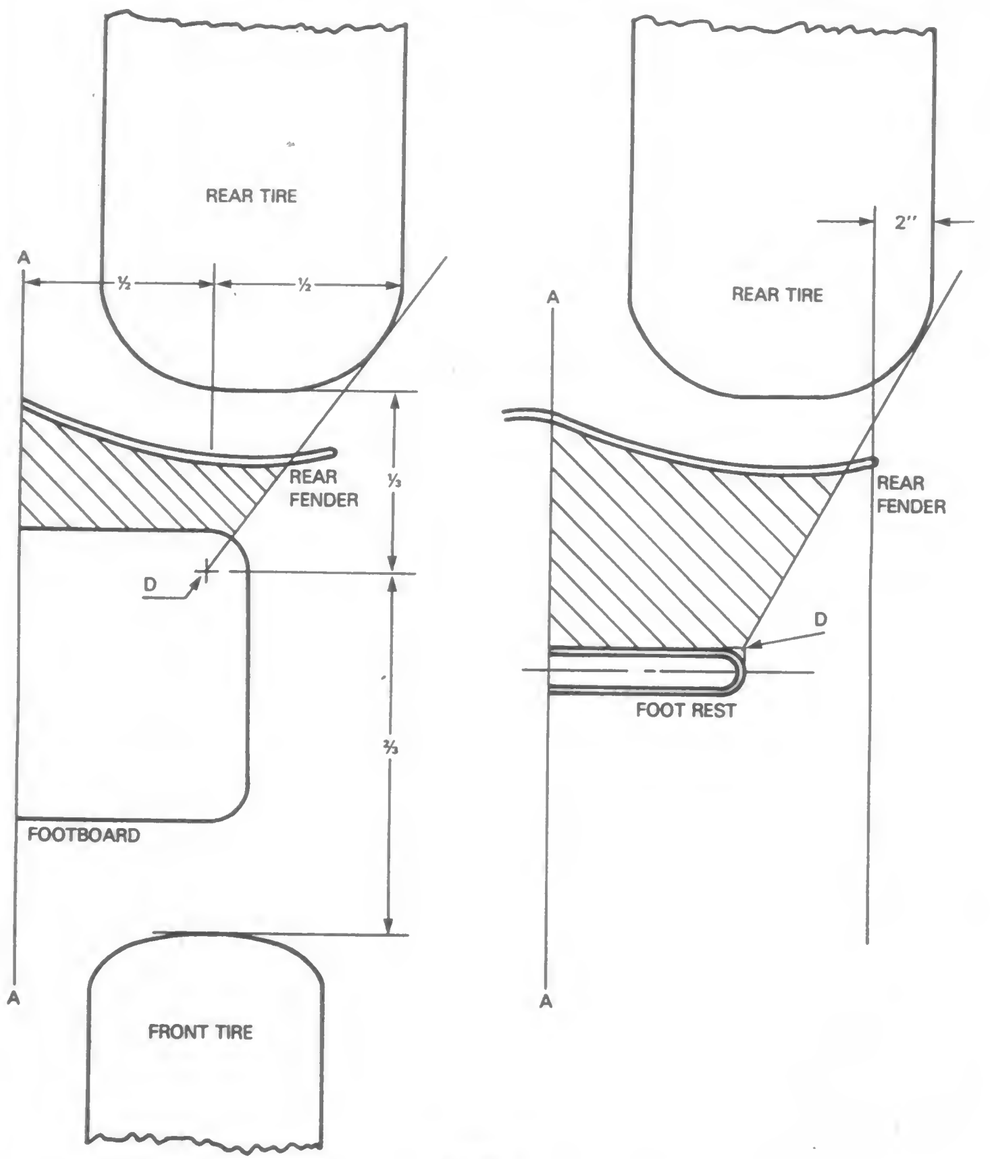


FIGURE 1
PLAN VIEW
(SECTION 3.15 OPERATOR FOOT ENVIRONMENT)

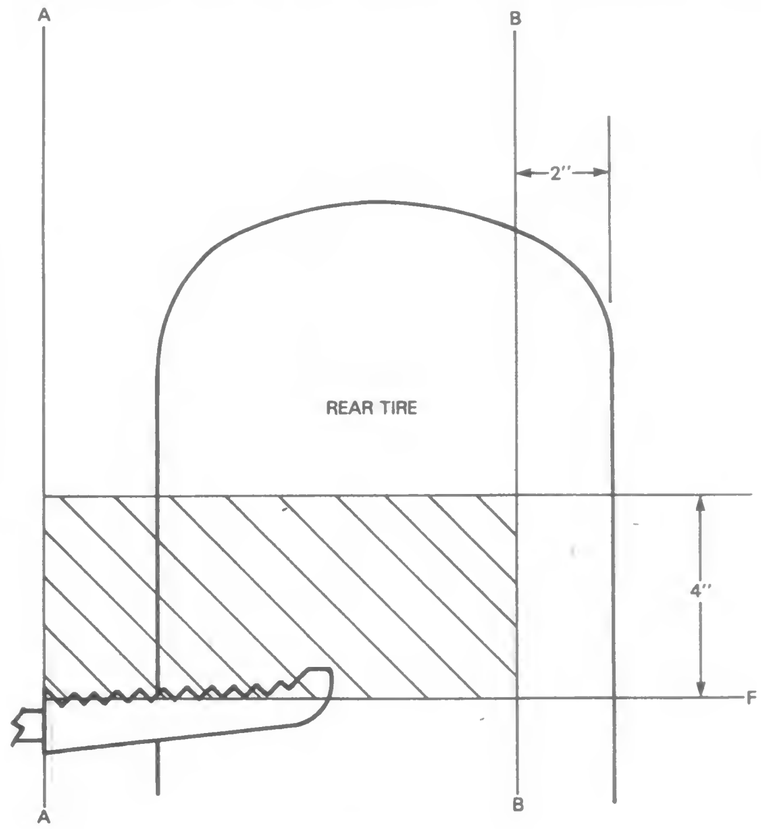


FIGURE 2
FRONT VIEW
(SECTION 3.15 OPERATOR FOOT ENVIRONMENT)

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3.15.1.1 Inserting probe vertically and downward. The probe shall be introduced end first in a vertical and downward direction to the zone described in 3.15.2 and shown by the shaded portion of Figure 1. The end of the probe in its entirety shall remain within the limits of the zone. It shall not penetrate the zone sufficiently to touch the ground when applied with a force of 100 lbf (445 N)

3.15.1.2 Inserting probe horizontally and rearward. The probe shall be introduced end first in a horizontal and rearward direction to the zone described in 3.15.3 and shown by the shaded portion of Figure 2. The end of the probe in its entirety shall remain within the limits of the zone. It shall not penetrate the zone sufficiently to touch the rear tire when applied with a force of 20 lbf (90 N).

3.15.2 Zone in Figure 1. The zone shown in Figure 1 is defined as bounded by:

(1) The vertical projection of the rear edge of the footrest.

(2) The vertical plane (line AA), parallel to the vehicle's longitudinal plane of symmetry, that passes through the inside edge of the footrest.

(3) The vertical projection of the intersection of a horizontal plane passing through the top surface of the footrest, and the rear fender or other structure.

(4) The vertical plane passing through point D and tangent to the outer front surface of the rear tire.

(a) For footages, Point D is defined as the intersection of the lateral projection of the rearmost point and the longitudinal projection of the outermost point of the footpeg.

(b) For footboards, Point D is defined as the intersection of 2 lines. The first is a line perpendicular to the vehicle longitudinal plane of symmetry and one-third of the distance from the front edge of the rear tire to the rear edge of the front tire. The second is a line parallel to the vehicle longitudinal plane of symmetry and one-half the distance between the inside edge of the footboard and the outside surface of the rear tire.

3.15.3 Zone in Figure 2. The shown in Figure 2 is defined as bounded by:

(1) The horizontal plane passing through the lowest surface of the footrest on which the operator's foot (boot) rests (plane F).

(2) The vertical plane (line AA), parallel to the vehicle longitudinal plane of symmetry, that passes through the inside edge of the footrest.

(3) The horizontal plane 4 in (100 mm) above plane F.

(4) The vertical plane (line BB), parallel to the vehicle longitudinal plane of symmetry and 2 in (50 mm) inboard of the outer surface of the rear tire.

3.15.4 Requirements for vehicles with non-fixed structure. In the case of vehicles equipped with a non-fixed type (i.e. foldable, removable or retractable) structure intended to meet the requirements of this section, such vehicles shall be equipped with one of the following:

3.15.4.1 Warning device. A warning device (i.e. buzzer or indicator) to indicate that the structure is not in the position needed to comply with these requirements, or

3.15.4.2 Device to prevent operation of vehicle. A device to prevent the vehicle from being operated under its own power if the structure is not in the position needed to comply with these requirements, or

3.15.4.3 Structure that prevents normal use of footrest when structure is folded, retracted, or removed. A structure that can be folded, retracted, or removed, such that when the structure is folded, retracted, or removed, the ATV can not be operated using the footrest in the normal manner.

3.16 Lighting Equipment.

3.16.1 Headlights and taillights. All ATVs except Category Y vehicles shall have at least one headlight projecting a white light to the front of the vehicle, and at least one taillight projecting a red light to the rear of the vehicle.

3.16.2 Requirements for category Y vehicles. Category Y vehicles shall not have a headlight or a taillight.

3.17 Spark arrester. All ATVs shall have a spark arrester of a type that is qualified according to the United States Department of Agriculture Standard 5100.1a.

3.18 Tire marking. All ATV tires shall carry the following markings:

3.18.1 Inflation pressure. Both tire sidewalls shall be marked with the operating pressure or the following statement, or an equivalent message: "SEE VEHICLE LABEL OR OWNER'S MANUAL FOR OPERATING PRESSURE." The messages required by this section shall be in capital letters not less than 0.156 in (4 mm) in height.

3.18.2 Bead seating pressure. Both tire sidewalls shall be marked with the following statement, or an equivalent message: "Do Not Inflate Beyond ** psi (**kPa) When Seating Bead).

3.18.3 *Other markings.* Both tire sidewalls shall have the following information, except where noted.

(1) The manufacturer's name or brand name.

(2) On one tire sidewall, the three digit week and year of manufacture in accordance with 49 CFR, Chapter V, § 574.5(d) fourth grouping.

(3) The size nomenclature of the tire (e.g. AT 22/10–9") as standardized by the Tire and Rim Association, Inc. or Japan Automobile Tire Manufacturers Association, Inc.

(4) The word "tubeless" for a tubeless tire.

(5) The phrase or abbreviations "Not For Highway Use," "Not For Highway Service," or "NHS."

3.18.4 *Letter sizes.* The information required by 3.18.2 and 3.18.3 shall be in letters or numerals no less than .078 in (2 mm) in height.

3.19 *Tire pressure gauge.* All ATVs shall be provided with a tire pressure gauge appropriate for the recommended operating tire pressure for the vehicle. All ATVs shall have a means of carrying the tire pressure gauge.

3.20 *Security.* All ATVs shall have a means to deter unauthorized persons from using the ATV. A key-operated or equivalent system (with a minimum of 300 exclusive combinations) shall be provided for all ATVs except Category Y vehicles, which may use a security system without multiple exclusive combinations.

3.21 *Owner's manual.* All ATVs shall be provided with a manual at the point of sale. All ATVs shall be equipped with a means of carrying the owner's manual that protects it from destructive elements while allowing reasonable access.

4. Youth Vehicle Requirements

4.1 *Speed limiting devices.* All Category Y ATVs shall be equipped with a means of limiting the maximum speed attainable by the ATV.

4.1.1 *Tools must be needed to adjust or remove device.* The means of limiting maximum speed may be adjustable or removable or both, but shall have means to prevent adjustment or removal without the use of tools.

4.1.2 *Maximum speeds.* Speed limiting devices for Category Y–6 ATVs shall be capable of limitimg maximum speed to 10 mph (16 km/h) or less when tested according to 4.3. Speed limiting devices for Category Y–12 ATVs shall be capable of limiting maximum speed to 15 mph (24 km/h) or less when tested according to 4.3.

4.1.3 *Delivery of vehicle from manufacturer.* All Category Y ATVs shall be delivered from the manufacturer or its designee with the speed limiting device adjusted to limit maximum vehicle speed as specified in 4.1.2.

4.2 *Maximum unrestricted speed capability.* When tested according to the procedure specified in 4.3, with any removable speed limiting devices removed and with any adjustable speed limiting devices adjusted to provide the vehicles maximum speed capability, the maximum speed capability of Category Y–6 ATVs shall be 15 mph (24 km/h) or less and the maximum speed capability of Category Y–12 ATVs shall be 30 mph (48 km/h) or less.

4.3 *Maximum speed capability measurement.*

4.3.1 *Test conditions.* Test conditions shall be as follows:

(1) ATV test weight shall be unloaded vehicle weight plus the vehicle load capacity (including test operator and instrumentation), with any added weight secured to the seat or carrier (if equipped).

(2) Tires shall be inflated to the pressures recommended by the vehicle manufacturer for the vehicle test weight.

(3) The test surface shall be clean, dry, smooth and level concrete, or equivalent.

4.3.2 *Test procedure.* Measure the maximum speed capability of the ATV using a radar gun or equivalent method. The test operator shall accelerate the ATV until maximum speed is reached, and shall maintain maximum speed for at least 100 ft (30.5 m). Speed measurement shall be made when the ATV has reached a stabilized maximum speed. Two test runs shall be made, in opposite directions, and the maximum speed capability of the ATV shall be considered to be the average of these two runs.

5. Service Brake Performance

5.1 *Test conditions.* Test conditions shall be as follows:

(1) The ATV shall be tested at the appropriate test weight described below:

(a) If the vehicle load capacity specified by the manufacturer is 200 lb (91 kg) or more, the ATV test weight shall be the unloaded vehicle weight plus 200 lb (91 kg) (including test operator and instrumentation), with any added weight secured to the seat or carrier (if equipped).

(b) If the vehicle load capacity specified by the manufacturer is less than 200 lb (91 kg), the ATV test weight shall be the unloaded vehicle weight plus the vehicle load capacity (including test operator and instrumentation), with any added weight secured to the seat or carrier (if equipped).

(2) Tires shall be inflated to the pressures recommended by the vehicle manufacturer for the vehicle test weight.

(3) Engine idle speed and ignition timing shall be set according to the manufacturer's recommendations.

(4) Ambient temperature shall be between 32 °F (0 °C) and 100 °F (38 °C).

(5) The test surface shall be clean, dry, smooth and level concrete, or equivalent.

(6) Any removable speed limiting devices shall be removed. Any adjustable speed limiting devices shall be adjusted to provide the vehicle's maximum speed capability.

5.2 Test procedure. The test procedure shall be as follows:

(1) Measure the maximum speed capability of the ATV using a radar gun or equivalent method. The test operator shall accelerate the ATV until maximum speed is reached, and shall maintain maximum speed for at least 100 ft (30.5 m). Speed measurement shall be made when the ATV has reached a stabilized maximum speed. Two test runs shall be made, in opposite directions, and the maximum speed capability of the ATV shall be considered to be the average of these two runs. Determine the braking test speed. The braking test speed is the speed that is the multiple of 5 mph (8 km/h) which is 4 mph (6 km/h) to 8 mph (13 km/h) less than the maximum speed capability of the ATV.

(2) Burnish the front and rear brakes by making 200 stops from the braking test speed or 30 mph (48 km/h), whichever is lower. Stops shall be made by applying front and rear service brakes simultaneously, and braking decelerations shall be from 0.2g to 0.5g.

(3) After burnishing, adjust the brakes according to the manufacturer's recommendation.

(4) Make six stops from the braking test speed or 30 mph (48 km/h), whichever is lower. Stops shall be made by applying front and rear service brakes simultaneously, and braking decelerations shall be from 0.2g to 0.5g.

(5) Make four stops from the braking test speed, applying the front and rear service brakes. Measure the speed immediately before the service brakes are applied. Measure the stopping distance.

(a) For all ATVs other than youth model ATVs, hand lever brake actuation force shall be not less than 5 lbf (22N) and not more than 55 lbf (245 N), and foot pedal brake actuation force shall be not less than 10 1bf (44 N) and not more than 90 1bf (400 N).

(b) For youth model ATVs, hand lever brake actuation force shall be not less than 5 lbf (22 N) and not more than 30 1bf (133 N) and foot pedal brake actuation force shall be not less than 10 and not more than 50 1bf (222 N).

(c) For all ATVs other than youth model ATVs, the initial application of lever force shall be 1.2 in (30 mm) from the end of the brake lever. For youth model ATVs, the point of initial application of lever force shall be 1 in (25 mm) from the end of the brake lever. The direction of lever force application shall be perpendicular to the handle grip in the plane in which the brake lever rotates. The point of application of pedal force shall be the center of the foot contact pad of the brake pedal, and the direction of force application shall be perpendicular to the foot contact pad and in the plane in which the brake pedal rotates.

5.3 Performance requirements.

5.3.1 *ATVs with lower maximum speed capability.* During the four stops of 5.2(5), all ATVs with a maximum speed capability of 18 mph (29 km/h) or less shall be capable of making at least one stop that complies with the relationship $S \leqq V$ where S equals the stopping distance (in feet) and V equals the braking test speed (in miles per hour).

5.3.2 *ATV with higher maximum speed capability.* During the four stops of 5.2(5), all ATVs with a maximum speed capability greater than 18 mph (29 km/h) shall be capable of making at least one stop that demonstrates an average deceleration of 0.6g or greater. Average deceleration can be determined according to the following formula: $D = (0.033) \times V^2 / S$; where D is deceleration (in g), V is vehicle speed immediately before the service brakes are applied (in miles per hour), and S is stopping distance (in feet).

6. Parking Brake performance

6.1 *Test conditions.* Test conditions shall be as follows:

(1) ATV test weight shall be the unloaded vehicle weight plus weight secured to the seat or carrier (if equipped), which is equal to the vehicle load capacity.

(2) Tires shall be inflated to the pressures recommended by the vehicle manufacturer for the vehicle test weight.

(3) The test surface shall be clean, dry, smooth concrete or equivalent, having a 30 percent grade.

6.2 Test procedure. The test procedure shall be as follows:

(1) Burnish the service brakes according to the procedure specified in 5.2(2)

(2) Adjust the parking brake or other device according to the procedure recommended by the vehicle manufacturer.

(3) Position the ATV facing downhill on the test surface, with the longitudinal axis of the ATV in the direction of the grade. Apply the parking brake or other device and place the transmission in

neutral or park (if equipped), and leave the ATV undisturbed for 5 minutes. Repeat the test with the ATV positioned facing uphill on the test surface.

6.3 Performance requirements. When tested according to the procedure specified in 6.2, the parking brake shall be capable of holding the ATV stationary on the test surface, to the limit of traction of the tires, for 5 minutes in both uphill and downhill directions.

7. Pitch Stability

7.1 Test conditions. Test conditions shall be as follows:

(1) The vehicle shall be in standard condition, without accessories. The vehicle and components shall be assembled and adjusted according to the manufacturer's instructions and specifications.

(2) Tires shall be inflated to the vehicle manufacturer's recommended settings for normal operation. If more than one pressure is specified, the lowest value shall be used.

(3) All fluids shall be full (oil, coolant, etc.) except that fuel shall be not less than ¾ full. Vehicles shall be unladen; no rider, cargo, or accessories.

(4) Steerable wheels shall be held in the straight ahead position.

(5) Adjustable suspension components shall be set to the values specified at the point of delivery to the dealer.

(6) Suspension components shall be fixed by means of a locking procedure such that they remain in the same position and displacement as when the unladen vehicle is on level ground, and in the conditions specified in 7.1(1) through 7.1(5).

7.2 Test procedure. The test procedure shall be as follows:

(1) Measure and record the wheelbase (L). The measurement of this length shall be done with an accuracy of ± 0.2 in (5mm) or ± 0.5%, whichever is greater.

(2) Measure and record the front and rear weights, (W_f and W_r, respectively). W_f is the sum of the front tire loads; and W_r is the sum of the rear tire loads, with the vehicle level and in the condition specified in 7.1. The measurements of these weights shall be done, with an accuracy of ± 1.1 lb (0.5 kg) or ± 0.5%, whichever is greater.

(3) Using the values obtained in 7.2(1) and 7.2(2), above, compute and record the quantity:

$$L_r = \frac{W_f}{W_r + W_f} L$$

(4) Measure and record the vertical height between the rear axle center and the ground (Rr). This measurement shall be done on level ground, with the vehicle in the conditions specified in 7.1, with an accuracy of ± 0.1 in (3 mm) or ± 1.5%, whichever is greater.

(5) Measure and record the balancing angle alpha. The procedure for obtaining this value is as follows: With the vehicle initially on a level surface, the front of the vehicle shall be rotated upward about the rear axle without setting the rear parking brake or using stops of any kind, until the vehicle is balanced on the rear tires. The balancing angle alpha through which the vehicle is rotated shall be measured and recorded with an accuracy of ± 0.5 degrees. If an assembly protruding from the rear of the vehicle, such as a carry bar or trailer hitch or hook interferes with the ground surface, so as to not allow a balance to be reached, the vehicle shall be placed on blocks of sufficient height to eliminate the interference.

(6) Repeat the measurement in 7.2(5) and determine if the two individual measurements are within 1.0 degree of each other. If they are not, repeat the measurements two more times and compute the average of the four individual measurements, and use that as the value.

7.3 Performance requirement.

7.3.1 Computation. Using the values obtained in 7.2(3), 7.2(4), and 7.2(6), compute the pitch stability coefficient:

$$K_p = \frac{L_r \tan \text{alpha}}{L_r + R_r \tan \text{alpha}}$$

7.3.2 Requirement. The pitch stability coefficient calculated according to 7.3.1 above, shall be at least 1.0.

Appendices (These Appendices are not part of the voluntary standard but are included for information only.)

Appendix A—Rationale

This appendix gives the rationale behind various requirements of this voluntary standard. The section numbers in this appendix correspond to those used in the body of the standard.

2. Definitions

All terrain vehicle (ATV). The definition of all terrain vehicle was arrived at after considering the important aspects of the configurations of vehicles that currently exist in the marketplace. The size and weight limits are those determined to be suitable for the kinds of uses intented for these vehicles. ATVs are subdivided into four categories, depending on the type of use intended by the manufacturer or its designee, in order to specify what requirements are important to the user or type of use.

3. Vehicle Equipment and Configuration

3.1 Service Brakes. It is important that the location and method of operation of the brake control be standardized. The specified control locations are consistent with current motorcycle and ATV practice.

3.2 Parking brake. The parking brake is intended to prevent rolling movement of an ATV when it is parked and left unattended.

3.3 Mechanical suspension. Mechanical suspension is provided to increase operator comfort and should also assist in reducing operator fatigue.

3.4 Engine stop switch. An engine stop switch shall be provided in a common location, be easily identified, and be of a type which does not require the operator to hold the switch in the off position. The following reasons were considered in making the location determination:

(1) Most current and prior model year ATVs are equipped with switches on the left side.

(2) This location is consistent with the prevailing practice for off-road motorcycles.

(3) The front brake control is on the right handlebar.

(4) The right hand typically operates both throttle and brake controls, while the left hand may have a clutch control or rear brake control, but not both, and sometimes neither.

(5) The left thumb is not used to operate any major control.

In sum, it was determined that prevailing practice in ATV and off-road motorcycle construction dictates that the engine stop switch be located on the left handlebar.

3.5 Manual clutch control. Location of a manual clutch control lever on the left side handlebar is dictated by the fact that this control is used in conjuction with the throttle and must be on the handlebar opposite from the throttle control. The location of this control is consistent with current motorcycle and ATV practices.

3.6 Additional clutch control. ATVs may be equipped with a power take off or other device which uses drive or propulsion provided by the ATV engine. A standardized method of operation is provided is such device is controlled through a clutch.

3.7 Throttle control. A common location and certain aspects of operation of the throttle control are important. The selection of the right side location and the requirement that the throttle be self-closing to idle are consistent with common practice on motorcycles and snowmobiles, as well as on ATVs.

3.8 Gear shift control. A common location and method of operation of the gearshift control will standardize this control. The left foot location and the upward motion to select higher gears was chosen to provide consistency with motorcycle practice.

3.9 Neutral indicator. A neutral indicator may help prevent inadvertent starting in gear of an ATV equipped with a centrifugal clutch. The indicator is not needed on an ATV equipped with a manual clutch control. It is difficult to start the engine of such an ATV except when the transmission is in neutral, unless the manual clutch is disengaged.

3.10 Reverse indicator. A reverse indicator informs and reminds the operator that reverse has been engaged.

3.11 Carry bar. The ATV operator can encounter situations requiring manual lifting or maneuvering of the ACV. The carry bar at the rear of the seat facilitates such action, when necessary. Some ATVs may be stored or transported by standing them on end and securing them in this position so that they take up less space. The carry bar can provide support for this purpose, and the requirement that the wheel centers not pass beyond a 90 degree angle is intended ot facilitate this purpose.

3.12 Flag pole bracket. Flag poles are required by law in certain areas. The device used for this purpose usually is a long, thin pole with a brightly colored flag at the top. The requirement for a flag pole bracket is intended to ensure that a secure location is provided for the installation of the pole.

3.13 Manual fuel shutoff. Specified operation of this control is consistent with current motorcycle practice. These requirements do not apply to non-manual fuel shut off methods; i.e., electric, vacuum, or other means not requiring direct operator action.

3.14 Handlebars. The intention is to help minimize the risk of injury due to contact with the handlebar mounting area. The purpose of the specific test procedures provided is to determine which parts can be contacted by the operator's head. The minimum edge radius specified will preclude the use of sharp edges that might contribute to injury. Handlebar crossbars should be padded to reduce the potential for facial injury in the event of an accident.

3.15 Operator foot environment. The operator foot environment configuration is intended to reduce the possibility of inadvertent contact between the operator's boot and the ground immediately in front of the rear tire, or the rear tire itself. Differing zones are defined for vehicles equipped with footpegs (designed to support the operator's foot with a relatively narrow bar), and footboards (designed to support the operator's foot with a platform-type structure).

3.16 Lighting. ATVs of Category G, S, and U can be expected to be used at night or under low visibility conditions. In the case of recreational ATVs this might be because the operator elects to ride under those conditions, or because, after participating in some activity, it may not be possible to return to base during daylight. In the case of a Category U ATV, the utility purposes for its operation may not coincide with daylight hours or the unit may be used in an area where artificial lighting is needed. For these ATVs, there are occasions when lighting equipment is required or desirable for the purpose of illumination or identification or both. The use by young operators of Category Y ATVs under nighttime and low visibility conditions is to be discouraged by proscribing the installation of lighting equipment. Moreover, proper supervision of youthful operators is necessary and would be difficult under those conditions.

3.17 Spark arrester. Performance requirements for spark arresters, and requirements that certain vehicles be equipped with a qualified spark arrester when used in certain areas, are enforced by state and federal authorities.

3.18 Tire marking. ATV tires operate at pressures substantially below those common for other powered vehicles. Information concerning these low pressures is provided on/with the vehicles. The intent of this section is to emphasize the low-pressure nature of these tires, direct the operator to appropriate sources of specific operating pressure recommendations, and to provide other valuable information.

3.19 Tire pressure gauge. Maintenance of the correct tire pressure is important to the handling characteristics of the ATV. A special gauge is needed because ATV tires use a much lower tire pressure than other vehicles.

3.20 Security. The intention is to permit the person in control of an ATV to retain control and regulate the use of the vehicle. A security system with 300 exclusive combinations is typically used for on-road motorcycles.

3.21 Owner's manual. An owner's manual is required because it is necessary that certain information be available to the owner/operator and it is not possible to provide all this material on labels affixed to the vehicle.

4. Youth Vehicle Requirements.

This section requires that all Category Y ATVs be equipped with an adjustable or removable speed limiter. The intent is to provide a means by which the supervising adult can limit the ATV's maximum speed capability according to the skill and experience of the young rider. By further requiring that Category Y ATVs be delivered with the speed limiter adjusted to provide the specified slow maximum speeds, it is expected that higher speeds will not be used unless the supervising adult has determined that the young rider has the skill and experience to operate the ATV at higher speeds.

This section also includes a requirement that the maximum unrestricted speed capability of Category Y ATVs be limited. It was decided to include this requirement even though no evidence could be found to indicate that the requirement is needed.

5. Service Brake Performance

This section establishes minimum braking performance requirements which are intended to help ensure that ATVs are equipped with brake systems that are adequate for stopping the vehicle. The requirements in this section are patterned after the requirements in Federal Motor Vehicle Safety Standard No. 122 (FMVSS 122), Motorcycle Brake Systems.

The pertinent elements of FMVSS 122 were selected for inclusion in this standard, based on the knowledge and experience of the manufacturers. Certain requirements which appear in FMVSS 122 were not included, because they were determined to be inappropriate, or because it was thought that they would add complexity without providing any benefit. After deciding which elements of FMVSS 122 to include, some of the specific provisions were changed to accommodate (1) physical differences between ATVs and motorcycles, and (2) differences between the off-road operating environment of ATVs and the on-road operating environment of motorcycles.

6. Parking Brake Performance

The parking brake performance requirements are intended to help ensure that ATV parking brakes are adequate to prevent rolling movement of an ATV when it is parked and left unattended. The requirements were patterned after similar requirements which appear in existing standards for vehicles such as motorcycles, multi-purpose passenger vehicles, riding lawn mowers, and golf carts.

Appendix 2—Consent Decree Provisions Mandatory Warnings and Training

Background

On April 28, 1988, a final Consent Decree was approved by the four major Japanese All-Terrain Vehicle (ATV) manufacturers, one U.S. ATV manufacturer, and the U.S. Consumer Product Safety Commission (CPSC). The Consent Decree resolves a lawsuit brought by the Department of Justice on behalf of the CPSC against the principal manufacturers of All Terrain Vehicles. While the decree is binding only on the five manufacturers who are parties to the suit, the CPSC encourages all ATV manufacturers to comply with the decree's requirements.

This Appendix explains three requirements of the decree: these requirements concern labeling, owner's manuals, and training. (There are variations between the explanations given below and the language of the Consent Decree. If any inadvertent inconsistencies exist, the language of the Consent Decree should be followed.)

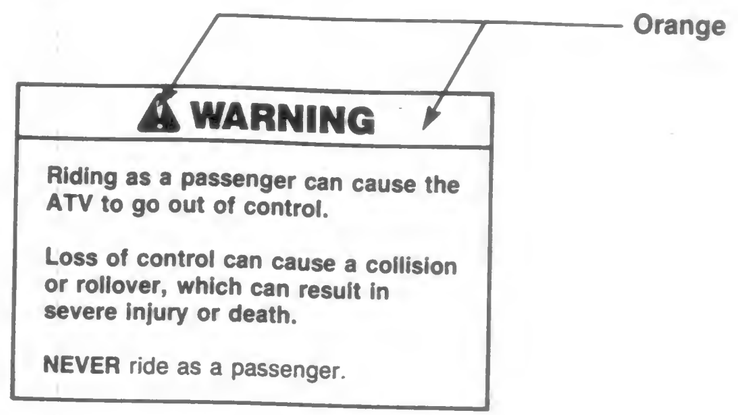
I. Labeling

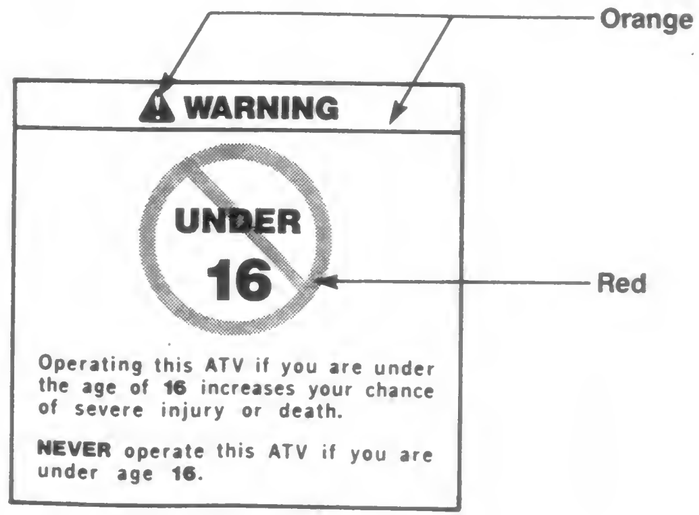
The labeling provision requires four labels on every ATV manufactured after 1988. Each label must conform to the following requirements for text, color scheme, format, durability, and placement.

A. *Text:* The warning labels are shown in Figure 1. The labels concern the following topics: (1) General warning label, (2) age recommendation warning label, (3) passenger warning label, and (4) tire pressure recommendations. With the exception of the tire pressure label, the text of each label must be identical to that of the examples shown in Figure 1.

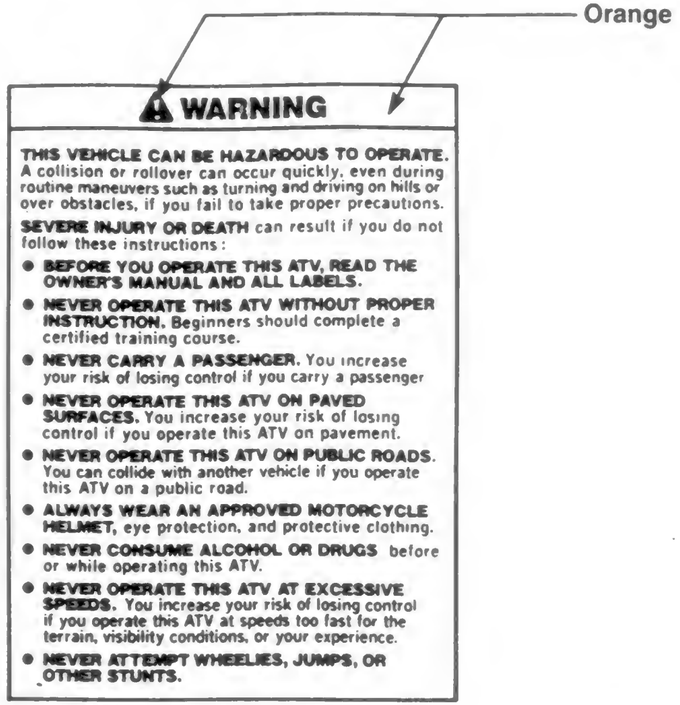
BILLING CODE 6355-01-M

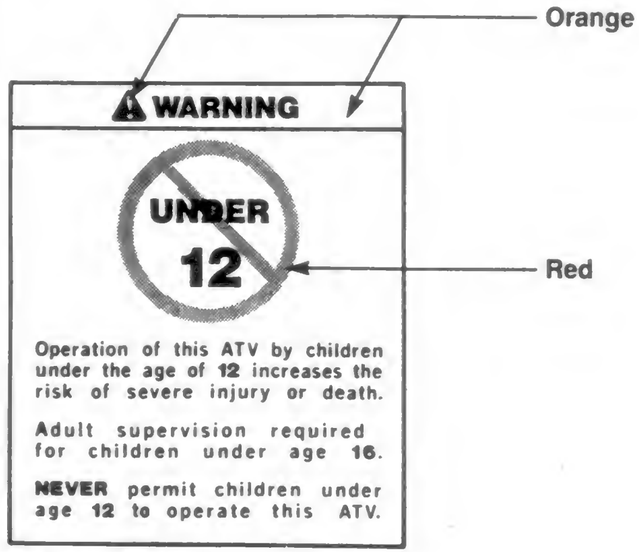
Figure 1





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The text requirement for the tire pressure label allow some discretion for additional information to be placed on the label and give manufacturers the option of using one or two labels, depending on the amount of information they need to transmit to the user. If a manufacturer elects to use only one label, the label must contain at least the following statements:

"Improper tire pressure or overloading can cause loss of control."

"Loss of control can result in severe injury or death."

If a manufacturer elects to use two labels, the labels shall contain at least the following statements:

Label #1: "Improper tire pressure can cause loss of control."

"Loss of control can result in severe injury or death."

Label #2: "Overloading can cause loss of control."

"Loss of control can result in severe injury or death."

Every label warning about improper tire pressure shall contain a statement indicating the recommended tire pressure(s). The recommended tire pressure information may be stated on the label itself or provided by a reference on the label to either the owner's manual, the tires, or both the owner's manual and the tires. Every label that warns against overloading shall state on the label itself the maximum weight capacity for the ATV model. Any other information appearing on either the tire pressure label or the overloading label must be safety-oriented and shall not detract from or contradict the required statements.

B. *Letter typeface and size:* The typeface to be used for each of the required labels and all other warning labels shall be Helvetica Bold or New Gothic Bold, sans serif. The size of the type face to the uppercase lettering in the text of the warnings shall be at least 0.10 inches in height, and the size of the type face of the signal word "Warning" and safety alert symbol shall be at least 0.15 inches in height.

C. *Format:* The Society of Automotive Engineers (SAE) safety alert symbol shall precede the signal word "Warning" on a single line, which shall be separated from the warning text by a horizontal line. The hazard statement shall appear first in the text of the warning, followed by the consequence statement, and concluded by the avoidance statement. Each of the statements shall be separated by a line of space. The label shall be completely framed with a margin of white space outside a black line forming a rectangle.

D. *Color scheme:* The rectangular background of the signal word, "Warning" shall be orange. The signal word "Warning" shall be in black lettering. The SAE safety alert symbol shall be a black triangle (apex up) enclosing an orange exclamation mark. The remainder of the label shall be in black lettering on a white background. The entire label shall be surrounded by a narrow, white border. The circle and the diagonal slash on the age label shall be red. The color scheme of the rest of the age label shall be as specified for the other labels.

E. *Durability:* All labels shall meet DOT/EPF standards for durability. These standards may be found at 49 CFR 567.4(b) and 40 CFR 86.087–35(c)(1).

F. *Placement:* Each label shall be affixed to the ATV in the following locations:

General Warning Label: This label shall be on the left front fender in a location where it can be easily read by an operator seated on the vehicle in the proper operating position. If this location is not appropriate for a particular vehicle, the label shall be on the right front fender in a location where it can be easily read by an operator seated on the vehicle in the proper operating position.

Age-recommendation warning label: This label shall be on the fuel tank in a location where it can be easily read by the operator seated on the vehicle in the proper operating position. If this location is not appropriate, the label shall be placed on the top portion of the headlight or on the vehicle body immediately forward of the seat so as to be easily read by the operator when seated on the vehicle in the proper operating position.

Passenger warning label: This label shall be on either (1) the body of the vehicle to the rear of the seat, on a flat surface and toward the center of the vehicle, or (2) the seat of the vehicle at the rear of the seat. If neither of these locations is appropriate for a particular vehicle, the label shall be on the left rear fender on the left side of the body in a location where it can be easily read by a potential passenger.

Tire pressure and overloading warning: The label (or labels) warning about improper tire pressures and overloading shall be on the left rear fender above the axle, facing outward in such a position that it (they) can be read by the operator when mounting the vehicle.

II. Owner's Manuals

There are a number of requirements in the final consent decree which concern owner's manuals. The following specific requirements are to be considered a minimum, and each manufacturer is encouraged to provide the reader with the fullest amount of safety information that is feasible and practical.

Each owner's manual is required to have at least the following:

A. A statement on the outside front cover that advises the reader that the manual contains important safety information which should be read carefully.

B. A statement on the outside front cover stating the age recommendation for that particular ATV model.

C. Definitions for "Warning" and Caution" that are consistent with, and not weaker than, the definitions for those terms contained in the current standards proposed by the American National Standards Institute (ANSI), along with an introductory statement alerting the reader to the significance of the SAE safety alert symbol and the signal words. If a manufacturer uses a definition which is stronger than that contained in the current standards proposed by ANSI, the statements at D. and E. below shall be consistent with the stronger definition.

D. The following reminder shall immediately precede the table of contents and be repeated at the beginning and end of the section describing proper operating procedures, on the last page before the outside back cover (or the inside back cover), and at least in 5 more places, appropriately spaced, within sections containing warnings:

! WARNING

Indicates a potential hazard that could result in serious injury or death.

The reminder shall be prominently displayed, segregated from other text on the page, in typeface at least 0.10 inches high, and with the signal word in typeface at least 0.15 inches high.

E. An introductory safety message emphasizing the importance of and availability of the training course described in Section III and the importance of the age recommendation for the particular model. This introductory message shall contain at least the following statement:

"Failure to follow the warnings in this manual can result in SERIOUS INJURY or DEATH."

F. For ATVs with engine sizes 90 cc and less, an introductory notice to parents emphasizing that an ATV is not a "toy," the importance of children completing the training course described in Section III, and the importance of children understanding and following the instructions and warnings in the manual. This introductory notice shall also contain the following statement:

improper operation of the vehicle. In the section of each manual devoted to describing proper operating procedures, the manufacturer shall include material addressing, in narrative text form and in appropriate detail, all of the topics in the following list. This material is in addition to the introductory safety section described in Section II(G) above. Those topics marked with an asterisk shall be accompanied by an illustration that clearly reflects the intent of the text.

- Operation without proper instruction
- Age recommendation
- * Carrying passengers
- * Operating ATV on paved surfaces
- * Operating ATV on public streets, roads, or highways
- * Operating ATV without wearing an approved motorcycle helmet, eye protection, and protective clothing
- Operating ATV after consuming alcohol or drugs
- Operating ATV at excessive speeds
- Attempting wheelies, jumps, and other stunts
- Failure to inspect ATV before operating
- Failure to properly maintain ATV
- Removing hands from handlebars or feet from footpegs during operation
- * Failure to use extra care when operating ATV on unfamiliar terrain
- * Failure to use extra care when operating ATV on excessively rough, slippery, or loose terrain
- Turning improperly
- Operating on excessively steep hills
- * Climbing hills improperly
- * Going down hills improperly
- * Improperly crossing hills or turning on hills
- * Stalling, rolling backwards, or improperly dismounting while climbing hills
- Improperly operating ATV over obstacles
- Skidding or sliding improperly
- Operating ATV through deep or fast-flowing water
- Improperly operating ATV in reverse
- Operating ATV with improper tires or with improper or uneven tire pressure
- Operating ATV with improper modifications
- Overloading ATV or carrying or towing cargo improperly

Such narrative text shall identify particular potential hazards associated with the types of operation or behavior in question and the possible consequences of such operation or behavior and shall describe how the vehicle should be operated to avoid or reduce the risk associated with such hazards.

The language of the narrative sections accompanying each warning shall not contradict any information contained in the warning section and shall be written to draw attention to the warning.

L. Description of proper maintenance, storage, and transportation procedures.

M. On the outside back cover, the contents of the general warning label shown in Figure 1.

III. Training

Each manufacturer of ATVs who signed the consent decree has agreed to provide each ATV purchaser and members of their immediate families with a free training course. Outlines 1 and 2 below, reflect the content of the training courses developed by the Specialty Vehicle Institute of America and Polaris Industries, Inc. The outlines are provided as a guide for the contents of a comprehensive ATV training course. Other ATV manufacturers may use these outlines to develop their own training courses.

Outline 1

The ATV Rider's Course Outline is based upon the curriculum contained in the existing Specialty Vehicle Institute of America (SVIA) Instructor's Guide (8/86 revision). It reflects the modifications agreed upon by the Japanese parties signing the Consent Decree with respect to a reordering of exercises, the addition of an evasive, swerve maneuver, and the expanded lecture. Those and other modifications are noted in the outline.

The exercises marked by an asterisk refer to cognitive lessons to be held away from the vehicles. Equipment and supplies that should be available to students during these sessions include folding stools, clipboards, and pencils. Unmarked exercises are to be conducted on the vehicles. The instructor will evaluate the performance of each student during the last session.

A. Section 1—*Introduction**

This section shall include at least a discussion of the following material:

—Purpose of Training and Safety Alert

—Rider Safety Awareness

—Introduce SIPDE

—Riding Responsibilities

—Riding Gear

This section shall also include at least a discussion of the following material:

—CPSC accident and injury data (updated every 12 months to reflect statistics for the preceding five years, as provided by the CPSC).

—Risk awareness and how to reduce the risks.

—Safety awareness on where to ride and the proper size vehicle to ride.

—Riding practices, such as: do not carry passengers, do not ride alone, etc..

—The use of alcohol/drugs and the loss of motor skills.

—The need for protective headgear and clothing to reduce injury severity.

—Local laws and regulations.

—Why the training is offered and what it means to the student.

B. Section 2—*Introduction Part II*

—Familiarization with controls

—Pre-ride inspection list (T–CLOC), Tires and Wheels, Controls and Cables, Lights and Electrical Switches, Oil and Fuel, Chain and Chassis

—Physical Warm-up

—Range Signals—(Hand signals for field use)*

—Pre-start Routine—(BONE–C), Brake set, Fuel and Ignition on, Transmission in neutral, Engine stop switch on, Choke

—Initial lesson shifting into forward gear and braking

—Stopping—in a straight line and in a curve.

C. Section 3—*Hands-on Practice*

—an oval course

—a circular course

—a figure 8 course

D. Section 4, *Terrain—Riding Strategies*

—Importance of scanning terrain*

—Identifying hazards*

—Evaluating and predicting the outcome of a potential maneuver*

—How to decide on the best course of action*

—Carrying out the Decision*

—Use of the acronym *SIPDE* (Scanning, Identifying, Predicting, Deciding, Executing)*

—Terrain Strategies*

—Terrain Specific Discussion*

E. Section 5—*Turns*

—Sharp Turns

—Quick Turns—Weave

F. Section 6—*Braking and Obstacles*

—Warm-up/Stretching*

—Quick Stops—Straight/Evasive Maneuvers

—Emergency Stops—Swerving Maneuvers

—Quick Stops—Turns

—Obstacles

G. Section 7—*Riding Behavior*

—Safety Behavior

—Environmental Concerns/SIPDE*

—Local Laws/Regulations*

—Locating Places To Ride*

H. Section 8

—Climbing, Turning, and Descending Hills, Stopping on Hills.

—Climbing, Stopping, Descending in the middle of a hill, (Moving K-Turn)

—Traversing a Hill

I. Section 9—*Trail Ride*

—Trail Ride/Practical Application

—SIPDE Reinforcement

"Children differ in skills, physical abilities, and judgment. Some children may not be able to operate an ATV safely. Parents should supervise their child's use of the ATV at all times. Parents should permit continued use *only* if they determine that the child has the ability to operate the ATV safely."

G. An introductory safety section which contains the safety messages set forth below:

AN ATV IS NOT A TOY AND CAN BE HAZARDOUS TO OPERATE. An ATV handles differently from other vehicles, including motorcycles and cars. A collision or rollover can occur quickly, even during routine maneuvers such as turning and driving on hills or over obstacles, if you fail to take proper precautions.

SEVERE INJURY OR DEATH can result if you do not follow these instructions:

- Read this manual and all labels carefully and follow the operating procedures described.
- Never operate an ATV without proper instruction. *Take a training course.* Beginners should receive training from a certified instructor. Contact an authorized ATV dealer or call 1–800–447–4700 to find out about the training courses nearest you.
- Always follow these age recommendations:

—A child under 12 years old should never operate an ATV with engine size 70 cc or greater.

—A child under 16 years old should never operate an ATV with engine size greater than 90 cc.

- Never allow a child under age 16 to operate an ATV without adult supervision, and never allow continued use of an ATV by a child if he or she does not have the abilities to operate it safely.
- Never carry a passenger on an ATV.
- Never operate an ATV on any paved surfaces, including sidewalks, driveways, parking lots, and streets.
- Never operate an ATV on any public street, road, or highway, even a dirt or gravel one.
- Never operate an ATV without wearing an approved motorcycle helmet that fits properly. You should also wear eye protection (goggles or face shield), gloves, boots, a long-sleeved shirt or jacket, and long pants.
- Never consume alcohol or drugs before or while operating an ATV.
- Never operate at excessive speeds. Always go at a speed that is proper for the terrain, visibility, and operating conditions and your experience.
- Never attempt wheelies, jumps, or other stunts.
- Always inspect your ATV each time you use it to make sure it is in safe operating condition. Always follow the inspection and maintenance procedures and schedules described in this manual.
- Always keep both hands on the handlebars and both feet on the footpegs of the ATV during operation.
- Always go slowly and be extra careful when operating on unfamiliar terrain. Always be alert to changing terrain conditions when operating an ATV.
- Never operate on excessively rough, slippery, or loose terrain until you have learned and practiced the skills necessary to control the ATV on such terrain. Always be especially cautious on these kinds of terrain.
- Always follow proper procedures for turning as described in this manual. Practice turning at low speeds before attempting to turn at faster speeds. Do not turn at excessive speed.
- Never operate the ATV on hills too steep for the ATV or for your abilities. Practice on smaller hills before attempting larger hills.
- Always follow proper procedures for climbing hills, as described in this manual. Check the terrain carefully before you start up any hill. Never climb hills with excessively slippery or loose surfaces. Shift your weight forward. Never open the throttle suddenly or make sudden gear changes. Never go over the top of any hill at high speed.
- Always follow proper procedures for going down hills and for braking on hills, as described in this manual. Check the terrain carefully before you start down any hill. Shift your weight backward. Never go down a hill at high speed. Avoid going down a hill at an angle that would cause the vehicle to lean sharply to one side. Go straight down the hill where possible.
- Always follow proper procedures for crossing the side of a hill as described in this manual. Avoid hills with excessively slippery or loose surfaces. Shift your weight to the uphill side of the ATV. Never attempt to turn the ATV around on any hill until you have mastered the turning technique described in this manual on level ground. Avoid crossing the side of a steep hill if possible.
- Always use proper procedures if you stall or roll backwards when climbing a hill. To avoid stalling, use the proper gear and maintain a steady speed when climbing a hill. If you stall or roll backwards, follow the special procedure for braking described in this manual. Dismount on the uphill side or to the left side if pointed straight uphill. Turn the ATV around and remount, following the procedure described in this manual.
- Always check for obstacles before operating in a new area. Never attempt to operate over large obstacles, such as large rocks or fallen trees. Always follow proper procedures when operating over obstacles, as described in the manual.
- Always be careful when skidding or sliding. Learn to safely control skidding or sliding by practicing at low speeds and on level, smooth terrain. On extremely slippery surfaces, such as ice, go slowly and be very cautious in order to reduce the chance of skidding or sliding out of control.
- Never operate an ATV in fast-flowing water or in water deeper than that specified in the manual. Remember that wet brakes may have reduced stopping ability. Test your brakes after leaving water. If necessary, apply them several times to let friction dry out the linings.
- Always be sure there are no obstacles or people behind you when you operate in reverse. When it is safe to proceed in reverse, go slowly.
- Always use the size and type tires specified in this manual. Always maintain the proper tire pressure described in this manual.
- Never modify an ATV through improper installation or use of accessories.
- Never exceed the stated load capacity for an ATV. Cargo should be properly distributed and securely attached. Reduce speed and follow the instructions in this manual for carrying cargo or pulling a trailer. Allow greater distance for braking.

FOR MORE INFORMATION ABOUT ATV SAFETY, call the Consumer Product Safety Commission at 1–800–638–2772, or the ATV Distributors' Safety Hotline at 1–800–447–4700.

H. An appropriate table of contents identifying the major portions of the manual.

I. Descriptions of the location of warning labels on the ATV and an introductory statement emphasizing the importance of understanding and following the labels and the importance of keeping the labels on the ATV. The introductory statement shall also contain instructions on how to obtain a replacement label in the event any label becomes difficult to read or comes off.

J. A description of pre-operating inspection procedures and a statement emphasizing the importance of these procedures.

K. A description of the proper operating procedures and of the potential hazards associated with

—Environmental Concerns
J. Section 10—*Review*
—Wrap-up Review, Course Completion Certificates, and Distribution of SVIA Student Handbook*

Outline 2

A. Section 1—*Vehicle Introduction*
This section shall include at least a discussion of the following material:
• CPSC accident and injury data (updated every twelve months to reflect statistics for the preceding five years, as provided by the CPSC)
• Risk awareness and how to reduce the risks
• Safety awareness on where to ride and the proper size of vehicle to ride
• Unsafe riding practices, *e.g.*, carrying passengers, riding on paved surfaces, riding alone, avoiding low-visibility conditions, etc.
• Danger associated with removing feet from foot rests
• The use of alcohol or drugs and the loss of motor skills
• The need for protective clothing to reduce injury severity
• Local laws and regulations
• Why this course is offered and what it means to the student.

B. Section 2—*Safety*
The following topics should be covered:
• ATV controls
• Riding strategies on various terrains, including hills
• a basic methodology to reach the student how to recognize hazards, assess the risks involved, and decide what action to take
• Proper riding techniques, including weight shifting, surmounting obstacles, etc.
• Environmental concerns
• Protective clothing
• The importance of heeding the operation instructions and the consequences of failing to do so could be severe injury or death
• The concept that a person operating an ATV should know his or her limitations and not attempt to perform any maneuver or traverse any terrain if performing the maneuver or operating on the terrain is beyond that person's capabilities and experience
• The concept that no person should encourage, urge, or otherwise pressure another person to attempt to perform any maneuver or attempt to traverse any terrain if performing the maneuver or operaton on the terrain might be beyond the other person's capabilities and experience
• The importance of practicing and gradually progressing from basic to more complex maneuvers
• The importance of keeping alert at all times and the concept that even a momentary distraction can cause loss of conrol resulting in a fatal or severe accident
• The hazard of operating an ATV on unfamiliar terrain; terrain with obstacles, rough, slippery or loose terrain, steep hills, and deep or fast-flowing water
• The importance of maintaining a safe distance from other off-road vehicles.

C. Section 3—*Vehicle Familiarization and Owner's Manual Review*
The following topics should be covered:
• Safety warning and operation lables
• Vehicle nomenclature
• Control and parts functions
• Design characteristics, such as the vehicle's solid rear axle, large low-pressure tires; rider-interactive nature; etc. This will include a discussion about how these characteristics affect the vehicle's handling, such as the requirement for weight shifting on hills, for turning, etc.
• Periodic and annual maintenance
• Importance of a pre-ride inspection of the vehicle's tire pressure, tire and wheel condition, levers and cables (for breakage and fraying), chain and chassis (for breakage or free play), etc.
• Transporting the vehicle

D. Section 4—*Operation of the Vehicle*
The following topics should be covered:
1. Owner's ATV pre-ride checkoff
2. Re-emphasizing safe operation, protective clothing, control, function, and as appropriate, a demonstation of each riding maneuver described in paragraph 3 below
3. Riding maneuvers and operation
a. Starting and stopping the ATV
b. Principles of turning, making gradual and tight turns, and performing figure 8's
c. Sharp turns and quick direction changes
d. Slalom maneuvers (emphasize weight shifting)
e. Quick stops—straight-evasive maneuvers including emergency stopping or swerving, quick stops and quick turns
f. Surmounting obstacles (both by a single wheel and by two wheels simultaneously)
g. Climb, turn, descent on a hill including "U" turns and so-called "K" turns (to be used on ascending hills when stalling or loss of traction occurs)
h. Traversing slopes
i. Trail or circuit ride which permits the student to demonstrate under the guidance of the instructor the required skills and which allows the instructor to complete a scoring chart.

In those instances where it is not possible to conduct the hill maneuvers because of a lack of access to a hill, the instructor shall explain and perform the operation of these maneuvers on the available terrain and provide the operator with written instructional materials on the maneuvers.

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DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation with Pacific Rim Nations will meet in closed session on February 24, March 6, April 3, May 1, and June 5, 1989 at the Hughes Corporation, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
January 10, 1989.
[FR Doc. 89-887 Filed 1-12-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

Air Force Academy Board of Visitors Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, March 3-5, 1989. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on March 4, 1989, from 9:15 a.m. to 10:45 a.m. and on March 5, 1989, from 8:30 a.m. to 9:30 a.m. Other portions of this meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in various facilities throughout the cadet area.

In addition to the open meeting sessions, the public is welcome to attend a press conference scheduled for 11:00 a.m. to 11:20 a.m. on March 5, 1989, in the Air Force Academy Officers Club.

For further information, contact Lieutenant Colonel Jim Geyer, Headquarters, US Air Force (DPPA), Washington, DC 20330-5060, at (202) 697-2919.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 89-893 Filed 1-12-89; 8:45 am]
BILLING CODE 3910-01-M

Defense Logistics Agency

Cooperative Agreements Revised Procedures

AGENCY: Defense Logistics Agency, DoD.
ACTION: Cooperation agreements; proposed revised procedures.

SUMMARY: This proposed revised procedure implements Chapter 142, Title 10, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by the DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until February 13, 1989. Proposed effective date: February 20, 1989.

FOR FURTHER INFORMATION CONTACT: Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (DLA-UM), Defense Logistics Agency, Alexandria, VA 22304-6100, Telephone (202) 274-6471.

Ray W. Dellas,
Staff Director, Small and Disadvantaged Business Utilization.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand its industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities where their interest in improving the business climate and economic development in their communities is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs (PTA) being conducted by state and local governments and private non-profit entities and can encourage the establishment of similar programs in their communities.

The Fiscal Year (FY) 1985 DoD Authorization Act, Pub. L. 98-525, amended Title 10, United States Code, by adding a Chapter 142 which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements with state and local governments, and other non-profit entities (hereinafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct PTA programs during FY 85. The program continues under Title 10, United States Code, as amended.

The Congress has authorized a total of $7 million to support the program during FY 89. Of this total, $500,000 is available for an Indian program only and such program will be executed centrally by Headquarters (HQ) DLA. Accordingly, each of the nine Defense Contract Administration Services Regions (DCASRs) within DLA will be authorized to award approximately $700,000 of the remaining $6.5 million authorized for FY 89 as its share of program costs to applicants within the geographical area under its cognizance.

In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their proposals to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director of Small Business who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager, is at Encl 1.

Additional Limitations placed on these funds follow:

(a) DoD cost sharing shall not exceed 50% of the net cost of a single program, excluding any Federal funds and other income, except that the DoD share may be increased up to 75% for an existing program or new start that qualifies solely as a distressed area. In no event, shall the DoD share of the net program cost exceed $300,000 for programs providing state-wide coverage and $150,000 for all other programs.

(b) Eligible entities are not to subcontract more than 10% of their total program costs for private consulting services to support the program.

(c) These limitations may be modified by the HQs DLA Policy Council as necessary to comply with legislative or other requirements.

The DoD presently provides procurement and technical assistance to business firms through its network of Small Business Specialists located in industrial centers around the country. the DCASR Associate Directors of Small Business, located in these industrial centers, will be available to provide eligible entities such assistance as necessary to explain and interpret the solicitation requirements when issued, to provide general guidance in preparing proposals, and to provide training and other technical assistance to recipients of cooperative agreements.

Procurement technical assistance given to clients for marketing their goods and services to other Federal Agencies and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include those marketing

opportunities for business firms located in the area being or to be serviced.

The purpose of this proposed revised procedure is to make available to all eligible entities the prerequisite requirements, policies and procedures which will govern the award of cooperative agreements by the DLA. Also, this procedure establishes the guidelines which will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a cooperative agreement with the DLA, the DLA has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Procedure implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts.

II. Other Information

The language contained in the current Cooperative Agreement Procedure limited the period of coverage to the FY 88 Program in that it addressed the FY 88 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 89 programs.

The DLA has determined that the proposed procedure does not involve substantial issues of fact or law and the procedure is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

Since this is the DLA's permanent procedure covering cooperative agreements pursuant to 31 U.S.C. 6301 *et seq*, using Procurement Contracts and Grant and Cooperative Agreements, additional comments are invited on the procedures and are to be submitted to the Defense Logistics Agency, ATTN: DLA–UM, Cameron Station, Alexandria, VA 22304–6100. All comments received by 13 February 1989 will be evaluated to determine if any revisions should be made to Subpart III.

COOPERATIVE AGREEMENT REGULATION GENERAL PROGRAM

III. Proposed Revision to DLA Procedure—Cooperative Agreements

1. Scope

(a) This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between the Defense Logistics Agency (DLA) and eligible entities. Under these agreements Department of Defense (DoD) financial assistance provided to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing Procurement Technical Assistance (PTA) Programs for furnishing PTA to business entities.

(b) A cooperative agreement is a binding legal instrument which reflects a relationship between the DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient for the accomplishment of the requirements described therein. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between the DLA and the recipient during performance of the agreement.

2. Policy

(a) When proposals for cooperative agreements are obtained through the issuance of a DLA Solicitation for Cooperative Agreement Proposals, hereinafter referred to as a SCAP, the contents of this procedure shall be incorporated, in part or in whole, into the program solicitation for the purpose of establishing administrative requirements for the execution and administration of DLA Cooperative Agreements. Program solicitations may include additional administrative requirements when such requirements are required by program legislation or are not included in this procedure.

(b) It is the DLA policy to encourage and maximize open and fair competition when awarding cooperative agreements for establishing or maintaining existing PTA programs. Cooperative agreements will be awarded on a competitive basis as a result of the issuance of a SCAP. However, the DoD, through the DLA, reserves the right to make or deny an award to an applicant whose application is competitive pursuant to the other factors detailed in paragraph 5(e) below if competition for DoD goods and services would be enhanced. For example, an award may be denied to reduce or eliminate overlapping or duplicate coverage in selected geographic areas or where the best interest of the government will not be served.

(c) SCAPs inviting the submission of proposals shall be given the widest practical dissemination to all known eligible entities and to those that request copies subsequent to its issuance. All eligible entities that have advised the DCASR of their interest in submitting a proposal, under the SCAP, will be invited to participate in a presolicitation conference to be held at a location to be designated by the DCASR approximately 30 calendar days prior to the SCAP closing date.

(d) Any solicitation issued in accordance with this procedure shall not be considered to be an offer made by the DoD and will not obligate the DLA to make any awards under this program. The DoD is also not responsible for any monies expended or expense incurred by applicants prior to the award of a cost sharing cooperative agreement.

(e) The DoD share of an eligible entity's proposal and award recipient's net program cost (NPC) shall not exceed 50%, except in the case of a distressed area (as defined in paragraph 3(g) below) the DoD share may be increased to an amount not to exceed 75%. However, in no event is the DoD share of any single net program cost to exceed $300,000 for programs providing state-wide coverage (defined in paragraph 3(x) below) and $150,000 for all other programs.

(f) During each fiscal year (FY) for which funding is authorized for the PTA program at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographic cognizance of each of DLA's nine Defense Contract Administration Services Regions (DCASRs). In cases where the area being or to be serviced by an eligible entity encompasses more than one DCASR's area of geographic cognizance, the eligible entity should submit its application to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application will be accepted from a single eligible entity.

(g) The award of a cooperative agreement shall not in any way obligate the DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of the award recipient.

(h) The award of a cooperative agreement under this program shall cover a twelve month performance period.

(i) To assist the DoD in achieving its socio-economic goals, applicants and cooperative agreement recipients are to give special emphasis to assisting small disadvantaged business firms participating in DoD contracting opportunities. A concerted effort will be made by each cooperative agreement recipient to identify small disadvantaged business firms and provide them with marketing and technical assistance, particularly where such firms are referred to a recipient for assistance by a DoD component.

(j) The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and spell out the rights and obligations of parties in Federal Procurement transactions. Although the regulation is not applicable per se to cooperative agreements, some of the provisions contained in the Regulation may be suitable for inclusion in cooperative agreement solicitation and award documents. Therefore, the clauses and provisions contained therein may be made a part of all cooperative agreement solicitations and award documents if not otherwise covered under the Office of Management and Budget (OMB) Circulars A–102 (Grants and Cooperative Agreements with State and Local Governments) and A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations). Where appropriate, the language of the clause(s) may be changed and will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary. Clauses and provisions specified as mandatory will not be subject to negotiations. Such clauses and provisions will only be used if the applicable FAR dollar threshold(s) are met. For example, if there is a prerequisite $100,000 threshold for applying the clause, that particular clause will only be used in the cooperative agreement solicitation or award document if the total program cost of the project (including both the applicant's and DoD's share of total program costs) equals or exceeds the $100,000 threshold.

(k) The addition of any clauses and provisions not identified in the solicitation or the modification of clauses and provisions included in the solicitation which are not designated as being mandatory may be negotiated.

(l) Award recipients are not required to obtain or retain private consulting services for any extended period of time. Accordingly, any costs being proposed for such services are not to exceed 10% of the total program cost. Costs in excess of 10% included in the eligible entity's proposal will cause the proposal to be rejected.

(m) Reasonable quantities of government publications, such as "Selling to the Military" may be furnished to award recipients at no cost, subject to availability.

(n) For the purpose of executing cooperative agreements, the HQs DLA Cooperative Agreement Program Manager and DCASR Associate Director of Small Business are delegated the authority to execute cooperative agreements and shall not require appointment as a contracting officer.

(o) Each cooperative agreement recipient's area of performance will be limited to the geographical area specified in its proposal.

(p) To the extent that the annual DoD Authorization and Appropriation Acts provide for restricting some part of the total funds authorized to accommmodate special socio-economic requirements, any specific requirements related to the restricted funds which differ from the requirements of this regulation will be identified in the solicitation for cooperative agreement proposals.

3. Definitions

The following definitions apply for the purpose of this procedure.

(a) *Civil Jurisdiction*—All cities with a population of at least 25, 000 and all counties. Townships of 25,000 or more population are also considered as civil jurisdictions in four states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

(b) *Client*—A recognized business entity, including corporations, partnerships, or sole proprietorships organized for profit, which are small and other than small, that have the potential or are seeking to market their goods or services to the DoD.

(c) *Cooperative Agreement Offer/Application/Proposal*—An eligible entity's response to the Solicitation for Cooperative Agreement Proposals describing their Procurement Technical Assistance program being operated or being planned. The offer binds the eligible entity to perform the services described therein if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

(d) *Cost Sharing*—A generic term denoting any situation wherein the Government does not fully fund the participant's total allowable costs required to accomplish the defined project or effort. The term encompasses concepts such as cost participation, cost matching, cost limitatioins (direct or indirect), and participation in kind.

(e) *Direct Cost*—Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any costs, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

(f) *Distressed Area*—The geographic area being or to be serviced by an eligible entity in providing procurement technical assistance to business firms physically located within that area:

(1) Has a per capita income of 80% or less of that State's average, or

(2) Has an unemployment rate of at least 1% above the national average for the most recent 24-month period in which statistics are available from the U.S. Department of Labor in all of the geographic areas being or to be serviced. A distressed area cannot include any areas that do not meet this criteria.

(3) Is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(g) *DoD Cooperative Agreement Program*—Provides assistance to eligible entities (defined by paragraph (g) below) in establishing or maintaining procurement technical assistance activities to help businss firms market their goods and services to the DoD and other government activities.

(h) *Eligible Entities*—include:

(1) *State Government*—a State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local Government*—a unit of government in a State, or local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(3) *Private, Non-profit Organization*—any corporation, trust, foundation, or institution which is entitled to

exemption under section 501(c)(3)–(8) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(4) *Special Program Organizations*—Those organizations authorized by legislation to participate in programs set-aside for specifically designated groups. Such entities will be identified in the solicitation specifically issued therefor.

(i) *Existing Program*—Includes any Procurement Technical Assistance type program that is the recipient of a cooperative agreement(s) with the Defense Logistics Agency during FY 87 or later.

(j) *Indian*—A person who is a member of an Indian tribe.

(k) *Indian Economic Enterprise*—Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit: provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(l) *Indian Tribe*—Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(m) *Indirect Cost*—Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost.

(n) *In-Kind Contributions*—Represent the value of noncash contributions provided by the eligible entity and non-Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefitting and specifically identifiable to the project or program.

(o) *Net Program Cost*—Total program cost (including all authorized sources) less any program income and/or other federal funds not authorized to be shared.

(p) *Net Start*—An eligible entity that is not an existing program (see paragraph 3(i) above for definition) to include those recipients of cooperative agreement with the DLA during FY 86 and prior years.

(q) *Private Consultant Services*—Services offered by private profit seeking individuals, organizations or otherwise qualified business entities to provide marketing and technical assistance to cooperative agreement recipients or business firms seeking contracts with Federal, State and local government organizations.

(r) *Procurement Technical Assistance*—Program organized to generate employment in and improve the general economy of a locality by assisting business firms in obtaining defense and other government contracts. It's purpose is to provide detailed counseling assistance, information and personal instructions to business firms in increasing their opportunities to sell their products or services to the Defense Department either directly as prime contractors or indirectly as subcontractors under DoD contracts, other government agencies and the private sector.

(s) *Reservation*—Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

(t) *Solitication for Cooperative Agreement Proposals (SCAP)*—A document issued by DLA containing provisions and evaluation criteria applicable to all applicants that apply for a PTA cooperative agreement.

(u) *Special Program*—A program by which funds are targeted by legislation for the purpose of sharing the cost of providing procurement technical assistance to specifically designated groups.

(v) *State-wide Coverage*—a procurement technical assistance program which proposes to service at least 50% of a State's civil jurisdictions and 75% of a state's labor force.

(w) *Total Program Cost*—Includes all funds from all sources to include in-kind contributions and all income received from all sources as a result of operating the program. Any federal funds proposed for use in establishing or conducting the program must have prior approval for such use.

(x) *Tribal organization*—The recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a cooperative agreement is awarded to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the award.

4. Program Description

The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to businesses, hereinafter referred to as clients, in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary depending on locations, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the following minimum features that a comprehensive PTA Program should generally include:

(a) *Personnel*—Professional personnel qualified to counsel and advise clients regarding DoD procurement policies and procedures. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition requirements for such things as construction, research and development, and data processing.

(b) *Marketing Tools*—Should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards, and other Federal Government publications.

(c) *Networking*—Techniques for providing assistance throughout the area being or to be serviced by locating assistance offices in areas of industrial concentration, arrangements with other entities or organizations, establishing data links, and through other appropriate means.

(d) *Fees and Service Charges*—In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for the amount of the fee to be charged must be described. Any fees earned under the program are to be included as part of the total program cost.

(e) *Performance Measurement*—Should include a means of periodically measuring program effectiveness in achieving the objective described above. Factors to consider in establishing time phased goals and techniques for measuring progress in its achievement should include the number and types of assistance rendered, such as marketing and accounting; the number of clients added to the DoD and other Federal Agency bidders mailing lists, the Minority Vendor Profile System of the Minority Business Development Agency, the Procurement Automated Source System (PASS) of the Small Business Administration and the value of prime and subcontract awards received by clients resulting from the program.

5. Procedures for Processing SCAPs and Award of Cooperative Agreements

(a) The cooperative agreement program manager will develop and prepare the SCAP(s). Also, he/she will be responsible for assuring that adequate funds are made available to the DCASR and for considering other factors in the selection process necessary to fully protect the interests of the government.

(b) The SCAP(s) will be approved by the HQ DLA Cooperative Agreement Policy Council and will be issued by HQ DLA or through each DCASR. The Policy Council will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged Business Utilization shall serve as the Policy Council Chairman and final appeal authority for disagreements between the Cooperative Agreement Program Manager, DCASR Associate Director of Small Business and the eligible entity and/or Cooperative Agreeement recipient. The Council will be responsible for reviewing the evaluations and recommendations of the Cooperative Agreement Program Manager and the evaluation panel.

(c) For special program, the HQs DLA Cooperative Agreeemnt Policy Council will be the review and approval authority for award selections.

(d) The evaluation of proposals submitted in response to the SCAP and the selection of award recipients will be conducted as detailed below:

(1) Proposals will be evaluated by a specially constituted evaluation panel established at HQ DLA. The panel will be comprised of representatives from the DCASR offices of small business, contract management, comptroller, and other offices deemed appropriate by the HQ DLA Cooperative Agreement Program Policy Council. However, the DCASR Associate Director of Small Business, who is delegated the authority to execute the cooperative agreements, shall not serve as panel member. A member of the Office of Counsel, HQ DLA, will be appointed to the panel, but will serve in an advisory capacity only.

(2) Prior to making a comprehensive evaluation of a proposal, the DCASR Associate Director of Small Business will make an initial evaluation to determine if each proposal contains sufficient technical, cost and other information, has been signed by a responsible official authorized to bind the eligible entity and generally meets all requirements of the SCAP. If the proposal does not meet those requirements, it will be rejected and a comprehensive evaluation will not be made. In such case, a prompt reply will be sent to the proposer by the DCASR Associate Director of Small Business indicating the reason for its proposal not being accepted. Otherwise acceptable proposals with the DCASR Associate Director of Small Business recommendations will be forwarded to the Cooperative Agreement Program Manager at HQs DLA. Under existing programs only, in the event the applicant's Procurement Technical Assistance Performance Report (RCS Number DLA (Q) 2545) is missing, the missing report will be attached to the proposal by the cognizant DCASR Associate Director of Small Business.

(3) Revised proposals will not be accepted from applicants whose proposals are rejected after the initial evaluation unless the revised proposals is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal received which is unsigned or otherwise rejected will not be given additional review consideration and will be retained with other unsuccessful applications by the DCASR Associate Director of Small Business.

(4) For an otherwise acceptable proposal the DCASR Associate Director of Small Business will include a review to verify the accuracy of the classification of the proposal concerning the entity's stated program status as existing or a new start. In the event the DCASR Associate Director of Small Business considers the proposal status misclassified, he/she will review the matter with the applicant. If there is disagreement, the Associate Director of Small Business' determination of the application's classification will be final and not subject to further review.

(5) Proposals which pass the initial evaluation will be subjected to a comprehensive evaluation by the HQs DLA evaluation panel. The basic purpose of the comprehensive evaluation is to assess the relative merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives, considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. Each proposal will be evaluated by the panel in accordance with stated criteria and ranked in order of excellence to determine which will best further specific program goals. All findings and recipient selections will be documented, signed by the panel members, and retained to provide an adequate record to support the panel's decisions. Upon completion of its review, the evaluation panel will submit the panel results and its recommendations to the Cooperative Agreement Program Manager.

(6) The Cooperative Agreement Program Manager will determine whether sufficient funds have been allocated to the DSASR to cover the DoD share of costs and will review the panel recommendations and results for completeness. Upon completion of the fund analysis and review of the panel results, the Cooperative Agreement Program Manager will forward the panel results with recommendations and comments (if any) to the HQ DLA Policy Council for review.

(e) The HQ DLA Policy Council will review the Cooperative Agreement Program Manager and evaluation panel's recommendations. The results of its review and its recommendations will be submitted to the appropriate DCASR Commander for approval. In developing its recommendations the Council may consider additional factors necessary to fully protect the interest of the Government. These factors may include, but are not limited to, economic downturns that effect national security in selected geographic areas; terminations of major DoD contracts; availability of funds; the potential for increasing competition for selected goods and services required by the DoD; the existence of other procurement technical assistance programs in the area; and compliance with any legislative requirement imposed on program funds.

(f) After approval of the award selections by the DCASR Commander and congressional notification provided, the cooperative agreements(s) will be executed by the DCASR Associate Director of Small Business.

6. Evaluation Criteria

(a) The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

(b) The following evaluation factors (which may be subject to change) will

be considered as the evaluation criteria for new starts:

(1) The types of qualifications of personnel assigned or to be assigned to the program.

(2) The quality of the PTA Program in existence or being planned for:

a. Developing new clients.

b. Assisting existing clients.

c. Any program established or to be established to identify and provide extraordinary assistance to small disadvantaged business firms.

(3) The number of clients in the geographic areas being or to be serviced. This includes carrying out the DoD policy described in paragraph 2(i) above for which the socio-economic status of clients should be estimated.

(4) The amount and percentage of net program costs to be shared by DoD.

(5) The level of unemployment in the area being or to be serviced.

(c) The evaluation criteria for existing programs (which may be subject to change) will include all of the above factors, as well as the following:

(1) The eligible entity's development, peformances and effectiveness in conducting the PTA Programs, including achievements against established goals and any special achievements relative to small disadvantaged business firms.

(2) The amount of subcontracting to private consultants.

(d) As this program applies both to existing PTA Programs and to those being planned, certain of these evaluation factors will be evaluated based upon stated implementation policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel.

(e) The amount of subcontracting to private consultants is limited to no more than 10% of total program costs for both existing programs and new starts. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts, equal weight will be given to all offers, subject only to the 10% limitation.

7. DoD Funding

(a) Any funds authorized for the PTA program will be allocated equitably among the nine DCASRs to cover the DoD share of the PTA program cost for existing programs and for new starts. The SCAP will identify the total amounts of funds authorized for the related fiscal year.

(b) If there is an insufficient number of satisfactory proposals in a DCASR to allow effective use of the funds allocated, the Cooperative Agreement Program Manager will reallocate the funds among the DCASRs based upon the award recommendations made by the HQs DLA evaluation panel and Cooperative Agreement Policy Council.

8. Cost Shoring Criterio and Limitations

(a) The DoD share of net program costs shall not exceed 50%, except in a case where an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to quality as a distressed areas are met, the DoD share may be increased to an amount not to exceed 75%.

(b) In no event shall the DoD share of net program costs exceed $300,000 for programs providing state-wide coverage and $150,000 for all other programs.

(c) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(d) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program.

(e) The type and value of any in-kind contribution will be limited to no more than 25% of the total program cost.

(f) Any fees, service changes or Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity. Although the fees, service charges and other authorized federal funds must be included in the annualized estimated budget, they cannot be included for cost sharing purposes. Inclusion of other Federal funds in the program is subject to the terms of the award instrument containing such funds or written advice beging obtained from the awarding Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

(g) In submitting its budget, and eligible entity that services, or plans to service clients exclusively in areas that qualify as distressed areas may submit a single budget and request a maximum of 75% as the DOD share of net program costs (NPC), subject to paragraphs 8(a and b) above. An entity that services or plan to service clients exclusively in non-distressed areas or in areas that include both distressed and non-distressed areas may submit a single budget and request a maximum of 50%. In those cases where the geographic area being or to be serviced includes both distressed areas and non-distressed areas, the budget may be divided based on a reasonable and logical distribution of total program costs between these two discrete areas, and submitted as a single proposal. In such case, the recipients accounting system must be capable of segregating and accumulating cost for each of the two budget areas.

(h) Recipients of cooperative agreements will be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(i) The SCAP will also provide that indirect costs are not to exceed 100% of direct costs.

(j) In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly identified in the proposed budget and shall be included as part of the total program costs.

(k) The Federal cost principles as stated in the OMB Circulars listed below will be used as guidelines to determine allowable costs in performance of the program:

(1) OMB Circular No. A-21, Cost Principles for Educational Institutions.

(2) OMB Circular No. A-87, Cost Principles for State and Local Governments.

(3) OMB Circular No. A-122, Cost Principles for Non-profit Organizations.

9. Administration

(a) Cooperative Agreements will be assigned to the cognizant DCASR for postaward administration.

(b) The Associate Director of Small Business at the cognizant DCASR will be responsible for reviewing recipients performance at least twice during the effective period of each cooperative agreement, to include a review of budgeted versus actual expenditures, and other performance factors. The results of the periodic reviews will be furnished to the recipient and a copy will be provided to the HQs DLA Cooperative Agreement Program Manager no later than 30 calendar days after completion of each review.

(c) For eligible entities covered by OMB Circular No. A-102, Grants and Cooperative Agreements with State and Local Governments, or OMB Circular No. A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM MANAGERS

(Addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director for Small Business who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager follow:)

State or area	DCASR	Associate Director
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico	DCASR Atlanta, 805 Walker Street, Marietta, GA 30060-2789.	Mr. Harold O. Watson, Telephone (404) 429-6195, Toll Free: 1-800-331-6415, (GA Only): 1-800-551-7801 Room Number 104.
Connecticut (except Fairfield County), Maine, New Hampshire, Massachusetts, New York (all counties except Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island, Vermont.	DCASR Boston, 495 Summer Street, Boston, MA 02210-2184	Mr. Edward J. Fitzgerald, Telephone (617) 451-4318, Toll Free: 1-800-321-1861, Located on 8th Floor
Illinois, Indiana, Wisconsin	DCASR Chicago O'Hare Int'l Airport, P.O. Box 66475, Chicago, IL 60666-0475.	Mr. James L. Kleckner, Telephone (312) 694-6020, Toll Free: 1-800-637-3848, (IL Only): 1-800-826-1046, Room Number 107.
Kentucky, Michigan, Ohio, Pennsylvania (Crawford, Erie, and Mercer Counties only).	DCASR Cleveland Federal Office Building, 1240 East 9th Street, Cleveland, OH 44199-2063.	Ms. Wilma R. Combs, Telephone (216) 522-5122, Toll Free 1-800-551-2785, Room Number 1849.
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	DCASR Dallas, 1200 Main Street, Dallas, TX 75202-4399.	Mr. Kenneth E. Strack, Telephone (214) 670-9205, Room Number 640.
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	DCASR Los Angeles, 222 N. Sepulveda Boulevard, El Segundo, CA 90245-4320.	Ms. Renee Deavens, Telephone (213) 335-3260; Toll Free 1-800-624-7372 (Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington), (CA Only) 1-800-251-5285; Room Number 302.
Connecticut (Fairfield County only), New Jersey (Northern 12 Counties), New York (Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester Counties only).	DCASR New York, 201 Varick Street, New York, NY 10014-4811.	Mr. John E. Mulreany, Telephone (212) 807-3050, Toll Free 1-800-251-6969, Room Number 1061.
Delaware, District of Columbia, Maryland, New Jersey (except for Northern 12 counties), Pennsylvania, (all counties except Crawford, Erie and Mercer), Virginia, West Virginia.	DCASR Philadelphia, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA 19101-7478.	Mr. Joseph Saracino (acting), Telephone (215) 952-4006, Toll Free 800-258-9503 (New Jersey, Delaware, Maryland, Virginia, West Virginia, and District of Columbia), (PA Only) 800-843-7694, Room Number 129.
Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	DCASR St. Louis, 1136 Washington Ave., St. Louis, MO 63101-1194.	Mr. Thomas Moore, Telephone (314) 263-6617, Toll Free: 800-325-3419, Third Floor.

[FR Doc. 89-835 Filed 1-12-89; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 13, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 10, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.
Title: Institutional Quality Control Measurement Project.
Frequency: One-time.
Affected Public: Businesses or other for-profit; Non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 42.
Burden Hours: 126.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Department will use this survey to examine and collect information on Federal aid programs and work-study programs from institutions, lenders, parents and students to determine whether error persists in Title IV Student Financial Aid Programs, and to conduct Management Assessment of the effectiveness of the Institutional Quality Control Pilot Project.

[FR Doc. 89-906 Filed 1-12-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-53-NG]

American Central Gas Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import and to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting American Central Gas Marketing Company (American Central) blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88-53-NG authorizes American Central to import up to 73 Bcf of Canadian natural gas and to export up to 73 Bcf of U.S. natural gas over a two-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056-C Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 10, 1989.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-909 Filed 1-12-89 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-507, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-507-000]

January 6, 1989.

Take notice that on December 29, 1988, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48242, filed in Docket No. CP89-507-000, a request for authorization pursuant to §§ 157.205 and 157.212 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act and ANR's blanket certificate issued in Docket No. CP82-480-000 pursuant to section 7 of the Natural Gas Act, for authorization to add an additional sales delivery point for an existing customer, Wisconsin Natural Gas Company (Wisconsin Natural), in Winnebago County, Wisconsin (Winchester Meter Station), all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that sales to Wisconsin Natural are made pursuant to a Service Agreement between the parties dated December 14, 1987, and that the maximum daily deliveries through the new sales delivery point will be within Wisconsin Natural's currently existing peak day and annual entitlements from ANR. Further ANR states that Wisconsin Natural has requested the additional meter station in order to provide operational flexibility and reliability on Wisconsin Natural's distribution system.

Comment date: February 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Paiute Pipeline Company

[Docket No. CP87-309-006, RP88-206-002]

January 6, 1989.

Take notice that on December 16, 1988, Paiute Pipeline Company (Paiute), pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, tendered for filing First Revised Sheet No. 63 and First Revised Sheet No. 64 to be part of its FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's May 17 and July 29, 1988 orders in this proceeding.

Paiute indicates that it is submitting the proposed revised tariff sheets in an effort to resolve any remaining matters at issue and to conclude this proceeding. Paiute states that on July 1, 1988, Paiute filed in this proceeding its initial FERC Gas Tariff, consisting of Original Volume No. 1, which Paiute proposed to be effective on August 1, 1988. By order issued July 29, 1988, according to Paiute, the Commission accepted Paiute's July 1, 1988 tariff filing and suspended it to become effective August 1, 1988, subject to refund. The Commission also directed that an informal technical conference be conveyed to address the concerns of Sierra Pacific Power Company, one of Paiute's customers, over various tariff language matters.

Paiute states that the technical conference was held on September 9, 1988. Paiute asserts that, based on discussions with the active participants in this proceeding, Paiute believes that only one item remains to be dealt with in these dockets. That matter, according to Paiute, involves clarifying Paiute's purchased gas cost adjustment (PGA) provision to provide for the appropriate flow-through by Paiute of purchased gas demand and commodity charges incurred from its various suppliers, in accordance with the Commission's Regulations and policies. Paiute states that its proposed First Revised Sheet No. 63 and First Revised Sheet No. 64 reflect changes to the language of Paiute's PGA provision that are designed to clarify Paiute's intention to pass through supplier demand and commodity charges in accordance with the Commission's Regulations and related orders.

Paiute requests that its proposed tariff sheets be permitted to become effective August 1, 1988. Paiute further requests waiver of the notice requirements of § 154.22 of the Commission's Regulations and of any other applicable rules and regulations as may be necessary so as to implement the tendered tariff sheets in the manner proposed.

Comment date: January 17, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP89-509-000]

January 9, 1989.

Take notice that on December 29, 1988, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89-509-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm sales service provided to Cook Forest Gas Company (Cook), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that National Fuel currently provides Cook with sales service under National Fuel's general service Rate Schedule RQ, pursuant to an open requirements service agreement dated November 1, 1977. It is alleged that under the terms of the service agreement, National Fuel is obligated to sell and deliver, on a firm basis, and Cook is obligated to receive and pay for a minimum monthly demand of 123 dekatherm and a minimum monthly winter requirement quantity of 9,077 dekatherm.

It is asserted that Cook has tendered partial payment for one monthly invoice and has not made any payment whatsoever in connection with another 35 monthly invoices over a period beginning April of 1985. Cumulative past due amounts for gas sales made prior to National Fuel's 1987 fiscal year total $37,929.28. Cook also owes an additional $33,583.21 and $59,506.63, respectively, for gas sold and delivered to Cook by National Fuel during fiscal years 1987 and 1988. It is alleged that as of December 9, 1988, Cook's past due obligations total approximately $161,169.16.

National Fuel states that it has made numerous efforts to resolve Cook's payment deficiencies and to bring the payment account current, but to no avail. It is further stated that on August 1, 1986, Cook executed a promissory note in favor of National Fuel in the amount of $86,506.11 representing amounts then past due and agreed to a payment schedule. After Cook failed to maintain the agreed upon payment schedule, National Fuel received a judgement in Pennsylvania State Court for the amount of the promissory note, plus interest. It is claimed that such judgement has not yet been satisfied, and may never be satisfied due to the relative state of Cook's assets.

It is alleged that there appears no reasonable likelihood that Cook would render timely and complete payment to National Fuel for National Fuel's current and future sales and deliveries of gas to Cook. Under these circumstances, National Fuel proposes to permanently abandon its sales to Cook, to terminate its service obligation under the Commission's certificate authorization, and to abandon in place a related sales tap and meter.

National Fuel asserts that Cook's system appears to be physically interconnected with the system of North Penn Gas Company and with local production from several wells. Cook in its 1986 annual report to the Pennsylvania Public Utilities Commission identified 40 percent of its gas purchases from National Fuel and 60 percent as from a combination of other sources. Cook's other supply sources as identified in its 1986 annual report are: North Penn Gas Company, Halls Well Service, and Cook Oil & Gas Production. National believes that Cook's payment accounts with its other gas suppliers are current. National Fuel claims that upon the Commission's approval of the abandonment request, Cook should be able to maintain adequate service to its customers through its purchases of natural gas under current arrangements with one or more of its other suppliers.

Comment date: January 30, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-499-000]

January 9, 1989.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-499-000 a request pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Ladd Gas Marketing, Inc. (Ladd), under Texas Gas's blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on a peak day up to 400,000 MMBtu equivalent of natural gas for Ladd, with an estimated average daily quantity of 100,000 MMBtu equivalent of natural gas. On an annual basis, it is stated that Ladd estimates a volume of 36,500,000 MMBtu equivalent of natural gas. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated November 7, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate consumers of the gas have been identified in the request as General Electric, RCA, Morton Salt, Alcan Aluminum, Owens-Illinois, Hope Gas and Mobay Corp. Texas Gas states that transportation service for Ladd commenced November 18, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1284.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89-197-001]

January 9, 1989.

Take notice that on December 21, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 25202-2563, filed in Docket No. CP89-197-001 an application pursuant to section 7(c) of the Commission's Regulations under the Natural Gas Act to amend its request filed in Docket No. CP89-197-000 on November 14, 1988, so as to authorize its contribution in aid of construction for the installation of certain compression and pipeline loop facilities that were the subject of an application filed August 15, 1988, in Docket No. CP88-683-000 by East Tennessee Natural Gas Company (East Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In Docket No. CP89-197-000, Southern proposes to render firm, long term transportation service of up to 30,000 Mcf per day on behalf of East Tennessee. It is indicated that East Tennessee requires 30,000 Mcf per day to meet the current need for an increase in contract demand service for certain of its customers named in East Tennessee's application for certificate filed in Docket No. CP88-683-000.

Southern proposes to provide the firm transportation service on behalf of East Tennessee so that East Tennessee can serve its customers with increased contract demand on a more economical basis.

Southern, in its application filed in Docket No. CP89–197–000, proposes to perform the firm transportation service to provide East Tennessee's customers with increased contract demand service instead of East Tennessee constructing additional facilities on its system as set forth in its application filed in Docket No. CP88–683–000 on August 15, 1988. Southern indicates that it intervened in Docket No. CP88–683–000 requesting a hearing to compare Southern's proposal to East Tennessee's proposal. It is stated in an answer to Southern's intervention that if East Tennessee accepted the firm transportation service proposed by Southern, it would still need to construct facilities on its system to deliver the increase in construct demand to its customers. Specifically, East Tennessee states that it will be required to construct up to an estimated $5,077,000 worth of facilities in order to provide the additional services specified in Docket No. CP88–683–000, which includes pipe, looping, new compression and the restaging of specified compressors.

In the amendment to the application, Southern proposes to make a contribution in aid of construction to East Tennessee in an amount that would cover the actual cost of the facilities which the Commission may authorize in East Tennessee's proceeding in Docket No. CP88–683–000. No other changes are proposed to Southern's proposal in Docket No. CP89–197–000.

Comment date: January 30, 1989, in accordance with Standard Paragraph F at the end of the notice.

6. Arkansas Oklahoma Gas Corporation

[Docket No CP89–465–000]

January 9 1989.

Take notice that on December 21, 1988, Arkansas Oklahoma Gas Corporation (AOG), P.O. Box 17004, Fort Smith, Arkansas 72917 filed in Docket No. CP89–465–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon compression facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

AOG proposes to abandon a 525 horsepower compressor unit at the Spiro Compressor Station in LeFlore County, Oklahoma. AOG states that the unit is oversized and obsolete in view of declining reserves and wellhead pressures, and has been replaced with a 330 horsepower compressor unit. AOG proposes that the abandonment authorization be made effective October 26, 1988. AOG further states that the estimated salvage value of the compressor unit is $48,300. AOG explains that the construction cost of the replacement unit is $120,800.

Comment date: January 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. National Fuel Gas Supply Corporation

[Docket No. CP89–467–000]

January 9, 1989.

Take notice that on December 21, 1988, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP89–467–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate seventeen sales taps, to add six delivery points, and to construct and operate a sales tap facility to enable gas delivery to Highland Land & Minerals, Inc. (Highland) under the blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

National Fuel proposes to construct sales tap facilities in Washington Township, Erie County; Worth Township, Mercer County; Heath Township, Jefferson County; Wayne Township, Erie County; Clarion Township, Clarion County; Glade Township, Warren County; Greenfield Township, Erie County; Hamilton Township, McKean County; and Lafayette Township, McKean County, Pennsylvania, in order to serve additional customers of National Fuel Gas Distribution Corporation (Distribution).

National Fuel also proposes the addition of delivery points with respect to Distribution in Wayne Township, Erie County; Rose Township, Jefferson County; Clarion Township, Clarion County; Keating Township, McKean County; and Eldred Township, Jefferson County, Pennsylvania and the Town of Genesee, Allegany County, New York. Additionally, National Fuel proposes to construct and operate a sales tap for gas deliveries to Highland in Highland Township, McKean County, Pennsylvania.

National Fuel states the proposed deliveries will have minimal impact on its peak and annual deliveries.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice

8. Texas Gas Transportation Corporation

[Docket No. CP89–501–000]

January 9, 1988.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–501–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Industrial Energy Services Company (Industrial Energy), under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on a peak day up to 30,000 MMBtu equivalent of natural gas for Industrial Energy, with an estimated average daily quantity of 15,000 MMBtu equivalent of natural gas. On an annual basis, it is stated that Texas Gas could transport up to 5,475,000 MMBtu equivalent of natural gas. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated October 26, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate consumers of the gas have been identified as those parties listed on Attachment No. 4 of Texas Gas's application. Texas Gas states that transportation service for Industrial Energy commenced November 17, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1276.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP89–503–000]

January 9, 1989.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–503–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Bishop Pipeline Corporation (Bishop), under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on a peak day up to 15,000 MMBtu of natural gas for Bishop, with an estimated average daily quantity of 5,000 MMBtu. On an annual basis, it is stated that Texas Gas could transport up to 1,825,000 MMBtu. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated October 26, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate consumers of the gas have been identified as Reelfoot Packing and Pennwalt Corporation. Texas Gas states that transportation service for Bishop commenced November 14, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1279.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89–502–000]

January 9, 1989.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–502–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Consolidated Fuel Corporation (Consolidated Fuel), under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to transport on a peak day up to 120,000 MMBtu of natural gas for Consolidated Fuel, with an estimated average daily quantity of 60,000 MMBtu. On an annual basis, it is stated that Consolidated Fuel estimates a volume of 21,900,000 MMBtu. Texas Gas states that the transportation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated October 21, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate end-users of the gas have been identified in the request as those parties listed on Attachment No. 4 of Texas Gas's application. Texas Gas states that transportation service for Consolidated Fuel commenced November 10, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1213.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP89–500–000]

January 9, 1989.

Take notice that on December 29, 1988, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–500–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Centran Corporation (Centran), under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to seciton 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to tranpsort on a peak day up to 30,000 MMBTU equivalent of natural gas for Centran, with an estimated average daily quantity of 8,500 MMBtu equivalent of natural gas. On an annual basis, it is stated that Centran estimates a volume of 3,650,000 MMMBtu equivalent of natural gas. Texas Gas states that the tranpsortation service is being rendered through the use of Texas Gas's existing facilities, and, pursuant to a gas transportation agreement dated September 23, 1988, the location of the points of receipt and delivery are specified in Exhibits B and C, respectively, of the agreement. It is further stated that the ultimate consumer of the gas have been identified as those parties listed on Attachment No. 4 of Texas Gas's application. Texas Gas states that transportation service for Centran commenced November 9, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1214.

Comment date: February 23, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Exxon Corporation

Docket No. CI89–182–000]

January 10, 1989.

Take notice that on December 16, 1988, Exxon Corporation (Exxon) of P.O. Box 2180, Room 208, Houston, Texas 77252–2180, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term, blanket certificate with pregranted abandonment authorization to authorize sales of uncommitted gas, all as more fully set forth in the application whcih is on file with the Commission and open to public inspection. Exxon also requests that such certificate cover gas which has been permanently abandoned or has been released from a gas sales contract and which has not otherwise been abandoned udner Order Nos. 490 and 490–A.

Comment date: January 24, 1989, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commisison on its own review of the matter finds that a grant of necessity. If a motion for leave to intervene is timely

filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

]. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any pesons wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-839 Filed 1-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD89-02896T]

Designation of Tight Formation; Hidalgo County, TX, Texas-44; Tight Formation Determination

December 23, 1988.

Take notice that on December 12, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that the McAllen Ranch (Guerra, E.) Field located in Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued November 21, 1988, finding that the formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1988)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register.** † Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-838 Filed 1-12-89; 8:45 am]

BILLING CODE 6717-01-M

New England Power Pool; Public Meeting

January 10, 1989.

Representatives of the New England Power Pool and the Mid-American Power Pool will meet with FERC Commissioners at 9:00 a.m., on Friday, January 27, 1989, to discuss the operations of these two systems.

The meeting will take place at the Commission's offices at 825 North Capitol Street, Washington, DC in a room to be posted the day of the meeting.

Lois D. Cashell,

Secretary.

[FR Doc. 89-837 Filed 1-12-89; 8:45 am]

BILLING CODE 6717-01-M

Southern Co. Services, Inc.; Initiation of Proceeding and Refund Effective Date

January 9, 1989.

Take notice that on January 6, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: March 14, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-836 Filed 1-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3505-6]

Assessment of Sodium Hydroxide As a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of sodium hydroxide assessment results and solicitation of information.

SUMMARY: This notice announces the results of EPA's assessment of sodium hydroxide under the Clean Air Act (CAA). The EPA initiated this assessment based on the production volume of sodium hydroxide and the potential for adverse health effects associated with exposure to sodium hydroxide. The results of EPA's preliminary analysis indicate that currently available data are insufficient to establish that emissions of sodium hydroxide to the ambient air pose a significant threat to public health. Based on this information, the EPA has determined that regulation of sodium hydroxide under the CAA is not warranted at this time.

Given the limited opportunity for prior public review of the health and exposure information incorporated in this notice, the Agency is soliciting comment on its determination. This finding has no effect on the regulation of sodium hydroxide to attain the national ambient air quality standards for particulate matter. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of sodium hydroxide.

DATE: Written comments pertaining to this notice must be received on or before April 13, 1989.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), U.S. Environmental Protection Agency, Attn: Docket No. A-88-20, 401 M Street SW., Washington, DC 20460. Docket No. A-88-20, which contains information relevant to this notice, is located in the Central Docket Section of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. The Docket may be inspected between 8:00 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information

Information on the availability of the health assessment summary document for sodium hydroxide, "Summary Review of Health Effects Associated with Sodium Hydroxide: Health Issue Assessment" (EPA 600/8-88-081), can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: (513) 569-7562 commercial/684-7562 FTS). The document is available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. The Sodium Hydroxide Preliminary Source Assessment (EPA-450/3-88-002) is also available from NTIS. The NTIS accession number is PB88-174545. The above document and other information on the sources, emissions, and atmospheric degradation are summarized in several reports which are found in the docket.

FOR FURTHER INFORMATION CONTACT: Robert Schell, Pollutant Assessment Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: (919) 541-5519 commercial/629-5519 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated an assessment of sodium hydroxide based on the large production volume and the potential for adverse health effects associated with exposure to sodium hydroxide in the ambient air. In the course of this assessment, the Agency collected the available relevant information and today's notice provides a summary of this information on the following topics: chemical characterization, production and uses, sources and emissions, atmospheric degradation, health effects, monitored ambient air concentrations, exposure estimation, risk characterization, and existing regulations and guidelines.

Chemical Characterization

Sodium hydroxide (CAS No. 131-07-32) is a white deliquescent, crystalline solid at room temperature (U.S. EPA, 1988a). Sodium hydroxide is very soluble in water and is often used in 45 to 75 percent in acqueous solutions (U.S. EPA, 1987a). Sodium hydroxide has a melting point of 318 degrees centigrade and a boiling point of 1390 degrees centigrade (U.S. EPA, 1988a).

Production and Uses

Sodium hydroxide is produced in large quantities in the United States. There are more than 40 production facilities which in 1985 produced approximately 11 million short tons of sodium hydroxide. Most sodium hydroxide is produced as a 50 percent solution in water. Sodium hydroxide is produced by the electrolysis of sodium chloride via the diaphragm, mercury, or membrane cell process (U.S. EPA 1988a).

Sodium hydroxide is one of the most widely used chemicals in the United States. In 1982, the total United States' consumption of sodium hydroxide was slightly greater than 8 million metric tons which was 20 percent below the record consumption of 10.1 million metric tons in 1979. The largest market for sodium hydroxide is in the chemical industry (48 percent of total demand) where it is used in the production of alumina from bauxite, and also used for pH control and in the neutralization of waste acids. The next largest market is the pulp and paper industry with 26 percent of total demand (U.S. EPA, 1988a).

Sources and Emissions

Routine emissions of sodium hydroxide into the environment occur via aerosol emissions, aqueous waste streams and consumer uses. There are numerous industries which emit sodium hydroxide. The major industries that emit sodium hydroxide to the atmosphere are the kraft pulp industry, the brewing industry, auto carburetor manufacturing, plating, industrial organic chemical manufacturing, soap manufacturing and metal partitions. The largest source of sodium hydroxide emissions to the atmosphere is the kraft pulp industry. For a more complete discussion of the industrial process which emit sodium hydroxide to the atmosphere the reader is referred to the sodium hydroxide preliminary source assessment (U.S. EPA, 1988a).

Atmospheric Degradation

Sodium hydroxide is very short lived in the atmosphere. Sodium hydroxide released to the atmosphere as an aerosol in solution with water will be neutralized as a result of its reaction with carbon dioxide.

The principal reaction products are sodium carbonate and water. The atmospheric half life of sodium hydroxide has been estimated at 13 seconds (U.S. EPA, 1988c). In the short-term modeling analysis described below, this rate of degradation results in only 0.4 percent of the sodium hydroxide released remaining at a point 200 meters from the site of release. For a more complete discussion of analysis of the atmospheric fate of sodium hydroxide the reader is referred to the public docket for this action, specifically the entry entitled "Estimation of the Half-Life of Sodium Hydroxide Aerosol in the Atmosphere" (U.S. EPA, 1988c).

Health Effects

The Agency has prepared a document entitled "Summary Review of the Health Effects Associated with Sodium Hydroxide: Health Issue Assessment" (U.S. EPA, 1987a). This document discusses the relevant data available for assessing the health effects associated with exposure to sodium hydroxide in the ambient air. This information is summarized briefly below.

Carcinogenicity and Mutagenicity

No *in vivo* animal studies of sodium hydroxide carcinogenicity were found in the literature (U.S. EPA, 1988b). There are some data, however, which suggest that the incidence of carcinoma of the esophagus is greatly increased following accidental or intentional ingestion of sodium hydroxide (lye) in humans (Lansing et al., 1969; Kiviranta, 1952). The National Institute for Occupational Safety and Health (NIOSH), however, points out that these carcinomas were the result of tissue destruction and possibly scar formation and were not caused by the direct carcinogenic potential of sodium hydroxide itself. In an epidemiological study of workers chronically exposed to sodium hydroxide dust, no relationship between malignancies or mortality was observed (Ott et al., 1977).

Sodium hydroxide has not been adequately tested for mutagenic potential. Two bacterial assays have suggested sodium hydroxide is not mutagenic. However, an *in vitro* deoxyribonucleic acid (DNA) synthesis study and an *in vivo* study of insect spermatocytes suggested sodium hydroxide may be mutagenic. Based on EPA's "Guidelines for Carcinogenic Risk Assessment" (51 FR 33992), sodium hydroxide has been classified in the weight of evidence category "D," meaning it is not classifiable as to human carcinogenicity.

Developmental and Reproductive Toxicity

Only one study exists on the developmental toxicity of sodium hydroxide. This study (Dostal, 1973) indicated increased mortality in the fetuses of mice when the dams were treated intraamniotically with a weak sodium hydroxide solution. Although this study suggests an embryotoxic effect, it is difficult to envision such an exposure resulting from sodium hydroxide in the ambient air.

Other Toxic Effects

The adverse health effects associated with exposure to sodium hydroxide result from its extreme alkalinity. In

evaluating the toxicity of sodium hydroxide, therefore, it is important to consider the pH of the solution to which individuals may be exposed. Furthermore, because sodium hydroxide is a solid or liquid at room temperature, the size of the particles to which individuals may be exposed is important for evaluating toxicity resulting from inhalation exposure. Larger particles tend to settle out faster and thus have a greater effect on the upper respiratory tract, whereas smaller particles tend to affect the lower regions.

Contact with sodium hydroxide in either solid, liquid or aerosol form has resulted in severe eye injuries, damage to the skin and injury of the mucous membranes (U.S. EPA, 1988b). Most of the case histories of injuries resulting from exposure to sodium hydroxide involve the liquid or solid form. There are very few cases of health effects resulting from airborne exposure documented in the literature (NIOSH, 1975). Sax (1984) reports that inhalation of sodium hydroxide dust or concentrated mist can cause damage to the upper respiratory tract and to lung tissue, depending on the extent of the exposure. The effects associated with inhalation exposure to sodium hydroxide may thus range from mild irritation to severe pneumonitis. In a study (Lewis, 1974) of the effects of aerosol oven cleaners containing sodium hydroxide, respiratory irritation was perceived in healthy human volunteers at concentrations of 0.24 to 1.8 mg/m^3. Unfortunately, this study did not take into account other potentially irritating ingredients of the aerosol.

Acute exposures of animals have produced similar results to those of humans. Frank damage of the respiratory system was observed in rats following exposures to aerosols generated from a 20 percent sodium hydroxide solution. The sodium hydroxide concentration in the exposure chambers was not given.

The only data regarding effects associated with chronic exposures come from an epidemiological study (Ott et al., 1977) of workers chronically exposed to sodium hydroxide dust ranging from 0.5 to 2.0 mg/m^3. This study reported no statistically significant increased mortality in the exposed group.

Monitored Ambient Concentrations

No data on monitored ambient levels of sodium hydroxide could be found in the available literature.

Exposure Estimation

The exposure assessment for sodium hydroxide relied upon dispersion modeling to estimate ambient concentrations near emission sources. However, given the extremely short atmospheric half-life of sodium hydroxide in the atmosphere, estimation of long-term ambient concentrations are not applicable. Consequently, the focus of this assessment was on short-term exposures.

In order to assess the potential for adverse noncancer health effects from short-term exposure to sodium hydroxide, a conservative screening modeling analysis was performed (U.S. EPA, 1985). The model employs a point source Gaussian air dispersion model and applies several reasonable worst-case assumptions for source location, emissions, meteorology and terrain. Although the short-term screening model is designed to produce conservative estimates of ambient concentrations, the emission rates used in this analysis are derived from estimates of annual releases and may not be representative of short-term release rates. For this assessment, the largest emitting sources were selected and the maximum levels of sodium hydroxide that could occur near each plant were calculated. These results reflect the extremely rapid atmospheric degradation of sodium hydroxide. The maximum concentrations were estimated to be 0.02 and 0.01 mg/m^3 for average times of 15 minutes and 24 hours respectively (U.S. EPA, 1988c).

Risk Characterization

Due to the paucity of data regarding health effects resulting from inhalation exposure to sodium hydroxide, it is difficult to derive a concentration level below which no significant health effects would be expected in the general population. For acute exposures, data from the study of oven cleaner aerosols containing sodium hydroxide would suggest that respiratory irritation could be perceived at levels as low as 0.24 to 1.8 mg/m^3. This study, however, is flawed due to the other potentially irritating ingredients of the aerosol. The occupational exposure ceiling level developed by the American Council of Governmental Industrial Hygienists (ACGIH) is 2.0 mg/m^3. A ceiling level is a level not to be exceeded at any time in work place air. The ACGIH documentation (ACGIH, 1986) referencing Patty (1949) states that 2 mg/m^3 sodium hydroxide in air "represents a concentration that is noticeably, but not excessively irritant." The NIOSH also cite Patty (1949) and recommend a 2 mg/m^3 limit as a 15 minute ceiling. In addition, the Occupational Safety and Health Administration (OSHA) has adopted an exposure level of 2 mg/m^3 as an 8 hour time weighted average.

Although sodium hydroxide is produced in great quantities in the United States, exposure to high concentrations in the ambient air is unlikely due to its rapid atmospheric degradation (the atmospheric half life is 13 seconds). The maximum modeled ambient sodium hydroxide concentration is 0.02 mg/m^3 (15 minute averaging period).

Given the paucity of data regarding systemic or acute health effects and the low potential for exposure to high concentrations of sodium hydroxide (due to its rapid atmospheric degradation), it is unlikely that routine emissions of sodium hydroxide pose a public health risk.

Existing Regulations and Guidelines

The NIOSH, OSHA, and ACGIH recommended ceiling level of 2 mg/m^3 is discussed above. Six other nations have also recommended workplace standards, for airborne sodium hydroxide (NIOSH 1975). All of these standards are equal to or near the NIOSH and ACGIH recommended level.

Sodium hydroxide has been removed (53 FR 49688) from the list of compounds subject to the reporting requirements of the Toxic Chemical Release Reporting, Community Right-to-Know rule (53 FR 4500), under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313 requires that owners and operators of certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to each environmental medium. In addition, certain suppliers of toxic chemicals must notify recipients of such chemicals in mixtures and trade name products.

Conclusions

The Agency concludes that the currently available data are insufficient to indicate health concerns that warrant specific Federal regulation of routine sodium hydroxide emissions under the CAA at this time. A number of uncertainties, however, are associated with this conclusion. With regard to the health assessment, the health data are inadequate to judge sodium hydroxide's carcinogenic potential in humans. Furthermore, there are virtually no dose-response data for noncancer health effects in humans, and the available inhalation data from animals are minimal. Regarding the exposure assessment, EPA's techniques for estimating short-term concentrations resulting from routine emissions are based on screening models rather than on extensive site-specific modeling. The concentrations estimated from the short-term modeling exercise do not account for emissions resulting from intermittent or batch operations, thus providing a potential for underestimation of short-term concentrations. The rapid atmospheric half life of sodium hydroxide, however, has been incorporated into the exposure assessment. Ambient monitoring data for sodium hydroxide were unavailable, in part due to its rapid atmospheric degradation and the confounding effect of other sodium compounds in the atmosphere.

Although EPA considers today's action appropriate in view of the current health and exposure information, the Agency will continue to evaluate new data as they become available.

Furthermore, emissions of sodium hydroxide to the ambient air will also be evaluated in the context of multiple pollutant emissions from categories of related emission sources (source categories).

The EPA invites comments and submission of information pertinent to the determination made today. A further notice will be published if public comments or other additional information suggest a need to reevaluate today's findings and revise EPA's conclusions.

Date: January 6, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

References

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U. S. EPA (Environmental Protection Agency) (1988d). Toxic Chemical Release Reporting; Community Right to Know: Final Rule. **Federal Register** 53:4500–4554.

U. S. EPA (Environmental Protection Agency) (1988e). Sodium Hydroxide; Toxic Chemcial Release Reporting; Community Right to Know. **Federal Register** 53:49688–49690.

[FR Doc. 89–856 Filed 1–12–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3505–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 26, 1988, through December 30, 1988, pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: DS–AFS–L65106–WA, Rating EC2, Olympic National Forest, Land and Resource Management Plan, Additional Information Concerning Management Requirements in the Current Direction Alternatives and all Forest Plan Alternatives, Implementation, Clallam, Grays Harbor, Jefferson and Madison Counties, WA.

Summary: EPA feels this document evaluates Alternatives NC (No Charge), which is essentially a continuation of timber resource plans previously developed. Alternative NC does not incorporate all the provisions of the National Forest Management Act of 1976 and would not include the specific standards and guidelines for water quality protection. As such, EPA could not support the implementation of this alternative. EPA understands that the purpose of this document was not to address public comments on the draft EIS. Since EPA's comments on the draft EIS remain outstanding, the rating on the draft EIS and the supplemental draft EIS are the same.

ERP No.: DR–BLM–J61052–WY, Rating LO, Rock Springs District Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Fremont, Lincoln, Sublette and Sweetwater Counties, WY.

Summary: EPA's request for clarification of pre-FLPMA oil and gas leaks affecting the Wilderness Study Areas (WSAs), which was missing from the previous draft EIS was addressed in this document. However, additional water quality information related potential salinity increases from proposed graying and recreation management practices on two of the WSA's is requested in the final EIS.

ERP No.: D–IBR–J31021–WY, Rating LO, Westside Irrigation Project, Water Resource Development and Land Transfer of Public Land, Implementation, Big Horn and Washakie Counties, WY.

Summary: EPA has no objections to the proposed project, and does not anticipate any significant adverse impacts. Although, EPA requests additional selenium concentration information and recommended

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expansion of the proposed trace element monitoring program.

Final EISs

ERP No.: F-FRC-D05122-00, Upper Ohio River Basin Hydroelectric Development, Construction, Operation and Maintenance, Licenses, Belmont, Gallia, Jefferson, Mohoning and Washington Cos., OH; Hancock Co., WV and Butler, Beaver, Allegheny, Armstrong, Fayette, Washington and Westmoreland Cos., PA.

Summary: EPA does not believe that the final EIS thoroughly addresses our comments to the draft EIS or presents a conclusive analysis of the potential impacts of the project. EPA has several objections pertaining to alternatives and alternative analyses, wetland and riparian area descriptions, water quality, impacts to fisheries resources, economic analysis, and cumulative impacts. EPA strongly recommends that FERC undertake a supplemental draft EIS to address these issues and produce a secondary set of environmental documents specific to each of the proposed projects. EPA also suggests the formation of a technical advisory committee to formulate a planned approach for supplemental draft EIS/tiering process.

Regulations

ERP No.: R-FHW-A42428-00, 23 CFR Part 770 and 49 CFR Part 623; Air Quality Procedures for use in Federal Aid Highway and Federally Funded Transit Programs (FHWA Docket No. 88-13) (53 FR 35178).

Summary: As currently proposed, EPA believes that this regulation would have environmentally unacceptable results. This regulation would allow FHWA/UMTA to put into place procedures that EPA believes are not consistent with section 176(a) and 176(c) of the Clean Air Act and thereby allow transportation projects that may have significant air quality impacts to proceed. EPA requested that the rulemaking be delayed until the issues are resolved.

Dated: January 10, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

FR Doc. 89-877 Filed 1-12-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3504-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 2, 1989 Through Janaury 6, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890000, LDraft, AFS, AR, Ozark National Forest Wild and Scenic River Study for Thirteen Rivers, Designation or Nondesignation into the National Wild and Scenic River System, Baxter, Newton, Franklin, Pope, Johnson, Searcy and Stone, AR, Due: April 14, 1989, Contact: Don Hurlbut (501) 968-2354.

EIS No. 89001, Final, AFS, AZ, Mount Graham Astrophysical Area Development, Approval and Management, Pinaleno Mountains, Coronado National Forest, Graham County, AZ, Due: February 13, 1989, Contact: R. B. Tippeconnic (602) 629-6483.

EIS No. 890002, Final, CDB, MI, Ambassador Bridge Border Station Expansion and Hubbard-Richard Housing Project Development, Urban Development Action and Community Development Block Grants, Wayne County, MI, Due: February 13, 1989, Contract: Rober Davenport (313) 224-0343.

EIS No. 890003, Final, AFS, WA, Colville National Forest, Land and Resource Management Plan, Implementation, Perry, Pend Oreille and Stevens Counties, WA, Due: February 13, 1989, Contact: Warren Current (509) 684-3711.

Amended Notices

EIS No. 880397, Final, COE, CA, Marathon Industrial/Commercial Business Park Development, Section 10 and 404 Permits, City of Hayward, Alameda County, CA, Due: February 23, 1989, Contact: Scott Miner (415) 974-0446.

Published FR 12-9-88—Review period extended.

EIS No. 880404, Draft, CDB, NY, Steeplechase Amusement Park Development, Construction and Operation, UDAG, Brooklyn, Kings County, NY, Due: January 31, 1989, Contact: Garrett Thelander (212) 619-5000.

Published FR 12-16-88—Review period extended.

Dated: January 10, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-878 Filed 1-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Senior Performance Review Board Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Programs Division, Office of Personnel and Equal Opportunity, 500 C Street, SW., Washington, DC 20742, 202-646-3040.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4341(c) are:

Members: William C. Tidball, Richard W. Krimm, Homer V. Hervey, George H. Orrell, John W. McKay, Laura A. Buchbinder, Katherine H. Shannon

George W. Watson,

Acting General Counsel.

[FR Doc. 89-846 Filed 1-12-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Charter Savings and Loan Association, Corpus Christi, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Charter Savings and Loan Association, Corpus Christi, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-912 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association, Luling, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First Federal Savings and Loan Association, Luling, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-913 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Independence Savings and Loan Association, Gonzales, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Independence Savings and Loan Association, Gonzales, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-914 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Keystone Savings and Loan Association, Lampasas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Keystone Savings and Loan Association, Lampasas, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-915 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Bloomfield Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, a amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Bloomfield Savings and Loan Association, F.A., Birmingham, Michigan December 15, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-880 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Sequin Savings Association, Sequin, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Sequin Savings Association, Sequin, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-916 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Union Savings Association, San Antonio, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Union Savings Association, San Antonio, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-917 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

United Savings Bank of Wyoming, Cheyenne, WY; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for United Savings Bank of Wyoming, F.S.B., Cheyenne, Wyoming on December 15, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-918 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

Yoakum Federal Savings and Loan Association, Yoakum, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Yoakum Federal Savings and Loan Association, Yoakum, Texas, on December 29, 1988.

Dated: January 10, 1989.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-919 Filed 1-12-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida, and Barnett Brokerage Service, Inc., West Palm Beach, Florida; to acquire Barnett Bond Service, Inc., Jacksonville, Florida, and thereby engage in acting as agent for its customers in buying and selling units in unit investment trusts and shares in mutual funds solely at the request of and for the account of its customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-817 Filed 1-12-89; 8:45 am]

BILLING CODE 6210-01-M

CitNat Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. CitNat Bancorp, Inc., Urbana, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Urbana, Urbana, Ohio.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Illini Community Bancorp, Inc., Springfield, Illinois; to acquire 86.32 percent of the voting shares of First Security Bank of Mackinaw, Mackinaw, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Reliable Community Bancshares, Inc., Perryville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Perryville, Perryville, Missouri.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Colwich Financial Corporation, Colwich, Kansas; to become a bank holding company by acquiring 86.1 percent of the voting shares of State Bank of Colwich, Colwich, Kansas.

2. First National Boncshares of Winfield, Inc., Winfield, Kansas; to acquire 100 percent of the voting shares of Butler County Financial Corp., Inc., Douglass, Kansas, and thereby indirectly acquire Exchange State Bank, Douglass, Kansas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Golden Gate Bancor, San Francisco, California; to become a bank holding company by acquiring 99.82 percent of the voting shares of Golden Gate Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, January 9, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-818 Filed 1-12-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Sam K. Kendrick Testamentary Trust

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Sam K. Kendrick Testamentary Trust, Dallas, Texas, to acquire 50 percent of the voting shares of Pedernales Investment Corporation, Johnson City, Texas, and thereby indirectly acquire Johnson City Bank, Johnson City, Texas.

Board of Governors of the Federal Reserve System, January 9, 1989.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 89-819 Filed 1-12-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Disclosure Requirements And Prohibitions Concerning Franchising And Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On February 1, 1988 (53 FR 2784), the Commission published a request for public comment on a petition for exemption from the requirements of its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" that had been filed by the Saturn Corporation. The Commission now grants the petition and determines that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by the Saturn Corporation.

EFFECTIVE DATE: January 13, 1989.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Attorney, PC-H-238, Federal Trade Commission, Washington, DC 20580 (202) 326-2970.

SUPPLEMENTARY INFORMATION: Before The Federal Trade Commission.

Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by the Saturn Corporation.

On February 1, 1988, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by the Saturn Corporation, a General Motors Corporation subsidiary, that will be engaged in distribution of the new "Saturn" line of motor vehicles. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedures Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending April 1, 1988. After reviewing the petition and the two comments received, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor with a relative lack of business experience and sophistication;

(2) Inadequate time for the investor to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance in which the franchisee is unable to obtain essential and relevant facts about the investment known to the franchisor.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge or ability to obtain it, and thus to protect themselves from any deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is hardly necessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for abuse in the sale of franchises are absent, and that there is no likelihood of unfair or deceptive acts or practices in the sale of its automobile dealer franchises for that reason.

The petition and public comment demonstrate that potential Saturn dealers will be a select group of highly sophisticated and experienced businessmen and women; that they will be making very significant investments; and that they will have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in particular that just 300 dealers are to be selected from over 2000 applicants; that only applications from established automobile dealers have been and will be considered; that total investments will range from almost $2 million to more than $13 million; and that applicants will participate in a six-month selection process that contemplates extensive information gathering and exchange by the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the sale of motor vehicle franchises on three prior occasions since 1980, and found no evidence or likelihood of significant abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's proposed sales will accomplish what the Rule was intended to ensure. The conditions most likely to lead to abuses will not be present in Petitioner's sales of motor vehicle dealerships, and the sales process will generate sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's sale of motor vehicle dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

The record does not provide an adequate basis for exemption of all motor vehicle manufacturers, distributors and dealerships as a class. The Commission will continue to review exemption petitions on a case-by-case basis in light of the statutory standard for exemption pursuant to section 18(g) of the Federal Trade Commission Act.

Accordingly, the Commission has determined that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by the Saturn Corporation.

The Commission hereby rescinds, as moot, the temporary stay of Franchise Rule compliance previously granted to Petitioner (53 FR 2784) pending a final decision on the exemption request.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-834 Filed 1-12-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Managment and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those

packages submitted to OMB since the last list was published on January 6, 1989.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of packages.)

1. Community Health Representative Activity Reporting Sample—NEW—The proposed information collection will obtain Indian Health Service (IHS) Community Health Representative program data on: Service category, health area, setting, patient's age and sex, referred from, referred to, and minutes providing service or in travel. This information will be collected during one week per month, reported to IHS quarterly and used for program planning, allocation of resources, management and evaluation purposes. Respondents: State or Local Governments (Tribal); Number of Respondents: 1,411; Number of Responses Per Respondent: 4; Average Burden Per Response: 1.5; Estimated Annual Burden: 8,466.

2. 1987 National Medical Expenditure Survey (Revision-Health Insurance Plans Survey)—0937–0187—This is a revision for contacting employers as a part of the National Medical Expenditure Survey (NMES) Health Insurance Plan Survey so that characteristics of all employers are included in the sample allowing national estimates to evaluate current and proposed health policy decisions; Respondents: Individuals or households, Businesses or organizations; Number of Respondents: 30,290; Number of Responses Per Respondent: 1; Average Burden Per Response: .5808; Estimated Annual Burden: 17,593.

OMB Desk Officer: Jim Scanlon.

Social Security Administration

(Call Reports Clearance Officer on 301–965–4149 for copies of package.)

1. Farm Self-Employment Questionnaire—0960–0061—The information will be used to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. Respondents: Individuals or households, farms; Number of Respondents: 50,000; Frequency of Response: 1; Estimated Annual Burden: 8,333.

2. Processed Workloads—NEW—The information is used to prepare annual, national and disability determination services' budget requests and resource needs projections for 2 future years. Respondents: The respondents are the 54 State agency disability determination services; Number of Respondents: 54; Annual Frequency: 1; Average Burden Per Response: 1 hour; Estimated Annual Burden: 54.

3. Personnel Costs—NEW—The information is used to prepare annual national disability determination services' budget requests and resource needs projects for 2 future years. Respondents: The respondents are the 54 State agency disability determination services; Number of Respondents 54; Annual Frequency: 1; Average Burden Per Response: 1 hour; Estimated Annual Burden: 54.

OMB Desk Officer: Ron Compston.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–0141 for copies of package.)

Governmentwide Requirements for Drug-Free Workplace (Grants)—NEW—This information collection presents the governmentwide standard requirements for public comments. HHS has asked for expedited OMB approval by January 30, 1989, due to the statutory deadline for implementing the Drug-Free Workplace Act and the fact that the entire information collection being requested follows statutory language without elaboration. The Act requires grantees of Federal agencies to certify, as a condition of the grant, that they will provide drug-free workplaces. The Act also requires employees to notify employers of drug offense convictions and employers/grantees to notify Federal agencies of such convictions. Respondents: Individuals or Households; Businesses; State or Local Governments; Non-profit institutions.

OMB Desk Officer: Cynthia Bauer.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: (202) 245–2100
HCFA: (301) 966–2088
FSA: (202) 252–5605
SSA: (301) 965–4149
OS: (202) 245–6511
OHDS: (202) 472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: January 10, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 89–861 Filed 1–12–89; 8:45 am]

BILLING CODE 4150-04-M

Delegation of Authority

Notice is hereby given that based on the authority delegated to me by the memorandum from the Secretary, dated January 24, 1983, regarding delegation of administrative management authorities, which included authority to direct and oversee this Department's responsibilities to implement the Paperwork Reduction Act of 1980, Pub. L. 96–511, as amended, I am,

1. Redelegating to the Deputy Assistant Secretary for Information and Resources Management authority for all matters related to:

a. The review and approval, prior to the submission to the Office of Management and Budget (OMB), of all Class A (Sensitive) and Class B (Large Burden) Collections of Information; Class C (Routine) Collections of Information when necessary; and, where expedited review by OMB is requested by an Operating Division (OPDIV) of Collections of Information.

b. The approval, for publication in the **Federal Register**, of notices of information collection requests submitted to the OMB for clearance.

c. Oversight and coordination of paperwork burden reduction for the Department of Health and Human Services.

d. All other related paperwork reduction staff work, such as Departmental policy development and the responsibility for coordinating and developing the Information Collection Budget.

These authorities may be further redelegated to an Office Director who reports directly to the Deputy Assistant Secretary.

2. Redelegating the following authorities to the Operating Divisions (OPDIVs) (or its equivalent) for all matters related to:

a. The preparation and processing of clearances for collections of information, as well as assuring compliance with related policies, standards, procedures and instructions emanating from the OMB, and the Offices of the Secretary, Assistant Secretary for Management and Budget, and the Deputy Assistant Secretary for Information Resources Management.

b. The review and approval of Class C (Routine) Collections of Information from the public prior to the submission of these requests to OMB, except where expedited review by OMB is requested.

c. The approval, for publication in the **Federal Register**, of notices of OPDIV information collection requests submitted to OMB for clearance.

d. The management of the OPDIV's burden reduction program within the ceiling issued by the Department.

e. All other related paperwork reduction staff work, such as direct communication with OMB on routine reports clearance issues.

To Whom Delegated	Area of Authority
Deputy Assistant Secretary for Management and Acquisition	Office of the Secretary headquarters and regional offices, including Office for Civil Rights Regional and Field Offices and the U.S. Office of Consumer Affairs.
Assistant Secretary for Health.	Public Health Service headquarters, regional and field offices.
Assistant Secretary for Human Development Services	Office of Human Development Services headquarters, regional, and field offices.
Commissioner, Social Security Administration.	Social Security Administration headquarters, regional and field offices.
Administrator, Health Care Financing Administration	Health Care Financing Administration headquarters, regional, and field offices.
Administrator, Family Support Administration.	Family Support Administration headquarters and regional offices.
Director, Office of Child Support Enforcement.	Office of Child Support Enforcement headquarters, regional and field offices.

These authorities may be redelegated (1) to officials who are outside the program operation chain but are not below the grade (or equivalent) of deputy assistant secretary, or (2) with the prior approval of the Assistant Secretary for Management and Budget to other employees.

This redelegation memorandum supersedes all previously redelegated authorities to the addressees on this subject. They include, but may not be limited to the following memoranda: 1) the December 24, 1984 delegation to addressees, subject "Redelegation of Clearance Functions under P.L. 96–511": 2) the April 10, 1987, memorandum on same subject to same addressees; 3) Information and Resources Management, subject "Delegation of Authority to Approve for Publication in the **Federal Register** Notices of Information Collections submitted to the Office of Management and Budget for Clearances."

This redelegation is effective on January 18, 1989. Further, any redelegation that was previously made and that is otherwise allowed by this redelegation shall remain in effect until new redelegations under this authority are made.

Date: January 5, 1989.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 89–860 Filed 1–12–89; 8:45 am]

BILLING CODE 4150-05-M

Social Security Administration

Finding Regarding Foreign Social Insurance or Pension System—Jordan

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Finding Regarding Foreign Social Insurance or Pension System—Jordan.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or their actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that Jordan, beginning May 1980, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Jordan to receive such benefits, or the actuarial equivalent, at the full rate without qualification or restriction while outside Jordan.

Accordingly, it is hereby determined and found that Jordan has in effect, beginning May 1980, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding, published at 23 FR 5674 on July 26, 1958, that Jordan does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3567.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security Survivors Insurance.)

Dated: January 3, 1989.

Elizabeth K. Singleton,

Director, Office of International Policy.

[FR Doc. 89–855 Filed 1–12–89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–220–09–4322–02]

Grazing Administration-Exclusive of Alaska; Grazing Fee for the 1989 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of grazing fee for the 1989 grazing year.

SUMMARY: The Secretary of the Interior hereby announces that the fee for livestock grazing for the 1989 grazing year is $1.86 per animal unit month on public lands administered by the Bureau of Land Management.

EFFECTIVE DATE: March 1, 1989 through February 28, 1990.

ADDRESS: Any inquiries should be sent to: Director (220), Bureau of Land Management, Room 5626, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653–9193.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order 12548 of February 14, 1986. The grazing fees

are computed by the formula established in 43 CFR 4130.7–1.

January 9, 1989.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 89–829 Filed 1–12–89; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

[INT–FES–89–02]

Change of Water Use in Willard Reservoir, Weber Basin Project, Utah

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of availability of abbreviated final environmental statement (FES): INT–FES–89–02.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared an abbreviated Final Environmental Statement (FES) on the change of water use in the Willard (A.V. Watkins) Reservoir, a feature of the Weber Basin Project, Utah. Reclamation's recommendation is to approve the Weber Water Conservancy District's municipal and industrial (M&I) plan and authorize the marketing of up to 33,000 acre-feet of water from Willard Reservoir for either irrigation or M&I use.

ADDRESSES: Single copies of the FES can be obtained by contracting: Regional Director, Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah 84147; telephone (801) 524–5580.

Copies of the FES are available for public inspection at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of Interior, Room 7455, 18th & C Streets NW., Washington, DC 20240; Telephone: (202) 343–4662.

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, Room 167, Denver, CO 80225; Telephone: (303) 236–6963.

Libraries:

Brigham City Library, Brigham City, UT.
Davis County Library, Farmington, UT.
Davis County North Bench Library, Clearfield, UT.
Harold B. Lee Library, Brigham Young University, Provo, UT.
Kaysville City Library, Kaysville, UT.
Marriott Library, University of Utah, Salt Lake City, UT.
Merrill Library and Learning Resources, Utah State University, Logan, UT.
Morgan County Library, Kaysville, UT.
Ogden City Library, Ogden, UT.
Provo Public Library, Provo, UT.
Salt Lake City Public Library, Salt Lake City, UT.
South Davis County Library, Bountiful, UT.
Stewart Library, Weber State Library, Ogden, UT.
Weber County Library, Ogden, UT.
Weber County Library, Southwest Branch, Roy, UT.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Sersland (Regional Environmental Officer, Upper Colorado Region, Salt Lake City, UT), (801) 524–5580; or

Dr. Wayne O. Deason, (Manager, Environmental Services, Bureau of Reclamation, Denver, CO), (303) 236–9336.

SUPPLEMENTARY INFORMATION: The abbreviated FES does not repeat information contained in the draft environmental statement (INT–DES–87–28), filed on September 14, 1987. Jointly, the two documents contain a full description of the environmental impacts. The FES summarizes the environmental impacts of five alternatives for using currently unsold water in Willard Reservoir.

The reservoir, which has a 215,000 acre-foot capacity, was originally intended to provide irrigation service to agricultural lands on the eastern shore of the Great Salt Lake. Since completion of the reservoir in 1964, demand for irrigation water has not developed as anticipated, leaving about 33,000 acre-feet of available water unsold. This unused water, combined with a series of unusually wet years, contributed to an unanticipated, full reservoir condition which sustained a reservoir fishery. The full reservoir also encouraged a much higher amount of recreation use than would have developed if project water use had occured as planned.

The Weber Basin Water Conservancy District (District), the administering agency, has proposed selling the water for M&I use. Although the State Division of Wildlife Resources and the U.S. Fish and Wildlife Service recognize that they did not originally recommend fish and recreation use of the reservoir, these agencies now recommend that consideration be given to holding the water in the reservoir for fish and recreation purposes.

The five alternatives evaluated in the DES remain unchanged in the FES. The irrigation plan, which would have the project proceed as originally designed and authorized, constitutes the "no Federal action" alternative. Under this alternative, the 33,000 acre-feet of water would remain available for irrigation use.

The current sales plan would limit project water sales to the present amount. The 33,000 acre-feet of unsold water would have to be purchased by a public entity, which would require holding the water in the reservoir for fish, wildlife, and recreation purposes. Because of the large amount of precipitation and the high streamflow that have occurred in recent years, some of the water sold has not been used, resulting in a fairly stable water level in the reservoir. Under average or dry conditions, all of the sold water would be used and cause the reservoir level to drop. The impact of using all sold water, with the 33,000 acre-feet held for fish and recreation, is described in the DES.

The M&I plan proposed by the District is Reclamation's preferred alternative. The use of the unsold irrigation water would be converted to M&I purposes. The water might require additional treatment or more probably would be exchanged for higher quality water.

The fish and recreation plan would limit the sale of water to what is currently being sold. In addition, the water elevation in the reservoir would be maintained at recommended seasonal levels for fisheries and recreation. A public entity would have to not only purchase the 33,000 acre-feet of unsold water but would also have to acquire some water already sold to irrigators to hold reservoir levels needed for fish and recreation.

The combination plan is a combination of the M&I and fish and recreation alternatives. The 33,000 acre-feet of unsold irrigation water would be converted to M&I use and would also provide the seasonal water elevations recommended for fisheries and recreation. This alternative would also require buying back some additional water already sold.

If the change in water use is approved, additional water sales within the scope of this statement would be approved without additional NEPA compliance. However, additional compliance would be carred out on individual sales when environmental review identifies significant impacts not evaluated in the FES.

Dated: December 30, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89–866 Filed 1–12–89; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Land Management

[CA–020–09–4050–90]

California; Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579 (FLPMA), that a District Advisory Council meeting has been scheduled for Tuesday, February 14, 1989. The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California 96130 and end at 4:30 p.m. The agenda will include discussion on the Malacha Hydro-Electric Project. The meeting is open to the public and interested persons may make oral statements to the Council or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, by February 7, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Council meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: John Bosworth, Public Affairs Officer, at 916–257–5381.

C. Rex Cleary,

District Manager.

[FR Doc. 89–882 Filed 1–12–89; 8:45 am]

BILLING CODE 4310–40–M

[ID–020–09–4212–13, I–22486]

Amendment of the Malad Hills Management Framework Plan (MFP)/ Notice of Realty Action: Exchange of Public Land in Oneida County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of the Malad Hills Management Framework Plan (MFP)/ Notice of Realty Action, exchange of public land in Oneida County, Idaho.

Notice: Notice is hereby given that the BLM has amended the Malad Hills MFP to allow for transfer of certain public lands in exchange for privately owned lands in Oneida County, Idaho.

SUMMARY: The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for transfer by land exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Public lands to be transferred are described as:

T.15 S., R. 30 E., Boise Meridian

Sec. 4: Lots 13, 14, 15, 18, 19, and 20 (230.36 acres).

Non-Federal lands to be acquired are as described as:

T. 14 S., R. 30 E., Boise Meridian

Sec. 16: N½ (320 acres).

The purpose of this exchange is to acquire non-Federal lands which have high public values for grazing, wildlife, recreation, and public access. Acquisition of those lands will block up public lands in the area and will facilitate more efficient management of public lands.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Mr. Kenneth Campbell of funds in an amount not to exceed 25 percent (25%) of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions: reservation of ditches and canals, oil and gas to the United States, and road right-of-way to Oneida County.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the land exchange can be obtained by contacting Wes Duggan, Deep Creek Realty Specialist, at (208) 766–4766.

Planning Protest

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest shall be in writing and filed with the Director (760), Bureau of Land Management, 1800 "C" Street, NW., Washington, DC 20240, within 30 days of this notice.

Land Exchange Comments

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the land exchange to the District Manager, Bureau of Land Management, Route 3 Box 1, Burley, Idaho, 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any planning protest or objections, regarding the land exchange, this realty action will become final determination of the Department of the Interior and the planning amendment will be in effect.

Dated: January 6, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89–881 Filed 1–12–89; 8:45 am]

BILLING CODE 4310–GG–M

[CO–942–09–4520–12]

Colorado: Filing of Plats of Survey

January 5, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., January 5, 1989.

The supplemental plat creating new lots 13, 14, 15, and 16 in the northeast quarter of section 1, T. 7 S., R. 78 W., Sixth Principal Meridian, Colorado was accepted November 23, 1988.

The plat (in eight sheets) representing the dependent resurvey of the south boundary, portions of the east and west boundaries, the subdivisional lines, and portions of certain mineral surveys, and the subdivision of certain sections and the metes-and-bounds surveys of certain tracts, T. 43 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group No. 616 was accepted December 6, 1988.

The plat (in two sheets) representing the dependent resurvey of a portion of the subdivisional lines and certain mineral surveys and the survey of the subdivision of section 4, T. 42 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group No. 616 was accepted December 6, 1988.

The plat representing the dependent resurvey of portions of the subdivisional lines and the J.R. Hewitt Claim, and the subdivision of certain sections, T. 35 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 795 was accepted December 7, 1988.

The plat representing the dependent resurvey of portions of the west boundary and the subdivisional lines and the subdivision of sections 5 an 6, T. 45 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group No. 850 was accepted September 27, 1988.

The plat representing the dependent resurvey of the south boundary, T. 46 N., R. 13 W., a portion of the north boundary, T. 45 N., R. 13 W. and the survey of the Sectional Guide Meridian and the subdivisional line, T. 45½ N., R. 13 W., New Mexico Principal Meridian, Colorado, Group No. 850 was accepted September 27, 1988.

The plat representing the dependent resurvey of the east boundary, T. 46 N., R. 15 W. and portions of the north boundary and subdivisional lines and the survey of the subdivision of certain sections, T. 46 N., R. 13 W., New Mexico Principal Meridian, Colorado Group No. 850 was accepted September 27, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-879 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-JB-M

[NV-940-09-4214-10; N-50250]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

January 5, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy, Nevada Operations Office, has filed an application to withdraw approximately 4,255.50 acres of public land. The purpose of the proposed withdrawal is to provide the U.S. Department of Energy with authority to use the land for site characterization studies, to prevent interference with site characterization activities, and to maintain the physical integrity of the subsurface environment from unplanned or unknown intrusions in order to ensure that scientific studies for site characterization are not invalidated. This notice closes the lands for up to 2 years from surface entry, mining and mineral leasing.

DATE: Comments and requests for meetings should be received on or before April 13, 1989.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, NV 89520.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, (702) 784-5413.

SUPPLEMENTARY INFORMATION: On December 28, 1988, the U.S. Department of Energy filed an application to withdraw the following described public lands from settlement, sale, location or entry under the public land laws, including the mining and mineral leasing laws, subject to valid existing rights:

Mount Diablo Meridian, Nevada

T. 13 S., R. 49 E., (Pro. Dia. No. 44)
secs. 7, 8 and 9;
secs. 10 and 15, except for those lands withdrawn by PLO 2568;
secs. 16 and 17;
sec. 20, NE¼;
sec. 21, N½, N½S½;
sec. 22, N½, N½S½, except for those lands withdrawn by PLO 2568.

The areas described aggregate approximately 4,255.50 acres in Nye County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Any temporary discretionary land uses to be permitted by BLM during this segregative period will be determined on a case by case basis after consultation with the Department of Energy, Nevada Operations Office.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation provided for in this notice does not have the effect of authorizing any use of the lands by the Department of Energy.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-885 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Larry E. Johnson, Phoenix, AZ—PRT-734059

The applicant requests a permit to purchase one female chimpanzee (*Pan troglodytes*) of unknown origin from Monkey Jungle, Miami, Florida, and export the chimpanzee to the Guadalajara Zoo, Mexico, for zoological display and breeding purposes.

Applicant: Hawthorn Corporation, Grayslake, IL—PRT-734010

The applicant requests a permit to export and reimport one male Asian elephant (*Elephas maximus*) for circus performances at which the applicant intends to educate the public with regard to this species' ecological role and conservation needs. The elephant is to be given to the applicant free of charge by Mr. Tarzan Zerbini of Tarzan Zerbini Circus, Webb City, Missouri.

Applicant: Martha Lynn Crump, Gainesville, FL—PRT-733942

The applicant requests a permit to import up to 10 preserved eggs and 150 preserved tadpoles of the Monteverde toad (*Bufo periglenes*) from Costa Rica for scientific research. Applicant intends to conduct a histological examination of the morphology of mouthparts and intestines of tadpoles raised under different conditions of food availability.

Applicant: Grandeur Productions, Inc., Jonesville, NC—PRT-734151

The applicant requests a permit to export and reimport one captive born female leopard (*Panthera pardus*) for public display designed to educate the public with regard to this species' ecological role and conservation needs.

Applicant: James C. Gillingham, Mt. Pleasant, MI—PRT-734192

The applicant requests a permit to import neck and dorsal integumentary tissue samples from three male and three female tuatara (*Sphenodon punctatus*) from the University of Wellington, Wellington, New Zealand, for histological studies.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 6, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-903 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: San Antonio Zoological Gardens & Aquarium, San Antonio, TX—PRT-733832

The applicant requests a permit to import one captive-born male black-footed cat (*Felis nigripes*) from the Rotterdam Zoo, Netherlands, for the purpose of enhancement of propagation.

Applicant: San Antonio Zoological Gardens & Aquarium, San Antonio, TX—PRT-733830

The applicant requests a permit to import one captive-born female black-footed cat (*Felis nigripes*) from the Zoologischer Garten Berlin, Federal Republic of Germany for the purpose of enhancement of propagation.

Applicant: Dr. Robert L. Shipp, Mobile, AL—PRT-732871

The applicant requests a permit to take (move, bury and relocate), in cooperation with the Sea Turtle Stranding and Salvage Network in the State of Alabama, green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricata*), Kemps (=Atlantic) Ridley sea turtles (*Lepidochelys kempii*), leatherback sea turtles (*Dermochelys coriacea*) loggerhead sea turtles (*Carretta caretta*), and Olive (=Pacific) Ridley sea turtles (*Lepidochelys olivacea*), for the purpose of survival of the species.

Applicant: Idaho Dept. of Fish & Game, Boise, ID—PRT-733906

The applicant requests a permit to import up to 40 peregrine falcons (*Falco peregrinus anatum*) from John LeJeune, Falcon Farms, Ltd., Agassiz, British Columbia, Canada, and/or Dr. Lynn Oliphant, Saskatoon, Saskatchewan, Canada, for release in Idaho. The birds are to be imported over a five-year period and will all be captive-hatched birds.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: January 4, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-904 Filed 1-12-89; 8:45 am]

BILLING CODE 4310-AN-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent Corporation and Address of Principal Office.* Rocco Enterprises, Inc., One Rocco Plaza, Harrisonburg, Virginia.

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations and Their States of Incorporation.*

(i) Rocco, Inc.; Virginia.
(ii) Rocco Building Supplies, Inc.; Virginia.
(iii) Rocco Investments, Inc.; Delaware.
(iv) Rocco Farms, Inc.; Virginia.
(v) Rocco Farm Foods, Inc.; Virginia.
(vi) Rocco Feeds, Inc.; Virginia.
(vii) Rocco Food Products, Inc.; Virginia.
(viii) Rocco FSC, Inc.; Guam.
(ix) Rocco Further Processing, Inc.; Virginia.
(x) Rocco Construction, Inc.; Virginia
(xi) Rocco Realty, Inc.; Virginia.
(xii) Rocco Specialty Foods, Inc.; Virginia.
(xiii) Rocco Turkeys, Inc.; Virginia.
(xiv) Rocco Turkeys of North Carolina, Inc.; Virginia.

Noreta R. McGee,

Secretary.

[FR Doc. 89-858 Filed 1-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 286X)]

CSX Transportation, Inc.; Abandonment Exemption; Webster County, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 7.66-mile line of railroad between milepost 3.03 at Donaldson and milepost 10.69 near Johnson Run, in Webster County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by the user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 12, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 2, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). See will issue the EA by January 18, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 89–775 Filed 1–12–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; American National Can Co., Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1989, a proposed Consent Decree in *United States* v. *American National Can Company, Inc.*, Civil Action No. 87–1800, was lodged with the United States District Court for the Middle District of Pennsylvania. The Consent Decree requires defendant to pay a civil penalty of $130,000 and to install pollution control equipment to bring the end-sealing operation at its Lemoyne Pennsylvania facility into compliance with the emission limitations for volatile organic compounds imposed by the Clean Air Act, 42 U.S.C. 7407, *et seq.*, and the Pennsylvania State Implementation Plan approved under that Act.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American National Can Company, Inc.*, DOJ Ref. 90–5–2–1–1178.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Suite 309, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania 18501 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–888 Filed 1–12–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Notification; Composite Materials Characterization, Inc.

Notice is hereby given that, on December 19, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Composite Materials Characterization, Inc. ("CMC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of CMC. The additional written notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CMC advised that The Dow Chemical Company has become a member of CMC.

CMC, with the addition of the Dow Chemical Company, consists of the following firms: The Dow Chemical Company; General Electric Company; Grumman Aerospace Corporation; Lockheed Corporation; LTV Aerospace and Defense Company; Rohr Industries, Incorporated; and United Technologies Corporation, Sikorsky Aircraft Division. The purpose of CMC is to conduct research and development in the area of composite materials testing, grading and characterization.

On December 16, 1987, CMC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 15, 1988, 53 FR 1074.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–890 Filed 1–12–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Semiconductor Research Corp.

Notice is given that, on December 13, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Semiconductor Research Corporation ("SRC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The changes consist of the addition of the following companies to the SRC:

Loral Systems Group, Micron Technology, Inc., NCR Corporation.

the deletion of the following companies from SRC:

GCA Corporation, Goodyear Aerospace Corporation.

the addition of the following companies to the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC:

American Technical Ceramics,
SOHIO Engineered Materials Co.

and the deletion of the following companies from the SEMI Chapter:

Dyanpert/Amedyne
Eagle-Picher Ind., Inc.
FEP Analytic (division of Verity Instruments, Inc.)
Gryphon Products
Iron Beam Technologies, Inc.
Machine Technology, Inc.
MG Industries/Scientific Gases
Micromanipulator Company, Inc.
Oneac Corporation
PT Analytic, Incorporation
Silsco, Inc.
UTI Instruments Company
XMR Inc.

Furthermore, notice is given of the merger of RCA Corporation into the General Electric Company.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. SRC filed additional notifications on June 6, 1985, November 4, 1985, February 19, 1986, and September 11, 1987, notice of which the Department published on June 28, 1985 (50 FR 26850), December 24, 1985 (50 FR 52568), March 18, 1986 (51 FR 9287), and October 9, 1987 (52 FR 37849), respectively. SCR also filed additional notifications on December 19, 1986 and January 30, 1987; the Department published notice of both on February 13, 1987, 52 FR 4671.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–889 Filed 1–12–89; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Prisons

Intent to Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Facility Cumberland, Allegany County, MD

AGENCY: Federal Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: .

1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal correctional institution with an adjacent satellite prison camp is needed in its system. A 175 acre tract of land at the Allegany County Industrial Park near the community of Mexico farms will be evaluated. The proposal calls for the construction of a 600 to 700 bed facility to house medium security inmates and a 150 to 200 bed camp to house minimum security inmates.

Approximately 80 of the 175 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Cumberland. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested comunity leaders and officials.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: Lloyd McMillan, Site Acquisition Specialist, U.S. Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, Telephone: (202) 724–6817.

William J. Patrick,

Chief, Facilities Development & Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 89–578 Filed 1–12–89; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is

encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA89-9 (Jan. 6, 1989)..... p. 228.
New York:
NY89-12 (Jan. 6, 1989)..... p. 790.
NY89-13 (Jan. 6, 1989)..... p. 800.
NY89-18 (Jan. 6, 1989)..... p. 828.

Volume II

Indiana:
IN89-4 (Jan. 6, 1989)..... p. 290.
IN89-5 (Jan. 6, 1989)..... p. 304.
Texas:
TX89-3 (Jan. 6, 1989)..... p. 986.

Volume III

California:
CA89-4 (Jan. 6, 1989)..... p. 90.
Nevada:
NV89-1 (Jan. 6, 1989)..... p. 245.
Utah:
UT89-1 (Jan. 6, 1989)..... pp. 243-250d.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6 day of January 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-594, Filed 1-12-89; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve corrections to standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letters dated April 15, 1987 and January 12, 1988 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard and amendment comparable to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response; Interim Final Rule, as published in the **Federal Register** (51 FR 45663) on December 19, 1986; and Corrections, as published in the **Federal Register** (52 FR 16241) on May 4, 1987.

The State's Hazardous Waste Operations and Emergency Response Code, which is contained in Subchapter 10, was adopted on May 19, 1987, and became effective June 19, 1987. The amendment, which corrects errors in the original code, was adopted on October 26, 1987, and became effective December 13, 1987. Notices of the State rulemaking were published in statewide media on March 11 and 18, 1987 for the standard and on August 22 and 28, 1987 for the amendment. The public comment periods were open for 34 days and 30 days, respectively. There were no comments received.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard and amendment are identical to the Federal standard. OSHA therefore approves the standard and amendment.

3. Location of supplement for inspection and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be unnecessary.

This decision is effective January 13, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. (29 U.S.C. 677)).

Signed at Seattle, Washington this 8th day of February 1988.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 89-809 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

Connecticut State Standards; Approval

1. Background.

Part 1953 of Title 29, Code of Federal Regulation, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On November 3, 1978, notice was published in the **Federal Register** (43 FR 51390) of the approval of the Connecticut Public Sector State Plan and the adoption of Subpart E to Part 1956 containing the decision.

The Connecticut Public Sector only State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing an intent to amend the State Plan by adopting the standard(s) in the Connecticut Law Journal.

b. Approval by the Commissioner of Labor and the Attorney General of the State of Connecticut.

c. Approval by the Legislative Regulation Review Committee, State of Connecticut.

d. Filing in the Office of the Secretary of State, State of Connecticut.

e. Publishing a notice that the State plan is amended by adopting the standard(s) in the Connecticut Law Journal.

The Connecticut Public Sector State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. By letters dated September 16, 1986 and December 29, 1986 from P. Joseph Peraro, Commissioner, Connecticut Department of Labor to OSHA's Acting Regional Administrator, and July 27, 1988, from Commissioner Betty L. Tianti, Connecticut Department of Labor, to John B. Miles, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR Parts 1910; 1915; 1917; 1918; 1926; and 1928 and subsequent amendments thereto, as described below:

1. Amendment to 29 CFR 1910.243, Power Lawnmowers, as contained in 50 FR 4648 (February 1, 1985).

2. Deletion to 29 CFR 1910.1029, Coke Oven Emission Standard; Conforming Deletions; as contained in 50 FR 37352 (September 13, 1985).

3. Amendment to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide; Labeling Requirements, as contained in 50 FR 41491 (October 11, 1985).

4. Amendment to 29 CFR 1910.19, Special Provision for Air Contaminants, as contained in 50 FR 51173 (December 13, 1985).

5. Amendment to 29 CFR 1910.1000, Air Contaminants, as contained in 50 FR 51173 (December 13, 1985).

6. Revision to 29 CFR 1910.1043, Occupational Exposure to Cotton Dust; Final Rule, as contained in 50 FR 51120 (December 13, 1985).

7. Revision to 29 CFR 1910.19, Special Provisions for Air Contaminants, as contained in 51 FR 22733 (June 20, 1986).

8. Revision to 29 CFR 1926.1001, Asbestos, Tremolite, Anthophyllite and Actinolite, as contained in 51 FR 22733 (June 20, 1986).

9. Revision to 29 CFR 1926.55, Gas, Vapors, Fumes, Dusts and Mists, as contained in 51 FR 22756 (June 20, 1986).

10. Addition to 29 CFR 1926.58, Asbestos, Tremolite, Anthophyllite and Actinolite, as contained in 51 FR 22756 (June 20, 1986).

11. Addition to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, as contained in 51 FR 45654 (December 19, 1986).

12. Amendment to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Reponse, as contained in 52 FR 16242 (May 4, 1987).

13. Amendment to 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval, as contained in 52 FR 17752 (May 12, 1987).

14. Amendment to 29 CFR 1926.58, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval, as contained in 52 FR 17756 (May 12, 1987).

15. Addition to 29 CFR 1910.1200, Hazard Communication; Final Rule, as contained in 52 FR 31852 (August 24, 1987).

16. Addition to 29 CFR 1915.99, Hazard Communication, as contained in 52 FR 31877 (August 24, 1987).

17. Addition to 29 CFR 1917.28, Hazard Communication, as contained in 52 FR 31877 (August 24, 1987).

18. Addition to 29 CFR 1918.90, Hazard Communication, as contained in 52 FR 31877 (August 24, 1987).

19. Addition to 29 CFR 1926.59, Hazard Communication, as contained in 52 FR 31877 (August 24, 1987).

20. Addition to 29 CFR 1928.21, Hazard Communication, as contained in 52 FR 31886 (August 24, 1987).

21. Amendment to 29 CFR 1910.19, Special Provisions for Air Contaminants, as contained in 52 FR 34562 (September 11, 1987).

22. Amendment to 29 CFR 1910.1000, Air Contaminants, as contained in 52 FR 34562 (September 11, 1987).

23. Addition to 29 CFR 1910.1028, Benzene, as contained in 52 FR 34562 (September 11, 1987).

24. Addition to 29 CFR 1910.16, Longshoring and Marine Terminals, as contained in 52 FR 36026 (September 25, 1987).

25. Addition to 29 CFR 1910.177, Serving Multi-piece and Single-piece Rim Wheels, as contained in 52 FR 36026 (September 25, 1987).

26. Addition to 29 CFR 1917.1, Scope and Applicability, as contained in 52 FR 36026 (September 25, 1987).

27. Revision to 29 CFR 1917.44, General Rules Applicable to Vehicles, as contained in 52 FR 36026 (September 25, 1987).

28. Revision to 29 CFR 1910.268, Telecommunications, as contained in 52 FR 36387 (September 28, 1987).

29. Revision to 29 CFR 1926.550, Cranes and Derricks, as contained in 52 FR 36382 (September 28, 1987).

30. Revision to 29 CFR 1926.552, Materials Hoists, Personnel Hoists and Elevators, as contained in 52 FR 36382 (September 28, 1987).

31. Revision to 29 CFR 1926.903, Underground Transportation of Explosives, as contained in 52 FR 36382 (September 28, 1987).

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standards. It has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of supplement for inspection and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109; and the Office of State Programs, 200 Constitution Avenue NW., Room N3700, Washington, DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Connecticut Public Sector Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective January 13, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Boston, Massachusetts, this 19th day of October, 1988.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 89-810 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

New Mexico State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated September 12, 1988, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the Plan, the State submitted State standards identical to 29 CFR 1910.272, Grain Handling Facilities; 29 CFR 1910.1048, Formaldehyde; 29 CFR 1910.1048, Amendment to Formaldehyde; 29 CFR 1910.211, Definitions; and 29 CFR 1910.217, Mechanical Power Presses.

These standards, contained in New Mexico Occupational Health and Safety Regulation 200, were promulgated on July 7, 1988, in accordance with applicable State law.

The subject standards became effective September 17, 1988, pursuant to New Mexico State Law, Section 50-9-1 through 50-9-25.

2. Decision

The above State standards have been reviewed and compared with the relevant Federal standards. It has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. Location of supplement for inspection and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor–OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, Room 2200–North, Sante Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

The decision is effective January 13, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this 7th day of October, 1988.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 89-811 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

Nevada State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for

Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letters and memos dated September 14, and 21, and October 10 and 13, 1988, from Nancy C. Barnhart to Frank Strasheim and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.217, Mechanical Power Presses (March 14, 1988, 53 FR 8322); 29 CFR 1910.28, 1910.35, 1910.103, 1910.106, 1910.107, 1910.108, 1910.109, 1910.110, 1910.111, 1910.155, 1910.178, 1910.180, 1910.181, 1910.251, 1910.265, 1910.266, and 1910.399, Safety Testing or Certification of Certain Workplace Equipment and Materials (April 12, 1988, 53 FR 12102); 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide (April 6, 1988, 53 FR 11414); 29 CFR 1926, Subpart Q, Concrete and Masonry Construction Safety Standards (June 16, 1988, 53 FR 22612) and 29 CFR 1926.550, Crane or Derrick Suspended Personnel Platforms (August 2, 1988, 53 FR 29116). These standards are contained in the Division of Occupational Safety and Health Standards for General Industry and Construction Standards. The subject standards, 29 CFR 1910.217, Mechanical Power Presses; 29 CFR 1910, Safety Testing or Certification of Certain Workplace Equipment and Materials; 29 CFR 1910.1047, Occupational Exposure to Benzene; 29 CFR 1926, Subpart Q, Concrete and Masonry Construction and 29 CFR 1926.550 Crane or Derrick Suspended Personnel Platforms were adopted be reference on April 14, 1988, June 13, 1988, August 25, 1988, June 16, 1988 and August 2, 1988 respectively, pursuant to Nevada State law, section 618.295.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Room 415, San Francisco, CA 94105; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 13, 1989.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California this 31st day of October, 1988.

Frank Strasheim,

Regional Administrator.

[FR Doc. 89-812 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

On its own initiative, the State of Oregon has submitted by letter dated August 3, 1988 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a repeal of State Initiated Rule OAR 437-63-090(3), Overhead Conveyor Requirement, which was formerly contained in the State's standard OAR 437-63, Handling Materials and Material Handling Equipment, and which received Federal Register approval at 39 FR 38037 on October 25, 1974. The Rule was repealed after the Notice of Proposed Amendment of Rules dated May 16, 1988 was mailed to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. One comment was received and the matter of concern was clarified by a letter of response. No requests for public hearings were received. The repealer was adopted and effective on July 22, 1988.

2. Decision

The above State Rule has been reviewed and OSHA has determined that no comparable Federal standard exists. OSHA therefore approves this standard repeal.

3. Location of supplement for inspection and copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174;

Accident Prevention Division, Department of Insurance and Finance, 21 Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N3476, 200 Constitution Avenue Northwest, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The State's Rule was repealed in accordance with procedural requirements which included public comments and further public participation would be repetitious.

This decision is effective January 13, 1989.

(Sec. 18, Pub. L. 91-596, 84 STAT. 6108 (29 U.S.C. 667).

Signed at Seattle, Washington this 19th day of October, 1988.

Ryan E. Kuehmichel,

Acting Regional Administrator

[FR Doc. 89-813 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required. The Oregon plan also provides for the adoption of Federal standards as State standards by reference.

The State submitted by letter dated August 2, 1988, from John A. Pompei, Director, to James W. Lake, Regional Administrator, and Incorporated as part of the plan, the State's incorporation by reference of 29 CFR 1910.272, Grain Handling Facilities, as published in the **Federal Register** (53 FR 49624) on December 31, 1987 and a subsequent amendment as published in the **Federal Register** (53 FR 17696) on May 18, 1988. The standard was adopted by reference and became effective on July 7, 1988, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under the Oregon APD Administrative Order 10-1988. On June 8, 1988, the State mailed the proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the comparable Federal standard. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Accident Prevention Division, Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

4. Public Participation

Under 29 CFR 193.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 13, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington this 20th day of October, 1988.

Ryan E. Kuehmichel,

Acting Regional Administrator.

[FR Doc. 89-814 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The Oregon plan provides for the adoption of Federal standards as State standards by reference.

In response to Federal standards changes, the State has submitted by letter dated September 14, 1988, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and

incorporated as part of the plan, a State standard comparable to 29 CFR 1910.1048, Formaldehyde, as published in the **Federal Register** (52 FR 46291) dated December 4, 1987 and (53 FR 6628) dated March 2, 1988.

The State's rules pertaining to Formaldehyde, contained in OAR 437-02-360(27), were adopted by reference and became effective on September 12, 1988, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 14-1988. On August 16, 1988, the State mailed the proposed amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003 Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication of the following reasons:

1. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective January 13, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. [29 U.S.C. 667]).

Signed at Seattle, Washington this 24th day of October, 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 89-815 Filed 1-12-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1045: "Telecommunications: HF Radio Automatic Link Establishment.".

DATE: Comments are due within 90 days of the date of this notice.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunication Sciences, National Telecommunications & Information Administration, Mr. Robert Adair, telephone (303) 497-3723, or Mr. Dave Peach, telephone (303) 497-5309.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the December 6, 1988 draft of FED-STD 1045 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 89-672 Filed 1-12-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL ECONOMIC COMMISSION

Meetings

AGENCY: National Economic Commission.

ACTION: Notice of Commission meetings.

SUMMARY: The National Economic Commission meetings scheduled for January 17, 18, and 19 have been cancelled. Additional public meetings are scheduled for February 7, 8, 14, 15, and 16. The commission meetings scheduled to be held on January 31, February 1 and 2, which were originally closed, are now open to the public. The commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: January 31, 11:00 a.m.—5:30 pm; February 1, 9:00 a.m.—5:30 p.m.; February 2, 9:00 a.m.—4:30 pm; February 7, 11:00 a.m.—5:30 p.m.; February 8, 9:00 a.m.—5:30 pm; February 14, 9:00 a.m.—6:00 p.m.; February 15, 9:00 a.m.—5:30 pm; February 16, 9:00 a.m.—12:00 noon. All meetings will be held in Room 562, Dirksen Senate Office Building, Washington, DC.

Agenda: The agenda for these meetings will be announced as soon as practicable before the meetings.

Open Meeting: All meetings of the commission will be open to the public.

For Additional Information: Contact Jim Hildreth at 703/425-8986, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

Supplementary Information: See **Federal Register**, volume 53, No. 80, Tuesday, April 26, 1988, page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89-1059 Filed 1-12-89; 8:50 am]

BILLING CODE 6820-45-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26431; File No. SR-CSE-88-4]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Adoption of CSE Rule 11.9(t), Relating to the Limitation of Liability for Member Use of Exchange Facilities

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on August 16, 1988 a proposed rule change to adopt new CSE Rule 11.9(t). As proposed, CSE Rule 11.9(t) would limit the liability of the Exchange and its facilities manager for claims by CSE members and member employees arising out of their use of the Exchange's National Securities Trading System and Automated Extension Processing System.[3]

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26276, November 14, 1988) and by publication in the **Federal Register** (53 FR 46958, November 21, 1988). The Commission received no comments on the proposed rule change.

Existing CSE Rule 14.5 limits the Exchange's liability to its members for losses resulting from their use of the Intermarket Trading System. Although the CSE states that Exchange policy currently limits the Exchange's liability to members for losses arising out of their use of CSE's data processing systems, there exists no specific Exchange Rule to this effect. Proposed CSE Rule 11.9(t) would formally reaffirm that the Exchange is not liable to its members or member organizations, as well as their successors, representatives or associated persons, for system-related claims arising from the use of Exchange facilities, including (without limitation) the National Securities Trading System ("NSTS") and the Automated Extension Processing System ("AEPS"). The Exchange cites as the statutory basis for proposed CSE Rule 11.9(t) those provisions of section 6(b)(5) and 11A of the Securities Exchange Act of 1934 that encourage the use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions.[4]

The proposed rule change is similar to an existing rule at other exchanges.[5] Further, the adoption of CSE Rule 11.9(t) does not diminish in any way the responsibilities of the exchanges to regulate the operation and use of such facilities in compliance with the Act, the rules thereunder or applicable rules of the Exchange.

The Commission finds that the proposed rule change is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange. More specifically, proposed CSE Rule 11.9(t) is consistent with sections 6(b)(5) and 11A of the Act, which encourage the development and use of new data processing and communication techniques to facilitate economically efficient executions of securities transactions. The Commission believes that facilities such as the CSE's NSTS and the AEPS Systems are useful in furthering the establishment of an efficient national market system. To this end, it is consistent with the purposes of the Act for a self-regulatory organization to limit its liability with respect to the use of such facilities by its members. Additionally, the Commission finds that the proposed rule change will not alter the duties and responsibilities inherent in the Exchange's role as a self-regulatory organization registered with the Commission as national securities exchange. Finally, the proposed adoption of CSE Rule 11.9(t) has no impact on the potential liability of the Exchange for the claims of non-members arising from the use of Exchange facilities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: January 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-869 Filed 1-12-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On November 3, 1988, the Commission received a letter from the CSE, which deleted proposed CSE Rule 11.9(t)'s extension of the liability limitation to CSE customers. *See* letter from David Colker, General Counsel, CSE to George Scargle, Staff Attorney, SEC, Division of Market Regulation, dated October 31, 1988.

[4] 15 U.S.C. 78f(b)(5), 78k-1.

[5] *See, e.g.*, Chicago Board Options Exchange Rule 6.7 and Securities Exchange Act Release No. 14982 (July 20, 1978), 15 SEC Docket 318 (August 1, 1978). *See also* American Stock Exchange Article IV, Section 1(e); and Philadelphia Stock Exchange Article XII, Section 12-11.

[6] *See* 17 CFR 200.30-3(a)(44).

[Release No. 34-26430; File No. SR-MSE-88-07]

Self-Regulatory Organizations; Order Granting Temporary Approal of Proposed Rule Change by Midwest Stock Exchange, Inc., Relating to the Automated Execution of "Stopped, Out-of-Range" Orders on a "Next Sale, But No Better Than The Last Sale" Basis

I. Introduction

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on September 16, 1988 a proposed rule change that would provide for the automatic execution of "stopped, out-of-range" orders on a "next sale, but no better than the last sale" basis. The proposal would be implemented on a sixty (60) day pilot basis, and would initially provide for the automatic execution of orders of 399 shares or less.

Notice of the proposed pilot program was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26196, October 18, 1988) and by publication in the **Federal Register** (53 FR 43062, October 25, 1988). The Commission received no comments on the proposed rule change.

II. Description of the Proposal

The MSE is proposing a pilot program that would change the method in which "stopped, out-of-range" orders are executed on the Exchange Floor. The proposed rule change would provide automated execution of such orders on a "next sale, but no better than the last sale" basis. Presently these orders are processed on a manual basis. This change would represent a new application of the Midwest Automated Execution System ("MAX").

Currently, when an Exchange co-specialist receives a buy or sell order that if executed would create a new high or low price for the day, the order is said to be "out-of-range," and the order is "stopped." The order is then placed in the co-specialist's open order file to be manually executed when conditions permit. The orders are then executed on a "next sale, but no better than the last sale" basis.

The Exchange has provided the following example of the manner in which "stopped, out-of-range" orders would be executed by MAX under the proposed rule change.

Where the market is ⅜ bid—⅝ offered, and the last sale was ½ occurring on an uptick, and where the high of the day is ½, a market order to buy is stopped.

—Where the next sale is ⅜, the order is filled at ½ (*i.e.*, no better than the last sale).

—Where the next sale is ½, the order is filled at ½.

—Where the next sale is ⅝, the order is filled at ⅝ (*i.e.*, next sale, but no better than the last sale).

Initially, only orders of 399 shares or less would be subject to automatic execution under the proposed pilot program, although a maximum execution of 1099 shares would remain available for orders over MAX that are not "stopped, out-of-range".

The Exchange cites two reasons supportive of its claim that the pilot program would facilitate the efficient handling of "stopped, out-of-range" orders. First, the Exchange contends that automatic execution of such orders would assure customers of execution as soon as conditions warrant. Second, the Exchange contends that automatic execution of such orders would relieve co-specialists from the burden of constantly monitoring and executing these orders manually. The Exchange is proposing to operate the pilot program on a sixty (60) day trial basis.

III. Discussion and Conclusion

Small order routing and execution systems are designed to receive smaller sized orders electronically from broker-dealers and route them to the appropriate stock exchange floor for automatic execution or manual handling by the specialist. The MSE's MAX System provides an automated small order routing and execution mechanism for retail orders for certain eligible securities, and automatically routes market and limit orders of up to 1,099 shares from member firms to specialist posts, guaranteeing execution of orders of up to 1,099 shares at the best bid or offer displayed on the Intermarket Trading System ("ITS").

MSE Rule 34, Art. XX governs the operations of MSE's Guaranteed Execution System.[3] Because MSE Rule 34, Art. XX guarantees executions on the basis of the best ITS bid or offer, an order may be executed out of the primary market price range for the day. However, for MSE dual trading system issues, MSE Rule 34, Art. XX requires that a "stop" must be granted if requested by an MSE member firm if the execution would occur outside of the primary market range for the day.[4] Thus, MSE Rule 34, Art. XX generally operates to protect customers from adverse price moves on the primary market for MSE dual trading system issues, such that executions received on the MSE would be no worse than if executed on the primary market.

As noted above, the Exchange contends that automatic execution of "stopped, out-of-range" orders would assure customers of execution as soon as conditions warrant. The continued coverage of the protection afforded customers under MSE Rule 34, Art. XX and the best execution duty that generally governs customer order executions both support the Exchange's contention that automatic execution of "stopped, out-of-range" orders would assure customers of timely execution of their orders.

The Commission believes that the proposed rule change is consistent with the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, more specifically, section 6(b)(5) of the Act. For the limited purpose of adopting a 60 day pilot program for the automatic execution of "stopped, out-of-range" orders of 399 shares or less on a "next sale, but no better than the last sale" basis, the Commission believes approval of the pilot program is appropriate. We note that "out of range" customer orders subject to automatic execution under the pilot will still be afforded the same price protections that they currently have under MSE rule while potentially receiving the benefit of more timely executions. Accordingly, the proposed rule change should facilitate the efficient handling of "stopped, out-of-range" orders while maintaining adequate customer protections.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above mentioned rule change is hereby approved on a temporary basis until March 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

January 9, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-870 Filed 1-12-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b-4.

[3] Rules of the Midwest Stock Exchange, Inc., Art. XX, Rule 34, Midwest Stock Exchange Guide (CCH) ¶ 1714 at 2098 (1987).

[4] A "stop" order to buy (sell) becomes a market order when a transaction in the security occurs at or above (below) the stopped price after the order is represented in the trading crowd. *See, e.g.*, 2 New York Stock Exchange Guide (CCH) Rule 2, ¶ 2014 at 2530 (1987).

[5] If the MSE decides to apply for permanent approval of the pilot, the Commission would be interested in receiving information on the operation of the pilot and any problems encountered in addition to specific data on the number of orders automatically executed under the pilot.

[6] *See* 17 CFR 200.30-3(a)(44).

[Release No. 34-26433; File No. SR-NASD-88-36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Eligibility Criteria for NASDAQ National Market System Securities

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 5, 1988, and amended on September 8, 1988,[1] a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder.

The proposed rule change amends Parts I and III of Schedule D to the NASD's By-Laws relating to qualification standards for NASDAQ National Market System ("NASDAQ/NMS") issuers. The amendments derive primarily from discussions among representatives of the NASD, certain of the registered securities exchanges, and the North American Securities Administrators Association ("NASAA"). These discussions concerned the development of a set of minimum quantitative and qualitative listing criteria that would provide a basis for a uniform exemption from state securities registration requirements for all securities traded in markets with such listing criteria. The minimum listing criteria and terms of the uniform marketplace exemption are set forth in a memorandum of understanding ("MOU") executed on March 16, 1988, by the presidents of NASAA and the NASD. The MOU was approved by the NASD Board of Governors on May 9, 1988, and by the NASAA membership on October 10, 1988. In addition, the Commission has endorsed the MOU.[4]

[1] The amendment, which is available in the Commission's Public Reference Room, corrected a technical error in the original filing.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] *See* Securities Act Release No. 6810 (December 16, 1988).

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The proposed rule change reflects the terms of the MOU and will enable the NASD to implement it.

The quantitative designation and maintenance criteria in the proposed rule change (Sections 2 and 4 of Part III of Schedule D) amend the existing NASDAQ/NMS criteria to make them substantially equivalent to the criteria imposed by the American Stock Exchange ("Amex") prior to February 1987. The NASD states in its proposed rule change that it believes that such levels are consistent with designating securities in which there is a national level of interest among investors and that would therefore most greatly benefit from exemption from state registration af securities provision while providing sufficient safeguards to innvestors to warrant such an exemption.

The proposed rule change also amends section 5(b) of Part III to modify the requirement imposed upon issuers with respect to interim reports by removing the requirement that such reports be distributed to shareholders and substituting the requirement that such reports be made available to shareholders. With respect to this provision, the NASD notes in its proposed rule change that many issuers routinely distribute interim reports to shareholders but believes that in some instances a mandatory distribution of such reports may be unduly burdensome and costly to issuers. The NASD also notes that neither the New York Stock Exchange ("NYSE") nor the Amex requires mandatory distribution of interim reports to shareholders.

The proposed rule change also adds a new provision to Part IIII [section 5(i)] that imposes upon NASDAQ/NMS issuers the requirement to obtain shareholder approval of certain significant corporate transactions.[5] In its proposed rule change, the NASD states that the purpose of this provision is to provide shareholders of NASDAQ/NMS issuers a greater level of participation in corporate affairs by enhancing the qualitative requirements for NASDAQ/NMS designation. The NASD believes that implementation of the shareholder approval requirement is another important step in the continuing development of the National Market System sagment of NASDAQ and that such a requirement provides further shareholder protection commensurate with the stature of the issuers comprising that market.

The proposed rule change also amends Part I of Schedule D by adding a definition of the term "net tangible assets."

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25993, August 12, 1988) and by publication in the **Federal Register** (53 FR 31790, August 19, 1988).

The Commission received only one comment letter on the proposal.[6] Moreover, the commentator, Sullivan & Cromwell ("S&C"), addressed only the shareholder approval provisions (Section 5(i) of Part III of Schedule D). Specifically, S&C argued that the shareholder approval requirements were inappropriate because such matters traditionaly have been, and should continue to be, reserved to the states, and, if adopted, may hinder the development of NASDAQ/NMS by eliminating a significant difference between NASDAQ/NMS securities and NYSE and Amex securities, thus possibly causing some issues to be listed on the exchanges that might otherwise become NASDAQ/NMS securies.[7] In response, the NASD argued that its proposed section 5(i) is substantially similar to the current NYSE shareholder approval rule and requested that the Commission approve the NASD's proposed rule change as currently filed.[8]

The Commission has reviewed carefully the points raised in the comment letter and finds that the proposed rule change is consistent with the Act. First, as noted by the NASD, the proposed shareholder approval standards traditionally have been required by the stock exchanges, and the proposed standards are substantially similar to current NYSE standards. Second, the Commission need not and does not find that the proposed standards are compelled by the Act, but we are satisfied that the NASD has acted within its discretion in reaching an acceptable balance in finding that any burdens that may be imposed upon NASDAQ/NMS issuers by the proposed rule change are outweighed by the benefits to be gained from ensuring shareholder participation in major acquisition transactions and transactions that raise particular concerns over conflicts of interest. Moreover, the Commission believes that approval of the rule change is appropriate to facilitate the implementation of the NASD/NASAA MOU and the resultant exemption of NASDAQ/NMS securities from state registration requirements.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 9, 1989.

Jonathan G. Katz,

Secretary.

FR Doc. 89-872 Filed 1-12-89; 8:45 am]

BILLING CODE 8010-01-M

[5] Section 5(i)(1) provides that each NASDAQ/NMS issuer shall require shareholder approval of the issuance of securities in connection with: (a) options plans or other special remuneration plans for directors, officers or key employees; (b) actions resulting in a change in control of the issuer; (c) the acquisition, direct or indirect, of a business, a company, tangible or intangible assets or property or securities representing any such interests (i) from a director, officer or substantial security holder of the company (including its subsidiaries and affiliates) or from any company or party in which one of such persons has a direct or indirect interest, or (ii) where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 25% or more. Section 5(i)(2) provides that, where shareholder approval is required, the minimum vote that will constitute shareholder approval shall be a majority of votes cast, provided that the total vote cast represents over 50% in interest of all securities entitled to vote on the proposal.

[6] Letter from Sullivan & Cromwell to Jonathan G. Katz, Secretary, SEC, dated September 9, 1988.

[7] As a separate matter, S&C also argued that, if approved, the proposal should incorporate a variety of changes generally along the lines of changes recently proposed by the NYSE. *See* File No. SR-NYSE-88-19, Securities Exchange Act Release No. 25944, 53 FR 28930, August 1, 1988. Specifically, S&C suggests the following changes to the shareholder approval subsection: (1) Delete the term "key employees" in connection with options plans or other special remuneration because of the uncertainty of determining who is covered by the term; (2) create explicit exceptions from the shareholder approval requirement for issuances of warrants or rights generally to shareholders of the issuers, broadly-based option plans that include employees other than just offices and directors, and issuances to persons not previously employed by an issuer that are an inducement for such persons to enter into an employment contract with the issuer; (3) eliminate the provision for shareholder approval of actions resulting in a change in control of the issuer, because the proposal already contains a requirement for shareholder approval whenever a present or potential issuance could result in an increase in outstanding shares of common stock of 25% or more; (4) create an exception from the shareholder approval requirement for issuances in conjunction with de minimis acquisitions from a director, officer or substantial security holder or from any company or party in which one of these persons has a substantial direct or indirect interest; and (5) include a definition of the term "outstanding" shares.

[8] Letter from T. Grant Callery, Associate General Counsel, NASD, to Katherine A. England, Branch Chief, Division of Market Regulation, SEC, dated September 20, 1988. With respect to S&C's proposed changes (*see* note 7, *supra*), the NASD represented that if the Commission approves the NYSE's proposed rule change, the NASD will present the changes to its board within 90 days so that the NASD Board of Governors may determine whether to conform the NASD shareholder approval rule to the NYSE rule.

[Release No. IC-16744; (812-7165)]

Legg Mason Cash Reserve Trust et al.; Notice of Application

January 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Legg Mason Cash Reserve Trust, Legg Mason Income Trust, Inc., Legg Mason Special Investment Trust, Inc., Legg Mason Tax-Exempt Trust, Inc., Legg Mason Total Return Trust, Inc. and Legg Mason Value Trust, Inc., and any investment companies to be established in the future for which Legg Mason Fund Adviser, Inc. or Western Asset Management Company serves as manager or investment adviser.

Relevant 1940 Act Sections: Applicants seek an order granting exemption from the provisions of section 23(a)(1) of the 1940 Act to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors or trustees meeting held within 90 days before or after the beginning of their fiscal years.

Filing Date: The application was filed on November 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants: c/o Marie K. Karpinski, Legg Mason Wood Walker, Incorporated, 111 South Calvert Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3047, or Brion Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is an open-end investment company under the 1940 Act organized as a Maryland corporation or as a Massachusetts business trust. Legg Mason Fund Adviser, Inc. serves as manager and/or investment adviser to all of the Applicants. Western Asset Management Company serves as investment adviser to Legg Mason Income Trust, Inc. and Legg Mason Cash Reserve Trust.

2. State law does not require Applicants to hold annual shareholders' meetings. Regularly scheduled Board meetings are currently held on the same dates for all of the Applicants in January, February, May, July and October of each year. It is the usual practice to consider an issue affecting more than one of the Applicants at the same meeting.

3. Each of the Applicants' Boards, other than Legg Mason Cash Reserve Turst, consists of six persons, four of whom are not "interested persons" as defined in the 1940 Act. There is substantial identity among the members of all such Boards. The Board of Legg Mason Cash Reserve Trust is comprised of four trustees, three of whom are not "interested persons", and all four of whom serve on the Boards of the other Funds.

4. The Applicants' respective fiscal year commencement dates are staggered as follows: January 1 (Legg Mason Income Trust, Inc. and Legg Mason Tax-Exempt Trust, Inc.); April 1 (Legg Mason Special Investment Trust, Inc., Legg Mason Total Return Trust, Inc. and Legg Mason Value Trust, Inc.); and September 1 (Legg Mason Cash Reserve Trust). The staggered fiscal year ends allow more efficient use of management and accounting personnel.

5. The selection of accountants for the Applicants is based on the recommendation of the Audit Committee of each Board. Each Applicant's Audit Committee is comprised of the "disinterested" members of the Board. The duties of the Audit Committee of each Applicant include meeting with the accountants as necessary to review the audit, financial statements, accountants' comments regarding the Applicant's policies, procedures and controls and the accountants' proposed opinion; reviewing audit and non-audit services provided by the accountants and the fees charged for such services; and evaluating the independence of the Applicant's independent public accountants and recommending whether to retain such accountants for the next fiscal year. The Audit Committees meet at least once a year, immediately preceding the Board meeting at which selection is to be considered, to review the performance of the independent accountants and to decide on its recommendation to the Board for the coming year.

Applicants' Legal Conclusions

1. The application of section 32(a)(1) in light of the present fiscal years and meeting dates of the Applicants would require two or three additional Board meetings for the sole purpose of selecting independent public accountants for the Applicants or a change in the present meeting schedule, because the regularly scheduled meetings do not fall within 30 days of the various Applicants' fiscal year commencement dates. Applicants submit that the present meeting schedule is advantageous to them because it allows the accountants to complete a substantial portion of the prior year's audit and present the results to the Audit Committee of each Applicant before the Committee selects accountants for the coming year. If meeting dates are changed or new funds with different fiscal years are added to the complex in the future, the requirement of section 32(a)(1) could become more onerous.

2. Applicants submit that it is desirable to consider the selection of their independent public accountant at the same time as one or more of the other Applicants during a regularly scheduled Board meeting. Expanding the 60-day window (30 days before or after the beginning of each fiscal year) to 180 days (90 days before or after the beginning of each fiscal year) would permit the Applicants to select accountants twice during the year at a regularly scheduled Board meeting. The purpose of the 60-day window is obscure since if a fund holds an annual meeting of shareholders the 1940 Act allows the directors to select the accountants at any time prior thereto. Applicants submit that it is preferable to avoid the extra expense and inconvenience of holding additional Board meetings solely for the purpose of selecting independent public

accountants, as would be required if the 60-day window were not expanded. Accordingly, Applicants conclude that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-871 Filed 1-12-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5519]

Filing of an Application for a License to Operate as a Small Business Investment Company; Zenia Capital Corp.

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Zenia Capital Corporation, 39-01 Main Street, Suite 210, Flushing, New York 11354, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et. seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of Ownership
Zenia C. Yuan, 39-01 Main St., Flushing, NY 11354.	President/ Director Treasurer	50
Sam C. Yuan, 39-01 Main St., Flushing, NY 11354.	Secretary/ Director.	50
Orest M. Glut, 39-01 Main St., Flushing, NY 11354	Financial Manager	
Min-Fei Hwang, 39-01 Main St., Flushing, NY 11354.	Director	

As a section 301(d) Licensee it will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by person whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under thier management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in the newspaper of general circulation in Flushing, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Date: January 9, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-825 Filed 1-12-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended

January 6, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46051

Date Filed: January 4, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 1989.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 130 in order to authorize United to operate (1) nonstop service between Chicago, Illinois, and points in Japan, and (2) between Chicago, Illinois, and points in Asia on Route 130 via Japan.

Docket No.: 46052

Date Filed: January 4, 1989.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 1, 1989.

Description: Application of Trans European Airways, S.A. pursuant to section 402 of the Act an Subpart Q of the Regulations requests authority, pursuant to the U.S.-Belgium bilateral, Annex II (Which specifically authorizes charter transportation), to operate (i) unrestricted Third and Fourth Freedom flights, (ii) Fifth Freedom flights as provided for in the U.S. Belgium bilaterial.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-876 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 88-115]

Rules of the Road Advisory Council; Working Group Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Working Group Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) notice is hereby given of a three member Working Group meeting of the Rules of the Road Advisory Council (RORAC). The meeting will be held on Thursday and Friday, February 9-10, 1989, at the World Trade Center, 29th Floor, Board of Director's Room, 2 Canal Street, New Orleans, Louisiana, and is scheduled to begin at 9:00 a.m. and end at 3:30 p.m. each day. The agenda for the meeting includes the following items concerning the Navigation Rules, International—Inland (COMDTINST M16672.2A):

1. Vertical Sector Lighting Requirements for Unmanned Barges operating on International (COLREG) waters.
2. Inland rule 38 exemption on sidelight placement.
3. International/Inland rule 23 to allow vessels of less than 50 meters in length to exhibit the forward masthead light as far forward as is practicable as opposed to forward of amidships.
4. Discussion of brightness of masthead light on tow vessels operating on Western Rivers.

The Working Group is interested in hearing the advice from individual attendees and interested parties.

Persons interested in addressing the Working Group on these issues should contact the Executive Director.

Attendance is open to the public. Public comments and/or oral statements are invited at the meeting. Any members of the public may present a written statement to the Working Group at any time.

Additional information may be obtained from Commander Tom Meyers, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR-3), 2100 Second St. SW., Washington, DC 20593-0001, Telephone (202) 267-0357.

Dated: January 10, 1989.

A. B. Smith,

Captain, U.S. Coast Guard Acting Chief, Office of Navigation Safety and Waterway Services

[FR Doc. 89-874 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Proposed Advisory Circular 21-QCC; Quality Control For Composite Materials and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-QCC, Quality Control For Composite Materials and Structures for review and comments. The proposed AC 21-QCC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures for Products and Parts.

DATE: Comments submitted must identify the proposed AC 21-QCC file number, P8-220-0005, and be received by February 13, 1989.

ADDRESSES: Copies of the proposed AC 21-QCC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frank Paskiewicz, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21-QCC provides information and guidance to FAA production approval applicants or holders concerning acceptable quality control systems and related procedures used in the manufacture of composite materials and structures for aircraft and related products.

Comments Invited

Interested persons are invited to comment on the proposed AC 21-QCC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-QCC may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m and 4:30 p.m.

Issued in Washington, DC on December 23, 1988.

Alphonse G. Santarelli,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 89-806 Filed 1-12-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-1]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 2, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 9, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25652.

Petitioner: Cochise Community College.

Sections of the FAR Affected: 14 CFR 141, Appendix H, paragaphs (3)(c) (1) and (3).

Description of Relief Sought: To allow the enrollment of students in the ground portion of the petitioner's FAA-approved Flight Instructor Certification Course prior to the students' completion of the flight portion of the FAA-approved Commercial Pilot Certification Course.

Docket No.: 25664.

Petitioner: Gulfstream Pacific Airways, Inc.

Regulations Affected: 14 CFR 43.3(a) and (g).

Description of Relief Sought: To allow petitioner's pilots to remove and install passenger seats when necessary to accommodate a flight.

Docket No.: 25737.

Petitioner: CCAIR, Inc., dba CCAIR Cargo.

Sections of the FAR Affected: 14 CFR 21.197(c).

Description of Relief Sought: To allow petitioner to operate certain aircraft maintained in accordance with the requirements of § 135.411(a) under

special flight permit with continuing authorization.

Docket No.: 25742.
Petitioner: Skydive Deland, Inc.
Sections of the FAR Affected: 14 CFR 105.43 and 91.15(a)(2).
Description of Relief Sought: To allow foreign skydivers to participate in events held by petitioner at Deland Municipal Airport (Taylor Field), Deland, Florida. The foreign skydivers would be required to show proof of membership in their National Aero Club, along with proof that their equipment has been approved or accepted in the participant's country.

Docket No.: 25746.
Petitioner: Seagull Air Service, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g).
Description of Relief Sought: To allow pilots employed by petitioner to perform the preventive maintenance functions of removing and/or replacing the passenger seats and seat belts of aircraft used in part 135 operations.

Docket No.: 20583.
Petitioner: Tenneco, Inc.
Sections of the FAR Affected: 14 CFR 61.58(c)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 3106, as amended, that allows petitioner's pilots in command (PIC) to complete the entire 24-month PIC in FAA-approved visual or Phase II simulators provided that the pilot taking the flight check has completed three takeoffs and three landings within the proceding days in the specific type aircraft in which the pilot is to serve as pilot in command.
Grant. December 30, 1988. Exemption No. 3106D.

Docket No.: 25307.
Petitioner: Precision Airlines.
Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435.
Description of Relief Sought: To amend Exemption No. 4867 that allows petitioner to use on its aircraft certain parts, repaired, overhauled, or otherwise maintained by foreign original equipment manufacturers. The amendment would add six German-built Dornier aircraft, Model Number DO228-202, to the exemption.
Grant. December 30, 1988. Exemption No. 4867A.

Docket No.: 25351.
Petitioner: USAir, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/ Disposition: To allow petitioner to use foreign vendors to perform inspection, repair, and overhaul work on airframe, engines, components, and equipment on petitioner's fleet of British Aerospace BAC 1-11, Boeing 737-300 and 737-200, and McDonnel-Douglas DC-9-30 aircraft, where such foreign vendors are the original equipment manufacturers of such equipment.
Partial Grant. December 29, 1988. Exemption No. 5005.

[FR Doc. 89-805 Filed 1-12-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the thirteenth meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held February 1-3, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of the previous meeting, RTCA Paper No. 436-88/ SC135-262; (3) review draft of proposed revision to DO-160B; (4) review status of the RF susceptibility problem and proposed changes to section 20.0, Radio Frequency Susceptibility; (5) review proposed changes to section 23.0, Lightning Direct Effects; (6) update change coordinator list; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any Member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 4, 1989.

Geoffrey R. McIntyre,
Acting Designated Officer.

[FR Doc. 89-807 Filed 1-12-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 163—Unintentional or Simultaneous Transmissions That Adversely Affect Two-Way Radio Communication; Procedures for Airborne Equipment; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the eighth meeting of RTCA Special Committee 163 on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communication to be held February 6-8, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) approval of the minutes of the previous meeting, RTCA Paper No. 438-88/ SC163-67; (3) review task assignments; (4) review fifth draft of the MOPS, RTCA Paper No. 440-88/SC163-66; (5) assignment of tasks; (6) other business; and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any Member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 4, 1989.

Geoffrey R. McIntyre,
Acting Designated Officer.

[FR DOC. 89-808 Filed 1-12-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Mecklenburg County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Mecklenburg County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Max Tate, District Engineer, Federal Highway Administration, 4505 Falls of Neuse Road, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an invironmental impact statement (EIS) on a proposed relocation of US 521 extending approximately 3.4 miles from the South Carolina state line to north of the proposed Charlotte Southern Outer Loop including an interchange with the Outer Loop in Mecklenburg County.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demand. Alternatives under consideration include (1) the "no-build", (2) improving the existing facilities and (3) a multilane highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and Local agencies. A public meeting and meeting with local officials will be held in the study area. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 6, 1989.

Max Tate,
District Engineer, Roleigh, North Carolina.

[FR Doc. 89-883 Filed 1-12-89; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 33-88]

Treasury Notes, Series AJ-1990

Washington, December 29, 1988.

The Secretary announced on December 28, 1988, that the interest rate on the notes designated Series AJ-1990, described in Department Circular—Public Debt Series—No. 33-88 dated December 22, 1988, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 89-820 Filed 1-12-89; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 34-88]

Treasury Notes, Series Q-1992

Washington, December 30, 1988.

The Secretary announced on December 29, 1988, that the interest rate on the notes designated Series Q-1992, described in Department Circular—Public Debt Series—No. 34-88 dated December 22, 1988, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 89-821 Filed 1-12-89; 8:45 am]
BILLING CODE 4810-40-M

Customs Service

[T.D. 89-8]

Automated Manifest System (AMS) Information Dissemination Product; Public Access

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document revises the final notice document published at T.D. 88-38 in the **Federal Register** on July 1, 1988 (53 FR 25041) concerning the information dissemination product called the Automated Manifest System, to reflect the preparation for sale to the public of a daily magnetic tape containing all releasable data from vessel manifests which are transmitted electronically to Customs through the AMS. The existing notice "contemplated" the preparation of a weekly tape.

EFFECTIVE: December 16, 1988.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Russell A. Berger, Regulations and Disclosure Law Branch, (202) 566-8237. Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations, (202) 566-6012.

SUPPLEMENTARY INFORMATION:

Background

By a final notice document published as T.D. 88-38 in the **Federal Register** on July 1, 1988 (53 FR 25041), pursuant to OMB Circular A-130, dated December 12, 1985 (50 FR 527391), the public was informed of a new information dissemination product developed by Customs called the Automated Manifest System (AMS) which allows carriers, port authorities (PAs), and service centers to electronically transmit data to Customs from inward vessedl manifests thereby facilitating and expediting the release of cargo from Customs custody.

The public was also informed that Customs would make available for public sale a magnetic tape containin- data from all the manifests being transmitted electronically to Customs through AMS, assuring proper confidentiality where requested. It was at the time "contemplated that the tape [would] be available on a weekly basis."

In this latter regard, it is now contemplated, and determined, that the magnetic tape will instead be made available on a daily basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566-6012.

Drafting Information

The principal author of this document was Russell A. Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Dated: January 4, 1989.

William von Raab,
Commissioner of Customs.

[FR Doc. 89-847 Filed 1-12-89; 8:45 am]
BILLING CODE 9111-26-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 9
Friday, January 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed revisions to the methodology for computing the Private Sector Adjustment Factor (PSAF).

2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: January 11, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-925 Filed 1-11-89; 11:05 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, January 18, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appointment of new members to the Consumer Advisory Council.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 11, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-926 Filed 1-11-89; 8:45 am]
BILLING CODE 6210-0-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, February 8, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1989.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: January 10, 1989.

Charles R. Barnes,
Executive Director, National Mediation Board.
[FR Doc. 89-939 Filed 1-11-89; 12:04 pm]
BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 54, No. 9
Friday, January 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1989; Solicitation of Applications

Correction

In notice document 88-28888 beginning on page 50500 in the issue of Thursday, December 15, 1988, make the following correction:

1. On page 50501, in the first column, the sequence of the last two headings should be reversed.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 81126-8226]

Coastal Migration Pelagic Resources of the Gulf of Mexico and South Atlantic

Correction

In rule document 88-30260 appearing on page 153 in the issue of Wednesday, January 4, 1989, make the following correction:

In the third column, in the first complete paragraph, in the last line, "(2˚20.4' N. latitude)" should read "(25˚20.4' N. latitude)".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[Gen. Docket 87-505; FCC 88-341]

National Security Emergency Preparedness Telecommunications Service Priority System

Correction

In rule document 88-27108 beginning on page 47535 in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47536, in the second column, at the beginning of the first indented line, insert "3.".

Appendix A to Part 64—[Corrected]

2. On the same page, in the same column, in Appendix A to Part 64, in paragraph 1c, in the 10th line, "condition" should read "conditions".

3. On page 47537, in Appendix A to Part 64, in the second column, in paragraph u, in the second line, "associate" should read "association".

4. On page 47539, in Appendix A to Part 64, in the second column, in paragraph 6f(6), in the second line, "and" should read "an".

5. On page 47540, in Appendix A to Part 64, in paragraph 9c, in the second column, in the 10th line, after "of" insert "a".

6. On page 47541, in Appendix A to Part 64, in the third column, in paragraph 12c(4)(b), in the third line, "and" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-09-4214-10; COC 49195]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

Correction

In notice document 88-29415 beginning on page 51597 in the issue of December 22, 1988, make the following corrections:

1. On page 51597, in the third column, under "T. 6S., R. 78 W.,", in the third line, after "E½W½NW¼" insert a comma.

2. On the same page, in the same column, under "T. 7 S., R. 78 W. (Protraction Diagram No. 9, Accepted April 26, 1965),", in the fifth line, after "Sec. 6, All" insert a comma.

3. On page 51598, in the 1st column, under "T. 6 S., R. 79 W.,", in the 1st line, after "Sec. 25, SW¼SW¼NE¼" remove the comma; and in the 11th line, "Sec. 34, E¼," should read "Sec. 34, E½,".

BILLING CODE 1505-01-D

federal register

Friday
January 13, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Part 202, 203, 206, 210, and 212
43 CFR Part 3480
Revision of Coal Product Valuation Regulations and Related Topics; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 210, and 212

43 CFR Part 3480

Revision of Coal Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rulemaking provides for the amendment and clarification of regulations governing the valuation of coal for royalty purposes. The amended and clarified regulations govern the methods by which value is determined when computing coal royalties under Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The revised regulations will result in consistent and uniform guidance to industry relative to the valuation of coal for royalty computation purposes.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Earl Cox, Herbert B. Wincentsen, Rodney Noah, and Michael Throckmorton of the Royalty Valuation and Standards Division of the Minerals Management Service (MMS), Lakewood, Colorado; Donald T. Sant, Deputy Associate Director for Valuation and Audit, MMS; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

A notice of proposed rulemaking for coal product valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1840), with a 90-day comment period. The public comment period was reopened on July 9, 1987. Additional comments were accepted through July 23, 1987 (52 FR 25887). A total of 136 comments were received from industry representatives, elected members of Congress, State governments, local governments, Indian Tribes, Indian organizations, and other persons.

During the initial comment period, a public hearing on the proposed rulemaking was held on March 3, 1987, in Denver, Colorado. The Royalty Management Advisory Committee (RMAC) also held a meeting on April 1, 1987, in Denver, Colorado, on the proposed coal valuation rulemaking. Industry, State, and Indian representatives also met with MMS and Department of the Interior (Department) officials during the comment period to discuss issues pertaining to the proposed rulemaking. Minutes from these meetings were included in the record and were incorporated as comments on the proposed rulemaking along with the transcripts from the public hearing and RMAC meeting, and written comments received by MMS.

On August 12, 1987, MMS published a notice in the **Federal Register** (52 FR 29868) reopening the public comment period for 69 days primarily to obtain public comments on a proposal submitted jointly on behalf of the coal and electric utility industries. This proposal included a comprehensive, section-by-section set of revisions to the January 1987 proposed rulemaking. The MMS received 48 comments on the industry proposal which are discussed in more detail below.

The MMS also recently completed two rulemakings to adopt new product valuation regulations for oil (53 FR 1184, January 15, 1988) and gas (53 FR 1230, January 15, 1988). The rulemaking process for oil and gas included draft rules, proposed rules, and two further notices of proposed rulemaking with draft final rules appended. (Citations are included in the preamble to the final rules.)

On June 7, 8, and 9, 1988, MMS held open meetings with representatives of the Western States, Indian Tribes, and the coal and electric utility industries to discuss a draft of this proposed rule. Several suggested changes and additions offered at those meetings were incorporated in a Further Notice of Proposed Rulemaking for coal product valuation regulations published in the **Federal Register** on July 15, 1988 (53 FR 26942) with a 60-day comment period. A total of 51 commenters comprised of representatives of State and local governments, other Federal agencies, the coal and electric utility industries, Indian Tribes, Indian Tribal organizations, individuals, and other organizations responded.

A public hearing on the proposed rulemaking was held during the 60-day comment period following the July 15, 1988, notice. Minutes of that September 7, 1988, meeting are included as comments on the proposed rulemaking.

Except for the addition of the severance tax exclusion from coal value at § 206.257(b)(5), the regulatory provisions in this notice have not changed significantly from the July 15, 1988 proposal. Therefore, we are not repeating the preamble discussion in this notice. Interested parties should refer to the July 15, 1988, notice (53 FR 26942).

II. Purpose and Background

These rules supersede all currently effective coal royalty valuation directives, such as those contained in numerous Secretarial, MMS, and U.S. Geological Survey Conservation Division (now Bureau of Land Management Onshore Operations) decisions and orders. These rules apply to production on or after the effective date of the final rule for all leases.

Structurally, these rules add sections to 30 CFR Parts 202, 203, and 206, revise §§ 206.10 and 210.10, revise subpart titles in Part 212, and remove paragraphs from 30 CFR 203.250 and 43 CFR 3485.2. Paragraph (b) of § 203.250 is redesignated to Part 202 at § 202.250.

For the convenience of coal lessees, payors, and the public, the following chart summarizes the regulation changes:

Regulation changes (all from 30 CFR, except as noted)	Descriptions
I. Redesignations	
1. Paragraph (b) of § 203.250 is designated to Part 202 as § 202.250	This administrative action more appropriately locates within 30 CFR the information contained in this paragraph.
2. Paragraph (a) of § 203.250 is redesignated as § 203.250	This administrative action removes the paragraph designation.
3. Paragraph (j) of 43 CFR 3485.2 is redesignated to 43 CFR 3485.2(d)	This action resulted from the deletion of paragraphs (d) through (g) of 43 CFR 3485.2(d).
II. Deletions	
1. Paragraph (c), (d), (e), (f), (g), (h), (i), (j), and (k) of § 203.250 are removed	This action eliminates the existing coal product valuation regulations.
2. Paragraphs (d), (e), (f), (g), (h), (i), and (k) of 43 CFR 3485.2 are removed	This action eliminates the existing coal product valuation regulations found at section 3485 of 43 CFR. These regulations are redundant with those at § 203.200 of 30 CFR Part 203, and would conflict with the new regulations intended to replace those in § 203.200.
III. Additions	
1. New section numbers 250 through 266 are added to Subpart F of Part 206	The addition of these sections provides new coal valuation regulations to replace those currently found at 30 CFR 203.200 and 43 CFR 3485.2.
2. The following new subparts are added to Part 212: Subpart H—Geothermal Resources—[Reserved]. Subpart I—"OCS Sulfur [Reserved].".	This administrative action creates new subparts for future rulemaking requirements.
IV. Amendments	
1. Section 206.10 is amended to reference 30 CFR 210.10 for information collection requirements contained in 30 CFR Part 206	This administrative action places the information collection requirements in 30 CFR 210.10

Regulation changes (all from 30 CFR, except as noted)	Descriptions
2. Section 210.10 is amended to include all information collection requirements, except for the Production Accounting and Auditing System (PAAS) and Royalty-In-Kind (RIK)	This administrative action places most information collection requirements in 30 CFR 210.10.
3. The titles of Subparts C, D, F, and G under Part 212 are revised to read: Subpart C—Federal and Indian Oil—[Reserved]. Subpart D—Federal and Indian Gas—[Reserved]. Subpart F—Coal—[Reserved]. Subpart G—Other Solid Minerals—[Reserved].	This administrative action creates new subparts for future rulemaking requirements.
4. Paragraph (b) of § 212.200 under Part 212 is amended	This technical amendment deletes the obsolete reference to the "District Mining Supervisor" and replaces the word "Associate Director for Royalty Management" with the word "MMS" for consistency with other parts.

These rules largely continue past practice for coal valuation. Two exceptions to this generalization are notable. Under these rules, lessees may deduct from gross proceeds their costs of Federal Black Lung excise taxes, abandoned mine lands fees, and severance taxes. However, these deductions are only available to Federal lessees, and are not available to lessees of Indian tribal or allotted lands. Secondly, Indian cents-per-ton royalty provisions are included in these rules. Royalty provisions also appear in Title 25 of the Code of Federal Regulations at 25 CFR 211.15(c), 212.18(c), 213.23(c), and 214.10(b).

These rules expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty shall govern to the extent of the inconsistency. This same principle applies to Federal leases.

The Mineral Leasing Act (MLA), as amended specifically by the Federal Coal Leasing Amendments Act of 1976 (FCLAA) requires that:

> A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations

The MLA and leases issued under the MLA do not specifically define "value," "gross value," "gross proceeds," or "value of production," or how to arrive at those values.

Valuation has long been described as the process of determining the worth of, or setting a price upon, anything. In the U.S. economic system, value has often been closely associated with market value. This means that the value of any good or service in terms of economics is defined by its ability to command other goods or services in exchange. The most common medium of exchange is money. Therefore, many economists signify the value of a good or service by the amount of money which it will command, in other words its value in terms of the commonly accepted medium of exchange.

The concept of establishing values based on the transactions of the marketplace and the benefits of market competition are well known. The Supreme Court summarized the positive effects of competition when it said: "Basic to faith that a free economy best promotes the public weal is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the nations's resources and thus direct the course its economic development will take." *Times-Picayune Co.* v. *United States*, 345 U.S. 594 (1953).

The regulatory approach to royalty valuation of the these final rules recognizes the existence of a market economy and subscribes to the premise that the private sector is presumed to be the most appropriate economic agent vis-a-vis Government planning and direction. Hence, in deference to the market concept, MMS accepts the principle that the most effective and efficient value-setting mechanism is the value set by competition in the free market.

Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determiend by reference to prices received by individuals buying or selling like-quality products in the same general area and having opposing economic interests. Also, in no instance can the basis of value be less than the amount received by a lessee in a particular transaction.

III. Response to General Comments Received on Proposed Coal Product Valuation Regulations and Related Topics

The notice of proposed coal valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1840). The public comment period was reopened from July 9, 1987, through July 23, 1987. On August 12, 1987 (52 FR 29868), MMS reopened the public comment period for 60 additional days to receive public response on a comprehensive alternative valuation proposal, which was submitted jointly by representatives of the coal and electric utility industries. On November 17, 1987 (52 FR 43919), MMS gave notice that it intended to issue a further notice of proposed rulemaking. In that notice, MMS explained that it had received many comments throughout the comment periods. The MMS also stated that some comments had been received after the close of the 60-day period following the August 12, 1987, notice. The MMS concluded by stating that all comments received since the January 15, 1987, proposed rulemaking and until the deadline of the planned further notice of proposed rulemaking would be accepted. On July 15, 1988, MMS published the further notice of proposed rulemaking (53 FR 26942). All comments postmarked by September 13, 1988, which was the closing date of the comment period, were accepted and included in the rulemaking record.

The MMS received many diverse comments on the principles underlying the proposed valuation methodology. Some comments were directed to proposing alternative valuation methodologies. These comments did not address specific sections of the proposed regulations. The general comments were categorized into 7 issues plus a section on other miscellaneous comments, which are addressed first. Following that discussion, MMS will discuss comments received pursuant to specific sections.

General Issue 1: The Ad Volorem Royalty Rate

Comment: One issue that permeated many of the comments, but which is unrelated to coal valuation, concerns the royalty rate. Several commenters from industry and States concluded that the 12½ percent royalty rate was too high thus placing an unfair financial burden on lessees, which in turn places them at an economic disadvantage. One State commented that royalty rates, in concert with valuation of deep-mined coal, place underground mines at a disadvantage,

and the 8-percent royalty rate "should be lowered accordingly to a maximum rate of 5 percent, but more equitably, a lower rate should be adopted by legislative action."

MMS Response: The royalty rate is not a valuation issue. The 12½ -percent royalty rate imposed on surface coal operations is required by statute. The Mineral Leasing Act (MLA), as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), requires the Secretary of the Interior to determine a royalty "of not less than 12½-per centum * * * except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." The Bureau of Land Management (BLM) regulations at 43 CFR 3473.3–2 require a royalty rate of 8 percent for coal from underground mines, with the provision to determine a lesser rate if conditions warrant, but in no case less than 5 percent. It is now well settled that BLM has the authority to readjust Federal coal leases and that FCLAA and its implementing regulations apply to pre-FCLAA leases.

Coastal States Energy Co. v. *Hodel*, 816 F.2d 502 (10th Cir. 1987); *FMC Wyoming Corp.* v. *Hodel*, 815 F.2d 496 *(10th Cir. 1987);* Ark Land Co., 97 IBLA 241, 244 (1987); *Coastal States Energy Co.*, 94 IBLA 352 (1986); *Gulf Oil Corp.*, 91 IBLA 93, 96 (1986); *Ark Land Co.*, 90 IBLA 43, 45 (1985). The MLA at 30 U.S.C. 209 provides statutory authority to reduce royalty rates for those lessees that cannot successfully operate their leases under the prevailing terms and conditions. The MMS notes that BLM has been attentive to industry's concerns regarding royalty rates. The BLM issued a procedural document concerning guidelines for royalty rate reduction on June 26, 1987 (52 FR 24347, June 30, 1987). By **Federal Register** notice dated August 5, 1988 (53 FR 29586), BLM gave notice of its intent to expand royalty rate reduction guidelines to accommodate and facilitate expedited administrative handling of certain reduction applications. By **Federal Register** notice dated July 29, 1988 (53 FR 28822), BLM announced a proposed rulemaking to amend royalty rates for underground mining operations.

General Issue 2: Valuation of Cool Under Some Form of a Cents-per-Million British Thermal Units (Btu) Valuation Procedure

Comment: During the initial comment period following the January 15, 1987, proposed rules, MMS received several comments from industry that advocated a royalty valuation procedure based exclusively on the coal's heat content. That value would be expressed in cents-per-million Btu. Additional comments were received after the July 15, 1988, notice, which further clarified how the procedure was envisioned to function. Other comments were received expressing either support or opposition to this alternative valuation procedure.

Simply stated, the cents-per-million Btu valuation that industry proposed would operate as follows: (1) An initial average value of all Federal surface-mined coal would be established by dividing the monies received for Federal surface-mined coal—less transportation and washing expenses, Federal fees and taxes, State and local taxes, and royalties—by the total number of million Btu's sold. No price adjustment would be made for the sulfur, ash, or moisture content of the coal. (2) This average value would be tied to a current economic index and would fluctuate annually with the rise and fall of that index. (3) Thereafter, a Federal lessee would pay a set royalty, adjusted to compensate for the index fluctuation, based only on the number of Btu's contained in the coal sold or consumed. (4) Metallurgical coal, which is not sold on a heat content basis, would be exempted from the cents-per-million Btu method. (5) No recommendation has been made as to how coal sold under a non-arm's-length contract, or coal consumed by the Federal lessee, would be valued to establish the initial cents-per-million Btu figure. Further, no recommendation has been made for valuing underground-mined coal.

One State commenter agreed with and three other industry commenters supported the cents-per-million Btu valuation procedure. These commenters generally rationalized that the procedure was preferable to MMS's "gross proceeds approach" because it is easy to administer and is more equitable because it separates value from the cost of mining.

MMS Response: The MMS has thoroughly examined this proposed procedure and has concluded the proposal may not represent the market value. The following table illustrates the result of adopting a standardized coal value of $1.00 per million Btus, which would be applicable to all leases.

Field/Area	Btu/lb	Standardized value/short ton at $1/MMBtu	Average market value/short ton (1985)
Fort Union (ND)	6,500	$13.00	$9.30
Powder River (WY)	8,400	16.80	8.67
Uinta (CO, UT)	11,000	22.00	27.69

As shown in this brief example, this procedure derives values that to not accurately represent the coal market. From this example, it appears that the procedure is biased against low Btu coal.

Apart from the inherent flaws embedded in the pricing mechanism, it fails to recognize that coal has never been, or likely ever will be, valued solely for its heat content. Moisture, ash, and sulfur often represent critical quality factors that must be taken into account by electric utilities prior to the purchase and consumption of coal. For example, the January 1987 issue of *Energy* (Volume XI), published by Sun-Progress Inc., states, "Scrubbers placed in the stacks at generating plants are needed to remove the pollutants from the emissions and, depending on the quality of sulphur and ash, can account for up to a third of a generating plant's expenses."

The MMS also concluded that the development and selection of a single dollar amount per million Btu would not be easy and could gravitate into a highly complex, labor intensive exercise. For instance, detailed procedures would have to be developed to explain how the base value is to be derived. To be equitably, other indexes would have to be developed to compensate for variables such as moisture content, ash, sulfur, and so forth.

General Issue 3: Grandfathering of Certain Agreements and Arrangements Under the Final Rules

Comment: Some industry comments received after the initial January 15, 1987, proposed rulemaking stated that all existing coal sale contracts or supply agreements should be "grandfathered" under any new royalty scheme. Under this approach, any such coal sales contracts would be subject to the royalty requirements in effect at the time the coal supply contract was executed. One of these comments cited the Interior Board of Land Appeals (IBLA) support for this position by quoting *Kanawha & Hocking Coal & Coke Co.*, 93 IBLA 179, at 183 as follows: "The method of calculating the value of coal for royalty purposes shall be that method set forth in the regulation on the effective date of readjustment, and any subsequent regulatory change will not alter that method." Similarly, two industry commenters requested that only leases readjusted after these rules become effective should be subject to these regulatory requirements. Other respondents raised this issue again in comments submitted specific to § 206.250(b).

In the preable to MMS's July 15, 1988, notice, MMS explained that it was its intent that absent specific lease terms that set forth valuation criteria, the proposed rules, when final, would govern the valuation of coal from Federal and Indian leases. However, MMS noted that there are some lessees with contracts that pre-date the Federal Coal Leasing Amendments Act (FCLAA) of 1976 and that do not have reimbursement provisions common to contracts after FLCAA's enactment. The MMS requested comments on whether there is a way to grandfather these contracts that would be consistent with the requirements of FCLAA and the MLA.

With regard to the comments that MMS should not make the new regulations applicable to existing pre-FCLAA contracts because the new rules would require royalty to be paid on payments which the commenters said are not royalty bearing under existing rules, MMS requested further comments, specifically identifying the type of payments that are involved.

The MMS received comments that included examples of situations that the commenters believed should not be subject to royalty under the final rules. These examples are:

1. Transfer of water rights. One comment stated that the mine transferred water rights as part of the consideration included in the negotiated coal sales contract. The commenter asserted that the water rights represented 8.3 percent of the coal's sale price and should be royalty exempt.

2. Services provided by the purchaser that are typically the responsibility of the lessee. Several lessees explained that because of the proximity of the mine to the power plant and because of long-standing operating relationships between the mine and power plant, the utility was crushing the coal on behalf of the lessee. In other instances the commenter explained there exists shared ownership of coal mine equipment such as draglines or coal mine facilities such as loadout facilities and primary crushers. The commenters insisted that these services, which represent noncash elements of value and would be subject to royalty under these final rules, should be royalty exempt since these agreements precede the effective date of these rules.

3. Lump sum prepayments. One commenter explained that a lump sum prepayment had been received to cover mine start-up capitalization costs. This commenter stated that since the payment was made prior to these rules, it should not be subject to royalty. This comment further explained that the lump sum payment "had nothing whatsoever to do with royalty avoidance," and that the payment does not affect the sales price.

On a more general note, one State commenter offered the suggestion to pay under the final regulations only if those royalties would be less than that payable under the prior regulations. This commenter stated that this procedure should be used in those situations where the lessee's sales contract has not pass-through provisions.

MMS Response: The State commenter's proposal is administratively infeasible and would constitute an extreme audit burden. Moreover, the lessee's royalty reporting burden would effectively be doubled, because each reporting month the lessee would be required to perform an accounting under two sets of regulations to determine its royalty payment.

The MMS's position with regard to any form of consideration paid under a coal supply contract, for the sale of produced coal, is that such consideration is part of the value of coal and is therefore subject to royalty. In this regard, the final rules represent a continuation of existing policy, except for the exclusion from royalty value for costs of Federal Black Lung excise taxes, abandoned mine lands fees, and severance taxes, as provided for at § 206.257(b)(5). The MMS has an established record under prior royalty valuation rules of aggressively pursuing royalty collections in those situations where the lessee has been receiving noncash benefits from its customer under coal sales agreements. Likewise, MMS has operated under a long-standing policy of accepting nothing less than the gross value received by the lessee for the sale of coal. With regard to the comment which referred to the lump-sum payment received to cover mine start-up capitalization costs, if the commenter's representation that the payment did not affect the contract sales price for each ton of coal were in fact true, then the payment may not be royalty bearing. However, it is MMS's experience that in most situations these kinds of costs are recovered through the contract sales price and therefore are in fact consideration for coal production. In such a situation, MMS would require royalty to be paid on some or all that lump sum. The reason for MMS's position is that a royalty is due on the value of production in marketable condition. The lessee is obligated to incur all costs to bring the coal production to that point, inlcuding all of the mine development costs, production costs, and costs of making the production marketable. If the buyer receives coal and in exchange transfers consideration to the lessee to reimburse it for any of the above-described costs, then that payment is part of the value of the production. Hence, it is subject to royalty.

A corollary issue is whether all or only a portion of such a one-time payment is royalty bearing. First, no royalty would be payable unless and until there is coal production. Once there is production, the lump-sum payment must be equitably pro-rated. If the contract includes a repayment clause or other applicable provision, that would be used. This would require an examination of the contract terms on a case-by-case basis.

However, if the contract does not contain a repayment clause or other applicable provision, MMS will develop a schedule to amortize the payment over the full tonnage deliverable over the life of the contract. If the contract terminates prematurely, royalty may not be due on the full lump-sum payment. By way of illustration, assume a $12 million lump-sum payment for start-up capitalization costs. Assume further that the contract is for 12 years and the anticipated take, based on full utilization of the customer's installed capacity, is 1 million tons/year. One possible equitable allocation method could be to allocate $1 of the lump-sum payment to each ton of production. If the contract were to terminate after 8 years, royalty may be due on only two-thirds of the lump-sum payment.

Therefore, MMS generally considers payments under a contract to be payment for coal production and royalty bearing. However, the lessee has the opportunity to rebut that presumption and demonstrate that the payment was not for coal production. *See* discussion below regarding § 206.257(b)(6).

With regard to the language quoted above from the IBLA in *Kanawha & Hocking Coal & Coke Co.*, the discussion was with respect to a particular lease provision. Therefore, the IBLA's statement is not relevant to the vast majority of coal leases which do not have the same provision.

General Comment 4: Valuation of Coal Under the Joint Proposal by Coal and Electric Utility Industries

Comment: The industry comments were submitted as a joint proposal by six groups representing the coal producers and electric utilities. This proposal included a comprehensive, section-by-section set of revisions to the January proposed rulemaking, including a justification for the suggested modifications. The most significant

revision in the joint industry proposal is to set aside the valuation standards contained in MMS's January 15, 1987, proposed rulemaking and substitute, instead, the concepts of "gross royalty value" and "net royalty value." Industry stated the basis for the their proposal is the Internal Revenue Code's (IRC) concept of "gross income from property" as used for depletion allowance calculations (IRC 613). This "gross royalty value" would be increased by amounts for non-Federal royalties and reduced by processing allowances and amounts based on Federal Black Lung excise taxes, Abandoned Mine Land fees, and State and local taxes (such as severance taxes). The resulting figure would be the "net royalty value" and upon which royalties would be paid. The "gross royalty value" would exclude outbound (long-distance) transportation costs incurred with f.o.b. destination sales. "Gross royalty value" would also exclude take-or-pay payments for royalty assessment.

The Department received a considerable number of comments on the joint industry proposal. A letter from the Governor of Montana, representing personal views and those of the Governors of Colorado, New Mexico, and Wyoming, generally opposed the joint industry proposal and supported continued reliance on the proposed valuation procedures. Several Governors subsequently wrote individual letters to express personal opinions where their views differed from that of the consensus view. The Governor of Wyoming and the Governor of Colorado indicated they could support exclusion of royalty reimbursements from gross proceeds to address the "royalty on royalty" issue. The Governor of Utah suggested that a depletable income method may be incorporated into the hierarchy of MMS's gross proceeds valuation framework. However, he stated that the depletable income method "should not reduce the fair market value or the royalty amount derived from the coal."

The Governor of North Dakota urged the Department to continue the ongoing review of product valuation and expressed specific concerns regarding the production of lignite in the State.

Numerous comments were submitted by electric utility firms and from Governors of States that consume substantial quantities of western coal production. These commenters urged adoption of the joint industry proposal, stating that the joint industry proposal would reduce fuel costs, which in turn would reduce consumer electricity costs. Some commenters supported the valuation proposal by rationalizing that a reduced valuation basis would compensate for the increased ad valorem royalty rates now required under the MLA.

The Assistant Attorney General for Natural Resources, The Navajo Nation, offered comments to the Subcommittee on Mineral Resources Development and Production during the Oversight Hearing on Proposed Coal Product Valuation Rules on November 16, 1987. The Assistant Attorney General opposed the joint industry proposal, stating: "Industry's deletion of the concept of 'gross proceeds' for royalty payment purposes is inconsistent with the concept underlying the present valuation regulations—that royalties from ad valorem leases be based on a percentage of gross proceeds. We urge MMS to retain the 'gross proceeds' methodology for valuation."

MMS Response: The Department expended considerable effort in reviewing the joint industry proposal. Representatives from MMS and from the Department met separately with representatives of the Internal Revenue Service (IRS) to discuss the operation of the "gross income from property" rules and the computation of the percentage depletion allowance. Also, analysts in the MMS reviewed the potential advantages and disadvantages of revenue problems that could arise if the joint industry proposal were adopted as the basis of coal royalty valuation. The MMS analysts solicited input from States and coordinated with principal industry representatives to arrive at a mutually agreed upon range of royalty revenue amounts that would, in the collective judgment of the States, MMS, and industry, most likely occur if the joint industry proposal were accepted.

Following this extensive review, MMS decided not to adopt the joint industry proposal. The following reasoning is provided to explain MMS's decision.

1. The Joint Industry Proposal is not Readily Adaptable to Lease Accounting

The MMS is required to collect and account for royalties on a lease basis. Royalty rates may vary from lease to lease; prices will vary from contract to contract; and contracts may dedicate specific reserves. The IRS determination is made on a taxpayer basis, which would be an aggregate, at least, of all leases and contracts for a single mine, and could conceivably encompass more than one mining operation. Thus, the industry proposal seems to be inconsistent with the basis on which MMS must collect and account for royalties. Making the proposal consistent with MMS needs would require that MMS develop an allocation procedure to convert depletable income to a lease basis. Such a procedure would likely be expensive and require the use of simplifying assumptions to the extent of being unacceptable.

2. The Joint Industry Proposal Creates New Auditing Problems

The Joint Industry Proposal would be a new and complex approach to coal royalty valuation determinations. It is significantly different from the existing valuation methodology used for coal and other minerals. As a result, MMS (as well as State and Indian) auditors would be required to relearn an entirely new system. This necessarily would delay many audits.

General Comment 5: The Advice of the Royalty Management Advisory Committee Was Ignored

Comment: Some commenters stated that in the January 1987 proposed rulemaking, MMS neither acknowledged nor adopted the Royalty Management Advisory Committee's (RMAC's) recommendations concerning coal product valuation. These commenters also stated that MMS did not provide its reasoning for not accepting RMAC's recommendations. Several commenters reiterated this position following the July 15, 1987, notice.

MMS Response: These comments are not supported by the record. The January 15, 1987, (52 FR 1840) **Federal Register** notice states that "MMS also has considered the written and oral comments from the public on the draft rules and the resolution presented to the Secretary by RMAC." The MMS also noted with appreciation the dedicated efforts of all participants who worked on the problems of coal valuation. The MMS considered the section-by-section analysis that preceded the proposed rules adequate explanation and notice to the public, including RMAC, of the substantive reasoning and motivation that guided the formulation of the proposed rules.

General Comment 6: Royalty On Take-Or-Pay and Other Similar Type Payments

Comment: The MMS received many comments concerning the inclusion of take-or-pay payments in the proposed gross proceeds definition. Four commenters, two Indian and two States, expressed support for the inclusion of take-or-pay payments as part of gross proceeds. One commenter reasoned that the inclusion was proper "since the other contractual terms may be affected by inclusion of such language in the selling agreement." Another commenter stated that gross proceeds "does not simply mean the amount received by the lessee. Rather, it must have an expansive definition to include any consideration * * * including any minimum payments, stand-by fees, or take-or-pay payments." Other commenters recommended that the gross proceeds definition stand as proposed with respect to including take-or-pay payments, but offered no additional reasoning or support.

Industry commenters generally opposed the collection of royalty on take-or-pay payments. Several commenters specifically stated that royalty is due only on production; others specifically stated that MMS lacks statutory support to collect royalty on take-or-pay payments; and some commenters stated that royalty should be collected on take-or-pay payments only under certain circumstances. With respect to the issue that royalty is only due on production, one commenter explained that "if no coal is produced, there is no diminution in the value of the coal reserve and therefore no royalty should be payable." Several other commenters took the same position. Another commenter stated that the "assessment of royalties on take-or-pay payments is inconsistent with the traditional framework for royalty payments. * * * The royalty becomes due only when coal is mined." Many commenters argued that the take-or-pay payments serve as a mechanism to cover the producer's investment risk and as such do not constitute a prepayment for Federal coal. Several commenters continued by stating that the Government has no right to share in the rewards resulting from risk of the capital investment. Several commenters declared that the proposed regulations were internally inconsistent, with certain parts requiring royalties to be paid on take-or-pay payments not related to coal production, while other parts such as §§ 206.259, 206.255, and 206.257 [now designated §§ 206.257, 206.253, and 206.255, respectively] require royalty to be paid on coal produced and sold or otherwise finally disposed of. One commenter also suggested that MMS adopt a wait-and-see position and let the courts decide the legality of collecting royalty on take-or-pay issues.

With regard to the comments citing MMS's lack of statutory support to collect royalties on take-or-pay payments, one commenter noted that "The plain language of FCLAA (30 U.S.C. 207) ties royalty assessment to the value of recovered coal." Other commenters echoed this view. Another commenter stated that the MLA does not allow royalty collection "on coal not mined, produced and sold." Another commenter stated that "The statutory authority to include in production royalties payments made on 'take-or-pay' provisions as if they were 'advance royalties' is certainly subject to question." The commenter further noted that payment of advance royalties is controlled by 30 U.S.C. 207(b). The commenter concluded: "Since advance royalties can only be accepted in lieu of continued operation—one percent of commercial quantities of recoverable coal reserves * * * if an operator is producing the required one percent, section 6 [of FCLAA] would prohibit the lessee from reducing his production royalty payment by the amount of his 'take-or-pay' payment, since these payments are not, by statute, considered 'advance royalties.'"

As noted earlier, several commenters agreed that under certain conditions royalty should be collected on take-or-pay payments. One industry commenter stated: "Some payments received under 'take-or-pay' clauses may well constitute payments for the disposition of coal produced by the lessee, and in such cases we agree that they should be subject to royalty."

Other industry commenters objected to collecting royalty on any other contractually required compensatory payments, other than take-or-pay, which are not based on coal production. The commenters referred to such payments as assignment payments, prepaid reserve payments, damages awarded by courts, buy-outs, bonuses, and capacity charges.

In the July 15, 1988, notice (53 FR 26951), MMS requested further comments as to whether the following payments identified by industry should be subject to royalty:

1. Damages recovered under a court judgment for the purchaser's breach of the sales contract;
2. Payments made under a force majeure clause;
3. "Settlement" payments made to terminate a sales contract before the contractually-specified termination date; this includes situations where there may or may not be a follow-on contract;
4. Payments for assignment of an interest in the lease;
5. Payments not designated as part of the purchase price but made on a periodic or regularly scheduled basis under the contract;
6. Payments not designated as part of the purchase price, which may or may not vary with the amount of coal delivered, and paid on a one-time or not regularly scheduled basis under the contract in a specific sum or calculated under a prescribed formula;
7. Payments or reimbursements for services or processing costs customarily the responsibility of the lessee, including that required to put the product in marketable condition.

Many industry and several State comments agreed that absent any physical removal of the resource from the leased property, no royalty should be due on any type of payment received by the lessee. Five comments advocated the assessment of royalty on take-or-pay or similar type payments. Some commenters suggested that take-or-pay type payments should be royalty bearing but that royalty collection should be deferred until the time of production. One State commenter also suggested that interest should accrue on take-or-pay payments beginning at the time those payments are received by the lessee and until royalty is paid. One State commenter maintained that take-or-pay and similar type payments should remain in gross proceeds but its specific application causing an assessment of royalty would be contingent upon a finding that such payments are consideration for the sale of coal.

While industry commenters contended that most take-or-pay payments are to reimburse the lessee for the risk involved in the lessee's investment of capital into his mining operation, a Tribal representative stated that the lessor is also at risk. The lessor has committed his reserves to the mining operation and thus has a sizable risk and commitment to the operation. Therefore, for sharing in the risk inherent in the mining operation, the lessor should also share in all proceeds received by the lessee, including all take-or-pay payments.

Many comments cited the August 17, 1988, Fifth Circuit Court of Appeals decision in *Diamond Shamrock Exploration Co. et al v. Hodel*, 853 F.2d 1159 15th Cir. 1988), where the Court ruled in the context of natural gas royalties that royalty payments are not due on receipt of take-or-pay payments, but are only due when the purchaser takes so-called "make-up" gas (gas taken in excess of minimum quantities in later periods against the purchase price of which previous take-or-pay payments are credited).

MMS Response: The Department has not further appealed the Fifth Circuit's decision in *Diamond Shamrock*, and will apply the rationale of that decision for purposes of coal royalty valuation.

Therefore, MMS's final coal regulations have been revised from previous proposed rules by revising the definition of "gross proceeds" in 30 CFR 206.251 to exclude the phrase "* * * payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; payments or credits for advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements, including but not limited to * * *." Of course, as discussed further below, if any of such payments at some point is used as a payment for produced coal, then they would still be subject to royalty as gross proceeds for produced coal.

For consistency within the body of the rules, 30 CFR 206.257(g) has been amended in part by deletion of the sentence, "If take-or-pay payments are a part of gross proceeds, no additional royalty shall be due if future make-up deliveries are taken, unless the purchaser is required to pay any additional amount because only a partial payment was previously made or as a result of price increases during the make-up period."

The MMS will not extend the Fifth Circuit's ruling beyond its holding to exclude from value and gross proceeds any payment received by the lessee not specfically denominated as purchase price, a position which the Fifth Circuit decision neither implies nor supports. Instead, the regulations at 30 CFR 206.257(b)(6) will provide lessees the opportunity to rebut the presumption that payments received by the lessee are not part of the total consideration paid for coal and, hence, are not royalty bearing. Since the question at issue is not whether a payment was made but, instead, whether that payment is part of the consideration paid for coal, MMS would expect any rebuttal to address the commercial relationship between the buyer and the seller (lessee). Specifically, MMS would require substantial explanation of why the value paid by a purchaser, under a coal sales contract, is not equitable to the value received by the lessee for the sale of coal.

In all instances, the substance of the transaction or contract clause, and not its form, will control.

General Comment 7: Marketable Condition Requirement

Following the January 15, 1987, proposed rulemaking, MMS received numerous comments regarding the definition of marketable condition. Some commenters stated that the definition was so vague and subjective as to be meaningless. Some commenters advanced alternative approaches to the term marketable condition. Many industry commenters concurred with the alternative valuation proposal submitted jointly by the coal and electric utility industries. Under that proposal, royalty would be computed at the earlier point of either when coal has been extracted, crushed, and sized or when the coal is loaded for delivery. In actual application, royalty would typically be assessed after coal had been processed through the crushing and sizing circuit, since the alternative to sell run-of-mine uncrushed coal does not constitute common industry practice.

Several commenters expressed concern that MMS's valuation approach would assess royalty on beneficiated products such as coal that has been subjected to "deep thermal drying," or "coal pelletization."

In order to address these concerns, MMS added § 206.265 to the July 15, 1988, notice and specifically requested in the preamble that commenters respond as to whether the definition of marketable condition requires further development. Commenters were asked to propose specific changes to the proposed regulatory language.

No commenter responded directly to MMS's request for specific alternative language designed to clarify the definition of marketable condition. Several commenters stated that freeze-proofing and dust suppression were not elements of marketable condition but instead provided a service for the purchaser. One commenter stated that the sale of run-of-mine coal constituted coal in marketable condition because the purchaser accepts the coal in that condition. In this situation, it is the buyer (utility) that owns and operates the crushing facilities.

One Indian commenter stated that it is the buyer's specifications that establish marketable condition and, therefore, the value of all beneficiation should be included in the royalty value.

MMS Response: The requirement that the lessee place the lease product in marketable condition at no expense to the lessor is a vital royalty concept. It defines the minimum level of effort and expenditure the lessee must undertake to place leasehold production in merchantable condition without any contribution or sharing of expenses by the lessor. Any further processing activity beyond that necessary for placing the lease product in marketable condition would be a derivative of the lessee's contractual sales obligation. From a royalty perspective, the additional processing would ostensibly qualify for a deduction from royalties accruing from the sale of leasehold production that has undergone processing beyond that necessary to prepare the mineral as a marketable product.

Marketable condition is the form and condition of leasehold production resulting from the application of normal mining processes. The established market demands and expects that lease production be in such a condition that it can be accommodated by existing buyer facilities used for receipt, handling, and consumption of leasehold production. With respect to coal, processes commonly applied by mine operators (or lessees) to prepare coal for the market include all operations which extract, sever, or otherwise separate coal from its in-place position in the geologic strata; crushing (to limit upward size), sizing, storing, blending, and loading for shipment (including oiling); and all transportation requirements in and about the mine beginning at the point of extraction and including movement to all plants and facilities in which normal mining processes are applied.

Processes which are not identified with common mine operations or practices include both surface and in-situ coal gasification or liquefaction operations, any other operations involving the chemical alteration of coal, and operations involving the physical processing of coal to a condition of quality beyond that normally attributed or associated with coal marketed from the same area.

However, the conditioning of coal for the market does not consist of a uniform set of processes. Rather, the marketable condition requirement is as flexible as the requirements of different market segments. For example, some types of coal sold to certain market segments are not normally screened. Instead, the run-of-mine coal is passed through a crusher to reduce the large pieces. The result of this size reduction is prepared coal that can be accommodated by both seller (lessee) and buyer's coal handling facilities. In other situations where coal fines present problems, the marketable condition requirement for coal will include screening, to eliminate the specified coal fines fraction.

Therefore, the test of marketable condition relies on: (1) The market segment that coal is sold into; (2) the customary requirements of preparation or conditioning normally expected by that market segment; and (3) the typical level of preparation or conditioning by coal producers in that area.

Therefore, under no circumstances will MMS accept the gross proceeds established under any sale of coal that does not meet the market's minimum requirement for marketable condition. Specifically, the sale of run-of-mine coal for steam coal utilization by an electric utility does not constitute coal in marketable condition. In this situation, MMS will add to the gross proceeds the cost of those normal mining processes which are ordinarily the responsibility of the lessee. This provision is explicitly set forth at § 206.257(h).

Other Miscellaneous General Comments

Comment: Several commenters expressed concern that deletion of redundant royalty provisions from 43 CFR 3485.2 would create confusion because of cross-references found in other sections of 43 CFR Part 3480.

MMS Response: The MMS agrees that some potential confusion could result if certain sections of 43 CFR Part 3480 continue to refer to portions of 43 CFR 3485.2 which would be deleted under a final rulemaking. The BLM will, as part of its normal ongoing housekeeping duties, ensure that 43 CFR Part 3480 is appropriately modified to eliminate cross-references to nonexistent sections.

Comment: The MMS received ten comments from industry and one comment from a State requesting that the proposed rules be withdrawn and that new rules be written. Eight other industry commenters stated MMS's proposed rules were too complicated and urged MMS to adopt simple rules. As one commenter explained, "there's no reason for excessively complex administrative procedures to determine what should be paid." In that same vein, three other industry commenters stated that the general intent of MMS's rules was not clear and that MMS should take additional measures to explain what the regulations would accomplish.

MMS Response: The MMS believes there is great public interest to be served by issuing updated, consolidated, and clarified regulations. With reference to the comment that the rules propose excessively complex procedures, MMS knows of no other procedure to communicate the necessary cost accounting and computation procedures imbedded in coal washing and transportation allowances other than the furnishing of detailed instructions and explanations. The MMS concludes that absent the detail furnished in these proposed rules, lessees would be placed at increased risk of applying improper coal valuation methods and of deducting erroneous coal washing and transportation allowances.

Comment: Twelve industry commenters, two State commenters, and one Indian commenter stated that the proposed rules constitute a major rulemaking as described under Executive Order 12291. The contention is that the proposed rules represent a significant change from the existing regulatory standard, thus, as one commenter described, mandating "a full and complete regulatory impact analysis." One comment from a State provided an opposite view stating, "I do not see these proposed regulations for valuation of coal as a profound change in the regulations already in effect or in the practice which is being used by the MMS * * *."

MMS Response: The Department has determined that these rules do not constitute a major rulemaking under Executive Order 12291. This determination obviates the need for a full and complete regulatory impact analysis.

Comment: Several commenters stated that MMS has not described the monetary impact associated with the proposed rules.

MMS Response: During the period from August 1987 to January 1988, the Department conducted an extensive review of monetary impacts associated with this rulemaking. The Department did not work in isolation but rather consulted extensively with several western coal States and with several industry representatives.

The Department recognizes that the exclusion of Federal and State production taxes will result in less royalty collections than if royalty were payable on the tax payments. It should be recognized, however, that future royalty collections are expected to continue to increase in both nominal and real dollars. Moreover, several factors act to reduce the negative impact on royalty, so that the ultimate reduction in the increase in future royalty collections is less than might first appear. Finally, the offsetting benefits attendant to excluding production taxes from the royalty base are sufficiently compelling that the Department believes the public interest is ultimately served by the exclusion.

The production tax exclusion applies only to ad valorem coal production, and has no impact on the cents per ton royalties paid prior to lease readjustment. Federal coal royalty collections increased from $6.4 million in 1976 to $101.1 million in 1986, a 1,480 percent increase because of increases in price and production (including the development of the Powder River Basin), and lease readjustments. Federal coal royalty collection increased by another 40 percent between 1986 and 1987, with little change in production (less than 2.5 percent). This large revenue increase was due to readjusting leases from the former cents per ton basis to the new ad valorem basis. Readjustments coupled with continued price decreases may increase 1987 revenues by more than 50 percent, reaching 220 percent of the 1986 collections level in 1990 when the readjustment process is expected to be largely complete. Rather than reducing royalties below current collection levels, the effect of the exclusion is to make the increase less dramatic—likely, 2,850 percent of the 1976 level rather than 3,350 percent, or 187 percent of the 1986 level rather than 220 percent.

The actual difference in Federal and State revenue collections, however, will be less than the potential difference in royalty collections. Royalties paid reduce taxable income for Federal and State income tax purposes. To the extent a coal lease is more profitable than it would otherwise be at higher royalties, a significant portion of that profit is absorbed by higher Federal and State income taxes. Moreover, it is expected that this increased profitability will also be reflected in higher bonus bids for coal leases. Finally, as discussed below, the exclusion is expected to make Federal coal more competitive in the market, resulting in some increase in production. This increased production will act to broaden the Federal and State royalty and tax base, resulting in higher revenue collections.

To the extent increases in royalties are "pass through" items in existing long-term coal supply contracts, the decreased collections will be reflected, on a dollar-for-dollar basis, in reduced electric utility generating costs and customer bills. To this extent, the ultimate beneficiary of the tax exclusion will be the consumer.

The Department believes that any remaining impact on royalty collections is more than offset by other local, regional, and national benefits. To the extent demand responds to price, the exclusion is expected to result in some increase in Federal coal production, as well as a reduction in the royalty related development delay. Similarly, the exclusion also results in a tendency to expand the geographic market for Federal coal, which may further increase production. Some of this increased Federal coal production may well come at the expense of increased oil consumption, thus fostering objectives of energy supply diversification and reduced dependence on foreign oil, with the attendant balance of payments benefits.

Additional local and regional employment and income benefits would

be realized to the extent that lower royalty payments contribute to making unprofitable operations marginally profitable. This would result in maintaining mines that otherwise might shut down. Since coal mining is part of the regional economic base in areas where it occurs, employment and income changes in coal mining affect jobs and incomes elsewhere throughout the region. For example, several studies have shown that for every 10 jobs in coal mining, between 6 and 10 additional jobs are created elsewhere in the region. Similarly, a recent study at the University of New Mexico shows that an increase in regional income of $2.46 would be expected for every dollar increase in net income from coal mining.

The MMS also conducted a similar analysis for Indian lands. However, this study is no longer relevant since under the final rules Indian leases will not be subject to the AML fee, Black Lung excise tax, or severance tax exclusions.

Comment: One Indian commenter asserted, "The Assumption that the Lessee will Advance the Interest of the Royalty Owner is Not Grounded in Fact." The comment supported this position by stating that the underlying assumptions such as an open marketplace for coal, the existence of arm's-length sales contracts, and that the lessee always acts to maximize its revenues, are "simply not true."

MMS Response: The MMS disagrees with the assertions of this comment.

There is an operative open marketplace for coal in the United States. The existence of arm's-length coal sales contracts between coal producers and electric utilities, steel mills, export coal buyers, and other coal users is a commonplace occurrence. Business literature is replete with explanations of goals and objectives of American business. Typically a firm will endeavor to maximize the value of a business by obtaining as great a price for its product as the marketplace will permit.

Comment: Many industry commenters stated that MMS had written the proposed coal product valuation regulations based on oil and gas industry principles. As stated in one comment, "By attempting to overlay existing oil and gas valuation concepts on the federal coal royalty program, MMS has arbitrarily ignored the physical properties of coal, realities of coal production, and basic business principles." Many commenters followed these objections by asking that MMS withdraw the proposed regulations and rewrite regulations more specific to coal.

MMS Response: The MMS considers the coal product value rulemaking as adhering to fundamental mining, preparation, and marketing precepts common to the entire extractive minerals industry.

Comment: Numerous industry commenters claimed MMS's proposed regulations were destroying the longstanding past practice of royalty valuation which is supported by administrative and judicial decisions. Some commenters stated that MMS's regulations represented an attempt to broaden, not clarify regulations pertaining to royalty valuation. One respondent offered, "[T]he Minerals Management Service has demonstrated an attitude which borders on the rapacious. The proposed rules are nothing more than a naked attempt to maximize revenues from federal and Indian coal leaseholds." One commenter concluded that MMS's use of longstanding policy to support these regulations was untenable, because there is no longstanding policy for coal product valuation.

MMS Response: The final rules are a rational policy choice within the bounds of the Secretary's discretion. Since Congress did not specify how the royalty value should be determined, the Secretary has discretion to adopt a reasonable set of standards for royalty valuation. "[I]f the statute is silent or ambiguous with respect to the specific issue, the question * * * is whether the agency's answer is based on a permissible construction of the statute." *Chevron, U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837, 843 (1984). A reviewing court will need not conclude that the agency's interpretation of the statute was the only permissible one, only that it was reasonable, and not arbitrary, capricious, or contrary to law.

In the case of *Motor Vehicle Manufacturers Association of the United States* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983), the court stated that "[r]egulatory agencies do not establish rules of conduct to last forever, and that an agency must be given ample latitude to adapt their rules and policies to the demands of changing circumstances." The agency is obliged to articulate a reasonable basis for its current position. The MMS has done so in this rulemaking.

Comment: Two State and one Indian commenter stated that the manner in which the proposed regulations are constructed essentially eliminates the protection of the existing regulations, and the self-implementing aspects of the proposed regulations invite industry abuse. These commenters further charge that MMS was abrogating its monitoring, review and audit responsibilities with respect to coal product valuation. On the other hand, one industry comment stated an objection to the "subjective determination elements [which] indicate a significant distrust by the government of the coal industry's past practices of valuation and accounting for royalty purposes."

MMS Response: The MMS believes that no derogatory connotation of industry accounting or valuation practices should be attributed to these rules. These rules should also not be viewed as delegating valuation responsibilities and duties to industry. The report entitled "Fiscal Accountability of the Nation's Energy Resources" written by the Linowes Commission and published in January 1982 (p. xvi) stated that "The Federal government should perform an oversight role. It must not waste its limited resources on tasks that are industry's responsibility. In managing royalty collection, it should not remain mired in bookkeeping details that rightly belong to the lessee. Instead, it should develop systematic, independent cross checks of royalties paid and reports submitted by companies, and it should impose meaningful penalties for false statements or gross errors." The MMS considers these rules to carry out that recommendation.

Comment: After industry commenters stated that MMS lacked statutory authority to maximize the rate of return for "the public's resources" and that the regulations are "greedy," two State commenters took the opposite position, "demand[ing] that the Department establish royalty policies which do not undermine state and federal revenues, particularly at a time when revenues are already curtailed."

MMS Response: The MMS's acceptance of values established under arm's-length contracts cannot be characterized as "greedy." The arm's-length valuation standard is the most commonly utilized and the most accurate representation of any good's true worth and does not constitute an unusual valuation theory design to maximize the rate of return for the public's and Indian's resources at the expense of the coal industry. The use of arm's-length contract values maximizes the return to the public or the Indians to the extent that the lessee is also striving to sell coal at the highest profit it can attain. In this respect, MMS is sharing in the proceeds of contracts that are the results of the free will of coal lessees and their coal purchasers. Hence, the maximization of return to the lessor is normally an unintended yet unavoidable result.

Comment: Many industry commenters stated that the proposed regulations do not promote development of Federal coal resources. An area of concern to these commenters is that these regulations discourage conservation of Federal coal. Two industry commenters stated that the proposed regulations would influence the economic behavior of the coal industry. One commenter offered its rationale for this position by stating, "The economic forces of the marketplace would move mine plans away from high royalty/high cost coal to lower royalty/lower cost coal or would hasten the closure or cessation of the mining of such federal coal reserves." One commenter also stated, "that MMS or BLM, is party to the ups and downs of the coal business and as such should work with the industry to improve market share as well as profitability." One comment stated that MMS failed to take into consideration the Mining and Minerals Policy Act of 1970, which states in part, "The Congress declares that it is the continuing policy of the Federal Government * * * to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining * * *." One State commenter and one Indian commenter suggested MMS should ignore any potential economic impacts that may result from the final coal valuation regulations. Opposing this viewpoint, one industry commenter concluded that MMS should consider the plight of the electric utility rate payer, who ultimately bears the full burden of any royalty increase.

MMS Response. The MMS disagrees with the statement that these regulations do not promote development of coal resources. The MMS considers these regulations to promote development to the extent that they would better communicate MMS's coal valuation policy to lessees. In this respect, the informed judgment of lessees, who are also prudent businessmen, is enhanced thus providing increased certainty regarding the economic consequences of Federal or Indian coal lease production. The MMS has no mandate to promulgate coal valuation rules which are expressly designed to preserve or improve the Federal or Indian lessor's overall nationwide market share of coal production.

Comment. Two industry commenters concluded that MMS is attempting to accomplish through administrative rulemaking what Congress should be doing through legislation. One industry commenter further explained that MMS's proposed valuation regulations "fly in the face of the clear congressional resolve and would properly be viewed as an 'end run' around Congress."

MMS Response. The MMS is not usurping the power of Congress. To the contrary, Congress' absence of specification on the issue of value reveals Congress' clear invitation to the Department of the Interior to measure the application of value by the needs of later days. The MMS, like all administrative agencies, is empowered to administer Federal statutes and prescribe necessary rules to place into effect the will of Congress. Title 30 U.S.C. 189 authorizes the Secretary of the Interior to "prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter * * *."

Comment. Two industry commenters stated that the proposed royalty valuation instructions are unclear when there is mixed mineral ownership at a single mine. One commenter requested that MMS provide guidance for the calculation of royalties "when an operator is producing coal from both Federal and non-Federal [lands] * * *." This commenter also stated that this issue becomes even more critical with respect to payments for insurance compensation, coal recovered from waste piles or slurry ponds, take-or-pay payments, and purchaser reimbursements for certain cost items. Another industry commenter claimed that it is "entirely possible that the definition of gross proceeds will be significantly different on Federal and non-Federal leases."

MMS Response. The MMS agrees that royalty terms in leases between private land owners and coal operators, or between States and coal operators, may differ significantly from Federal lease royalty terms. However, the applicability of these proposed rules is limited to Federal and Indian Tribal and allotted coal leases. See § 206.250. Similarly, valuation procedures or instructions contained in private or State leases do not pertain to Federal or Indian leases. It is the lessee's obligation to ensure that in situations of mixed mineral ownership, coal production is properly allocated between Federal, Indian and non-Federal and non-Indian leases.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preambles to the proposed regulation published on January 15, 1987 (52 FR 1840), and on July 15, 1988 (53 FR 26942) may be consulted for a full description of the purposes of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.250 Overriding royalty interest.

Comment. Two comments, one from industry and one from a Federal agency, were received concerning overriding royalties. One commenter stated, "[A]lthough regulations limiting overriding royalties are in existence, the wholesale treatment of 43 CFR Part 3400 to override royalties cannot be done without violating express contractual rights of the owners of the overriding royalty interests." The other commenter asked, "[W]hat are the procedures for handling a case where the company grants an overriding royalty to another individual or company?"

MMS Response. Regulations pertaining to overriding royalty interests are presently found at both 30 CFR 203.200(b) and 43 CFR 3485.2(b). This rulemaking eliminates the redundant regulatory provisions from 30 CFR 203.200(b) (redesignated as 30 CFR 202.250) and clarifies that BLM is the proper agency to approve overriding royalty interests. See 43 CFR 3473.3–2 (1987). The specific provisions of 43 CFR 3485.2(b) are unaffected by these rules. Questions regarding procedures for obtaining approval of overriding royalty interests or similar types of production payments should be directed to BLM.

Section 206.250 Purpose and scope.

Comment. Following the January 15, 1987, proposed rulemaking, MMS received 18 comments from nine industry respondents and two Indian respondents on proposed § 206.250. One industry commenter recommended no change to the language of this proposed section. Four industry commenters agreed with paragraph (a). However, these same commenters also stated MMS had lost sight of the goals of valuing production stated in paragraph (a) later in its regulations by requiring royalty to be paid on take-or-pay payments. Two Indian commenters disagreed with the thrust of paragraph (a) stating that coal production from Indian tribal and allotted leases should

not be valued under the same criteria as Federal coal production. One Indian commenter stated that MMS had neglected to set forth in the proposed regulations MMS's trust responsibilities to the Indians. One industry commenter requested that the MMS "explain in the preamble to the final rules that coal must be allocated to each particular lease in the course of product valuation and royalty assessment."

MMS Response. In response to the concerns expressed by the Indians, MMS modified § 206.250 by adding paragraph (d) to this section to explicitly acknowledge the United States' trust responsibilities to the Indians. That modification was published in the July 15, 1988, notice.

In response to this modification MMS received several comments from Indians expressing approval.

The MMS believes the new valuation regulations, with the changes discussed in more detail below, are one way of meeting with the Secretary's obligations to Indian lessors.

With respect to Industry comments regarding royalty on production, MMS has revised its position with respect to take-or-pay payments. See discussion above.

Comment: The MMS received two comments, one industry and one Indian, on proposed § 206.250(c). One commenter agreed with the proposed rule, finding that all royalty payments should be subject to audit and adjustment. The Indian commenter stated that "MMS' past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: The issuance of more detailed and clarified valuation regulations, as intended by these rules, will further enhance the productivity of MMS auditors.

Section 206.251 Definitions

The MMS received several comments on the proposed definitions in § 206.251. Not all of the definitions received significant additional comments. Also, comments on definitions already were addressed in the July 15 notice. Following are most of the original comments and MMS's responses.

"Ad valorem lease" *Comment:* Some industry respondents recommended deletion of the words "amount or" from the proposed definition of "ad valorem lease." One commenter explained: "Amount of production is only relevant in a take-in-kind royalty provisions [sic]. There is no authorization for such a provision in the MLA [Mineral Leasing Act of 1920, as amended]."

MMS Response: The phrase "based upon a percentage of the amount or value of the production" is appropriate because Indian leases may include a royalty-in-kind proviso. Because these rules pertain to both Federal and Indian coal production, it is proper to include regulatory language that provides for this possibility.

"Allowance" *Comment:* The phrase "Coal washing allowance" appears in these proposed rules as an integral part of the definition of "Allowance." Many industry respondents recommended expanding the scope of the definition and changing the term "coal washing allowance" to "coal processing allowance." One commenter stated that this change was necessary to be consistent with the proposed revisions to § 206.260 [redesignated in the July 15, 1988, notice as §§ 206.258 and 206.259]. Many other commenters supported the proposed expansion for various similar reasons including the suggestions that "an allowance should be extended to all processing costs incurred downstream from the point of royalty determination" and to "other methods of beneficiation which may increase the value of coal * * *." Examples provided as other forms of processing included pelletizing, treatment with chemicals or oil, drying, crushing, and sizing.

MMS Response: The MMS acknowledges the existence of developing coal quality enhancement techniques other than the commercially available coal washing process. However, rather than transplant coal washing allowance procedures to other coal beneficiation technologies, MMS believes it is preferable to provide a rule that recognizes coal beneficiation processes other than coal washing for royalty valuation purposes. Section 206.265 was added to the July 15, 1988, notice to address these comments. The discussion of § 206.265 appears later in this preamble.

Comment: One Indian commenter recommended deleting "all references to washing allowances," and maintained that the basic premise of the regulations is that the lessee "is obligated to place the mineral in its first marketable condition." In support of this position, this commenter stated: "The incorporation of a practice which is primarily a conservation measure does not belong in regulations to value the product for royalty purposes." This commenter concluded that such decisions as approving washing allowances should be the responsibility of "the agency leasing the minerals."

MMS Response: Coal washing is not necessarily practiced as an exclusive conservation measure. It is feasible for coal operators to wash coal to upgrade a first marketable product. Because the net effect of coal washing is to increase heat content and to provide a cleaner burning product by removal of ash and sulfur, an operator may desire to wash coal to extend its market reach or expand its potential customer base. The MMS considers any attempt to differentiate between washing as a conservation measure (to develop a first marketable product) and washing as a marketing tactic to be a needless expenditure of MMS's limited manpower resources. Allowances have been provided to coal lessees that wash Federal coal since the inception of ad valorem royalty rates. Indian coal washing has never occurred. However, allowances for washing Indian coal would equally apply. These rules increase the level of detail necessary to obtain coal washing allowances but otherwise would continue existing policy.

Comment: Some industry respondents recommended deleting the "reasonableness" standard. The proposed definition provided for a coal washing allowance based on the "reasonable, actual costs." One commenter explained that "there is no indication of what would be considered reasonable or unreasonable. We believe that the concept of 'reasonableness' is inherent in all of the lessee's obligations under these regulations."

MMS Response: The MMS nomally considers any cost incurred for coal washing or transportation that is out of proportion to standard industry practices to be unreasonable. However, this statement may be tempered by the specific situation that created the unusual (and possibly unreasonable) costs. In any event, because the commenter acknowledges that the concept of reasonableness is present in all lessee's obligations, it seems no greater an imposition to explicitly state the term in the regulation.

Comment: A few industry respondents recommended substituting the word "value" for the word "cost," because, as stated by one commenter, "it is the *value* of the coal processing activity that should be allowed by MMS—not just its cost."

MMS Response: The MMS believes these commenters have misconstrued the thrust of the regulations. The royalty owner and the lessee share in the value-enhancing of coal washing or coal transportation. As a matter of policy MMS has determined that it is appropriate to continue participation in the costs of washing or transporting the production from either Federal or Indian coal leases. Participating in washing or transportation costs in the form of

allowances results in a net reduction of the royalty payment, which is in itself a cost to the lessor. Therefore, the value of coal washing or transportation to the royalty owner is the increased value of the product sold, less the incurred costs to wash and/or transport coal.

The phrase "Transportation allowance" also appears in these rules as an integral part of the definition of "Allowance." Several industry respondents provided comments on this proposed definition. Many of the same comments were received as discussed above with respect to the phrase "coal washing allowance." These will not be addressed again.

Comment: One industry commenter recommended "that the final regulations should be amended to provide an allowance for all transportation costs." No elaboration or explanation was provided.

One industry commenter recommended that the rules should provide that "a lessee may claim a transportation allowance * * * if a lessee is compelled for geographical, topographical, or other reasons to transport coal from a lease to mine facilities off the lease where it is sold." This comment also suggested granting a transportation allowance under any circumstances where coal is transported more than one mile from the Federal lease. One State commenter suggested that all transportation operations, on or off the lease, even if it is in-mine haulage, should be granted transportation allowances if the transportation occurs after the coal is in marketable condition. Another State commenter concluded that MMS should ensure that transportation allowances are not granted for in-mine haulage.

One industry commenter recommended that the transportation regulations should take into account the situation where in-mine transportation occurs, but the coal being transported is from another adjacent, but distinct, mine. This commenter concluded that transportation in this situation should be eligible for an allowance. Two other commenters, one State and one Indian, similarly recommended inserting the word "necessary," such that the affected portion of the regulation would read "means an allowance for the reasonable, actual, necessary costs incurred by the lessee * * *."

A few industry commenters recommended that the term "remote" is ambiguous and requires clarification. Two of these commenters also claimed the term "mine" required clarification. No suggestions as to additional clarifying language were offered.

MMS Response: The MMS recognizes that transportation costs resulting from the movement of coal throughout the mine complex can be a significant cost. Transportation costs are, in fact, a large factor in determining whether a coal deposit can be mined.

The lessor has historically not participated in the cost of mining, including the costs of normal mine processing operations and any necessary movement of mined material about the mine area. The lessor has historically shared in the cost of outbound (long-distance) transportation where sales occur at the destination rather than the mine. This existing policy is proposed to be continued with further clarification to distinguish those situations where the lessor should participate in the cost of transportation.

The following questions are posed to implement a clarified policy regarding transportation allowances.

1. Does coal transportation occur in what could reasonably be considered the vicinity of the mine, lease, etc., which is defined by some administrative boundary or definition?

An affirmative response to this question would constitute de facto mine haulage and would not qualify for a transportation allowance. Coal movement outside the lease boundary from where it was extracted but inside a larger encompassing mine boundary is not unusual. Any coal movement about the mine premise and between mine processing facilities is at the direction of the mine manager, who ultimately exercises control over the flow of coal from the point of extraction through all processing circuits and loadout facilities.

2. Is the coal transportation considered a normal mining operation?

Coal movement from the pits (in the case of a surface mine) or the portals (in the case of an underground mine) to crushing facilities, preparation plants, surge bins, stockpiles, silos or other storage, loading, or sales facilities of the mine is common trade practice and considered part of the mining operation.

The Minerals Management Service recognizes that it is not only a necessary industry practice to move coal to and from the various processing facilities but to also arrange for coal to enter the stream of commerce and for possession to transfer to the buyer. Transportation recognized as necessary to the operation of the mine would not qualify for transportation allowances.

3. Does the transportation of coal occur prior to the first point where production can reasonably be marketed?

The mine operator is responsible for arranging for the sale and transfer of coal to buyers in the marketplace. The first point where coal may be marketed is the point where title, possession, and liability of loss can transfer from the mine operator to buyers. This point is normally the mine loadout facility.

4. Are there any extraordinary or exceptional circumstances involving coal transportation that should be considered as relevant factors or that could render other transportation allowance eligibility criteria invalid?

Under normal mining conditions, all transportation occurring prior to an f.o.b. (free-on-board) mine sales point would be born exclusively by the lessee. However, under unusual arrangements or circumstances that create transportation costs that are uncommon or which are beyond the established norm for that area, a transportation allowance could be granted.

The MMS has no intent to provide transportation allowances for routine in-mine transportation costs, which every mining operation encounters to some degree. In-mine transportation is an integral part of the total mining process, the cost of which the Federal or Indian owner has historically not shared. Additional discussion of transportation allowances appears later in this preamble. The MMS notes, however, that under the definition of "mine," no allowance would be approved for coal transported between mine facilities, including, for instance, transportation between the pit (or portals, in the case of an underground mine) and the crusher, or for transfer from the crusher to other mine surface facilities, including the storage and loadout facility.

The requirement of a lessee to perform this normal in-mine haulage at no cost to the lessor is sometimes lost because the nature of mineral occurrence does not always lend itself to convenient clustering of mine facilities. Other competing factors such as access to electrical power, water, and long-distance transportation corridors, e.g., railroads, highways, or political or topographical constraints often require compromised mine design.

The MMS has surveyed the various types of minerals produced from mines on Federal and Indian leases and have found that all lessees engage in some degree of mine haulage and normal processing to produce a marketable product at no expense to the lessor. The MMS routinely considers these activities as occurring "at the mine," even though the mine's facilities are not necessarily near the point of extraction.

"Area" *Comment:* Two industry respondents stated that the definition was neither relevant nor precise.

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MMS Response: The MMS finds the term "area" to be relevant because of its use in §§ 206.257(c)(2) (i) and (ii), which sets forth the first two valuation criteria for non-arm's-length sales. Under the approach, lessees will use values established under comparable arm's-length coal sales contracts for coal with similar economic and quality characteristics found in the same geographic region. Therefore, for example, a lessee in North Dakota seeking to establish a value for its non-arm's-length coal sales could not resort to coal sales contracts in Colorado as a means of establishing a royalty value.

"Arm's-length contract" The definition of "arm's-length contract generated numerous comments following the January 15, 1987, original proposed rulemaking. The definition in that earlier proposal would have found a controlling interest regardless of how small the ownership between the two persons was. The July 15, 1988, notice amended the earlier proposed definition.

"Arm's-length contract" is defined as a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. Affiliation essentially would be a control test; ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS can rebut. Contracts between relatives would not be arm's-length contracts. To be considered arm's-length for any production month, a contract must meet the requirements of the definition for that month as well as when the contract was executed. Thus, if two contracting parties were not affiliated when the contract was executed, but are affiliated now, the contract would be non-arm's-length.

Alternatively, if two parties were affiliated and executed a non-arm's-length contract, but subsequently divested ownership in one-another, that contract would continue to be regarded as non-arm's-length until such time that the contract terminates or is replaced by a contract negotiated at arm's-length.

Comment: One State commenter proposed an alternative definition that would not include the issue of control. This commenter also stated that regardless of which definition is adopted, "MMS should retain the ability to review contracts [for their arm's-length status] as they relate to current sales."

A few industry commenters stated that MMS's "Arm's-length contract" definition was too reliant on form rather than substance. These commenters asserted that where a contract was agreed upon when the parties were nonaffiliated and that contract has continued unamended even though the parties have since become affiliated, the contract should be viewed as "arm's-length."

MMS Response: The July 15, 1988, proposed definition is retained unchanged in the final rules. The arm's-length test must be met each production month. Contracts entered into by independent parties lose their arm's-length status when the contracting parties become affiliated. Clearly, any contract signed by former unaffiliated parties would only continue to operate under the permission of the controlling entity, if the entity's best interest is served. The MMS does not consider such a contract to be arm's-length.

"Audit" *Comment:* Several industry respondents and one Indian respondent submitted numerous comments regarding the January 15, 1987, proposed definition of this term. Three industry commenters requested clarification regarding who conducts audits of royalty payments and on what date an audit would be deemed final. Two industry commenters stated a need to clarify this definition's relation to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). One Indian commenter stated that the phrase "production verification" should also be defined. One commenter stated that MMS should be required to disseminate audit findings to Indian tribes and allottees "as their needs arise."

MMS Response: The MMS is the prime auditing authority of coal royalty payments from either Federal or Indian coal lessees. States and Indians may also audit coal royalty payments under the provisions of individually executed cooperative agreements. The results of an audit are normally considered final when the lessee accepts the audit findings or its appeal rights are exhausted. The Federal Government is not prevented from reopening an audit if there is evidence of substantial omission or fraud. The definition in the July 15, 1988, notice modified the January 15, 1987, proposed definition by deleting all language following the first sentence of the definition. The deleted material was only intended to be explanatory. These final rules contain the July 15, 1988, proposed definition unchanged from that proposal.

"Coal washing" *Comment:* Several respondents provided comments concerning this definition. Several industry commenters recommended revising this definition from "Coal washing" to "Coal processing." Support for this modification provided in these comments followed the same rationale as stated earlier: Other methods of beneficiation besides coal washing may increase the value of coal. One commenter further explained, "The definition of coal washing should be rewritten to clarify that these processes are included and provide incentives to develop new technologies for increased or different federal coal use." One Indian commenter recommended deleting the definition entirely but offered no reasoning.

MMS Response: The MMS responded to these issues earlier at the discussion of the term "Allowance."

Comment: The MMS received many comments from industry respondents stating that all preparation costs should be excluded from the royalty value.

MMS Response: The details of these comments and MMS's response to them were published in the July 15, 1988 (53 FR 26942), notice. The reader should refer to the referenced issue of the **Federal Register.**

The final rules maintain the longstanding requirement for the lessee to place the mined product in marketable condition at no expense to the lessor. An extensive discussion of the "marketable condition" requirement is contained earlier in this preamble.

"Contract" *Comment:* Several industry respondents provided comments recommending deletion of the phrase "that with due consideration creates an obligation" from the proposed definition. Two commenters stated the phrase was "unnecessary and confusing."

MMS Response: The MMS considers the elements of consideration and obligation to be fundamental elements of coal sales contracts. These rules retain the language of the January 15, 1987, proposed rulemaking.

"Gross proceeds" *Comment:* Following the original January 15, 1987, proposed rulemaking, MMS received many comments on the definition of "Gross proceeds." Many comments were concerned with the proposal to exclude the AML fee and Black Lung excise tax from the value of coal. An extensive description of those comments appeared in the preamble to the July 15, 1988 (53 FR 26942), notice. Readers should refer to the referenced issue of the **Federal Register** to review those comments and MMS's response.

Comments received since the July 15, 1988, notice regarding the inclusion or exclusion of the AML fee, Black Lung excise tax, and other taxes or fees are addressed in the discussion of § 206.257(b).

MMS Response: There is no doubt, for example, that when the purchaser pays $10/ton for coal, that is the lessee's gross proceeds. Whether all of that $10 is royalty-bearing is a separate issue and is addressed below in § 206.257(b).

Comment: Many commenters including States, Indians, and industry, commented that they favored recognizing all forms of consideration received by the lessee for purposes of valuing Federal and Indian coal. Several industry respondents opposed the concept of including noncash forms of consideration such as providing crushing or loading services to the lessee. One commenter maintained: "There may be occasions when there truly is significant consideration given to the seller which is not included in the actual sales price of the coal. When that is the case, then there is justification to collect royalty on such consideration." This commenter concluded, however, that the proposed rules do not define what is significant.

MMS Response: The MMS partially responded to this issue as it was raised in the discussion of "grandfathering." The MMS's policy is restated again to be very clear on this issue. The MMS has always required royalty to be paid on all components of produced coal value, including those components of a coal sales agreement that are not in the form of cash and are not imbedded in the price. As stated in the January 15, 1987, proposed rulemaking, "The definition of gross proceeds is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller for the disposition of the coal * * *."

The rationale for this policy is that a mine operator can benefit equally from transactions involving noncash as well as cash benefits. In other words, cost avoidance can contribute as much to overall firm profitability as incoming revenues can. However, the royalty owner likewise is entitled to receive a share of the noncash value components received by the lessee. Any other proposition is unacceptable because the outcome would clearly represent royalty assessed on an amount that represents less than the full value of coal.

Comment: Many industry commenters stated that the use of "gross proceeds valuation" does not have a basis in law. One commenter supported this position by stating that, "The words 'gross proceeds' do not appear in the Mineral Leasing Act of 1920. Section 7 of the Act, as amended in 1976, established a royalty based on coal's value." This reasoning was expressed as support in other comments.

MMS Response: Section 7 of the MLA, as amended by FCLAA, requires royalty to be paid on "the value of coal as defined by regulations." The regulations in effect since 1976 have required royalty to be based on "gross value." Although the "gross proceeds" term herein is new, it is not forwarding a new concept. The selection of the term "gross proceeds" is to assure regulatory consistency within MMS and is an exercise of discretion provided by statute.

Comment: Some industry commenters stated that MMS should not use the gross proceeds established under contracts signed in the 1970's. One respondent commented that "These negotiated coal prices are over-inflated and not indicative of fair market value. They were contracted during the 'oil crisis' and the moratoriums on federal coal leasing." The commenter advocates that MMS "should develop a method that takes into account the average coal price at each mine and does not consider those 1970's contracts as indicative of fair market value." Another industry commenter offered an alternative proposal where royalty would be based on the average price of a geographic area if "the current 'arm's-length' price exceeds the average price for coal sold in the same geographic area by 20 percent or more * * *."

MMS Response: For arm's-length contracts, MMS does not believe that there is any justification for receiving a royalty based on less than a contract sales price regardless of when the contract was signed. The lessee receives the benefit of a higher price and the royalty owner is entitled to share in that benefit. Non-arm's-length situations are addressed later in this preamble. Interestingly, a similar issue was raised several decades ago. The conclusion was as follows: "Prices specified in contracts made years ago, but still effective, are just as significant a part of present markets for natural gas as those made yesterday, or those which may be made tomorrow." (Federal Power Commission, Natural Gas Investigation 222 [Docket No. G–580, 1948]).

Many comments were received on the take-or-pay issue prior to the July 15, 1988 (53 FR 26942), notice. Those comments were summarized in this referenced notice and will not be repeated here.

Numerous comments on the take-or-pay issue were received since the July 15, 1988, notice. The MMS responded to the issue of take-or-pay payments and similar type payments earlier in this preamble. The MMS's response also explains changes to the "gross proceeds" definition that have been made to conform to the Fifth Circuit Court of Appeals decision regarding take-or-pay.

The remaining definition of gross proceeds remains unchanged from the July 15, 1988, notice.

The definition of "gross proceeds" includes the total monies and other consideration "accruing" to the lessee. Because the definition of arm's-length contract does not include any provisions which address the concept that such contracts must reflect the entirety of the agreement between the parties, MMS concluded that the definition of gross proceeds should be sufficiently broad to encompass all consideration to which the lessee is entitled. The term "accruing" is intended to accomplish this purpose.

"Lease" *Comment:* Seven industry and one Indian respondent submitted comments regarding this proposed definition. One commenter stated that the definition was too broad, and six other commenters advocated redefining the term to exclude arrangements that are not leases, such as profit-sharing arrangements or joint ventures. Three other commenters suggested that MMS should adopt BLM's definition of lease as found at 43 CFR 3400.0–5(r), stating that there was no need for two bureaus of the same Department to have different definitions of the same term.

MMS Response: The definition of "Lease" is largely a restatement of the definition of that term as defined by various statutes.

"Lessee" *Comment:* Ten industry commenters stated that the definition was too broad and "subject to misconception," and that MMS should redefine this term to eliminate persons who pay royalties but have no interest in the lease. As explained by one commenter, "It [the definition] could, for instance, include as a 'lessee' a coal buyer who in the coal sales contract agrees to reimburse the coal miner for royalties payable."

MMS Response: The term "lessee" as defined in these rules does not extend to an unaffiliated coal buyer, which under a coal sales contract agrees to reimburse the lessee for royalty expenses. The lessee cannot contract away an obligation created by the taking of a lease. Further, failure of a coal buyer to render payment to the lessee does not relieve the lessee of its obligation to submit royalty payments for coal sold from a Federal or Indian coal lease. The definition does, however, include a coal buyer who agrees to report and pay the royalty to the MMS.

"Like-quality coal" *Comment:* One industry respondent questioned the meaning of the word "similar." Specifically, the comment asked how much variation in the chemical and physical characteristics would be allowed within the term "similar."

MMS Response: In general, MMS would consider two coals to be similar if they fall within the same coal classification, as set forth by The American Society for Testing Materials (ASTM) Standard D–388. However, MMS cautions that these general tolerances for the similarity test are not conclusive. Btu, ash, sulfur, and moisture content, and in specific situations other tests such as washability, drop shatter test, test for water soluble alkali or other tests may be necessary to conclude similarity.

"Net-back method" *Comment:* Numerous industry respondents submitted comments on the proposed definition that was contained in the January 15, 1987, proposed rulemaking. Two commenters advocated taking into consideration only the actual cost of transportation, thus eliminating costs such as coal handling, washing, etc., from the net-back calculations. One commenter suggested changing the definition to mean a procedure for valuing produced coal at the mine-mouth when a sale has taken place downstream from the lease or mine. Similarly, other commenters who advocated the "depletion income" valuation method offered an alternative proposal by defining the term to mean "a procedure for valuing coal downstream from the lease or mine working back from the point of gross royalty valuation to arrive at net royalty value at the first point of marketable condition." Any transportation, washing, or handling services would not be included in the "net royalty value." One commenter stated that the definition should be deleted as it is unnecessary under its proposed alternative "fair market value approach." One commenter stated that the "point of measurement for royalty purposes" is not specified in the definition and questioned how that point would be determined. One commenter recommended modifying the definition "to recognize that it is a procedure for determining the value of coal at the point of extraction." This commenter advocated also including "all portions of the value added to the coal as a result of post-extractive processes."

MMS Response: The definition in the July 15, 1988, notice which has been carried forward unchanged in these final rules, substantially revised the earlier proposal. The MMS will not permit any expense incurred prior to the point where the mineral is placed in marketable condition to be included in a net-back valuation method. To permit otherwise would contradict long-standing Department of the Interior policy and would deny equal royalty treatment to other lessees, which cannot avail themselves of a net-back valuation procedure. Therefore, the definition contained in this rulemaking has been streamlined but the concept is unchanged. The MMS will use a net-back valuation method only when other methods of determining value, such as those specified in the rules, are inapplicable. In doing a net-back, MMS will start at the first point at which a market value for the product can be determined, and will deduct costs of transportation, washing, handling, etc. to reach a value for royalty purposes.

"Net output" *Comment:* Two industry respondents requested that the term be redefined to mean "the quantity of coal delivered to the purchaser." The commenter supported this change to "make the definition more accurate and readable."

MMS Response: The MMS believes the term "produced" provides more flexibility and accuracy by including such situations as retention of washed coal by the on-site washer for purposes of drying coal or space heating.

"Person" *Comment:* Three industry respondents requested that the definition be revised. Two advocated changing the definition to read " 'Person' means any individual or legal entity." One commenter justified the proposed change by stating that "This revision is intended to make the definition legally sound, less confusing and less subject to being misconstrued."

MMS Response: The MMS's definition of "person" is consistent with sound legal principles and other statutes.

"Selling arrangement" *Comment:* Several industry respondents commented that this definition's meaning and purpose in the regulations are unclear and should be deleted.

MMS Response: The term "selling arrangement" is used in § 206.262 "Transportation allowances-general." The purpose of the term, as it is used in the rule, is to prohibit the transfer of transportation costs incurred under one particular sale to other sales not involving transported coal. It also clarifies that although present royalty reporting requirements for Form MMS–4014 allow aggregated reporting of sales, for purposes of allowances these deductions will be by individual contractual sales arrangement. These final rules adopt the July 15, 1988, notice definition.

"Severance tax"—Because these final rules adopt Recommendation VII–5 of the Commission on Fair Market Value Policy for Federal Coal Leasing that "the base for calculating Federal royalty payments should be the f.o.b. price minus all State and local severance and similar taxes," a definition of "Severance tax" has been added to this section. The intent of this definition is that only State and local production-related taxes may be excluded from the Federal coal lessee's gross proceeds and that other taxes and royalties may not be excluded.

"Spot market price"—The July 15, 1988, notice included a definition of "spot market price." Although no comments were received on this definition, MMS wishes to make clear its intent through the following explanation. The definition provides: "The price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year." The term "planned" is used because duly executed spot sales contracts providing for near term future sales would be evidence of market value at that time.

This definition is adopted unchanged in the final rules.

Section 206.262 Information collection

Comment: One industry and one Indian respondent commented on MMS's proposed information collection requirements. The industry commenter stated, "Collection of washing and transportation allowance data is unnecessary with a market value test" valuation, as opposed to a gross proceeds requirement. (The detailed discussion of alternative valuation proposals is contained at § 206.257(b).) The Indian commenter requested that MMS "clarify that this information will be available to Indian tribes on request for use in tribal management programs."

MMS Response: The MMS will respond to the alternative valuation procedures in the responses to comments at § 206.257(b). With respect to the sharing of mineral lease data with Indians, it is MMS policy to provide the Indian lessor any information relevant to its specific Indian leases, provided the Indian lessor agrees to safeguard certain proprietary financial and trade information.

Section 206.253 Coal subject to royalties—General provisions

Comment: The MMS received many comments from numerous industry respondents and one Indian respondent concerning proposed § 206.253. One industry commenter recommended that no changes be made to this section. Numerous industry respondents submitted many comments objecting to the provisions of paragrpah (a). Five commenters stated that only coal produced under a resource recovery and protection plan should be subject to royalty. One commenter explained that "BLM approves of the lessee's Resource Recovery and Protection Plan and thereby approves of the quality and quantity of that coal which must be recovered * * *." The commenter "urged that the rules provide that so long as the Resource Recovery and Protection Plan is being achieved, no royalties be charged for coal which is not mined pursuant to that plan." Four other commenters stated paragraph (a) was a duplication of BLM's existing authority for Maximum Economic Recovery (MER). One commenter noted, "The BLM's Maximum Economic Recovery regulations already serve to define how the reserve will be produced." One commenter objected to paragraph (a), stating that the requirement to pay royalties "on coal avoidably lost does not take into consideration the real world of mine operation and business." Indian commenters stated royalty should be due on all coal, including that coal unavoidably lost. Five other commenters stated that paragraph (a) was inadequate in other respects. One Indian commenter stated that this paragraph failed to deal with theft. Two other commenters stated it did not adequately define "avoidably lost." One commenter stated this paragraph would impose a royalty on coal too thin to mine or too poor a quality to use at a utility plant. One industry commenter stated that paragraph (a) refers to coal "which is 'unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400' " but noted that "the Group 3400 regulations do not address the concept of 'unavoidably lost.' "

MMS Response: The BLM determines the quantity of coal subject to royalty under its production verification responsibilities. Section 206.253(a) does not duplicate or usurp BLM's responsibilities pursuant to 43 CFR Group 3400. MMS points out, however, that coal avoidably lost is subject to BLM's scrutinty under 43 CFR Group 3400 performance standards. Coal which cannot be produced for various reasons, and is not mined, in compliance with the BLM-approved Resource Recovery and Protection Plan would not be subject to royalty. However, the Federal or Indian lessor does not bear the economic burden of absorbing losses due to the actions of an imprudent operator. In regards to theft, BLM may consider stolen coal avoidably lost and thus subject to royalty.

One industry commenter stated that although MMS uses the word "produced" in paragraph (a), the word is not defined in the proposed regulations. This commenter also offered a definition: "[C]oal is produced for royalty purposes when it is severed and placed in commercially salable condition, and then either sold, consumed, or otherwise disposed of." This commenter further noted that the use of the term "produced" in paragraph (a) was inconsistent with the gross proceeds approach of the regulations.

MMS Response: The MMS accepts the common usage and meaning of the word "produced," and believes no definiton in the regulations is necessary. The MMS discussed this issue in greater depth in the general comments regarding take-or-pay and similar type payments. The MMS agrees with the commenter that coal "produced" is relevant to coal that may be used by the lessee on-lease or off-lease, but not sold.

The intent of paragraph (a) is to make clear that royalty is due when coal is used, sold, or otherwise produced and disposed of by the lessee on or off the lease. These final rules include, unchanged, the regulation as it was proposed in the July 15, 1988, notice.

Comment: One industry comment stated that coal, free-of-charge, is provided to the Indian lessor. This commenter noted that royalty should not be charged on that coal.

MMS Response: The MMS understands that coal provided free-of-charge to the Indian lessor is explicitly provided for by lease terms. These rules explicitly provide for lease terms to govern where specifically inconsistent with these rules. See § 206.250(b).

Comment: Several industry respondents provided comments discussing paragraph (b). Two commenters requested that MMS clarify the language of paragraph (b) to state that insurance payments received by the lessee for losses other than coal would not be royalty bearing. One commenter suggested adding the phrase "for the coal lost" to the end of paragraph (b) as it was proposed.

MMS Response: The regulations published in the January 15, 1987 (52 FR 1840), proposed rulemaking were changed in the July 15, 1988 (53 FR 26942), notice to clarify MMS's intent on this issue. Royalty will be due only on insurance monies received by the lessee for the loss of coal. Royalty will not be due on insurance monies received for replacement of equipment or real estate. The July 15, 1988, notice language has been adopted in the final rules.

Comment: One industry commenter questioned if it were necessary "to determine if the insurance contract is arm's-length and go through the procedures of 30 CFR 206.257?"

MMS Response: The MMS believes that the issue of arm's-length versus non-arm's-length insurance payments is not relevant in this situation. In the instance of coal avoidably lost, MMS would determine the value of the coal pursuant to § 206.257.

Comment: Two industry commenters stated that no royalty was due on insurance proceeds. One commenter explained, "An insurance payment is a contractual agreement between the lessee and a third party by which the lessee has shifted the risk of losses to the third party through the payment of certain insurance premiums." A few industry commenters stated that the lessor should carry its own insurance or share in the lessee's insurance premiums if the lessor wished to indemnify itself from losses.

MMS Response: Royalty is due on insurance proceeds because the insurance payment compensates the lessee for the loss of Federal or Indian coal. If not for the production and loss of the Federal or Indian coal, the lessee would not receive the insurance payment. Once severed from the lease, protecting coal is the responsibility of the lessee until risk of loss has been transferred to the purchaser. Where the protection extends to insurance coverage, that coverage also reduces the lessor's risk on the royalty portion, which represents an undivided interest on all production from Federal and Indian leases.

Comment: Section 206.253(c), which requires royalty to be paid on coal recovered from waste piles or slurry ponds, received several comments from respondents. One commenter agreed with this paragraph. Two commenters stated that the record keeping requirements relating to the allocation of coal "may be difficult since the 'event' at issue may have occurred 10–12 years in the past."

MMS Response: The record keeping requirements are not new. Correct allocation of Federal and non-Federal production (or Indian/non-Indian) is a consistent obligation of lessees. See, for example, 30 CFR 211.63(k) of the July 30, 1982, Minerals Management Service final rulemaking for Coal Exploration and Mining Operations (47 FR 33192). If

adequate records have been discarded over time, production estimates approved by BLM would be sufficient for royalty determination purposes.

Comment: One industry commenter posed the question of how to account for coal in waste pits, which was derived "from multiple Federal leases and both Federal and non-Federal lands?" This commenter further maintained that the requirements of paragraph (c) are both "unreasonable and unenforceable."

MMS Response: Specific cases involving allocation issues will be dealt with on a case-by-case basis. If complete production records were kept by the lessee, correct allocation of coal in waste pits will not be difficult.

Comment: One industry commenter recommended that "there has been no prior obligation to keep such records [as required by paragraph (c)]."

MMS Response: The commenter is incorrect. Production records have always been required to be kept in order to verify coal production removed from a lease. See 30 CFR 211.63(k) (July 30, 1982) (47 FR 33192), Minerals Management Service final rulemaking for Coal Exploration and Mining Operations. Prior to that rulemaking, see 30 CFR 211.66(a) (May 17, 1976) (41 FR 20271), final rulemaking.

Comment: One industry commenter stated that paragraph (c) [§ 206.255(c)] in the January 15, 1978, proposed rulemaking] should be revised to reflect that royalties are due when coal is sold or used, "not at the time of recovery."

MMS Response: This comment is reasonable and the regulations were changed in July 15, 1988, notice to require royalty payments when the coal recovered from waste or slurry ponds is used, sold, or otherwise disposed. This language has been carried through to the final rules.

Comment: One industry commenter stated, "MMS should address the possible situation where waste piles and slurry ponds may contain coal produced using both underground and surface methods."

MMS Response: The MMS will investigate such a situation when or if it occurs; however, MMS is convinced that if proper records were retained by the lessee, correct allocation and royalty calculation is feasible.

Section 206.254 Quality and quantity measurement standards for reporting and paying royalties

Comment: Numerous industry respondents submitted comments relating to § 206.254. One commenter recommended no changes to this section. Nine respondents objected to the quality reporting standards set forth in paragraph (a). Two commenters believed the requirements of paragraph (a) are burdensome and recommended deletion. One commenter continued by asserting that "MMS is requesting a great amount of unnecessary information." Three other commenters similarly stated that there was "no legitimate governmental interest in receiving this information, particularly if the coal is being sold pursuant to a bona fide arm's-length coal supply agreement. Federal coal royalties are calculated on quantity and price."

MMS Response: Such information is necessary so that MMS may perform its oversight functions. The MMS believes that such information should be readily available for purposes of properly analyzing values used for coal sold under non-arm's-length conditions. The valuation of coal sold under non-arm's-length conditions normally requires a comparison to like-quality coal sold in the same area under arm's-length conditions. The requirement to provide such information to MMS is specified at 30 CFR Part 216. The reporting regulations of § 206.254(a) for coal are more specific, but do not impose additional requirements.

Comment: Several commenters requested that MMS clarify paragraph (a) to require that quality information be submitted once a month for a representative shipment providing no extraordinary bonuses or penalties were incurred by the lessee during the month.

MMS Response: Section 206.257 requires lessees to perform coal quality analysis at intervals set forth in their contracts, but in no case less than quarterly. However, the reporting of those analyses to MMS should be consistent with the standards contained in 30 CFR Part 216. The MMS contemplates that the weighted average of all shipments during a reporting period will be reported because coal lessees do not report the details of individual shipments unless only one shipment was made during the reporting period.

Comment: One commenter requested that the provisions of paragraph (a) be revised to address "the circumstance where the sales contract does not provide the intervals at which quality determinations will be made."

MMS Response: The MMS concurred with the comment and accordingly incorporated clarifying language in the July 15, 1988, notice. For the general case in which a sales contract does not provide the intervals at which quality determinations will be made, quality tests will be performed not less than quarterly.

Comment: One commenter recommended amending paragraph (a) such that the quarterly coal quality tests would only be required "if coal on which royalty is due was mined during that period."

MMS Response: Quality tests would be performed at intervals specified in the coal contract but not less than quarterly. The reporting of those quality parameters should be consistent with the reporting requirements of 30 CFR Part 216.

MMS received a few comments concerning paragraph (b). The commenters recommend amending paragraph (b) to exclude "extraneous ash and moisture [from the weight] (i.e., that not found to be inherent in the coal itself) before calculating royalties." The commenter cited *A.J. Taft Coal Co.* v. *U.S.*, 605 F. Supp. 366 (D. Ala. 1984), aff'd 760 F. 2d 279 (11th Cir. 1985) in support of this proposal. Another commenter stated that the weight of water added for dust suppression should be deducted.

MMS Response: Under the valuation rules, coal royalties are based on gross proceeds. Thus, to the extent that ash and moisture penalties effect gross proceeds, the Federal or Indian lessor also shares in the reduced revenues received for the sale of coal containing excessive impurities. Additional discounts for coal weight contributed by impurities are inconsistent with general principles of ad valorem royalty accounting, which principally rely on revenue receipts for the sale of production rather than on the weight of production.

The MMS similarly rejects the latter comment concerning a deduction for water added for dust suppression. Ad valorem royalties are based on value of coal sold in marketable condition. The commenter noted that an average of 2 gallons of water is added to each ton of coal sold. The additional 16 pounds of added water per ton of coal represents a weight increase of about 0.8 percent, an amount which is below the acceptable percentage of error of tolerance present in many certified rail or truck scales. The MMS also suggests that the costs of the additional recordkeeping requirements that would be necessary to support actual water weight applied to coal would easily exceed royalty savings.

Section 206.255 Point of royalty determination

Section 205.257 of the January 15, 1987, proposed rulemaking was redesignated § 206.255 in the July 15, 1988, notice. The language was also slightly amended. The term "used" was added to the paragraphs (b) and (c) to make it clear that use of coal by the lessee triggers the royalty payment obligation. Section 206.255 of the July 15, 1988, notice is adopted into these final rules without change.

Comment: The MMS received many comments from industry respondents and one Federal agency concerning § 206.255 (formerly § 206.257) published in the January 15, 1987, proposed rulemaking. Nine industry respondents submitted numerous comments related to paragraph (a). One commenter stated that this paragraph was vague; another comment stated that it was confusing. One commenter specifically recommended deleting the phrase "marketable condition," and explained that the phrase was unnecessary where a specified point of royalty determination is designated. Ten comments offered alternative points of royalty measurement other than that "prescribed by BLM." Three commenters suggested that the point of royalty measurement should be after the coal is crushed and screened. One commenter believed this was a reasonable point since these operations were undertaken by all lessees. One commenter stated that the point of royalty measurement should occur "at the point at which the coal is severed from the mineral estate." One commenter suggested substituting the term "mine" in place of "point of royalty measurement prescribed by BLM." One commenter advocated that the point of royalty determination should be the first of either "the point when coal is produced and first placed in a marketable condition or loaded for delivery." One commenter stated that the point of royalty measurement should be where "ownership is transferred at the point of sale." Two commenters stated that the point of royalty determination should be the point of sale, normally f.o.b. the mine. Another commenter also stated that there was no provision for the lessee to have input into this determination.

MMS Response: The "marketable condition" standard is present for consistency with § 206.257(h). The MMS will not accept, for royalty purposes, the gross proceeds accruing to the lessee for the arm's-length sale of coal which is not in marketable condition, as defined at § 206.251. The point of royalty determination is a joint BLM and MMS function. Often the point of sale specified in a sales contract is the same as the point of royalty determination, which is typically at or near the mine. The MMS expects that extensive consultation would occur between all concerned parties, including the lessee, prior to establishing a point of royalty determination. However, the final decision of a point of royalty determination is not delegable to the lessee. Where unusual selling arrangements exist, BLM and MMS may, at their discretion, assign any point of royalty determination, including a point different from the point of sale contained in the sales contract.

Comment: Six comments from four industry respondents and one Federal agency were received on paragraph (b). The Federal agency suggested that MMS should promulgate a definition for "large coal stockpile." Two commenters requested MMS to clarify what constitutes excessive stockpiles or inventory. Two of these commenters asked that MMS be flexible "in these [excessive stockpiles or inventory] determinations since a 100,000-ton stockpile may be 'excessive' at one operation but may be quite normal at another." One commenter recommended substituting the word "when" for the word "after," stating that the current word is confusing. Two commenters agreed with MMS's paragraph (b). One commenter stated, "Many of the recently readjusted Federal leases specify that royalties will continue to be paid at the time coal is produced. It is suggested that the provisions of this section need to be further strengthened to clarify that this section will prevail over the terms of the lease * * *."

MMS Response: The MMS will be flexible in determining what constitutes an "excessive stockpile." These determinations will be made on a case-by-case basis by BLM. The MMS did not, however, strengthen paragraph (b) to prevail over lease terms. As contractual agreements, leases and their provisions prevail over regulations where leases and regulations are inconsistent.

Comment: Seven comments from six industry respondents were received on paragraph (c). One commenter recommended deleting this paragraph entirely, "since all Federal coal leases contain provisions for royalty rates and frequency of payments." Six other commenters objected to the language "or otherwise disposed of." In lieu of this language, two commenters suggested substituting the word "consumed"; one commenter suggested substituting the word "removed"; and one commenter suggested substituting "or used by the lessee on lease or off lease."

MMS Response: The purpose of paragraph (c) is to refer to 30 CFR 206.256(d), which deals with practical situations for paying royalty when coal is sold, used, or otherwise finally disposed of. The MMS considers the phrase "or otherwise disposed of" necessary to anticipate other dispositions of coal in addition to sale. The MMS does not intend this provision to mean that royalty normally is due when coal is removed from a lease and transferred to a nearby stockpile prior to sale. The word "sold" was added to the provision to be consistent with other parts of these regulations which discuss disposition of Indian and Federal coal.

Section 206.256 Valuation standards for cents-per-ton leases

Comment: Several industry and one Indian respondent submitted nine comments regarding § 206.258 of the January 15, 1987, notice, now redesignated § 206.256. The MMS received no comments on paragraph (a).

Three industry respondents submitted three comments concerning paragraph (b). One commenter recommended that "the word 'volume' be replaced with the word 'quantity' to be consistent with proposed 30 CFR 206.254(b)." The other commenters were concerned with the requirement that royalty would be due on coal avoidably lost. Two commenters questioned the conditions under which royalty would be due on coal left in-place (unmined) and one stated that paragraph (b) was essentially a "duplicate regulation by the Department of Interior [sic] in that BLM already has existing authority to assure maximum economic recovery * * *."

MMS Response: Paragraph (b) was changed in the July 15, 1988, notice by replacing the word "volume" with the word "quantity." "Quantity" is consistent with usage at 30 CFR 206.254(b), because coal is not measured for royalty purposes by "volume." Also, see MMS's response regarding coal avoidably lost at § 206.253.

Comment: Three comments from industry respondents were received on paragraph (c). Two commenters recommended deleting this paragraph completely. The other commenter maintained that both washing and transportation allowances should be available for cents-per-ton leases. The commenter stated that denying allowances for only cents-per-ton leases "create[s] a double standard."

MMS Response: The denial of allowances for cents-per-ton coal lease does not create a double standard of royalty valuation. Cents-per-ton royalty payments are not increased because of the value added benefits of washed coal. The historic practice of collecting

cents-per-ton royalty on the quantity of cleaned coal rather than the quantity of uncleaned coal actually mined is continued. See initial policy at 30 CFR 211.64, May 17, 1976, 41 FR 20271.

Comment: Three industry and one Indian respondent submitted five comments pertaining to paragraph (d). One Indian comment commended MMS for its position "that it will be the policy * * * to convert cents-per-ton leases to ad valorem leases on readjustment dates unless, of course, a cents-per-ton lease would yield greater royalties to an Indian tribe." All other comments were put forth by industry. Two of these commenters recommended deletion of this paragraph. One commenter reasoned "that this entire area [of lease readjustments] is in such a state of turmoil that MMS should probably refrain from addressing this issue at this time." Another commenter stated, "The royalty to be paid for coal depends on the actual date of coal severance (date of being mined) * * *." One commenter noted that the 30-day requirement of paragraph (d) could be in conflict with certain lease terms and MMS should ensure that the "proposition ('lease terms govern') should be constant throughout the rules." One commenter "suggested that the lessee should at least be given some 'force majeure' relief on the 30-day requirement if he is unable to rotate his stockpile due to forces beyond the lessee's control."

MMS Response: There is no confusion in the area of lease readjustment. The policy of the Department of the Interior is to readjust all Federal coal leases to be consistent with the requirements of 30 U.S.C. 207, as implemented by appropriate regulations of 43 CFR Subpart 3451. This policy has been upheld by the courts (citations provided earlier). The purpose of this regulation is to provide the lessee formal written policy regarding the imposition of new ad valorem royalty rates on previously mined coal inventories, which were in existence on the effective date of the lease readjustment.

The language of § 206.256 as published in the July 15, 1988, notice was carried forward into this final rulemaking.

Section 206.257 Valuation standards for ad valorem leases

The final rulemaking adopts the basic valuation approach as it was proposed in the July 15, 1988, notice. However, several changes have been made to conform with the amended definition of gross proceeds and to adopt the Commission on Fair Market Value Policy for Federal Coal Leasing recommendation that State and local severance taxes be excluded from gross proceeds. Other minor changes, which are described below, were made for clarity.

Following the original January 15, 1987, proposed rulemaking, MMS received several editorial-type comments concerning paragraph (a) which were suggested for clarification. Some comments repeated earlier statements that a processing allowance should be used in place of a washing allowance. The MMS clarified paragraph (a) in the July 15, 1988, notice by revising the language and adding the deductibility of an allowance for beneficiation pursuant to § 206.265. No additional comments were received specific to this paragraph. Therefore, this paragraph has no changes from the July 15, 1988, notice.

Paragraph (b)(1) contains no changes from the July 15, 1988, notice. This paragraph essentially continues the existing policy of determining per centum coal royalties on the basis of sales prices obtained pursuant to arm's-length contracts. Acceptance of the sanctity of such contracts remains a fundamental valuation concept. It represents very important ideas about the nature of business in the free marketplace. That is, that businesses have the right, within the bounds of what is legal, to fix a relationship by a binding written agreement. The freedom to write contracts and to abide by their terms represents a fundamental trait of this Nation's economic system. These rules and specfically this paragraph adhere to this feature of the U.S. economic system, because this paragraph states that the lessor agrees to limit its share of royalties to a specified fraction of receipts received by the lessee. In other words, MMS accepts as a proper valuation for the payment of royalties the value negotiated at arm's-length with a purchaser in light of the marketing conditions that existed at the time the contract was entered.

The MMS received several comments suggesting alternative methodologies for valuation. Earlier in this preamble MMS responded to a proposal to value on the basis of heat content. Other commenters suggested establishing "fair market value" through techniques other than by contract sale prices. The MMS rejects all of these alternatives. The MMS maintains that there is nothing wrong with the workings of the competitive marketplace. Accordingly, the marketplace will continue to be the primary determinant of value of coal for royalty purposes.

Comment: Paragraph (b)(2) conditions MMS acceptance of gross proceeds under contracts on whether each contract reflects the total consideration actually transferred from buyer to seller. A number of industry comments objected to this provision and stated that MMS should restrict the value basis to the contract sales price.

MMS Response: MMS recognizes that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes.

For example, if a lessee sells coal to the neighboring nonaffiliated utility at reduced prices and in return the utility sells electricity to the lessee at a reduced rate, then the coal sale agreement would not be reflective of the full value of coal.

In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, MMS could accept the lessee's gross proceeds as value, adjusted to reflect the additional consideration when that additional consideration can be converted to a dollar value. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS may require under paragraph (b)(2) that the coal production be valued in accordance with paragraph (c), the standards used to value coal disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts. Thus, despite several industry comments suggesting that this section be deleted, it is retained in the final rules.

Paragraph (b)(2) is not meant to apply to situations where there is intentional misconduct by the lessee. Such circumstances are covered by paragraph (b)(3). Rather, it could be used in situations where a lessee did not consider a particular benefit provided by its purchaser to be a payment for coal, but MMS on review considers it to be part of the consideration for coal production under the contract.

Comment: Many comments were received concerning paragraph (b)(3) following the July 15, 1988, notice. Many industry comments asserted that MMS was attempting to expand its rule beyond the traditional bounds of a lessor, as intended by Congress. One comment stated "MMS is bringing the negligence concept from tort law to a contractual relationship." Many comments stated that this regulation would effectively grant MMS license to second guess the lessee's legal and

business judgment. Other comments stated that paragraph (b)(3) created undue uncertainties in the royalty valuation process and would result in an expansion of litigation.

MMS Response: Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to § 206.251, if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then MMS may require that the coal be valued pursuant to the first applicable criterion of paragraph (c)(2).

Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market the production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production for the mutual benefit of the lessee includes, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudulently manipulated, or negligence in negotiating contracts.

When MMS makes the determination under paragraph (b)(3), the effect is that the arm's-length contract price will not be accepted automatically. Instead, value will be independently determined using the benchmarks in paragraph (c).

Comment: Paragraph (b)(5) excludes the cost of the Black Lung excise tax, the AML fee, and severance tax from gross proceeds to arrive at the value for Federal royalty purposes. These specific exclusions do not apply to Indian leases. In the preamble to the July 15, 1988, notice, MMS provided an extensive accounting of comments that had been received prior to that date. In the July 15, 1988, preamble, MMS requested additional comments on whether the Black Lung excise tax and AML fee should be excluded from the value basis. The MMS requested further comment on whether the concept of excluding certain costs should be extended to include exemption for the costs of State severance taxes and "royalty on royalty." "Royalty on royalty" or "royalty on itself" is a phrase used by commenters to describe the royalty effects of a lessee raising the sales price to recapture the cost of the royalty itself.

The overwhelming majority of industry commenters advocated excluding all Federal and State imposed taxes, fees, and royalties. Most of these commenters stated that the taxes and fees did not add to the value of the coal and therefore should not be subject to royalty. One western coal producing State commenter agreed with the industry consensus. Four western coal producing States recommended rejecting the policy of excluding the Black Lung excise tax and the AML fee from the royalty value. Four western coal producing States also recommended rejecting the policy of excluding State severance taxes from the value basis. Three western coal producing States recommended rejecting the policy of excluding the cost of royalty ("royalty on royalty") from the value basis. One commenter stated: "MMS' algebraic manipulations in the preamble notwithstanding, this proposal boils down to nothing more and nothing less than reducing the 12.5% royalty rate to 11.39%." One western coal producing State chose not to comment on any of these possible exclusions but instead requested an alternative valuation system for low Btu content coal. Several coal consuming States advocated adoption of the alternative valuation proposal that was submitted jointly by representatives of the coal and electric utility industries. That proposal would exclude all production taxes, fees, and royalties.

Several industry commenters stated that the proposed exclusions should extend to Indian coal also. The Indian commenters, on the other hand, expressed agreement with the proposed regulatory provision to exempt Indian coal from any of the exclusions for taxes, fees, and royalties. One Federal agency stated that excluding the Black Lung excise tax and the AML fee from Indian lands "could precipitate an adverse situation, wherein producers would preferentially develop non-Indian lands. This does not seem consistent with the trust responsibility of the Federal Government with regard to Indian mineral resources."

The MMS received numerous comments on the deletion of reimbursements for Black Lung Excise Taxes and Abandoned Mine Land Reclamation Fees (AML) from royalty value. Thirty-nine respondents, consisting of industry representatives, one local government association, and one State, specifically supported MMS's proposed deletion of reimbursements for Black Lung Excise Taxes and Abandoned Mine Land Reclamation Fees from royalty value. One industry respondent explained: "The exclusion of Abandoned Mine Land Reclamation (AML) fees and Black Lung (BL) taxes is appropriate as they add no enhancement to the real value of the coal." Another industry commenter noted support for "Secretary Hodel's proposal to exclude those reimbursables [Federal Black Lung Taxes and Abandoned Mine Land Fees] from gross proceeds on the grounds that it is inequitable to require lessees to pay royalties on levies imposed by Federal, State, or local governments solely to mine coal." Many other respondents repeated this rationale. One industry respondent offered a somewhat different reasoning by stating that it was appropriate for MMS to take action to "enhance the competitiveness of Federal and Tribal coal, and hence the viability of the domestic coal industry."

Eighteen respondents, consisting of 14 State organizations and 4 Indian groups, opposed the exclusion of any reimbursed taxes or fees from gross proceeds. Most respondents maintained that MMS's explanation of why Black Lung Excise Taxes and AML fees are excluded from gross proceeds was not sufficient or acceptable. One Indian respondent specifically commented that MMS's justification for exclusion was not true with respect to Indians who do not set the rate of either the Black Lung Excise Tax or the AML fee. The respondent further noted that AML fees have not been made available to Indian lands. A State respondent commented: "These fees are essentially a pass-through, the lessee does receive the benefit of the purchaser reimbursing him * * *." These costs would otherwise be borne by the lessee. Another State respondent claimed: "The MMS proposal would have the effect of reducing royalties on coal without going through the findings required under the Minerals Leasing Act, 30 U.S.C. 209." One other State respondent concurred with this statement. Several other State respondents objected to the exclusion of Black Lung Excise Taxes and AML fees on the grounds that it sets a precedent and "opens the door for the exclusion of other items * * *."

The MMS also received comments stating that the value of coal should be reduced by amounts for State and local severance taxes. Most comments maintained that the resulting lower royalty costs would promote development and lower costs to consumers. Other comments stated that severance taxes should be excluded from the value basis because the lessee merely collects these taxes on behalf of the taxing authority. Hence, the lessee obtains no benefit or value from the collection of such pass-through taxes. As one comment explained, "None of these cost [tax] components are part of the 'value' of the raw product, coal, to

the lessee. The lessee receives nothing in return for these payments; i.e., they are true liabilities and to charge a royalty on them is unconscionable." Several commenters pointed out the MMS's proposed rules are not in accord with the February 1984 recommendation of the President's Commission on fair market value policy for Federal Coal Leasing (Linowes Commission). One commenter restated the conclusions of Linowes Commission by stating "[T]he Federal royalty should be based on the value of the coal being produced, not on State and local taxes as well. Federal royalty policies should not create an incentive for higher State and local severance taxes, or similar production based taxes, by increasing the effective total return to a given percentage tax. State and local governments should bear the direct responsibility for the full financial impact of their severance taxes. Accordingly, the Commission recommended that 'the base for calculating Federal royalty payments should be the F.O.B. price minus all State and local severance and similar taxes'."

A definition of severance tax has been added in § 206.251. *See* discussion above.

During the September 7, 1988, public hearing, a difference of opinion surfaced concerning whether exclusions for taxes, fees, or royalties, represents an established industry standard outside of Federal coal leasing. One industry commenter stated unequivocally that all private coal leases in the west contained valuation terms that were net (noninclusive) of taxes, fees, and royalties. The other industry commenter refuted the previous commenter's position by stating that it was not that conclusive. The commenter stated that lease terms often varied by region and often the bargaining strengths of the parties dictated the ultimate lease valuation provisions. This commenter then concluded that his company's leases and other large landholder's leases contained lease terms requiring royalty to be assessed at the gross (no exclusion) level.

MMS Response: The MMS has adopted the provision that amounts for AML fees and Black Lung taxes are excluded from royalty value. The MMS agrees that these fees do not add to the value of the coal. On review, MMS declined to extend the exclusions from royalty value to include "royalty on royalty." The term "royalty on royalty" is somewhat a misnomer. Although various mathematical calculations were submitted to show the effects of purchaser royalty reimbursement on royalty payments, no argument could change the nature of what a mineral royalty is: A share of minerals produced. At a rate of 12.5 percent, one ton out of eight belongs to the lessor, no more and no less. To attribute some intangible addition to the lessor's share destroys the concept of royalty itself. Therefore, the proposal to exclude "royalty on royalty" was not adopted in the final rule.

Paragraph (b)(5) also has been modified to allow for the exclusion of State and local severance taxes from gross proceeds. Additional language was added to clarify that these exclusions refer only to the cost of the tax or fee itself. No additional deduction is allowed because the lessee has incurred interest charges or other monetary penalties arising from the nonpayment or underpayment of the Black Lung excise tax, AML fee, or severance tax.

The Department believes that there are several reasons to exclude severance taxes from the Federal royalty value for coal. First, coal has its own valuation history. Second, but related, are the characteristics of the coal marketplace.

The comment submitted jointly by the National Coal Association, American Mining Congress, Edison Electric Institute and the Western Coal Traffic League, and the comment submitted on behalf of Kanawha and Hocking Coal & Coke Company and Valley Camp of Utah, Inc., focused on the historical valuation of coal. First, as noted earlier, prior to the Federal Coal Leasing Amendments Act of 1976 (FCLAA) revision to the Mineral Leasing Act (MLA), virtually all Federal coal leases had cents-per-ton royalty clauses. Therefore, severance taxes as part of royalty value was not an issue. The first administrative decision dealing with the coal severance tax issue is *Knife River Cool Co.*, 29 IBLA [Interior Board of Land Appeals] 26 (1977), a decision involving one of the few pre-FCLAA leases with an ad valorem royalty clause. The Board concluded that it should follow the decisions involving gas and include severance tax reimbursements as part of the value. However, in deciding that case, IBLA did not address two important concepts. First, the MLA as amended by FCLAA was different for coal than for gas in terms of defining the royalty obligation. For gas, royalty is due on the "value of the production," 30 U.S.C. 226, whereas for coal, royalty is due on "the value of coal as defined by regulation . . . ." Second, IBLA did not consider that when the Department adopted regulations to implement the new statutory scheme as for gas. The current coal regulations in 30 CFR 203.200(f) use the term "gross value" whereas the oil and gas rules in 30 CFR Part 206 always used the term gross proceeds. Also, the department did adopt specific rules providing that tax reimbursements are included in gross proceeds. *See* Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL–5), 42 FR 22610 (May 4, 1977)). Such a specific requirement was not promulgated for coal.

More important than the historical application of regulatory provisions by the Department, however, is the perception today by both coal producers and coal purchasers of the market for coal. As MMS has consistently emphasized in its product value rulemaking, the best determinant of value is the market. In the coal context, some of the comments maintain that severance taxes are not part of the market value of the coal. For example, in its comments, the Western Fuels Association reiterated testimony that it had previously provided to the Congress:

> The value of a product does not increase because a tax or fee is added to it, only its cost increases. As a matter of fact, the inclusion of these items could well cause the product's value to decline.

The Western Fuels Association, as well as many other commenters, also cited the Linowes Commission, *Report of the Commission: Fair Market Value Policy for Federal Coal Leasing.* Recommendation VIII–5 of that report states: "The base for calculating Federal royalty payments should be the F.O.B. price minus all State and local severance taxes and similar taxes." Thus, this independent commission did not consider taxes to be part of value.

A comment which focused directly on the question of how the market perceives severance taxes was submitted by Utah Power & Light Co. It's comment states:

> The MMS has stated that the cornerstone of the regulations is the interaction of buyers and sellers who are knowledgeable, willing and not obligated to buy or sell. This market concept does not properly consider federal and state taxes and/or fees which are not set in the market place, but arbitrarily set by federal and state agencies for purposes of raising revenues. The states and Federal Government as lessor can manipulate its' [sic] royalty revenue by increasing or decreasing taxes and fees, proving they do not contribute to the value of coal. This not only puts a burden of uncertainty on producers and consumers of federal coal but provides the lessor a mechanism to impact the "⅛ share" of production he is to receive. Additionally, the inclusion of these fees, which are not market driven, unnecessarily inflate the cost of federal coal in the long-run, potentially making it an undersirable fuel choice.

Utah Power & Light's comments were addressing only AML fees, Black Lung taxes, State severance taxes and Federal royalty—not State or Federal income taxes and similar taxes.

The characteristics of the market for coal also was the subject of considerable comment by the Edison Electric Institute (EEI). It is EEI's conclusion that "Coal is not a commodity like oil. The market for Western coal is user specific and is custom-produced according to quantity and quality." The EEI also noted: "In fact, seldom is the same price paid for Western coal from the same mine where the mine sells coal to several buyers."

It is indeed true that oil and gas and coal are very different commodities. In addition to their obvious physical differences and the differences in production methods, Federal western coal is used in large part only for electric generation, whereas this is only one of many uses for oil and gas. Related to their varied uses is the fact that oil and gas prices are dictated in large part by international market forces. Coal, on the other hand, is affected more by specific markets because it is not a fungible. For example, many large western mines are developed to supply coal to a particular powerplant which is designed specifically to burn that coal. If that purchaser is lost, the coal may not be readily saleable.

The differences in the coal market from that for oil and gas have resulted in different contracting practices, with the value of the coal being established first, and then severance taxes and other reimbursables being treated separately. Again, what purchasers are willing to pay for domestic oil and gas tends to be dictated more by international market forces than by local market needs.

It is the Department's conclusion from the large number of comments it received that consideration of the interaction of the market place supports excluding severance taxes from the value of the coal for royalty purposes. As noted above, coal buyers, and sellers commented that taxes are not part of the coal's value. Many of the comments point that even the states which impose a severance tax recognize that there is a determinable value for the coal before the tax is assessed because the assessment is based on the value of the coal net of any amount representing the tax. Thus, for coal, the Department has concluded that severance taxes increase the cost of the resource but not its value. Consequently, the Department is excluding severance taxes from the value of coal for Federal royalty purposes.

Comment: Paragraph (b) (6) of the proposed rule provided that the royalty value would not include payments received by a lessee pursuant to its contract if the lessee demonstrates to MMS's satisfaction, that such payments were not part of the total consideration paid for the purchase of coal.

Most comments received by MMS were addressed earlier in the general comment response to MMS's position with respect to take-or-pay and similar type payments. However, one comment raissed particular issues that require separate responses here. The commenter stated that the proposed regulation, as worded, appears to defeat judicial review because the demonstration (that a payment is not royalty bearing) is "to MMS's satisfaction," instead of an objective finding of fact. The commenter concluded that "Royalty determinations are subject to judicial review under the Administrative Procedure Act as actions that have not been committed to agency discretion by law, and MMS cannot adopt an unreviewable standard in the face of this congressional mandate for review."

MMS Response: There is no attempt to circumvent the requirements of The Administrative Procedure Act. The MMS decisions generally are subject to the administrative appeal process. Adverse decisions may ultimately be taken to the Federal court system for relief.

The MMS has adopted this paragraph (b)(b) as proposed. Under this section, there is a presumption that payments received by the lessee from its purchaser are payments for coal production. The lessee can rebut that presumption, but the burden is on the lessee to come forward with the justification for its position that the payment was not for coal production. The MMS always has had a consistent policy that royalty is due on no less than the lessee's gross proceeds, which includes all payments for production. Heretofore, that policy resulted in royalty demands on virtually all payments from the purchaser to the seller. However, payments must indeed be payments for coal production before any royalty is owed. Therefore, lessees will have the opportunity to come forward with arguments as to why a particular payment under a coal sales contract is not part of the value of the coal production.

Because there are so many different types of coal sales contract clauses, MMS cannot include in this rulemaking comprehensive criteria which could be considered in deciding whether a lessee has met its burden to demonstrate a particular payment is not royalty bearing. However, MMS will certainly consider such factors as the terms of the sales contract, the lessee's rationale for its claim that the payment is not part of the value of production, how the purchaser characterizes the transaction (particularly if it is a public utility subject to state public utilities commission regulation), and any other relevant matters. Other factors could include the following:

1. The unit sale or contract price, including prices that explicitly vary with the level of production, are considered royalty bearing.

2. Payments not designated as part of the purchase price, but made on a periodic or regularly scheduled basis, generally are royalty bearing.

3. "Settlement" payments made to terminate a sales contract before the contractually-specified termination date will usually not be considered payment for produced coal. If there is a follow-on contract, MMS will review the circumstances to determine if some or all of the payment is royalty bearing.

4. Payments or reimbursements for services or processing costs customarily the responsibility of the lessee, including that required to put the product in marketable condition, will usually be considered payment for produced coal.

5. Damages recovered under a court judgment, or included in a liquidated damages clause, that are for the purchaser's breach of a sales contract are usually not considered payment for produced coal, if they correspond to or are a reasonable estimate of the producer's lost profit.

The provisions of paragraph (b)(6) will not be applicable to any types of payments which other sections of the rules expressly include as part of the royalty value, such as payments for the costs of placing production in marketable condition.

As MMS gains experience in dealing with these issues, MMS expects to develop criteria which may be included in the regulations at a later date.

Paragraph (c), which contains MMS's valuation criteria when coal is disposed of under non-arm's length conditions, generally is unchanged from the July 15, 1988, notice. The MMS did make one change to clarify the application of the first benchmark in paragraph (c)(2). The proposed rule provided that MMS would accept the lessee's gross proceeds under its non-arm's-length contract if those proceeds were "equivalent" to those

under "comparable" arm's-length contracts. While the proposal included criteria for comparability, no criteria existed for equivalency; therefore, MMS has modified the final rule to provide that the lessee's non-arm's-length gross proceeds will be acceptable if it is within the "range" of gross proceeds paid under comparable arm's-length contracts in the field or area.

Comment: The MMS received numerous comments following the January 15, 1987, proposed rulemaking concerning non-arm's-length valuation. Eight industry, three Indian, and three State respondents submitted 27 comments regarding the non-arm's-length valuation criteria of the regulations. One industry commenter stated MMS should always be notified which valuation criteria is being used. One industry commenter questioned what is a "reasonable value[?]" One industry commenter stated that the value of non-arm's-length sales should always be established using that lessee's arm's-length contracts. The respondent supported its position by stating, "The lessee's arm's-length contracts are the best evidence of the value" had the lessee "sold the coal under an arm's-length contract." One industry commenter suggested using the average price of the lessee's arm's-length contracts. One industry respondent stated that paragraph (c) could be deleted if "the criteria for determining gross royalty [were adopted] as prescribed in 26 CFR 1.6134(b)(2), based on a representative market or field price."

Fourteen comments recommended either revising the application order or revising the language of the valuation criteria. Two State commenters recommended exchanging the sequence of paragraphs (c)(2)(i) and (c)(2)(ii). Two Indian commenters recommended ignoring arm's-length contracts of the lessee and seeking "[t]he highest gross proceeds" in "the same coal field" or alternatively "from other coal fields" as being the first two preferred valuation criteria. One State commenter suggested revising paragraph (c)(2)(ii) because it would be too difficult to implement, and the contracts of other lessees would not be available. Another industry commenter stated that the term "area" as used in paragraph (c)(2)(ii) should be defined. Two industry and one State respondent specifically addressed paragraph (c)(2)(iii), which would use prices reported to a public utility commission as the value for royalty purposes. One State commenter suggested this method was the most accurate because "it is highly unlikely that they [utilities] will understate their coal or fuel costs." One industry commenter stated that the value should be the production costs reported to the public utility commission less taxes and fees but plus a profit. One industry commenter disagreed with the use of paragraph (c)(2)(iii) because the regulation is unclear as to "who is reporting the price of the coal," and the price could include transportation and handling expenses, thus unnecessarily increasing the royalty value of the coal.

MMS Response: The intent of sequenced valuation criteria is to avoid any opportunity to selectively choose a valuation method which minimizes the lessee's royalty obligation, as opposed to correctly establishing royalty value under these rules. Conversely, these rules also offer the lessee the assurance that MMS would not arbitrarily rebut the benchmark that assigns the highest gross proceeds in the area to the lessee unless mandated by the regulatory criteria.

The July 15, 1988, notice contained minor modifications to the non-arm's-length valuation criteria listed in paragraph (c) of the January 15, 1987, proposed rulemaking. Most notable was that criteria (i) and (ii) were combined into a single valuation criterion. The effect from this modification is to increase the number of arm's-length contracts available for review, thus increasing the opportunity for a value via comparable arm's-length contracts. Also, as discussed above, MMS has replaced the term "equivalent" with provisions that clarify MMS's intent that the non-arm's-length price would be acceptable if it is within the range of comparable arm's-length contracts in the field or area. The MMS also removed the term "reasonable" from the phrase "reasonable value," which was stated in the first two sentences of paragraph (c)(2). Any value correctly established under paragraph (b) or (c) is the value for royalty purposes.

With respect to the comment requesting adoption of 26 CFR 1.613–4(b)(2), MMS cannot identify any benefits in administration or simplification in valuation that would occur. The Internal Revenue Service (IRS) rejects the taxpayer's use of representative market or field prices determined by exceptional, insignificant, unusual, tie-in, or accommodation sales. The IRS also disregards any representative market or field price established in transactions between members of a controlled group unless the IRS has determined the price to be a competitive sale price. See 26 CFR 1.613–4(c)(3). The IRS requires any taxpayer that computes its depletable income using representative market or field prices to attach to its tax return a summary statement indicating the price or prices used and the sources of the information as to such price or prices. Also, IRS requires the relevant supporting data to be assembled, segregated, and made readily available at the taxpayer's principal place of business (26 CFR 1.614–4(c)(5)). The MMS considers the IRS provisions more burdensome than the provisions in these rules.

Comment: One State respondent objected to using spot market prices to value coal under paragraph (c)(2)(v), explaining that "our experience with published or publically [sic] available spot market prices for fuels leaves much to be desired." Three commenters disagreed with the mandatory prioritization of the non-arm's-length valuation criteria. One State commented that such a prioritized approach could "be more appropriately referred to as a straight jacket system." Another State commented that "prioritizing the benchmarks constitutes a significant change in long-standing * * * procedures" and would "limit the Secretary's discretionary ability * * *." One Indian commenter maintained that the lessee should not select the appropriate valuation criterion, but instead MMS should apply the correct valuation method.

One Indian commenter stated the non-arm's-length valuation criteria are too subjective and costly to administer. One Indian commenter stated that if the approach of paragraph (c) were to be used (to determine value in accordance with this paragraph), then "[t]he Secretary should determine whether each contract is arm's-length or non-arm's-length * * *."

One industry commenter stated that the net-back approach of paragraph (c)(2)(vi) was ill-defined.

MMS Response: The MMS will review the procedures adopted by lessees to establish non-arm's-length royalty values on a selective basis. The MMS intends to ensure compliance with these rules through vigorous monitoring, review, and audit activity. The MMS will verify that lessees chose the correct valuation method and will be available to assist lessees in calculating net-back royalty values. The MMS agrees that the prioritized valuation criteria procedure is a departure from past practice. The benchmark system has been adopted in order to provide certainty in valuing coal for royalty purposes. The MMS wishes to point out that MMS discretion is not attenuated in making a decision

on whether or not a contract is arm's-length. If a lessee incorrectly maintains that a contract is arm's-length and pays royalty accordingly, the MMS may find otherwise and require royalties be paid according to non-arm's-length criteria.

Comment: In the July 15, 1988 notice, the coal industry had commented that in today's weak coal market MMS should not receive a royalty computed on a cost-based contract that exists between affiliates. These comments were based on the premise that in today's environment mining costs often exceed the price for which coal can be sold in the marketplace. Therefore, MMS specifically requested comments on whether the final rules should include a provision whereby royalty value for non-arm's-length sales in mine mouth or captive mine situations should be based principally on current market determinants such as spot prices.

Several comments were received responding to this specific request. The majority of commenters supported the non-arm's-length valuation procedure as proposed by MMS; i.e., the first applicable benchmark but in no case less than gross proceeds. One commenter stated, "The prices in such [non-arm's-length] contracts nonetheless represent the value of coal to the purchaser, at least to the extent that such contract prices are accepted and passed on to consumers by the appropriate electric utility regulatory body, and they are gross proceeds to the producer. It would be grossly unfair to allow producers to pay a royalty only on the current spot market price of coal when they receive, and electricity consumers pay, far more for the coal."

Another commenter noted that accurate spot market prices are generally unavailable, and, although they are an indication of current market prices, they have no application when compared to long-term captive mine agreements. Only one commenter agreed that the value of coal should be based solely on market value determinants such as spot market prices. In a somewhat different approach, another commenter stated that value for captive mines could be determined by biennial regional rulemaking. In this approach MMS would in some way average current spot and term bids with the average contract price paid during the previous year. In regard to Indian coal, one comment stated, "We recommend that for Indian coal leases, MMS take the higher of the results between the current market determinants and the value as determined by benchmarks. Such dual accounting for Indian leases is consistent with the Secretary's trust responsibility." One other comment was received in regard to the the non-arm's-length benchmarks at § 206.257(c)(2). This comment expressed concern that in a rising market, using a comparative arm's-length value would remove some of the benefits of a long-term arrangement with their subsidiary. This same commenter also cautioned that prices reported to public utility commissions or prices reported to the Energy Information Administration may contain plant handling or transportation costs that should not be subject to royalty.

Another commenter applauded MMS's use of the net-back method as the benchmark of last resort.

MMS Reponse. The MMS has decided not to disturb the arm's-length valuation criteria as listed in the July 15, 1988, notice. Therefore, the first criteria to be applied are market-based value determinants. The lessee would be required to compare its non-arm's-length contract with its comparable arm's-length contracts and to other comparable arm's-length contracts of coal producers in the same area. Using the comparability criteria in paragraph (c)(2) will ensure that long-term contracts are compared only to other long-term contracts and not to spot contracts. Likewise, in valuing a lessee's spot sales contract, only other spot sales contracts will be used.

Failing to establish a value using the arm's-length comparability test, the lessee would then establish the coal's value using the prices approved by a State public utility commission or, following that, prices reported to the Energy Information Administration of the Department of Energy. Setting the coal's value for royalty purposes based on prices approved by public utility commissions is consistent with MMS's gross proceeds concept, because the amount that a utility can pay for its own captive coal production is regulated and approved by the public utility commission. Therefore, in this situation, MMS is limiting its royalty value to that value received by the lessee.

As restated in 1984 by the Supreme Court of the State of New Mexico in a case involving the reasonableness of coal costs:

> The normal burden to be met in making a *prima facie* case regarding costs incurred in transactions with non-affiliates is a demonstration that the costs were, in fact, incurred. However, the normal burden regarding costs incurred in transactions with affiliates is heavier, requiring a showing of the reasonableness of the costs. *Boise Water Corp.* v. *Idaho Public Utilities Commission*, 97 Idaho 832, 555 P.2d 163 (1976).

If the public utility commission is unconvinced of the justness or reasonableness of a utility's costs, including fuel (coal) costs, it can deny incorporation of those costs into the electric rates.

The MMS ranked the use of spot market prices low for minimal application because of dissimilarities between long-term contracts and spot market sales in market purpose and motivation and because of disparities in long-term versus spot sales market share.

Literature published on the domestic coal market states that the domestic coal market is subdivided into two categories: The commercial coal market and the captive coal market.

The commercial coal market is comprised of coal producers that do not use their product and coal consumers that do not produce it. Within this subdivision two types of transactions dominate, which are the long-term contract and spot sales. The purposes of long-term coal contracts have been stated to be:

—Assured quantity (buyer expectation)
—Assured quality (buyer expectation)
—Predictable price (buyer expectation)
—Assured demand (seller expectation)
—Minimized investment risk (seller expectation)
—Guaranteed cashflow (seller expectation)

Only some of the previously listed advantages of security and stability, for the buyer or the seller, are present in the spot market. Because both the supply and demand for spot market coal tends to be short term, the pricing of spot market coal is substantially more volatile than that of long-term contracts.

The volatility of the spot market, for both the coal consumer and coal producer, coupled with the huge investments required to open a western surface mine, relegates the spot sales to a small fraction of the total market. The Department of Energy, Energy Information Administration, publication titled *Coal Dato: A Reference* (released March 6, 1987), shows the following historical average relationship between market share of long-term contracts and spot sales.

Year	Long-term contract (million short tons)	Spot sales million short tons	Spot sales tonnage as a percent of total tonnage [1]
1981	500.9	75.5	13 10
1982	540.6	57.0	9.54
1983	523.6	69.2	11.67
1984	584.8	99.3	14.52

Year	Long-term contract (million short tons)	Spot sales million short tons	Spot sales tonnage as a percent of total tonnage [1]
1985	592.4	74.3	11.14

[1] Total tonnage equals long-term contract tonnage plus spot sales tonnage.

The Wyoming Geological Survey publication titled *Wyoming Geo-notes No. 14* (published April 1987) stated that in 1985 spot sales accounted for about 4 percent of total Wyoming coal sales. In 1986 spot sales accounted for about 5 percent of total Wyoming coal sales.

The second major subdivision of the domestic coal market is the captive coal market, wherein the consumers produce their own coal to satisfy their needs. In contrast to the commercial market, captive coal producers do not normally sell captive coal production on the spot market. Instead, captive coal's principal use is to serve internal consumption requirements.

Comment: Prior to publication of the July 15, 1988, notice, several comments were made on § 206.259(d), now designated § 206.257(d). Three industry and two Indian respondents submitted four comments concerning paragraph (d). Three industry commenters suggested amending this paragraph to provide for lessee appeals of MMS valuation determinations. Both comments proposed adding a new section of regulation, with one commenter stating "to provide for an adjudicatory hearing on MMS determinations under 5 U.S.C. 544 [sic]." One Indian commenter recommended "in the case of Indian lands, all non-arm's-length computations of value for royalty purposes * * * should be preapproved [by MMS]." Another Indian commenter agreed, and also stated paragraph (d) "should require MMS to notify the tribe or allottee involved of any change in value determinations."

MMS Response: The right of a lessee to appeal MMS decisions is provided at 30 CFR Part 290. Further right of appeal is provided at 43 CFR Part 4, "Department Hearings and Appeals Procedures." The MMS considers that the current appeal procedures provide appropriate avenues of recourse to the lessee. With regard to the comment of Tribal or allottee notification of value determinations, the MMS finds it reasonable that Tribes or allottees should be provided an explanation when MMS product value determinations affect royalties.

For the July 15, 1988, notice, paragraph (d) was modified from the first proposal. Paragraph (d)(1) provides that value determinations under paragraph (c) do not require MMS's prior approval. However, the lessee would be required to retain all data that would be subject to review and audit. The MMS could direct a lessee to use a different value for calculating royalty if it determines that the lessee's reported value is inconsistent with the requirements of the regulations.

Paragraph (d)(2) requires a lessee to make sales and sales quantity data available to authorized MMS, State, and Indian representatives, to the Inspector General of the Department of the Interior, and to other authorized persons.

Paragraph (d)(3) continues to provide a notification requirement if a lessee determined value using the second through fifth benchmarks.

Paragraphs (d)(1), (d)(2), and (d)(3) are adopted unchanged in this final rulemaking.

Comment: Paragraph (e) was added in the July 15, 1988, notice to clarify that if a lessee improperly determines value, the lessee would be liable for both the additional royalties and interest. A few commenters noted that interest is not actually a penalty, and that penalties should be charged in addition to interest. Comments were also received on the issue of interest after the January 15, 1987, proposed rulemaking. Several commenters stated MMS should pay interest to lessees for royalty overpayments. One commenter explained, "For the sake of consistency and fundamental fairness, the interest payment should either apply in both cases or in neither." One commenter took a different approach, arguing that if "the United States cannot provide or pay interest on judgments without the express consent or approval of the Congress, it does not seem to preclude the government's recognition of such over-payment, along with the interest accrued, through means of an escrow account system with payment of the interest going to the prevailing party." this same commenter provided an alternative recommendation "to allow credits on royalties due in the future, including the interest earned on the original over-payment of royalty." One commenter recommended revising current paragraph (e) to "provide for some allowance for error for which no interest will be assessed on the underpayment, similar to the Internal Revenue Service's allowance for the payment of estimated tax which will be due."

MMS Response: MMS believes that the interest payment required for improperly reporting value, while not a penalty, is a sufficient deterrent to intentional underreporting. In addition, under the provisions of 18 U.S.C. 1001, it is a crime punishable by up to 5 years imprisonment or a fine of $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any Agency of the United States any false or fraudulent statement(s) to any matters within the Agency's jurisdiction.

On the issue of MMS paying interest to lessees for royalty overpayments, Congress has not provided MMS with this option, and MMS cannot authorize which interest payments, without Congress' approval. The MMS also does not have authority to establish escrow accounts.

Comment: Twenty industry and one Indian respondent commented on § 206.257(g), which primarily would require that the value for royalty purposes can be no less than the gross proceeds accruing to the lessee less applicable exclusions. Paragraph (g) was initially proposed as § 206.259(f). Comments pertaining to the "which could accrue" issue have been addressed by MMS at § 206.257(b). Other comments were received concerning take-or-pay payments. The *MMS* addressed the issue of royalty on take-or-pay payments in the discussion of general comments. Readers are requested to refer to those sections for MMS's discussion concerning these topics. One industry comment was received which specifically objected to a royalty value floor of no less than gross proceeds. One Indian comment was received concerning the paragraph (g) provisions of take-or-pay payments as related to make-up deliveries. The Indian respondent requested that paragraph (g) be clarified such that "a lessee should not be allowed to deduct from royalty payments any return of take-or-pay payments required by the lessee in the event make up quantities are not available. Royalties on take-or-pay payments should be able to be offset only with make-up deliveries, not royalty adjustments."

MMS Response: With respect to the comment requesting clarification of the disposition of royalty payments made on take-or-pay payments subsequently returned, MMS would either refund the royalty overpayment or otherwise provide a credit against further royalties from that lease. The MMS considers the lessee's refund of a take-or-pay payment to the purchaser to be tantamount to a retroactive contract price adjustment, thus precipitating necessary adjustments in previously paid royalties.

For this final rulemaking, MMS has amended paragraph (g), deleting

reference to take-or-pay payments. Please refer to the section on general comments for MMS's policy on take-or-pay payments. Regarding the comment that objected to a royalty floor of no less than the lessee's gross proceeds, MMS responded to this issue in its response at paragraph (c).

Comment: After the January 15, 1987, proposed rulemaking, twelve industry respondents submitted 18 comments concerning § 206.257(h), which was intially designated as § 206.259(g). Two commenters stated that there was no need for MMS to charge royalties on additional imputed values because the contract price normally reflects the fair value for both the coal sold and the services provided in connection with the sale of that coal. Four commenters stated that there could be a need for such a provision, with one particular commenter explaining that "otherwise, an opportunity for abuse could occur and royalty payments could in some isolated instances partially be avoided by manipulation of contracts." Four commenters also urged MMS to apply this regulation prospectively to newly executed contracts, not to existing contractual relationships. These commenters continued to explain that the retroactive application of the provision of paragraph (h) would create a major disruption in the industry, because the coal industry is replete with existing contractual realtionships wherein purchasers are providing certain services or facilities which normally would be the responsibility of the lessee. One commenter objected on the basis that "the rules create some sort of an operational warranty on the lessee's activity under the lease. We know of no authorization of such an express warranty." One commenter objected to paragraph (h) because "MMS should not collect a royalty on the increased value of coal resulting from beneficiation." This commenter further questioned "how the owner of a raw product can value it to a lessee on the basis of what it will be worth after the lessee spends the money to upgrade the product." One commenter claimed, "Paragraph (g) [h] imposes a lease term not presently contained in the existing Federal coal leases, namely that the lessee is required to place coal in a marketable condition." Three other commenters took a similar position, stating that the provisions of paragraph (h) have no basis in law. Three commenters requested that MMS retain the current regulations (30 CFR 203.200) and supported their position by stating that paragraph (h) was unnecessary and what constitutes marketable condition was vague.

MMS Response: The MMS has retained paragraph (h) as originally written (originally designated as paragraph (g)) in the proposed regulations published January 15, 1987. The MMS responsibilities regarding paragraph (h) will be upheld in considering both past and future coal sales contracts. The MMS does not now allow Federal or Indian royalties to be avoided through sales contracts which require purchasers to fulfill services that are normally the responsibility of the lessee. Allowing a sale price to be reduced because the purchaser performs certain normal mine preparation services which typically fall to the lessee or mine operator represents an indirect, but nevertheless just as real, deduction from royalties for the cost of placing coal in marketable condition. The MMS and its predecessor agency have always required that lessees place lease production in marketable condition without cost to the Federal or Indian lessor. This practice has not been changed in these final regulations. Additional discussion of this issue is found in MMS's general comments response regarding "marketable condition" and "grandfathering."

Comment: Numerous comments were received after the July 15, 1988, notice regarding § 206.259(e), now redesignated as § 206.257(i). Twenty-three industry, one Indian, and one State respondent submitted 35 comments. Thirteen industry commenters specifically called for the deletion of this paragraph. Nine industry commenters object to "second guessing" by MMS. One commenter particularly noted this paragraph would make MMS a party to sales contracts. Two commenters stated that paragraph (i) was unworkable, with one commenter explaining that unless MMS increases staffing requirements to analyze contracts "that they [MMS] are not in the position to interpret the contract or any subsequent amendments." Five industry commenters believed this paragraph would prevent compromise between the lessee and the buyer and, as one other commenter explained, "would result in a * * * flooding of the courts with unnecessary litigation merely to justify a position." One industry commenter stated that the third sentence, requiring contract amendments to be in writing, was in conflict with the definition of "contract" in these proposed regulations.

One Indian respondent objected to the provision of paragraph (i) allowing contract amendments to be retroactive. The commenter further stated that "the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price." Two industry commenters objected to the provisions of paragraph (i) because the provision would be unfair to the consumer. As one commenter explained, "[T]he coal producer will always be able to argue that the consumer or purchaser should agree to some higher price since that is what MMS would set in any event since the producer, under federal regulations, has an affirmative obligation to extract the maximum possible price from the coal consumer." Two industry commenters stated that paragraph (i) was unwarranted, with one commenter further explaining that there is no "reason to presume that a producer will not obtain the maximum consideration allowed under its contracts." One State respondent countered this presumption, stating that "failure on somebody's part to enforce the contract is, according to one auditor's experience, not at all hypothetical. They [the auditors] have found instances where a company has simply neglected to invoice for several years for a payment they were definitely entitled to under the contract."

MMS Response: Paragraph (i) was revised in the July 15, 1988, notice to eliminate the "could receive" language but emphasizes that royalty is due on all benefits to which the lessee is legally entitled. The rule also limits any effect on royalty due to retroactive contract revisions to a two-year historical period.

Paragraph (i) imposes a diligence requirement on lessees. This section would require a lessee to pay royalty in accordance with its contract price, but also expressly would recognize that contract prices may be amended retroactively. Retroactive price adjustments would be limited to 2 years. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all reasonable attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper and timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. The phrase "applies to

price increases only and" has been deleted from the last paragraph to eliminate excess redundancy. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Comment: In response to the July 15, 1988, notice, several commenters repeated the allegation that paragraph (i) would allow the MMS to "second guess" industry practices, and suggested that this provision be deleted.

MMS Response: These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

Comment: Several commenters objected to the requirement that contract revisions or amendments must be in writing and signed by all parties. The commenters stated that this requirement obstructed normal business practices in their day-to-day administration of coal sales contracts and constituted undue interference by the government.

MMS Response: The MMS does not intend to interfere in the day-to-day administration of contracts. The MMS believes that the consideration flowing from buyer to seller is the best measure of the parties' interpretation of their sales agreement. This provision is included in the final rule to ensure that any retroactive price reduction, and thus any claim by the lessee for refunds or credits, is legally enforceable.

Comment: One commenter expressed concern that a two year limitation to retroactively change value could impose an undue burden on the lessee where non-arm's-length value has been determined by prices reported to a public utility commission. The commenter stated that public utility commissions often rule on fuel costs three to five years after they have been included in rates and adjust them retroactively. Another commenter approved of MMS's restriction of limiting retroactive price changes to two years.

MMS Response: Paragraph (i) provides that retroactive adjustments to value will be limited to two years unless MMS approves a longer period. In a situation such as the one described a longer period would be approved.

Paragraph (k) was published in the January 15, 1987, proposed rulemaking, as paragraph (i) and modified slightly in the July 15, 1988, notice to specifically note that the rights to information by Indian lessors are not diminished by this paragraph.

The release of financial and confidential information for Federal solid mineral leases is subject to the Department of the Interior's (Department) regulations for releasing this type of data to the public. See 43 CFR 2.13. It is the policy of the Department to make the records available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act (FOIA), 5 U.S.C. 552. It is the policy of MMS to make available information requested under the FOIA at the earliest possible date, while, at the same time, protecting the rights of individuals involved, and the administrative processes surrounding such rights. It also is the policy of the Department to withhold information falling within one of the FOIA exemptions only if (1) disclosure is prohibited by statute or Executive Order, or (2) sound grounds exist for not releasing such information. Accordingly, MMS considers certain information submitted by a person or entity privileged and financially confidential. We recognize the critical importance of this information to the success and competitive position of a business. Therefore, MMS does not release this information without the permission of the submitter. However, MMS will, to the extent legally permitted, release proprietary data to any State or Indian tribe upon a satisfactory explanation of why this particular data is necessary and following the execution of a binding written agreement to safeguard the proprietary data.

Section 206.259 Determination of Washing Allowances.

In the July 15, 1988 (53 FR 26942), notice, MMS discussed various changes that had occurred from the January 15, 1987, proposed rulemaking. The MMS noted that the allowance limits had been eliminated. The MMS also provided its rationale for that modification. Another change from the January 15, 1987, proposed rulemaking was the substitution of the interest rate associated with Standard and Poor's industrial BBB rate in place of Moody's Aaa corporate bond rate. This interest rate is used to compute the return on investment component in non-arm's-length allowance calculations. An extensive explanation of this change is provided in the preambles to the final oil and gas product valuation rules published on January 15, 1988 (Oil—53 FR 1212–1214; Gas—53 FR 1262–1263, respectively).

Comment: In the July 15, 1988, notice, MMS also requested comments on providing an exception to the cost-based approach for non-arm's-length allowance computation. The MMS explained that in certain circumstances where the gas plant operator provides the same services under arm's-length contracts as it does for itself, the arm's-length contract processing costs can be substituted in place of actual costs. The MMS requested whether a similar provision should be included for coal washing.

MMS Response: The MMS received no comments on this proposal; therefore, the final rule contains no such provision.

Comment: Many comments received by MMS pursuant to the January 15, 1987, proposed rulemaking were not addressed at the time of the July 15, 1988, notice. To the extent these comments continue to be relevant to the July 15, 1988, publication, they are addressed below.

Two industry commenters specifically recommended that the allowance should be based on the added value, not the cost incurred. One commenter explained, "The lessee's royalty obligations end once the coal is first placed in a marketable condition, and that is the point at which royalty value should be determined."

MMS Response: The MMS believes that determining the value added would be subjective, difficult to implement, and would require additional rulemaking. The reasonable, actual cost of coal washing is the preferred method to arrive at an appropriate allowance.

Comment: Two industry commenters specifically endorsed MMS's proposal to continue coal washing allowances. Eighteen other industry commenters recommended that MMS extend the allowance to include all forms of beneficiation (processing). According to one commenter, coal processing would encompass coal washing, "pelletizing; beneficiation; treatment with substances including chemicals or oil; drying; and subsequent handling which occurs after coal is first placed in a marketable condition." Three Indian and one industry respondent opposed granting any washing allowances, with one Indian commenter going further to recommend that "no allowances be given for any type of coal beneficiation." This commenter reasoned, "To provide for allowances for all types of coal beneficiation will create a bureaucratic nightmare * * *." One industry commenter recommended deleting all allowances as "unnecessary under * * *

market value standards." This commenter explained that market value would be determined "by current sales of comparable unwashed coal." One Indian commenter opposed an allowance because "a practice which is primarily a conservation measure does not belong in regulations to value the product for royalty purposes."

MMS Response: The regulations continue the historic practice of allowing deductions for the cost of coal washing from the sale proceeds of cleaned coal. See 30 CFR 211.63, May 17, 1976, 41 FR 20271, for original policy. The MMS believes that improving the quality of domestic energy resources is in the national interest. The allowance procedure will not be difficult to implement and should be less difficult to administer than the procedure that was in effect under the prior rules. Treating coal with oil or chemicals in order to suppress dust and/or improve handling is considered to be the responsibility of the lessee to place coal in a marketable condition. Any payment for such activities therefore is a component of gross proceeds, if this treatment is required by the purchaser.

Comment: One industry commenter proposed an alternative method for calculating allowances using the previously discussed Internal Revenue Code (IRC) "depletion income" method of valuing coal. A "processing allowance" would be subtracted from the "depletion income" before the royalty rate is applied to the resulting "net royalty value." The allowance would be calculated by multiplying the "depletion income" by a fraction, "the numerator of which is the cost of all post marketable condition processes and handling [after crushing and sizing] and the denominator of which is the total costs of all pre and post marketable condition processes and handling." This commenter justified this method as being more advantageous than the "complex and inadequate concept proposed by MMS" because it is (1) simple to calculate "based on available information and easily audited"; (2) used by other State and Federal "agencies with satisfactory results"; (3) eliminates "potential for excessive deductions"; and (4) results in a "fair" allowance.

MMS Response: The MMS has carefully reviewed the underlying principles and history of the proportionate profits method and has concluded that it has no application for determining washing allowances for royalty purposes.

The proportionate profits formula is a specific procedure under IRS regulations to determine the "gross income from mining" for depletion allowance income tax purposes when representative field or market prices are unavailable or inapplicable.

The outcome of the proportionate profits formula is elimination from the depletion allowance of all nonmining costs. Its purpose is to establish a representative market or field price for integrated miner/manufacturers only when representative prices cannot be obtained in the area. Its intent is to place integrated miner/manufacturers on the same depletion allowance basis as ordinary nonintegrated miners, thus providing no unfair tax advantage to the integrated firms.

The proportionate profits method is premised on the theory that each dollar of total costs, including nonmining applications, earns the same percentage of profits as mining processes. Assuming this principle to be uniformly true, and it is not (for example, see *Hugoton Production Company* v. *The United States*, 349 F. 2d 418 (cl. ct. 1965)), it is improper to extrapolate this principle to situations which involve deductions for the ordinary mining processes. The workings of the marketplace suggest that if a mine product has not been prepared to meet the minimum acceptable conditions that are customary for the market, then that mined product may not be saleable and, hence, would have no value in the normal sense of the term. For these reasons MMS does not accept the proportionate profits formula to determine any allowance for royalty purposes.

Comment: Two Indian commenters stated that the regulations were unclear with respect to when allowances would be approved. One commenter also stated, "The preamble to the rules also states that coal washing allowances will be allowed when they enhance the value of the coal. But the regs * * * do not require any showing that there is an enhancement * * *."

MMS Response: Allowance forms showing recorded costs are to be submitted to MMS. Regulations on the timing of form submittal are provided at § 206.259 (c) and (e). With respect to the latter comments, MMS believes that a prudent lessee would to take up the task and incur the expense of washing coal unless the process ultimately increases the value or marketability of the coal.

Comment: One Indian comment stated "inclusion of ad valorem property taxes in allowable operating costs should not include taxes imposed by the Navajo Nation."

MMS Response: To the extent that property taxes are levied directly upon washing equipment or to the extent that it can be demonstrated that property taxes are allocable to washing equipment, MMS believes that such taxes should be included in the cost basis for allowance calculation. Such taxes represent costs just as real to the lessee as labor, materials, utilities, fuel, or other direct costs.

Comment: One Indian comment recommended that the language of the regulations be clarified such "that no profit can be included in the cost of washing * * *." One State commenter stated "if washing allowances are provided for, we see no reason to factor a profit component into the lessee's cost. A profit is not guaranteed to a lessee mining federal coal * * *."

MMS Response: The return on investment component of non-arm's-length allowances is not a profit component. Rather, this component is intended to represent a fair rate of return to capital. The MMS has solicited and received significant comments on what would constitute a fair return under these circumstances. The MMS believes based on these comments that the Standard and Poors BBB bond rate represents a rational choice among alternatives.

Regarding § 206.258(b)(2), MMS has removed the word "initial" before the phrase "depreciable investment in the wash plant * * *." This term caused confusion. It was not MMS's intent to exclude costs incurred after the original construction of the wash plant. Rather, total investment was the intent.

Comment: Two comments discussed paragraph (b)(2)(iv)(A), which prohibits altering the depreciation schedule initially established by the original owner of a coal wash plant. One Indian commenter agreed with this stipulation. An industry commenter disagreed stating, "A buyer will almost inevitably assign a new and different value to acquired assets. Such value will often exceed the previous owner [sic] book value, and establishes the new basis upon which future depreciation is calculated * * *."

MMS Response: In MMS's judgment, the simple change of capital asset ownership does not create a situation requiring asset depreciation to be repeated. However, any additional retooling, refurbishing, retrofitting, or other capital improvements would necessarily be added to the capital investment base and depreciated accordingly.

Comment: Following the July 15, 1988, notice, several additional comments were received concerning washing allowances. In general, Indian comments opposed allowances for

washing. State commenters expressed support for washing allowances. Industry generally favored washing allowances and in particular expressed support for the elimination of any limit to the allowance cost. However, one industry commenter opposed the granting of washing allowances. Two comments were received that expressed concern over the use of Standard and Poor's BBB industrial bond rate for non-arm's-length allowance determinations. One commenter stated that the "[j]ustification for the use of the rate in 52 FR 1212–1214 concerns the risk associated with mineral-related projects. However, washing and transportation, even transportation using new technologies, are ancillary services. The risk is in the mining of coal."

MMS Response: As stated earlier, MMS has examined the use of the Standards and Poor's BBB industrial bond rate carefully and has concluded that the use of such rate would be appropriate for use as an allowed rate of return for washing and transportation of coal.

Section 206.260 Allocation of washed coal

Comment: Following the January 15, 1987, proposed rulemaking, five industry respondents submitted five comments concerning § 206.261, now designated § 206.260. Two commenters agreed with the procedures to allocate washed coal back to the leases from which it was produced. Four respondents recommended substituting the term "processed" for "washed" in order to be consistent with their other proposals to expand washing allowances to include other forms of beneficiation.

MMS Response: The MMS did not amend § 206.261 when redesignating to § 206.260 in the July 15, 1988, notice and has not changed § 206.260 for this final rulemaking. For the MMS response to the washing/processing issue, please refer to the MMS responses to comments at § 206.265.

Sectin 206.262 Determination of transportation allowances.

In the July 15, 1988 (53 FR 26942), notice, MMS discussed various changes that were made to the January 15, 1987, proposed rulemaking. The MMS noted that the allowance limits had been eliminated. The MMS also provided its rationale for that modification. Another change from the January 15, 1987, proposed rulemaking was the substitution of the interest rate associated with Standard and Poor's industrial BBB rate in place of Moody's Aaa corporate bond rate. This interest rate is used to compute the return on investment component in non-arm's-length allowance calculations. An extensive explanation of this change is provided in the preamble to the final oil and gas product valuation rules published on January 15, 1988 (53 FR 1212–1214 and 53 FR 1262–1263, respectively). In order to be consistent with coal washing regulations at § 206.259(d)(1), identical language has been added to § 206.262(d)(1), and the reference to penalties has been deleted.

Comment: In the July 15, 1988, notice, MMS also requested comments on providing an exception to the cost-based approach for non-arm's length allowance computation, whereby the lessee could apply to MMS for an exception from the requirement that it compute actual costs if the lessee has a transportation rate approved by a regulatory authority and the rate is not excessive as compared to other arm's-length contracts. If there are no other arm's-length contracts to use for comparison, other criteria apply.

MMS Response: The MMS received no comments on this proposal; therefore, the final rule contains no such provision.

Comment: Many comments received by MMS pursuant to the Janaury 15, 1987, proposed rulemaking were not addressed at the time of the July 15, 1988, notice. To the extent these comments continue to be relevant to the July 15, 1988, publication, they are addressed below.

Comment: The MMS received 24 comments from seven industry, five Indian, and two State respondents concerning proposed § 206.261(a)(i). Six industry commenters stated that the term "remote" was ambiguous and should be clarified. One of these commenters specifically stated, "The criteria demands [sic] clear definition." One industry and one Indian commenter requested MMS define the meaning of "transportation."

Four comments were received on paragraph (a) addressing the requirement that the point of sale or washing facility be "remote" from the lease or mine. One industry commenter stated, "It makes no sense to forbid a transportation allowance for sales to the 'mine-mouth' customers * * *." In the same vein, another industry commenter stated, "MMS should consider instances where long distances exist between the point of severance and the washing facility or point of sale which may be located on the same lease or mine area." Two other commenters specifically opposed this notion. One Indian commenter requested that the regulation be clarified to "indicate that no transportation allowance will be allowed except from the lease boundary." Another Indian commenter suggested that an allowance would be appropriate from the lease boundary to the point of sale.

Three comments were received on paragraph (a) concerning what would be considered as transportation to a point of sale or washing facility remote from the lease or mine. Two industry commenters suggested that any transportation to a point of sale or washing facility greater than one mile from the mine or lease boundary should be eligible for a transportation allowance. One of these commenters explained that this standard "provides much greater certainty than under the ambiguous remote standard * * *." One industry commenter stated that all transportation should be eligible for allowance after the coal is "severed from the ground and either is removed from the lease itself or * * * reaches the surface of the ground" in the case of underground mining.

MMS Response: The MMS responded to similar comments earlier in this preamble in the discussion of § 206.251 Definitions, "Allowance."

Comment: Six commenters addressed other aspects of paragraph (a). One industry commenter stated that the word "reasonable" should be deleted as it gives too much discretion to MMS. Two Indian and three State commenters expressed concern that protections to the lessor that exist in the current regulations were being abandoned. Two State comments requested that language be added which would ensure "the value will never be less than what value would have accrued, had the sale been FOB the mine." The other three commenters requested that the word "necessary" be added to this paragraph in order to provide protection against any potential lessee abuse.

MMS Response: The MMS reiterates its belief that lessees are also prudent businessmen and as such are unlikely to undertake operations that are unnecessary or unreasonable. Since most royalty rates are set at or below 12½ percent, is difficult to contrive a situation where any lessee interested in maximizing its allowance would benefit from unnecessary or unreasonable expenditures. For each unnecessary dollar spent the lessee could only recoupe, at most, the amount equal to the lease royalty, which is 12.5 cents or less.

Comment: The MMS received several additional comments following the July 15, 1988, notice. Two comments stated that in no case should a transportation allowance be allowed to reduce the value to zero. One comment offered an alternative proposal: "Under no circumstances shall the washing allowance and transportation allowance reduce the value to less than the value of like quality and quantity coal being sold from the area under an arm's-length agreement." Another comment stated there should be some absolute limit to the allowance deduction.

MMS Response: The MMS does not believe any threshold or limit to allowances is necessary. The rules provide that the allowances cannot reduce the value for royalty purposes to zero. Limiting transportation allowances to amounts such that the royalty value of destination sales would not fall below the royalty value of f.o.b. mine sales does represent one test available to MMS in reviewing allowances, but it does not constitute the conclusive action that would be taken by MMS. In keeping with the general free-market themes that underpin this rulemaking, MMS believes that the lessee normally is striving to attain the greatest return. When the lessee must incur additional costs to transport coal to remote sales destinations, the presumption is that those additional costs were necessary because the market for f.o.b. mine sales was saturated. The MMS has no intention of second guessing prudent business judgments made by lessees in response to their market assessments.

Comment: One comment advised MMS to exercise caution when reviewing transportation allowances as some lessees may attempt to manipulate the point of sale to benefit from a transportation allowance.

MMS Response: The MMS will diligently review transportation allowances, applying the criteria stated above in MMS's discussion of "Allowance" at § 206.251 Definitions.

Other changes made to the transportation allowance section are the same as those discussed above for washing allowances.

Section 206.263 Contract submission

After the January 15, 1987, proposed rulemaking, the MMS received many comments opposing the requirement to submit contracts to MMS upon request. The MMS responded to those comments and others in the July 15, 1988, notice. In response to the July 15, 1988, notice, several commenters again objected to the contract submittal requirement.

MMS Response: The MMS intends to review contracts during on-site audits. However, the MMS must retain the right to obtain sales contracts or other agreements from Federal or Indian lessees. The MMS will take all necessary precautions to safeguard contracts from unauthorized disclosure. The section has not changed from the July 15, 1988, notice.

Section 206.264 In-situ and surface gasification and liquefaction operations

Comment: The MMS received several comments from industry respondents on this section. Two industry commenters stated that this section provided excessive authority to MMS to determine value. As one commenter explained, "The result [of MMS authority] will be a dampening effect on the development of new technologies."

Three industry commenters recommended that MMS's valuation authority be restricted to in-situ processes only and that post mining processes such as liquefaction and thermal drying be excluded from royalty valuation by applying the provisions of § 206.257 to the value of feedstock coal when it first becomes marketable. One of these commenters explained, "The lessor should share in the benefit of such processes only to the extent of royalty at the prescribed rate on the value of feedstock coal * * *." One commenter recommended that if MMS authority was not restricted by the changes suggested "[i]t would be more appropriate to delete this section, place it in a reserved category and reconsider it in the future."

One industry respondent recommended no changes to proposed § 206.264.

MMS Response: The MMS does not envision that the development of new coal technologies will be dampened by § 206.264, which merely states that MMS will determine the royalty value of production developed by in situ or surface gasification or liquefaction technology. Historically, Federal treatment of developing technologies with reference to federal resources has ben accommodating. As noted previously in the preamble § 206.265 has been added since the January 15, 1987, proposed rulemaking, in response to the comments received.

Section 206.265 Value enhancement of marketable coal

In order to address concerns that MMS would assess royalties on the value added by new beneficiation technologies, such as "deep thermal drying," or "coal pelletization," § 206.265 was added to the July 15, 1988, notice. This section would also apply to surface gasification or liquefaction, if coal is placed in marketable condition prior to processing to a different physical or chemical form.

Comment: Several comments were received that commended the addition of this section. Only one Indian commented that these beneficiation processes were for the purpose of placing lease products in marketable condition and that royalty should be asessed on the total value of products sold. Two comments were received that stated when a net-back valuation was necessary, two times the Standard and Poor's BBB industrial bond rate was appropriate for high risk ventures. Two commenters expressed concern that two times the BBB industrial bond rate may be excessive and requested that the rate be reviewed before publication of final rules.

MMS Response: The MMS has retained the rate of return component in paragraph (b) at two times the Standard and Poor's industrial BBB rate. The MMS does not consider this rate as excessive. It is a well-established economic principle that the incremental cost of funds are a function of both the general economy and the results of operation of the individual company. The results of operation consider prior investments. In this case, we are dealing with new and evolving technologies without much prior experience. Given this reality, it is not appropriate to apply the industry standard for rate of return when the project is known to be complex and a high risk venture. For extremely risky operations such as the Great Plains Coal Gasification Project in North Dakota, the General Accounting Office (GAO) estimated an internal rate of return over the life of the gasification project to be between 14 percent and 19 percent (GAO/RCED–85–92, May 28, 1985). This project also had Government price guarantees. For other more risky projects, higher rates recognize the risk associated with the project and exceed the industry and standard for cost of capital. The MMS therefore concludes that, in net-back valuations, proper rate of return for beneficiation projects should be 2 times the industrial BBB rate.

V. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian coal royalty valuation regulations; clarifies DOI coal royalty valuation and coal transportation and coal washing allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations into a single part for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implication of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 206.254, 206.257, 206.259, 206.262, and 206.263 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned clearance number 1010–0040, –0063, –0064, and –0074.

Public reporting burden for this collection of information is estimated to vary from one-half hour to 3 hours per response with an average of 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Due to the complexity of the information requested, applications for allowances using Forms MMS–4292 and MMS–4293 in non-arm's-length or no-contract situations may require up to an estimated 40 hours per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 632, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 212

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3480

Government contracts, Intergovernmental relations, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: January 9, 1989.

James E. Cason,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 210, and 212 and 43 CFR Part 3480 are amended as follows:

Title 30—Mineral Resources

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

§ 202.250 [Amended]

2. Paragraph (b) of § 203.250 under Subpart F of Part 203 is redesignated as a new § 202.250 under Subpart F of Part 202.

3. 30 CFR 202 is amended by revising newly redesignated § 202.250 to read as follows:

§ 202.250 Overriding royalty interest.

The regulations governing overriding royalty interests, production payments, or similar interests created under Federal coal leases are in 43 CFR Group 3400.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

§ 203.250 [Amended]

2. Paragraphs (c), (d), (e), (f), (g), (h), (i),(j), and (k) of § 203.250 under Subpart F are removed.

3. Paragraph (b) of § 203.250 is redesignated as a new § 202.250 under Subpart F of Part 202.

4. Paragraph (a) under § 203.250 is redesignated as a new § 203.250 under Subpart F and retitled "Advance royalty." The new section reads as follows:

§ 203.250 Advance royalty.

Provisions for the payment of advance royalty in lieu of continued operation are contained at 43 CFR 3483.4.

5. A new § 203.251 is added in Subpart F to read as follows:

§ 203.251 Reduction in royalty rate or rental.

An application for reduction in coal royalty rate or rental shall be filed and processed in accordance with 43 CFR Group 3400.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 206 is amended by revising § 206.10 of Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 216.10.

3. Subpart F is revised to read as follows:

Subpart F—Coal

Sec.

206.250 Purpose and scope.
206.251 Definitions.
206.252 Information to collection.
206.253 Coal subject to royalties—general provisions.
206.254 Quality and quantity measurement standards for reporting and paying royalties.
206.255 Point of royalty determination.
206.256 Valuation standards for cents-per-ton leases.
206.257 Valuation standards for ad valorem leases.
206.258 Washing allowances—general.
206.259 Determination of washing allowances.
206.260 Allocation of washed coal.
206.261 Transportation allowances—general.
206.262 Determination of transportation allowances.
206.263 Contract submission.
206.264 In situ and surface gasification and liquefaction operations.
206.265 Value enhancement of marketable coal.

Subpart F—Coal

§ 206.250 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Federal and Indian Tribal and allotted leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Mineral Management Service (MMS) are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.251 Definitions.

"Ad valorem lease" means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

"Allowance" means an approved, or an MMS-initially accepted deduction in determining value for royalty purposes. "Coal washing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an approved or MMS-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an approved MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

"Arm's-length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal or Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Coal" means coal of all ranks from lignite through anthracite.

"Coal washing" means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of the coal produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oils, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to coal, also includes but is not limited to reimbursements for royalties, taxes or fees, and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is constractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal or Indian coal resource under a mineral leasing

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law that authorizes exploration for, development or extraction of, or removal of coal—or the land covered by that authorization, whichever is required by the context.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality coal" means coal has similar chemical and physical characteristics.

"Marketable condition" means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

"Mine" means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

"Net-back method" means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

"Net output" means the quantity of washed coal that a washing plant produces.

"Person" means by individual, firm, corporation, association, partnership, consortium, or joint venture.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

"Severance tax" means any tax paid to any government agency based upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the value of coal, or any license fee, unless such license fee is based on either the volume or the value of production. Mineral royalties are not tases.

"Spot market price" means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

§ 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 216.10.

§ 206.253 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) from a Federal or Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) In the event waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal or Indian leases shall be allocated to such leases regardless of whether it is stored on Federal or Indian lands. The lessee shall maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

§ 206.254 Quality and quantity measurement standards for reporting and paying royalties.

(a) For leases subject to § 206.257 of this subpart, the quality of coal on which royalty is due shall be reported on the basis of percent sulfur, percent ash, and number of British thermal units (Btu) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, or if the contract does not specify the intervals of coal quality determination, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry-recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR Part 216.

(b) For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR Part 216 and on the Report of Sales and Royalty Remittance, Form MMS–4014, as required under 30 CFR Part 210.

§206.255 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal or Indian coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. The MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 206.256(d) of this subpart.

§ 206.256 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determine by BLM pursuant to 43 CFR Part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR Part 3400 and the royalty valuation method changes from

a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 206.257 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.

§ 206.257 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Iridian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty as a percentage of the amount of value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determine pursuant to §§ 206.258 through 206.262 of this subpart, or any allowance authorized by § 206.265 of this subpart. The royalty due shall be equal to the value for royalty purposes multiplied by the royalt rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accuring to the lessee, except as provided in paragraphs (b)(2), (b)(3), (b)(5), and (b)(6) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal produced. If the contract does not reflect the total consideration, then the MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be based on less than the gross proceeds accruing to the lessee for the coal production, including the additional consideration.

(3) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the coal production be valued pursuant to paragraph (c)(2) (ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.

(5) Notwithstanding any other regulations in this subpart, except for Indian leases, the value of coal for royalty purposes shall not include amounts of Federal Black Lung excise taxes authorized by the Black Lung Benefits Revenue Act of 1977 (26 U.S.C. 4121), abandoned mine lands fees authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(a)), and severance taxes. These exclusions include only the costs of the Federal Black Lung excise tax, abandoned mine land fee, and severance tax themselves and do not include late payment charges and/or other monetary penalties which may be levied on coal producers for nonpayment or underpayment of either the Federal Black Lung excise tax, the abandoned mine land fee, or the severance tax.

(6) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS's satisfaction, were not part of the total consideration paid for the purchase of coal production.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition of produced coal by other than an arm's-length contract), provided that those gross proceeds are within the range of the gross proceeds derived from, or paid under, comparable arm's-length contracts between buyers and sellers neither of whom is affiliated with the lessee for sales, purchases, or other dispositions of like-quality coal produced in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the coal;

(ii) Prices reported for that coal to a public utility commission;

(iii) Prices reported for that coal to the Energy Information Administration of the Department of Energy;

(iv) Other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of coal;

(v) If a reasonable value cannot be determined using paragraphs (c)(2) (i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value determination shall be consistent with the provisions contained in paragraphs (b)(5) and (b)(6) of this section, as appropriate.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS's prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Associate Director for Royalty Management of his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a

one-time notification due no later than the month the lessee first reports royalties on the Form MMS–4014 using a valuation method authorized by paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section, and each time there is a change in a method under paragraphs (c)(2) (iv) or (v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for the deposition of produced coal less applicable exclusions of paragraphs (b)(5) and (b)(6) of this section and less applicable allowances determined pursuant to §§ 206.258 through 206.262, and § 206.265 of this subpart.

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the tessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances pursuant to § 206.265 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease or applicable law.

§ 206.258 Washing allowances—general.

(a) For ad valorem leases subject to § 206.257 of this subpart, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 206.257 of this subpart was based upon like-quality unwashed coal. Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.262 of this subpart reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section, then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit without interest.

(c) Lessees shall not disproportionately allocate washing costs to Federal or Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

§ 206.259 Determination of washing allowances.

(a) *Arm's-length contracts.* (1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then the MMS may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty

to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deductd under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for washing during the reported period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes, rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalities, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the wash plant services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) *Reporting requirements.*—(1) Arm's-length contracts. (i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS–4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS–4014, Report of Sales and Royalty Remittance. A Form MMS–4292 received by the end of the month that the Form MMS–4014 is due shall be considered to be received timely.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Washing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract. (i) With the exception of those washing allowances specified in paragraphs

(c)(2)(v) and (vii) of this section, the lessee shall submit an initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–4014, Report of Sales and Royalty Remittance. A Form MMS–4292 received by the end of the month that the Form MMS–4014 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS–4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial Form MMS–4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS–4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) The MMS may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the Form MMS–4014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a washing allowance on its Form MMS–4014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.* (1) If the actual coal washing allowance is less than the amount the lessee has taken on Form MMS–4014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to acredit without interest.

(2) The lessee must submit a corrected Form MMS–4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other washing cost determinations.* The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

§ 206.260 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, unless determined otherwise by BLM, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

§ 206.261 Transportation allowances—general.

(a) For ad valorem leases subject to § 206.257 of this subpart, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

(1) Transport the coal from a Federal or Indian lease to a sales point which is remote from both the lease and mine; or

(2) Transport the coal from a Federal or Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point. In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.257 of this subpart reduce the value of coal under any selling arrangement to zero.

(c)(1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported.

(2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the transported coal is sold and royalties are reported and paid.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.202, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Federal or Indian leases.

§ 206.262 Determination of transportation allowances.

(a) *Arm's-length contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–24293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or paragraph (b)(2)(iv)(B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, whichever is appropriate, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after March 1, 1989.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in *Standard and Poor's Bond Guide* for the first month of the reporting period of which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to the MMS for exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. The MMS will grant the exception only if the lessee has a rate for the transportation approved by a Federal agency (for both Federal and Indian leases) or by a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) No Federal or State regulatory agency costs analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) The rate significantly exceeds the lessee's actual costs for transportation as detemined under this section.

(c) *Reporting requirements*—(1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1) (v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–4014, Reports of Sales and Royalty Remittance.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2) (v) and (vii) of this section, the lessee shall submit an initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–4014, Report of Sales and Royalty Remittance. The initial report may be based on estimated costs.

(ii) The initial Form MMS–4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. Form MMS–4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract-based transportation allowances that are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4293. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(viii) If the lessee is authorized to use its Federal- or State-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–4014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transporation allowance on its Form MMS–4014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–4014 for each month during the allowance form reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be to a credit without interest.

(2) The lessee must submit a corrected Form MMS–4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.263 Contract submission.

(a) The lessee and other payors shall submit to MMS, upon request, contracts for the sale of coal from ad valorem leases subject to this subpart. The MMS must receive the contracts within a reasonable period of time, as specified by MMS. Lessees shall include as part of the submittal requirements any contracts, agreements, contract amendments, or other documents that affect the gross proceeds received for the sale of coal, as well as any other information regarding any consideration received for the sale or disposition of coal that is not included in such contracts. At the time of its contract submittals, MMS may require the lessee to certify in writing that it has provided all documents and information that reflect the total consideration provided by purchasers of coal from ad valorem leases subject to this subpart. Information requested under this section may include contracts for both ad valorem and cents-per-ton leases and shall be available in the lessee's offices during normal business hours or provided to MMS at such time and in such manner as may be requested by authorized Department of the Interior personnel. Any oral sales arrangement negotiated by the lessee must be placed in a written form and be retained by the lessee. Nothing in this section shall be construed to limit the authority of MMS to obtain or have access to information pursuant to 30 CFR Part 212.

(b) Lessees and other payors shall designate, for each contract submitted pursuant to this section, whether the contract in arm's-length or non-arm's-length.

(c) A lessee's or other payor's determination that its contract is arm's-length is subject to future audit to verify that the contract meets the criteria of the arm's-length contract definition in § 206.251 of this subpart.

(d) Information required to be submitted under this section that constitutes trade secrets and commercial and financial information that is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the lessee or other payor, except as otherwise provided by law or regulation.

§ 206.264 In-situ and surface gasification and liquefaction operations.

In an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to MMS. The MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

§ 206.265 Value enhancement of marketable coal.

If, prior to use, sale, or other disposition, the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with § 206.257(h) of this subpart, the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 206.257(c)(2)(i-iv) of this subpart; or,

(b) In the event that a value cannot be established in accordance with subsection (a), then the value of production will be determined in accordance with § 206.257(c)(2)(v) of this subpart and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by MMS-approved processing costs and procedures including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 206.259(b)(2)(v) of this subpart.

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 2101 *et seq.;* 30 U.S.C. 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 210 is amended by revising § 210.10 of Subpart A to read as follows:

Subpart A—General Provisions

§ 210.10 Information collection.

This section identifies MMS Royalty Management Program information collection requirements, except for reports required for the MMS Production Accounting and Auditing System (PAAS), which are identified in 30 CFR 216.10, and reports required for the Government's Royalty-In-Kind (RIK) Program, which are identified in 30 CFR 208.3. The information collection requirements identified in this section have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name and filing date	OMB No.
MMS–2014—Report of Sales and Royalty Remittance—Oil and Gas—Due by the end of first month following production month for royalty payment and for rentals no later than anniversary date of the lease	1010–0022
MMS–4014—Report of Sales and Royalty Remittance—Solid Minerals—Due by end of month following sales or production month (unless lease terms specify a different frequency for royalty payments) and for rentals no later than the date specified in the lease terms	1010–0064
MMS–4025—Oil and Gas Payor Information Form—Due 30 days after issuance of a new lease or a change to an existing lease	1010–0033
MMS–4030—Solid Minerals Payor Information Form—Due 30 days after issuance of a new lease or change to an existing account established by an earlier form	1010–0064
MMS–4109—Gas Processing Allowance Summary Report—Initial report due within 3 months following the last day of the month for which an allowance is first claimed unless a longer period is approved by MMS	1010–0075
MMS–4110—Oil Transportation Allowance Report—Initial report due within 3 months following the last day of the month for which an allowance is first claimed, unless a longer period is approved by MMS	1010–0061
MMS–4280—Application for Reward for Original Information—Due when a reward is claimed for information provided which may lead to the recovery of royalty or other payments owed to the United States	1010–0076
MMS–4292—Coal Washing Allowance Report/Application—Due prior to, or at the same time that the allowance is first reported on Form MMS–4014, and annually thereafter if the allowance does not change	1010–0074
MMS–4293—Coal Transportation Allowance Report/Application—Due prior to, or at the same time that the allowance is first reported on Form MMS–4014 and annually thereafter if the allowance does not change	1010–0074

Form No., name and filing date	OMB No.
MMS-4295—Gas Transportation Allowance Report—Initial report due within 3 months following the last day of month for which an allowance is first claimed unless a longer period is approved by MMS....	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information collected will be used to determine (a) whether royalty payments represent the proper values; (b) the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands, and (c) the eligibility of informants to receive rewards. The reports are mandatory and are required to receive a benefit. Information reporting forms are available from MMS. Requests should be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

PART 212—RECORDS AND FILES MAINTENANCE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. The titles of Subparts C, D, F, and G under Part 212 are revised to read as follows:

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

3. The following new subparts are added to Part 212:

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

4. The introductory text of paragraph (b) of § 212.200 is revised to read as follows:

§ 212.200 Maintenance of and access to records.

(a) * * *

(b) The MMS shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

* * * * *

Group 3400—Coal Management

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

1. The authority citation for Part 3480 continues to read as follows:

Authority: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the Freedom of Information Act (5 U.S.C. 552).

§ 3485.2 [Amended]

2. Section 3485.2 of 43 CFR Part 3480 is amended by removing paragraphs (d), (e), (f), (g), (h), (i), and (k). Paragraph (j) of § 3485.2(j) is redesignated as paragraph (d) of § 3485.2.

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federal register

Friday
January 13, 1989

Part III

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its guaranteed loan regulations to implement certain provisions of the Agricultural Credit Act of 1987 (Pub. L. 100–233) and to provide clarification for the processing and servicing of guaranteed Operating (OL), Soil and Water (SW) and Farm Ownership (FO) loans. This action is necessary to carry out the provisions of Pub. L. 100–233 and to encourage greater participation in the guaranteed loan program for farmers. The intended effect is to facilitate the handling of guaranteed loans; to insure prompt payment of losses to lenders for bankruptcy cases; and to reduce the Government's cost for the program.

EFFECTIVE DATE: January 13, 1989.

ADDRESSES: The Interim Regulatory Impact Analysis (IRIA) will be made available for public inspection during regular working hours at the following address: Office of the Chief, Directives Management Branch, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 475–4019.

FOR FURTHER INFORMATION CONTACT: Ann Dill, Guaranteed Loan Making Branch, Farmers Home Administration, USDA, Room 5440, Washington, DC 20250. Telephone (202) 382–1186.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be major because it will result in an annual effect on the economy of $100 million or more.

Memorandum of Law

I have reviewed the regulations which the Farmers Home Administration (FmHA) is publishing as a final rule to implement, among other items, Titles 5 and 6 of the Agricultural Credit Act of 1987, Pub. L. 100–233, 101 Stat. 1662 et seq. I find that these regulations comply with that statute and that FmHA has the authority to propose such regulations pursuant to section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989).

Christopher Hicks,
General Counsel.

Summary of IRIA

The USDA has developed an Interim Regulatory Impact Analysis (IRIA) due to the effect the Agricultural Credit Act of 1987 (the Act) will have on the economy. There are a number of requirements in the Act; however, one of the most significant requirements is the loan restructuring with debt write down provision.

The Agricultural Credit Act of 1987 provides for substantial revisions in loan servicing procedures of FmHA. The objective of this impact analysis is to summarize the revised loan restructuring procedures, estimated costs and budget impacts from restructuring with debt write down.

The restructuring provisions of the Act provide for a write down of debt to the recovery value of collateral where the return to the Government under the restructured debt is at least as great as the return from involuntary liquidation.

A summary of the PRIA was published in the **Federal Register** on September 14, 1988, [53 FR 35638]. A summary of the IRIA was published in the **Federal Register** on September 14, 1988 [FR 35638] as a part of another regulation package.

The revision of guaranteed Farmer Program regulations is only one of the several documents published in the **Federal Register** to implement the requirements of the Act and should have a lesser impact on the economy than the loan restructuring with debt write down.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:
10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans
10.422—Business and Industrial Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency loans, Farm Operating loans, and Farm Ownership loans, with the exception of nonfarm enterprise activity, are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Background

FmHA published a proposed rule in the **Federal Register** on May 9, 1988 [53 FR 16416], for comments on its proposed revisions to the guaranteed loan regulations dealing with payment of estimated loss claims while a borrower is engaged in a reorganization bankruptcy at the time the plan is confirmed by the bankruptcy court, and at the completion of the bankruptcy plan. FmHA also published a proposed rule in the **Federal Register** on June 17, 1988, [53 FR 22764] for comments on its proposed revisions implementing various sections of the Agricultural Credit Act of 1987 and clarifying the processing and servicing of guaranteed loans. A interim rule was published in the **Federal Register** on January 3, 1989, [54 FR 11] implementing certain provisions of the May 9, 1988 and June 17, 1988 proposed rules. Any items covered in the interim rule will remain subject to public comment. In order to expedite the implementation of the remaining provisions, the **Federal Registers** of May 9 and June 17, 1988 are combined in the issuance of this document.

Discussion of Comments

This rule combines proposed rules published May 9, 1988, [52 FR 16416] and June 17, 1988, [53 FR 22764].

A total of 8 comments were received on the proposed rule published in the **Federal Register** on May 9, 1988 [53 FR 16416]. Comments were received from bank officials, FmHA employees, and other Federal agencies and an FmHA employee association.

Overall, most of the comments were favorable. Several respondents suggested clarification of several items. All comments have been carefully considered and appropriate changes and clarifications made. One respondent suggested that attorneys' fees be considered as part of the loss. The Agency does not agree. The guarantee covers loss of principle and interest on a loan. One respondent commented that we should require a lender to submit an estimated loss report rather than have it optional. We disagree, as it is our opinion this should be the lender's choice. One respondent objected to FmHA monitoring the lender's files. We disagree. It is our opinion that monitoring of lender files is necessary to insure proper program administration and is helpful to both FmHA and the lender. One respondent indicated that sometimes there are lengthy delays in the approval of bankruptcy reorganization plans and that partial loss estimates be made in such cases if FmHA and the lender can agree on the estimate. We agree. Some of the comments were general in nature and require no response. Some of the comments are more specifically addressed later in this preamble. The proposed amendments for these revisions are modified and adopted in this final rule.

A total of 24 comments were received on the proposed rule published in the **Federal Register** on June 17, 1988, [53 FR 22764]. Comments were received from commercial lenders, FmHA employees, other Federal Agencies, interest groups, individuals and state government agencies. Following is a brief summary of the comments received and the action the Agency is taking in response to the comments. The proposed amendments for these revisions are modified and adopted in this final rule. Additional minor changes to correct internal inconsistencies and to clarify certain minor items are not discussed below but are also adopted in this final rule.

Subpart A

Section 1980.6 Definitions and abbreviations. A reference was added to the definition of a borrower to refer to § 1980.106(b)(4) of Subpart B of this part. No negative comments were received. The Agency adopts the proposed rule.

Section 1980.12 Case and identification (ID) numbers. One respondent submitted a comment under this section dealing with what happens when a holder does not agree to a servicing option. This is evidently a misprint as § 1980.12 deals only with the assignment of case numbers. It is believed that the respondent was referring to § 1980.124 which deals with consolidations, rescheduling, reamortizing, and deferral. The respondent's question was, if the FmHA purchased the holder's portion of the loan, does the borrower have an insured loan and would the guaranteed borrower then be eligible for the added servicing options that go along with an insured loan. In addition, the respondent felt that holders would not be very willing to purchase the guaranteed portion of a loan if they knew there was a possibility that if a deferral was ever approved, they would not receive any payment on the guarantee during the deferral period.

Section 1980.124(a)(6) of Subpart B of this part states, "Any holder(s) agrees in writing to the rescheduling, reamortization, and deferral. The holder(s) must understand that they will not receive any payments from the lender or from FmHA during the deferral period." This is a general requirement. A holder may not wish to agree to one of the enumerated servicing options, but the holder should understand that it may very well be to its financial advantage to agree than to have its interest prematurely repurchased by the lender or FmHA. Even if the holder wishes to retain the guaranteed portion of a loan when the lender wants to reschedule, reamortize or defer, the holder should be aware that, due to servicing requirements, the lender or FmHA may need to purchase the guaranteed portion of the loan from the holder. For additional guidance regarding the servicing of guaranteed loans, paragraph X of Form FmHA 449–35, "Lender's Agreement," spells out the lender's rights to repurchase the guaranteed portion from the holder. If FmHA purchases the guaranteed portion of a loan from a holder, FmHA merely steps in the shoes of the holder. The borrower is still a borrower of the lender unless the lender assigns its portion of the loan to FmHA, and only then would the borrower be entitled to FmHA's insured servicing options; otherwise the guaranteed borrower will continue to be serviced by the lender. The Agency believes the repurchase of the holder's interest is clarified in the appropriate sections of the regulations. The Agency adopts the proposed rule as is.

Section 1980.13 Eligible lenders. This section sets out the criteria that lenders must meet if they wish to participate in the guaranteed program.

Several comments were received expressing concern that all Agricultural Credit Corporations were not included in the proposed rule, which allows an Agricultural Credit Corporation to become an eligible lender only if it is a subsidiary of a Federal or State chartered bank. Lenders must be subjected to credit examinations. While stand-alone Agricultural Credit Corporations are subject to regular examinations and regulated by the Farm Credit System, they do not receive the oversight of an Agricultural Credit Corporation that is a subsidiary of a bank. It must be noted that an Agricultural Credit Corporation that is not a subsidiary may still become an eligible lender if the State Directors request that an exception be granted as stated in § 1980.85 of this subpart. The Agency adopts the proposed rule.

Another respondent felt that FmHA should expand the definition of being in good standing with its licensing authorities to include such items as strong asset ratios, low problem loan percentages, and a minimum length of time incorporated. The majority of the lenders involved are small agricultural banks whose financial condition is known by the local population. The Agency believes the addition of these requirements would have an adverse effect on lenders who wish to become eligible lenders as it would just be an additional paper burden. The Agency adopts the proposed rule.

One respondent commented that the Agricultural Credit Act of 1987 required the Federal Land Bank and the Federal Intermediate Credit Bank in each district to merge into a single entity (i.e., a Farm Credit Bank) by July 6, 1988. The Act also required that the stockholders of each Production Credit Association (PCA) and Federal Land Bank Association (FLBA) that have substantially the same chartered territory, vote no later than January 6, 1989, on merging their organizations into a single entity. The respondent requested that eligible Farm Credit System lenders be defined as any Farm Credit Bank, Bank for Cooperatives, and any other Farm Credit System institution with direct lending authority. The Agency agrees and has adopted this change to the proposed rule.

Section 1980.20 Loan guarantee limits. This section sets out the criteria for the establishment of the percent of guarantee. The lender and the applicant will propose this percent of guarantee. FmHA can either accept or reject the proposed percent requested. The Agency proposed to allow all Farmer Program guaranteed loans be issued with a 90 percent guarantee.

Several respondents felt that the Agency should continue to be able to determine if the requested percent of guarantee was proper, and felt that this percent be based on risk exposure. The higher the risk, the lower the percent of guarantee that the Agency would be willing to grant. The respondents believe that limiting the percentage to guarantee to 90 percent would limit the flexibility of the program and reduce the availability to loan guarantees to

farmers. The Agency has reconsidered its position and agrees. Negotiation of the guaranteed percentage provides an opportunity for the lender and FmHA to reach a compromise on sharing of risks, which would allow more guarantees to be issued. However, the maximum percentage of guarantee for Farmer Program loans will be 90 percent.

The Agricultural Credit Act of 1987, Section 625, "Sense of Congress Regarding Guaranteed Loan Programs," states that the Agency should issue guarantees for loans to the maximum extent possible to assist eligible borrowers whose loans are restructured by institutions of the Farm Credit System, commercial banks, insurance companies, and other lending institutions.

Since the Agency has a charge to use its guarantee authority to the maximum extent possible, the proposed rule is amended to continue to allow guarantee percentages to be negotiated, and the proposed rule is adopted as changed.

Section 1980.22 Charges and fees by lender. This section provides guidance as to the fees and charges a lender may establish for loans. The Agency amended this section to clarify that if these charges and fees are the same as those charges other applicants pay for similar types of transactions, the lender may charge them to a guaranteed customer. No negative comments were received. The Agency adopts the proposed rule.

Section 1980.40 Environmental requirements. The section sets forth the environmental requirements regarding an environmental impact statement (EIS) which must be met. Previously the need for an EIS was determined by the State Director. The Agency amended this section to provide that this determination be made by the approval official. No negative comments were received. The Agency adopts the proposed rule.

Section 1980.41(o) Equal Credit Opportunity Act. This subsection has been amended to provide a reference to physical/mental handicap (providing the applicant can execute a legal contract) as an additional prohibited grounds for discrimination. No negative comments were received and the Agency adopts the proposed rule.

Section 1980.67 Bankruptcy. This section has been added to provide guidance of payments of estimated losses as the result of bankruptcy. The section which was previously 1980.67 has been redesignated as 1980.68. No negative comments were received and the Agency adopts the proposed rule.

Section 1980.85 Exception authority. This section provides guidance for the making of an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. To provide further clarification, the Agency has amended this to include a specific reference to the authorizing statute.

Subpart B

Section 1980.101 Introduction. This section sets forth the policies for issuing guaranteed Operating (OL) (both loans and lines of credit), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), and Emergency (EM) loans to lenders who are in need of a guarantee to continue with a farm borrower. Two of the loan programs (RL and EM) were deleted in the proposed rule due to suspension of the programs for a number of years. There were no negative comments received concerning the deletion of the RL program; thus, the Agency adopts the proposed rule.

One respondent commented that due to the Administration's push for increasing the guaranteed loan program and the serious national drought situation that exists, the deletion of the guaranteed EM loan program would be a very bad policy. As stated in the proposed rule, this program has been suspended for a number of years. Lenders have shown very little interest in the program due to the complicated process of calculating losses and the additional paper work involved in applying for the subsidized interest rate. This fact, plus recent legislation which places additional emphasis on allowing guaranteed operating loans to be made to help family-size farmers overcome losses incurred during the 1988 drought, leads the Agency to believe that these factors, along with the additional servicing option of debt write down, will allow the lender to continue with those farmers who have been affected by the drought. It will also assure that lenders will not have to learn a new way of submitting guaranteed applications which would be very complicated as to the documentation of losses resulting from the drought. The Agency adopts the proposed rule.

The Agency also proposed to remove the "Debt Adjustment Program–Farmers Home Administration (FmHA) Guarantees of Loans with Accompanying Debt Adjustment by Lender," which was Exhibit B of this subpart. No negative comments were received; thus, the Agency adopts this portion of the proposed rule.

The Agency also proposed to remove § 1980.101(f), which dealt with restricting the issuance of OL and FO guarantees if the loan will be used to increase the production of crops in surplus. No negative comments were received; thus, the Agency adopts the proposed rule.

Section 1980.106 Abbreviations and definitions. This section sets forth the definitions for key phrases throughout this regulation.

One respondent commented that the definition for an applicant should be clarified to insure that the party applying for the guaranteed loan or line of credit is the party that will become the borrower if the loan is made. The present definition in this section for an applicant states, "The party applying for a guaranteed loan or line of credit." The Agency does not believe further clarification is necessary. The Agency adopts the proposed rule as is.

One respondent commented that the definition of a joint operation added additional confusion as it requires that a husband and wife, who typically apply for credit together as co-applicants, be considered a joint operation. This will increase confusion which will result in an increasing number of instances where improper assistance is inadvertently granted and will falsely show that the Agency is making a shift away from individuals to entity borrowers. While the Agency agrees that this requirement might cause some confusion initially, it must be pointed out that a husband or a wife may each file as an individual. Also, the Consolidated Farm and Rural Development Act does not contemplate making or guaranteeing one loan to two individuals and the Equal Opportunity Credit Act prohibits discrimination based on marital status. The Agency is treating a husband and wife just like any other individuals who farm together. Thus, the Agency cannot change this language of the proposed rule.

Another respondent was concerned that the removal of the definition of aquaculture would result in certain aquaculture practices which would no longer be permissible, such as the growing and harvesting of aquatic plants. The Agency agrees and has revised this section to include a definition for aquaculture. The Agency adopts the proposed rule as changed.

One respondent commented that in the definition of family farm, the word "immediate" should be inserted before the word "family" in paragraph (b)(6)(iv)(A) of this section. This change would insure that lenders have a clear understanding of what constitutes the

members of a family farm. The Agency agrees and has amended the proposed rule accordingly.

The same respondent also suggested that the words "full time" be deleted from the family farm definition in paragraph (b)(6)(v), which provides guidance for the amount of outside labor an applicant may use in carrying on the farming operation. Sometimes a lender will submit a request for a guarantee which includes an extraordinary amount of full time hired labor and the argument is that this section will allow excessive full time hired labor. The Agency disagrees because it must still be demonstrated that the full-time hired labor be a "reasonable" amount. The Agency adopts the proposed rule as is.

Several respondents commented that the requirement for a 10 percent reserve in the definition for a positive cash flow was too restrictive. The argument was that in most cases, guaranteed loans are used for borrowers with tight cash flow and limited repayment ability. The respondents did indicate that a reserve was necessary but a 5 percent reserve was more in line with the clientele for which lenders would be requesting guarantees. In many cases, the reason that the lender is requesting a guarantee is not so much because of a tight cash flow, but because the security margins have deteriorated to where the lender is faced with a loan being classified as marginal. Many of these borrowers will have an acceptable cash flow, as the guarantee will provide the lender the relief from the bank examiners to continue with the loan. The Agency adopts the proposed rule as is.

One respondent commented that the cash flow required an average standard of living but there is no description of how to determine what an average standard of living will be. The Agency agrees and has revised the definition of average standard of living to read "provide living expenses which are in accordance with the essential family needs." The Agency adopts the proposed rule as amended.

One respondent commented that § 1980.106(b)(23), which deals with the definition of veterans, should be amended to read, "For a period of at least 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975." They stated if this was not amended, it would appear that only those who had entered the reserves during the Vietnam era would be entitled to veteran's preference, but not those who actually served in Vietnam for six or more months. Presently the regulations reads "for a period of not more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975." Removing the word "not" clarifies that persons who served during this timeframe will be defined as veterans. The Agency adopts the proposed rule as amended.

Section 1980.108 General provisions. This section provides the guidance regarding security for the loans, personal guarantees, persons entitled to veteran's preference, credit elsewhere, etc.

One respondent commented that the requirement that the borrower's and personal guarantor's financial statement not be more than 60 days old at time of certification and loan closing is very restrictive. The respondent suggested a more reasonable time of 90 days. The Agency agrees and adopts the proposed rule as amended.

One respondent commented that the requirement for the lender to certify to FmHA that the lien position required under the terms of the loan has been obtained is too stringent as it is not always possible for the lender to be aware of a claim or lien. They suggested that the language be changed to allow the lender to ascertain that there are no *known claims.* This change should insure that the lender exercised reasonable diligence while taking into account that there might be situations where the lender was not aware of the claim or lien. The majority of lenders today are using in-house attorneys to close loans. The attorney should be responsible for providing the lender with the necessary information as to claims and liens upon the property in question. It is the lender's responsibility to insure that the proper lien position is obtained at loan closing and if there are any questions, they should obtain the assistance of an attorney.

Acceptance of this change would make it difficult to deny a loss claim if at a later date it was determined the lender did not have the proper lien position. The Agency adopts the proposed rule as is.

One respondent commented that in paragraph (c) of this section, which requires each lender to certify that the loan cannot be made without a guarantee, the lender should not be further required to certify that credit is not available elsewhere. They suggested that since the lender cannot reasonably certify that no other lender would or could make the loan that the word "elsewhere" be deleted from the heading. The Agency agrees with this suggestion as the intent of the paragraph was not to have the lender certify that the applicant cannot obtain any credit anywhere but rather that the applicant cannot obtain credit from that particular lender without a guarantee. The Agency adopts the proposed rule as changed.

Several respondents commented that the change which considers different lien positions on the same real estate security as separate and identifiable collateral was a welcome relief. They went on to comment that similar authority for use with chattel secured loans such as Operating loans would be helpful. The Agency believes that allowing different lien positions on real estate to be considered as separate and identifiable collateral provides a means whereby the farmer may take advantage of the equity in the real estate property. The Agency does not believe that allowing different lien positions on chattels would be beneficial to the farmer. Real estate, during normal times is fairly stable in value; chattels tend to lose value over time. By allowing a separate lien position on chattels to be used as collateral when it is not separate and identifiable will cause confusion if a loss claim was filed and other parties have an interest in the chattel property. The Agency adopts the proposed rule as is.

One respondent commented that crop insurance should be required. While the Agency agrees, it cannot require that it be a blanket policy. The Agency has amended this section to encourage the taking of crop insurance if it is available.

One respondent commented that it was not a good idea to adopt the proposed change deleting the requirement that personal guarantees from principal members of cooperatives and corporations be taken. The Agency has reconsidered its proposal and has amended the proposed rule to retain the present requirements regarding the liability of the principal members or stockholders of the corporation or cooperative (in the case of operating loans) or members or stockholders holding a majority interest (in the case of Farm Ownership or Soil and Water loans). The Agency adopts the proposed rule as changed.

In addition to the above changes to the proposed rule the Agency has expanded on the relationship between FmHA insured loans and guaranteed loans. This was added to clarify the relationship between the two.

Section 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements. Several respondents commented that they felt all members or stockholders of a cooperative or a corporation should be required to sign the note as co-signer(s) and they should be personally liable for the debt. The argument was that there

could be times when certain members or stockholders have extensive assets and, under the proposed rule, would not be required to either sign the note or pledge these assets. Requiring members or stockholders to sign the note and to be personally liable for the debt will insure that they will all have an active interest in the debt and will also better protect the interest of the Government in preventing or minimizing future losses. The Agency has reconsidered its proposal and has amended the proposed rule to retain the present requirements regarding the liability of the principal members or stockholders of the corporation or cooperative (in the case of operating loans) or members or stockholders holding a majority interest (in the case of Farm Ownership or Soil and Water loans).

There were also several respondents who suggested that the proposed rule requirement that demand notes not be allowed would discourage participation in the program by lenders. They indicated that the "payment on demand" clause was a common and accepted practice in the agricultural lending industry. They felt that if a recipient of a guaranteed loan is performing as projected in the approved operating budget and is otherwise fulfilling the loan obligations, the loan recipient would have a valid defense to the lender who would exercise the demand clause. The Agency cannot guarantee a note which is immediately due and payable, and that is what a demand note is. The Agency adopts the proposed rule as is.

Section 1980.113 Receiving and processing applications. This section provides guidelines to the field staff on the difference between a preliminary and a complete application and how each application will be handled when received.

One respondent commented that in paragraph (a)(1) that lenders are not always providing the information requested on the form. It was suggested that this paragraph be clarified to insure a lender would provide any other information requested on the form. The regulations already require a lender to provide the necessary information. If the lender does not, the lender should not be receiving a guarantee. Also, the Agency believes that the regulation as proposed, makes it clear what sources of information should be looked at and has adopted the proposed rule as is.

One respondent commented that in paragraph (c) of this section, an appeal should never be allowed on a preliminary application. A complete application should be required, which would allow for a complete determination to be made before an appeal is even considered. To do otherwise will result in a completed application being submitted, thus having two appeals on the same request. The opportunity for an appeal should be afforded whenever an adverse action is taken. If a lender insists on presenting FmHA with a preliminary application and the information clearly indicates the application would be rejected, then the Agency would have to notify the lender and the loan applicant stating the reason(s) and providing appeal rights. The Agency adopts the proposed rule as is.

One respondent commented that the line of credit agreements between the borrower and the lender should establish the period of time (1, 2, or 3 years) and the ceiling (amount) for lines of credit. The Agency agrees and has adopted the proposed rule as amended.

Several respondents commented on the requirement that an application include a 5-year financial and production history and documentation as to what the sources of prices and yield information were used, and that consideration be given to allowing the use of the County average yields when an applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture. The Agency believes that in order to obtain an historical record of a farmer's ability to manage the operation, five years is the minimum historical requirement. Reducing the five-year requirement to three years could adversely affect the historical financial and production picture and present an unrealistic projection of the farmer's actual accomplishments. As to the need for additional lender documentation as to prices and yields, if the lender provides the information already required, the Agency will be able to make a sound decision on the farmer's financial and production abilities. The Agency does not adopt either suggestion for reducing the number of years required for historical data or the need for additional lender documentation as to prices and yields. The suggestion that a farmer be allowed to use county averages for those years when a disaster was responsible for a reduction in yields has been incorporated into the final rule. The Agency adopts this proposed rule as changed.

One respondent suggested that if a lender had established "normal prices" for use in operational forecasts for long-term loans, this would be acceptable to the Agency. It was felt that these prices, based on historical cash prices and adjusted to reflect commodity prices, would minimize the impact on projections of volatility in the commodity markets. If the Agency would allow lenders to utilize these prices, it would result in many different types of price projections being submitted to the Agency for consideration which would result in additional confusion. The Agency adopts this section of the proposed rule as is.

Several respondents commented that paragraph (b)(7) should be clarified as to the types of restrictions and requirements the Agency is requiring so lenders can draft restrictions that will meet the Government's concerns. The items listed in paragraph (b)(7) of this section are the minimum items a loan or line of credit agreement should include. If the Agency tries to pinpoint every item that could be included in a loan or line of credit agreement, it would be denying the lender the ability to structure an agreement to address specific concerns of the borrower's operation. The Agency adopts this section of the proposed rule as is.

Several respondents had comments regarding the selection of appraisers by the lender for appraisal work. The proposed rule requires that the Agency concur in the selection of the appraiser and that the appraiser must meet certain qualifications. It was suggested that requiring the Agency to concur in the selection of an appraiser would lead to an appearance of favoritism. As explained in the proposed rule, there have been instances where a conflict has occurred when a question arises concerning the value of the security (i.e., the lender's loss claim based on appraised value.) This proposed rule will assure that FmHA and the lender will have agreed prior to loan approval that the appraiser is qualified. It must be remembered that the lender is the one that selects the appraiser and that this requirement only pertains to FmHA concurring in this selection. Just because the County Supervisor concurs in the selection of an appraiser in no way relieves the County Supervisor's responsibility as to questioning an appraisal that is out of line. The Agency does not adopt this recommendation.

Several respondents commented that the section regarding the qualifications of an appraiser should be clarified. One respondent suggested, "the appraiser must meet one of the qualifications in the following order of preference." This change will insure that the lender in selecting an appraiser will not immediately go to item (e) for the selection criteria but will be required to select appraisers who have a sound and knowledgeable appraisal background. The Agency adopts this section of the proposed rule as amended.

One suggestion was that the person conducting the appraisal use the normally accepted appraisal procedure required by FmHA appraisal regulations. The appraiser is selected by the lender with the concurrence of the County Supervisor. Adoption of this suggestion would result in a reduction in the number of appraisers who would be willing to perform this function for a lender. As professionals, they will normally insist on presenting an appraisal report under their professional guidelines. To insure that the lenders be allowed to use all qualified appraisers, the Agency adopts the proposed rule as is. One of the respondents suggested that the appraiser be required to submit a recent sample of an appraisal if FmHA is not familiar with the appraiser's work. The Agency agrees and has amended this section accordingly. The Agency adopts the proposed rule as amended.

One respondent commented that requiring the lender to provide management assistance to the borrower could lead to a lawsuit if the lender provided this management assistance and later the operation failed. They went on to indicate that "once a lender provides any type of 'management assistance' to a borrower, the court may determine that the lender has become an insider to the operation. The lender then becomes liable for the obligations of the borrower and the ultimate success or failure of the operation." The respondent suggested that this section of the proposed rule be changed to where the words "and providing management assistance to the borrower" be deleted. The Agency does not agree. That phrase has been in the regulations for some time. It does not require that a lender provide management assistance to a borrower but rather that the lender inform FmHA of any plan to do so. The Agency has clarified this language and has adopted the proposed rule as amended.

Several respondents commented on the requirement in the administrative section that provides for the County Supervisor to send Attachment 1 to Exhibit D of this subpart to the borrower and the lender describing the Interest Rate Buydown Program. One respondent stated that it was their understanding that the application is between the lender and FmHA and they saw no reason for FmHA to have direct correspondence with the borrower regarding any part of the Interest Rate Buydown Program. It was the respondent's concern that almost every borrower would request the lender to write down the loan, even when the interest rate buydown is not necessary. This can also have an adverse affect on the lender's other customers who do not have guaranteed loans because they would also be demanding a break on interest rates. The respondents felt that this section should be deleted, since participation in the interest rate buydown is determined by the lender. While the Agency agrees that the determination rests with the lender on whether or not to participate in the program, the farmer has a right to know of the provisions of the whole guaranteed program. The Agency adopts the proposed rule as is.

Section 1980.114 FmHA evaluation of applications. This section provides guidance for the County Supervisor on evaluating applications and how to proceed after the evaluation is completed. One respondent commented that the proposed rule indicates that the County Supervisor will notify the lender and the loan applicant in writing within 10 calendar days of a decision to deny the loan. The concern was that FmHA should not be notifying the loan applicant as the lender is the one requesting the guarantee. The respondent felt that it would only serve to deteriorate relationships between the loan applicant and the lender by receiving correspondence from the County Supervisor. The respondent also felt that FmHA should be able to notify the lender within 5 working days of the decision to deny the guaranteed request. The Agency agrees as to the timeframe, but as mentioned before, believes that the loan applicant should know the action taken and has adopted the proposed rule as amended.

Section 1980.115 County Committee review. This section provides guidance to the field staff on the timeframe for the County Committee to review loan applications and the action that will be taken after either a favorable or unfavorable decision is made.

One respondent commented that the proposed rule required that all guaranteed applications be acted upon within 60 calendar days after receipt of completed applications. It was suggested that all guaranteed loan applications, once completed, could be acted upon within 30 calendar days. This change would further assist in streamlining the application process and reduce the excessive time involved in guaranteed loan applications. It must be pointed out that in the administrative section of this section, complete applications from approved lenders must be acted upon by the County Committee within 14 calendar days and once the County Committee has made a determination regarding eligibility, the approval official has 14 working days to render approval. The Agency agrees that once all information is received for a complete application, 60 days is too long to reach a decision. The Agency will amend the requirement that for ALP lenders the timeframe will be 14 days for County Committee action, if possible, and after County Committee action, 14 days, if possible, for approval action. This change was the result of one respondent commenting that it was not always possible to get County Committee persons out of the field during spring planting to insure a committee meeting could be held within 14 days. For non-ALP lenders, the Agency is reducing the total time from 60 days to 45 days after a complete application is received, as there is additional information required from lenders who are not ALP lenders which will normally take additional time to review. The Agency adopts the proposed rule as amended.

Several respondents commented on the requirement that a lender has to agree that if liquidation of an account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of this subpart, and request a determination of the borrower's eligibility by FmHA. The lender must also agree not to initiate foreclosure action on the guaranteed loan until 60 calendar days after a determination has been made regarding eligibility of the borrower to participate in the Interest Rate Buydown Program. One respondent indicated that one lender who has fully supported the guaranteed program in the past may cease using the program due to this requirement, as the lender does not believe in having different interest rates for different borrowers. This requirement is mandated by Section 613 of the Agricultural Credit Act of 1987. Thus, the Agency cannot change this language. In order to clarify this requirement, the Agency has set forth guidelines in Exhibit D to Subpart B of Part 1980 establishing timeframes for the determination of eligibility so that lenders who will continue liquidation will be able to proceed in a timely manner. The Agency adopts this proposed rule as amended.

Section 1980.116 Review of requirements. This section sets forth the guidance regarding the review of approval conditions by the lender and the applicant and the execution of the acceptance or rejection of conditions by the lender to the County Supervisor.

One respondent commented that some lenders have a problem with the execution of a new note simultaneously with the restructure of a loan. The respondent suggested that an argument could be made that the original note has been paid and, by operation of law, the mortgage satisfied. In other words, a new note would require a new mortgage. It was suggested that consideration be given to allow the use of existing legal documents, provided a title opinion is obtained verifying the validity of the lien position, and if necessary, a new loan agreement setting forth conditions, dollar amounts, etc. Adoption of this suggestion would require extensive revision of the Agency's regulations as they do not contemplate the restructuring of a loan as a loan purpose. Refinancing a debt is a presently recognized loan purpose, when the debt is refinanced, the new debt is substituted for the old debt and new loan instruments should be taken. The Agency agrees and has amended this section by allowing eligible lenders to use a restructure agreement in lieu of a new promissory note, providing the terms and conditions of the restructure agreements meet the FmHA guaranteed loan making regulation requirements. The Agency adopts the proposed rule as is.

One respondent commented that this section sets forth the guidelines for notification of the lender and the loan applicant of an unfavorable action. The respondent suggested that it was important that Subpart B of Part 1900 of this chapter clarify that the applicant can appeal the denial without the assistance of the lender. The respondent further stated in many instances the lender will not be willing to spend the time necessary to be involved in an appeal of a denial of a loan guarantee. It must be pointed out that the applicant for a guarantee is the lender. The lender is the party that benefits from the granting of the guarantee by FmHA. The loan applicant does not make the decision to request the guarantee; it is the decision of the lender to request the guarantee if the guarantee is the only means the lender has of continuing with, or assisting, an applicant. Subpart B of Part 1900 of this chapter sets forth the guidelines regarding appeals of requests for guarantees. The majority of appeals concerning guaranteed applications involve rejections due to larger than family size farms and lack of repayment. The lender must understand that FmHA's guaranteed farm loans are subject to family size unit limitations, which are determined by the County Committee. Applications that do not cash flow indicate a weak credit risk for the lender for which obtaining a guarantee would reduce the lender's losses. The Agency has a mission to provide credit assistance to farmers who are unable to obtain credit from other sources, but it also has a mission to protect the interest of the Government. Only by involving both the lender and the loan applicant in the appeal process will the Agency be assured that both parties are honestly working together to achieve a successful operation. The Agency adopts the proposed rule as is.

Section 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement. Several respondents commented regarding paragraph (d) of this section which stated that, "Paragraph IX (C)(10) of Form FmHA 449–35 will be changed by striking the word 'semiannually,' inserting the word 'annual' in its place, and eliminating the words 'and June 30.' " The majority of the comments were that this paragraph should be deleted and the change be made in the form. One respondent felt that FmHA should continue to request semi-annual reports. This agreement is used for both Business and Industry (B&I) guaranteed loans and Farmer Program (FP) guaranteed loans. The Agency agrees that the form should be revised to indicate the difference between B&I and FP loan status reporting and has adopted the proposed rule as amended. FmHA has not been requiring the submission of semi-annual reports for Farmer Programs loans for a number of years. This additional reporting requirement would only place an additional burden on the Finance Office. The lender is already required to provide the County Supervisor with information any time a borrower is 30 days delinquent. This information allows the County Supervisor to know the status of each guaranteed loan if it becomes delinquent, thus providing more up-to-date information than a semi-annual status report from the Finance Office. The Agency has amended Form FmHA 449–35 to provide for Farmer Programs loan status to be reported annually.

Section 1980.123 Transfer and assumption of Farmer Program loans. This section provides guidance as to the actions necessary when a guaranteed loan is being transferred and assumed.

One respondent commented that paragraph (f)(1) of this section should be amended to read, "FmHA must determine that the transferor has no reasonable ability to make his scheduled debt payments considering assets and income at the time of the transfer." The respondent believes that this amendment will insure that if the borrower could pay only a few dollars but not the entire scheduled payment, then the ability to pay just a few dollars would not make the person ineligible for transfer and assumption. This paragraph deals with the release of liability by the lender with FmHA's written concurrence when the value of the collateral is less than the amount of the loan or line of credit being transferred. The ability of the transferor to pay only a few dollars will not make the transferor ineligible to transfer its loan. The Agency adopts the proposed rule.

Section 1980.124 Consolidation, rescheduling, reamortizing and deferral. This section provides guidance to allow borrowers who cannot pay as scheduled to have their loan(s) rescheduled, reamortized or deferred when it will result in the orderly collection of a loan.

Several respondents commented that many guaranteed loans were allowed to be amortized over a 22-year period with a balloon at seven years for OL loans when real estate represented a substantial portion of the security. They suggested that if it became necessary to reamortize or reschedule loans of this type that the loan should be reamortized or rescheduled within the remaining original amortization period of the loan. The Agency agrees and has incorporated this change in the final rule.

Several respondents also pointed out that there were inconsistencies in the language of this section in that a new note may be used for rescheduling and then later on it stated no new note or line of credit agreement will be allowed. They suggested that an "allonge" described within this section is sufficient for accommodating these rescheduling or reamortizations as it is more legally effective to use an "allonge" which would allow the original note to continue recitation of the original security agreements, mortgages, and other loan documents. The Agency intended that an allonge be used when a note is rescheduled. However, the Agency recognizes that when a consolidation occurs, the existing notes being consolidated are also rescheduled. In that case a new note will be taken to evidence the consolidated indebtedness. The Agency has amended this section accordingly to make this clear. The Agency adopts the proposed rule as amended.

One respondent commented that this section does not indicate whether the borrower is required to offer for sale any assets determined to be non-essential to

the farming operating as required for insured Farmer Program loans. The respondent suggested that any non-essential assets should be sold prior to processing a request for consolidation, rescheduling, reamortization, or deferral. The Agency believes that if a lender has to request FmHA's concurrence with the lender's decision to pursue a servicing option to continue with a guaranteed borrower, the lender will have explored all the possibilities of how best to service the loan. The Agency is not adopting this suggestion.

One respondent felt that the County Supervisor should approve all servicing actions in advance. The Agency agrees and has amended the proposed rule accordingly.

One respondent suggested that the term "unplanned" as it relates to farm expenses and family living expenses should be clearly defined to prevent liberal interpretations by lenders who may be encouraged to process marginal requests for debt write down for the purpose of receiving a loss payment. The Agency agrees and has deleted the word "unplanned" and inserted "unforeseen". For example, this past season has resulted in circumstances caused by the drought which were not foreseen by either the lender or the farmer and which resulted in essential expenses being incurred to protect the collateral. The agency adopts the proposed rule as amended.

One respondent suggested that the Agency clarify the concept of "untimely marketing practices" as an indication of poor financial management. The respondent felt that if a farmer made a decision to sell a crop on contract and later the price increased that this might be used as an excuse to not grant servicing actions. The Agency agrees and amended this section to indicate that if a farmer forward contracted, price differential would not be an indication of untimely marketing practices.

One respondent commented that a delinquency caused by a natural disaster be specified as circumstances beyond the farmer's control. The Agency agrees and has amended the proposed rule accordingly.

One respondent commented that §§ 1980.124 and 1980.125 of the proposed rule allow lenders to reamortize, reschedule, defer or write down the principal indebtedness of a borrower's account; with an accompanying loss payment by FmHA but that an important and attractive farm loan restructuring tool also authorized by the Agricultural Credit Act of 1987 and the Food Security Act of 1985 was absent from this proposed rule. The respondent was referring to Conservation Easements, which were enacted by section 1318(a) of the Food Security Act of 1985 and are found in section 349 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1997). This authority was further amended by section 612 of the Agricultural Credit Act of 1987. Section 349 allows the Secretary to acquire and retain an easement in real property for a term of not less than 50 years for conservation, recreation, and/or wildlife purposes. It also provides that any such easement acquired by the Secretary shall be purchased from the borrower by cancelling a part of the amount of such outstanding loans the borrower held under laws administered by the Farmers Home Administration. This requirement was designed to apply only to FmHA's insured loan borrowers. In the guaranteed program, the loans are made and serviced by the lender. FmHA is only guaranteeing the lender against a loss if the lender's borrower should default on the loan. Thus, the Agency cannot change the language of the proposed rule.

Another respondent also commented that the Agency has neglected to provide for Conservation Easements as established in the Food Security Act of 1985. For the reasons set forth above, the Agency is adopting the proposed rule.

Section 1980.125 Debt write down. This section allows lenders to write down the principal indebtedness of a borrower's account, with an accompanying loss payment by FmHA. Thus, for purposes of the guarantee, the lender shall be treated as having sustained a loss and any amount paid to a lender will be treated as payment toward satisfaction of the loan guarantee. This section also requires the borrower to enter into a shared appreciation arrangement with the lender to recapture any appreciation of any real estate security which might occur.

One respondent commented that "Typically, no lender would be able to fund a term loan of one year or longer at rates anywhere close to 90-day Treasury bill rates." This comment was in regard to the requirement that the lender will use the rate for 90-day Treasury bills in effect on the date of the write down to calculate present value. The Agency has reconsidered this issue and has deleted the requirement regarding the use of 90-day Treasury bill rate to calculate present value. The rate to be used will be the loan rate. The Agency adopts the proposed rule as amended.

One respondent commented that this section should specify that only the minimum number of loans will be written down to permit the development of a feasible plan of operation. The respondent also felt that the proposed rule was not clear as to whether the lender would be required to liquidate the borrower's accounts or initiate foreclosure action if a positive cash flow cannot be demonstrated through debt write down. The Agency agrees regarding the number of loans which may be written down and has amended the proposed rule accordingly. Regarding the comment concerning the liquidation of the account, the account would be delinquent if a positive cash flow cannot be developed and the lender would have to abide by §§ 1980.145 and 1980.146 of this subpart, which would result in an orderly liquidation of the account by the lender. The Agency adopts the proposed rule.

One respondent commented that the net recovery from a Chapter 7 bankruptcy may be similar to the net recovery from an involuntary liquidation or foreclosure under § 1980.125(b)(1)(ii). It is unclear how the lender shall determine the net recovery from a Chapter 11 or 12 bankruptcy. Section 1980.114 of this subpart explains how Chapter 11 and 12 bankruptcies will be handled as to payment of estimated losses. The Agency adopts this proposed rule as is.

One respondent commented that this section should specify the nature and extent of the documentation required to be provided by the lenders as support for the write down determination and also that a note or line of credit agreement which has been written down cannot be rescheduled or reamortized during the shared appreciation period. The Agency has amended the proposed rule to specify the necessary information which the lender will submit in requesting a write down, but the Agency believes that the proposed rule adequately addresses what a lender must consider when contemplating a write down. Paragraph (a)(1) states that the borrower must demonstrate that a positive cash flow cannot be developed after consideration is given to the authorities as set out in § 1980.124 of this subpart. If a positive cash flow can be developed showing that a debt write down will allow the borrower to remain in business, then a write down may be approved. This section requires a cash flow to be developed which will provide the documentation necessary for the write down. However, the Agency has amended the proposed rule to specify that, when a lender has both a line of credit and a loan, the line of credit will be considered for write down before the

loan will and that principal will be written down before accrued interest. The Agency also believes that the suggestion not to allow the notes to be rescheduled or reamortized during the shared appreciation period is not in accordance with the purpose of the Agricultural Credit Act of 1987. The purpose of the Act is to allow farmers to remain on the farm, if possible, and it would be unfair to force a farmer, who has had the debt written down, suffered a financial loss beyond the farmer's control 6 years down the road, and is still able to show that the plan will work, into liquidation. The Agency adopts the proposed rule as amended.

One respondent commented that § 1980.125(a)(7) was unclear as it stated no further advances may be made under a line of credit but further states the principal amount remaining after the write down becomes the new line of credit ceiling, implying that further advances up to the new ceiling are allowed. The Agency agrees and has amended this section to make it clear that the written down line of credit becomes a fixed amount loan and no new advances can be made under it. The Agency adopts the proposed rule as changed.

Several respondents commented that the lender must consider the Interest Rate Buydown program, before the lender could go to write down. The Interest Rate Buydown program, is less costly to the Government than paying losses after a write down. Therefore, FmHA requires that the lender explore all the other available servicing options, including Interest Rate Buydown, before writing down a debt. The Agency adopts this proposed rule as is.

Several respondents commented that in paragraph (b), an allowance should be provided for income received by the lender from leasing of the property while the lender has the property in inventory. The Agency agrees and has amended the proposed rule accordingly.

Several respondents commented regarding the requirement that the borrower who received a write down would have to enter into a shared appreciation agreement. One respondent felt that requiring the borrower to enter into a shared appreciation agreement would have a crippling effect on the farmer and would require further monitoring by the Agency. Another respondent in favor of the agreement suggested the appreciation value be based on the difference between the net recovery value at the time the loan is written down and the appraised value at the time of recapture. To avoid excessive losses to the Government, the Agency has adopted the shared appreciation concept. This concept will only come into play if the value of the real property increases during the agreement period. To clarify the value which will be used to calculate the appreciation, the Agency has decided to use the market value of the property. This will reduce claims at the expiration of the agreement that the original value placed on the property was incorrect, as the lender is required to utilize an independent appraiser to establish the appraised value. The Agency adopts the proposed rule as is.

One respondent commented that FmHA should require prior approval of all transfers of real property by surviving spouses to prevent circumvention of the shared appreciation agreement. This agreement provides that one of the occurrences which would affect the recapture of appreciation is the transfer of the property. Transfer of title to the property to the borrower's spouse on the borrower's death will not be treated as a conveyance for the purpose of recapture. However, if surviving spouse then transfers title to the property to someone else, then recapture would be triggered at this time of that latter transfer. The Agency adopts the proposed rule.

Section 1980.126 Mediation. This section provides guidance on the responsibilities of a lender regarding the mediation process. Several respondents commented that this section should be amended to require FmHA to review and respond during the required time period for decisions under the State mediation law; clarify the ability of the lender to discuss other servicing options during the mediation process; issue a State supplement regarding mediation; require FmHA to send to the lender and the borrower copies of Exhibit D, "Interest Rate Buydown Program," and Attachment 1 to Exhibit D; require FmHA to draft a form which indicates the different servicing actions a lender may provide to a borrower; require FmHA to participate in a meeting to discuss the servicing of the delinquent guaranteed loan; require the lender to participate in States which have "voluntary" mediation programs; and require State Director approval of any agreements reached during the mediation process. The guaranteed program depends upon commercial lenders requesting guarantees to cover their higher risk loans. If a number of the suggestions were implemented, lenders would pull out of the guarantee program, thus reducing the amount of credit available for farmers whose financial conditions are better than what FmHA deals with, but still weak enough that the lender is requesting a guarantee to continue with the borrower. Many small rural communities depend upon the farmer for their economic well being and if the commercial lender does not have a guaranteed program to fall back on, the economic conditions in these rural areas will continue to decline. A number of the suggestions are already covered in the present regulations. Requesting that FmHA participate in a meeting with the lender and the borrower when the borrower is delinquent is covered under § 1980.145 of this subpart. Before this meeting, FmHA will send the lender and the borrower Attachement 1 to Exhibit D and meet with the lender and the borrower to discuss the problems and any proposed solutions. The Agency believes this meeting provides the lender and the borrower with the necessary information needed if mediation is the next step. Besides, the lender, not FmHA, is responsible for servicing the guaranteed loan. FmHA must concur in any decisions reached by the lender but FmHA does not initiate these decisions. Therefore, the lender's participation in the mediation process is necessary, while FmHA's is not. If a State has a mediation program and the borrower requests that the lender go to mediation, the lender will be required to do so, since the Agricultural Credit Act of 1987 states that the lender shall participate in States with mediation programs. The Agency agrees with the suggestion that the section specify who in FmHA is responsible for approving any agreements reached by the lender and borrower as a result of mediation. The Agency has amended this section to specify that the State Director be responsible for approving these agreements.

Section 1980.130 Loan servicing. This section sets forth the lender's responsibilities in servicing guaranteed loans. Several respondents felt that the requirement in the Administrative portion of this section that all guaranteed loans be reviewed within 45 days after loan closing was placing too much of a burden on FmHA personnel. They suggested this time be increased to 90 days, and only be required for those guaranteed loans which were not previously reviewed. The Agency agrees and amends the proposed rule accordingly.

One respondent commented that this section should require that all requests for debt write down be approved by the State Director. The also suggested that this section set forth the levels of approval required for subsequent requests for consolidation, rescheduling, reamortization, and deferral. The Agency agrees with this respondent as to requiring State Director approval of all write downs. The Agency has amended this section to specify that State Director approval is required for all write downs. The Agency believes the authority to approve or concur with any deferral, rescheduling, or reamortization should remain with the County Supervisor to allow for timely decisions to be made so the borrower can continue with the business. The Agency adopts the proposed rule as changed.

One respondent suggested that since this section contains administrative procedures and recommendations for the County Supervisor, it should be amended to require the County Supervisor to immediately send Exhibit D and Attachment 1 of this subpart to the lender and the borrower when the lender notifies the County Supervisor that the borrower is delinquent. The Agency believes this is adequately covered in § 1980.145 of this subpart and adopts the proposed rule.

In addition to the above changes to the proposed rule the Agency has added an additional responsibility to the County Supervisor. The County Supervisor will be required to review the Shared Appreciation Agreement with the lender at least annually. The addition was made to assure proper compliance with this agreement.

Section 1980.136 Protective advances. This section sets forth guidance regarding the use of protective advances. One respondent commented that this section should be modified to more explicitly define costs that are typically thought of as protective advances. The Agency agrees and has amended the proposed rule accordingly. Also, it requires the County Supervisor to approve the requested protective advance in writing.

Section 1980.144 Bankruptcy. This section provides guidance in the payment of loss claims when a lender's borrower files for bankruptcy and the lender requests an estimated loss payment. Several respondents commented that this action was long overdue and would result in additional utilization of the guaranteed program. One respondent commented that this section should be clarified to allow existing guaranteed loans to be serviced under this rule. The Agency has made this optional with the lender in its amendment to § 1980.67 of Subpart A of this part. Further clarification is unnecessary. One respondent commented that attorney fees should be an allowable recoverable cost, as the typical lender will remain reluctant to continue with agricultural loans and would continue to push their customers to FmHA insured loans. The Agency does not agree and does not consider attorneys' fees are a valid recoverable costs covered by the guarantee. The guarantee covers loan of principal and interest on a loan. The Agency adopts the proposed rule as is.

Another respondent commented that by only listing specific things a lender must do to protect their interests in bankruptcy cases, the implication is given that this is all they will need to do. The list is only a guideline and the Agency believes that each lender should be able to determine those items which directly affect the borrower's account. The Agency adopts the proposed rule.

These same comments are incorporated in Subpart C, "Emergency Livestock Loans;" Subpart E, "Business and Industrial Loan Program;" and Subpart F, "Economic Emergency Loans," of this part.

One respondent was upset because his reorganization plan had been submitted 15 months ago and had not been approved by the court. The Agency sympathizes with the concern of the respondent but has no control over the court or the timeframe in which the court works.

Section 1980.145 Default by borrower. This section provides guidance regarding the actions that will be taken when a borrower defaults on a loan. Several respondents commended that the timeframe of 3 days before the scheduled meeting was too short to send Attachment 1 to Exhibit D of this subpart to the lender and borrower. It was also suggested that a letter be prepared confirming the discussion and decisions made, along with all calculations and documentation used in determining the appropriate action to take. This letter should be sent to the borrower. It was also suggested that a copy of Exhibit D be sent along with notices of the servicing options. The Agency agrees with the timeframe for providing the borrower with a report concerning the determination and decisions made at the meeting and the sending of Exhibit D. The Agency disagrees as to preparing a notice to send to the lender and the borrower listing the servicing options available. It is the lender's decision as to what servicing options the lender will employ to continue with the borrower. The Agency adopts the proposed rule as changed.

Section 1980.146 Liquidation. This section provides guidance for the liquidation of guaranteed Farmer Programs loan/line of credit. One respondent commented that FmHA should specify when estimated reports of loss should be submitted by the lender. It was suggested that if the liquidation is expected to exceed 90 days, an estimated loss claim should be filed and the lender should discontinue interest accrual on the defaulted loan at the time the claim is filed. The Agency agrees except that it believes that it would be fairer to the lender to discontinue the interest accrual at the time the estimated loss claim is approved, not when it is filed. The Agency adopts the proposed rule as changed.

One respondent commented that this section should clarify the approval authority of the County Supervisor for loss payments and that the approval authority for FmHA to liquidate the account should be at the State level. The Agency agrees and has adopted these changes.

One respondent commented that this section requires the lender to obtain FmHA approval of the liquidation plan. The respondent suggested that this section be amended to provide the borrower an opportunity to appeal FmHA's decision to approve the liquidation plan. The Agency disagrees because the borrower's loan is with the lender and it is the lender's responsibility to service it. FmHA merely concurs in the lender's decision. The borrower is not entitled to appeal as the adverse decision was made by the lender, not FmHA.

One respondent commented that when choosing to liquidate a guaranteed loan, FmHA must meet all of the requirements for liquidating the guaranteed loan as it would for an insured loan. It was suggested that a reference to Subpart S of Part 1951 of this chapter be included to insure that Attachment 1 to Exhibit A of Subpart S of Part 1951 of this chapter, "Notice of the Availability of Loan Servicing Programs," be sent to these borrowers. Unless the lender assigns its portion of the loan to FmHA, the loan is still the lender's loan. Only in those cases where the lender would assign its portion of the loan to FmHA and FmHA undertakes servicing of the loan would the Agency consider the borrower for the servicing actions under the insured loan regulations. The regulations already listed which FmHA must follow if it were to liquidate such a loan refer to compliance with Subpart S of Part 1951, so it is unnecessary to list that reference here. The Agency adopts the proposed rule as is.

Section 1980.148 Appeal procedure. This section provides guidance as to the method of appealing adverse decisions. One respondent commented that this

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section should be amended to require that both the lender and the applicant sign letters requesting an appeal before the situation would fall under Subpart B of Part 1900 of this chapter. The Agency believes that Subpart B of Part 1900 of this chapter sufficiently spells out the requirements for appeals. The Agency adopts the proposed rule.

Section 1980.175 Operating loans. This section sets forth guidance for the granting of a guarantee to a lender to allow the lender to provide credit to a farm customer for operating purposes.

One respondent commented that the applicant should be required to attest on the application form that they will not use the guaranteed loan proceeds to plant, cultivate, grow, produce, harvest, or store a controlled substance. The Agency has incorporated the insured and guaranteed application into one application, Form FmHA 410–1, "Request for FmHA Services," which already contains this statement regarding controlled substances.

One respondent commented that in order to receive a guaranteed operating loan, the borrower must have had training or farming experience in managing and operating a farm or ranch (within one of the last 5 years). They suggested that this requirement is an unnecessary restriction as there may be former farmers or ranchers who wish to re-enter the agricultural section who have not had training or actual experience in the farming or ranching operation in the last 5 years. They also suggested that if FmHA had concerns about the applicant having kept up with the more recent farming practices and theories, it could require the applicant to take courses or study these theories as a condition of the loan. The Agency has modified the proposed rule to allow educational or on the job training during one of the past five years to be acceptable. The Agency adopts the proposed rule as amended.

One respondent commented that paragraph (b)(1)(iv) should be clarified regarding character as to past repayment history. The Agency agrees and has amended this section to provide if a applicant has made an honest attempt to meet the obligations, this will be viewed in the applicant's favor in determining eligibility. The Agency adopts the proposed rule as amended.

One respondent commented that paragraph (b)(2), which contains the eligibility criteria for a cooperative, corporation, partnership, and joint operation is confusing. The comment stated that in one instance, where the majority interests are related by blood or marriage, that at least one of the members must operate the family farm and at the same time the entity must operate the farm. This is a statutory requirement and the Agency cannot adopt the proposed rule as is.

There were several respondents who commented in regards to lines of credit in paragraph (c)(2). One comment suggested the ability to purchase replacement foundation livestock should be reinstated as it was important that a farmer be allowed to purchase replacement animals as necessary. The Agency disagrees. To insure the farmer will retain the numbers, one should keep replacements, obtain a Loan Note Guarantee or replace with normal income. Another respondent felt that one should be allowed, under a line of credit, to pay a creditor as established in paragraph (c)(1)(ix) of this section and also to pay principal payments on real estate. The Agency does not agree, as the line of credit is established to pay current operating expenses. Interest charged may be considered as a current expense. Section 313 of the Consolidated Farm and Rural Development Act prohibits operating loan funds from being used for land purchase. The Agency adopts the proposed rule.

To obtain consistency with the insured regulation, the Agency has amended paragraph (c)(1)(viii) of this section to increase the amount of operating funds for real estate improvements from $7,500 to $15,000 per year, which is more in line with present costs. The Agency adopts the proposed rule as changed.

One respondent commented that FmHA should use the authority in this section to guarantee operating lines of credit for the purpose of refinancing existing operating debt. Under a line of credit, the lender may refinance operating debt that has been incurred for the present crop year only. The regulations currently provide for this as long as the security is adequate and a positive cash flow can be developed. The Agency believes that this is in line with the limited time period for an operating line of credit and does not adopt the suggestion.

Several respondents commented that the deletion of the provision allowing the lender to charge a one percent higher interest rate than what they charge to their average farm customer would have an adverse effect on the guaranteed program. There have been cases where some lenders will charge a lower interest rate because of the guarantee. It reduces the lender's risk and exposure, while increasing the lender's profitability and liquidity if they participate in the secondary market. Another point of view expressed was that borrowers with guaranteed loans require a greater amount of servicing, thus the lender justifies increasing the rate. There have been times when a lender has obtained a guarantee and the servicing of the account decreases, as the feeling is that if the account does not perform, FmHA will pay for any loss incurred. The Agency believes that by allowing the lender to charge an additional one percent, in many instances it places a greater financial burden on the borrower, thus increasing the possibility of failure. The Agency adopts the proposed rule.

One respondent commented that paragraph (f)(5) should be amended to delete purchasing feed while crops are being established as an eligible balloon purpose. The feed cost should always be collected when the livestock is sold. The Agency agrees and has amended the proposed rule accordingly.

One respondent commented that paragraph (h) of this section should be amended to insure that where multiple entities own the chattels, a guarantee would not be issued unless all entities guarantee and pledge security for the loan, and that FmHA and the lender would have to concur before any transfer of ownership could occur. FmHA agrees and has amended the proposed rule accordingly.

One respondent commented that the Agency should require the guaranteed borrower to obtain insurance, as applicable, on loan security prior to or at loan closing and that proof of such insurance must be documented at loan closing. The Agency agrees with the principle behind this comment and will continue to encourage lenders to have guaranteed borrowers obtain insurance. In those instances where it is apparent that insurance is necessary, the approval official will so indicate by making it a condition for the loan. The Agency adopts the proposed rule.

One respondent commented that the last sentence in paragraph (h) should be amended to allow different lien positions on chattels to be considered as separate and identifiable. The Agency disagrees, as this would allow mixing and matching of security and if a loss claim was ever processed, the security covering the guarantee would be the one that was missing. The Agency adopts the proposed rule.

One respondent commented that paragraph (j) should be amended to correspond with § 1980.180 of this subpart regarding the handling of other assets which are definitely not needed or used directly in the farming operation. The Agency agrees and has amended the proposed rule.

One respondent commented that in general it was supportive of this regulation, but additional clarification was needed regarding protecting environmental resources. One suggestion was that in §§ 1980.175, 1980.180 and 1980.185 of this subpart, a reference should be made to the "Memorandum of Understanding Between FmHA and the U.S. Fish and Wildlife Service," to be used as a guide in implementation of the Environmental Program. Exhibit M to Subpart G of Part 1940 covers much more than what this Memorandum of Understanding covers and it would be inappropriate to refer to that memorandum in the context of the paragraphs in question. The Agency adopts the language proposed in these sections as is.

Section 1980.180 Farm Ownership loans. This section sets forth guidance for granting a guarantee to a lender to allow a farmer to purchase farm real estate.

One respondent commented that the same concerns should be addressed in this section as in § 1980.175 of this subpart regarding character and farm experience. Another respondent commented that for clarification, it would be possible to combine paragraph (b) of § 1980.180 with the requirements set forth in § 1980.175(b) and § 1980.180(e)(2) and § 1980.185(e)(1) with the requirements set forth in § 1980.175(e). The Agency agrees, as this will allow the lender to go to one section for the regulations governing these requirements. The Agency adopts the proposed rule as amended.

One respondent commented that paragraph (f)(2)(i) seems to be excessive as it requires a mortgage to be taken on the entire farm owned or to be owned by the applicant. The respondent suggested that this paragraph be amended to state, "A mortgage on the entire farm will not be necessary if a mortgage on the property to be purchased or refinanced or on which improvements will be made with the loan proceeds is given and that mortgage is sufficient to adequately secure the loan." Section 307 (7 U.S.C. 1927) states that the Secretary shall take as security for the obligations entered into in connection with loans, mortgages on farms with respect to which such loans are made or such other security as the Secretary requires. A prudent lender would require a mortgage on the total farm and the Agency believes the lender should secure the loan with a mortgage on the total farm. The Agency adopts the proposed rule.

One respondent commented that paragraph (g)(2)(i) should be amended as it presently allows for the lender to take a mortgage on a borrower's dwelling when it is located somewhere other than on the farm. The respondent indicated there was no justification for automatically requiring a mortgage on the borrower's dwelliing simply because it is not located on the farm. A mortgage should only be taken if it is necessary to provide adequate security for the guaranteed FO loan. The Agency disagrees as it provides additional security for the loan and, as stated in the regulations, must be located close enough to the farm so the farm may be operated successfully. Taking a mortgage on the dwelling will insure the borrower has a desire to make the operation a success.

Section 1980.185 Soil and Water loans. This section provides guidance in the granting of a guarantee to a lender to allow a farmer to obtain a guaranteed Soil and Water loan to encourage and facilitate the improvement, protection, and proper use of farmland. The objectives should help a farmer make needed land-use adjustments and should lessen the impact of adverse weather conditions on farming operations.

One respondent commented that this section should be revised to amend the reference to character and experience as indicated in § 1980.175. The Agency amends these paragraphs and has adopted the proposed rule as changed.

One respondent commented that exception authority should be included in this subpart. This authority is inappropriate for a regulation containing various statutory requirements such as eligibility. Therefore, the Agency is not adopting this suggestion.

Exhibit A to Subpart B—Approved Lender Program/Farm Ownership and Operating loans. This section provides guidance for the making and servicing of a guaranteed loan by an Approved Lender.

Several respondents commented as to the absence of the Soil and Water program and the requirement that these agreements do not allow the ALP lender to submit loans involving subsidy payments under the ALP. The Agency agrees and has revised this section to allow ALP lenders to make soil and water loans and loans involving subsidy under this section.

One respondent suggested that the list of approved lenders be provided to the potential applicant or borrower. The statute states the County Supervisor shall make available to farmers, on request, a list of approved lenders in the area that participate in the FmHA guaranteed loan programs and other lenders in the area that express a desire to participate in the program. The Agency believes the proposed rule is in accordance with the statute and thus adopts the proposed rule.

One respondent commented on the fact that ALP status will expire at the end of any 2-year period for a FCS member institution not having acceptable loan losses. The concern was that FmHA should be attempting to get a statement from the Farm Credit Administration at the end of the normal 2-year period that the FCS member institution still maintains an acceptable loan loss level. The regulation already requires FCA to provide this information to the Agency. Once this information is received, FmHA notifies its field offices as to those FCS institutions that are eligible. The Agency adopts the proposed rule as is.

One respondent commented on paragraph II (A)(1)(b)(ii). The respondent suggested that the requirement as to the 1½ percent of the lender's total loan portfolio or the lender's total loan portfolio of all types of loans be clarified. The Agency agrees and has amended this requirement to refer to the Agricultural loan portfolio of the lender. The Agency adopts the proposed rule as amended.

One respondent commented in paragraph II (A)(2)(c) regarding the requirement that the training for the person designated to process and service guaranteed loans for an ALP lender should read as follows, "Training in Agricultural Economics and/or at least two years agricultural lending experience." The Agency agrees and has adopted this change to the proposed rule.

One respondent commented that the information required by FmHA for approving a lender for the ALP is usually only background material. The respondent suggested a more useful document would be to require the lender's audited financial statements or its most recent quarterly submission file, Report of Condition and Income. The Agency agrees and has adopted the change to require the Report of Condition and Income in the optional criteria found in paragraph II A(2)(d) of Exhibit A. The Agency adopts the proposed rule as changed.

One respondent commented that, if the cash flow statement that a lender normally uses does not list at least a debt repayment source and breakdown of income, this information should be required. When this was provided, it greatly expedited the processing of the ALP applications. The Agency agrees and has amended paragraph III A of the proposed rule to ask for a statement

similar to item 28 of the Request for Loan Note Guarantee.

One respondent commented on the need to be sure that paragraph IV of Exhibit A, Attachments 1 and 2, contain the language that allows Farm Credit System board members to obtain an FmHA guarantee under certain circumstances. The Agency agrees and has revised these paragraphs accordingly.

One respondent commented as to the ability to modify Attachments 1 and 2 to allow for an extension of less than 2 years and to provide guidance as to when a new ALP agreement is needed. Paragraph XVII of these agreements provides the guidance as to when an agreement is needed. The Agency does not understand why a lender would request an extension of less than 2 years. The Agency adopts the proposed regulation.

Exhibit D Interest Rate Buydown Program. This section provides guidance on the issuance of a buydown of interest to a lender whose borrower cannot meet a repayment schedule due to interest cost. Several comments were received on cash flow projections, 24-month cash flows, need for additional cash flows following initial cash flows, and projected financial statements.

The requirement for a 24-month cash flow is statutory. The other comments were addressed and projected financial statements deleted. The word typical was added to 24-month cash flow in order to avoid judging feasibility of 3-year buydowns on transition cash flows. Several comments were received about the need for interest rate buydowns for loans longer than 3 years. The law only provides for one buydown per loan at a time and only allows for the maximum period for a buydown to be three years.

A comment was received to clarify the .25 percent increments on buydown in paragraph IV I. The Agency has done so. A comment was received on deleting non-essential assets requirement from buydown, as experience has shown some problem areas. The Agency added it back to the Exhibit, but confined the requirement to nonfarm non-essential assets. The Agency adopts the proposed rule as amended.

Exhibit E—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm Land. This exhibit provides guidance for the operation of the program between FmHA and the Farm Credit System. A comment was received stating all lenders should be eligible to sell acquired property under this Exhibit. The statute limits the property to property owned by Farm Credit System Organizations; thus, the Agency cannot change this language of the proposed rule. A comment was received about the inconsistency of the title and the language in the body of the exhibit. The Agency has reconciled the language differences. A comment was received on the use of the preliminary applications and dropping the use of suitability, ratios, and amount of cash flow needed to be feasible. The Agency aligned the exhibit to more closely follow the preliminary procedure in § 1980.113 of this subpart, dropped the paragraph on ratios, dropped the word suitable, and adjusted needed cash flow, to allow for a cash flow from 100 percent to 110 percent once the buydown is in effect.

One respondent commented as to the ability of ALP lenders to use their forms for the demonstration project. The Agency changed its requirements to authorize ALP lenders to use their own forms.

One respondent commented that an eligible borrower should be able to buy farms at auction. It would be extremely difficult to help farmers buy land at auctions through use of guaranteed loans. The Agency does not adopt this suggestion.

A comment was received concerning publicizing the availability of farms and projects. An agreement between FmHA and Farm Credit District Banks has been developed to cover joint responsibilities in this area. This effort will be coordinated between the State Director and the FCS district where the demonstration program is available to ensure that inventory land is available.

One respondent was concerned about lenders passing on the interest rate reduction of 4 percentage points to the borrower. This has been covered in Form FmHA 1980–58, "Interest Rate Buydown Agreement," rather than in the exhibit itself.

A comment was received on criteria that would be used to determine feasibility. The concern was that the County Supervisor and the applicant would not be able to determine feasibility. Feasibility requirements are the ones established in this subpart for all guaranteed loans except for those special changes as set forth in this Exhibit.

Several respondents commented on the term "positive cash flow." The concern was the window of eligibility is very small, as a less than positive cash flow is required to get the interest assistance, but a positive cashflow (at least 110%) is required after the interest assistance is considered. The Agency agrees and has amended the proposed rule to allow borrowers to have a positive cash flow after the interest assistance is granted from 100 to 110 percent. The proposed rule is adopted as amended.

One respondent commented, regarding loans to purchase inventory property of the Farm Credit System, FCS should comply with various environmental requirements found in FmHA regulations such as those governing conservation easements. The Agency disagrees. These requirements do not apply in these cases, as the inventory property is in the possession of the Farm Credit System, not FmHA. However, both the lender and the borrower must agree to comply with various other environmental requirements found in Subpart G of Part 1940 of this chapter before FmHA will issue a guarantee.

Lender Agreements—Form FmHA 449–35 "Lender's Agreement," Form FmHA 1980–38 "Lender's Agreement (Line of Credit)," "Lender's Agreement (Loan Note Guarantee Only)," and "Lender's Agreement (Operating Line of Credit Guarantee) for Approved Lenders."

These agreements set forth guidance for lenders who are involved in both the regular guaranteed program and the approved lender program.

Several comments were received on making regulations and forms conform with each other requiring Finance Loan Status reports. The Agency agrees and has incorporated this aspect wherever possible.

Form FmHA 449–35, "Lender's Agreement," Paragraph XI K. A comment was received about making payment within 30 days after completion of review versus the existing 60-day requirement. The Agency agrees and adopts this proposal.

Form FmHA 449–35, "Lender's Agreement," Paragraph I E 2. A comment was received regarding why the Agency had 30 days to submit Report of Loss to Finance Office after the report of loss estimate had been approved. The Agency deleted the 30-day phrase and has revised the proposed rule accordingly.

Several respondents commented regarding paragraph IX of Forms FmHA 449–35 and 1980–38 and suggested the lender should be required to inspect collateral at least annually and persons having a partial ownership should provide a personal guarantee.

Section 1980.106 requires personal guarantees routinely and they must be obtained unless waived by the Agency. Paragraph IX of the forms require inspecting the collateral as often as is necessary to service the collateral. Bare farmland may not require an annual visit, whereas in other cases a visit might be needed monthly. The Agency did not adopt these suggestions as it feels the regulations adequately address these concerns.

Comments were received on Forms FmHA 449–35 and 1980–38, paragraph XI, stating a reasonable period of time for curing default should be specifically identified. Different circumstances would dictate different time tables, which would vary when trying to determine what is reasonable. Therefore, the agency did not choose to set a specific time table for all cases. The Agency adopts the proposed rule as is.

Additionally, a comment was received stating a lender should submit an estimated Forms FmHA 449–30, "Report of Loss," when liquidation is expected to take a long time, in order to stop the accrual of interest. The Agency has amended the proposed rule advising lenders they will file an estimated loss if it will take over 90 days to liquidate the security.

An additional comment stated that interest should stop accruing within 90 days of acceleration. This is not always possible as there are times where it will take longer than 90 days to liquidate the security, which is beyond the lender's control. The Agency is not changing its statement that accruing interest is covered, provided the lender proceeds expeditiously with the approved liquidation plan. The Agency adopts the proposed rule as is.

An additional comment was received about release of liability when a guaranteed borrower transfers the loan. The suggestion was that paragraph XV of Forms FmHA 449–35 and 1980–38 should be revised to require FmHA approval of the release. Section 1980.123(f) requires FmHA written concurrence. The Agency believes the current regulations adequately address this concern.

A comment was received recommending that the ALP lender's agreements must be conformed to allow the same application of regulations when applicable. Therefore, the agency is conforming paragraph IV of both ALP lender agreements to paragraph V of Forms FmHA 449–35 and 1980–38.

One comment was received recommending that Forms FmHA 449–35 and 1980–38 be combined and also both ALP lender agreements. Form FmHA 1980–38 deals with lines of credit unlike Form 449–35 which deals with fixed loans. Also, Form FmHA 1980–38 is used with Subparts C and F of Part 1980 and, therefore, cannot be combined at this time as this would necessitate extensive revisions of those regulations. This suggestion has merit and will be considered at a later date.

One comment was received requesting some lender discretion on loaning for nonguaranteed short-term operating without FmHA concurrence on each request, which is now prohibited by paragraph XIII of Forms FmHA 449–35 and 1980–38. The Agency has modified this paragraph.

A comment was received that Forms FmHA 449–35 and 1980–38 should address the guarantee of protective advances. The guarantee of protective advances is covered on the Forms FmHA 449–34 and 1980–27. The Agency believes this adequately covers the subject.

A comment was received on paragraph IX C 2 stating the holder could possibly deny the reamortization, renewal, or rescheduling of the guaranteed portion of the loan. When a loan is sold on the secondary market the holder has certain rights. It must be pointed out that the lender has the ability to buy back a loan from the holder, if needed, to properly service the loan.

A comment was received on paragraph X A of Forms FmHA 449–35 and 1980–38 stating FmHA should list the write down of principal and interest as action which can be done to resolve a default status. The Agency has added the write down option to the paragraph.

A further comment was received on paragraph X B of the same forms about including FmHA as negotiating in good faith. The real test of good faith is between the lender and the borrower. If they can come to an agreement and the restructuring of the loan is within the scope of the regulations, the Agency will work with the lender in staying with the borrower. The ability for the lender to write down a guaranteed loan provides another tool for the lender to continue with the borrower. The Agency adopts the proposed rule.

A comment was received on paragraph X of Forms FmHA 449–35 and 1980–38 concerning the borrower's appeal rights regarding denial of servicing actions. The refusal by FmHA to concur in a lender's proposed servicing action is not appealable by the borrower alone, as the party directly affected is the lender. Both the borrower and the lender would have to join in any appeal.

A further comment was received on paragraph XI B stating that FmHA concurrence on a lender's liquidation is appealable. FmHA is not making an adverse decision and the lender's decision is not appealable under FmHA's administrative appeal procedure. The FmHA did not make the loan and has only issued a guarantee. Only adverse decisions which FmHA makes are appealable under Subpart B of Part 1900 of this chapter.

It should be further noted that there are very few circumstances where FmHA ever purchases the entire guaranteed loan. Utilizing the insured loan liquidation procedures, as one commentator suggested, is not applicable unless the lender would assign its portion of the loan to FmHA and then, and only then, would the loan be treated under Subpart S of Part 1951 of this chapter.

One commentator suggested paragraph XI K of Forms FmHA 449–35 and 1980–38 should clarify loss. All of paragraph XI refers to loss when liquidating, and Form FmHA 449–30 is the "Loan Note Guarantee Report of Loss." The Agency adopts the proposed rule.

One lender commented on the need for a subsection on bankruptcy and loan write down in lender's agreements.

The Agency had previously published proposed rules on bankruptcy in the **Federal Register** on May 7, 1988, and received comments which were positive. All lender's agreements have paragraphs added to them to cover both items.

General Comments

One respondent was concerned that there was no mention of Section 711, "Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration" in this proposed rule. This section of the law provides guidance to the Agency in the continued development of a secondary market for guaranteed loans. It allows for the Secretary to directly, or through a market maker, issue pool certificates representing ownership of part or all of the guaranteed portion of any loan guaranteed by the Secretary under this title and the process of servicing guaranteed loans that are sold on the secondary market. Due to the complexity of the requirement the Agency has determined that this requirement will be issued under a separate regulation which will be published in the near future as a proposed rule for public comment.

One respondent commented that the proposed rule did not reference Section 625, "Sense of Congress Regarding Guaranteed Loan Program." This section encouraged the Secretary to issue guarantees for loans under the Consolidated Farm and Rural Development Act, to the maximum extent practical to assist eligible borrowers whose loans are restructured

by institutions of the Farm Credit System, commercial banks, insurance companies, and other lending institutions. The Agency believes that with the past emphasis placed on the guaranteed program that the agricultural lenders who wish to participate in the program are knowledgeable about the program. The Agency has used "Operation Assist" as a means by which FmHA assisted current FmHA borrowers to apply for guarantees with local lenders. This program resulted in 2533 guaranteed loans with a value of $181.9 million being made this past spring which otherwise would have resulted in insured loans. A number of lenders have backed off of agricultural-type loans due to past experience of having to charge off a number of agricultural loans. As the farm economy improves, lenders will move back into agricultural lending and the Agency believes the effort it has put forth over the past couple of years will insure the continued growth of the guaranteed program.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan program—Agriculture.

Accordingly Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Section 1980.6 is amended by revising the definition of "borrower" in paragraph (a) to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Borrower. (B&I and RH loans only). All parties liable for the loan or any part thereof. For Farmer Programs loans, see § 1980.106(b)(4) of Subpart B of this part for the definition of borrower.

* * * * *

3. Section 1980.13 is amended by revising paragraph (b) introductory text to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System Institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, mortgage company that is a part of a bank-holding company, or an insurance company that is regulated by the National Association of Insurance Commissioners. For Farmer Program loans, an Agricultural Credit Corporation which is a subsidiary of any Federal or State chartered bank is an eligible lender. The above entities must be subject to credit examination and supervision by either an agency of the United States or a State. (Credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency are eligible lenders only for Farmer Program guaranteed loans). Only those lenders listed in this paragraph are eligible to make and service guaranteed loans and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located, and the loan making and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

* * * * *

4. Section 1980.20 is revised to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be advised in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefor. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of Subpart E of this part. The maximum percentage of guarantee for all other loans covered by this section will be 90 percent. Also, except in regards to D & D Guaranteed loans (See Subpart E of this part), the maximum loss covered by the Loan Note Guarantee, Form FmHA 449–34 or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of:

(1) The percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or

(2) The percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

(b) FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicant's principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

5. Section 1980.22 is amended by revising paragraph (a) to read as follows:

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * * * *

6. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA approval official. The determination will be based upon FmHA's review of Form FmHA 1940–20, "Request for Environmental Information," when required as set forth in Subpart G of Part 1940 of this chapter and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA is responsible for assuring that the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and Subpart G of Part 1940 of this chapter are met.

7. Section 1980.41 is amended by revising paragraph (a) to read as follows:

§ 1980.41 Equal opportunity and nondiscrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, martial status or physical/mental handicap providing the applicant can execute a legal contract. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act. (See 12 CFR Part 202.) Such compliance will be accomplished prior to loan closing.

* * * * *

§ 1980.68 [Redesignated from § 1980.67]

8. Section 1980.67 is redesignated as § 1980.68 and a new § 1980.67 is added to read as follows:

§ 1980.67 Bankruptcy.

(a) *Reference.* Refer to Subparts B, C, E, or F of this part. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Payments will be made in accordance with applicable FmHA regulations.

(b) *Lender's option.* If a lender has made a loan or line of credit guaranteed by FmHA under previous regulations, and the borrower has filed for protection under a reorganization bankruptcy, the lender has the option of requesting an estimated loss payment under the provisions of this part.

9. Section 1980.85 is revised to read as follows:

§ 1980.85 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law, or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exception, must be in writing by the State Director and submitted through the appropriate Assistant Administrator. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. In addition, any request for an exception to § 1980.13(b) of this subpart must document that the lender involved has furnished acceptable evidence of regulation and supervision.

10. Appendix B to Subpart A is revised to read as follows:

Appendix B to Subpart A—Lender's Agreement [1]

USDA-FmHA

Form FmHA 449–35
(Rev. 1–89)
FORM APPROVED
OMB. NO. 0575–0024
Type of Loan: _____
Applicable 7 CFR Part 1980 Subpart _____
FmHA Loan Ident. No. _____

_____ (Lender of _____ has made a loan(s) to _____ (Borrower) _____ in the principal amount of $_____ _____ as evidenced by _____ note(s) (include Bond as appropriate) described as follows:——

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guarantee Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

[1] Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0024), Washington, D.C. 20503.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Programs loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that none of its officers or directors stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farmer Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $——— without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report." For Farm Ownership, Soil and Water, and Operating loans, Form FmHA 1980–41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's, Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accured interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accuring after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder'(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item

is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation:* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In al' liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be processed in accordance with the applicable FmHA regulations.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but all not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XVI. Bankruptcy.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during the reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.*

a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the acutal loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. Debt Write-down. For Farm Ownership, Soil and Water, and Operating loans only, refer to Title 7 of CFR Part 1980, Subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVIII. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XIX. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XX. Notices.

All notices and actions will be initiated through FmHA for _____

(State) with mailing address at the date of this instrument _____

Dated this ——— day of ———, 19—

LENDER:

By _____

Title _____

United States of America
Farmers Home Administration

By _____

Title _____

Attest: ——— (Seal)

11. Appendix E to Subpart A is revised to read as follows:

Appendix E to Subpart A—Lender's Agreement (Line of Credit)

USDA-FmHA
Form FmHA 1980–38
(Rev. 1–89)

FORM APPROVED
OMB No. 0575–0079

Type of Loan: ☐ OL ☐ EL or ☐ EE
FmHA Loan ID No. ———
Applicable 7 CFR Part 1980, Subpart ———

———
(Lender) of ———
has established a line of credit to ——— (Borrower) for the fiscal period ending ——— , 19—,
for the purpose of ———
in the maximum sum of $——— as evidenced by a "Line of Credit Agreement" dated ——— , 19—.

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980–27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980–15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed ———% of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement.

The Parties agree:

I. The maximum loss covered under the Contract of Guarantee will not exceed ——— percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. *Full Faith and Credit.*

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. *Lender's Sale of Guaranteed Line of Credit by Participation.*

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0079), Washington, D.C. 20503.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980–15.

V. The Lender certifies that none of its officers or directors, stockholders, or other owners (except stockholders in a Farm Credit Bank, other Farm Credit System institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or officer of a Farm Credit Bank or other Farm Credit System institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee.

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee.

IX. *Servicing.*

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized, rescheduled or (for Operating Loan lines of credit only) written down only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $——— without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 90 days old for both types of guarantees for operating Loan lines of credit, and for corporate guarantees for Emergency Livestock and Economic Emergency lines of credit. Financial statements of personal guarantors for Emergency Livestock and Economic Emergency lines of credit will not be over 60 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report".

11. Obtaining from the Borrower periodic financial statements under the following schedule:

———

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

12. Monitoring loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to do so will be considered negligent servicing and any loss attributed to such negligent servicing will not be paid by FmHA, as explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. For Operating Loan lines of credit only, the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR, Part 1980, Subpart B, § 1980.126

X. *Defaults.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

XI. *Liquidation.*

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option decides to carry out liquidation.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with.

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.

3. A proposed method making the maximum collection possible on the indebtedness.

4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation proposal.* FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation.* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. From FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.

2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449–30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral. For Operating Loan lines of credit only, if it appears the liquidation period will exceed 90 days, the

Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA regulations.

After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsiblity. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except for Operating Loan lines of credit only, when the Lender files an estimated loss claim. For Operating Loan lines of credit only, when a Lender files an estimated Loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated Loss claim is approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII. *Protective advances.*

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. *Additional Loans or Advances.*

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. *Future Recovery.*

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. *Transfer and Assumption Cases.*

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accured interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XVI. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. If the loan is involved in a reorganization bankruptcy proceeding under Chapter 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments:*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payment:*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. For FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankdruptcy court.

3. *Final Loss Payments:*

a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment is received.

4. *Payment Applicotion.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6 *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. *Debt Write-down.* For Operating Loan lines of credit only, refer to Title 7 of CFR, Part 1980, Subpart B, 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the precent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVII. *Debt Write-down.* For Operating Loan lines of credit only, refer to Title 7 of CFR, Part 1980, Subpart B, 1980.125. The maximum amount of loss payment associated with a loan/line if credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of loan/line of credit after the write-down. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVIII. *Other Requirements.* This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendment of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XIX. *Execution of Agreement.* If this agreement is executed prior to the execution of the Contract of guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XX. *Notices.* All notices and actions will be initiated through the FmHA County Supervisor for ——— (County) ———. (State with mailing address at the date of this instrument):

—.

Dated this ——— day of ———, 19 —.

LENDER:

ATTEST: ———. SEAL

By ———

Title ———

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By ———

Title ———

11A. Appendix H to Subpart A is revised to read as follows:

Appendix H to Subpart A—Interest Rate Buydown Agreement

USDA–FmHA

Form FmHA 1980–58

(Rev. 1–89)

☐Loan Note Guarantee

☐Contract of Guarantee

Type of Loan ———

7 CFR Part 1980

Subpart B

FORM APPROVED

OMB NO. 0575–0079

State ———

County ———

Date of Note ———

Borrower ———

FmHA Loan ID No. ———

Lender ———

Lender's IRS ID Tax No. ———

Lender's Address———

Principal Amount of Loan/Line of Credit Ceiling ———

The principal amount of loan or line of credit is evidenced by ——— note(s) or line of credit agreement(s) described below. This instrument is attached to note or line of credit agreement dated ——— in the face amount of $ ——— and is number ——— of ———.

Copies of the lender's Loan Note Guarantee, or Contract of Guarantee for a line(s) of credit, and any Assignment Guarantee Agreement, if applicable (Loan Note Guarantee cases only) are attached to this Agreement as a part of it.

Lender's Note No.	Note/Line of Credit Agreement	Interest Rate (If variable calculate in accordance with Part 1980, Subpart B Exhibit D, Paragraph IV f)	Lender Write Down	FmHA Interest Rate Buydown

This agreement is effective beginning ——— and expires on ———.

In consideration of the subject lender's write down of interest rate on the above borrower's account by ——— percentage points, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for ——— percentage points of the write down. The full amount of the interest rate buydown made by FmHA to the lender will be passed on to tbe borrower.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0075), Washington, D.C. 20503.

CONDITIONS OF INTEREST RATE BUYDOWN

1. Buydown Rates

The buydown rate set forth in this agreement will remain constant during the term of this agreement. If a 95 percent guarantee has been issued to the lender by FmHA under Exhibit E to 7 CFR Part 1980, Subpart B, the percentage of this interest rate reduction made by the lender will be permanent.

2. Interest Rate Buydown Payments

FmHA's payments made in connection with the interest rate buydown will be calculated using 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980–19, "Guaranteed Loan Closing Report," the preferred method, which may not change once established.

3. Annual Rate Buydown Claims and Payments

The intial Interest Rate Buydown claim will be prepared by the lender using form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about a date 12 months from the date of this agreement, unless it is the first or last claim which may be submitted in

accordance with the first and last due date on the borrower's promissory note. Subsequent claims will be filed by the lender on or about a date 12 months thereafter but no later than the anniversary date of filing of the initial interest rate buydown claim. Upon full payment of the note or line of credit agreement the lender will immediately prepare Form FmHA 1980–24 and mail a copy to the FmHA serving office.

4. When Interest Rate Buydown Payments Cease

For Loan Note Guarantee cases, when FmHA purchases a portion of a loan, interest buydown payments on that portion will cease. Interest rate buydown payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government. Interest buydown payments shall cease upon the assumption/transfer of the loan if the transferee was not liable for the debt at the time the buydown was granted. The lender shall complete Form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to request payment for the buydown/subsidy through the date of the transfer or assumption of the guaranteed loan.

5. Cash Flow

The lender certifies that the interest rate reduction to the borrower results in a reduced, equally amortized payment schedule for the term of this agreement so that the borrower's operation projects a positive cash flow on all income and expenses including debt service for the term of this agreement. A typical plan of operation must show that a positive cash flow can be expected during the initial 24 month buydown period. For those loans/lines of credit with terms less than 24 months, then the operation must show a positive cash flow for the term of the loan/line of credit. In cases where the term of the loan or line of credit agreement exceeds the term of this agreement, the lender certifies that the borrower is projected to have a positive cash flow on all income and expenses including debt service after this agreement expires. Cash flow and positive cash flow are defined in Exhibit D or Exhibit E to Subpart B of 7 CFR 1980, as applicable, and must be calculated in accordance with § 1980.113(d)(8) of Subpart B of Part 1980.

6. Cancellation of Interest

Lender certifies that the amount of interest written down on subject borrower's account will be permanently canceled as it becomes due and no attempt will be made to collect that portion of the debt.

7. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown. (Loan Note Guarantee Cases Only). See also item 10 of Form FmHA 449–36.

In the case of converting a guaranteed loan without an interest rate buydown to one with such a buydown, the lender must obtain the holder's consent in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. Any repurchase will only be made after the lender obtains FmHA's written approval. In the event the lender assigns the guaranteed portion of the loan to a holder(s) the Assignment Guarantee Agreement (Form FmHA 449–36) will be amended as provided in 7 CFR, Part 1980, Subpart B, Exhibit D, paragraph VI B2 or Exhibit E, paragraph VI B2, as applicable, to reflect the reduced interest rate.

8. Regulatory Changes

This Agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provisions of this agreement.

9. Cancellation

The Interest Rate Buydown Agreement is in contestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this Agreement is executed or for which the lender participates in or condones.

10. Excessive Interest Rate Buydown

The Government may amend or cancel this agreement and collect from the lender any amount of reduction granted as a result of incomplete or inaccurate information, computation errors, or other circumstances which resulted in interest rate buydown payments that the lender was not entitled to receive.

11. Access to Lender's Files

Lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining interest rate buydown claims.

Lender

By _____

Title _____

United States of America, Farmers Home Administration

Attest: _____

[SEAL]

Address: _____

_____

By _____

Title _____

Acknowledged:

Borrower _____

Attest: _____

[SEAL]

12. Subpart B, consisting of §§ 1980.101 through 1980.200, and Exhibits A and D of Subpart B are revised, Exhibit B is removed and reserved, and Exhibits E and F of Subpart B are added to read as follows:

Subpart B—Farmer Program Loans

Sec.

1980.101 Introduction.
1980.102—1980.105 Reserved]
1980.106 Abbreviations and definitions.
1980.107 Full faith and credit.
1980.108 General provisions.
1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.
1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).
1980.111—1980.112 [Reserved]
1980.113 Receiving and processing applications.
1980.114 FmHA evaluation of applications.
1980.115 County Committee review.
1980.116 Review of requirements.
1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.
1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.
1980.119—1980.121 [Reserved]
1980.122 Substitution of lenders.
1980.123 Transfer and assumption of Farmer Program loans.
1980.124 Consolidation, rescheduling, reamortizing and deferred.
1980.125 Debt write down.
1980.126 Mediation.
1980.127—1980.128 [Reserved]
1980.129 Planning and performing development.
1980.130 Loan servicing.
1980.131—1980.135 [Reserved]
1980.136 Protective advances.
1980.137—1980.138 [Reserved]
1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.
1980.140 1980.143 [Reserved]
1980.144 Bankruptcy.
1980.145 Defaults by borrower.
1980.146 Liquidation.
1980.147 Graduation.
1980.148 Appeal procedure.
1980.149 Access to lender's records.
1980.150—1980.152 [Reserved]
1980.153 FmHA forms.
1980.154 1980.174 [Reserved
1980.175 Operating loans.
1980.176—1980.179 [Reserved]
1980.180 Farm Ownership loans.
1980.181—1980.184 [Reserved]
1980.185 Soil and Water loans.
1980.186—1980.199 [Reserved]
1980.200 OMB control number.
Exhibit A—Approved Lender Program—Farm Ownership, Soil and Water and Operating Loans
Exhibit B—[Reserved]

. . . . .

Exhibit D—Interest Rate Buydown Program.
Exhibit E—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm Land.
Exhibit F—Shared Appreciation Agreement.

Subpart B—Farmer Program Loans

§ 1980.101 Introduction

(a) *Policy.* This Subpart, supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO) and Soil and Water (SW) loans. It also contains regulations concerning the servicing of these loans as well as the servicing of Emergency (EM) and Recreation (RL) loans, which are no longer guaranteed by FmHA. It is the policy of FmHA to guarantee loans made to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap, providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans, and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Rate Buydown Program for Guaranteed Operating (OL) loans including lines of credit, Guaranteed Farm Ownership (FO) loans including lines of credit, Guaranteed Farm Ownership (FO) loans and Guaranteed Soil and Water (SW) loans. Exhibit E provides policies and procedures for a Demonstration Project for purchase of certain Farm Credit System Acquired Farm Land. Exhibit F provides the precedures for the recapturing of shared appreciation when a lender requests a write down on the debt.

(b) *Program administration.* Farmer Programs are administered by the FmHA Administrator through a State Director, who serves each State through District Directors and County Supervisors. The County Supervisor is the focal point for the program and is the local contact person for processing and servicing activities, even though this subpart refers in various places to the duties and responsibilities of other FmHA employees.

(c) *Administrative provisions.* Within this subpart there are administrative provisions which, for the benefit of the State Directors, District Directors, and County Supervisors, set out the internal duties and responsibilities of FmHA personnel and outline the procedures to be followed in carrying out the requirements of the program. These provisions are identified as "ADMINISTRATIVE" and correspond to the sections of this subpart which they follow.

(d) *References.* Sections 1980.101—1980.174 pertain to the FO, EM, OL, RL, and SW loan programs. The requirements set forth in Subpart A of Part 1980 of this chapter which are not in conflict with the provisions set forth in this subpart must be met.

(e) *Type of guarantee.*—(1) *Loan Note Guarantee.* Lenders desiring to sell the guaranteed portion of fixed amount and term loans will use the method contained in Subpart A of this part. In accordance with that method, loans may be made by a lender and guaranteed by issuance of Form FmHA 449–34, "Loan Note Guarantee."

(2) *Contract of Guarantee* (Operating Loans—Line of Credit only). Lenders desiring a guarantee on a "line of credit" will use the method contained in Subpart A of this part. Line of credit loans are guaranteed by Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)." The amount of loan may not exceed the line of credit ceiling set forth in the contract. This procedure will be followed for operating purposes—line of credit only. (See § 1980.175(c)(2) of this Subpart.)

§§ 1980.102—1980.105 [Reserved]

§ 1980.106 Abbreviations and definitions.

(a) *Abbreviations.* See § 1980.6 of Subpart A of this part.

(b) *Definitions.* The following definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of Subpart A of this part.

(1) *Applicant.* The party applying for a guaranteed loan or line of credit.

(2) *Approval official.* An FmHA field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish (as defined in this section), amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be a farm only if it is conducted on the grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

(4) *Borrower.* When a loan is made to an individual, the individual is the lender's borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the lender's borrower.

(5) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(6) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation by the laws of the State(s) in which the entity will operate a farm(s).

(7) *Family farm.* A farm which:

(i) Produces agricutlural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(ii) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(A) Pay necessary family living and operating expenses.

(B) Maintain essential chattel and real property.

(C) Pay debts.

(iii) Is managed by:

(A) The borrower when a loan is made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(iv) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(A) The borrower and the borrower's immediate family for a loan made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(v) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

(8) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops, livestock, and/or aquacultural products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although

physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

(9) *Fish.* Any aquatic, gilled animal commonly known as "fish" as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

(10) *Fixture.* Generally an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.

(11) *Joint Operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. For example, husband and wife who apply for a loan together will be considered a joint operation.

(12) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

(13) *Market value.* The amount which an informed and willing buyer would pay an informed and willing but not forced seller in a completely voluntary sale.

(14) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(15) *Nonfarm enterprise.* Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(16) *Partnership.* Any entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by laws of the State(s) in which the entity will operate a farm and must be authorized to own both real estate and personal property and to incur debts in its own name.

(17) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows plus the planned reserve for the planned period. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113(d)(8) of this subpart. A positive cash flow must show that a borrower will be at least able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet scheduled payments on all open accounts and carryover debts including delinquent taxes.

(iii) Provide a reserve of at least 10 percent in addition to the loan installments due and payable as recorded in Table K of the Farm and Home Plan or other similar plans of operation acceptable to FmHA. The reserve will allow for new investments, risk and uncertainties associated with the farming operation.

(iv) Provide living expenses for an individual borrower and that borrower's family members of for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower and that operator's family members which is in accordance with the essential family needs. Family members include the immediate members of the family which reside in the same household.

(18) *Recreation enterprise.* An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

(19) *Related by blood or marriage.* As used in this Subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

(20) *Security.* Property of any kind subject to a real or personal property lien. Any reference to "collateral" or "security property" shall be considered a reference to the term "security."

(21) *State or United Stotes.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(22) *Subsequent loans.* Any loans processed by the Finance Office after it processes an initial loan for a borrower.

(23) *Veteran.* One who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps or Coast Guard under conditions other than dishonorable, who served on active duty in such forces: (1) during the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955; or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

§ 1980.107 Full faith and credit.

See § 1980.11 of Subpart A of this part.

§ 1980.108 General provisions.

(a) *Security, personal and corporate guarantees, and other requirements.* See §§ 1980.175(h), 1980.180(f) and 1980.185(f) of this subpart for specific security requirements for the type of loan or line of credit being considered.

(1) *Security.* (i) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(ii) All security must secure the entire loan/line of credit. The lender may not take separate security to secure only that portion of the loan/line of credit not covered by the guarantee. The lender may not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan/line of credit. However, compensating balances or certificates of deposit as used in the ordinary course of business are not prohibited.

(iii) When FmHA and a guaranteed lender are involved in separate loans to the *same borrower*, separate collateral must be clearly identified for both the FmHA and the lender's loan. Different lien positions on real estate are considered separate collateral. FmHA will not subordinate any interest in property which secures as insured loan, except it may do so when crops are involved to permit a guaranteed lender to advance funds and perfect its security interest in the crop.

(iv) When the lender is involved in both a guaranteed loan and an unguaranteed loan to the same borrower and there will be like collateral for each, the guaranteed loan(s) must be adequately secured by a lien on separate collateral that is clearly identifiable or a lien of higher priority if the same collateral is used to secure both loans. When the same collateral secures both loans, the lender must agree in writing that scheduled installments on the guaranteed loan will be paid first.

(2) *Personal and corporate guarantees.* (i) for FO, SW and OL loans/lines of credit, personal guarantees from all partners of a partnership, and all joint operators of a joint operation will be required. The lender and/or FmHA also may require that such guarantees be secured.

(ii) For OL loans/lines of credit, personal guarantees from principal members of cooperatives, and stockholders of corporations, will be required. For this purpose, any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member or stockholder owns or controls at least a 20 percent interest, all members or stockholders will be considered principal members or stockholders. For FO, and SW loans, personal guarantees from members holding a majority interest in cooperatives, and stockholders of corporations, will be required. Guarantees of parent, subsidiary, or affiliated companies may also be required. Guarantees will be required on an amount which reasonably assures repayment of the loan/line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender and/or FmHA may require additional personal and corporate guarantees. The lender and/or FmHA also require that such guarantees be secured.

(iii) The lender may ask FmHA to make an exception to the requirement for personal or entity guarantees if the proposed guarantors cannot provide such guarantees due to other existing contractual obligations or legal restrictions. Applicants will give the lender written evidence of any such obligations or restrictions. FmHA's concurrence is required before an exception is made.

(iv) *Guarantors of applicants will:*

(A) In the case of personal guarantees, provide current financial statements (not over 90 days old at time of filing) signed by the guarantors, and disclosing community or homestead property.

(B) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing) certified by an officer of the corporation.

(3) *Other requirements.* (i) The lender must ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties against the security of the borrower, and that no suits are pending or threatened that would adversely affect the borrower's interest in the collateral when the security instruments are filed when final loan disbursement is made

(ii) Appropriate hazard insurance with a standard mortgage clause naming the lender as beneficiary may be required by the lender when deemed necessary.

(iii) The lender will encourage any borrower who grows crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(iv) When the lender believes it is necessary, life insurance will be required for the individual borrower or all members of the entity borrower and will be assigned or pledged to the lender. This life insurance may be decreasing term insurance. A schedule of life insurance available will be included as part of the application.

(v) Worker's Compensation Insurance will be obtained as required by State law.

(vi) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter will be met.

(b) *Preference.* When it appears that available funds will be inadequate to meet the needs of all applicants, the following preference will apply;

(1) An application on hand from a veteran as defined in § 1980.106(b)(23) of this subpart will be given preference by the lender over an application from a nonveteran on file at the same time.

(2) An application on hand from an FmHA insured loan borrower will be given preference over one from an applicant who does not have an FmHA insured loan.

(3) An application for a loan for land purchase from an applicant who has a dependent family; or is an owner of livestock and farm implements necessary to successfully carry on a farming operation; or is able to make downpayments will be given preference over one from an applicant who does not meet any of these criteria.

(c) *Determining whether credit is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loans/lines of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, a joint operation and the joint operators as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans, insured and guaranteed.* (1) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO or SW guaranteed loans, or OL guaranteed loans/lines of credit, provided the total outstanding principal indebtedness for EE, FO, RL, SW, or OL guaranteed or insured loans/lines of credit to FmHA and/or an FmHA guaranteed lender would not exceed $650,000.

(2) A guaranteed FO or OL loan may be made to an insured borrower with the same type of loan provided:

(i) The outstanding combined insured and guaranteed FO or OL principal balance owned by the loan applicant or owed by anyone who will sign the note as cosigner may not exceed the authorized guaranteed loan limit for that type of loan.

(ii) Chattel and/or real estate security must be separate and identifiable from the security pledged to FmHA for an insured loan. Different lien positions on real estate are considered separate and identifiable collateral.

Administrative

The County Supervisor will determine whether the lender is requiring adequate security. If necessary, the assistance of the District Director or Farmer Programs Staff will be obtained.

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) *Promissory notes, line of credit ogreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this subpart or Subpart A of this part.

(1) Repayment Schedules—In order for notes to be acceptable, the principal and interest repayment schedules will be clearly shown in the note(s). Use of a note with a "payment on demand" feature is not permissible unless it is modified by a supplemental agreement in the form of an allonge to the note or other legally effective amendment which waives the demand feature and sets forth the repayment schedule.

(2) Signatures—Except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart the promissory note will be signed as follows:

(i) Individuals. Only one person will sign the note as a borrower. If a cosigner is needed, the cosigner will also sign the note.

(ii) Partnerships or joint operations. The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(iii) Corporations or cooperatives—OL guaranteed loans/lines of credit. The promissory note(s) or line of credit agreement(s) will be executed so as to evidence liability of the entity as well as each principal member or stockholder as an individual. Any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member, partner, or stockholder owns or controls at least a 20 percent interest, all members or stockholders will be considered principal member stockholders.

(iv) Corporations or cooperatives—FO and SW guaranteed loans. The promissory note(s) will be executed so as to evidence liability of the entity as well as liability of member(s) or stockholder(s) holding a majority interest in the entity as individuals.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) Stating that "disposition of the collateral is not authorized hereby."

§ 1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).

Loan subsides are payments made by FmHA to lenders to induce them to service and collect guaranteed EM loans.

(a) *Subsidy rates.* FmHA will establish subsidy rates periodically. Thus, the subsidy rate may vary from time to time. However, the subsidy rate set forth in the Loan Note Guarantee will remain constant during the life of the loan guarantee. The subsidy rate will be a rate equal to the difference, if any, between the interest rate charged to the borrower and any higher annual rate prevailing in the private market for similar loans as determined by the Secretary of Agriculture. The lender may contact the local County Supervisor servicing the area to obtain the current subsidy rate. (See FmHA Instruction 440.1, Exhibit B, a copy of which is available in any FmHA Office.)

(b) *Annual subsidy claims and payments.* The initial subsidy claim will be prepared by the lender using Form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about 12 months from the date of the note. The original will be mailed by the lender to the County Supervisor. Subsequent subsidy claims will be filed by the lender on or about 12 months thereafter, but no later than the anniversary date of the filing of the initial subsidy claim. Upon full payment of a note the lender will immediately prepare Form FmHA 1980–24 and mail the original to the County Supervisor.

(c) *When subsidy payments cease.* When FmHA purchases a guaranteed portion of a loan, subsidy payments on that portion will cease. Loan subsidy payments will also cease when the Loan Note Guarantee terminates.

§§ 1980.111–1980.112 [Reserved]

§ 1980.113 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. A preliminary application may be used when an applicant or lender wants FmHA to determine eligibility, feasibility, or the availability of guaranteed authority before filing a complete application. Exhibit C of this subpart (available in any FmHA office) may be used by leaders for submitting applications under this subpart. The County Supervisor will cooperate with the lender and applicant and will provide appropriate assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Preliminary application.* This will consist of:

(1) Form FmHA 410–1, "Application for FmHA Services." For applications to be processed under the Approved Lender feature set out in Exhibit A of this subpart, Form FmHA 410–1 need only reflect the name, address, telephone number, purpose of the loan or line of credit, and date and signature of the applicant, provided the information requested on the form is provided on an attached alternative document such as the lender's application form, the FmHA Request for Loan Note Guarantee/Contract of Guarantee, etc.

(2) Verification of off-farm employment, if any.

(3) Commercial credit report or other information concerning an applicant's credit history.

(4) For a cooperative, corporation, partnership, or joint operation, those additional items listed in § 1980.113(b) of this subpart.

(5) Any proposed line of credit agreement.

(b) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation, the following additional information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(2) A current personal financial statement from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation.

(3) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(4) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(c) *Preliminary determination by FmHA.* If it appears, after a review of the preliminary application, that the applicant is not eligible, the County Supervisor will notify the loan applicant and the lender in writing within 5 calendar days of FmHA's decision of all the reasons for the decision and advise them of their opportunity for an appeal, as set out in Subpart B of Part 1900 of this chapter, if applicable. If it appears that the applicant is eligible and loan guarantee funding authority is available, the County Supervisor will inform the lender and applicant not later than 10 calendar days after receipt of the preliminary application and request the lender to submit a complete application.

(d) *Complete application.* The complete application will consist of:

(1) Those items listed in paragraphs (a) and (b) of this section.

(2) Applicable items required by §§ 1980.40, 1980.41, 1980.42, 1980.43, 1980.44 and 1980.45 of Subpart A of this part.

(3) Form FmHA 449–12, "Request for Loan Note Guarantee (Farmer Program Loans)," or Form FmHA 1980–25, "Request for Guarantee (Operating Loan/Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

(4) A copy of any lease, contract or agreement entered into by the applicant which may be pertinent to the consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(5) Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by Approved Lenders.

(6) Notices of compliance with the Privacy Act of 1974.

(7) Proposed loan agreements or line of credit agreements when a Contract of Guarantee is requested, between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement," or paragraph VII of Form FmHA 1980–38, "Lender's Agreement.") Loan Agreements of Line of Credit Agreements will include *at least the following*:

(i) Any improved management practices to be implemented.

(ii) Requirements for accounting and recordkeeping and periodic financial reporting. Line of credit agreements will require the borrower to submit annual financial statements and cash flow projections prepared in accordance with paragraph (d)(3) of this section.

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

(iv) Prohibitions against assuming liabilities or obligations of others.

(v) Restrictions on patronage refunds, if the applicant is a cooperative; dividend payments, if the applicant is a corporation; or distribution of net income, if the applicant is a partnership or joint operation.

(vi) Limitations on purchase or sale of equipment and/or fixed assets.

(vii) Limits on compensation of officers and/or owners if not a sole proprietorship.

(viii) Minimum working capital requirements.

(ix) Maximum debt to asset ratio.

(x) Restrictions concerning consolidation, mergers or other circumstances if the applicant is a corporate entity.

(xi) Purposes for which loan funds or funds advanced under the line of credit will be used.

(xii) Interest rate.

(xiii) The plan for repayment, reamortization, or rescheduling of the loan or line of credit.

(xiv) Establishment of the period of time (1, 2 or 3 years) and the ceiling ($ amount) for lines of credit.

(8) Production history and operation forecast must also be provided by the lender and/or applicant. Financial and production history must include the past 5 years. The information will also include current financial condition; projected production; income and expenses; and loan/line of credit repayment plan. Forms ordinarily used by the lender or Form FmHA 431–2, "Farm and Home Plan," Form FmHA 431–1, "Long-Time Farm and Home Plan," or Form FmHA 1924–1, "Development Plan," may be used, or other similar plans of operation acceptable to FmHA.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, documented by date, location, time and degree of use.

(B) Government loan rates, i.e., ASCS target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the State land grant university for the time of crop sale.

(F) For specialty crops, the average of three previous years' prices, *only* if the above data is not available.

(ii) Lenders will use the following guidelines for estimating crop yields:

(A) for existing farmers, actual production/yields for the past 5 years will be utilized.

(B) For those farmers with less than a 5 year production/yield history, the actual production history will be utilized.

(C) For those beginning farmers, consider the use of Agricultural and Stabilization Conservation Service (ASCS) records, Cooperative Extension Service (CES) data, State averages, County averages or any other reliable sources of information that are agreeable with the lender and the applicant.

(D) When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yields, County average yields will be used for that year(s). If County average yields are not available yields will be used.

(9) Appraisals—(i) *Appraisal Report.* (A) Real estate or chattel property that will serve as collateral for a loan/line of credit will be appraised. Appraisal reports may be on forms approved by the lender and/or Form FmHA 422–1, "Appraisal Report Farm Tract," and Form FmHA 440–21, "Appraisal of Chattel Property."

(B) A real estate appraisal report will be based on at least two comparable sales made within 2 years. If the real estate has been appraised by FmHA or by a qualified appraiser within the last 12 months and if no significant changes in the market value of real estate have occurred in the area within the past 12-month period, a new appraisal does not have to be made.

(C) A chattel appraisal is required when an initial loan is made and chattels are taken as security.

(ii) *Appraiser Qualifications.* The lender is responsible for substantiating the appraiser's qualifications. The lender will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the lender will utilize the appraiser in any appraisal work. If FmHA is not familiar with the appraiser, the lender will submit a recent appraisal completed by the appraiser. The appraiser completing the report must meet *one* of the following qualifications in the following order of preference:

(A) Certification by a National or State appraisal society.

(B) If a certified appraiser is not available, the lender may use other qualified appraisers, if the lender can establish that the appraiser meets the criteria for certification in a National or State appraisal society.

(C) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(10) The lender's plan for servicing the loan/line of credit and any plan for providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.

(11) Notices of compliance with the Privacy Act of 1974.

(12) Applicable items required in Subpart G of Part 1940 of this chapter, including SCS Form CPA–26, "Highly Erodible Land and Wetland

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Conservation Determination," and Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," as specified in Exhibit M to Subpart G of Part 1940 of this chapter.

Administrative

A. Regardless of whether the applicant is acting as an individual or as a representative of a cooperative, corporation, partnership, or joint operation, when FmHA solicits personal information, the individual will be given FmHA 401–9, "Statement Required by the Privacy Act."

B. If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410–10, "Privacy Act Statement to References."

C. Immediately after a preliminary or complete application is received, and prior to County Committee action, the County Supervisor will send Attachment 1 to Exhibit D of this subpart to the borrower and lender describing the Interest Rate Buydown Program.

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determination will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation (Farmer Programs)." This evaluation is for the benefit of FmHA, not the lender. The County Supervisor will notify participants in the Approved Lender Program within three working days whether an application submitted is complete and acceptable. Nonapproved lenders will be advised on the completeness of applications within 14 working days. This requirement is contingent upon the availability of a County Supervisor during the prescribed timeframe, and employment ceilings affecting FmHA.

(a) *Indication of unacceptability.* If the application for a guarantee cannot be approved for reasons that would not be affected by the County Committee certification, the County Supervisor will so inform the lender and the loan applicant in writing within 5 working days of the decision. Factual reasons for the decision will be clearly set forth along with notice of the opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

(b) *Indication of acceptability.* If the evaluation indicates that the guarantee may be approved, the County Supervisor will present the application to the County Committee for certification or rejection.

Administrative

The County Supervisor will:

A. Determine if the material and information submitted is complete.

B. Determine that a positive cash flow projection as defined in § 1980.106(b)(17) of this subpart can be reasonably achieved.

C. Determine if the proposed collateral is adequate, repayment plan realistic, and loan agreement is satisfactory.

D. Determine that the requirements of §§ 1980.40 through 1980.45 of Subpart A of this part and those found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

E. Follow the requirements of Subpart G of Part 1940 of this chapter.

§ 1980.115 County Committee review.

The County Committee will review completed loan applications within 30 calendar days (or 14 calendar days when possible, if a participant in the Approved Lender Program is involved) to determine whether the applicants meet FmHA eligibility requirements. The County Supervisor will promptly notify the lender and applicant in writing of the County Committee's determination. (See § 1980.115 Administrative paragraph B of this subpart.)

(a) *Favorable action.* If the County Committee finds the applicant eligible, the members will sign form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. When the applicant has been determined eligible for assistance and additional information becomes available before issuance of the conditional commitment that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the applicant.

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440–2 and the County Supervisor will inform the lender and the loan applicant in writing within 10 calendar days of FmHA's decision of the reasons for disapproval and of their opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

Administrative

A. After County Committee certification is obtained, the County Supervisor will:

1. Prepare Form FmHA 1940–1, "Request for Obligation of Funds," and, for initial loans/lines of credit only, Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the Forms Manual Insert (1 MI).

2. Prepare Form FmHA 419–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, Conditional Commitment for Contract of Guarantee (Line of Credit)." In no case will Form FmHA 449–14 or 1980–15 be executed prior to the determination of availability of funds for the loan/line of credit. Any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices, and the type and frequency of financial report required by FmHA but not required by the lender. An attachment to the form may be used if necessary.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. The approval official will:

1. Approve or disapprove all guaranteed applications not later than 45 calendar days after receipt of completed applications, execute Forms FmHA 1940–1, 449–14 and/or 1980–15 and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when funds are temporarily exhausted and the loan will be approved, Form FmHA 1940–1 must be signed. The following approval condition will be included, under Section 41, "Comments and Requirements of Certifying Official," for guaranteed Farmer Program loans.

"This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds."

When funds are exhausted, a Conditional Commitment for Guarantee *will not* be executed until such time as funds become available and have been obligated in connection with the guarantee request.

2. Set forth in the space provided on Form FmHA 449–14 (A.2. above) or Form FmHA 1980–15 (A.2. above) any special conditions of approval, including requirements for security, improved management practices relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart G of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender. When Form FmHA 1980–15 is executed, the approval official will add the the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) of this subpart for prior approval of advances to be made for the second and third years of a line of credit. The loan approval official will also include the following requirement as condition of approval for either Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the borower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit if Form FmHA 1980–15 is used) until 60 calendar days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program."

3. An attachment to the form may be used, if necessary. Return Forms FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution. When Form FmHA 1980–15 is executed the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) of this Subpart for prior approval of advances made for the second and third years of a line of credit.

4. Forward the loan docket to the appropriate approval official if the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

5. In addition to the requirements in paragraph B.1. above, determinations will be made within 14 working days of County Committee Certification for Approved Lenders, if possible, and within 45 calendar days of receipt of a completed application for nonapproved lenders.

§ 1980.116 Review of requirements.

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449–14 or Form FmHA 1980–15 will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449–14 or FmHA 1980–15 will be so revised. If rejected, the County Supervisor will notify the loan applicant and the lender in writing within 10 calendar days of FmHA's decision as set out in Subpart A of Part 1910 of this chapter, of all the specific reasons for the decision, and advises them of their opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

See § 1980.60 of Subpart A of this part. The provisions of § 1980.60(a)(2) and (8) are *not* applicable to Farmer Program loans.

Administrative

The County Supervisor will:

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 449–14 or FmHA 1980–15. A copy of Form FmHA 449–14 or FmHA 1980–15 and any amendments will be included in the file.

B. Review the loan agreement between the borrower and lender which provides for the periodic submission of financial statements to the County Supervisor. *An annual analysis report of the farming operation will be required.* In line of credit cases, the County Supervisor will review the lender the requirement that the lender is to submit a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) of this subpart for prior approval of advances made in the second and third years of a line of credit.

C. Review plans for inspection on construction projects.

D. Review basic credit requirements of all loans/lines of credit.

E. Review cost overruns, if any, and how they will be met.

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

(a) See § 1980.61 of Subpart A of this part.

(b) A guaranteed portion of the loan may not be sold by the lender until the loan has been fully disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in paragraph III of Form FmHA 1980–38, "Lender's Agreement (Line of Credit)."

(c) The amount to be entered in the blank in paragraph IX. C.5. of Form FmHA 449–35 "Lender's Agreement," or paragraph IX. C.5. of Form FmHA 1980–38 for a loan secured by chattels, will be the lesser of $10,000 or 20 percent of the loan/line of credit for OL loan/line of credit purposes.

Administrative

A. *Section 1980.61(a).* The original Form FmHA 449–35 or Form FmHA 1980–83 will be kept in the County Office.

B. *Section 1980.61(b)(1).* Copy(ies) of the Loan Note Guarantee(s) or Contract of Guarantee(s) will be kept in the County Office. Additional copy(ies) may be retained by the State Office.

C. *Section 1980.61(b)(3).* For reporting purposes where multi-notes are issued, the loan will be counted as one loan regardless of the number of notes issued.

§§ 1980.119–1980.121 [Reserved]

§ 1980.122 Substitution of lenders.

With prior written approval of the FmHA State Director, a new eligible lender may be substituted for the original provided the new lender agrees in writing to assume all servicing and other responsibilities *of the original lender* and acquires the unguaranteed portion of the loan. Such substitution may be made without the holder's consent but not without notice to holder(s) by the substituted lender. The new lender will execute Form FmHA 449–35 or Form FmHA 1980–38 at the same time of the substitution. After approval of the lender, Form FmHA 1980–42, "Notice of Substitution of Lender," will be completed by the FmHA servicing representative and mailed to the Finance Office.

§ 1980.123 Transfer and assumption of Farmer Program loans.

(a) All transfers and assumptions must be approved in writing by FmHA. Such transfers and assumptions must be to an eligible applicant. EM actual loss loans may only be transferred to a co-obligor. All transfers and assumptions must meet the requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(b) The transferee will submit Form FmHA 410–1 "Application for FmHA Services," and other needed information to the lender for evaluation.

(c) In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual transferee or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding years. Applicants will attest on Form FmHA 410–1 that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) When a transfer and assumption occurs and the transferee has an outstanding insured or guaranteed FO, SW or RL loan, the borrower's total unpaid principal insured and guaranteed indebtedness for these loans may not exceed the lesser of $300,000 or the market value of the farm or other security. When the transferee is indebted for an OL loan/line of credit, the transferee's total insured and guaranteed OL principal balance may not exceed $400,000 at the time of the transfer and assumption.

(e) Available transfer and assumption options to eligible applicants include transferring the *total* indebtedness to another borrower on the same terms, or on different terms not to exceed those terms for which an initial loan/line of credit can be made.

(f) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or the

line of credit ceiling for Contracts of Guarantee. If the transfer is for less than this:

(1) FmHA must determine that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer.

(2) FmHA County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the transferor's ability.

(g) Any proceeds received from the sale of security before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(h) The lender is responsible for getting an appraisal of the fair market value of all the collateral securing the loan/line of credit. Subject to the approval of the transferor and transferee, an appraisal can be made by either independent fee appraisers or qualified appraisers on the lender's staff. Appraisers must meet the qualifications outlined in § 1980.113(d)(9)(ii) of this subpart. The appraisal report fee and other related costs will be paid by the transferor and the transferee, as they agree.

(i) The market value of the security being acquired by the transferee, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the total guaranteed loan/line of credit ceiling for Contracts of Guarantee, plus any prior liens.

(j) If any cash downpayment is made, it may be paid directly to the transferor as payment for the transferor's equity in the project provided:

(1) The lender recommends and FmHA approves the cash downpayment be released to the transferor.

(2) Any downpayment that is made by the transferee to the transferor does not suspend the transferee's obligation to continue to make the guaranteed loan/line of credit payments as they come due under the terms of the assumption.

(3) The transferor agrees not to take any actions against the transferee in connection with such transfer in the future without first obtaining the approval of FmHA and the lender.

(4) The lender determines that the transferee has the ability to repay the guaranteed debt assumed and any other indebtedness.

(k) The lender will issue a statement to FmHA that the debt can be properly transferred and the conveyance instruments must be filed, registered, or recorded, as appropriate, and must be legally sufficient.

(l) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(m) The assumption will be made on the lender's form of assumption agreement.

(n) The assumption agreement must contain the FmHA case number of the transferor and transferee.

(o) The assumption agreement may change loan terms and/or interest rates only if a new Loan Note Guarantee or Contract of Guarantee will be executed.

(p) In the case of a transfer and assumption at the same rates and terms the lender must give any holder(s) notice of the transfer and notice that future payments will be made under a different name and case number. It is the lender's responsibility to see that the transfer and assumption is noted on all originals of the Loan Note Guarantee or Contract of Guarantee. The lender must provide FmHA with a copy of the transfer and assumption agreement.

(q) Before allowing a transfer and assumption at *different* rates and terms, the lender must consult with any holder(s). If the holder(s) consents in writing to the change in rates and terms, the lender must provide FmHA with documentation of the holders concurrence and a copy of the transfer and assumption agreement and must note the transfer and assumption on all originals of the Loan Note Guarantee or Contract of Guarantee.

Administrative

A. *Loan approval officials may consent:*

1. To all transfer and assumption cases.

2. To the release of the transferor and guarantor(s) from liability on the loan or line of credit agreement. The approval official will notify the lender and the appropriate parties of the decision in writing.

3. To any changes in the loan or line of credit terms and/or interest rates provided the holder(s), if any, and lender agree.

B. The Loan Note Guarantee or Contract of Guarantee will be endorsed in the space provided on the form.

C. A copy of the Assumption Agreement will be retained in the County Office file. The County Supervisor will notify the Finance Office of all approved transfer and assumption cases so that Finance Office records may be adjusted accordingly. This will be accomplished by sending completed Forms FmHA 1960-7, "Notification of Transfer and Assumption of a Guaranteed Loan," FmHA 1980-51, "Add, Change, or Delete Guaranteed Loan Record," and, for new borrowers, FmHA 1960-50 to the Finance Office.

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) *General requirements.* All borrowers are expected to repay their loans according to the planned repayment schedule. However, circumstances may arise which will not permit borrowers to pay as scheduled. When rescheduling, reamortization, or deferral will assist in the orderly collection of a loan, such action *may* be taken upon prior concurrence given by FmHA provided:

(1) The borrower meets the eligibility requirements for an initial loan guarantee and the lender's security position would not be adversely affected. For FO, SW loans and OL loans/lines of credit refer to this subpart for these requirements. For EM loans refer to Subpart D of Part 1945 of this chapter for eligibility and security requirements. For RL loans refer to SW eligibility and security requirements as set out in this subpart.

(2) The action will ensure that the borrower will be able to continue the farming or ranching operation.

(3) Any delinquency is due to circumstances beyond the borrower's control. Circumstances beyond the borrower's control are limited to one of the following:

(i) A reduction in income has occurred which is not due to inadequate or poor financial management decisions, such as untimely marketing practices which might occur when a borrower has forward contracted and the price continues to increase.

(ii) Unforseen, but essential, farm expenses and/or, in the case of individual borrowers and the partners, joint operators, stockholders and members who operate the farm, essential family living expenses.

(iii) A natural disaster, such as a drought or flood, regardless of whether the area has been declared a disaster area.

(4) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements with, and promises made to, the lender. This includes cooperating in servicing the account and maintaining the security;

(5) The lender determines that a positive cash flow cannot be developed with the existing repayment schedule, but can be developed with revised repayment terms;

(6) Any holder(s) agrees in writing to the rescheduling, reamortization, and deferral. The holder(s) must understand that they will not receive any payments from the lender or from FmHA during any deferral period.

(7) No interest is ever charged on interest.

(b) *Consolidation and rescheduling.* (1) The term "consolidate" means to combine the outstanding principal and interest balances of two or more EM loans *made for operating (Subtitle B) purposes or two or more OL Loans.* An existing OL line of credit loan may only be consolidated with a new OL line of credit loan if the terms (to make advances as well as final maturity date) of the new OL line of credit are within the terms of the existing OL line of credit agreement.

(2) The term "rescheduling" means to rewrite the rates and/or terms of a single note or line of credit agreement which acknowledges indebtedness for a loan made for operating purposes (EM loan or OL loan/line of credit).

(3) EM loans made for operating loan purposes may be consolidated only with other EM loans made for operating loan purposes, including EM loans for annual operating purposes and EM major adjustment loans for operating (Subtitle B) purposes. OL Loan Note Guarantee loans may be consolidated only with other OL Loan Note Guarantee loans.

(4) An EM loan made for operating loan purposes or an OL loan/line of credit may be rescheduled when it is in the best interest of the borrower and the lender to do so.

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes, OL loans secured by real estate, OL Contract of Guarantee line of credit with unlike terms and OL loans/lines of credit with outstanding interest rate buydown agreement or shared appreciation agreement will *not* be consolidated.

(6) There is no limit on the number of times a consolidation or rescheduling action may take place provided all the interest payments are being made and a principal payment is made which is at least equal the amount of depreciation on the security.

(7) Unless a note or line of credit agreement being rescheduled is consolidated with one or more notes or lines of credit agreements at the time of the rescheduling, no new note or line of credit agreement will be taken when a loan/line of credit is rescheduled. Instead, the existing note or line of credit agreement will be modified by attaching an "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. When a note or line of credit agreement being rescheduled is also being consolidated with one or more other notes or lines of credit agreement, then a new note evidencing the consolidated indebtedness will be taken.

(8) The interest rate for a consolidated or rescheduled EM loan for operating purposes will be the current rate established by the Secretary of Agriculture for similar type loans in effect at the time of action. This information is available from any FmHA office (See FmHA Instruction 440.1, Exhibit B).

(9) The interest rate for a consolidated OL loan or rescheduled OL loan/line of credit will be the negotiated rate agreed upon by the lender and the borrower subject to the limitations set out in § 1980.175(e) of this subpart. If the consolidated OL loan or rescheduled OL loan/line of credit still has an outstanding interest rate buydown agreement in effect at the time of consolidation or rescheduling, the interest rate will remain the same during the balance of the buydown agreement period.

(10) A rescheduled note or the new note which exists after a consolidation of two or more loans must be repaid over a period not to exceed fifteen (15) years from the date of the action, unless the note evidences a loan made solely for recreation and/or nonfarm enterprise purposes, in which case it must be repaid over a period not to exceed seven (7) years from the date of the action. A rescheduled OL line of credit agreement must be repaid over a period not to exceed seven (7) years from the date of the action; however, a new OL line of credit agreement that exists after consolidating an existing line of credit with a new line of credit cannot exceed the terms (to make advances as well as final maturity date) of the existing line of credit agreement. Balloon payments are prohibited, however, the loan can be rescheduled in unequal amortized installments, provided the current year and any typical year plan(s) demonstrate that these installments will be used only in those cases where a new enterprise is being established, developing a farm, or during recovery from economic reverses. The consolidation will be reported to the Finance Office with Form FmHA 1980-19, "Guaranteed Loan Closing Report," along with a memorandum identifying which loans are being consolidated.

(11) When a consolidation occurs, a new Form FmHA 449-34 will be executed.

(12) When a consolidation occurs, the new note or line of credit agreement will describe the note(s) or line of credit agreement(s) being consolidated and will state that the indebtedness evidenced by such note(s) or line of credit agreement(s) is not satisfied. The original note(s) or line of credit agreement(s) will be retained for identification purposes.

(c) *Reamortization.* The term "reamortize" means to rearrange the rates and/or terms of a loan(s) made for real estate purposes, i.e., FO, SW, RL, EM actual loss loans having basic security consisting of real estate, and EM major adjustment loans *made for real estate (Subtitle A) purposes.* Scheduled payments may be rearranged over the remaining term of the original repayment period established for the loan or assumption agreement (new terms), or be rearranged over a period not to exceed the maximum statutory period which is set at 40 years from the date of the original note.

(1) No new note will be taken when a loan is reamortized. Instead, the existing note will be modified by attaching an "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change.

(2) The interest rate for a reamortized EM actual loss loan will be at the same rate as the original loan.

(3) The interest rate for a reamortized EM major adjustment loan for real estate purposes will be the current market rate in effect for similar type loans at the time of reamortization as established by the Secretary of Agriculture. This information is available from any FmHA office. (See FmHA Instruction 440.1, Exhibit B).

(4) The interest rate for a reamortized FO or SW loan will be the negotiated rate agreed upon by the lender and the borrower at the time of the action subject to the limitations set out in §§ 1980.180 and 1980.185 of this subpart, as applicable. The interest rate limitation set out in these sections will also apply when RL loans are reamortized. If the reamortized FO or SW loan still has an outstanding interest rate buydown agreement in effect at the time of reamortization, the interest rate will remain the same during the balance of the buydown agreement period.

(d) *Deferral.* The term "defer" means to postpone the payment of principal and/or interest on an FO, SW, RL, OL or EM loan or OL line of credit. Principal may be deferred in whole or in part. Interest may be deferred only in part. A partial payment of interest will be required during the deferment period.

(1) Deferred interest will not be capitalized.

(2) Payments may be deferred for no more than five years, but in no case will the deferral period extend beyond the final due date of the note.

(3) The lender must determine, and FmHA must concur, that scheduled payments cannot be made for reasons beyond the borrower's control as defined in paragraphs (a)(3)(i) and (ii) of this section and must also determine that there are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) *Principal limit.* The rescheduled/reamortized note or line of credit agreement which exists after a consolidation occurs will not increase the amount of principal which the borrower would have been required to pay if the rescheduling, reamortization or consolidation had not been made.

(f) *Lien priority.* Additional security instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHa.

§ 1980.125 Debt write down.

(a) *General requirements.* In addition to the authorities available in § 1980.124 of this subpart to consolidate, reschedule, reamortize and/or defer a guaranteed loan/line of credit, whether or not that loan/line of credit agreement

is delinquent, and the authority available in Exhibit D concerning an Interest Rate Buydown, a lender may only write down a *delinquent* guaranteed loan/line of credit agreement in amounts sufficient to permit the borrower to develop a feasible plan of operation. Such action may be taken with the written approval of FmHA provided:

(1) The borrower cannot demonstrate a positive cash flow projection on all income and expenses, including debt service, after consideration is given to servicing the loan or line of credit agreement using the authorities provided in § 1980.124 of this subpart. If a positive cash flow projection can be achieved using these authorities, then the loan or line of credit agreement will be consolidated, rescheduled, reamortized and/or deferred, and no write down will take place. If a positive cash flow cannot be achieved and the lender contemplates an interest rate reduction in connection with the write down, the borrower may be considered for an Interest Rate Buydown under Exhibit D of this subpart. If the proposed interest rate reduction results in a positive cash flow and the lender can achieve a positive cash flow at the end of the Interest Rate Buydown period, the interest rate reduction and the write down may be approved, providing the remaining requirements in this paragraph can be met.

(2) The loan or line of credit agreement, if written down, will result in a net recovery to the lender, during the term of the loan or line of credit agreement as written down, that would be more than or equal to the net recovery to the lender from the borrower through bankruptcy or from an involuntary liquidation or foreclosure of the security for the loan or line of credit. The calculations to be used in making this determination are found in paragraph (b) of this section.

(3) The requirements found in § 1980.124(a)(2) through (a)(5) of this subpart are met.

(4) After being asked by the lender, other creditors of the borrower may agree to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other major creditors of the borrower, other than those that are fully collateralized, agree to participate in developing a restructuring plan or agree to participate in a State's farm mediation program, then the write down may be approved, providing the remaining requirements in this paragraph can be met. Failure of such creditors to agree to participate will not preclude use of a write down if the lender, with FmHA's concurrence, determines that a write down results in the least cost to the lender.

(5) If the borrower owns real estate which secures the loan, the borrower must sign a shared appreciation agreement, as further specified in paragraph (c) of this section, covering the amount written down.

(6) Any holder must agree to the write down in writing. If the holder does not agree to this action, the leader must repurchase the unpaid portion of the loan from the holder before the write down may be approved.

(7) If a line of credit is written down, no further advances may be made under that agreement and the principal amount remaining after the write down fixes the principal amount covered by the guarantee.

(8) The lender will obtain FmHA approval of the proposed write down by submitting to the County Supervisor the following:

(i) A cash flow statement indicating the borrower can pay all necessary expenses and service all debt after the write down.

(ii) A current appraisal of the property securing the loan.

(iii) An estimate of lender's cost relating to an involuntary liquidation or bankruptcy including disposal of any property taken into inventory.

(iv) A proposed estimated loss claim.

(v) A current balance sheet for the borrower.

(9) If the borrower has both a line of credit and a loan, the lender will write down the line of credit before consideration will be given to a write down of the loan.

(10) The debt write down will be on principal first and then accrued interest, if needed.

(b) *Value determination.* The lender must determine the recovery value of the security and the value of the written down loan or line of credit agreement in order to determine the net recovery from a bankruptcy or an involuntary liquidation of the loan or line of credit. These determinations will be done as follows:

(1) The recovery value of the security will be based on the amount of the current appraised value of the security *less* the estimated costs associated with liquidation and disposition of the loan/line of credit security.

(i) The current appraised value will be determined by an independent appraiser selected by the lender and approved by FmHA. The appraisal fee will be shared equally by the lender and FmHA.

(ii) Any lease income estimated to be generated while the property is in the lender's inventory will be calculated to offset any of the estimated cost items listed in paragraph (iii) below.

(iii) The estimated costs associated with liquidation and disposition include the following:

(A) The payment of prior liens;

(B) Taxes and assessments, depreciation, management costs, yearly percentage decrease or increase in the value of the property, and lost interest income, each calculated for the lender's average holding period, in the State in which the property is located, for the type of property involved;

(C) Resale expenses, such as repairs, commissions, and advertising; and

(D) Other reasonable and necessary administrative costs and expenses, including attorney's fees, that customarily are incurred in such liquidation and disposition.

(2) The value of the written down loan/line of credit agreement will be based on the present value of payments that the borrower would make to the lender if the loan/line of credit terms were modified using any combination of the authorities provided in §§ 1980.124 and 1980.125 of this subpart or an interest rate buydown as provided in Exhibit D of this subpart.

(3) The loan may be written down with FmHA's approval if the calculations specified in paragraphs (b)(1) and (2) of this section show that the net recovery to the lender, during the term of the loan or line of credit agreement as written down, would be more than or equal to the net recovery to the lender from the borrower through bankruptcy or from an involuntary liquidation or foreclosure of the security.

(c) *Shared Appreciation Agreement.* If the loan/line of credit agreement is to be written down in accordance with this section and there is real estate which is security for the loan/line of credit agreement, then the borrower must enter into an agreement that provides for recapture of a portion of any appreciation in the value of the real estate securing the remaining loan/line of credit after write down. This agreement is Exhibit F to this subpart and is entitled "Shared Appreciation Agreement." The lender will provide a copy of the shared appreciation agreement to FmHA.

(1) The shared appreciation agreement will have a term not to exceed 10 years from the date of the shared appreciation agreement and provide for the recapture of appreciation on real estate based on the difference between the appraised market value of the real estate at the time the loan/line of credit agreement is written down and at the time of recapture.

(2) The shared appreciation agreement will provide that the amount recaptured will be 75 percent of the appreciated value of the real estate if the events described in paragraph (c)(3) of this section occur within 4 years of the write down, and 50 percent of such value if the recapture occurs during the remainder of the term of the agreement.

(3) Recapture of the appreciated value of the real estate will occur either at the end of the term of the shared appreciation agreement or at the time the real estate is conveyed, the loan/line of credit agreement is repaid, or the borrower ceases farming, whichever occurs earlier. Transfer of title to the borrower's spouse on the borrower's death will not be treated as a conveyance for the purpose of recapture.

(4) Any amount recaptured will be shared on a pro-rata basis between the lender and FmHA as provided in paragraph XIV of Form FmHA 449–35 or paragraph XIV of Form FmHA 1980–38.

(5) In no case will the amount recaptured exceed the amount of debt written down.

(d) *Additional requirements.* (1) The lender will use an addendum to the existing note or line of credit agreement which reflects the write down of the debt and the existence of any shared appreciation agreement.

(2) If the interest rate is changed, the interest rate will be the negotiated rate agreed upon by the lender and the borrower, subject to the provisions of § 1980.124 (b) (8) and (9) and (c) (2), (3), and (4) of this subpart, depending on the type of loan involved.

(3) The lender must attach the original of Exhibit F of this Subpart to the promissory note or line of credit agreement which evidences a loan/line of credit agreement that is written down and to the Loan Note Guarantee or Contract of Guarantee. If a holder is involved, a copy of Exhibit F will be attached to the original Form FmHA 449–36, "Assignment Guarantee Agreement," along with a copy of the note and Loan Note Guarantee. A copy of Exhibit F will be kept in the County Office and attached to the appropriate Loan Note Guarantee or Contract of Guarantee.

(4) As provided by paragraph XI C 2 of Form FmHA 449–35, the lender will remit to the holder the holder's pro-rata share of any estimated loss claim payments made by FmHA after the write down.

(5) Additional security instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHA. In addition, if Exhibit F is executed, the lender is responsible for making sure that the security instruments also assure future collection of any appreciation in the real property covered by Exhibit F.

(6) The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percentage of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write down and the outstanding balance of the loan/line of credit after the write down. The lender will complete Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to receive its pro-rata share of any loss sustained.

(7) During the period of time in which the shared appreciation agreement is in effect, a note or line of credit agreement which has been written down cannot be consolidated.

§ 1980.126 Mediation.

Various States have mediation programs, which are designed to assist farm borrowers and their creditors in resolving financial disputes through the process of mediation. Where a State has such a farm credit mediation program, the lender shall participate in accordance with the rules of that system. The lender must not agree to any proposals concerning the rewriting of the terms of the guaranteed loan which do not comply with the provisions of Subpart A of this Part and this Subpart, especially §§ 1980.124 and 1980.125. Any agreements reached as a result of such mediation must have prior concurrence by the State Director or designee. FmHA is not bound by any agreements developed in mediation or findings of the mediator unless FmHA agrees to them in writing.

§§ 1980.127—1980.128 [Reserved]

§ 1980.129 Planning and performing development.

The lender is responsible for seeing that any buildings or other improvements or major land development to be paid for with loan funds are properly completed within a reasonable period of time. The security must be free of any mechanic's, materialmen's or other liens which would affect the priority of the lien which the lender told FmHA would be taken on the security. All major construction, major repairs, and major land development must be performed under contract. As soon as such construction, repair, or land development involving the use of loan funds has been completed in accordance with the plans and specifications, Form FmHA 449–11, "Certificate of Acquisition or Construction," will be completed and given to the County Supervisor. This form will be used by a lender, borrower, and/or contractor to certify that the security has been acquired or the construction completed.

In connection with construction the lender is responsible for:

(a) Making sure there is compliance with applicable laws, ordinances, codes and regulations, including FmHA regulations, which affect all phases of construction. The lender may inspect the site and any construction or development work at any stage whenever the lender considers it necessary.

(b) Seeing that the plans, specifications, and estimates are adequate.

(c) Making sure of the rights to an adequate water supply of sufficient quantity and quality.

(d) Identifying whether the construction or development will be performed by contract or other method.

(e) Checking to see that any necessary bonds covering contractors are in proper form.

(f) Seeing that all equal opportunity and nondiscrimination requirements are met. (See § 1980.41 of Subpart A of this part.)

(g) Limiting periodic or partial payments for construction or development to a reasonable percentage of the actual value of work and material in place. The lender will make final payment only after seeing that the final inspection has been made.

(h) Ascertaining that after planned development is completed, the requirements of § 1980.108(a)(3)(i) of this Subpart are met.

Administrative

The County Supervisor will:

1. Check to see that the construction, repair or land development has been completed.

2. Forward Form FmHA 449–11 to the lender for completion and execution by the lender, borrower, and contractor.

§ 1980.130 Loan servicing.

The lender is responsible for loan servicing as required by paragraph IX of Form FmHA 449–35, or paragraph IX of Form FmHA 1980–38.

Administrative

A. The lender has the responsibility for loan servicing and protecting the collateral. Prompt followup on delinquent payments and early recognition of problems are keys to resolving many delinquent loans. Contacts with the borrower when determined necessary by the County Supervisor will be made with the lender present. If the borrower also has an insured loan, normal servicing contacts will only be made by FmHA:

however, FmHA should provide the lender with a summary of the results of the visit.

B. The County Supervisor is responsible for monitoring the lender's servicing activities as follows:

1. Unless previously reviewed, the lender's borrower case files will be reviewed within 90 days after loan closing. The lender will be reminded of the lender's responsibilities in servicing the loan as required in paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38 when deficiencies are noted. Any deficiencies will be discussed with the lender and the discussion will be confirmed in writing with a copy to the State Director through the District Director.

2. Contact the State Office when the case file review indicates the lender or the borrower has failed to fulfill any of the loan approval conditions and the resulting problem cannot be resolved by the County Supervisor and the lender.

3. Take the action required in paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

4. Use an office management system for guaranteed loans to assure timely followup on all required financial statements, and to make sure any special requirements for loan servicing conditions are met.

5. Review at least 20 percent of the existing loan(s)/line of credit(s) which each lender has each year and any problem loan(s)/line of credit(s) which were previously identified.

6. Submit to the Finance Office immediately after December 31 of each year, the Lender's statement required in paragraph IX C 10 of Form FmHA1980–38 or paragraph IX C 10 of Form FmHA 449–35 as modified by requirements set out in § 1980.118(c) of this subpart, reflecting the unpaid principal balance on the loan or line of credit.

7. Contact, at least annually, all lenders with active shared appreciation agreements for borrowers who have received debt write down. When making this contact, the County Supervisor will ascertain if any collection has been made from property covered by such agreement. Findings will be recorded in the County Office file. If any unauthorized collection is made by the lender, a report will be forwarded to the State Director.

C. The State Director will approve all debt write downs. Approval will be evidenced by a letter to the lender with a copy to the borrower and signed by the State Director.

D. The District Director will:

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

2. Review all field visit reports and make recommendations or comments and transmit them to the State Director, if necessary.

3. In the case of a debt write down, the District Director will review for concurrence and forward to the State Director as appropriate.

E. County Supervisors are authorized to approve or concur in:

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. Any deferral, rescheduling, or reamortization of the loan.

5. For debt write down, the County Supervisor will recommend State Director approval through the District Director.

6. The use of proceeds from the disposition of collateral complying with the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

§§ 1980.131–1980.135 [Reserved]

§ 1980.136 Protective advances.

Protective advances are advances made by a lender when the borrower is in liquidation or close to being liquidated to protect or preserve the collateral itself from loss or deterioration. Examples of protective advances are: payment of delinquent taxes, assessments, ground rents, hazard or flood insurance premiums against or affecting the collateral, harvesting costs, cost for emergency measures to protect the collateral, etc., attorney fees are not a protective advance. It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38.

Administrative

The County Supervisor is authorized, under paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, to approve protective advances in excess of $500 and will consult with the lender on future servicing of the account. Such protective advances must be approved in writing by the County Supervisor.

§§ 1980.137–1980.138 [Reserved]

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449–34, or paragraph 5 of Form FmHA 1980–27.

Administrative

The County Supervisor will advise the Finance Office by memorandum when a Loan Note Guarantee or Contract of Guarantee is terminated.

§§ 1980.140–1980.143 [Reserved]

§ 1980.144 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C 5 of Form FmHA 449–35 or Form 1980–38). These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the bankruptcy estate, will immediately seek adequate protection of the collateral, including petitioning for a super priority. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely. In Chapters 11, 12, and 13 bankruptcy cases, the lender will monitor the plans to determine whether the borrower is fulfilling the requirements of the plan and take appropriate action to obtain dismissal of the case if the borrower fails to comply with the requirements of the plan. A dismissal of the plan by the bankruptcy court would restore the original outstanding indebtedness at the time the reorganization plan was approved.

(5) FmHA will be kept adequately and regularly informed in writing on all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In Chapters 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses, in Chapters 11, 12, or 13 reorganization cases, are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees), while the borrower is in reorganization, are considered normal expenses of servicing the account, and therefore are the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases provided the lender is doing the actual liquidation of the collateral and presents adequate written justification for each expense and secures FmHA's written concurrence prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender, in this instance, is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the actual liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in actual liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss payments.* See paragraph XVI of Form FmHA 449–35 or Form FmHA 1980–38.

Administrative

A. The lender is responsible for advising FmHA of the completion of the reorganization plan. The lender is also responsible for advising FmHA if the borrower does not comply with the plan and servicing action the lender will take to protect the interest of the lender and FmHA. However, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

B. When an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays the loan in full without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

C. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

D. Protective Advances—Authorized Protective Advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not authorized.

E. Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on the principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for verifying the accuracy of the interest calculations on the final report of loss before submission to the Finance Office.

F. Repurchase of Notes—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of the loan(s) from any holder(s) to reduce interest accrual during a Chapter 7 proceeding, or after a Chapter 11 proceeding becomes a liquidation proceeding. (Refer to paragraph X C of Form FmHA 449–35 or Form FmHA 1980–38).

G. County Supervisors are authorized to approve Report of Estimated Loss or Final Loss Payments on Form FmHA 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determination in all other cases. A copy of Form FmHA 449–30, when approved by the County Supervisor, will be sent to the District Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of any losses.

§ 1980.145 Defaults by borrower.

(a) See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

(b) The lender will prepare current financial information including a cash flow and will schedule a meeting with the County Supervisor and the borrower to discuss possible solutions including interest rate buydown to resolve the borrower's financial problems. The lender must notify the County Supervisor of the meeting at least 10 working days in advance. At least 10 working days prior to the meeting, the County Supervisor will mail Exhibit D and Attachment 1 of this subpart to the lender and the borrower.

(c) A record of the meeting will be prepared by the lender, which will at least include a list of the individuals who attend, and a summary of the problem and proposed solutions. The original will be retained in the lender's loan file and a copy will be submitted to the County Supervisor and the borrower.

(d) If the lender and the borrower's proposed action is either denied or partially denied, the County Supervisor will notify the lender and the borrower in writing within 10 days of FmHA's decision of all the reasons for the decision and advise them of their opportunity to jointly appeal the decision as set out in Subpart B of Part 1900 of this chapter.

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449–35 or paragraph X A of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449–35) when the holder(s) is located in close proximity to the local lender. If any holder is located ouside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Suprevisor, the County Supervisor will be notified of the transaction.

B. The County Supervisor will verify the amounts due the holder(s), and transmit the holder's demand for paymant by memorandum to the State Director. Copies of evidence of the holder's ownership will be included. Any original evidence of ownership will be retained in the County Office. A proposed payment date will be established in order to calculate the interest due the holder(s).

C. In the event of default or servicing problems, the County Supervisor will use Form FmHA 1980–37, "FmHA purchase of a Guaranteed Loan Portion," to request a check to pay the guaranteed portion of a loan(s) to the holder(s) when necessary. The Finance Office will forward the check within 10 days after receipt of the request.

D. Any evidence of ownership retained in the County Office will be considered in any future report of loss calculations. A record of any purchase will be maintained in the loan file.

§ 1980.146 Liquidation.

(a) *General.* The general requirements for liquidating a guaranteed Farmer Program loan/line of credit are set out in § 1980.64 of Subpart A of this part and in paragraph XI of Form FmHA 449–35 or paragraph XI of Form FmHA 1980–38. The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. All liquidations must receive prior concurrence by the appropriate FmHA official. Estimated or final loss claims will be submitted using Form FmHA 449–30, "Loan Note Guarantee Report of Loss," along with the required supporting documentation set out in the instructions for preparing the form.

(b) *Estimated loss claims.* (1) Estimated loss claims will only be approved after the lender has obtained FmHA approval of a liquidation plan, a debt write-down plan or a reorganization plan which has been approved by the bankruptcy court. Once a liquidation plan is approved and it appears the liquidation period will exceed 90 days, the lender will file an estimated loss claim. Once this claim is approved by FmHA, the lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with Administrative paragraph D of this section. The County Supervisor may approve loss payments up to $55,000, or the State Director for loss payments in excess of $55,000. Estimated loss payments will be inserted under "Amount Due Lender"on Form FmHA 449–30. The Director, Finance Office, will forward loss payment checks within 30 days of receipt of the request.

(2) If the actual loss is less than the estimated loss payment, the lender will reimburse FmHA for the overpayment, plus interest at the note or line of credit agreement rate from the point of initial check issuance. Variable interest notes or line of credit agreements will bear interest at the average note or line of credit agreement rate paid during the loan/line of credit term.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs will be allowed. Reasonable is defined as the prevailing rate charged in the area for like services. Liquidation costs are paid from the sale of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or if liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender *are not allowable* costs under a liquidation plan. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel and overhead.

(2) *Appraisals.* If an appraisal is required, the fee is shared by FmHA and the lender in accordance with Paragraph XI A 4 of Form FmHA 449–35 or paragraph XI A 4 of Form FmHA 1980–38, this is an allowable liquidation cost. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered. The funds that are collected as recovery of an appraisal fee will be forwarded to the Finance Office along with Form FmHA 1980–40, "Reverse a Report of Liquidation Expenses."

Administrative

A. *Meetings.* The County Supervisor will meet with the lender when the lender or FmHA determines that liquidation is necessary and will inform the District Director and the State Director of the results.

B. *Form FmHA 449–35, paragraph XI B or paragraph XI B of Form FmHA 1980–38.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see Subpart A of Part 1955, Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter). The County Supervisor will approve lender liquidation plans. The District Director or State Office may be consulted on complex cases for advice if necessary. When FmHA exercises the option to liquidate, the State Director or designee will be the approval official. When such a decision is made, submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *Fom FmHA 449–35, paragraph XI D or paragraph XI D of Form FmHA 1980–38.* County Supervisors are responsible for seeing that the lender complies with the requirements of paragraph XI D. The County Supervisor will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office when necessary. When FmHA liquidates the security, the County Supervisor will submit these reports to the lender and will send copies to the District Director and the State Office.

D. *Form FmHA 449–35, paragraph XI E 2 or paragraph XI E 2 of Form FmHA 1980–38.* County Supervisors are authorized to approve Report of Estimated Loss or Final Loss Payment determinations on form FmHA 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit form FmHA 449–30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

E. *Form FmHA 449–35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980–38.* Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced, if necessary, after considering the Conditions of Guarantee in Form FmHA 449–34 or Form FmHA 1980–27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss payment does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any review. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

F. The County Supervisor will establish a follow-up to contact lenders in writing who have received final loss claim payments to report any collections made on the guaranteed loans. Such follow-up will be made annually for 5 years after the final loss claim is paid. The County Supervisor will report the results of the follow-up to the State Director no later than 10 working days after the end of the fiscal year. The State Director will consolidate the County Office reports and report the results to the Administrator by November 1 of each year. The information to be reported will be: lender, borrower, case number, loss claim amount, amount collected, and amount submitted to FmHA.

§ 1980.147 Graduation.

There is no graduation requirement for guaranteed loans/lines of credit.

§ 1980.148 Appeal procedure.

Refer to Subpart B of Part 1900 of this chapter for the method of appealing adverse decisions of County Committees, County Supervisors, District Directors, and State Directors.

§ 1980.149 Access to lender's records.

See § 1980.81 of Subpart A of this part for this requirement.

§§ 1980.150–1980.152 [Reserved]

§ 1980.153 FmHA forms.

See § 1980.83 of Subpart A of this part and Exhibit C (available in any FmHA office) of this subpart.

General Administrative

A. *Office of the General Counsel (OGC):* In performing administrative functions with respect to Farmer Program loans, FmHA may ask for the advice and assistance of OGC on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are met. If FmHA has any questions concerning the lender's resolution of these matters, it should consult with OGC.

B. *Delegation of Authority:* State Directors should delegate to their staff members those administrative duties and responsibilities stipulated in the Administrative sections of this subpart.

§§ 1980.154–1980.174 [Reserved]

§ 1980.175 Operating loans.

(a) *Objectives.* The basic objective of the guaranteed OL loan program is to provide credit for family farmers and ranchers to conduct operations when credit is not available without a guarantee. This assistance provides family farm operators an opportunity to make efficient use of their land, labor and other resources, to improve their living conditions and to improve their overall economic situation.

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (See § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation.

(v) Honestly try to carry out the conditions and terms of the loan.

(vi) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vii) Be an owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as individuals.

(ii) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(iii) Consist of members, stockholders, partners or joint operators who are individuals and not a cooperative(s), corporation(s), partnership(s), or joint operation(s).

(iv) If the members, stockholders, partners, or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request INS to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(B) They must have sufficient educational or on the job training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation.

(D) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(E) At least one member, stockholder, partner or joint operator must operate the family farm.

(F) The entity must operate the farm and be authorized to own or operate a farm in the State(s) in which the farm is located.

(v) If the members, stockholders, partners or joint operators holding a majority interest are *not* related by marriage or blood:

(A) The requirements of paragraphs (b)(2)(iv) (A) through (D) must be met.

(B) They and the entity itself must operate the family farm.

(C) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the

family farm definition limits, their collective interests can exceed the family farm definition limits only if: all of the members of the entity are related by blood or marriage, all of the members are or will be operators of the entity, and the majority interest holders of the entity meet the requirements of paragraphs (b)(2)(iv) (A) through (D) and (F) of this section.

(c) *Loon purposes.*—(1) *Loon Note Guarantee.* Loans may be made for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, aquaculture, worms, birds, bees, tools, and inventories, or to purchase an individual undivided interest in such items.

(ii) Payment of annual operating expenses.

(iii) Payment of family living expenses.

(iv) Refinancing debt incurred for any authorized operating loan purpose, including FmHA insured loans.

(v) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(vi) Purchase and repair of essential home equipment.

(vii) Purchase of milk base or milk quota with or without cows.

(viii) Not more than $15,000 in a fiscal year for real estate improvements or repairs. The following determinations must be made by the lender before a guaranteed OL loan is made for real estate improvement:

(A) Loans will not be needed year after year for this purpose.

(B) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(ix) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to the creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(x) Purchase of a franchise, contract or privilege when necessary to the operation of the planned enterprise.

(xi) Partial payment for the purchase and construction of crop, storage and drying facilities when the Commodity Credit Corporation (CCC), through the ASCS, is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(2) *Contract of Guarantee—Line of Credit.* Lines of credit may be advanced for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Payment of annual operating expenses, which may include the purchase of feeder animals, and family living expenses.

(ii) Payment of debts incurred by the borrower for current annual operating expenses that were advanced by the lender and/or other creditors/suppliers prior to the issuance of the guarantee. In no case will carryover debts from previous crop years be refinanced.

(d) *Loan limitations.* (1) The total outstanding insured and guaranteed OL principal balance owed by the loan applicant or owed by anyone who will sign the note/line of credit agreement as a cosigner may not exceed a total of $400,000 at loan closing. The amount of principal outstanding at any time on a guaranteed line of credit also must never exceed the ceiling set out on the Contract of Guarantee.

(2) Loans may not be made for: (i) The purchase of real estate, or (ii) Making principal payments on real estate.

(3) Guaranteed lines of credit *will not* be used for capital expenditures.

(4) Loans also may not be made for any purpose that will contribute to excessive erosion or highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(5) Multiple Guarantees. More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan/line of credit is secured with separate collateral that is clearly identified. This requirement does not preclude cross-collateralization of loans/lines of credit with other guaranteed loans/lines of credit to obtain additional collateral provided that the loans/lines of credit are held by the same lender. Total loans or line of credit ceilings must not exceed $400,000 at any time.

(e) *Interest rates.* (1) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender will charge the same rate on both the guaranteed and the non-guaranteed portions of the note.

(2) The lender may charge a rate *not to exceed* the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customers. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(3) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a rate specifically agreed to by the lender and borrower. Such agreement on interest rate must be documented in the borrower/lender's loan agreement. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit intstrument.

(4) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(5) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) *Terms.* (1) The final maturity date for each loan/line of credit cannot exceed 7 years from the date of the promissory note/line of credit agreement.

(2) All advances on a line of credit must be made within 3 years from the date of the Contract of Guarantee.

(3) Ordinarily, loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will be scheduled for payment when the income from the year's operation is to be received. Under certain circumstances these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, or during recovery from disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period.

(4) Advances for purposes other then those for annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of seven years.

(5) When conditions warrant, installments scheduled in accordance with paragraph (f)(4) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments there must be adequate collateral for the loan/line of credit at the time the balloon installment becomes due. In no case will annual crops and/or machinery be used as the sole collateral securing a loan with a balloon installment. Circumstances which warrant balloon payments are factors such as establishing a new enterprise, developing a farm, or during recovery from a disaster or economic reverses. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 15-year period except for NFE loans, which will be a maximum additional 7 years. The applicant must be advised before the loan is closed that the lender will review each case at the end of the initial loan term to determine if such rescheduling is warranted. (See § 1980.124 of this subpart.)

(g) *Security.* Ordinarily, the security must be adequate in the opinion of the lender and FmHA to assure repayment of the loan/line of credit. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the lender and FmHA (provided the FmHA approval official's opinion is based on the evaluation set forth in § 1980.114 of this subpart) in determining whether the loan/line of credit should be made. However, when a loan is made for refinancing purposes, the amount refinanced may not exceed the value of the security. The loan/line of credit must be secured by a first lien on all property or products acquired or produced with loan funds and by any additional security needed. Any loans made for refinancing when the debt refinanced is secured by real estate or chattels will be secured by a first lien on the property securing the debt which is being refinanced or when the debt refinanced is secured by real estate by a junior lien which is no lower than the lien presently held on the property securing the debt being refinanced, and by any additional security needed. Additional security may consist of the best lien obtainable on chattels, real estate or other property.

(h) *Special security requirements.* (1) Operating loans shall not be guaranteed where multiple entities own the chattel unless all entities guarantee and pledge security for the loan and no entity may transfer ownership or security value to another entity without the lender and FmHA concurrence.

(2) When guaranteed OL loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed OL loan(s) as individual(s) *or* when guaranteed OL loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed OL loans(s), security must consist, of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and identifiable collateral.

(i) *Insurance.* Insurance for property, public liability, and crops should be obtained before or at the time of loan closing.

(1) *Chattel property.* Borrowers should be encouraged to carry insurance on chattel property, including growing crops, which serves as security for a loan and on other chattel or real property, in order to protect themselves against losses resulting from hazards existing in an area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies, and inventory centrally stored over an extended period. Such insurance may be required by the loan approval official in individual cases.

(2) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate.

Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the amount of the debt, including the debts for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the guarantee is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, to apply to debts secured by prior liens, or to apply to the guaranteed OL loan/line of credit being made.

(3) *Public liability and property damage.* Borrowers, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(j) *Other considerations.* (1) Applicants will be advised by the lender that they are expected to comply with any applicable special laws and regulations.

(2) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and encouraged to obtain public liability and property damage insurance.

§§ 1980.176–1980.179 [Reserved].

§ 1980.180 Farm Ownership loans.

(a) *Objectives.* The basic objectives of the Farmers Home Administration (FmHA) in guaranteeing farm ownership (FO) loans are to assist eligible applicants who cannot get credit without a guarantee to become owner-operators of family farms. The operations may include establishment or

enlargement of nonfarm enterprises to supplement the farm income.

(b) *Farm ownership loan eligibility requirements.* The farm ownership loan eligibility requirements are the same as the operating loan eligibility requirements as defined in § 1980.175(b) of this subpart except as follows:

(1) Section 1980.175(b)(1)(vii) does not apply. Instead an individual must be the owner-operator of not larger than a family farm after the loan is closed.

(2) Section 1980.175(b)(2)(iv)(F) does not apply. Instead a cooperative, corporation, partnership or joint operation must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(c) *Loan purposes.* Loans that are consistent with all Federal, State and local environmental quality standards may be made for the following authorized loan purposes:

(1) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(i) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(ii) An applicant's portion of the cost of land which is being subdivided.

(iii) Making a downpayment on the purchase of land under the following conditions:

(A) A deed is obtained by the applicant and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(B) The applicant can meet the loan terms under normal farm conditions.

(C) The conditions and the requirements of any prior mortgage or contract meet the security requirements for taking a junior lien as shown in paragraph (f)(2)(iii) of this section.

(D) A purchase contract is signed which obligates the purchaser or contract to meet the security requirements for the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(2) Construct, buy, or improve buildings and facilities needed on the applicant's farm, including:

(i) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or aquaculture such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(ii) The improvement, alteration, repair, replacement, relocation or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the lender.

(i) Funds may be used to pay for development costs on land owned with defective title (see paragraph (f)(2) of this section) or on land in which the applicant owns an undivided interest, provided:

(A) The amount of loan funds used on such land is limited to $25,000;

(B) There is adequate security for the loan; and

(C) The tract with defective title or undivided interest is not included in the appraisal report.

(ii) Funds may be used to pay for development costs on land leased by the applicant provided:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(B) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(C) There is adequate security for the loan; and

(D) The amount of loan funds used for improvements on leased land will not exceed $10,000.

(4) Refinance debts subject to the following:

(i) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(ii) The lender will verify the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, first year insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrowers and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(6) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland.

(7) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan limitations.* A guaranteed FO loan will not be approved if:

(1) The total outstanding insured or guaranteed FO, Soil and Water (SW) or Recreation (RL) loan principal balance owed by the applicant or by anyone who will sign the note as a cosigner will exceed the lesser of $300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(e) *Rates and terms.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(1) *Interest rates.* The interest rate requirements are the same as set forth for operating loans in § 1980.75(e) of this subpart.

(2) Installments on loans may be deferred in accordance with § 1980.124(d) of this subpart.

(3) At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(f) *Security.* (1) Each guaranteed FO loan will be secured by real estate only or by a combination of real estate and chattels or other security.

(2) When obtaining real estate security the following will apply:

(i) A mortgage will be taken on the entire farm owned or to be owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cleared at a reasonable cost provided:

(*1*) The lender determines the applicant's interest is of such nature that it is not mortgageable;

(*2*) To include the land would complicate loan servicing or liquidation; and

(*3*) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(*4*) State law prohibits taking a lien on homestead property, except for a purchase money interest in such property. In that case, the State Director will issue a State supplement exempting taking a lien on homestead property, where a purchase money interest is involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien when the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattels subject to the following conditions:

(i) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(ii) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any such property must have security value and be transferable.

(5) For the State of Hawaii—FO loans on leasehold interests on real property. The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an approved appraiser of the lender. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue a State supplement for this subpart addressing leasehold interest and providing the requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

(g) *Special requirements.* (1) The lender is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other

community facilities; and tax rates and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm operation, and development needed to make it a suitable farm.

(2) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings ordinarily will be located on the applicant's farm. Exceptions to this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and is located close enough to the farm so the farm may be operated successfully. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home. A mobile home will not be considered to add value to the farm but FO guaranteed loan funds may be used to finance anchoring the home.

(3) Development needed to make the farm and any nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. The applicant should obtain the recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups to be included in the development plan and in the operating plan. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any sources such as the ASCS programs.

(4) Insurance on buildings and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Applicants receiving loans for nonfarm enterprises will be advised by the lender of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary for the lender to determine that:

(i) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(ii) Any off-farm employment the applicant depends on is likely to continue.

(6) Nonfarm enterprises will be analyzed by the lender to determine soundness.

(7) Other assets not used directly in the farming operation will be handled as follows:

(i) A guaranteed FO loan may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(A) The real estate furnishes employment or income which is essential to the applicant's success.

(B) Sale of the property will not eliminate the need for FmHA guaranteed credit.

(C) Retention of the real estate will not cause the operation to be larger than a family farm.

(ii) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree in writing to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(iii) The applicant must agree to use the proceeds from the sale of other real estate to:

(A) Pay costs and taxes connected with the sale;

(B) Reduce the FmHA guaranteed debt or any prior lien;

(C) Make essential capital purchases; or

(D) Pay essential farm and home expenses.

(iv) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:

(A) The appraisal report.

(B) The security instrument for the loan.

(C) The total debt against the security.

(8) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has a legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(9) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the guaranteed loan such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(10) When guaranteed FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed FO loan(s) as individual(s) *or* when guaranteed FO loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed FO loan(s), security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and identifiable collateral.

§§ 1980.181–1980.184 [Reserved].

§ 1980.185 Soil and Water loans.

(a) *Objectives.* The basic objectives of the guaranteed SW loan program are to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation; water development, conservation, and use; forestation; drainage of farmland; establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State, and local environmental quality standards. Achieving these objectives should help farmers to make needed land-use adjustments and should lessen the impact of adverse weather conditions on farming operations.

(b) *Soil and Water loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee in any crop year, the individual or entity shall be ineligible for a loan guarantee for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 410–1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(1) An individual must:.

(i) Be a citizen of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the INS to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation.

(iv) Honestly try to carry out the conditions and terms of the loan.

(v) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vi) Be the owner or operator of a farm after the loan is closed.

(vii) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the guaranteed loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Along with all of its members, stockholders, partners, or joint operators have the character (emphasizing credit history, past record of debt repayment and reliability) and industry to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant is not eligible if an honest attempt has been made to meet the obligation.

(ii) Along with all of its members, stockholders, partners, or joint operators, honestly try to carry out the conditions and terms of the loan.

(iii) Consist of members, stockholders, partners or joint operators holding a majority interest who are citizens of the United States (see §1980.106(b)(21) of this subpart for the definition of "United States"), or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I–151 or I–551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the INS to verify the information appearing on the alien's identification card by completing INS Form G–641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(iv) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(v) Be unable to obtain sufficient credit without a guarantee, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time.

(vi) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(vii) Be the owner or operator of a farm after the loan is made.

(viii) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(ix) Consist of members, stockholders, partners or joint operators who are *individuals* and not corporation(s), partnership(s), cooperative(s), or joint operations.

(c) *Loan purposes.* Loan purposes must be consistent with all Federal, State and local environmental quality standards and funds may be used to:

(1) Pay the costs for construction, materials, supplies, equipment, and services related to land and water development, use, and conservation; and energy saving measures related to soil and water conservation, such as:

(i) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(ii) Drainage of land which is part of an operating farm unit.

(iii) Land clearing.

(iv) Sodding, subsoiling, land leveling, liming and fencing.

(v) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(vi) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(vii) Gasoline, oil, and equipment rental or hire connected with

establishing or completing the development.

(viii) Reasonable expenses incidental to obtaining, planning closing and making the loan, such as fees for legal, engineering or other technical services, hazard insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(ix) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided:

(A) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(B) The cost of the equipment plus the other costs related to the improvement will not be more than if performed by a contractor or by another method.

(2) Pay the costs of meeting Federal, State and local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(3) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(i) The purchase of water stock or membership in an incorporated water user association.

(ii) The acquisition of a water right through appropriation, agreement, permit, or decree.

(iii) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(A) The value of the land without the water supply or right is only an incidental part of the total price; and

(B) The water supply and right will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(4) Refinance debts subject to the following:

(i) The debts were incurred for authorized guaranteed SW loan purposes.

(ii) All development or repair work conforms to FmHA standards or those standards will be met with the guaranteed loan.

(iii) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(iv) The lender will verify the need to refinance all secured and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(6) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the ASCS or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the lender.

(7) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(8) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(i) Such a loan may be made on land with defective title owned by the applicant (see paragraph (f) of this section) or on land in which the applicant owns an undivided interest providing:

(A) The amount of funds used on such land is limited to $25,000,

(B) There is adequate security for the loan, and

(C) The tract is not included in the appraisal report.

(ii) Such a loan may be made on land leased by the applicant providing:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life.

(B) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(C) There is adequate security for the loan.

(9) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan limitations.* A guaranteed SW loan will not be approved if:

(1) The total outstanding insured or guaranteed SW, FO or RL loan principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of $300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(e) *Rates and terms.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(1) The interest rates requirements are the same as set forth for operating loans in § 1980.175(e) of this subpart.

(2) Installments may be deferred in accordance with § 1980.124(d) of this subpart.

(f) *Security.* (1) Each guaranteed SW loan will be secured by real estate, chattels, other security, leaseholds, or a combination of these.

(2) When obtaining real estate security, the following will apply:

(i) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(*1*) The lender determines the applicant's interest is of such nature that it is not mortgageable; and

(*2*) To include the land would complicate loan servicing or liquidation: and

(*3*) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(*4*) State law prohibits taking a lien on homestead property, except for a purchase money interest in such property. The State Director will issue a State supplement exempting taking a lien on homestead property where purchase money interest is involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided the part excluded from the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattels subject to the following conditions:

(i) Real estate security is inadequate to secure the loan or is not available at all.

(ii) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferable separately from the land, provided:

(A) There is a market for the stock.

(B) The purchase price is no greater than the price at which stock in the water company is normally sold.

(vi) If secured by chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(vii) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will properly identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations, or water stocks. Any such property must have security value and be transferable.

(5) A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(i) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure that the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(ii) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the lender's security. Any provisions which may jeopardize the lender's security must be limited, modified, waived or subordinated in favor of the lender.

(iii) With respect to achieving the purpose of the loan, obtaining adequate security, and being able to service the loan and enforce its rights, the lender, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the mortgage on the leasehold interest, the lender should consider whether or not:

(A) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(B) The right to foreclose the mortgage and sell without restriction would adversely affect the saleability or market value of the security.

(C) The lender has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(D) The lender has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit.

(E) The borrower has the right, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the mortgage, to an eligible transferee who will assume the guaranteed SW debt.

(F) Advance notice will be given to the lender of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit the lender to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, permit appropriate action by the lender to be taken.

(G) There are express provisions covering the question of the lender's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during the lender's occupancy or ownership, pending further servicing or liquidation.

(H) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(I) Any other provisions are necessary to obtain an interest which can be mortgaged.

(iv) The following language or similar language which is legally adequate will be inserted on the lien instrument:

All Borrower's right, title, and interest in and to the leasehold estate for a term of ____ years beginning on _____, 19____

created and established by a certain Lease dated _____, 19___, executed by _____ as lessor(s), recorded on _____, 19___, in Book _____, page __ of the _____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate: (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the lender's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(g) *Special requirements.* (1) When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan and in the operating plans. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the ASCS programs.

(2) Applicants are responsible for obtaining all the technical assistance required in connection with a guaranteed SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(3) Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(i) The land to be irrigated is suitable for irrigation.

(ii) The applicant has a right to use water for irrigation.

(iii) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(iv) If irrigation specialists have prepared any feasibility studies, copies of these studies should be submitted to the lender.

(4) Insurance on building and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has a legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(6) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incured in connection with the guaranteed loan, unless the total debt against the security would be within its market value.

(7) When guarantees SW loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed SW loan(s) are made to eligible *individual(s), or* when guaranteed SW loans are made to eligible *individuals,* who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed SW loan(s), security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and indentifiable collateral.

§§ 1980.186–1980.199 [Reserved].

§ 1980.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0079.

Exhibit A—Approved Lender Program—Farm Ownership, Soil and Water and Operating Loans

I. *General:* This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175. Farm Ownership (FO) Loans described in § 1980.180 and Soil and Water (SW) loans described in § 1980.185 of this subpart. The objectives are to minimize time required by approved lenders in obtaining response to request for a guarantee, eliminate the requirement of having Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)." executed for each loan or line of credit guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1 and 2, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Exhibit. Attachment 1 is the Lender's Agreement to be executed in relation to regular term loans. Attachment 2 is the Lender's Agreement that is to be executed in relation to lines of credit. The lender, in its application, should indicate the type(s) of advances to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status; (2) Methods an ALP lender will use to process, service and conclude guaranteed OL, SW, and FO loans; (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL, SW, and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL, SW, and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

C. *List of Lenders.* The County Supervisor will maintain a current list of approved lenders and other lenders who express a desire to participate in the guaranteed program. This list will be made available to farmers upon request.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.* Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 and/or Attachment 2 of the Exhibit. The agreement will not apply to branches or suboffices of the lender unless specifically named in the Agreement. In cases involving the Farm Credit System (FCS), the State Director shall

give ALP status, within the State Director's area of jurisdiction, to any FCS member institution provided such members do not have loan losses exceeding 6 percent per year for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years. FCS member institutions having an acceptable loan loss percentage as specified above are exempt from complying with requirements of paragraph II A (1)(a) through (d) and (2). The Farm Credit Administration (FCA) will notify the FmHA Administrator in writing annually or sooner of any FCS member institution that has loan losses exceeding the acceptable percentage specified above.

To obtain ALP status, an FCS member institution with an acceptable loan loss percentage need only execute the agreement (Attachment 1 and/or Attachment 2 of this Exhibit) and satisfy the State Director that it is using acceptable forms as provided in paragraph II A (1)(e). Even if an FCS member institution is not identified by FCA as having an acceptable loan loss percentage, that institution may still request the State Director to consider it for ALP status under paragraphs II A (1) and (2). When FCS member institutions reorganize into one association, the reorganized association must be considered for ALP status as an initial applicant with unacceptable loan losses. Except for those FCS member institutions identified by FCA as having an acceptable loan loss percentage, ALP status will expire at the end of any approved 2-year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. The ALP status of *any* lender may be revoked by the FmHA State Director as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold ALP status. The name of each ALP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of this part. Except for FCS member institutions having an acceptable loan loss percentage as specified in the introductory text to paragraph II. lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria" and "optional criteria," contained in paragraphs II A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State Office may provide a lender who desires to apply for ALP status, a complete copy of Subparts A and B of this part, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

(1) *Required Criteria.* Other than as noted in paragraph II A above, before a State Director approves a lender, including an FCS member institution that is not identified by FCA as having as having an acceptable annual percentage of loan losses, for ALP status, the requirements listed in paragraphs II A (1) (a) through (f) must be met. However, upon the request of a lender asking for ALP status, the State Director may exempt that lender from complying with the requirement of paragraph II A (1)(b) provided the lender complies with all the other requirements listed in paragraph II A (1) if the State Director is satisfied that the lender—without regard to the requirement for which the exemption is being requested—is an acceptable agricultural lender with the ability to adequately make and service agricultural loans.

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A of this part.

(b) Provide information to show that agricultural loan losses—net of recovery—do not exceed the following:

(i) For FCS member institutions, either 6 percent per year of the institution's total loan portfolio for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years; *or*

(ii) For all other lenders, either 1½ percent per year of the lender's total agricultural loan portfolio computed for the three previous years or 4½ percent of the lender's average agricultural loan portfolio computed for the three previous years.

(c) Have the capacity to process and service FmHA guaranteed FO and SW loans and OL loans/lines of credit.

(d) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit and SW and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(e) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, recordkeeping methods, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(f) Agree to abide by all applicable conditions of § 1980.60 of Subpart A of this part for all loan guarantees.

(2) *Optional Criteria.* Exceptions to the following criteria may be made at the discretion of the State Director.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans/lines of credit.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide a resume of designated person who will process and service guaranteed FmHA loans/lines of credit. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and/or at least two (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(d) Provide a copy of its most recent Report of Condition and Income (Call Report) and description of current level of agricultural and other leading activities.

(e) Demonstrate a potential capacity for guaranteed OL loan/line of credit and guaranteed FO and SW loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL loans/lines of credit and/or SW and/or FO loans, subject to availability of funds, per fiscal year (October 1–September 30).

(f) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood and Mudslide, Clean Air, etc. (See §§1980.40 through 1980.46 of Subpart A of this part.)

(g) Agree to submit requests for guaranteed OL loans/lines of credit and/or SW and/or FO loans to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(h) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval Period(s).* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II. a new 2-year period of ALP status is not automatic. Lenders who desire to continue in ALP status are required to submit a request for subsequent approved periods at least 60 days prior to the expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnel, and, if requested by the lender, determine if a new 2-year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, as a minimum, the following:

(1) A brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL loan/lines of credit, SW loans, and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL, SW, and/or FO lending activity and recap of any loss settlements.

(2) A current update of data required in paragraphs IIA(1) (a) and (b) and IIA(2)(d) of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL loan/line of credit, SW loan, and/or FO loan processing and servicing.

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(3) Request for a new 2-year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons. An ALP lender who has not participated in the guaranteed program during the previous 2 year approved period must submit a request as outlined in paragraph II A of this Exhibit.

C. *Revocation of ALP Status.* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, ALP status will lapse upon expiration of any 2-year period unless the lender obtains a new agreement under paragraph II B.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet any "optional criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan or line of credit, or to protect adequately the interests of the lender and the Government. Furthermore, status, at the option of the State Director, may also be revoked if an FCS member institution that previously had acceptable loan losses as specified in the introductory text of paragraph II above is no longer identified by FCA as having acceptable losses.

State Directors will provide all County Office named in paragraph XVIII of the ALP agreement (Attachment 1 and/or Attachment 2 of this Exhibit) with a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders' loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP Agreement and Subparts A and B of this part pertaining to guaranteed OL, SW and FO loans. County Supervisors will use their copy of the ALP Agreement to duplicate and place in the County Office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any discrepancies. A maximum of 30 days will be provided to correct any deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) or line(s) of credit shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL, SW and FO Loans.*

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Part 1980, Subparts A and B of this part. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b), 1980.180(b) or 1980.185(b) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit and SW and FO loans in §§ 1980.175, 1980.180 and 1980.185 of this subpart. All requests for guaranteed loans or lines of credit, will be processed under Subparts A and B of this part except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 410–1, "Application for FmHA Services," signed by the applicant's borrower. The applicant's borrower must complete and sign all parts of the Form FmHA 410–1 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL loans/lines of credit or SW or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this subpart except Form FmHA 449–12, "Request for Loan Note Guarantee (Farmer Programs Loans)," and the applicable environmental review requirements contained in Subpart G of Part 1940 of this chapter. These latter requirements remain the responsibility of the FmHA loan approval official. However, ALP lenders are responsible for meeting the lender's requirements contained in Exhibit M to Subpart G of Part 1940 of this chapter. Attachment 3 to this Exhibit will be used by ALP lenders to request a guarantee from FmHA. An ALP lender will only be required to submit Form FmHA 410–1 and information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Exhibit and Attachment 3 of this Exhibit, with any supportive information attached, to FmHA for making application for a guarantee. If the lender's cash flow statement does not lend itself to providing a debt repayment source and use breakdown of income the lender will submit a statement similar to item 28 of Form FmHA 449–12. A guaranteed OL loan/line of credit or SW or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," and the determination that all conditions, including the certification required by § 1980.80 of Subpart A of this part can be met. The ALP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g), FO loan under § 1980.180(f) or SW loan under § 1980.185(f) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans/lines of credit guaranteed.

C. *Liquidation of Loans/Lines of Credit.* Any liquidation of guaranteed OL loans/lines of credit, SW loans or FO loans will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. FmHA County Supervisor will complete the required environmental review and will review each Form FmHA 410–1 and request for a guarantee, compare material with the county office copy of ALP agreement, approved forms, and methods, and immediately contact the ALP lender within three working days if the information is not in accord with the approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449–23, "Guaranteed Loan Evaluation, Farmer Programs," if needed, to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit, SW loan or FO loan, and the purposes and terms of such loans/lines of credit.

A. If the County Supervisor's evaluation indicates the application is complete and acceptable, FmHA will provide the lender a County Committee determination of the borrower's eligibility within 14 days. This 14-day period will be contingent upon:

(1) Request for a guarantee being received by the appropriate FmHA County Office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first three loans or lines of credit developed by a new ALP lender before the loan/line of credit is closed. FmHA will examine the lender file on each guaranteed loan/line of credit within 90 days of loan closing and will review 20 percent of the lender's guaranteed portfolio annually. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be discussed with the lender and confirmed in writing with a copy to the State Director through the District Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guaranteed program complies with Subparts A and B of this part.

Each Approved Lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement (Attachments 1 and/or 2 to this Exhibit) so that the Lender recognizes that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under this Exhibit D and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guaranteed is issued under the Lender's Agreement for Guaranteed Operating Loans (OL), Guarantee Farm Ownership Loans (FO) and Guaranteed Soil and Water Loans (SW) dated ———." The date will be the same date entered in paragraph XX of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated ———." The date will be the same date entered in paragraph XX of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County Office file maintained for each Loan Note Guarantee and Contract of Guarantee issued.

Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement (Loan Note Guarantee Only) for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) Guaranteed Soil and Water Loans (SW)

(Lender) of ———

is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This does not apply to loan types other than those specifically named in this agreement. The agreement applies to the following offices of the Lender:

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the Lender as may be issued pursuant to the regulations for operating, soil and water, and/or farm ownership loans and to participate in a percentage of any loss on any such operating, soil and water and/or farm ownership loan not to exceed the amount established in the particular loan note guarantee as the percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this Agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating, soil and water and/or farm ownership loan guaranteed.

II. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold under Form FmHA 449–36. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) under Form FmHA 449–36.

2. *Multinote System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases insure to its and the Government's benefit not withstanding any contrary provisions of State law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the lender with a Form FmHA 449–34, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not succeed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then exchanged for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.* a. The lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The lender may obtain participation of only the unguaranteed portion of its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan in which the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall upon the sale succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lenders will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in Title 7 CFR, Part 1980, Subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions of this Agreement.

III. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and B as set forth in Form FmHA 449–14, "Conditional Commitment for Guarantee," for the particular loan.

IV. The Lender certifies that none of its officers or directors, stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System institutions with direct lending authority that have normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners have a substantial financial interest in the Lender. If the borrower is a member of the board of directors of a Farm Credit Bank or other Farm Credit System institution with direct lending authority the lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

V. The Lender will certify to FmHA, prior to the issuance of a Loan Note Guarantee for each loan, that there has been no adverse change(s) in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 90 days old at the

time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

VI. Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VII. *Servicing.* A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portion of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this Agreement.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to: 1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower on any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, rescheduled or written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagor or secured party.

5. Assuring that:

a. taxes, assessment or ground rents against or affecting collateral are paid;

b. the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

c. Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

d. Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

e. The Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 90 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart B, § 1980.106(b)(4)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured borrower at least annually. Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of action to the FmHA office upon request.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1980, Subpart G, Exhibit M.

D. The lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.128.

VIII. *Default by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination of the following:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the lender to bring the account current.

3. Reamortization or rescheduling of the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder's(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

8. Principal and interest writedown in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower within 30 days of its receipt of the payment. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by Paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

FmHA will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with Paragraph 10 of the Loan Note Guarantee.

IX. *Liquidation.* If the Lender concludes the liquidation of a guaranteed Loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculation of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR 1980, Subpart B.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, and it is anticipated liquidation will take longer than 90 days it will request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss on the outstanding principal balance owed on the guaranteed debt (See G below). The Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, FmHA will send the original Report of Loss estimate to the FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and Report of Loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate

the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA except when an estimated loss claim is filed. When a Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. *Payment.* Final loss payments will be made within 30 days after the review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI. *Additional Loans or Advances.* Except as provided for in each borrower's loan agreement which was specifically approved by FmHA for that specific borrower, the Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIII. Transfer and Assumption Cases. Refer to 7 CFR Part 1980, Subpart B.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XIV. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in paragraph XIV. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XIV B 3 and B 6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XIV B 1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Loan Note Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.*

a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payment to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidationn action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XV. *Debt write down.* Refer to Title 7 of CFR Part 1980, Subpart B, § 198.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVI. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XVII. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Exhibit A of 7 CFR Part 1980. Subpart B will be considered by FmHA on a case-by-case basis.

XVIII. *Notices.* All requests for Loan Note Guarantee and any notices or action will be initiated through the following FmHA County Offices

_____

_____

_____

XIX. *Termination of Agreement.* Except for FCS Member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of request for Loan Note Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XX unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Loan Note Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at time of expiration or revocation until those loan note guarantees still extant are concluded.

XX. This Agreement is dated _____.

Lender _____

(Name)

_____

(IRS) I.D. Tax No.)

BY _____

Title _____

Attest: _____

(SEAL)

United States of America, Farmers Home Administration.

By _____

Title _____

Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

—(Lender) of ___ is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to lines of credit types other than those specifically named in this agreement. The agreement applies to the following officers of the Lender: _____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA), agrees to enter into Contract of Guarantees with the Lender for Operating loan lines of credit and to participate in a percentage of any loss on any such operating loan line of credit advance(s) not to exceed the amount established in the particular contract of guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advance(s) the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular line of credit guarantee as to percentage of the principal and accrued interest on any Operating Loan line of credit advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. *Lender's Sale of Guarantee Line of Credit by Participation.*

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line(s) credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedure. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or borrower or members or their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line(s) of credit through participation at or subsequent to execution of the line of credit agreement(s), such line(s) of credit must not be in default as set forth in the terms of the Line of Credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line(s) of credit. Participation with a lender by an entity does not make the entity a holder.

III. The Lender agrees funds advanced under the line(s) of credit will be used for the purposes authorized in Subpart B of Title 7 CFR Part 1980 as set forth in Form FmHA 1980–15, "Conditional Commitment for Contract Guarantee (Line of Credit)," for the particular line of credit.

IV. The Lender certifies that none of its officers or directors, stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System institutions with direct lending authority that have normal stockshare requirements for participating) or the other owners have or will have a substantial financial interest in any guaranteed line of credit Borrower. The Lender certifies that neither any guaranteed line of credit Borrower nor its officers or directors, stockholders or other owners have a substantial financial interest in the Lender. If the borrower is a member of the board of directors of a Farm Credit Bank or other Farm Credit System institution with direct lending authority, the Lender certifies that a FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

V. The Lender will certify to FmHA, prior to the issuance of a contract of guarantee for each line of credit agreement, that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 90 days old at the time of certification. As used in this paragraph only, the term "Borrower"

includes any parent, affiliate, or subsidiary of the Borrower.

VI. The Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Contract of Guarantee is issued.

VII. *Servicing.*

A. The lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of a line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of lines of credit or loans that are not guaranteed.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing of any violations.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized, rescheduled, or written down only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) Taxes, assessments or ground rents against or affecting collateral are paid;

(b) The line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature which will serve as collateral without written concurrence of FmHA;

(e) The Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such guarantors will be obtained which are not over 90 days old. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A, Section 1980.106(b)(4)) is not released from liability for all or any part of the line of credit except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least annually. Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. The lender shall participate in any farm credit mediation program of a State in accordance with the rules of that system and 7 CFR Part Part 1980, Subpart B, § 1980.126.

VIII. *Default by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in Subpart B of Part 1980 or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

IX. *Liquidation.*

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the line of credit unless FmHA, at its option, decides to carry out liquidation.

A. *Lender's proposed plan of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed plan of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreements and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credit.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the line of credit which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation action. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the line of credit. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculation of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation, and it is anticipated liquidation will take longer than 90 days it will request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guarantee debt (See G. below). The Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

(a) If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

(b) If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of the agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except when an estimated loss claim is filed. When a Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 440–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 30 days after the review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI. *Additional Loans or Advances.* Except as provided for in each Borrower's loan agreement which was specifically approved by FmHA for that specific borrower, the Lender will not make additional expenditures or new lines of credit or loans to any borrower which has financial assistance guaranteed by FmHA without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XII. *Future Recovery.* After a line of credit has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender will be prorated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the line of credit and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the line of credit.

XIII. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, Subpart B. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file and estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XIV. *Bankruptcy.*

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under Chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XIV. For a Chapter 7 bankruptcy or a liquidation plan in a Chapter 11 bankruptcy, only paragraphs XIV B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the

Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to revise estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XIV B 1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Contract of Guarantee or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.*

a. Final loss payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payment to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XV. *Debt write down.* Refer to title 7 of CFR Part 1980, Subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVI. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XVII. *Execution of Agreements.* This agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR Part 1980, Subparts A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVIII. *Notice.* All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA County Offices

_____

_____

_____

XIX. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of requests for Contracts of Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XX unless earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at time of expiration or revocation until those Contracts of Guarantees still extant are concluded.

XX. This Agreement is dated

_____.

Lender: _____

(Name)

_____

(IRS I.D. Tax No)

By _____

Title _____

ATTEST: _____ (Seal)

UNITED STATES OF AMERICA, Farmers Home Administration.

By

_____

Title

_____

Exhibit B—[Reserved]

Exhibit D—Interest Rate Buydown Program

I. *General.*

This exhibit contains the policies and procedures pertaining to an Interest Rate Buydown Program for guaranteed Operating (OL) loans and lines of credit, described in § 1980.175 of this subpart, guaranteed Farm Ownership (FO) loans described in Section 1980.180 of this subpart and Soil and Water (SW) loans described in Section 1980.185 of this subpart. Subparts A and B of Part 1980 are applicable to this Exhibit except as modified by Exhibit A and E of this subpart and this exhibit. Authority to enter into the Interest Rate Buydown agreement is provided for in this Exhibit and expires September 30, 1993.

II. *Introduction.*

The authorities contained in this exhibit provide lenders with a tool to enable them to continue to provide credit to operations of not larger than family farms who are temporarily unable to project a positive cash flow on all income and expenses including debt service without a reduction in the interest rate. This exhibit also provides that a lender that has a guaranteed loan/line of credit which is not already involved in the Interest Rate Buydown program must agree if liquidation of the account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under this exhibit and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in this program.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan/line of credit. In return, FmHA will make annual interest rate buydown payments to the lender in an amount not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this exhibit will in no case exceed 2 percentage points.

III. *Definitions.*

A. *Cash flow*—A projection listing on a typical 24-month basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cashflow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

B. *Interest Rate Buydown Agreement*—(Form FmHA 1980–58] The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate buydown.

C. *Positive Cash Flow*—A cash flow projection, as defined in § 1980.106(b)(17) of this subpart. Except the reserve requirement as outlined in § 1980.106(b)(17)(iii) of this subpart may be from 0 up to 10 percent.

IV. *Program Administration.*

County Supervisors are authorized to approve interest rate buydown agreements providing the following requirements are met by the lender:

A. For those borrowers currently indebted for an FmHA guaranteed loan(s) or line(s) of credit where the guaranteed loan/OL line of credit is to be considered for an interest rate buydown under this exhibit, the lender must demonstrate that a positive cash flow projection on all income and expenses, including debt service, is not possible by rescheduling or reamortizing the account in equally amortized installments as described in § 1980.124 of this subpart. If a positive cash flow can be achieved using rescheduling or reamortizing authorities, subject to the requirements outlined in § 1980.124, the borrowers account will be rescheduled or reamortized. If a positive cash flow projection is then possible, the borrower is not eligible for an interest rate buydown.

1. As required in Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," a lender will notify FmHA when a borrower is thirty (30) days past due on a payment and it is unable to bring the account current within 30 days. The lender will request that FmHA make a determination as to the borrower's eligibility for an interest rate buydown. The lender will submit a plan of operation projecting the repayment ability of the borrower with or without an interest rate buydown. FmHA will make the eligibility determination and will notify the lender in writing within 10 calendar days of receipt of the request. Upon receipt of FmHA's determination of the borrower's eligibility for interest rate buydown, the lender will submit a request for Interest Rate Buydown as set forth in Attachment 2 to this exhibit. If the lender declines to utilize interest rate buydown, the lender will notify the County Supervisor in writing.

2. In addition, the following information will be submitted by the lender:

(a) Verification of off-farm equipment, if any.

(b) Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by approved lenders.

(c) Documentation of the borrower's and lender's compliance with the requirements of Exhibit M to Subpart G of Part 1940 of this chapter, if the affected loan is not already subjected to this provision.

B. Applications from individuals who are not presently indebted for an FmHA guaranteed loan/line of credit shall be processed in accordance with § 1980.113 of this subpart and this exhibit. In addition, the lender will submit Attachment 2 of this exhibit with the application. The lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate on the borrower's loan(s)/line(s) of credit.

C. In all cases, the lender and County Supervisor must determine whether the borrower owns any nonfarm assets which do not contribute to essential family living expenses or to the maintenance of a sound farming operation. The lender must determine whether the borrower could sell these assets and, if so, for how much. The lender will then prepare new cash flow projections which take into account the sale of these assets. If a positive cash flow can then be achieved, the borrower is not eligible for an interest rate buydown.

D. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other creditors adjust their debts and the proposed interest rate buydown results in a positive cash flow, interest rate buydown may be approved.

E. If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and the interest rate buydown, the interest rate buydown will not be approved.

F. In order for a borrower's loan to be eligible for an interest rate buydown, a typical plan of operation must show that a positive cash flow can be expected during the initial 24-month buydown period. For those loans with terms less than 24 months then the operation must show a positive cash flow for the term of the loan. All loans/lines of credit with terms exceeding the buydown period must demonstrate that the borrower will be able to project a positive cash flow on all income and expenses, including debt service, after the buydown agreement expires. Further, if the lender proposes a term for the interest rate buydown which exceeds 24 months, the lender will provide FmHA with a typical 12-month cash flow documenting the necessity for the increased term. In no case will the Federal Buydown period exceed three years.

G. Any holder(s) must agree to the interest rate reduction in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. When FmHA purchases a portion of a guaranteed loan, buydown payments on that portion shall cease.

H. The Interest Rate Buydown Agreement will be attached to the promissory note(s) or line of credit agreement. The promissory note(s) or line of credit agreement, cannot exceed the interest rate the lender charges its average farm customer, *priar* to any write down by the lender, as outlined in § 1980.175(e) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate when needed; however, no new notes or line of credit agreements may be issued. If the lender elects to use a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated *not to exceed* the average variable rate charged the lender's average farm customer (as defined in § 1980.175(e)), over the past 90 days. The promissory note(s), line of credit agreements and any attachments to these agreements, must schedule repayment in accordance with the terms for the applicable loan type set forth in §§ 1980.175(f) and (g), 1980.180(e) and (f), or 1980.185(e) and (f) of this subpart.

I. FmHA will pay the lender any interest rate buydown equal to one-half of the lender's write down of interest percentage points, except that such payments will in no case exceed the cost of reducing such interest by more than two percentage points. The lender will adjust its interest rate in increments of .25%. Once eligibility is established the lender may reduce the interest rate paid on a loan/line of credit to a point equal or exceeding that necessary to achieve a positive cash flow. When a lender requests an interest rate buydown along with a write down, the interest reduction will at least be one full percentage point.

V. *Approval of Interest Rate Buydown.*

If the approval official determines the buydown will be approved in accordance with Paragraph IV of this exhibit, in addition to the determinations required in § 1980.115 Administrative paragraphs A and B, *the approval official will:*

A. Prepare Form FmHA 1940–1, "Request for Obligation of Funds." This form will be used to obligate the buydown portion for those loans presently guaranteed where the interest rate is subsequently bought down, and to obligate the loan and interest rate buydown for initial loans.

B. The approval official will execute Form FmHA 1940–1 and distribute copies in accordance with the Forms Manual Insert (FMI). The Finance Office will enter the obligation of funds on their records for the interest rate buydown and/or loan and notify the approval official by forwarding the original and one copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

C. A loan or line of credit for which the interest rate was previously reduced under this exhibit, may receive a subsequent buydown provided the total buydown term(s) over the life of the loan does not exceed 3 years and the buydown is approved on or before September 30, 1993.

VI. *Interest Rate Buydown Closing.*

A. The lender will prepare and deliver a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit in which the interest rate is bought down under this Exhibit.

B. See § 1980.61(b)(1) and § 1980.118(c) and Administrative paragraph B of this subpart.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the borrower will execute Form FmHA 1980–58, "Interest Rate Buydown Agreement." In NO CASE will Form FmHA 1980–58 be executed prior to the determination of availability of funds for the loan/line of credit and buydown as evidenced on Form FmHA 440–57.

2. An original Form FmHA 1980-58 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980-58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract or Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), or the holder(s) agree(s) to any reduction in interest rate, a copy of Form FmHA 1980-58 will be attached to the original Form FmHA 449-36, "Assignment Guarantee Agreement," along with a copy of the borrower's note(s) with "allonge" and Loan Note Guarantee. Form FmHA 449-36 will be revised to reflect the note amounts. At the top of the face of the document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated ____ and Form FmHA 1980-58, "Interest Rate Buydown Agreement," which temporarily reduces the interest rate on the promissory note to an effective interest rate of ____ %." This revision will be initialed and dated by the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown Agreement will be kept in the County Office, attached to the appropriate Loan Note Guarantee or Contract of Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown (Loan Note Guarantee cases only). See Item number 10 of Form FmHA 449-36 and Item number 6 of Form FmHA 1980-58. When FmHA purchases a portion of the guaranteed loan, buydown payments on that portion shall cease. The interest rate reduction shall remain in effect.

VII. *Interest Rate Buydown Cloims ond Payments.*

Claims and payments will be processed in accordance with Paragraphs 2 and 3 of Form FmHA 1980-58.

VIII. *Term of Buydown Agreement.*

The term of a buydown agreement entered into under this exhibit shall not exceed 3 years or the outstanding term of the loan involving the interest rate buydown, whichever is less.

IX. *Cancellation of Interest Rate Buydown.*

Form FmHA 1980-58, "Interest Rate Buydown Agreement," is incontestable except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. *Excessive Interest Rate Buydown.*

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. *Transfer and Assumption of Loans Involving Interest Rate Buydown.*

Transfers will be processed in accordance with § 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Rate Buydown Agreement only in cases where the transferee was liable for the debt at the time the buydown was granted. Under no other circumstances will the buydown be transferred. If the buydown is necessary for the transferee to achieve a positive cash flow, the lender must make application for an initial buydown under this exhibit.

XII. *Review by FmHA Employees.*

The lender will submit Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," annually along with detailed calculations and a statement of activity on the borrower's account to support the claim. The County Supervisor will approve, if correct, and forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when buydown claims are involved.

XIII. *List of Eligible Lenders.*

The County Supervisor will maintain a current list of eligible lenders and other lenders who express a desire to participate in the guaranteed program. This list will be made available to farmers upon request.

Attachment 1—Buydown Information Letter

United States Department of Agriculture
Farmers Home Administration (location)

Dear _____:

The Farmers Home Administration (FmHA) has authority under the Food Security Act of 1985 (P.L. 99-198) to temporarily make payments to lenders to reduce borrower interest rates on a guaranteed loan to eligible applicants and borrowers. The Interest Rate Buydown Program provides lenders with a tool to enable them to continue to provide credit to family farm operators who are temporarily unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual payments to the lender in an amount of not more than 50 percent of the cost of reducing the interest rate on the loan. Payment made to a lender under this authority may not exceed two percentage points.

Borrowers with existing guaranteed Farm Operating (OL), Farm Ownership (FO) and Soil and Water (SW) guaranteed loans, may have the interest rate on their loans bought down by FmHA.

If you would like additional information regarding the Interest Rate Buydown Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

_____

County Supervisor

Attachment 2—Request for Interest Rate Buydown

To County Supervisor, FmHA

_____

_____

Subject: Request for Interest Rate Buydown

Borrower's Name:

_____

In connection with the subject application for an interest rate buydown, this lending institution certifies:

(1) The loan balance of $_____ is the amount requested for an interest rate buydown. If a line of credit, the line of credit balance is $_____, and the line of credit ceiling amount of $_____ is the amount requested for an interest rate buydown.

(2) (a) The interest rate charged the lender's average farm customer, determined in accordance with §1980.175(e) of this subpart, is _____%. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

(b) The lender's interest rate to the subject borrower prior to writedown is _____% (may not exceed (2)(a)).

(c) The lender's writedown is _____%.

(d) The interest rate to be charged with the writedown to the borrower is _____%.

(3) The amount of interest written down is permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

(4) The lender's interest rate reduction to the borrower will result in a reduced payment schedule for the term of the buydown and that a positive cash flow on all income and expenses, including debt service, will be expected during the buydown period. In cases where the term of the loan exceeds the term of the buydown, the borrower must project a positive cash flow on all income and expenses, including debt service, after the buydown period terminates.

(5) The borrower's cash flow projections have been prepared in accordance with Part 1980, Subpart B, §1980.113(d)(8), and are attached to this document.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

_____

(Name of Lender)

By

_____

Title

_____

_____

Lender's IRS ID No.

Date

_____

Exhibit E—Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland

I. *General.*

This Exhibit contains the policies and procedures pertaining to a Demonstration Project for purchase of certain Farm Credit System acquired farmland (FCS Demonstration Project) for guaranteed Farm Ownership (FO) loans described in § 1980.180 of this subpart. Subparts A and B of this part are applicable to this Exhibit except as modified by Exhibit A of this subpart and this Exhibit. Authority to enter into the FCS Demonstration Project expires January 6, 1991. Attachment 1 is the Farm Credit Bank Agreement to be executed by the Administrator of the Farmers Home Administration (FmHA) and the President of each Farm Credit Bank of those Districts which are certified to participate in the "Demonstration Project for the Purchase of Farm Credit System Land." When a District is certified by the Farm Credit System Assistance Board (FCSAB), the President of the District will sign the Agreement and forward it to the FmHA Administrator for signature. The original Agreement will be retained by FmHA with a conformed copy to the District and the FCSAB.

II. *Introduction.*

This Exhibit contains a means by which the Farm Credit System (FCS) can make available for sale certain acquired lands to eligible FO applicants, as provided by § 351(h) of the Consolidated Farm and Rural Development Act. Each FCS District President and FmHA State Director, who will be involved in the Demonstration Project will provide ample notice of the project as outlined in Attachment 1 of this Exhibit. Only those properties owned by FCS member institutions certified to issue preferred stock under § 6.27 of the Farm Credit Act of 1971 may be purchased under this Exhibit. The Farm Credit Administration (FCA) will provide the Farmers Home Administration (FmHA) with a list of these certified FCS member institutions, as further explained in Memorandum of Understanding between FmHA and FCA found in FmHA Instruction 2000-MM (available in any FmHA office). FmHA may issue certificates of eligibility to eligible borrowers to reduce the interest rate paid by such borrowers on FmHA guaranteed loans obtained from eligible Farmer Program lenders to purchase properties owned by the Farm Credit System. The sale of land by the Farm Credit System under this program is limited to an aggregate land value not to exceed $250,000,000 at fair market value each fiscal year.

Lenders that participate in this FCS Demonstration Project may enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual interest rate buydown payments to the lender in the amount of 4 percentage points. Those lenders who permanently reduce the interest rate charged on the guaranteed loan by at least 1 full percentage point will receive a 95 percent guarantee. The reduction of interest by FmHA will be in effect for a term equal to the outstanding term of such loan, or 5 years, whichever is less.

III. *Definitions.*

A. *Cash Flow*—A projection listing on a typical 24-month basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cash flow will be calculated in accordance with Section 1980.113(d)(8) of this subpart.

B. *Certificate of Eligibility*—The County Committee will certify on Form FmHA 440-2, "County Committee Certification or Recommendation" the following:

(1) That the borrower is eligible for a guaranteed FO loan.

(2) The farm is eligible for the program in accordance with § 1980.106(b)(7) of this subpart.

(3) The borrower is eligible for an interest rate reduction.

C. *Interest Rate Buydown Agreement*—(Form FmHA 1980-58) The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate reduction.

D. *Personal Funds*—Any funds listed on a borrower's financial statement or obtained through a loan, whether or not secured by other property.

E. *Positive Cash Flow*—A cash flow projection, as defined in § 1980.106(b)(17) of this subpart.

IV. *Program Administration.*

County Supervisors are authorized to approve Interest Rate Buydown Agreements for the FCS Demonstration Project providing the following requirements are met by the applicant, FCS and the lender.

A. Applications from individuals who are seeking to purchase FCS acquired farmlands with a guaranteed FO loan shall be processed in accordance with § 1980.113 of this subpart and this Exhibit. In addition, the lender will submit Attachment 2 of Exhibit D with the application. The lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate on the FO loan, except the reserve requirement as outlined in § 1980.106(b)(17)(iii) of this subpart may be from zero to 10 percent.

B. Prospective borrowers who seek to purchase FCS acquired farmlands and who do not have a lender involved in that purchase will submit an application to FmHA. The County Committee will review the application, which will also include a description of the property, and render a decision as to the eligibility of the prospective borrower and farm. If the County Committee determines the prospective borrower is eligible and that the farm meets the requirements of § 1980.106(b)(6) of this subpart, then the County Supervisor will determine if the request is feasible. If the request is rejected by either the County Committee or the County Supervisor, the prospective borrower and the lender will be advised of the opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

C. Prospective borrower must provide a down payment equal to at least 15 percent of the land purchase price using personal funds, as defined in paragraph III D of this Exhibit.

D. Prospective borrowers must meet the applicable requirements of Subpart G of Part 1940 of this chapter, including providing SCS Form CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," as required by Exhibit M to Subpart G of Part 1940 of this chapter.

E. The FCS must price suitable farmland (family farm size as determined by the County Committee) to eligible prospective borrowers at fair market value.

F. FmHA will pay the lender an interest rate reduction of 4 percentage points.

G. The loan will be guaranteed at 90 percent in connection with a 4 percentage point interest rate reduction.

H. A lender who permanently reduces the interest rate currently charged on the loan by at least 1 full percentage point will receive a 95 percent guarantee.

I. The terms of the reduction will not exceed the outstanding term of such loan, or 5 years, whichever is less.

J. In order for the prospective borrower to qualify for a loan and an interest rate reduction, a typical plan of operation must show that a positive cash flow as defined in § 1980.106(b)(17) of this subpart can be expected during the reduction period and after the Interest Rate Buydown Agreement expires.

K. The Interest Rate Buydown Agreement will be attached to the promissory note(s). The promissory note(s) cannot exceed the interest rate the lender charges the average farm customer, *prior* to any write down by the lender, as outlined in § 1980.175(e)(2) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or other legally effective amendment of the interest rate; however, no new notes may be issued. If the lender elects to use a variable rate note, the fixed rate of interest charged during the reduction period will be calculated *not to exceed* the average variable rate charged the lender's average farm customer (as defined in § 1980.175(e)(2)) of this subpart over the past 90 days. The promissory note(s) and any attachments to these agreements, must schedule repayment in accordance with the terms for the loan set forth in Section 1980.180(e) and (f) of this subpart.

V. *Approval of Loan Guarantees and Interest Rate Reduction.*

Authority to approve loan guarantees and Interest Rate Buydown Agreements expires January 6, 1991. If the FmHA approval official determines the reduction will be in accordance with paragraph VI of this Exhibit, in addition to the determinations required in § 1980.115, Administrative paragraphs A and B, of this subpart *the approval official will:*

A. Prepare Form FmHA 1940-1, "Request for Obligation of Funds." The request for obligation of funds must include the amount of the loan and its respective buydown.

B. Execute Form FmHA 1940-1 and distribute copies in accordance with the FMI. The Finance Office will enter the obligation of funds on their records for the interest rate reduction and notify the approval official by forwarding the original and one copy of Form

FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

VI. *Interest Rate Reduction Closing.*

A. The lender will prepare and deliver a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each guaranteed loan in which the interest rate is reduced under this Exhibit.

B. See § 1980.61(b)(1), § 1980.118(c) and Administrative paragraph B of this subpart.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the borrower will execute Form FmHA 1980–58, "Interest Rate Buydown Agreement." In NO CASE will Form FmHA 1980–58 be executed prior to the determination of availability of funds for the loan and interest reduction as evidenced on Form FmHA 440–57.

2. An original Form FmHA 1980–58 will be prepared for each note executed. All originals of Form FmHA 1980–58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), a copy of Form FmHA 1980–58 will be attached to the original Form FmHA 449–36, "Assignment Guarantee Agreement," along with a copy of the borrower's note[s] with "allonge" and Loan Note Guarantee. Form FmHA 449–36 will be revised to reflect the note amounts. At the top of the face of the document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated_____ and Form FmHA 1980–58, "Interest Rate Buydown Agreement," which reduces the interest rate on the promissory note to an effective interest rate of ____%. This reduction is _____ (insert "temporary" if there is no 95 percent guarantee involved or "permanent" if a 95 percent guarantee is involved.)" This revision will be initialed and dated by the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown Agreement will be kept in the County Office, and attached to the appropriate Loan Note Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file. Copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of guaranteed loans having interest rate reduction under this FCS Demonstration Project. See item number 10 of Form FmHA 449–36 and item number 6 of Form FmHA 1980–58. When FmHA purchases a portion of the guaranteed loan, buydown payments on that portion shall cease, but the interest rate reduction shall remain in effect. The lender shall complete Form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to request payment for the buydown/subsidy through the date of the FmHA purchase.

VII. *Interest Rate Reduction Claims and Payments.*

Claims and payments will be processed in accordance with paragraphs 2 and 3 of Form FmHA 1980–58.

VIII. *Term of Buydown Agreement.*

The term of a buydown agreement entered into under this Exhibit shall not exceed 5 years or the outstanding term of the loan involving the interest rate reduction, whichever is less.

IX. *Cancellation of Interest Rate Reduction.*

Form FmHA 1980–58 is incontestable, except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. *Excessive Interest Rate Reduction.*

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. *Transfer and Assumption of Loans Involving Interest Rate Reduction.*

Transfers will be processed under this Exhibit. The lender shall complete Form FmHA 1980–24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to request payment for the buydown/subsidy through the date of the transfer or assumption of the guaranteed loan under the transferor's case number. If the reduction is necessary for the transferee to achieve a positive cash flow, the lender must make application for an initial reduction under this Exhibit.

XII. *Review by FmHA Employees.*

The lender will submit Form FmHA 1980–24 annually along with detailed calculations and a statement of activity of the borrower's account to support forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when reduction claims are involved.

Attachment 1—Farmers Home Administration Demonstration Project for the Purchase of Farm Credit System Land

Farm Credit Bank Agreement

I. *General:* This agreement provides the guidelines for the implementation of the Demonstration Project for the Purchase of Certain Farm Credit System Acquired Land (FCS Demonstration Project) between Farmers Home Administration (FmHA) and the Farm Credit Bank of _____ (Bank) to carry out the goals and objectives of Section 351(h) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1999(h)) as described in Exhibit E of 7 CFR Part 1980, Subpart B.

The Parties Agree That:

I. The Bank will make available for purchase by qualified borrowers property eligible for the FCS Demonstration Project as further explained in Paragraph II of Exhibit E of 7 CFR Part 1980, Subpart B.

II. The Bank may, at its discretion and for the purpose of maximizing the economic return on the sale of acquired property, subdivide tracts of land to make available parcels that permit eligible borrowers to purchase the parcels consistent with limits placed on the size of loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act.

III. The Bank will periodically provide the FmHA State Director with current inventories of properties that may be eligible for the FCS Demonstration Project.

IV. The Bank, through private sale, will sell land at fair market value, as determined by the Bank, to eligible borrowers.

V. The Bank reserves the right to market and sell its acquired property to any qualified individual until, under the terms of the FCS Demonstration Project, FmHA has determined the eligibility of the borrower and suitability of the property, and a purchase agreement has been executed between the eligible borrower and the Bank.

VI. The Bank will provide technical assistance to the extent possible in connection with the implementation of the FCS Demonstration Project.

VII. The Bank will dispose of properties listed under the FCS Demonstration Project in a manner consistent with the applicable provisions of Section 4.36 of the Farm Credit Act of 1971, as amended, governing the rights of first refusal of former owners.

VIII. The FmHA will process applications for participation in the FCS Demonstration Project in accordance with FmHA regulations, including those set out in 7 CFR Part 1980, Subparts A and B.

IX. The FmHA will determine the eligibility of the prospective borrower and the property for the FmHA guaranteed program.

X. The FmHA will provide certificates of eligibility to eligible borrowers on a timely basis consistent with the availability of acquired property owned by institutions of the Farm Credit System certified to issue preferred stock under Section 6.27 of the Farm Credit Act of 1971.

XI. The Bank and FmHA are independently responsible for providing adequate media coverage of the FCS Demonstration Project. Media coverage will include news releases for local newspapers, radio, and television.

This Agreement is effective upon signing by both the Administrator of the Farmers Home Administration and President of the Farm Credit Bank of _____. This Agreement may be amended at any time by written agreement of both parties, and shall terminate with the expiration of the authority for the FCS Demonstration Project.

By _____
Administrator, Farmers Home Administration

Date: _____

By: _____
President of the Farm Credit Bank of

_____

Date: _____

Exhibit F—(Prepare One for Each Loan/Line of Credit to be Written Down) Shared Appreciation Agreement

This Agreement is entered into between (Lender's name) (called "Lender") and (Borrower's name) (called "Borrower") on (date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to Lender for a loan or line of credit as evidenced by the note(s) or line of credit agreement(s) described below:

Date	Principal amount	Interest rate	Due date

This Agreement is attached to the note(s) or line of credit agreement(s) described above. As of the date of this Agreement, before write down, the unpaid principal balance on this note or line of credit agreement was $_____ and the unpaid interest balance was $_____. If a line of credit agreement is involved, the new line of credit ceiling is $_____, and no increase will be made under the line of credit agreement(s). The value of the security covered by this agreement at the time of write down is $_____.

The note or line of credit agreement described above is secured by the following real estate security instruments:

Grantor	Date of security instrument	Records of		Book or reel	Page
		County	State		

Lender agrees to write down $_____ of principal and accrued interest of the above-described note or line of credit agreement. After the write down, there is now due and owing the principal sum of $_____ plus interest in the sum of $_____ together with interest accruing from the date of this agreement on the unpaid principal balance at the rate of ____%.

As a condition to, and in consideration of, Lender writing down the above amounts and restructuring the loan, Borrower agrees to recapture by the Lender an amount according to one of the following schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays all guaranteed loan(s) or lines of credit in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays all guaranteed loans or lines of credit in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by Lender will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into. Both values will be determined thorough an appraisal conducted by Lender. The amount of recapture will not exceed the amount of write down as stated on this form. Repayment of the recapture amount may be rescheduled or reamortized if the borrower is unable to pay the recapture amount at the expiration date of this agreement.

_____
(Borrower signature)

_____
(Lender signature)

Subpart C—Emergency Livestock Loans

13. Section 1980.284 is added to read as follows:

§ 1980.284 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C 5 of Form FmHA 449–35 or Form FmHA 1980–38). These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) The lender, whose collateral is subject to being used by the bankruptcy estate, will immediately seek adequate protection of the collateral, including petitioning for a super priority. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely. In Chapters 11, 12, and 13 bankruptcy cases, the lender will monitor the plan to determine whether the borrower is fulfilling the requirements of the plan and take appropriate action to obtain dismissal of the case if the borrower fails to comply with the requirements of the plan. A dismissal of the plan by the bankruptcy court would restore the original outstanding indebtedness at the time the reorganization plan was approved.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In Chapter 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses, in a Chapter 11, 12, or 13 reorganization case, are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees) while the borrower is in reorganization are considered normal expenses of servicing the account and therefore are

the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases provided the lender is doing the actual liquidation of the collateral, presents adequate written justification for each expense, and secures FmHA's written concurrence prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender in this instance is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss payments.* See paragraph XVI of Form FmHA 449-35 or Form FmHA 1980-38.

Administrative

A. The lender is responsible for advising FmHA of the completion of reorganization plan. The lender is also responsible for advising FmHA if the borrower does comply with the plan and the servicing action the lender will take to protect the interest of the lender and FmHA. However, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

B. When an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the remaining balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

C. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

D. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankrutcy.

E. Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on the principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for the accuracy of the interest calculations on the final report of loss before submission to the Finance Office.

F. Repurchase of Notes.—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of loan(s) from any holder(s) to reduce interest accrual during a Chapter 7 proceeding, or after a Chapter 11 proceeding becomes a liquidation proceeding. (Refer to paragraph X C of Form 449-35 or Form FmHA 1980-38.)

G. County Supervisors are authorized to approve Report of Estimated Loss or Final Loss Payments on Form FmHA 449-30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to approve the determination in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses.

Subpart E—Business and Industrial Loan Program

14. Section 1980.475 is amended by redesignating paragraph (a)(5) as (a)(6), adding new paragraph (a)(5), revising paragraph (b), adding new paragraph (d), and revising the Administrative section, to read as follows:

§ 1980.475 Bankruptcy.

(a) * * *

(5) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

* * * * *

(b) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

* * * * *

(d) *Estimated loss payments.* See paragraph XVI of Form FmHA 449-35.

Administrative

Refer to Appendix G of this subpart (available in any FmHA office) for advice on how to interact with the lender on liquidation and property management.

A. It is the responsibility of the State Program Chief to see that FmHA is being fully informed by the lender in all bankruptcy cases.

B. All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

C. Chapter 11 pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Liquidating 11. If the proceeding should become a Liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral provided the lender is doing the actual liquidation of the collateral as provided by the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If and when liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, the lender cannot claim expenses.

D. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be halted in accordance with the Lender's Agreement and carry the approval of the State Director.

E. The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not in-house expenses of the lender.

F. The lender is responsible for advising FmHA of the completion of the Chapter 11 reorganization plan; however, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

G. If an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the remaining balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

H. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA servicing office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

I. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the Chapter 11 reorganization provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy.

J. Adequate Protection—The bankruptcy court can order protection of the collateral while the borrower is in a reorganization bankruptcy. The lender whose collateral is subject to being used by the trustee in bankruptcy should immediately seek adequate protection of the collateral, including petitioning for a super priority.

14a. Subpart E is amended by adding Exhibit G.

Exhibit G

Note.—The Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA office.

Subpart F—Economic Emergency Loans

15. Section 1980.583 is added to read as follows:

§ 1980.583 Bankruptcy.

(a) *General.* In bankruptcies, there are two separate proceedings: liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to paragraph IX C 5 of Form FmHA 449-35 or Form FmHA 1980-38). These responsibilities include, but are not limited to:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend, and where necessary, participate in meetings of the creditors and all court proceedings.

(3) The lender whose collateral is subject to being used by the bankruptcy estate will immediately seek adequate protection of the collateral, including petitioning for a super priority. Adequate protection of the collateral, depending on interpretation, may take several forms. In a bankruptcy, the trustee is authorized to sell, lease or use the collateral if the borrower's business is in operation. The only collateral the trustee cannot utilize is cash collateral unless the secured creditor grants permission or the bankruptcy court authorizes the use of such after giving a proper hearing and notice.

(i) Cash collateral means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, such as accounts receivable.

(ii) Concerning machinery, equipment and real estate, adequate protection can be interpreted differently under reorganization. The bankruptcy trustee could dispose of certain collateral and grant to the secured party a replacement lien on some other collateral which may or may not have the same value. For example, the lender may hold a first lien on a good saleable piece of real estate and could find replacement of this particular parcel of property with a second or possibly a third lien on another parcel of land that the lender may find undesirable for adequate protection. There are no guarantees to the lender when the borrower is in reorganization that the collateral will be protected to the lender's satisfaction. The lender should be fully aware of what is taking place with the collateral and resist any adverse changes that may be made in the collateral securing the FmHA guaranteed loan.

(4) When permitted by the Bankruptcy Code, the lender will request a modification of any plan of reorganization whenever it appears that additional recoveries are likely. In Chapters 11, 12, and 13 bankruptcy cases, the lender will monitor the plan to determine whether the borrower is fulfilling the requirements of the plan and take appropriate action to obtain dismissal of the case if the borrower fails to comply with the requirements of the plan. A dismissal of the plan by the bankruptcy court would restore the original outstanding indebtedness at the time the reorganization plan was approved.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) *Reorganization bankruptcy cases.* (1) In a Chapter 11, 12, or 13 reorganization, if an independent appraisal of collateral is necessary in FmHA's opinion, FmHA and the lender will share the appraisal fee equally.

(2) Lender expenses in a Chapter 11, 12, or 13 reorganization case are not deducted from the proceeds of the collateral because a reorganization is not a liquidation. All expenses incurred by the lender (including attorney's fees) while the borrower is in reorganization are considered normal expenses of servicing the account, and therefore are the responsibility of the lender and are not deductible from the proceeds of the collateral or covered under the FmHA guarantee.

(c) *Liquidation bankruptcy cases.* (1) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases, provided the lender is doing the actual liquidation of the collateral, presents adequate written justification for each expense, and secures FmHA's written concurrence prior to incurring the expense.

(2) If a trustee is appointed by the bankruptcy court to sell the collateral under a conversion of a reorganization plan to a liquidation plan or Chapter 7, the trustee rather than the lender in this instance is responsible for liquidating the collateral. Normally, any expenses incurred by the lender during this period are not considered liquidation expenses and cannot be deducted from collateral proceeds. The lender is not engaged in the liquidation but is performing in a manner considered to be normal servicing of the loan under the circumstances.

(3) If the property is abandoned by the trustee and the lender is actually engaged in liquidation, reasonable liquidation expenses would be recoverable from liquidation proceeds with prior written concurrence for each expense from FmHA before the expense is incurred.

(d) *Loss payments.* See paragraph XVI of Form FmHA 449-35 or Form FmHA 1980-38.

Administrative

A. The lender is responsible for advising FmHA of the completion of the reorganization plan. The lender is also responsible for advising FmHA if the borrower does not comply with the plan and the servicing action the lender will take to protect the interest of the lender and FmHA. However, the FmHA servicing office will monitor the lender's files to ensure timely notification of servicing actions.

B. When an estimated loss claim is paid during the operation of the reorganization plan, and the borrower repays in full the balance of the loan as set forth in the plan without an additional loss sustained by the lender, a Final Report of Loss is not necessary. The Finance Office will close out the estimated loss account as a Final Loss at the time notification of payment in full is received.

C. If the bankruptcy court attempts to direct that loss payments will be applied to the account other than the unsecured principal first and then to unsecured accrued interest, the lender is responsible for notifying the FmHA office immediately. The FmHA servicing office will then obtain advice from OGC on what actions FmHA should take.

D. Protective Advances—Authorized protective advances may be included with the estimated loss payment associated with the reorganization bankruptcy provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy.

E. Accrued interest owed to the lender should be supported by documentation as to how the accrued interest amount was calculated by the lender. A copy of the promissory note and ledger should also be attached. As part of the review of the final loss claim, FmHA should be assured that the lender has not accrued interest on .he

principal and interest amount of the loan that was paid by the estimated loss payment. The approval official is responsible for the accuracy of the interest calculations on the final report of the loss before submission to the Finance Office.

F. Repurchase of Notes—In cases where a default on the guaranteed note does not exist, the State Director may approve the repurchase of the unpaid guaranteed portion of the loan(s) from any holder(s) to reduce interest accrual during a Chapter 7 proceeding, or after a Chapter 11 proceeding becomes a liquidation proceeding. (Refer to paragraph X C of Form FmHA 1980–35 or Form FmHA 1980–38.)

G. County Supervisors are authorized to approve Report of Estimated Loss or Final Loss Payments to Form FmHA 449–30 in those cases where the loss payment will not exceed $55,000. The State Director is authorized to approve the determination in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of any losses.

Dated: January 5, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89–573 Filed 1–12–89; 8:45 am]

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federal register

Friday
January 13, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 880

Medical Devices; Patient Examination Glove; Revocation of Exemptions from the Premarket Notification Procedures and the Current Good Manufacturing Practice Regulations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 88N-0044]

Medical Devices; Patient Examination Glove; Revocation of Exemptions From the Premarket Notification Procedures and the Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the patient examination glove classification regulation, set forth in 21 CFR 880.6250, by revoking exemptions from the premarket notification procedures and certain current good manufacturing practice (CGMP) requirements identified in the regulation. The revocations are necessary because of the importance of this device in helping to prevent the transmission between patients and health-care workers of the HIV (human immunodeficiency virus) virus that causes AIDS (acquired immunodeficiency syndrome).

DATES: The rule becomes effective on April 13, 1989.

A premarket notification submission is required for any patient examination glove intended to be introduced or delivered for introduction into commerce on or after April 13, 1989, pursuant to section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), and the procedures in Subpart E of 21 CFR Part 807. A manufacturer, or an initial distributor of an imported patient examination glove, that has already begun commercial distribution under FDA's existing exemption from premarket notification, is required to submit to FDA a premarket notification on or before April 13, 1989.

All patient examination gloves, whether made in the United States or imported, that are introduced or delivered for introduction into commerce after April 13, 1989, must have been manufactured in compliance with the CGMP regulations in 21 CFR Part 820.

Submit any written comments by March 14, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 21, 1980 (45 FR 69678 at 69723), FDA published a final rule classifying into class I the patient examination glove (21 CFR 880.6250) using procedures in section 513(b) of the act (21 U.S.C. 360c(b)). In that regulation, FDA identified the patient examination glove as a disposable device intended for medical purposes, that is worn on the examiner's hand or finger to prevent contamination between the patient and examiner. The generic device may be made of various materials, such as vinyl or latex rubber.

As part of the regulation, FDA exempted manufacturers of the device (1) from the premarket notification procedures in Subpart E of 21 CFR Part 807 and, (2) if the device is not labeled or otherwise represented as sterile, the CGMP regulations in 21 CFR Part 820, with the exception of §§ 820.180 and 820.198, relating to the keeping of records and complaint files and related procedures, respectively. In the 1980 regulation, FDA granted these exemptions because no adverse experiences had been related to patient examination gloves. Also, the role of the gloves as a protective barrier against HIV transmission was not the public health concern then that it is today, because AIDS and the HIV virus were not recognized at that time and the risks associated with glove failure were not as well understood as they are today.

Since publication of the final classification regulation for the patient examination glove, AIDS has become a major public health problem. In the United States, an estimated 1 to 1.5 million persons are infected with HIV and the number of those persons who will develop AIDS is unknown (Ref. 1). As of November 7, 1988, the Centers for Disease Control (CDC) report that there have been 77,994 reported cases of AIDS in the United States, and over half of these persons have died (Ref. 2). It is projected that, by the end of 1991, a cumulative total of 270,000 cases of AIDS will have been reported in the United States and a projected total of 179,000 deaths will have occurred from the disease (Ref. 3).

HIV is contacted primarily through sexual contract; however, a number of cases have been contracted through transfusions of infected blood or blood products, contact with infected blood or blood products, and from use of contaminated needles, typically by intravenous drug users. HIV has been isolated from body fluids, such as blood, semen, vaginal secretions, saliva, tears, breast milk, cerebrospinal fluid, amniotic fluid, and body excretions, such as urine. As the prevalence of HIV infection increases, health-care workers are subjected to an increasing potential of HIV exposure by virtue of treating and caring for larger numbers of HIV-infected persons.

Health-care workers are those persons, including students and trainees, whose activities in a health-care setting involve contact with blood or other body fluids or excretions from patients. Because a patient's typical medical history and patient examination currently cannot readily identify whether the patient is infected with HIV or other blood-borne pathogens, CDC and others recommend that health-care workers should use appropriate barrier precautions when handling a patient's blood or other body fluids or excretions to prevent exposure to pathogens.

On August 21, 1987, CDC published a report that emphasized the need for all health-care workers to routinely use appropriate barrier precautions when contact with blood or body fluids of any patient is anticipated to prevent skin and mucous membrane exposure (Ref. 4). The CDC report recommended that health-care workers wear patient examination gloves (1) when touching blood and body fluids, mucous membranes, or nonintact skin of all patients, (2) in handling items or surfaces soiled with blood or body fluids, and (3) in performing venipuncture and other vascular access procedures.

Because of the risk of exposure to HIV, there now is a need for greater assurance that contamination between patients and health-care workers does not occur. Accordingly, FDA believes that it is imperative that patient examination gloves worn by health-care workers provide an effective barrier to contamination. An effective barrier can be provided only if the gloves are intact, i.e., do not contain or develop holes while being used. FDA has determined that defects (holes) in patient examination gloves are not always readily detectable by the users of the device. Holes in the gloves, which may compromise the effectiveness of the barrier, may result in contamination between health-care workers and patients, leading to HIV exposure.

FDA believes that revocation of the exemption from certain of the CGMP requirements will help provide assurance that manufacturers provide an acceptable manufacturing quality level for patient examination gloves, thus improving the safety and effectiveness of the device for its intended use.

FDA believes that revocation of the exemption from the premarket notification procedures is necessary to assure that FDA will be able to monitor the introduction into commerce, by manufacturers and importers, of patient examination gloves.

In revoking the exemption from premarket notification, FDA has included individuals presently marketing patient examination gloves among those persons who must file 510(k) notifications. Under 21 CFR 807.81(a)(3)(ii), any person responsible for a major change or modification in a marketed device's intended use is subject to the 510(k) requirement to file a premarket notification.

Current health needs and recommendations from health authorities relating to the use of the device as the an in preventing the transmission of HIV from patients to health-care practitioners has created a new highly specific intended use for patient examination gloves. Due to the new primary use of the gloves and the potential risk of their failure, FDA believes it is entirely proper to require premarket notification for the devices now on the market, inasmuch as the 1980 exemption from premarket notification did not contemplate the present HIV-related intended use of the gloves.

Quality control measures used by manufacturers an product testing are of special concern to FDA. Thus, the premarket notifications submitted to FDA should include a description of the product testing, the methodology and the standard employed, and the acceptable quality level (AQL).

Accordingly, to provide an increased level of public health protection from HIV, FDA is revoking the exemptions from certain requirements of the CGMP regulations and from premarket notification procedures for the patient examination glove. After the requirements for premarket notification and CGMP's have been in effect for a period of time, if the quality levels of nonsterile patient examination gloves are determined by FDA to be satisfactory and the risks of glove failure have been reduced to minimal levels, FDA may reconsider whether exemptions should again be granted to manufacturers of nonsterile patient examination gloves.

Under sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. 553(b) and (d)) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)), FDA finds that notice and public procedure for amending 21 CFR 880.6250 are contrary to the public interest considering the public health interests that are at stake. FDA believes that it needs to revoke the existing exemptions as quickly as possible to protect the public health. The revocation of the exemptions will provide FDA (1) notification by manufacturers and importers of the devices that are intended for commercial distribution and (2) assurance that manufacturers will follow CGMP regulations, thereby increasing the reliability of patient examination gloves as an effective barrier to the transmission of HIV between patients and health-care workers. FDA, therefore, believes it has good cause to proceed directly to a final rule.

FDA is aware of reports of shortages of patient examination gloves caused by increasing demand. Weighing the public's need for protection from HIV transmission in the medical context against additional glove shortages, it any, attributable to FDA's revocation of exemptions, the agency is providing glove manufacturers and importers 90 days prior to the final regulation's effective date in order to permit orderly compliance with regulatory requirements. The agency intends to provide expedited review of all submission received, to help ensure that these revisions in regulatory requirements will not adversely affect the availability of patient examination gloves that provide reliable, effective protection against HIV exposure.

Although the agency is publishing this rule as a final rule without an opportunity for prior notice and comment as a proposed rule, FDA is providing for comment on this final rule.

FDA advises that the generic type of device surgeon's glove intended to be worn by operating room personnel to protect a surgical wound from contamination was classified into class I without exemptions in a separate regulation (21 CFR 878.4460; 53 FR 23856, June 24, 1988). Thus, manufacturers and importers of the surgeon's glove must comply with the premarket notification requirements and the CGMP regulations.

Effective Dates

Any person that is required to register and list under 21 CFR 807.20 because of the manufacture or importation of the patient examination glove is subject to this final rule.

A premarket notification submission is required for any patient examination glove intended to be introduced or delivered for introduction into commerce on or after April 13, 1989, pursuant to section 510(k) of the act (21 U.S.C. 360(k)) and the procedures in Subpart E of 21 CFR Part 807. A manufacturer, or an initial distributor of an imported patient examination glove that has already begun commercial distribution under FDA's existing exemption for premarket notification is required to submit to FDA a premarket notification on or before April 13, 1989.

All patient examination gloves, whether made in the United States or imported, that are introduced or delivered for introduction into commerce after April 13, 1989, must have been manufactured in compliance with the CGMP regulations in 21 CFR Part 820.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Quarterly Report to the Domestic Policy Council on Prevalence and Rate of Spread of HIV and AIDS—United States," Vol. 37, No. 38, September 16, 1988, pp. 551-559.

2. "Centers for Disease Control AIDS Weekly Surveillance Report—United States," November 7, 1988.

3. "Human Immunodeficiency Virus Infection in the United States: A Review of Current Knowledge," *Morbidity and Mortality Weekly Report*, December 18, 1987, Vol. 36, No. S-6.

4. "Recommendations for Prevention of HIV Transmission in Health-Care Settings," *Morbidity and Mortality Weekly Report*, Centers for Disease Control, August 21, 1987, Vol. 36, No. 2S.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has examined the economic impact of this rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96-395). In accordance with section 3(g)(1) of Executive Order 12291, the impact of this rule has been analyzed, and it has been determined that this final rule is not a major rule as defined in section 1(b) of the Executive Order.

The final rule simply brings any manufacturer or initial distributor of a

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patient examination glove under the same requirements that most other manufacturers of medical devices must meet. The original implementation of the premarket notification and CGMP regulations involved assessment of their economic impact, and so no special analyses are needed for this one segment of the device manufacturing community.

Interested persons may, on or before March 14, 1989, submit to the Dockets Management Branch (address above), written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. The agency will review any comments submitted with respect to this final rule to determine whether the rule should be further amended or revoked, and the agency may provide additional opportunity for comment.

List of Subjects in 21 CFR Part 880

General hospital and personal use devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR Part 880 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 880.6250 is amended by revising paragraph (b) to read as follows:

§ 880.6250 Patient examination glove.

* * * * *

(b) *Classification.* Class I (general controls).

Dated: December 17, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-626 Filed 1-12-89; 8:45 am]

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federal register

Friday
January 13, 1989

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Industrial-Commercial Institutional Steam Generating Units; Proposed Revision of Rule and Denial of Petitions for Reconsideration

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3483–2]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revision of rule.

SUMMARY: On November 25, 1986, standards of performance were promulgated limiting emissions of particulate matter (PM) and nitrogen oxides (NO_x) from industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) (51 FR 42768). Petitions for reconsideration of the NO_x standards were submitted by the Utility Air Regulatory Group (UARG) and owners of the William H. Zimmer Generating Station (Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, and the Dayton Power and Light Company; hereafter "Zimmer owners"), which presented information pertaining to steam generating units that operate at very low annual capacity factors. Consideration of these data and information has led to today's proposal to establish revised NO_x performance testing and monitoring requirements for steam generating units with heat input capacities of greater than 73 MW (250 million Btu/hour) that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent). In addition, today's proposal would also exempt steam generating units with heat input capacities of less than 73 MW (250 million Btu/hour) that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent) from the NO_x standards and performance testing and monitoring requirements.

DATES: *Comments.* Comments on the proposed changes must be received by March 10, 1989.

Public hearing. If anyone requests to speak at a public hearing by February 2, 1989, a public hearing will be held on February 9, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541–5578 to verify that a hearing will be held. Assistance will be available for persons with hearing impairments.

Request to speak at hearing. Persons wishing to present oral testimony must request to speak at the public hearing by February 2, 1989.

ADDRESSES: *Comments.* Comments on the proposed changes should be submitted (in duplicate, if possible) to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: Docket Number A–79–02.

Public hearing. If anyone requests a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket Number A–79–02, containing supporting information used in developing the proposed revision, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter [(919) 541–5251] Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: .

Criteria for Review of the Petitions for Reconsideration

The standards were promulgated under the procedures of section 307 of the Clean Air Act. The petitioners (i.e. UARG and Cincinnati Gas & Electric Company) have requested reconsideration under section 307(d)(7)(B) of the Act. Section 307(d)(7)(B) provides that "if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the comment period] if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule [ ]." As the relevant House report explains, the purpose of section 307(d)(7)(B) is to provide the Agency an opportunity "to pass on the significance of the [new] materials and determine whether supplementary proceedings are called for or not." Legislative History of the Clean Air Act Amendments of 1977, Volume 4, p. 2790.

In EPA's view, such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653 (December 11, 1980); Response to Petition for Reconsideration and Final Amendments, NSPS for Petroleum Dry Cleaners, 50 FR 49022 (November 27, 1985).

In reviewing the reconsideration petitions of UARG and Cincinnati Gas & Electric Company, EPA has considered whether under section 307(d)(7)(B) of the Act, the petitions presented EPA with new material of central relevance to the rule that could not have been presented before.[1] As is discussed in detail elsewhere in today's **Federal Register**, it has decided that none of the petitions present that kind of material. Nevertheless, the Administrator has discretionary authority to reconsider or amend a rule at any time. The Administrator has determined that with respect to one issue raised by Cincinnati Gas & Electric and UARG—the NO_x standard as applied to low capacity steam generating units burning certain oils or natural gas—EPA agrees with UARG and the Zimmer owners. The proposed rule exempted all units, regardless of size or fuel consumed, from continuous emission monitors (CEM) requirements for NO_x if they operated at 30 percent capacity or less. The final rule modified the CEM exemption. It deleted the capacity factor criterion and substituted criteria related to size and fuel consumption in order to better fit the CEM requirement to the units most likely to generate large

[1] Section 4(d) of the Administrative Procedure Act (APA), U.S.C. 553(e), states "Each agency shall give an interested person the right to petition for issuance, amendment or repeal of a rule." Although section 4(d) of the APA also establishes a right to petition for administrative reconsideration, that provision almost certainly does not apply to petitions for reconsideration of regulations that are promulgated pursuant to the rulemaking provisions of section 307(d) of the Clean Air Act. *See* section 307 (d)(1)(N). 42 U.S.C. 7607(d)(1)(N). ("The provision of section 553 through 557 * * * of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to action to which evaluating the petition for reconsideration under the APA are essentially the same as those for section 307(d)(7)(B) petitions. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653–54, and decision cited therein.

quantities of NO_x. Upon further consideration, EPA agrees that it is not reasonable to require continuous emission monitoring of emissions from very low capacity factor steam generating units—even large ones—using certain low nitrogen fuels (very low nitrogen residual oil, distillate oil and natural gas). For that reason, EPA is proposing to revise the rule to require initial performance testing and annual testing of large steam generating units and is proposing to exempt small steam generating units from NO_x standards. The basis for and the details of the proposed action are discussed below.

Rationale for Proposed Amendments

The UARG and the Zimmer owners submitted petitions for reconsideration requesting changes to the promulgated NO_x standards as they applied to utility auxiliary steam generating units. As promulgated, the standards limited NO_x emissions from industrial-commercial-institutional steam generating units with heat input capacity greater than 29 MW (100 million Btu/hour) for which consideration commenced after June 19, 1984 (51 FR 42768).

As identified by the petitioners, utility auxiliary units are used at power plants to assist in start-up of the main steam generating unit. These auxiliary units operate infrequently and typically exhibit very low annual capacity factor levels. The petitions stated that the NO_x standards would impose an unreasonable burden on these steam generating units. They, therefore, requested that the final NO_x standards be amended to either: (1) Exempt utility auxiliary steam generating units from the NO_x standards; (2) exempt steam generating units from the NO_x standards that operate at very low annual capacity factor levels, such as 10 percent or less; or (3) reduce the burden imposed by the performance testing and monitoring requirements associated with the NO_x standards on steam generating units that operate at such very low annual capacity factors.

In support of its petition, UARG submitted data for 20 utility auxiliary steam generating units planned for construction in the 1985 to 1995 time period which would be subject to the NO_x standards, as promulgated. The annual capacity factor of these units was generally in the range of 5 to 8 percent, although several were as low as 2 and 3 percent.

Review of a survey of owners/operators of new industrial steam generating units constructed between 1981 and 1984, which the Agency conducted in 1986–1987, indicates that utility auxiliary units are not the only type of steam generating units that operate at such low capacity factors. A limited number of industrial steam generating units also operate at very low annual capacity factors of 10 percent or less. These industrial units function as stand-by or back-up steam generating units that are operated only when the primary steam generating unit must be taken out of operation for some reason. The impacts of the promulgated NO_x standards on steam generating units that operate at very low annual capacity factors are essentially the same whether the units are utility auxiliary units or industrial stand-by or back-up units. Consequently, the same provisions should apply to both utility auxiliary and industrial-commercial-institutional steam generating units.

Review of the data submitted by the petitioners, as well as that contained in the survey mentioned above, indicates that very low annual capacity factor steam generating units tend to fire "clean" fuels such as natural gas, distillate oil, or low nitrogen residual oils (i.e., residual oils with nitrogen contents of 0.30 weight percent or less). Combustion of these "clean" fuels results in much lower NO_x emissions than combustion of "dirty" fuels, such as high nitrogen residual oils or coal. Therefore, special provisions applicable to very low annual capacity factor steam generating units should be limited to those units firing "clean" fuels in order to minimize NO_x emissions from such units.

With these considerations in mind, the impacts associated with the promulgated NO_x standards were reviewed for steam generating units firing natural gas, distillate oil, and low nitrogen residual oil at very low annual capacity factors (i.e., less than 10 percent). The impacts were reviewed in terms fo the annual cost of NO_x control (including the performance testing and monitoring requirements), the potential NO_x reduction from these units, and the cost effectiveness of the NO_x standards.

As promulgated, the NO_x standards for a typical steam generating unit with a heat input capacity of 73 MW (250 million Btu/hour) or less and firing natural gas, distillate oil, or low nitrogen residual oil are based on low excess air (LEA) operation. The standards require a 30-day intitial performance test, continuous monitoring of either NO_x emissions or combustion parameters indicative of NO_x emissions, and the submittal of quarterly excess emission reports (semiannual reports if no excess emissions occurred). The NO_x standards for a large steam generating unit with a heat input capacity greater than 73 MW (250 million Btu/hour) and firing natural gas, distillate oil, or low nitrogen residual oil are based on staged combustion and low NO_x burners. The standards require a 30-day initial performance test, continuous monitoring of NO_x emissions using a continuous emission monitoring system (CEMS) for continuous compliance (including Appendix F quality assurance procedures), and the submittal of quarterly reports including emissions data and the results of the Appendix F procedures.

Thus, the population of industrial-commercial-institutional steam generating units subject to the promulgated NO_x standards can be divided into two groups for analysis. The impacts on a typical steam generating unit [i.e., one with heat input capacities between 29 MW (100 million Btu/hour) and 73 MW (250 million Btu/hour)] can be considered by examining a steam generating unit with a heat input capacity of 44 MW (150 million Btu/hour). The impacts on a large steam generating unit [i.e., one with a heat input capacity of greater than 73 MW (250 million Btu/hour)] can be considered by examining a steam generating unit with a heat input capacity of 117 MW (400 million Btu/hour).

For a typical steam generating unit with a heat input capacity of 44 MW (150 million Btu/hour), operating at 10 percent annual capacity factor, using LEA as the NO_x control technique, and firing natural gas, distillate oil, or low nitrogen residual oil, the annual cost associated with the NO_x standards (control equipment, performance test, and monitor) would be $65,000 to $75,000 per year. For a large-sized steam generating unit with a heat input capacity of 117 MW (400 million Btu/hour), operating at 10 percent annual capacity factor, using staged combustion or low NO_x burners to control NO_x emissions, and firing natural gas, distillate oil, or low nitrogen residual oil, the annual cost would be $130,000 to $150,000 per year. The NO_x reductions that would be achieved by these steam generating units would be less than 2 tons per year for the typical unit and approximately 20 tons per year for the large unit.

The estimated emission reductions associated with the standards are notable for the large steam generating unit. The cost effectiveness of NO_x control for these very low capacity units, however, appears to be quite high [i.e., $5,000 to $8,000 per ton of NO_x for the large 117 MW (400 million Btu/hour) unit and $43,000 to $49,000 per ton of NO_x for the typical 44 MW (150 million

Btu/hour) unit). Since the cost effectiveness of NO_x control is "driven," in this case, by the cost of the performance testing and monitoring requirements, the impacts associated with alternative and less burdensome performance testing and monitoring requirements were analyzed.

To derive these cost estimates, EPA assumed that all very low capacity factor units would vent to the atmosphere 100 percent of the steam generated in performance tests. Thus, the fuel used to fire these units is a major component of the cost of complying with the performance testing requirements of the current standards. The EPA solicits comments on the approach used to determine the cost effectiveness, especially the assumption that all steam would be vented to the atmosphere.

The application of NO_x control through the use of techniques such as LEA or staged combustion generally makes combustion more difficult to sustain in a steam generating unit. Thus, the unit generally becomes more difficult to operate and requires more frequent and greater operator attention. The natural tendency, therefore, is for the operator to decrease the amount of LEA or staged combustion in order to make operation of the steam generating unit easier. As this occurs, NO_x emissions increase and NO_x emission reductions decrease.

As a result, continuous monitoring of NO_x emissions (either directly by the use of a continuous emission monitor, or indirectly by monitoring combustion parameters indicative of NO_x emissions) is necessary to provide complete assurance of NO_x emission reductions. As the frequency of NO_x monitoring decreases, the assurance of actual NO_x emission reductions decreases, and the NO_x standards become less meaningful.

The only alternative to continuous monitoring of NO_x is periodic, short-term NO_x performance tests. Because this alternative is less rigorous than continuous monitoring, however, it will undoubtedly lead to some increase in NO_x emissions above the levels that could be maintained through the use of continuous monitoring. Despite this drawback, periodic short term performance tests are a useful tool for enforcement and will permit enforcement personnel to monitor periodically the compliance status of steam generating units operating at very low annual capacity factors.

The requirement of an initial 24-hour NO_x performance test followed by 3-hour NO_x performance tests (conducted annually or after every 400 hours of operation, whichever comes first) reduces the cost effectiveness of the NO_x standards to about $300 per ton for a large steam generating unit. For a typical steam generating unit, however, even these requirements result in a NO_x cost effectiveness greater than $3,000 per ton.

The changes being proposed today, therefore, would amend the promulgated NO_x standards in two ways. First, less burdensome performance testing and monitoring requirements for NO_x emissions are proposed for large steam generating units [i.e., those greater than 73 MW (250 million Btu/hour) heat input] firing natural gas, distillate oil, or low nitrogen residual oil (either alone or in combination), and operating at 10 percent annual capacity factor or less. These units would be required to perform an initial short-term performance test (minimum 24-hour) for NO_x emissions within 60 days after achieving the maximum production rate, but not later than 180 days after initial start-up to demonstrate compliance with the NO_x standards and to confirm their maximum heat input capacity. This initial test would be followed by a short-term (minimum 3-hour) NO_x performance test (conducted annually or after every 400 hours of operation, whichever comes first) to verify continued compliance using Method 7, 7A, or other approved methods, or using a CEMS.

Second, an exemption from the NO_x standards and monitoring requirements is proposed for typical steam generating units [i.e., those of less than 73 MW (250 million Btu/hour) heat input] that fire natural gas, distillate oil, or low nitrogen residual oil (either alone or in combination), and operate at 10 percent annual capacity factor or less. The reason for the exemption is the lack of a cost-effective method of monitoring No_x emissions. These units would be required, however, to perform an initial short-term test (minimum 24-hour) to confirm their maximum heat input capacity. This is necessary to ensure that these steam generating units will, in fact, operate at 10 percent annual capacity factor or less. Sources will also be required to maintain fuel records to demonstrate that they are using the "clean" fuels.

The estimated increase in No_x emissions resulting from the proposed exemption for typical steam generating units is less than 50 tons per year. The promulgated standards projected approximately 25,000 tons of NO_x reduction per year in the fifth year following promulgation. This proposed revision would affect fewer than 30 steam generating units out of the 604 units projected to be constructed in the 5 years following promulgation. No solid waste or liquid waste environmental impacts are associated with these proposed revisions.

Miscellaneous

Under Executive Order 12291, a rulemaking action must be examined to determine if it is a "major rule" and, therefore, subject to certain requirements of the Order. Today's rulemaking action would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." This rulemaking action would result in a reduced burden on the industrial-commercial-institutional steam generating unit source category. It would not result in any increase in costs or prices and would not disrupt market competition. This revision, therefore, would not be a "major rule" under Executive Order 12291.

Under section 317 of the Clean Air Act, an economic impact assessment must be prepared for revisions that are determined to be substantial. These revisions are not substantial; as a result, an economic impact assessment has not been prepared.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that these revisions would not have a significant impact on a substantial number of small entities. The revisions would reduce the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (51 FR 42787 and 42788, November 25, 1986).

Paperwork Reduction Act

Changes to the information requirements as proposed in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1088) and a copy may be obtained by writing Carla Levesque, Information Policy Branch, Environmental Protection Agency, 401 M Street, SW. (PM-223), Washington, DC 20460 or by calling (202) 382-2468.

Public reporting burden for this collection of information is estimated to decrease 800 hours for large steam generating units [i.e., those greater than 73 MW (250 million Btu/hour) heat input] that fire natural gas, distillate oil, or low nitrogen residual oil (either alone or in combination), and operate at 10 percent annual capacity factor or less and 3,700 hours for steam generating units with less than 73 MW (250 million Btu/hour) heat input that also fire natural gas, distillate oil, or low nitrogen residual oil (either alone or in combination), and operate at 10 percent annual capacity factor or less.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-1088), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Date: January 6, 1989.

Lee M. Thomas,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.44b is amended by revising the first phase of paragraphs (a) and (b) and adding paragraphs (i), (j), and (k) as follows:

§ 60.44b Standard for nitrogen oxides.

(a) Except as provided under paragraph (k) of this section, * * *

(b) Except as provided under paragraph (k) of this section, * * *

* * * * * *

(i) Except as provided under paragraph (j) of this section, compliance with the emission limits under this section is determined on a 30-day rolling average basis.

(j) Compliance with the emission limits under this section is determined on a 24-hour average basis for the initial performance test and on a 3-hour average basis for subsequent performance tests for any affected facilities meeting the following three criteria:

(1) combust, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;

(2) have a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and

(3) are subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less.

(k) Affected facilities that meet the criteria described in paragraph (j) of this section, and that have a heat input capacity of 73 MW (250 million Btu/hour) or less, are not subject to the nitrogen oxides emission limits under this section.

3. Section 60.46b is amended by revising paragraph (c) and adding paragraphs (g) and (h) as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * * *

(c) Compliance with the nitrogen oxides emission standards under § 60.44b shall be determined through performance testing under paragraph (e), (f), or (g) and (h) of this section, as applicable.

* * * * * *

(g) The owner or operator of an affected facility described in § 60.44b(j) or 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. This demonstration will be made during the initial performance test for affected facilities that meeting the criteria of § 60.44b(j). It will be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of each facility, for affected facilities meet the criteria of § 60.44b(k). Subsequent demonstrations may be required at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacture is used.

(h) The owner or operator of an affected facility described in § 60.44b(j) shall:

(1) conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the nitrogen oxides emission standards under § 60.44b using Method 7, Method 7A, or other approved reference methods, or using a continuous emission monitoring system (CEMS); and

(2) determine nitrogen oxides emissions after the initial performance test once per calendar year or every 400 hours of operation (whichever comes first) using Method 7, Method 7A, or other approved reference methods, or using a continuous emission monitoring system (CEMS).

4. Section 60.48b is amended by revising paragraph (b) and adding paragraph (i) as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

* * * * * *

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

* * * * * *

(i) The owner or operator of an affected facility described in §§ 60.44b(j) or 60.44b(k) is not required to install or operate a continuous monitoring system to measure nitrogen oxides emissions.

5. Section 60.49b is amended by revising paragraphs (a)(2), (b), (e), and the introductory text of paragraph (g) and adding paragraphs (p) and (q) as follows:

§ 60.49b Reporting and recordkeeping requirements.

(a) * * *

(2) if applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under §§ 60.42b(d)(1), 60.43b(a)(2), 60.43b(a)(3)(iii), 60.43b(c)(2)(ii), 60.43b(d)(2)(iii), 60.44b(c), 60.44b(d), 60.44b(e) 60.44b(i), 60.44b(j), 60.44b(k), 60.45b(d), 60.46b(g), 60.46b(h), or 60.48b(i).

* * * * * *

(b) The owner or operator of each affected facility subject to the sulfur dioxide, particulate matter, and/or

nitrogen oxides emission limits under §§ 60.42b, 60.43b, and 60.44b, shall submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in Appendix B. The owner or operator of each affected facility described in §§ 60.44b(j) or 60.44b(k) shall submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

* * * * *

(e) For an affected facility that combusts residual oil and meets the criteria under §§ 60.46b(e)(4), 60.44b(j), or 60.44b(k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (IBR—see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

* * * * *

(g) Except as provided under paragraph (p) of this section, the owner and operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

* * * * *

(p) The owner or operator of an affected facility described in §§ 60.44b(j) or 60.44b(k) shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date.

(2) The number of hours of operation.

(q) The owner or operator of an affected facility that meets the criteria under §§ 60.44b(j) or 60.44b(k) shall submit to the Administrator on a quarterly basis:

(1) Results of any nitrogen oxides emission tests required during the quarter,

(2) The annual capacity factor over the previous twelve months,

(3) The average fuel nitrogen content during the quarter, if residual oil was fired; and,

(4) If the affected facility meets the criteria described in § 60.44b(j), the hours of operation during the quarter and the hours of operation since the last nitrogen oxides emission test.

[FR Doc. 89–700 Filed 1–12–89; 8:45 am]

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40 CFR Part 60

[AD–FRL–3504–9]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions for reconsideration.

SUMMARY: New source performance standards (NSPS) for new, modified, and reconstructed industrial-commercial-institutional steam generating units with heat input capacities of more than 29 MW (100 million Btu/hour) [other than those subject to Subpart Da] were promulgated on November 25, 1986 (51 FR 42768), as Subpart Db of 40 CFR Part 60. These standards limited emissions of particulate matter (PM) from industrial-commercial-institutional steam generating units firing coal, wood, and municipal solid waste, and nitrogen oxides (NO_x) emissions from steam generating units firing natural gas, oil, coal, and waste by-product fuels. Additional standards promulgated on December 16, 1987 (52 FR 47826), limited emissions of sulfur dioxide (SO_2) from industrial-commercial-institutional steam generating units firing coal and oil, and PM emissions from units firing oil.

Petitions requesting reconsideration of the standards of performance promulgated on November 25, 1986, were submitted to the Agency in January 1987 by the Council of Industrial Boiler Owners (CIBO), Utility Air Regulatory Group (UARG), and the owners of the William H. Zimmer Generating Station (Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, and the Dayton Power and Light Company, referred to hereinafter as the Zimmer owners). Petitions requesting reconsideration of the standards of performance promulgated on December 16, 1987, were submitted to the Agency in February, March, and May 1988, by CIBO, Hawaiian Electric Company (HECO), the Zimmer owners, and the American Paper Institute (API) together with the National Forest Products Association (NFPA).

The issues raised by these petitioners do not meet the criteria for reconsideration of the rule as set out in section 307(d)(7)(B) of the Clean Air Act (CAA or the Act). The petitioners neither raised new objections that were impractical to present during the specified comment period nor presented new material of central relevance to the outcome of the rule. Because these petitions do not provide substantial support for revising the standards of performance promulgated on November 25, 1986, and December 16, 1987, they are being denied in today's notice. However, using his discretionary authority to reconsider and amend a rule, the Administrator has decided that sufficient reason exists and, therefore, is proposing revisions to parts of the NO_x rule. (The rationale for this decision is explained more fully in a separate **Federal Register** notice.) These proposed revisions are discussed elsewhere in today's **Federal Register**.

DATES: The denial of the petitions to reconsider these standards is a final action under sections 307(b)(1) and 307(d)(7)(B) of the CAA. Review of the denial is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia within 60 days of today's publication, as provided in section 307(b)(1).

ADDRESSES: Docket Nos. A–79–02 (PM/NO_x) and A–83–27 (SO_2) are available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Fred Porter [(919) 541–5251]. Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Standards of performance for PM and NO_x emissions from industrial-commercial-institutional steam generating units were promulgated on November 25, 1986 (51 FR 42768), and for SO_2 emissions on December 16, 1987 (52 FR 47826). Subsequently, seven groups petitioned the Administrator pursuant to section 307(d)(7)(B) of the CAA to reconsider certain requirements of these standards.

These standards of performance implement section 111 of the Clean Air Act and are based on the Administrator's determination that industrial-commercial-institutional steam generating units cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Industrial-commercial-institutional steam generating units, as a source category, are the second largest stationary source of PM, NO_x, and SO_2 emissions from fuel combustion in the nation, ranking only behind electric utility steam generating units. Further, they were the highest ranked source of PM and SO_2 emissions and the second highest ranked source of NO_x emissions in the NSPS priority list adopted in 1980. The standards, as promulgated, reflect the Administrator's determination of the reduction in emissions (i.e., PM, NO_x, and SO_2) achievable by the best demonstrated system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements. [*See* CAA section 111(a)(1)(C).] The basis for specific components of the standards as promulgated were set forth in the preambles to the final rules (51 FR 47268 and 52 FR 47826) and the various background documents referred to in the promulgation notices and contained in the record. In certain cases, specific percentage reduction requirements were determined to be unreasonable. Emission limits, however, remain applicable.

By and large, the petitions submitted by the parties challenge various individual pieces of data, conclusions made by the Agency, or interpretations of the data. For the most part, the petitions simply restate or expand on issues raised and considered during the comment period or present issues that could have been raised during the comment period. To the extent that new issues are raised (e.g., the effect of the "new boiler survey" on the PM standards), the petitioners' contentions are either without merit, or even if true, do not affect the outcome of the rule. Although most of the contentions raised in the petitions could be rejected summarily, the Agency, in the notice below, has endeavored to provide a comprehensive response to the contentions.

Three groups petitioned for reconsideration of the promulgated PM/NO_x standards. CIBO (Docket No. A–79–02, Docket Item VI–D–2) sought reconsideration on the basis that the interrelationship with the SO_2 standards was not considered, the environmental and economic impacts of the standards were overstated, new information gathered in the Agency's own "Survey of New Industrial Boiler Projects 1981–1984" (referred to hereinafter as the "new boiler survey") (Docket No. A–83–27, Item IV–A–4) was not considered, and certain aspects of the Industrial Fuel Choice Analysis Model (IFCAM) were not valid. The Zimmer owners (Docket No. A–79–02, Docket Item VI–D–6) petitioned for reconsideration of the PM/NO_x standards on the basis that NO_x limits on electric utility auxiliary steam generating units are unreasonable and distillate oil NO_x standards cannot be achieved. UARG (Docket No. A–79–02, Docket Items VI–D–1 and IV–D–4) petitioned for reconsideration on the basis that NO_x limits on electric utility auxiliary steam generating units are unreasonable.

Five groups petitioned for reconsideration of the promulgated SO_2 standards. CIBO (Docket No. A–83–27, Item VI–A–1) petitioned on the basis that the standards are inconsistent with the 1977 amendments to the CAA, national energy policy was not considered, the performance of fluidized bed combustion (FBC) and lime spray drying flue gas desulfurization (FGD) systems was not demonstrated, new information on waste disposal impacts was discovered after the comment period closed, the exemption from percent reduction requirements for noncontinental areas is arbitrary, new analyses made available after proposal of the standard (especially information from the "new boiler survey") were not given sufficient consideration, and informal vendor statements were used to support the requirement for 90 percent SO_2 reduction. The Zimmer owners (Docket No. A–83–27, Item VI–A–4) petitioned on the basis that the impacts of a 130 ng/J (0.30 lb/million Btu) heat input emission limit for SO_2 on two oil-fired electric utility auxiliary steam generating units at the Zimmer Station are unreasonable. HECO (Docket No. A–83–27, Item VI–A–5) requested reconsideration on the basis that the impacts of a 130 ng/J (0.30 lb/million Btu) heat input emission limit for SO_2 on oil-fired steam generating units in Hawaii are unreasonable. API and NFPA (Docket No. A–83–27, Item VI–A–6) sought reconsideration on the basis that the lack of provisions for start-up, shutdown, and malfunction is unreasonable.

The next section of today's notice discusses the content of each petition relative to the criteria set forth in section 307(d)(7)(B) of the CAA for requiring the Administrator to convene a proceeding to reconsider the promulgated standards. Following that section, the notice addresses the technical merit of each issue raised in the petitions.

This notice is organized as follows:

I. Review of Petitions for Reconsideration Under Section 307 of the Clean Air Act.
A. Criteria for Reconsideration Under Section 307.
B. Summary of PM/NO_x Reconsideration Petitions.
1. UARG.
2. Zimmer Owners.
3. CIBO.
C. Summary of SO_2 Reconsideration Petitions.
1. CIBO.
2. Zimmer Owners.
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C. Projected Environmental and Economic Impact
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1. Consistency of SO_2 Standards with Congressional Intent.
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B. Projected Economic Impacts.
1. Cost Effectiveness of a 130 ng/J (0.30 lb SO_2/million Btu) Heat Input Emission Limit on Electric Utility Auxiliary Steam Generating Units at the Zimmer Owners' Generating Station.
2. Exemption for Noncontinental Areas.
3. Failure to Analyze Economic Impacts on the Paper Industry.
4. Inadequate Analysis of the Economic Impact of Start-up, Shutdown, and Malfunction Provisions.
5. Legal Requirement for Consideration of Start-up, Shutdown, and Malfunction Costs.
6. Availability of 130 ng SO_2/J (0.30 lb SO_2/million Btu) Oil in Hawaii.
7. Need for New Oil Transportation System in Hawaii.
8. Increased Use of Large Steam Generating Units or Gas Turbine Generators in Hawaii.
9. Economic Impacts of Firing Low Sulfur Oil in the Hawaiian Outer Islands.

C. Post-Proposal Developments
1. New Docket Material.
2. Analysis of the "New Boiler Survey".
3. Reevaluation of SO_2 Emission Reductions.
4. Information on Impacts of Waste Disposal.
5. Ability of FBC and FGD System to Achieve 90 Percent SO_2 Reduction.
6. Use of Vendor Statements to Support 90 Percent SO_2 Reduction.
IV. Summary

I. Review of Petitions for Reconsideration Under Section 307 of the Clean Air Act

A. Criteria for Reconsideration under Section 307

Review of these petitions for reconsideration was carried out according to the procedures of section 307 of the Clean Air Act. Section 307(d)(7)(B) provides that:

> [i]f the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within [the comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule. . . .

As the relevant House report explains, the purpose of section 307(d)(7)(B) is to provide the Agency an opportunity "to pass on the significance of the [new] materials and determine whether supplementary proceedings are called for or not." (See "Legislative History of the Clean Air Act Amendments of 1977," Volume 4, p. 2790.)

Objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. [See Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653 (December 11, 1980); Response to Petition for Reconsideration and Final Amendments, NSPS for Petroleum Dry Cleaners, 50 FR 49022, (November 27, 1985).] Using the section 307(d)(7)(B) criteria, each of the seven petitions was reviewed to determine whether material of central relevance to the rule was presented that could not have been presented during the comment period. For reasons summarized below and detailed later in this notice, it is apparent that none of the petitions presents this kind of material. In a separate notice in today's **Federal Register**, however, the Administrator is exercising his discretionary authority to propose revised rules for monitoring NO_x emission from very low capacity factor steam generating units.[1]

B. Summary of PM/NO_x Reconsideration Petitions

1. UARG

UARG submitted a petition contending that EPA did not respond to the specifics of arguments it had made on the proposed rule. Further, UARG supplemented this petition with arguments that no standards should be imposed on very low capacity factor utility auxiliary steam generating units. UARG also sought deletion of the monitoring requirements on the grounds that the requirements cannot be applied readily to units that are used infrequently.

These arguments do not compel reconsideration under section 307. First, a claim that EPA's response to comments was incomplete does not trigger section 307 reconsideration. Second, the information provided in UARG's "supplement" could have been provided during the comment period. The same is true of the arguments concerning monitoring. UARG's comments are discussed in Section III below.

2. Zimmer Owners

The Zimmer owners argued that EPA failed to address their comments on the proposed standards. In a supplement dated June 29, 1987, 7 months after the standards were promulgated, the Zimmer owners argued that the standards should not apply to utility auxiliary units for legal and economic reasons.

As the Zimmer owners themselves seemed to recognize, their reconsideration comments generally repeated and expanded on arguments raised during the comment period. Such comments do not compel reconsideration under section 307. The Zimmer owners' comments are discussed in Section III below.

3. CIBO

CIBO argued that two post-proposal developments in the SO_2 proceeding compel reconsideration of the PM/NO_x rule under section 307. The two developments were EPA's proposal of an "interrelated" SO_2 standard after proposal (but before promulgation) of the PM/NO_x standards and the imminent (in early 1987) completion of a "new boiler survey" in the SO_2 rulemaking.

These developments do not compel reconsideration under section 307 because they do not constitute information of central relevance to the outcome of the PM/NO_x rulemaking. EPA has long recognized and taken into account the interrelated character of the PM/NO_x and SO_2 rules. CIBO's argument, therefore, does not provide new information. The only respect in which the argument could be considered new is in CIBO's conjecture that the NO_x standard could be violated in steam generating units designed for firing pulverized coal (PC) when using natural gas or oil. As explained below in Section III, however, EPA believes that compliance with the NO_x standards can be readily accomplished by such units, and CIBO has provided no data to support its comments. CIBO's comments on the interrelationship of the PM/NO_x and SO_2 rules are discussed in Section III below.

CIBO's claims that the projections of new units were too high and its conjectures regarding the "new boiler survey" do not compel reconsideration under section 307. As explained in Section III below, new projections of the absolute number of new and replacement steam generating units are informative, but far less important in regulatory analysis than the relative balance between costs and benefits. When deciding whether or not to regulate, it is the relative balance between costs and benefits that is of primary importance rather than the absolute numbers. However, even with lower projections of the number of new units, the emission reductions achieved by the standards are significant. Conjecture regarding the methods of the "new boiler survey" is also not a basis for mandatory reconsideration absent compelling indications that the survey methods affected the results. CIBO's critiques are not, therefore, of central relevance to the outcome of the rule.

[1] Section 4(d) of the Administrative Procedure Act (APA), U.S.C. 553(e), states, "Each agency shall give an interested person the right to petition for issuance, amendment or repeal of a rule." Although Section 4(d) of the APA also establishes a right to petition for administrative reconsideration, that provision almost certainly does not apply to petitions for reconsideration of regulations that are promulgated pursuant to the rulemaking provisions of Section 307(d) of the Clean Air Act. See section 307(d)(1)(N), 42 U.S.C. 7607(d)(1)(N). ("The provisions of section 553 through 557 * * * of Title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to action to which this subsection applies.") In any event, the criteria for evaluating a petition for reconsideration under APA are essentially the same as those for section 307(d)(7)(B) petitions. *See* Denial of Petitions to Revise NSPS for Stationary Gas Turbines, 45 FR 81653–54, and decisions cited therein.

C. Summary of SO_2 Reconsideration Petitions

1. CIBO

CIBO argued that (1) the SO_2 standards are inconsistent with the 1977 amendments to the CAA, (2) national energy policy was not considered, (3) EPA erroneously analyzed the results of a "new boiler survey," (4) the "new boiler survey" produced important new information, (5) post-proposal waste disposal information showed that flue gas desulfurization (FGD) on coal-fired units is not cost effective, (6) post-proposal fluidized bed combustion (FBC) and spray dryer information did not show that they constitute "demonstrated technologies, (7) EPA did not provide notice of the extent of its reliance on vendor guarantees, and (8) EPA should have extended its unanticipated exemption from percent reduction requirements for noncontinental areas to the continental United States. CIBO argued that these post-proposal developments compel reconsideration under section 307(d)(7)(B).

This is not the case. The issues of consistency with the 1977 amendments to the CAA and national energy policy were raised and discussed at length prior to proposal as well as during the comment period. [See e.g., "Background Information Document" (BID), Volume 4.] Such comments, therefore, do not compel reconsideration under section 307.

Concerning the analysis of the "new boiler survey," EPA surveyed steam generating unit sales from 1981 to 1984 to determine why new steam generating units are installed, what percentage of recent sales were for replacement, how sales might be related to increased cost, and the impact of new units on overall SO_2 emissions. The survey was conducted to respond to CIBO comments that the great majority of new units replace existing units and that the NSPS would prompt owners to delay purchasing replacement units. CIBO suggested that EPA's analysis of the "new boiler survey" is faulty and argued that had EPA correctly analyzed the survey, the outcome of the rule would have been different.[2]

Again, this is not the case. The findings of the survey indicate that although replacement was the primary reason for many new units, a roughly equal number of units are installed for new applications. The survey also found that the decision to build most of these new application units was not sensitive to cost increases in the range expected to result from the new rules. Findings from the survey also indicated that many existing units would continue to be used alongside the replacement units.

In its petition, CIBO hypothesized that the answers received from the survey might have been different if the survey had asked whether the unit would be built if air pollution control equipment were required. However, CIBO provided no details to support this conjecture. Unsupported conjecture does not provide a basis for reconsideration under section 307. As discussed in greater detail in Section IV below, the amount, not the origin, of costs seems relevant to elasticity of sales as a function of costs. The replacement rate may affect the number of unit sales, but in the final analysis—and absent volume price decreases—the relationship between control costs and absolute emission reductions is more relevant to standard setting.

CIBO also argued that, apart from costs, reliability needs also deter new unit installation if pollution control systems are less reliable than production facilities. On August 19, 1988, it provided EPA with a "supplement" attaching letters attesting to the need for high rates of facility reliability. This argument does not provide a basis for reconsideration under section 307. The general point—the need for high steam generating unit reliability—was raised at the time of proposal and addressed during the comment period [See e.g., BID, Volume 4 (EPA–450/3–87–024)]. The specific argument that this need, like increased costs, could deter new installation could have been made at that time. Factored into the analysis was the cost of backup systems generally used by industry to ensure steam supply. Use of such backup systems should assure reliable operation and should not significantly affect installation rates. Even if backup systems did affect installation rates, the point remains that the number of new units and replacement units is less relevant to standard setting than the relationship between control costs and emissions.

CIBO argued that the "new boiler survey," properly analyzed, supported its claim that EPA overstated emission reductions. For reasons explained in Section IV below, CIBO's argument does not provide information of central relevance to the outcome of the rule compelling reconsideration under section 307. The reasonableness of the rule, considering costs, is not significantly affected by the total number of projected unit installations since smaller population projections would mean a corresponding reduction of control costs. Furthermore, CIBO simply renews a contention that was raised and discussed during the comment period. (See e.g., BID, Volume 4.)

CIBO also argued that a post-proposal memorandum, which was prepared for EPA and discussed the disposal of sodium-scrubbing waste, coupled with EPA's "reliance" on sodium-scrubbing, shows the "impracticability" of the rule—or, rather, that the rule renders "impracticable" the use of coal-fired steam generating units. The post-proposal memorandum notes, among other things, that several sodium scrubbers are located in areas where local rules might limit the availability of some scrubbing waste disposal options (Docket No. A–83–27, Docket Item IV–B–12).

The issue of scrubber waste disposal was raised and thoroughly discussed both prior to proposal and during the comment period. (See e.g., BID, Volume 4.) CIBO's comments on the post-proposal memorandum do not compel reconsideration under section 307. The possibility that some sources may be limited in their disposal options does not change the outcome of the rule.

CIBO also argued that post-proposal memoranda prepared for EPA do not show that fluidized bed combustion (FBC) and lime spray dry scrubbers are "demonstrated" technologies. (See e.g., Docket No. A–83–27, Docket Items IV–B–18 and IV–B–97.) CIBO's critique of the post-proposal memoranda does not compel reconsideration under section 307. The Agency's conclusion that FBC and lime spray dryers are "demonstrated" technologies was explained prior to proposal and again in response to public comments [See e.g., BID, Volume 4; 52 FR 47837; and "Summary of Regulatory Analysis" (EPA–450/3–86–005).] The EPA's conclusion in the final rule, as well as at proposal, was based on the judgment that test data and other factors indicate that high levels of reliability are achievable. The post-proposal memoranda, while providing additional support for this conclusion, were far from its sole support. Critiques of the memoranda, therefore, are not centrally relevant to the finding that these technologies are demonstrated for purposes of Section 111 of The CAA. The merit of CIBO's critiques is discussed in Section IV below.

[2] That EPA was going to conduct the "new boiler survey" was noted in the June 19, 1986, notice of proposed rulemaking (51 FR 22384). Notice of the availability of the study was sent to all commenters in April 1987, informing them that new analyses were being added to Docket A–83–27.

CIBO argued that EPA did not provide notice of the "extent" of its reliance on vendor guarantees with respect to the demonstrated status of lime spray dryers and that EPA improperly relied on a guarantee that was informal and unenforceable. This comment does not constitute centrally relevant new information compelling reconsideration under section 307. As CIBO's comment acknowledges, the possibility that EPA might refer to vendor guarantees was evident during the comment period. (See e.g., "Summary of Regulatory Analysis.") Moreover, as is discussed in Section IV below, EPA's determination that lime spray drying technology is demonstrated was based on engineering review of lime spray dryer designs, test data, and other information that indicate that this technology is demonstrated. The vendor guarantees were merely corroborative of this conclusion.

CIBO argued that the exemption for noncontinental areas from the percent reduction requirement should apply to all areas where natural gas is unavailable. The comment is essentially a moot point. The noncontinental exemption applies in practice only to units firing very low sulfur oil. The final standard, in fact, exempts all sources firing very low sulfur oil from the percent reduction requirement, no matter where they are located.

2. Zimmer Owners

The Zimmer owners argued that information provided in their petition shows that use of 130 ng SO_2/J (0.30 lb SO_2/million Btu) oil is not cost effective relative to using a higher sulfur content oil. This comment does not compel reconsideration under section 307. The original exemption at the time of proposal was based on a heat input limitation of 86 ng SO_2/J (0.20 lb SO_2/million Btu), and the exemption in the final rule was based on 130 ng SO_2/J (0.30 lb/million Btu). The Zimmer owners' concerns about the cost effectiveness of various low sulfur oils could have been raised during the comment period. The Zimmer owners' comment is discussed in more detail in Section IV below.

3. HECO

The final rule, unlike the proposal, exempted oil-fired units in noncontinental areas from the percent reduction requirement, but limited emissions to the equivalent of 130 ng SO_2/J (0.30 lb. SO_2/million Btu). HECO argued that no notice of the 0.30 requirement was given, that the emissions limit should be raised to 210 ng SO_2/J (0.50 lb SO_2/million Btu) on Oahu, and that no limit should be imposed elsewhere in Hawaii.

This argument does not compel reconsideration under section 307. It is true, as HECO claims, that the emission limit of 130 ng SO_2/J (0.30 lb SO_2/million Btu) was developed after (and as a result of) the comment period. The Agency had, however, established an 86 ng SO_2/J (0.20 lb SO_2/million Btu) limit as the basis for a percent reduction exemption. HECO's objections could have been raised during the comment period because its objections are based on the cost and/or current unavailability of very low sulfur oil, i.e., they apply to both the proposed emission limit and the final emission limit. Further, the standard does not require use of 130 ng SO_2/J (0.30 lb SO_2/million Btu) oil, but rather allows the owner to meet this emission limit by whatever means the owner chooses. HECO's comments are discussed in more detail in Section IV below.

4. API/NFPA

API and NFPA argued that new post-proposal materials and analyses showed that various backup strategies for maintaining compliance during periods of planned and unplanned outages (i.e., start-ups, shutdowns, and malfunctions) are not available.

This comment does not compel reconsideration under Section 307 because the information in the API/NFPA petition, including information about demand charges and premiums for noninterruptible supplies of natural gas, was addressed in response to comments or could have been presented during the public comment period. Furthermore, as discussed in Section IV below, even upon consideration of the information contained in the petition, EPA finds no basis for reconsideration of the rule.

II. Petitions Submitted Concerning the PM/NO_x Standards

A. Achievability of the PM/NO_x Standards

1. Achievability of NO_x Standards by Distillate Oil-Fired Electric Utility Auxiliary Steam Generating Units

Petitioner's Comment: The Zimmer owners commented that electric utility auxiliary steam generating units that fire distillate oil cannot consistently meet the NO_x standard of 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input.

Agency Response: Electric utility auxiliary steam generating units are large field-erected units. These units are characterized by low volumetric heat release rates, typically below 310,000 J/sec-m^3 (30,000 Btu/hour ft^3). Heat release rate is one of the major factors in determining the NO_x-generating potential of a unit firing distillate oil and the ability of control techniques to limit NO_x emissions. Data show that NO_x emissions increase as heat release rate increases, all other things being equal. Emission test data available from three distillate oil-fired steam generating units employing staged combustion demonstrate that NO_x emissions can be limited to 43 ng NO_x/J (0.10 lb NO_x/million Btu) or below through the use of this technique. (See Docket No. A–79–02, Docket Items II–I–224, II–A–9, and II–A–14.) One of the units used a staged combustion burner while the other units used staged combustion air. These steam generators are packaged units with volumetric heat release rates of 460,000 to 490,000 J/sec-m^3 (45,000 to 48,000 Btu/hour-ft^3), which are higher than those typical for electric utility auxiliary units.

Since the heat release rates for electric utility auxiliary units are substantially below those of the tested steam generating units, NO_x emissions can be limited to 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input or less through the use of staged combustion when firing distillate oil. Moreover, other NO_x limitation techniques, such as flue gas recirculation, are available which have been shown to be capable of limiting NO_x emissions to 43 ng NO_x/J (0.10 lb NO_x/million Btu) or less in distillate oil-fired steam generating units with heat release rates up to 640,000 J/sec-m^3 (62,000 Btu/hour-ft^3). (See Docket No. A–79–02, Docket Items II–I–224 and IV–B–23.) Accordingly, there is no basis for granting the request by the Zimmer owners for a higher NO_x limit.

2. Special Monitoring Problems Associated with Electric Utility Auxiliary Steam Generating Units

Petitioner's Comment: UARG contended that the monitoring requirements in the NO_x standards would be difficult, if not impossible, for very low capacity factor steam generating units to meet. Specifically, the petitioner claimed that facilities such as oil-fired utility auxiliary steam generating units would not be able to satisfy the initial performance test requirement to be completed within 180 days of initial start-up because a unit that operates only 2 or 3 days per month, for example, would take an entire year to satisfy these performance test requirements.

Similarly, the petitioner claimed that the 30-day rolling average compliance test for these same units would not produce meaningful data because it is unlikely that enough data would be collected in 1 year to calculate even one 30-day average.

Agency's Response: The Agency does not agree with the petitioner's contention that the NO_x monitoring requirements cannot be met by very low capacity factor steam generating units. The initial performance test is based on emissions data collected during the first 30 operating days following unit start-up (operation of a unit for a single hour during a given day qualifies as an operating day). Up to 180 calendar days can be used to collect these 30 days of operating data. Many very low capacity factor units may be able to gather 30 days of data through collection of NO_x emissions data in conjunction with commercial acceptance testing of the unit and during normal operating days. If insufficient operating days occur during the first 180 calendar days, the owner can operate the unit and vent steam to collect the additional NO_x emissions data necessary. If collection of such data is considered infeasible for an individual unit, the owner can apply to the Administrator for relief under § 60.8(b) of the General Provisions of 40 CFR Part 60.

The petitioner misunderstands the mechanics of how 30-day rolling averages are calculated in contending that insufficient data would be collected in a year to calculate 30-day averages. A 30-day rolling average is calculated as the average of all daily average data collected during the previous 30 consecutive steam generating unit operating days. The first 30-day average is calculated after initial unit start-up and serves as the initial performance test. Thereafter, a new 30-day rolling-average is calculated at the end of each new steam generating unit operating day.

B. Interrelationship of PM/NO_x and SO_2 Standards

1. Effect of SO_2 Control Techniques on PM/NO_x

Petitioner's Comment: CIBO stated that EPA proposed a stringent (90 percent reduction) SO_2 standard after proposal of the PM/NO_x NSPS, but ignored economic and technical interrelationships between the proposed SO_2 standards and the promulgated PM/NO_x standards. According to the petitioner, all of these combustion products (PM, NO_x, and SO_2) are critically interrelated and, therefore, should not have been considered under two separate NSPS. The petitioner pointed out that implementation of control techniques to satisfy the SO_2 standards will affect the control techniques necessary to satisfy the PM/NO_x standards, both from a technical feasibility and a cost standpoint. The petitioner also stated that no opportunity was given for public comment on the technical or cost impact of the SO_2 standards on the PM/NO_x standards.

Agency Response: Although NSPS for PM/NO_x and SO_2 were developed in separate regulatory actions, potential technical or economic interrelationships were considered throughout the development of regulations for each pollutant and fuel type. For example, because PM and SO_2 emissions and control technologies for oil-fired units are closely interrelated, the PM and SO_2 standards for oil were considered in the same regulatory action. Relationships between the use of a fabric filter or electrostatic precipitator (ESP) to reduce PM emissions and a flue gas desulfurization (FGD) system to reduce SO_2 emissions from coal-fired steam generating units were also identified, but were found to be separable, and were therefore analyzed in separate regulatory actions. Possible interrelationships between NO_x and SO_2 control were also considered, but no significant interrelationships were identified.

Further, when evaluating alternative SO_2 standards for coal-fired units, the Agency assumed that the proposed PM and NO_x standards were already in effect and that new units were constructed and operated to comply with them. This approach ensured that even minor technical and cost interrelationships between the standards for PM, NO_x, and SO_2 were implicitly considered during the course of the SO_2 rulemaking. Accordingly, the petitioner's contention that the Agency did not consider the interrelationship between the PM/NO_x and SO_2 standards is incorrect.

Finally, during the comment period on the proposed SO_2 standards, the public could have commented on technical and economic interrelationships among the PM, NO_x, and SO_2 standards. However, no significant interrelationships were identified by any of the commenters. Furthermore, mere conjuncture is not a basis for granting a petition for reconsideration. Only one specific interrelationship of the standards was identified by the petitioners and, as is explained below, it does not impose unreasonable impacts.

2. Achievability of NO_x Standards by Pulverized Coal-Fired Units When Using Backup Fuel to Meet SO_2 Standards

Petitioners Comment: As a specific example to illustrate the PM/NO_x/SO_2 interrelationship, CIBO cited a field-erected pulverized coal (PC)-fired steam generating unit firing natural gas or oil as a backup fuel. The petitioner stated that firing backup fuels in PC units will become more frequent and prolonged than in the past because of FGD system reliability problems, fuel disruptions, and fuel price variations. According to the petitioner, all PC units are equipped with air preheaters, which typically deliver preheated air at 110 to 160 °C (400 to 600 °F) for combustion of both primary and backup fuels. Such high air temperatures, which increase the formation of thermal NO_x, restrict the ability of units with volumetric heat release rates below 720,000 J/sec-M^3 (70,000 Btu/hour-ft^3) to meet the 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input NSPS for natural gas for distillate oil combustion. Since using backup fuel is part of the basis for the SO_2 standards, the petitioner stated that this requirement must be considered in the NO_x standards and the necessary relief must be provided in the form of a higher NO_x emission rate for PC units firing natural gas or distillate oil with air preheat.

Agency Response: Coal-fired steam generating units inherently have larger furnace volumes than oil- and natural gas-fired units with equivalent steam generating capacities. Because of the lower heat release rates in these larger furnace volumes, conversion of atmospheric nitrogen to NO_x while firing backup fuels in a field-erected PC-fired steam generating unit is lower than in a smaller, higher heat release rate steam generating unit designed to fire natural gas or oil. To assure that proper combustion conditions are achieved to minimize NO_x formation, a number of NO_x reduction techniques are available. These techniques include reducing combustion air temperature by either total or partial bypass of the air preheater, and using flue gas recirculation, overfire air ports, and low NO_x burners to fire backup fuels. Data from units employing staged combustion burner (SCB) or staged combustion air technology indicate that these controls can meet the 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input limit when firing natural gas or oil in units with heat release rates below 720,000 J/sec-m^3 (70,000 Btu/hour-ft^3). In addition, one low NO_x burner manufacturer stated that NO_x emissions can be limited to 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input while firing natural gas if the unit heat release rate is less than 770,000 J/sec-m^3 (75,000 Btu/hour-ft^3). (See Docket No. A–79–02, Docket Item IV–E–14.)

Industrial field-erected units have heat release rates well below these levels. A survey of such units installed between 1982 and 1986 identified nine PC-fired units. (See Docket No. A–83–27, Docket Items IV–J–4, IV–J–5, IV–J–7, and IV–J–9, and IV–J–42.) The heat release rates for these units ranged from 140,000 to 245,000 J/sec-m³ (13,500 to 23,700 Btu/hour-ft³). Since these heat release rates are substantially below the upper limits of 720,000 to 770,000 J/sec-m³ (70,000 to 75,000 Btu/hour-ft³) identified above, NO_x emissions can be reduced to 43 ng NO_x/J (0.10 lb NO_x/million Btu) heat input or less through use of the above NO_x reduction techniques when firing natural gas or oil as a backup fuel. Accordingly, there is no basis for granting the CIBO request for a higher NO_x limit or convening a proceeding to reconsider the interrelationship between the PM/NO_x and SO_2 standards.

C. Projected Environmental and Economic Impacts

1. Overstatement of Impacts

Petitioner's Comment: EPA projected that 725 new steam generating units with heat input over 29 MW (100 million Btu) would be built in the 5-year period following proposal. CIBO stated that this number is too high (CIBO contended that 250 new units are more likely, of which 80 percent are replacement units) and, as a result, the projected economic, environmental, and energy impacts associated with the PM/NO_x standards are overstated. The petitioner cited the Agency's own "new boiler survey" to support its contention. The petitioner contended that the survey shows that the number of "new" steam generating units as opposed to "replacement" units was overestimated, that purchase of replacement units is discretionary, and that the impact of the standards will be to further reduce the number of replacement units during the period modeled, given the high cost of complying with the standards. Thus, CIBO argued that the projected emission reductions achieved by the standards are significantly overestimated.

Agency's Response: As explained in the response to comments in the SO_2 rulemaking (see e.g., 52 FR 47826), several factors suggest that 1984 estimates of steam generating unit population and total "new" emissions were high. These estimates of new steam generating units were based on U.S. Department of Energy projections made in the late 1970's. (See e.g., BID, Volume 4.) As the Agency explained, however, any change in the overall balance between the costs and benefits and, hence the reasonableness of the standard, depends on the relative change in both costs and benefits. If EPA has overestimated the number of new units subject to the standard, then *both* the costs as well as the emission reductions (i.e., benefits) of the standard decrease. EPA's conclusion as to the standard would remain valid even if CIBO's estimates, or lower ones, proved more accurate.

The total number of new steam generating units and the percentage of these units that are replacements was examined in the "new boiler survey." The survey results suggest that about half of all unit installations from 1981 to 1984 represented replacements of existing units. However, for four reasons, the fact that a significant number of new units are replacements for existing units does not support CIBO's claims that lower-than-projected emissions reduction compel reconsideration. First, replacement capacity may simply displace existing capacity in an accounting sense, but it represents *new* capacity under section 111 of the Clean Air Act. Therefore, the petitioner's exclusion of replacement capacity from its calculations of baseline emissions increases is not warranted. Second, the suggestion that replacement should not be counted because it is discretionary and might be deferred is unfounded. Deferring replacement is simply replacement displaced in time to a later date. Third, the "new boiler survey" results indicate that the decision to install new steam generating units is not significantly cost sensitive in the range of cost increases anticipated by the Agency. Fourth, with respect to projected post-NSPS emission levels, many of the replaced units are not retired but continue in service.

2. Legal Basis for and Economic Impacts of Controls on Electric Utility Auxiliary Steam Generating Units

Petitioner's Comment: In their petitions, UARG and the Zimmer owners argued that Subpart Db should not apply to auxiliary utility steam generating units that are used to assist in start-up and shutdown of the main steam generating unit because these units are not significant contributors, operate at very low capacity factors, use oil or natural gas, operate intermittently, and are located in rural areas. The petitioners also contended that any standards for PM/NO_x would result in excessive cost impacts on electric utility auxiliary steam generating units relative to units operated at higher capacity factors. According to the petitioners, the standards would also have minimal impact on reducing PM and NO_x emissions beyond those achieved by current unit designs. Therefore, the petitioners recommended that the final standards be amended to either (1) exempt utility auxiliary steam generating units from the standards; (2) adopt a capacity factor cut-off for the promulgated standards and establish different levels of control for units that operate at very low annual capacity factor levels, such as 10 percent or less; or (3) reduce the burden imposed by NO_x monitoring requirements on steam generating units that operate at very low annual capacity factors.[3]

Agency Response: As the Agency stated in its June 19, 1984, proposed rule (49 FR 25156), all steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hour) (other than those units subject to Subpart Da) were included within the Subpart Db rule (51 FR 42794). The Agency included very low capacity factor units on the basis that the design of these units and control technologies for emission reductions are similar, irrespective of capacity factor. As was noted in the final rule, "there is no requirement that each subcategory of a listed category or each individual source within a listed category also be a significant contributor." (See 51 FR 42795; *see also* 51 FR 42772.) It was thereby determined that auxiliary utility steam generating units are subject to Subpart Db.

The Agency does not agree that the criteria set forth by UARG and the Zimmer owners provide a basis for EPA to subcategorize utility auxiliary steam generating units. No doubt there are multiple bases upon which Subpart Db steam generating units could be subcategorized. Criteria such as ownership and/or the existence of companion base load units (i.e., units owned by utilities, or units auxiliary to base load units) do not seem to be functionally useful. An exemption for rural settings is inconsistent with the concept of section 111, which contemplates national standards and does not distinguish among regions based on air quality achieved. Capacity factor, although related to the level of emissions, is unsuitable as a basis for exemption from all standards where emission control remains cost effective: as the final rule recognizes, however,

[3] The Zimmer owners also contended that section 111(f) bars EPA from determining that utility auxiliary steam generating units are within the category of units subject to Subpart Db and, simultaneously, in regulating such units, section 111(f) requires that EPA establish a list of major stationary source categories and establish deadlines for regulation. The Zimmer owners do not explain their interpretation of section 111(f). On its face, section 111(f) contains no such bar.

capacity factor is an appropriate criterion for exemption where emission control is not cost effective.

As discussed in a separate rulemaking notice published today elsewhere in the **Federal Register**, the Administrator, under his discretionary authority, is proposing to amend the NO_x performance testing and monitoring requirements for steam generating units that operate at very low annual capacity factors (less than 10 percent) and that fire natural gas, distillate oil, or low nitrogen residual oil (either alone or in combination). The proposed rule imposes less burdensome performance testing and monitoring requirements on large steam generating units and exempts small steam generating units from the NO_x standards.

The Agency also does not agree that auxiliary utility steam generating units should be exempted from the performance standards for PM and NO_x on the basis that minimal emission reductions will be achieved. Although most auxiliary utility units may be designed to fire oils with PM emission potentials of less than 43 ng/J (0.10 lb/million Btu) and may be equipped with low NO_x burners, the performance standards provide a "cap" to assure that these units are operated in a manner that minimizes emissions. Establishment of performance standards as a "cap" to limit future emissions is a valid exercise of regulatory authority.

D. "New Boiler Survey"

Consideration of New Information Gathered in the "New Boiler Survey."

Petitioner's Comments: CIBO stated that EPA recognized the importance of steam generating unit replacement when it announced that it had initiated a "new boiler survey" to gather information regarding the impact of the NSPS on new steam generating unit construction and refurbishment (51 FR 16586). The petitioner contended that many new steam generating units are replacements for existing units and, in most cases, these new units represent discretionary expenditures by unit owners. As a result, if the cost of a new unit is too high, the owner will continue to use the existing unit. Because existing units frequently have higher emission rates than new units, failure to install new units will result in higher emission levels and fewer reductions than claimed by the Agency. The petitioner contended that EPA should recalculate the net reduction in emissions from steam generating unit replacement in its analysis and modify the final rule to encourage economic replacement of higher emitting, existing units.

Agency Reponse: Two questions are relevant here: First, what is the impact of the PM/NO_x standards on the rate of steam generating unit installations; and second, what are the implications of the "new boiler survey" for the PM/NO_x rule. Regarding the first of these questions, the "new boiler survey" was conducted in response to public comments on the proposed SO_2 standards. It focused on collecting data about the reasons new units are installed, the extent to which new units may be replacements for existing units, and the impact of new units on overall SO_2 emisssions. The survey did not directly examine PM/NO_x emissions. However, based on the survey data and earlier analyses of the cost of PM and NO_x control techniques, the impact of the PM/NO_x standards on replacement of existing steam generating units is considered minimal because of the small cost of the PM/NO_x standards on new units.

As to the second question, EPA's analysis of the "new boiler survey" results confirms the need for PM/NO_x controls. It may well be true, as the petitioner contends, that PM and NO_x emission rates for individual new units will be lower, even absent an NSPS, than for existing units of equal size and fuel use patterns. However, the level of reductions from individual units that would occur in the absence of an NSPS is less than the emission reductions resulting from the promulgated standards.

The argument that NSPS-induced delays in steam generating unit replacement will result in higher aggregate emissions is not supported by analysis. (See Docket A–83–27, Docket Item IV–A–4.) Based on unit replacement data from the "new boiler survey" and the PM and NO_x emission levels expected from existing and NSPS-controlled new steam generating units, aggregate emissions from existing and new steam generating units at facilities covered by the survey will increase after installation of new units even with the NSPS. For PM, the aggregate increase was roughly 30 percent relative to the level occurring prior to new unit installation. For NO_x, the aggregate emissions almost doubled. This result—higher aggregate emission despite lower emission rates from individual units—is caused primarily by emission increases from new units installed for new applications that substantially exceed the emission reductions from facilities where replacements occurred. Adoption of less stringent emission control requirements for new units would result in even greater increases in aggregate PM and NO_x emissions. As a result, promulgation of an NSPS with stringent emission limits is essential if aggregate emissions of PM and NO_x are to be minimized.

E. IFCAM Notional Impacts Model

Validity of the Model

Petitioner's Comment: CIBO claimed that the Industrial Fuel Choice Analysis Model (IFCAM) EPA used to forecast industrial steam generating unit sales has serious shortcomings. The model is based on historical data from a period of chaotic energy prices and large cost differentials between high cost fuels (such as natural gas and fuel oil) and low cost fuels (such as coal and waste fuels). The petitioner stated that the previous behavior of steam generating unit owners in conserving energy and switching fuels would not be repeated today because of the large decline of natural gas and fuel oil prices relative to those for coal and waste fuels. According to the petitioner, the IFCAM model must be revalidated using the steam generating unit sales results contained in the "new boiler survey" and energy prices for the period in question, allowing for appropriate decision lead times. The petitioner stated that the IFCAM model should not be used for regulatory analyses until this revalidation has been accomplished. If the IFCAM projections cannot be validated, the petitioner stated that they must be disregarded and new data developed.

Agency Reponse: The petitioner appears to misunderstand the design and operation of IFCAM. IFCAM is simply a "least cost" economic choice model designed to aid in examining the impact of alternate regulatory standards on new industrial steam generating units. Key economic parameters (such as the estimated growth in national industrial energy demand and projected prices for coal, oil, and natural gas) are inputs to the model and reflect projected economic conditions in the future. For each alternate regulatory standard, IFCAM uses the projected fuel prices and total industrial energy demand to evaluate steam production costs for new industrial units spanning a range of sizes, capacity factors, and fuels, and then selects the steam generating unit and fuel combination with the lowest after-tax costs over the useful life of each unit. The results of these fuel choice selections for each new steam generating unit are then added together to estimate the total costs, emissions, and fuel use associated with the alternate regulatory standard.

Consequently, the impacts of alternate regulatory standards are projected by IFCAM based on the input values for projected fuel prices, projected industrial energy demand, and specified regulatory requirements. The results obtained from IFCAM, therefore, are not based on the "past," but are based on projections of the "future."

III. Petitions Submitted Concerning the SO_2 Standards

A. Legal Basis for Establishing the SO_2 Standards

1. Consistency of the SO_2 Standards with Congressional Intent

Petitioner's Comment: CIBO supplemented its petition for reconsideration with contentions that the SO_2 standard is inconsistent with Congressional intent in enacting the 1977 amendments to the CAA. The essence of CIBO's contentions is that Congress enacted the section 111 percent reduction requirement to ensure that new sources do not switch to natural gas to avoid the application of control technology. CIBO contends, however, that the percent reduction requirement included in the SO_2 standard will encourage new sources to switch from coal to natural gas. The result, therefore, is to circumvent the statute. (The Department of Commerce also submitted comments on this point.)

Agency Reponse: The petitioner's contentions that the SO_2 standard is inconsistent with Congressional intent are without merit. The petitioner misinterprets section 111. Followed to their logical conclusions, these contentions mean that the Agency should have either not adopted any percent reduction requirement at all, or adopted a percent reduction requirement that applied to all fuels (e.g., coal, oil, natural gas, wood, etc.).

An SO_2 standard for fossil fuel-fired stationary sources without any percent reduction requirement is inconsistent with the explicit language of Section 111 as it was amended by Congress [see CAA 111(a), H.R. Rep. No. 95–294 95th Cong., 1st Sess. 188 (1977) "Conference Report" reprinted in "Legislative History of the Clean Air Act Amendments of 1977", Volume 4, at 2655 "Legislative History"]. If the Agency had adopted an SO_2 standard including only a mass emission limit, sources could have avoided the application of any control technology simply by burning oil or low sulfur coal.

An SO_2 standard with a percent reduction requirement applied to all fuels, including fuels such as natural gas, very low sulfur oil, wood, etc., may also be inconsistent with the explicit language of section 111, which requires the Agency to consider costs. If the Agency had adopted an SO_2 standard applying the percent reduction requirement to all fuels, unreasonably high costs would have been imposed on a number of new sources firing fuels such as natural gas, very low sulfur oil, wood, etc.

EPA reads the percent reduction requirement in section 111 as tempered by the requirement that technology be the "best technological system of continuous emission reduction which (taking into consideration the cost * * *) * * * has been adequately demonstrated." Thus, a percent reduction requirement need not be applied to certain types or classes of sources if the impacts associated with imposing this requirement would be unreasonable. Consequently, the Agency made a thorough analysis of the potential impacts of imposing the percent reduction requirement on various types and classes of sources. Based on this analysis, the Agency included exemptions from the percent reduction requirement where the impacts of imposing this requirement would have been unreasonable. The final SO_2 standard, therefore, is reasonable and this approach represents a reasonable way to harmonize the twin requirements of Section 111 to include percent reduction requirements and to consider costs.

Finally, even in the absence of the SO_2 standard, economic factors unrelated to the standards, such as the relative price between coal, oil, and natural gas, are likely to have more impact on the choice of fuel for a new industrial-commercial-institutional steam generating unit than the SO_2 standard.

2. Impacts of the SO_2 Standard on the Natural Energy Policy

Petitioner's Comment: CIBO claimed that the SO_2 standard is inconsistent with national energy policy in that it fails to encourage the use of coal, threatens a balanced energy supply, and reduces the incentive for companies to develop clean coal technologies. (The Department of Energy and the Department of Commerce also submitted comments on this point.)

Agency Response: The petitioner's comments are a repetition of comments submitted to the Agency during the public comment period following proposal of the SO_2 standards. At worst, as discussed in the "Summary of Regulatory Analysis," the proposal notice (51 FR 22384), Volume 4 of the Background Information Document, and the promulgation notice (52 FR 47826), the SO_2 standard will have only a very small impact on the overall mix of fuels consumed to satisfy national energy demands. Thus, the standard will not cause a significant change in national energy supplies nor will it threaten national energy security.

To illustrate this fact, under the worst case scenario examined by the Agency, about 600 new coal-, oil- or gas-fired industrial-commercial-institutional steam generating units are projected to be sold over the 5-year period between 1986 and 1990. These new units will result in total fuel consumption of roughly 550 PJ/year (520 trillion Btu/year) in 1990. Even if all this energy consumption were satisfied by coal, it would represent less than 3 percent of total United States coal consumption in 1986. Similarly, if all this energy consumption were satisfied by oil or natural gas, it would represent less than 2 percent or 3 percent, respectively, of total oil or natural gas consumption in 1986.

Not all this increased energy consumption in new industrial-commercial-institutional steam generating units, of course, will be satisfied by a single fuel, such as natural gas or oil. Furthermore, the Agency's projections of sales of new steam generating units are quite likely to be overestimated, as the petitioner has pointed out. Consequently, the impact of the SO_2 standard on changes in the national energy mix of coal, oil, and natural gas will be even less significant than these figures might indicate.

The Agency acknowledges that some fuel switching to natural gas may occur as a result of the SO_2 standard. As discussed in Volume 4 of the Background Information Document and the promulgation notice (52 FR 47826), this fuel switching, however, will be small compared to the amount of fuel switching that is likely to occur as a result of the current low price of natural gas. The impact of the SO_2 standard on the difference in cost between firing coal or firing natural gas in a new steam generating unit is small compared to the impact of current natural gas prices. Even in the absence of the SO_2 standard, with current low natural gas prices few new steam generating units are likely to select coal over natural gas.

Finally, as also discussed in the proposal notice (51 FR 22384), Volume 4 of the Background Information Document, and the promulgation notice, (52 FR 47826), in developing the SO_2 standard the Agency recognized that the standard and, in particular, the requirement to achieve a 90 percent reduction in SO_2 emissions, could hinder

the development of some new clean coal technologies. The potential risk of failure that might be associated with using a new technology to achieve such a high percent reduction requirement could be sufficient in some cases to deter the use of that technology. Yet it is only through new technologies that better and less expensive means of controlling SO_2 emissions can be developed.

Although development of new technologies should be encouraged, it is not reasonable to permit the use of new technologies if use of these technologies would lead to SO_2 emissions grossly out of balance with what emissions would have been if a conventional technology had been used. Thus, to encourage the development of new technologies that show promise of achieving levels of performance comparable to those of existing technologies, but ensure that SO_2 emissions are not grossly out of balance with what they would have been if a conventional technology had been used, provisions were included in the SO_2 standard that require a 50 percent reduction in SO_2 emissions from new technologies and limit SO_2 emissions to 260 ng SO_2/J (0.6 lb SO_2/million Btu). This percent reduction requirement is low enough to substantially reduce the risk of failure associated with achieving it, and the 260 ng SO_2/J (0.6 lb SO_2 million Btu) emission limit ensures that SO_2 emissions from a source using a new technology will not be grossly out of balance with what SO_2 emissions would have been if a conventional technology had been used.

B. Projected Economic Impacts

1. Cost Effectiveness of a 130 ng SO_2/J (0.30 lb SO_2/million Btu) Heat Input Emission Limit on Electric Utility Auxiliary Steam Generating Units at the Zimmer Owners' Generating Station

Petitioner's Comment: The Zimmer owners stated that EPA did not consider the full costs associated with meeting a 130 ng SO_2/J (0.30 lb SO_2/million Btu) heat input emission limit for its two very low capacity factor auxiliary utility steam generating units. The petitioner stated that the exemption from the percent reduction requirement for oil-fired units with a maximum annual heat input capacity of 30 percent and less was meaningless when their very low capacity auxiliary units must also meet the 130 ng SO_2/J (0.30 lb SO_2/million Btu) heat input emission limit.

The petitioner contended that the full costs of meeting a 130 ng SO_2/J (0.30 lb SO_2/million Btu) heat input standard at its two auxiliary units are grossly disproportionate to the benefits achieved [i.e., Mg (tons) of SO_2 removed]. For these units, either very low sulfur oil must be burned in both the main unit and the auxiliary units or a separate oil handling system must be installed for the auxiliary units. According to the petitioner, the separate handling system would cost a total of $225,000/year, or $13,000/Mg ($11,800/ton) of SO_2 removed, whereas burning very low sulfur oil in both the main unit and auxiliary units would cost a total of $190,000/year, or $11,000/Mg ($10,000/ton) of SO_2 removed. As a result of these unreasonable cost impacts, the petitioner recommended that very low capacity factor auxiliary units be excluded altogether from regulation under Subpart Db standards.

Agency Response: The 130 ng SO_2/J (0.30 lb SO_2/million Btu) heat input emission limit for steam generating units exempt from the percent reduction requirement was established based on an assessment of the emissions and costs of very low sulfur oils. In establishing an NSPS, the Agency determines the best technology available, considering costs and other factors, for the category of sources affected by the standard. This approach does not mean that every source affected by the standards will incur the same costs of compliance. Some individual facilities subject to the standards may experience higher cost. In other words, in setting standards for new sources the Agency takes costs into account for the category of sources considered as a whole, not cost for every particular facility that might be affected.

Nevertheless, EPA reexamined the cost effectiveness of the promulgated SO_2 standard based on the Zimmer owners' specific situation and concluded that even in their situation the costs are reasonable.

Of the two compliance alternatives identified by the Zimmer owners, the lower cost alternative is to use very low sulfur oil in both the main steam generating unit [which is permitted to fire oil with an emission potential of 240 ng SO_2/J (0.55 lb SO_2/million Btu)] and the auxiliary units, which are subject to these standards. Based on the projected emission reductions from only the auxiliary units [estimated at 17 Mg/year (19 tons/year)], the petitioner estimated that the cost effectiveness of SO_2 reductions would be $11,000/Mg ($10,000/ton). However, it is inappropriate to exclude the emission benefits of using very low sulfur oil in the main units. When these emission reductions are included, the cost-effectiveness level is roughly $3,700/Mg ($3,400/ton) of SO_2, which is considered reasonable.

Further, these calculations are based on a fuel premium that the Zimmer owners believe may exist between 130 and 240 ng SO_2/J (0.30 and 0.55 lb SO_2/million Btu) oil of six cents per gallon. Based on a review of available data on fuel sulfur price premiums in the areas surrounding the Zimmer station, this premium appears overstated. In fact, this review identified little, if any, premium in the price between 130 and 240 ng SO_2/J (0.30 and 0.55 lb SO_2/million Btu) oils. As a result, the actual cost-effectiveness level could be considerably lower than the value calculated above.

2. Exemption for Noncontinental Areas

Petitioner's Comment: CIBO contended that the exemption of industrial steam generating units from the 90 percent SO_2 reduction requirement in noncontinental areas was arbitrary. According to the petitioner, the Agency provided this limited exemption due to the unavailability of natural gas in noncontinental areas. The petitioner argued that the distinction between facilities in continental and noncontinental areas is not supportable, considering that steam generating unit owners in some areas of the continental United States also have difficulties in obtaining natural gas.

Agency Response: The petitioner's contention is a moot point. Little or no coal is burned in steam generating units loaded in noncontinental areas. Thus, the exemption for noncontinental areas in the final rule applies in practice only to steam generating units burning very low sulfur oil. The final standard, however, also exempts all steam generating units firing very low sulfur oil from the percent reduction requirement no matter where they are located. In effect, therefore, the exemption sought by CIBO has already been granted in the existing rule. To extend this exemption for oil-fired units to coal-fired units in the continental United States, would present statutory difficulties. Congress plainly intended that the Agency utilize percentage reduction standards where appropriate given other statutory constraints, including the obligation to consider costs and other environmental impacts.

3. Failure to Analyze Economic Impacts on the Paper Industry

Petitioner's Comment: API/NFPA stated that, when compared to the seven other major steam-using industry groups

examined in the "Summary of Regulatory Analysis," the paper industry ranked first in industrial steam generating unit fossil fuel consumption. However, EPA performed economic impact analyses for only six of these industries, omitting an analysis of the paper industry. According to the petitioner, such an analysis of the paper industry would have revealed important information about the impact of the standard on the paper industry.

Agency Response: The economic impacts analysis of NSPS for industrial steam generating units was conducted in two phases. The first phase focused on major steam-using industries. Using aggregate economic criteria to characterize each industry selected for analysis, this phase of the analysis examined the potential impact of NSPS on industry average steam costs and product prices, and the ability of the industry to pass increased costs forward to the consumer or to absorb increased costs due to high profitability.

The second phase of the analysis focused on selected industries considered likely to experience the most severe economic impacts. Industries were selected for this phase of the analysis based on several criteria: (1) Results from the first phase of the analysis indicated further analysis was appropriate; (2) manufacturing operations within an industry were considered unusually steam-intensive; or (3) the steam generating unit capacity within an industry was characterized by unusually low utilization factors. Using model plants and model firms representative of those found within each industry selected for analysis, this phase of the analysis examined the potential impacts of NSPS on product prices and profitability at the plant level and capital availability at the firm level.

The pulp and paper industry was one of the industries examined in the first phase of this analysis. The results, however, indicated that the potential impacts of NSPS on this industry were small and that further analysis of this industry was not warranted in the second phase of this analysis. Although a major steam consuming industry, most of the steam used in the pulp and paper industry for pulping, bleaching, and paper making is generated by burning fuels, such as black liquor and wood, which are not subject to the SO_2 standards. Combustion of oil and coal in the pulp and paper industry may contribute less than one-third of the total steam requirements for this industry. Therefore, the potential impact of the NSPS on steam costs and product prices is small.

In addition, the first phase of the analysis also indicated that the pulp and paper industry was quite profitable. Pulp, paper, and board were produced at record levels in 1984, 1985, and 1986. The rates of after-tax profit on stockholders equity, the rates of after-tax profit on total assets, and the after-tax profits per dollar of sales were near or exceeded the average for all manufacturing plants in 1984, 1985, and 1986.

As a result, the pulp and paper industry was not considered one of those industries likely to experience the most severe economic impacts and, therefore, this industry was not examined in the second phase of the analysis. In any case, the petitioner gave no indication of how such an analysis would change the outcome of the standard. Consequently, the Agency finds no basis for reconsidering the standards.

4. Inadequate Analysis of the Economic Impact of Start-Up, Shutdown, and Malfunction Provisions

Petitioner's Comment: API/NFPS also contended that start-up, shutdown, and malfunction provisions are needed for the standards because methods of compliance with the standards during these periods are not always available or are too expensive for many new paper industry facilities. The petitioner contended that EPA had abandoned its earlier position that emissions during periods of start-up, shutdown, or malfunction would be minimized by relying on spare capacity. The petitioner added that the Agency now relies on the ability of units to switch to very low sulfur oil or natural gas during such periods.

The petitioner stated that many paper mills cannot obtain natural gas and that 0.3 weight percent sulfur oil is not readily available in many areas of the country, particularly in noncoastal areas. The petitioner contended that the lack of natural gas in the noncontinental United States was specifically recognized in the regulations by providing an exemption from the percent reduction requirement for facilities in these locations, but that the regulations discriminate for no valid reason against continental facilities that cannot obtain gas or very low sulfur fuel.

According to the petitioner, many paper mills with access to natural gas would also incur costs for backup supplies of natural gas in excess of EPA assumptions because the gas costs that were assumed when developing the regulations did not take into account demand charges and premium prices for firm gas supplies. Many paper mills would also incur excessive costs for backup supplies of very low sulfur fuel oil. The petitioner estimated that the cost effectiveness of SO_2 removal when using noninterruptible natural gas or very low sulfur oil as a malfunction backup fuel can be as high as $17,300/Mg ($15,700/ton), a ratio almost ten times more than estimated when developing the regulations.

Agency Response: The decision to limit SO_2 emissions during periods of start-up, shutdown, and malfunction was based on the availability of several cost-effective alternatives that an affected facility can use during these periods. Contrary to the petitioner's assertion, using spare FGD capacity was not abandoned as a backup alternative and is the most economically attractive option in many situations. It is true that natural gas is not available everywhere. Similarly, very low sulfur residual oil may be difficult to obtain in noncoastal locations, although very low sulfur distillate oil is generally available throughout the United States. If neither of these fuels is available at a specific location, alternatives such as liquid petroleum gas (LPG) or spare FGD modules could be considered. Each alternative need not be available at every potential location of a new facility.

The costs of spare FGD capacity, natural gas, and very low sulfur oil were analyzed prior to promulgation of the standards. These costs were reexamined based on the petitioner's comments. In addition, use of LPG was also examined. When demand charges cited by the petitioner of $6.60 to $11.40/trillion J/day/month ($7 to $12/million Btu/day/month) are assumed for noninterruptible natural gas, the cost effectiveness of this option ranges from $3,800 to $71,500/Mg ($3,500 and $10,500/ton). The cost effectiveness of all of the other options, however, such as natural gas (which does not carry such high demand charges), very low sulfur oil, LPG, or spare FGD capacity, remains in the range of $550 to $4,400/Mg ($500 to $4,000/ton) of SO_2 removed and is considered reasonable.

In addition, most steam using plants operate several steam generating units at less than full capacity so that if one unit malfunctions, the load can be switched from one unit to another. According to data collected in the "new boiler survey," over 90 percent (i.e., 85 out of 92) of the new coal- or oil-fired units sold between 1981 and 1984 were installed at plants with multiple steam generating units. Because of the availability of backup steam generating capacity, most plants should be able to shift steam production to another unit during periods of FGD malfunction.

In view of this variety of start-up, shutdown, and malfunction compliance options, individual plants will be able to economically control SO_2 emissions during these periods.

5. Legal Requirement for Consideration of Start-up, Shutdown, and Malfunction Costs

Petitioner's Comment: API/NFPA further contended that the courts require consideration of start-up, shutdown, and malfunction costs, citing *National Lime Association v. EPA*, 627 F.2d 416 (DC Circuit 1980) (referred to hereinafter as *National Lime*). According to the petitioner, the costs of complying with the standards during periods of start-up, shutdown, and malfunction are unreasonably high and could be avoided with a provision for a temporary variance during start-up, shutdown, and malfunction conditions.

Agency Response: National Lime does not require special start-up, shutdown, or malfunction provisions. Rather than specifying a particular requirement or type of analysis to be undertaken, the court in *National Lime* required only that consideration be given to the achievability of the standards under the anticipated range of operating variables. The petitioner correctly pointed out that analysis of the achievability of standards under the likely range of conditions should include an assessment of the cost of compliance associated with start-up, shutdown, and malfunction of FGD equipment. As discussed above, the costs of several different start-up, shutdown, and malfunction alternatives were analyzed. The results of this analysis indicate that the impacts associated with limiting emissions during start-up, shutdown, and malfunction are reasonable. Thus, it is clear that the Agency's analysis in adopting the standards is consistent with *National Lime*.

6. Availability of 130 ng SO_2/J (0.30 lb SO_2/million Btu) Oil in Hawaii [4]

Petitioner's Comment: HECO stated that the unique fuel supply and electric generation situation in Hawaii was not considered in establishing the 130 ng SO_2/J (0.30 lb SO_2/million Btu) emission limit. HECO contended that EPA should broaden the exemption to allow sources on Oahu to burn oil with a sulfur content of 0.5 weight percent or less, which HECO currently is required by local regulations to fire on Oahu.

The two refineries located on the Island of Oahu purchase crude oils with low sulfur contents that, when blended, produce low sulfur residual oil with 0.5 weight percent sulfur or less. These refineries cannot supply all of HECO's needs, however, and approximately 3 million barrels of low sulfur residual oil are imported by HECO from the West Coast of the United States, Singapore, and other worldwide sources.

Meeting a sulfur specification of 0.5 weight percent permits HECO and the two refineries on Oahu to keep costs down and allows HECO to purchase low sulfur residual oil that is competitive with low sulfur residual oil in the continental United States. Having to purchase low sulfur residual oil with a sulfur content of less than 0.3 weight percent would increase HECO's costs. Besides the premium for this oil, there would be additional costs for segregated storage, and the benefits would not be worth the costs. As a result, the promulgated standards would effectively preclude new Subpart Db steam generating units on Oahu.

Agency Response: HECO argues, in effect, that the exemption from the 90 percent reduction requirement included in the final standard for steam generating units firing very low sulfur oil should be increased from 130 ng SO_2/J (0.30 lb SO_2/million Btu) to 240 ng SO_2/J (0.50 lb/million Btu) since firing oil containing less than 130 ng SO_2/J (0.30 lb SO_2/million Btu) will increase HECO's costs. The mere fact that complying with this exemption from the percent reduction requirement will itself result in some increase in costs, if HECO decides to take advantage of the exemption, is not a sufficient basis for reconsidering the exemption. This exemption was not included in the standard to provide a convenient means for sources to avoid the percent reduction requirement or for sources to avoid experiencing any increase in costs in complying with the standard.

The exemption from the percent reduction requirement included in the standard for steam generating units firing oils of less than 130 ng SO_2/J (0.30 lb SO_2/million Btu) was based on a broad weighing of the relative costs and benefits of percent reduction requirements compared to firing oils of various sulfur contents. The costs of complying with the standard will vary somewhat from location to location, and at any specific location will depend on factors, such as local fuel prices, which are unique to that location. Not every steam generating unit, therefore, will find it advantageous to comply with the standard in exactly the same way. Some units may find it advantageous to comply with the standard by meeting the percent reduction requirement, others may find it advantageous to comply with the standard by firing very low sulfur oils. In short, not every steam generating unit subject to the standard will experience the same costs, nor is there any requirement in section 111 of the CAA that the Agency tailor the standard in such a way that no source will experience higher costs than any other source.

In the original rulemaking, the Agency examined a broad range of costs associated with the standard. (See e.g., "Summary of Regulatory Analysis.") HECO's contention that it will experience increased costs, or for that matter even that it may experience higher than average costs, in complying with the standard (or exemptions from the standard) would not have changed the outcome of the rule and, therefore, does not compel reconsideration.

Despite this finding, however, the Agency is unaware of why any HECO facility would be unable to take advantage of the exemption from the percent reduction requirement for steam generating units firing oils of less than 130 ng SO_2/J (0.30 lb SO_2/million Btu) if it chose to, nor does HECO suggest otherwise.

First, Hawaii's access to very low sulfur oil may well be equal to or superior to that of many areas of the continental United States, with its access to waterborne shipments of very low sulfur fuel oils from Indonesia and California, two of the largest markets of very low sulfur residual oil in the world.

Second, available data from the U.S. Department of Energy (DOE) for the years 1985 and 1986 (Docket No. A–83–27, Docket Items IV–I–3, IV–I–5, IV–I–6 and IV–I–7) indicate that about 10 to 20 percent of the residual oil used by HECO in 1985 and 1986 was 0.3 weight percent sulfur (or less) with the balance being between 0.3 and 0.5 weight

[4] Following the submittal of its Petition for Reconsideration in March, HECO offered to provide additional information concerning oil shipments and oil consumption on the Hawaiian Islands to support its contention that oil containing less than 0.3 weight percent sulfur was unavailable in Hawaii. No such data were forthcoming until December 19, 1988, some 9 months after submittal of the Petition for Reconsideration. The data covered the 1984–1987 time period, and much of this information could have been submitted during the comment period following proposal of the rule in June 1986, and certainly the information could have been submitted with the Petition for Reconsideration. HECO never advised the Agency that it was having difficulty obtaining the data or that it actually intended to supplement its petition. The Agency has no obligation to delay action on the Petitions for Reconsideration pending submittal, however belated, of information from petitioners or others. Nevertheless, the responses set forth below do address information presented in HECO's December 19, 1988, submittal.

percent sulfur. Additional data indicate a significant percentage of the residual oil imported into Hawaii (i.e., from outside the United States) was less than 0.3 weight percent sulfur: 7 percent in 1985; 15 percent in 1986; and 85 percent in 1987.

Furthermore, as HECO points out in its supplement, it currently imports oil from the West Coast of the United States and Singapore. Based on review of DOE data for 1987 (Docket A–83–27, Docket Item VI–B–9), supplies of residual oil containing less than 0.3 weight percent sulfur are currently available in California. These residual oils are refined from Indonesian and Australian crude oils and could be shipped to Hawaii. Handling requirements for these 0.3 weight percent sulfur residual oils are similar to those for higher sulfur content residual oils.

This indicates that residual oil with less than 0.3 weight percent sulfur is available in Hawaii, has been used by HECO in the past, and is available for import to Hawaii.

Third, the possible need for new handling facilities does not distinguish HECO from other steam generating unit owners and operators. In Hawaii, as elsewhere in the United States, depending on the type of oil purchased (a matter under the owner or operator's control), the use of very low sulfur oil may require installation of dedicated oil handling and storage facilities alongside of, or in place of, facilities handling higher sulfur content oil.

Finally, HECO claims that the increase in costs associated with complying with the exemption from the percent reduction requirement might result in "precluding" the use of new steam generating units on Oahu. HECO, however, does not explain its reasoning for this claim. HECO may mean, as it suggests with respect to the outer islands, that sources may construct diesel engines rather than steam generating units. This decision is for the source operator to make. The possibility that sources may construct diesel engines rather than steam generating units is not, however, a basis for modifying the standard.

For all of these reasons, an increase in the sulfur content of the oil exempted from the percent reduction requirement is not warranted for Hawaii.

7. Need for New Oil Transportation System in Hawaii

Petitioner's Comment: HECO also stated that, in order for neighboring islands (Maui, Kauai, Molokai, Lanai, and Hawaii) to use very low sulfur residual fuel oil a new inter-island transportation system (including vessels and delivery, receiving, and storage capacity) would have to be developed. Currently, all of the oil fired on these islands is imported in barges or tankers. Steam generating units on the neighboring islands fire oil with a sulfur content of 2 weight percent or less, which does not require a heated storage or distribution system. Importing waxy, very low sulfur residual oil would require heated barges for inter-island transport and a heated storage and distribution system on the islands. Coast Guard regulations prohibit hearing of the barges used for inter-island transport, and constructing a heated storage and distribution system would be uneconomical. HECO contended, therefore, that the Agency should exempt the Hawaiian outer islands from the SO_2 standards all together or permit the use of medium sulfur (2 weight percent) oil.

Agency Response: The nature of the inter-island transportation system in Hawaii does not warrant a special exemption for the outer islands. Residual oil capable of meeting an SO_2 emission limit of 130 ng SO_2/J (0.30 lb SO_2/million Btu) could be obtained by HECO, as discussed above. Based on information received from the Hawaiian Department of Energy (Docket No. A–83–27, Docket Item VI–E–9), the current method for transporting residual oil between the neighboring islands of Hawaii is by barge. This same system could be used to transport very low sulfur oil among the islands if slight modifications were made. These modifications could include cleaning some of the barges, dedicating them to the transport of very low sulfur oil, and equipping new steam generating units with new or converted storage tanks dedicated to the storage of very low sulfur oil.

Barge transport of fuel oil, far from being unique to Hawaii, is common practice throughout the continental United States. The Coast Guard does not prohibit the heating of barges transporting oil; it does have specific barge and heating system design requirements to ensure that oil is safely shipped (Docket A–83–27, Docket Item IV–E–10).

Depending on the type of oil purchased, a matter entirely under HECO's control, use of very low sulfur residual oil may require construction of a heated storage and distribution system. The need for this type of system, however, would be no different for a new steam generating unit located in Hawaii than for a similar unit located in the continental United States.

Therefore, an exemption from the standard for steam generating units located on the outer islands or an increase from 130 ng SO_2/J (0.30 lb SO_2/million Btu) to 867 ng SO_2/J (2.0 lb SO_2/million Btu) in the sulfur content of the oil exempted from the percent reduction requirement for the outer islands based on the need to make changes to the existing inter-island transport system or the cost of constructing a heated storage and distribution system is unwarranted.

8. Increased Use of Large Steam Generating Units or Gas Turbine Generators in Hawaii

Petitioner's Comment: HECO further stated that if it is required to comply with the 130 ng SO_2/J (0.30 lb SO_2/million Btu) SO_2 limitation, it would install gas turbine generators or electric utility steam generating units with heat inputs greater than 73 MW (250 million Btu/hour) rather than Subpart Db units. According to the petitioner, such large utility steam generating units and gas turbine generators could comply with Subparts Da or GG by using the 0.5 weight percent sulfur residual oil available on Oahu.

Agency Response: Subpart Db applies to steam generating units with a heat input capacity greater than 29 MW (100 million Btu/hour), except for electric utility steam generating units covered by Subpart Da. Indeed, the petitioner could install electric utility steam generating units in excess of 73 MW (250 million Btu/hour) heat input or a gas turbine generator and be subject to Subpart Da or GG, respectively, rather than Subpart Db. Large electric utility steam generating units or gas turbine generators can comply with the SO_2 requirements of Subparts Da or GG by firing 0.5 weight percent sulfur oil.

9. Economic Impacts of Firing Low Sulfur Oil in the Hawaiian Outer Islands

Petitioner's Comment: HECO noted that the cost differential between distillate oil and residual oil makes the use of distillate oil in steam generating units impracticable on the outer islands compared to diesel engines. The result, according to HECO, is that no one will build steam generating units; rather, they will burn distillate oil in more efficient diesel engines.

Agency Response: The SO_2 standards merely limit the sulfur content of oil that may be fired without meeting the 90 percent reduction requirement. The standards do not require new steam generating units taking advantage of this exemption to fire distillate oil, but permit new steam generating units to fire any type of oil. That HECO might find it more economical to make use of diesel engines to produce electricity does not make the standard unreasonable. As stated earlier, the Agency believes that residual oil containing less than 130 ng SO_2/J (0.30 lb SO_2/million Btu) is available and can be supplied to steam generating units in Hawaii. HECO, however, always has the option of using distillate oil, residual oil, or even crude oil, or of switching between these fuels, based on its own assessment of fuel costs, supply uncertainties, and other factors. Furthermore, if transportation costs or use of very low sulfur content oil in the Hawaiian Islands becomes too expensive, HECO may wish to consider partial scrubbing of higher sulfur content oil to achieve the 130 ng/J (0.30 lb/SO_2 million Btu) emission limit.

B. Post-Proposal Developments

1. New Docket Material

Petitioner's Comment: CIBO contended that EPA introduced new material into the docket and conducted new analyses of existing data after the close of the public comment period, and that the public was not given sufficient opportunity to comment on this new material.

Agency Response: In the proposed SO_2 rulemaking of June 19, 1986, EPA stated that the energy price scenarios would be updated between proposal and promulgation to determine whether the costs, emission reductions, or cost effectiveness of the rule would be altered significantly, and, when completed, this information would be added to the docket. (See 51 FR 22387.)

On April 27, 1987, and again on October 30, 1987, a notice of document availability was sent to parties who commented on the June 19, 1986, proposed rulemaking, informing them that new materials and analyses were being added to the docket. These notices included a listing of more than two dozen new reports related to the rulemaking, which can be found in Docket No. A–83–27. Copies of four of the reports, including the results of the "new boiler survey," were attached to the April notice and six were attached to the October notice.

None of the petitioners commented on these new materials nor did they submit any additional information. Further, the new analyses showed no significant differences from the analyses that led to the development of the proposed standard and reaffirmed the reasonableness of the final standard.

2. Analysis of the "New Boiler Survey"

Petitioner's Comment: CIBO objected to a question in the "new boiler survey" which asked, "Would your decision to build a new boiler change if projected costs to produce steam increased by: 10, 20, 30, or 50 percent?" The petitioner contended that this question was misleading because it failed to reveal the source of the increased cost of meeting the 90 percent SO_2 emission reduction requirement. The petitioner also contended that the question failed to address costs, other than incremental steam cost, that would affect project viability. The petitioner suggested that the question be rephrased to ask, "Would your decision to install a coal- or oil-fired boiler change if such boiler were subject to a requirement (1) that 90 percent of potential SO_2 emissions be removed on a continuous 30-day average basis (including start-up and shutdown periods), and (2) that the installation of low sulfur fuel-firing capability might need to be installed for periods of FGD system malfunction?"

Agency Response: The purpose of the "new boiler survey" was to determine to what extent new steam generating units may be replacements for existing units and what impact this may have on overall SO_2 emissions. Thus, the survey focused on the reasons motivating the installation of new units, the disposition of existing units that may be replaced by new units, and the overall impact of the installation of new units on SO_2 emissions. The specific question on costs was included in the survey to gauge how sensitive decisions to install new units, including those units that may replace existing units, may be to potential increases in costs. The petitioner hypothesized that the answers might have been different if EPA had formulated its question to specify that increased costs resulted from pollution control. In determining the cost of steam, prudent business practices would be to include all the costs associated with steam production, including any costs associated with pollution control and steam supply reliability. It is the magnitude, not the origin, of costs that is relevant to the elasticity of sales as a function of costs. No details or data were provided to support CIBO's conjecture. Unsupported conjecture is not an adequate basis for reconsidering a rule.

3. Reevaluation of SO_2 Emission Reductions

Petitioner's Comment: CIBO also contended that EPA failed to reevaluate SO_2 emission reductions in light of the data received from the "new boiler survey" conducted after proposal of the standards. Specifically, the petitioner contended that the SO_2 emission rates used by EPA were too high and, as a result, SO_2 emission reductions were overestimated. The petitioner also contended that the overall emission rate gleaned from the survey demonstrates that a 1,100 ng SO_2/J (2.5 lb SO_2/million Btu) heat input baseline for new coal-fired steam generating units is unjustifiably high. The petitioner also contended that the survey demonstrates that SO_2 emission rates for oil-fired units were overestimated. The petitioner stated that without an accurate estimate of emission reduction, EPA cannot fulfill its statutory obligation under the CAA to accurately determine the cost of achieving the emission reductions that any particular standard will impose.

Agency Response: The Agency did analyze the impacts of the SO_2 standards using SO_2 emission rates from the "new boiler survey." In fact, for every analysis of national impacts performed by EPA, both prior to and after proposal of the standards, the Agency included regulatory altenratives that were essentially the same as the emission rate indicated by the survey to represent baseline levels. Because the Agency analyzes the incremental impacts of each regulatory alternative over the next less stringent alternative, the designation of a particular emission level as "baseline" rather than a "regulatory alternative" bas little practice effect. The incremental differences will be the same in either case.

Each of the Agency's analyses included emission levels lower than 1,100 ng SO_2/J (2.5 lb SO_2/million Btu) for coal-fired units and 1,300 ng SO_2/J (3.0 lb SO_2/million Btu) for oil-fired units. For example, each analysis included an alternative based on an emission level of 520 ng SO_2 /J (1.2 lb SO_2/million Btu) and 340 ng SO_2/J (0.8 lb SO_2/million Btu) for coal- and oil-fired units, respectively. These emission levels are essentially the same as those the petitioner believes can be gleaned from the survey as representative of baseline emission levels.

In each analysis, the impacts of the regulatory alternative eventually promulgated as the SO_2 standards were analyzed relative to less stringent alternatives, including an emission level essentially comparable to the "revised baseline" level proposed by the petitioner. In each instance, the impacts of the promulgated standards were reasonable compared to this "revised baseline" level. Consequently, the Agency did analyze the impacts of the

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standards in light of the results of the survey and found those impacts to be reasonable.

4. Information on Impacts of Waste Disposal

Petitioner's Comment: CIBO argued that post-proposal information showed that significant waste disposal problems would be created by the SO_2 standards. It also argued that methods used in some areas for disposing of sodium scrubber waste (i.e., deep well injection, use of lined disposal sites) are not cost effective, making the use of coal-fired steam generating units impracticable.

Agency Response: Steam generating units generally do not operate in isolation from other industrial processes, but are most often part of a larger industrial manufacturing plant that itself often produces substantial quantities of wastes requiring disposal. In addition, coal-fired steam generating units generate fly ash as well as liquid feedwater and steam system "blow-down" wastes, which also require disposal. Thus, use of SO_2 control systems to reduce SO_2 emissions from steam generating units may increase the volume of wastes to be disposed of, but generally does not create a new problem (i.e., a need to dispose of wastes where no such need existed before).

In areas where disposal of waste streams from sodium FGD or any other FGD system is considered by the owner or operator of a new steam generating unit covered by the NSPS to be too costly, the owner or operator could select an alternative approach to comply with the NSPS. As discussed throughout volume 4 of the "Background Information Document," the "SO_2 Control Technology Updates Report," and the "Summary of Regulatory Analysis," the SO_2 standards are based on a wide variety of techniques for controlling or reducing SO_2 emissions. The types of waste produced by FGD systems are quite different. As a result, a steam generating unit owner can select the FGD system best suited to local waste disposal requirements. Sodium FGD systems, for example, produce a liquid waste requiring disposal. Lime spray drying systems and FBC systems, on the other hand, produce a dry waste product. The cost impacts associated with each of these SO_2 control technologies, including the costs of waste disposal, are considered reasonable. Thus, one can minimize problems associated with increased waste disposal by appropriate selection of the SO_2 control system. The NSPS does not create an insurmountable waste disposal problem nor does it make the use of coal-fired steam generating units impractical. Finally, even though not a basis of the standard, if the steam generating unit owner or operator views the cost of these control techniques as excessive, switching to an alternate fuel, such as natural gas or very low sulfur oil, which imposes no additional waste disposal requirements, is an option.

5. Ability of FBC and FGD Systems to Achieve 90 Percent SO_2 Reduction

Petitioner's Comment: CIBO questioned the ability of FBC units to achieve 90 percent SO_2 reduction, especially those units experiencing large load swings. In addition, the petitioner stated that new information on spray dryer FGD systems does not support the ability of this technology to meet the 90 percent SO_2 reduction requirements. The petitioner claimed that EPA relied on switching to natural gas, and that such reliance violated EPA's duty to promulgate a standard that is achievable for coal- and oil-fired units.

Agency Response: As discussed in Volume 4 of the "Background Information Document," sufficient short-term performance test data exist to demonstrate that FBC technology is capable of achieving 90 percent SO_2 removal. Short-term data presented in the "Summary of Regulatory Analysis" show that several FBC units achieved 90 percent or greater SO_2 control during the test periods. Longer term data (30 days or more) also demonstrate that FBC units care capable of achieving greater than 90 percent SO_2 removal at high reliability levels. A 30-day test on a bubbling bed FBC unit burning high sulfur coal showed SO_2 removal efficiencies averaging 93.5 percent. A 30-day test conducted at another site showed an average SO_2 removal of 90 percent with greater than 99 percent reliability. During a 67-day period at this site, the FBC unit had a reliability of 97 percent. In addition, vendors have consistently stated that FBC units can be designed to achieve 90 percent SO_2 removal at high reliability levels. Based on these data, EPA believes that FBC has demonstrated the ability to meet the 90 percent SO_2 reduction requirement in the promulgated standards.

In response to the petitioner's comment regarding the ability of FBC units to respond to load swings, FBC technology is characterized by the large thermal mass of the bed, which in turn limits the ability of FBC units to adjust quickly to large variations in steam demand. This is a characteristic of FBC technology that is unrelated to SO_2 removal. As a result, the owner of a facility with rapidly changing steam demands is likely to select a conventional steam generating unit and FGD system, rather than an FBC, due to this inherent characteristic of FBC technology, which limits its ability to respond to large load swings.

The percent reduction and reliability of lime spray drying have also been demonstrated, as discussed in Volume 4 of the "Background Information Document" and as documented in the "Summary of Regulatory Analysis" and the "SO_2 Control Technology Update Report." Although few long-term (30 day and longer) data are available to demonstrate high SO_2 removal levels, short-term tests indicate that lime spray drying systems are capable of achieving percent reduction levels in excess of 90 percent. Although most lime spray dryers today are operated at roughly 70 percent reduction to comply with the lower percent reduction requirements in Subpart Da and in State permits, there is no reason to believe lime spray dryers cannot achieve 90 percent SO_2 reduction while maintaining a high degree of reliability. In fact, those periods during which high removal levels have been achieved in percent reduction tests indicate that lime spray drying systems are capable of achieving high percent reduction levels with high reliability levels. In addition, as with FBC technology, a vendor has also stated that lime spray dryer FGD systems can be designed to achieve 90 percent SO_2 removal at high reliability levels (Docket No. A–83–27, Docket Item VI–D–5). For these reasons, EPA believes that lime spray drying has demonstrated the ability to meet the 90 percent SO_2 reduction requirement in the promulgated standards. (See 52 FR 47837.)

In this connection, EPA stated in the promulgation preamble that one vendor's guarantee that 95 percent reliability was achievable in industrial applications was "consistent" with the results of 2 years operation of a lime spray drying system on a 132 MW (450 million Btu/hour) heat input coal-fired steam generating unit. (See 52 FR 47837; see also Docket A–83–27, Docket Item IV–B–9.) This statement remains true. The distinctions noted by the petitioner between this application and industrial applications regarding removal rates and load levels do not invalidate the comparison. The lower removal rate does not mean that EPA is incorrect in judging that higher removal rates can be achieved in industrial applications. Likewise, differences in loads do not mean that EPA's judgment is mistaken that load changes can be managed. The Agency's use of the comparison was fair. The example was not used as direct proof of reliability. It served as a useful, but not necessary, illustration that the vendor guarantee in question was realistic. Moreover, the Administrator's determination that the standard was reasonable was not based on the assumption that fuel switching would occur.

6. Use of Vendor Statements to Support 90 Percent SO_2 Reduction

Petitioner's Comment: CIBO stated that informal vendor statements had been used to support that assertion that lime spray dryers can achieve a 90 percent SO_2 reduction. The petitioner asserted that a vendor guarantee does not reflect "adequately demonstrated" performance because the standard "must be based on cost-effective technologies that can be successfully and reliably used in operating installations." The petitioner also stated that EPA did not provide notice of how much EPA relied on vendor guarantees in finding that lime spray dryers are "demonstrated."

Agency Response: Data, analysis, and engineering judgment were used to establish the 90 percent SO_2 reduction standard. The vendor guarantee was used merely to confirm the regulatory decision and not as the sole basis for the standard. The term "adequately demonstrated" does not mean "successfully and reliably used in operating installations." An "achievable" standard need not be already routinely achieved in the industry. [See *National Lime Association v. EPA*, 627 F.2d 416 (1980); *Sierra Club v. Costle*, 657 F.2d 298 (1981); and *Portland Cement Assn. v. Ruckelshaus*, 486 F.2d 375 (1973).] Rather, to be achievable, the standard must be achievable under most adverse conditions that can reasonably be expected to occur. (See *National Lime, supra.*)

The vendor in question is a leading spray dryer FGD manufacturer, having installed over 50 percent of the existing units, and is a reliable and authoritative source of information on dry FGD systems. The vendor's statements were only used to support the data and engineering judgment that served as the basis of the standards. CIBO's criticisms of such guarantees are not "centrally relevant" to the outcome of rule. In fact, EPA's determination that the lime spray technology was "demonstrated" was based, in the proposal as in the final rule, on the data in the record and its judgment that high levels of performance and reliability were achievable. The Agency noted the availability of performance guarantees at the time of proposal only as additional support for, but not the basis of, its position. (See e.g., BID, Volume 4.)

IV. Summary

The issues raised in each petition and discussed in this notice were carefully considered; however, only the issue concerning cost impacts of the NO_x standard on very low capacity factor steam generating units provides a basis for revising the promulgated standards. A proposal to do so will be made in a separate notice. The other issues raised by petitioners do not require or justify reconsideration of the promulgated PM, SO_2, or NO_2 standards under Section 307.

Date: January 6, 1989.

Lee M. Thomas,

Administrator.

[FR Doc. 89–701 Filed 1–12–89; 8:45 am]

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federal register

Friday
January 13, 1989

Part VI

Department of the Interior

Minerals Management Service

Norton Basin Lease Sale 120; Request for Interest; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Norton Basin Lease Sale 120
Request for Interest

Purpose

Proposed Sale 120--Norton Basin is being reviewed by the Secretary of the Interior to determine whether the Outer Continental Shelf (OCS) presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring in the Norton Basin Planning Area.

The responses will assist the Secretary of the Interior in determining if the presale process for the proposal should be started, delayed, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data and economic or other conditions could create bidding interest in areas which may now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could make an area presently unattractive to potential bidders into one which could be of interest. Other information of interest would include new geophysical data, new geologic data, new interpretations of existing data, and new estimates of costs of production. By requesting information and acting on it prior to the issuance of the Call for Information and Nominations, the risk of inappropriate expenditures for such sales would be reduced.

If the Request for Interest (RFI) indicates sufficient interest to warrant proceeding with the sale, these prelease steps will follow: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearings, final EIS, proposed Notice of Sale, Governor's Comments, and final Notice of Sale. For Alaska sales, the entire process takes approximately 28 months.

Description of the Area

The Norton Basin Planning Area is located offshore the western coast of the State of Alaska in the Northern Bering Sea and includes approximately 4,700 blocks covering about 25 million acres.

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Large portions of the area were requested for deferral by the State of Alaska and the signatories to the Institute for Resource Management (IRM) Bering Sea Proposal. A portion of the area requested for deferral has been deferred pursuant to the 5-year program. This is shown as a subarea deferral on the map which appears at the end of this document. Areas requested by the State and the IRM that were not adopted for deferral at this time have been highlighted for special presale consideration. Highlighting subareas for special presale consideration means special mention of such subareas in the Call for Information and Nominations and consideration of them as potential deferral alternatives in the EIS scoping process. This is consistent with the commitment made in the 5-year program.

The total area open for comment at this time consists of approximately 2,300 blocks (approximately 13 million acres) and is outlined on the attached map.

Previous Sale-Related Activities

The first Federal offshore oil and gas lease sale in this area, OCS Oil and Gas Lease Sale 57, was held on March 15, 1983. Of 418 blocks (about 2.3 million acres) offered, 64 blocks received bids, and bids on 59 blocks were accepted. As a result of that sale, over $317.8 million in bonuses were collected. All 59 leases were issued for a primary term of 10 years. Forty-six leases have been relinquished as of November 1988.

An RFI for Sale 120 was published on April 30, 1987, at 52 FR 15932. On October 8, 1987, the Department of the Interior announced the decision to delay action on this lease sale. This decision was made after analyzing comments submitted by 11 companies in response to the RFI.

Two Deep Stratigraphic Test wells have been drilled in this area. In addition, six exploratory wells were drilled without encountering commercial discoveries of oil and gas. All six wells have been plugged and abandoned.

Instructions on Request for Interest

Information regarding leasing and exploring in the Norton Basin Planning Area may be provided by mail, telephone, or, alternatively, an informal meeting with the Regional Director or designated representative. General or detailed information may be submitted. We request that you provide information on the following:

(1) Are you interested in the area at this time?

(2) Would your level of interest in this area change if oil and gas prices increase?

(3) What general or detailed information can you provide regarding whether we should proceed in this planning area with the OCS presale process; delay the presale process for 1 year or more; or defer the sale for consideration in a future 5-year schedule?

(4) Is your company spending money on any oil and gas activities in this area or are expenditures anticipated on activities such as geologic and geophysical work, etc.?

(5) What comments and suggestions can you provide on your choice of minimum bid level, alternative bidding systems, and other procedures which may lead to the enhanced understanding of the oil and gas resources of the Norton Basin Planning Area?

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the Federal Register. Receipt of the information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale 120, Norton Basin." The telephone number and name of a person to contact in the respondent's organization for additional information should also be enclosed.

Letters should be mailed or hand delivered to the Regional Supervisor for Leasing and Environment, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302. Telephone responses may be made to Mr. Tom Warren at (907) 261-4691 or to Mr. Dave Bornholdt at (202) 343-5121. A copy of the response should be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230 (Mail Stop 645), Washington, D.C. 20240. Hand deliveries to the headquarters office may be made at 18th and C Streets, N.W., Room 2523, Washington, D.C.

Director, Minerals Management Service

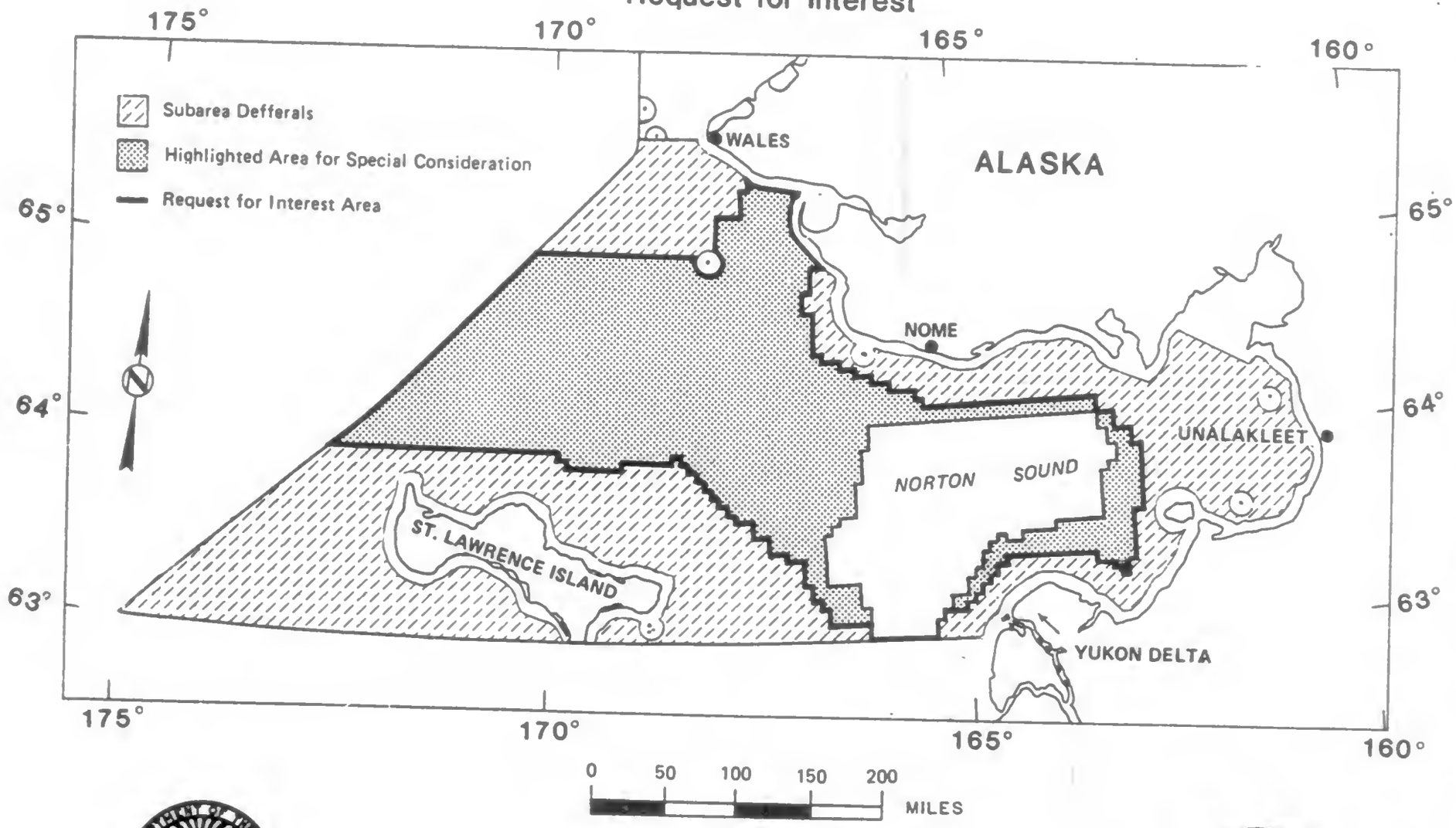
Thomas Gernhofer

Approved:

Assistant Secretary - Land and Minerals Management

Date 1/9/89

James E. Cason



U.S. DEPARTMENT OF THE INTERIOR

MINERALS MANAGEMENT SERVICE

ALASKA OCS REGION

[FR Doc. 88-772 Filed 1-12-88; 8:45 am]

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federal register

Friday
January 13, 1989

Part VII

Department of the Interior

Minerals Management Service

Chukchi Sea; Lease Sale 126; Call for Information and Nominations; Intent to Prepare an Environmental Impact Statement; Notice

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Chukchi Sea
Lease Sale 126

Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for Outer Continental Shelf (OCS) Lease Sale 126. This sale, located in the Chukchi Sea Planning Area, is tentatively scheduled for May 1991. Information and nominations on oil and gas leasing, exploration, and development and production within the Chukchi Sea are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the area described below.

Description of Area

The area of Call is located offshore the State of Alaska in the Chukchi Sea and the Arctic Ocean. The area available for nominations and comments consists of approximately 5,450 whole and partial blocks (about 29.5 million acres) as outlined on the map which appears at the end of this Call. The map includes an outline of the Minerals Management Service's (MMS's) interpretation of the area of hydrocarbon potential. Respondents may nominate and are asked to comment on any acreage within the entire Call area. A larger scale map of the Chukchi Sea Planning Area (hereinafter referred to as the Call Map) showing boundaries of the Call area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 261-4621. The OPD's may be purchased from the Records Manager for $2.00 each.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like included in OCS Lease Sale 126. Nominations must be depicted on the larger scale Call map by outlining the area(s) of interest along block lines. Respondents may also submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Respondents should also rank areas nominated according to priority of their interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority, because blanket priorities on large areas are not useful in the analysis of industry interest.

The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or socioeconomic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments also are sought on potential conflicts that may result from the proposed sale and future OCS oil and gas activities with approved local coastal management plans (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of either broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed Chukchi Sea Lease Sale 126," or "Comments on the Call for Information and Nominations for Proposed Chukchi Sea Lease Sale 126," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area. Copies of the Call map showing indications of interest and any comments are to be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230, 18th and C Streets, NW, Washington, D.C. 20240.

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Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to focus the analysis in the remainder of the sale process on areas of hydrocarbon potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of potential advantages and disadvantages of oil and gas exploration and development to the Region and the Nation. A third purpose for this Call is to use the comments to initiate the scoping process for the EIS and analyze alternatives to the proposed action. The Notice of Intent to Prepare an EIS, including a description of the scoping process, is located later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to evaluate potential conflicts between the Coastal Management Program and offshore oil and gas activities.

Existing Information

An extensive environmental as well as socioeconomic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Description of Area or by telephone at (907) 261-4620. Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180 or by calling (703) 285-2283.

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Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the OCS Lands Act, as amended, and with established departmental procedures.

Tentative milestones that will precede this sale, proposed for May 1991, are:

Milestones	Dates
Comments Due on the Call	February 1989
Scoping Comments Due	February 1989
Area Identification	April 1989
Draft EIS Published	May 1990
Hearings on Draft EIS Held	June 1990
Final EIS Published	November 1990
Availability of Proposed Notice of Sale Published	December 1990
Governor's Comments Due on Proposed Notice	February 1991
Final Notice of Sale Published	April 1991
Sale	May 1991

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 126 in the Chukchi Sea off Alaska. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks

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included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

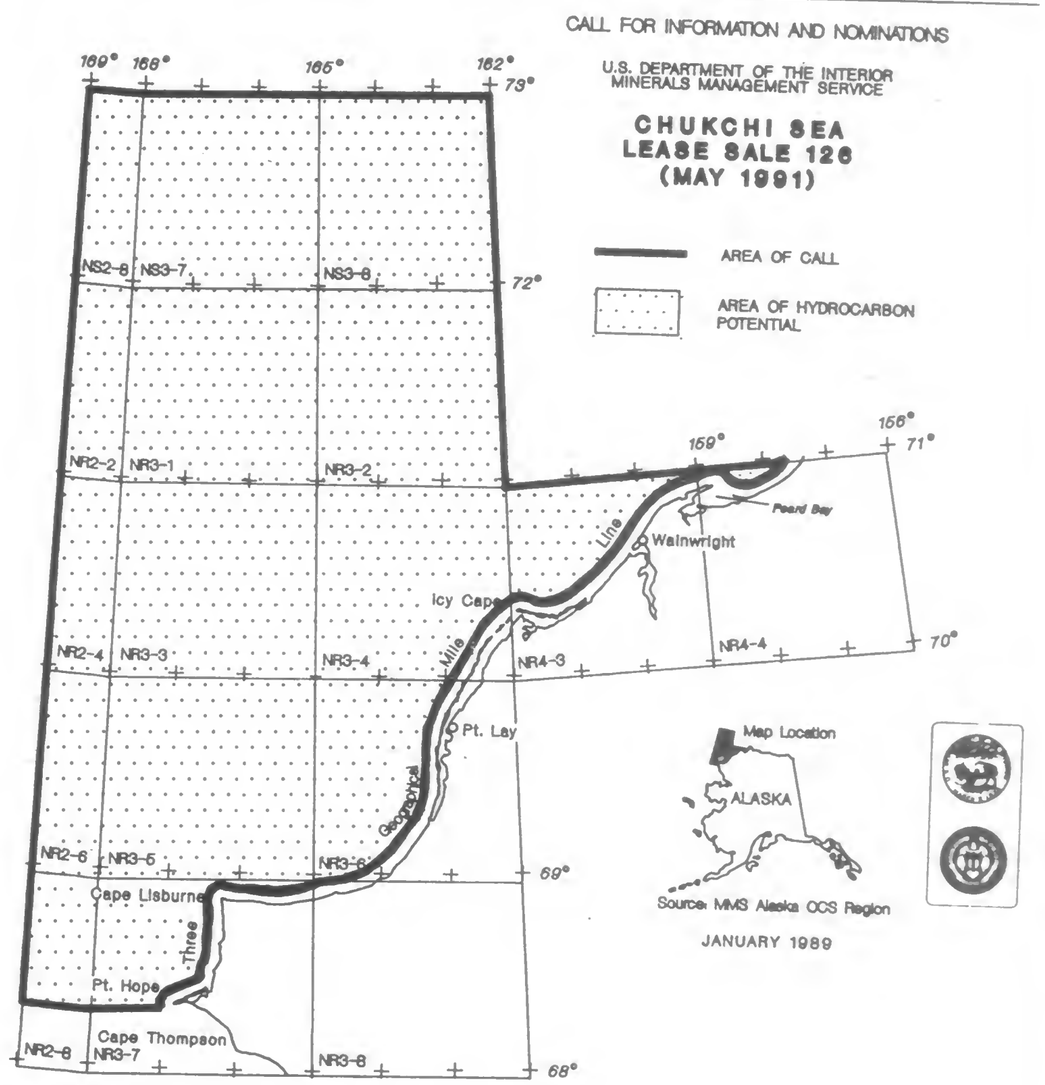
Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Description of Area above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Chukchi Sea Lease Sale 126." Comments are due no later than 45 days from publication of this Notice.

Director, Minerals Management Service
Robert E. Kallman

Approved:

Acting Assistant Secretary - Land and Minerals Management
James E. Cason

1/9/89
Date



[FR Doc. 89-771 Filed 1-12-89; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Friday
January 13, 1989

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 301

Preschool Grants for Handicapped Children Program; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 301

Preschool Grants for Handicapped Children Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations implementing the Preschool Grants for Handicapped Children program (Preschool Grants). This program is authorized under section 619 of Part B of the Education of the Handicapped Act (EHA), as amended by Pub. L. 99-457, the Education of the Handicapped Act Amendments of 1986. These final regulations establish the requirements for implementing this new formula grant program to provide Federal financial assistance to States for serving children with handicaps aged three through five years.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Treusch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4615—MES 2732), Washington, DC 20202; Telephone: (202) 732-1097.

SUPPLEMENTARY INFORMATION: Public Law 99-457, enacted on October 8, 1986, revised section 619 of Part B of the EHA by replacing the Incentive Grants program with a new Preschool Grants for Handicapped Children program (Preschool Grants). The purpose of the Preschool Grants program is to provide additional Federal financial assistance to States for providing special education and related services to children with handicaps aged three through five years. The Preschool Grants regulations establish the administrative procedures for applying for and distributing Preschool Grant funds. They are not intended to repeat the substantive rights and protections of three through five-year-old children with handicaps which are established under Part B of the EHA and its implementing regulations at 34 CFR Part 300. These rights and protections include the right to a free appropriate public education, placement in the least restrictive environment, and the availability of due process procedures.

Beginning in fiscal year (FY) 1988, States are required to use at least seventy-five percent of their Preschool Grants funds for making subgrants to local educational agencies (LEAs) and intermediate educational units (IEUs). States may use not more than twenty percent of their grant funds for planning and developing a statewide comprehensive delivery system for special educational services to children with handicaps aged birth through five years and for providing direct and support services to children with handicaps aged three through five years. These funds may be used to continue the planning begun under the Early Childhood State Plan grants which were previously authorized under section 623(b) of the EHA and eliminated by Pub. L. 99-457. States may use not more than five percent of the total grant award for the cost of administering the grant.

A new provision in the statute requires that States make a free appropriate public education available to all children with handicaps aged three through five years by FY 1991 in order to continue to be eligible for funding under the Preschool Grants program. Eligibility for EHA-Part B funds for children with handicaps aged three through five years, funding under Parts C through G of the EHA for projects relating exclusively to children with handicaps aged three through five years, and funding for children with handicaps aged three through five years served under Pub. L. 100-297 (which reauthorized the Chapter 1 State Operated or Supported Program for Handicapped Children) is contingent upon eligibility for a Preschool Grant. These statutory eligibility restrictions will become effective in FY 1991. Currently, all States are eligible for funding under the Preschool Grants program.

For FY 1987 through FY 1989 a Preschool Grant award is the total of two amounts. The first amount, the basic grant, is based on the previous year's December 1 EHA-Part B count (reported to the Secretary on a non-categorical basis) of three- through five-year-old children with handicaps receiving special education and related services. The basic amount was $300 per child in FY 1987, $400 per child in FY 1988, and will be up to $500 per child in FY 1989.

The second amount, the bonus, is based upon the net estimated increase in the number of three- through five-year-old children with handicaps expected to be served under the EHA-Part B on December 1 of the current calendar year. A bonus payment of up to $3800 for each additional child is paid when: (1) there is an estimated increase in the total number of three- through five-year-old children with handicaps served (i.e., those served under both the EHA-Part B and the Chapter 1 State Operated or Supported Program for Handicapped Children) from the previous child count, and (2) there is an estimated increase from the previous year's EHA-Part B count in the number of three- through five-year-old children served under the EHA-Part B. Therefore, in order to determine the net estimated increase in three- through five-year-old children served, a State must estimate the next year's Chapter 1 State Operated or Supported Program for Handicapped Children three- through five-year-old child count as well as the next year's EHA-Part B three- through five-year-old child count.

Downward or upward adjustments are made in the subsequent year's grant if the actual child count differs from the estimate. Bonus payments apply only for fiscal years 1987, 1988, and 1989. For fiscal year 1990 and thereafter, States receive up to $1000 per child for the three- through five-year-olds counted in the previous year's December 1 EHA-Part B child count.

Section 3501 of the Hawkins-Stafford Act amended Part E of the General Education Provisions Act (GEPA) to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Educational Appeal Board and sets out new hearing procedures. 20 U.S.C. 1234-1234i. As a result, appeals from cost disallowance decisions received by a State educational agency (SEA) on or after October 25, 1988 will be heard by the OALJ. The Educational Appeal Board will continue to hear appeals from determinations received by an SEA before October 25.

On November 18, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (52 FR 44346). No major changes have been made to the proposed regulations. A technical change has been made to § 301.4 due to the publication (FR 8033-8103, March 11, 1988) of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (to be codified at 34 CFR Part 80). Effective October 1, 1988, Part 80 supersedes Part 74 with respect to State and local governments. Section 301.12 has been deleted because this information is already included in the application package. A new § 301.12 has been added describing the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all children with handicaps aged three through five years.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment, five hundred and five (505) parties submitted comments on the proposed regulations. An analysis of the comments and of changes in the regulations since publication of the NPRM follows.

Major issues that address topics covered in the Part B regulations are grouped according to subject. Other substantive issues are discussed under the section of the Preschool Grants regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Many of the public comments pertained to the substantive rights of three- through five-year-old children with handicaps which are in the regulations implementing Part B of the EHA (34 CFR Part 300). Comments which addressed the proposed addition to the comment on the least restrictive environment (LRE) contained in the NPRM under the EHA-Part B (FR 8390, March 14, 1988) will be considered in the development of the final Part B regulations at 34 CFR Part 300. No changes have been made to the Preschool Grants regulations based on comments regarding issues covered by the regulations at 34 CFR Part 300. However, the Secretary has briefly responded to the comments that have a significant impact on the three- through five-year-old population by cross-referencing the pertinent EHA-Part B regulations. A discussion of these topics follows:

1. Least Restrictive Environment (LRE)

Comment: Some commenters wanted specific language stating that special education and related services must, to the maximum extent appropriate, be provided to preschool children with handicaps in the LRE. Other commenters wanted clarifiction of the definition of "least restrictive environment" as it applies to preschool children, especially if a State does not provide preschool programs for non-handicapped children.

Discussion: The existing requirements on LRE at 34 CFR 300.550-300.556 apply to preschool children with handicaps. The NPRM to amend 34 CFR Part 300 proposes an addition to the comment following § 300.552, which sets forth the general requirements for placement in the least restrictive environment. The proposed addition to the comment provides examples of how a public agency serving preschool children with handicaps may meet the LRE requirements if it does not provide education to non-handicapped children who are aged three, four, or five years.

Changes: None.

2. Parent Counseling and Training

Comment: Some commenters wanted the Preschool Grants regulations to contain requirements that the individualized education program (IEP) include instruction for parents so that they can be active and knowledgeable in assisting in their child's progress and "involvement of parents and family" to ensure that the family involvement provided for under the Early Intervention for Infants and Toddlers with Handicaps program (Early Intervention program) will be continued in preschool programs.

Discussion: "Parent counseling and training" is defined at 34 CFR 300.13(b)(6) as a related service and may be included at any time in an IEP if it is determined to be needed to assist a child in benefitting from special education. The regulations implementing Part B also emphasize the role of parents at an IEP meeting. See Question 26 in Appendix C to 34 CFR Part 300. Finally, the regulations at 34 CFR 300.370(b)(2) include "parent training activities" under the definition of "support services" for which a State educational agency (SEA) may use its EHA-Part B allocation.

The Secretary has consistently supported parental involvement in all educational programs. This includes supporting the important role of parents as active participants in the development and implementation of their child's educational program. States are encouraged to increase efforts to include parents in developing and providing special education and related services to their preschool child with handicaps.

Changes: None.

3. Case Management Services

Comment: Some commenters argued that case management services that are required under the Early Intervention program, should be required under the Preschool Grants program.

Discussion: Part H of the EHA specifically identifies case management services as one of the early intervention services to be provided. Under the Early Intervention program, the case manager is responsible for the implementation of the Individualized Family Service Plan (IFSP) and coordination with other agencies. Under Part B of the EHA, the public agency responsible for the education of a child with a handicapping condition must ensure that all the services listed in the child's IEP are provided. (See 34 CFR 300.341 and questions 45 and 46 in Appendix C to 34 CFR Part 300)

Changes: None.

4. Comprehensive System of Personnel Development (CSPD)

Comment: Many commenters wanted the regulations implementing the CSPD to include training for both professionals and paraprofessionals who work with preschool children with handicaps.

Discussion: Section 613(a)(3) of the EHA and the EHA-Part B regulations implementing the Comprehensive System of Personnel Development at 34 CFR 300.380-300.387 already allow a State to include in the CSPD professionals and paraprofessionals who work with preschool children with handicaps.

Changes: None

5. Applicability of 34 CFR 300.300(b)(3)

Comment: Many commenters wanted guidance on the applicability of 34 CFR 300.300(b)(3) to the Preschool Grants program. Section 300.300(b)(3) requires a State to serve all three- through five-year-old children with a particular handicapping condition once 50% of those children are served. Commenters believed that this requirement conflicts with the phasing-in of the new provision in Section 619 of a free appropriate public education to all three-through five-year-old children with handicaps by fiscal year 1991.

Discussion: Section 110 of the Handicapped Programs Technical Amendments Act of 1988 (Pub. L. 100-630, enacted on November 7, 1988) exempts States from complying with 34 CFR 300.300(b)(3), with respect to children aged three through five years, during the phase-in period of the Preschool Grants program.

Changes: None

6. Transition

Comment: Many commenters were concerned about the transition of children from the Early Intervention program to the Preschool Grants program. Some commenters recommended that, to ensure a smooth transition, these children should continue to be served under an individualized family service plan (IFSP)

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rather than under an individualized education program (IEP). Some commenters recommended that, to prevent lapses in services for these children, language should be added to the Preschool Grants regulations requiring coordination between the Early Intervention program and the Preschool Grants program.

Discussion: The State educational agency has a variety of options for developing and implementing procedures that will ensure continuity during a child's transition from services under the Early Intervention program to services under the Preschool Grants program and the EHA-Part B. Section 619(c) of the statute allows the SEA to use up to 20% of its Preschool Grant (State set-aside) for planning and developing a comprehensive statewide service delivery system for children from birth through age five years. These funds may be used to develop a system for planning and coordinating transition services when a child moves from the Early Intervention program to the Preschool Grant program. The SEA may also use funds from the set-aside portion of the EHA-Part B State grant to provide transition services. Finally, Part H funds may be used to support transition services, as will be indicated in the final regulations implementing the Early Intervention program.

Although IFSPs and IEPs must be developed and implemented according to the requirements applicable to the respective programs, nothing in Part B, section 619, or Part H of the statute prevents IEPs from containing the same elements as IFSPs. In fact, section 677(d) of the EHA–Part H requires that the IFSP contains steps to be taken to support the transition of the handicapped toddler to services provided under the EHA–Part B, to the extent such services are considered appropriate. States may include in their procedures for transition methods by which the IFSP can be used as a basis for the development of the IEP.

Since no one agency has the funding sources to provide all the necessary services, States may use their interagency agreements to clarify transition options and develop appropriate procedures and activities. With proper planning, the interagency agreements between the SEA and other agencies providing services to handicapped infants and toddlers should contain enough flexibility so that lapses in delivery of services will not occur.

Changes: None.

The following is an analysis of comments pertaining to specific regulatory sections of the Preschool Grants regulations.

Subpart A—General

Section 301.1

Comment: Commenters wanted the language in paragraphs (a) and (c) revised to clarify that SEAs may make subgrants to LEAs and IEUs to provide special education and related services and that the SEA may provide direct and support services.

Discussion: Section 301.1 describes the general purpose of the Preschool Grants program. The specific provisions that the commenters wanted included are set forth in § 301.3 and § 301.30. These sections implement the statutory requirement that beginning in fiscal year 1988, the SEA must allocate at least 75% of the Preschool Grant award for subgrants to LEAs and IEUs for their use in providing special education and related services to preschool children with handicaps. The SEA may use not more than 20% of the Preschool Grant award to plan and develop a statewide comprehensive service delivery system for children with handicaps from birth through five years and to provide direct and support services to preschool children with handicaps.

Changes: None.

Section 301.2

Comment: Commenters wanted "local educational agency (LEA) or intermediate educational unit (IEU)" in paragraph (b) changed to "LEAs and IEUs."

Discussion: This change will clarify that both LEAs and IEUs are eligible subgrantees.

Changes: "Any" is deleted and "or" is changed to "and."

Comment: Many commenters wanted private schools and other State agencies to be eligible subgrantees. There was concern that funding only LEAs and IEUs would disrupt the current service delivery system in many States.

Discussion: Section 619(c) of the statute authorizes subgrants only to LEAs and IEUs. However, nothing in the statute prohibits LEAs, IEUs, and the SEA, if the SEA provides direct or support services, from contracting with private schools and other State agencies for the delivery of services.

Changes: None.

Section 301.3

Comment: Commenters wanted services under this program to be available to children with handicaps from birth through age five years.

Discussion: Services under this program are not authorized for children with handicaps from birth through age two years, although they were authorized under the former Preschool Incentive Grant program. Under the EHA Amendments of 1986, direct services under the Preschool Grants program are provided only to children with handicaps aged three through five years.

Changes: None.

Section 301.4

Comment: Some commenters wanted all documents and regulations applicable to this program included in this regulation rather than cited separately.

Discussion: Because so many parts of the Education Department General Administrative Regulations (EDGAR) and other regulations apply to this program, the Department does not consider it feasible to compile all of the regulations into one document. A compilation would be overly cumbersome and would duplicate existing regulations.

Changes: None.

Section 301.5

Comment: Some commenters wanted "and their families" and "early intervention services," added to the definition of "comprehensive service delivery system" (CSDS) to clarify that the States could plan for these types of services under the CSDS.

Discussion: The definition of CSDS already gives States the authority to plan for providing special education and related services to handicapped children from birth through age five. This includes planning appropriate services for handicapped infants and toddlers, including involvement of their families.

Changes: None.

Comment: Some commenters wanted the term "excess appropriation" changed because it can be confused with "excess cost."

Discussion: "Excess appropriation" is the statutory term. Its definition makes it clear that the term does not mean "excess cost."

Changes: None.

Comment: Commenters wanted the word "years" added to the definition of "Preschool."

Discussion: This suggestion clarifies that "age" refers to years.

Changes: The definition of "Preschool" is amended by adding "years" after "three through five."

Subpart B—How Does a State Apply for a Grant?

Section 301.10

Comment: Several commenters wanted to know what must be included in the EHA–Part B State plan to demonstrate the availability of a free appropriate public education to all children with handicaps aged three through five years.

Discussion: In order to be eligible for a Preschool Grant in FY 1991, the State must include in its State plan policies and procedures that ensure the availability of a free appropriate public education to all children with handicaps aged three through five years. See section 619(b)(1). A State must verify the policies and procedures with copies of State statutes, regulations, court orders, or other legal documents on which the policies and procedures are based.

Changes: None.

Section 301.11

Comment: Several commenters wanted the Tydings Amendment included in this section of regulations. The Tydings Amendment provides states and subgrantees one additional fiscal year beyond the fiscal year for which a grant was made for obligating funds from that fiscal year. Because appropriations become available on July 1 each year for this program, State and local recipients have 27 months from that date to obligate the funds.

Discussion: The Tydings Amendment, Section 412(b) of the General Education Provisions Act applies to the Preschool Grants program. 34 CFR 76.705 of the Education Department General Administrative Regulations (EDGAR) implements the statutory provision. Under Pub. L. 100–630, if a State's FY 1988 allotment was adjusted downward due to overpayment of bonus funds in FY 1987, the FY 1987 funds remain available for obligation by the State and LEAs and IEUs for an additional 12 months. If a State's FY 1989 allotment is adjusted downward due to an overpayment of bonus funds in FY 1988, the FY 1988 funds will remain available for obligation by the State and LEAs and IEUs for an additional 12 months. States that do not receive a downward adjustment to their FY 1988 or FY 1989 allotment will not be affected by this provision in Pub. L. 100–630.

Changes: None.

Section 301.12

Comment: Several commenters wanted clarification that nonparticipation under section 619 will not affect receiving Part B funds for children and youth with handicaps aged 6 through 21 years. Also, several commenters wanted to know what funds will be affected if a State does not make a free appropriate public education available to all preschool children with handicaps by the timeline established in the statute.

Discussion: EHA–Part B funds for six through twenty-one year-old children with handicaps will not be affected if a State does not make a free appropriate public education available to all three-through five-year-old children with handicaps by 1991.

Sections 609 and 611(a)(1) of the EHA describe the funds that are affected by a State not making a free appropriate public education available to all preschool children with handicaps by 1991.

Changes: A new § 301.12, "What are the sanctions if a State does not meet the statutory timelines for making a free appropriate public education available to preschool children with handicaps?" has been added.

Subpart C—How Does the Secretary Make a Grant to a State?

Section 301.20

Comment: Some commenters asked that States be allowed to use "other available data," in addition to data obtained from LEAs and IEUs, as a basis for the estimate of the increase in the number of children with handicaps aged three through five years who will be receiving special education and related services on December 1 of the next fiscal year.

Discussion: Each State submitting an estimated count must attach a copy of the procedures the State used to make an estimation. Using other data in addition to data from LEAs and IEUs is permissible under the statute and, as the commenters suggested, may assist States in acquiring the information needed for the most accurate estimate possible.

Changes: The Secretary has added "and other available data" to § 301.20(c).

Comment: Some commenters felt that bonus payments only for newly served preschool children with handicaps is unfair to States that have already established preschool programs.

Discussion: The principal purpose of the bonus provision is to provide a financial incentive to States that were not previously serving the preschool handicapped to enourage them to do so. States with mandates already in effect can receive bonus funds for previously unserved children with handicaps, including those who will turn three years old and receive special education and related services by December 1, of the next school year.

Changes: None.

Comment: Many commenters asked which children may be considered "newly served" for purposes of the estimated count and whether children served under the Chapter 1 State Operated or Supported Program for Handicapped Children could be included in the estimate as new children to be served under Part B.

Discussion: "Newly served" children are those who have never received special education and related services. Children previously served under the Chapter 1 State Operated or Supported Program for Handicapped Children have received special education and related services, and are, therefore, not "newly served" children for purposes of making an estimation. The purpose of the bonus payments was not to transfer children from another federal program to Part B in order to generate bonus funds. The intent was to encourage states to locate and serve children who had never received special education and related services.

Changes: None.

Comment: Some commenters wanted the estimated count to pertain to the estimated increase in the number of preschool children with handicaps receiving a "free and *most* appropriate education." (emphasis added)

Discussion: The statute provides that the estimated count consist of children with handicaps aged three through five years who will be receiving special education and related services. This is the standard used in the regulations.

Changes: None.

Section 301.21

Comment: Some commenters requested clarification of the language to show that the Chapter 1 State Operated or Supported Program for Handicapped Children (34 CFR Part 302) count, as well as the EHA–B (34 CFR Part 300) count, will be used to verify the accuracy of an estimated count.

Discussion: In making adjustments to a State's grant, both of these counts are used to verify the accuracy of the estimated count.

Changes: Section § 301.21 is amended to include the Chapter 1 State Operated or Supported Program for Handicapped Children count in verifying the accuracy of an estimated count.

Subpart D—How Does a State Distribute the Grant Money?

Section 301.30

Comment: Some commenters suggested that § 301.30(d), which allows the SEA to provide services if an LEA or IEU is unable or unwilling to provide services, may cause LEAs and IEUs not to provide services, and should be deleted.

Discussion: Section 614(d) of the EHA allows States, under certain limited circumstances, to retain funds that would normally flow to an LEA or IEU. Funds can be retained if the LEA or IEU (1) is unable or unwilling to maintain programs of free appropriate public education; (2) is unable or unwilling to be consolidated with other LEAs in order to establish and maintain the programs; or (3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of these children.

The Department has no authority to eliminate this provision which applies to all programs authorized under the EHA-Part B, including the Preschool Grants program in section 619.

Changes: None.

Section 301.31

Comment: Some commenters wanted States to have the discretion to combine basic and bonus funds before calculating subgrants rather than separately calculating basic and bonus amounts for subgrants.

Discussion: Section 619(a) and (c)(3) of the statute require that both at the federal and State level two calculations, basic and bonus, be made. Each must be calculated on a pro rata basis. The subgrant may be issued on a grant award document showing the award as a total amount that does not break out the basic and bonus amounts.

Changes: None.

Comment: None.

Discussion: The Secretary has made a minor change to § 301.31 to clarify how a State determines the amount to which an LEA or IEU that is entitled to a subgrant will receive upon submitting an approval application to the SEA. The change conforms the language of § 301.31 to the language of the statute.

Changes: The regulation is amended by deleting the last phrase in § 301.31 (a) and (b), "in all LEAs and IEUs that apply to the SEA for Preschool Grant funds," and replacing it with "in all LEAs and IEUs that are entitled to Preschool Grants funds."

Section 301.32

Comment: Some commenters wanted this section to provide that SEAs may use the 20% State set-aside portion of the Preschool Grant to adjust bonus allocations awarded to LEAs and IEUs so that LEAs and IEUs that did have an increase in the number of preschool children with handicaps will not be penalized because there was no statewide growth.

Discussion: The SEA already has the authority to use the 20% set-aside portion of its grant under this program and under their EHA-Part B grant to assist LEAs and IEUs who would otherwise not receive as large a subgrant as anticipated.

Change: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 301

Education, Education of the handicapped, Grant programs—education, Reporting and recordkeeping requirements.

Dated: November 14, 1988.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.173 Preschool Grants for Handicapped Children)

The Secretary amends Title 34, Chapter III of the Code of Federal Regulations by revising Part 301 to read as follows:

PART 301—PRESCHOOL GRANTS FOR HANDICAPPED CHILDREN

Subpart A—General

Sec.

301.1 What is the Preschool Grants for Handicapped Children Program?
301.2 What is eligible for an award?
301.3 What kinds of activities may be assisted?
301.4 What regulations apply?
301.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

301.10 How does a State become eligible to receive a grant?
301.11 When does a State apply for a grant?
301.12 What are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with handicaps?

Subpart C—How Does the Secretary Make a Grant to a State?

301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excess appropriation?
301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

Subpart D—How does a State Make a Subgrant to an Applicant?

301.30 How does a State distribute the grant money?
301.31 What is the amount of a subgrant to a local educational agency?
301.32 How are adjustments made to a local educational agency's subgrant?

Authority: 20 U.S.C. 1419, unless otherwise noted.

Subpart A—General

§ 301.1 What is the Preschool Grants for Handicapped Children Program?

The Preschool Grants for Handicapped Children program (Preschool Grants program) provides grants to States to assist them in—

(a) Providing special education and related services to handicapped children aged three through five years;

(b) Planning and developing a statewide comprehensive delivery system for handicapped children from birth through age five years; and

(c) Providing direct and support services to handicapped children aged three through five years.

(Authority: 20 U.S.C. 1419)

§ 301.2 Who is eligible for an award?

(a) The Secretary makes a grant to each State that submits an application that meets the requirements of this part.

(b) A State may make a subgrant to any local educational agency (LEA) and intermediate educational unit (IEU) that submits an approvable application to the State educational agency (SEA).

(Authority: 20 U.S.C. 1419)

§ 301.3 What kinds of activities may be assisted?

Under the Preschool Grants program, the Secretary makes a grant to a State to conduct the following activities:

(a) Provide subgrants to LEAs and IEUs to assist them in providing special education and related services to handicapped children aged three through five years.

(b) Plan and develop a statewide comprehensive service delivery system for handicapped children from birth through age five years.

(c) Provide direct and support services from the SEA to handicapped children aged three through five years.

(Authority: 20 U.S.C. 1419)

§ 301.4 What regulations apply?

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement).)

(b) The regulations in this Part 301.

(c) The regulations in 34 CFR Part 300.

(Authority: 20 U.S.C. 1419)

§ 301.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act:

Intermediate educational unit
Local educational agency
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Education of the Handicapped Act, as amended.

"Comprehensive service delivery system" means a State's plans and procedures, including goals and objectives, for identifying all handicapped children from birth through age five years and providing special education and related services to those children in accordance with State law, policy, or practice.

"Excess appropriation" means that portion of each appropriation for fiscal years 1987, 1988, and 1989 remaining after the maximum amount of funds for each child counted has been awarded to States based on the most recent child count of children with handicaps aged three through five years receiving special education and related services.

"Part B child count" means the child count required by section 611(a)(3) of the Act.

"Preschool" means the age range of three through five years.

(Authority: 20 U.S.C. 1402, 1419)

Subpart B—How Does a State Apply for a Grant?

§ 301.10 How does a State become eligible to receive a grant?

(a) For fiscal years 1988, 1989, and 1990 a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State provides special education and related services to any handicapped children aged three through five years; and

(3) The State submits an application to the Secretary that meets the requirements of this part.

(b) Beginning in fiscal year 1991, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State has policies and procedures in its State plan under 34 CFR Part 300 that assure the provision of a free appropriate public education to all handicapped children aged three through five years in accordance with the requirements in 34 CFR Part 300; and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(Authority: 20 U.S.C. 1419 (a), (b))

§ 301.11 When does a State apply for a grant?

(a) A State shall submit a Preschool Grants application effective for fiscal years 1988 and 1989.

(b) The State shall extend its FYs 1988–1989 application through FY 1990.

(c) For FY 1991 a State shall submit a one, two, or three year application. Thereafter the State shall submit its Preschool Grants application with the three-year State plan under 34 CFR Part 300.

(Authority: 20 U.S.C. 1419 (a)(3), (b)(4))

§ 301.12 What are the sanctions if a State does not meet the statutory timeline for making a free appropriate public education available to all preschool children with handicaps?

If a State does not meet the requirements in section 619(b)(1) of the Act—

(a) The State is not eligible for a Preschool Grant;

(b) The State is not eligible for funds under 34 CFR Part 300 for handicapped children aged three through five years;

(c) No State, LEA, IEU, or other public institution or agency is eligible for a grant under Parts C through G of the Act if the grant relates exclusively to programs, projects, and activities pertaining to handicapped children aged three through five years; and

(d) The State is not eligible for funds for three through five-year-old children served under 34 CFR Part 302.

(Authority: 20 U.S.C. 1406; 1411(a)(1)(A); 1419(a)(b))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excess appropriation?

(a) In order to receive funds from an excess appropriation based on an estimated increase in the number of handicapped children aged three through five years who will be receiving special education and related services under Part B of the Act on December 1 of the year following the most recent Part B child count, a State must—

(1) Have an increase in the total number of handicapped children aged three through five years served under both 34 CFR Parts 300 and 302 from the previous year; and

(2) Have an increase from the previous year in the total number of handicapped children aged three through five years served under 34 CFR Part 300.

(b) Each State shall develop and implement procedures to estimate accurately the increase in the number of handicapped children aged three through five years who will be receiving special education and related services under 34 CFR Parts 300 and 302 by the count dates for these programs for the next fiscal year.

(c) The procedures for making an estimation in paragraph (b) of this section must be based upon estimates from LEAs and IEUs, and other available data, of the number of additional handicapped children aged three through five years that LEAs and IEUs expect to be serving under 34 CFR Parts 300 and 302 on December 1 of the year following the most recent Part B child count.

(d) The State shall provide the estimates on forms provided by the Secretary no later than February 1 of the year in which the Secretary requires estimates.

(e) The State shall attach a copy of the procedures used to make the estimates under paragraph (c) of this section to the estimated count form.

(Authority: 20 U.S.C. 1419(a))
(Approved by the Office of Management and Budget under control number 1820-0552)

§ 301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

If the actual number of additional handicapped children aged three through five years counted as served on December 1 of the following year under 34 CFR Parts 300 and 302 differs from the estimate submitted by a State in fiscal year 1987, 1988, or 1989, the Secretary increases or decreases the State's grant for the next fiscal year based upon the difference in the number of additional handicapped children who were estimated to be served and the number actually served under 34 CFR Part 300.

(Authority: 20 U.S.C. 1419(a)(2))

Subpart D—How Does a State Make a Subgrant to an Applicant?

§ 301.30 How does a State distribute the grant money?

(a) A State shall distribute at least 75 percent of its grant to LEAs and IEUs to be used to provide additional education and related services to handicapped children aged three through five years.

(b) A State may use not more than 20 percent of the grant for—

(1) The planning and development of a statewide comprehensive service delivery system for handicapped children from birth through age five years; and

(2) The provision of direct and support services for handicapped children aged three through five years.

(c) A State may use not more than five percent of the grant for the costs of administering the grant.

(d) If a State provides services to preschool handicapped children because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs and IEUs to provide special education and related services to handicapped children aged three through five years residing in the area served by those LEAs and IEUs.

(Authority: 20 U.S.C. 1414(d), 1419(c)(2))

§ 301.31 What is the amount of a subgrant to a local educational agency?

From the amount of funds available to LEAs and IEUs in the State, each LEA and IEU is entitled to the sum of—

(a) An amount that bears the same ratio to the maximum amount awarded to the State based on the previous child count as the number of handicapped children aged three through five years in that agency who were receiving special education and related services on the most recent Part B child count bears to the aggregate number of handicapped children aged three through five years receiving special education and related services on the most recent Part B child count in all LEAs and IEUs that are entitled to Preschool Grants funds; and

(b) An amount that bears the same ratio to the State's excess appropriation, if any, as the LEA's or IEU's estimated count of additional handicapped children aged three through five years who will be receiving special education and related services on the next Part B child count bears to the aggregate number of additional handicapped children aged three through five years who will be receiving special education and related services by the next Part B child count in all LEAs and IEUs that are entitled to Preschool Grant funds.

(Authority: 20 U.S.C. 1419(c)(3))

§ 301.32 How are adjustments made to a local educational agency's subgrant?

If the actual number of additional handicapped children aged three through five years served under 34 CFR Part 300 in fiscal year 1987, 1988, or 1989 differs from the estimate submitted by an LEA or IEU for that fiscal year, the State shall increase or decrease the LEA's or IEU's grant in the next fiscal year based upon the number of preschool handicapped children who were actually served.

(Authority: 20 U.S.C. 1419(c)(3) (A), (B))

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federal register

Friday
January 13, 1989

Part IX

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report six new rescission proposals totaling $143,096,000.

The rescissions affect programs in the Departments of Housing and Urban Development, Interior, Justice, and Labor.

The details of these rescission proposals are contained in the attached report.

Ronald Reagan,

The White House.

January 9, 1989.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Housing and Urban Development:	
	Housing Programs:	
R89-1	Subsidized housing programs.....	20,000
	Community Planning and Development:	
R89-2	Urban development action grants.....	51,651
	Department of the Interior:	
	Fish and Wildlife Service:	
R89-3	Land acquisition.....	30,000
	National Park Service:	
R89-4	Land acquisition and State assistance	35,000
	Department of Justice:	
	Office of Justice Programs:	
R89-5	Justice assistance.....	5,000
	Department of Labor:	
	Employment Standards Administration:	
R89-6	Black lung disability trust fund....	1,445
	Total, rescissions.....	143,096

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SUMMARY OF SPECIAL MESSAGES FOR FY 1989
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Third special message:		
New items	143,096	---
Revisions to previous special messages	---	---
Effects of second special message	143,096	---
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	143,096	---
Amounts from previous special messages that are not changed by this message	---	8,942,531
Total amount proposed to date in all special messages	143,096	8,942,531

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Rescission Proposal No: R89-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development

Bureau: Housing Programs

Appropriation title and symbol:

Subsidized housing programs

86X0164

OMB identification code:

86-0164-0-1-999

Grant program: [X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority..... $7,180,265,000 (P.L. 100-404)
Other budgetary resources.. $ 451,043,000

Total budgetary resources.. $7,631,308,000

Amount proposed for rescission..... $ 20,000,000

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account funds subsidized housing programs such as Section 8 housing programs (including housing vouchers), and public and Indian housing development. The Nehemiah Housing Opportunity Grants program is also funded under this account, receiving an appropriation of $20 million in FY 1989. Under the Nehemiah program, non-profit organizations are given grants to provide loans up to $15,000 at no interest to moderate income households (up to 115 percent of median income) to rehabilitate or purchase housing. A rescission of $20 million is proposed because the Nehemiah program would not help very-low-income households (those households with incomes below 50 percent of median income) and would require residents to live in specified areas. Instead, the Administration supports the expansion of the housing voucher program from 47,000 HUD incremental units in FY 1989 to 120,000 in FY 1990 (including 20,000 in FmHA). The housing voucher program directs Federal subsidies to the most needy while improving tenant mobility and choice.

Estimated Program Effect: A lower priority program activity would be terminated.

4

R89-1

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate Without Rescission	1989 Outlay Estimate With Rescission	Outlay Savings 1989	1990	1991	1992	1993	1994
12,565,347	12,565,347	...	6,875	9,375	3,750	...	...

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R89-1

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Annual Contributions for Assisted Housing

(including rescission)

Of the funds included under this head in Public Law 100-404, $20,000,000 for the Nehemiah Housing Opportunity Grants program are rescinded: Provided, That the following language is repealed : ", and $20,000,000 shall be for assistance under the Nehemiah housing opportunity program pursuant to section 612 of the Housing and Community Development Act of 1987 (Public Law 100-242) and the immediately aforementioned $20,000,000 shall not become available for obligation until July 1, 1989, and pursuant to section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this action is a necessary (but secondary) result of a significant policy change".

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Rescission Proposal No: R89-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	**New budget authority**..... $_____ (P.L.)
Bureau: Community Planning and Development	**Other budgetary resources**.. $ 100,988,000
Appropriation title and symbol: Urban development action grants 866/90170 867/00170 868/10170	**Total budgetary resources**.. $ 100,988,000
	Amount proposed for rescission..... $ 51,651,000
OMB identification code: 86-0170-0-1-451	**Legal authority** (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual Sept. 30, 1989 Sept. 30, 1990 ☒ Multiple-year Sept. 30, 1991 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation provides grants to cities and urban counties to stimulate economic development activity. However, the Administration believes that these grants redistribute economic activity rather than creating it and distort local economic investment decisions. No new funds were provided for this activity in FY 1989 appropriations. Building on the decisions implicit in these enacted levels, a rescission of recoveries and recaptures of prior year obligations and repeal of program authorization are proposed. Other more preferable Federal programs, such as the Community Development Block Grant (CDBG) program remain available for local economic development activities.

Estimated Program Effect: A lower priority program would be terminated.

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1989	1990	1991	1992	1993	1994
310,000	310,000	...	12,500	12,500	13,325	13,326	...

7

R89-2

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Urban development action grants

From funds available under this head in fiscal year 1989 through recaptures or recoveries of prior year obligations, not to exceed $49,337,000 may be obligated during fiscal year 1989, and the remaining balances are rescinded.

8

Rescission Proposal No: R89-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Interior	New budget authority..... $ 74,759,000 (P.L. 100-446)
Bureau: Fish and Wildlife Service	Other budgetary resources.. $ 7,579,000
Appropriation title and symbol: Land acquisition 14X5020	Total budgetary resources.. $ 82,338,000
	Amount proposed for rescission..... $ 30,000,000
OMB identification code: 14-5020-0-2-303	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation funds land acquisition by the Fish and Wildlife Service. Federal land purchases may be postponed in times of budget stringency, without adverse effect on jobs, the national economy, or vital national needs. The Federal Government already owns more than 760 million acres of land, or more than one-third of all land in the United States. Also, recent data show that recreational use of Federal lands (measured in visitor-days) has declined from its 1976 peak. A rescission of $30 million is proposed, reflecting the postponement of non-essential Federal land acquisition to help offset expected costs of adding land to Manassas National Battlefield Park (VA) pursuant to P.L. 100-647.

Estimated Program Effect: Lower priority Federal land acquisition would be postponed or cancelled.

9

R89-3

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate Without Rescission	1989 Outlay Estimate With Rescission	Outlay Savings 1989	1990	1991	1992	1993	1994
62,217	48,717	13,500	13,500	3,000	...	...	...

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R89-3

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Land acquisition

Of the funds made available under this head in Public Law 100-446, $30,000,000 are rescinded.

11

Rescission Proposal No: R89-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Interior	New budget authority..... $ 91,245,000 (P.L. 100-446)
Bureau: National Park Service	Other budgetary resources.. $ 19,653,000
Appropriation title and symbol: Land acquisition and State assistance 14X5035	Total budgetary resources.. $ 110,898,000
	Amount proposed for rescission..... $ 35,000,000
OMB identification code: 14-5035-0-2-303	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other _____
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation funds land acquisition by the National Park Service and grants to States for recreation development purposes. Federal land purchases may be postponed in times of budget stringency, without adverse effect on jobs, the national economy, or vital national needs. The Federal Government already owns more than 760 million acres of land, or more than one-third of all land in the United States. Also, recent data show that recreational use of Federal lands (measured in visitor-days) has declined from its 1976 peak. A rescission of $35 million is proposed, reflecting the postponement of non-essential Federal land acquisition to help offset expected costs of adding land to Manassas National Battlefield Park (VA) pursuant to P.L. 100-647.

Estimated Program Effect: Lower priority Federal land acquisition would be postponed or cancelled.

12

R89-4

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1989	1990	1991	1992	1993	1994
120,296	108,046	12,250	10,500	7,000	5,250	...	...

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R89-4

DEPARTMENT OF THE INTERIOR

National Park Service

Land acquisition and State assistance

Of the funds made available under this head in Public Law 100-446, $35,000,000 are rescinded.

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Rescission Proposal No: R89-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Justice	**New budget authority**..... $ 319,075,000 (P.L. 100-459)
Bureau: Office of Justice Programs	**Other budgetary resources**.. $ 21,184,000
Appropriation title and symbol: Justice assistance 1590401	**Total budgetary resources**.. $ 340,259,000
	Amount proposed for rescission..... $ 5,000,000
OMB identification code: 15-0401-0-1-754	**Legal authority** (in addition to sec. 1012): ☐ Antideficiency Act
Grant program: ☒ Yes ☐ No	☐ Other _____
Type of account or fund:	**Type of budget authority:**
☒ Annual	☒ Appropriation
☐ Multiple-year _____ (expiration date)	☐ Contract authority
☐ No-Year	☐ Other _____

Justification: This appropriation funds the Office of Justice Programs, including grants to States for expenses incurred for the incarceration of Mariel Cubans in State facilities following their conviction of a felony committed after having been paroled into the United States by the Attorney General. There is no precedent for the Federal Government to reimburse States for the costs of incarcerating individuals convicted of State crimes. Further it is not appropriate that taxpayers throughout the United States should share the costs of reimbursing States for a program that benefits only sixteen States. This proposed rescission (coupled with supplemental proposals included with the FY 1990 Budget) will allow the funding of other higher priority Department of Justice programs.

Estimated Program Effect: Grants will not be awarded to those States having incarcerated Mariel Cubans in State facilities.

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R89-5

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1989	1990	1991	1992	1993	1994
279,369	274,369	5,000	...	...	...	...	...

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R89-5

DEPARTMENT OF JUSTICE

Office of Justice Programs

Justice assistance

Of the funds made available under this head in Public Law 100-459, $5,000,000 are rescinded from funds available for grants to states for their expenses of incarcerating Mariel Cubans: Provided, That the last paragraph under this head is repealed.

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Rescission Proposal No: R89-6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Labor	New budget authority..... $ 690,825,000 (P.L. 95-227 & 100-436)
Bureau: Employment Standards Administration	Other budgetary resources.. $ 13,170,000
Appropriation title and symbol: Black lung disability trust fund 209/08144	Total budgetary resources.. $ 703,995,000
	Amount proposed for rescission..... $ 1,445,000
OMB identification code: 20-8144-0-7-601	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multiple-year Sept. 30, 1990 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This appropriation finances payment of black lung benefits and the administration of the Black Lung Disability Trust Fund. A rescission is proposed to reduce the amount of funding available for transfer to Departmental Management. This proposal reflects the elimination of the Black Lung case backlog in the Office of Administrative Law Judges in FY 1989. This rescission proposal, accompanied by a general fund FY 1989 supplemental appropriation of the same amount in the FY 1990 Budget, will provide funds to permit the transfer of Administrative Law Judges from Black Lung caseload, where they are no longer needed, to the Longshore and Harbor Workers' area, where backlogs are increasing rapidly.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1989 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1989	1990	1991	1992	1993	1994
683,077	681,632	1,445	...	...	...	...	...

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R89-6

DEPARTMENT OF LABOR

Employment Standards Administration

Black lung disability trust fund

(including transfer of funds)

Of the funds made available for transfer to Departmental Management, Salaries and Expenses, under this head in Public Law 100-436, $1,445,000 are rescinded.

[FR Doc. 89-821 Filed 1-12-89; 8:45 am]
BILLING CODE 3110-01-C

federal register

Friday
January 13, 1989

Part X

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1989.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of January 1, 1989 of 14 deferrals contained in the first two special messages of FY 1989. There have been no rescissions proposed. These messages were transmitted to the Congress on September 30, and November 29, 1988.

Rescissions (Table A and Attachment A)

As of January 1, 1989, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of January 1, 1989, $7,811.5 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers as listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988
Vol. 53, FR p. 49530, Wednesday, December 7, 1988

Joseph R. Wright, Jr.,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	8,942.5
Routine Executive releases through January 1, 1989 (OMB/Agency releases of $1,137.1 million and cumulative adjustments of $6.0)	-1,131.1
Overturned by the Congress.....	0
Currently before the Congress.....	7,811.5

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of January 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1989

As of January 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88	300,000				3,822,750
Economic support fund	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	779,860				1,866,900
Military assistance	D89-12	457,000		11-29-88	9,000				448,000
International military education and training	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88	4,796				13,329
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88					144,649
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					1,212
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800

Attachment B - Status of Deferrals - Fiscal Year 1989

As of January 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.....	D89-8	90,000		09-30-88					90,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D89-9	26,135		09-30-88					
	D89-9A		27,000	11-29-88	6,001			6,001	53,135
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D89-10	823,608		09-30-88					
	D89-10A		202,084	11-29-88					1,025,692
TOTAL, DEFERRALS.....		6,659,446	2,283,084		1,137,056	0		6,001	7,811,475

[FR Doc. 89-922 Filed 1-12-89; 8:45 am]
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federal register

Tuesday
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Rules and Regulations

Federal Register
Vol. 54, No. 10
Tuesday, January 17, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-200-AD; Amdt. 39-6108]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This airworthiness directive (AD) revises an existing airworthiness directive (AD), applicable to McDonnell Douglas DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, which currently requires eddy current inspections to detect cracking in the fuselage skin and longerons on airplanes prior to the accumulation of 55,000 landings. This action requires that the external eddy current inspections for skin and longeron cracks on those airplanes be accomplished prior to the accumulation of 45,000 landings. This action is prompted by additional reports of cracked or failed longerons in airplanes with fewer than 50,000 landings. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and rapid decompression of the airplane.

DATE: Effective January 27, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5320.

SUPPLEMENTARY INFORMATION: On November 8, 1988, FAA issued AD 88-24-08, Amendment 39-6071 (53 FR 46433; November 17, 1988), to require external eddy current inspections for fuselage skin and longeron cracks on McDonnell Douglas Model DC-9 series airplanes prior to the accumulation of 55,000 landings. That action was prompted by reports of skin and longeron cracks at various overwing fuselage stations. This condition, if not corrected, could degrade the structural integrity of the fuselage and lead to possible rapid decompression.

Subsequent to the issuance of that AD, there have been additional reports of cracked or failed longerons on airplanes with fewer than 50,000 landings. One operator has reported finding skin and longeron cracks on four airplanes having accumulated between 45,000 and 52,000 landings.

In addition, the FAA has reviewed and approved McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 1, dated December 22, 1988, which recommends a revised (lower) threshold for initial inspections, describes procedures for inspections of the affected areas, and provides instructions for interim and permanent repairs.

Since this condition is likely to exist or develop on other airplanes of this same type design, this action revises AD 88-24-08 to require operators to perform the external eddy current inspections for skin and longeron cracks on airplanes prior to the total accumulation of 45,000 landings, and repair, if necessary, in accordance with the revised service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Based on the reports of cracking described above, the FAA has also issued a separate rulemaking action, Docket 88-NM-178-AD, which proposes to require repetitive aided visual inspections of the longerons in the area of the upper fuselage over the wing on airplanes that have accumulated 45,000 or more landings. However, the proposed initial compliance time for those inspections is sufficient so as to afford the public an opportunity to comment on the proposed rule.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 88-24-08, Amendment 39-6071 (53 FR 46433; November 17, 1988), paragraphs A., B., and C. as follows:

McDonnell Douglas: Applies to Model DC–9–10, –20, –30, –40, –50, and C–9 series airplane, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fatigue cracking and subsequent failure of the fuselage skin and longeron, accomplish the following:

A. Prior to the accumulation of 45,000 landings, or within the next 30 days, whichever occurs later, unless accomplished within the last 1,400 landings, perform external eddy current inspections of the fuselage skin and longerons from longeron 7 left through 7 right, in accordance with the accomplishment instructions of McDonnell Douglas DC–9 Alert Service Bulletin A53–230, Revision 1, dated December 22, 1988, within the range of fuselage stations for the particular series airplanes as specified in Table I of that service bulletin.

Note.—Inspections performed in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–230, N/C, dated November 2, 1988, meet the requirements of this paragraph.

B. Conduct repetitive inspections in accordance with paragraph A., above., at intervals not to exceed 5,800 landings.

C. If cracks are detected, prior to further flight, repair in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–230, Revision 1, dated December 22, 1988. If Option II, Condition 2, of the service bulletin is selected, accomplish removal of interim repair doublers(s) and accomplish permanent longeron repair(s) within 2,500 landings after installation of the interim repair doublers.

Note.—Repairs performed in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–230, N/C, dated November 2, 1988, meet the requirements of this paragraph.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 28, 1988.

This amendment becomes effective January 27, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–929 Filed 1–13–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 25773; Amdt. No. 348]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on January 5, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 348 EFFECTIVE DATE, FEBRUARY 09, 1989

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO READ IN PART		
JIMMY, VA FIX	INT HPW VORTAC 105 & HCM VORTAC 134	2000
NORFOLK, VA VORTAC	JIMMY, VA FIX	2000
IS AMENDED TO DELETE		
SNOWBIRD, TN VORTAC	WHITESBURG, KY VORTAC	18000 MAA-45000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
TALOR, WI FIX *7000 - MCA PETTY FIX, N BND **2300 - MOCA	*PETTY, WI FIX	**7000
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
PONTIAC, IL VORTAC KELSI, IL FIX	KELSI, IL FIX ROCKFORD, IL VORTAC	3000 2700
§95.6014 VOR FEDERAL AIRWAY 14		
IS AMENDED TO READ IN PART		
GARDNER, MA VORTAC *4000 - MRA	*GRAYM, MA FIX	3000
GRAYM, MA FIX *2200 - MOCA	NORWICH, CT VORTAC	*3000
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
MILLSAP, TX VORTAC *2300 - MOCA	ACTON, TX VORTAC	*3000
PATUXENT, MD VORTAC	CHOPS, MD FIX	4000
CHOPS, MD FIX *1500 - MOCA	KENTON, DE VORTAC	*2000
§95.6018 VOR FEDERAL AIRWAY 18		
IS AMENDED TO READ IN PART		
SACKS, SC FIX	CHARLESTON, SC VORTAC	2100
§95.6054 VOR FEDERAL AIRWAY 54		
IS AMENDED TO READ IN PART		
TANNE, AL FIX	ROCKET, AL VORTAC	2900
§95.6077 VOR FEDERAL AIRWAY 77		
IS AMENDED TO READ IN PART		
ABILENE, TX VORTAC	WICHITA FALLS, TX VORTAC	3500
IS AMENDED TO DELETE		
WOVEN, TX FIX *5000 - MRA	*MANKI, TX FIX	3000
MANKI, TX FIX	WICHITA FALLS, TX VORTAC	3000
§95.6095 VOR FEDERAL AIRWAY 95		
IS AMENDED TO READ IN PART		
SALT RIVER, AZ VORTAC	WINSLOW, AZ VORTAC	10000
§95.6101 VOR FEDERAL AIRWAY 101		
IS AMENDED TO READ IN PART		
NEOLA, UT FIX	*SALT LAKE CITY, UT VORTAC	15000
*11000 - MCA SALT LAKE CITY VORTAC, E BND		
§95.6128 VOR FEDERAL AIRWAY 128		
IS AMENDED TO READ IN PART		
DUBUQUE, IA VORTAC	JANESVILLE, WI VORTAC	3000
JANESVILLE, WI VORTAC	ROCKFORD, IL VORTAC	2700
ROCKFORD, IL VORTAC	KELSI, IL FIX	2700
KELSI, IL FIX	SMARS, IL FIX	3000
SMARS, IL FIX	KANKAKEE, IL VOR	#2700
#COP MEASURED FROM BDF VORTAC.		
KANKAKEE, IL VOR	KENLA, IN FIX	2400
§95.6134 VOR FEDERAL AIRWAY 134		
IS AMENDED TO READ IN PART		
*FAIRFIELD, UT VORTAC	**CARBON, UT VOR/DME	12700
*10800 - MCA FAIRFIELD VORTAC, E BND **10200 - MCA CARBON VOR/DME, W BND		
§95.6144 VOR FEDERAL AIRWAY 144		
IS AMENDED TO READ IN PART		
BRADFORD, IL VORTAC	KANKAKEE, IL VOR	2700
KANKAKEE, IL VOR	ROONY, IN FIX	2400
ROONY, IN FIX *2200 - MOCA	MAPPS, IN FIX	*3000

FROM	TO	MEA
§95.6144 VOR FEDERAL AIRWAY 144—Continued		
MAPPS, IN FIX *2400 - MOCA	CLEFT, IN FIX	*4000
§95.6157 VOR FEDERAL AIRWAY 157		
IS AMENDED TO READ IN PART		
PATUXENT, MD VORTAC	CHOPS, MD FIX	4000
CHOPS, MD FIX *1500 - MOCA	KENTON, DE VORTAC	*2000
§95.6213 VOR FEDERAL AIRWAY 213		
IS AMENDED TO READ IN PART		
PATUXENT, MD VORTAC	CHOPS, MD FIX	4000
CHOPS, MD FIX *1500 - MOCA	KENTON, DE VORTAC	*2000
§95.6222 VOR FEDERAL AIRWAY 222		
IS AMENDED TO READ IN PART		
MONTGOMERY, AL VORTAC *3500 - MRA	*MARST, AL FIX	2300
§95.6229 VOR FEDERAL AIRWAY 229		
IS AMENDED TO READ IN PART		
PATUXENT, MD VORTAC	GARED, MD FIX	4000
§95.6235 VOR FEDERAL AIRWAY 235		
IS AMENDED TO READ IN PART		
*FAIRFIELD, UT VORTAC *12500 - MCA FAIRFIELD VORTAC, NE BND	GRODI, WY FIX	14000
GRODI, WY FIX	FORT BRIDGER, WY VORTAC	11000
ROCK SPRINGS, WY VORTAC	OILLY, WY FIX	11200

FROM	TO	MEA
§95.6267 VOR FEDERAL AIRWAY 267		
IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC *3000 MRA	*BAXLY, GA FIX	3000
§95.6281 VOR FEDERAL AIRWAY 281		
IS AMENDED TO READ IN PART		
MOSES LAKE, WA VOR/DME	PASCO, WA VOR/DME	4000
§95.6311 VOR FEDERAL AIRWAY 311		
IS AMENDED TO READ IN PART		
ERNIE, SC FIX	SACKS, SC FIX	2000
SACKS, SC FIX	CHARLESTON, SC VORTAC	2100
§95.6382 VOR FEDERAL AIRWAY 382		
IS AMENDED TO READ IN PART		
BRYCE CANYON, UT VORTAC *10000 - MRA **13300 - MOCA	*GREEL, UT FIX	**16000
GREEL, UT FIX *14000 - MCA SAKES FIX, SW BND **13300 - MOCA	*SAKES, UT FIX	**16000
§95.6568 VOR FEDERAL AIRWAY 568		
IS AMENDED BY ADDING		
ACTON, TX VORTAC *2300 - MOCA	MILLSAP, TX VORTAC	*3000
MILLSAP, TX VORTAC	WICHITA FALLS, TX VORTAC	3000

FROM	TO	MEA	MAA
§95.7010 JET ROUTE NO. 10			
IS AMENDED TO READ IN PART			
BLUE MESA, CO VORTAC	DENVER, CO VORTAC	18000	45000
§95.7024 JET ROUTE NO. 24			
IS AMENDED TO READ IN PART			
MONTEBELLO, VA VOR/DME	FLAT ROCK, VA VORTAC	18000	41000
FLAT ROCK, VA VORTAC	HARCUM, VA VORTAC	18000	29000
§95.7030 JET ROUTE NO. 30			
IS AMENDED TO READ IN PART			
KESSEL, WV VOR/DME	TRIXY, VA FIX	18000	29000
§95.7034 JET ROUTE NO. 34			
IS AMENDED TO READ IN PART			
KESSEL, WV VOR/DME	TRIXY, VA FIX	18000	29000
§95.7036 JET ROUTE NO. 36			
IS AMENDED TO READ IN PART			
DUNKIRK, NY VORTAC	MINEO, PA FIX	31000	45000
§95.7051 JET ROUTE NO. 51			
IS AMENDED TO READ IN PART			
NOTTINGHAM, MD VORTAC	PALEO, MD FIX	18000	29000
PALEO, MD FIX	DUPONT, DE VORTAC	18000	45000
§95.7060 JET ROUTE NO. 60			
IS AMENDED TO READ IN PART			
PHILIPSBURG, PA VORTAC	EAST TEXAS, PA VORTAC	18000	38000
EAST TEXAS, PA VORTAC	SPARTA, NJ VORTAC	18000	32000
§95.7233 JET ROUTE NO. 233			
IS ADDED TO READ			
WATERLOO, IA VORTAC	ST LOUIS, MO VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-16		
	IS AMENDED TO DELETE		
LYNCHBURG, VA VORTAC	FLAT ROCK, VA VORTAC	33	LYNCHBURG
PATUXENT, MD VORTAC	KENTON, DE VORTAC	33	PATUXENT
	V-39		
	IS AMENDED TO DELETE		
SOUTH BOSTON, VA VORTAC	GORDONSVILLE, VA VORTAC	48	SOUTH BOSTON
	V-128		
	IS AMENDED BY ADDING		
SMARS, IL FIX	KANKAKEE, IL VOR	44	SMARS
	V-144		
	IS AMENDED BY ADDING		
BRADFORD, IL VORTAC	KANKAKEE, IL VOR	44	BRADFORD
	V-157		
	IS AMENDED TO DELETE		
PATUXENT, MD VORTAC	KENTON, DE VORTAC	33	PATUXENT
	V-213		
	IS AMENDED TO DELETE		
PATUXENT, MD VORTAC	KENTON, DE VORTAC	33	PATUXENT
	V-260		
	IS AMENDED TO DELETE		
LYNCHBURG, VA VORTAC	FLAT ROCK, VA VORTAC	33	LYNCHBURG

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-6		
	IS AMENDED BY ADDING		
MARTINSBURG, WV VORTAC	LANCASTER, PA VORTAC	20	MARTINSBURG
	J-233		
	IS AMENDED BY ADDING		
WATERLOO, IA VORTAC	ST LOUIS, MO VORTAC	55	WATERLOO

[FR Doc. 89-930 Filed 1-13-89; 8:45 am]
BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

Arbitration or Other Dispute Settlement Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended its rules governing arbitration or other dispute settlement procedures. The amendment requires that when a customer who has signed a pre-dispute agreement notifies a registrant other than a floor broker, or when such a registrant notifies the customer, of its intent to submit a claim to arbitration, such registrant must provide the customer with a list of organizations qualified to conduct arbitration proceedings under the Commission's rules, one of which must be a registered futures association. The National Futures Association ("NFA") is currently the only registered futures association. The Commission's rules currently do not require that a registered futures association be included on the list of organizations qualified to conduct arbitration proceedings. The Commission expects that this rule amendment will encourage greater use of the NFA as an arbitration forum.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

While the Commission has determined that this final rule does not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rule 180.3 and all other rules relating to contract markets and their members (3038–0022) is estimated to average 3,003.05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission also notes, however, that there are no burden hours attributable to Rule 180.3. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0022), Washington, DC 20503.

II. Comments on the Proposed Rule Amendment

A. Introduction

The Commission published its proposal to amend Rule 180.3(b)(4) and allowed sixty days for public comment thereon. 53 FR 24954 (July 1, 1988). In that notice of proposed rulemaking, the Commission explained why it believed that use of the NFA arbitration forum should be encouraged. The Commission received five written comments on the proposal, two from contract markets, one from the NFA, one from a futures commission merchant ("FCM") and one from a private attorney. The Commission has carefully reviewed the comments received on the rule proposal, and has adopted the rule amendment essentially as proposed, with certain clarifications as noted below.

B. Floor Brokers

Although none of the commenters objected to the basic purpose of the proposal, two contract markets and the NFA expressed concern about its application to floor brokers. As the NFA stated in its comment letter in pertinent part:

> Floor brokers are not required to be NFA Members. NFA does not generally arbitrate disputes between non-Member registrants and customers. Requiring non-Member registrants to list NFA as a qualified arbitration forum may inadvertently mislead customers by giving them the impression they may arbitrate their claims through NFA. In any event, NFA believes that exchange forums are more appropriate for the resolution of disputes with floor brokers. Therefore, the Commission should exempt non-NFA Members from listing NFA as a qualified arbitration forum.

The comment letters of the two contract markets made the same point.

The Commission reviewed these comments and its proposal and has determined to revise the proposal accordingly. Rule 180.3(b)(4) as amended makes clear that most registrants must include the NFA on the list of approved arbitration forums, but floor brokers can continue to abide by the existing requirement to list two arbitration forums, a contract market and an organization with nationwide venues for hearings and mixed panels of arbitrators (*i.e.*, panels of which a majority of the members are not associated with a contract market).[1]

C. Non-Members of a Contract Market

The private attorney who commented on the proposed rule amendment indicated that a registrant which is not a member of a contract market, such as an introducing broker ("IB"), commodity trading advisor ("CTA") or commodity pool operator ("CPO"), may not be able to include three organizations as appropriate arbitration forums since it could not include a contract market as a forum. The commenter further noted that perhaps the words "if available" in the existing rule "are meant to refer to this difficulty." The Commission recognizes that a contract market forum is generally available only when the registrant is a member of the contract market where the contracts in dispute are traded. A contract market forum is thus more likely to be available to customers of a clearing FCM than to customers of an IB, CTA or CPO. Because of this, the Commission previously included the words "if available" when referring to a contract market as an appropriate arbitration forum in Rule 180.3(b)(4). The Commission wishes to make clear that those registrants other than floor brokers which are not contract market members will generally be required to list only two arbitration forums, a registered futures association (*i.e.*, NFA) and another organization with nationwide venues for hearings and mixed panels of arbitrators, such as the American Arbitration Association.

D. The FCM's Comments

The FCM which commented on the proposal stated its belief that a customer only needed to be offered a choice of three tribunals if the pre-dispute agreement "specifies a forum for arbitration other than a contract market." The commenter has apparently confused the provisions of paragraph (b)(7) of Rule 180.3 with those of paragraph (b)(4).[2] Rule 180.3(b)(4) currently requires that a customer who has entered into a pre-dispute agreement have a choice of at least two forums for arbitration. The amended rule generally will require at least three forums for arbitration when an FCM is involved, one of which is a registered futures association. As the Commission noted when it proposed this amendment (53 FR 24954 n.3), customers who do not enter into a pre-dispute agreement are not required to be afforded the choice of multiple forums, as provided for in Rule 180.3(b)(4). When the Commission first adopted the rule, it considered whether to allow customers who had not entered into a pre-dispute agreement the same protection, but determined that further rulemaking in this area was not necessary. 48 FR 22133, at 22141 (May 17, 1983).

The FCM further stated in its comment letter that "[a]s good as the National Futures Association arbitrators may be, we do not wish to conduct an arbitration in Chicago (which is NFA's headquarters), when we and most of our customers are in the New York area." Affording customers the choice of the NFA arbitration forum will not require that such hearings be held in Chicago. NFA endeavors to accommodate the preferences of the parties in providing for hearings throughout the United States. *See* NFA Code of Arbitration, section 9(a). As the Commission also noted when it proposed this rule amendment, "NFA currently has a roster of more than 1,450 persons in 49 states who volunteer to serve as arbitrators." (53 FR 24954.) The use of the NFA arbitration forum will not require a hearing to be held in Chicago if the parties involved are located in New York.

E. NFA's Other Comments

In addition to NFA's comment regarding floor brokers referred to above, the NFA also commented as follows:

> NFA agrees with the Commission that the proposed rule amendment, if adopted, would encourage greater use of NFA as an arbitration forum. However, NFA believes that if the Commission wants to substantially increase the role of NFA as an arbitration forum, it should not require registrants to list non-futures forums when two futures forums are available. Registrants should only be required to list an available contract market and a registered futures association. A non-futures arbitration forum may be listed, but that choice would be solely in the discretion of the registrant. NFA believes this change to 180.3(b)(4) would further the Commission's goals of increasing the use of NFA as an arbitration forum. [Footnotes omitted.]

The Commission appreciates the NFA's concern, which the Commission shares, that arbitrators in non-futures forums may not be familiar with the intricacies of futures trading. Since the Commission did not propose to amend Rule 180.3(b)(4) along the lines suggested by NFA, however, the Commission does not believe it would be appropriate to adopt such a rule change at this time. The Commission also notes, however, that its staff is undertaking an examination of the various arbitration programs of the self-regulatory organizations, and the staff will also endeavor to survey the arbitration programs of the American Arbitration Association, the National Association of Securities Dealers and the New York Stock Exchange, Inc. with respect to futures-related disputes. If these studies or any other information received by the Commission so warrant, further appropriate action regarding arbitrations may be undertaken.

NFA also raised the issue of a grace period for firms to amend their pre-dispute agreements. The amendment to Rule 180.3(b)(4) discussed herein requires no change to a pre-dispute agreement. Rule 180.3(b)(4) will continue to state that:

> The agreement must advise the customer that, at such time as he or she may notify the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

The rule amendment discussed herein does not change that portion of the rule. The only effect of the rule amendment will be in the qualified forums of which a customer must be apprised following the filing of a notice of intent to arbitrate by the customer or the registrant. The Commission therefore sees no need to address the question of changes which firms may wish to make in their pre-dispute agreements except to reiterate that firms must comply with the provisions of Part 180.

The Commission also notes that NFA indicates in its comment letter that it may amend its Code of Arbitration based on the Commission's rule amendment discussed herein since it believes the amendment may render a part of its Code of Arbitration obsolete. The Commission cannot comment on any proposed rule change which NFA might submit for Commission approval prior to its receipt of a formal request for such approval. The Commission wishes to emphasize, however, that its amendment to Rule 180.3(b)(4) does not require NFA to be listed as a qualified forum in a pre-dispute agreement; it simply requires that registrants other than floor brokers include NFA in the list of qualified arbitration forums furnished to the customer following the filing of a notice of intent to submit a dispute to arbitration.

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that FCMs and registered commodity pool operators should not be considered small entities for purposes of the RFA.[3] With respect to commodity trading advisors, floor brokers, and introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities, and if so, that it would analyze the economic impact on them of any rule.[4] Because the amendment to the Commission's arbitration rules discussed herein will not result in any additional burdens to the above-mentioned registrants, the Commission believes that the rule amendment will not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission certifies that this rule amendment will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted Rule 180.3 as part of information collection number 3038–0022. The Office of Management and Budget last approved the collection of information associated with OMB

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[1] The Commission also notes, however, that if a floor broker also is registered in another category, such as commodity trading advisor, and is a member of NFA in such other category, he must list NFA as a qualified arbitration forum for a dispute involving activities under such other registration category.

[2] Rule 180.3(b)(7) states that "[i]f the agreement specifies a forum for arbitration other than a contract market or registered futures association, the procedures of such forum must be fair and equitable as defined by § 180.2 of this part."

[3] 47 FR 18618–18620 (April 30, 1982).

[4] 47 FR 18618, 18620 (April 30, 1982) (commodity trading advisors and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers).

control number 3038–0022 on July 22, 1987. The Commission has determined that this rule amendment will not change materially the information collection burden approved by OMB at that time, and that there are no burden hours attributable to Rule 180.3. The OMB approved burden for information collection number 3038–0022, which covers all rules relating to contract markets and their members, is as follows:

Average burden hours per response—3.003.05
Number of respondents—11,940
Frequency of response—daily and weekly

Copies of the OMB approved information collection package concerning OMB control number 3038–0022 may be obtained from Gary Waxman, Office of Management and Budget, Paperwork Reduction Project (3038–0022), Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 180

Arbitration, Claims.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4d, 4f, 4k, 5a, 8a, and 17 thereof (7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21), hereby amends Part 180 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

1. The Authority citation for Part 180 is revised to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k 7a, 12a, and 21, unless otherwise noted.

2. Section 180.3 is amended by revising paragraph (b)(4) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

* * * * *

(b) * * *

(4) The agreement must advise the customer that, at such time as he or she may notify the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(i) In the case of a future commission merchant, introducing broker, commodity pool operator, commodity trading advisor or associated person, within ten business days after receipt of such notice from the customer, or at the time such a registrant so notifies the customer, the futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or associated person must provide the customer with a list of organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of § 180.2 of this part, together with a copy of the rules of each forum listed. The list must include:

(A) The contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization which will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and which will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of a contract market or employee thereof, and which are not otherwise associated with a contract market (mixed panel).

(ii) A floor broker, within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time the floor broker notifies the customer of his or her intent to submit a claim to arbitration, must provide the customer with a list of organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of § 180.2 of this part, together with a copy of the rules of each forum listed. The list must include the organizations specified in paragraphs (b)(4)(i)(A) and (b)(4)(i)(C) of this section.

The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

* * * * *

Issued in Washington, DC on January 10, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–945 Filed 1–13–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 89–10]

Establishment of Davenport, IA, Rock Island and Moline, IL, as a Permanent Port of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document provides public notice that the port of Davenport, Iowa, and Rock Island and Moline, Illinois, which was established as a temporary port of entry on a trial basis approximately 2 years ago, has been accorded permanent status as a port of entry.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service (202) 566–9425.

SUPPLEMENTARY INFORMATION: In a notice published on October 17, 1985 (50 FR 42035), the Customs Service set forth for public comment a proposal to establish a port of entry for a 2-year trial basis at Davenport, Iowa, Rock Island and Moline, Illinois. In a subsequent notice of final rulemaking published in the **Federal Register** on April 16, 1986 (51 FR 12843), designated as T.D. 86–76 and effective May 16, 1986, the proposal was adopted. The reason for adoption and a discussion of the comments received are set forth in T.D. 86–76, as well as a discussion of the authorities under which changes in Customs field organization are made.

Reference was also made in that decision to the Customs criteria for establishing ports of entry in T.D. 82–37 published in the **Federal Register** on March 9, 1982 (47 FR 10137). Among these criteria are a minimum workload of 2,500 consumption entries per year. Based on current statistics it is projected that this entry-volume standard will be met in fiscal year 1988 and exceeded in the future. Accordingly, the temporary status for the port is terminated and permanent port-of-entry status is substituted.

The limits of the port of entry of Davenport-Rock Island-Moline are as follows:

In Rock Island County, Illinois, the Townships of Andalusia, Blackhawk, Rock Island, South Rock Island, Moline, South Moline, Coal Valley, Hampton, Zuma, and Coe; in Henry County, Illinois, the Townships of Colona, Hanna, and Edford; and in Scott County, Iowa, the Townships of Buffalo, Blue Grass, Hickory Grove, Sheridan, Lincoln, LeClaire, Pleasant Valley, Bettendorf, and that area of the City of Davenport enclosed within the present limits of these townships.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely makes adjustments to its field organization throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although the changes may have a limited effect upon small entities in the areas affected, they are not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the amendment relates to the Customs field organization, and will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Inapplicability of Public Notice and Delayed Effective Date Requirements

The criteria and considerations for establishing a new port of entry on a permanent basis are essentially the same as those for establishing a port on a temporary basis. These criteria and considerations were fully discussed, and comments from interested members of the public taken into consideration, at the time of notice of final rulemaking with respect to establishment of the port on a temporary basis. Accordingly, it is determined that solicitation of further comments and delay in the change in status of the port would serve no useful purpose. Therefore, it is determined that good cause exists for dispensing with the procedures for notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Authority

These changes are made under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch II), and pursuant to the authority provided by Treasury Department Order No. 101–05 dated February 17, 1987 (52 FR 6282).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR Part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 1, 66, 1202 (Gen. Headnote 11), 1624, Reorganization Plan of 1965; 3 CFR 1965 Supp.

2. The list of Customs regions, districts and ports of entry in § 103.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by revising the reference at the end of the listing for Davenport, Iowa, and Rock Island and Moline, Illinois, in the port-of-entry column under the North Central Region to read "including the territory described in T.D. 89–10.".

Approved: December 8, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

William von Raab,

Commissioner of Customs.

[FR Doc. 89–953 Filed 1–13–89; 8:45 am]

BILLING CODE 1820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 556, and 558

Animal Drugs, Feeds, and Related Products; Ipronidazole

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulations that reflect approval of new animal drug applications (NADA's) for ipronidazole, a new animal drug used in turkeys. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA's is being withdrawn.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 43–477 for ipronidazole Type A medicated article, NADA 47–089 for ipronidazole Type A medicated article with sulfadimethoxine and ormetoprim Type A medicated article, and NADA 91–782 for ipronidazole hydrochloride soluble powder, held by Hoffmann-La Roche, Inc., Nutley, NJ 07110. Ipronidazole is labeled for use in turkeys as an aid in the prevention of blackhead, fowl cholera, and coccidiosis caused by *Eimeria* species, for the treatment of blackhead, and for increased rate of weight gain and improved feed efficiency. The sponsor has requested the withdrawal of approval of the NADA's.

Upon withdrawal of new animal drug applications, the agency is required by section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) to remove the regulations that reflect the approvals. This document removes 21 CFR 520.1162, 556.340, 558.305, and 558.575(c)(3)(ii), which reflect the approvals, and amends 21 CFR 558.4, which concerns medicated feed applications, to delete ipronidazole.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 556, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1162 [Removed]

2. Section 520.1162 *Ipronidozole hydrochloride soluble powder* is removed.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 556.340 [Removed]

4. Section 556.340 *Ipronidozole* is removed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.4 [Amended]

6. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the "Category II" table by removing the entry "Ipronidazole."

§ 558.305 [Removed]

7. Section 558.305 *Ipronidazole* is removed.

§ 558.575 [Amended]

8. Section 558.575 *Sulfadimethoxine, ormetoprim* is amended by removing paragraph (c)(3)(ii), and by redesignating paragraphs (c)(3)(i) (*a*) and (*b*) as paragraphs (c)(3) (ii) and (iii), respectively.

Dated: January 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–977 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

22 CFR Part 9b

[108.876]

Press Building Passes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule changes the Department of State regulations governing press building passes. To adjust to access alterations made at the Main Department of State building, the Department changes its regulations governing Department of State press building passes to reflect the following: That only State Department press building passes will be recognized by the automated access control system established in March 1988; that access by media correspondents and technicians with State Department press building passes is limited after office hours and on weekends and holidays to designated areas without an escort; and state the procedures concerning the purpose, issuance, application and renewal procedures for a Department of State press building pass.

These changes are made to provide publicly available guidelines to the media on access requirements for the Main Department of State building and to provide publicly available guidance on the procedures for issuance of a Department of State press building pass.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Beck at 202–647–2492.

SUPPLEMENTARY INFORMATION: The Department of State published a notice of proposed rulemaking on the revision of regulations governing Department of State press building passes in the **Federal Register** on June 23, 1988 (22 CFR Part 9b). Comments on the proposed rule were requested through July 25, 1988. The Department received no comments.

This final rule is not a major rule for the purposes of Executive Order 12991 of February 17, 1981. As required by the Regulatory Flexibility Act, this final rule will not have a significant impact on small business entities. This final rule does not contain information collection requirements under the Paperwork Reduction Act of 1980.

List of Subjects in 22 CFR Part 9b

Administrative practice and procedure, Federal buildings and facilities, News media, Security measures.

For the reasons set forth in the preamble, the Department of State amends 22 CFR Part 9b as follows:

PART 9b—[AMENDED]

1. The authority citation for 22 CFR Part 9b continues to read as follows:

Authority: 22 U.S.C. 2658.

2. Section 9b.1 is revised to read as follows:

§ 9b.1 Press access to the Department of State.

(a) Media correspondents without valid Department of State press building passes shall have access to the Main State building identical to that enjoyed by members of the public.

(b) Media correspondents holding valid Department of State press building passes:

(1) May enter and have access 24 hours a day, during regular working hours, outside regular working hours, on weekends and on holidays, without an appointment, to the reception area of the Diplomatic Lobby, C Street Mezzanine area, press booths (Room 2310), press briefing room (Room 2118), and when in operation, the Office of Press Relations (Room 2109).

(2) May enter and have access without an appointment, on the basement level or on the first and second floors, to the cafeteria, post office, banks, concessionaries, barber shop, dry cleaners and the Foreign Affairs Recreation Association offices for the purposes for which they are established and when they are in operation.

(3) May not escort non-passholders into the Department of State building.

(c) Media correspondents, with or without a Department of State press building pass, may enter areas above the second floor of the Main State building only if the correspondent is invited by a Department employee to attend a specific social or official function in an office located above the second floor. Permission to enter areas above the second floor is strictly limited to direct passage to and from the appointment location of the Department of State employee, or the office or reception room where the function takes place.

(d) Possession of State Department press building pass does not confer access to or other privileges at other Federal buildings. It is not to be construed as official United States Government recognition, approval or accreditation of a correspondent.

3. Section 9b.2 is amended by removing paragraph (c) and revising the introductory text and paragraphs (a)(1), (a)(3) and (b) to read as follows:

§ 9b.2 Press correspondents employed by United States media organizations.

In order to obtain a Department of State press building pass, press correspondents employed by United States media organizations must:

(a) * * *

(1) That the applicant is a bona fide, full-time media correspondent based permanently and residing in the Washington, DC, metropolitan area;

* * * * * * *

(3) That the organization and the applicant have regular and substantial assignments in connection with the Department of State as evidence by regular attendance at the daily press briefings.

(b) Submit to the Office of Press Relations, Department of State, Washington, DC. 20520, a signed application and FORM DSP–97 for a press building pass. Applicants must comply with instructions contained in paragraphs 1 and 6 of FORM DSP–97 regarding fingerprinting and prior arrests. FORM DSP–97 requires the following information:

(1) Name;

(2) Affiliation with news media organizations;

(3) Date of birth;

(4) Place of birth;

(5) Sex;

(6) Citizenship;

(7) Social Security or passport number;

(8) Marital status;

(9) Spouse name;

(10) Office address and telephone number;

(11) Length of employment;

(12) Home address and telephone number; and

(13) Length of residence.

4. Section 9b.3 is amended by removing paragraph (d) and revising paragraphs (a)(1), (a)(3) and (c) to read as follows:

§ 9b.3 Press correspondents employed by foreign media organizations.

* * * * * *

(a) * * *

(1) That the applicant is a bona fide, full-time media correspondent based permanently and residing in the Washington, DC., metropolitan area:

* * * * * *

(3) That the organization and the applicant have regular and substantial assignments in connection with the Department of State as evidence by regular attendance at the daily press briefings.

* * * * * *

(c) Submit to the Office of Press Relations, Department of State, Washington, DC. 20520 a signed application and FORM DSP–97 for a press building pass. Applicants must comply with instructions contained in paragraphs 1 and 6 of FROM DSP–97 regarding fingerprinting and prior arrests. FORM DSP–97 requires the following information:

(1) Name;

(2) Affiliation with news media organizations;

(3) Date of birth;

(4) Place of birth;

(5) Sex;

(6) Citizenship;

(7) Social Security or passport number;

(8) Marital status;

(9) Spouse name;

(10) Office address and telephone number;

(11) Length of employment;

(12) Home address and telephone number; and

(13) Length of residence.

5. Section 9b.4 is revised to read as follows:

§ 9b.4 Department of State building press pass for technical crews.

Department of State press building passes are issued to members of television and radio technical crews who provide technical support on a daily basis for media correspondents assigned to the Department of State. Members of technical crews who do not possess press passes, but who provide technical support for media correspondents assigned to the Department of State, may apply to the Office of Press Relations for a visitor's pass valid for one day.

6. Section 9b.5 is revised to read as follows:

§ 9b.5 Temporary Department of State press building passes.

A media correspondent or technician who meets all the qualifications stated in §§ 9b.2(a)(1) and 9b.2(a)(2) or 9b.3(a) and 9b.3(b), but does not have regular and substantial assignments in connection with the Department of State may make arrangements with the Office of Press Relations for the issuance of a visitor's pass valid for one day.

7. Section 9b.6 is amended by adding paragraph (e) and revising the introductory text and paragraphs (a) and (c) to read as follows:

§ 9b.6 Grounds for denial, revocation or non-renewal of Department of State press building passes.

In consultation with the Bureau of Diplomatic Security and the Office of the Legal Adviser, the Director of the Office of Press Relations of the Department of State, may deny, revoke, or not renew the Department of State press building pass of any media correspondent or technician who:

(a) Does not meet the qualifications stated in §§ 9b.2(a)(1), 9b.2(a)(2) and 9b.2(a)(3) or 9b.3(a)(1), 9b.3(a)(2), 9b.3(a)(3) and 9b.3(b). (Upon denial, revocation, or non-renewal the correspondent or technician may not reapply for a period of one year unless there are material changes in meeting the qualifications.) or,

* * * * * *

(c) Engages or engaged in conduct which there are reasonable grounds to believe might violate federal or state law or Department of State regulations.

* * * * * *

(e) Fails to claim an approved authorization form for a State Department press building pass after notification by the Office of Press Relations following a period of three (3) months.

8. Section 9b.7 is amended by revising paragraphs (a), (e), (f)(1), (f)(3), and (g) to read as follows:

§ 9b.7 Procedures for denial, revocation, or non-renewal of Department of State press building passes.

(a) If the Director of the Office of Press Relations, Department of State, anticipates, after consultation with the Office of the Legal Adviser, that in applying the standard set forth in § 9b.6 a Department of State press building pass might be denied, revoked or not renewed, the media correspondent or technician will be notified in writing by the Director of the basis for the proposed denial in as much detail as the security of any confidential source of information will permit. This notification will be sent by registered mail.

* * * * * *

(e) At the time of the filing of the media correspondent's or technician's written response to the notification of the proposed denial, revocation or non-renewal, the correspondent or technician may request, and will be granted, the opportunity to make a personal appearance before the Director of the Office of Press Relations, Department of State, for the purpose of personally supporting his/her eligibility for a press pass and to rebut or explain the factual basis for the proposed denial. The Director shall exercise, in consultation with the Bureau of Diplomatic Security and the Office of the Legal Adviser, final review authority in the matter. The correspondent or technician may be represented by counsel during this appearance.

(f)(1) On the basis of the correspondent's or technician's written and personal response and the factual basis for the proposed denial, revocation or non-renewal, the Director of the Office of Press Relations, Department of State, will consult with the Bureau of Diplomatic Security and the Office of the Legal Adviser to determine whether or not further inquiry

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or investigation concerning the issues raised is necessary.

* * * * *

(3) If a decision is made that such further inquiry is necessary, the Director of the Office of Press Relations of the Department of State, the Bureau of Diplomatic Security and the Office of the Legal Adviser will conduct such further inquiry as is deemed appropriate. At the Director's discretion the inquiry may consist of:

(i) The securing of documentary evidence:

(ii) Personal interviews:

(iii) An informal hearing:

(iv) Any combination of paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(g) On the basis of the correspondent's or technician's written and personal response, the factual basis for the proposed denial and the additional inquiry provided for if such inquiry is conducted, the Director of the Office of Press Relations of the Department of State will consult with the Bureau of Diplomatic Security and the Office of the Legal Adviser and expeditiously reach a final decision in accordance with the standard set forth in § 9b.6. If a final adverse decision is reached, the correspondent or technician will be notified of this final decision in writing. This notification will set forth as precisely as possible, and to the extent that security considerations permit, the factual basis for the denial in relation to the standard set forth in § 9b.6. This notification will be sent by registered mail and will be signed by the Director of the Office of Press Relations of the Department of State.

9. Section 9b.8 is revised to read as follows:

§ 9b.8 Term and renewal of Department of State press building passes.

Department of State press building passes are valid for either three or four years. Department of State press building pass holders must, nevertheless, submit a letter annually from their employing media organizations attesting that they continue to cover the Department of State for that organization on a regular and substantial basis. If the correspondent fails to supply such a letter by a previously announced date, his/her press building pass will be subject to revocation as set out in § 9b.7.

Dated: November 10, 1988.

Ronald I. Spiers,

Under Secretary of State for Management.

[FR Doc. 89-1046 Filed 1-13-89; 8:45 am]

BILLING CODE 4710-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1845; FR-2543]

Secton 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; St. Thomas, Virgin Islands; Special Revisions for Fiscal Years 1986 and 1987

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes for the Fiscal Year 1986 and Fiscal Year 1987 Fair Market Rent Schedules new FMRs for the St. Thomas, Virgin Islands market area for those two fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) made rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area a determined by HUD Field Office staff. For the FY 1986 FMRs and FY 1987 FMRs previously promulgated by the Department (see the August 7, 1986 and April 26, 1988 **Federal Registers**, 51 FR 28486 and 53 FR 14954, respectively), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the Fiscal Year 1986 and Fiscal Year 1987 Fair Market Rent schedules applicable to the St. Thomas, Virgin Islands market area. These FMRs reflected data submitted by the Caribbean Office. Because of market conditions, the FMRs for the St. Thomas, Virgin Islands market area dropped between FY 1983 and FY 1984. In addition, there was no change in the published FMRs for this market area between FY 1985 and FY 1986 because the Caribbean Office was late in submitting acceptable schedules of FMRs for FY 1986. Further, where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Caribbean Office requesed that the Department establish new rents for the St. Thomas, Virgin Islands market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1986 and FY 1987 FMRs for this market area is needed. Accordingly, the Department proposed a revision of the FY 1986 and FY 1987 schedules applicable to the St. Thomas, Virgin Islands market area in the **Federal Register** on October 4, 1988, at 53 FR 44616, to announce a 30-day public comment period. No comments were received. Therefore, this notice establishes the FMRs which were proposed on October 4, 1988, as they are set forth below. The applicability of these schedules is the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR Part 40, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedules is announced and established for the St. Thomas, Virgin Islands Maraket area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

[Region 2—New York Regional Office Market: St. Thomas, Virgin Islands]

Structure type	Number of bedrooms				
	0	1	2	3	4+
Special revision of FY 1986 FMRs:					
Detached			899	981	1107
Semi-detached/row	605	668	770	886	1006
Walkup	485	565	695	775	869
Elevator 2-4 story	510	590	720		
Special revision of FY 1987 FMRs:					
Detached			926	1010	1140
Semi-detached/row	623	688	793	913	1036
Walkup	500	582	716	796	895
Elevator 2-4 story	525	608	742		

Authority: Section 8(c)(1) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 9, 1989.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-980 Filed 1-13-89; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 3282

[Docket No. N-89-1895; FR-2568]

Manufactured Home Monitoring Inspection Fee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of manufactured home monitoring inspection fee.

SUMMARY: This notice announces that the monitoring inspection fee for each transportation section of each manufactured housing unit shall be $24 as of February 2, 1989. A fee increase to $24 will permit the Department to maintain the present enforcement program pursuant to the Act, without reducing the available funds in the fee account to a negative dollar balance. The new fee amount assumes a balance fiscal account of income and expenses for the next five years. (The fee increase shall apply to all manufactured home inspection labels purchased beginning on February 2, 1989.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: G. Robert Fuller, Chief, Compliance Branch, Room 9156, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6920. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 3282.454, the Secretary is authorized to establish by notice in the **Federal Register** a monitoring inspection fee for each manufactured home. The fee amount is established in accordance with the criteria set out in § 3282.454, and is currently $16 per manufactured floor.

The criteria call for a determination by the Department of the aggregate cost of conducting the inspection program. These costs include the funds necessary to support (1) inspection-related activities of the State Administrative Agencies (SAA); (2) inspection-related activities performed by the Department of Housing and Urban Development; (3) inspection-related activities performed by monitoring inspection contractors; (4) miscellaneous activities involving the performance of inspection-related activities by the Department, including on-site inspections on an ad hoc basis, and (5) maintenance of adequate funds to offset short-term fluctations in costs that do not warrant revising the fee under the authority of this section.

This manufactured home label increase contains two specific components:

(1) An amount of $5.00 per floor is to maintain the current minimum level of support for the ongoing enforcement program. Annual inspection-related expenses have recently exceeded fee collection, substantially depleting the fee account balance. During FY 1988, expenditures of $5.9 million will exceed fee collections of $4.9 million. This will reduce the available balance in the account to approximately $600,000. Since this trend is expected to continue, a fee increase is essential to the continued support of inspection-related activities during FY 1989 and future years.

(2) The increased amount of $3.00 per floor is to provide additional income to

the SAAs participating in the enforcement program. These SAAs are currently funded from the incoming label fees which provide them $12.00 for each manufactured home sited in their respective State. Under Cooperative Agreements signed with HUD, SAAs are required to monitor manufacturer's compliance with Federal Regulations (24 CFR Part 3282) which provide for notification to homeowners with defective homes or correction of homes with serious defects. This monitoring requires SAAs to perform investigations to determine whether there are similar defects in more than one home produced by a manufacturer. Present funding provides necessary resources for SAAs to assist consumers within their own States. However, it does not account for other inspection-related activities or the heavy workload involved with manufacturing plants in States that produce a large volume of homes that are exported to other States. Several of these SAAs have reported substantial net losses under the Federal Program. Consequently, many of these SAAs have not been able to function effectively. The increase of $3.00 per floor will be used to meet the funding needs of the States to carry out the inspections and inspection-related activities of the States. Further, the Department intends to amend 24 CFR 3282.307(b) in the near future to provide for a more equitable method for distributing funds to the States to meet their inspections and related expenses.

The following table details the fee income and expenses for FY 89 through FY 93 with the $8.00 per floor fee increase. The table shows the unobligated balance at the end of each year to be just adequate to offset short-term fluctuations in costs. The Department does not anticipate the need to revise the fee over the five year period, 1989–1994.

FEE ACCOUNT ($24 PER FLOOR)

	Estimate FY 88	Estimate FY 89	Estimate FY 90	Estimate FY 91	Estimate FY 92	Estimate FY 93
Manufactured homes produced	215,000	215,000	215,000	215,000	215,000	215,000
Transportable sections	305,000	305,000	305,000	305,000	305,000	305,000
Unobligated balance start of year	[2] 1,610	630	796	811	669	525
Fee at $24.00 [1]	[1] 4,880	7,320	7,320	7,320	7,320	7,320
Fee expenses:						
SAA Monitoring	2,245	3,290	3,290	3,290	3,290	3,290
Contractor	2,750	3,000	3,150	3,308	3,308	3,308
HUD salaries and expenses	865	865	865	865	866	866
Expenses	5,860	7,187	7,337	7,495	7,496	7,496
Unobligated balance end of year	630	796	611	669	525	382

[1] FY 88 Fee at $16.00.
[2] Does not include the amount of $259,000 sequestered in FY 1986, which is unavailable for obligations.

Therefore notice is hereby given that the monitoring inspection fees established by 24 CFR 3282.307(a) and 24 CFR 3282.454 (a) and (b) shall be $24.00 for each transportation section of each manufactured housing unit.

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 3419, Sec. 7(d)), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))

Dated: December 16, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-861 Filed 1-13-89; 8:45 am]

BILLING CODE 4210-27-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Correction; final regulations.

SUMMARY: On December 22, 1988, on pages 51550 through 51552 (53 FR 51550), the Veterans Administration (VA) published final rules to increase the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans were also increased.

EFFECTIVE DATE: December 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: In publishing the interest rates increase, the VA inadvertently neglected to change the effective date contained in § 36.4311(c) to the effective date of the regulation. The VA hereby corrects that error.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Dated: January 9, 1989.

C.G. Verenes,

Acting Chief, Directives Management Division.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended by correctly revising § 36.4311(c) to read as follows:

§ 36.4311 Interest rates.

* * * * *

(c) Effective December 19, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

[FR Doc. 89-935 Filed 1-13-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3493-2; EPA Docket No. AMO69 MD]

Approval and Promulgation of Implementation Plan; Maryland; Stack Height Regulation EPA Docket No. AMO69 MD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. The revision consists of an amendment to the State's regulation (COMAR) 10.18.01.08, Determination of Ground Level Concentration Acceptable Techniques. EPA has reviewed this revision and has concluded that it conforms to 40 CFR Part 51, including the July 8, 1985 amendments (50 FR 29906).

EFFECTIVE DATE: This rule will become effective on February 16, 1989.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Unit, 401 M Street, S.W., Washington, D.C. 20460.
U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM11).
Maryland Air Management Administration, 201 West Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Magerr (3AM13) at (215) 597–6863 or at the EPA Region address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION:

On August 27, 1987 (52 FR 25371), EPA published a Notice of Proposed Rulemaking (NPR) to revise the SIP for the State of Maryland. The NRP proposed to approve amendments to the State's stack height regulations to conform to the Federal stack height regulations as amended July 8, 1985 (50 FR 27892).

A description of the revision was provided in the NPR and will not be restated here.

Public Participation

The SIP revision was proposed under a procedure called "parallel processing" (47 FR 27073). Under this procedure, the State and EPA propose the regulation at the same time, announce concurrent comment periods, and jointly review the comments. If the State or EPA receive no substantive comments that would necessitate significant changes to the regulation, it is adopted by the State and formally submitted to EPA. The State adopted regulation is then acted on by EPA, as a final rulemaking. If significant changes are made to the regulation, EPA would have to repropose the regulation. In the case of Maryland's stack height regulation, the public was given an opportunity to comment as a result of EPA's proposed rulemaking of August 27, 1987 (52 FR 32321) and during the State's public comment period as advertised in the local newspapers on August 29, 1986. In both cases, no comments were received.

Final Action

EPA has reviewed this amendment and believes there will be no adverse effects on air quality if approved. Furthermore, the revisions meet the requirements under 40 CFR Part 51, and section 110 of the Clean Air Act. Therefore, EPA is approving this regulatory revision to the Maryland SIP, codified COMAR 10.18.01.08, Determination of Ground Level Concentrations Acceptable Techniques.

Conformity With EPA's GEP Stack Height Requirements

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F2d. 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.1000(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 15.100(hb)(2)(88)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves Maryland's stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the State of Maryland that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Maryland and source owners or operators.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, and Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7642.

Date: December 12, 1988.

Lee M. Thomas,

Administrator.

40 CFR Part 52, Subpart V, is amended as follows:

PART 52—[AMENDED]

Subpart V—Maryland

1. The authority citations for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1070 is amended by adding paragraph (c)(87) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(87) A revision submitted by the Secretary, Maryland Department of Health and Mental Hygiene on March 30, 1987, consisting of amendments to the Good Engineering Practice (GEP) Stack Height Regulations, COMAR 10.18.01.08 (Determination of Ground Level Concentrations—Acceptable Techniques).

(i) Incorporation by reference

(A) Letter of March 30, 1987 from the Secretary, Maryland Department of Health and Mental Hygiene.

(B) COMAR 10.18.01.08 (Determination of Ground Level Concentrations—Acceptable Techniques), which was adopted by the Maryland Department of Health and Mental Hygiene on January 23, 1987.

(ii) Additional Information

(A) None

[FR Doc. 89-1062 Filed 1-13-89; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3480-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is taking final action to approve a revision to the Ohio State Implementation Plan (SIP) for the Coulton Chemical Plant in Toledo, Ohio, and for the E.I. duPont de Nemours and Company facility in Miami, Ohio. The revision is in the form of Permits to Operate for the two facilities. The permits require the installation and operation of continuous emission monitors for sulfur dioxide.

This revision was submitted by the State to satisfy section 110(a)(2)(F) of the Clean Air Act and 40 CFR 51.214 (previously codifed at 40 CFR 51.19(e)) and to address a remand from the Sixth Circuit Court of Appeals concerning continuous emission monitoring for sulfur dioxide. (*Northern Ohio Lung Association* v. *U.S. Environmental Protection Agency*, 572 F.2d 1182 (6th Cir. 1978), hereafter "NOLA Remand.")

EFFECTIVE DATE: This rule will become effective on February 16, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, (312) 886-6088.

SUPPLEMENTARY INFORMATION: Section 110(a)(1) of the Clean Air Act (Act) requires each State to adopt and submit to USEPA a plan which provides for attainment and maintenance of the primary and secondary national ambient air quality standards. The plan for achieving the secondary standard may be submitted as part of a State's plan for achieving the primary standard or as a separate plan. The primary standard plan must provide for attainment no later than 3 years from plan approval. Attainment of the secondary standard must be within a reasonable time.

Under section 110(c) of the Act, USEPA promulgated its substitute sulfur dioxide plan for the State of Ohio on August 27, 1976, which set emission limitations for Ohio sources to assure that the State of Ohio attain and maintain the national ambient air quality standards for sulfur dioxide (SO_2).

See 41 FR 36324, 41 FR 52155, and 42 FR 27588. The Federal plan was designed to ensure attainment of both the primary and secondary sulfur dioxide standards within 3 years of plan approval.

On February 9, 1978, the United States Court of Appeals for the Sixth Circuit remanded to USEPA for its further consideration two aspects of the plan. *Northern Ohio Lung Association* v. *USEPA*, 572 F.2d 1182 (6th Cir. 1978). The Court held that the plan did not comply with the requirements of Section 110(a)(2)(F) of the Act and did not include specific provisions for meeting the secondary ambient air quality standards for SO_2.

USEPA previously addressed the secondary standard portion of the remand on October 6, 1981 (46 FR 49123), and July 26, 1982 (47 FR 32121). This notice addresses the portion of the sulfur dioxide remand regarding section 110(a)(2)(F) of the Clean Air Act which requires appropriate sources to monitor their own emissions.

On January 27, 1981 (46 FR 8481), USEPA approved a significant portion of Ohio's sulfur dioxide SIP which replaced USEPA's August 27, 1976, plan. (Effective date was subsequently delayed until April 13, 1982 (47 FR 15782)). Amendments were approved by USEPA on April 20, 1982 (47 FR 16784), and May 13, 1982 (47 FR 20586). The SO_2 plan in Ohio is no longer the Federal plan promulgated by USEPA but, in most cases, is the revised State SO_2 plan. Therefore, Ohio submitted a revision to the SIP to satisfy both section 110(a)(2)(F) of the Clean Air Act and 40 CFR 51.214 (previously codified at 40 CFR 51.19(e)) as they pertain to sulfur dioxide emissions, and to address the remand from the Sixth Circuit Court of Appeals.

Section 110(a)(2)(F)

According to section 110, SIPs must require the installation of equipment to monitor emissions from stationary sources, the periodic reporting of such emissions, and the correlation of such reports with any emission limitations. To implement this provision of section 110, USEPA promulgated regulations identifying the minimum emission monitoring requirements (40 CFR Part 51, Appendix P). For SO_2, continuous emission monitoring (CEM) is required for the following source categories:

(1) Fossil fuel-fired steam generators greater than 250 Million British Thermal Units per hour (MMBTU/HR) which have installed SO_2 pollution control equipment, and

(2) Sulfuric acid plants of greater than 300 tons per day production capacity.

(1) Fossil Fuel-Fired Generating Units—Ohio SIP

Currently, there are only two fossil fuel-fired steam generating units greater than 250 MMBTU/HR that have SO_2 pollution control equipment in Ohio: C&SOE Conesville—Units 5 and 6. Continuous emission monitoring of SO_2 for Conesville Units 5 and 6 were already installed to satisfy New Source Performance Standards (NSPS) requirements at 40 CFR Part 60, Subpart D.

On December 21, 1976 (41 FR 55575), and December 22, 1981 (46 FR 62065), USEPA delegated authority to implement NSPS to Ohio. Because Subpart D (fossil fuel-fired generators which commenced construction after August 17, 1971) and Subpart Da (electric utility steam operating units which commenced construction after September 18, 1978) both require the installation and operation of continuous emission monitors for SO_2, any new fossil fuel-fired generator greater than 250 MMBTU/HR in Ohio will be required to have continuous emission monitors.

Any existing source greater than 250 MMBTU/HR not subject to NSPS which alters its compliance method to include the use of SO_2 pollution control equipment must install CEM equipment consistent with the NOLA remand. For any such source, OEPA plans to specify the monitoring requirements as part of the source's Permit to Operate. The State must also submit any such CEM requirement to USEPA as a SIP revision request.

Thus, all existing and future fossil fuel-fired generating units in Ohio subject to the control requirements of Subparts D, and Da, will comply with the requirements of section 110(a)(2)(F).

(2) Sulfuric Acid Plants—Ohio SIP

As noted in a letter dated September 5, 1985, from Ohio EPA, there are only two sulfuric acid plants with greater than 300 tons per day production capacity in Ohio (Coulton Chemical and E.I. duPont). This letter is contained in the docket for this proposed action.

A. Coulton Chemicol Company

The State submitted two permits to operate (identified as A-Plant and B-Plant) for the Coulton Chemical Company in Lucas County. The State requested that Terms and Conditions listed in item 3 of the permits be incorporated into the Ohio SIP.

Condition 3 references a compliance time schedule for installing and operating continuous emission monitoring equipment. The schedule requires completion of testing and calibration of installed continuous emission monitoring within 18 months of issuance of the permit for A-Plant and by July 3, 1987, for B-Plant. Ohio EPA requested USEPA to act on these compliance schedules as part of Condition 3. Additionally, Condition 3 requires these facilities to submit quarterly reports pursuant to 40 CFR Part 51, Appendix P, Paragraph 4 documenting all instances of sulfur dioxide emissions in excess of the limitations specified in OAC Rule 3745-18-54(X). This rule is identical to the currently effective SIP for this source as contained in 40 CFR 52.1881(b)(39)(vi)(B). USEPA finds that the continuous emission monitoring requirements for SO_2 in these permits satisfy 40 CFR Part 51, Appendix P.

B. E.I. duPont

The State submitted a permit to operate for the E.I. duPont Fort Hill Plant in Miami. The State requested that Terms and Conditions listed in Condition 3 of the permits be incorporated into the Ohio SIP. Condition 3 requires the source to operate and maintain existing equipment to continuously monitor and record the SO_2 emissions from the source as required by 40 CFR Part 60.13. Additionally, Condition 3 requires this facility to submit quarterly reports pursuant to 40 CFR Parts 60.7 and 60.84, documenting all instances of sulfur dioxide emissions in excess of the Ohio SIP. The continuous emission monitoring requirements for SO_2 in these permits satisfy 40 CFR Part 51, Appendix P.

As noted above, USEPA delegated authority to implement NSPS to Ohio. Because 40 CFR Part 60, Subpart H requires the installation and operation of continuous emission monitors for SO_2, any new sulfuric acid production unit in Ohio will be required to have continuous emission monitors. Thus, all existing and future applicable sulfuric acid plants in Ohio will comply with the requirements of section 110(a)(2)(F).

USEPA Action

On April 30, 1986, Ohio EPA submitted a draft revision to the Ohio SIP in the form of operating permits for Coulton Chemical and for E.I. duPont. On December 24, 1986, a notice was published in the **Federal Register** (51 FR 46693) proposing to approve this revision. The notice stated that in order for USEPA to approve this revision in final, the State must submit a final plan which was identical to the draft plan. On May 5, 1987, the State submitted the final plan which is in the form of operating permits for Coulton Chemical and E.I. duPont. The final operating permits for these facilities contain CEM requirements which are substantially identical to the draft permits that USEPA proposed to approve. Additionally, no public comments were received during the public comment period on USEPA's proposed action.

USEPA is approving the requirements for SO_2 continuous emission monitors in the operational permits for Coulton Chemical and E.I. duPont as a revision to the Ohio SIP. These SIP revisions, coupled with Ohio's NSPS delegation, satisfy the requirements of section 110(a)(2)(F) for the SO_2 SIP and respond to the NOLA remand.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).) Identification of subjects for Part 52.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 28, 1988.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7462

2. Section 52.1870 is amended by adding new paragraph (c)(78) to read as follows:

§ 52.1870 Identification of plan.

(c) • • •

(78) On April 30, 1986, (draft) and on May 5, 1987, (final) the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's sulfur dioxide SIP. The revision was in the form of Permits to Operate for the Coulton Chemical Plant in Toledo, Ohio, and the E.I. duPont de Nemours and Company facility in Miami, Ohio. The permits require the installation and operation of continuous emission monitors for sulfur dioxide at these facilities, and the reporting of monitoring data.

(i) Incorporation by reference.

(A) Special Term and Condition No. 3 of Permit to Operation No. 0448020014P001 for Coulton Chemical Corporation, effective January 3, 1986, Permit to Operate No. 0448020014P002 for Coulton Chemical Corporation, effective March 25, 1986.

(B) Special Term and Condition No. 3 of Permit to Operate No. 1431350617P001 for E.I. duPont de Nemours and Company (Fort Hill Plant), effective March 2, 1984.

(ii) Additional material

(A) September 5, 1985, letter from Charles M. Taylor, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency; to Steve Rothblatt, Chief, Air and Radiation Branch, U.S. Environmental Protection Agency.

3. Section 52.1881 is amended by adding new paragraph (a)(10) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) • • •

(10) Approval—USEPA approves Condition #3 of the permits for the Coulton Chemical Plant in Toledo and the E.I. duPont de Nemours and Company plant in Miami, Ohio. This condition requires the installation and operation of continuous emission monitors for sulfur dioxide.

• • • • • •

[FR Doc. 89-1063 Filed 1-13-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3478-7]

Approval and Promulgation of State Implementation Plans; Utah; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is approving the general plan requirements and long-term strategies (LTS) for visibility protection in a revision to the Utah State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), at which EPA disapproved SIPs of states which failed to comply with the provisions of 40 CFR 51.302 (visibility general plan requirements) and 51.306 (visibility LTS). EPA also incorporated these Federal plans and regulations into the SIPs of these states.

The Governor of Utah submitted a SIP revision for visibility protection on December 11, 1987. Review of the plan indicates that Utah has met the criteria of 40 CFR 51.302 and 51.306, and that these revisions will replace the Federal plans and regulations in the Utah Visibility SIP.

DATES: This action will be effective on March 20, 1989, unless notice is received by February 16, 1989 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 564-1769.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 CFR Part 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs. Part of the negotiated Settlement Agreement between EPA and EDF required EPA to determine the adequacy of State Visibility SIPs to meet the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302-51.307), and LTS (40 CFR 51.306). The Settlement Agreement required EPA to propose and promulgate Federal Visibility SIPs (hereinafter Federal Implementation Plans (FIPs)) to remedy any deficiencies on a specified schedule. On January 23, 1986 (51 FR 3046), EPA preliminarily determined that the SIPs of 32 states (including Utah) were deficient with respect to the visibility provisions.

The EPA and the plaintiffs negotiated revisions to the Settlement Agreement which extended the deadlines for proposing FIPs to remedy the deficiencies. Under this revised agreement, EPA must propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and LTS, and can defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal Land Managers (FLMs) have certified to EPA.

On March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of 32 states (including Utah) for failing to meet the general plan and LTS requirements of 40 CFR 51.302 and 51.306, and to incorporate these Federal regulations into each State's SIP. The states were given the opportunity to avoid promulgation, if they submitted SIP revisions to EPA by August 31, 1987. Additionally, the EPA proposed to defer a decision on the necessity of a best available retrofit technology (BART) review for Canyonlands National Park, Utah, pending the development of additional monitoring information to determine the source(s) of impairment.

On November 24, 1987, EPA disapproved SIPs for states (including Utah) which failed to meet the requirements of 40 CFR 51.302 and 51.306. EPA also incorporated these Federal regulations into the SIPs of these states.

On December 11, 1987, Utah submitted a SIP revision pertaining to the general plan requirements and the LTS for visibility protection in Class I areas. Utah has deferred a BART review for Canyonlands National Park pending further information. Additionally, the December 11, 1987, submittal revises § 16.1 of Utah's SIP by providing for a review of the Visibility SIP every three years. (EPA had originally approved an annual review of the Visibility SIP (51 FR 19550, May 30, 1986, final rulemaking; 50 FR 46782, November 13, 1985, proposed rulemaking).) This submittal appears to meet the requirements of 40 CFR 51.302 and 51.306. Final approval of this submittal would replace the Federal visibility plans and regulations pertaining to the LTS and general provisions in Utah's SIP.

Earlier drafts of this submittal provided for visibility protection of integral vistas that are identified by the FLMs. The State has chosen not to list scenic views (integral vistas) or establish the mechanism to protect these views from impairment. Utah's submittal meets the requirements of 40 CFR 51.304.

Affected Areas

The following areas in Utah are Class I areas where visibility is an important value:

Arches National Park
Bryce Canyon National Park
Canyonlands National Park
Capitol Reef National Park
Zion National Park

General Plan Requirements

A. Requirements

The visibility regulations provide general plan requirements for the Visibility SIPs. The general plan requirements of 40 CFR 51.302(c) require that the SIPs include: (1) An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal; (2) emission limitations, or other control measures, representing BART for certain sources; (3) provisions to protect integral vistas; (4) provisions to address any existing impairment certified by the FLM; and (5) a long-term (10 to 15 year) strategy for making reasonable progress toward the national goal.

The Utah Visibility SIP reiterates these general plan requirements in §§ 16.2 ("Background") and 16.3 ("Visibility Protection") with the exception of (3) above, "provisions to protect integral vistas". Utah has chosen not to list integral vistas or establish the mechanism to protect integral vistas from impairment.

B. Control Strategies

The regulations establish the following process for developing control strategies to remedy existing impairment. First, the State or the FLM identifies the Class I areas where visibility impairment exists. The regulations require the State to address in the SIP any impairment which has been certified at least 6 months prior to SIP submittal. (See 40 CFR 51.302(c)(4).)

In identifying existing facilities which cause or contribute to the visibility impairment, the regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources. Although the FLMs may provide the State with a list of sources suspected of causing any existing impairment in the certification, the responsibility of identifying sources is the State's. (See 45 FR 80086, col. 3, and 40 CFR 51.302(c)(4)(i).)

The State is required to perform a BART analysis for any existing stationary facility which has been identified as causing impairment in a Class I area. The State determines BART on a case-by-case basis, taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement that can be anticipated to result from the use of the controls. The State must adopt emission limitations representing BART which must be installed as expeditiously as practical, but no later than five years from SIP approval. (See 40 CFR 51.302(c)(4).)

The State is not required to adopt emission limitations representing BART if, for example, retrofit controls do not exist or are not anticipated to result in improvements in visibility. (See 45 FR 80087, col. 1.) However, if a source has not been subject to BART because control technologies do not exist, and if the Administrator determines that new technologies are available which would more effectively control that pollutant, the State must reanalyze for BART at that time. (See 40 CFR 51.302(c)(4)(v).)

Under 40 CFR 51.303, sources may apply to the Administrator of EPA for exemptions from BART if they can demonstrate that their emissions do not cause "significant" visibility impairment. The concurrence of the State and the FLM must be obtained before an exemption is granted.

The regulations do not specify methods other than visual observation for characterizing visibility impairment. However, if a State is to adequately and timely address existing visibility impairment, a thorough characterization may be necessary. The EPA is aware that it, or the State, may find that the impairment cannot be attributed to specific sources and therefore cannot be addressed under the existing visibility regulations. (See 52 FR 7804, col. 1.)

A thorough characterization is important when a BART analysis is conducted, so that the anticipated improvements in visibility may be estimated. The State or EPA may find that the impairment is attributable to minor stationary sources or to emissions from prescription fires. In these cases, the need for a control strategy to remedy the impairment is assessed as part of the LTS rather than BART. (See 52 FR 7804, col. 1.)

The Utah Visibility SIP, § 16.6 ("Existing Source Visibility Impact and BART") contains provisions which address the development of these control strategies. (A significant amount of detail on the development of Federal control strategies is contained in 52 FR 7802 (March 12, 1987).)

C. Assessment of Visibility Impairment

The EPA reviewed the information provided by the Department of Interior (DOI) to determine if impairment (1) appeared to occur in Utah's Class I areas, and (2) if impairment was a type which may be traceable to specific sources.

The information provided by the FLMs indicated that one Class I area in Utah—Canyonlands National Park—is experiencing visibility impairment within the park boundaries which may be traceable to specific sources.

The EPA is aware that the FLMs may, in the future, provide additional information on this impairment which would allow EPA or a State to attribute it to a specific source. In such cases, the information would be reviewed under the procedures described above and addressed in the periodic review of the LTS discussed below.

Long-term Strategy

A. Requirements

The regulations require that the LTS be a 10 to 15 year plan for making reasonable progress toward the national goal. The LTS must cover any existing impairment that the FLM certified at least six months before plan submission. A LTS must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The LTS and SIP must provide for the review of the impact of new sources as required by 40 CFR 51.307. The State must consider at a minimum the following six factors in the LTS: (1) Emission reductions due to ongoing air pollution control programs; (2) additional emission limitations and schedules for compliance; (3) measures to mitigate the impacts of construction activities; (4) source retirement and replacement schedules; (5) smoke management (techniques for agricultural and forestry management purposes, including such plans as currently exist within the State for these purposes); and (6) enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the LTS.

The State must commit to periodic review of the SIP on a schedule not less frequent than every three years. A periodic report must be developed in consultation with the FLMs and must contain the following: (1) Progress achieved in remedying existing impairment; (2) the ability of the LTS to achieve reasonable progress toward the national goal; (3) any change in visibility conditions since the last report or since plan approval; (4) additional measures, including the need foir SIP revisions, that may be necessary to achieve progress toward the national goal; (5) the progress achieved in implementing BART and meeting other schedules laid out in the LTS; (6) the impact of any exemption granted.

B. Remedies

The existing visibility regulations are designed to address impairment which can be traced to specific sources and EPA is deferring action on such existing impairment. Therefore, the Federal LTS is limited to the prevention of future impairment. It establishes a mechanism

to address any additional impairment which may be certified in the future. Although EPA intends for these discussions to be the Federal remedy, each State must develop its own LTS when developing its Visibility SIP.

1. Ongoing Air Pollution Control Programs

The regulations require that each LTS provide for the review of the potential impact on visibility of new major stationary sources or major modifications in accordance with 40 CFR 51.307. The regulations further require that each SIP contain a discussion of the effect of on-going air pollution control programs on remedying existing and preventing future impairment of visibility.

The Utah Visibility SIP has met this requirement; EPA approved the Utah NSR program for visibility protection on May 30, 1986 (51 FR 19550).

2. Smoke Management Practices

The FLMs have not specifically identified smoke from prescribed fires as a cause of impairment in the Class I areas. Nonetheless, EPA believes that this could be a significant cause of impairment in certain Class I areas.

Utah commits to negotiate with the FLMs to include a review for visibility impacts on Class I areas due to smoke from prescribed burning. Utah's plan requires that the impacts of prescribed burning on visibility be reduced or minimized.

3. Future Certifications of Impairment

Under the revised Settlement Agreement, EPA must address existing deficiencies in Visibility SIPs. Thus, EPA has only addressed the certifications of impairment in Class I areas made by the FLMs prior to June 1, 1986. The EPA is aware, however, that information may become available which indicates the existence of additional visibility impairment within the Class I areas or which may allow EPA or the State to attribute impairment to a specific source which could not be addressed at this time. A discussion of how any future impairment will be addressed may be found in 40 CFR 51.302(c).

4. Existing Visibility Impairment

Since the EPA deferred action on the requirements to address existing visibility impairment, discussions related to source impact (such as additional emission limitations, source retirement and replacement, construction activities, and enforceability of emission limitations) are not required in the SIPs at this time. However, Utah has chosen to establish the mechanism for addressing existing visibility impairment, and implementing BART once an existing source(s) has been identified as causing visibility impairment in a Class I area.

The Utah Visibility SIP includes provisions which address Federal LTS requirements in § 16.8 ("Long Term Plan to Show Progress Toward Improved Visibility"). Additional information and detail concerning the Federal LTS requirements is contained in 52 FR 7802 (March 12, 1987).

Summary of Action

The December 11, 1987, submittal by the Governor of Utah includes an adequate visibility plan to meet the general plan requirements and LTS of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 45132. (One should reference March 12, 1987, 52 FR 7802, for additional information.) The State commits to a review of the Visibility SIP every three years, making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The submittal will replace the Federal plans and regulations of 40 CFR 51.302 and 51.306 in Utah's SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective (60 days from publication).

Final Action

EPA hereby approves the revisions in the Utah Visibility SIP for general plan and LTS requirements. With such approval EPA is removing the federal requirements in the Utah SIP, 40 CFR 52.2347.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (March 20, 1989). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Date: November 2, 1988.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart TT—Utah

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2320 is amended by adding paragraph (c)(21) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(21) A revision to the SIP was submitted by the Governor on December 11, 1987, for visibility general plan requirements and long-term strategies.

(i) Incorporation by reference.

(A) Letter dated December 2, 1988, from the Utah Bureau of Air Quality to the U.S. Environmental Protection Agency, Region VIII.

(B) A revised section 16, Visibility Protection, of the Utah SIP was adopted on November 12, 1987, except for the first three paragraphs of § 16.1, the fifth and sixth paragraph of § 16.4, and the second and third paragraphs of § 16.5.

§ 52.2347 [Removed]

3. Section 52.2347 is removed.

[FR Doc. 89–1064 Filed 1–13–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket 87–212; FCC 88–412]

Equipment Authorization Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the equipment authorization procedures to reduce application filing requirements, simplify equipment identification and labeling requirements and improve the efficiency of the equipment sampling procedures.

EFFECTIVE DATE: February 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Marrangoni, telephone (202) 653–8107.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in General Docket 87–212, adopted December 15, 1989, released January 5, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

Summary of Report and Order

1. In the *Notice of Proposed Rule Making (Notice)* in General Docket 87–212, adopted June 4, 1987, FCC 87–204, the Commission proposed to amend the equipment authorization provisions of Part 2 of its rules to discontinue the use of the manufacturer code as part of the FCC identification code, delete the requirement of file an application with the Commission when trade names are changed or added, delete the requirement to indicate the country of origin on the FCC label for products not produced in the United States, and permit a less restrictive format for the FCC equipment authorization label. In addition, modifications were proposed in the Commission's equipment sampling program and in the time period within which a grantee must report changes in name and/or address. Finally, new administrative Sections, as well as editorial amendments to §§ 2.910, 2.954 and 2.1043(b) and (d), were proposed.

2. While most of the commenters were supportive of the proposed amendments, several opposed discontinuing the use of the manufacturer code. These parties argued that the manufacturer code serves to encourage manufacturers to be more compliant with the Commission's technical standards and is necessary for the Commission's enforcement program. The Commission concluded that the manufacturer code is not necessary for compliance or enforcement proposes. Accordingly, it deleted the manufacturer code from the FCC identification code and eliminated the requirement for filing a new equipment authorization application whenever a grantee uses a new manufacturer to produce a device that has been authorized previously.

3. Some commenters also believed that the requirement for indicating the country of origin on the FCC label should be retained so that prospective buyers could easily identify products not produced in the United States. The Commission stated that while it understands these concerns, the U.S. Customs Service, which is the agency with primary responsibility for matters relating to identification of foreign products, has adequate regulations to address these concerns. The Commission found no communications policy need for separate country of origin labeling requirement and delete the existing rule in this regard. The Commission also deleted the requirement that grantees circumscribed the information on the FCC label with a line and permitted grantees to combine the FCC label with other labeling information so long as that label is affixed to the exterior of the device.

4. With regard to modification of the Commission's equipment sampling procedures, several commenters suggested that 60 days would be a more appropriate time period for submission of equipment in response to FCC requests for samples than the 30 day period proposed in the *Notice*. Several parties also proposed that the Commission accept written responses in lieu of the requested equipment samples in certain cases. The Commission adopted the 60 day time period for submission of samples suggested by the commenters. It found that the longer period is necessary to allow grantees to complete internal activities involved in submitting a sample and to allow grantees with inventory problems to make a unit of a device available for testing. However, the Commission decided not to accept written responses in lieu of the requested sample because to do so would negate the intent of this rule, i.e., to obtain the timely submission of an equipment sample for testing. However, the Commission stated that in extenuating circumstances it may specify a lesser time period for grantees to submit requested samples and upon a good cause showing, it may consider requests for extensions of time.

5. In the *Notice* the Commission requested comment on a proposed sampling procedure whereby a Commission representative would select a specific sample of a grantee's equipment for compliance testing. The commenters generally opposed this proposal arguing that it would subject the grantees to problems involving inventory availability. While the Commission was not convinced that the issues raised were insurmountable, it was persuaded not to adopt the proposed sampling procedure at this time. The Commission concluded that in the absence of evidence indicating the test samples submitted by the grantees are not representative of the devices being marketed, the burden that would be imposed by having a Commission representative select samples is not warranted. The Commission stated that it will continue to use its current procedure for obtaining samples.

6. The Commission also made several administrative changes to its rules for equipment authorization. The first was to add a new § 2.910 to the rules to indicate the correct mailing address for the submission of equipment and/or test samples to the Commission. The second administrative change was to modify § 2.934, which addresses changes in the name of the grantee, by requiring that changes in the grantee name and /or address be filed with the Commission no later than 30 days after the change occurs. The third change was to revise § 2.954 to clarify that identification used on equipment subject only to verification is not to be of a type and format that could be confused with the FCC Identifier used on certified, notified, type accepted, or type approved equipment. The final administrative rule change was to revise § 2.1043(b) and (d), which address permissive changes in certified equipment, to more accurately reflect the new FCC equipment labeling requirements adopted in this proceeding.

Regulatory Flexibility Final Analysis

7. Pursuant to 5 U.S.C. 601 et seq., the Commission's Final Regulatory Flexibility Analysis is:

I. Need and Purpose of This Action

The regulations adopted herein are intended to relieve applicants for equipment authorization from unnecessary application filing and

increase the grantee's flexibility when labeling equipment. The administrative and equipment sampling rules adopted herein are intended to increase the efficiency of our equipment authorization and sampling procedures.

II. Summary of Issues Raised by the Public Comments in Response to the Regulatory Flexibility Analysis

No comments were received that specifically addressed the Initial Regulatory Flexibility Analysis in this proceeding. Moreover, our action imposes no new reporting or record keeping requirements. There should be a savings to the grantee of approximately 26,400 hours by the elimination of the application filing requirements in this proceeding as well as $700,000 in filing fees.

III. Significant Alternatives

The Commission considered all the alternatives in this proceeding, and considered all timely filed comments directed to the various issues in the Notice. After carefully weighing all aspects of this proceeding, the Commission has adopted the most reasonable course under the mandate of the Communications Act of 1934, as amended.

Paperwork Reduction Act Statement

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

9. It is ordered that, pursuant to the authority contained in sections 4(i), 302 and 303(r) of the Communications Act of 1934, Part 2 of Chapter 1 of Title 47 of the Code of Federal Regulations *Is Amended* as set forth below. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 2

Equipment authorization.

47 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

10. The authority citation for Part 2 is revised to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

11. All authority citations contained in Subparts I, J, and K are removed.

12. A new § 2.910 is added to read as follows:

§ 2.910 Submittal of equipment authorization application or information to the Commission.

(a) Applications and Fees for equipment authorization shall be submitted to the FCC, 1919 M Street North West, Washington DC 20554–1300, unless otherwise directed.

(b) Any information or equipment samples requested by the commission pursuant to the provisions of Subpart J of this Part shall, unless otherwise directed, be submitted to the FCC, Autorization and Evaluation Division, 7434 Oakland Mills Road, Columbia, MD 21046.

13. A new § 2.924 is added to read as follows:

§ 2.924 Marketing of electrically identical equipment having multiple trade names and models or type numbers under the same FCC identifier.

The grantee of an equipment authorization may market devices having different model/type numbers, or trade names without additional authorization provided such devices are electrically identical and the equipment bears an FCC Identifier validated by a grant of equipment authorization.

14. In § 2.925, paragraphs (a) and (b)(1) are revised to read as follows:

§ 2.925 Identification of equipment.

(a) Each equipment covered in an application for equipment authorization shall bear a nameplate or label listing the following:

(1) FCC Identifier consisting of the two elements in the exact order specified in § 2.926. The FCC Identifier shall be preceded by the term "FCC ID" in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification.

Example: FCC ID XXX123. XXX—Grantee Code 123—Equipment Product Code

(2) Any other statements or labeling requirements imposed by the rules governing the operation of the specific class of equipment, except that such statement(s) of compliance may appear on a separate label at the option of the applicant/grantee.

(3) Equipment subject only to registration will be identified pursuant to Part 68 of this chapter.

(b) * * *

(1) Separate FCC Identifiers may be assigned to a device consisting of two or more sections assembled in a common enclosure, but constructed on separate sub-units or circuit boards with independent frequency controlling circuits. The FCC Identifier assigned to any transmitter section shall be preceded by the term "TX FCC ID", the FCC Identifier assigned to any receiver section shall be preceded by the term "RX FCC ID" and the identifier assigned to any remaining section(s) shall be preceded by the term "FCC ID".

* * * * *

15. In § 2.926, paragraphs (a), (b), (c) and (d) are revised as follows:

§ 2.926 FCC Identifier.

(a) A grant of equipment authorization issued by the Commission will list the validated FCC Identifier consisting of the grantee code assigned by the FCC pursuant to paragraph (b) of this section, and the equipment product code assigned by the grantee pursuant to paragraph (c) of this section. See § 2.925.

(b) The grantee code assigned pursuant to paragraph (c) of this section is assigned permanently to applicants/grantees and is valid only for the party specified as the applicant/grantee in the code assignment(s).

(c) A grantee code will have three characters consisting of Arabic numerals, capital letters, or combination thereof. A prospective grantee or his authorized representative may submit a written request to the Commission for assignment of a grantee code at any time. However, it is preferred that grantee codes be requested prior to filing applications for equipment authorization. If a grantee code is not requested in advance, one will be assigned at the time an application is received by the FCC Laboratory and the applicant will be notified to make any necessary label revisions in order to comply fully with application procedural rules.

(1) After assignment of a grantee code each grantee will continue to use the same grantee code for subsequent equipment authorization applications. In the event the grantee name is changed or ownership is transferred, the circumstances shall be reported to the Commission so that a new grantee code can be assigned, if appropriate. See §§ 2.934 and 2.935 for additional information.

(d) The equipment product code assigned by the grantee shall consist of a series of Arabic numerals, capital letters or a combination thereof, and may include the dash or hyphen (-). The total of Arabic numerals, capital letters and dashes or hyphens shall not exceed 14 and shall be one which has not been previously used in conjunction with:

(1) The same grantee code, or

(2) An application denied pursuant to § 2.919 of this chapter.

* * * * *

§ 2.929 [Removed]

16. In § 2.929 paragraph (b)(3) is removed.

17. Section 2.934 is revised to read as follows:

§ 2.934 Change in name and/or address of grantee.

Whenever there is a change in the name and/or address of the grantee of an equipment authorization, written notice of such change(s) shall be filed within 30 days after the grantee starts using the new name and/or address, in order for the Commission to update its records of grantee names, addresses and grantee codes. See § 2.910(b).

18. A new § 2.946 is added to read as follows:

§ 2.946 Penalty for failure to provide test samples and data.

(a) Any party holding a grant of equipment authorization issued by the Commission, or who markets equipment subject to the provisions of this chapter shall provide test sample(s) or data upon request by the Commission. Failure to comply with such request within 60 days may be cause for forfeiture, pursuant to § 1.80 of Part 1 of this chapter, or other administrative sanctions such as suspending action on any applications for equipment authorization submitted by such party while the matter is being resolved.

(b) In the case of equipment involving harmful interference or safety of life or property, the Commission may specify that test samples be submitted within less than 60 days, but not less than 14 days. Failure to comply within the specified time period will be subject to the sanctions specified in paragraph (a).

(c) The Commission may consider extensions of time upon submission of a showing of good cause.

19. Section 2.954 is revised to read as follows:

§ 2.954 Identification.

Devices subject only to verification shall be uniquely identified by the person responsible for marketing or importing the equipment within the United States. However, the identification shall not be of a format which could be confused with the FCC Identifier required on certificated, notified, type accepted or type approved equipment. The importer or manufacturer shall maintain adequate identification records to facilitate positive identification for each verified device.

§ 2.1035 [Removed]

20. Section 2.1035 is removed.

21. In § 2.1043, paragraphs (b) and (d) are revised to read as follows:

§ 2.1043 Changes in certified equipment.

* * * * *

(b) Two classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. Neither class of change shall result in a change in identification.

* * * * *

(d) A modification which results in a change in the identification with or without change in circuitry requires a new application for, and grant of certification. If the changes affect the characteristics required to be reported, a complete application shall be filed. If the characteristics required to be reported are not changed the abbreviated procedure of § 2.933 may be used.

22. Section 2.1300 is revised to read as follows:

§ 2.1300 Cross reference.

The general provisions of this part, §§ 2.909, 2.923, 2.929, 2.935, 2.936, and 2.946 shall apply to applications for and grants of registration for telephone terminal equipment pursuant to Part 68 of this Chapter.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 89–647 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–51; RM–6265]

Radio Broadcasting Services; Warrenton, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harold Hinsley, allots Channel 226A to Warrenton, Georgia, as the community's first local FM service. Channel 226A can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33–24–24 and West Longitude 82–39–42. With this action, this proceeding is terminated.

DATES: Effective February 21, 1989, the window period for filing applications will open on February 22, 1989, and close on March 24, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 88–51, adopted November 18, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Georgia is amended by adding the following entry, Warrenton, Channel 226A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–990 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–175; RM–6248]

Radio Broadcasting Services; Lawrenceburg, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 248A to Lawrenceburg, Tennessee, as that community's second FM service, as requested by Robert W. Wright. A site restriction of 5.4 kilometers (3.4 miles) southwest of the city is required, at coordinates 35–12–30 and 87–22–30. With this action, this proceeding is terminated.

DATES: Effective February 21, 1989; The window period for filing applications will open on February 22, 1989, and close on March 24, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–175, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 47—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 248A at Lawrenceburg.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–991 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 601, 604, and 605

[Docket No. 80225–8253]

Style Guide, Regional Fishery Management Councils, Other Applicable Law, Guidelines for Council Operations and Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to revise regulations and guidelines concerning the operation of Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action implements parts of Title I of Pub. L. 99–659, which amends the Magnuson Act; clarifies instructions of the Secretary of Commerce (Secretary) on other statutory and regulatory requirements affecting the Councils; and adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1986. This action includes the uniform standards for the operation of the Councils required by the Magnuson Act.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone 301–427–2334.

SUPPLEMENTARY INFORMATION:

Background

Section 302(f)(6) of the Magnuson Act requires each Council to determine its organization, and prescribe its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary. This action repromulgates the Secretary's uniform standards governing the operations of the Councils. It includes: (1) Implementation of parts of Title I of Pub. L. 99–659; (2) supplementary instruction on requirements affecting the Councils under other applicable law; (3) guidelines for the fishery management process; and (4) guidelines for (a) Council Statements of Organization, Practices, and Procedures, (b) Council organization, (c) employment practices, (d) financial management systems, and (e) recordkeeping. Included are some of the changes to the fishery management process approved by the Under Secretary for Oceans and Atmosphere, NOAA, that had been recommended by the two fishery management studies commissioned by NOAA in 1985 and 1986: The NOAA/Council Task Group Report, and the NOAA Fishery Management Study. These two studies, each of which generated wide public comment, were undertaken to assess the Magnuson Act fishery mangement system after ten years of operation, with a view to making administrative and legislative improvements.

Other 1986 efforts to examine the Magnuson Act system, including the Mackerel Investigative Committee, the Mid-Atlantic Council proposal, and the Center for Ocean Management Systems Conference on Rethinking Fishery Management, have figured in the development of these regulations and guidelines. Some of the ideas are derived from procedures successfully implemented by the Councils over the years. Selected material from the *Magnuson Act Operations Handbook* and from the *Operational Guidelines for the Fishery Monagement Process* has been updated and included.

Three new parts and one subpart have been added:

(1) "Part 600—Definitions" is designed ultimately to consolidate in one place the definitions, word usages, and abbreviations that apply to Chapter 6 of Title 50 of the CFR. For purposes of this revision, only those definitions broadly connected with Parts 601–605 are included; definitions and word usages uniquely associated with particular topics remain in their appropriate sections.

(2) "Part 601, Subpart D—Membership" addresses requirements affecting Council members individually, such as appointment, term, removal, conduct, compensation, financial disclosure, and so forth.

(3) "Part 604—Other Applicable Law" describes the requirements of other law that the Secretary has determined to be applicable to the fishery management process.

(4) "Part 605—Guidelines for Council Operations and Administration" provides guidance for the development of (a) fishery management plans, and (b) each Council's Statement of Organization, Practices, and Procedures (SOPP).

Parts 600 and 601 implement various statutory requirements, and provide the regulatory principles for the 605 guidelines. Part 604 describes to the public the other laws that the Secretary has determined apply to the fishery management process. The guidelines summarize Secretarial interpretations that will be applied under the statutory and regulatory principles. They are intended as an aid to decision-making—an indication or outline of future policy or conduct—as for example, to assist in the amendment and review of Council SOPPs.

Overview of Issues and Rationale

Revision of these guidelines has been underway since December 1986, and has included an eight-month-long series of Council and NMFS meetings, drafts, and reviews; three months of intensive joint drafting and further Council review; and final debate and recommendations at a Council Chairmen's meeting in July 1988. This process resolved many of the issues before publication as a proposed rule in the **Federal Register**. The public comment period thus allowed the Councils to focus in a more formal way on the need to clarify some remaining administrative questions. However, two issue areas continued to provoke serious comment: the Council member appointment process, which generated comment from several Governors and members of Congress, and the need to distinguish the effect of regulations and guidelines. Many of the suggested changes were primarily editorial in nature. In general, NOAA's response was to accept comments except where they (1) contradicted or conflicted with law, Executive Order, or Administration policy; or (2) caused inconsistencies in style, word usage, or editorial integrity. Many of the changes are refinements and clarifications, and as such are not necessarily addressed individually in the body of the comments and response section.

Comments and Response

Part 600—Style Guide

Section 660.1 Definitions

1. *Comment:* One commenter requested a definition of "confidential" as it is applied to security clearances.

Response: NOAA added the security definition, and, for further clarification, distinguished the security definition from the data collection definition as it is applied under the Magnuson Act.

2. *Comment:* Several Councils expressed concern individually and at the Council Chairmen's meeting about the perceived regulatory effect of referencing "guidelines" in regulations, and of the descriptions of other applicable law in Part 604.

Response: NOAA added a definition of "guidelines" with preamble explanations of how it is applied in the context of Parts 600, 601, 604, and 605. (See "Background" section above, and "comment/response" at Parts 604 and 605.)

601 Subpart C—Uniform Standards for Organization, Practices, and Procedures

Section 601.25 Support Services

3. *Comment:* Councils have indicated that the attendance of NOAA employees at some types of Council meetings is often critical, and that under current budget constraints, has been limited by the prohibition against Council reimbursement of NOAA employee travel.

Response: The language suggested at the Council Chairmen's meeting was adopted in § 601.25(d)(1), which permits the Assistant Administrator for Fisheries to approve, on a case-by-case basis, Council reimbursement for NOAA employees' expenses to participate in Council activities.

Section 601.27 Protection of Confidentiality of Statistics

Section 601.27 specifies that Council procedures must be consistent with procedures of the Secretary and the laws and regulations of a State submitting them, and expresses NOAA policy with regard to Council member and staff access to confidential statistics, pursuant to Pub. L. 99–659. These regulations supplement 50 CFR Part 603, which is being revised to regionalize the access system. Section 605.21 specifies that the Council SOPP should include these procedures.

4. *Comment:* Councils suggested that it was unnecessary to repeat language in the Magnuson Act concerning confidentiality in the regulations.

Response: In general, NOAA repeats provisions of the Magnuson Act in all regulations or guidelines when the context requires it or for ease of reference. No change was made.

5. *Comment:* One commenter requested deletion of the phrase requiring "documented need for unaggregated data" prior to granting Council staff access.

Response: NOAA modified the language in § 605.27(b) as follows: "Council staff having a need for such [confidential] information is granted access provided that the Council has established procedures to ensure its confidentiality as required by the Magnuson Act."

601 Subpart D—Membership

Section 601.33 Appointments

Section 601.33(b) defines "knowledgeable and experienced" to clarify the basis on which Governors nominate and the Secretary appoints. This section also includes the Pub. L. 99–659 requirement that Governors consult commercial and recreational fishing representatives in the nomination process, and that the Secretary ensure a fair apportionment of membership. In addition, NOAA is making a technical amendment, pursuant to the Pub. L. 99–659 requirement and recommended by the Fishery Management Study, to provide greater flexibility for the Secretary in choosing among names provided by the Governors. An oath of office, also recommended by the Fishery Management Study, is included.

6. *Comment:* Councils objected to stipulating the number of years of experience required to qualify for Council membership as being restrictive and arbitrary.

Response: Paragraphs 601.33 (b)(1)–(7) were accordingly modified to delete any specific number of years experience.

7. *Comment:* Councils and other commenters opposed eliminating the "obligatory" and "at-large" designations for Council membership on the basis that the current system had worked well and that eliminating the categories would create inequities in State representation or upset cooperative relationships. Council Chairmen proposed language changes and expressed interest in an amendment to the Magnuson Act stipulating that a statutory obligatory seat for each State be filled by appointment from a list of individuals submitted by that State.

Response: Eliminating the designations in the proposed rule appeared to jeopardize the State's role in the selection of its two voting members. In order to clarify NOAA's intent, under the final rule the designations are being retained and Council suggested language adopted to indicate (a) that each member State has one "obligatory" seat, (b) that when the term of the seat expires, the Secretary may fill it only from nominees for Council membership submitted by the Governor of that State, and (c) each State, pursuant to the Magnuson Act requirement, will have at least two voting members—the principal State official with marine fishery management responsibility and expertise designated by the Governor, and the individual filling the State's obligatory seat, as selected by the Secretary from the Governor's nominees for Council membership, or persons who are knowledgeable and experienced with regard to the conservation and management of the recreational or commercial harvest of the fishery resources of that State.

In order to implement Pub. L. 99–659, which requires the Secretary to "ensure a fair apportionment, on a rotating or other basis, of the active participants in the fisheries under Council jurisdiction", the final rule allows the Secretary, when filling a State's obligatory seat, to select from any of the nominees for Council membership (i.e., either obligatory or at-large) submitted by the Governor of that State. This does not change the Governor's role in nominating qualified individuals for the obligatory seat but provides the Secretary more opportunity to implement his statutory responsibility to balance the recreational, commercial, and processing interests on each Council.

Section 601.35 Rules of Conduct

8. *Comment:* Councils questioned the application of section 601.35(b)(4) to Council staff members other than the Executive Director.

Response: This section is accurate as written. In 1978, the NOAA Office of General Counsel determined that Council staff members were covered by the Federal conflict of interest laws. The Department of Justice and the Office of Government Ethics of the Office of

Personnel Management concurred in that opinion. Pub. L. 99–659 added the provision that exempts the Executive Director from the Federal conflict-of-interest law found at 18 U.S.C. 208 when he or she is in compliance with the financial disclosure regulations found in Part 601. Sections 601.35 (a) and (b) were modified to clarify this point. Section 601.35(b)(8)(i) was also modified to clarify that subsection (b)(8)(i) applies to matters of primarily individual concern, such as a contract, in which a member has a financial interest, as distinguished from subsection (b)(8)(ii) which applies to general public policy matters, such as a fishery management plan, in which a member has a financial interest. A member can participate in the latter if the interest is reported, but not the former.

Section 601.37 Financial Disclosure

The financial disclosure requirements of Pub. L. 99–659 are set forth in § 601.37 and, in a separate action, were published on October 6, 1988, as a final rule at 53 FR 39303 in order to permit implementation of section 302(k) of the Magnuson Act as soon as possible. This action republishes section 601.37 as a convenience to the reader, and, in addition, makes a technical correction to conform the regulation with section 302(k) of the Magnuson Act. Section 601.37 is reworded to read: (a) "The Magnuson Act requires the disclosure by Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors of any financial interest . . .". As clarified by the use of the more precise phrase "voting members appointed by the Secretary", the regulations reflect the statute's language requiring nominees and voting members appointed to the Council by the Secretary, as well as the Executive Director of a Council, to disclose certain financial interests. Thus, the Regional Director and the principal State official designated by the Governor of a constituent State are not subject to the disclosure requirements of section 302(k). This technical change resolves ambiguities accompanying use of the broader term "voting members", which could be interpreted to include voting members of the Council not appointed by the Secretary.

Section 601.38 Security Investigations and Clearances

Section 601.38 provides expanded and updated instruction regarding the security clearance process. Paragraphs (g), (h), and (i) of this section require the submission of any lawful non-disclosure agreement, required by the National Security Council or other lawful Directive, that may be developed in the future.

Section 601.39 Council Member Compensation

10. *Comment:* Councils wanted to be permitted alternative methods of payment which allow deductions. As drafted, the regulations stipulate payment on a contract basis without deductions.

Response: Section 601.39(b) "grandfathers" current practices through a specified period, but otherwise retains the language. For reasons of equity, NOAA believes that the system of payment should be consistent for all Councils. Alternative methods of payment require Federal payment of benefits that do not otherwise have to be paid. Thus, consistency will result in Federal cost savings.

11. *Comment:* Section 601.39(c) defines a compensable day for non-government Council members. One commenter objected, stating the belief that each Council should have the latitude to determine what activities will be compensated.

Response: No change was made. NOAA believes it important to have a clear and uniform understanding of compensable activities in the interests of fairness and equity among Councils and appropriate financial accountability. There is nothing to preclude Councils from including in their amended SOPPs any further restrictions they feel appropriate.

12. *Comment:* Councils believe the requirement in § 601.39(d) for a report of authorized Council member compensation to be unnecessary and burdensome.

Response: No change was made. NOAA needs this information to respond to requests from Congress and the public, and for making budget and policy decisions.

Part 604—Other Applicable Law

Part 604 groups "other applicable law", for ease of description, into three general categories. Section 604.3 addresses the statutes dealing with administrative operations and employment practices, which include the Federal Tort Claims Act, the Fair Labor Standards Act, conflict of interest statutes, Workmen's Compensation, and Unemployment Compensation.

Section 604.4 addresses laws dealing with the fishery management decision process, which require consideration of environmental, paperwork, and/or economic and social impacts, or establish rules of procedure for public and State participation or access. They include the Administrative Procedure Act, the National Environmental Policy Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, E.O. 12291, E.O. 12612, and E.O. 12630.

Section 604.5 addresses laws dealing with the uses of oceans and coastline, explaining how the following statutes affect the fishery management process: the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Marine Protection, Research, and Sanctuaries Act.

13. *Comment:* Several Councils expressed concern that, because Part 604 is not guidelines, the descriptive summaries would have regulatory effect in and of themselves. Similarly, others worried that mention of the *Operational Guidelines* in this "regulatory" section constituted adoption by reference.

Response: NOAA added language, at the Councils' suggestion, which clarifies that Part 604 comprises abbreviated summaries of other law applicable to the FMP process. NOAA did not identify them as guidelines; it needs to be clear that these are the laws that the Secretary has determined to be applicable to the fishery management process, and which must be complied with according to the regulations or agency directives specific to each law. Referring to Part 604 as guidelines would create an ambiguity or be misleading since it is a public listing of what the Secretary has determined to be the "other applicable law" with which the FMPs must be found consistent under section 304(a)(1)(B) of the Magnuson Act. Further, the status of the *Operational Guidelines* remains unchanged. The **Federal Register** requires specific "adopt by reference" language when the intent is to adopt the contents of another document as part of a regulation; that language is not included here.

Part 605—Guidelines for Council Operations/Administration Subpart B—Operations

Section 605.1 Purpose and Scope

14. *Comment:* Several of the Councils wanted to clarify further that this section is actually guidelines by adding "which do not have the effect of law" to this section.

Response: No change was made. NOAA has attempted throughout this document to make it clear which parts have regulatory effect and which do not, and the relation of each to the other. The definition of "guidelines" in Part 600 is the key: guidelines are intended to provide an indication of future policy or conduct, as an aid to decisionmaking.

The Part 605 guidelines summarize Secretarial interpretations that will be applied under the appropriate statutory and regulatory authorities.

Section 601.13 Planning

15. *Comment:* Section 605.13(b) describes the data collection program authorized under the Magnuson Act. Councils want to limit the number of days the Secretary may take to inform the Councils of the reason(s) for disapproving a data collection plan to 60 days.

Response: NOAA agrees and the language has been modified.

Section 605.15 Establishment of Management Measures

16. *Comment:* Section 605.15(b)(3) sets forth guidance to assist in the development of workable management measures. Councils stated a need to require, upon request, written comments from NOAA and the Coast Guard within 60 days pertaining to the feasibility and cost of enforcement and vessel safety.

Response: NOAA and the Coast Guard both agree to respond to Council requests for this information within 60 days, and the language has been modified accordingly.

605 Subpart C—Administration

Section 605.23(d) highlights the functions of the advisory groups and specifically defines advisory group involvement in the fishery management planning and development process, as per Pub. L. 99–659. This section, in combination with Part 605, Subpart B, suggests an operational structure that responds to recommendations from both commissioned studies and describes a process whereby issues can be identified and resolved and available expertise called upon on a continuing basis, including relevant NOAA offices, State and academic scientists, advisory groups, planning teams, and others as appropriate.

Section 605.24 Council Meetings and Hearings

17. *Comment:* One commenter objected to the requirement in § 605.24(a)(2) that timely public notice of each regular or emergency meeting be published in local newspapers, on the grounds that other notification methods are more effective and cheaper.

Response: No change was made. The requirement is statutory.

18. *Comment:* Section 605.24(a)(3)(i) calls for a Council vote on applications for foreign fishing. Councils could, and some do, by majority vote, delegate to the Executive Director or Chairman the authority to submit the Council's comments on categories of foreign fishing applications to the Secretary.

Response: NOAA concurs with the Council practice and deleted the requirement for a vote on this matter.

19. *Comment:* Some Councils questioned the prohibition of proxy voting as it might apply to Council member designees.

Response: NOAA changed the language in § 605.24(a)(3) to clarify that voting by proxy is permitted by official designees as specified in § 605.23(b).

20. *Comment:* Councils object, on grounds of feasibility, to the requirement that a minority report be submitted at the same time as that of the majority when submitting any issue to the Secretary.

Response: NOAA believes it reasonable to change "must" to "should" in § 605.24(a)(3)(iv), with the understanding that Councils amend their SOPPs to include a time limit, as indicated in § 605.21.

Section 605.25 Employment Practices

Section 605.25 establishes guideline standards to be implemented in each Council's SOPP, for staffing, recruitment, details, personnel actions, salary and wage administration, benefits, and travel reimbursement.

21. *Comment:* Some Councils wanted to limit required budget justifications for positions to new positions only.

Response: No change was made. NOAA believes that Councils should be subject to the same budget justification procedures as all Federal entities receiving Federal funds.

22. *Comment:* Some Councils questioned the prohibition against contracting with experts and consultants for the provision of services on a continuing basis; others continue to be opposed to the requirement that Councils notify the NOAA Office of General Counsel before seeking outside legal advice.

Response: The NOAA Office of General Counsel determined in 1978 that Councils could contract for the provision of outside legal services, subject to the Secretary's control over funding. This is implemented through the requirement that Councils notify the NOAA Office of General Counsel before seeking outside legal advice, and that contracts not be entered into the for provision of legal services on a continuing basis. Through an editing oversight, this prohibition was extended to all outside experts and consultants. The language has been clarified to permit contracting for all outside experts and consultants, other than for the provision of legal services, on a continuing basis.

23. *Comment:* Several Councils expressed concern regarding the provision prohibiting lump sum payments for unused sick leave upon retirement, since they do not have a defined benefit pension plan based upon years of employment and average salary which would allow unused sick leave to be credited upon retirement as additional time worked.

Response: The language was modified in § 605.25(g)(2) to accommodate this concern through permitting a deposit to be made to an employee's retirement fund for unused sick leave up to a maximum number of days and contribution per day established by the Council as set forth in its SOPP.

24. *Comment:* Councils were concerned that, with the rising cost of health benefits, the restriction of employee benefits to 20 percent of gross salary would work a hardship.

Response: No change was made. If it becomes necessary to exceed the 20-percent limit, Council submission of a higher amount would be considered on an individual basis at the time of NOAA review and approval of a Council's budget.

25. *Comment:* Councils expressed strong feelings about inequities of travel reimbursement; they believe that the same per diem rates and other reimbursement allowances should apply to Council, SSC, and AP members as Council staff, members of plan teams, and NMFS employees.

Response: The distinction in travel reimbursement that the Councils object to was set up in the statute. Sections 302 (d) and (f)(7) of the Magnuson Act provide that the voting members of the Councils, certain non-voting members, and members of advisory groups established under section 302(g) shall be reimbursed for their actual expenses. Others traveling on Council business must use the government-wide system established pursuant to 5 U.S.C. 5702 and 5703. The reason for this distinction is not clear, but the interpretation is supported in the legislative history. It is clear that during its deliberations, Congress differentiated between "actual expenses" and those expenses allowable under 5 U.S.C. 5702 and 5703 and consciously selected those Council officials who would be entitled to the former and those who would be entitled to the latter.

26. *Comment:* Some Councils objected to the provision restricting payment of non-NOAA team members to travel expenses without other compensation.

Response: No change was made. Compensation is limited to appointed Council members under the Magnuson

Act. This does not prohibit Councils from contracting for special services.

Section 605.26 Financial Management

Section 605.26 sets out the cooperative agreement requirements and details relevant portions of Office of Management and Budget (OMB) Circular A-110 governing financial management systems, procurement, property and space management, and financial reporting. It establishes audit schedules and criteria for programmatic funding.

27. *Comment:* Councils objected to listing all contemplated equipment purchases over $500 in their budget submission.

Response: This provision was deleted. Government-wide regulations covering procurement procedures and dollar amounts for itemizing equipment purchases are in the process of revision.

28. *Comment:* One Council objected to the requirement for a monthly statement of income/expenses.

Response: No change was made. The provisions of § 605.26(a)(1)(ii) describing a minimum Council accounting system represent a liberalization of previous regulations.

Section 605.27 Recordkeeping

Section 605.27 addresses the requirements for FMP administrative records, Privacy Act records, and Freedom of Information Act requests.

In summary, the proposed regulations/guidelines have been directed to providing uniform standards and guidelines which clarify the system and strengthen accountability at both the administrative and programmatic levels.

Classification

The Under Secretary of Commerce for Oceans and Atmosphere has determined that this rule is not a "major" rule under E.O. 12291 requiring a regulatory impact analysis. It prescribes agency policies and procedures and will have no economic impact on the public until specific management decisions contained within specific FMPs are made; until a given FMP is developed there is no basis for evaluating the consequences of these management decisions. Economic impact on small entities is addressed at a later date through regulatory flexibility analyses for individual FMPs. For the same reasons, the General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10(5)(c)(3)(i). Section 601.37, published previously at 53 FR 39303, sets forth a collection-of-information requirement subject to the Paperwork Reduction Act and approved by the Office of Management and Budget under Control No. 0648-0192.

Public reporting burden for this collection is estimated to be one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Richard Roberts, NOAA Clearance Officer, 6010 Executive Blvd., Rockville, MD 20852 and to the Office of Management and Budget, Information and Regulatory Affairs Paperwork Reduction Project 0648-0192, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and is issued in compliance with E.O. 12291.

List of Subjects

50 CFR Part 600

Fisheries.

50 CFR Part 601

Advisory groups, Fisheries.

50 CFR Part 604

Fisheries, Law.

50 CFR Part 605

Administrative practice and procedure, Fisheries.

Dated: January 3, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 600, 604, and 605 are added, and Part 601 is revised as follows:

PART 600—STYLE GUIDE

Sec.

600.1 Definitions.
600.2 Word Usage.
600.3 Abbreviations.

Authority: 16 U.S.C. 1801 *et seq.*

§ 600.1 Definitions.

The terms used in these regulations/guidelines (50 CFR Parts 600, 601, 604, and 605) have the meanings that are prescribed in section 3 of the Magnuson Act, 16 U.S.C. 1802. In addition, the following definitions apply:

Advisory group—means a Scientific and Statistical Committee (SSC) or Advisory Panel (AP) established by a Council under the Magnuson Act.

Allocation—means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Assistant Administrator—means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration or a designee.

Center—means one of the National Marine Fisheries Service (NMFS) major research centers that supervise the operations of approximately 25 fishery science laboratories throughout the United States.

CONFIDENTIAL as a national security classification—means information officially classified as *CONFIDENTIAL* because un-authorized disclosure reasonably could be expected to cause damage to the national security.

Confidential statistics—means:

(a) Any information/data/statistics prohibited from disclosure by statute. As used in the Magnuson Act, it describes information/data/statistics submitted as a requirement of a PMP or FMP, the disclosure of which would directly or indirectly identify the submitter or the submitter's business; or

(b) Any information/data/statistics identifiable with any submitter collected under a pledge of confidentiality. Such a pledge is used to obtain voluntary cooperation of submitters and prevent inadvertent disclosure of business confidential, trade secret, or proprietary information.

Council—means one of eight Regional Fishery Management Councils established under the Magnuson Act: New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, Western Pacific.

Exclusive economic zone (EEZ)—means the zone established by Presidential Proclamation 5030, 3 CFR Part 22 (1983 Comp.), and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management—means the system used to conserve and allocate the fishery resource—including research and data collection; specification of objections and management measures; establishment, enforcement, and evaluation of regulations.

Fishery management plan (FMP)—means a document that contains a systematic description of a given fishery and the objectives and management measures for the fishery. Required and discretionary contents appear in section 303 of the Magnuson Act. Guidelines for contents of an FMP appear in the NMFS *Operational Guidelines: Fishery Management Plan Process*, Phase II, 1988.

Fishery management unit (FMU)—means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

Grants Officer—means the NOAA official who signs, on behalf of the government, the cooperative agreement providing funds to the Council.

Guidelines—means an indication or outline of future policy or conduct.

Highly migratory species—means the species of tuna which in the course of their life cycle spawn and migrate over great distances of the ocean, including, but not limited to:

Albacore, *Thunnus alalunga*;
Bigeye tuna, *Thunnus obesus*;
Bluefin tuna, *Thunnus thynnus;*
Southern bluefin tuna, *Thunnus maccoyii*;
Yellowfin tuna, *Thunnus albacares;* and
Skipjack tuna, *Euthynnus pelamis.*

Industry—means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

Information, data, and statistics are used interchangeably. (See definition of "confidential statistics".)

Magnuson Act—means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)

Management measure(s)—means one or more technique(s) through which the objectives for a given fishery are achieved; a management measure embodied in a regulation has the force of law.

Plan Team—means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Region—mean one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Director (RD)—means the director of a NMFS Regional Office or a designee. Regional Directors serve on the various Councils, as specified by § 605.33. RDs may arrange for the administrative services offered by the DOC Regional Administrative Support Centers.

Secretary—means the Secretary of Commerce or a designee.

Stock assessment—means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to "assess and specify the present and probable future condition of a fishery," (as is required by the Magnuson Act), and are summarized in the Stock Assessment and Fishery Evaluation (SAFE) or similar document.

Stock Assessment and Fishery Evaluation (SAFE)—means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in a fishery management unit, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Under Secretary—means the Under Secretary of Commerce for Oceans and Atmosphere, who is Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

§ 600.2 Word usage.

(a) *Must* is used, instead of "shall", to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson Act, the logical extension thereof, or of other applicable law.

(b) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(c) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(d) *May* is used in a permissive sense.

(e) *May not* is proscriptive; it has the same force as *must not.*

(f) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(g) *Could* is used when giving examples, in a hypothetical, permissive sense.

(h) *Can* is used to mean "is able to" as distinguished from "may."

§ 600.3 Abbreviations.

(a) *Fishery management terms.*

ABC—acceptable biological catch
DAH—estimated domestic annual harvest
DAP—estimated domestic annual processing.
EEZ—exclusive economic zone
FMP—fishery management plan
FMU—fishery management unit
JVP—joint venture processing
MSY—maximum sustainable yield
OY—optimum yield
PMP—preliminary fishery management plan
TAC—total allowable catch
TALFF—total allowable level of foreign fishing

(b) *Legislation.*

APA—Administrative Procedure Act
CZMA Castal Zone Management Act
ESA—Endangered Species Act
FOIA—Freedom of Information Act
MFCMA—Magnuson Fishery Conservation and Management Act
MMPA—Marine Mammal Protection Act
MPRSA—Marine Protection, Research, and Sanctuaries Act
NEPA—National Environmental Policy Act
PA—Privacy Act
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act

(c) *Federal agencies.*

CEQ—Council on Environmental Quality
DOC—Department of Commerce
DOI—Department of the Interior
DOS—Department of State
EPA—Environmental Protection Agency
FWS—Fish and Wildlife Agency
GSA—General Services Administration
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
OMB—Office of Management and Budget
SBA—Small Business Administration
USCG—United States Coast Guard

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

Subpart A—General

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Subpart B—Boundaries

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601.22 Council statement of organization, practices, and procedures.
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Subpart D—Membership

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601.39 Council member compensation.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 601.1 Purpose and scope.

(a) This part governs the jurisdiction, organization, practices, and procedures of the eight Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), 16 U.S.C. 1801 *et seq.* The Councils are institutions created by Federal law, whose actions must conform to the uniform standards established by the Secretary of Commerce in this part.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B—Boundaries

§ 601.11 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Councils.* The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41°16'16.249" N. latitude and 71°54'28.477" W. longitude and proceeds south 37° 22'32.75" E. to the point of intersection with the outward boundary of the exclusive economic zone (EEZ) as specified in the Magnuson Act.

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina, and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(c) *South Atlantic and Gulf of Mexico Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson Act, and 83°00' W. longitude, proceeds northward along that meridian to 24°35' N. latitude, (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquessas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquessas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

§ 601.12 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by a majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the "administrative lead." The "administrative lead" Council is responsible for the preparation of the FMP or any amendments and other required documents for submission to the Secretary.

(3) None of the Councils involved in joint preparation may withdraw without Secretarial approval. If Councils cannot agree on approach or management measures within a reasonable period of time, the Secretary may designate a single Council to prepare the FMP or may issue the FMP under Secretarial authority.

Subpart C—Uniform Standards for Organization, Practices, and Procedures

§ 601.21 Purpose.

Section 302(f)(6) of the Magnuson Act, 16 U.S.C. 1852(f)(6), requires each Council to determine its own organization, practices, and procedures for carrying out its functions in accordance with such uniform standards as are prescribed by the Secretary. This subpart provides these uniform standards.

§ 601.22 Council Statement of organization, practices, and procedures.

(a) Councils are required to publish and make available to the public a Statement of Organization, Practices, and Procedures (SOPP) in accordance with such uniform standards as are prescribed by the Secretary. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

(b) Accordingly, within 180 days of the effective date of these regulations, Councils must prepare and submit for Secretarial review and approval amendments to their current SOPPs which are consistent with the guidelines in Part 605, statutory requirements of the Magnuson Act, and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a Notice of Availability will be published in the **Federal Register**, including an address where the public may write to request copies.

(c) Councils may deviate, where lawful, from the guidelines with appropriate supporting rationale, and Secretarial approval of each amendment to a SOPP would constitute approval of any such deviations for that particular Council.

§ 601.23 Employment practices.

Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations. Council staffing practices are set forth in each Council's Statement of Operating Practices and Procedures. (See Part 605 for guidelines concerning Council personnel matters and standards.)

§ 601.24 Budgeting, funding, and accounting.

Each Council's administrative operations are governed by the requirements of OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations), and A-122 (Cost Principles for Nonprofit Organizations), and the Council's SOPP.

§ 601.25 Support services.

Section 302(f)(3) of the Magnuson Act directs the Secretary to provide the Councils with administrative and technical support services necessary for their effective functioning.

(a) Section 302(f)(4) of the Magnuson Act directs the Administrator of the General Services Administration to furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any agency or instrumentality of the United States.

(b) Section 302(f)(2) of the Magnuson Act authorizes all Federal agencies to detail personnel on a reimbursable basis to the Councils after consulting with the Assistant Administrator.

(c) NOAA regional offices are assigned to arrange for services and support to each Council as follows:

Council	Servicing field unit
New England	Northeast Region, NMFS
Mid-Atlantic	Northeast Region, NMFS
South Atlantic	Southeast Region, NMFS
Caribbean	Southeast Region, NMFS
Gulf of Mexico	Southeast Region, NMFS
Pacific	Northwest Region, NMFS
North Pacific	Alaska Region, NMFS
Western Pacific	Southwest Region, NMFS

(d) Transfer of funds between NMFS and Councils. Once funds are provided to the Councils, they cannot be transferred from a Council to a NMFS Center or Region, or any other Federal agency. Councils can request that NOAA transfer funds identified for Council programmatic activities to NMFS' Centers or Regional Offices.

(1) Councils may not reimburse, or otherwise pay for, NOAA employees' travel, per diem, or other expenses to participate in Council activities unless such reimbursement or payment is approved by the Assistant Administrator, upon a Council's request, on a case-by-case basis.

(2) Regional Offices or Centers may not transfer funds to the Council, or in any way purchase products, services, or supplies directly from the Councils. Any transfer of funds or purchases of any type must be made through NOAA, with the approval of the Assistant Administrator, to secure the services or goods from the Councils.

§ 601.26 Other applicable law.

Under section 303(a)(1)(C) of the Magnuson Act, an FMP must be "consistent with the national standards, the other provisions of this Act, and any other applicable law." Part 604 sets forth the Secretary's determination and announcement to the public of other law that is considered applicable to the fishery management process.

§ 601.27 Protection of confidentiality of statistics.

(a) Each Council must establish appropriate procedures applicable to it, its members, and employees, and to its committees and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council member, employee, or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary, and, in the case of statistics submitted to the Council by a State, the confidentiality laws and regulations of that State.

(b) NOAA does not release or allow access to confidential information in its possession to Council members and members of Council advisory groups. Council staff having a need for such information is granted access, provided that the Council has established procedures, as required by the Magnuson Act, to ensure its confidentiality.

Subpart D—Membership

§ 601.31 Purpose.

This subpart sets forth obligations under law and Secretarial policy that affect Council members individually. It provides information for the public regarding the nomination process, qualification for Council membership, compensation, and conduct while in office.

§ 601.32 Terms of Council members.

Voting members (other than principal State officials, the RD, or their designees) are appointed for a term of three years and may be reappointed. An individual appointed to fill a vacancy occurring prior to the expiration of any term of office will be appointed for the remainder of that term. The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than the normal three years if necessary to provide for balanced expiration of terms of office.

§ 601.33 Appointments.

The following procedures govern the nomination and appointment of Council members.

(a) Each year, the term of approximately one-third of the appointed members of each Council expire. New members will be appointed or existing members reappointed by the Secretary to vacancies from lists of nominees submitted by March 15 of each year by the Governors of each constituent State. When a vacancy arises prior to the expiration of a member's term, the Secretary will fill the vacancy for the remainder of the term from nominees submitted by the appropriate Governor(s).

(b) Governors must submit the names of three nominees for each applicable vacancy.

(c) The Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests, and each nominee is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) Harvesting, processing, or marketing of fish or fish products;

(2) Promoting fishing for pleasure, amusement, relaxation or consumption. This may include operating a recreational fishing business;

(3) As former or current officer or leader in a State, regional, or national organization made up of representatives of any of the interests described in § 601.33(b) (1) and (2);

(4) Managing and conserving natural resources, including at least one year interacting with industry, government bodies, academic institutions, and public agencies. This would include experience serving as a member of a Council, Advisory Panel, or Scientific and Statistical Committee.

(5) Representing consumers of fish or fish products through participation in local, State, or national organizations, or performing other activities specifically related to the education and/or protection of the consumer of marine resources.

(6) Teaching, journalism, writing, or researching matters related to fisheries, fishery management and fishery resource conservation. Such experience includes both natural and social sciences.

(7) Consulting or legal experience in areas directly related to fisheries

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resource management, conservation, or use, including interacting with officials of local, State, or Federal agencies.

(d) To assist in identifying necessary qualifications, each nominee should furnish to the appropriate Governor's office a current resume or equivalent, describing career history—with particular attention to experience related to the above criteria. Nominees may provide such information in any format they wish. Career and educational history information sent to the Governors should also be sent to the Office of Fisheries Conservation and Management.

(e) If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor may then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(f) There are two categories of seats to which voting members are appointed: "obligatory" and "at-large".

(1) Each constituent State has one obligatory seat. When the term of a State's obligatory member is expiring, or that seat becomes vacant before the expiration of its term, the Governor of that State must submit the names of at least three qualified individuals to fill that seat. In order to fill a State's obligatory seat, the Secretary may select from any of the nominees for such obligatory seat and for any at-large seat submitted by the Governor of that State.

(2) When the term of an at-large member is expiring or that seat becomes vacant before the expiration of its term, the Governor of all constituent States must submit the names of at least three qualified individuals to fill that seat. In order to fill an at-large seat, the Secretary may select from the nominees for that seat submitted by the Governors of the constituent States. When the terms of both an obligatory member and an at-large member expires the same year, the Governor of the State holding the expiring obligatory seat may indicate that remaining nominees for an obligatory seat may be considered for an at-large seat.

(g) If a Governor fails to submit a list of qualified nominees within the time allotted, then new at-large members will be appointed from the list of nominees submitted by Governors of other constituent States and the State's obligatory seat will remain vacant until three qualified nominations are received and acted upon by the Secretary.

(h) The Secretary must ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members.

§ 601.34 Oath of office.

As trustees of the Nation's fishery resources, all voting members must take an oath specified by the Secretary as follows: I, _____, as a duly appointed member of a Regional Fishery Management Council established under the Magnuson Fishery Conservation and Management Act, hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the Nation. I recognize my responsibility to serve as a knowledgeable and experienced trustee of the Nation's marine fisheries resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources. I commit myself to uphold the provisions, standards, and requirements of the Magnuson Fishery Conservation and Management Act and other applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is freely given and without mental reservation or purpose of evasion.

§ 601.35 Rules of conduct.

(a) Council members, as Federal officeholders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. In particular, the following provisions apply:

(1) 18 U.S.C. 201—prohibits offer or acceptance of anything of value to influence any official act;

(2) 18 U.S.C. 203, 205—prohibits officials from representing anyone before a Federal court or agency in a matter involving a specific party in which the United States has a direct and substantial interest and in which the official has worked personally and substantially.

(3) 18 U.S.C. 207—prohibits a former official from representing others before a Federal agency concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or which was under the person's official responsibility.

(4) 18 U.S.C. 208—prohibits official acts in a matter in which the official has a personal financial interest. This prohibition does not apply to a financial interest of a Council voting member or Executive Director if the official obtains a waiver under 18 U.S.C. 208(b), or if the financial interest is in a harvesting, processing, or marketing activity that has been disclosed in a report filed under § 601.37.

(5) 18 U.S.C. 209—prohibits an official from receiving compensation for performing Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.

(6) 18 U.S.C. 210, 211—prohibit offer or acceptance of value to procure appointment to public office.

(7) 18 U.S.C. 1905—prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

(8) 18 U.S.C. 1913—prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation or appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are identified as such are not prohibited.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, State, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council which might affect that interest, if that interest has been disclosed in a report filed under § 601.37.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate—

(i) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or

(ii) In any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under § 601.37. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

§ 601.36 Removal.

The Secretary may remove for cause any Secretarially-appointed member of a Council in accordance with section 302(b)(5) of the Magnuson Act wherein the Council concerned first recommends removal by not less than two-thirds of the voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary and Executive Directors must file the report with the Executive Director of the appropriate Council prior to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an interest that has been reported.

§ 601.38 Security investigations and clearances.

(a) Access to security classified material is governed by security regulations and procedures issued pursuant to E.O. 12356, 3 CFR 166 (1982 Comp.). No person may have access to classified information unless that person has obtained a security clearance and it has been determined that access is necessary for the performance of that person's official duties. Detailed procedures governing applications for, and the issuance of, security clearances are set forth in Department Administrative Order (DAO) 207-1, and the DOC Personnel Security Manual. The authority having custody of the classified information determines whether the requester has a need to know the information in the performance of the requester's official duties. Access to information classified as *CONFIDENTIAL* or *SECRET*, which is normally sufficient for Council purposes, requires clearance at the noncritical-sensitive level.

(b) All Council members, staff, and members of advisory groups are individually required to protect classified information and may be subject to sanctions if they violate E.O. 12356, 18 U.S.C. 793, 794, or 952, or the National Security Act (50 U.S.C. 401 *et seq.*)

(c) Security clearances are required for Executive Directors, and, prior to appointment, for all Council nominees. Other staff and advisory group members may be required to obtain clearances at the Council's discretion. Those who have not been cleared may not participate in meetings, or portions of meetings, closed for reasons of national security, or have access to any classified information.

(d) Any person required to obtain a clearance must initiate the process by submitting:

(1) An FBI fingerprint card (FD-258), and

(2) A Standard Form 85, "Data for Nonsensitive or Noncritical-Sensitive Position."

Form FD-258 is the standard fingerprint card used by the FBI. Fingerprints are not maintained on file with the FBI but are destroyed once the criminal history check has been completed. Individuals may have their fingerprints taken at their local police department or at the personnel/security office of any Federal agency willing to provide the service. The Standard Form 85 is a multi-use biographical form developed by the Office of Personnel Management. Instructions on how to complete and submit the forms will be provided when the forms are distributed.

(e) The security clearance is valid for five (5) years.

(f) Individuals who are renominated and who have not undergone security processing within the five-year period will be required to submit a new processing package, including fingerprints.

(g) If a security clearance is granted, it will become effective only upon receipt by the DOC Office of Security of any necessary Non-Disclosure Agreement

lawfully required by the National Security Council or other lawful Directive in accordance with its terms.

(h) After notification of appointment, new Council members should submit any lawfully required Non-Disclosure Agreement to the Office of Fisheries Conservation and Management through the RDs as quickly as possible.

(i) All other individuals are encouraged to submit any lawfully required Non-Disclosure Agreement simultaneously with the SF–85 and FD–258 to expedite final clearances.

(j) Councils should maintain adequate records to determine when to initiate renewal requests as clearances expire. It will be the responsibility of Council staffs to request (through the Office of Fisheries Conservation and Management), as appropriate:

(1) Initial and renewal security clearances for State designees/alternates, and all members of advisory groups (SSC, AP, team members, etc.); and

(2) Initial and renewal security clearances for Council staff.

(k) Security clearances for U.S. Fish and Wildlife Service, U.S. Coast Guard, U.S. Department of State, and Marine Fisheries Commission non-voting members are obtained by the respective agencies. However, Council staffs are advised to verify periodically that these members have valid clearances in effect.

§ 601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any State or local government (that is, anyone who does not receive compensation from any such government for the period when performing duties as a Council member) receives compensation at the daily rate for a GS–18 in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

(b) Effective September 1, 1991, all Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid on a contract basis without deductions being made for Social Security or Federal and State income taxes. Until that time, such deductions may be made at the Councils' option. A report of compensation will be furnished each year as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis whether in excess of eight hours a day or less than eight hours a day. The time is compensable where the individual member is required to expend a significant private effort which substantially disrupts the daily routine to the extent that a work day is lost to the member. "Homework" time in preparation for formal Council meetings is not compensable. State officials may be compensated at the GS–18 level if they can document they are on leave without pay (LWOP). (LWOP does not include annual leave, holidays, or weekends.)

(c) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors when approved in advance by the Chair and a substantial portion of any day is needed.

(5) Conducting or attending hearings when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(d) The Council Chair must submit to the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

PART 604—OTHER APPLICABLE LAW

Sec.

604.1 Purpose and scope.
604.2 Categories.
604.3 Administrative operations and employment practices.
604.4 The decision process.
604.5 Uses of oceans and coastline.

Authority: 16 U.S.C. 1801 *et seq.*

§ 604.1 Purpose and scope.

(a) This part sets forth abbreviated summaries of other law applicable to the FMP process. (Regulations or agency directives specific to each law apply.)

(b) Definitions. The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

§ 604.2 Categories.

Section 304(a)(1)(B) of the Magnuson Act, 16 U.S.C. 1854(a)(1)(B), requires that each FMP or amendment be reviewed for consistency with the national standards, the other provisions of the Magnuson Act and other applicable law. The list of laws affecting the Councils and their operations are grouped, for ease of description, into three general categories: those dealing with administrative operations and employment practices; those dealing with the fishery management decision process; and those dealing with other uses of the oceans and coastline. More detailed guidance is cited throughout this part and also appears in the NMFS *Operational Guidelines.*

§ 604.3 Administrative operations and employment practices.

Statutes in this category apply, in part, to Council staff, Council members, and members of Council advisory groups. These statutes include the Federal Tort Claims Act, 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–80; the Fair Labor Standards Act, 29 U.S.C. 201; the anti-lobbying statute, 18 U.S.C. 1913; the Trade Secrets Act, 18 U.S.C. 1905; the bribery and conflict of interest statutes, 18 U.S.C. 201, 203, 205, 207, 208, 209, 210, and 211; Workmen's Compensation, 5 U.S.C. 8101 *et seq.;* and Unemployment Compensation, 5 U.S.C. 8501 *et seq.* Applicability of these statutes is detailed in Part 601, Subpart D, and Part 605, Subpart C.

§ 604.4 The decision process.

This category of laws applies to the fishery management decision process, and requires consideration of environmental, paperwork, and/or economic and social impacts, or establishes rules of procedure for public participation or access. These statutes include the Administrative Procedure Act (APA), 5 U.S.C. 551–553; the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; the Paperwork Reduction Act (PRA), 49 U.S.C. 3501; and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. Procedures under these statutes and under Executive Orders (E.O.) 12291, 12612, and 12630 are described as follows:

(a) *Administrative Procedure Act (APA).* Sections of the APA (5 USC 551–553) establish procedural requirements applicable to decisionmaking of Federal agencies. The purpose is to ensure public access to the rulemaking process, protect the rights of individuals under the Privacy Act and make available to the public information requested under the Freedom of Information Act. The effect on the Magnuson Act process is: to require a minimum 15- to 30-day public comment period for proposed rules and a 30-day delayed effectiveness date for final rules, with justification possible for waiving or shortening both; to require the Council to maintain security of personal records of Council members, employees, consultants under contract, and advisory group members; and to require NOAA to respond to requests for information under specified criteria for denial and time limits. Required procedures under these statutes are detailed in §§ 605.25 and 605.27.

(b) *E.O. 12291.* This Executive Order (E.O.) applies to the proposal, issuance, and review of rules, and the development of legislative proposals concerning regulations. The E.O. requires that: regulatory objectives and priorities be established with the aim of maximizing net benefits to society; rules be developed with a cost/benefit approach when possible; the chosen regulatory approach or alternative be the one with the least net cost to society; regulatory action not be undertaken unless the potential benefits outweigh the potential costs to society; and administrative decisions be based on adequate information concerning the need for and consequences of the proposed government action. The E.O. also requires that a semi-annual regulatory agenda be prepared. The effect on the Magnuson Act process is to require all rules to be reviewed by OMB unless covered by specific exemption, and to require a Regulatory Impact Analysis if the rule is "major". A prior determination is made by the Secretary or his designee as to whether the rule is major or nonmajor and whether the rule complies with the above requirements based on a Regulatory Impact Review.

(c) *National Environmental Policy Act (NEPA).* NEPA requires that the effects of Federal activities on the environment be assessed. NEPA's purpose is to ensure that Federal officials weigh and give appropriate consideration in policy formulation decisionmaking, and administrative actions to environmental values and ecological, economic and social benefits and costs and that the public is provided adequate opportunity to review and comment on the impact of major Federal actions. NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the human environment. NEPA's effect on the Magnuson Act process is that a draft EIS, or environmental assessment for a finding of no significant impact, must be prepared. NEPA procedures are detailed in NOAA Directives Manual (NDM) 02–10.

(d) *Paperwork Reduction Act (PRA).* The PRA requires agencies to minimize paperwork and reporting burdens whenever collecting information from the public. PRA's effect on the Magnuson Act process is that if an FMP requires any form of information collection from the public, that collection must receive OMB approval. To obtain OMB approval, a written justification must be submitted. In addition, formal Council input is needed each Spring when the overall NMFS information collection budget request is formulated for submission to OMB. Procedures under the PRA are detailed in NDM 59–11.

(e) *Regulatory Flexibility Act: (RFA).* The RFA establishes the principle that where Federal regulation is necessary, the regulation should be tailored to the regulated entity's size and capacity to bear the regulatory burden. RFA's effect on the Magnuson Act process is to require a determination of whether a proposed rule is likely to have a significant economic impact on a substantial number of small entities. If the determination is affirmative, initial and final regulatory flexibility analyses must be prepared to accompany the proposed and final rules respectively. If the determination is negative, the DOC General Counsel so certifies to the Small Business Administration. These analyses must consider the benefits and costs of compliance, with particular emphasis on the effects of the rule on the competitive position, cash flow and liquidity, and ability of the small entity to remain in the market. The RFA also requires a projection of reporting and record-keeping requirements.

(f) *E.O. 12612.* This E.O. requires Executive departments and agencies, in formulating and implementing policies that have federalism implications (including proposed regulations), to be guided by federalism principles and criteria. Federalism principles and criteria involve close consultation with the States in any actions which have substantial direct effects on the States or on the distribution of power and responsibility between and among the levels of government. The Secretary or his designee determines which proposed policies have sufficient implications to warrant preparation of a Federalism Assessment. The effect on the Magnuson Act process is to require the Councils to identify federalism issues before submitting management programs to the Secretary for approval. Any principal State official opposed to adoption of an FMP or amendment may file a dissenting report explaining the nature of the State's objection and its relation to the policies of the executive order. (See § 605.24(a)(3)(iv).)

(g) *E.O. 12630.* This E.O. requires that each Federal agency prepare a Takings Implication Assessment (TIA) for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use or value of any real or personal private property. These policies include regulations that propose or implement licensing or permitting requirements, conditions, or restrictions otherwise imposed by an agency on the use of private property, and actions relating to, or causing the physical occupancy or invasion of, private property. DOC is developing procedures to implement the requirements of this E.O.; these regulations will be appropriately amended to implement the DOC procedures when they become available.

§ 604.5 Uses of oceans and coastline.

This category of laws also applies to the fishery management process, and deals with the competing uses of the ocean, the protection of certain living marine resources and their habitats, and the management of the nation's coastal areas. These statutes include the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451; the Endangered Species Act (ESA), 16 U.S.C. 1531; the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361; and Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA), 16 U.S.C. 1431. Procedures under these statutes are described as follows:

(a) *Coastal Zone Management Act (CZMA).* The principal objective of the CZMA is to encourage and assist States in developing coastal zone management programs, to coordinate State activities, and to safeguard the regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any Federal activity directly affecting the coastal zone of a State be consistent with that State's approved coastal zone management program to the maximum extent practicable. CZMA's effect on the Magnuson Act process is to require determination that an FMP has no direct effect on the coastal zone, or is consistent with the State's approved coastal zone management program to the maximum extent practicable. Procedures under the CZMA are detailed in 15 CFR Part 930.

(b) *Endangered Species Act (ESA).* The ESA provides for the conservation of endangered and threatened species of fish wildlife, and plants. The program is administered jointly by the Department of Interior (DOI), which generally has jurisdiction over terrestrial and freshwater species, and the Department of Commerce (DOC), which generally has jurisdiction over marine species. With respect to endangered or

threatened sea turtles, DOC has jurisdiction while the turtles are in the water and DOI while the turtles are on land. Conflicts between the ESA and Federal actions are to be resolved by a consultation process between the project agency and DOC and/or DOI, as appropriate. ESA's effect on the Magnuson Act process is to require biological assessment and consultation with NMFS or the Fish and Wildlife Service (FWS) if an FMP or amendment may affect endangered or threatened species or cause destruction or adverse modification of any designated critical habitat. The consultation must conclude that there is no likelihood of jeopardy to any listed species, or, if jeopardy exists, reasonable and prudent alternatives approved by NMFS or FWS must be adopted before the FMP can be approved.

(c) *Marine Mammal Protection Act (MMPA).* The MMPA establishes a moratorium on the taking of marine mammals and a ban on the importation of marine mammal products with certain exceptions. Responsibility is divided between DOC (whales, porpoises, seals, and sea lions) and DOI (other marine mammals) to issue permits and to waive the moratorium for specified purposes, including incidental takings during commercial fishing operations. The Magnuson Act amended the MMPA to extend its jurisdiction to the EEZ. MMPA's effect on the Magnuson Act process is that if the FMP has an effect on the marine mammal population, certain information must be included in the EIS, and the FMP should indicate what authorization is needed for any incidental takings.

(d) *Marine Protection, Research and Sanctuaries Act (MPRSA).* Title III of the MPRSA authorizes the Secretary to designate as marine sanctuaries areas of the marine environment that have been identified as having special national significance due to their resource or human-use values. The Marine Sanctuaries Amendments of 1984 amend this Title to include, as consultative agencies in determining whether the proposal meets the sanctuary designation standards, the Councils affected by the proposed designation. The Amendments also authorize the Council affected to prepare draft regulations for the Secretary's approval, consistent with the Magnuson Act national standards and the goals and objectives of the proposed designation, for fishing within the EEZ as it may deem necessary to implement a proposed designation.

PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ ADMINISTRATION

Subpart A—General

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Subpart B—Operations

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605.25 Employment practices.
605.26 Financial management.
605.27 Recordkeeping.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 605.1 Purpose and scope.

(a) This part sets forth guidelines for the development of fishery management plans and for the organization, practices, and procedures of the Councils.

(b) The definitions, word usage, and abbreviations set forth in Part 600 apply within this part.

Subpart B—Operations

§ 605.11 General.

The primary functions of each Council are to develop, monitor, and evaluate FMPs, and propose amendments and associated regulations for each fishery that requires conservation and management within its geographical area of authority. The following describes the Councils' and the Secretary's roles and responsibilities and sets out key activities necessary to produce FMPs, amendments, and annual specifications acceptable for review by the Secretary. It is designed to—

(a) Bring to bear the necessary expertise on all aspects of the process;

(b) Be responsive to other applicable law, the public interest, and shifts in Council priorities and objectives; and

(c) Ensure the quality, relevance, reliability, and independence of science in the management process.

§ 605.12 Use of available expertise.

Councils should use all available expertise as necessary and appropriate in carrying out their functions. This includes experts within NOAA, at State and academic institutions, Scientific and Statistical Committees (SSCs), Advisory Panels (APs), plan teams, and/or other working groups established to assist in the processes described below.

§ 605.13 Planning

(a) *General.* Councils must establish procedures for identifying, on a continuing basis, fishery management issues and needs. The procedures established must ensure consideration of, and responsiveness to, the Stock Assessment and Fishery Evaluation (SAFE) report, economic and social impact analyses, enforcement experience, public perceptions and proposals, management priorities and long-term management goals and objectives. In its planning process, the Councils should define the FMU, determine the need for management, identify data and information needs, examine the range of issues to be addressed, propose management objectives, and schedule future actions.

(b) *Data Collection Program (DCP).*

(1) The Magnuson Act authorizes collection of information and data which would be beneficial in determining whether an FMP is needed for a fishery or in preparing an FMP. Councils may request that the Secretary implement a DCP for a fishery which would provide the types of information and data specified by the Councils. If the need for data is justified for conservation and management and approved by OMB under the Paperwork Reduction Act, the Secretary will approve such a DCP and issue proposed regulations to implement the program within 60 days and establish an estimated date of availability of the data. If the Secretary determines the need for a DCP is not justified, the Council must be informed in writing of the reason(s) for the determination within 60 days.

(2) NOAA is authorized under the Magnuson Act and other statutes to collect proprietary or confidential commercial or financial information and provide nonconfidential aggregations of such data to fulfill a Council's request. Information and data that would disclose proprietary or confidential commercial or financial information regarding individual fishing operators or fish processing operations would not be provided to the Council except as provided in § 601.27 and Part 603.

§ 605.14 Fishery management objectives.

Each FMP and amendment, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to achieve, i.e., the management objectives to be attained in regulating the fishery under consideration. (See § 602.10, national standard guidelines, which sets out the role of objectives in the development and review process.)

§ 605.15 Establishment of management measures.

(a) The council develops management measures to achieve optimum yield (OY) and the management objectives of the Council. The Council must propose management measures that are consistent with the national standards, other sections of the Magnuson Act, and other applicable law. The Council must prepare draft regulations that implement the management measures for submission to the Secretary with the FMP or amendment. Supporting documents required by other applicable law (see Part 604) must accompany the Council submission. Procedural details may be found in the NMFS *Operational Guidelines.*

(b) Prior to the Council's adoption of the management measures:

(1) The Council must prepare an analysis of the economic and social effects of alternate management measures and their effectiveness in achieving the objectives in the FMP. The analysis must discuss the need for Federal action, and the benefits and costs of each alternative, and the effects on small entities and fishery-dependent communities. The analysis must include a conclusion concerning the expected net economic and social benefits to be achieved by each alternative management measure or system. To the extent such net benefits cannot be quantitative, qualitative estimates must be provided.

(2) The SSC must advise the Council on the adequacy of all support analyses and whether they are based on the best scientific information available, and on the efficacy of proposed management measures.

(3) NOAA and the Coast Guard, upon request of a Council, must provide written comments within 60 days pertaining to the feasibility and cost of alternatives relative to enforcement and on vessel safety implications of the management measures.

(4) The Council may solicit comment from the AP, and any other interested group or individual concerning the effects and probable effectiveness of the proposed alternatives.

Subpart C—Administration

§ 605.21 Council Statement of Organization, Practices, and Procedures (SOPP).

Council SOPPs required under § 601.22 must, at a minimum, implement the standards outlined below in this subpart. As appropriate, these sections may be incorporated by reference. Councils should also include in their SOPPs a time limit within which they will submit a minority report under § 605.24(a)(3)(iv); specify an appropriate deposit, if applicable, to be made to an employee's retirement fund for unused sick leave up to an explicit maximum number of days and contribution per day; and implement § 601.27 on protection of confidentiality of statistics. In addition, they may wish to include selected regulatory sections from Parts 601 and 604, as circumstances warrant.

§ 605.22 SOPP checklist.

The following is an outline/checklist of the sections in Subpart C for use in developing each Council's SOPP:

§ 605.23 Council organization.

(1) Officers and terms of office.
(b) Designees.
(c) Designation of Regional Directors.
(d) Advisory groups.
(e) Working groups.
(f) Committees.

§ 605.24 Council meetings and hearings.

(a) Meetings.
(1) General.
(2) Notice.
(3) Conduct.
(4) Record.
(5) Closed meetings.
(6) Frequency and duration.
(7) Location.
(b) Hearings.
(1) General.
(2) Notice.
(3) Conduct.
(4) Record.

§ 605.25 Employment practices.

(a) Staffing.
(b) Experts/consultants.
(c) Details.
(d) Personnel actions.
(e) Salary/wage.
(f) Recruitment.
(g) Leave.
(h) Employee benefits.
(i) Travel reimbursement.
(j) Foreign travel.

§ 605.26 Financial management.

(a) Cooperative agreements.
(b) Procurement.
(c) Property management.
(d) Space management.
(e) Accounting system.
(f) Audits.
(g) Financial reports.

§ 605.27 Recordkeeping.

(a) Administrative records of FMPs.
(b) Disposition of records.
(c) Permanent records.
(d) Privacy Act.
(e) Freedom of Information Act.

§ 605.23 Council organization.

(a) *Officer and terms of office.* The Chair must be elected from among the voting members by a majority vote of the voting members present and voting. The term of office for the Chair may not exceed one year; however, the Chair may be eligible for re-election as set forth in the Council's SOPP. The Council may establish other officers as deemed necessary and set their terms of office.

(b) *Designees.* (1) The Magnuson Act authorizes only the principal State officials, the Regional Directors, and the nonvoting members to designate individuals to attend Council meetings in their absence. The Chair of the Council must be notified in writing, in advance of any meeting at which a designee will initially represent the Council member, the name, address, and position of the individual designated. A designee may not name another designee. However, such officials may submit to the Chair, in advance, a list of several individuals who may act as designee, provided that the list designates who would serve if more than one designee is in attendance.

(2) Reimbursement of travel expenses to any meeting must be limited to the member, or, in the case of the absence of the member, one designee—in any case, one person.

(c) *Designation of Regional Directors.* The Regional Directors serve as voting members, on the Councils as follows:

Council	Regional director
New England	Northeast Region
Mid-Atlantic	Northeast Region
South Atlantic	Southeast Region
Caribbean	Southeast Region
Gulf of Mexico	Southeast Region
Pacific	Northwest/Southwest Region [1]
North Pacific	Alaska Region
Western Pacific	Southwest Region

[1] The Southwest Regional Director is the NMFS spokesman on the Council and votes on fishery matters primarily or exclusively off California. The Northwest Regional Director is the spokesman and votes on fishery matters primarily or exclusively off Oregon and Washington.

(d) *Advisory groups.* Each Council must establish a Scientific and Statistical Committee (SSC) and may establish such other Advisory Panels (APs) as necessary or appropriate to assist it in carrying out its functions. Size is discretionary within the resources budgeted to the particular Council. Each Council must specify procedures in its SOPP for continuing involvement of its advisory groups in the development of amendment of FMPs. Procedures for appointing members of these groups should also be specified in the SOPPs.

(1) *Scientific and Statistical Committee (SSC).* The SSC provides

expert scientific and technical advice to the Council on the development of fishery management objectives and strategies, the scientific information supporting preparation of FMPs the appropriateness of the ABC and OY levels, the adequacy of the regulatory analysis, and the effectiveness of FMPs once in operation. In providing this advice, the SSC assists the Council in identifying the need for research and data collection and the scientific resources available, and in establishing criteria for framework actions. Membership must be multidisciplinary, and should include biological and social scientists from the Federal and State governments, and private scientific community who are knowledgeable about the fisheries to be managed.

(2) *Advisory Panel (AP).* The AP provides pragmatic advice from individuals most affected by, or interested in, Council matters of fishery management. A balanced representation should be maintained of those who are either actually engaged in harvesting, processing, marketing, or consuming fish, or knowledgeable and interested in the conservation and management of the fisheries within the Council's jurisdiction. With respect to each FMP or amendment under consideration by the Council, the AP should provide advice concerning the recommended OY, the management measures and allocations under consideration, the supporting documentation to any regulatory action, management objectives, and any other subject, as required by the Council.

(e) *Working groups.* Fishery management planning and development of FMPs may be performed by various types of working groups, under the direction of the Council. For example, the Council may establish a Plan Team to assess the need for management, assemble information, conduct and evaluate analyses, evaluate public/industry proposals and comments, and estimate the costs of plan development, implementation, and monitoring. In addition, Councils may use *ad hoc* groups to address resource user conflicts or other issues.

(f) *Committees.* The Council may appoint standing and *ad hoc* committees from among the voting and nonvoting members as it deems necessary for the conduct of Council business.

§ 605.24 Council meetings and hearings.

In fulfilling the Council's responsibilities and functions, the Council members may meet in plenary session, in working groups, or individually to hear statements in order to clarify issues, gather information, or make decisions regarding material before them. To provide for review and decision by the Secretary, recommendations of each of these groups must be documented and available. The documentation must include, at a minimum, a statement of the problem, recommendations for corrective action, likely impact on the affected resource, and likely impact on affected user groups.

(a) *Meetings*—(1) *General.* The Councils meet in plenary session at the call of the Chair or upon request of a majority of the voting members. Advisory groups may meet with the approval of the Chair. Emergency meetings may be held at the call of the Chair or equivalent presiding officer.

(2) *Notice.* With respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council, timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, must be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting must also be published in the Federal Register.

(3) *Conduct of meetings.* (i) All meetings of the Council advisory and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chair. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary.

(ii) A majority of the voting members of any Council constitutes a quorum for Council meetings, but one or more such members designated by the Council may hold hearings.

(iii) Decisions of any Council are by majority vote of the voting members present and voting (except for proposed removal of Council members, see § 601.36). Voting by proxy is not permitted except as allowed under § 605.23(b). An abstention does not affect the unanimity of a vote.

(iv) Voting members of the Council who disagree with the majority on any issue to be submitted to the Secretary, including principal State officials raising federalism issues, may submit a written statement of their reasons for dissent. If any Council member elects to file a minority report, it should be submitted at the same time as that of the majority.

(4) *Record.* (i) Minutes of each meeting must be kept and must contain a record of the persons present, an accurate discription of matters discussed and conclusions reached, and copies of all statements filed.

(ii) Subject to the procedures established by the Council under § 601.27, and the regulations prescribed by the Secretary under Part 603 relating to confidentiality, the administrative record (including minutes required under paragraph (a)(4)(i) of this section) of each meeting, and records or other documents which were made available to or prepared for or by the Council, SSC, or APs incident to the meeting, must be available for public inspection and copying at a single location in the offices of the Council.

(5) *Closed meetings.* (i) Each Council, SSC, and AP:

(A) Must close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) May close any meeting, or portion thereof, that concerns matters or information that pertains to unclassified national security matters, employment matters, or briefings on litigation in which the Council is interested.

(ii) Closed meetings must be announced in the news media.

(6) *Frequency.* Each Council must meet in plenary session at least once every six months. Council advisory groups may meet as frequently as necessary, with the approval of the Council Chair.

(7) *Location.* (i) Each Council must conduct all meetings within its geographical area of concern, but may hold joint meetings within any of their constituent states for the purpose of discussing issues of mutual concern. In the particular case of Council meetings of the North Pacific Council, "geographical area of concern" means within the State of Alaska. When two or more Councils have been designated by the Secretary to prepare an FMP jointly, Councils so designated may meet jointly within any of their constituent States for the purpose of developing or amending such an FMP.

(ii) The Council meeting place should have a capacity large enough to accommodate the anticipated public attendance and be accessible to those interested in attending, including

consideration of the cost of transportation and lodging.

(b) *Hearings*—(1) *General.* The Magnuson Act directs the Councils to hold public hearings, at appropriate times and in appropriate locations in the geographical area concerned, to provide the opportunity for all interested persons to be heard in the development of FMPs and amendments, and with respect to the administration and implementation of the Magnuson Act. The term "geographical area of concern", for purposes of holding hearings, may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area.

(2) *Notice.* Hearings must follow the same procedures for announcement as for Council and advisory group meetings. Timely public notice also should be given to the local media where the hearing is to take place. Publicity should be sufficient in time, substance, and area coverage to assure that all interested parties are aware of the opportunity to make their views known.

(3) *Conduct of hearings.* When it is determined that a hearing is appropriate, the Chair of the Council must designate at least one voting member of the Council to officiate. All points of view must be given a reasonable opportunity to be heard.

(4) *Record.* An accurate and timely report of the participants and their views must be provided in writing to the Council and maintained as a part of the Council's official records.

§ 605.25 Employment practices.

The following sets forth the responsibilities of the Councils with regard to personnel matters and establishes personnel-related standards. Council members (except for Federal government officials) and staff are not Federal employees subject to Office of Personnel Management (OPM) regulations.

(a) *Staffing.* Each Council may appoint and assign duties to an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of Council functions consistent with budgetary limitations. The Executive Director is responsible to the Council, and the staff is responsible to the Executive Director. Each position must be justified during the budget process described in OMB Circular A-110, or prior to filling a new position established during the course of the cooperative agreement year. Descriptions of the work to be performed must be submitted.

(1) Council staff positions must be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions must be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

(2) No employee of the Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) In conducting official Council business, Council members and staff generally have the same protection from individual tort liability as Federal employees on official actions, and are protected by the Federal workmen's compensation statute, by the minimum wage/maximum hour provisions of the Fair Labor Standards Act (FLSA), and by the rights of access and confidentiality provisions of the Privacy Act (PA).

(4) Council staff are eligible also for unemployment compensation in the same manner as Federal employees.

(b) *Experts and consultants.* As long as funding is available in its budget, each Council may contract with experts and consultants as needed to provide technical assistance not available from NOAA. This includes legal assistance in clarifying issues, but Councils must notify the NOAA Office of General Counsel before seeking outside legal advice. A Council may not contract for the provision of legal services on a continuing basis.

(c) *Details of Government employees.* All Federal agencies are authorized by section 302(f)(2) of the Magnuson Act, 16 U.S.C. 1852(f)(6), to detail personnel to the Council on a reimbursable basis to assist the Council in the performance of its functions. Nonreimbursable details are not precluded. Council requests to the heads of such agencies must contain the purpose of the detail, length of time, compensation to be paid, if any, and the stipulation that the Assistant Administrator be consulted prior to granting the request. Copies of this correspondence will be transmitted to the Assistant Administrator through the servicing Regional Office. Federal employees so detailed retain all benefits, rights, and status as they are entitled to in their regular employment. The Councils may negotiate arrangements with State or local governments to utilize employees of those governments. Assistance in arranging these details may be obtained through the servicing Regional Office.

(d) *Personnel actions.* Subject to these instructions, and within budgetary limits, the Councils may establish positions, recruit, hire, compensate and dismiss personnel. Dismissal will be made for misconduct, unsatisfactory performance, and/or lack of funds, with reasonable notice to the employee.

(e) *Salary and wage administration.* (1) In setting rates of pay for Council staff, the principle of equal pay for equal work must be followed. Variations in basic rates of pay should be in proportion to substantial differences in the difficulty and responsibilities of the work performed.

(2) A cost of living allowance may be applied to the salaries of Council members and staff whose post of duty is in one of the following areas: Alaska, Hawaii, Guam, Virgin Islands, the Northern Mariana Islands, and Puerto Rico. Members from American Samoa will receive post differential. The rate of cost of living allowance may not exceed that paid by the Federal Government in the same area. The current rates may be obtained from the applicable NOAA field unit.

(3) The duties of any new position must be contained in a brief description to be submitted to the Regional Office assigned to a Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position and a determination of the applicability of the Fair Labor Standards Act. The Council then may fill the position at any salary level within that range; the policy of hiring at the beginning rate should be followed except in unusual cases when recruitment of an exceptionally qualified employee is hampered thereby. The annual pay for any staff position may not exceed the current rate for the top step of grade 15 of the Federal General Schedule at any time.

(f) *Recruitment.* All personnel vacancies should be filled on a competitive basis, unless unusual circumstances clearly dictate otherwise. For this purpose, the Council may avail itself of the vacancy advertising system operated by NOAA through the servicing Regional Office or any other recruitment tool, including newspapers and local employment agencies.

(g) *Leave.* Council employees should be granted paid leave for holidays, vacations or exigencies, sickness, and civil duties (e.g., jury duty, military

reserve obligations) as determined by the Council. Councils should inform employees that leave is not transferable to or from Federal agencies. Leave is subject to the following limitations:

(1) *Annual leave.* Full-time Council employees may accrue annual leave at rates not to exceed those for Federal employees. Part-time employees accrue leave at the same rate, per hours worked.

(i)(A) Up to three years of service—maximum of 2 hours leave per 40 hours (13 days per year);

(B) Three to 15 years—maximum of 3 hours per 40 hours (20 days per year); and

(C) Over 15 years: maximum of 4 hours per 40 hours (26 days per year).

(ii) If the Council so desires, it may credit prior Federal, State, or local government service for the purpose of determining leave accrual of individual employees. Application of such a policy must be uniform and public.

(iii) Employees may carry over up to 240 hours (30 days) unused annual leave from one year to the next. Amounts remaining above 240 hours will be forfeited. Employees who were authorized to carry over more than 240 hours in accordance with Council SOPPs prior to the effective date of these guidelines may continue under such policy. Under certain conditions, forfeited annual leave may be restored if it was properly scheduled for use and circumstances beyond the employee's control caused the forfeiture. Approval for this restoration must be obtained from the Council Chair or his/her designee, who will refer to the NOAA Personnel Regulations and other source documents for guidance. Lump sum reimbursements not to exceed 240 hours carryover plus current year earnings of unused leave are authorized upon employee separation. (Councils should neither budget nor account separately for anticipated or accrued leave costs payable upon employee separation. Should such costs arise and exceed Council funding availability, NOAA will defray these costs in total.)

(2) *Sick leave.* (i) Full-time Council employees may accrue sick leave at the rate of two hours per week (13 days per year). Part-time employees may accrue at a percentage of the hours worked compared to 40 hours. A 20-hour-a-week employee would accrue half the leave accrued by a 40-hour-a-week employee. Unused sick leave credit may be accumulated without limit. Lump sum payments to the employee upon separation are not authorized. However, at retirement as defined in accordance with the provisions of the Social Security Act or in the event of death of the employee, a deposit may be made to the employee's retirement fund for unused sick leave up to a maximum number of days and contribution per day as established by the Council in its SOPP.

(ii) In meritorious cases, Councils may advance up to one year's earnings of sick or annual leave when it is reasonably expected that the advanced leave will be repaid by the employee. This must be approved by the Council Chair or designee (designation must be in writing).

(h) *Employee benefits.* Employee benefits are identified in the Council SOPP, a copy of which should be provided to each employee. The Council should provide its employees the opportunity to participate in group medical insurance, life insurance, and retirement plans, and pay a reasonable proportion of the cost of such plans. Total employee benefits may not exceed 20 percent (exclusive of FICA) of employees' gross salary, without NOAA approval.

(1) *Medical insurance.* Councils may provide group medical and dental insurance to their employees either through a commercial underwriter or through a State or local government program, if within the 20% total benefit limitation. Councils are not authorized to increase employee salaries in lieu of a medical or dental insurance plan.

(2) *Life insurance.* Councils may provide group life insurance for employees, if within the 20% total benefit limitation. An increase in salary in lieu of insurance coverage is not authorized.

(i) *Travel Reimbursement.*

(1) *General.*

(i) Each Council must include travel reimbursement procedures in its SOPP.

(ii) The per diem and actual subsistence rates contained in the NOAA Travel Handbook apply.

(iii) Actual expenses include transportation by air coach, rail coach, bus or privately owned vehicle (automobile or private plane reimbursed on a per mile basis); room and meals within a reasonable limit established by the NOAA Travel Handbook; and incidental expenses such as taxi fares, parking, and telephone calls on official business.

(iv) Coach air transportation must be utilized when available. Travel via first class air must be justified on the reimbursement voucher and approved by the Council Chair or his/her authorized representative. Privately owned vehicles (POVs) may be authorized when other modes of transportation are either unavailable or inconvenient. When a POV is authorized for the convenience of the traveler, the reimbursed costs must not exceed the costs of coach air fare. Accommodations equivalent to other-than-first-class should be utilized in the unlikely event that water vessel transportation is required. When sustantial savings can be realized by utilizing rail travel, this mode of transportation should be considered when available and adequate.

(2) *Council, AP, SSC Members.* Section 302 (d) and (f) of the Magnuson Act provide that the voting menbers of each Council, the Executive Director of the Marine Fisheries Commission on each Council, the additional non-voting member of the Pacific Council, and members of advisory groups will be reimbursed for actual expenses incurred in the performance of Council duties. They are not bound by the separate per diem limits for meals and lodging as set forth in the CSA Rules. They are subject, however, to the total reimbursement limits established by the NOAA Travel Handbook for actual expenses, and they must itemize their actual expenses up to the specified limit each day. Lodging receipts are required. The rates are included in the GSA Rules. Federal employees serving in the above capacities are subject to the reimbursement rules of their agencies.

(3) *Council staff, members of plan teams, and others.* Members of the Council staff and plan teams, invited experts, consultants, or others specifically invited, unlike those described in paragraph (i)(2) of this section, must adhere to the per diem limits or actual expense requirements set forth in the GSA Rules.

(4) *Non-NOAA team members.* Non-NOAA team members may be reimbursed for travel expenses but receive no other compensation from the Council.

(j) *Foreign travel.* (1) Foreign travel must be approved, in advance, by the Assistant Administrator for Fisheries or designee and by the Grants Officer. Requests for foreign travel approval should be submitted, in writing, at least 15 days in advance to the Assistance Administrator, through the NMFS Office of Management and Budget and the Grants Officer. Routine across-the-border travel to Mexico and Canada is exempt.

(2) Each Council should specify in its SOPP any delegation of authority to approve routine across-the-border travel which has been granted to it by NOAA.

(3) Council Chairmen or their authorized representatives may approve routine across-the-border travel to Canada or Mexico for Council members and employees within specified Federal rates.

(4) Domestic invitational travel for non-Council personnel may be approved by the Council Chairman or his/her authorized representative. Foreign invitational travel must have approved as described in paragraph (j)(l) of this section. The per diem limits or actual expense requirements described above also are applicable to no-Council personnel traveling at Council expense. Payment for NOAA personnel from Council funds is not authorized.

§ 605.26 Financial management.

The Council's administrative operations are governed by OMB Circular A-110 (Uniform Administrative Requirements for Grants and Ageements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and OMB Circular A-122 (Cost Principles for Non-Profit Organizations). A-110 prescribes standards for financial management systems, procurement, property management, financial reporting, cash depositories, and grant close-out procedures. Councils are required to comply strictly with the provisions on the Circulars and terms and conditions of the awards.

(a) *Cooperative agreements.* Councils receive funds through cooperative agreements for two basic types of expenditures: administrative (or operations) funds to cover general operating expenses, such as salaries, office space, utilities, travel, State liaison activities, etc., and programmatic (or contract) funds primarily designed to fund contracts generated by the Councils for development of FMPs (including amendments) or FMP-oriented information.

(1) *Administrative.* The funding for the administrative and technical support of Council operations is included in the budget of the Department of Commerce and, through the Department, in the budgets of NOAA and NMFS. The funding requirements for the Councils are subject to regular budgetary review procedures. Annual or biennial grants and cooperative agreements will provide such Federal funds as the Secretary determines are necessary to the performance of the functions of the Councils and consistent with budgetary limitations. Requirements for periodic reports for purposes of NOAA budgetary control are described in individual grants and cooperative agreements issued to the Councils.

(i) *Application for cooperative agreement.* (A) The Council must submit a formal application (Standard Form 424, Federal Assistance Short Form) to the appropriate Regional Director. This application includes a Budget Data Form, a Program Narrative Statement supporting the application, and a Statement of General Assurances. As backup to the Budget Data Form, each Council must prepare a Budget Summary Worksheet for three fiscal/calendar years. This Budget Data Form must reflect the amounts in lines A1 through A8 of the Worksheet. The Program Narrative Statement should describe in appropriate detail the purpose for which funds are sought, e.g., operational expenses, FMP-oriented contracts, State liaison support.

(B) Upon receiving a recommendation from the Regional Director (RD), the Assistant Administrator will review the application and transmit the application through the RD to the appropriate Grants Officer for processing. If the application is disapproved by the Assistant Administrator, the RD will be contacted and supplied with the reasons for disapproval and the criteria for resubmission.

(ii) *Accounting.* A Cash Receipts and Disbursement Journal with a monthly Summary of Accounts is required as a minimum bookkeeping system. In addition, a Statement of Income and Expenses for the Council must be prepared monthly for the Council membership. Each cash disbursement must be approved by the Council Executive Director or Administrative Officer. All checks for amounts more than $5,000 require two signatures—the Council Executive Director and another person designated by the Council. The approval authority must be included in any SOPP published after the effective date of these guidelines. When budget estimates are submitted to the Assistant Administrator, the uniform account classification titles should be used.

(iii) *Advance of funds.* A Letter of Credit will be established for each cooperative agreement. Drawdowns from the Treasury will be made at the commerical bank through electronic fund transfer from Treasury. The Council shall initiate each drawdown at approximately the same time that checks are issued by the Council in payment of Council liabilities. Drawdowns should not be made more frequently than daily or in amounts less than $5,000. These requirements are under the Department of the Treasury Circular 1075, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs" (31 CFR Part 205).

(2) *Programmatic*—(i) *Nature of request.* Councils may enter into cooperative agreements with Federal agencies, State, and private institutions on matters of mutual interest which further the objectives of the Magnuson Act. Approval from the Secretary of Commerce must be obtained prior to entering into such arrangements, and each agreement must specify the nature and extent of Council participation. The Councils are not authorized to accept gifts or contributions directly. All such donations must be directed to the NOAA Administrator in accordance with applicable NOAA regulations.

(ii) *Criteria.* NOAA has established the following criteria to guide each year's decisions on programmatic funding:

(A) Proposed projects must be directly related to the formulation of an FMP, amendment, or emergency action (including data collection necessary to determine whether an FMP should be formulated); necessary to evaluate an FMP already in place; or, necessary to obtain information for use in framework FMP management actions.

(B) Proposed projects must be short-term, preferably one year or less but generally not longer than two years.

(C) Proposed projects must avoid duplication of effort and operate as cost efficiently as possible in order to maximize benefits for Federal expenditures. When a Council has identified data needs for a particular fishery, available resources from NOAA, the States, Office of Sea Grant, academic institutions, and other established sources of information should be utilized to avoid duplication of effort. If certain biological, ecological, economic, or social data is needed on a high-priority basis which cannot readily be supplied free-of-charge by NMFS or other institutions, the Councils may be authorized to contract for the information collection and analysis. The SSC of each Council should assist in identifying immediate and longer-range research and data needs.

(iii) *Procedure.* (A) Requests for programmatic funding may be submitted at the same time as the Council's administrative budget, or at other times as requested by the Assistant Administrator. Documentation should include a cover letter explaining the need for the project, how it contributes to an FMP (proposed, developing or existing), and how it meets criteria outlined in this section. An additional factor that is considered during NOAA review is documentation jointly submitted by the Regional Director and Chief Scientist stating that needed information is not available from NOAA or other sources and establishing regional priorities among the various Council requests.

(B) Competing project proposals which meet the above criteria may be funded based on an evaluation of urgency of problem to be addressed, impact of failing to fund, impact of delay in funding, and importance and size of fishery.

(C) Programmatic contract services always must be described in the context of overall Council plans in a particular programmatic area. The relationship of individual contracts to past and projected goals must be reflected in all Council applications for contract funds.

(b) *Procurement.* Draft contracts or solicitations relating to the development or monitoring of FMPs must be submitted to the RD. Proposed sole source procurements over $5,000 and purchases or leases of automated data processing (ADP) equipment must also be submitted to the RD prior to award. Solicitations will not be released, nor contracts awarded, until all substantive issues noted by the RD have been satisfactorily resolved. Proposed sole source contracts over $10,000 must be approved in writing by the Grants Officer. Final copies of all contracts awarded will be filed with the appropriate Grants Officer. The cost and financial management principles outlined in OMB Circulars A–122 and A–110 apply to all Council procurement actions.

(1) To avoid duplication of work, efforts must be made to use existing support sources (Federal, State, other Councils, etc.) before commercial sources are sought.

(2) Competition must be held for all commercial purchases over $5,000 unless the unique nature of the procurement, unforeseen time constraints, and/or substantiated overall savings (administrative plus contractual) clearly dictate otherwise. All sole source procurements above $5,000 with individuals and commercial vendors will be documented and reviewed by the RD as described above. Such purchases over $10,000 must be approved by the Grants Officer. Internal Council evaluations may be made on unusual and large procurements to ensure their legality, economy, and viability, or the Council may delegate such authorization to its Executive Director or Chair.

(3) Efforts must be made to inform minority firms of planned Council procurements. The *Commerce Business Daily* (CBD) should be considered by each Council as a means of publicizing contemplated contracts.

(4) The purchase or lease of ADP equipment by Councils and its subcontractors requires prior approval by the RD. Such approval will be made only after a cost-benefit analysis (system life cost, lease vs. purchase, compatibility, etc.) by the Council demonstrates the economy of the proposed action.

(5) Councils are authorized to purchase supplies and services from GSA directly. Individual accounts have been set up for each Council, and information is available through Regional Offices.

(c) *Property management.* A listing of Federally-owned (Council) property must be submitted to the Grants Officer annually. Theft of Council property should be reported promptly to local law enforcement personnel, including the FBI, the Grants Officer, and to the Regional Office. Property management procedures must ensure adequate control and protection of Council property at all times. Such procedures are included in Council's SOPP, and must include the following as a minimum:

(1) A perpetual inventory system for all nonexpendable items, e.g., office equipment, furniture, etc.;

(2) Procedures for marking such items as Council property;

(3) Provision for safeguarding sensitive items such as cameras and biological equipment. Insurance should not be obtained.

(4) Procedures to be followed in disposing of surplus items;

(5) Listing of all personnel, including consultants if appropriate, authorized to have access to Council property.

(d) *Space management.* Economy should be exercised regarding the amount and cost of space acquired. When acquiring office space, Councils may avail themselves of the following:

(1) General Services Administration leasing assistance;

(2) Regional Office assistance;

(3) Direct negotiations within the guidelines stated above.

(e) *Accounting system.* Councils must maintain a document-oriented, obligation-accounting system (with accruals, as necessary, for budget projection purposes) rather than a cash-accounting system. Actual journals and ledgers must be maintained either manually or on an automated system; in either case, however, all obligations must be clearly documented and organized in order to provide quick access and verification by professional auditors. The actual composition (chart of accounts) of the system may vary somewhat from Council to Council. As a minimum, however, the system must provide fiscal control over expenditures in line with those object classes depicted in the Council budget submission. This will allow not only timely submission of the periodic financial status reports, but will also ensure close coordination between actual spending rates and budgeted amounts so that comparisons and changes can be made at any time. All financial records must be handled in accordance with OMB Circular A–110.

(f) *Audits.* An independent audit is required at least biennially by DOC Office of the Inspector General auditors or an independent public accountant (IPA). All Councils are subject to audit by the DOC Office of the Inspector General and the General Accounting Office. The scope of the audit may include: conduct of financial operations; compliance with applicable laws and regulations; economy and efficiency of administrative procedures; and achievement of results.

(1) If an IPA is to perform the audit, the request for proposals and contract must comply with the Audit Guidelines.

(2) As part of the IPA's examination of Council records, it is requested that they comment on whether efforts have been made by the Council to include small, minority, and women-owned businesses as sources of supplies and services.

(3) In order to provide guidance or provide additional information to the auditors and the Councils on audit-related matters, it is suggested that the following NOAA personnel be invited to participate in the audit exit conference:

(i) The Grants Officer;

(ii) The Assistant Administrator's staff and/or a representative of the Regional Office;

(g) *Financial reports.* Reports are required which summarize total expenditures made and Federal funds unexpended for each award, and the status of Federal cash received. The Report of Federal Cash Transactions (Form SF–272) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required upon completion of the grant, to be submitted within 90 days after completion of the grant. The Financial Status Report (Form SF–269) is required from each Council quarterly and is due to the Grants Officer no later than 30 working days after the end of the quarter. A final report is required 90 days following completion of the grant. Guidance for the preparation of these reports and other financial reporting procedures is contained in Attachment G of OMB Circular A–110.

§ 605.27 Recordkeeping.

(a) *Administrative records for FMPs.* (1) Councils and NMFS Headquarters, Regions and Centers collectively are responsible for maintaining records pertaining to the development of FMPs and amendments within their geographic area of authority. In the event of litigation, compilation of an administrative record for a court case will be under the direction of the NOAA General Counsel.

(2) Categories of documents which generally constitute an administrative record include the following:

(i) Council meeting agendas;
(ii) Minutes of Council meetings;
(iii) Plan Team reports, if any;
(iv) SSC reports;
(v) AP reports;
(vi) Hearing reports;
(vii) Council reports/recommendations;
(viii) Correspondence relating to the FMP;
(ix) Scoping comments;
(x) Work plan, if any;
(xi) Discussion papers, if any;
(xiii) NEPA documents;
(xiii) Regulatory analyses;
(xiv) PRA justification;
(xv) Proposed regulations;
(xvi) Final regulations;
(xvii) Emergency regulations; and
(xviii) Notices of meetings (Council, SSC, AP, Team).

(b) *Disposition of records.* (1) The goal of an effective disposition program is annually to destroy at least enough unneeded records to equal the volume of records created, while preserving records having long-term or enduring value because of administrative, legal, scientific, or historical importance.

(2) Councils must consult with NOAA before destroying Council records. Financial records (including time and attendance records) should be handled according to the stipulations of OMB Circular A–110. Councils must send records associated with FMPs to the appropriate Region for disposition.

(3) All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they cannot take the original or file copies of records with them: to do so violates Federal law.

(c) *Permanent records.* The designation of a file as "permanent" means that the records are appropriate for offer to the National Archives when 20 years old, unless otherwise specified. Destruction of permanent records is not authorized. The following are examples of permanent files:

(1) EIS files: Documents relating EIS's or environmental assessments. Cut off at end of calendar year when created. Permanent retention; no approved disposition at this time.

(2) Annual report files: Input for the DOC Annual Reports and related correspondence. Cut off at end of calendar year when created; permanent.

(3) Meeting files: Including agendas, minutes, reports, studies and related correspondence. Cut off at end of calendar year; permanent.

(d) *Privacy Act (PA) records.* Each Council will maintain in its office, under appropriate safeguards in accordance with the PA, personnel files on employees, experts and consultants under contract, and advisory group members.

(1) *Maintenance.* A file for each Council member containing appointment papers, security reports, biographical data and other official papers will be centrally maintained in NOAA under security and safeguard conditions required of files subject to the PA. This file will be available to members to which it pertains on request, and to other members and government officials when a need to know the information in the performance of the requester's official duties is established.

(2) *Protection.* The PA provides the following protection for individuals, including Council employees, except as otherwise limited by law:

(i) An individual is permitted to know what records pertaining to him/her are collected, maintained, used, or disseminated.

(ii) An individual is permitted to prevent records pertaining to him/her, which have been obtained for a particular purpose, from being used or made available for another purpose without his/her consent.

(iii) An individual is permitted to request access to information in Federal records pertaining to him/her, to have a copy made of all or any portion of such records, if releasable, and to request to correct or amend such records.

(iv) The collection, maintenance, use, or dissemination of any record of identifiable personal information must be in a manner which assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(v) Exemption from the requirements of the PA are permitted only in those cases where there is an important public need for such exemption as has been determined by specific statutory authority.

(vi) Federal agencies are subject to civil suit for any damage which occurs as a result of willful or intentional action which violates any individual's rights under the PA.

(3) *Request for PA information.* Any time an individual is asked to provide information about himself/herself to be maintained in a PA record, the individual must be given a written statement for his/her retention which provides the following information:

(i) The authority (statute or executive order) which authorizes the collection of the information, indicating whether the authority either imposes or authorizes any penalty for failing to answer; whether providing the information is mandatory or voluntary;

(ii) The principal purpose for which the information is to be used; and

(iii) Any other routine uses which may be made of the information. These routine uses must be limited to those published in the **Federal Register**, and the effect(s), if any, on the individual of not providing all or any of the requested information, both beneficial and adverse.

(4) *Disclosure of PA records.* The disclosure of PA records to the individual to whom they pertain, to a person accompanying the individual, to the parent of a minor, or to a legal guardian comprise a fundamental aspect of the PA. Otherwise, Councils may only disclose PA records under one of eleven situations outlined in NOAA Circular 75–82.

(5) *Disposition of PA records.* Councils must contact NOAA for guidance before disposing of PA records. Examples of PA records with recommended timeframes for disposition are as follows:

(i) Membership files: Containing biographical data on members. Cut off when member leaves Committee; destroy five years later.

(ii) Time and attendance files: Retain for three years following the final financial report for each grant year in accordance with OMB Circular A–110.

(e) *Freedom of Information Act (FOIA).* All FOIA requests must be submitted in writing. The envelope and letter should be clearly marked "Freedom of Information Request."

(1) *Requests.*

(i) FOIA requests should be time-and-date stamped upon receipt. Each request must be acknowledged within 10 working days and filled as expeditiously as possible. Time limits for processing FOIA requests start upon receipt of the request (by the FOIA unit) for information. In unusual circumstances, the 10-day time limit may be extended up to an additional 10 working days. Discretion should be used in invoking the 1- to 10-day extension provision. Any extension reduces availability by the same number of days of an

extension that otherwise can be invoked, if partial or full denial should result in an appeal.

(ii) FOIA requests received by a Council should be coordinated promptly with the Regional Office. The Region will coordinate logging the FOIA request and obtain clearance from the NOAA General Counsel concerning initial determination for release or denial of information (under paragraph (c)(5)(ii) of this section.

(iii) FOIA requests will be controlled and documented in the Region by completion of Form CD–244. Councils may obtain copies of this three-part form from the NOAA Logistics Supply Center at Kansas City or from local GSA stores, and assist the Regional Office in completing the form as well as in assigning an official response date. Copies of the CD–244 should be distributed to the Regional Director (white copy) and the Council (yellow copy), and an information copy with the incoming request should be provided to the NMFS FOIA Officer.

(iv) Councils should recover allowable costs for locating and reproducing information released under the FOIA and forward these funds through the NOAA Freedom of Information Officer to the U.S. Treasury. Appropriate charges are outlined in the DOC Uniform Schedule of Fees, 15 CFR 4.9.

(2) *Initial denials.* (i) The purpose of the FOIA is to make available to the public all information requested, with some exceptions in nine categories of information. Each Council may determine who may disclose unclassified information in its possession. However, only the Assistant Administrator has been delegated authority to make initial determinations on whether to deny information requested under the FOIA. This authority may not be redelegated. Regions must keep Councils informed.

(ii) Proposals to deny, or partially deny, as request for information should be coordinated with the appropriate Regional Attorney who will, in turn, coordinate with the DOC's Office of General Counsel, and with NOAA's Office of Public Affairs, and NOAA's Office. No initial denial may be issued until the concurrence of the Department's Office of General Counsel has been obtained.

(iii) After the coordination mentioned in paragraph (e)(2)(ii) of this section, the Assistant Administrator must send a letter to the requesting party denying the request for information. The denial letter should include the following:

(A) The specific exemption(s) which apply and why they apply.

(B) In the case of a partial denial, a statement of the specific manner in which a portion of a record is being provided after deletion of the portions which are determined to be exempt.

(C) A statement of the right to appeal to the DOC General Counsel within 30 days of the receipt of the denial.

(D) A statement that the appeal should include a copy of the original request, the initial denial, the requester's reasons why the records should be made available, and the reasons why the initial denial is believed to be in error.

(E) Copies of the letter of denial, along with the original FOIA request, should be sent to the DOC Office of General Counsel, the NOAA FOIA Officer, and the NMFS FOIA Officer.

[FR Doc. 89–863 Filed 1–13–89; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 646

[Docket No. 81017–8271]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the use of trawl nets in the snapper-grouper fishery in the exclusive economic zone (EEZ) between Cape Hatteras, North Carolina and Cape Canaveral, Florida. NOAA also redefines the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed. The intended effects of this rule are to prevent habitat damage and prevent the harvest of undersized fish, thereby ensuring the continued productivity of the snapper-grouper resource and to clarify the regulations.

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery is managed under the FMP, prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP, implemented September 28, 1983 (48 FR 39463, August 31, 1983), addressed growth overfishing of a number of the major species in the fishery and controversy regarding certain harvest techniques. Minimum sizes were established for five of the major species, and limitations were imposed on the use of poisons, explosives, fish traps, and trawls in the fishery. A prohibition on use of roller trawls was considered in order to address concerns about trawl damage to live-bottom habitat and harvest of very small vermilion snapper. The prohibition was rejected because conclusive evidence of trawl-induced habitat damage was not available at that time. The FMP noted ongoing studies of the effects of trawls on live-bottom habitat and expressed the intent to address this issue via FMP amendment if evidence of significant damage was documented. Information is now available to document habitat damage resulting from use of bottom trawls in live-bottom areas.

Amendment 1 addresses the problems of habitat damage and trawl harvest of undersized fish by prohibiting the use of trawl gear in a directed snapper-grouper fishery between Cape Hatteras, North Carolina and Cape Canaveral, Florida. A vessel possessing trawl gear and more than 200 pounds of fish in the snapper-grouper fishery (as listed in § 646.2) is defined as a participant in a directed fishery. It is a rebuttable presumption that a vessel possessing fish in the snapper-grouper fishery harvested those fish in the EEZ.

In addition, Amendment 1 updates the habitat section of the FMP and incorporates vessel safety considerations into the FMP.

The primary habitat for the major species in the snapper-grouper fishery, the historical use of trawl gear to harvest snapper-grouper species, evidence of live-bottom habitat damage by trawl gear, the effect of trawl gear on the harvest of undersized vermilion snapper, and analysis of the economic impacts of implementing Amendment 1 were fully discussed in the proposed rule (53 FR 42985, October 25, 1988) and are not repeated here. In addition, changes to the regulations proposed by NOAA to redefine the area south of Fowey Rocks Light, Florida wherein fish traps may not be placed, and other technical changes were discussed in the proposed rule and are not repeated here.

Comments and Responses

NOAA received twenty-seven letters from recreational fishermen, sportfishing organizations, a conservation organization, two federal agencies, a state natural resource agency, and a member of Congress supporting Amendment 1 and implementation of the proposed rule. Most of these

commenters and the Council requested a waiver of the 30-day delayed effectiveness of this final rule under the Administrative Procedure Act (APA). This waiver would make the rule effective near the beginning of the trawl season and, thus, would avoid additional habitat damage. Six letters opposing Amendment 1 and the proposed rule were received from individuals associated with a Sea Grant Marine Extension Service. The U.S. Coast Guard indicated support for the proposed rule but expressed concerns about enforccability.

U.S. Coast Guard Concerns

The Coast Guard indicated that the rule may not be effective in preventing habitat damage, because vessels can trawl over live bottom for other species and discard snapper-grouper to avoid exceeding the 200-pound limit. Although this is theoretically possible, NOAA does not believe this will occur. To our knowledge, there are no other trawl fisheries that target these live-bottom areas. Shrimp and calico scallop trawling do not occur in these areas. It is unlikely that finfish, other than the 69 species defined to be in the snapper-grouper fishery, would be sufficiently abundant in these areas to support directed fisheries and justify the extensive culling of snapper-grouper species that would be required. The Coast Guard also suggested that, because the rule does not prohibit the transfer of trawl gear, a trawl vessel could avoid detection of having engaged in a directed snapper-grouper fishery by transferring his gear at sea after use. NOAA considers the transfer at sea of trawl gear to be a cumbersome, time-consuming operation that will not be undertaken readily. If either of these problems does occur, amendment of the regulations will be considered. Finally, the Coast Guard commented that, because at-sea enforcement would still be required, this rule would not significantly reduce enforcement costs. NOAA concurs.

Marine Extension Service Comments

These commenters expressed a number of concerns about Amendment 1 including: (1) Data regarding habitat damage due to trawling are limited; (2) one of the cited studies indicated that the density of sponges and other invertebrates increased twelve months after the area was trawled; (3) other alternatives such as minimum size limits or prohibiting trawling only in specified areas should have been adopted; (4) the 200-pound limit will create a hardship for multi-gear vessels; and (5) prohibiting all trawling by vessels with more than 200 pounds of fish in the snapper-grouper fishery will preclude development of other trawl harvesting methods. Responses are categorized below.

Scientific Data

NOAA acknowledges that the scientific information regarding habitat damage due to trawling are somewhat limited but concludes that information presented adequately demonstrates that trawling in the live-bottom areas that support most of the snapper-grouper fishery will result in habitat damage. Although one study did authors specifically stated that commercial trawlers often drag repeatedly over the same area and that multiple tows would probably have caused much greater damage to sponge and coral populations.

Alternatives

Minimum size limits to control the trawl harvest of small vermilion snapper were previously considered by the Council and rejected because of the poor survival rate of undersized fish that would be released. Further, minimum sizes would not address the problem of habitat damage. The alternative of prohibiting trawling only in specified live-bottom areas would require knowledge of the precise locations of all of these areas. Such information is not currently available. Because these areas are believed to be sparsely distributed, enforcement of a patchwork of prohibited areas would be extremely difficult, and compliance by fishermen might be difficult as well. Further, the snapper-grouper trawl fishery is prosecuted predominantly, if not exclusively, over areas containing live bottom because that is the primary habitat of the target species. It would appear that there would be little to be gained by allowing directed snapper-grouper trawling in areas devoid of live bottom. NOAA believes this alternative is impractical.

200-Pound Limit

The final rule prohibits the use of trawl gear in a directed snapper-grouper fishery in the prescribed area. The 200-pound limit is the criterion used to define a directed fishery. The Council specifically considered the potential hardship that the 200-pound criterion might create for vessels (primarily shrimpers) that possess trawls and occasionally use other gear to catch snapper-grouper on the same trip. Representatives of the State fisheries agencies from North Carolina, South Carolina, and Georgia indicated that shrimp vessels would not be impacted. Data provided by Florida representatives indicated that of 8,396 shrimp trips taken during 1985–1987 only three exceeded the 200-pound limit. The number of multi-gear vessels likely to be affected by this criterion appears to be small. Because the criterion is critical to enforcement of the trawl prohibition, NOAA concludes that the measure is justified.

Impact on Development of New Trawling Methods

The prohibition on use of trawl gear in a directed snapper-grouper fishery is intended to prevent habitat damage and reduce growth by overfishing of vermilion snapper. There is no intent to ". . . stymie technological advances and economic growth of fisheries. . . ." The regulations for the Snapper-Grouper Fishery of the South Atlantic (50 CFR Part 646) contain a provision that allows the Secretary of Commerce to authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations. Under this provision, a request for an exemption to allow limited research to evaluate alternative trawl technologies could be considered. This would provide a reasonable opportunity for technological advances. Data obtained from such research could be submitted to the Council for consideration of possible modification of the regulations.

Waiver of Delayed Effectiveness

NOAA has determined that delay of the effectiveness of this final rule for 30 days would lead to further habitat damage, and further harvest by the trawl fishery of undersized vermilion snapper, and thus would be contrary to the public interest. Therefore, "good cause" exists under section 553(d)(3) of the APA to waive the delayed effectiveness of this final rule.

Classification

The Secretary of Commerce determined that Amendment 1 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review for this rule. A summary of the economic effects was included in the proposed rule and is not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The reasons for this determination were included in the proposed rule and are not repeated here.

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator), determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone management program. This determination was submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The Council prepared an environmental assessment (EA) for Amendment 1 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: January 11, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in the South Atlantic EEZ.

§ 646.2 [Amended]

3. In § 646.2, in the definition for *Black sea bass trap*, the phrase "fishes in the management unit" is removed and the phrase "fish in the snapper-grouper fishery" is added in its place; and in the term *Fish in the snapper-grouper species*, the word *species* is removed and the word *fishery* is added in its place.

§ 646.4 [Amended]

4. In § 646.4, in the first sentence, the phrase "for YPR analysis" is removed; and in the second sentence, the opening word "Those" is removed and the word "fishermen" is capitalized.

5. In § 646.6, in paragraph (b) the reference to "§ 646.20" is revised to read "§ 646.20(a)"; in paragraph (k) the reference to "§ 646.22(b)(5)" is revised to read "§ 646.22(b)(4)"; paragraphs (h) and (i) are revised; and new paragraphs (o) and (p) are added to read as follows:

§ 646.6 Prohibitions.

* * * * *

(h) Fish with explosives or poisons, as specified in § 646.22(a).

(i) Fish with a fish trap, except as specified in § 646.22(b).

* * * * *

(o) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cap Hatteras, North Carolina and Cape Canaveral, Florida, as specified in § 646.22(c)(1).

(p) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22(c) (2) and (3).

6. Section 646.22, with the exception of Figure 1, is revised to read as follows:

§ 646.22 Gear limitations.

(a) *Explosive and poisons.* (1) Explosives (except explosives in powerheads) may not be used in the EEZ to fish for fish in the snapper-grouper fishery.

(2) Poisons may not be used in the EEZ to fish for fish in the snapper-grouper fishery except as authorized by permit under State or Federal law.

(b) *Fish traps.* (1) A fish trap in the EEZ is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior axis of the trap's throat (funnel). The panel or door fasteners or hinges must be made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(2) A fish trap in the EEZ must meet all of the following mesh size requirements (examples of fish trap mesh configurations which meet the minimum requirements are shown in Figure 1):

(i) Two square inch minimum open mesh area;

(ii) One inch minimum length for shortest side;

(iii) Minimum distance of one inch between parallel sides of rectangular openings, and one and one-half (1.5) inches between parallel sides of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measurement.

(3) A fish trap may not be placed in the South Atlantic EEZ south and west of 25°35.5′ N. latitude (off Fowey Rocks Light, Florida) to 82°40′ W. longitude shoreward of the 100-foot contour that is closest to the shore and continuous along the coast and Florida Keys, as shown on the latest editions of National Ocean Service charts 11462, 11452, 11442, and 11439. West of 82°40′ W. longitude, traps may not be placed in the South Atlantic EEZ north of a line connecting 24°24.86′ N. latitude, 82°40′ W. longitude and 24°28.6′ N. latitude, 83°00′ W. longitude. A fish trap so placed will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer).

(4) A buoy line attached to a fish trap possessed or fished shoreward of the outer boundary of the EEZ and south of 25°35.5′ N. latitude must be a minimum of 125 feet in length.

(c) *Trawl gear.* (1) In the EEZ between Cape Hatteras, North Carolina (35°15′ N. latitude) and Cape Canaveral, Florida (28°35.1′ N. latitude)—due east of the NASA Vehicle Assembly Building), the use of trawl gear in a directed snapper-grouper fishery is prohibited. A vessel with trawl gear and more than 200 pounds of fish in the snapper-grouper fishery aboard is considered to be in a directed snapper-grouper fishery. It is a rebuttable presumption that a vessel with more than 200 pounds of fish in the snapper-grouper fishery aboard harvested such fish in the EEZ.

(2) A vessel with trawl gear aboard may not transfer at sea any fish in the snapper-grouper fishery—

(i) Taken in the EEZ between Cape Hatteras and Cape Canaveral; or

(ii) In the EEZ between Cape Hatteras and Cape Canaveral, regardless of where such fish were taken.

(3) No vessel may receive at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard, as specified in paragraph (c)(2) (i) and (ii) of this section.

[FR Doc. 89-955 Filed 1-11-89; 3:35 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 10
Tuesday, January 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88-010P]

Importation of Livestock Carcasses With Tissues Removed

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by deleting § 327.3(d) (9 CFR Part 327) to remove the requirements prohibiting the importation into the United States (U.S.) of carcasses or parts of carcasses of certain livestock from which the pleura, peritoneum, body or portal lumph nodes are removed. This action is in response to a petition submitted by Cloverdale Foods Company, Minot, North Dakota.

DATE: Comments must be received on or before February 16, 1989.

ADDRESS: Written comments should be sent to the Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (See also "Comments" under **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposal would allow certain livestock carcasses and parts from countries eligible to ship products to the U.S. to be imported and transported in commerce under the same provisions as those carcasses and parts which are inspected and passed in the U.S. Additionally, the proposal would ease the inspection burden on the Agency and the importing industry, ease congestion of loading docks, and reduce inspection time at the port of entry. Inspectors would not be required to specifically determine whether certain tissues had been removed from carcasses or parts, but would assure that products are from countries eligible to import meat products into the U.S. and are wholesome, not adulterated, and properly marked and/or labeled.

Effect on Small Entities

The Administrator of the Food Safety and Inspection Service has determined that this proposal would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). This proposal would not impose any new requirements on the meat industry; rather it would permit this industry to use more imported livestock carcasses or parts. The carcasses and parts would be further processed in the U.S.; thus, there would be less importation of processed products. There would be no economic impact on small entities because the proposed rule would be limited to removing an outdated regulation.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and must refer to the docket number located in the heading of this document. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, carry out a post-mortem inspection of carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines, when they are slaughtered in an establishment that is subject to inspection under the FMIA.

Post-mortem inspection involves a series of routine and special examinations by one or more veterinary medical officers, or trained food inspectors under veterinary supervision, of the head, viscera, and other parts of the carcass of each animal slaughtered to detect diseases or abnormalities that could cause the carcass or any part to be adulterated. Routine post-mortem inspection is divided into three phases: head inspection, viscera inspection and carcass inspection. During each phase, FSIS inspectors perform specific tasks which involve a sequence of observing, palpating, and incising certain tissues and lymph nodes. During inspection of the viscera, the inspectors examine all organs and corresponding lymph nodes, including the portal lymph nodes; and during inspection of the carcass, they examine all carcass surfaces including the pleura, peritoneum, and body lumph nodes. When carcasses are affected by diseases or abnormalities, such carcasses are retained for a special examination by FSIS veterinary medical officers who, depending upon the diseases or abnormalities, perform thorough and expanded examinations by observing, palpating and incising tissues and lymph nodes. These tasks have been tested and have proved to be effective and efficient methods of inspection. It is during all these tasks that, if any abnormalities, such as localized adhesions, small encapsulated abscesses, localized bruises, etc., are found on the pleura, peritoneum or lymph nodes, these abnormalities are removed with the surrounding tissues, destroyed or denatured, and not saved for human food. The removal or absence of the pleura, peritoneum, or some lymph nodes does not mean that the remaining parts of the carcass are adulterated and not fit for human consumption.

Under section 20 of the FMIA (21 U.S.C. 620), FSIS is responsible for assuring that imported carcasses and parts of cattle, sheep, swine, goats, horses, mules or other equines and their products meet the same standards as those applied in the U.S. FSIS carries out this responsibility by reviewing the inspection system of each country that wishes to import such carcasses, parts, or other products into the U.S., by determining whether the foreign country's laws and inspection program are at least "equal" to those of the U.S. system, and by reinspecting imported products at the port of entry.

For a country's inspection system to be considered at least "equal" to that of the U.S., that country must provide documentary proof that it has an "at least equal" operating inspection system. If the review of the documents demonstrates that the country has such a system, FSIS personnel conduct on-site reviews of the country's system. If all requirements of the FMIA are met, the country is considered to be "eligible" to import products into the U.S. In addition to the documents' review and on-site reviews of each foreign country system, FSIS carefully reinspects the product at the port of entry in the U.S. and assures that the foreign country system continues to produce product that conforms to the standards for product produced in the U.S.

The requirements in 9 CFR 327.3(d) have been part of the Federal meat inspection regulations for many years and were promulgated in response to foreign countries' exporting practices in existence at that time.

FSIS has been petitioned by Cloverdale Foods Company, Minot, North Dakota, to evaluate the current requirements on the basis that they are no longer applicable and to consider their deletion from the regulations. FSIS agrees with the petitioner since the removal or absence of the pleura, peritoneum, or lymph nodes does not mean that the other parts of the carcass are adulterated and not fit for human consumption. Accordingly, FSIS is hereby proposing to amend 9 CFR Part 327 of the Federal meat inspection regulations by deleting § 327.3(d).

Proposed Rule

For the reasons set out in the preamble, § 327.3 of the Federal meat inspection regulations would be amended as set forth below:

List of Subjects in Part 327

Meat inspection, Imported products.

PART 327—[AMENDED]

1. The authority citation for Part 327 continues to read as follows:

Authority: 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

§ 327.3 [Amended]

2. Section 327.3 (9 CFR 327.3) would be amended by removing paragraph (d).

Done at Washington, DC, on January 10, 1989.

Lester M. Crawford,
Administrator, Food Safety and Inspection Service.

[FR Doc. 89-940 Filed 1-13-89; 8:45 am]
BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Quality Assurance in the Medical Use of Radioactive Byproduct Material; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned a public workshop with medical use licensees to discuss working drafts of a proposed rule and a regulatory guide concerning quality assurance in the medical use of byproduct material.

DATES: The workshop will be held Monday, January 30, 1989 (for quality assurance related to the use of radiopharmaceuticals); and Tuesday, January 31, 1989 (for quality assurance related to the use of sealed sources for teletherapy and brachytherapy). The workshop will begin each day at 9:00 am and end about 5:00 pm.

ADDRESS: U.S. Nuclear Regulatory Commission, Room 4B11, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Regulation Development Branch, NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION: The NRC is proposing to amend its regulations to require its medical use licensees to develop and implement quality assurance programs designed to prevent, detect, and correct the cause of errors in the administration of byproduct material for medical use.

A proposed rule was published in the Federal Register on October 2, 1987 (52 FR 36942) which prescribed certain quality assurance procedures that the NRC believed should be incorporated in each medical use program to prevent most human errors in the administration of byproduct material. Public comments suggested that the prescriptive rule lacked flexibility, and might interfere with the delivery of medical care. Instead, a performance-based rule was recommended.

Based on consideration of public comments to date, the NRC has prepared a working draft of a performance-based proposed rule. The NRC has also prepared a working draft of a regulatory guide that contains specific quality assurance procedures to meet the performance-based rule.

The purpose of the workshop is to obtain input from and have a round-table discussion with the medical use licensees on the working drafts of the performance-based rule and the regulatory guide.

The working drafts of the performance-based rule and the regulatory guide are available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC. The transcript of the workshop will be available by about March 1, 1989 at the NRC Public Document Room.

Conduct of the Meeting

The workshop will be co-chaired by Mr. John L. Telford, Section Leader, Rulemaking Section, Regulation Development Branch, Office of Nuclear Regulatory Research, and Dr. John H. Austin, Acting Chief, Medical, Academic and Commercial Use Safety Branch, Office of Material Safety and Safeguards, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., medical use licensees and NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come-first served basis.

Dated at Rockville, MD, this 11th day of January 1989.

For the Nuclear Regulatory Commission.

Bill M. Morris,
Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89-1028 Filed 1-13-89; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS–RM–87–102]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rule; correction.

SUMMARY: On December 2, 1988 (53 FR 48796), DOE published a proposed rule to consider amending the energy conservation standards for refrigerators, refrigerator-freezers, and freezers; to establish standards for small gas furnaces and to consider establishing standards for television sets. This document corrects an error concerning refrigerator-freezers in that notice.

FOR FURTHER INFORMATION CONTACT: Michael J. McCabe, (202) 586–9127.

Issued in Washington, DC, January 9, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—[CORRECTED]

On page 48809, the standard level 19.1 AV+499, under level 2 of Table 3–1, should be 19.1 AV+399.

[FR Doc. 89–1049 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–178–AD]

Airworthiness Directives: McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 series airplanes, which would have required repetitive aided visual inspections for cracks in certain longerons for airplanes that have accumulated more than 55,000 landings. That action was prompted by reports of fuselage skin and longeron cracks found in the upper fuselage over the wing. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and lead to rapid decompression of the airplane. This action revises the proposed rule by reducing the initial compliance threshold 45,000 landings, and revising the service information to cite a later revision of the applicable service bulletin.

DATE: Comments must be received no latger than February 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–178–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. The applicable service information may be obtained from McDonnel Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Admnistrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 88–NM–178–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulatons to include an airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 series airplanes, which would have required an aided visual inspection of fuselage overwing longerons on airplanes prior to the accumulation of 55,000 landings, was published in the **Federal Register** on November 17, 1988 (53 FR 46447). That action was prompted by reports of fuselage skin and longeron cracks in the upper fuselage over the wing. Such cracking, if not detected and corrected, could result in degradation of the structural integrity of the fuselage and lead to rapid decompression of the airplane. (Based on those same reports of cracking, the FAA issued a separate final rule, Amendment 39–6071, (53 FR 46433; November 17, 1988), to require repetitive external eddy current inspections of this same area of the longerons and the fuselage skin.)

Since issuance of that proposal, an operator has reported finding skin and longeron cracks on four airplanes have accumulated between 45,000 and 52,000 landings.

The FAA has reviewed and approved McDonnell Douglas DC–9 Altert Service Bulletin A53–230, Revision 1, dated December 22, 1988, which recommends a revised (lower) threshold for initial inspections for cracks in the fuselage overwing longerons. This service bulletin also describes procedures for inspections of affected areas and instructions for interim and permanent repairs.

The FAA has determined that this NPRM must be revised to require the repetitive aided visual inspections for cracks in the longerons of the area in the upper fuselage over the wing, and repair, if necessary, on the subject airplane models prior to the accumulation of 45,000 total landings, and to incorporate an optional repair procedure as defined in Revision 1 to McDonnell Douglas Service Bulletin A53–230.

There are approximately 490 Model DC–9 series airplanes of the affected design in the worldwide fleet. It is estimated that 476 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $913,920 for the initial inspection cycle.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, model DC–9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, which appeared in the **Federal Register** on November 17, 1988 (53 FR 46467), as follows:

McDonnell Douglas: Applies to Model DC–9–10, –20, –30, –40, –50, and C–9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fatigue cracking and failure of fuselage skin and longerons, accomplish the following:

A. Prior to the accumulation of 45,000 landings, or within 1,100 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 2,500 landings, perform an aided visual inspection (3x to 5x magnification) of the longerons from longeron 7 left through 7 right from inside the fuselage, in accordance with accomplishment instructions of McDonnell Douglas DC–9 Alert Service Bulletin A53–230, Revision 1, dated December 22, 1988, within the range of fuselage stations for the particular series airplanes as specified in Table I of that service bulletin.

B. Conduct repetitive inspections in accordance with paragraph A., above, at intervals not to exceed 5,800 landings.

C. If cracks are detected, prior to further flight, repair in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–230, Revision 1, dated December 22, 1988. If Option II, Condition 2, of the service bulletin is selected, accomplish removal of interim repair doubler(s) and accomplish permanent longeron repair(s) within 2,500 landings after installation of the interim repair doubler(s).

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1–750 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California 90806–2425.

Issued in Seattle, Washington, on December 28, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–831 Filed 1–13–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AGL–27]

Proposed Alteration to Transition Area—Ashland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Ashland, WI, transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to John F. Kennedy Memorial Airport, Ashland, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 18, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 88–AGL–28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments

BEST COPY AVAILABLE

on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-27". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Ashland, WI.

The present transition area is being modified to accommodate existing SIAPs to John F. Kennedy Memorial Airport.

This modification will decrease the transition area radius and extension and return that portion of airspace back to a noncontrolled status.

The development of these procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual fight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ashland, WI—[Revised]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the John F. Kennedy Memorial Airport (Lat. 46°32'55"N., Long. 90°55'08"W.) within 3 miles each side of the 204° bearing from the airport extending from the 5 mile radius to 8.5 miles southwest of the airport, within 3 miles each side of the 206° bearing from the airport extending from the 5 mile radius to 8.5 miles southwest of the airport, within 3 miles each side of the 124° bearing from the airport extending from the 5 mile radius to 8.5 miles southeast of the airport.

Issued in Des Plaines, Illinois, on December 30, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-932 Filed 1-13-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86-11, Notice No. 2]

RIN 2125-AB 84

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Passing and No-Passing Zone Standards; Docket Closing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of rulemaking and docket closing notice.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has considered the idea of revising the current MUTCD standards for no-passing zones. In response to this concern, an advance notice of proposed rulemaking (ANPRM) was issued June 11, 1986, so that interested persons and/or organizations could have the opportunity to participate in the consideration of this matter. Based upon comments received in response to the ANPRM and upon its own experience, the FHWA has no conclusive data for determining that the current passing sight distances are inadequate or that changes to the MUTCD are warranted at this time. Also, the FHWA will continue to review research efforts being done in this area. The public is invited to provide any additional research results that may be useful.

DATE: The docket is closed as of January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Present Regulations

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be

purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions. The FHWA both receives and initiates requests for amendments to the MUTCD.

The MUTCD fulfills a statutory responsibility imposed on the Secretary of Transportation in sections 109(b), 109(d), and 402(a) of Title 23, U.S.C., and delegated to the Federal Highway Administrator in 49 CFR 1.48(b), (c), and (n). Generally, 23 U.S.C. 109 authorizes the Secretary to develop, approve, and apply standards for the construction of highways in which Federal funds participate. Section 109(b) calls for standards for the Interstate System to be applied uniformly throughout the States. Section 109(d) directs the Secretary to approve only such standards for the location, form, and character of signs, signals, and markings on Federal-aid highways as will promote the safe and efficient utilization of the highways. Section 402(a) authorizes the Secretary to promulgate uniform national standards relating to highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic, etc., for use on all public roads.

Current Rulemaking

This rulemaking was initiated by the issuance of an Advance Notice of Proposed Rulemaking (AMPRM) on June 11, 1986 (51 FR 21180). In this ANPRM the FHWA discussed the concerns that have been addressed regarding no-passing zones. The basic concern is whether or not the MUTCD standards and the American Association of State Highway and Transportation Officials (AASHTO) standards provide enough passing sight distance and length of passing zone to provide safe completion or abortion of a passing maneuver by all vehicles and trucks.

Summary of Comments

The FHWA analyzed the comments received from the 29 responses to this ANPRM. The following summary presents the responses received to the nine questions addressed in the ANPRM:

Question 1—Are revisions to the MUTCD needed?

There were thirteen negative and twelve affirmative responses. Four commenters did not address this question. Of those who favored revisions, two believed revisions were only needed in the area of cars versus trucks; while four indicated a need for only minor revisions, such as, a better definition of no-passing zones and modification of the 400 feet suggested minimum distance between successive no-passing zones.

Question 2—Any reported accidents or problems to suggest change?

The purpose of this question was to determine if accident data exist to substantiate that no-passing zones create problems. Eighteen responded negatively, two responded affirmatively and nine did not comment. The two affirmative responses addressed personal experiences.

Question 3—Any specific changes identified?

Twenty-five responded negatively and four responded affirmatively. The suggested changes dealt with reducing the eye height to 3.5 ft. (which has already been done), reducing the length of the end of the passing zone, and bringing the AASHTO and MUTCD standards into agreement.

Question 4—Are making standards other than the MUTCD and AASHTO used?

Of the twenty-nine commenters, sixteen responded negatively, two responded affirmatively, and eleven did not address the question. The two affirmative responses were Ohio, which uses its own manual, and New York DOT, which uses a sliding scale (length increases with speed) instead of the 400 feet minimum distance suggested in the MUTCD for successive no-passing zones.

Question 5—Any truck problems?

Of the twenty-nine commenters, sixteen responsed negatively, three responded affirmatively, and ten did not comment. Only one of the three affirmative responses provided any specific problems caused by trucks. The specific problems were: (1) Tractor-trailers crossing four-lane divided facilities with median widths less than the length of the trucks, (2) off-tracking is increased at intersections and/or curves, and (3) substantial increases are required in the lengths of time and distances for successful passes or aborts of vehicles attempting to pass impeding vehicles. This subject of trucks and no-passing zones is discussed in more detail in question eight.

Question 6—Additional practices/procedures suggested?

Those who responded to this question merely reiterated the need for adding passing lanes. There were no suggestions on special procedures or practices that should be considered in the location and design of highways.

Question 7—Any special consideration for mountainous low-volume highways?

None were suggested.

Question 8—Is research warranted? If so, what?

In the eighteen affirmative responses, many research criteria were identified and research topics suggested. One research area that was suggested is cars versus trucks. The 1982 Surface Transportation Assistance Act enacted by Congress required States to allow longer trucks on the Nation's highways. Longer trucks significantly increase the length of roadway and time necessary for a passing manuever, especially if the passing vehicle is a low-powered car. The FHWA is sponsoring a research effort to (1) identify those highway design and operational standards which are sensitive to truck performance characteristics, (2) determine the adequacy of those standards for trucks, (3) and develop and assess new standards for those situations where the current standard does not adequately address the current or future truck population.

Examples of other research criteria suggested by those responding to the ANPRM are:

(a) Driver behavior,
(b) Vehicle performance,
(c) Roadway conditions,
(d) Establishing more realistic values for minimum length of passing zones,
(e) Reviewing assumptions made in establishing MUTCD and AASHTO values with the intent of bringing them into agreement,
(f) Short no-passing zones versus long no-passing zones,
(g) Determining adequacy of 400 feet minimum distance between successive no-passing zones,
(h) Expected vehicle mix, and
(i) Vehicle conspicuity under conditions of darkness.

Question 9—Impact of proposed change.

The fifteen commenters indicated that implementation of this change would be quite costly and that the proposed change would result in excessively long no-passing zones which would reduce passing opportunities and increase motorist violations.

Another area of concern addressed in the ANPRM and reviewed by the Federal Highway Administration was the relationship between the AASHTO "Green Book" and the MUTCD. The AASHTO's values represent design standards and the MUTCD values represent operational standards. The two are developed on different assumptions as discussed in the

ANPRM. They serve different purposes. The AASHTO standards compute the minimum sight distance needed to assure safe passing opportunities at all times when designing a road. The AASHTO's values are used primarily by design engineers to make economic and capacity decisions regarding the building of highways. In determining minimum passing sight distance, AASHTO uses the following formula: $d_1 + d_2 + d_3 + d_4$ where:

- d_1—Distance traversed during perception and reaction time (Pass Initiation Distance).
- d_2—Distance traveled while the passing vehicle occupies the left lane (Left Lane Occupancy Distance).
- d_3—Distance between the passing vehicle at the end of its maneuver and the opposing vehicle (Clearance Distance).
- d_4—Distance traversed by an opposing vehicle for two-thirds of the time the passing vehicle occupies the left lane (Opposing Vehicle Travel Distance).

The formula used in determining the MUTCD values is $(2/3)\ d_2 + d_3 + d_4$. The MUTCD formula is different from the AASHTO formula and is used for operational and not design purposes. The development of the MUTCD minimum passing zone sight distances on which pavement markings are based was discussed in the ANPRM. As shown in the table included in the ANPRM, the type of pass influences the required passing sight distance appreciably. The distances used in the AASHTO design values are based on the delayed passing of an overtaken vehicle traveling 10 m.p.h. less than the passing vehicle. Unlike the AASHTO distances, the MUTCD distances are based on a compromise between a delayed pass and a flying (or undelayed) pass.

If striped in accordance with only the delayed pass assumption, passing would be restricted when it could frequently be accomplished with safety under one or more of the following conditions: (1) The passing vehicle may not be slowed down to the speed of the overtaken vehicle and may pass at a higher speed, reducing the time and distance of passing; (2) the overtaken vehicle may be traveling at speeds less than average; and (3) the opposing vehicle which appears after the passing maneuver is begun may be traveling slower than the assumed design speed. The AASHTO assumption of delayed passing is on the safe side but if a road is striped on this basis it may unduly limit the usefulness of the road because vehicles naturally pass without first reducing speed when the opposing traffic lane is clear of vehicles. Therefore, the MUTCD suggested sight distances for restricted striping are compromises between the two types of passes.

While the AASHTO minimum sight distance represents the distance needed to initiate and complete a passing maneuver, the MUTCD minimum sight distance represents only the distance needed to safely complete a passing maneuver. The pass initiation distance is not included in the MUTCD values because drivers can often see the pavement markings located at the beginning of a passing zone for some distance before they reach that point. This gives the driver advanced time to assess the situation and allows additional time to start the pass immediately if there is no opposing traffic. The minimum passing sight distance as shown in MUTCD Figure 3–8 includes the length of the pass completion distance and the no-passing zone marking.

Of all of the ideas, materials, comments, and studies that were reviewed in response to this rulemaking, the study "A New and Improved Model of Passing Sight Distance on Two-Lane Highways," by John C. Glennon and prepared for the 67th Annual Transportation Research Board Meeting held January 11–14, 1988, stands out as being the most thorough and conclusive reinforcement of the adequacy of the present MUTCD passing sight distance standards.

Mr. Glennon's model is based on the hypothesis that a critical position exists during the passing maneuver where the passing sight distance required to either complete or abort the pass is equal. Mr. Glennon concluded that none of the studies by Lieberman, Saito, Gericke and Walton, Fancher, and Khasnabis were based on a correct analysis of passing sight distance requirements. Mr. Glennon also concluded, based on the new model and very conservative values for deceleration, that passing sight distance requirement are close to those presented in the MUTCD.

Mr. Glennon used eight feet per second per second (8 ft. per sec.2) as the deceleration level to determine passing sight distance requirements. The FHWA feels that somewhat higher decelerations are acceptable for determining minimum passing sight distance requirements. At the twentieth annual meeting of the Highway Research Board, Mr. Ernest E. Wilson, Director, General Motors Proving Ground, presented his report "Deceleration Distances for High Speed Vehicles". The report concluded that stopping decelerations varied from 8.55 ft. per sec.2 (comfortable to passenger and preferred by driver) to 13.9 ft. per sec.2 (severe and uncomfortable to passengers, objects slide off seats, and driver classifies as an emergency) to 19.5 ft. per sec.2 (maximum stop). To determine the traffic control signal change interval, the 1976 edition of the Transportation and Traffic Engineering Handbook recommended a deceleration of 15 ft. per sec.2.

Using Mr. Glennon's model and his other assumptions, it can be determined that the passing sight distance requirement for a 16-foot vehicle passing a 55-foot vehicle using a deceleration of 13.9 ft. per sec.2 and for a 16-foot vehicle passing a 70-foot vehicle using a deceleration of 15 ft. per sec.2, are:

Deceleration ft. per sec.2	30 MPH	40 MPH	50 MPH	60 MPH	70 MPH
13.9	430	604	772	935	1,093
15.0	422	601	774	942	1,105
MUTCD	500	800	800	1,000	1,200

The above table clearly illustrates that the 40 mph passing sight distance requirement is the most difficult to meet. However, it has been shown that by using decelerations similar to those that are commonly used in the determination of the change interval for intersection traffic control signals, the MUTCD passing sight distances provide for the safe passing of long vehicles.

The Glennon model can also be used to show that the passing sight distance requirements for a slow passing vehicle is actually less than that of a faster vehicle. This is true because a vehicle can decelerate at a much faster rate than it can accelerate, and because the kinetic energy of a moving object varies with the square of its velocity. Using Mr. Glennon's model and his other assumptions, it can be determined that the passing sight distance requirement for a vehicle going 68 mph passing an impeding vehicle going 60 mph, is about 27 feet less than the requirement for a passing vehicle that is going 70 mph (805 feet versus 832 feet). The FHWA acknowledges that the slower passing vehicle will have to abort more passing attempts than would a faster passing vehicle; however, it has been shown that the safety of the passing vehicle has not been compromised.

Conclusions

The existing data and the studies that were responsive to this rulemaking show that the current passing sight distances are adequate for most vehicles and that changes to the MUTCD are not warranted at this time. The FHWA does not have any significant statistics to show that no-passing zone accidents that are directly related to the passing sight distance, represent a disproportionate share of highway accidents. It should also be remembered that the distances shown in the MUTCD are *minimums* and that highway agencies may establish longer distances where engineering judgment determines the need.

The AASHTO "Green Book" and the MUTCD minimum passing sight distances are based on different formulas and serve different purposes. The FHWA has determined that there is no significant need to make the two distances agree. The FHWA will consider changing the terminology in the MUTCD to provide a clearer distinction between the two standards.

These conclusions are based on the FHWA review and analysis of the current MUTCD standards, all docket comments, and the research study reports discussed in the ANPRM. It should be noted that many of the research studies have been based upon mathematical formulas rather than actual field observation. It should also be noted that the MUTCD passing sight distances were verified by field observations in the 1940's and again in the late 1950's. Driver behavior is an important factor that has not been factored into many of the research studies. Although all of the study and research efforts were well intended, many were based on incorrect assumptions or formulas. The report, "A New and Improved Model of Passing Sight Distances on Two-Lane Highways" by John C. Glennon (January 1988) offers considerable reinforcement of the MUTCD standards. The FHWA is still concerned with the adequacy of the MUTCD standards as they relate to long trucks and FHWA will continue to evaluate and support research efforts relating to passing sight distances and no-passing zones, especially as they relate to trucks.

In summary, based on the FHWA's review of the current standards, the docket comments and the related research studies, it is felt that the proposed change would result in excessively long no-passing zones which would reduce the passing opportunities and increase motorist violations. The current practice is acceptable because it achieves a balance between passing opportunities and motorist violations. When the current research concerning truck operations is completed, the FHWA will review the entire matter and consider additional research or rulemaking as appropriate.

Accordingly, all rulemaking actions regarding Docket 86–11 are terminated.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation. Due to the nature of this termination action, a regulatory evaluation is not required since no economic impact is expected. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the notice of termination does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(Authority: 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b)

Issued on January 10, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89–1057 Filed 1–13–89; 8:45 am]

BILLING CODE 4910-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268]

Advanced Television Systems

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action extends the deadline for reply comments in the *Tentative Decision and Further Notice of Inquiry* in MM Docket 87–268, 53 FR 38747 (Oct. 3, 1988), extended, 53 FR 45127 (Nov. 8, 1988) from January 9, 1989, to January 23, 1989.

DATE: Reply comments by January 23, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of Bureau's *Further Order Extending Time for Filing Reply Comments*, adopted January 3, 1989, and released January 4, 1989, DA 89–1. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street Northwest, Washington, DC. The complete text of this order also may be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 1919 M Street Northwest, Room 246, Washington, DC.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR 89–996 Filed 1–13–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–589, RM–6482]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Taos Communciations Corp. seeking the substitution of Channel 268C2 for Channel 269A at Taos, New Mexico, and the modification of its license for Station KTAO to specify the higher powered channel. Channel 268C2 can be allotted

to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.1 kilometers (11.9 miles) south to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 36–14–48 and West Longitude 105–39–15. In accordance with Section 1.420 of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Taos or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before February 27, 1989, and reply comments on or before March 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frederick W. Finn, Esq., 1920 N Street NW., Suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making , MM Docket No. 88–589, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFr 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–992 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–587, RM–6471]

Radio Broadcasting Services; Comanche, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Harold E. Cochran seeking the substitution of Channel 245C2 for Channel 244A at Comanche, Oklahoma, and the modification of its license for Station KDDQ to specify the higher powered channel. Channel 245C2 can be allotted to Comanche in compliance with the Commission's minimum distance separation requirements and can be used at Station KDDQ's present transmitter site. The coordinates for this allotment are North Latitude 34–26–12 and West Longitude 97–54–47. In accordance with Section 1.420(g) of the Commission's Rules concerning adjacent channel upgrades, we shall not accept competing expressions of interest in use of Channel 245C2 at Comanche or require Cochran to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before February 27, 1989, and reply comments on or before March 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent J. Curtis, Jr., Esq., Patricia A. Mahoney, Esq., Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–587, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–993 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–588, RM–6481]

Radio Broadcasting Services; The Dalles, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Nugent Broadcasting Corporation, seeking the substitution of Channel 249C2 for Channel 249A at The Dalles, Oregon, and the modification of its license for Station KACI(FM) to specify operation on the higher powered channel. Channel 249C2 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) northwest to accommodate petitioner's desired transmitter site. the coordinates for this allotment are North Latitude 45–38–54, West Longitude 121–16–18. In accordance with Section 1.420 of the Commission's Rules, competing expressions of interest in use of Channel 249C2 at The Dalles will not be accepted and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before February 27, 1989, and reply comments on or before March 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Dominic Monahan, Dow, Lohnes & Albertson, 1255–23rd Street, NW., Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–588, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–994 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–590, RM–6484]

Radio Broadcasting Services; Ravenel and Barnwell, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coastal Broadcasting, Inc. seeking the substitution of Channel 269C2 for Channel 269A at Ravenel, SC, and the modification of its license for Station WMGL(FM) to specify operation on the higher powered channel. In addition, it requests the substitution of Channel 256A for Channel 269A at Barnwel, SC, and the modification of Radio Station WBAW, Inc.'s license for Station WBAW(FM) to specify operation on the substitute channel. Channel 269C2 can be allotted to Ravenel in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.2 kilometers (10.7 miles) southwest to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 32–40–40 and West Longitude 80–23–40. Channel 256A can be allotted to Barnwell in compliance with the Commission's minimum distance separation requirements and can be used at Station WBAW(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 33–13–25 and West Longitude 81–21–35. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 269C2 at Ravenel or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before February 27, 1989 and reply comments on or before March 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, Esq., Fisher, Wayland, Cooper and Leader, 1255–23rd Street NW., Suite 800, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 88–590, adopted November 30, 1988, and released January 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–995 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 88–567; FCC 88–403]

Amendment for the Purpose of Implementing a Conditional Authorization Procedure for New Private Land Mobile License Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to a petition for rule making, the Commission adopted a Notice of Proposed Rule Making to consider amending § 90.159 of the Commission's Rules to establish a procedure for granting a conditional authorization, not to exceed 180 days, to applicants proposing new private land mobile radio status. Under this procedure, an applicant for a new station could commence operations pursuant to a conditional permit under upon self-certification that certain conditions had been met, including completion of the frequency coordination process and submission of the application to the Commission.

DATES: February 27, 1989, and replies March 14, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Feldman, Land Mobile and

Microwave Division, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 88–567, adopted December 12, 1988, and released January 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (Room 5126), 2025 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. This *Notice of Proposed Rule Making* proposes to amend § 90.159 of the Commission's Rules in order to extend the Commission's conditional permit procedures for additional user applicants on existing private land mobile stations to applicants for new stations.

2. Under this procedure, the Commission would authorize an applicant for a new station to commence operations upon the filing of an application provided that the application is accompanied by a frequency coordination recommendation and the application does not involve any environmental, Canadian border, rule waiver, or FAA tower clearance issues. Conditional authority would remain in effect for a period not to exceed 180 days or until the Commission acts on the application, whichever is shorter. To implement this procedure would require amendment of the Commission's Rules and modification of the station license application form to reflect that the applicant could commence conditional operation upon the filing of a properly coordinated application that contains the applicant's self-certifications that none of the above issues are present. If the applicant certifies that any of the above issues exist, the applicant may not begin operation until the Commission grants the application.

3. In addition to the certifications noted above, the applicant would continue to certify that all statements on the application are true and made in good faith. Finally, there would be a warning printed on the application that conditional authority could be terminated at any time if the Commission determines that the applicant is ineligible or that a grant of the application may not otherwise be in the public interest. Conditional authority would be in effect only during the relatively brief period for processing the application and the Commisison would grant unconditional authority only after finding that such grant would be in the public interest.

4. The Commission is also proposing to apply this conditional licensing procedure to applications for itinerant frequencies and applications for the assignment of authorization or transfer of control of a license for an existing station where the applicant is not requesting any change in the operating parameters of the existing facility. These applicants are not required to submit frequency coordination recommendations with their applications.

Initial Regulatory Flexibility Analysis

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, an initial flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

6. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980. Although these proposals require modification of the license application form, they contain no new information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public.

Ordering Clauses

7. This is non-restricted notice comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

8. Authority for issuance of this *Notice of Proposed Rule Making* is contained in sections 4(i), 301, 303(r), 309 and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(r), 309 and 331(a). Interested parties may file comments on or before February 27, 1989, and reply comments on or before March 14, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

9. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, NW., Washington, DC

List of Subjects in 47 CFR Part 90

Applications and authorizations

Donna R. Searcy,

Secretary.

Appendix A

47 CFR Part 90 is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Section 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.159 is proposed to be amended by changing its title and by designating the existing text of this rule section as paragraph (a) and adding new paragraphs (b), (c) and (d) as follows:

§ 90.159 Conditional temporary authorizations.

* * * * *

(b) An applicant proposing to operate a new private land mobile radio station below 470 MHz that is required to submit a frequency recommendation pursuant to § 90.175(a) through (e) may operate the proposed station during the pendancy of its application for a period of up to 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127 if the application is accompanied by a frequency recommendation in accordance with §§ 90.175 and 90.176, and provided that the following conditions are satisfied:

(1) The proposed station location is south of Line A or west of Line C as defined in § 90.7.

(2) The proposed antenna structure does not exceed 6.1 meters (20 feet) above ground level or above an existing man made structure (other than an antenna structure), unless the antenna structure has been cleared by the FAA as required by § 17.4(f).

(3) The grant of the application does not involve a waiver of the Commission's Rules.

(4) The applicant has determined that the proposed facility will not significantly affect the environment as defined in § 1.1307.

(c) The following applicants that are not required to submit evidence of frequency coordination under § 90.175(F) may operate the subject station during the pendancy of the application for a period not to exceed 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127:

(i) An applicant proposing to operate on a frequency designated for itinerant operation only under § 90.175(f)(5).

(ii) An applicant seeking the assignment of authorization or transfer of control of a license for a station operating below 470 MHz that does not involve a change in the operating parameters of the existing station under § 90.175(f)(9).

(d) A conditional authorization pursuant to (b) and (c) above is evidenced by retaining a copy of the executed application and coordination recommendation, if required, with the station records. Conditional authorization does not prejudice any action the Commission may take on the subject application. Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. Consistent with § 90.175(d), the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. The transmissions of stations operating pursuant to conditional authority shall be identified by a temporary call sign consisting of the prefix "WT" followed by the applicant's local seven digit business telephone number as provided in §2.302.

[FR Doc. 89–997 Filed 1–13–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to clarify and update certain policy and procedural requirements. These revisions include the update of approval authorities for particular actions, use of a standard small purchase form, update of addresses for certain submissions, changes in property recordkeeping requirements and asset codes, correciton of some typographical errors, and clarification regarding several contract clauses.

DATE: Written comments should be submitted no later than March 3, 1989.

ADDRESS: Comments should be addressed to the Department of Energy, Procurement Policy Division, Procurement and Assistance Management MA–421, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Cherlyn Seckinger, Procurement and Assistance Management (MA–421), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9737. Edward Weber, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The primary purpose of this proposed rule is to revise the DEAR, as necessary, to implement recent changes to the Federal Acquisition Regulation (FAR), which is codified at 48 CFR Chapter 1. As a result, the following sections and subsections would be affected. Subsection 901.603–71 would be renumbered as 901.602–3 to conform to the numbering of the corresponding FAR section and is proposed to be modified to reflect current delegations of authority and revised procedures. Section 904.404 is proposed to be revised to identify the appropriate listing of sensitive foreign nations that shall be used. Section 906.303(a)(1) is deleted to reflect the obligation of DOE offices to justify extension of management and operating contracts in accordance with CICA. Proposed section 908.7121 would reflect the new office responsible for maintaining the DOE supply of precious metals. Section 913.505 is proposed to be revised by adding a new section on the use of Standard Form 44, Purchase Order-Invoice-Voucher. Proposed subsection 916.301–3 would permit contracting officers to approve Determinations and Findings related to cost-type contracts. Section 935.014 would be removed. Section 942.1004 would be updated to reflect the current address for submission of IR&D/B&P Proposals. Proposed section 945.101 would increase the threshold in the definition of "capital equipment" from $1,000 to $5,000. Subsection 945.5205–5 is proposed to be revised to reflect changes in the property reporting requirements. Subsection 945.505–14 is proposed to be revised to reflect changes in the asset codes. Subsection 945.607–2 is proposed to be revised to reflect the name of the new contractor as well as new address for the submission of precious metal scrap reports. A new subsection 945.608–6 is proposed to be added to identify the designee authorized to approve waivers of screening requirements. Subsections 970.3102–16 and 970.5204–13 would be revised to correct typographical errors. The clause in subsection 970.5204–27 is revised to reflect application of the clause to the employee of a management and operating contractor as a consultant to another organization in any field and not solely to the "atomic energy" field.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order, entitled "Federal Regulations," requires that certain regulations be reviewed by OMB prior to their promulgation. The OMB has concluded its review and has no objections to the proposed change.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have significant economc impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collections in this rule have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), and OMB's implementing regulations at 5 CFR Part 1320.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements, for purpose of clarification and updating, without altering their substance. States which contract with DOE will be subject to the revisions. However, the Department of Energy has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional function of States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR Part 1020) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in the notice.

All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Ch. 9

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

1. The authority citation for Chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—[AMENDED]

2. Subpart 901.6 is proposed to be amended by adding a new section 901.602–3 as follows, removing the existing 901.603–71, and by redesignating subsections 901.603–72 and 901.603–73 as subsections 901.603–71 and 901.603–72, respectively.

901.602–3 Ratification of unauthorized commitments.

(b)(2) Subject to the limitations in paragraph (c) of FAR 1.602–3 and the requirements of this subsection, the Procurement Executive is authorized to ratify an unauthorized commitment.

(b)(3) The ratification authority of the Procurement Executive in subparagraph (b)(2) of this section is delegated to the Heads of Contracting Activities (HCAs) for individual unauthorized commitments not-to-exceed $25,000. The ratification authority of the HCA is nondelegable.

(e) *Procedures.* Except for those unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act (see FAR 1.602–3(b)(5)), the following procedures shall be followed for ratification of unauthorized commitments.

(1) Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised by the contracting officer that the work is unauthorized and performance is at the person's own risk.

(2) The individual who made the unauthorized commitment shall be required to furnish the contracting officer, through the Director of the cognizant Program Office at the contracting activity, or comparable official, all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the contracting office was not used, why the contractor was selected, a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. To preclude recurrence, the Director of the Program Office will include recommendations for corrective action in the package.

(3) The contracting officer will evaluate this information, make a determination with respect to reasonableness of price and whether or not payment should be made (see FAR 1.602–3(c)), and forward the file with comments to the Head of the Contracting Activity (HCA).

(4) The HCA is authorized to ratify individual unauthorized commitments not exceeding $25,000 in accordance with locally established procedures. Local procedures may require legal counsel concurrence, but such concurrence is not a requirement of this subsection. If the HCA ratifies the commitment, the file will be returned to the contracting officer for action. The HCA is responsible for assuring the implementation and monitoring of a corrective action plan. A copy of each ratification action by an HCA, along with supporting documentation, shall be provided to the Director, Business Clearance Division, MA–441, Headquarters.

(5) Unauthorized commitments involving amounts in excess of $25,000 require ratification by the Procurement Executive. In those cases, the HCA or designee will evaluate the information assembled pursuant to subsection 901.602–3(e)(2) above, including the corrective action plan, and, if the HCA concurs, forward the package with HCA concurrence to the Procurement Executive.

(6) The Procurement Executive may ratify the unauthorized commitment after coordinating with the Office of General Counsel and, when deemed necessary, obtaining the concurrence of the Senior Program Official. If ratified, the file will be returned to the contracting officer for action. The Procurement Executive or designee shall monitor the implementation of the corrective action plan.

(7) If the Procurement Executive does not ratify the action, the file will be returned to the HCA with an explanation of the decision not to ratify.

(8) Unauthorized commitments that are not ratifiable under this subsection may be subject to referral by the HCA, with the concurrence of the Procurement Executive or designee, to the General Accounting Office for resolution. (See FAR 1.603–(2)(d).)

(9) If an unauthorized commitment is ratified, the supporting documentation will be included as part of the official contract file. If an unauthorized commitment is not ratified, the documentation will be maintained for audit purposes as a separate file by the cognizant contracting office.

901.603–71 [Removed]

901.603–72 and 901.603–73 [Redesignated as 90.603–71 and 90.603–72]

PART 904—[AMENDED]

3. Section 904.404 is proposed to be amended by revising paragraph (d)(3) to read as follows:

904.404 Contract clause.

(d) * * *

(3) *Sensitive foreign nation controls, 952.204–71.* This clause is required in unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations included in the most recent revision of DOE 1240.2, Attachment 4, and any subsequent changes. (The attachment referred to in the clause should set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

PART 906—[AMENDED]

4. Section 906.303–70 is proposed to be revised to read as follows:

906.303–70 Exemption.

The provisions of FAR 6.303–1 do not apply to Special Research contracts and extensions thereof entered into under DEAR 917.71, which are subject to separate justification.

PART 908—[AMENDED]

5. Section 908.7121 is proposed to be revised to read as follows:

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials are unclassified, the specific quantities, destination or use my be classified. See appropriate sections of the Classification Guide. Contracting activities shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* The Oak Ridge Operations Office is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. Oak Ridge Operations Office has assigned management of these metals to Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239. DOE offices and authorized contractors shall coordinate with WMCO regarding the availability of the above metals prior to the purchase of these metals on the open market.

(c) *Lithium.* Lithium is available at no cost other than normal packing, handling, and shipping charges. The excess quantities at Oak Ridge are to be considered as the first source of supply prior to procurement of lithium or lithium compounds from any other source.

PART 913—[AMENDED]

6. Section 913.505 is proposed to be amended by adding a new subsection 913.505–3 to read as follows:

913.505–3 Standard Form 44, Purchase Order Invoice-Voucher.

(b)(1) Where necessary, contracting officers may authorize others to use the Standard Form 44 to make small purchases under $1000. Such purchases shall be made in accordance with the requirements in FAR 13.505–3, this section, and local procedures.

(d)(1) HCA's shall ensure that local procedures are issued which provide adequate safeguards regarding the usage of this type of small purchase method, control of forms, the designation of employees authorized to use SF44's, and accounting for purchases.

(d)(2) Contracting officers and designated employees are responsible for books of Standard Form 44's issued to them and are responsible, when purchasing an item, for ensuring that funds are available for the purchase, the form is properly processed, and purchases are limited to those items not prohibited by law or regulation.

PART 916—[AMENDED]

7. The first sentence in paragraph (c) of subsection 916.301–3 is proposed to be revised to read as follows:

916.301–3 Limitations.

(c) The determination and findings required by FAR 16.301–3(c), may be approved by the contracting officer.

* * *

PART 935—[AMENDED]

935.014 [Removed]

8. Part 935 is amended by removing section 935.014.

PART 942—[AMENDED]

942.1004 [Amended]

9. In section 942.1004, the address for submission of IR&D/B&P proposals/correspondence is proposed to be revised to read as follows: "Department of Energy, Oak Ridge Operations Office, Chief, Systems and Cost Analysis Branch, P.O. Box E, Oak Ridge, TN 37831."

PART 945—[AMENDED]

10. Section 945.101 is revised to read as follows:

945.101 Definitions.

"Personal property," as used in this part, means property of any kind or interest therein, except real property; records of the Federal Government; and nuclear and special source materials, atomic weapons, and by-product materials.

"Capital equipment," as used in this part, means personal property items having a unit acquisition cost of $5,000 or more and an anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

11. Subpart 945.5 is proposed to be amended by revising subsection 945.505–5.

945.505–5 Records of plant equipment.

The property record requirements of FAR 45.505–5 shall include the DOE asset type for reporting purposes.

11. a. Subsection 945.505–14 is proposed to be amended by revising paragraph (b), and by revising the table entries for asset code numbers 610, 615, 620, 665, 670, 680, 715, 720, 730, 735, 745, 750, 755, 770, 799, and 800.

945.505–14 Reports of Government property.

* * * * *

(b) The report of physical inventory of capital equipment (see 945.508(b)) shall be required to be submitted, as a minimum, with the fourth semiannual report after either the last physical inventory report or the inception of the contract.

DOE Plant and Equipment Asset Types

* * * * *

610 *Communication Systems.* Includes the cost of lines, poles, cable, and conduits: built-in radio transmitting and receiving

equipment; and any installed equipment, otherwise portable, which has been so installed that it cannot be removed without damaging the equipment or damaging the building or structure in which it has been installed. Personal property such as telephones, *intercommunication*, and teletype equipment should be included in asset code 730.

615 *Electric Generation, Transmission and Distribution Systems.* Includes the cost of all electric generation equipment; boiler plant equipment primarily used to supply steam to steam-electric generation equipment; transmission and distribution lines, poles, towers, grounding systems, substations, transformers, controls, cables, conduits, services, meters, and protective devices; lighting fixtures, wire, poles, standards and the related accessories supplying electric lighting service to roads, walks, and fences. Personal property, such as portable generators, are included in asset code 799.

620 *Fire Alarm System.* Includes the cost of central office equipment necessary for receiving and transmitting alarms, including control wiring, both cable and open, and other associated overhead and underground equipment. Portable equipment which is not permanently connected to permanent wiring and which may be removed without affecting operation of the fire alarm system is included in asset code 750.

* * * * *

665 *NPR Crude Oil Extration and Distribution System.* Includes the cost of real property and related personal property necessary for crude oil extraction distribution such as the well casings, piping, and integrated equipment in the piping system; oil storage facilities and support buildings and structures. Does not include any personal property, which should be included in the appropriate asset code (710–799) for personal property.

670 *Process System.* (Real or related personal property) Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments, which are integral to the operation of real property, or which are so affixed to real property that removal of the equipment would significantly diminish the economic value of the real property or the equipment itself.

680 *Reactors and Accelerators.* (Real or related personal property) Includes the cost of reactors, proton synchrotrons, electron sychrotrons, cyclotrons, linear accelerators, Van De Graaf generators and other similar facilities, as well as the related equipment which is an integral part of the facility or related to, designed for, or specially adapted to, the functional or productive capacity of the real property, and removal of this equipment would significantly diminish the economic value of the real property or the equipment itself. Reactors with significant electrical generation should be identified with asset type 655.

* * * * *

715 *Hospital and Medical Equipment.* Includes the cost of hospital, clinical, and dental equipment such as hospital beds, dentist chairs, instruments, sterilizers, and other scientific equipment used by dentists and doctors. Build-in or installed equipment which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).

720 *Laboratory Equipment.* Includes the cost of laboratory equipment such as microscopes, analytical balances, electronanalyzer, oscillographs, refractometers, light sources, vibrometers, and other scientific equipment usually associated with laboratories. The cost of furniture and fixtures and shop equipment are included in codes 730 and 755. Built-in or installed equipment which is an integral part of real property or related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699, and 800).

* * * * *

730 *Office Furniture and Equipment.* Includes the cost of office furniture and equipment such as machines, desks, drafting sets, safes, photographic equipment, printing equipment and other office equipment regardless of where located. The cost of automatic data processing equipment is included in code 770. Built-in or installed equipment which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).

735 *Process Equipment.* Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments. Built-in or installed equipment which is an integral part of real property or is related to, designated for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in asset code 670.

* * * * *

745 *Reactors and Accelerators.* Includes the cost of accessory equipment, including associated measurement and control instruments, which are not real property.

750 *Security and Protection Equipment.* Includes the cost of equipment used for security, police, and fire protection purposes, except that all associated automotive vhicles are included in code 725. Built-in or installed equipment which is an intergral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 throguh 699 and 800).

755 *Shop Equipment.* Includes the cost of shop equipment such as lathes, drilling machines, rolling mills, hoists, grinders, forges, pipe cutting machines, presses, saws, shapers, and other equipment usually associated with shops, garages and service stations. Similar equipment used in laboratories and other areas for research purposes should also be identified by this code. Built-in or installed equipment which is an intergral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminsh the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).

* * * * *

770 *Automatic Data Processing Equipment.* Includes the cost of all equipment used in automatic data processing, such as (1) punched card and/or tape equipment, whether used alone or in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems emplolying devices communication or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; and (5) the initial package of software that is required to make the system operational. Equipment such as flexowriters, IBM typewriters, equipment reading the results of experiments, etc., shall be classified as ADP equipment when used primarily in conjunction with an ADP system. Excluded are the costs of equipment such as analog computers card and/or tape file cabinets, and air-conditioning for the processing 28 room. Also, excluded are the costs of automatic data recording or electronic control systems, including the computers, themselves, used to furnish operating guidance for control of machine tools, equipment used in process operations, reactors, accelerators, etc., or equipment used to operate energy monitoring and control systems (EMCS). The cost of this type of equipment is included in the asset code for the equipment or system to which it furnishes operating guidance in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers; (5) the initial package of software that is required to make the system operational.

799 *Miscellaneous Equipment.* Includes the cost of furniture and fixtures for hotels, dormitories, and apartments; laundry equipment; restaurant, cafeteria and canteen equipment; and other miscellaneous equipment not included in other codes. Built-in or installed equipment which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property, removal of which would significantly diminish the economic value of the real property, or the equipment itself, must be included in the appropriate real property asset code (400 through 699 and 800).

800 *Improvements to Property of Others.* Includes the cost of betterments made by DOE to land, land improvements (roads, runway, etc.), and improvements to existing buildings, structures, building services, and utility systems not owned by DOE. New construction such as plants, laboratories and similar facilities built by DOE on land owned by others should be classified in Asset Type Code 501.

* * * * *

12. Subpart 945.6 is proposed to be amended by revising section 945.607–2 and by adding a new subsection 945.608–6 to read as follows:

945.607–2 Recovering precious metals.

(b) Contractors generating contractor inventory containing precious metals shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE precious metal pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by Westinghouse Materials Company of Ohio (WMCO), P.O. Box 398704, Cincinnati, Ohio 45239.

945.608–6 Waiver of screening requirements

(a) The Director of Review and Analysis, Procurement and Assistance Management, is the designee who may authorize exceptions from screening requirements in accordance with the provisions of FAR 45.608–6.

(b) A request to the Director of Review and Analysis for the waiver of screening requirements must be submitted by the Head of the Contracting Activity with a justification setting forth the compelling circumstances warranting the exception.

PART 970—[AMENDED]

13. Subsection 970.3102–16 is proposed to be amended by revising paragraph (c)(4) to read as follows:

970.3102–16 Relocation costs.

* * * * *

(c) * * *

(4) Payments for employee's income taxes or FICA (social security taxes) incident to reimbursed relocation costs.

* * * * *

970.5204–13 [Amended]

14. Subsection 970.5204–13 is proposed to be amended by making the following corrections:

a. In the last sentence in paragraph (c), "not simply" should read "not imply."

b. In the second sentence of paragraph (d)(8), "personal appendix" should read "personnel appendix".

c. In the first sentence in paragraph (d)(8)(i), "50 percent or more or" should read "50 percent or more of."

15. Subsection 970.5204–27(b) is proposed to be amended by removing the phrase "for an organization in the atomic energy field other than a DOE cost-type contractor" in the fourth sentence of the clause and substituting (Jan 1989) for (Apr 1984) in the title of the clause.

[FR Doc. 89–739 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 510, 511 and 552

[GSAR Notice No. 5–230]

General Services Administration Acquisition Regulation, Specifications, Standards, Purchase Descriptions and Acquisition of Commercial Products

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 510.011 to prescribe an alternate to the Acceptable Age of Supplies clause; retitle section 511.070 and add the prescription for use of the Commercial Item Certification provision; delete section 511.070–1; and amend section 522.210–72 to provide the text for the alternate to the Acceptable Age of Supplies clause.

DATE: Comments are due in writing on or before February, 16, 1989.

ADDRESS: Comments should be addressed to Ms. Majorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed regulation would provide GSA contracting officers with an alternate Acceptable Age of Supplies clause to use when the items being acquired are known to have a limited shelf-life. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 510, 511, and 552

Government procurement.

1. The authority citation for 48 CFR Parts 510, 511 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2. Section 510.011 is amended to revise paragraph (c) to read as follows:

510.011 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall insert a clause substantially the same as the clause at 552.210–72, Acceptable Age of Supplies, or the clause at 552.210–73, Age of Delivery, in solicitations and contracts if the contractor will be required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies. (See 101–27.206–2 of the Federal Property Management Regulation.) The Acceptable Age of Supplies clause at 552.210–72 should be used when the required shelf-life period is 12 months or less, and lengthy acceptance testing may be involved. For items having a limited shelf-life, Alternate I to 552.210–72 must

be substituted in the basic clause when requested by the director of the commodity center concerned and authorized by the Director, Operations Mangement Division. The Age of Delivery clause at 552.210–73 should be used when the required shelf-life period is more than 12 months, or when source inspection can be performed within a short time period.

* * * * *

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

3. Section 511.070 is retitled and revised to read as follows:

511.070 Solicitation provision.

Except for supplies acquired using the Federal Prison Industries or Workshops as mandatory sources (see FAR Subparts 8.6 and 8.7), the contracting officer shall include the provision at 552.211–70, Commercial Item Certification, in solicitations for supplies when a basic or broad description of a standard commercially available product is used to describe the requirement.

511.070–1 [Removed]

4. Section 511.070–1 is removed.

Subpart 552.2—Text of Provisions and Clauses

5. Section 552.210–72 is revised to read as follows:

552.210–72 Acceptable age of supplies.

As prescribed in 510.011(c), insert the following clause:

ACCEPTABLE AGE OF SUPPLIES (XXX 1989)

The supplies furnished under this contract shall not be more than ____ months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if shipment is authorized to be made without prior inspection by the Government. If the age of the supplies furnished under this contract is greater than the specified period, the Government may exercise its right to reject the supplies under paragraph (f) of FAR clause 52.246–2, Inspection of Supplies—Fixed Prices. (End of clause.)

Alternate I (XXX 1989)

For items having a limited shelf-life, the sentence below should be substituted for the first sentence of the basic clause when authorized.

The supplies furnished under this contract shall not be more than ____ days old, beginning with the date of manufacture (month, day, year) marked on the container.

Dated: January 3, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–891 Filed 1–13–89; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Parts 538, 539, and 552

[GSAR Notice No. 5–115]

General Services Administration Acquisition Regulation, Contractor's Report of Orders Received Clause for GSA Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would retitle Part 538 and amend the part to add Section 538.000 and Subpart 538.2; add Part 539; and amend Subpart 552.2 to add Section 552.238–72 to provide the text of the new Contractor's Report of Orders Received clause with two alternates.

DATE: Comments are due in writing on or before February 16, 1989.

ADDRESS: Comments should be addressed to Ms. Majorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB) by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

The requirements of the Contractor's Report of Orders Received clause may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief Counsel of Advocacy of the Small Business Administration. Copies of the initial regulatory analysis are available for public comment from the office identified above.

The Contractor's Report of Orders Received clause at GSAR 552.238–72 contains an information collection requirement which requires the approval of OMB under Section 3504(h) of the Paperwork Reduction Act. This proposed rule has been submitted to OMB for approval. Comments on the information collection requirement in GSAR 552.238–72 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for GSA, Washington, DC 20503.

The title of the collection is "48 CFR 552.238–72, Contractor's Report of Orders Received." The clause requires GSA schedule contractors to submit quarterly reports containing the dollar value of all Government orders received or invoices issued covering the previous three-month period. Depending upon whether the basic clause is used or its Alternate II, the report is made on GSA Form 72–A or GSA Form 72, respectively. GSA Form 72–A has previously been approved by OMB and assigned OMB control number 3090–0121. The report is used by the contracting office to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on future contracts based upon volume, and for special reports. The respondents are GSA schedule contractors. The estimated annual burden for this collection is 32,204 hours. This is based on an estimated average burden hour per response of 0.17 and 1.33, a proposed frequency of 26 and 6 responses per respondent, and an estimated number of respondents of 4,300 and 1,682, for GSA Form 72–A and GSA Form 72, respectively.

List of Subjects in 48 CFR Parts 538, 539 and 552

Government procurement.

1. Part 538 is retitled and added to read as follows:

PART 538—GSA SCHEDULE CONTRACTING

538.000 Scope of part.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.

538.203–70 [Reserved]

538.203–71 Contract clauses.

Authority: 40 U.S.C. 486(c).

538.000 Scope of part.

Except for the Information Resources Management Service (IRMS) schedule contracts awarded under the Teleprocessing Service Program (TSP) and unless otherwise stated, the policies and procedures in this part are prescribed for contracting for supplies and services by the Federal Supply Service (FSS) and the Information Resources Management Service (IRMS) under their respective schedule programs.

Subpart 538.2—Establishing and Administering Schedules

538.203 Solicitation preparation.

538.203–70 [Reserved]

538.203–71 Contract clauses.

The contracting officer shall insert the clause at 552.238–72, Contractor's Report of Orders Received, in solicitations issued and contracts awarded under the FSS and IRMS schedule programs. Paragraph (b) of the basic clause may be modified as necessary to meet program requirements. If it is necessary to identify the official responsible for preparing the report, the contracting officer may use the clause with its Alternate I. When the clause is used by IRMS, the contracting officer shall use the clause with its Alternate II.

2. Part 539 is amended to read as follows:

PART 539—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Authority: 40 U.S.C. 486(c).

539.000 Scope of part.

To the extent prescribed in Part 538, the policies and procedures in that part apply to IRMS schedules.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

4. Section 552.238–72 is added to read as follows:

552.238–72 Contractor's Report of Orders Received.

As prescribed in 538.203–71, insert the following clause:

Contractor's Report of Orders Received (XXX 1989)

(a) Contractors shall furnish quarterly the dollar value (rounded to the nearest whole dollar) of all Government agencies' and Government Contractor's orders received during the preceding three-month period to include any partial month. A separate report for each National Stock Number (NSN), Special Item Number (SIN), or subitem shall be prepared and submitted, unless otherwise specified, on GSA Form 72A.

(b) The report is due in the office specified below or specified at the time of award 15 days following the completion of the reporting period or completion of the contract. A report is required even when no billings or invoices are issued or no orders are received during the reporting period.

(c) The Government reserves the right to inspect without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Willful failure or refusal to furnish the required reports, or falsification thereof, shall constitute sufficient cause for terminating the contract for default under FAR 52.249–8, Default (Fixed-Priced Supply and Service).

(d) The report shall be forwarded to the following address:

General Services Administration

_____

_____

(End of Clause)

Alternate I (XXX 1989). If it is necessary to identify the official responsible for preparing the report, the contracting officer may add a paragraph substantially the same as the following paragraph (e) to the basic clause:

(e) Within —— days of contract award, the Contractor shall provide to the Contracting Officer, the name, title, address, and telephone number of the individual who will be responsible for the report.

Alternate II (XXX 1989). When the clause is used in IRMS schedule contracts, substitute a paragraph substantially the same as the following paragraph (a) for paragraph (a) of the basic clause:

(a) The contractor shall furnish quarterly the dollar value (rounded to the nearest whole dollar) of orders received or invoices issued during the preceding three-month period to include any partial month. A separate report for each Special Item Number (SIN) shall be prepared and submitted, unless otherwise specified, on GSA Form 72.

Dated: January 4, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–892 Filed 1–13–89; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 54, No. 10
Tuesday, January 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Order OMB Review

AGENCY: ACTION.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use: The results of this evaluation will be of great value to ACTION and the entire field of Federal agencies involved in the drug education and prevention efforts as well as State and local agencies, school and private organizations.

The results will also be useful in determining viable roles for youth in drug prevention activities.

To Obtain Information About or To Submit Comments on This Proposed Information Collection, Please Contact Both:

Melvin E. Beetle, Clearance Officer, ACTION, Room M–600, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634–9321; and James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395–7316.

Office of ACTION issuing the Proposal: Office of the Inspector General, Program Analysis and Evaluation Division.

Title of Form: Impact Evaluation Of The Drug Alliance Program.

Type of Request and Respondent's Obligation to Reply: New/Response is voluntary.

General Description of Respondents: Drug Alliance Project Directors, High School and College Aged Volunteers, 9-to-14 year old recipients.

Estimated Response Burden: Overall Figure in Burden Hours—4,554.

Number of respondents by group	Average burden minutes per response	Frequency of response
35 project directors	45	2
1,360 volunteers	30	2
3,712 recipients	20	2
1,000 comparison group	20	2

Date: January 10, 1989.

Melvin E. Beetle,

Clearance Officer, ACTION.

[FR Doc. 89–943 Filed 1–13–89; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Working Group on Model Rules; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Working Group on Model Rules of the Administrative Conference of the United States. The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

DATE: Monday, January 23, 1989 at 12:00 p.m.

Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles, 202–254–7020.

Jeffrey S. Lubbers,

Research Director.

December 22, 1988.

[FR Doc. 89–1043 Filed 1–13–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Timber Sale Performance and Payment Bond Forms

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: This proposal would revise the payment bond form (FS–6500–12) currently being used on Forest Service timber sale contracts and create a new performance bond form to be used on timber sale contracts in lieu of the current form (SF–25) being used. This action is being taken because of the difficulty the Forest Service has had collecting amounts owed by surety companies on bond obligations following default and subsequent nonpayment of damages by holders of timber sale contracts. This action is intended to encourage surety companies to make prompt payment of bond obligations covering timber sale contracts which are defaulted by the contractor.

DATE: Comments must be received in writing by March 20, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (6560), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Fiscal and Public Safety Staff, Room 701–E, 1621 Kent Street, Rosslyn, VA. 22209, between the hours of 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Arnold D. Sartori, Fiscal and Public Safety Staff, (703) 235–3360.

SUPPLEMENTARY INFORMATION:

Background and Need for Policy

National Forest Service timber is sold to private purchasers through competitive bidding. To protect the interests of the Government against resource damage or financial loss, successful bidders are frequently required to furnish bid, payment and performance bonds (36 CFR 223.34, 223.35, and 223.83). Bonds may be secured by corporate surety, cash, certified or cashier checks, bank drafts, Post Office money orders, assigned savings accounts or certificates of deposit, negotiable U.S. Treasury obligations, or irrevocable letters of credit. This proposal affects only bonds secured by corporate surety.

The Forest Service has had difficulty in the past few years collecting amounts due on performance bonds secured by corporate surety following default and subsequent nonpayment of damages by the contractor on timber sale contracts. Performance bond amounts are set by Forest Service policy. Up until 1986, the maximum performance bond amount that could be required on a single timber sale contract was $200,000. In 1986, the maximum was raised to $500,000. Over 1900 timber sale contracts have defaulted since 1982, with damages estimated in excess of $225 million. In the Pacific Northwest Region alone, total damages on defaulted timber sale contracts has exceeded $200 million. On these contracts, as provided by the current performance bond, the Forest Service has billed surety companies for a little over $20 million in performance bond guarantees. As of June 30, 1988, however, the Forest Service has been able to collect only about $5 million of this amount voluntarily. Another $4 million was recently collected through lengthy negotiations with the surety company. Some of the outstanding claims against surety companies have been delinquent for more than four years.

The problem seems to be multi-faceted. To begin with, the current performance bond form (SF–25) being used for timber sale contracts does not lend itself well to this use. It was developed by the General Services Administration (GSA) in response to the requirements of the Miller Act (40 U.S.C. 270a–270f) and is peculiar to construction contracts. It was intended for use in conjunction with the Government's purchase of a product or service, rather than for the sale of a product by the Government, as is the case in the sale of timber. The current performance bond form is unclear as to when a surety company actually becomes liable for the default of a contract by its principal and exactly how long the surety company has to make payment. Neither the current payment bond form nor the performance bond form incorporate requirements of the Debt Collection Act of 1982 (31 U.S.C. 3717), which specifies that additional charges will be due from surety, i.e. interest, penalties and administrative costs, if payment is not received when due.

Surety companies defend their late payment, or nonpayment, of bond obligations by asserting that under the laws of suretyship, they have a right of the same defenses as the principal (the contractor) in the case of default by the principal on a contract. Therefore, they assert that if payment of the bond obligation is made voluntarily by the surety company, in spite of the fact that the principal is contesting the declaration of default, and against the wishes of the principal, the surety company may face claims by its principal of interference with contractual relations, domination, bad faith, etc. Surety companies are concerned that if these claims by their principal are established, they could be found liable to their principal for compensatory and punitive damages and could lose their rights of indemnification and possibly subrogation. Thus, many surety companies do not feel obligated to make payment on a bond guarantee until a judgment is rendered against their principal, which can take from one to five years or more. Also, surety companies do not want to lose the interest they could earn on their funds over this period of time, particularly if a judgment is ultimately rendered in favor of their principal.

The Forest Service maintains that surety need not fear the loss of its rights of indemnification or subrogation due to prompt payment of bond guarantees. Surety can amend its indemnity agreement with the principal to clarify the circumstances under which a surety will be entitled to be reimbursed by the principal for payments made to the Forest Service, just as the Forest Service has clarified under this revised bond form, the circumstances under which the surety will become liable. Further, any surety that is concerned about the loss of entitlement to the right of subrogation by payment of the full amount of the debt prior to judgment can condition its payment on an express prior agreement with its principal. Moreover, the Forest Service is not aware of any legal authority subjecting a surety to compensatory or punitive damages for paying a claim prior to judgment where the surety has confirmed the failure of its principal to perform and has complied with its obligation to evaluate the defenses asserted by the principal and found those defenses wanting. To the contrary, the weight of legal authority appears to hold that the surety does have the right, and the duty, to discharge its obligation without waiting to be sued by the Forest Service and thus it is highly unlikely that a surety would be held liable for exercising this right. Further, any amounts paid to the Forest Service under the bond guarantee would be refunded to surety if its principal appealed the default and a judgment was ultimately rendered in favor of its principal. Also, the Forest Service would consider the deposit of negotiable Treasury securities with the Forest Service as payment by surety on a bond obligation. Interest earned on the securities would be paid to the surety, along with the bond forfeiture amount mentioned above, if the surety's principal prevailed in court. The Forest Service agrees that payment on a bond guarantee by the surety will not be used in court against the principal as an admission of liability by the principal and would be willing to so state this commitment in the bond form if necessary.

The Forest Service has found that surety companies, in many cases, do not honor their bond obligations even when a petition for voluntary or involuntary bankruptcy regarding the principal has been filed under liquidation procedures of Chapter 7 of the U.S. Bankruptcy laws; or where, under reorganization procedures of Chapter 11 of the U.S. Bankruptcy laws, the defaulted contract has been rejected by the court. Surety companies have also failed to honor their bond obligations when the principal has failed to maintain its business registration as required by State law; or when the principal otherwise dissolves and discontinues regular business activities. In other cases, sureties have refused to honor their bond obligations on the basis of an appeal of the default or damage claim by their principal, on grounds the Forest Service does not consider to be bona fide. Specifically, surety companies have refused to pay bond obligations on such grounds as: (1) The commercial impracticability of performance based on changes in markets and costs; (2) unconscionability and/or mutual mistakes relating to the terms and conditions of the contract; (3) disagreement with the contract clauses used for computing damages; or (4) challenges to the jurisdiction of the Agriculture Board of Contract Appeals

or the U.S. Claims Court on constitutional grounds. It should be noted that the courts have upheld the Forest Service position that some of these reasons are not bona fide grounds for appeal. When a default is clear, e.g. when the contractor fails to perform for economic reasons, or simply does not have the resources to perform and files for chapter 7 bankruptcy, the Forest Service does not believe it should have to wait one to five years or more to collect the security on these defaulted contracts; but if it must, then interest from the date the first demand letter is mailed to the surety company will be assessed, in accordance with the Debt Collection Act of 1982 (31 U.S.C. 3717).

Proposal

This proposal would eliminate the use of Standard Form 25 with Forest Service timber sale contracts, and create a new Forest Service performance bond form (FS–6500–11) for use with timber sale contracts. The new performance bond form would clarify: (1) The obligations of a surety company in regard to what is being guaranteed, (2) when payment would be due from a surety company in case of default of the contract by the principal, and (3) what additional charges (i.e. interest, penalties, and administrative costs) will be assessed if payment is not received from surety company when due. It would also specify what grounds for dispute the Forest Service would consider insufficient to suspend collection activity against the surety company. This proposal would also revise the payment bond form (FS–6500–12) currently being used with timber sale contracts to include provisions on the assessment of interest, penalties and administrative costs for late payment, as required by the Debt Collection Act of 1982 (31 U.S.C. 3717).

The proposed forms are set forth at the conclusion of this document as they will be printed for use with timber sale contracts.

Controlling Paperwork Burdens on the Public

The proposed performance bond form and the revision of the payment bond form are legal instruments setting forth terms and conditions applicable to bonding and are necessary to execute the obligations of a surety company. They do not require information collection or additional paperwork not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR Part 1320 do not apply.

Environmental Impact

Based on both experience and environmental analysis, this proposed policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. This policy will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or state or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this policy since it will not change the total amount owed by surety companies, but, if the intended effect is realized, this policy will reduce the time required to collect from surety and would reduce the cost for both industry and government associated with lengthy litigation.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities. This policy affects primarily large insurance/surety corporations and has no adverse or special impacts on small businesses.

Comments Invited

The Forest Service invites written comments on this proposal. The agency will analyze and consider comments received in adopting the final bond forms. Notice of the final forms including discussion of comments received, will be published in the **Federal Register.**

Date: January 9, 1989.

George M. Leonard,

Associate Chief.

BILLING CODE 3410-11-M

FS-6500-11

USDA Forest Service **PERFORMANCE BOND** (For Forest Service Timber Sales)	1. Bond Number	2. Date Bond Executed
3. Principal (Name, Business Address & Zip Code)	4. Surety (Name, Business Address & Zip Code)	
4. Penal Sum of Bond (In Words and Figures)	6. Contract No.	7. Contract Date

8 a. OBLIGATIONS

We, the Principal and Surety, are firmly bound to the United States of America acting through the Forest Service, United States Department of Agriculture (hereinafter called "the Service") in the above penal sum. For the payment of this amount we bind ourselves, our heirs, executors, administrators, successors, and assignees, jointly and severally.

The Principal has entered into or assumed the contract identified above for the purchase of timber on lands administered by the _____ National Forest. This bond guarantees the faithful performance and fulfillment of the terms and conditions of the contract including, but not limited to, the Principal's mid-point, and/or periodic payment obligations.

b. CONDITIONS

(1) If the Principal defaults in the performance of the terms and conditions of the contract by: 1) failing to make timely mid-point or periodic payments, 2) failing to complete all contract requirements before the termination date, or 3) giving cause to the Service to terminate the contract for breach, the Surety shall be obligated to make payment to the Service for amounts billed under this bond. The Surety further agrees that its obligation to pay amounts billed under this bond shall be triggered if: 1) a petition for voluntary or involuntary bankruptcy regarding the Principal is filed under Chapter 7, or Chapter 11 and the contract has not been accepted by the court, 2) the Principal fails to maintain its business registration as required by state law, or 3) the Principal otherwise dissolves and discontinues regular business activities. The Surety shall make said payment within thirty (30) calender days after the Service notifies the Surety by written demand that the Principal has failed to, or refuses to, pay as billed.

(2) If the Service has not received Surety payment within thirty (30) calendar days after written demand, the Surety shall pay:

(i) Simple interest on the outstanding demand amount at the Current Value of Funds Rate published annually by the Secretary of the Treasury in the Federal Register, or the Prompt Payment interest rate established by the Secretary of Treasury under section 12 of the Contract Disputes Act of 1978, **WHICHEVER IS HIGHER.** The interest shall accrue from the date the Service issued the written demand to the Surety.

(ii) Administrative costs incurred by the Service for collection of the amount owed by the Surety.

(3) If the Service has not received Surety payment by the end of ninety (90) calendar days after written demand, the Surety shall pay a penalty charge of six percent (6%) per year on the demand amount. This charge shall be in addition to the interest charge described in paragraph 8.b.(2) (i) and shall accrue from the date the Service issued the written demand to the Surety.

(4) The payment of interest, administrative costs, and penalties is in addition to the principle amount due and if necessary to assess, may cause total liability to exceed the stated penal sum of the bond.

FS-6500-11 (page 2)

(5) The Surety may contest the first billing within thirty (30) days after receipt and provide a detailed written justification for it's failure to pay. Nevertheless, pursuant to section 8.(b) above, the Surety may not contest any billing where: (1) a petition for voluntary or involuntary bankruptcy regarding the Principal has been filed, (2) the Principal has allowed it's state business registration to lapse, or (3) the Principal has ceased to conduct regular business. If the Surety fails to pay the first billing or file a Notice of Intent to Contest, as allowed in this section, the billing shall remain due and payable and subject to further collection action, including interest, administrative costs, and penalties. The Forest Service shall suspend further collection action, but not the accrual of interest, if the Surety's justification indicates to the satisfaction of the Forest Service that a bona fide dispute exists as to the Principal's liability, and that the Principal has filed an appeal of the Contracting Officer's decision on the basis of this dispute. No appeal will be considered bona fide if it challenges liability based on: (1) the commercial impracticability of performance based on changes in markets and costs, (2) unconscionability and/or mutual mistakes relating to the terms and conditions of the contract, (3) the method of computing damages as set forth in the contract, or (4) challenges, on constitutional grounds, to the jurisdiction of the Agriculture Board of Contract Appeals or the U.S. Claims Court.

c. RELIEF FROM OBLIGATIONS AND CONDITIONS

The above obligations and conditions are void if the Principal performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of: (1) the contract during the original term of the contract and any extensions thereof that are granted by the Service, with or without notice to the Surety, and (2) any and all duly authorized modifications of the contract that are hereafter made. Notice of those modifications to the Surety is waived.

d. WITNESS

The Principal and Surety executed this performance bond and affixed their seals on the above date. The official character and authority of the person(s) executing the bond for a corporate Principal have been certified by the secretary or assistant secretary of the corporation.

PRINCIPAL		
9.a. Individual Principal		
_____ (Witness)	as to Signature _____ (Principal)	(Seal)
9.b. Partnership		
_____ (Witness)	as to Signature _____ (Partner)	(Seal)
_____ (Witness)	as to Signature _____ (Partner)	(Seal)
_____ (Witness)	as to Signature _____ (Partner)	(Seal)
9.c. Corporate Principal		Affix Corporate Seal
_____ (Signature)	_____ (Title)	
_____ (Signature)	_____ (Title)	

FS-6500-11 (page 3)

CERTIFICATE AS TO CORPORATE PRINCIPAL

10. I, _____ certify that I am the _____ secretary of the corporation named as principal in the within bond: that _____ who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

Corporate
_____ Seal

CORPORATE SURETY

11. Corporate Surety _____ (Name and Business Address & Zip Code) — Affix Corporate Seal

_____ (Signature) by _____ (Title)

APPROVAL BY USDA - FOREST SERVICE

12. Signature	13. Title	14. Date Approved

INSTRUCTIONS

1. Use this form when a performance bond is required for National Forest System timber sale contracts.

2. Insert the full legal name and business address of the Principal in block 3.

3. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or an officer of the corporation involved.

a. An individual Principal shall sign the bond above the word "Principal" in block 9, and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals. The Principal's signature shall be witnessed in block 9 above the word "Witness".

b. If the Principal is a partnership, the bond must be signed by all partners if possible, but in any event by at least one partner above the word "Partner" in block 10. Each partner's signature shall be witnessed in block 10 above the word "Witness."

c. If the Principal is a corporation, the corporate seal shall be affixed above the word "seal" in block 11. If the corporation has no corporate seal, include a scroll or adhesive seal following the corporate name. The secretary or assistant secretary of the corporation shall certify to the official character and authority of the person or persons signing the bond for a corporate Principal in block 12.

4. Corporations executing the bond as Surety must appear on the most current Department of the Treasury Circular 570 list of approved sureties and must act within the limitations listed therein. The Bond Number entered in block 1 shall be assigned by the Surety.

5. Corporations executing the bond as Surety shall affix their corporate seal above the word "seal" in block 13. If the corporation has no corporate seal, include a scroll or adhesive seal following the corporate name.

BEST COPY AVAILABLE

FS-6500-12

USDA - Forest Service PAYMENT BOND (For Forest Service Timber Sales)	1. Bond Number	2. Date Bond Executed
3. Principal (Name, Business Address & ZIP Code)	4. Surety (Name, Business Address & ZIP Code)	
5. Penal Sum of Bond (Express in Words and Figures)	6. Contract No. 7. Contract Date	

8.a. OBLIGATIONS

We, the Principal and Surety, are firmly bound to the United States of America acting through the Forest Service, United States Department of Agriculture (hereinafter called "the Service") in the above penal sum. For the payment of this amount, we bind ourselves, our heirs, executors, administrators, successors, and assignees, jointly and severally.

The Principal has entered into or assumed the contract identified above for the purchase of timber on lands administered by the _____ National Forest. This bond guarantees payment for all timber cut but not paid for under said contract for the period beginning on (Month, Day, and Year) and ending on (Month, Day, and Year), or any extension of such period. If this bond replaces a previous payment bond covering said contract, this bond also covers all timber cut but not paid for, under said contract, prior to the aforementioned period.

b. CONDITIONS

(1) If the Principal fails for any reason to make any payment, the Surety shall make payment within thirty (30) calendar days after the Service notifies the Surety by written demand that the Principal has failed to make any required payment.

(2) If the Service has not received payment from the Surety within thirty (30) calendar days after written demand, the Surety shall pay:

(i) Simple interest on the outstanding demand amount at the Current Value of Funds Rate published annually by the Secretary of the Treasury in the Federal Register, or the Prompt Payment interest rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978, WHICHEVER IS HIGHER. Interest shall accrue from the date the Service issues the written demand to Surety.

(ii) Administrative costs incurred by the Service for the collection of the amount owed by the Surety.

(3) If the Service has not received Surety payment by the end of ninety (90) calendar days after written demand, the Surety shall pay a penalty charge of six percent (6%) per year on the demand amount. This charge shall be in addition to the interest charge described in paragraph 8.b.(2) (i), and shall accrue from the date the Service issues the written demand to the Surety.

(4) The payment of interest, administrative costs and penalties is in addition to the principle amount due and if necessary to assess, may result in total liability exceeding the stated penal sum of this bond.

c. RELIEF FROM OBLIGATIONS AND CONDITIONS

The above obligations and conditions are void if the Principal makes timely payment to the Service of the amounts due for timber cut prior to payment and other charges under said contract and any and all authorized modifications of the contract that are subsequently made. Notice of any such modifications to the Surety is hereby waived.

FS-6500-12 (page 2)

d. TERMINATION

(1) This bond may be terminated by the Principal or the Surety at any time. Such termination to be effective thirty (30) calendar days after the Service receives written notice of termination from the Principal or the Surety; or

(2) This bond may be terminated by the Surety after receiving the Service's demand for payment under this bond. Such termination shall be effective ten (10) calendar days after the Service receives written notice of termination from the Surety.

(3) Termination of this bond under this section relieves the Principal or the Surety only of any liability arising after the effective date of termination and does not relieve the Principal or Surety of obligations arising during the period in which the bond is in effect.

e. WITNESS

The Principal and Surety executed this payment bond and affixed their seals on the above date. The official character and authority of the person(s) executing the bond for a corporate Principal have been certified by the secretary or assistant secretary of the corporation.

PRINCIPAL

9.a. Individual Principal

_____ (Witness) as to Signature _____ (Principal) (Seal)

9.b. Partnership

_____ (Witness) as to Signature _____ (Partner) (Seal)

_____ (Witness) as to Signature _____ (Partner) (Seal)

_____ (Witness) as to Signature _____ (Partner) (Seal)

9.c. Corporate Principal

_____ (Signature) _____ (Title) Affix Corporate Seal

_____ (Signature) _____ (Title)

CERTIFICATE AS TO CORPORATE PRINCIPAL

10. I, _____ certify that I am the _____ secretary of the corporation named as principal in the within bond: that _____ who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ Corporate Seal

CORPORATE SURETY

11. Corporate Surety _____ (Name, Business Address and ZIP Code) Affix Corporate Seal

_____ (Signature) By _____ (Title)

APPROVAL BY USDA - FOREST SERVICE

12. Signature	13. Title	14. Date Approved

FS-6500-12 (page 3)

INSTRUCTIONS

1. Use this form when a payment bond is required for a National Forest System timber sale contract.

2. Insert the full legal name and business address of the Principal in block 3.

3. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or an officer of the corporation involved.

a. An individual Principal shall sign the bond above the word "Principal" in block 9, and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals. The Principal's signature shall be witnessed in block 9 above the word "Witness."

b. If the Principal is a partnership, the bond must be signed by all partners if possible, but in any event by at least one partner above the word "Partner" in block 10. Each partner's signature shall be witnessed in block 10 above the word "Witness."

c. If the Principal is a corporation, the corporate seal shall be affixed above the word "seal" in block 11. If the corporation has no corporate seal, include a scroll or adhesive seal following the corporate name. The secretary or assistant secretary of the corporation shall certify to the official character and authority of the person or persons signing the bond for a corporate Principal in block 12.

4. Corporations executing the bond as Surety must appear on the most current Department of the Treasury Circular 570 list of approved sureties and must act within the limitations listed therein. The Bond Number entered in block 1 shall be assigned by the Surety.

5. Corporations executing the bond as Surety shall affix their corporate seal above the word "seal" in block 13. If the corporation has no corporate seal, include a scroll or adhesive seal following the corporate name.

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[FR Doc. 89-1017 Filed 1-13-89; 8:45 am]
BILLING CODE 3410-11-C

Soil Conservation Service

Sulphur Creek Watershed, TX

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sulphur Creek Watershed; Bee, Karnes and Live Oak Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas, 76501, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to conserve water, improve water quality, reduce sediment damage, assure the capability to sustain long-term agricultural productive capacity, and improve social well-being of area residents. The plan consists of an accelerated land treatment program that provides financial and technical assistance to apply conservation practices on cropland and rangeland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

January 5, 1989.

Harry W. Oneth,

State Conservationist.

[FR Doc. 89-923 Filed 1-13-89; 8:45 am]
BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 8:00 p.m. on January 11, 1989, at 12 6th Ave., Augusta, ME 04333. The purpose of the meeting is 1) to receive a briefing on the Eastern Regional Conference of SAC chairs, and 2) to plan a community forum on "Race- and national origin-motivated bigotry and violence" to be held in April 1989.

Persons desiring additional information, or planning a presentation to the committee, should contact Committee Chairperson Grayce E. Studley, (207/874-8135) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1988.

Melvin L. Jenkins,

Acting Staff Director.

Note: The Civil Rights Commission mailed this document to the Office of the Federal Register, December 21, 1988. The Office of the Federal Register received this document January 11, 1989.

[FR Doc. 89-1092 Filed 1-13-89; 8:45 am]
BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission On Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission which was to have been convened at 1:00 p.m. and adjourned at 4:00 p.m. on December 1, 1988, in Room 317 of the U.S. Customs House, 2 Chestnut Street, Philadephia, PA, is postponed until January 12, 1989.

The original notice for the December 1, 1988, meeting was published at 53 FR 45312 (November 9, 1988). The new date for the meeting is January 12, 1989, and the location will be Court Room 300, U.S. Customs House, 2 Chestnut Street, Philadelphia. The business segment of the meeting will begin with remarks by Commission Vice Chairman Murray Friedman at 1:00 p.m., and a forum on the State's law requiring the collection of data on bias-related incidents will begin about 2:00 p.m.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division of the Commission at (202/523-5264 or TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 16, 1988.

Melvin L. Jenkins,

Acting Staff Director.

Note. The Civil Rights Commission mailed this document to the office of the Federal Register December 21, 1988. The office of the Federal Register received this document January 11, 1989.

[FR Doc. 89-1093 Filed 1-13-89; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 418]

Resolution and Order Approving the Application of the Virginia Port Authority for a Foreign-Trade Subzone at the Stihl Plant in Virginia Beach, VA

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Virginia Port Authority, grantee of FTZ 20, filed with the Foreign-Trade Zones Board (the Board) on February 27, 1987, requesting special-purpose subzone status for the chain saw and power tool manufacturing plant of Stihl, Inc., in Virginia Beach, Virginia, adjacent to the Norfolk-Newport News Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, provided approval is subject to the condition that Stihl be required to elect privileged foreign status with respect to all foreign merchandise admitted to the subzone for the manufacture of chain saws, approves the application, subject to the foregoing condition.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

WHEREAS, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

WHEREAS, the Virginia Port Authority, grantee of Foreign-Trade Zone 20, has made application (filed February 27, 1987, FTZ Docket 3–87, 52 FR 9514), in due and proper form to the Board for authority to establish a special-purpose subzone at the chain saw and power tool manufacturing plant of Stihl, Inc. (Stihl), located in Virginia Beach, Virginia;

WHEREAS, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

WHEREAS, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

NOW, THEREFORE, in accordance with the application filed February 27, 1987, the Board hereby authorizes the establishment of a subzone at the Stihl plant, designated on the records of the Board as Foreign-Trade Subzone No. 20A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, the condition in the resolution accompanying this action, and to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board and has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 5th day of January, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates.

[FR Doc. 89–1003 Filed 1–13–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On October 20, 1988, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covered the period May 1, 1985 through April 30, 1986. That notice incorrectly gave zero percent as the margin for Far East Machinery Co., Ltd. The correct margin for Far East Machinery Co., Ltd., is 0.2 percent.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 41218) the final results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (49 FR 19369, May 7, 1984). After publication of our final results we received comments from the petitioner alleging certain errors. In addition, we found another error.

For three companies, Far East Machinery Co., Ltd. ("FEMCO"), Yieh Hsing, and Kao Hsing Chang, we did not properly account for scrap in the computer program when we calculated the duty drawback amount for each sale. We have corrected that error. Another computer programming error resulted in failure to divide total duty drawback received for each company's total U.S. sales by the number of units sold. This resulted in an overstatement of drawback. In addition, we removed an incorrect exchange rate calculation from the ocean freight expense calculation for Yieh Hsing.

Amended Final Results of the Review

The Department has corrected the errors and amended the final results for one company. The amended margin for FEMCO is 0.2 percent. Since the margin for this firm is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for FEMCO. For the other companies the results were unaffected because no margins existed before or after the corrections.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

This amendment to final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(1)), and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: January 10, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–1004 Filed 1–17–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–428–037]

Drycleaning Machinery From West Germany; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On December 15, 1987, the Department of Commerce initiated an administrative review of the antidumping finding on drycleaning machinery from West Germany. The Department has now determined to terminate that review.

Background:

On December 15, 1987, the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on drycleaning machinery from West Germany (52 FR 47617). That notice stated that we would review Seco Maschinenbau & Co. GmbH ("Seco") for the period November 1, 1986 through October 31, 1987. Seco subsequently withdrew its request for review on July 7, 1988. As a result, the Department has determined to terminate the review.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Phyllis Derrick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: January 10, 1989.

[FR Doc. 89–1005 Filed 1–17–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–484–801; A–419–801]

Postponement of Public Hearings: Antidumping Duty Investigations on Electrolytic Manganese Dioxide From Greece and Ireland

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Office of Antidumping Compliance has postponed the hearings on the antidumping duty investigations on electrolytic manganese dioxide from Greece and Ireland.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Holly Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–2923/4733.

SUPPLEMENTARY INFORMATION: On December 20, 1988, we published in the **Federal Register** (53 FR 51129) notices of postponement of our final antidumping duty determinations on electrolytic manganese dioxide from Greece and Ireland. These notices also stated that the public hearings were to be held on January 17, 1989.

At the request of the petitioners, the public hearings on these antidumping duty investigations have been postponed until January 23, 1989. The hearing on the investigation of electrolytic manganese dioxide from Greece will begin at 1:30 p.m. in room 1414, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230. The hearing on the Irish investigation will follow immediately thereafter. Prehearing briefs are due to the Assistant Secretary by January 17, 1989.

This notice is published pursuant to section 774(b) of the act.

January 10, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–1006 Filed 1–13–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–402]

Lime From Mexico; Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted a changed circumstances administrative review of the countervailing duty order on lime from Mexico. We preliminarily determine that, following the sale of Sonocal to Bomintzha, bounties or grants previously received by Sonocal do not provide benefits to Bomintzha. We also preliminarily determine that the deposit rate of estimated countervailing duties for Bomintzha is the "all other" rate currently in effect of 1.21 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 17, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35672) a notice of final affirmative countervailing duty determination and countervailing duty order on lime from Mexico. The order, which excluded seven firms, established rates of cash deposit of estimated countervailing duties of 55.89 percent for one firm, Sonocal, and 1.21 percent for all other firms. These rates are still applicable.

On July 21, 1988, the Government of Mexico requested a changed circumstances administrative review of this order in accordance with section 751(b) of the Tariff Act of 1930 ("the Tariff Act"). The Government of Mexico requested the Department to examine the purchase of Sonocal by Bomintzha ("Sociedad Cooperativa E.E.R.R. Bomintzha, S.C.L.") and to determine whether the transaction was at "arm's length," thereby permitting the Department to apply to Bomintzha the "all other" rate for purposes of cash deposit of estimated countervailing duties.

On August 2, 1988, the Department published in the **Federal Register** (53 FR 29076) a notice of initiation of changed circumstances administrative review of the countervailing duty order on lime from Mexico. We stated that, in this review, we would determine whether an actual sale took place and whether bounties or grants received by Sonocal continued to provide benefits to Bomintzha. We further stated that the review would be conducted to determine whether the rate of cash deposit of estimated countervailing duties for exports by Bomintzha should be changed to the "all other" rate.

Scope of Review

The United States, under the auspices of the Customers Cooperation council, has developed a system or tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments from Mexico by Bomintzha of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide [$Ca(OH)_2$], commonly called hydrated lime or hydrate. These products are currently classifiable under HTS item numbers 2520.20.00, 2522.10.00 and 2522.30.00.

Analysis of the Transaction

On September 2, 1986, Bomintzha signed a contract for the purchase of Sonocal. The co-signers included a commercial bank acting as the government's agent for the sale, and the various government entities that together owned all of Sonocal's shares. In purchasing 100 percent of Sonocal's shares, Bomintzha acquired all of Sonocal's assets and liabilities with the exception of Sonocal's bank debt, which was assumed by the Government of Mexico.

The sale of Sonocal took place under the auspices of a program, begun by the Mexican government in 1983, for rationalizing the parastatal sector and privatizing parastatal companies in nonpriority sectors. (A parastatal company is one that is owned in whole or in part by the government.) As part of this program, numerous parastatal companies were liquidated, merged, terminated or sold. For each company to be sold, the government appointed a major bank as its agent for conducting the sale. The agent was charged with undertaking studies to evaluate the company in preparation for its sale, announcing the sale in the media, preparing a timetable for the receipt of bids, and defining the terms and arrangements for the sale. In conducting the sale, the agent, who received a commission based on the sales price, was to consider the various goals of privatization, among them ensuring the economic viability of the company and preserving productive capacity and employment. Agents were expected to seek the best conditions of sale for the government but, at the same time, were authorized to be pragmatic and flexible. The assumption of bank debt, where conditions warranted, was one of the procedures authorized by the governmental committee overseeing the sale of parastatals.

On January 20, 1986, a public notice appeared in newspapers nationwide that Sonocal, along with other parastatals, was for sale. The notice announced that interested parties were to contact the designated agent for more information. Prospective buyers were able to obtain the independent appraisals of Sonocal's physical assets, a valuation of its land, geological studies of Sonocal's limestone deposits, and Sonocal's financial statements from the government's designated agent.

Before making its bid, Bomintzha made an on-site inspection of the Sonocal plant and its limestone deposits. As part of its bid, Bomintzha submitted its own financial statements, statements of financial condition and financial forecasts, along with relevant information on its experience and future plans.

The agent accepted Bomintzha's bid and recommended the bid for approval to the governmental committee overseeing the sale of parastatals. On May 15, 1986, in a letter to the agent, the committee stated that it had determined, following a financial analysis of Sonocal as well as the various bids to buy it, that selling Sonocal to Bomintzha assured the best conditions for the government and that the government would assume Sonocal's bank debt.

In analyzing the sale of Sonocal to Bomintzha, we stated in our initiation of this changed circumstances review that we had two concerns: (1) Whether ownership of Sonocal was actually transferred such that Sonocal, which was a 100-percent government-owned company when we made our final determination, ceased to exist; and (2) whether bounties or grants received by Sonocal continue to provide benefits to Bomintzha.

Based on the terms of the September 2, 1986 purchase contract, we conclude that ownership of Sonocal was transferred to Bomintzha. Bomintzha financed the purchase with loans from the Mexican government (see below) and now owns Sonocal in much the same way as any purchaser owns mortgaged property. Therefore, we preliminarily determine that Sonocal is no longer a government-owned company.

With respect to the question of whether bounties or grants received by Sonocal continue to benefit Bomintzha (*i.e.*, whether such benefits were passed through to Bomintzha), we based our analysis on the proposition that, to the extent that the price paid for a government-owned company reflects the company's market value, we believe it is reasonable to presume, as outlined below, that any countervailable benefits previously granted to the company are fully reflected in the purchase price and that such benefits are not passed through to the purchaser.

In our final determination, we found the following benefits to Sonocal countervailable: government equity infusions since 1982, which we determined was the year that Sonocal became unequityworthy; delayed fuel payments to Pemex (the government-owned oil monopoly), which we considered to be interest-free loans; and various types of preferential loans.

The government equity infusions, which ceased as a result of the sale, increased Sonocal's net worth. The continued obligation for operating liabilities, such as Sonocal's unpaid Pemex bills, had the effect of decreasing the company's net worth. Finally, with the government's assumption of Sonocal's bank debt, the company's net worth increased. As a consequence, any effect from the countervailable benefits provided to Sonocal would be reflected in Sonocal's current net worth, and a prospective buyer would take the current net worth into account when estimating Sonocal's market value and making an offer.

Ultimately, a company's value is whatever price the market will bear, regardless of its net worth. Thus, while a logical starting point for analyzing Sonocal's market value is the value of its assets minus liabilities ("net worth"), we recognize that Sonocal's net worth, or the appraised value of its physical assets, or any other objective measure of its value, is not necessarily an accurate measure of its market value.

Innumerable factors can influence a company's market value, some of the most important being a company's net worth and the value of its physical assets. While some of these factors are measurable, many factors whose value is difficult to quantify also affect the market value, such as future expectations of inflation, recession, or changes in interest rates.

To ensure that market forces are allowed to operate, an important consideration is whether an open, competitive bidding process is in place. We have examined the bidding process and the Government of Mexico's stated goals for the sale of Sonocal and other parastatals. The Government of Mexico's agent conducted an open bidding process, in which Bomintzha participated along with other bidders. Bomintzha's bid was selected by the agent and subsequently approved by the Mexican government as representing the best conditions of sale for the government. In addition to the price offered, the agent had to consider various factors in making this determination, among them the continued economic viability of the company and the preservation of employment.

Although the Mexican government had goals other than solely to maximize its financial return when selling parastatals, it does not necessarily follow that, with such goals, the Mexican government's sale of Sonocal provided a benefit to Bomintzha. All prospective buyers were subject to the same conditions and were evaluated with the same goals in mind. Any conditions attached to the sale had to be taken into consideration by prospective buyers and, to the extent that these conditions (such as the obligation to make necessary investments and maintain employment) were perceived as acting to the detriment rather than the benefit of the buyer, they may have resulted in lower bids. However, the lower level of bidding would not provide a benefit to the eventual buyer if it merely reflected the perception of additional risk and cost attached to the purchase. In this context, accepting the bid that represented the best terms for the government could still indicate that the tendered price reflected the company's market value.

At the time of the sale, Sonocal was in considerable financial difficulty. Its accumulated losses were well in excess of its paid-in capital. It had bank debt nearly equal to the appraised value of its physical assets and in excess of the price offered by Bomintzha. With the Mexican government's assumption of Sonocal's bank debt, Sonocal's net worth was somewhat higher than Bomintzha's bid and somewhat lower than the appraised value of the physical assets.

In determining an appropriate sales price for Sonocal, a prospective buyer and the Mexican government would have had to consider many factors, including: the current market demand for the company's products; the condition of its physcial assets and the need for any major repairs; the degree of technical sophistication of the machinery; and the recent and expected financial performance of the company. Depending on the results of such an analysis, the parties involved in the sale could have determined that Sonocal was either overvalued or undervalued in relation to the value that appeared in its financial records. After assessing Sonocal's value based on such factors, a prospective buyer would have offered what he estimated would be a successful bid and the Mexican government would have had to determine what was an acceptable bid.

Sonocal had been cut off from a substantial portion of its traditional market in the United States by the high countervailing duty rate. In purchasing Sonocal, Bomintzha expected that the countervailing duty would no longer be applicable and had reason to believe that its long-term market prospects were very good. Bomintzha, as well as other bidders, had an opportunity to inspect Sonocal's physical plant, and while Bomintzha's subsequent problems with repairs and plant operation suggest that the condition of the equipment was far from optimal, we have no evidence that Bomintzha or the Mexican government was aware of this at the time of the sale. Therefore, we have no reason to assume that the value of the physical assets was anything less than the value recorded in the June 30, 1986 balance sheet, a document that was considered in the purchase contract to be an accurate representation of Sonocal's current financial condition.

However, Sonocal's financial performance in the several years prior to the sale was daunting. It had not made a profit in more than five years. In 1984 and 1985, the two completed fiscal years prior to the sale, Sonocal's combined losses exceeded the total value of its paid-in capital. At the time of the sale, its accumulated losses accounted for half of its total liabilities. Even in the first six months of 1986, its losses were well in excess of the difference between the price Bomintzha paid and Sonocal's net worth. On this basis alone, the purpose of Sonocal clearly involved a risk. Any potential buyer, however confident in his ability to turn the company around, would have expected continued losses in the near term. At the same time, the Mexican government would have had to take Sonocal's finanical condition into consideration in determining what it could expect to receive for Sonocal.

Given such dire financial circumstances, a seller would weigh heavily the alternative of continued substantial losses and declining net worth in determining the reasonableness of any offer. A buyer, faced with the inherent risk in purchasing such a company, would have to factor in the costs of making the company viable (or the cost of possible failure) against any objective measure of the company's value, such as the appraised value of its physical assets or its net worth. In this context, the price that the Mexican government accepted appears reasonable because that price, although lower than these measures of Sonocal's value, reflects the risks involved in purchasing Sonocal. On this basis, we preliminarily determine that the price Bomintzha paid reflected Sonocal's market value and, therefore, that no benefits to Sonocal passed through to Bomintzha.

The petitioners have alleged that the terms of the mortgage obtained by Bomintzha from the Mexican government are preferential. Based on this premise, they conclude that the Department must determine that bounties or grants provided to Sonocal passed through to Bomintzha. We do not agree. If the financing were preferential, we would consider it a benefit provided directly to Bomintzha and, therefore, outside the scope of this review. The purpose of this review is very limited—to determine whether, pending completion of a section 751(a) review, Bomintzha should be subject to the rate of cash deposit of estimated countervailing duties applicable to Sonocal or the rate applicable to all other, including new, exporters. We will examine the mortgage terms and any other potential benefits provided to Bomintzha in the recently initiated section 751(a) administrative review for calendar year 1987 and any subsequent reviews, if requested.

Preliminary Results of Review

As a result of our review, we preliminarily determine that bounties or grants provided by the Government of Mexico to Sonocal before its sale to Bomintzha in 1986 do not continue to provide benefits to Bomintzha. Therefore, the Department preliminarily

determines that the appropriate rate of cash deposit of estimated countervailing duties for Bomintzha's exports of time to the United States is the "all other" rate of 1.21 percent *ad valorem*.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.21 percent of the f.o.b. invoice price on shipments from Bomintzha of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within seven days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following.

Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(b)(1) of the Tariff Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.41(b).

Date: January 9, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-1007 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof The MBDC will operate in the Pittsburgh, Pennsylvania geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operations of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community, in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resource available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDC's will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 20, 1989. Applications must be postmarked on or before March 20, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, (202) 377-8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)
Date: January 9, 1989.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 89-950 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Newport News, VA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period June 1, 1989 to May 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Newport News, Virginia geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points)., An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is February 21, 1989. Applications must be postmarked on or before February 21, 1989.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, (202) 377-8275.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development. (Catalog of Federal Domestic Assistance)
Date: January 9, 1989.

Willie J. Williams,

Regional Director, Washington Regional Office.

[FR Doc. 89-951 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Public Meeting

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Wednesday, February 8, 1989 from 8:30 a.m. to 3:00 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

DATES: The meeting will convene February 8, 1989 at 8:30 a.m. and will adjourn at 3:00 p.m.

ADDRESS: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The public is invited to attend this meeting, and the Chairperson will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Dale Hall at the address shown above.

Date: January 10, 1989.

R.G. Kammer,

Acting Director.

[FR Doc. 89-957 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Issuance of Letter of Authorization

Notice is given that on January 10, 1989, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B-Taking of Ringed Seals Incidental to On-Ice Seismic Activities, to the following: CGG American Services Inc., 1616 Champa Street, Denver, Colorado 80202-2703.

This Letter of Authorization is valid for 1989 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B).

Issuance of this letter is based on a finding that the total taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 10, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-946 Filed 1-13-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting on January 30, 1989, at 1 p.m., at 2000 SW. First Avenue, Room 240, Portland, OR. The proposed meeting agenda includes discussion of biological and economic analyses of sablefish fishery data, review of information and the use of information pertaining to discards of fish in the trawl fishery, reevaluation of yellowtail rockfish distribution and management areas, and discussion of possible changes in accessibility of the Pacific Coast Fishery Information Network data. Other issues pertaining to management of the groundfish fishery may also be discussed. The public meeting will adjourn on February 1, 1989, at noon.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–63523.

Date: January 10, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–956 Filed 1–13–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Ms. C. Rachael Howell (P432)

On October 11, 1988, notice was published in the **Federal Register** (53 FR 39635) that an application had been filed by Ms. C. Rachael Howell, Corpus Christi State University, 3140 Ocean Drive, Corpus Christi, TX 78404 for a permit to take by harassment up to 200 Atlantic bottlenose dolphins (*Tursiops truncatus*) during photographic studies for purposes of scientific research.

Notice is hereby given that on January 11, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324 Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Date: January 11, 1989.

Nancy Foster,

Director, Officer of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–1029 Filed 1–13–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permit Modification: Dr. Thomas F. Albert (P282A) Modification No. 1 to Permit No. 519

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and § 220.24 of the regulations on endangered species (50 CFR Parts 217 through 222), Scientific Research Permit No. 519 issued to the Dr. Thomas F. Albert, Department of Conservation and Environmental Protection, North Slope Borough, P.O. Box 69, Barrow, Alaska 99723, on August 23, 1985 (50 FR 35286) is modified in the following manner:

Section B.5 is changed to read:

This Permit is valid with respect to the taking authorized herein until December 31, 1991.

This modification becomes effective on January 1, 1989.

Documents pertaining to the Permit and all modifications are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910.

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Date: January 10, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–1030 Filed 1–13–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board, Meeting

January 5, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Aerospace Applications of Superconductors will meet on Feb. 7, 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting is to draft a report on their findings. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–1044 Filed 1–13–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Announcement of Public Scoping Meetings for Environmental Impact Statement on Electromagnetic Pulse Simulator Operations at the Harry Diamond Laboratories Woodbridge Research Facility, Woodbridge, VA

AGENCY: Department of the Army, DOD.

ACTION: Announcement of time and place for public scoping meetings for the Environmental Impact Statement (EIS) on electromagnetic pulse (EMP) simulator operations at the Harry Diamond Laboratories Woodbridge Research Facility (HDL–WRF), Woodbridge, VA.

1. In an earlier **Federal Register** announcement on January 11, 1989, the Department of the Army announced its intent to prepare an EIS on electromagnetic pulse simulator operations at HDL–WRF.

2. The Army will conduct two public scoping meetings to aid in determining the significant issues related to the proposed action. The first will be conducted on January 30, 1989 at the Woodbridge High School Auditorium, 30013 Old Bridge Road, Woodbridge, VA. beginning at 7 p.m. EST. The second will be conducted on January 31, 1989 at the Bott's Station Hall (Occoquan, Woodbridge, Lorton Volunteer Fire Department), 1306 F Street, Woodbridge, VA. beginning at 1:30 p.m. EST.

These meetings are intended to provide a forum for individuals, governmental agencies and private organizations to offer information relevant to the environmental impacts or related aspects of the proposed action which should be considered by the Army. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the EMP simulator operations at the HDL–WRF. This includes information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with EMP simulator operations at the HDL–WRF.

3. Individuals or group representatives are invited to register for an opportunity to make an oral presentation at the public scoping meeting. To ensure that as many persons as possible are given an opportunity to present oral comments, the length of each presentation will be limited to no more than 10 minutes. On-site registration will be available.

4. Those unable to attend the scoping meeting may convey their views by writing to the address shown below: U.S. Army Laboratory Command, ATTN: AMSCL–PA, 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Comments and suggestions should be received no later than 15 days following the public scoping meetings to be considered in the Draft EIS. For additional information, call (202) 394–3590.

January 11, 1989.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (I&L).

[FR Doc. 89–948 Filed 1–13–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Aluminum Company of America Laboratories (Alcoa); Cooperative Agreement

AGENCY: Department of Energy.

ACTION: Intent to Negotiate a Cooperative Agreement—Aluminum Company of America, Alcoa Laboratories.

SUMMARY: Low-Temperature Electrolysis of Alumina. The U.S. Department of Energy, Idaho Operations Office, intends to award on a noncompetitive basis, a cooperative agreement, as the result of an unsolicited proposal submitted by the Aluminum Company of America Alcoa Laboratories (Alcoa), Alcoa Center, Pennsylvania 15069, on its own initiative, and was accepted for support pursuant to the provisions of 10 CFR 600.14(f). The Cooperative Agreement will be to assess the technical and economic commercial viability of using high surface area anodes (HSAA) and a low-temperature electrolyte in aluminum reduction cells. Goals include inert HSAA corrosion rates that result in commercial-purity aluminum, and economically viable anode life and cell performance. Alcoa will (1) assess concept feasibility, (2) evaluate cell design concepts using bench-through pilot-scale cells, and (3) determine at a high level of confidence if the technology is commercially viable as demonstrated in a 20 kA pilot cell. Alcoa's unsolicited proposal has been accepted for DOE financial assistance based on its meeting the criteria outlined in the following paragraphs listed under 10 CFR Part 600.14:

(a) The activity to be funded is an innovative approach relevant to a public purpose.

(b) The applicant possesses the facilities and techniques necessary to achieve the proposed project's objectives.

Contact: U.S. Department of Energy; Idaho Operations Office; Attention: J.P. McGowan, Contracts Management Division; 785 DOE Place, Idaho Falls, Idaho 83402, (208) 526–8779.

Issued this 28th day of December at Idaho Falls, Idaho.

R.E. Tiller,

Acting Manager.

[FR Doc. 89–908 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/CA(EU)–16, for the retransfer of 260 kilograms of uranium enriched to 19.75 percent in the isotope uranium-235 for use as fuel in the NRU research reactor, Chalk River, Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: January 11, 1989.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 89–1048 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, February 6, 1989, 8:30 am–6:00 pm; Tuesday, February 7, 1989, 8:30 am–4:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Ave. SW., Forrestal Bldg., Rm; 1E–245, Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20545, Telephone: (301) 353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, February 6, 1989 and Tuesday, February 7, 1989

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Update on Superconducting Super Collider (SSC) Programs
—Discussion of proposed KAON (*K*aons, *A*ntiprotons, *O*ther strongly interacting particles, and *N*eutrinos) facilities
—Status Report on DUMAND II, GRANDE, and FLY'S EYE Subpanel
—Discussion of High Energy Physics and the SSC Over the Next Decade Subpanel Report
—Reports on and discussions of topics of general interest in high energy physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of

the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 11, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–1050 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases filed; Week of December 3 through December 9, 1988

During the week of December 3 through December 9, 1988, the appeals and applications for other releif listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

January 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Dec. 5, 1988	United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, AFL–CIO, Washington, DC.	KFA–0242	Appeal of an Information Request Denial. If granted: The United Association would receive access to identifying information contained in the certified payroll reports of Cobb Mechanical.
Dec. 6, 1988	Government Accountability Project, Washington, DC.	KFA–0236	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive access to information relating to the Knolls Atomic Power Laboratory.
Do	Government Accountability Project, Washington, DC.	KFA–0237	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive access to information relating to the Knolls Atomic Power Laboratory.
Do	Government Accountability Project, Washington, DC.	KFA–0238	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive access to specific information relating to the Knolls Atomic Power Laboratory.
Do	Government Accountability Project, Washington, DC.	KFA–0239	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive access to information from the DOE's Schenectady Naval Reactors Office relating to the Knolls Atomic Power Laboratory.
Do	Government Accountability Project, Washington, DC.	KFA–0240	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive access to information relating to the Knolls Atomic Power Laboratory.
Do	Tri City Herald, Tri-Cities, Washington	KFA–0241	Appeal of an Information Request Denial. If granted: The November 18, 1988 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded and the Tri City Herald would receive access to copies of information relating to a decision involving Westinghouse Hanford

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
01/25/88	Porter's Gas, Inc.	RF300–10624
02/22/88	Beth Liggett	RF300–10623
12/05/88	Jim's Gulf Service Station.	RF272–75140
12/05/88	Jim's Gulf Service Station.	RF272–75141
12/05/88	Jim's Gulf Service Station.	RF272–75142
12/05/88	Brecksville-Broadview Hgts.	RF272–75143
12/06/88	J. Alfred Kelrns	RF272–75144
12/06/88	Rocky's Oil Service, Inc.	RF304–7433
12/06/88	Crossroads C.B.S. Gas, Inc.	RF308–7
12/06/88	Rash Oil Company	RF310–326
12/07/88	Brooks Armored Car Ser.	RF272–75145
12/08/88	Green Acres Ansques	RF272–75146

Refund Applications Received—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
12/08/88	Red's Kerr McGee	RF272–306–8
12/08/88	Ginther LP Gas	RF308–9
12/08/88	Carl's Gulf	RF300–10622
12/3/88 thru	Exxon Refund Applications.	RF307–6974
12/09/88	Received	RF307–7040
12/03/88 thru	Atlantic Richfield Company.	RF304–7405
12/09/88	Refund Applications Received.	RF304–7445
12/03/88 thru	Murphy Oil Refund	RF309–625
12/09/88	Applications Received	RF309–641

[FR Doc. 89–1051 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of October 31 through November 4, 1988

During the week of October 31 through November 4, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Alexandria Light Power Co., 11/3/88; RF272–75020

On August 11, 1988, the DOE issued a Decision and Order granting a refund to Alexandria Light & Power Co. (Alexandria), Case No. RF272–33077. *Graf Bros., et al.*, 17 DOE ¶ _____ (Case Nos. RF272–33000, *et al.* (August 11, 1988). The Appendix to this Decision and Order listed erroneous gallonage and refund figures for Alexandria. Accordingly, to remedy the situation, the DOE issued a Supplemental Order granting Alexandria an additional refund of $171.

Aminoil U.S.A., Inc./Behm Family Corporation, 10/31/88; RF139–183

The DOE issued a Supplemental Order concerning the Application for Refund filed by the Rehm Family Corporation in the Aminoil U.S.A., Inc. special refund proceeding. Specifically, the DOE corrected, *sua sponte*, an error in the calculation of the cost banks of one of Behm's subsidiaries, Taylor's Propane, Inc. The recalculation led to the granting of a supplemental refund of $29,482, representing $16,645 in principal and $12,837 in interest.

Alantic Richfield Company City Transfer and Storage, et al., 11/3/88; RF304–472, et al.

The DOE issued a Decision and Order concerning five applications filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented their purchases of Arco products and, as small claimant/end-users, were presumed to have been injured. The refunds granted totalled $1,372, including $280 in accrued interest.

Atlantic Richfield Company/Confair Bottling Co., Inc., et al., 11/2/88; RF304–538, et al.

The DOE issued a decision and Order concerning fifty-four Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end users of reseller/retailers applying for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $61,303 representing $48,821 in principal and $12,482 in accrued interest.

Atlantic Richfield Company/John J. Serpo, et al., 11/2/88; RF304–484, et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end users or reseller/retailers applying for small claim presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $90,472 representing $72,054 in principal and $18,418 in accrued interest.

Atlantic Richfield Company/Whittaker's ARCO, 11/1/88; RF304–327

The DOE issued a Decision and Order concerning an Applications for Refund filed by Whittaker's ARCO in the Atlantic Richfield Company (ARCO) special refund proceeding. The application indicated that Whittaker's ARCO was a consignee/agent of ARCO products during the consent order period. Under the procedures for distribution ARCO funds, consignees are presumed not to have been injured by any alleged overcharges. Because the application made no attempt to rebut this presumption, the DOE concluded that the firm was not injured and denied its Application for Refund.

Exxon Corporation/Glenn's Esso et al., 11/2/88; RF307–1858 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. All of the Applicants purchased directly from Exxon and were resellers whose allocable share is less than $5,000. Each of the Applicants relied upon gallonage figures taken from its records or a printout sent to it by Exxon to document its purchases during the consent order period. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $3,958 ($3,485 principal plus $473 interest).

Exxon Corporation/John B. Bennett, B&K Exxon Service Station, Sliger-Monroe Oil Co., 11/4/88; RF307–1300, RF307–1301, RF307–1458

The DOE issued a Decision and Order concerning Applications for Refund filed in the Exxon Corporation special refund proceeding by John B. Bennett, on behalf of his wholesale operation (Case No. RF307–1300) and his rental operations under the name B&K Exxon Service Station (Case No. RF307–1301), and by Sliger-Monroe Oil Co., a wholesale distributor of Exxon products. Both Bennett and Sliger-Monroe purchased directly from Exxon, and their respective allocable shares are more than $5,000. In the Exxon proceeding, a reseller applicant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present cases, $5,000 is greater. Accordingly, the refunds granted in this Decision total $11,360 ($10,000 principal plus $1,360 interest).

Exxon Corp./Michael Cecere et al., 11/1/88; RF307–300 et al.

The Department of Energy issued a Decision and Order granting 49 Applications for Refund from consent order funds obtained from Exxon Corporation. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The total gallonage for which refunds were sought is 117,400,023, and the sum of the refunds granted is $33,344.

Exxon Corporation/Odley Romero et al., 11/2/88; RF 307–1470 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,160 ($23,028 principal plus $3,132 interest).

Florida Power Corp et al., 11/3/88; RF272–204 et al.

Nine investor-owned public utilities filed applications for refund in the Subpart V crude oil refund proceedings. A group of states filed objections to the applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The states also claimed that the applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers. The DOE rejected both of the states' arguments, finding that the applicants were not claiming a refund for themselves, but rather agreed to pass through to their customers the benefits of any refunds which they would receive. The DOE also found that the Settlement Agreement permitted utilities to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of the applicants claims. Accordingly, the applications were approved and the applicants were granted refunds totalling $4,741,166.

Getty Oil Company/Cardetti Skelgos, Furniture and Applicance Company, Inc., 11/1/88; RF265–1994

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of propane that was covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating Getty purchases of 6,393,566 gallons of propane. It elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the $50,000 threshold. The total refund approved in this Decision is $12,046, representing $5,854 in principal and $6,192 in accrued interest.

Getty Oil Company/Kelley's Filling Station, 11/4/88; RF265–2143

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating the volume of its Getty gasoline purchases of one of its station outlets and was eligible for a refund on the basis of the level-of-distribution presumption of injury methodology. The total refund approved in this Decision is $2,339, representing $1,137 in principal and $1,202 in accrued interest.

Glenn W. Spriggs, et al., 11/1/88; RF272–60437, et al.

The DOE issued a Decision and Order denying thirteen Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured by the crude oil overcharges, they were ineligible for a crude oil refund.

Gulf Oil Corporation/Donahue Oil Co. et al., 11/4/88; RF300–6582, et al.

The DOE issued a Decision and Order concerning 100 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $155,662.

Gulf Oil Corporation/McCue's Service Station et al., 11/4/88; RF300–6850, et al.

The DOE issued a Decision and Order concerning 100 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $216,868.

Gulf Oil Corporation/Moran Coal Company, Inc., et al., 11/1/88; FR300–1192, et al.

The DOE issued a Decision and Order concerning 86 Applications for Refund submitted by retailers and consumers in the Gulf Oil Corporation special refund proceeding. Each consumer applicant is presumed injured under the end-user presumption, and each reseller applicant is claiming a refund less than $5,000, and is therefore presumed injured under the small claims presumption. Therefore, each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $119,139.

Gulf Oil Corporation/North East Independent School District, et al., 11/1/88; RF300–2404, et al.

The DOE issued a Decision and Order concerning 98 Applications for Refund submitted by retailers and consumers in the Gulf Oil Corporation special refund proceeding. Each consumer applicant is presumed injured under the end-user presumption, and each reseller applicant is claiming a refund less than $5,000, and is therefore presumed injured under the small claims presumption. Therefore, each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $161,042.

Gulf Oil Corporation/Richmond County Board of Education, et al., 1/3/88; RF300–1400, et al.

The DOE issued a decision and order granting 15 Applications for Refund in the Gulf Oil Corporation refund proceeding. Each of the claimants demonstrated that it was a direct purchaser of Gulf covered products during the consent order period. Each of the claimants listed in the appendix to this Decision has demonstrated that it was an end-user of the Gulf products it purchased. Accordingly, the claimants listed in the appendix were assumed injured and received their full allocable shares. The total amount of refunds granted in this Decision, which include both total principal and total interest, is $11,402.

Gulf States Asphalt Company, 11/2/88; RF272–8868, RD272–8868

Gulf States Asphalt Company filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of states filed an objection to Gulf States' application, claiming that the firm should not be eligible to receive a refund because it had not established that it was an injured end-user. The states also filed a Motion for Discovery, seeking information that would support their assertion of non-injury. The DOE rejected the states' arguments, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE also dismissed the Motion for Discovery on similar grounds. The DOE then reviewed the application and found that information provided therein supported the firm's claim. Accordingly, Gulf States was granted a refund of $43,315.

J.W. Snyder et al., 11/2/88; RF272–32303 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 14 applicants based on their respective purchases of refined petroleum products during the period August 19, 1983, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, road maintenance, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $4,864. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Johnson Oil Company et al., 11/4/88; RF272–62031, et al.

The DOE issued a Decision and Order denying six Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured by the crude oil overcharges, they were ineligible for a crude oil refund.

Lafayette Greenville Bus Owner's Association, 10/31/88; RF272–75021

The DOE issued a Supplemental Order rescinding the refund granted to Lafayette & Greenville Bus Owner's Association in *Junior Boyd*, 17 DOE ¶ 85,695 (1988), because the firm had previously waived its right to further crude oil refunds when it filed an application for refund from the Surface Transporters escrow in the Stripper Well proceeding. *See International Shoe Co.*, 16 DOE ¶ 85,452 (1987). Accordingly, the firm was instructed to remit the sum of $263 to the DOE. In addition, Donald Brooks of Petroleum Resource Associates, Inc., who filed the crude oil application on behalf of Lafayette & Greenville, was held to be jointly responsible with Lafayette & Greenville for the return of the money.

Mayer Truck Line, Inc., et al., 11/2/88; RF272–8587 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 10 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. All of the applicants were trucking firms, and none had waived their rights to a Subpart V crude oil refund by filing a claim for a refund from a Stripper Well escrow. Each applicant determined its volume claim by either utilizing actual purchase records from the crude oil price control period or by using a reasonable estimation technique. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $10,507.

Melvin Miller Sons et al., 11/2/88; RF272–30230 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, manufacturing, road maintenance, and heating public school facilities, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $5,750. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Mid-Atlantic Coca-Cola Bottling Co., Inc. Coca-Cola Foods Co., 11/1/88; RF272–3406, RD272–3406, RF272–3748, RD272–3748

The Department of Energy (DOE) issued a Decision and Order granting the applications of Mid-Atlantic Coca-Cola Bottling Co., Inc. Coca-Cola Foods Co. for a refund pursuant to the provisions of 10 CFR Part 205, Subpart V (Subpart V) for its purchases of crude oil products between August 1973 and January 1981. The DOE also rejected Motions for Discovery and Objections filed against these two applicants by a group of 30 State governments and two territories (The States). The States sought to rebut the presumption that end users were injured by the crude oil overcharges occurring during the regulatory period. The DOE rejected the States' contention that the overall profitability of the applicants' respective industries during the regulatory period showed that the applicants were able to pass along the costs of overcharges to their customers. The DOE noted that a manufacturer's energy cost will vary based on the size of the business and types of refined products used. With regard to the discovery motions filed by the States, the DOE ruled that discovery was inappropriate in a Subpart V proceeding, and that the States had failed to show that any additional information was required to be submitted by the applicants. The DOE found that the applicants were end users of petroleum products and substantiated their purchases. Accordingly, the DOE granted the applicants' respective refund claims.

Robert Patefield et al., 11/3/88; RF272–5237 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $522.

Shope Brothers et al., 11/2/88; RF272–30905 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by fifteen (15) claimants for crude oil overcharge funds collected by the DOE. The OHA found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. OHA granted the claimants a total refund of $3,027 based on their purchases of 15,140,236 gallons of refined petroleum products.

Total Petroleum, Inc./Apco Oil Corp./Twin City Oil Company, Inc., 11/3/88; RF310–1, RF83–164

The DOE issued a Decision and Order concerning an Application for Refund filed by Twin City Oil Company, Inc., a motor gasoline retailer, from the settlement fund obtained by the DOE through a consent order with Total Petroleum, Inc. The DOE determined that Twin City met the criteria for a refund of $3,832 ($3,358 in principal and $474 in interest). The DOE determined further that Twin City's refund should not be disbursed to the firm because in an earlier proceeding involving the Apco Oil Corporation escrow account fund, Twin City received a refund to which it was not entitled. The DOE therefore transferred the $3,832 awarded to Twin City from the Total escrow fund account directly to the Apco escrow fund account. This transfer served to reduce Twin City's repayment obligation to the Apco escrow fund account to $1,424. Twin City was directed by DOE to pay this amount to the Apco escrow fund account within twenty days of the issuance of this Decision.

W.R. Grace & Company, 11/3/88; RF272–30836

The DOE issued a Decision and Order denying an Application for Refund filed by W.R. Grace & Company (Grace) in the Subpart V crude oil proceedings. The DOE's denial was based on the fact that Grace's affiliate, Grace Distribution Services, had applied for and been granted a refund from the Surface Transporters Escrow, and had thereby waived Grace's right to a refund in the crude oil proceeding.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No of applicants	Total refund
Bimbo Enterprises, Inc. *et al*	RF272–10428	10/31/88	145	$7,038
Dennis Allen *et al*	RF272–15620	11/2/88	59	16,507

Name	Case No.	Date	No of applicants	Total refund
Hatco Corp. *et al*	RF272-9660	11/4/88	15	24,872
Home Rubber Co. *et al*	RF272-17223	11/3/88	85	37,692
Richard Frank *et al*	RF272-31304	11/3/88	33	3,442
Wilson Excavation and Grading, Inc	RF272-16801	10/31/88	32	5,294

Dismissals

The following submissions were dismissed:

Name and case Number:

Abbott Ambulance Service, Inc.—RF272—73833
Alford L. Flanagan—RF272—59636
Ang's Service Station—RF300—8587
Anthony Milhovilich—RF300—8602
Aurora Aviation—RF272—74646
Beer Soda, Inc.—RF300—9860
Cal Kirkland—RF272—46319
Charles V. Johnson—RF272—41865
City of Conover—RF272—60024
City of Ralls—RF272—61342
Claybornes Grocery—RF272—72445
Crowders Gulf Station—RF272—65055
David T. Long—RF272—61433
Davis Gulf Service—RF300—8909
Edward A. Reely—RF272—73201
Federal Express Corporation—RF300—9049, RF300-9452
Five Point Gulf—RF300—8477
Floyd Feser—RF272—63265
Franklin Plaza Apts., Inc.—RF272—62211
Frederick E. Meyer—RF307—2705
G. C. Feaster and Sons—RF300—5153, RF300—9632
Garden City Public Schools—RF272—61043
Gardenside Arco Service Station—RF304—2354
Grady & John H. Latham Dairy—RF300—9857
Guilford County—RF272—59995
Henderson Gulf Service—RF00—9318
Howe Oil Co.—RF300—9461
J.D. Melton Gulf Station—RF300—9644
Jackson Greer—RF307—2139
Jeff Nesmith—KFA—0225
Jim Pletcher—RF272—60535
Joseph P. Fox—RF272—54743
Keignas Service Station—RF300—8566
Kidder Fuels, Inc.—RF300—8314
Lafayette Service Station—RF300—8548
Long Island Lighting Co.—RF300—9818
Memphis Areo Corporation—RF307—4533
Milan Express—RF272—72458
Mr. Earl Conway—RF300—10412
New-Mac Electric Coopertive, Inc.—RF272—54763
Oats Incorporated—RF300—9864
Oelkers Servicecenter—RF307—955
Parman Enterprises, Inc.—RF272—64521
Pennsylvania Power and Light Company—RF272—66265
Pitcher's Loma Vista—RF265—1869
Rainbow Bridge Exxon—RF307—1059
Retail Petroleum Service, Inc.—RF300—10296
Richard R. Saburn—RF300—7439
Robert A. Martin—RF272—74792
Robert Patefield—RF272—11791
Roger Gulf Service—RF300—8565
San Ramon Valley Unified School District—RF272—73255
Sawyer Gas of Jacksonville, Inc.—RF307—5247
Schluckebier Oil Company—RF310—7
Second Triangle Station—RF300—8609
Standard Trucking Co.—RF272—67309
Standard Trucking Co.—RF300—8993, RF300—9509
Stanley Oil Company, Inc.—RF307-5867
State Line Gulf Service—RF300-7127
State of Minnesota—RF272-66176
Surfside Gulf—RF300-8481
Svatek Distributing Co.—RF300-9863
Township of Hampton—RF272-74479
Walt Harris Gulf Products—RF300-8004
Welliver Brothers—RF272-61233

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidlines*, a commercially published loose leaf reporter system.

January 10, 1989.

George B. Breznay,

Director, Offie of Hearings and Appeals.

[FR Doc. 89-1052 Filed 1-13-89; 8:45 am]

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Issuance of Decisions and Orders; Week of November 21 Through November 25, 1988

During the week of November 21 through November 25, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Glen Milner, 11/22/88; KFA-0229

Glen Milner filed an Appeal from a denial by the Freedom of Information Officer (FOI Officer) of the Albuquerque Operations Office of the U.S. Department of Energy (DOE) of a request for a waiver of fees under the Freedom of Information Act. In considering the Appeal, the DOE found that, although Milner satisfied one of the requirements for fee waiver, i.e., the disclosure of the information was not primarily in his commercial interest, he did not meet the other requirement, i.e., disclosure of the information was likely to contribute to public understanding of the operations or activities of the government. The subject of Milner's request concerned the operation or activities of the government but disclosure of the requested material with security deletions was not likely to contribute significantly to the public understanding of those activities. Furthermore, the DOE found that Milner was not in a position to disseminate the material in a useful way to the public. Because Milner had failed to satisfy both of the basic requirements for a fee waiver, his Appeal was denied.

Toledo Coalition For Safe Energy, 11/22/88; KFA-0227

The Toledo Coalition for Safe Energy filed an Appeal from a partial denial by the Acting Director of the Office of Remedial Action and Waste Technology of the Office of Nuclear Energy of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that certain documents which were initially withheld under FOIA Exemption 5 should not be released to the public. An important issue that was considered in the Decision and Order was whether certain documents were protected from disclosure by the deliberative process privilege.

Remedial Orders

Tri-Service Drilling Company, 11/21/88; KRO-0120

Tri-Service Drilling Company (Tri-Service) objected to an Amended Proposed Remedial Order (APRO) which the Economic Regulatory Administration (ERA) issued to the firm on September 3, 1985. In the APRO, the ERA found that Tri-Service violated the crude oil producer price regulations at 10 CFR 212.73 and 212.74. The ERA alleged that Tri-Service misapplied the definition of property and, as a result, miscertified crude oil as stripper well oil and charged prices which exceeded its applicable ceiling prices under the regulations. After considering the firm's Statement of Objections, the DOE concluded that the APRO should be issued as a final Remedial Order. In reaching its conclusion, the DOE rejected the firm's contentions that: (i) Tri-Service's oil and gas leases qualified as a single property; (ii) the ERA did not set forth a *prima facie* case and did not provide conclusive evidence on the average daily production of the oil and gas leases; (iii) the ERA's interest assessment on the overcharge amount was improper; and (iv) the DOE does not have the authority to order payment to any person other than the actual purchaser of the crude oil at issue. Tri-Service was directed to refund $394,838 plus interest, to the DOE for distribution under 10 CFR Part 205, Subpart V.

Implementation of Special Refund Procedures

Indian Wells Oil Company, 11/22/88; KEF-0103

The DOE issued a final Decision and Order establishing procedures for the distribution of funds obtained as a result of a consent order entered into with Carlson Companies, Inc. and Ferrell Companies, Inc., owners of Indian Wells Oil Company. The Decision discusses presumptions that will be applied in evaluating refund claims of applicants who purchased natural gas liquids and natural gas liquid products from Indian Wells during the consent order period.

Refund Applications

Atlantic Richfield Company/Carmona's Arco Service, et al., 11/23/88; RF304-1200, et al.

The DOE issued a Decision and Order concerning 51 Applications for Refund filed by 48 claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers applying for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $95,037 representing $75,316 in principal and $19,721 in accrued interest.

Atlantic Richfield Company/Charles Schneider, et al., 11/23/88; RF304-1079, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by three claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that these firms should receive refunds totalling $4,933, representing $3,909 in principal and $1,024 in accrued interest.

Belridge Oil Company/Indiana; RQ8-480

Standard Oil Co. (Indiana)/Indiana; RQ251-481

Standard Oil Co. (Indiana)/Indiana; RQ251-128

Standard Oil Co. (Indiana)/Indiana; 11/22/88; RQ251-135

The DOE issued a Decision and Order approving the Applications for Refund and Motions for Modification filed by the State of Indiana in the Belridge Oil Company and Standard Oil Co. (Indiana) refund proceedings. Indiana requested permission to transfer $343,539.29 in previously approved funds and expend the remainder of its undisbursed second-stage refund monies ($101,829 in principal plus $21,024 in interest) on the State's Energy Conservation Financial Assistance Program (ECFAP). Citing previous second-stage disbursements to ECFAP and the current success of the program, the DOE determined that it was appropriate to grant additional funding to ECFAP. Accordingly, Indiana's submissions were granted.

City of Fort Lauderdale et al., 11/23/88; RF272-30941 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 24 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their activities. The DOE granted the claimants refunds totalling $10,800 based on their purchases of 54,008,416 gallons of refined petroleum products.

Exxon Corporation/Collier Gas & Appliance Co., Inc., et al., 11/23/88; RF307-3839 et al.

The DOE issued a Decision and Order concerning 41 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $35,250 [$30,839 principal plus $4,411 interest).

Fred L. Waldron, Ltd., 11/23/88; RF272-75094

The Department of Energy issued a Supplemental Decision and Order to Fred L. Waldron, Limited (Waldron) in connection with a special refund proceeding under 10 CFR Part 205, Subpart V. In *Farrell F. Beck*, 17 DOE ¶ 85,706 (1988), the DOE granted Waldron, a refund of $86 based on its purchases of 429,764 gallons of petroleum products (Case No. RF272-12824). However, Waldron had previously been granted a refund of $83 under Case No. RF272-16278. *Skic's, Inc.*, Case Nos. RF272-16201 *et al.* (July 15, 1988). Waldron returned the check for the second refund (for $86), stating that only the application approved in the *Skic's* Decision and Order is correct. Therefore, the DOE rescinded the refund granted to Waldron in Case No. RF272-12824.

Getty Oil Company/Hop & Sack Convenience Stores, 11/25/88; RF265-2662

Hop & Sack Convenience Stores (Hop) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Hop documented the volume of Getty motor gasoline which it purchased indirectly through Crescent Oil of Duncan, Inc., a Getty jobber, that had previously received a refund in the Getty proceeding. Utilizing the procedures outlined in *Pioneer Corp./E.I. du Nemours & Co.*, 14 DOE ¶ 85,190 (1986), the DOE calculated Hop's allocable share, which was less than the small claims threshold. The total amount of this refund is $2,231, representing $1,083 in principal and $1,148 in accrued interest.

Getty Oil Company/James Mill Truck Plaza, 11/23/88; RF265-0018, RF265-2755

The DOE issued a Decision and Order concerning two Applications for Refund filed by James Mill Truck Plaza (James Mill), a retailer-reseller of motor gasoline and middle distillates covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted competitive disadvantage data and the volumes of Getty covered products that were purchased during the consent period

from Lakeside Oil Company, Inc. (Lakeside), a jobber that had previously received presumption level refunds in the Getty proceeding. After fully evaluating the circumstances in this proceeding, James Mill was granted a refund based on Lakeside's passthrough percentages of 60 percent for motor gasoline and 50 percent for middle distillates. The refund approved in this Decision is $16,874, representing $8,190 in principal and $8,684 in accrued interest.

Gulf Oil Corporation/Ballance Gulf & Oil Co., Inc., et al., 11/23/88; *RF300–500, et al.*

The DOE issued a Decision and Order concerning 151 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $228,831.

Gulf Oil Corporation/Central Motors Express, Inc., et al., 11/23/88; *RF306–600, et al.*

The DOE issued a Decision and Order concerning 133 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $200,228.

Gulf Oil Corporation/Darrell's Gulf Service, et al., 11/25/88; RF300–6474, et al.,

The DOE issued a Decision and Order concerning 31 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant elected the $5,000 or 40 percent "mid-range" presumption of injury rather than demonstrate that it was injured by the overcharges. For each of the applicants, a refund of $5,000 in principal was greater than 40 percent of the allocable share. The sum of the refunds granted in this Decision is $196,586.

Gulf Oil Corporation/Hayden's Gulf, et al., 11/23/88; RF300–2901, et al.

The DOE issued a Decision and Order concerning 88 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $132,897.

Gulf Oil Corporation/James D. Pressly, et al., 11/21/88; RF300–4353, et al.

The DOE issued a Decision and Order concerning 150 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $281,148.

Gulf Oil Corporation/Town of East Hartford, et al., 11/23/88; RF300–3011, et al.

The DOE issued a Decision and Order concerning 146 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $226,976.

Gulf Oil Corporation/W.R. Greene, et al., 11/22/88; RF 300–3200, et al.

The DOE issued a Decision and Order concerning 67 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $117,759.

Gulf Oil Corp./William Telesco, 11/23/88, *RF300–10605*

On November 9, 1988, the DOE issued a Decision and Order granting a refund of $148 to William Telesco (Telesco), Case No. RF300–7416. *Gulf Oil Corp./White Mountain Oil Co.*, 18 DOE ¶ 85,223 (1988). That Decision and Order granted Telesco a refund based on an erroneous gallonage figure. Accordingly, the DOE issued a Supplemental Order granting Telesco an additional refund of $810.

Gulf Oil Corporation/Star-Tex Propone, et al., 11/23/88, *RF300–7204, et al.*

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, is $75,758.

Gulf Oil Corporation/Tom's Foods, Inc., 11/21/88, *RF300–10601*

On November 9, 1988, the DOE issued a Decision and Order granting a refund of $792 to Tom's Foods, Inc., Case No. RF300–2708. *Gulf Oil Corp./Leroy Brown*, 18 DOE ¶ 85,222 (1988). The DOE determined that this refund was a duplicate of the refund granted to Tom's Foods, Case No. RF300–5216, also on November 9, 1988. *See Gulf Oil Corp./Brown Transport Corp.*, 18 DOE ¶ 85,194 (1988). Accordingly, the DOE issued a Supplemental Order rescinding the refund granted to Tom's Foods, Inc. in *Gulf Oil Corp./Leroy Brown.*

Laurence F. Lillibridge et al, 11/21/88, *RF272–3565 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 55 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. With the exception of some applicants who used reasonable estimates to determine their volume claims, all of the applicants relied upon actual purchase records for the crude oil price control period. The sum of the refunds granted in this Decision is $39513.

Marathon Petroleum Co./Township Oil Co., 11/22/88, *RR250–4*

The DOE considered a motion filed by Township Oil Company requesting reconsideration of a partial denial of its Application for Refund in the Marathon Petroleum Company special refund proceeding. Township claimed in its original refund application that it had been disproportionately overcharged by Marathon, because Marathon had improperly eliminated a discount. That claim was denied on the grounds that the firm failed to show that Marathon was required to maintain the discount. Township was granted a refund at the volumetric level for the period during which it was able to show that it had banks of unrecouped increased product costs. In its Motion for Reconsideration, Township renewed its claim of disproportionate overcharge and also provided a recalculation of its banks of unrecouped costs. The DOE found that Township had still failed to submit any information establishing that it was entitled to the discount that was discontinued. The DOE also found that since Township showed additional banks of unrecouped product costs, it was entitled to some additional refund. However, since the firm did not show actual injury as a result of Marathon overcharges, the firm's additional refund was limited to 40 percent of the volumetric level under the mid-range presumption methodology. The additional refund granted in this case was $6,414 in principal and $1,267 in interest.

Murphy Oil Corporation/James B. Phelps et al., 11/22/88, *RF309–1 et al.*

The DOE issued a Decision and Order granting 50 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $53,768 ($47,924 principal plus $5,844 interest).

Plaquemines Oil Sales Corp./Celotex Corporation, 11/23/88, *RF305–14*

The DOE issued a Decision and Order approving the Application for Refund filed by Celotex Corporation, an identified end-user of Plaquemines Oil Sales Corp. No. 2 diesel fuel. After examining the application and supporting information, the DOE granted the firm a refund of $19,787 ($13,523 principal plus $6,264 interest).

Robert Bennett Lee's Service, 11/23/88, *RF272–34227, RF 272–34234*

The DOE issued a Decision and Order concerning the Applications for Refund of two claimants in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicants resold the refined petroleum products that formed the basis of their applications and thus passed on the costs of any overcharges to their customers. Therefore, the DOE concluded that these claimants were not injured by any of the overcharges associated with the gallons that they purchased. Accordingly, both Applications for Refund were denied.

Robert Patefield Brown Stove Works, Inc., 11/23/88, *RF272–75109, RF272–75110*

The Department of Energy issued a Supplemental Decision and Order to Robert Patefield (Patefield) and Brown Stove Works, Inc. (Brown) in connection with a special refund proceeding under 10 CFR Part 205, Subpart V. In *Robert Patefield*, 18 DOE ¶ 85,163 (1988), the DOE granted Patefield a refund of $23 based on his purchases of petroleum products and Brown a refund of $361 based on its purchases of petroleum products. However, Patefield had previously been granted a refund for the same purchase volume in *Freed Agricultural Service*, Case No. RF272–7147 (July 15, 1988), and Brown had previously been granted a refund for the same purchase volume in *Gilpotrick Ranch*, Case No. RF272–5237 (May 13, 1988). Therefore, the DOE rescinded the duplicate refunds awarded in the *Patefield* Decision.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Cathern E. Deboer *et al*	RF272–30734	11/23/88	41	$11,702
Heck's Inc. *et al*	RF272–14852	11/23/88	57	17,352
Saint Mary's Hospital *et al*	RF272–33227	11/23/88	37	14,759

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill Moore Exxon	RF307–21.
Bristol Myers Co	RF272–8587.
C. Franklin Nelson	RF272–51444.
Central Management Corp	RF272–62886
City of Austin	RF300–10559.
City of Burlington	RF272–74404.
City of Newark	RF272–61142.
City of Scott City	RF272–49167.
Cook's Gulf Service	RF300–49.
Crowell Motor Lines	RF300–10565.
Crum's Gulf Service	RF300–3626.
Farmington Public Schools	RF272–73910.
Fred's Gulf Service	RF300–29.
Gale Wehling	RF272–49894.
Gary Mork	RF272–47911.
Gene Meitler	RF272–59123.
Gilbert Seiler	RF272–69927.
Glen Gregory	RF272–51042.
Haven Service Center, Inc	RF300–7977.
Herman Stude	RF272–53327.
Highlawn Terrace, Inc	RF272–58296.
Hillsboro Elementary School Distnct #7.	RF272–59516.
Homestead Farm	RF272–57389.
Inco Alloys International, Inc	RF272–71258.
James Rollins	RF272–74774.
Jim's Exxon	RF307–1028.
John's Gulf Service	RF300–10488.
Louis D. Casper	FF272–58008.
Lyle Carlton	RF272–70784.
Marshall Farms	RF272–70658.
McDaniel Trucking Co.	RF272–70299.
Miller Brands-Milwaukee, Inc	RF272–42390.
Northeast Missouri Electnc Power Coop.	RF272–41644.
O.L. "Shorty" Fought Exxon	RF307–0836, RF307–2086, RF307–5206.
Otto's Gulf Service	RF300–9197.
P&R Trucking	RF272–34345.
Pennfield Corporation	RF272–74250.
Reed W. Smith	RF300–10528, RF300–10529, RF300–10530, RF300–10531.
Renner Brothers	RF272–74720.
Rinderknecht Associates, Inc	RF272–48395.
River Valley Cooperative	RF272–69028.
Robert A. Moore	RF272–68798.
Robert Hadley	RF272–73631.
Shupe Brothers Co	RF272–62720.
Skyland Gulf Service	RF300–9954.
Stuart-Menlo School	RF272–61877.
Thom's Transport	RF272–72681.
Winge's Super Service	RF300–10572.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published looseleaf reporter system.

January 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–1053 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Period of December 5 Through December 23, 1988

During the period of December 5 through December 23, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

BEST COPY AVAILABLE

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays.

January 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Rob-Lu Oil Company, Inc., Clarksburg, West Virginia. Case No. KEE-0166

Rob-Lu Oil Company, Inc. filed an Application for Exception from the filing requirements of Form EIA-782B. The exception of request, if granted, would permit Rob-Lu to cease filing Form EIA-782B. On December 19, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 89-1054 Filed 1-13-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-131-000, et al.]

Southwestern Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 9, 1989.

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Company

[Docket No. ER89-131-000]

Take notice that on December 19, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing an amendment (Amendment), dated December 5, 1988, to a letter agreement, dated December 2, 1987, between SWEPCO and Brazos Electric Power Cooperative, Inc. (Brazos). The Amendment provides for the continued provision of transmission service by SWEPCO to Brazos beyond the original December 31, 1988 termination date.

SWEPCO requests an effective date of January 1, 1989 to assure that there is no break in service to Brazos and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon Brazos, Gulf States Utilities, the Southwestern Power Administration, the Arkansas Public Service Commisson, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Electric Power Company

[Docket No. ER89-144-000]

Take notice that on December 23, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a Power Supply Agreement, dated June 23, 1988, between SWEPCO and TEX-LA Electric Cooperative of Texas, Inc. (TEX-LA). The Power Supply Agreement provides for SWEPCO to sell to TEX-LA all the power and energy required by TEX-LA (in excess of the power and energy received by TEX-LA from the Southwestern Power Adminsitration) to meet the load of TEX-LA's members served from the points of delivery listed in the Power Supply Agreement. The Power Supply Agreement supersedes in its entirety an Interim Letter Agreement pursuant to which SWEPCO currently serves TEX-LA.

SWEPCO requests an effective date of January 1, 1988, and therefore requests waiver of the Commission's notice requirements

Copies of this filing were served upon TEX-LA and the Public Utility Commission of Texas.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER89-147-000]

Take notice that on December 23, 1988, Montaup Electric Company (Montaup) tendered for filing an agreement between itself and New England Power Company (NEP). This Agreement provides for the construction, owernship, and payment for a tap to Montaup's L-14 and M-13 115 kV transmission lines for service to NEP's Tiverton substation. The Agreement provides that once the Tap is built NEP shall pay 100% of the yearly cost of service for the Tap.

At this date, the Tap has not been fully constructed and will not be complete until the spring of 1989. However, at NEP's request the Tap has been energized and power is flowing to NEP's substation. Montaup requests waiver of the 60-day notice period and that the Commission allow the rate schedule to become effective as of November 26, 1988. This will allow Montaup to recover that portion of the cost of the Tap which has already been placed into service. Montaup will inform the Commission as to the date the Tap becomes fully constructed.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Otter Tail Power Company

[Docket No. ER89-137-000]

Take notice that on December 22, 1988, Otter Tail Power Company (Otter Tail) tendered for filing a rate schedule covering the sale of supplemental power to the City of Breckenridge, Minnesota. An effective date of December 21, 1988 is requested for the decrease estimated at approximately $134,137 per year, in the rates to be charged to the City of Breckenridge for supplemental power.

Otter Tail requests waiver of the Commission's notice requirements to allow this schedule to become effective on December 21, 1988, this will coincide with the current billing dates.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Monongahela Power Company, The Potomac Edison Company, West Penn Power Company

[Docket No. ER89-158-000]

Take notice that Allegheny Power Service Corporation tendered for filing on December 30, 1988, a modification dated December 20, 1988 to an Agreement concerning limited term and supplemental power service among Monongahela Power Company (Monongahela), The Potomac Edison Company (Potomac), West Penn Power Company (West Penn), and Baltimore Gas and Electric Company (BGE). The Commission has previously designated the agreement as MP 41, PE 45, and WP 40.

Section 1 of the Modification revises the parties' Limited Term Power service schedule by providing for a demand rate of up to $7.70 per kilowatt per month.

Section 2 of the Modification revises the rate for Limited Term operating capacity and energy by inserting "up to" before the present formula (the lesser of (i) out-of-pocket costs (OPC) plus 2 mills or (ii) 110% of OPC).

Section 3 of the Modification establishes a lower limit to the total revenue realization for any transaction as 110% of OPC.

The parties have requested an effective date of January 1, 1989, and therefore request waiver of the Commission's notice requirements.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER89-156-000]

January 9, 1989.

Take notice that on December 29, 1988, Idaho Power Company (IPC) tendered for filing in Interim Agreement dated January 13, 1988, and a Transmission Services Agreement dated June 27, 1988, both of which provide for transmission service for the City of Seattle by IPC. These services are to be provided for a term from January 1, 1988, to December 31, 2007.

IPC has requested waiver of the notice provisions of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER89-160-000]

Take notice that on October 30, 1988, Southern Company Services, Inc. (SCS) tendered for filing a contract for Short-Term Power between Southern Companies and Virginia Electric and Power Company. Under the terms of the contract Virginia Power will purchase and Southern Companies will sell 300 megawatts of capacity during the month of January, 1989, and possibly the month of February, 1989 if the capacity is needed by Virginia Power during that month and Southern Companies make a determination that capacity is available for sale.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER89-163-000]

Take notice that Florida Power & Light Company (FPL), on January 3, 1989, tendered for filing as an initial rate schedule a Supplementary Agreement Number One To Special Short Term Agreement To Provide Capacity and Scheduled Incremental Energy By Florida Power & Light Company to Seminole Electric Cooperative, Inc. During Forced Outage of Seminole Unit No. 1, and Cost Support Schedules C, D, F and G (together with Cost Support Schedule F Supplements) which support the rates for sales under the Supplementary Agreement.

The new rate schedule provides for the sale of installed reserves from FPL to the Seminole Electric Cooperative, Inc. for a specified term commencing on January 1, 1989, and estimated to end the earlier of: (1) The return of Seminole Unit No. 1 or (2) February 28, 1989. FPL respectfully requests that the proposed Supplementary Agreement and Cost Support Schedules C, D, F and G (together with Cost Support Schedule F supplements) be made effective on January 1, 1989. According to FPL, a copy of this filing was served upon Seminole Electric Cooperative, Inc. and the Florida Public Service Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Arkansas Power & Light Company

[Docket No. ER89-159-000]

Take notice that Arkansas Power & Light Company (AP&L) tendered for filing on December 30, 1988, revised Rate Formulas applicable to certain of its wholesale customers pursuant to Rate Formula Agreements reached with those customers through arms-length negotiations. The Settlement Rate Formulas would increase revenues from the affected customers by $1,235,104 based on billing determinants for the 12-month period ended December 31, 1987. The Settlement Rate Formulas are proposed to take effect on March 1, 1989.

AP&L states that the Settlement Rate Formulas are required to provide the Company a compensatory rate of return on its service to the affected jurisdictional customers.

Copies of the Settlement Rate Formulas and statements comparing the sales and revenues therefrom were served on AP&L's jurisdictional customers affected by the filing. Copies were also served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Missouri Public Service Commission and the Tennessee Public Service Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER89-161-000]

Take notice that on December 30, 1988, Wisconsin Public Service Corporation (WSPC or the Company) tendered for filing rate schedule revisions permitting it to recover through the fuel adjustment clause applicable to wholesale service buyout costs incurred in order to reduce its future fuel costs and requested waiver of the Commission's fuel clause regulations pursuant to the Commission's order of December 13, 1988 in Kentucky Utilities Co. and Nevada Power Co., Docket Nos. EL88-20-000 and EL88-32-000, in order to permit that recovery.

The Company also requested that the Commission waive its fuel clause regulations in order to permit recovery of costs of uranium mines which the Company has shut down in order to purchase nuclear fuel at a lower cost to ratepayers. The rate schedule revisions tendered by the Company provide for such recovery.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Central Hudson Gas & Electric Corporation

[Docket No. ER89-162-000]

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on January 3, 1989, tendered for filing as a rate schedule an executed Agreement dated December 2, 1988, between Central Hudson and Orange and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for a transmission agreement between Central Hudson and O&R.

Central Hudson states that the service to be provided by Central Hudson is the transmission of power and energy between (a) Central Hudson's transmission connection with the 345 Kv Leeds Substation of Niagara Mohawk Power Corporation and (b) Central Hudson's transmission connection with O&R at the 115 Kv Sugarloaf Substation.

Central Hudson states that transmission capacity to be made available to O&R will be that schedule as unsupported firm power for O&R by the New York Power Authority (NYPA) in accordance with contracts in effect between NYPA and O&R.

Central Hudson states that copies of the subject filing were served upon Orange and Rockland Utilities, Inc.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Yankee Nuclear Power Corporation

[Docket No. EL89-11-000]

Take notice that on December 9, 1988, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing, a Petition for a Declaratory Order. Vermont Yankee states that the Petition is necessary to resolve uncertainty concerning the permissible investments for funds collected from customers to pay for the eventual decommissioning of Vermont Yankee's nuclear generating plant. Vermont Yankee requests the Commission's authorization for a portion of the decommissioning funds to be invested in common equity securities, under guidelines specified in the Petition. Vermont Yankee states that it is an integral part of its proposal that customers bear the risk that the investment strategy may prove unsuccessful, and remain responsible for all decommissioning charges

necessitated by inadequate fund earnings.

Comment date: January 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER89-152-000]

Take notice that on December 27, 1988, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule D providing for long-term interchange service between Tampa Electric and the Kissimmee Utility Authority (Kissimmee). The service schedule is submitted as a supplement under the existing agreement for interchange service between Tampa Electric and Kissimmee, designated as Tampa Electric's Rate Schedule FERC No. 16.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule D under its rate schedule, a Letter of Commitment providing for the sale by Tampa Electric to Kissimmee of capacity and energy from two of Tampa Electric's coal-fired generating units, at a maximum hourly delivery rate of 15 megawatts. The term of the commitment is from January 1, 1989 through March 31, 1990, unless extended upon mutual agreement of the parties.

Tampa Electric proposes an effective date of January 1, 1989, for Service Schedule D and the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this document.

14. Arkansas Power & Light Company

[Docket No. ER89-164-000]

Take notice that on January 4, 1989, Arkansas Power & Light Company (AP&L) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 115.

AP&L states that this schedule is a letter agreement between AP&L and the City of Ruston, Louisiana (Ruston) which provided for AP&L to furnish transmission services through its system to the system of Louisiana Power and Light Company to permit a sale of power and energy by Arkansas Electric Cooperative Corporation to Ruston.

AP&L requests that the cancellation be made effective as of March 1, 1989, and therefore requests waiver of the Commission's notice requirements.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Louisiana Power & Light Company

[Docket No. EL89-7-000]

Take notice that on November 23, 1988 Lousiana Power & Light Company (LP&L) filed a motion for waiver of regulations. LP&L filed its motion in Docket Number FA86-63-000. This filing will now be treated as a separate docket and has been designated as Docket Number EL89-7-000. LP&L certified that it had served a copy of its motion upon the persons designated on the official service list in Docket Number FA86-63-000.

In its filing LP&L states that it requests waiver of the notice provisions of section 35.3 of the Commission's regulations in order to permit modifications to wholesale rate schedules for service to two municipal electric service customers. LP&L states that in a recent audit by the Commission's Division of Audits, the audit staff has asserted that in its opinion LP&L had improperly collected costs from an affiliated entity, System Fuels, Inc. (SFI), through its wholesale fuel adjustment clause billings during the period covered by the audit. LP&L describes events in the course of the hearing in Docket Number FA86-63-000 involving issues related to its recovery of the SFI costs. LP&L states that it is seeking waiver of the Commission's regulations in order to obviate the necessity for a costly and time-consuming hearing concerning the issues involving the SFI costs. LP&L states that the hearing in Docket Number FA86-63-000 is being held in abeyance pending submittal of its request and action upon it by the Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Refuse Energy Systems Company

[Docket No. ER89-148-000]

Take notice that on December 23, 1988, Baltimore Refuse Energy Systems Company, Limited Partnership (Bresco) tendered for filing (1) a proposed rate schedule change (designated Bresco Rate Schedule FERC No. 2) consisting of an Electric Power Purchase Contract (the Contract), dated June 3, 1982, and a Modification to Electric Power Purchase Contract (the Modification), dated July 1, 1988, to govern sales of electric power by Bresco to Baltimore Gas & Electric Company (BG&E) from a biomass fueled small power production facility (the Facility) located in Baltimore, Maryland and (2) a petition for waiver of the Commission's regulations regarding the submission of cost-of-service data and the submission of rate change schedules not less than 60 days prior to the date on which the proposed change is to become effective.

The proposed changes would increase revenues from jurisdictional sales by $6,867,801.00 based on the 12 month period ending June 30, 1989. The rate schedule change modifies the existing rate schedule by providing for the purchase by BG&E of capacity from the Facility.

The principal reason for the proposed change is that Bresco has agreed to provide BG&E with capacity from the Facility, and BG&E has agreed to purchase the capacity under certain conditions set forth in the rate schedule.

Copies of the rate change filing have been served upon BG&E.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Company

[Docket No. ER89-153-000]

Take notice that on December 27, 1988, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule D providing for long-term interchange service between Tampa Electric and the Florida Municipal Power Agency (FMPA). The service schedule is submitted as a supplement under the existing agreement for interchange service between Tampa Electric and FMPA, designated as Tampa Electric rate Schedule FERC No. 29.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule D under its rate schedule, a Letter of Commitment providing for the sale by Tampa Electric to FMPA of capacity and energy from two of Tampa Electric's coal-fired generating units, at a maximum hourly delivery rate of 20 megawatts. The term of the commitment is from January 1, 1989 through January 31, 1990, unless extended upon mutual agreement of the parties.

Tampa Electric proposes an effective date of January 1, 1989 for Service Schedule D and the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER89-150-000]

Take notice that on December 27, 1988, Northeast Utilities Service Company (NUSCO), acting as Agent for the Connecticut Light and Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) tendered for filing proposed rate schedules pertaining to sales agreements (Agreements) with respect to system power (Agreement A) and various fossil units (Agreement B) between NUSCO, as agent for CL&P and WMECO and Fitchburg Gas and Electric Light Company (Fitchburg) dated as of October 1, 1984 and September 30, 1985, respectively.

NUSCO states that the rate schedules provide for sales to Fitchburg of capacity and associated energy from CL&P and WMCECO's system and CL&P's Montville Unit No. 6, Middletown Unit Nos. 2, 3, and 4, and from a unit in which CL&P has an entitlement, Newington (hereinafter called individually a "Unit," collectively the "Units"), together with related transmission service. Agreement A commenced on October 1, 1984 and can be terminated with thirty (30) days written notice. Agreement B commenced on September 30, 1985 and terminates April 30, 1988.

NUSCO requests that the Commission waive its standard notice period and permit the rate schedules to become effective as of October 1, 1984 and September 30, 1985, respectively.

NUSCO states that the Capacity Charge for Agreement A is negotiated on a daily/weekly basis with a maximum Capacity Charge of $10.00 per megawatt hour. The Energy Charge is based on the weighted average forecasted energy charge rate for the generating unit(s) determined to provide such energy. NUSCO further states that the Capacity Charge for Agreement B is a cost-of-service rate for the period September 30, 1985 to October 31, 1985 and thereafter is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The Energy Charge is based on Fitchburg's portion of the applicable fuel expenses and no special cost-of-service studies were made to derive this charge.

NUSCO also submits for filing a notice of termination for Agreement B and requests that said termination be effective April 30, 1988, the date the Agreement ended in accordance with its own turns.

NUSCO states that a copy of this filing has been mailed to Fitchburg.

Comment date: January 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. Madison Gas and Electric Company

[Docket No. ER89-151-000]

Take notice that on December 27, 1988, Madison Gas and Electric Company (Madison) tendered for filing Statement of Agreement canceling Appendix H and New Appendices N, P, Q, R, S, and T to the Interconnection Agreement dated April 1, 1976, between Madison and Wisconsin Power and Light Company (WPL).

The Statement of Agreements provides for the cancelation of Appendix H relating to the Westport tap interconnection which has been removed from service and new points of interconnection between Madison and WPL as described in Appendices N, P, Q, R, and S. Appendix T relates to RTU installations at various points of interconnection.

Madison proposes an effective date of September 1, 1987, and therefore requests the Commission to waive the notice requirements to allow for such effective date.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER89-155-000]

Take notice that on December 29, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement dated October 23, 1987 providing for the delivery by Con Edison of power and energy purchased by the New York City Public Utility Service (NYCPUS) and sold by NYCPUS to NYCPUS' commercial and industrial electricity consumers in New York City. Under the agreement, Con Edison will deliver no more than 200 megawatts of firm power and associated energy to no more than 200 industrial or commercial electric consumers in New York City.

Con Edison also filed revisions to its Public Agency Economic Development Power tariff (Rate Schedule FERC No. 87, Supplement No. 1) applicable to delivery service rendered to NYCPUS. The tariff is currently applicable to similar service rendered to the County of Westchester Public Utility Service Agency. Con Edison is also proposing to amend the Public Agency tariff to lower the threshold, from 3,000 kw to 1,500 kw, at which customers will be subject to time-of-day pricing. No current customer would be affected by the change. Con Edison is requesting permission to put this rate schedule into effect as of February 15, 1989.

A copy of this filing has been served upon NYCPUS, COWPUSA and the New York State Public Service Commission.

Comment date: January 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. Western Area Power Administration

[Docket No. EF89-5041-000]

Take notice that on December 28, 1988, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-39, did confirm and approve on an interim basis, to be effective on January 1, 1989, that being the first day of the January 1989 billing period, Western Area Power Administration's (Western) extension of Power and Transmission Rate Schedules PD-F2; PD-NT2; PD-NFT2; and PD-FCT2 for the Parker-Davis Project (P-DP). The power and transmission rates will be in effect for a period of 5 years pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The power repayment study (PRS) and supporting data on which the power and transmission rates are based indicates that the existing rates are sufficient to maintain a level of revenues that is sufficient to recover the costs of producing and transmitting power and energy, maintaining the power system in good repair, including the recovery of capital investments, and transferring surplus revenues to other Federal power and water projects in accordance with applicable laws, over a reasonable period of years. A brief summary of the existing rates and the PRS results follows.

Current Rate Schedules

PD-F2—Wholesale Firm Power: Capacity Charge, $1.87/kW/mo.; Energy Charge, $4.28 mills/kWh; Annual Average Composite, $8.55 mills/kWh.

PD-FDT2—Firm Transmission: $7.56/kW/yr. or $0.63/kW/mo.

PD-NFT2—Nonfirm Transmission: 1.4 mills/kWh.

PD-FCT2—Transmission Service for Colorado River Storage Project Power and Energy: 3.78/kW/season or $0.63/kW/mo.

Annual revenues for fiscal year 1987 were approximately $24.2 million, while average estimated operating revenues for the first 5 future years (FY 1988-FY 1992) are approximately $20 million. Revenues are impacted by two factors: (1) The amount of sales (kWh) and (2) the rates for such sales. Energy sales for fiscal years 1988 through 2007 (termination of current contracts) are based on firm power and transmission contractual commitments. The power and transmission rates now in effect are sufficient to recover the costs of producing and transmitting power and energy. Additionally, all Federally funded reimbursable construction of the P-DP facilities has been recovered with appropriate interest.

The PRS on which the rate extension is based differs in the treatment of future replacements from the PRS on which the current rates were based. While the previous ratesetting PRS projected replacements for the entire term of the study, the PRS for the rate extension projects replacements for the 5-future-year cost evaluation period only. In this way a presently unnecessary rate increase for this project that has been repaid is prevented. Additionally, since 1983, several events have occurred that are now reflected in the PRS prepared for the rate extension. First, fuel replacement sales were mede utilizing Western's Boulder City Area Office's transmission system with the revenues from those sales shared among projects. Secondly, the P–DP is repaid, in part due to fuel replacement sales revenues as well as sales greater than expected resulting from surplus water. Lastly, surplus revenues are used during the 5-year cost evaluation period to repay budgeted investments and thereafter are transferred to another project as required by law.

The Administrator of Western certifies that the existing rates are consistent with applicable laws and that they are the lowest possible rates to the customers consistent with sound business principles. The rate order and associated rate schedules are submitted by the Deputy Secretary for confirmation and approval on a final basis beginning January 1, 1989, through September 30, 1992, pursuant to authority vested in the Federal Energy Regulatory Commission by Amendment No. 1 to Delegation Order No. 0204–108.

Comment date: January 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–959 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1490–003]

Brazos River Authority; Availability of Environmental Assessment

January 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Morris Sheppard Dam Water Power Project on the Brazos River in Texas and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–960 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Upper Falls Project, FERC Project No. 10560–000]

Metropolitan Water District of Provo City; Availability of Environmental Assessment

January 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application of exemption from licensing for the proposed Upper Falls Hydroelectric Project, located on Upper Falls, a tributary of the Provo River, in Utah County, near Provo, Utah, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–961 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 9974–001, Wisconsin]

Rough and Ready Hydro Co.; Availability of Environmental Assessment

January 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the application for exemption from licensing for the proposed Upper Watertown Hydroelectric Project located on the Rock River in Jefferson County, near Watertown, Wisconsin, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–963 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST89–1–000, et al.]

Tennessee Gas Pipeline Company, et al.; Self-Implementing Transactions

January 10, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before February 1, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

BILLING CODE 6717–01–M

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
ST89-0001	GULF ENERGY PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	10-03-88	C		
ST89-0002	DELHI GAS PIPELINE CORP.	EL PASO NATURAL GAS CO.	10-03-88	C		
ST89-0003	DELHI GAS PIPELINE CORP.	NORTHERN NATURAL GAS CO.	10-03-88	C	03-02-89	35.00
ST89-0004	DELHI GAS PIPELINE CORP.	EL PASO NATURAL GAS CO.	10-03-88	C		
ST89-0005	SABINE PIPE LINE CO.	EASTEX GAS TRANSMISSION CO.	10-03-88	B		
ST89-0006	SABINE PIPE LINE CO.	CINCINNATI GAS AND ELECTRIC CO.	10-03-89	B		
ST89-0007	SABINE PIPE LINE CO.	AEC GAS CO.	10-03-88	B		
ST89-0008	SABINE PIPE LINE CO.	EAST OHIO GAS CO.	10-03-88	B		
ST89-0009	ACADIAN GAS PIPELINE SYSTEM	ANR PIPELINE CO.	10-03-88	C		
ST89-0010	LONE STAR GAS CO.	EL PASO NATURAL GAS CO.	10-03-88	C		
ST89-0011	UNITED TEXAS TRANSMISSION CO.	TENNESSEE GAS PIPELINE CO.	10-03-88	C		
ST89-0012	UNITED TEXAS TRANSMISSION CO.	NATURAL GAS PIPELINE CO. OF AMERICA	10-03-88	C		
ST89-0013	MIDCON TEXAS PIPELINE CORP.	NATURAL GAS PIPELINE CO. OF AMERICA	10-03-88	C		
ST89-0014	UNITED TEXAS TRANSMISSION CO.	PHILLIPS NATURAL GAS CO.	10-03-88	C		
ST89-0015	RED RIVER PIPELINE	EL PASO NATURAL GAS CO.	10-03-88	C	03-02-89	36.00
ST89-0016	ONG TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-03-88	C	03-02-89	24.32
ST89-0017	NATURAL GAS PIPELINE CO. OF AMERICA	DAYTON POWER AND LIGHT CO.	10-03-88	B		
ST89-0018	NATURAL GAS PIPELINE CO. OF AMERICA	ANADARKO TRADING CO.	10-03-88	G-S		
ST89-0019	NATURAL GAS PIPELINE CO. OF AMERICA	SUN GAS TRANSMISSION LIMITED PARTNERSHIP	10-03-88	B		
ST89-0020	UNITED GAS PIPE LINE CO.	MIDCON MARKETING CORP.	10-03-88	G-S		
ST89-0021	TRANSCONTINENTAL GAS PIPE LINE CORP.	ASSOCIATED INTRASTATE PIPELINE CO.	10-03-88	B		
ST89-0022	TRANSCONTINENTAL GAS PIPE LINE CORP.	AMERICAN DISTRIBUTION CO., INC.	10-03-88	G-S		
ST89-0023	TRANSCONTINENTAL GAS PIPE LINE CORP.	SHELL GAS TRADING	10-03-88	G-S		
ST89-0024	TRANSCONTINENTAL GAS PIPE LINE CORP.	ARCO OIL & GAS CO.	10-03-88	G-S		
ST89-0025	TRANSCONTINENTAL GAS PIPE LINE CORP.	LOUISIANA GAS MARKETING CO.	10-03-88	B		
ST89-0026	TRANSCONTINENTAL GAS PIPE LINE CORP.	PUBLIC SERVICE CO. OF N. CAROLINA	10-03-88	B		
ST89-0027	SOUTHERN NATURAL GAS CO.	COLONY NATURAL GAS CO.	10-03-88	G-S		
ST89-0028	SOUTHERN NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	10-03-88	B		
ST89-0029	COLORADO INTERSTATE GAS CO.	MICHIGAN CONSOLIDATED GAS CO.	10-03-88	B		
ST89-0030	COLORADO INTERSTATE GAS CO.	UNION PACIFIC RESOURCES CO.	10-03-88	G-S		
ST89-0031	NORTHWEST PIPELINE CORP.	KIMBALL ENERGY CORP.	10-03-88	G-S		
ST89-0032	NORTHWEST PIPELINE CORP.	LOUTEX ENERGY, INC.	10-03-88	G-S		
ST89-0033	NORTHWEST PIPELINE CORP.	BRANDYWINE INDUSTRIAL GAS, INC.	10-03-88	G-S		
ST89-0034	NORTHWEST PIPELINE CORP.	IGI RESOURCES, INC.	10-03-88	G-S		
ST89-0035	NORTHWEST PIPELINE CORP.	AMOCO ENERGY TRADING CORP.	10-03-88	G-S		
ST89-0036	WILLIAMS NATURAL GAS CO.	BISHOP PIPELINE CORP.	10-03-88	B		
ST89-0037	WILLIAMS NATURAL GAS CO.	AMERICAN CENTRAL GAS COS., INC.	10-03-88	G-S		
ST89-0038	WILLIAMS NATURAL GAS CO.	CLINTON GAS TRANSMISSION, INC.	10-03-88	G-S		
ST89-0039	WILLIAMS NATURAL GAS CO.	COLONY PIPELINE CORP.	10-03-88	B		
ST89-0040	WILLIAMS NATURAL GAS CO.	OXY GAS MARKETING, INC.	10-03-88	G-S		
ST89-0041	WILLIAMS NATURAL GAS CO.	KANSAS POWER AND LIGHT CO.	10-03-88	G-S		
ST89-0042	ANR PIPELINE CO.	CITY OF ALTA VISTA	10-03-88	B		
ST89-0043	ANR PIPELINE CO.	MICHIGAN CONSOLIDATED GAS CO.	10-03-88	B		
ST89-0044	ANR PIPELINE CO.	MICHIGAN CONSOLIDATED GAS CO.	10-03-88	B		
ST89-0045	ANR PIPELINE CO.	WEST TENNESSEE PUBLIC UTILITY DIST.	10-03-88	B		
ST89-0046	ANR PIPELINE CO.	MICHIGAN GAS UTILITIES CO.	10-03-88	B		
ST89-0047	ANR PIPELINE CO.	WISCONSIN GAS CO.	10-03-88	B		
ST89-0048	ANR PIPELINE CO.	CITY OF WAYLAND	10-03-88	B		
ST89-0049	ANR PIPELINE CO.	ANR GATHERING CO.	10-03-88	G-S		

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
CP89-0050	ANR PIPELINE CO.	SOUTH CAROLINA PIPELINE CORP.	10-03-88	B		
CP89-0051	ANR PIPELINE CO.	SEAGULL LOUISIANA INTRASTATE PIPELINE CO	10-03-88	B		
CP89-0052	ANR PIPELINE CO.	WISCONSIN PUBLIC SERVICE CORP.	10-03-88	B		
CP89-0053	ANR PIPELINE CO.	ACADIAN GAS PIPELINE SYSTEM	10-03-88	B		
CP89-0054	ANR PIPELINE CO.	LOUISVILLE GAS & ELECTRIC CO.	10-03-88	B		
CP89-0055	ANR PIPELINE CO.	MICHIGAN GAS UTILITIES CO.	10-03-88	B		
CP89-0056	COLORADO INTERSTATE GAS CO.	UNION PACIFIC RESOURCES CO.	10-03-88	G-S		
CP89-0057	DOW PIPELINE CO.	TENNESSEE GAS PIPELINE CO., ET AL.	10-04-88	C	03-03-89	7.31
CP89-0058	TRUNKLINE GAS CO.	TRANSTATE GAS SERVICE CO.	10-05-88	G-S		
CP89-0059	TRANSCONTINENTAL GAS PIPE LINE CORP.	BAY STATE GAS CO.	10-05-88	B		
CP89-0060	NATURAL GAS PIPELINE CO. OF AMERICA	DELMI GAS PIPELINE CORP.	10-05-88	B		
CP89-0061	NATURAL GAS PIPELINE CO. OF AMERICA	MIDVEN PIPELINE CO.	10-05-88	B		
CP89-0062	NATURAL GAS PIPELINE CO. OF AMERICA	DELMI GAS PIPELINE CORP.	10-05-88	B		
CP89-0063	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN INDIANA PUBLIC SERVICE CO.	10-05-88	B		
CP89-0064	NATURAL GAS PIPELINE CO. OF AMERICA	UNITED TEXAS TRANSMISSION CO.	10-05-88	B		
CP89-0065	NATURAL GAS PIPELINE CO. OF AMERICA	CITY OF OFFERLE	10-05-88	B		
CP89-0066	NATURAL GAS PIPELINE CO. OF AMERICA	AMOCO PRODUCTION CO.	10-05-88	G-S		
CP89-0067	GAS CO. OF NM (DIV. PUBLIC SERV. CO. NM)	EL PASO NATURAL GAS CO.	10-05-88	G-MT		
CP89-0068	TEXAS EASTERN TRANSMISSION CORP.	CENTRAL ILLINOIS PUBLIC SERVICE CO.	10-05-88	B		
CP89-0069	TEXAS EASTERN TRANSMISSION CORP.	PEOPLES NATURAL GAS CO.	10-05-88	B		
CP89-0070	TEXAS EASTERN TRANSMISSION CORP.	CITY OF BERNIE	10-05-88	B		
CP89-0071	TEXAS EASTERN TRANSMISSION CORP.	APACHE TRANSMISSION CORP.	10-05-88	B		
CP89-0072	TEXAS EASTERN TRANSMISSION CORP.	ACCESS ENERGY CORP.	10-05-88	B		
CP89-0073	NORTHERN BORDER PIPELINE CO.	IOWA PUBLIC SERVICE CO.	10-06-88	B		
CP89-0074	VALERO TRANSMISSION, L.P.	TEXAS EASTERN TRANSMISSION CORP.	10-06-88	C		
CP89-0075	DELMI GAS PIPELINE CORP.	PACIFIC GAS AND ELECTRIC CO.	10-06-88	D		
CP89-0076	TENNESSEE GAS PIPELINE CO.	DELTA NATURAL GAS CO.	10-06-88	B		
CP89-0077	TENNESSEE GAS PIPELINE CO.	HOUSTON GAS EXCHANGE CORP.	10-06-88	G-S		
CP89-0078	WILLIAMS NATURAL GAS CO.	KANSAS CITY POWER & LIGHT CO.	10-05-88	G-S		
CP89-0079	WILLIAMS NATURAL GAS CO.	CONTINENTAL NATURAL GAS, INC.	10-05-88	G-S		
CP89-0080	TRANSCONTINENTAL GAS PIPE LINE CORP.	KERR-MCGEE CORP.	10-06-88	G-S		
CP89-0081	TRANSCONTINENTAL GAS PIPE LINE CORP.	DELMI GAS PIPELINE CORP.	10-06-88	B		
CP89-0082	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-06-88	B		
CP89-0083	TEXAS GAS TRANSMISSION CORP.	LOUISVILLE GAS AND ELECTRIC CO.	10-06-88	B		
CP89-0084	TEXAS GAS TRANSMISSION CORP.	NGC INTRASTATE PIPELINE CO.	10-06-88	B		
CP89-0085	TEXAS GAS TRANSMISSION CORP.	LLAND, INC.	10-06-88	B		
CP89-0086	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-06-88	B		
CP89-0087	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-06-88	B		
CP89-0088	TEXAS EASTERN TRANSMISSION CORP.	NIAGARA MOHAWK POWER CORP.	10-06-88	B		
CP89-0089	TEXAS EASTERN TRANSMISSION CORP.	HOUSTON PIPE LINE CO.	10-06-88	B		
CP89-0090	TEXAS EASTERN TRANSMISSION CORP.	TPC PIPELINE CO.	10-06-88	B		
CP89-0091	TEXAS EASTERN TRANSMISSION CORP.	PEOPLES NATURAL GAS CO.	10-06-88	B		
CP89-0092	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN INDIANA PUBLIC SERVICE CO.	10-06-88	B		
CP89-0093	NATURAL GAS PIPELINE CO. OF AMERICA	BALTIMORE GAS AND ELECT. CO., ET AL.	10-06-88	B		
CP89-0094	NATURAL GAS PIPELINE CO. OF AMERICA	V.H.C. GAS SYSTEM, L.P.	10-06-88	G-S		
CP89-0095	PANHANDLE EASTERN PIPE LINE CO.	ACCESS ENERGY PIPELINE CORP.	10-06-88	B		
CP89-0096	WILLIAMS NATURAL GAS CO.	CAPORALE ENERGY CORP.	10-06-88	G-S		
CP89-0097	NATURAL GAS PIPELINE CO. OF AMERICA	ENTEX, INC.	10-07-88	B		
CP89-0098	TEXAS EASTERN TRANSMISSION CORP.	EAST OHIO GAS CO.	10-07-88	B		

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
ST89-0099	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA ELECTRIC CO.	10-07-88	B		
ST89-0100	TEXAS EASTERN TRANSMISSION CORP.	CITY OF TOMPKINSVILLE	10-07-88	B		
ST89-0101	TEXAS EASTERN TRANSMISSION CORP.	WEBB/DUVAL GATHERERS	10-07-88	B		
ST89-0102	PANHANDLE EASTERN PIPE LINE CO.	PEOPLES GAS LIGHT & COKE CO., ET AL.	10-07-88	B		
ST89-0103	PANHANDLE EASTERN PIPE LINE CO.	PEOPLES GAS LIGHT & COKE CO., ET AL.	10-07-88	B		
ST89-0104	TRANSOK, INC.	NATURAL GAS PIPELINE CO. OF AMERICA	10-07-88	C	03-06-89	32.50
ST89-0105	NORTHERN NATURAL GAS CO.	WOODBINE MUNICIPAL NATURAL GAS SYSTEM	10-07-88	B		
ST89-0106	NORTHERN NATURAL GAS CO.	TEXAS UTILITIES FUEL CO.	10-07-88	B		
ST89-0107	NORTHERN NATURAL GAS CO.	UNITED TEXAS TRANSMISSION CO.	10-07-88	B		
ST89-0108	NORTHERN NATURAL GAS CO.	SOUTHERN UNION GAS CO.	10-07-88	B		
ST89-0109	ANR PIPELINE CO.	BP GAS TRANSMISSION CO.	10-07-88	B		
ST89-0110	ANR PIPELINE CO.	ALLERTON GAS CO.	10-07-88	B		
ST89-0111	ANR PIPELINE CO.	WISCONSIN NATURAL GAS CO.	10-07-88	B		
ST89-0112	ANR PIPELINE CO.	ENOGEX INC.	10-07-88	B		
ST89-0113	ANR PIPELINE CO.	TEXLINE GAS CO.	10-07-88	B		
ST89-0114	ANR PIPELINE CO.	RIVERWAY GAS PIPELINE CO.	10-07-88	B		
ST89-0115	WILLIAMS NATURAL GAS CO.	KANSAS POWER AND LIGHT CO.	10-06-88	B		
ST89-0116	EL PASO NATURAL GAS CO.	SOUTHERN CALIFORNIA GAS CO.	10-11-88	B		
ST89-0117	DELHI GAS PIPELINE CORP.	SOUTHERN CALIFORNIA GAS CO.	10-11-88	B		
ST89-0118	NATURAL GAS PIPELINE CO. OF AMERICA	WILLIAMS GAS MARKETING CO.	10-11-88	G-S		
ST89-0119	COLUMBIA GULF TRANSMISSION CO.	SOUTHERN INDIANA GAS & ELECTRIC CO.	10-11-88	B		
ST89-0120	COLUMBIA GULF TRANSMISSION CO.	NATURAL GAS PIPELINE CO. OF AMERICA	10-11-88	B		
ST89-0121	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTH JERSEY GAS CO.	10-11-88	B		
ST89-0122	TRANSCONTINENTAL GAS PIPE LINE CORP.	NORTH CAROLINA NATURAL GAS CORP.	10-11-88	B		
ST89-0123	TRANSCONTINENTAL GAS PIPE LINE CORP.	NORTH PENN GAS CO.	10-11-88	B		
ST89-0124	TRANSCONTINENTAL GAS PIPE LINE CORP.	ELIZABETHTOWN GAS CO.	10-11-88	B		
ST89-0125	ANR PIPELINE CO.	CITY OF ALEDO	10-11-88	B		
ST89-0126	ANR PIPELINE CO.	CONSUMERS POWER CO.	10-11-88	B		
ST89-0127	ANR PIPELINE CO.	CITY OF ALBANY	10-11-88	B		
ST89-0128	ANR PIPELINE CO.	INDIANA NATURAL GAS CORP.	10-11-88	B		
ST89-0129	ANR PIPELINE CO.	NORTHERN INDIANA PUBLIC SERVICE CO.	10-11-88	B		
ST89-0130	ANR PIPELINE CO.	CITY OF UNIONVILLE	10-11-88	B		
ST89-0131	NATURAL GAS PIPELINE CO. OF AMERICA	TEXAS INDUSTRIAL ENERGY CO.	10-11-88	B		
ST89-0132	ALGONQUIN GAS TRANSMISSION CO.	COMMONWEALTH GAS CO.	10-11-88	B		
ST89-0133	TEXAS EASTERN TRANSMISSION CORP.	NIAGARA MOHAWK POWER CORP.	10-11-88	B		
ST89-0134	TEXAS EASTERN TRANSMISSION CORP.	HOPE GAS, INC.	10-11-88	B		
ST89-0135	TEXAS EASTERN TRANSMISSION CORP.	NORTHERN INTRASTATE PIPELINE CO.	10-11-88	B		
ST89-0136	TEXAS EASTERN TRANSMISSION CORP.	CITY OF NORRIS CITY	10-11-88	B		
ST89-0137	TENNESSEE GAS PIPELINE CO.	SOUTHERN NATURAL GAS CO.	10-11-88	G		
ST89-0138	NORTHWEST PIPELINE CORP.	TIFFANY GAS CO.	10-11-88	G-S		
ST89-0139	NATURAL GAS PIPELINE CO. OF AMERICA	PEOPLES GAS LIGHT & COKE CO.	10-12-88	B		
ST89-0140	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN ILLINOIS GAS CO.	10-12-88	B		
ST89-0141	UNITED GAS PIPE LINE CO.	MIDCON MARKETING CORP.	10-12-88	G-S		
ST89-0142	NATURAL GAS PIPELINE CO. OF AMERICA	PSI, INC.	10-12-88	G-S		
ST89-0143	WILLIAMS NATURAL GAS CO.	SPECTRUM NATURAL GAS CO.	10-12-88	G-S		
ST89-0144	WILLIAMS NATURAL GAS CO.	FLEXEL, INC.	10-12-88	G-S		
ST89-0145	WILLIAMS NATURAL GAS CO.	ENTRADE CORP.	10-12-88	G-S		
ST89-0146	LOUISIANA RESOURCES CO.	LOUISIANA GAS MARKETING CO.	10-12-88	C	03-11-89	26.43
ST89-0147	EL PASO NATURAL GAS CO.	MERIDIAN OIL HYDROCARBONS, INC.	10-13-88	B		

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ST89-0148	NATURAL GAS PIPELINE CO. OF AMERICA	TEXPAR ENERGY, INC.	10-13-88	G-S		
ST89-0149	NATURAL GAS PIPELINE CO. OF AMERICA	ARCO OIL & GAS CO.	10-13-88	G-S		
ST89-0150	TRUNKLINE GAS CO.	BAY STATE GAS CO., ET AL.	10-14-88	B		
ST89-0151	VALERO TRANSMISSION, L.P.	NATURAL GAS PIPELINE CO. OF AMERICA	10-14-88	C		
ST89-0152	VALERO TRANSMISSION, L.P.	TRANSWESTERN PIPELINE CO.	10-14-88	C		
ST89-0153	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	10-14-88	C		
ST89-0154	UNITED GAS PIPE LINE CO.	ALABAMA GAS CORP., ET AL.	10-14-88	B		
ST89-0155	TENNESSEE GAS PIPELINE CO.	NATIONAL FUEL GAS DISTRIBUTION CORP.	10-13-88	B		
ST89-0156	WILLIAMS NATURAL GAS CO.	ARCHER DANIELS MIDLAND CO.	10-13-88	G-S		
ST89-0157	WILLIAMS NATURAL GAS CO.	AG PROCESSING, INC.	10-13-88	G-S		
ST89-0158	WILLIAMS NATURAL GAS CO.	AMERICAN-CENTRAL GAS MARKETING CO.	10-13-88	G-S		
ST89-0159	SABINE PIPE LINE CO.	TPC PIPELINE CO.	10-14-88	B		
ST89-0160	WEBB/DUVAL GATHERERS	NATURAL GAS PIPELINE CO. OF AMERICA	10-14-88	C		
ST89-0161	ARKLA ENERGY RESOURCES	KANSAS PIPELINE CO.	10-14-88	B		
ST89-0162	TEXAS GAS TRANSMISSION CORP.	WESTVACO CORP.	10-14-88	G-S		
ST89-0163	TEXAS GAS TRANSMISSION CORP.	ARMCO, INC.	10-14-88	G-S		
ST89-0164	TEXAS GAS TRANSMISSION CORP.	GEORGIA-PACIFIC, INC.	10-14-88	G-S		
ST89-0165	TEXAS GAS TRANSMISSION CORP.	MIDDLETOWN PAPERBOARD CO.	10-14-88	G-S		
ST89-0166	TEXAS GAS TRANSMISSION CORP.	TRANSCONTINENTAL GAS PIPE LINE CORP.	10-14-88	G		
ST89-0167	TEXAS GAS TRANSMISSION CORP.	FRANKLIN BOXBOARD CORP.	10-14-88	G-S		
ST89-0168	TEXAS GAS TRANSMISSION CORP.	OLIN CORP.	10-14-88	G-S		
ST89-0169	TEXAS GAS TRANSMISSION CORP.	CSX NGL CORP.	10-14-88	G-S		
ST89-0170	TEXAS GAS TRANSMISSION CORP.	NECHES GAS DISTRIBUTION CO.	10-14-88	B		
ST89-0171	TEXAS GAS TRANSMISSION CORP.	TRANSCONTINENTAL GAS PIPE LINE CORP.	10-14-88	G		
ST89-0172	TEXAS EASTERN TRANSMISSION CORP.	MISSISSIPPI FUEL CO.	10-17-88	B		
ST89-0173	TEXAS EASTERN TRANSMISSION CORP.	ELIZABETHTOWN GAS CO.	10-17-88	B		
ST89-0174	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA GAS WORKS, INC.	10-17-88	B		
ST89-0175	TEXAS EASTERN TRANSMISSION CORP.	CITY OF BUDE	10-17-88	B		
ST89-0176	TEXAS EASTERN TRANSMISSION CORP.	CITY OF FLORA	10-17-88	B		
ST89-0177	TEXAS EASTERN TRANSMISSION CORP.	HORTON HIGHWAY UTILITY DISTRICT	10-17-88	B		
ST89-0178	TEXAS EASTERN TRANSMISSION CORP.	PUBLIC SERVICE ELECTRIC AND GAS CO.	10-17-88	B		
ST89-0179	TEXAS EASTERN TRANSMISSION CORP.	CINCINNATI GAS AND ELECTRIC CO.	10-17-88	B		
ST89-0180	TEXAS EASTERN TRANSMISSION CORP.	ELIZABETHTOWN GAS CO.	10-17-88	B		
ST89-0181	TEXAS EASTERN TRANSMISSION CORP.	CITY OF MEADVILLE	10-17-88	B		
ST89-0182	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA GAS WORKS, INC.	10-17-88	B		
ST89-0183	TEXAS EASTERN TRANSMISSION CORP.	ACCESS ENERGY PIPELINE CORP.	10-17-88	B		
ST89-0184	TEXAS EASTERN TRANSMISSION CORP.	CONSOLIDATED EDISON CO. OF NY, INC.	10-17-88	B		
ST89-0185	TEXAS EASTERN TRANSMISSION CORP.	SUN GAS TRANSMISSION CO., INC.	10-14-88	B		
ST89-0186	TEXAS EASTERN TRANSMISSION CORP.	HORTON HIGHWAY UTILITY DISTRICT	10-14-88	B		
ST89-0187	TEXAS EASTERN TRANSMISSION CORP.	CITY OF LIBERTY	10-14-88	B		
ST89-0188	DELHI GAS PIPELINE CORP.	EL PASO NATURAL GAS CO.	10-17-88	C		
ST89-0189	DELHI GAS PIPELINE CORP.	EL PASO NATURAL GAS CO.	10-17-88	C		
ST89-0190	ONG TRANSMISSION CO.	PEOPLES NATURAL GAS CO.	10-17-88	C	03-16-89	24.32
ST89-0191	ONG TRANSMISSION CO.	PEOPLES NATURAL GAS CO.	10-17-88	C	03-16-89	24.32
ST89-0192	KENTUCKY WEST VIRGINIA GAS CO.	GULF OHIO CORP.	10-17-88	G-S		
ST89-0193	KENTUCKY WEST VIRGINIA GAS CO.	EQUITABLE GAS CO.	10-17-88	B		
ST89-0194	BP GAS TRANSMISSION CO.	TEXAS EASTERN TRANS. CORP., ET AL.	10-14-88	C	03-13-89	21.00
ST89-0195	TENNESSEE GAS PIPELINE CO.	CHEVRON U.S.A.	10-17-88	G-S		
ST89-0196	COLUMBIA GULF TRANSMISSION CO.	BRIDGELINE GAS DISTRIBUTION CO.	10-17-88	B		

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ST89-0197	COLUMBIA GULF TRANSMISSION CO.	WEST TENNESSEE PUBLIC UTILITY DIST.	10-17-88	B		
ST89-0198	WILLIAMS NATURAL GAS CO.	UNION PACIFIC RESOURCES CO.	10-17-88	G-S		
ST89-0199	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN ILLINOIS GAS CO.	10-17-88	B		
ST89-0200	NATURAL GAS PIPELINE CO. OF AMERICA	PEOPLES GAS LIGHT & COKE CO.	10-17-88	B		
ST89-0201	TRANSCO-LOUISIANA INTRASTATE PIPELINE CO	TRANSCONTINENTAL GAS PIPE LINE CORP.	10-17-88	C		
ST89-0202	TRANSCONTINENTAL GAS PIPE LINE CORP.	BRIDGELINE GAS DISTRIBUTION CO.	10-17-88	B		
ST89-0203	TEXAS GAS TRANSMISSION CORP.	ILLINOIS GAS CO.	10-17-88	B		
ST89-0204	TEXAS GAS TRANSMISSION CORP.	LOUISVILLE GAS & ELECTRIC CO.	10-17-88	B		
ST89-0205	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0206	TEXAS GAS TRANSMISSION CORP.	CITY OF ELIZABETHTOWN	10-17-88	B		
ST89-0207	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0208	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0209	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-17-88	B		
ST89-0210	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-17-88	B		
ST89-0211	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0212	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0213	TEXAS GAS TRANSMISSION CORP.	CINCINNATI GAS AND ELECTRIC CO.	10-17-88	B		
ST89-0214	TEXAS GAS TRANSMISSION CORP.	MEMPHIS LIGHT, GAS AND WATER DIVISION	10-17-88	B		
ST89-0215	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-17-88	B		
ST89-0216	TEXAS GAS TRANSMISSION CORP.	CITY OF ELIZABETHTOWN	10-17-88	B		
ST89-0217	TEXAS GAS TRANSMISSION CORP.	INDIANA GAS CO., INC.	10-17-88	B		
ST89-0218	TEXAS GAS TRANSMISSION CORP.	CITY OF CARROLLTON	10-17-88	B		
ST89-0219	TEXAS GAS TRANSMISSION CORP.	MISSISSIPPI VALLEY GAS CO.	10-17-88	B		
ST89-0220	SOUTHERN NATURAL GAS CO.	GULF STATES PIPELINE CORP.	10-17-88	B		
ST89-0221	SOUTHERN NATURAL GAS CO.	SONAT MARKETING CO.	10-17-88	G-S		
ST89-0222	SOUTHERN NATURAL GAS CO.	ARCO OIL & GAS CO.	10-17-88	G-S		
ST89-0223	SOUTHERN NATURAL GAS CO.	UTILITIES BOARD OF THE TOWN OF CAMP HILL	10-17-88	B		
ST89-0224	SOUTHERN NATURAL GAS CO.	RANGELINE CORP.	10-17-88	G-S		
ST89-0225	SOUTHERN NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	10-17-88	B		
ST89-0226	SOUTHERN NATURAL GAS CO.	RANGELINE CORP.	10-17-88	G-S		
ST89-0227	SOUTHERN NATURAL GAS CO.	RANGELINE CORP.	10-17-88	G-S		
ST89-0228	SOUTHERN NATURAL GAS CO.	TEJAS POWER CORP.	10-17-88	G-S		
ST89-0229	LOUISIANA INTRASTATE GAS CORP.	TENNESSEE GAS PIPELINE CO.	10-18-88	C	03-17-89	27.44
ST89-0230	TENNESSEE GAS PIPELINE CO.	FLORIDA GAS TRANSMISSION CO.	10-18-88	G		
ST89-0231	TENNESSEE GAS PIPELINE CO.	POLARIS PIPELINE CORP.	10-18-88	G-S		
ST89-0232	TEXAS GAS TRANSMISSION CORP.	CNG TRANSMISSION CORP.	10-18-88	G		
ST89-0233	TEXAS GAS TRANSMISSION CORP.	COLUMBIA GAS TRANSMISSION CORP.	10-18-88	G		
ST89-0234	NORTHERN NATURAL GAS CO.	CONSUMERS POWER CO.	10-18-88	B		
ST89-0235	NORTHERN NATURAL GAS CO.	NORTHERN MINNESOTA UTILITIES	10-18-88	B		
ST89-0236	NORTHERN NATURAL GAS CO.	WEST TEXAS GAS, INC.	10-18-88	B		
ST89-0237	NORTHERN NATURAL GAS CO.	WEST TEXAS GAS, INC.	10-18-88	B		
ST89-0238	PANHANDLE EASTERN PIPE LINE CO.	MOBIL NATURAL GAS, INC.	10-19-88	G-S		
ST89-0239	KANSAS GAS SUPPLY CORP.	WILLIAMS NATURAL GAS CO.	10-19-88	C		
ST89-0240	TENNESSEE GAS PIPELINE CO.	CINCINNATI GAS AND ELECTRIC CO.	10-19-88	B		
ST89-0241	TENNESSEE GAS PIPELINE CO.	CITIZENS GAS SUPPLY CORP.	10-19-88	G-S		
ST89-0242	TENNESSEE GAS PIPELINE CO.	TENNECO OIL CO.	10-19-88	G-S		
ST89-0243	TENNESSEE GAS PIPELINE CO.	GULF COAST ENERGY, INC.	10-19-88	B		
ST89-0244	TENNESSEE GAS PIPELINE CO.	CITIZENS GAS SUPPLY CORP.	10-19-88	G-S		
ST89-0245	TEXAS GAS TRANSMISSION CORP.	NIAGARA MOHAWK POWER CORP.	10-19-88	B		

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ST89-0246	TEXAS GAS TRANSMISSION CORP.	LONG ISLAND LIGHTING CO., ET AL.	10-19-88	B		
ST89-0247	TEXAS GAS TRANSMISSION CORP.	RELIANCE PIPELINE CO.	10-19-88	B		
ST89-0248	NATURAL GAS PIPELINE CO. OF AMERICA	TRANSAMERICAN GAS TRANSMISSION CORP.	10-19-88	B		
ST89-0249	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA ELECTRIC LIGHT & POWER CO.	10-19-88	B		
ST89-0250	WILLIAMS NATURAL GAS CO.	SUNRISE ENERGY CO.	10-19-88	B		
ST89-0251	WILLIAMS NATURAL GAS CO.	WILLIAMS GAS MARKETING CO.	10-19-88	G-S		
ST89-0252	WILLIAMS NATURAL GAS CO.	CONOCO, INC.	10-19-88	G-S		
ST89-0253	WILLIAMS NATURAL GAS CO.	CHEVRON U.S.A.	10-19-88	G-S		
ST89-0254	WILLIAMS NATURAL GAS CO.	KPL GAS SERVICE CO.	10-19-88	B		
ST89-0255	TENNESSEE GAS PIPELINE CO.	TEXACO GAS MARKETING, INC.	10-20-88	G-S		
ST89-0256	TENNESSEE GAS PIPELINE CO.	UNION LIGHT, HEAT & POWER	10-20-88	B		
ST89-0257	ENSERCH GAS TRANSMISSION CO.	EAST OHIO GAS CO.	10-20-88	C		
ST89-0258	LONE STAR GAS CO.	EAST OHIO GAS CO.	10-20-88	C		
ST89-0259	NATURAL GAS PIPELINE CO. OF AMERICA	MIDCON MARKETING CORP.	10-20-88	G-S		
ST89-0260	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA SOUTHERN UTILITIES CO.	10-20-88	B		
ST89-0261	NATURAL GAS PIPELINE CO. OF AMERICA	LOUTEX ENERGY, INC.	10-21-88	G-S		
ST89-0262	NATURAL GAS PIPELINE CO. OF AMERICA	TRANSOK, INC.	10-21-88	B		
ST89-0263	TRUNKLINE GAS CO.	MICHIGAN POWER CO.	10-21-88	B		
ST89-0264	TENNESSEE GAS PIPELINE CO.	BERKSHIRE GAS CO.	10-21-88	B		
ST89-0265	TENNESSEE GAS PIPELINE CO.	CORNERSTONE ENERGY CORP.	10-21-88	G-S		
ST89-0266	NORTHWEST PIPELINE CORP.	TEKTRONIX, INC.	10-20-88	G-S		
ST89-0267	NATURAL GAS PIPELINE CO. OF AMERICA	CITY OF SALEM	10-20-88	B		
ST89-0268	TRANSCONTINENTAL GAS PIPE LINE CORP.	PHILADELPHIA ELECTRIC CO.	10-21-88	B		
ST89-0269	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTHERN INDIANA GAS & ELECTRIC CO.	10-21-88	B		
ST89-0270	UNITED GAS PIPE LINE CO.	LOUISIANA STATE GAS CORP.	10-21-88	G-S		
ST89-0271	UNITED GAS PIPE LINE CO.	TEJAS POWER CORP.	10-21-88	G-S		
ST89-0272	UNITED GAS PIPE LINE CO.	SEAGULL MARKETING SERVICES, INC.	10-21-88	G-S		
ST89-0273	UNITED GAS PIPE LINE CO.	TEXACO GAS MARKETING, INC.	10-21-88	G-S		
ST89-0274	UNITED GAS PIPE LINE CO.	TEXACO GAS MARKETING, INC.	10-21-88	G-S		
ST89-0275	UNITED GAS PIPE LINE CO.	TEJAS POWER CORP.	10-21-88	G-S		
ST89-0276	UNITED GAS PIPE LINE CO.	SEAGULL MARKETING SERVICES, INC.	10-21-88	G-S		
ST89-0277	UNITED GAS PIPE LINE CO.	HOUSTON GAS EXCHANGE CORP.	10-21-88	G-S		
ST89-0278	ONG TRANSMISSION CO.	WILLIAMS NATURAL GAS CO.	10-24-88	C	03-23-89	24.32
ST89-0279	ONG TRANSMISSION CO.	NORTHERN NATURAL GAS CO.	10-24-88	C	03-23-89	24.32
ST89-0280	ONG TRANSMISSION CO.	NORTHERN NATURAL GAS CO.	10-24-88	C	03-23-89	24.32
ST89-0281	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO.	10-24-88	C		
ST89-0282	NATURAL GAS PIPELINE CO. OF AMERICA	ATLANTA GAS LIGHT CO., ET AL.	10-24-88	B		
ST89-0283	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN INDIANA PUBLIC SERVICE CO.	10-24-88	B		
ST89-0284	NATURAL GAS PIPELINE CO. OF AMERICA	COLUMBIA GAS OF KY, ET AL.	10-24-88	B		
ST89-0285	NATURAL GAS PIPELINE CO. OF AMERICA	PEOPLES GAS LIGHT & COKE CO.	10-24-88	B		
ST89-0286	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN ILLINOIS GAS CO.	10-24-88	B		
ST89-0287	NATURAL GAS PIPELINE CO. OF AMERICA	NORTH SHORE GAS CO.	10-24-88	B		
ST89-0288	NATURAL GAS PIPELINE CO. OF AMERICA	AMERICAN CENTRAL GAS MARKETING CO.	10-24-88	G-S		
ST89-0289	SUPERIOR OFFSHORE PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	10-24-88	G		
ST89-0290	SUPERIOR OFFSHORE PIPELINE CO.	TEXAS EASTERN TRANSMISSION CORP.	10-24-88	G		
ST89-0291	SUPERIOR OFFSHORE PIPELINE CO.	BISHOP PIPELINE CORP.	10-24-88	B		
ST89-0292	TEXAS CORP.	NORTHERN NATURAL GAS CO.	10-07-88	C	03-06-89	55.00
ST89-0293	SUPERIOR OFFSHORE PIPELINE CO.	LGS INTRASTATE, INC.	10-24-88	B		
ST89-0294	SUPERIOR OFFSHORE PIPELINE CO.	ACADIAN GAS PIPELINE SYSTEM	10-24-88	B		

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ST89-0295	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-21-88	C	03-20-89	19.00
ST89-0296	BP GAS TRANSMISSION CO.	TEXAS EASTERN TRANSMISSION CORP., ET AL.	10-24-88	C	03-23-89	21.00
ST89-0297	UNITED GAS PIPE LINE CO.	FINA OIL AND CHEMICAL CO.	10-24-88	G-S		
ST89-0298	UNITED GAS PIPE LINE CO.	LASER MARKETING CO.	10-24-88	G-S		
ST89-0299	UNITED GAS PIPE LINE CO.	LASER MARKETING CO.	10-24-88	G-S		
ST89-0300	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO.	10-24-88	C		
ST89-0301	NORTHWEST PIPELINE CORP.	UNIVERSAL FROZEN FOODS CORP.	10-24-88	G-S		
ST89-0302	NORTHWEST PIPELINE CORP.	INTERMOUNTAIN GAS CO.	10-24-88	B		
ST89-0303	NORTHWEST PIPELINE CORP.	ASH GROVE CEMENT WEST, INC.	10-24-88	G-S		
ST89-0304	NORTHWEST PIPELINE CORP.	EASTEX CANADIAN HUNTER	10-24-88	G-S		
ST89-0305	SOUTHERN NATURAL GAS CO.	HADSON GAS SYSTEMS, INC.	10-24-88	G-S		
ST89-0306	SOUTHERN NATURAL GAS CO.	ARCHER DANIELS MIDLAND CO.	10-24-88	G-S		
ST89-0307	SOUTHERN NATURAL GAS CO.	ALABAMA GAS CORP.	10-24-88	B		
ST89-0308	SOUTHERN NATURAL GAS CO.	SOUTH CAROLINA PIPELINE CORP.	10-24-88	B		
ST89-0309	SOUTHERN NATURAL GAS CO.	ARCO OIL & GAS CO.	10-24-88	G-S		
ST89-0310	SOUTHERN NATURAL GAS CO.	SOUTH CAROLINA PIPELINE CORP.	10-24-88	B		
ST89-0311	SOUTHERN NATURAL GAS CO.	SOUTHEAST ALABAMA GAS DISTRICT	10-24-88	B		
ST89-0312	SOUTH GEORGIA NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	10-24-88	B		
ST89-0313	TRANSCONTINENTAL GAS PIPE LINE CORP.	CITY OF RICHMOND	10-24-88	B		
ST89-0314	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTH JERSEY GAS CO.	10-24-88	B		
ST89-0315	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTH JERSEY GAS CO.	10-24-88	B		
ST89-0316	NORTHWEST PIPELINE CORP.	PENNWALT CORP.	10-24-88	G-S		
ST89-0317	NORTHWEST PIPELINE CORP.	G. HEILEMAN	10-24-88	G-S		
ST89-0318	NORTHWEST PIPELINE CORP.	CANTERRA NATURAL GAS, INC.	10-24-88	G-S		
ST89-0319	NORTHWEST PIPELINE CORP.	QUIVIRA GAS CO.	10-24-88	B		
ST89-0320	TRUNKLINE GAS CO.	EXXON CORP.	10-25-88	G-S		
ST89-0321	TRUNKLINE GAS CO.	CENTRAL ILLINOIS PUBLIC SERVICE CO.	10-25-88	B		
ST89-0322	PANHANDLE EASTERN PIPE LINE CO.	MOUNTAIN IRON & SUPPLY CO.	10-25-88	G-S		
ST89-0323	ONG TRANSMISSION CO.	NATURAL GAS PIPELINE CO. OF AMERICA	10-25-88	C	03-24-89	24.32
ST89-0324	KANSAS GAS SUPPLY CORP.	PANHANDLE EASTERN PIPE LINE CO.	10-25-88	C		
ST89-0325	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA-ILLINOIS GAS & ELECTRIC CO.	10-25-88	B		
ST89-0326	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA-ILLINOIS GAS & ELECTRIC CO.	10-25-88	B		
ST89-0327	NATURAL GAS PIPELINE CO. OF AMERICA	HALL-HOUSTON OFFSHORE	10-25-88	G-S		
ST89-0328	NATURAL GAS PIPELINE CO. OF AMERICA	OXY NGL, INC.	10-25-88	G-S		
ST89-0329	NATURAL GAS PIPELINE CO. OF AMERICA	INTERSTATE POWER CO.	10-25-88	G		
ST89-0330	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA-ILLINOIS GAS & ELECTRIC CO.	10-25-88	B		
ST89-0331	NATURAL GAS PIPELINE CO. OF AMERICA	INTERSTATE POWER CO.	10-25-88	G		
ST89-0332	NATURAL GAS PIPELINE CO. OF AMERICA	INTERSTATE POWER CO.	10-25-88	G		
ST89-0333	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA-ILLINOIS GAS & ELECTRIC CO.	10-25-88	B		
ST89-0334	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTH JERSEY GAS CO.	10-25-88	B		
ST89-0335	TRANSCONTINENTAL GAS PIPE LINE CORP.	SOUTH JERSEY GAS CO.	10-25-88	B		
ST89-0336	WILLIAMS NATURAL GAS CO.	QUAKER OATS CO.	10-25-88	G-S		
ST89-0337	WILLIAMS NATURAL GAS CO.	QUAKER OATS CO.	10-25-88	G-S		
ST89-0338	NORTHWEST PIPELINE CORP.	NORTHWEST ALUMINUM CO.	10-25-88	G-S		
ST89-0339	NORTHWEST PIPELINE CORP.	NORPAC FOODS, INC.	10-25-88	G-S		
ST89-0340	TENNESSEE GAS PIPELINE CO.	POWER RESOURCES OPERATING CO., INC.	10-25-88	G-S		
ST89-0341	COLORADO INTERSTATE GAS CO.	MGTC, INC.	10-25-88	B		
ST89-0342	COLORADO INTERSTATE GAS CO.	UNION PACIFIC RESOURCES CO.	10-25-88	G-S		
ST89-0343	COLORADO INTERSTATE GAS CO.	MGTC, INC.	10-25-88	B		

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
ST89-0344	COLORADO INTERSTATE GAS CO.	MGTC, INC.	10-25-88	B		
ST89-0345	COLORADO INTERSTATE GAS CO.	COLORADO GASMARK, INC.	10-25-88	G-S		
ST89-0346	COLORADO INTERSTATE GAS CO.	WYOMING GASMARK, INC.	10-25-88	G-S		
ST89-0347	EL PASO NATURAL GAS CO.	PACIFIC GAS AND ELECTRIC CO.	10-26-88	B		
ST89-0349	BP GAS TRANSMISSION CO.	TEXAS EASTERN TRANS. CORP., ET AL.	10-26-88	C	03-25-89	21.00
ST89-0350	BP GAS TRANSMISSION CO.	TEXAS EASTERN TRANS. CORP., ET AL.	10-26-88	C	03-25-89	21.00
ST89-0351	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA ELECTRIC LIGHT & POWER CO.	10-26-88	B		
ST89-0352	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA ELECTRIC LIGHT & POWER CO.	10-26-88	B		
ST89-0353	NATURAL GAS PIPELINE CO. OF AMERICA	ILLINOIS POWER CO.	10-26-88	B		
ST89-0354	NATURAL GAS PIPELINE CO. OF AMERICA	MIDWEST GAS CO., DIV. IOWA PUB. SERV. CO	10-26-88	B		
ST89-0355	TRANSCONTINENTAL GAS PIPE LINE CORP.	HOUSTON GAS EXCHANGE CORP.	10-26-88	G-S		
ST89-0356	TRANSCONTINENTAL GAS PIPE LINE CORP.	FINA OIL AND CHEMICAL CO.	10-26-88	G-S		
ST89-0357	LONE STAR GAS CO.	EL PASO NATURAL GAS CO.	10-26-88	C		
ST89-0358	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO.	10-26-88	C		
ST89-0359	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	10-26-88	C		
ST89-0360	NATURAL GAS PIPELINE CO. OF AMERICA	SEAGULL MARKETING SERVICES, INC.	10-26-88	G-S		
ST89-0361	TEXAS EASTERN TRANSMISSION CORP.	COMMONWEALTH GAS SERVICES	10-26-88	B		
ST89-0362	TEXAS EASTERN TRANSMISSION CORP.	NIAGARA MOHAWK POWER CORP.	10-26-88	B		
ST89-0363	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA ELECTRIC CO.	10-26-88	B		
ST89-0364	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA GAS WORKS, INC.	10-26-88	B		
ST89-0365	TEXAS EASTERN TRANSMISSION CORP.	EAST OHIO GAS CO.	10-26-88	B		
ST89-0366	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA ELECTRIC CO.	10-26-88	B		
ST89-0367	TENNESSEE GAS PIPELINE CO.	EAST TENNESSEE NATURAL GAS CO.	10-27-88	G		
ST89-0368	TENNESSEE GAS PIPELINE CO.	ANR GATHERING CO.	10-27-88	G-S		
ST89-0369	TENNESSEE GAS PIPELINE CO.	CNG TRANSMISSION CORP.	10-27-88	G		
ST89-0370	TENNESSEE GAS PIPELINE CO.	ARKLA ENERGY MARKETING	10-27-88	G-S		
ST89-0371	TENNESSEE GAS PIPELINE CO.	PARAGON GAS CORP.	10-27-88	G-S		
ST89-0372	NORTHERN NATURAL GAS CO.	TEJAS POWER CORP.	10-27-88	G-S		
ST89-0373	NORTHERN NATURAL GAS CO.	SOUTHERN NATURAL GAS CO.	10-27-88	G		
ST89-0374	NORTHERN NATURAL GAS CO.	COASTAL STATES GAS TRANSMISSION CO.	10-27-88	B		
ST89-0375	NORTHERN NATURAL GAS CO.	PSI, INC.	10-27-88	G-S		
ST89-0376	NORTHWEST PIPELINE CORP.	QUESTAR PIPELINE CO.	10-27-88	G		
ST89-0377	ARKLA ENERGY RESOURCES	WISCONSIN POWER AND LIGHT CO.	10-27-88	B		
ST89-0378	UNITED GAS PIPE LINE CO.	ENRON GAS MARKETING	10-27-88	G-S		
ST89-0379	UNITED GAS PIPE LINE CO.	AIR PRODUCTS & CHEMICALS, INC.	10-27-88	G-S		
ST89-0380	UNITED GAS PIPE LINE CO.	E.I. DUPONT DE NEMOURS & CO.	10-27-88	G-S		
ST89-0381	UNITED GAS PIPE LINE CO.	ENMARK GAS CORP.	10-27-88	B		
ST89-0382	UNITED GAS PIPE LINE CO.	E.I. DUPONT DE NEMOURS & CO.	10-27-88	G-S		
ST89-0383	UNITED GAS PIPE LINE CO.	SUPERIOR NATURAL GAS CORP.	10-27-88	G-S		
ST89-0384	UNITED GAS PIPE LINE CO.	ENTRADE CORP.	10-27-88	G-S		
ST89-0385	UNITED GAS PIPE LINE CO.	MISSISSIPPI GULF SO. TRANSMISSION CO.	10-27-88	B		
ST89-0386	UNITED GAS PIPE LINE CO.	MOBILE GAS SERVICE CORP.	10-27-88	B		
ST89-0387	UNITED GAS PIPE LINE CO.	OHIO VALLEY GAS CORP., ET AL.	10-27-88	B		
ST89-0388	UNITED GAS PIPE LINE CO.	CITY OF ALEXANDER CITY, ET AL.	10-27-88	B		
ST89-0389	UNITED GAS PIPE LINE CO.	MIDCON MARKETING CORP.	10-27-88	G-S		
ST89-0390	UNITED GAS PIPE LINE CO.	PARKER GAS GATHERING COMPANY, INC.	10-27-88	G-S		
ST89-0391	UNITED GAS PIPE LINE CO.	PENNZOIL GAS MARKETING CORP.	10-27-88	G-S		
ST89-0392	UNITED GAS PIPE LINE CO.	BAY SPRINGS MUNICIPAL DISTRICT	10-27-88	B		
ST89-0393	UNITED GAS PIPE LINE CO.	OLYMPIC PIPELINE CO.	10-27-88	B		

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
ST89-0394	UNITED GAS PIPE LINE CO.	ASSOCIATED INTRA. PIPELINE CO., ET AL.	10-27-88	B		
ST89-0395	UNITED GAS PIPE LINE CO.	LASER MARKETING CO.	10-27-88	G-S		
ST89-0396	UNITED GAS PIPE LINE CO.	SEAGULL MARKETING SERVICES, INC.	10-27-88	G-S		
ST89-0397	EL PASO NATURAL GAS CO.	GULF GAS UTILITIES CO.	10-28-88	B		
ST89-0398	TENNESSEE GAS PIPELINE CO.	PIKE NATURAL GAS CO.	10-28-88	B		
ST89-0399	TENNESSEE GAS PIPELINE CO.	DELMARVA POWER AND LIGHT CO.	10-28-88	B		
ST89-0400	TENNESSEE GAS PIPELINE CO.	GRANITE STATE GAS TRANSMISSION, INC.	10-28-88	G		
ST89-0401	TENNESSEE GAS PIPELINE CO.	TRANSCONTINENTAL GAS PIPE LINE CORP.	10-28-88	G		
ST89-0402	TENNESSEE GAS PIPELINE CO.	COMMONWEALTH GAS CO.	10-28-88	B		
ST89-0403	TENNESSEE GAS PIPELINE CO.	MISSISSIPPI FUEL CO.	10-28-88	B		
ST89-0404	TENNESSEE GAS PIPELINE CO.	CNG TRADING CO.	10-28-88	G-S		
ST89-0405	TENNESSEE GAS PIPELINE CO.	SUPERIOR NATURAL GAS CORP.	10-28-88	G-S		
ST89-0406	MID LOUISIANA GAS CO.	WINTERSHALL PIPELINE CORP.	10-28-88	G-S		
ST89-0407	TRANSCONTINENTAL GAS PIPE LINE CORP.	PUBLIC SERVICE CO. OF N. CAROLINA	10-28-88	B		
ST89-0408	SABINE PIPE LINE CO.	MISSISSIPPI VALLEY GAS CO., ET AL.	10-28-88	B		
ST89-0409	SABINE PIPE LINE CO.	NASHVILLE GAS CO.	10-28-88	B		
ST89-0410	SABINE PIPE LINE CO.	LLANO, INC.	10-28-88	B		
ST89-0411	SABINE PIPE LINE CO.	NECHES GAS DISTRIBUTION CO.	10-28-88	B		
ST89-0412	SABINE PIPE LINE CO.	LOUISIANA STATE GAS CORP.	10-28-88	B		
ST89-0413	SABINE PIPE LINE CO.	HYDROCARBON DEVELOPMENT CORP.	10-28-88	B		
ST89-0414	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN ILLINOIS GAS CO.	10-28-88	B		
ST89-0415	NATURAL GAS PIPELINE CO. OF AMERICA	RELIANCE PIPELINE CO.	10-28-88	B		
ST89-0416	NATURAL GAS PIPELINE CO. OF AMERICA	ENRON GAS MARKETING, INC.	10-28-88	G-S		
ST89-0417	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-28-88	B		
ST89-0418	TEXAS GAS TRANSMISSION CORP.	EAST OHIO GAS CO.	10-28-88	B		
ST89-0419	TEXAS GAS TRANSMISSION CORP.	RELIANCE PIPELINE CO.	10-28-88	B		
ST89-0420	TEXAS GAS TRANSMISSION CORP.	GULF COAST INDUSTRIAL GAS, INC.	10-28-88	G-S		
ST89-0421	TEXAS GAS TRANSMISSION CORP.	CITY OF LIVERMORE	10-28-88	B		
ST89-0422	TEXAS GAS TRANSMISSION CORP.	WESTERN KENTUCKY GAS CO.	10-28-88	B		
ST89-0423	UNITED GAS PIPE LINE CO.	MIDCON MARKETING CORP.	10-28-88	G-S		
ST89-0424	UNITED GAS PIPE LINE CO.	NORTHERN ILLINOIS GAS CO.	10-28-88	B		
ST89-0425	TEXAS EASTERN TRANSMISSION CORP.	HOPE GAS, INC.	10-28-88	B		
ST89-0426	TEXAS EASTERN TRANSMISSION CORP.	LAWRENCEBURG GAS CO.	10-28-88	B		
ST89-0427	TEXAS EASTERN TRANSMISSION CORP.	PEOPLES GAS LIGHT & COKE CO.	10-28-88	B		
ST89-0428	TEXAS EASTERN TRANSMISSION CORP.	TENNESSEE RIVER INTRASTATE GAS CO.	10-28-88	B		
ST89-0429	TEXAS EASTERN TRANSMISSION CORP.	ROCHESTER GAS & ELECTRIC CORP.	10-28-88	B		
ST89-0430	ONG TRANSMISSION CO.	NATURAL GAS PIPELINE CO. OF AMERICA	10-31-88	C	03-30-89	10.00
ST89-0431	LONE STAR GAS CO.	NATURAL GAS PIPELINE CO. OF AMERICA	10-31-88	C		
ST89-0432	DELHI GAS PIPELINE CORP.	NORTHERN NATURAL GAS CO.	10-31-88	C	03-30-89	35.00
ST89-0433	VALERO INTERSTATE TRANSMISSION CO.	VALERO TRANSMISSION, L.P.	10-31-88	B		
ST89-0434	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO.	10-31-88	C		
ST89-0435	BP GAS TRANSMISSION CO.	PANHANDLE EASTERN PIPE LINE CO., ET AL.	10-31-88	C	03-30-89	28.80
ST89-0436	TENNESSEE GAS PIPELINE CO.	CREOLE GAS PIPELINE CORP.	10-31-88	B		
ST89-0437	NORTHERN NATURAL GAS CO.	CABOT GAS SUPPLY CORP.	10-31-88	B		
ST89-0438	TAFT PIPELINE CO.	NORTHERN NATURAL GAS CO.	10-31-88	C		
ST89-0439	NORTHERN NATURAL GAS CO.	WEST TEXAS GAS, INC.	10-31-88	B		
ST89-0440	NORTHERN NATURAL GAS CO.	PSI, INC.	10-31-88	G-S		
ST89-0441	NORTHERN NATURAL GAS CO.	MINNEGASCO, INC.	10-31-88	B		
ST89-0442	NORTHERN NATURAL GAS CO.	PHILLIPS NATURAL GAS CO.	10-31-88	G-S		

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	SUBPART	EXPIRATION DATE**	TRANSPORTATION RATE (¢/MMBTU)
ST89-0443	TEXAS EASTERN TRANSMISSION CORP.	COMMONWEALTH GAS CO.	10-31-88	B		
ST89-0444	ALGONQUIN GAS TRANSMISSION CO.	BAY STATE GAS CO.	10-31-88	B		
ST89-0445	ALGONQUIN GAS TRANSMISSION CO.	PROVIDENCE GAS CO.	10-31-88	B		
ST89-0446	ALGONQUIN GAS TRANSMISSION CO.	PROVIDENCE GAS CO.	10-31-88	B		
ST89-0447	ALGONQUIN GAS TRANSMISSION CO.	ORANGE AND ROCKLAND UTILITIES, INC.	10-31-88	B		
ST89-0448	ALGONQUIN GAS TRANSMISSION CO.	COMMONWEALTH GAS CO.	10-31-88	B		
ST89-0449	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-31-88	C	03-30-89	8.00
ST89-0450	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-31-88	C	03-30-89	14.00
ST89-0451	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-31-88	C	03-30-89	13.70
ST89-0452	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-31-88	C	03-30-89	12.00
ST89-0453	BP GAS TRANSMISSION CO.	ANR PIPELINE CO., ET AL.	10-31-88	C	03-30-89	19.00
ST89-0454	UNITED GAS PIPE LINE CO.	SEAGULL MARKETING SERVICES, INC.	10-31-88	G-S		
ST89-0455	TENNESSEE GAS PIPELINE CO.	DIAMOND SHAMROCK OFF. PART. LTD. PART.	10-31-88	G-S		
ST89-0456	NATURAL GAS PIPELINE CO. OF AMERICA	IOWA ELECTRIC LIGHT & POWER CO.	10-31-88	B		
ST89-0457	NATURAL GAS PIPELINE CO. OF AMERICA	WINNIE PIPELINE CO.	10-31-88	B		
ST89-0458	NATURAL GAS PIPELINE CO. OF AMERICA	MISSISSIPPI RIVER TRANSMISSION CORP.	10-31-88	G		
ST89-0459	NATURAL GAS PIPELINE CO. OF AMERICA	WESTAR TRADING & REFINING, INC.	10-31-88	G-S		
ST89-0460	NATURAL GAS PIPELINE CO. OF AMERICA	NORTHERN INDIANA PUBLIC SERVICE CO.	10-31-88	B		
ST89-0461	NATURAL GAS PIPELINE CO. OF AMERICA	TRANSAMERICAN TRANSMISSION CORP.	10-31-88	B		
ST89-0462	WILLIAMS NATURAL GAS CO.	PSI, INC.	10-31-88	G-S		
ST89-0463	WILLIAMS NATURAL GAS CO.	ENERGY DYNAMICS, INC.	10-31-88	G-S		
ST89-0464	WILLIAMS NATURAL GAS CO.	CARNATION CO.	10-31-88	G-S		
ST89-0465	WILLIAMS NATURAL GAS CO.	NGL PRODUCTION CO.	10-31-88	G-S		
ST89-0466	WILLIAMS NATURAL GAS CO.	ENRON GAS MARKETING	10-31-88	G-S		
ST89-0467	NORTHWEST PIPELINE CORP.	COLUMBUS GAS SERVICES	10-31-88	G-S		
ST89-0468	NORTHWEST PIPELINE CORP.	NATIONAL COOPERATIVE REFINERY ASSOC.	10-31-88	G-S		
ST89-0469	COLORADO INTERSTATE GAS CO.	NGC INTRASTATE PIPELINE CO.	10-31-88	B		
ST89-0470	COLORADO INTERSTATE GAS CO.	NORTHWEST NATURAL GAS CO.	10-31-88	B		

THE INITIAL REPORT LISTED BELOW IS BEING NOTICED OUT OF SEQUENCE DUE TO EXTENSIVE COMMISSION REVIEW.

ST88-4796	TENNESSEE GS PIPELINE CO.	STELLAR GAS CO.	07-20-88	B		

* NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/18/85).

** THE INTRASTATE PIPELINE HAS SOUGHT COMMISSION APPROVAL OF ITS TRANSPORTATION RATE PURSUANT TO SECTION 284.123(B)(2) OF THE COMMISSION'S REGULATIONS (18 CFR 284.123(B)(2)). SUCH RATES ARE DEEMED FAIR AND EQUITABLE IF THE COMMISSION DOES NOT TAKE ACTION BY THE DATE INDICATED.

[FR Doc. 89-958 Filed 1-13-89, 8:45 am]
BILLING CODE 6717-01-C

[Project No. 2446, Illinois]

Commonwealth Edison Co.; Notice of Intent To File An Application for a New License

January 12, 1989.

Take notice that on December 28, 1988, Commonwealth Edison Company, the existing licensee for the Dixon Hydroelectric Project No. 2446, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2446 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on Rock River in Lee County, Illinois. The principal works of the Dixon Project include a rock-filled, timber-crib dam enclosed with steel sheet piling and capped with concrete; a reservior of 800 acres; a powerhouse with an installed capacity of 3,200 kW; a 2.3/34.5-kV substation; a 1.5-mile-long, 34.5-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 72 West Adams Street, Room 1835, Chicago, Illinois 60690.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–964 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2458, Maine]

Great Northern Nekoosa Corp.; Intent To File an Application for a New License

January 12, 1989.

Take notice that on December 21, 1988, Great Northern Nekoosa Corporation, the existing licensee for the Penobscot Mills Hydroelectric Project No. 2458, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2458 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Penobscot River and Millinocket Stream in Penobscot and Piscataquis Counties, Maine. The principal works of the Penobscot Mills Project include North Twin, Millinocket, Dolby, and East Millinocket dams, dikes and reservoirs; Millinocket Lake dam, storage reservoir, and pumping plant; four power plants with an installed capacity of 55,308 kW; transmission lines; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Great Northern Paper Company, Engineering and Research Building, Millinocket, Maine 04462, Attn: James B. Carson, Jr., telephone (207) 723–5131.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–965 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2572, Maine]

Great Northern Nekoosa Corp.; Intent To File An Application For a New License

January 12, 1989.

Take notice that on December 21, 1988, Great Northern Nekoosa Corporation, the existing licensee for the Ripogenus Hydroelectric Project No. 2572, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2572 was issued effective October 1, 1951, and expires December 31, 1993.

The project is located on the West Branch of the Penobscot River in Piscataquis Counties, Maine. The principal works of the Ripogenus Project include a composite concrete and earthfill dam, 83 feet high and about 895 feet long; a reservoir of 28,032 acres at elevation 941.59 feet m.s.l.; a 16-foot-diameter tunnel, about 3,850 feet long, and a surge tank; three penstocks; a powerhouse with an installed capacity of 37,530 kW; a 28.2-mile-long, 115-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Great Northern Paper Company, Engineering and Research Building, Millinocket, Maine 04462, Attn: James B. Carson, Jr., telephone (207) 723–5131.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–966 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1773, Utah]

Moon Lake Electric Association, Inc.; Intent To File an Application for a New License

January 12, 1989.

Take notice that on January 12, 1988, Moon Lake Electric Association, Inc., the existing licensee for the Yellowstone Hydroelectric Project No. 1773, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 1773 was issued effective April 1, 1943, and will expire March 31, 1993.

The project is located on the East Fork of Lake Fork of the Duchesne River in Duchesne County, Utah, and occupies lands of the Ashley National Forest, lands of the Uintah and Ouray Indian Reservations, and private property. The principal works of the Yellowstone Project include a log-fill, rock-fill diversion dam, 9.75 feet high and about 380 feet long; a 2.27-mile-long steel conduit; a powerhouse with an installed capacity of 900 kW; a tailrace; a transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 188 West 200 North, Roosevelt, UT 84066.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89–962 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–468–000]

Shell Western E & P Inc.; Notice of Petition For Declaratory Order

January 10, 1989.

Take notice that on December 21, 1988, Shell Western E & P Inc. (Shell Western), P.O. Box 2463, Houston, Texas 77252–2463, filed in Docket No. CP89–468–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the Commission disclaim jurisdiction over certain natural gas facilities and the natural gas treating plant currently owned by EL Paso Natural Gas Company (El Paso), located in Terrell, Val Verde and Crockett Counties, Texas (collectively referred to as the Terrell Facilities), if such facilities are acquired by Shell Western pursuant to a May 14, 1988, Settlement Agreement (Settlement).

It is stated that El Paso currently operates gathering facilities connecting eighty-nine wells in the J.M., J.M. North and Brown Bassett Fields (referred to as the Fields) in the above mentioned counties with the natural gas plant located in Terrell County. The facilities are comprised of (i) the J.M. Field system, consisting of approximately 15.0 miles of 24" O.D. field feeder pipeline and approximately 25.5 miles of gathering lines ranging in size ranging in size from 8⅝" O.D. to 24" O.D.; and (ii) the Brown Bassett system, consisting of approximately 48.2 miles of various size lines ranging in size from 6⅝" O.D. to 24" O.D. Shell western states that the Terrell Plant provides a purification and treating service, primarily to remnove carbon dioxide from the gas.

It is stated that the Settlement resolves Shell Western's take-or-pay and pricing litigation pending in Texas state court and provides for the release of certain gas volumes from the Fields and transportation by El Paso of those released volumes in interstate commerce. As partial consideration for the Settlement, El Paso agreed to sell the Terrell Facilities to Shell Western for a cash payment by Shell Western. Shell Western states that it intends to operate the Terrell Facilities as an integrated, non-jurisdictional gathering and treating system. It is further stated that the acquisition, however, is conditioned upon the receipt from the Commission of a declaratory order satisfactory to Shell Western that Shell Western's acquisition, ownership and operation of the Terrell Facilities will not be subject to Commission jurisdiction.

Shell Western states that upon its acquisition of the Terrell Facilities and pursuant to the terms of the Gas Measurement, Gathering Treating, Compression and Dehydration Agreement dated October 21, 1988, it will gather, purify, treat and dehydrate for El Paso all gas that El Paso purchases from producers and tenders to Shell Western. It is stated that the gathering agreement becomes effective only upon Shell Western's acquisition of the Terrell Facilities and applies only to gas purchased by El Paso pursuant to gas purchase agreements in existence as of May 14, 1988, between El Paso and producers behind the Terrell Plant.

According to Shell Western, in the event of El Paso's release and temporary or permanent abandonment of gas behind the Terrell Plant, including Shell Western's own production pursuant to the Settlement or otherwise, Shell Western is obligated to enter into negotiations with individual producers for gathering, treating and other agreements to carry such gas to the Terrell Plant for treatment. It is further stated that, although not yet resolved, services at the Terrell Plant may be performed for other producers either (1) with Shell Western as sole plant owner for a fee; or (2) with Shell Western acting as operator and co-owner with other producers who may purchase an ownership interest in the Terrell Plant from Shell Western.

It is averred that El Paso's sale of the Terrell Facilities to Shell Western is also conditioned upon the receipt by El Paso of appropriate abandonment authority; El Paso is filing for this authority contemporaneously with this petition. Finally, Shell Western states that the acquisition, ownership and operation of the Terrel facilities by Shell Western are not subject to the Commission's jurisdiction because such facilities constitute a traditional production and gathering function.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 31, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–967 Filed 1–13–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2560, Wisconsin]

Wisconsin Public Service Corp.; Intent to File an Application for a New License

January 12, 1989

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Potato Rapids Hydroelectric Project No. 2560, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2560 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Peshtigo River in Marinette County, Wisconsin. The principal works of the Potato Rapids Project include a 442-foot-long concrete dam, a 684-foot-long dike from the east end of the dam to the powerhouse, a 1,900-foot-long dike along the west shore, and a 1,500-foot-long dike along the east shore; a reservoir of 258 acres; a powerhouse with an installed capacity of 1,380 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307-9002.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-968 Filed 1-13-89; 8 45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Community Broadcasting Foundation, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Community Broadcasting Foundation, Inc	Rochester, New York	BPED-870910MP	88-558
B. Knight Radio, Inc	Rochester, New York	BPH-870917MB	
C. Rochester Broadcasting Corporation	Rochester, New York	BPH-870918MD	
D. Victorson Group, Inc	Rochester, New York	BPH-870918MF	
E. Eison and Associates, Limited	Rochester, New York	BPH-870918MJ	
F. R.B. Lee Rust	Rochester, New York	BPH-870918MQ	
G. Upstate FM Limited Partnership	Rochester, New York	BPH-870918NB	
H. Agape Radio, Inc	Rochester, New York	BPH-870918ND	
I. Taylor Communications of Rochester, Inc	Rochester, New York	BPH-870918NE	
J. Christian Discerner, Inc	Rochester, New York	BPED-870918NG	
K. Donald B. Crawford	Rochester, New York	BPH-870918NJ	
L. Dolores Boyd d/b/a Lake Broadcasting	Rochester, New York	BPH-870918NM	
M. Best Broadcasting Co., L.P	Rochester, New York	BPH-870918NN	
N. SpaceCom, Inc	Rochester, New York	BPH-870918NO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. Environmental	B, D, E, H, I, K, L, M.
2. City Coverage	A, I.
3. Air Hazard	D, E, G, H, I, K, L, M.
4. Financial	E.
5. Comparative	A-N.
6. Ultimate	A-N.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89-998 Filed 1-13-89; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order in re Applications of Rhys G. Mussman d/b/a Dial 1 Mobile

AGENCY: Federal Communications Commission (FCC).

ACTION: Hearing designation order.

ADDRESS: Federal Communications Commission, 1919 M Sreet NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Hearing Designation Order* in Common Carrier Bureau Docket No. 88-530, DA 88-1735, Adopted November 1, 1988, and Released November 28, 1988.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800 M Street NW., Suite 140, Washington, DC 20037.

Summary of Hearing Designation Order

1. In this *Order*, we designate for a consolidated hearing two applications filed on behalf of Rhys G. Mussman, d/b/a Dial 1 Mobile (Mussman), for authority to construct and operate Domestic Public Cellular Radio Telecommunications Systems on Frequency Block A in the Asheville, North Carolina and Enid, Oklahoma markets. Substantial and material questions about Mussman's qualifications to be a commission cellular licensee have been raised by his apparent continuing failure to comply with effective Commission orders.

2. The hearing shall determine whether Mussman failed to comply with an outstanding Commission order, *CCI Cablevision*, 103 FCC 2d 600 (1985), when he failed to promptly divest himself of Northwest Indiana CATV, Inc. d/b/a Northwestern Indiana Cablevision (Northwest) or to place Northwest in trust following the U.S. Court of Appeals for the District of Columbia Circuit's denial of a request for stay of that order; whether Mussman possesses the requisite character qualifications to be a cellular radio licensee of the Commission; and whether grant of the subject cellular radio applications would be in the public interest.

3. BC Cellular (the number two selectee in the Asheville market who had protested the application for that market), Mussman and the Chief of the FCC's Common Carrier Bureau were made parties to the hearing.

(Federal Communications Commission.)

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89-999 Filed 1-13-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine and Carbon Monoxide Content of 272 Varieties of Domestic Cigarettes

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine and Carbon Monoxide Content of 272 Varieties of Domestic Cigarettes.

DATE: December 30, 1988.

ADDRESSES: Copies of the report are available from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave. NW., Washington, DC 20580. (202) 326-2222.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, Bureau of Consumer Protection, at the address given above, telephone (202) 326-3150.

SUPPLEMENTARY INFORMATION: These are the first test results reported by the FTC using a procedure under which the Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted tar, nicotine and carbon monoxide testing for these 272 varieties. The methodology, processes and procedures that the companies and TITL employ are identical to those the Commission has followed. Cigarette smoke from 272 varieties was tested by TITL. This laboratory provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to requests issued by the Commission requiring submission of this information.

By Direction of the Commission.

Donald S. Clark,

Secretary.

"TAR," NICOTINE, AND CARBON MONOXIDE OF THE SMOKE OF 272 VARIETIES OF DOMESTIC CIGARETTES

Brand		Tar [1] mg/cig	Nicotine [2] mg/cig	CO [3] mg/cig
Alpine	KFMSP [4]	17	1.1	16
Belair	KFMSP	10	0.8	10
Belair 100's	100 FMSP	9	0.7	9
Benson & Hedges	KFHP	15	1.2	12
Benson & Hedges 100's	100FHP	17	1.2	17
Benson & Hedges 100's	100FMHP	16	1.1	15
Benson & Hedges 100's	100FSP	17	1.2	17
Benson & Hedges 100's	100FMSP	16	1.2	18
Benson & Hedges Deluxe Ultra Lights 100's	100FHP	6	0.5	7
Benson & Hedges Deluxe Ultra Lights 100's	100FMHP	5	0.5	8
Benson & Hedges Lights 100's	100FSP	10	0.8	13
Benson & Hedges Lights 100's	100FMSP	11	0.8	12
Benson & Hedges Multifilter	KFSP	12	0.9	12
Bright 100's	100FMSP	7	0.5	11
Cambridge Full Flavor	KFSP	17	1.1	16
Cambridge Full Flavor 100's	100FSP	17	1.2	16
Cambridge Lights	KFSP	12	0.8	13
Cambridge Lights	KFMSP	12	0.8	13
Cambridge Lights 100's	100FSP	12	0.9	14
Cambridge Lights 100's	100FMSP	12	0.9	14
Camel	RNFSP	22	1.4	14
Camel Filters	KFHP	16	1.0	16
Camel Filters	KFSP	15	1.0	15
Camel Filters	100FSP	17	1.1	18
Camel Lights	KFHP	10	0.6	12
Camel Lights	KFSP	9	0.6	12
Camel Lights 100's	100FSP	11	0.8	15
Capri	100FHP	9	0.8	8
Capri	100FMHP	9	0.7	8
Carlton	KFHP	(*)	(*)	(*)
Carlton	KFSP	1	0.1	2
Carlton	KFMSP	1	0.1	1
Carlton 100's	100FHP	1	0.1	1
Carlton 100's	100FMHP	1	0.1	1
Carlton 100's	100FSP	3	0.3	4
Carlton 100's	100FMSP	4	0.4	6
Carlton 120's	120FSP	6	0.6	5
Carlton 120's	120FMSP	6	0.6	5
Century 25's	KFSP	15	0.9	17
Century 25's	100FSP	17	1.1	21
Century 25's Lights	KFSP	10	0.7	12
Century 25's Lights 100's	100FSP	12	0.8	14
Century 25's Menthol Lights 100's	100FMSP	12	0.8	14
Chesterfield	RNFSP	20	1.3	13
Chesterfield	KNFSP	25	1.7	16
Craven "A"	KFHP	16	1.1	16
Craven "A"	RFHP	16	1.1	13

BEST COPY AVAILABLE

"TAR," NICOTINE, AND CARBON MONOXIDE OF THE SMOKE OF 272 VARIETIES OF DOMESTIC CIGARETTES—Continued

Brand		Tar [1] mg/cig	Nicotine [2] mg/cig	CO [3] mg/cig
Doral Full Flavor	KFHP	15	0.8	18
Doral Full Flavor	KFSP	18	0.9	20
Doral Full Flavor 100's	100FSP	14	0.8	17
Doral Filter Lights	KFSP	12	0.7	15
Doral Menthol Filter Lights	KFMSP	12	0.6	14
Doral 100's Filter Lights	100FSP	12	0.7	14
Doral Menthol Lights 100's	100FMSP	12	0.7	14
Doral Ultra Lights 100's	100FSP	7	0.5	12
Dunhill International	100FHP	15	1.4	17
Dunhill Menthol	100FMHP	15	1.2	17
Dunhill International Superior Mild	100FHP	9	0.8	11
Eli Cutter	KFSP	16	1.1	15
Eli Cutter Lights	KFSP	12	0.9	13
English Ovals	KNFHP	24	1.8	15
Eve Slim Lights 100's	100FHP	13	1.0	11
Eve Slim Lights 100's	100FMHP	13	1.0	11
Eve Lights 120's	120FHP	12	1.1	11
Eve Lights 120's	120FMHP	13	1.1	11
Falcon Lights	KFSP	11	0.8	11
Falcon Lights	KFMSP	10	0.8	12
Falcon Lights 100's	100FSP	13	0.9	15
Falcon Lights 100's	100FMSP	9	0.7	11
Fiesta	KFSP	16	0.7	18
Herbert Tareyton	KNFSP	25	1.6	18
Hi-Lite	100FHP	14	1.0	15
Kent Golden Lights	KFHP	10	0.8	10
Kent Golden Lights	KFSP	9	0.8	9
Kent Golden Lights	KFMSP	8	0.7	9
Kent Golden Lights 100's	100FHP	10	0.9	11
Kent Golden Lights 100's	100FSP	10	0.9	11
Kent Golden Lights 100's	100FMSP	9	0.9	10
Kent	KFHP	11	0.9	13
Kent	KFSP	12	0.9	13
Kent 100's	100FSP	13	1.0	14
Kent 100's	100FMSP	14	1.0	14
Kent III	KFSP	4	0.4	4
Kent III 100's	100FHP	5	0.5	6
Kent III 100's	100FSP	5	0.5	7
Kim 25's	100FHP	11	0.9	12
Kim 25's	100FMHP	9	0.8	10
Kool	RNFMSP	21	1.3	14
Kool	KFMHP	16	1.1	16
Kool	KFMSP	17	1.2	17
Kool Super Longs 100's	100FMSP	16	1.2	16
Kool Lights	KFMSP	8	0.7	9
Kool Lights 100's	100FMSP	9	0.7	10
Kool Milds	KFMHP	11	0.9	11
Kool Milds	KFMSP	12	0.9	13
Kool Milds 100's	100FMSP	12	0.9	12
L&M	KFHP	14	1.1	13
L&M	KFSP	13	1.0	13
L&M Super 100	100FSP	14	1.1	14
L&M Long Lights	100FSP	8	0.8	6
L&M 30's Lights 100's	100FSP	13	1.1	11
Lark	KFSP	13	1.0	12
Lark	100FSP	15	1.2	14
Lark Lights	KFSP	13	1.0	13
Lark Lights 100's	100FSP	14	1.1	14
Lucky Strike	RNFSP	24	1.5	17
Lucky Strike	KFHP	12	0.9	13
Lucky Strike	KFSP	12	0.9	12
Lucky Strike Filters 100's	100FSP	12	1.0	12
Lucky Strike Menthol 100's	100FMSP	12	0.9	12
Lucky Strike Lights	KFSP	8	0.6	10
Lucky Strike Lights 100's	100FSP	9	0.8	10
Magna	KFHP	14	0.9	16
Magna	KFSP	14	0.9	15
Magna Lites	KFSP	9	0.6	13
Malibu 100's	100FSP	12	1.0	13
Malibu Menthol 100's	100FMSP	11	0.9	12
Malibu Menthol 100's	100FSP	9	0.7	10
Marlboro	KFHP	16	1.1	15
Marlboro	KFSP	17	1.1	16
Marlboro	KFMSP	17	1.1	16
Marlboro 100's	100FHP	17	1.2	17
Marlboro 100's	100FSP	17	1.2	17
Marlboro 25's	KFSP	17	1.1	16
Marlboro Lights	KFHP	11	0.8	12
Marlboro Lights	KFSP	11	0.8	12

"TAR," NICOTINE, AND CARBON MONOXIDE OF THE SMOKE OF 272 VARIETIES OF DOMESTIC CIGARETTES—Continued

Brand		Tar [1] mg/cig	Nicotine [2] mg/cig	CO [3] mg/cig
Marlboro Lights	KFMSP	11	0.8	12
Marlboro Lights 100's	100FHP	11	0.8	13
Marlboro Lights 100's	100FSP	11	0.8	13
Marlboro Lights 100's	100FMSP	10	0.8	12
Marlboro Lights 25's	KFSP	11	0.8	12
Marlboro 100 Red	100FHP	17	1.2	17
Marlboro 100 Red	100FSP	17	1.2	16
Max 120's	120FSP	18	1.4	17
Max 120's	120FMSP	18	1.5	17
Merit	KFHP	8	0.8	10
Merit	KFSP	8	0.8	10
Merit	KFMSP	8	0.6	10
Merit 100's	100FSP	10	0.8	12
Merit 100's	100FMSP	10	0.8	12
Merit Ultra Lights	KFSP	5	0.5	7
Merit Ultra Lights	KFMSP	5	0.4	6
Merit Ultra Lights 100's	100FSP	6	0.5	7
Merit Ultra Lights 100's	100FMSP	5	0.5	7
More 120's	120FSP	17	1.2	21
More 120's	120FMSP	17	1.3	21
More Lights 100's	100FHP	9	0.7	10
More Lights 100's	100FMHP	9	0.7	10
More Lights 120's	120FSP	12	0.9	19
More Lights 120's	120FMSP	12	0.9	19
Newport	KFMHP	17	1.3	17
Newport	KFMSP	17	1.3	18
Newport 100's	100FMHP	19	1.5	19
Newport 100's	100FMSP	19	1.5	19
Newport (25)	KFMSP	17	1.3	17
Newport 100's (25)	100FMSP	20	1.6	19
Newport Lights	KFMHP	9	0.8	10
Newport Lights	KFMSP	9	0.8	10
Newport Lights 100's	100KMHP	10	1.0	11
Newport Lights 100's	100FMSP	9	0.9	10
Now	KFHP	(*)	(*)	(*)
Now	KFSP	1	0.1	2
Now	KFMFSP	1	0.1	2
Now 100's	100FSP	2	0.2	3
Now 100's	100FMSP	3	0.3	4
Old Gold Straights	KNFSP	27	1.9	19
Old Gold Filters	KFSP	17	1.3	18
Old Gold Filter 100's	100FSP	20	1.5	19
Old Gold Lights	KFSP	10	0.9	11
Old Gold Lights 100's	100FSP	13	1.0	17
Pall Mall	KNFSP	24	1.5	16
Pall Mall 25's	KNFSP	24	1.5	16
Pall Mall 100's	100FSP	17	1.2	17
Pall Mall Unfiltered Lights	KNFSP	16	1.1	12
Pall Mall Light 100's	100FSP	10	0.8	12
Pall Mall Lights 100's Low Tar	100FMSP	13	1.1	13
Pall Mall Red	KFSP	14	1.0	13
Pall Mall Red	100FSP	14	1.0	14
Parliament Lights	KFHP	9	0.7	10
Parliament Lights	KFSP	9	0.7	10
Parliament Lights 100's	100FSP	12	1.0	13
Philip Morris	RNFSP	23	1.3	13
Philip Morris Commander	KNFSP	27	1.6	16
Philip Morris Blues	KFMSP	17	1.2	16
Philip Morris Blues	100FMSP	15	1.2	16
Philip Morris International	100FHP	18	1.2	17
Philip Morris International	100FMHP	17	1.1	15
Players	RNFHP	25	1.7	18
Players	KFHP	12	0.8	12
Players	KFMHP	12	0.8	12
Players 100's	100FHP	14	1.0	13
Players 100's	100FMHP	14	1.0	13
Players Lights 25's	KFSP	10	0.7	11
Players Lights 25's	KFMSP	10	0.7	11
Players 25's Lights 100's	100FSP	12	0.8	14
Players 25's Lights 100's	100FMSP	11	0.8	13
Raleigh	KNFSP	24	1.4	17
Raleigh	KFSP	15	1.0	15
Raleigh 100's	100FSP	15	1.0	16
Raleigh Lights	KFSP	12	0.9	13
Raleigh Lights 100's	100FSP	11	0.9	13
Richland (25)	KFSP	17	1.2	16
Richland (25)	KFMSP	16	1.1	16
Richland (25) 100's	100FSP	18	1.3	17
Richland (25) 100's	100FMSP	16	1.2	17

"TAR," NICOTINE, AND CARBON MONOXIDE OF THE SMOKE OF 272 VARIETIES OF DOMESTIC CIGARETTES—Continued

Brand		Tar [1] mg/cig	Nicotine [2] mg/cig	CO [3] mg/cig
Richland Lights (25)	KFSP	11	0.8	13
Richland Lights (25) 100's	100FSP	12	0.9	14
Ritz 100's	100FHP	12	0.8	13
Ritz 100's	100FMHP	11	0.8	12
Rothmans	KFHP	19	1.3	20
Rothmans Special Mild	KFHP	14	1.0	16
St. Moritz Filter 100's	100FSP	15	1.1	15
St. Moritz Menthol Filter	100MSP	15	1.0	15
Salem	KFMSP	18	1.0	18
Salem 100's	100FMSP	17	1.1	18
Salem Lights	KFMSP	10	0.7	12
Salem Lights 100's	100FMHP	11	0.8	12
Salem Lights 100's	100FMSP	9	0.7	11
Salem Slim Lights 100's	100FMHP	9	0.7	10
Salem Ultra Lights	KFMSP	5	0.4	8
Salem Ultra Lights 100's	100FMSP	5	0.4	7
Saratoga 120's	120FHP	14	1.0	15
Saratoga 120's	120FMHP	15	1.1	15
Satin	100FSP	11	1.0	13
Satin	100FMSP	11	1.0	13
Satin	100FMSP	11	1.0	13
Silva Thins Filters	100FHP	10	0.9	11
Silva Thins Menthol	100FMHP	11	1.0	11
Silva Thins	100FSP	12	0.9	10
Silva Thins Menthol	100FMSP	12	1.0	10
Spring 100's	100FMSP	19	1.8	18
Tall 120's	120FSP	20	1.8	21
Tall 120's	120FMSP	18	1.5	18
Tareyton	KFSP	14	1.0	15
Tareyton 100's	100FSP	14	1.0	16
Tareyton Lights	KFSP	5	0.4	6
Tareyton Long Lights	100FSP	9	0.7	9
Triumph	KFSP	4	0.4	4
Triumph	KFMSP	4	0.4	4
Triumph 100's	100FSP	5	0.5	7
Triumph 100's	100FMSP	6	0.6	8
True	KFSP	5	0.5	6
True	KFMSP	5	0.5	6
True 100's	100FSP	7	0.7	7
True 100's	100FMSP	7	0.7	8
Vantage	KFSP	11	0.7	14
Vantage	KFMSP	10	0.7	13
Vantage 100's	100FSP	9	0.6	12
Vantage Menthol 100's	100FMSP	8	0.6	13
Vantage Ultra Lights	KFSP	5	0.4	8
Vantage Ultra Lights 100's	100FSP	6	0.5	9
Viceroy	KFSP	15	1.0	15
Viceroy Super Long 100's	100FSP	16	1.1	15
Viceroy Lights	KFSP	11	0.9	13
Viceroy Lights 100's	100FSP	12	0.9	14
Virginia Slims	100FSP	15	1.1	14
Virginia Slims	100FMSP	15	1.1	13
Virginia Slims Lights	100FHP	9	0.7	10
Virginia Slims Lights	100FMHP	9	0.7	9
Virginia Slims Lights 120's	120FHP	14	1.0	15
Virginia Slims Lights 120's	120FMHP	14	1.0	15
Virginia Slims Ultra Lights	100FHP	6	0.5	7
Virginia Slims Ultra Lights	100FMHP	6	0.5	7
Winston	KFHP	16	1.0	16
Winston	KFSP	17	1.1	16
Winston 100's	100FSP	17	1.1	18
Winston Lights	KFHP	10	0.6	12
Winston Lights	KFSP	11	0.8	14
Winston Lights 100's	100FHP	10	0.7	11
Winston Lights 100's	100FSP	11	0.8	13
Winston Ultra Lights	KFSP	5	0.4	8
Winston Ultra Lights 100's	100FSP	5	0.4	9

[1] TPM dry (tar)—milligrams total particulate matter less nicotine and water per cigarette.
[2] Total alkaloids reported as nicotine milligrams per cigarette.
[3] Carbon monoxide reported as milligrams per cigarette.
[4] F-filter; NF-non-filter; M-menthol; R-regular; HP-hard pack; SP-soft pack.
* Below the sensitivity of the method.

[FR Doc. 89-944 Filed 1-13-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Notice of Meetings

SUMMARY: This notice sets forth the schedules and proposed agendas of the forthcoming meetings of the agency's initial review committees in the month of February 1989. These committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Dote and Time: February 2-3: 9:00 a.m.

Place: The Holiday Inn, Inner Harbor, 301 W. Lombard Street, Baltimore, MD 21201.

Status of Meeting: Open—February 2: 9:00-9:30 a.m. *Closed*—Otherwise.

Contact: Naomi Lichtenberg, Room 9C-18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA.

Date and Time: February 2-3: 10:30 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 1, 3rd Floor, Wilson Hall, Bethesda, MD 20892.

Status of Meeting: Open—February 2: 10:30 a.m.-5:00 p.m. *Closed*—Otherwise.

Contact: James Vaughan, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Committee Name: National Advisory Mental Health Council, NIMH.

Date and Time: February 6-7: 9:00 a.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—February 7: 9:00 a.m.-5:00 p.m. *Closed*—Otherwise.

Contact: Dee Herman, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health, and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: February 7-8: 9:00 a.m.

Ploce: Parklawn Building, Conference Room L, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—February 7: 9:00 a.m.-5:00 p.m. February 8: 2:00 p.m.-5:00 p.m. *Closed*—Otherwise.

Contact: Sheila Gardner, Room 8A-54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Dote and Time: February 9-10: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: Open—February 9: 9:00-10:00 a.m. *Closed*—Otherwise.

Contact: Frances Smith, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4868.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH.

Date and Time: February 9-11: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—February 9: 8:30-9:30 a.m. Closed—Otherwise.

Contact: Gerry Perlman, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936.

Purpose: The Committees is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral neurobiology with recommendations to the National Advisory Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neurosciences Research Review Committee, NIMH.

Date and Time: February 9-11: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—February 9: 8:30-9:30 a.m. Closed—Otherwise.

Contact: Barbara Campbell, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral neurobiology with

recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 9–11: 9:00 a.m.

Place: Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: OPen—February 9: 9:00–9:30 a.m. Closed—Otherwise.

Contact: Naomi Lichtenberg, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to understanding the impact of the social environment on the mental health of children and adults with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 13–15: 9:00 a.m.

Place: Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: Open—February 13: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Lenore Radloff, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3942.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: February 13–15: 8:00 a.m.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Status of Meeting: Open—February 13: 8:00–9:00 a.m. Closed—Otherwise.

Contact: Samir Zakhari, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3942.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.

Date and Time: February 13–16: 8:30 a.m.

Place: Rockville Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—February 13: 8:30–12:30 p.m. Closed—Otherwise.

Contact: Raquel Crider, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 14–15: 8:30 a.m.

Place: Montrose Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—February 14: 8:30–9:00 a.m. Closed—Otherwise.

Contact: Rita Liu, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 14–16: 8:30 a.m.

Place: Halpine Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: *Open*—February 14: 8:30–9:00 a.m. *Closed*—Otherwise.

Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: February 14–17: 9:00 a.m.

Place: Parklawn Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: *Open*—February 14: 9:00–9:30 a.m. *Closed*—Otherwise.

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 15–17: 8:30 a.m.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814

Status of Meeting: *Open*—February 15: 8:30–9:30 a.m. *Closed*—Otherwise.

Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: February 15–17: 9:15 a.m.

Place: Holiday Inn at Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Status of Meeting: *Open*—February 15: 9:15–10:00 a.m. *Closed*—Otherwise.

Contact: Peg Lyons, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: February 16–18: 9:00 a.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Status of Meeting: *Open*—February 16: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 16–17: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008.

Status of Meeting: *Open*—February 16: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Richard Marcus, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychobiology and Behavior Research Review Committee, NIMH.

Date and Time: February 16–18: 9:00 a.m.

Place: The Days Inn—Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Status of Meeting: *Open*—February 16: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: February 21–23: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Status of Meeting: *Open*—February 21: 9:00–9:30 a.m. *Closed*—Otherwise.

Contact: Ronald F. Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: February 22–24: 9:00 a.m.

Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: *Open*—February 22: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 23–24: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting: *Open*—February 23: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Richard Marcus, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and Time: February 23–25: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of Meeting: *Open*—February 23: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Cathy Oliver, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Small Business Research Review Committee, NIMH.

Date and Time: February 27–28: 9:00 a.m.

Place: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Status of Meetings: *Open*—February 27: 9:00–10:00 a.m. *Closed*—Otherwise.

Contact: Bonnie Dwyer, Room 9C–23, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the

National advisory Mental Health Council.

Substantive information, summaries of the meetings, and rosters of the committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4333.

Date: January 11, 1989.

Peggy W. Cockrill,

Committee Monogement Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–976 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Ipronidazole; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the approved new animal drug applications (NADA's) for ipronidazole. Hoffmann-La Roche, Inc., sponsor of the approved NADA's, requested the withdrawal of approval.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 43–477 for ipronidazole Type A medicated article, NADA 47–089 for ipronidazole Type A medicated article with sulfadimethoxine and ormetoprim Type A medicated article, and NADA 91–782 for ipronidazole hydrochloride soluble powder. Ipronidazole is labeled for use in turkeys as an aid in the prevention of blackhead, fowl cholera, and coccidiosis caused by *Eimeria* species, for the treatment of blackhead, increased rate of weight gain, and improved feed efficiency.

FDA's Center for Veterinary Medicine requested that Hoffmann-La Roche, Inc., submit additional data to support the safety of ipronidazole, based on the agency's concerns regarding the possible carcinogenicity of ipronidazole and its extra-label use in swine. The sponsor subsequently requested withdrawal of approval, stating that the manufacture of ipronidazole base material would cease on August 31, 1988, and that no products containing ipronidazole would be sold or distributed after January 1, 1989. The sponsor also stated that any inventory remaining at the distributor or user level after December 31, 1988, and brought to its attention will be retrieved by the sponsor and disposed of in accordance with all applicable Federal, State, and local laws and regulations.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 43–477, 47–089, and 91–782 and all supplements thereto is hereby withdrawn, effective January 27, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.1162, 556.340, and 558.305, and amending 21 CFR 558.4(d) and 558.575(c)(3).

Dated: January 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–978 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88P–0424]

Liquid Eggs Deviating From the Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Morning Glory Eggs, Inc., to market test experimental packs of liquid eggs, designated as "ultrapasteurized liquid whole eggs" and "ultrapasteurized liquid whole eggs with citric acid," products that are not provided for by the U.S. standard of identity for liquid eggs (21 CFR 160.115). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0112.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Morning Glory Eggs, Inc., Highway 49 South, P.O. Box 373, Richfield, NC 28137–0373.

The permit covers limited interstate marketing tests of liquid whole eggs and liquid whole eggs with citric acid. The test products deviate from the standard of identity in § 160.115 (21 CFR 160.115) because they are processed by a special procedure that involves increased heat treatment combined with aseptic processing and packaging. The purpose of the special process is to (1) render the egg products free of *Salmonella and Literia Monocytogenes*, (2) substantially reduce the number of spoilage bacteria in the liquid whole eggs and liquid whole eggs with citric acid, (3) prevent postprocess contamination of the products, and (4) obtain a shelf life greater than 4 weeks under refrigeration. Citric acid is added at a level of 0.15 percent to preserve color.

The products will be identified as "ultrapasteurized liquid whole eggs" or "ultrapasteurized liquid whole eggs with citric acid." The package labeling will declare the term "keep refrigerated" and will include a "use by date" statement to indicate extended shelf life under refrigeration.

The permit provides for the temporary marketing of a total of 25 million pounds of egg products to be packaged in approximately 11,400,000 1-liter (2.2-pound) packages. The test products will be produced and packaged at Morning Glory Eggs, Inc., Highway 49 South, Richfield, NC 28137–0373, and will be distributed throughout the continental United States. Each of the ingredients used in the food will be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but no later than April 17, 1989.

Dated: January 4, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–979 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees has been filed with the Library of Congress:

National Advisory Council on Nurse Training

National Advisory Council on Migrant Health

National Advisory Council on the National Health Service Corps

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from:

National Advisory Council on Nurse Training: Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

National Advisory Council on Migrant Health: Mrs. Sonia M. Leon Reig, Executive Secretary, National Advisory Council on Migrant Health, Room 7A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

National Advisory Council on the National Health Service Corps: Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4814.

Date: January 10, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–936 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–15–M

Health Resources and Services Administration; Public Health Service; National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HRSA, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4–101, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from December 8 through December 30, 1988. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions Received

1. James L. and Marjorie A. Grant on Behalf of Scott Grant, Beaver Dam, Wisconsin, Claims Court Docket Number 88–70 V.

2. Timothy B. and Karen L. Cline on Behalf of Sabra Lynn Cline, Haskell, Oklahoma, Claims Court Docket Number 88–71 V.

3. Richard and Vicki Nestor on Behalf of Jesse Nestor, Spokane, Washington, Claims Court Docket Number 88–72 V2.

4. George and Lois Johnson on Behalf of Jodi Lyn Johnson, Fargo, North Dakota, Claims Court Docket Number 88–73 V.

5. Colleen Nuzzo on Behalf of Andrew D. Nuzzo, Bradford, Pennsylvania, Claims Court Docket Number 88–74 V.

6. Mary Beth Carlson on Behalf of Michael Alphonse Caouette, Jamestown, New York, Claims Court Docket Number 88–75 V.

7. Michael Lindeman on Behalf of Michael Lindeman, Framingham, Massachusetts, Claims Court Docket Number 88–76 V.

8. Pamela J. Huston on Behalf of Daniel Scott Huston, Athens, Tennessee, Claims Court Docket Number 88–77 V.

9. Anthony Monteverdi on Behalf of Thomas A. Monteverdi, Portland, Oregon, Claims Court Docket Number 88–78 V.

10. Crist and Betty Polito on Behalf of Christina Marie Polito, Altoona, Pennsylvania, Claims Court Docket Number 88–79 V.

Dated: January 10, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–937 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Administration for Children, Youth and Families; Availability of FY 89 Funds and Request For Applications

[Program Announcement No. 13600–883]

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: *Correction:* Grantee share of the project as omitted from the announcement of the availability of financial assistance and request for applications for comprehensive child development programs, published on December 29, 1988.

SUMMARY: This notice corrects the announcement of the availability of financial assistance and request for applications for comprehensive child development programs, published in the **Federal Register** on December 29, 1988. In that announcement, a topical heading and an introductory phrase were inadvertently omitted from the sentence describing the grantee's share of the project.

DATES: The dates by which applications should be submitted remain the same. For planning grant applications it is February 15, 1989, and for operating grant applications it is July 14, 1989.

FOR FURTHER INFORMATION CONTACT: Allen N. Smith (202) 755–7782.

SUPPLEMENTARY INFORMATION: On December 29, 1988, the Office of Human Development Services published in the **Federal Register** a notice which announced the availability of funds for competing applications for a new Comprehensive Child Development Program (53 FR 52812). The purpose of this new program is to plan for and carry out projects for intensive, comprehensive, integrated and continuous supportive services for infants, toddlers and preschoolers from low-income families to enhance their intellectual, social, emotional, and physical development and provide support to their parents and other family members.

Under Part II of the announcement, page 52814 (middle column), the section heading "B. Grantee Share of the Project" and the introductory phrase to the sentence on the grantee share of the project costs were inadvertently omitted. Section B of Part II is reprinted in full and reads as follows:

B. Grantee Share of the Project

The non-Federal share of planning grant and operating grant costs shall be 20 percent of the total project costs for each grantee and may be provided in-cash or in-kind, fairly evaluated, including equipment and/or services.

Dated: January 10, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89–938 Filed 1–13–89; 8:45 am]

BILLING CODE 4130–01–M

NATIONAL INSTITUTES OF HEALTH

Meeting of the Ad Hoc Panel on Peer Review

Notice is hereby given of the meeting of the AD Hoc Panel on Peer Review on February 22–23, 1989 at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland. The meeting will take place from 8:30 a.m. to 5:30 p.m. on February 22 and from 8:30 a.m., to 1:00 p.m. on February 23. The meeting will be open to the public.

The purpose of the meeting is to discuss reviewer workload, length of service requirements, and review group membership as they relate to participation of consultants in the peer review process.

Dr. Norman S. Braveman, Chief, Planning and Policy Research Branch, DPE, OSPL, OD, National Institutes of Health, Suite 200, Control Data Corporation Building, 6003 Executive Boulevard, Bethesda, Maryland 20892, (301) 496–4418, will furnish the meeting agenda, rosters of the Panel members and consultants, and substantive program information upon request. Individuals planning to attend the meeting should inform Dr. Braveman by February 15, 1989.

Date: January 9, 1989.

James B. Wyngaarden,

Director, NIH.

[DR Doc 89–1018 Filed 1–13–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 53 FR 11348–49, April 6, 1988) is amended to reflect a realignment of several functions within the Administrative Services Center, Office of Management, Office of the Assistant Secretary for Health (ASC/OM/OASH). This realignment will more accurately describe the current functions within ASC.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management (HAU), Administrative Services Center (HAU1), delete the word, "claims" from the second sentence in the last paragraph of the statement.

Under the heading Administrative Services Center (HAU1), delete the title and statement in its entirety for the Division of Administrative Operations (HAU15).

Under the heading Division of Technical Support (HAU18), delete the statement in its entirety and substitute the following:

Division of Technical Support (HAU18)

The Division plans, coordinates, and provides a variety of support services for the Office of the Assistant Secretary for Health and the PHS agencies at headquarters. These services are:

printing and reproduction management, including operation of copy centers; telecommunications management; mail and messenger services; motor pool management; support services for conference room and training facilities; visual aids and graphic art services; photography services; internal data processing support; and provides mission-related library services to personnel of the Public Health Service and other agencies within the Department, appropriate libraries, educational institutions, research agencies, organizations, and individuals. Provides nationwide PHS Printing Management Policy and procedural guidance.

Date: January 6, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89–1008 Filed 1–13–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–1919]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Ececutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 4, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of HUD Policy on the Establishment of Ceiling Rents for Public Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The data collected will provide PHAs with a way to request a waiver of regulatory requirements to establish ceiling rents under the 1987 HCD Amendments until a final rule is issued. Ceiling rents may be based on local Section 8 Fair Market Rents or a lesser amount based on a demonstration of comparability. Rents cannot be less than the statutory minimum equal to operating expenses plus debt service.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Policies and Procedures for Tenant Selection and Continued Occupancy	775		1		2		1,550
Determining Ceiling Rent Amounts	775		1		5		3,875
Request for HUD Approval	775		1		12		9,300
Recordkeeping Burden	775		1		1		775

Total Estimated Burden Hours: 15,500.

Status: New.

Contact: Edward C. Whipple, HUD (202) 426–0744; John Allison, OMB, (202) 395–6880.

Date: January 4, 1989.

[FR Doc. 89–982 Filed 1–13–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1920]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the

proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice Lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 4, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of HUD Policy on Establishment of Ceiling Rents for Indian Housing.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The data collected will provide a way for IHAs to request a waiver of the current regulatory requirements for establishing rents pursuant to the 1987 HCD Amendments until a final rule is issued. Ceiling rents will be based on a demonstration of comparability and in no event may be less than the statutory minimum equal to operating expenses plus debt services.

Form Number: None.

Respondents: Individuals of Households and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	No. of respond-ents	×	Frequency of response	×	Hours per response	=	Burden hours
Policies and Procedures for Tenant Selection and Continued Occupancy	100		1		2		200
Determining Ceiling Rent Amounts	100		1		4		400
Request for HUD Approval	100		1		13		1,300
Recordkeeping Burden	100		1		1		100

Total estimated burden hours: 2.000

Status: New.

Contact: Dom Nessi or Pat Arnaudo, HUD (202) 755–1015; John Allison, OMB, (202) 395–6880.

Date: January 4, 1989.

[FR Doc. 89–983 Filed 1–13–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1918]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Christy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: January 4, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Program Existing Housing.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will assure HUD and the PHAs that subsidized projects are located in acceptable neighborhoods, that money committed for projects is not in excess of funds available, and that applicants' and participants' rights are protected through a fair hearing.

Form Number: None.

Respondents: State or Local Government.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	No. of respond-ents	x	Frequency of response	x	Hours per response	=	Burden hours
Section 882.109—HQS and Neighborhood Standards	280		1		2		560
Section 882.216—Information Review or Hearing	2,000		20		1		40,000
Handbook 7420.3 REV., Section 6–3 (a) and (b), PHA Request to Change Bedroom Distribution	150		1		2		210

Total Estimated Burden Hours: 40,770.

Status: New.

Contact: Louise Hunt, HUD, (202) 755–6887; John Allison, OMB, (202) 395–6880.

Date: January 4, 1989.

[FR Doc. 89–1066 Filed 1–13–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–19M; FR–2606]

Excess and Surplus Federal Buildings and Real Property Determined by HUD to Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies excess and surplus Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: January 17, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88–2503–OG, HUD is publishing this notice identifying Federal buildings and real property in the current excess and surplus inventory of the General Services Administration (GSA) that HUD has determined to be suitable for use for facilities to assist the homeless. HUD published the first notice on January 9, 1989 (54 FR 667).

Suitability determinations are based on information provided by GSA. The determinations are classified as: (1) Suitable buildings for occupancy; (2) suitable buildings for non-occupancy; (3) suitable vacant land. Each determination is subject to the property's being used in compliance with applicable Federal, state, and local requirements. Buildings and land found suitable are identified even though they may be currently occupied or in use. The issue of availability will be addressed by GSA or the Department of Health and Human Services (HHS). Detailed information about the property may be obtained from James Folliard ((202) 535–7052) or Richard Stinson ((202) 535–7067), Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405. (These are not toll-free numbers). (Please refer to the GSA identification number given with each identified property.)

Public bodies and private nonprofit organizations wishing to apply for use of a property published with this notice should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to Judy Breitman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A–10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2265. (This is not a toll-free telephone number.)

Dated: January 9, 1989.

James E. Schoenberger,

Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Land

Gallup Indian Center, Gallup, NM, 7–F–NM–548
Cherry Creek Lake, Denver, CO, 7–D–CO–420 D
GSA Baton Rouge Depot, Baton Rouge, LA, 7–G–LA–523 G
GSA Baton Rouge Depot, Baton Rouge, LA, 7–G–LA–523 F
Amarillo National Guard, Amarillo, TX, 7–D–TX–527 J
Parcels, W.C. Austin Project, Jackson County, OK, 7–I–OK–544
Portion, Andrews AFB, Prince Georges County, MD, 4–D–MD–450 D
Portion, Jefferson County Receiver Site, Bandane, WV, 4–GR–WV–486
Portion, Camp Butner, Butner, NC, 4–GR–NC–418
Portion, Lake Sidney Lanier, Gainesville, GA, 4–D–GA–609 A
Andrews Lock and Dam, Henry County, AL, 4–D–AL–566
Portion, VA Hospital, Lebanon, PA, 4–GR–PA–637
Andrews Lock and Dam, Early County, GA, 4–D–GA–639
Portion, Naval Submarine Base, Kings Bay, GA, 4–N–GA–606 A
Portion, Fort Hamilton, Brooklyn, NY, I–D–NY–764
U.S. Army Reserve Center, Homewood, IL, I–D–IL–651 A
Portion, Plum Brook Station, Sandusky, OH, Z–OH–738 B
San Gabriel River Channel, Azusa, CA, 9–D–CA–780 C
Ft. Wainwright Annex, Fairbank, AK, 9–D–AK–0537 R

Suitable Buildings

FAA Housing, Tonopah, NV, 9–U–NV–461 A
FAA Housing Lot 2, Tonopah, NV, 9–U–NV–461 B
FAA Housing Lot 7, Tonopah, NV, 9–U–NV–461 C
Portion, Bishop Henry Whipple Federal Bldg., Minneapolis, MN, 1–G–MN–0550.

[FR Doc. 89–984 Filed 1–13–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a Departmentwide system of records concerning safety and accident information. Except as noted below, all changes being published are editorial in nature, clarify and update

existing statements, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register** on May 3, 1983 (48 FR 19949). The notice being revised, which is published in its entirety below, is titled: "Safety Management Information System—Interior, Office of the Secretary—60."

The notice is revised to reflect that the Bureau of Reclamation is operating the system for the Department. Two existing routine use disclosure statements are revised as follows: (1) The disclosure statement for litigation purposes is revised to incorporate the clarifications on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act; and (2) the routine disclosure to congressional offices to respond to inquiries made at the request of individuals is clarified. Also the retention and disposal statement is amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on or before January 17, 1989. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Date: January 9, 1989.

INTERIOR/OS–60.

SYSTEM NAME:

Safety Management Information System—Interior, Office of the Secretary—60.

SYSTEM LOCATION:

(1) Safety Office, Bureau of Reclamation, U.S. Department of the Interior, P.O. Box 25007, Code D–7600, Denver, CO 80225.

(2) All field offices and bureau headquarters retain copies of source document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, concessioners and public visitors to Interior facilities who have been involved in an accident resulting in personal injury, and/or property damage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, social security number (employees only), occupation, date and location of accident; data elements about the accident for analytical purposes; and descriptive narrative concerning the reason for the loss producing event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 7901, (2) 28 U.S.C. 2671–2680, (3) 31 U.S.C. 240–243, (4) Executive Order 12196 (1980), (5) 29 CFR Part 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) provide summary data of injury, illness and property loss information to bureaus in a number of formats for analytical purposes in establishing program to reduce or eliminate loss producing problem areas, (b) provide listings of individual cases to bureaus to insure that accidents occurring are reported through the Safety Management Information System, and (c) adjudicating tort and employee claims. Disclosures outside the Department of the Interior may be made. (1) to a Federal, State or local government agency that has partial or complete jurisdiction over the claim or related claims; (2) provide to the Department of Labor quarterly summary listings of fatalities and disabling injuries and illnesses in compliance with 29 CFR 1960.6; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, with copies of source document maintained at bureau safety management headquarters, regional, and field offices where accident is reported.

RETRIEVABILITY:

System is indexed by bureau assigned document control number.

SAFEGUARDS:

Maintained with safeguards meeting the 'Computer Security Guidelines for Implementing the Privacy Act of 1974.'

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule (GRS) 10, item 5; GRS–18, item 11; and GRS–20.

SYSTEM MANAGER(S) AND ADDRESS:

Department Safety and Health Program Manager, Safety Office, Bureau of Reclamation, U.S. Department of the Interior, P.O. Box 25007, Code D–7600, Denver, CO 80225.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager or the field office in which the source document pertaining to the individual would be filed. A written and signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager or the field safety office in which the source document for the individual would be filed. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Supervisor of employee involved in accident. Investigation conducted by supervisor of employee and may include safety professionals and other management officials of the involved bureau of office.

[FR Doc. 89–1045 Filed 1–13–89; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Land Management

[AA–620–09–4111–12–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Managment and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Geothermal Leasing Reports, 43 CFR 3203.

Abstract: Respondents supply information on diligent efforts toward utilization of geothermal resources; bona fide efforts made to produce geothermal resources; and significant expenditure of funds made on the geothermal lease. This information allows the Bureau to determine if the lessee qualifies for a lease extension.

Bureau Form Numbers: N/A.

Frequency: Diligent Efforts Report—Yearly; Bona Fide Effort Report—Every Five Years; Significant Expenditures Report—Yearly.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: 2 hours each report.

Annual Responses: 75.

Annual Burden Hours: 150.

Bureau Clearance Officer: Rose Marie Berezowsky, 202–653–8853.

Date: November 14, 1988.

Roland Robison,

Deputy Director.

[FR Doc. 89–952 Filed 1–13–89; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Receipt of Additional Information on Request To Amend San Bruno Mountain Incidental Take Permit

On September 9, 1988, a notice was published in the **Federal Register** that the County of San Mateo, California, had applied for an amendment to the San Bruno Mountain incidental take permit (PRT–2 9818). This permit authorizes the incidental take of mission blue butterflies (Icaricia icarioides missionensis), San Bruno elfin butterflies (Callophyrs mossii bayensis), and San Francisco garter snakes (Thamnophis sirtalis tetrataenia) on San Bruno Mountain pursuant to a multi-party agreement which implements the San Bruno Mountain Area Habitat Conservation Plan (Plan).

The amendment, initially applied for by the County of San Mateo, as Plan Operator, and requested by Pacific Gas and Electric Company (PG&E), is called the "Transmission Lines Amendment" and proposes replacement and relocation of PG&E's natural gas pipeline (Main 101) across San Bruno Mountain. The amendment was requested pursuant to the provision of Section IX.B of the agreement, the 3-year window amendment. In accordance with this section, the Service is required to make a determination on the proposed amendment by December 31 of the year in which the amendment request is submitted.

Under the provisions of Section IX.B of the Agreement, San Mateo County must approve the proposed amendment. On December 6, 1988, the County Board of Supervisors turned down the amendment request, and on the same day, the County informed the Service of such by letter. The County's letter was received by the Service on December 13. This additional information from the applicant is significant to the Service's consideration of the proposed amendment and warrants an opportunity for public review and comment.

The documents submitted with the County's letter include (1) Resolution No. 52044 of the Board of Supervisors which rejected the proposed amendment, and (2) the County's Final Supplemental Environmental Impact Report and Environmental Assessment on PG&E's Main 101 Gas Line Replacement and Reroute Project Over San Bruno Mountain.

Copies of the amendment request and additional information are on file at the following locations and are available for inspection by the public during normal business hours: U.S. Fish and Wildlife Service, Office of Management Authority, mailing address P.O. Box 27329, Washington, DC 20038–7329, street address Room 400 Hamilton Building, 1375 K Street, NW., Washington, DC 20005 (202/343–4955); U.S. Fish and Wildlife Service, Division of Fish and Wildlife Enhancement, Lloyd 500 Building, Suite 1692, Portland, Oregon 97232 (503/231–6150); U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866); and, the County of San Mateo, County Government Center, Redwood City, California 94063 (415/363–4666).

Interested persons may comment on this application by submitting written data, views or arguments to the Chief, Office of Management authority, mailing address P.O. Box 27329, Washington, DC 20038–7329; street address 400 Hamilton Building, 1375 K Street, NW., Washington, DC 20005 within 15 days of the date of this publication. Please refer to the San Bruno Incidental Take Permit PRT 2–9818 when submitting comments.

Dated: January 10, 1989.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–1065 Filed 1–13–89; 8:45 am]

BILLING CODE 4310–AN–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 284X)]

CSX Transportation, Inc.; Abandonment Exemption in Fayette and Nicholas Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.57-mile line of railroad between milepost 1.43 at Gauley Bridge in Fayette County, WV, to milepost 8.00 at Open Fork Junction, in Nicholas County, WV. Imperial Colliery Company filed a motion to reject this notice of exemption on December 30, 1988. By separate decision, that motion has been denied.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial

revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 16, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1989.[3]

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 6, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 19, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1010 Filed 1–13–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the FEDERAL REGISTER on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–290 (Sub-No. 29X)]

Southern Railway Co.; Abandonment Exemption—Gurnee Junction and Boothton, AL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 3.02-mile line of railroad between milepost 16.40–S at Gurnee Junction, AL, and milepost 19.42–S at Boothton, AL. The exemption is scheduled to become effective on February 16, 1989.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 16, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 6, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 19, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1011 Filed 1–13–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the FEDERAL REGISTER on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Conveyor Belt Flammability Program; Public Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public meeting to discuss the future direction of MSHA's conveyor belt flammability program.

DATE: The public meeting will be held on Thursday, January 19, 1989 in Triadelphia, West Virginia at 10:00 a.m.

ADDRESS: The public meeting will be held at the Mine Safety and Health Administration's Approval and Cerification Center, Building #2, Room 113, Triadelphia, West Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Chief, Approval and Certification Center, MSHA, phone (304) 547–0400.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for MSHA to share information with the mining public and explore options for addressing the Agency's conveyor belt flammability program. Under existing 30 CFR 75.1108, conveyor belts for underground coal mines are required to be approved by MSHA. Primarily, this approval consists of a test for flame resistance specified in 30 CFR 18.65. During recent months, the Agency has been evaluating new tests that provide better assurance against flame propagation. MSHA will share this information and will solicit comment on these tests from the mining public.

Date: January 12, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89–1170 Filed 1–13–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–228–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Ireland Mine (I.D. No. 46–01438) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The underground installations at the mine including rectifiers, pumps, and transformers are not able to be ventilated effectively to the returns, due to deteriorating roof conditions. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Supporting the areas where ventilation tubing would be installed would pose unnecessary risks to the miners.

3. As an alternative method, petitioner proposes that—

(a) The affected rectifier, pump, and transformer installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165° Fahrenheit. The structure would be designed to provide a reasonably airtight enclosure around all associated electric components;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) The electric equipment would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system, and the automatic fire suppression system; and

(e) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (February 6, 1989). Copies of the petition are available for inspection at that address.

Date: January 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–1040 Filed 1–13–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–244–C]

L & W Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

L & W Coal Company, Inc., R.D. 2, Box 201, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 2 Slope (I.D. No. 36–07171) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable dam and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet a minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (February 6, 1989). Copies of the petition are available for inspection at that address.

Date: January 11, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1041 Filed 1-13-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-233-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The underground installations at the mine including rectifiers, pumps, and transformers are not able to be ventilated effectively to the returns, due to deteriorating roof conditions. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Supporting the areas where ventilation tubing would be installed would pose unnecessary risks to miners.

3. As an alternate method, petitioner proposes that—

(a) The affected rectifier, pump, and transformer installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165° Fahrenheit. The structure would be designed to provide a reasonably airtight enclosure around all associated electric components;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) The electric equipment would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system, and the automatic fire suppression system; and

(e) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 6, 1989. Copies of the petition are available for inspection at that address.

Date: January 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-1042 Filed 1-13-89; 8:45 am]

BILLING CODE 4510-43-M

LEGAL SERVICES CORPORATION

Grant Award; American Corporal Counsel Institute

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $40,000 in 1989 to the American Corporate Counsel Institute to expand efforts to motivate corporate law department attorneys to provide *pro bono* legal representation.

DATE: All comments and recommendations must be received by the Office of Field Services within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Charles T. Moses, III, Associate Director, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION:

The American Corporate Counsel Institute (ACCI) will use the grant of $40,000 to expand efforts begun in 1983 to motivate corporate law departments to provide *pro bono* legal representation. Among other things, such efforts will include developing models and distributing educational and resource materials to aid companies in initiating and operating *pro bono* programs, conducting seminars to activate corporate *pro bono* involvement, and continuing to compile statistical information on corporate *pro bono* activities. Additionally, ACCI intends to make LSC-funded legal services programs aware of the resources of its nationwide *pro bono* program and to assist programs in the recruitment of corporate personnel. LSC is providing its support to this effort as a model project.

Interested persons are invited to submit written comments and/or recommendations concerning this grant action to Charles T. Moses, III, Associate Director, Office of Field Services.

Dated: January 11, 1989.

Mary C. Higgins,

Director, Office of Field Services.

[FR Doc. 89-1014 Filed 1-13-89; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-412]

Duquesne Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-73 to Duquesne Light Company (DLC or the licensee), for the Beaver Valley Power Station, Unit 2 located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's application dated August 30, 1988.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, and provide the flexibility of extending the fuel irradiation and permitting operation of longer fuel cycles.

Environmental Impacts of the Proposed Action

The staff has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revision would permit use of fuel enriched with Uranium 235 up to 4.85 weight percent. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite during normal operation. There is also no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation have been discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988 (53 FR 30355). As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.42(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the staff concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Beaver Valley Power Station, Unit 2," dated September 1985.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the staff concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 30, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 9th day of January, 1989.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Acting Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-969 Filed 1-13-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will a meeting on January 26, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 26, 1989—8:30 a.m. until the conclusion of business

The Subcommittee will review the Human Factors Research Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 9, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-986 Filed 1-13-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on January 27, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, January 27, 1989—2:00 p.m. until the conclusion of business

The Subcommittee will review the proposed resolution of Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over-Pressure Protection," and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 9, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89–987 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on January 27, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Friday, January 27, 1989—8:30 a.m. until 1:00 p.m.

The Subcommittee will review the adequacy of the proposed Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 301/492–9522) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 9, 1989.

Morton W. Libarkin,

Executive Director for Project Review.

[FR Doc. 89–988 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–315]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–58 issued to the Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit No. 1 (the facility), located in Berrien County, Michigan.

In accordance with the licensee's application for amendment dated August 9, 1988, the amendment would allow a one-time extension of the surveillance intervals for certain surveillances normally performed with the unit shutdown. The extensions involve:

1. Ice basket weighing;
2. Ice condenser flow passage inspections;
3. Ice condenser inlet door testing; and
4. Resistance temperature detector calibrations.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commision has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission's evaluation of the proposed amendment with respect to the above criteria is as follows:

Criterion 1

The period of time the surveillance intervals will be exended is very brief. The surveillances for which extensions are requested fall due from February 26, 1989, through March 26, 1989. Extensions are necessary only until the Cycle 10–11 refueling outage, which is scheduled to begin in March 1989. The licensee has reviewed previous surveillance test results for the affected equipment and has found nothing that would indicate

the equipment may become inoperable as a result of the extensions. Therefore, the extensions are not expected to significantly increase the probability or consequences of a previously analyzed accident.

Criteron 2

The requested extensions will not result in a change in plant configuration or operation and therefore would not be expected to create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

As discussed under Criterion 1, the requested extension period is very brief. The licensee has reviewed previous surveillance test results and found nothing which would indicate that the affected equipment would become inoperable as a result of the proposed surveillance interval extensions. Therefore, the proposed amendment is not expected to involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding and how that interest may be affected by the resultsof the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervne must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresed to Theodore R. Quay: (petitioner's name and telephone number); (date petition was mailed); (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General

BEST COPY AVAILABLE

Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licnesee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 9, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555 and at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 10th day of January, 1989.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 89–970 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power & Light Co. et al.; Issuance of Amendment to Facility Operating Licenses; Correction

The **Federal Register** published on December 15, 1988, contained a "Notice of Issuance of Amendment to Facility Operating Licenses" (53 FR 50479). Following the word "Association" in paragraph 1 through the end of paragraph 2 should be deleted and the following words inserted "amending the Operating License to change the schedule for implementing the recommendations of Regulatory Guide 1.97 for monitoring neutron flux in the reactor following an accident for the operation of Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance."

Also, the **Federal Register** cite in paragraph 4 should be changed to read "on August 2, 1988 (53 FR 29094)."

For the Nuclear Regulatory Commission.

Edward A. Reeves, Jr.,

Senior Project Manager, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–971 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated November 11, 1988.

The proposed amendment would revise Technical Specifications 3.5.1 and Table 2.1 to incorporate revised steam/feedwater flow mismatch reactor trip setpoints and revised limiting conditions for operation. The reactor trip on steam/feedwater flow mismatch would occur on either high or low mismatch of 25 percent when the reactor is above 50 percent power. Below 50 percent, the trip would not activate, but reactor protection would be provided by a 50-percent setting on pressurizer level which would be active at all power levels. The proposed changes are designed to correct a single failure deficiency in the steam/feedwater flow reactor trip circuit identified in an earlier report dated November 20, 1987.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 16, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties in the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel–White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–972 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated November 11, 1988.

The proposed amendment would revise Technical Specification 4.2, "Safety Injection and Containment Spray System Periodic Testing", to add a new surveillance requirement for the proposed trip of the safety injection and main feedwater pumps on low-low refueling water storage tank (RWST) level. The proposed change would also revise the diesel generator load rejection surveillance test from 3220 Kw to 4000 Kw since the safety injection and feedwater pumps would be tripped simultaneously with the new trip circuit on low-low RWST level.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 16, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fuiiy in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 3rd day of January, 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Project Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–973 Filed 1–13–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Articles Which May Be considered for Duty Modification in International Trade Negotiations

AGENCY: Office of the United States Trade Representative.

SUMMARY: This notice identifies articles which may be considered for modification or removal of U.S. import duties in the Uruguay Round of international trade negotiations under the General Agreement on Tariffs and Trade (GATT) or in other trade negotiations. This notification by no means indicates that we intend to reduce or eliminate these tariff measures. It merely indicates our interest in obtaining factual advice from the U.S. International Trade Commission and the public on the probable economic effect of their reduction or elimination..

FOR FURTHER INFORMATION CONTACT: Nancy Adams (202–395–5097), Office of GATT Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20506.

SUPPLEMENTARY INFORMATION: In conformity with section 131(a) of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2151(a)), notice is hereby given of the articles which may be considered in international trade negotiations for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties, under the authority contained in section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 2902, 102 Stat. 1126). This notification by no means indicates that we intend to reduce or eliminate these tariff measures. It merely indicates our interest in obtaining factual advice from the U.S. International Trade Commission and the public on the probable economic effect of their reduction or elimination.

I. Trade Negotiations

It is intended that the authority conferred by section 1102 of the 1988 Act will be employed in the Uruguay Round of multilateral trade negotiations held under the auspices of the GATT. That authority also may be employed to conclude other trade agreements, such as bilateral trade agreements.

II. List of Articles Which May Be Considered in Trade Negotiations

A. Every article provided for in the Harmonized Tariff Schedule of the United States (HTS) may be considered for modification or continuance of the existing United States duties, continuance of existing United States duty-free or excise treatment, or additional duties, as appropriate, *to the extent permitted by section 1102 of the 1988 Act and section 127 of the 1974 Act.*

B(1) The dutiable articles listed in annex A, for which the existing rate of duty is not more than 5 percent ad valorem (or ad valorem equivalent), may be considered for continuance, elimination, or reduction of existing United States duties, pursuant to the authority contained in section 1102 of the 1988 Act.

(2) All other dutiable articles may be considered for continuance or reduction of existing duties, pursuant to the authority contained in section 1102 of the 1988 Act.

(3) All articles for which the existing duty is free may be considered for continuance of United States duty-free or excise treatment, pursuant to the authority contained in section 1102 of the 1988 Act.

(4) All dutiable products of the least-developed developing countries listed in annex B and of beneficiary countries under the Caribbean Basin Economic Recovery Act may be considered for immediate duty-free treatment without staging at the conclusion of the Uruguay Round.

III. Public Hearings

Section 133 of the 1974 Act requires that the President afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to proposed trade agreements. The time and place of such hearings, to be held by the Trade Policy Staff Committee, will be announced.

IV. Advice of the International Trade Commission

In accordance with section 131 of the 1974 Act, the International Trade Commission is being furnished with the list of articles published in paragraph II B of this notice for the purpose of securing from the Commission within six months its judgment as to the probable economic effect of continuance, reductions, or eliminations of United States duties, or continuance of United States duty-free or excise treatment, on United States industries producing like or directly competitive articles and on consumers.

Alan F. Holmer,

Deputy United States Trade Representative.

BILLING CODE 3190–01–M

Annex A

Dutiable Articles for Which the Rate of Duty Does Not Exceed 5 Percent Ad Valorem

HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
0102.90.40	0303.39.00	0601.10.30	0713.39.10
0104.20.00	0303.71.00	0601.10.45	0713.39.20
0105.11.00	0303.75.00	0601.10.60	0713.39.40
0105.19.00	0303.77.00	0601.10.75	0713.40.10
0105.91.00	0303.79.40	0601.10.85	0713.40.20
0105.99.00	0304.10.20	0601.20.10	0713.50.10
0106.00.10	0304.20.40	0601.20.90	0713.50.20
0201.10.00	0305.30.20	0602.30.00	0713.90.10
0201.20.20	0305.30.40	0602.91.00	0713.90.60
0201.20.60	0305.41.00	0602.99.30	0713.90.80
0201.30.20	0305.49.20	0602.99.60	0714.90.10
0201.30.60	0305.51.00	0603.10.30	0802.21.00
0202.10.00	0305.59.20	0603.90.00	0802.22.00
0202.20.20	0305.59.40	0701.90.00	0802.31.00
0202.20.60	0305.61.20	0703.10.20	0802.50.20
0202.30.20	0305.63.20	0703.10.30	0802.50.40
0202.30.60	0305.63.40	0703.20.00	0802.90.20
0203.12.10	0305.69.20	0705.11.20	0802.90.25
0203.19.20	0305.69.40	0705.19.20	0802.90.80
0203.22.10	0305.69.60	0705.21.00	0802.90.90
0203.29.20	0307.60.00	0705.29.00	0803.00.40
0204.10.00	0401.10.00	0706.10.10	0804.10.40
0204.21.00	0401.20.20	0706.90.30	0804.10.60
0204.22.20	0401.20.40	0708.10.20	0804.30.60
0204.22.40	0401.30.30	0708.10.40	0804.50.80
0204.23.20	0401.30.40	0708.20.10	0805.10.00
0204.23.40	0402.10.00	0708.90.15	0805.20.00
0204.30.00	0402.21.20	0708.90.30	0805.40.80
0204.41.00	0402.21.40	0709.20.10	0805.90.00
0204.42.20	0402.21.60	0709.40.40	0806.10.20
0204.42.40	0402.91.20	0709.90.20	0806.10.60
0204.43.20	0402.99.20	0710.21.20	0806.20.10
0204.43.40	0403.90.10	0710.22.10	0806.20.20
0207.10.20	0403.90.15	0710.29.15	0807.10.50
0207.23.00	0403.90.20	0710.29.30	0808.20.40
0208.90.30	0403.90.40	0711.20.15	0809.10.00
0209.00.00	0403.90.60	0712.10.00	0809.30.20
0210.11.00	0403.90.70	0712.30.10	0809.40.40
0210.12.00	0404.10.20	0712.30.20	0810.10.20
0210.19.00	0404.90.10	0712.90.15	0810.10.40
0210.90.20	0405.00.70	0712.90.20	0810.20.10
0210.90.40	0407.00.00	0713.10.10	0810.90.40
0302.22.00	0409.00.00	0713.10.40	0811.90.50
0302.23.00	0410.00.00	0713.20.10	0812.20.00
0302.29.00	0501.00.00	0713.31.10	0812.90.30
0302.61.00	0502.10.00	0713.31.40	0812.90.40
0302.65.00	0505.90.00	0713.32.10	0813.10.00
0302.69.40	0509.00.00	0713.32.20	0813.20.10
0303.32.00	0511.99.40	0713.33.10	0813.30.00
0303.33.00	0601.10.15	0713.33.20	0813.40.10

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
0813.40.20	1209.30.00	1601.00.60	2005.51.40
0813.40.40	1209.91.10	1602.10.00	2005.59.00
0813.40.90	1209.91.50	1602.20.20	2005.70.11
0814.00.90	1209.91.80	1602.20.40	2005.70.13
0901.40.00	1209.99.40	1602.41.20	2005.70.21
0904.20.20	1210.10.00	1602.41.90	2005.70.22
0904.20.60	1210.20.00	1602.42.20	2005.70.81
0908.20.20	1211.90.60	1602.42.40	2005.90.85
0910.10.40	1212.30.00	1602.49.10	2006.00.40
0910.40.40	1212.91.00	1602.49.20	2007.99.10
0910.91.00	1214.10.00	1602.49.40	2007.99.15
0910.99.60	1301.90.40	1602.49.60	2007.99.40
1003.00.20	1302.19.40	1602.50.05	2007.99.50
1005.90.20	1302.20.00	1602.50.20	2007.99.70
1006.20.20	1302.31.00	1602.50.60	2008.19.15
1006.40.00	1302.39.00	1604.11.40	2008.19.20
1007.00.00	1401.20.40	1604.12.40	2008.19.30
1008.20.00	1401.90.40	1604.13.10	2008.20.00
1008.30.00	1403.10.00	1604.13.40	2008.30.10
1008.90.00	1403.90.40	1604.14.40	2008.30.20
1101.00.00	1502.00.00	1604.14.70	2008.30.40
1102.10.00	1503.00.00	1604.16.10	2008.30.54
1102.20.00	1504.10.40	1604.16.40	2008.30.55
1102.30.00	1504.20.40	1604.20.30	2008.30.60
1103.11.00	1505.10.00	1604.30.30	2008.30.70
1103.12.00	1505.90.00	1605.10.40	2008.30.80
1103.13.00	1506.00.00	1605.90.06	2008.91.00
1103.14.00	1507.90.20	1605.90.50	2008.99.05
1104.11.00	1509.10.20	1605.90.55	2008.99.15
1104.12.00	1509.10.40	1702.90.30	2008.99.18
1104.21.00	1509.90.20	1702.90.35	2008.99.23
1104.22.00	1509.90.40	1702.90.40	2008.99.40
1105.10.00	1510.00.40	1703.10.30	2008.99.50
1105.20.00	1510.00.60	1703.10.50	2009.30.10
1106.30.20	1512.19.00	1703.90.30	2009.50.00
1107.10.00	1515.21.00	1703.90.50	2009.80.40
1107.20.00	1515.29.00	1704.10.00	2009.80.60
1108.11.00	1515.30.00	1803.20.00	2009.80.80
1108.12.00	1515.50.00	1805.00.00	2009.90.20
1108.13.00	1515.60.00	1806.20.40	2101.30.00
1109.00.10	1515.90.40	1806.20.60	2102.20.60
1202.20.00	1519.13.00	1806.32.20	2103.10.00
1205.00.00	1519.19.20	1901.90.10	2103.30.40
1207.91.00	1519.19.40	1903.00.40	2103.90.40
1208.10.00	1519.20.00	1904.10.00	2106.90.05
1208.90.00	1519.30.40	2001.90.42	2106.90.10
1209.21.00	1519.30.60	2001.90.45	2201.10.00
1209.22.20	1520.10.00	2004.90.10	2202.10.00
1209.24.00	1520.90.00	2004.90.80	2202.90.90
1209.25.00	1601.00.20	2005.51.20	2203.00.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
2204.21.40	2511.20.00	2805.21.00	2827.36.00
2204.21.60	2513.19.00	2805.22.10	2827.37.00
2204.29.20	2513.29.00	2805.40.00	2827.38.00
2204.29.80	2514.00.00	2806.20.00	2827.39.30
2205.10.30	2515.11.00	2810.00.00	2827.39.50
2205.10.60	2515.12.10	2811.19.10	2827.41.00
2205.90.20	2516.12.00	2811.19.50	2827.51.20
2205.90.60	2517.20.00	2811.21.00	2827.59.05
2206.00.15	2517.30.00	2811.22.10	2827.59.30
2206.00.45	2518.30.00	2811.23.00	2827.59.50
2207.10.60	2519.90.10	2811.29.50	2827.60.20
2207.20.00	2519.90.20	2812.10.50	2827.60.50
2208.10.60	2520.20.00	2812.90.00	2828.10.00
2208.20.10	2523.21.00	2813.10.00	2828.90.00
2208.20.40	2525.20.00	2813.90.50	2829.19.00
2208.20.60	2526.10.00	2815.30.00	2829.90.10
2208.30.30	2526.20.00	2816.10.00	2829.90.50
2208.50.00	2529.22.00	2816.20.00	2830.10.00
2208.90.05	2530.20.20	2816.30.00	2830.20.00
2208.90.10	2607.00.00	2818.10.20	2830.30.00
2208.90.15	2608.00.00	2819.10.00	2830.90.00
2208.90.30	2613.10.00	2819.90.00	2832.10.00
2208.90.40	2613.90.00	2820.10.00	2832.20.00
2208.90.45	2614.00.30	2820.90.00	2832.30.10
2208.90.65	2619.00.30	2821.10.00	2832.30.50
2209.00.00	2620.11.00	2822.00.00	2833.11.50
2302.50.00	2620.19.30	2824.10.00	2833.21.00
2303.10.00	2620.19.60	2824.20.00	2833.23.00
2304.00.00	2620.20.00	2824.90.50	2833.24.00
2305.00.00	2620.30.00	2825.10.00	2833.25.00
2306.10.00	2620.90.90	2825.20.00	2833.26.00
2306.20.00	2707.99.30	2825.50.10	2833.27.00
2306.30.00	2709.00.10	2825.50.20	2833.29.10
2306.40.00	2709.00.20	2825.50.30	2833.29.50
2306.50.00	2710.00.05	2825.60.00	2833.30.00
2306.60.00	2710.00.10	2825.70.00	2833.40.10
2306.90.00	2710.00.15	2825.90.10	2833.40.20
2308.10.00	2710.00.18	2825.90.15	2833.40.50
2308.90.60	2710.00.20	2825.90.20	2834.10.50
2309.90.60	2710.00.25	2825.90.60	2834.29.20
2309.90.90	2710.00.30	2826.11.10	2834.29.50
2504.10.10	2710.00.45	2826.11.50	2835.10.00
2507.00.00	2713.12.00	2826.19.00	2835.21.00
2508.10.00	2801.30.10	2826.20.00	2835.22.00
2508.20.00	2804.10.00	2826.90.00	2835.23.00
2508.30.00	2804.21.00	2827.10.00	2835.24.00
2508.40.00	2804.29.00	2827.31.00	2835.29.50
2508.60.00	2804.30.00	2827.33.00	2835.31.00
2509.00.20	2804.40.00	2827.34.00	2835.39.10
2511.10.10	2804.61.00	2827.35.00	2835.39.50

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
2836.10.00	2850.00.50	2914.13.00	2918.15.50
2836.20.00	2851.00.00	2914.19.00	2918.16.50
2836.40.10	2901.10.20	2914.21.20	2918.19.50
2836.40.20	2901.10.50	2914.29.10	2918.29.30
2836.60.00	2901.24.20	2914.29.50	2918.30.50
2836.70.00	2901.24.50	2914.41.00	2918.90.50
2836.91.00	2901.29.10	2914.49.50	2919.00.50
2836.92.00	2901.29.50	2914.50.50	2920.10.50
2836.99.10	2902.19.00	2914.70.50	2920.90.50
2836.99.50	2903.12.00	2915.13.50	2921.11.00
2837.20.10	2903.14.00	2915.21.00	2921.12.00
2837.20.50	2903.19.10	2915.22.00	2921.19.10
2838.00.00	2903.22.00	2915.23.00	2921.30.50
2839.11.00	2903.23.00	2915.24.00	2922.41.00
2839.19.00	2903.30.05	2915.29.00	2922.42.50
2839.20.00	2903.30.15	2915.31.00	2922.49.40
2839.90.00	2903.30.20	2915.32.00	2922.49.50
2840.11.00	2903.40.00	2915.39.45	2923.10.00
2840.19.00	2903.59.40	2915.39.50	2924.10.10
2840.20.00	2903.59.50	2915.40.10	2924.29.07
2840.30.00	2904.10.50	2915.40.50	2925.19.50
2841.10.00	2904.90.50	2915.50.10	2925.20.50
2841.20.00	2905.16.00	2915.50.50	2927.00.15
2841.30.00	2905.17.00	2915.60.50	2928.00.10
2841.40.00	2905.19.00	2915.70.00	2928.00.30
2841.50.00	2905.22.10	2915.90.10	2930.10.00
2841.60.00	2905.22.20	2915.90.15	2930.20.50
2841.70.10	2905.22.50	2915.90.50	2930.30.00
2841.70.50	2905.29.00	2916.11.00	2930.40.00
2841.90.20	2905.41.00	2916.12.50	2930.90.30
2841.90.30	2905.42.00	2916.13.00	2930.90.45
2841.90.50	2905.49.10	2916.14.00	2930.90.50
2842.10.00	2906.13.50	2916.15.50	2931.00.50
2842.90.00	2907.12.00	2916.19.10	2932.11.00
2843.21.00	2907.19.40	2916.19.20	2932.13.00
2843.29.00	2907.29.10	2916.19.50	2932.19.50
2843.30.00	2909.11.00	2916.20.00	2932.29.50
2843.90.00	2909.20.00	2917.11.00	2932.90.30
2844.10.10	2909.49.20	2917.13.00	2932.90.50
2844.10.50	2909.50.40	2917.14.50	2933.19.45
2844.30.50	2909.60.50	2917.19.17	2933.29.45
2846.90.50	2910.30.00	2917.19.30	2933.51.10
2847.00.00	2910.90.10	2917.19.50	2933.51.50
2848.10.00	2910.90.50	2917.20.00	2933.59.30
2849.10.00	2912.11.00	2918.11.50	2933.61.00
2849.20.20	2912.19.20	2918.12.00	2933.69.00
2849.90.10	2912.19.30	2918.13.10	2933.79.20
2849.90.20	2912.30.20	2918.13.20	2933.90.40
2849.90.50	2912.49.50	2918.13.30	2933.90.48
2850.00.07	2914.12.00	2918.13.50	2934.90.47

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
2936.10.00	3203.00.50	3402.11.50	3703.10.30
2936.21.00	3204.19.35	3402.13.50	3703.10.60
2936.22.00	3206.20.00	3402.19.50	3703.20.30
2936.24.00	3206.30.00	3402.90.10	3703.20.60
2936.25.00	3206.41.00	3402.90.50	3703.90.30
2936.27.00	3206.42.00	3403.11.20	3703.90.60
2936.29.15	3206.43.00	3403.11.50	3706.10.30
2936.29.50	3206.49.30	3403.19.10	3707.10.00
2936.90.00	3206.49.50	3405.10.00	3707.90.60
2937.10.00	3207.10.00	3405.20.00	3801.10.10
2937.91.00	3207.20.00	3405.30.00	3801.30.00
2937.92.10	3207.30.00	3405.40.00	3801.90.00
2937.99.50	3208.10.00	3405.90.00	3802.10.00
2938.10.00	3208.20.00	3501.10.10	3802.90.20
2938.90.00	3208.90.00	3501.90.50	3802.90.50
2939.10.50	3210.00.00	3503.00.10	3804.00.50
2939.40.50	3211.00.00	3505.10.00	3805.10.00
2939.50.00	3212.10.00	3505.20.00	3805.90.00
2939.60.00	3212.90.00	3506.10.50	3806.10.00
2939.70.00	3213.90.00	3506.91.00	3806.20.00
2939.90.10	3214.10.00	3506.99.00	3806.90.00
2939.90.50	3215.11.00	3507.90.00	3807.00.00
2941.20.00	3215.19.00	3603.00.30	3808.10.10
2941.30.00	3215.90.10	3603.00.60	3808.10.30
2941.50.00	3215.90.50	3603.00.90	3808.10.50
2941.90.10	3301.29.10	3604.10.00	3808.20.20
2941.90.50	3301.29.20	3606.90.60	3808.20.30
2942.00.50	3302.90.10	3701.10.00	3808.20.50
3001.10.00	3302.90.20	3701.20.00	3808.30.20
3001.20.00	3303.00.20	3701.30.00	3808.30.50
3002.90.10	3303.00.30	3701.91.00	3808.40.50
3003.20.00	3304.10.00	3701.99.30	3808.90.20
3003.31.00	3304.20.00	3701.99.60	3808.90.50
3003.39.10	3304.30.00	3702.10.00	3810.10.00
3003.39.50	3304.91.00	3702.20.00	3810.90.50
3003.40.00	3304.99.00	3702.31.00	3812.10.50
3004.20.00	3305.10.00	3702.32.00	3812.20.50
3004.31.00	3305.20.00	3702.39.00	3812.30.50
3004.39.00	3305.30.00	3702.41.00	3813.00.50
3004.40.00	3305.90.00	3702.42.00	3815.90.20
3004.50.50	3306.10.00	3702.43.00	3815.90.50
3004.90.30	3307.10.10	3702.44.00	3816.00.00
3005.10.10	3307.10.20	3702.51.00	3821.00.00
3005.90.10	3307.20.00	3702.52.00	3822.00.50
3006.10.00	3307.30.50	3702.53.00	3823.20.00
3006.40.00	3307.41.00	3702.54.00	3823.30.00
3006.60.00	3307.49.00	3702.91.00	3823.40.50
3201.90.10	3401.11.10	3702.92.00	3823.90.33
3201.90.50	3401.11.50	3702.93.00	3823.90.34
3202.90.50	3401.20.00	3702.95.00	3823.90.40

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
3823.90.47	3924.10.10	4015.19.10	4203.21.55
3823.90.50	3924.10.50	4015.90.00	4203.21.80
3905.11.00	3924.90.10	4016.10.00	4204.00.30
3905.19.00	3924.90.20	4016.92.00	4205.00.40
3905.20.00	3924.90.50	4016.93.00	4206.10.30
3905.90.10	3925.30.10	4016.95.00	4206.90.00
3906.90.50	3926.20.10	4016.99.03	4302.11.00
3909.50.20	3926.20.30	4016.99.05	4302.12.00
3910.00.00	3926.20.50	4016.99.25	4302.13.00
3912.39.00	3926.90.10	4104.10.40	4302.19.30
3913.10.00	3926.90.15	4104.10.60	4302.19.45
3914.00.00	3926.90.20	4104.21.00	4302.19.60
3916.90.20	3926.90.30	4104.22.00	4302.19.75
3917.10.50	3926.90.40	4104.29.30	4302.20.30
3917.21.00	3926.90.45	4104.29.50	4302.20.60
3917.22.00	3926.90.50	4104.29.90	4302.20.90
3917.23.00	3926.90.59	4104.31.20	4303.90.00
3917.29.00	3926.90.60	4104.31.40	4401.30.20
3917.31.00	3926.90.75	4104.31.50	4409.10.20
3917.32.00	3926.90.77	4104.31.60	4409.10.40
3917.33.00	4006.90.10	4104.31.80	4409.10.50
3917.39.00	4007.00.00	4104.39.20	4409.10.60
3918.10.31	4008.11.10	4104.39.40	4409.20.50
3918.10.50	4008.19.10	4104.39.50	4410.10.00
3918.90.50	4008.21.00	4104.39.60	4411.11.00
3920.10.00	4009.10.00	4104.39.80	4411.19.20
3920.20.00	4009.20.00	4105.11.00	4411.21.00
3920.42.10	4009.30.00	4105.12.00	4411.29.60
3920.42.50	4009.40.00	4105.19.00	4412.11.10
3920.62.00	4009.50.00	4105.20.30	4412.12.10
3920.63.10	4010.10.50	4105.20.60	4412.19.10
3920.69.00	4010.91.19	4106.12.00	4412.21.00
3920.72.00	4010.91.50	4106.19.00	4412.29.10
3920.73.00	4010.99.19	4106.20.30	4412.29.50
3920.79.50	4010.99.50	4106.20.60	4412.91.00
3920.91.00	4011.10.00	4107.10.00	4412.99.10
3920.92.00	4011.20.00	4107.21.00	4412.99.90
3920.99.20	4011.40.00	4107.29.30	4416.00.30
3921.12.11	4011.50.00	4107.29.60	4417.00.60
3921.13.11	4011.91.50	4107.90.30	4418.30.00
3921.13.50	4011.99.50	4107.90.60	4420.90.20
3921.90.11	4012.10.50	4108.00.00	4420.90.60
3921.90.29	4012.20.50	4109.00.30	4421.90.10
3921.90.40	4012.90.20	4109.00.70	4421.90.50
3921.90.50	4013.10.00	4111.00.00	4501.90.40
3923.10.00	4013.90.50	4201.00.30	4502.00.00
3923.21.00	4014.10.00	4201.00.60	4503.10.20
3923.29.00	4014.90.10	4202.31.30	4503.10.30
3923.30.00	4014.90.50	4203.10.20	4503.10.40
3923.90.00	4015.11.00	4203.21.20	4503.10.60

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
4503.90.20	4809.20.20	4823.90.20	5204.20.00
4504.10.10	4809.90.40	4823.90.40	5205.11.10
4504.10.45	4809.90.80	4823.90.70	5207.10.00
4504.10.47	4810.11.20	4902.90.10	5207.90.00
4601.20.20	4810.11.30	4908.10.00	5301.21.00
4601.20.60	4810.11.90	4908.90.00	5307.10.00
4601.20.80	4810.12.00	4909.00.20	5307.20.00
4601.91.40	4810.21.00	4909.00.40	5308.90.00
4601.99.00	4810.29.00	4910.00.40	5309.11.00
4602.10.05	4810.39.40	4910.00.60	5309.19.00
4602.10.19	4810.91.40	4911.91.20	5309.21.40
4602.10.50	4810.99.00	4911.91.40	5309.29.40
4802.10.00	4811.31.40	4911.99.60	5310.90.00
4802.30.20	4811.39.20	4911.99.80	5311.00.40
4802.30.40	4811.40.00	5004.00.00	5404.10.10
4802.51.10	4811.90.10	5005.00.00	5407.30.10
4802.51.40	4811.90.20	5006.00.00	5503.10.00
4802.52.10	4811.90.40	5007.10.30	5503.20.00
4802.52.15	4811.90.80	5007.20.00	5503.30.00
4802.52.20	4812.00.00	5007.90.30	5503.40.00
4802.52.40	4813.10.00	5101.11.20	5503.90.00
4802.53.10	4813.20.00	5101.11.40	5504.10.00
4802.53.15	4813.90.00	5101.11.60	5504.90.00
4802.53.20	4815.00.00	5101.19.20	5505.10.00
4802.53.90	4816.10.00	5101.19.40	5505.20.00
4802.60.10	4816.20.00	5101.19.60	5601.30.00
4802.60.20	4816.30.00	5101.21.15	5603.00.10
4803.00.20	4816.90.00	5101.21.30	5607.10.00
4804.31.10	4817.10.00	5101.29.15	5609.00.20
4804.31.20	4817.20.40	5101.29.30	5701.10.13
4804.31.60	4817.30.00	5101.30.10	5701.10.16
4804.39.20	4818.90.00	5101.30.40	5701.90.10
4804.39.60	4819.10.00	5102.10.20	5702.10.10
4804.41.40	4819.20.00	5102.10.40	5702.10.90
4804.49.00	4819.50.20	5102.10.60	5702.20.10
4804.59.00	4819.50.30	5103.10.00	5702.39.10
4805.10.00	4820.10.20	5103.20.00	5702.49.10
4805.30.00	4820.50.00	5104.00.00	5702.49.15
4805.40.00	4821.10.20	5105.40.00	5702.51.20
4805.60.20	4821.10.40	5108.10.30	5702.91.20
4805.60.50	4821.90.40	5108.20.30	5702.91.30
4805.60.90	4822.10.00	5109.10.40	5801.90.10
4805.70.20	4822.90.00	5109.90.40	5803.90.20
4805.80.20	4823.19.00	5110.00.00	5803.90.40
4807.91.00	4823.20.90	5201.00.20	5805.00.20
4807.99.20	4823.30.00	5201.00.50	5805.00.25
4808.10.00	4823.51.00	5202.91.00	5806.39.30
4808.90.20	4823.59.20	5203.00.00	5808.10.20
4808.90.40	4823.59.40	5204.11.00	5811.00.40
4809.10.20	4823.60.00	5204.19.00	5901.10.20

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
5901.90.40	6306.31.00	6806.10.00	7004.90.40
5903.10.15	6306.39.00	6806.20.00	7005.10.00
5903.10.20	6306.41.00	6806.90.00	7005.21.10
5903.20.15	6306.49.00	6807.10.00	7005.29.05
5903.20.20	6307.10.10	6809.11.00	7005.29.15
5903.90.15	6309.00.00	6809.90.00	7005.30.00
5903.90.20	6310.10.10	6810.11.00	7006.00.40
5904.10.00	6310.90.10	6810.19.50	7008.00.00
5904.91.00	6402.20.00	6810.20.00	7010.10.00
5904.92.00	6403.19.15	6810.91.00	7010.90.20
5906.91.20	6403.40.30	6810.99.00	7011.10.10
5906.99.20	6403.51.30	6811.30.00	7015.10.00
5909.00.10	6403.59.15	6812.50.50	7015.90.10
6106.90.30	6403.59.30	6815.10.00	7015.90.50
6108.39.20	6403.91.30	6815.91.00	7018.10.20
6108.99.40	6403.99.40	6815.99.40	7018.10.50
6110.20.10	6405.20.60	6901.00.00	7101.21.00
6116.99.90	6406.10.65	6902.10.50	7101.22.00
6201.12.10	6406.99.60	6902.20.50	7102.21.30
6201.13.10	6501.00.30	6902.90.50	7103.99.10
6201.19.00	6501.00.60	6903.10.00	7104.90.10
6201.92.10	6502.00.40	6903.20.00	7105.90.00
6201.93.10	6502.00.60	6903.90.00	7108.13.10
6201.99.00	6503.00.30	6904.90.00	7114.11.40
6202.12.10	6503.00.60	6905.90.00	7116.10.15
6202.13.10	6506.10.30	6906.00.00	7117.90.20
6202.19.00	6506.10.60	6909.11.20	7201.40.00
6202.92.10	6506.91.00	6909.19.10	7202.11.10
6202.93.10	6507.00.00	6912.00.10	7202.11.50
6202.99.00	6701.00.00	6912.00.39	7202.19.10
6203.32.10	6702.10.40	6912.00.47	7202.19.50
6203.42.10	6702.90.10	6913.10.10	7202.21.10
6203.43.10	6703.00.30	6913.90.10	7202.21.50
6203.49.30	6703.00.60	6913.90.20	7202.21.75
6204.32.10	6704.11.00	6913.90.30	7202.30.00
6204.33.20	6704.19.00	7001.00.10	7202.41.00
6204.62.10	6704.20.00	7002.10.20	7202.49.10
6204.63.10	6704.90.00	7002.20.10	7202.49.50
6204.69.90	6801.00.00	7002.31.00	7202.70.00
6205.90.40	6802.21.50	7003.11.00	7202.91.00
6206.30.20	6802.23.00	7003.19.00	7202.92.00
6208.99.80	6802.91.05	7003.20.00	7202.93.00
6209.90.40	6802.93.00	7004.10.10	7202.99.10
6211.20.10	6803.00.50	7004.10.20	7202.99.50
6211.39.00	6804.21.00	7004.90.05	7205.10.00
6216.00.50	6804.22.40	7004.90.10	7205.21.00
6216.00.60	6804.22.60	7004.90.15	7206.10.00
6302.92.00	6805.10.00	7004.90.20	7206.90.00
6304.19.10	6805.20.00	7004.90.25	7207.11.00
6306.22.10	6805.30.10	7004.90.30	7207.12.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
7207.19.00	7216.40.00	7305.39.50	7317.00.55
7207.20.00	7216.50.00	7305.90.10	7317.00.65
7208.13.50	7216.60.00	7305.90.50	7317.00.75
7208.14.50	7216.90.00	7306.10.10	7318.15.20
7208.23.50	7217.11.10	7306.10.50	7318.15.40
7208.24.50	7217.11.20	7306.20.20	7318.15.50
7208.34.50	7217.11.70	7306.20.40	7318.16.00
7208.35.50	7217.12.50	7306.20.60	7318.23.00
7208.44.00	7217.13.50	7306.20.80	7319.30.50
7208.45.00	7217.19.10	7306.30.50	7320.10.00
7208.90.00	7217.21.10	7306.40.50	7320.20.10
7209.24.10	7217.29.10	7306.50.50	7320.90.10
7210.11.00	7217.31.10	7306.60.10	7321.11.30
7210.12.00	7217.39.10	7306.60.30	7321.11.60
7210.20.00	7221.00.00	7306.90.10	7321.12.00
7211.19.50	7222.40.30	7306.90.50	7321.13.00
7211.29.30	7223.00.50	7307.11.00	7321.81.50
7211.29.70	7225.30.30	7307.21.10	7321.82.50
7211.30.10	7225.40.30	7307.91.10	7321.83.00
7211.30.30	7225.50.70	7307.91.30	7321.90.30
7211.41.30	7225.50.80	7307.99.10	7321.90.60
7211.41.50	7226.91.50	7307.99.30	7322.11.00
7211.49.10	7226.92.50	7308.30.10	7322.19.00
7211.49.30	7227.20.00	7308.30.50	7322.90.00
7212.10.00	7227.90.10	7308.90.30	7323.10.00
7212.30.10	7227.90.20	7308.90.60	7323.92.00
7212.30.30	7227.90.60	7309.00.00	7323.93.00
7212.40.10	7228.70.30	7311.00.00	7323.94.00
7213.10.00	7301.10.00	7312.10.30	7323.99.10
7213.20.00	7301.20.10	7312.10.60	7323.99.50
7213.31.30	7301.20.50	7312.10.80	7323.99.90
7213.31.60	7302.10.10	7312.10.90	7324.10.00
7213.39.00	7302.10.50	7314.11.10	7324.21.50
7213.41.30	7302.20.00	7314.11.20	7324.29.00
7213.41.60	7302.40.00	7314.19.00	7324.90.00
7213.49.00	7304.20.20	7314.30.10	7325.99.10
7213.50.00	7304.20.40	7314.41.00	7326.11.00
7214.10.00	7304.90.10	7314.42.00	7326.90.10
7214.20.00	7304.90.30	7314.49.60	7401.10.00
7214.30.00	7305.11.10	7314.50.00	7401.20.00
7214.40.00	7305.11.50	7315.11.00	7402.00.00
7214.50.00	7305.12.10	7315.12.00	7403.11.00
7214.60.00	7305.12.50	7315.19.00	7403.12.00
7215.90.10	7305.19.10	7315.20.10	7403.13.00
7216.10.00	7305.19.50	7315.82.10	7403.19.00
7216.21.00	7305.20.40	7315.82.50	7403.21.00
7216.22.00	7305.20.80	7315.89.10	7403.22.00
7216.31.00	7305.31.40	7316.00.00	7403.23.00
7216.32.00	7305.31.60	7317.00.10	7403.29.00
7216.33.00	7305.39.10	7317.00.30	7405.00.10

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
7406.20.00	7505.11.30	7615.10.90	8203.10.30
7407.10.50	7505.12.10	7615.20.00	8203.10.60
7407.21.10	7505.12.30	7616.10.30	8203.10.90
7407.21.50	7505.21.10	7801.10.00	8203.30.00
7407.21.70	7505.21.50	7801.91.00	8203.40.60
7407.21.90	7505.22.10	7801.99.30	8205.20.60
7407.29.50	7505.22.50	7801.99.90	8205.51.15
7408.11.30	7506.10.10	7802.00.00	8205.51.45
7408.11.60	7506.10.30	7803.00.00	8205.51.60
7408.19.00	7506.10.50	7804.11.00	8205.59.30
7408.21.00	7506.20.10	7804.19.00	8205.59.60
7408.22.10	7506.20.30	7805.00.00	8205.70.00
7408.22.50	7506.20.50	7806.00.00	8205.80.00
7408.29.10	7507.11.00	7901.11.00	8207.12.60
7408.29.50	7507.12.00	7901.12.50	8207.20.00
7409.11.50	7507.20.00	7902.00.00	8207.30.60
7409.19.10	7508.00.10	7903.10.00	8207.50.80
7409.19.50	7601.10.30	7903.90.30	8207.70.60
7409.19.90	7601.20.30	7904.00.00	8207.80.60
7409.21.00	7601.20.60	7905.00.00	8207.90.15
7409.29.00	7603.20.00	7906.00.00	8207.90.75
7409.31.50	7604.10.10	7907.90.30	8208.10.00
7409.39.50	7604.10.30	8003.00.00	8208.20.00
7409.90.50	7604.10.50	8004.00.00	8208.30.00
7410.11.00	7604.21.00	8005.20.00	8208.40.30
7410.12.00	7604.29.10	8006.00.00	8208.90.60
7410.21.60	7604.29.30	8007.00.10	8211.91.10
7410.22.00	7604.29.50	8007.00.50	8211.92.60
7411.10.10	7605.11.00	8101.91.10	8211.93.00
7411.10.50	7605.19.00	8102.10.00	8211.94.10
7411.21.10	7605.21.00	8102.91.10	8212.90.00
7411.21.50	7605.29.00	8103.10.60	8214.20.60
7411.29.10	7606.11.30	8109.10.60	8214.90.90
7411.29.50	7606.11.60	8112.20.60	8215.91.30
7412.20.00	7606.12.30	8112.30.60	8215.99.22
7413.00.10	7606.91.30	8112.40.60	8215.99.24
7413.00.50	7606.91.60	8112.91.10	8215.99.45
7414.10.90	7606.92.30	8112.91.40	8301.10.20
7414.90.00	7607.11.90	8112.91.50	8301.10.40
7415.29.00	7607.19.60	8201.10.00	8301.10.50
7415.32.10	7607.20.10	8201.20.00	8301.10.80
7417.00.00	7611.00.00	8201.30.00	8301.10.90
7418.10.10	7612.10.00	8201.50.00	8302.10.30
7418.10.20	7613.00.00	8201.60.00	8302.30.30
7418.10.50	7614.10.10	8202.20.00	8302.41.30
7418.20.10	7614.10.50	8202.31.00	8302.49.40
7418.20.50	7614.90.10	8202.32.00	8302.50.00
7419.91.00	7615.10.10	8202.40.60	8302.60.30
7419.99.50	7615.10.50	8202.91.30	8302.60.90
7505.11.10	7615.10 70	8202.91.60	8305.20.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
8305.90.30	8412.80.90	8418.99.00	8424.10.00
8306.29.00	8412.90.10	8419.11.00	8424.20.90
8308.20.30	8412.90.90	8419.19.00	8424.30.90
8308.20.60	8413.11.00	8419.20.00	8424.81.90
8308.90.30	8413.19.00	8419.31.00	8424.89.00
8309.10.00	8413.20.00	8419.32.10	8424.90.05
8310.00.00	8413.30.10	8419.32.50	8424.90.90
8311.30.30	8413.30.90	8419.39.00	8425.11.00
8401.20.00	8413.40.00	8419.40.00	8425.19.00
8403.10.00	8413.50.00	8419.50.00	8425.20.00
8403.90.00	8413.60.00	8419.60.00	8425.31.00
8405.10.00	8413.70.20	8419.81.10	8425.39.00
8405.90.00	8413.81.00	8419.81.90	8425.41.00
8406.11.90	8413.82.00	8419.89.10	8425.42.00
8406.19.90	8413.91.10	8419.89.50	8425.49.00
8406.90.90	8413.91.90	8419.90.10	8426.11.00
8407.32.20	8413.92.00	8419.90.20	8426.12.00
8407.33.20	8414.10.00	8419.90.30	8426.19.00
8407.34.20	8414.20.00	8419.90.90	8426.20.00
8408.10.00	8414.30.40	8420.10.90	8426.30.00
8408.20.20	8414.30.80	8420.91.90	8426.41.00
8408.20.90	8414.40.00	8420.99.90	8426.49.00
8408.90.90	8414.51.00	8421.11.00	8426.91.00
8409.91.91	8414.59.80	8421.12.00	8426.99.00
8409.91.92	8414.60.00	8421.19.00	8428.10.00
8409.91.99	8414.80.10	8421.21.00	8428.20.00
8409.99.91	8414.80.20	8421.22.00	8428.31.00
8409.99.92	8414.80.90	8421.23.00	8428.32.00
8409.99.99	8414.90.10	8421.29.00	8428.33.00
8411.11.40	8414.90.20	8421.31.00	8428.39.00
8411.11.80	8414.90.90	8421.39.00	8428.40.00
8411.12.40	8415.10.00	8421.91.00	8428.50.00
8411.12.80	8415.81.00	8421.99.00	8428.60.00
8411.21.40	8415.82.00	8422.11.00	8428.90.00
8411.21.80	8415.83.00	8422.19.00	8429.11.00
8411.22.40	8415.90.00	8422.20.00	8429.19.00
8411.22.80	8416.10.00	8422.30.10	8429.20.00
8411.81.40	8416.20.00	8422.30.90	8429.30.00
8411.81.80	8416.30.00	8422.40.10	8429.40.00
8411.82.40	8416.90.00	8422.40.90	8429.51.10
8411.82.80	8418.10.00	8422.90.05	8429.51.50
8411.91.90	8418.21.00	8422.90.10	8429.52.10
8411.99.90	8418.22.00	8422.90.20	8429.52.50
8412.10.00	8418.29.00	8422.90.90	8429.59.10
8412.21.00	8418.30.00	8423.10.00	8429.59.50
8412.29.40	8418.40.00	8423.20.00	8430.10.00
8412.29.80	8418.50.00	8423.30.00	8430.20.00
8412.31.00	8418.61.00	8423.81.00	8430.31.00
8412.39.00	8418.69.00	8423.82.00	8430.39.00
8412.80.10	8418.91.00	8423.89.00	8430.41.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
8430.49.80	8443.90.50	8453.80.00	8462.21.00
8430.50.50	8444.00.00	8453.90.50	8462.29.00
8430.61.00	8445.11.00	8455.10.00	8462.31.00
8430.62.00	8445.12.00	8455.21.00	8462.39.00
8430.69.00	8445.13.00	8455.22.00	8462.41.00
8431.10.00	8445.19.00	8455.30.00	8462.49.00
8431.31.00	8445.20.00	8455.90.00	8462.91.00
8431.39.00	8445.30.00	8456.10.10	8462.99.00
8431.41.00	8445.40.00	8456.10.50	8463.10.00
8431.42.00	8445.90.00	8456.20.10	8463.20.00
8431.43.80	8446.10.00	8456.20.50	8463.30.00
8431.49.10	8446.21.00	8456.30.10	8463.90.00
8431.49.90	8446.29.00	8456.30.50	8464.10.00
8433.11.00	8446.30.00	8456.90.10	8464.20.00
8433.19.00	8447.11.10	8456.90.50	8464.90.00
8433.90.10	8447.11.90	8457.10.00	8465.10.00
8435.10.00	8447.12.10	8457.20.00	8465.91.00
8435.90.00	8447.12.90	8457.30.00	8465.92.00
8437.10.00	8447.20.60	8458.11.00	8465.93.00
8437.80.00	8447.90.10	8458.19.00	8465.94.00
8437.90.00	8447.90.50	8458.91.10	8465.95.00
8438.10.00	8447.90.90	8458.91.50	8465.96.00
8438.20.00	8448.11.00	8458.99.10	8465.99.00
8438.40.00	8448.19.00	8458.99.50	8466.10.00
8438.50.00	8448.20.10	8459.10.00	8466.20.90
8438.60.00	8448.20.50	8459.21.00	8466.30.10
8438.80.00	8448.32.00	8459.29.00	8466.30.30
8438.90.90	8448.33.00	8459.31.00	8466.91.50
8439.30.00	8448.39.10	8459.39.00	8466.92.50
8439.91.10	8448.39.50	8459.40.00	8466.93.70
8439.99.50	8448.39.90	8459.51.00	8466.94.50
8440.10.00	8448.41.00	8459.59.00	8467.11.10
8440.90.00	8448.42.00	8459.61.00	8467.11.50
8441.10.00	8448.49.00	8459.69.00	8467.19.10
8441.20.00	8448.51.50	8459.70.00	8467.19.50
8441.30.00	8448.59.10	8460.11.00	8467.81.00
8441.40.00	8448.59.50	8460.19.00	8467.89.10
8441.80.00	8449.00.50	8460.21.00	8467.89.50
8441.90.00	8450.11.00	8460.29.00	8467.91.00
8443.11.00	8450.19.00	8460.31.00	8467.92.00
8443.12.00	8450.20.00	8460.39.00	8467.99.00
8443.19.10	8451.10.00	8460.40.00	8469.10.00
8443.19.50	8451.30.00	8460.90.00	8470.10.00
8443.19.90	8451.50.00	8461.10.00	8470.21.00
8443.21.00	8452.10.00	8461.20.00	8470.29.00
8443.29.00	8452.21.90	8461.30.00	8470.30.00
8443.30.00	8452.29.90	8461.40.50	8470.40.00
8443.40.00	8452.40.00	8461.50.00	8470.90.00
8443.50.50	8452.90.00	8461.90.00	8471.10.00
8443.60.00	8453.10.00	8462.10.00	8471.20.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
8471.91.00	8479.82.00	8501.33.40	8509.20.00
8471.92.10	8479.89.10	8501.33.60	8509.30.00
8471.92.40	8479.89.20	8501.34.30	8509.40.00
8471.92.65	8479.89.30	8501.34.60	8509.80.00
8471.92.90	8479.89.60	8501.40.20	8509.90.20
8471.93.20	8479.89.70	8501.40.40	8509.90.30
8471.93.40	8479.89.90	8501.40.50	8509.90.40
8471.93.60	8479.90.40	8501.40.60	8510.10.00
8471.99.30	8479.90.80	8501.51.20	8510.20.00
8471.99.90	8480.20.00	8501.51.40	8510.90.10
8472.10.00	8480.30.00	8501.51.50	8510.90.20
8472.20.00	8480.41.00	8501.51.60	8510.90.30
8472.30.00	8480.49.00	8501.52.40	8511.10.00
8472.90.20	8480.50.00	8501.53.60	8511.20.00
8472.90.80	8480.60.00	8501.53.80	8511.30.00
8473.10.00	8480.71.90	8501.61.00	8511.40.00
8473.21.00	8480.79.90	8501.62.00	8511.50.00
8473.29.00	8481.10.00	8501.63.00	8511.80.20
8473.30.80	8481.20.00	8501.64.00	8511.80.40
8473.40.20	8481.30.90	8502.11.00	8511.80.60
8473.40.40	8481.40.00	8502.12.00	8511.90.20
8474.10.00	8481.80.50	8502.13.00	8511.90.40
8474.20.00	8481.80.90	8502.20.00	8511.90.60
8474.31.00	8481.90.50	8502.30.00	8512.10.40
8474.32.00	8481.90.90	8502.40.00	8512.20.40
8474.39.00	8482.10.10	8503.00.20	8512.30.00
8474.80.00	8482.91.00	8503.00.60	8512.40.20
8474.90.00	8483.10.10	8504.10.00	8512.40.40
8475.10.00	8483.10.30	8504.21.00	8512.90.20
8475.20.00	8483.10.50	8504.22.00	8512.90.70
8475.90.10	8483.40.10	8504.23.00	8512.90.90
8475.90.90	8483.40.50	8504.31.20	8514.10.00
8476.11.00	8483.40.90	8504.31.60	8514.20.00
8476.19.00	8483.90.50	8504.32.00	8514.30.00
8476.90.00	8484.10.00	8504.33.00	8514.40.00
8477.10.60	8484.90.00	8504.34.00	8514.90.00
8477.20.00	8485.10.00	8504.40.00	8515.11.00
8477.30.00	8501.10.60	8504.50.00	8515.19.00
8477.40.00	8501.20.20	8504.90.00	8515.21.00
8477.51.00	8501.20.40	8505.11.00	8515.29.00
8477.59.00	8501.20.50	8505.19.00	8515.31.00
8477.80.00	8501.20.60	8505.20.00	8515.39.00
8477.90.00	8501.31.20	8505.30.00	8515.80.00
8478.10.00	8501.31.40	8505.90.40	8515.90.20
8478.90.00	8501.31.50	8505.90.80	8515.90.40
8479.10.00	8501.31.60	8508.10.00	8516.10.00
8479.20.00	8501.31.80	8508.20.00	8516.21.00
8479.30.00	8501.32.20	8508.80.00	8516.29.00
8479.40.00	8501.32.60	8508.90.00	8516.31.00
8479.81.00	8501.33.30	8509.10.00	8516.32.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
8516.33.00	8524.22.20	8540.20.40	8701.30.50
8516.40.20	8524.23.10	8540.41.40	8701.90.50
8516.50.00	8524.23.20	8540.42.00	8702.10.00
8516.80.40	8524.90.40	8540.49.00	8702.90.00
8516.80.80	8525.10.20	8540.81.00	8703.10.00
8516.90.40	8525.20.20	8540.89.00	8703.21.00
8516.90.60	8525.30.00	8540.91.20	8703.22.00
8517.20.00	8526.10.00	8540.99.00	8703.23.00
8517.30.50	8526.91.00	8541.40.20	8703.24.00
8517.40.10	8526.92.00	8541.40.90	8703.31.00
8517.40.70	8527.11.11	8541.50.00	8703.32.00
8517.82.00	8527.11.20	8541.60.00	8703.33.00
8517.90.55	8527.11.40	8542.80.00	8703.90.00
8517.90.60	8527.11.60	8543.10.00	8704.10.10
8517.90.70	8527.21.10	8543.20.00	8704.22.10
8517.90.80	8527.21.40	8543.30.00	8705.10.00
8518.10.00	8527.31.05	8543.80.40	8705.20.00
8518.21.00	8527.31.40	8543.80.60	8705.30.00
8518.22.00	8527.31.50	8543.80.70	8705.40.00
8518.29.00	8527.31.60	8543.80.90	8705.90.00
8518.30.20	8527.90.40	8543.90.40	8706.00.10
8518.40.20	8528.10.40	8543.90.80	8706.00.15
8518.50.00	8528.10.80	8544.19.00	8706.00.25
8518.90.30	8528.20.00	8544.30.00	8706.00.50
8519.10.00	8529.10.20	8544.59.40	8707.10.00
8519.21.00	8529.10.40	8544.60.60	8707.90.50
8519.29.00	8529.90.10	8545.11.00	8708.10.00
8519.31.00	8529.90.15	8545.19.20	8708.21.00
8519.39.00	8529.90.20	8545.19.40	8708.29.00
8519.40.00	8529.90.30	8545.20.00	8708.31.50
8519.91.00	8529.90.35	8545.90.20	8708.39.50
8519.99.00	8529.90.40	8545.90.40	8708.40.10
8520.10.00	8529.90.45	8546.90.00	8708.40.20
8520.20.00	8530.10.00	8547.10.40	8708.40.50
8520.31.00	8530.80.00	8547.20.00	8708.50.30
8520.39.00	8530.90.00	8548.00.00	8708.50.50
8520.90.00	8531.10.00	8601.10.00	8708.50.80
8521.10.00	8531.20.00	8601.20.00	8708.60.30
8521.90.00	8531.80.00	8602.10.00	8708.60.50
8522.10.00	8531.90.00	8602.90.00	8708.60.80
8522.90.40	8532.90.00	8604.00.00	8708.70.30
8522.90.60	8539.10.00	8607.11.00	8708.70.80
8522.90.90	8539.21.40	8607.19.10	8708.80.50
8523.11.00	8539.22.80	8607.19.90	8708.91.50
8523.12.00	8539.29.40	8607.21.50	8708.92.50
8523.13.00	8539.31.00	8607.29.50	8708.93.50
8523.20.00	8539.39.00	8607.30.50	8708.94.50
8523.90.00	8539.40.40	8607.91.00	8708.99.20
8524.10.00	8539.40.80	8607.99.50	8708.99.50
8524.21.30	8539.90.00	8701.20.00	8711.10.00

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
8711.20.00	9006.52.90	9017.30.80	9027.30.40
8711.30.00	9006.53.00	9018.11.00	9027.40.00
8711.40.30	9006.59.40	9018.19.80	9027.50.40
8711.40.60	9006.59.90	9018.20.00	9027.80.40
8711.50.00	9006.61.00	9018.39.00	9027.90.40
8711.90.00	9006.62.00	9018.41.00	9028.30.00
8712.00.50	9006.69.00	9018.49.80	9030.10.00
8713.90.00	9006.99.00	9018.90.50	9030.20.00
8714.11.00	9007.11.00	9018.90.70	9030.31.00
8714.19.00	9007.19.00	9019.10.20	9030.39.00
8714.91.10	9007.21.40	9019.10.40	9030.40.00
8715.00.00	9007.29.40	9019.20.00	9030.81.00
8716.10.00	9007.91.40	9020.00.60	9030.89.00
8716.20.00	9008.20.40	9020.00.90	9030.90.40
8716.31.00	9008.40.00	9021.21.40	9030.90.80
8716.39.00	9008.90.40	9021.29.40	9031.10.00
8716.40.00	9009.11.00	9021.40.00	9031.20.00
8716.80.50	9009.12.00	9021.50.00	9031.80.00
8716.90.50	9009.21.00	9021.90.40	9031.90.60
8801.10.00	9009.22.00	9021.90.80	9032.10.00
8801.90.00	9009.30.00	9022.11.00	9032.20.00
8802.11.00	9009.90.00	9022.19.00	9032.81.00
8802.12.00	9010.10.00	9022.21.00	9032.89.20
8802.20.00	9010.20.10	9022.29.40	9032.89.40
8802.30.00	9010.20.20	9022.29.80	9032.89.60
8802.40.00	9010.20.50	9022.30.00	9032.90.20
8802.50.90	9010.20.60	9022.90.20	9032.90.40
8805.10.00	9010.30.00	9022.90.40	9032.90.60
8903.10.00	9011.10.40	9022.90.60	9033.00.00
8903.91.00	9011.20.40	9022.90.80	9101.12.00
8903.92.00	9012.10.00	9024.10.00	9101.91.20
8903.99.15	9013.10.30	9024.80.00	9102.12.00
8903.99.20	9013.20.00	9024.90.00	9102.29.60
8903.99.90	9014.10.60	9025.19.00	9102.91.20
8905.90.10	9014.10.70	9025.20.40	9103.10.20
8906.00.10	9014.20.40	9025.20.80	9104.00.05
8907.10.00	9014.20.60	9025.80.10	9104.00.25
8907.90.00	9014.80.20	9025.80.30	9104.00.45
9001.90.80	9014.80.40	9025.80.40	9105.11.40
9002.90.70	9014.90.10	9025.80.50	9105.21.40
9005.90.00	9014.90.60	9026.10.20	9105.91.40
9006.10.00	9015.10.40	9026.10.60	9108.12.00
9006.20.00	9015.20.40	9026.20.40	9108.91.20
9006.30.00	9015.30.40	9026.20.80	9108.91.50
9006.40.40	9015.40.40	9026.80.20	9108.99.60
9006.40.90	9015.80.60	9026.80.60	9109.11.10
9006.51.00	9015.80.80	9026.90.20	9109.19.10
9006.52.10	9016.00.20	9026.90.60	9113.90.80
9006.52.30	9017.10.00	9027.10.20	9202.10.00
9006.52.50	9017.20.40	9027.20.40	9204.10.40

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HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING	HTS SUBHEADING
9204.20.00	9403.20.00	9506.99.05	
9205.90.40	9403.30.80	9506.99.15	
9205.90.60	9403.40.60	9506.99.20	
9206.00.20	9403.40.90	9506.99.30	
9206.00.60	9403.50.60	9506.99.60	
9208.10.00	9403.50.90	9507.20.40	
9209.10.00	9403.60.80	9507.30.60	
9209.20.00	9403.70.80	9507.90.60	
9209.30.00	9403.80.60	9508.00.00	
9209.91.40	9403.90.10	9601.10.00	
9209.92.40	9403.90.50	9601.90.20	
9209.92.60	9403.90.80	9601.90.40	
9209.99.40	9404.10.00	9601.90.80	
9209.99.60	9404.30.40	9602.00.10	
9301.00.90	9404.90.80	9602.00.40	
9303.90.80	9405.10.80	9602.00.50	
9304.00.40	9405.20.40	9603.21.00	
9305.10.80	9405.20.80	9603.29.80	
9305.21.80	9405.40.80	9603.30.40	
9305.29.10	9405.50.20	9603.30.60	
9305.29.20	9501.00.40	9603.40.40	
9305.29.50	9504.10.00	9603.50.00	
9305.90.10	9504.20.80	9603.90.40	
9305.90.20	9504.30.00	9604.00.00	
9305.90.30	9504.40.00	9606.21.20	
9305.90.40	9504.90.40	9606.22.00	
9306.10.00	9504.90.60	9608.40.80	
9306.21.00	9504.90.90	9608.99.60	
9306.29.00	9505.10.25	9609.20.40	
9306.30.40	9505.90.40	9609.90.80	
9306.30.80	9505.90.60	9612.10.10	
9306.90.00	9506.11.20	9613.30.00	
9401.10.40	9506.11.60	9613.80.20	
9401.10.80	9506.12.40	9613.90.40	
9401.20.00	9506.19.40	9614.20.40	
9401.30.80	9506.21.40	9614.20.60	
9401.40.00	9506.21.80	9614.90.80	
9401.61.20	9506.29.00	9615.11.10	
9401.61.60	9506.31.00	9615.11.30	
9401.69.40	9506.32.00	9615.19.20	
9401.69.80	9506.39.00	9615.19.40	
9401.71.00	9506.51.40	9616.10.00	
9401.79.00	9506.51.60		
9401.80.40	9506.59.80		
9401.80.60	9506.61.00		
9401.90.10	9506.62.80		
9401.90.35	9506.69.20		
9401.90.50	9506.69.60		
9402.10.00	9506.70.60		
9403.10.00	9506.91.00		

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Annex B

Potential List of Beneficiaries for a U.S. LDDC Trade Initiative

Bangladesh	Maldives
Benin	Mali
Burkina Faso	Mauritania
Bhutan	Mozambique
Burma	Nepal
Burundi	Niger
Cape Verde	Rwanda
Central African Republic	Sao Tome and Principe
Chad	Senegal
Comoros	Sierra Leone
Djibouti	Somalia
Equatorial Guinea	Sudan
The Gambia	Tanzania
Ghana	Togo
Guinea	Uganda
Guinea-Bissau	Western Samoa
Haiti	Yemen Arab Republic (Sanaa)
Kenya	Zaire
Lesotho	Zambia
Malawi	

[FR Doc. 89-1084 Filed 1-13-89; 8:45 am]

BILLING CODE 3190-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Wednesday, January 18, 1989, from 9:00 a.m. to 5:00 p.m. and on Thursday, January 19, 1989, from 8:30 a.m. to 3:00 p.m. The meeting will be held in the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., in the National Ballroom. The agenda for the meeting will include discussion of: The Commission's work in developing a fee schedule (including visit coding, practice costs, geographic multipliers, simulation results, assignment policy and the process of transition from the current system to a fee schedule); policy options addressing the volume and quality of physician services under Medicare Part B (including practice guidelines, financial issue related to expenditure targets, and utilization and quality review) and risk sharing arrangements with physicians.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89-924 Filed 1-13-89; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26441; File No. S7-820]

Options Price Reporting Plan: Notice of Immediate Effectiveness of Amendment

On November 22, 1988, the participants in the "Options Price Reporting Authority" ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,"[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.

I. Description of the Amendment

OPRA proposes to establish a fee to be paid by vendors who furnish a dial-up computer market data service to their customers. The monthly fee is $50.00 times the peak number of the vendor's computer ports used simultaneously to provide the service during each month.

II. Purpose of the Amendment

OPRA states that the purpose of the new fee is to permit securities information vendors to offer to their customers a dial-up service whereby current options market data may be provided to a personal computer without requiring the customers who receive the service to become OPRA subscribers and pay applicable subscriber fees. The proposed new fee is designed to encourage firms to offer a dial-up service utilizing current market data by eliminating any fees imposed by OPRA directly on recipients of the service, and by simplifying the administrative requirements to be met by providers of the service. The new fee would also apply to current information furnished via a dial-up service to a 300 baud printer, and would thus replace the existing fee that covers only a dial-up printer service.[2] The port charge to be imposed on providers of the service is similar to the port charges that have been adopted by OPRA in connection with dial-up printer [3] and voice-synthesized market data services.[4] The new fee has been established at a level estimated by OPRA to be substantially below the aggregate subscriber fees that would be payable if a dial-up market data service could be offered only to OPRA subscribers.

III. Manner of Implementation of the Amendment

The Dial-up Service Fee will be implemented by adopting a Dial-up Market Data Service Rider to OPRA's existing Vendor Agreements, which must be executed by every vendor who wishes to offer this service. The Rider describes the terms and conditions governing the service.

In light of some uncertainty as to how the new dial-up service will be used and how it will affect OPRA's traditional subscriber fee revenue base, OPRA intends to implement the Dial-up Service Fee as a pilot during the first year after the Fee goes into effect.

IV. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the Dial-up Market Data Service Fee and Rider became effective on November 22, 1988, when the OPRA participants filed their plan amendment with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, by February 7, 1989. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

[1] *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

[2] *See* Securities Exchange Act Release No. 34-24353 (April 18, 1987), 52 FR 13784.

[3] *Id.*

[4] *See* Securities Exchange Act Release No. 34-23804 (November 14, 1986), 51 FR 42324.

Dated: January 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1031 Filed 1-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26436; File No. SR-Amex-88-27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 9, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to timely responses to Exchange requests for information and Amex policy regarding cooperation with domestic and foreign self-regulatory organizations ("SROs").

The proposed rule change was noticed in Securities Exchange Act Release No. 26325 (November 29, 1988), 53 FR 48994 (December 5, 1988). No comments were received on the proposed rule change.

The purpose of the proposed rule change is to require persons and firms subject to the Exchange's jurisdiction to respond to Exchange requests for information within a reasonable, yet specific, period of time. The Amex Constitution and Rules currently authorize the Exchange to require persons and firms subject to its jurisdiction to provide information and testimony, and also establish a disciplinary mechanism for failure to cooperate with an Exchange investigation, but there is no specific requirement that requests for information or testimony be answered within a reasonable period of time. The Exchange states in its filing that slow responses to requests for information by member firms and other persons have hampered the Exchange's ability to investigate possible insider trading situations and other matters in the past.

New Rule 31 should enhance the timeliness of Exchange investigations by ensuring that all Exchange requests for information are answered promptly. Specifically, the new rule requires that persons and firms subject to Amex's jurisdiction comply with requests for information within the time specified by the representative or committee of the Exchange making the request. Commentary .01 to Rule 31 provides that an extension of time to comply with a request for information is available for good cause shown. Such an application must be submitted to the representative or committee of the Exchange making the request prior to the deadline for compliance with the Exchange's request.

Additionally, Commentary .02 to the new rule sets out Exchange policy concerning cooperation with domestic and foreign SROs. The Exchange notes that development of a surveillance system that is appropriate to the realities of today's international and domestic securities markets requires close cooperation between the Exchange and other SROs and associations. For this reason, the Exchange routinely shares surveillance and investigative information with domestic SROs pursuant to the agreement between the members of the Intermarket Surveillance Group, and has entered into bilateral information-sharing agreements for regulatory purposes with foreign exchanges and associations. The new commentary sets forth this policy of cooperation by specifically noting the Exchange's authority to enter into agreements with domestic and foreign SROs for the exchange of information and other regulatory purposes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will protect investors and the public interest by enabling the Exchange to conduct prompt investigations into possible trading violations and other regulatory matters.

The proposal regarding timely production of investigatory information is virtually identical to a proposal by the New York Stock Exchange ("NYSE") that the Commission approved last year.[4] In approving the NYSE proposal, the Commission determined that, in order to effect its supervisory and compliance role over members and member organizations, it is necessary for an exchange to have the ability to set timetables for the receipt of information, and the disciplinary authority to compel members to comply with such requests. Because the timetable set by the NYSE (and AMEX) will vary depending upon the circumstances of a particular investigation, it would be inappropriate to establish a minimum notice period for members and member organizations to respond to information requests.

Additionally, in connection with the NYSE filing, some commentators expressed concern about the exchange's ability to impose fines for the failure to produce information, in that an unreasonable deadline set by the exchange can result in a fine being imposed against a member or member organization who in good faith attempted to produce the requested information on a timely basis. To address this concern, the NYSE noted that the language of its rule is intended to make clear that the exchange can adjust deadlines for members and member organizations that show reasonable grounds for not meeting an initial deadline. A new Commentary to the Amex rule contains similar language. Further, in approving the NYSE proposal, the Commission determined that the due process protections built into NYSE disciplinary actions, as well as Commission review of disciplinary proceedings, offer protection to members and member organizations. The same determination is applicable to the AMEX proposal.

As regards the portion of the rule change regarding surveillance-sharing agreements, the Commission believes that U.S. national securities exchanges and associations have the ability to enter into surveillance-sharing agreements with foreign SROs, and the Commission encourages the development of such agreements. Thus, while the Commission believes the Amex already has the ability to enter into such agreements, the proposed rule change will clarify the Exchange's authority to coordinate with domestic and foreign SROs in developing a surveillance system appropriate to today's increasingly linked markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-88-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: January 10, 1989.

[FR Doc. 89-1036 Filed 1-13-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b-4 (1986)

[3] 15 U.S.C. 78f (1982).

[4] *See*, SR-NYSE-87-10, approved in Securities Exchange Act Release No. 25763 (May 27, 1988).

[5] 17 CFR 200.30-3(a)(12) (1986).

[Rel. No. 34-26440; File No. SR-CSE-88-6]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to Uniform Trading Halts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on December 29, 1988, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to adopt a policy that interprets Exchange Rule 12.11 so as to require the CSE to participate in a uniform trading halt by all exchanges. The Policy Statement is set forth in full below:

Policy Statement on Market Closings December 15, 1988

The Board of Trustees of the Cincinnati Stock Exchange has reviewed the "circuit breaker" proposal of the President's Working Group on Financial Markets, and the responses to the proposal by the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), the Midwest Stock Exchange ("MSE"), the National Association of Securities Dealers, Inc. ("NASD"), and the Pacific Stock Exchange ("PSE"). Based upon its review of the proposals and statements, the Board of Trustees has adopted this Policy Statement.

The Working Group recommends that all U.S. markets for equity and equity-related products halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 points from its previous day's closing level and for two hours if the DJIA declines 400 points.

The NYSE, AMEX, and MSE have filed for, and received approval, to implement circuit breaker systems based upon the Working Group's proposal. The NASD has adopted a policy statement calling for the pursuit of other initiatives relating to the authority of the Securities and Exchange Commission, the coordination and unification of clearing and settlement systems, and establishment of an intermarket self-regulatory coordinating policy group.

The NASD's Statement recognizes the need to consider the Working Group's proposal and acknowledges the risks imposed on any single market remaining open while all other U.S. markets have halted trading. In that regard, the NASD will, upon request from the SEC, halt domestic trading in all securities quoted in the NASDAQ system and domestic trading in equity and equity-related securities in the over-the-counter market.[1]

The PSE stated that, while it was sensitive to the need for interim solutions that will help to reinstate public confidence, it did not believe that the best solution had been found. Accordingly, the PSE decided not to file a rule that adopted circuit breakers. The PSE did, however, issue a policy which stated that it would cooperate with a request from the SEC to halt trading in all equity and equity-related products traded at the PSE in conjunction with halted trading at other U.S. markets.[2]

The Cincinnati Stock Exchange is in agreement with the conclusion of the PSE Policy Statement. Therefore, the CSE will not file a rule but will halt trading in all equities traded at the CSE in conjunction with halted trading at all other U.S. equity and equity-related markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 31, 1988, the NYSE filed proposed Rule 80B with the Commission regarding trading halts due to extraordinary market volatility. The SEC approved the NYSE filing on October 19, 1988.[3] In response, the CSE Board of Trustees has reviewed the "circuit breaker" proposal recommended by the President's Working Group on Financial Markets as well as the proposals submitted by the NYSE, the AMEX, the MSE, the NASD, and the PSE. Having reviewed these proposals, the CSE Board of Trustees has adopted this Statement of Policy.

CSE Rule 12.11 gives the Chairman or the President of the Exchange the power to suspend trading whenever they believe that such suspensions would be in the public interest. The proposed rule change interprets Rule 12.11 by requiring the Exchange, as a matter of policy, to halt trading in all equities traded on the CSE in conjunction with halted trading at all other U.S. equity and equity-related markets.[4]

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CSE believes that the proposed rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CSE neither solicited nor received comments on the proposed rule change from members, participants, or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act so that the effectiveness of its rule can be coordinated with similar rule changes filed by the other exchanges.[5] The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register**. The CSE's proposed Policy Statement is virtually identical to a proposal submitted by the NASD that was reviewed by the Commission and that was noticed and approved on an accelerated basis in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637. In light of the absence of any adverse comments on the NASD's filing and the Commission's view of the benefits that may accrue from the adoption or coordinated circuit breakers that respond to stock market volatility and that may increase investor confidence in the markets, the Commission believes a good cause finding is justified.

The Commission finds that the proposed Policy Statement filed by the CSE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6[6] and the rules and regulations thereunder. The proposal will permit the Exchange to coordinate with the other securities SROs and futures exchanges in providing a mechanism to address periods of extreme downward volatility in the stock market.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 7, 1989.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: January 10, 1989.

[FR Doc. 89-1032 Filed 1-13-89; 8:45 am]

BILLING CODE 8010-01-M

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[1] In approving the NASD's proposal, the Commission requested that the NASD implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading (*i.e.*, whenever the DJIA declines 250 or 400 points). *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[2] As it did with the NASD's proposal, in approving the PSE's proposed rule change, the Commission requested that the PSE implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. *See* Securities Exchange Act Release No. 26368 (December 16, 1988).

[3] Securities Exchange Act Release No. 26198, 53 FR 41637.

[4] The Commission notes that, as a stated policy, practice, or interpretation of the Exchange, the CSE's Policy Statement, as is the NASD's and the PSE's statements, has the same effect as a written rule.

[5] Letter from David Colker, Vice President, Market Regulation, and General Counsel, CSE, to Mary N. Revell, Division of Market Regulation, Commission, dated January 4, 1989.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1988).

[Rel. No. 34-26437; File No. SR-GSCC-88-6]

Self-Regulatory Organizations; Government Securities Clearing Corporation, Notice of Proposed Rule Change; Comparison Operation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1988, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's Rules and Procedures as per Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to establish the binding effect of comparisons issued by GSCC to Members for correctly compared trades. This will enable Members to cease their current manual confirmation process which is duplicative of the GSCC comparison reports. In addition, the proposed rule filing deletes the requirement that members confirm and acknowledge receipt of transactions on contract lists, since such action will not be required of Members.

(b) The proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of the 1934 Act, as amended, and the rules and regulations thereunder applicable to the self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule change and comments will be solicited by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–GSCC–88–4 and should be submitted by February 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 10, 1989.

Jonathan G. Katz,

Secretary.

Exhibit A—Comparison Operation

Italics indicate addition; [Brackets] indicate deletion.

Rule 7. Sec. 1. A Member may submit to the Corporation for comparison trade data on any transaction calling for delivery of Cleared Securities between it and another person. The Corporation will, in accordance with this Rule and the Procedures, handle the comparison of transactions reflected in trade data so submitted to it.

Sec. 2. Trade data submitted to the Corporation by a Member pursuant to Section 1 of this Rule shall be submitted in the form and manner, and in accordance with the time schedules, prescribed by, or pursuant to, the Procedures.

The name of a Member printed, stamped or written on any form, document or other item issued by him pursuant to this Rule or the Procedures shall be deemed to have been adopted by him as his signature and shall be valid and binding upon him in all respects as though he had manually affixed his signature to such form, document or other item.

Each Member shall promptly check each document he receives from the Corporation pursuant to this Rule or the Procedures.

[Each Member who receives a contract list pursuant to the Procedures shall not later than the time specified by the Corporation deliver to the Corporation confirmations confirming and acknowledging each transaction appearing on such contract lists.]

Any trade data submitted to the Corporation by a Member pursuant to Section 1 of this Rule which is not compared by the Corporation, or any such item compared by the Corporation which is subsequently deleted as provided in the Procedures and not later compared, shall be adjusted directly between the parties.

Sec. 3. Comparisons generated by the Corporation shall constitute the sole comparison for all trades in Cleared Securities for which Members have submitted data and which the Corporation has identified as compared trades. Each comparison generated by the Corporation as to any such correctly compared trade shall evidence a valid, binding and enforceable contract between the Members in respect of such trade. Any confirmation, comparison or other documentary evidence of any such trade, other than the comparison generated by the Corporation, shall not affect the existence or terms and conditions of such a valid, binding and enforceable contract between the Members in respect of such trade.

[FR Doc. 89–1037 Filed 1–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26435; File No. SR–OCC–88–09]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Proposed Rule Change Regarding Escrow Deposits for Index Participations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on December 19, 1988, Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described below. The proposal would permit clearing members to deposit escrow receipts with OCC in lieu of margin on short Index Participation ("IP") [1] positions carried for the accounts of customers. The Commission is publishing this notice to solicit comment.

I. Description of the Proposal

Proposed Rule 1909 governing IP escrow deposits is patterned on existing Rule 1801 which governs index option escrow receipts. As in the index option escrow receipt program, a customer wishing to utilize the IP escrow receipt program would be required to make an escrow deposit of at least a minimum aggregate value with a bank or trust company (a "depository"). Rule 1909(c) would provide that the minimum aggregate value as of the trade date (*i.e.*, the date on which the IPs covered by the deposit were written) would have to be at least 150% of the "initial position value" (trade price per minimum trading unit on the trade date times the number of minimum trading units of IPs covered by the deposit). OCC states in its filing that the 150% requirement is consistent with the initial margin requirement for short stock positions as set forth in Regulation T of the Board of Governors of the Federal Reserve System. OCC believes that consistency is appropriate since IPs function economically as surrogates for stock; IPs are unleveraged as stocks are; and (because IPs are based on baskets of stocks) IPs are, if anything, less volatile than individual stocks.

Rule 1909(b) would provide that the deposited property could consist of any combination of cash, United States government securities, and common stocks. Consistent with OCC's requirements for margin in the form of government securities and common stocks, Rule 1909(f) would provide that government securities would be valued at the lesser of par value or 100% of current market value and that common stocks would be valued at 50% of their market value for all calculations under Rule 1909. Rule 1909(e) would accord OCC the authority to disregard the escrow receipt and require margin if the aggregate value of the deposited property fell below 130% of the current market value of the IPs covered by the deposit. OCC believes that the 130% requirement is consistent with the maintenance margin requirement for short stock positions as set forth in the rules of the various exchanges. The proposed form of IP escrow receipt would require the depository to notify the customer and request that the deposit be supplemented if the value of the deposit fell to less than 135% of the then current position value, and to notify OCC if the value of the deposit fell to less than 130% of the then current position value.

As with index options, Rule 1909(d) and the IP escrow receipt would provide that OCC may make a demand on an IP escrow deposit when an exercise notice is assigned to the covered short IP position. Paragraphs (d) and (e) of Rule 1909 and the IP escrow receipt also would provide that OCC may make a demand on the IP escrow deposit if the value of the deposited property fell below 130% of the current market value of the IPs covered by the deposit, OCC called for margin and such margin was not forthcoming, and OCC suspended the Clearing Member. Finally, Rule 1909(d) and the IP escrow receipt also would provide that OCC may make a demand on the IP escrow deposit when a dividend equivalent is owed in respect of the position. The need for this last right stems from the fact that writers of IPs are obligated to pay holders of IPs dividend equivalents once every calendar quarter.

II. OCC's Rationale for the Proposal

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act. OCC states in its filing that the proposed escrow receipt program will foster broader institutional participation in the market for IPs, while providing adequate safeguards for the protection of OCC in the event of a default by a customer or a clearing member.

III. Request for Comments

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office.

All comments should refer to the file number SR–OCC–88–09 and should be submitted by February 7, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1033 Filed 1–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26439; File No. SR–SCCP 88–02]

Self-Regulatory Organization; Notice of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Board Meeting

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") proposes as a rule change to amend its By-Law Article IV, Section 4 in order to allow its Board of Directors to convene its meetings from time to time outside the Commonwealth of Pennsylvania. The text of the proposed rule change is as follows: Italics indicates additions; brackets indicate deletions.

By-Law Article IV, Section 4—Meetings of Directors

The meetings of the Board may be held at such place within *or without* the Commonwealth of Pennsylvania as a majority of the directors may from time to time appoint, or as may be designated in the notice calling the meeting.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is being submitted to allow the Board of Directors of SCCP to schedule meetings outside the Commonwealth of Pennsylvania. From time to time the PHLX Board of Governors convenes its Board conference outside the Commonwealth of Pennsylvania with the respective Boards of its subsidiaries meeting at the similar location. In order to facilitate such meetings in the future the proposed by-law amendment is being filed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed by-law amendment will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

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[1] An IP is a proposed new product whose value is determined by reference to the value of an underlying stock index. An IP is of indefinite duration and entitles holders to cash payments equivalent to a proportionate share of any regular cash dividends declared on the component stocks of the underlying index. OCC would issue, clear and settle IPs pursuant to rules proposed in Securities Exchange Act Release Nos. 25529 (March 29, 1988), 53 FR 10860; 25867 (June 29, 1988), 53 FR *25560*; and 26388 (December 22, 1988), 53 FR *52901*. Additionally, a number of exchanges have proposed rule changes to list for trading a variety of IP products.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to SR–SCCP–88–02 and should be submitted by February 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 10, 1989.

[FR Doc. 89–1034 Filed 1–13–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26438; File No. SR–PHILADEP 88–02]

Self-Regulatory Organization; Notice of Proposed Rule Change By the Stock Clearing Corporation of Philadelphia Relating to Board Meetings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1988, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Depository Trust Company ("PHILADEP") proposes as a rule change to amend its By-Law Article IV, Section 4 in order to allow its Board of Directors to convene its meetings from time to time outside the Commonwealth of Pennsylvania. The text of the proposed rule change is as follows: Italics indicates additions; brackets indicate deletions.

By-Law Article IV, Section 4—Meetings of Directors

The meetings of the Board may be held at such place within *or without* the Commonwealth of Pennsylvania as a majority of the directors may from time to time appoint, or as may be designated in the notice calling the meeting.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is being submitted to allow the Board of Directors of PHILADEP to schedule meetings outside the Commonwealth of Pennsylvania. From time to time the PHLX Board of Governors convenes its Board conference outside the Commonwealth of Pennsylvania with the respective Boards of its subsidiaries meeting at the similar location. In order to facilitate such meetings in the future the proposed by-law amendment is being filed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed by-law amendment will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to SR–PHILADEP–88–02 and should be submitted by February 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 10, 1989.

[FR Doc. 89–1035 Filed 1–13–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2327]

Missouri (and Contiguous Counties in the State of Arkansas); Declaration of Disaster Loan Area

Barry County, in the State of Missouri, constitutes a disaster area as a result of damages from tornadoes which occurred on November 15, 1988. Applications for loans for physical damage may be filed until the close of business on March 6, 1989, and for economic injury until the close of business on October 4, 1989, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

Or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Lawrence, McDonald, Newton, and Stone, in the State of Missouri, and Benton and Carroll Counties, in the State of Arkansas, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125

The number assigned to this disaster for physical damage is 232712 and for economic injury the numbers are 668800 for the State of Missouri and 668900 for the State of Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: January 4, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1025 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/06–0020]

Banc One Capital Corp.; License Surrender

Notice is hereby given that Banc One Capital Corporation, 100 East Broad Street, Columbus, Ohio 43215, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Banc One was licensed by the Small Business Administration on January 17, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 30, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: January 9, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–1026 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02/5274]

Pioneer Capital Corp.; Surrender of License

Notice is hereby given that Pioneer Capital Corporation, 111 East 55th Street, New York, New York 10022 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Pioneer Capital Corporation was licensed by the Small Business Administration on September 2, 1969.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 20, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 9, 1989.

[FR Doc. 89–1027 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

National Advisory Council Executive Committee Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC, will hold a National Advisory Council Executive Committee meeting, on Thursday and Friday, February 2 and 3, 1989 from 8:30 a.m. on Thursday and adjourn by 11:30 a.m. on Friday, in the Administrator's Conference Room, at 1441 L Street, NW., 10th Floor, Washington, DC 20416, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street, NW., Room 503–E, Washington, DC 20416, 202/653–6748.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 10, 1989.

[FR Doc. 89–1024 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Thursday, February 9, 1989 at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 5309, Honolulu, Hawaii 96850, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T. C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, 808/541–2990.

Jeannette M. Pauli,

Acting Director Office of Advisory Councils.

January 6, 1989.

[FR Doc. 89–1019 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 9:30 a.m. on Friday, February 24, 1989 at the O'Hare Plaza Hotel, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator for Public Affairs and Communications, U.S. Small Business Administration, 230 South Dearborn Street, Room 510, Chicago, Illinois 60604–1593, 312/353–0359.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 6, 1989.

[FR Doc. 89–1020 Filed 1–13–89; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Columbus, will hold a public meeting at 9:30 a.m. on Friday, February 17, 1989 at the U.S. Federal Courthouse, 85 Marconia Boulevard, Conference Room 446 (Fourth Floor), Columbus, Ohio, 43215, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call

Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Boulevard, Fifth Floor, Room 512, Columbus, Ohio 43215, 614/469-7310.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 10, 1989.

[FR Doc. 89-1021 Filed 1-13-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting at 9:00 a.m. on Thursday, February 9, 1989 at the Small Business Administration Office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Abby H. Carter, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890, 504/589-2744.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 10, 1989.

[FR Doc. 89-1022 Filed 1-13-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Lubbock, will hold a public meeting at 10:00 a.m. to 12:00 noon on Tuesday, February 14, 1989 at the Brazos Room at Lubbock Plaza Hotel and Convention Center, 3201 South Loop 289, Lubbock, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas 79401, 806/738-7462.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

January 10, 1989.

[FR Doc. 89-1023 Filed 1-13-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1090]

Soviet-Eastern European Studies Program

On December 21, 1988, the U.S. Department of State approved the recommendations of the Soviet-Eastern European Studies Advisory Committee for the following FY 1989 awards.

1. American Council of Teachers of Russian

Grant: $95,000.

Purpose: To provide fellowships for advanced Russian language study in Moscow.

Contact: Dr. Dan E. Davidson, Director, USSR Programs Group, American Council of Teachers of Russian, Fifth Floor, 1619 Massachusetts Avenue NW., Washington, DC 20036, (202) 328-2287.

2. Council on International Educational Exchange

Grant: $25,000.

Purpose: To provide fellowships for advanced Russian language study at Leningrad State University.

Contact: Dr. Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program, Council on International Educational Exchange, 205 East 42nd Street, New York, NY 10017, (212) 661-1414.

3. Hoover Institution at Stanford University

Grant: $200,000.

Purpose: To provide postdoctoral fellowships and summer research grants for support of individual research projects at Hoover on the USSR and Eastern Europe.

Contact: Dr. Richard F. Staar, Coordinator, International Studies Program, Hoover Institution on War, Revolution and Peace at Stanford University, Stanford, CA 94305, (415) 723-1348.

4. University of Illinois

Grant: $140,000.

Purpose: To provide partial funding for the University's Slavic Reference Service and Summer Research Laboratory on Russia and Eastern Europe.

Contact: Ms. Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL 61801, (217) 333-1244 or 3278.

5. International Research and Exchange Board

Grant: $795,000.

Purpose: To support a variety of activities facilitating access for American scholars to pursue research in the USSR and countries of Eastern Europe.

Contact: Ms. Barbara Sassone, International Research and Exchanges Board, 126 Alexander Street, Princeton, NJ 08540-7102, (609) 683-9500.

6. The Joint Committee on Eastern Europe

Grant: $440,000.

Purpose: To provide fellowships for advanced graduate training, advanced research, and language training in the East European field.

Contact: Dr. Jason Parker, Executive Associate, Joint Committee on Eastern Europe, American Council of Learned Societies, 228 East 45th Street, New York, NY 10017, (212) 697-1505.

7. The Joint Committee on Soviet Studies

Grant: $765,000.

Purpose: To support a national fellowship program for advanced graduate training, dissertation writing, and postdoctoral support for junior scholars; provide institutional awards for new teaching positions; and institutional grants for training in the languages of the USSR.

Contact: Ms. Kathryn Becker, Joint Committee on Soviet Studies, Social Science Research Council, 605 Third Avenue, New York, NY 10158, (212) 661-0280.

8. The National Academy of Sciences

Grant: $65,000.

Purpose: To provide partial support for a program of field research and bilateral workshops on science and technology policy in Eastern Europe.

Contact: Dr. Glenn Schweitzer, Director, Soviet & East European Affairs, Office of International Affairs, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20418, (202) 334-2644.

9. The National Council for Soviet and East European Research

Grant: $1,265,000.

Purpose: To conduct a national research program which awards contracts to American institutions of higher education or not-for-profit corporations in support of postdoctoral research projects.

Contact: Mr. Vladimir I. Toumanoff, Executive Director, The National Council for Soviet and East European Research, 1755 Massachusetts Avenue NW., Suite 304, Washington, DC 20036, (202) 387-0168.

10. The Woodrow Wilson Center

Grant: $750,000.

Purpose: To support the research fellowships and meetings programs of the Kennan Institute for Advanced Russian Studies ($475,000) and the East European Program ($275,000).

Contact:

Dr. Blair Ruble, Secretary Kennan Institute for Advanced Russian Studies.

or

Dr. John Lampe, Secretary, East European Program, The European Institute.

The Wilson Center, 370 L'Enfant Promenade, Suite 704, Washington, DC 20024-2518, (202) 287-3000.

Date. January 6, 1989.

E. Raymond Platig,

Executive Director, Soviet and Eastern European Studies Program.

[FR Doc. 89-1047 Filed 1-13-89; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Dallas/Fort Worth International Airport; Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for proposed facility improvements at Dallas/Fort Worth International Airport.

FOR FURTHER INFORMATION CONTACT: Mo Keane, Airport Environmental Specialist, ASW-612B, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193-0612. Telephone: (817) 624-5606.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Dallas/Fort Worth International Airport Board, will prepare an EIS for airfield improvements at the Dallas/Fort Worth International Airport.

The Dallas/Fort Worth International Airport proposes to construct an 8,500-foot runway tentatively identified as RW 16-34 East. The runway is required to increase hourly capacity and alleviate aircraft delay. Need for this project is identified by the DFW Metroplex Air Traffic System Plan.

The runway project will be accomplished through a two-phased action. Phase 1 proposes a 6,000-foot x 150-foot runway capable of accommodating commuter and general aviation traffic. This portion of the project is scheduled to be on-line in 1992. Phase 2 will extend the runway to overall dimensions of 8,500-foot x 150-foot. The runway will support air carrier traffic flying routes of 2,000 nautical miles or less. Implementation of the second phase will occur near the year 2000 or as required by aviation demand.

The FAA intends to consult and coordinate with Federal, State, and local agencies which have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed project. To solicit input, three scoping meetings are being scheduled. The first will be held for public agencies on February 21, 1989, at the Dallas/Fort Worth International Airport, Administration Building, Board Room, beginning at 2:00 p.m. The second meeting will be held for interested members of the public on February 21, 1989, in the Coppell City Hall, Coppell, Texas, from 7:30 p.m. to 9:30 p.m. The third meeting will be held for interested members of the public on February 22, 1989, in the Irving City Hall, Irving, Texas, from 7:30 p.m. to 9:30 p.m. Interested persons or agencies are invited to attend the appropriate scoping meeting to identify those issues which may have significant environmental impacts.

Issued on: January 4, 1989.

Gene L. Faulkner,

Manager, Airports Planning Branch.

[FR Doc. 89-933 Filed 1-13-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Trinidad, CO; Closing

Notice is hereby given that on or about February 9, 1989, the flight service station at Trinidad, Colorado, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Denver, Colorado. This information will be reflected in the FAA Organization Statement the next time it is issued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

Issued in Seattle, Washington, on January 3, 1989.

[FR Doc. 89-934 Filed 1-13-89; 8:45 am]

BILLING CODE 4910-31-M

Federal Railroad Administration

[Docket No. RSPC-84-1, Notice 3]

Rail Passenger Equipment; Reissuance of Guidelines for Selecting Materials To Improve Their Fire Safety Characteristics

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Reissuance of guidelines.

SUMMARY: FRA is updating its guidelines containing performance criteria for the flammability and smoke emission characteristics of materials to be used in the construction of new or rebuilt rail passenger cars. The new guidelines contain an updated table of recommended testing methods for determining whether materials meet the performance criteria. FRA's guidelines are similar to recommendations issued by the Urban Mass Transportation Administration (UMTA) for the rapid transit industry.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, Washington, DC 20590, Telephone 202-366-0897.

SUPPLEMENTARY INFORMATION: Section 702 of the Rail Safety and Service Improvement Act of 1982 (Pub. L. 97-468), enacted on January 14, 1983, required the issuance of any necessary rules relating to rail passenger equipment and a report to Congress. In its 1984 report to Congress, FRA concluded that rail passenger service has compiled an excellent safety record, one that can be attributed to the rail industry's operational and safety practices as well as the effect of FRA's extensive safety regulations.

To enhance that record, FRA has undertaken five safety initiatives: (1) A final rule extending its Federal Track Safety Standards (49 CFR Part 213) to include all track used exclusively for commuter service; (2) a final rule amending Railroad Power Brakes Regulations (49 CFR Part 232) to preserve the inspection and testing requirements for passenger car brake equipment; (3) a safety inquiry to assess the potential impact of technological changes in rail passenger equipment; (4) a joint FRA-industry examination of emergency procedures; and (5) these guidelines. The public notices concerning the first three actions appeared in the **Federal Register** on January 17, 1984 (49 FR 1987).

FRA initially published these guidelines in the **Federal Register** on

August 20, 1984 (49 FR 33076). The guidelines were republished on November 7, 1984, (49 FR 44582) to include a table omitted from the initial publication.

Background

The background for the development and initial issuance of these guidelines is provided in the previous **Federal Register** notices concerning this matter. FRA is reissuing these guidelines to provide an updated table of recommended testing methods for determining whether materials meet the performance criteria. This additional information was obtained from a more exhaustive review of available fire standards, both in the U.S.A. and in Europe. The updated table details functions for materials formerly under the miscellaneous category and provides an additional performance criteria for floor covering and elastomers.

Recommended Fire Safety Practices for Rail Passenger Car Materials Selection

Application

This document provides fire safety practices of testing the flammability and smoke emission characteristics of materials used in the construction of commuter and intercity passenger vehicles.

Referenced Fire Standards

The source of test procedures listed in Table 1 are as follows:

1. Leaching Resistance of Cloth, FED-STD191A-Textile Test Method 5830.

Available from: General Services Administration Specifications Division, Building 197 Washington Navy Yard, Washington, D.C. 20407.

2. Federal Aviation Administration Vertical Burn Test, FAR-25.853.

3. American Society for Testing Materials (ASTM):

(a) Specification for Gaskets, ASTM C-542.

(b) Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D-3675.

(c) Fire Tests of Building Construction and Materials, ASTM E-119.

(d) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E-162.

(e) Bonded and Laminated Apparel Fabrics, ASTM D-2724.

(f) Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, ASTM E-648.

(g) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E-662.

Available from: American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

In all instances, the most recent issue of the document or the revision in effect at the time of request should be employed in the evaluation of the materials specified herein.

Definition of Terms

1. Critical Radian Flux (CRF), as defined in ASTM E-648 is a measure of the behavior of horizontally-mounted floor covering systems exposed to a flaming ignition source in a graded radiant heat energy environment in a test chamber.

2. Flame spread index (I_s) as defined in ASTM E-162 is a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $I_s = F_s \times Q$.

3. Specific optical density (D_s) as defined in ASTM E-662 is the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm² for a specified period of time.

4. Surface flammability denotes the rate at which flames will travel along surfaces.

5. Flaming running denotes continuous flaming material leaving the site of material burning or material installation.

6. Flaming dripping denotes periodic dripping of flaming material from the site of material burning or material installation.

Recommended Test Procedures and Performance Criteria

(a) The materials used in commuter and intercity passenger vehicles should be tested according to the procedures and performance criteria set forth in Table 1.

(b) The owners and operators should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized independent testing laboratory, and that the results are within the recommended limits.

(c) Although, at present, there are no Fire Safety Practices for electrical insulation materials, information pertinent to the selection and specification of an electrical insulation for use in the rail transit environment is contained in the following UMTA reports:

1. Electrical Insulation Fire Characteristics, Volume I, Flammability Tests, December 1978. UMTA-MA-06-0025-79-1. PB294 840/4GA.

2. Electrical Insulation Fire Characteristics, Volume II, Toxicity, December 1978. UMTA-06-0025-79-2. PB294 841/2GA.

3. Combustibility of Electrical Wire and Cable for Rail Rapid Transit Systems, Volume I, Flammability, May 1983. UMTA-MA-06-0025-83-6. PB83-233742.

4. Combustibility of Electrical Wire and Cable for Rail Transit Systems, Volume II, Toxicity, May 1983. UMTA-MA-06-0025-83-7. PB83-233759.

Available from: The National Technical Information Service, Springfield, Virginia 22161.

BILLING CODE 4910-06-M

TABLE 1.—RECOMMENDATIONS FOR TESTING THE FLAMMABILITIY AND SMOKE EMISSIONS CHARACTERISTICS FOR COMMUTER AND INTERCITY RAIL VEHICLE MATERIALS

Category	Function of Material	Test Procedure	Performance Criteria
Passenger seats, sleeping and dining car components	Cushions, Mattresses [1, 2, 5, 9*]	ASTM D-3675	$I_s \leq 25$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 175$
	Seat and/or Mattress Frame [1, 5, 8]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Seat and Toilet Shroud, Food Trays [1, 5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Seat Upholstery, Mattress Ticking and Covers, Curtains [1, 2, 3, 5]	FAR 25.853 (Vertical)	Flame time $\leq$ 10 sec.; Burn length $\leq$ 6 inch
		ASTM E-662	$D_s (4.0) \leq 250$ coated $D_s (4.0) \leq 100$ uncoated
Panels	Wall [1, 5, 10]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Ceiling [1, 5, 10]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Partition, Tables and Shelves [1, 5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Windscreen [1, 5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	HVAC Ducting [1, 5]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (4.0) \leq 100$
	Window [4, 5]	ASTM E-162	$I_s \leq 100$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
	Light Diffuser [5]	ASTM E-162	$I_s \leq 100$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
Flooring	Structural [6]	ASTM E-119	Pass
	Covering [7, 10]	ASTM E-648	C.R.F. $\geq$ 0.5 w/cm²
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
Insulation	Thermal [1, 2, 5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s (4.0) \leq 100$
	Accoustic [1, 5]	ASTM E-162	$I_s \leq 25$
		ASTM E-662	$D_s (4.0) \leq 100$
Elastomers	Window Gaskets, Door Nosing, Diaphragms, Roof Mat [1]	ASTM C-542	Pass
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
Exterior Plastic Components	End Cap Roof Housings [1]	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$
Component Box Covers	Interior, Exterior Boxes	ASTM E-162	$I_s \leq 35$
		ASTM E-662	$D_s (1.5) \leq 100$; $D_s (4.0) \leq 200$

* Refers to Notes on Table 1

BILLING CODE 4910-06-C

Notes

1. Materials tested for surface flammability should not exhibit any flaming running or flaming dripping.

2. The surface flammability and smoke emission characteristics should be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.

3. The surface flammability and smoke emission characteristics should be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D–2724. Materials that cannot be washed or dry cleaned should be so labeled and should meet the applicable performance criteria after being cleaned as recommended by the manufacurer.

4. For double window glazing, only the interior glazing should meet the materials requirements specified herein, the exterior need not meet those requirements.

5. ASTM E–662 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming and non-flaming mode, depending on which mode generates the most smoke.

6. Structural flooring assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in the dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against under car fires. Penetrations (ducts, etc.) should be designed against acting as passageway for fire and smoke.

7. Floor covering should be tested in accordance with ASTM E–648 with its padding, if the padding is used in actual installation.

8. Arm rests, if formed plastic, are tested as cushions, if hard material, are tested as a seat back shroud.

9. Testing is performed without upholstery.

10. Carpeting on walls and ceilings are to be considered wall and ceiling panel materials respectively.

Issued in Washington, DC, on January 10, 1989.

John H. Riley,

Administrator.

[FR Doc. 89–1058 Filed 1–13–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Announcing the Second Meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Biomechanics Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding injuries other than thoracic and abdominal injuries occurring in side impact crashes and injuries caused by steering assemblies.

DATE AND TIME: The meeting is scheduled for February 10, 1989, from 10:30 a.m. to 5:00 p.m..

ADDRESS: The meeting will be held in Room 6332 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Biomechanics Subcommittee will focus on head injury criteria. Discussions will cover: Available data to support development and/or evaluation of head injury criteria; alternative criteria; their bases, validation, and application; and future research needs to further criteria development.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

Records shall be kept of all Subcommittee proceedings and shall be available for public inspection in public reference file number 88–01—Biomechanics Subcommittee during the hours of 8:00 a.m. to 4:00 p.m. in the National Highway Traffic Safety Administration's Technical Reference Division, in Room 5108, 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rolf Eppinger, Office of Research and Development, 400 Seventh Street, SW., Room 6226, Washington, DC 20590, telephone: (202) 366–4875.

Issued on: January 11, 1989.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research

[FR Doc. 89–1060 Filed 1–13–89; 8:45 am]

BILLING CODE 4910–59–M

Date: January 11, 1989.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0892

Form Number: 8300

Type of Review: Resubmission

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payer. Any transaction which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Farms, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations

Estimated Number of Respondents: 8,300

Estimated Burden Hours Per Response/Recordkeeping: 16 minutes

Frequency of Response: On occasion

Estimated Total Recordkeeping/Reporting Burden: 8,593 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–1013 Filed 1–13–89; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

[T.D. 89–9]

Approval and Accreditation of PKB-Scania (USA), Inc., As a Commercial Gauger and Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval and accreditation of PKB-Scania (USA), Inc., as a Commercial Gauger and Laboratory.

SUMMARY: PKB-Scania (USA), Inc., of New Orleans recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils in bulk and in liquid form, and for accreditation to analyze petroleum and petroleum products for API gravity and sediment and water content. Customs has determined that PKB meets the requirements for approval and accreditation.

Therefore, in accordance with § 151.13(c), PKB-Scania (USA), Inc., 524 Elmwood Park Blvd., New Orleans, Louisiana 70123, is approved to gauge and accredited to analyze the products named above in all Customs districts.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: January 9, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89–954 Filed 1–13–89; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Exchange With USSR, Central and Eastern Europe, and Yugoslavia; Correction

The announcement on this subject appearing at 53 FR 52570 through 52572 on December 28, 1988, has a typographical error on page 52572 under the heading of "Category C: Youth Exchanges With Central/Eastern Europe and Yugoslavia" the first sentence up to the first comma should read: "1. The Same Criteria and foci as in Category B apply here,"

Please make this change on copies of said announcement.

Ledra L. Dildy,

Federal Register Liaison.

[FR Doc. 89–1061 Filed 1–13–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 10
Tuesday, January 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, January 10, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of the B.M. Behrends Bank, Juneau, Alaska, for consent to establish a branch at the Juneau Pioneers Home, Glacier Highway, Juneau, Alaska.

Recommendations with respect to administrative enforcement proceedings against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof.

Recommendation concerning the Corporation's assistance agreement with an insured bank.

Matters relating to the possible closing of certain insured banks.

Application of Pioneer Financial, A Cooperative Bank, an operating non-FDIC insured cooperative bank located at 46 Pleasant Street, Malden, Massachusetts, for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to the public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: January 11, 1989.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89–1094 Filed 1–12–89; 3:14 pm]
BILLING CODE 6714–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

(NCLIS)

DATE AND TIME: January 26–27, 1989.

PLACE: La Fonda Hotel, Santa Fe Room, 100 E. San Francisco, Santa Fe, New Mexico 87501.

STATUS:

January 26, 1989, 9:00 a.m.–5:00 p.m.—OPEN
January 27, 1989, 8:30 a.m.–9:30 a.m.—CLOSED
Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
January 27, 1989, 9:30 a.m.–5:00 p.m.—OPEN

MATTERS TO BE DISCUSSED:

Panel presentation on library and inforamtion services to American Indians
Hearings on library and information services and needs to American Indians
Chairman's Report
Approval of October 27–28, 1988 Minutes
Executive Director's Report
—FY 89 First Quarter Report
—Administrative Report
Report on New Mexico State Library Programs and Activities, Virginia Hendley, State Librarian
NCLIS Committee Reports
—White House Conference on Library and Information Services II
—Recognition Awards
—Legislative
—Public Affairs
—International
—Budget and Finance
—Program Review
—School Media
—Governance
—Information Age
Federal-State Cooperative System for Public Library Statistics
Discussion and information on:
—Acid Free Paper
—EDUCOM
—Snowe bill

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 111 18th Street NW., Suite 310, Washington, DC 20036, (202) 254–3100.

Dated: January 9, 1989.
Jane D. McDuffie,
Staff Assistant.
[FR Doc. 89–1055 Filed 1–12–89; 9:15 am]
BILLING CODE 7527–01–M

SECURITIES AND EXCHANGE COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 16, 1989.

A closed meeting will be held on Wednesday, January 18, 1989, at 2:30 p.m. An open meeting will be held on Thursday, January 19, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be prsesent.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A), and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 18, 1989, at 2:30 p.m., will be:

Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Formal orders of investigation.

The subject matter of the open meeting scheduled for Thursday, January 19, 1989, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U–3A–2 under the Public Utility Holding Company Act of 1935. Rule 17 would specify the circumstances in which non-utility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended form UA–3A–2 would require the company to furnish information supporting its ability to rely on one of the safe harbor provisions of Rule 17. For further information, please contact Sidney L. Cimmet at (202) 272–7340.

2. Consideration of whether to adopt amendments to Forms N–3 and N–4 to (1) require consolidation of all expense-related information in a fee table located near the front of each variable annuity separate account prospectus; and (2) eliminate disclosure that would be repetitive of information contained in the fee table. In addition, the Commission will consider whether to adopt amendments to Form N–1A to eliminate the fee table requirement for management investment companies offering shares exclusively to separate accounts. For further information, please contact Nancy M. Rappa at (202) 272–2822.

3. Consideration of whether to publish a release for comment which proposes amendments to Rule 10b–4. The proposed amendments would clarify the net long proviso of the rule. In addition, the release would propose for comment deregulation of hedged tendering. For further information, please contact M. Blair Corkran or Jodie J. Kelley at (202) 272–2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272–2300.

Jonathan G. Katz,
Secretary.
January 10, 1989.
[FR Doc. 89–1038 Filed 1–11–89; 4:48 pm]
BILLING CODE 8010–02–M

Corrections

Federal Register
Vol. 54, No. 10
Tuesday, January 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

Medical Devices; Labeling; User Labeling for Menstrual Tampons; Proposed Ranges of Absorbency for Menstrual Tampons

Correction

In proposed rule document 88-21664 beginning on page 37250 in the issue of Friday, September 23, 1988, make the following correction:

§ 801.430 [Corrected]

On page 37263, in the second column, in § 801.430(e)(1), the third line should read "designations of absorbency listed in this paragraph representing the absorbency of the".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

Correction

In notice document 89-105 beginning on page 329 in the issue of Thursday, January 5, 1989 make the following correction:

On page 329, in the 3rd column, under **DATES**, in the 22nd line, "January 30, 1980" should read "January 30, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket Nos. 86-17, Notice 4 and 87-16, Notice 3]

RIN 2125-AB56

Design Standards for Highways; Standard Specifications for Highway Signs, Luminaires, and Traffic Signals

Correction

In rule document 89-95 beginning on page 276 in the issue of Thursday, January 5, 1989, make the following correction:

§ 625.5 [Corrected]

On page 281, in the third column, in § 625.5(b)(6), in the second line, "and" should read "through".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

Notice That Entry/Entry Summary Required for Importation of Hong Kong Textiles

Correction

In notice document 89-142 appearing on page 349 in the issue of Thursday, January 5, 1989, make the following corrections:

1. In the first column, the subject heading should read as it appears above.

2. In the same column, under **SUMMARY**, in the second line, "for" should read "of".

3. In the same column, under **SUPPLEMENTARY INFORMATION**, in the sixth line, the comma should be replaced by a period.

BILLING CODE 1505-01-D

Federal Register

Tuesday
January 17, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, California; Proposed Rule and Proposed Technical Determinations

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf, California

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish special emission control requirements for Outer Continental Shelf (OCS) facilities off the coast of California under the provisions of section 5(a)(8) of the OCS Lands Act, as amended. The application of the provisions of proposed § 250.47 to OCS facilities off the coast of California would supersede the requirements found in 30 CFR 250.45 and 250.48. The requirements in §§ 250.45 and 250.46 would continue to apply to OCS facilities off the coast of States other than California. This action is taken to address problems regarding air quality which are unique to California. The objective of the proposed rule is to prevent or mitigate any significant adverse impact on onshore air quality as a result of oil and gas operations conducted on Federal leases in the OCS adjacent to the State of California.

DATE: Comments must be hand delivered or postmarked no later than February 16, 1989.

ADDRESS: Comments should be hand delivered or mailed to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Attention: Gerald D. Rhodes; telephone (703) 648–7816; (FTS) 959–7816.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Introduction

This Notice consists of five major parts: A two-part preamble followed by the text for the proposed rule and the appendices for the rule. The preamble contains: a) Background information pertinent to this rulemaking in general and b) information pertinent to the proposed rule. The text of the proposed rule follows the preamble with the two appendices that are pertinent to it. The public is asked to comment on the proposed rule and its appendices as a whole and to provide answers to the questions set forth at the end of the preamble.

Background

Activities associated with the exploration for and development of oil and gas resources emit air pollutants. In particular, exploration and development activities in the OCS emit carbon monoxide (CO), particulate matter (total suspended particulates (TSP) and (PM_{10})), sulfur dioxide (SO_2), nitrogen oxides (NO_x), and volatile organic compounds (VOC). Once in the atmosphere, NO_x, and VOC react photochemically to produce ozone.

The largest amount of emissions comes from power generation equipment on OCS platforms, such as gas turbines and diesel engines, used to run drilling rigs and pumps. Most of the emissions are NO_x. The exact amount of NO_x emitted from these sources depends upon the operating characteristics of the turbine or engine, such as the size, type, and period of use, as well as the type of fuel burned.

VOC emissions, mostly hydrocarbons, come from fugitive sources. Fugitive sources include valves, flanges, and pumping equipment through which oil and gas are processed and transported.

The amount of SO_2 emissions depends largely on the hydrogen sulfide (H_2S) content of the gas, if any, produced with the crude oil, the removal and treatment of the H_2S, and the sulfur content of the fuels used.

Section 5(a)(8) of the OCS Lands Act directs the Secretary of the Interior (Secretary) to adopt rules for compliance with the national ambient air quality standards (NAAQS) pursuant to the Clean Air Act (CAA) to the extent that activities authorized under the Act significantly affect the air quality of any State (43 U.S.C. 1334(a)(8)). Responding to this mandate, in 1980 the Department of the Interior (DOI) published final rules to regulate the emission of air pollutants from activities authorized on the OCS under the OCS Lands Act. The final rules were codified at 30 CFR 250.57 on March 7, 1980 (45 FR 15128). The operating regulations at 30 CFR Part 250 were revised in a final rule published on April 1, 1988, and effective on May 31, 1988 (53 FR 10596). The sections governing control of air emissions now appear in Subpart C at 30 CFR 250.44, 250.45, and 250.46.

The DOI's existing emissions control program may be described as a three-step process to determine whether an OCS facility should be subject to air emission control requirements and, if so, to what extent. The first step requires a lessee to submit an inventory of projected emissions from its facilities and to compare that inventory with "allowable" emissions levels. The "allowable" emissions levels are based on the distance of the OCS facility from the shoreline. Facilities further from shore are permitted larger allowances than those closer to shore in recognition of the fact that pollutants are dispersed in the atmosphere. The regulations exempt OCS facilities with projected emissions below specified levels from further review, unless it is determined that the emissions from an OCS facility in combination with the emissions from other OCS facilities in the vicinity could result in adverse cumulative impacts on onshore air quality.

The second step involves a screening procedure which requires more detailed evaluation to determine whether the emissions will exceed significance levels. This step uses air quality computer models to predict the onshore concentration of pollutants emitted from OCS facilities. The models use representative meteorological data to calculate the onshore impacts based on projected emissions from an OCS source and the characteristics of that source. If a predicted concentration is below the significance levels set forth in the rules, the OCS facility is not required to control emissions. This process is followed for all pollutants except VOC. Since there are unanswered questions concerning the regulation of VOC emissions under a similar impact-based approach, VOC emissions are regulated pursuant to an emission-based approach.

The third step determines what measures a lessee must take to control emissions and mitigate the impact of emissions that exceed the significance levels established in the governing regulations. The amount of control and mitigation imposed depends on the air quality status of the adjoining onshore area, i.e., whether it is attaining the NAAQS under the Clean Air Act. If emissions from an OCS facility significantly impact an onshore area attaining the NAAQS, the rules require the lessee to install the best available control technology (BACT) to reduce emissions. If the emissions from an OCS facility significantly impact an onshore area not attaining the NAAQS, the lessee is required to install the BACT and to install additional control equipment or obtain credit for emission reductions elsewhere (in the OCS or onshore) to fully mitigate the net emissions from the OCS facility to zero.

On March 7, 1980, DOI also published a separate proposal for rules which would have governed emissions from OCS facilities located in areas off the coast of California (45 FR 15147). These proposed rules would have applied lower allowable emission levels and significance levels than the levels applicable to OCS facilities off the coast of States other than California. The DOI withdrew the proposed rules on April 16, 1982 (47 FR 16349), after considering the comments received on the proposed rules, environmental impact statements, and air quality studies.

The decision not to adopt separate emission control rules for operations in the OCS adjacent to California is being challenged in *State of California v. Watt*, No. 81–3234–CBM (MX) (C.D. Cal.) (second amended complaint). The Citizens for a Better Environment and the Coalition for Clean Air intervened in the lawsuit in support of the position taken by the State of California. The Western Oil and Gas Association intervened in support of the position taken by the Secretary. Complainants claim that DOI's national emission control program does not take into account the unique situation the emission of pollutants in the OCS off the coast of California present to the resolution of California's air quality problems.

In the course of the litigation, DOI opened the record to obtain information that could be used to develop emissions control requirements that could be applicable to OCS facilities that may adversely affect onshore air quality in California. This was done by publication of an Advance Notice of Proposed Rulemaking (ANPR) on January 7, 1985 (50 FR 838). The ANPR set forth a general regulatory framework, requested comments on the desirability of various elements of the general regulatory framework, and presented suggestions on a wide range of issues.

The comments received in response to the ANPR included a suggestion that DOI use a mediator to negotiate with interested groups rules to govern air emissions from OCS facilities adjacent to California. The DOI decided to investigate and implement the suggestion. It retained an independent organization, the Mediation Institute, to assess whether negotiated rulemaking among the parties to the lawsuit and others was worth pursuing. With the aid of the Mediation Institute, direct negotiations began between DOI and other interested parties in September 1986.

The participants in the lawsuit and others identified by the Mediation Institute as needed parties in the negotiations were organized into five coalitions: Local, State, and Federal governments, as well as industry and environmental groups. Within the local government coalition were representatives from air pollution control districts and elected officials. The State government coalition included representatives from California's Air Resources Board, the California Coastal Commission, and the State Attorney General's office. The Federal Government coalition included representatives from DOI, the Environmental Protection Agency (EPA), the Department of Energy, the Office of Management and Budget, and the Department of Justice. Industry's coalition included representatives from the Western Oil and Gas Association and officials from various Federal lessees operating in the OCS off the coast of California. The environmental coalition included representatives from the Citizens for a Better Environment, the Coalition for Clean Air, the Natural Resources Defense Council, the Sierra Club, and environmental and citizen groups in Santa Barbara.

To assist the coalitions at the outset and throughout the negotiations, three working groups with technical expertise were formed. One working group focused on the availability and effectiveness of various technologies designed to control air emissions at their source; the second working group developed information on different computer models for predicting onshore air pollutant concentrations; and the third working group developed ideas for innovative approaches to the mitigation of air emissions. Representatives from each of the coalitions served on the working groups. Later, the coalitions agreed to establish a fourth working group to assist in developing policy choices for the issues under study.

The coalitions' charge was to come to a consensus on proposed rules governing air emissions from OCS oil and gas facilities located off the coast of California. If consensus was achieved, the Secretary was prepared to publish that agreement as the basis for a Notice of Proposed Rulemaking (NPR) and request comments on the specifics of the proposal. After considering the comments and recommendations received on the NPR, the Secretary would develop and publish a Notice of Final Rule (NFR) or take such other action as he considered appropriate.

During the negotiated rulemaking effort, the coalitions gathered substantial amounts of information and came to a better understanding of the means that local and State jurisdictions in California are using to address their onshore air quality problems. The negotiated rulemaking effort produced valuable technical information on emissions control technologies, innovative approaches to the mitigation of impacts, and computer models for predicting onshore impacts of OCS emissions. Further, the effort led to a better understanding of various parties' concerns about the interrelationship between industrial activity onshore and OCS oil and gas development activities.

In July 1988, representatives of the coalitions appeared to be near agreement on the concepts to be included in the rule, and asked DOI to prepare a draft rulemaking package. In August 1988, the coalitions met to review the package. When it became clear that the coalitions disagreed over the details, DOI asked each to submit comments on the August draft by the end of September.

After reviewing the comments of the coalitions and holding further discussions with the negotiating parties, DOI determined that the negotiation had served as many of its purposes as was posssible, and that it was time to broaden the public dialogue by publishing a Notice of Proposed Rulemaking and soliciting public review and comment. Although the coalitions were unable to produce a consensus rule, DOI believes much has been accomplished during the two years of discussions.

During that time, the coalitions considered many approaches to regulating OCS emissions, some of them innovative. The following list is indicative of the range of the major issues examined:

Controlling emissions of nitrogen oxides and volatile organic compounds, which are precursors to the formation of ozone.

Reviewing the need for and types of controls that might be installed on new and existing emissions sources on the OCS.

Reviewing the need for and types of controls or mitigation for emissions from "off-platform" sources, such as crew and supply boats and tankers servicing OCS facilities.

Determining the emission allowances for all pollutants.

Using innovative methods to mitigate pollutant emissions, such as the mitigation fee concept.

Assessing periodically the cumulative impacts of emissions from OCS sources.

Developing rules to address inspections and enforcement.

Defining what constitutes an "upset" condition and how to regulate emissions during upset events.

Sharing annual emission inventories between DOI and onshore regulators.

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Regulating emissions from temporary sources, such as exploration and construction activities.

Regulating toxic air pollutants.

Expanding the list of pollutants regulated under the Clean Air Act's provisions for the prevention of significant deterioration of air quality.

Regulating modifications to existing OCS facilities.

Requiring an electrification analysis for each new OCS facility to determine whether onshore electricity is the best source of power for the facility.

Creating an advisory committee to give DOI advice on mitigation policies and technical matters.

Creating a regulatory system of "one-stop shopping" so that a lessee's OCS emissions were the subject of one permit review rather than several.

Throughout the discussions, the coalitions emphasized that the rule would require careful balancing of its component parts and final consensus could be reached only when the rule could be viewed as a complete package. Because each part of the negotiated rule would be interdependent on the other parts, changes in one part would require adjustments in others. For this reason it is important to emphasize that the coalitions have not agreed on "any" of the elements included in this proposed rule.

The DOI learned from the negotiations that some of the elements of significant concern that were raised in the ANPR and examined during the negotiations could not be adopted in this proposed rule. The two most significant of these elements were a mitigation fee program and a scheme to regulate emissions from crew and supply boats.

The mitigation fee program would have created a fund through which large-scale projects to reduce emissions of air pollutants in areas affected by OCS emissions could be financed. The fund was intended to permit projects that otherwise could not be undertaken through the purchase of traditional offsets. These reductions would have been in addition to those reductions the local authorities were already obligated to achieve in the State implementation plan (SIP) under the Clean Air Act.

Similarly, this proposed rule does not include provisions regulating emissions from crew and supply boats while they are in transit between port and State and Federal offshore facilities because there are many unresolvable issues of jurisdiction over those vessels.

In the remaining sections of this preamble, we discuss the requirements of section 5(a)(8) of the OCSLA, the reasons why the Department is proposing air quality regulations applicable to activities on the OCS off California, and the components of the proposed rule.

Requirements of Section 5(a)(8)

As previously noted, section 5(a)(8) of the OCS Lands Act requires that the Secretary issue regulations for compliance with the NAAQS to the CAA (42 U.S.C. 7401 *et seq.*) to the extent that activities authorized under this Act significantly affect the air quality of any State. 43 U.S.C. 1334(a)(8). Under this provision, the Secretary's rules must protect the national primary and secondary ambient air quality standards, adopted under section 109 of the CAA, and the standards to prevent significant deterioration of air quality set forth in section 163 of that Act. *See* 47 FR 16351 (April 16, 1982). Although DOI has the discretion to protect stricter ambient air quality standards, it is not required to do so. *Ibid.*, pp. 16351–54. The issue of stricter State air quality standards has been an important one in California. Here some background is necessary.

Under the CAA, EPA has issued national air quality standards which are codified in 40 CFR Part 50. The EPA standards supersede any State air quality standards that are less stringent but do not supersede those that are more stringent. *Connecticut* v. *EPA*, 656 F.2d 902, 909 (2d Cir. 1981). California has its own air pollution control law, and the California Air Resources Board (CARB) has adopted air quality standards. These apply Statewide, although the Board does have the authority to create a different set of standards for each of California's 14 air basins. Cal. Health and Safety Code, section 39606(b).

For the types of pollutants commonly emitted by OCS facilities, the standards promulgated by the EPA (the Federal standards) and the CARB have some notable differences. California has adopted a 1-hour ambient air quality standard for nitrogen dioxide and sulfur dioxide, while EPA has not adopted 1-hour standards for these pollutants. California's 24-hour ambient air quality standards are stricter than EPA's 24-hour standards for all pollutants for which 24-hour standards have been established. For particulate matter, the California standard is 100 microgams per cubic meter ($\mu g/m^3$) averaged over 24 hours; the Federal standard is 150 $\mu g/m^3$. For SO_2 the California standard is 131 $\mu g/m^3$ averaged over 24 hours; the Federal standard is 365 $\mu g/m^3$. California has set standards for some air pollutants, such as sulfates, hydrogen sulfide, the vinyl chloride, that have no corresponding Federal standard.

Section 5(a)(8) follows the CAA in not requiring emission sources located outside of a State (i.e., in the OCS) meet that State's stricter-than-national standards. *See* 47 FR 16353 (April 16, 1982). It is in accord with *State of Connecticut* v. *EPA*, 656 F.2d 902, 909 (2d Cir. 1981). (Despite legislative history concerning protection of State and local standards, the interstate pollution provisions of the CAA are tied to the Federal standards.)

Another concept fundamental to any rule implementing section 5(a)(8) is that of "significance." The Act requires the Secretary to regulate air pollution from OCS facilities but only "to the extent that activities authorized under this Act significantly affect the air quality of any State." 43 U.S.C. 1334(a)(8). The key question is this: How much pollution is significant? To answer this question with regard to its national emission control program, DOI has looked to see how much pollution an offshore facility would contribute to the onshore air quality. In other words, it has looked to see how much emissions from the OCS would increase the onshore *ambient concentration* of a given pollutant. For reasons explained below, the rules governing DOI's existing national emissions control program have defined "significance" as an increase in onshore ambient concentrations equivalent to approximately 1 to 5 percent of the Federal standard for the given pollutants. The legislative history of section 5(a)(8) does not require that "*any increase*" in the onshore ambient concentration of a pollutant is considered significant.

As originally introduced, section 5(a)(8) would have applied "to the extent that activities authorized under this Act *affect* the air quality of such State." H.R. Rep. No. 95–590, 95th Cong., 1st Sess. 9 (1977). [Emphasis added] However, this language was amended by the Conference Committee:

> [Chief Counsel] BELSKY. * * * In the EPA opinion which came down April [18, 1978], they used the words "significantly affects." I think that with that change, the language in section (8) would be the same as EPA's determination.
>
> MR. MILLER [of California]. You were suggesting that we add "significantly"? This is a higher burden, right[?]
>
> MR. BELSKY. That is correct. It would show a higher burden on the State.

Transcript of Conference on S. 9, p. 18 (June 19, 1978).

The conference report clarified the intent behind the change in the bill:

> [S]ome activities may not have significant effects because of distance from shore or meteorological conditions that blow the pollution out to sea. If an OCS activity or facility is determined to have no such significant effect * * *, the requirements of the regulations under section 5(a)(8) would not apply.

S. Rep. No. 95–1091, 95th Cong., 2d Sess. 86 (1978).

Thus, Congress plainly did not intend to require the Secretary to treat each increase in the ambient concentration of a pollutant as significant, even when the area affected already violates the national standard.

When adopting the standard for significance under the national emission control program in 1980, Secretary Andrus looked to see how Congress and the EPA had treated analogous problems. He first looked to the CAA. In sections 160 through 169A of that Act, Congress set out its plan to prevent the significant deterioration of the air quality of areas already meeting the national standards. 42 U.S.C. 7470–7491. Its goal, in other words, was to keep clean-air areas clean. Congress provided for three classes of clean-air areas, I, II, and III. *See generally Nance* v. *EPA*, 645 F.2d 701, 704 (9th Cir.), *cert. den.* 454 U.S. 1081 (1981) (describing the three classes).

Class I is subject to the toughest standards for it includes major national parks and wilderness areas. 42 U.S.C. 7472. A polluter, wherever its source is located, cannot increase the concentration of a pollutant in a Class I area by more than the amounts set in section 163(b)(1). 42 U.S.C. 7473(b)(1). These amounts are approximately 2 to 6 percent of the national standard for the given pollutant. Congress wanted tough protection for pristine wilderness areas but was unwilling to require that there be no effect on air quality in these areas. Put differently, Congress found that more than a 2- to 6-percent increase in the ambient concentration of a pollutant would cause "significant deterioration" in these pristine areas. Secretary Andrus relied on this policy judgment in developing the significance levels under the national emission control program. 45 FR 15131 (March 7, 1980).

Secretary Andrus also relied on EPA's policy judgment in its "Emission Offset Interpretive Ruling". 44 FR 3274 (January 16, 1979). In that ruling, EPA established its significance levels for the emissions of the inert pollutants from individual sources, no significance level was or has been established for ozone. The EPA uses these levels to decide how to regulate a pollution source located in an attainment area (or an unclassified area) if its emissions would affect a nonattainment area. The EPA did not rule that every increase in pollution was significant. Instead, it ruled that "a new or modified source will not be considered to cause or contribute to a violation of an NAAQS if the air quality impact of the source is less than the specified significance levels." 44 FR 3277 (January 16, 1979). The levels EPA established were adopted by Secretary Andrus. *Compare* 44 FR 3283 (January 16, 1979), codified at 40 CFR Part 50, Appendix S, Part III.A. (1987), with 30 CFR 250.45(e).

By not treating each increase in the ambient concentration of a pollutant in a nonattainment area as significant, section 5(a)(8) again follows the CAA. In the 1977 Amendments to the CAA, Congress found that the Act had been inadequate to deal with interstate air pollution and added provisions to resolve the problem. *Air Pollution Control District* v. *EPA*, 739 F.2d 1071, 1075 (6th Cir. 1984). Under section 110 of the Act, each State Implementation Plan (SIP) is to assure that sources within the State do not prevent attainment of the national standards in neighboring States. 42 U.S.C. 7410(a)(2)(E). The Act requires certain new sources to notify "all nearby States" which may be affected by their emissions. 42 U.S.C. 7426(a). The affected State has no power to veto the permit to be given to the new source, but it may petition EPA to find that the source will prevent the affected State from complying with the national standards. 42 U.S.C. 7426(b).

The CAA does not seek to stop a source from emitting any pollution which may affect another State; rather, it requires only that the source must not significantly contribute to violations of the standards in another State. *Air Pollution Control District, supra*, at 1088–94. Indeed, under the CAA, one court has noted that to prevent a source State from causing even minimal impacts on its neighbor "would be to hold one State [the source] hostage to another's failure to enact the pollution control strategies necessary to conform to the requirements of the Clean Air Act." *Connecticut* v. *EPA*, 696 F.2d 147, 164, (2d Cir. 1982).

Accordingly, in a ruling on interstate pollution, EPA found that an Indiana plant, emitting sulfur dioxide into a Kentucky area that already was violating the SO_2 standard, was not preventing the Kentucky area from meeting the Federal standard. The EPA found that the plant's "maximum contribution to predicted violations of the 24-hour SO_2 standard is small [3 percent]." 47 FR 6625 (February 16, 1982). Consequently, "since Gallagher's [the plant's] contributions to violations in Jefferson County [Kentucky] are so small, the agency has concluded that emissions from the Gallagher plant are not preventing attainment and maintenance of the SO_2 standards in Kentucky." *Id.*

Under DOI's existing rules Federal standards, rather than those of the affected coastal state, are followed. However, even in these rules DOI exercised its discretion in going beyond the minimum requirements announced in the cited court cases. For example, under the national existing rules if computer modeling showed that an OCS facility would increase pollution by 3 percent of the NAAQS in an onshore area violating that standard, DOI would require the polluter to reduce the net emissions of that pollutant to zero.

The proposed rules, like the existing DOI rules, assure compliance with the National Ambient Air Quality Standards. However, the proposals go much further to help address the problems particular to California. The basis for the proposed rule's stringency is explained in the next section.

Uniqueness of California

Against this background, it is important to explain why DOI is proposing in this Notice a rule which would apply only to OCS facilities off the coast of California. Four factors, taken together, support the consideration of separate, more stringent rules to govern control of emissions from OCS facilities off the California coast, especially with respect to the problem of ozone.

First is the severity of existing violations of the NAAQS in several onshore areas along the California coast. Despite efforts in the last 15 years by coastal jurisdictions to comply with the NAAQS established under the CAA, southern California coastal communities still contend with some of the worst air quality in the nation. During 1986, the San Diego air district exceeded the NAAQS for ozone on 42 days; the South Coast air district exceeded the NAAQS for ozone on 164 days; the Ventura air district exceeded the NAAQS for ozone on 59 days; the southern Santa Barbara air district exceeded the NAAQS for ozone on 1 day; and the San Francisco Bay area air district exceeded the NAAQS for ozone on 5 days. No exceedances of the NAAQS for ozone were measured in the northern Santa Barbara, San Luis Obispo, the North Central Coast, and North coast air districts.[1] (The NAAQS for ozone is 12 parts per hundred million (pphm).)

[1] Summary of 1986 Air Quality Data, California Air Resources Board Volume XVIII.

Second, environmental, climatic, and geographic conditions along the coast of California believed to contribute to the formation and accumulation of ozone and other pollutants in coastal California to a greater degree than is experienced in other coastal areas of the United States. These conditions include the presence of a largely unbroken chain of coastal hills and mountains from Mexico to Oregon landward of the narrow coastal plain. When the winds along the coast come in from the sea, the mountains act as a barrier frequently preventing the maritime air from flowing into the inland valleys and desert, thereby trapping pollutants originating in the coastal areas.[2]

In addition, especially during the summer months, conditions frequently create "temperature inversions" which trap pollutants in the maritime air at a low level over the coastal plain.

> The general [air] circulation of the [California] region is located under the eastern portion of the Pacific High. This results in a prevailing northwesterly flow along the west-facing coast. In the northern hemisphere, northerly flow along west-facing coastlines can result in significant oceanic upwelling, thus bringing cool water to the ocean surface. This is the case along most of the California coast north of Point Conception, leading to the prevailing stratus and fog regimes of the summer season. The eastern portions of anticyclones are also areas of subsidence, which are sinking motions that tend to warm the air. The warming of air aloft and cooling of surface air by the upwelled cool ocean water result in the formation of a low level temperature inversion (a condition of increasing temperature with elevation). The end result is a low level layer of stable and cool air, referred to as the marine layer. It is marked by a stratus and fog regime and limits the vertical advection of atmospheric pollutants and aerosols.[3]

Also potentially contributing to the problem is the daily pattern of alternating sea breezes and land breezes along the coast. On a summer morning, the sun warms the land and the air above it more rapidly than it warms the water and the air above the water. As the air above the land heats, it rises, and marine air flows in to replace it. After sunset, the flow reverses; as the land and the air above the land cool more rapidly than the water and the air above the water, the air above the water then rises relative to the cooler air onshore, and the onshore air flows offshore. This daily pattern permits emissions of oxides of nitrogen and VOC from OCS facilities to mix onshore with emissions from onshore sources. These emissions can then react photochemically with the sunlight during the day and move offshore at night where more OCS emissions are added. Thus, OCS and onshore emissions can "slosh" around together, trapped by the coastal mountains on one side and the temperature inversion above the emissions move back and forth with limited ventilation out of the coastal areas.

Third is the narrowness of the continental shelf off much of the California coast which will dictate near-shore development. Off the California coast, the water depth increases quickly. As a consequence, most OCS exploration and development within the next 15 years will be concentrated within 15 miles of the coast. For example, the Development and Production Plan for the Santa Ynez Unit calls for several platforms, all within 9 miles of the mainland. Platforms Hidalgo, Harvest, and Hermosa in the Point Arguello field will be within 11 miles of the coast. Platforms Grace, Gilda, and Gail in the Santa Clara and Sockeye fields are within 11 miles of the coast. Because the OCS off California has high potential for significant new discoveries of oil and gas, MMS is optimistic that additional exploration and development activities will occur there over the next 10–15 years. However, the closeness of these operations to shore create the potential for emissions to concentrate in a smaller area and may reduce the dispersion for these emissions.

Fourth is the consideration of California's own air quality standards. Under its own air pollution control law, California has adopted stricter-than-national standards for ozone and several inert pollutants. While, as previously discussed, DOI is not required to protect the more stringent California standards in order to satisfy section 5(a)(6), DOI believes that the state standards should be considered in developing DOI's proposal.

The differences between the State and national standards has been an important part of the controversy over the regulation of air pollutants from OCS facilities off California. Since at least 1976, coastal counties and the Coastal Commission have denied OCS lessees necessary authorizations onshore in order to negotiate further controls and mitigation on OCS facilities, in addition to those already required by DOI. These actions have resulted in litigation, confusion, expense, and delay. Production of needed oil and gas supplies has been postponed, and the public's revenue from its OCS resources diminished.

The DOI's previous reluctance to require special protection for California's air quality standards stemmed from the fact that, unlike the Federal Clean Air Act, "California statutes generally [did] not set deadlines for attaining State standards." 47 FR 16353 (April 16, 1982). While DOI agreed that it would be unfair for OCS activities to significantly interfere with the State's efforts to meet the Clean Air Act's deadlines, it could perceive no reason to place special burdens on OCS lessees to help the State meet the distant and generalized goals of its own laws. 47 FR 16350 (April 16, 1982).

The situation has changed. On September 30, 1988, Governor Deukmejian signed the California Clean Air Act of 1988, amending the State's air pollution control laws. Among the Act's many changes is a requirement for the local air pollution control districts to achieve State standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide "by the earliest practicable date," a fixed date the district is to determine subject to the review of CARB (California Health and Safety Code) secs. 40910 and 41500(a). Each district generally is to reduce emissions of each nonattainment pollutant by at least five percent per year. Id. sec. 40914. Additional requirements must be imposed in each district depending upon whether its air pollution is determined to be "moderate," "serious," or "severe." Id. secs. 40918–40920.

In light of this development, DOI believes it appropriate to minimize the effects that OCS development may have on the State's efforts to meet its own ambient air quality standards for inert and reactive pollutants regulated under this proposed rule. For this reason, among others, DOI is proposing to require lessees to install BACT on new facilities and RACT on some existing facilities regardless of their emission contribution. In other words, controls will be required no matter how small an OCS facility's impacts on air quality. Additional changes serving this goal are discussed in the topics below.

Effective Date of New Rule

The DOI has received many comments concerning the effective date of the final rule and how this determination should affect requirements for the facilities installed in the OCS off the coast of California since June 1980. The definitions for "new facility" and "existing facility" are integrally linked to this determination. Comments have ranged from the date of the publication of the Notice of Final Rulemaking (NFR) the DOI air quality rules promulgated March 7, 1980, with an effective date of June 2, 1980, or the date of the filing of California's lawsuit challenging them (July 1, 1981) to 60 or 90 days after the publication of the NFR for these proposed rules in the **Federal Register**.

The DOI expects to make the new rules effective 30 days after publication of the NFR. The NFR will be prospective with regard to OCS facilities considered as "new OCS facilities"; that is, any OCS facility in a proposed plan submitted for review after the effective date of the rule will be defined as a new OCS facility, and all other OCS facilities will be defined as existing OCS facilities.

Through the publication of this Notice, DOI seeks comments and recommendations regarding the proposed regulatory program for the control of emissions from OCS activities off the coast of California. Reviewers are reminded that many of the provisions of the NPR are interdependent. Thus, while comments and recommendations regarding specific provisions are sought, comments on the proposal as a whole are especially solicited.

Structure and Overview of the Proposed Rule

The proposed rule regulates pollutants considered to be inert and those that react photochemically to form ozone. Under the provisions for the prevention of significant deterioration, TSP will be the particulate matter indicator rather than PM_{10} (EPA, **Federal Register** Notice of July 1, 1987 (52 FR 24633)). The ozone precursors are NO_x and VOC.

The proposed rule sets forth a four-step process. First, lessees shall install BACT on new facilities and RACT on existing facilities adjacent to nonattainment areas. Second, the magnitude of any remaining emissions from new facilities shall be reviewed. Third, that review shall dictate what further mitigation, if any, is needed for the new facilities. Fourth, the cumulative impacts from all facilities, new and existing, shall be assessed periodically for the purpose of deciding whether even further emission control is necessary.

The proposed rule would impose different requirements on new, existing, and modified facilities on the basis of whether the pollutants being reviewed are photochemical in nature (NO_x and VOC) or are the class of pollutants called "inerts" (NO_2, SO_2, CO, TSP, lead, and PM_{10}).

For new OCS facilities, lessees must install BACT on new sources associated with the new OCS facility, such as the power generation equipment, and RACT on existing sources associated with the new OCS facility, including crew and supply boats. This requirement applies regardless of whether the new OCS facility's projected emissions exceed the emission or significance (de minimis) levels established in the proposed rule. At this initial stage of review, lessees also must analyze the feasibility of using onshore generated electricity to power the new facilities. The protocols governing the economic component for the electrification determination are set forth in Appendix B of this Notice.

The proposed rule sets forth detailed procedures for reviewing the remaining emissions after these initial stages of review and determining if further mitigation is required. In addition, the proposed rule also requires lessees to estimate any emissions of pollutants classified in this rule as toxic and to conduct a risk assessment if a generic assessment has not been completed by the RD.

For some existing OCS facilities, the rule proposes to require the installation of RACT within 3 years.

The provisions governing modification of OCS facilities require lessees to install BACT or RACT and to compare the net emissions resulting from the modification with allowable levels of emission increases. The degree of mitigation, if any, shall depend upon whether the modification is to an existing or new OCS facility and the quantity of the projected increase.

The proposed rule further proposes to cross-reference certain regulations of EPA. These include provisions governing the use of onshore sources for offsets, the designation of onshore attainment and nonattainment areas, and the revised NAAQS for particulate matter. As in prior rulemakings, DOI has carefully reviewed and included in the proposed rule the pertinent requirements of EPA's regulations.

Finally, the proposed rule provides protection for onshore air quality which would not only comply with the requirements of the OCS Lands Act but would also provide additional protection of California's onshore air quality commensurate with the uniqueness of California's air quality problems. The proposal would govern all air pollutants with primary and secondary NAAQS, restrict the emissions of the ozone precursors from new OCS facilities, regulate temporary sources, and require electrification analyses. These provisions serve to protect California's onshore air quality. In addition, the requirement that lessees immediately install emission control technology on new and modified OCS facilities further protects the onshore air quality. The provisions of the cumulative analysis section specifically provide the local air pollution control agencies the opportunity to petition the RD to implement possible emission control measures developed as a result of the joint assessment conducted by the RD and the agencies.

Definitions

The definitions applicable to the proposed rule are included as § 250.47(a)(2). The DOI received many comments on the definitions for the rule. Commenters provided four general views on the definitions: (1) The definitions should be modified to parallel more closely the State and local air quality program definitions; (2) the definitions should parallel as closely as possible the Federal EPA definitions and those in the CAA; (3) the definitions in the existing rules were satisfactory; and (4) the definitions, though satisfactory, should be clarified in some areas.

The DOI has made an effort to parallel the EPA definitions, when appropriate; to clarify definitions which may have been ambiguous; to retain those it believes are satisfactory; and to consider all of them in light of the definitions either proposed or presently used by the State and local air pollution agencies.

Three terms received extensive comments: "Facility," "best available control technology," and "emission offsets." These are discussed in greater detail below.

Definition of Facility

The DOI has received many comments on the appropriate definition of the term "facility." Comments ranged from those suggesting very broad definitions to those suggesting very limited definitions and addressed two key aspects of the definition: What structures should be included, and how mobile sources, such as crew and supply boats, should be regulated.

The broadest definition suggested the inclusion of all structures in an area connected by above-water or underwater pipelines, cables or walkways, and all mobile sources when at a structure and when in transit between the structure and the mobile source's port. The most limited definition suggested was a definition that included individual structures and mobile sources while at a structure.

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[2] *See* Teknekron, Inc., "Critique of the CARB Definition of California Coastal Waters and Discussion of the Sea Breeze/General Circulation in Southern California," 52 [July 1979].

[3] Final EIS/R for Santa Ynez Unit Las Flores Canyon Development and Production Plan. P. 5–20 [June 1984].

The existing rule defines an OCS facility as including all sources related to the development of or exploration for oil and gas at a single site and includes sources such as crew and supply boats when they are located at the facility. The DOI proposes to retain the present definition in the existing air quality rules which includes structures that are associated with the production at a single site and mobile sources when they are at a structure, but clarify its provisions through a restructuring of the definition.

The provisions of the regulatory program which address crew and supply boats and tankers received extensive comments. Suggestions ranged from regulating these sources while at or near an OCS facility (defined as 150 feet by some commenters and as on the lease tract by others) to the regulation of these sources from the time they leave port to the time they return to port. The DOI proposes to continue to regulate emissions from crew and supply boats when they are attached to the OCS facility which they are servicing.

The inclusion of crew and supply boats as part of the OCS facility when the boat is located at the OCS facility places the requirement for the installation of OCS RACT on these sources. The installation of OCS RACT on boats relates only to pieces of equipment or operational limitations, such as the use of fuel which contains reduced levels of sulfur compounds. OCS RACT does not refer or relate to emission reduction techniques such as speed limits for the crew and supply boats in transit between their ports and the OCS facility. The OCS RACT determination for special, one-time use boats (for example, a special barge for the installation of a platform structure) will be made on a case-by-case basis.

Definition of OCS Best Available Control Technology (BACT) and OCS Reasonably Available Control Technology (RACT)

OCS BACT and OCS RACT are defined in the existing rules to parallel the definition used by the EPA: Control technology which considers the energy, environmental, and economic impacts in assessing the status of a candidate emission control technology as appropriate for a particular application.

The proposed definition for OCS BACT differs from the definition of BACT in the existing rules and from that of the onshore California air pollution agencies (which is similar to the Lowest Achievable Emission Rate definition established by EPA) but tries to reflect the economic and safety considerations that are unique to OCS facilities. The definition includes several explicit factors that are intended to be guides in determining, on a case-by-case basis, whether a candidate emission control technology will be installed.

The rule proposes that OCS BACT will be installed on all new OCS facility sources and OCS RACT will be installed on all existing sources (including existing crew and supply boats) or applicable sources used for these new OCS facilities' operations. The installation of control equipment will reduce the quantity of emissions from these sources and reduce the onshore impacts from OCS facilities. "Applicable sources" for construction activities means sources that will be used on a more than one-time basis, such as crew and supply boats. A source which will be used for one unique project, such as a special crane or barge, will be evaluated on a case-by-case basis.

Requirements for the installation of BACT for new sources in the coastal California air districts vary. Some require the installation of BACT on all sources; others require the installation of BACT if emissions exceed levels ranging as high as 250 tons per year. RACT can be required as the result of the periodic SIP analyses and rulemaking for existing onshore sources.

A Notice printed elsewhere in this issue of the **Federal Register** describes the process by which specific control technologies are determined to represent OCS BACT or OCS RACT and proposes an initial list of OCS BACT and OCS RACT for various OCS sources. Because the candidate emission control technologies apply to a wide range of different sources used for the same purpose (such as power generators) and because emission control technologies are, in many cases, source specific (there are unique technologies for lean-burn engines that differ from those for rich-burn engines), the installation of all the listed emission control technologies is not practical or appropriate. A provision is included to allow the lessee to justify why installation of an identified emission control technology would not be appropriate for a source.

Definition of Emission Offsets

The acquisition of emission offsets is an option if mitigation is required because a proposed OCS activity or OCS facility will emit pollutants in excess of permitted levels. Emission offsets can be obtained from stationary sources, such as power plants (commonly referred to as "traditional offsets") and from mobile sources, such as cars and buses (commonly referred to as "nontraditional offsets").

The DOI received numerous comments concerning the appropriate definition for emission offsets. The commenters were concerned that the definition would reflect the onshore agencies' requirements (both EPA and the State/local rules) and that the OCS program be coordinated with the onshore programs to insure against the double-counting of offsets by both onshore and offshore agencies.

The DOI proposes a definition and regulatory provisions that reflect the requirements of the onshore agencies, include key aspects of the Federal requirments, and insure proper coordination between the onshore and OCS programs by mandating that the lessees obtaining offsets coordinate with the appropriate onshore agencies. OCS operators proposing the use of onshore emission offsets must show that the appropriate onshore agencies have been notified and the appropriate SIP amended before the offset can be applied to the OCS facility. The provisions for emission offsets are proposed to address the concerns of the commentors and to insure appropriate coordination and accounting for any proposed emission offsets.

The DOI is also considering the establishment of an offset "banking" program. A **Federal Register** Notice published by EPA on December 4, 1986 (51 FR 43813), outlined EPA's program, and aspects of it could serve as a basis for DOI's program. This banking program would allow an operator to place in reserve (bank) for later use emission offsets that had been obtained but were not needed because the specific activity for which the offset was obtained was terminated or the mitigation requirement for the project was reduced (possibly by the reduced production level at the OCS facility).

An explanation of the other paragraphs of the rule follows:

Cumulative Assessments

The provisions of § 250.47(a)(3) of the proposed rule describe a periodic cumulative assessment of the impact of emissions from OCS facilities on onshore air quality by the RD in coordination with the local air pollution control agencies. The local agencies will be able to petition the RD to implement emission control measures for OCS facilities determined to have a beneficial effect on onshore air quality. The RD would assess and implement those measures determined to be appropriate and feasible on OCS sources.

Facilities Affecting Both Attainment and Nonattainment Areas

The provisions of § 250.47(a)(4) of the proposed rule relate to OCS facilities that may affect both attainment and nonattainment areas. The intent of this provision is to set a distance from an onshore nonattainment area within which an OCS facility is treated as if it were affecting that nonattainment area. This distance is proposed to be 25 miles. The Joint Interagency Ozone Modeling Study (JIMS) for the Santa Barbara Channel Area predicted that the ambient ozone impact from a group of sources fell below 1 to 2 parts per billion 25 miles downwind of the sources. This impact level is considered the sensitivity level for the photochemical models used for these analyses. This distance is also extensively referenced in an EPA **Federal Register** Notice dated November 24, 1987 (52 FR 45043) outlining EPA's post-1987 ozone and carbon monoxide nonattainment area policy.

Mitigation

Section 250.47(a)(5) of the proposed rule addresses the methods by which mitigation for emissions from an OCS facility in excess of the allowable levels may be obtained. The ANPR proposed options that could be employed if mitigation of emissions were required. They were:

1. Traditional and nontraditional offsets (defined above),
2. Interpollutant offsets (substituting the acquisition of an offset for one pollutant for the mitigation required for a second pollutant; an example is the acquisition of VOC offsets to satisfy a mitigation requirement for NO_x emissions),
3. Interbasin offsets (the acquisition of offsets in an onshore air basin adjacent to the onshore air basin directly impacted by the emissions from a source),
4. A fee program (a program in which a fee is paid in lieu of the acquisition of offsets; the pooled funds are directed to emission control strategies or programs that are either too large, too costly, or involve too many small sources for one operator to fund),
5. The application of advanced emission control technology (technology that is unproven in the application being proposed but that has been shown in other applications to effectively reduce the emissions of a particular pollutant), and
6. The application of additional emission control equipment, technology that is proven in the application being proposed but is not listed as a required control by the OCS BACT requirement.

The DOI would include traditional offsets, non-traditional offsets, and the application of advanced emission control technology as options when mitigation is required by the proposed rule. The DOI believes that additional information concerning the rule of the precursors to ozone in its formation and the long-range transport of pollutants must be gathered before either an interpollutant or an interbasin offset program is developed and proposed but will consider the use of interpollutant offsets on a case-by-case basis when analyses establish net equivalency to the RD and, when onshore offset sources are proposed, the appropriate onshore agencies. The application of control equipment not listed as OCS BACT is not being proposed because, upon additional analysis, no technology or pieces of equipment were identified for this category. When offsets are provided as a mitigation option, the total quantity of the emission offsets obtained must equal or exceed the projected emissions profile for the OCS facility being mitigated, as specified by the proposed rule.

California Air Quality Advisory Committee (CAQAC)

Several commenters suggested the chartering of an advisory committee when a notice of final rulemaking (NFR) was developed. The committee would provide the RD with general advice and recommendations as well as review of the elements of the NFR. The DOI is proposing to charter an advisory committee.

The proposed committee would provide advice and recommendations to the RD in the development of elements for the implementation of the rules including OCS BACT and OCS RACT, risk assessments for toxic air pollutants, and elements of the electrification analysis. There would be five voting members: One person representing the State of California, one person representing the local counties/air pollution control agencies, one person representing the offshore industry, one person representing the environmental community, and a chairman selected by the Secretary. Nonvoting, ex officio members would include representatives from MMS, EPA, and the U.S. Coast Guard.

The CAQAC will meet at least once a year, and during the first few years, it will meet more than once a year. Actions receiving the unanimous consent of the voting members would be forwarded as recommendations of the committee and actions not receiving unanimous consent would be forwarded with the differing opinions.

The CAQAC would be allowed to establish technical workgroups to develop information for the committee's agenda items. These workgroups would consist of technically qualified staff or representatives from the groups represented on the committee.

Emissions Monitoring Requirements

The proposed rule includes in § 250.47(a)(6) emissions monitoring requirements that would be applicable to both new and existing facilities, including any that require emissions controls after modification. These requirements parallel those of existing §§ 250.45 and 250.46. The proposed provisions require the lessee to submit emissions data monthly, including information determined by DOI to be necessary to insure compliance with the remainder of the rules and in a form prescribed by DOI, and that the lessee prepare a plan to evaluate the effectiveness of the monitoring equipment employed and submit the results of that evaluation.

Annual Projected Inventory

Under § 250.47(a)(7) of the proposed rule, a lessee would be required to update annually the past and projected total emissions for the lessee's OCS facilities within a given OCS air basin and submit the information to the RD.

Collection of Meteorological Data

Under § 250.47(a)(8) of the proposed rule, a lessee may be required to collect and submit meteorological data in the same manner as required under §§ 250.45 and 250.46. The Quality Assurance Handbook for Air Pollution Measurement Systems: Vol. IV Meteorological Measurements (EPA–600/4–82–060, Feb., 1983) and Onsite Meteorological Program Guidance for Regulatory Modeling Application (EPA–450/4–87–013, June 1987) provides guidelines concerning the acquisition of data.

Inspection of OCS Facilities and Enforcement

General provisions for the inspection of OCS facilities are addressed in § 250.47(a)(9) of the proposed rule. This paragraph also includes requirements for the source test program for an OCS facility. Where applicable, 40 CFR Part 60, Appendix A, provides guidelines for the periodic source test procedures.

This paragraph also includes the granting of a short-term variance during those periods of upset conditions (periods of time when pieces of equipment malfunction) which may arise from time to time without penalty

so long as the provisions of the paragraph are complied with. A variance could be granted to allow the continuation of operations with a schedule for the repair of the malfunctioning piece of equipment. Any emissions occurring during the upset condition must be reported.

New OCS Facilities

The provisions of § 250.47(b) of the proposed rule pertain to "new OCS facilities" as defined at § 250.47(a) and apply to all operations occurring in the OCS off the coast of California. Section § 250.47(b)(2) of the proposed rule details the information to be included with a plan that will enable the RD to make the required determinations.

The Electrification Analysis

Under § 250.47(b)(3) of the proposed rule, the preparation of an electrification analysis is proposed for OCS development and production facilities. The existing rules do not require an analysis of the acquisition of electricity for an OCS facility from onshore sources. Guidelines for the economic component of the analysis are proposed in Appendix B of this Notice.

This analysis would provide information which would be used by the RD in determining whether a facility should obtain its power from OCS sources or from onshore sources, such as cogeneration facilities or the onshore power grid. If power for an OCS facility can be obtained from the onshore power grid, the net emissions and onshore impacts from the OCS can be reduced.

An OCS facility's electric power generation equipment is a principal source of OCS emissions; therefore, electrification defined in § 250.47(a)(2)) is considered as a means of reducing air emissions from OCS areas, where feasible. However, DOI is concerned that alternate power sources supplying the power needed for OCS projects may emit comparable levels of pollution and have environmental impacts in the areas where the power is produced. A decision on the feasibility of electrifying an OCS facility from onshore sources could take into consideration the net environmental impact of the analyzed scenarios.

There is a minimal level of on-facility generated power needed to provide power to fire and safety equipment and for backup power in case the onshore power source is disrupted (to insure the safety of the platform and personnel). The final decision concerning the electrification of an OCS facility will be made by the RD.

Section 250.47(b)(3) also proposes a process by which the RD will discuss the content of the electrification analysis with the CAQAC and consider the individual committee member's comments in determining the extent to which power for the proposed OCS facility will be met from onshore sources. The CAQAC will not provide any project-specific recommendations on these analyses.

Initial Emission Control Requirement

Section 250.47(b)(4) of the proposed rule requires the installation of emission control technology on all appropriate sources associated with new OCS projects. This level of emission control is defined as either OCS BACT for new sources, such as power generators on a new facility, and OCS RACT for existing sources, including crew and supply boats, associated with new facilities. The existing rules require the installation of emission control equipment only after an analysis is conducted that shows that an OCS facility would have a significant effect on onshore air quality. The installation of control equipment will reduce the emissions and onshore impacts from OCS facilities and also provides energy efficiency benefits for the operators. An example is the use of waste heat from the power generation equipment as a way to meet the heat requirements for processing at the same time the operator reduces power generation capacity and net emissions.

A Noticed published elsewhere in this issue of the **Federal Register** proposes a determination of emission control technologies on pieces of equipment that would constitute OCS BACT or OCS RACT. Once these lists are final, all new applicable OCS sources would be required to install the listed emission control equipment unless the operator could show the RD that a particular piece of equipment or strategy is inappropriate for the specific OCS facility. An example of this situation is where the list contains emission control equipment for "lean-burn" diesel generators but an operator chooses to install a "rich-burn" diesel generator with the listed emission control equipment for "rich-burn" diesel generators. The installation of emission controls for a "lean-burn" diesel generator is inappropriate in this case.

Air Quality Review and Additional Controls Required

Section 250.47(b)(5) of the proposed rule proposes review and mitigation requirements for exploration, construction, and development/production/processing phases of OCS projects for the photochemical and inert air pollutants. The existing rules, as discussed earlier, require a three-step process to determine if a significant onshore impact will result from emissions from a new OCS facility and the degree of mitigation required if such an impact is predicted. The existing rules use an emission-based approach for the ozone precursor VOC and an impact-based approach for the remaining pollutants. These approaches apply to all phases of an OCS project, with varying degrees of mitigation required based on the phase being analyzed. These approaches apply to all phases of an OCS project to minimize the net emissions and onshore impacts from an OCS project.

The proposed rule differs from the existing rules in the approach employed for the controlled pollutants, the scope of mitigation required for a particular phase of a project, and the stage during the review at which emission control equipment is required. The emission levels at which control equipment and mitigation is required are also reduced in the proposed rule from the existing rules.

Ozone Precursors—Exploration

The proposed regulation for exploration operations limits the number of exempt simultaneous drilling operations that can take place in an OCS air basin off California and in all OCS air basins off California (see the map in Appendix A of this Notice), places spatial limitations on the proximity of operations to one another, and uses a performance standard for the emissions of NO_x—a precursor to ozone and NO_2. These provisions will reduce the net emissions and onshore impacts from the exploration phase of OCS activities.

The limitation on simultaneous operations is based on the designation of the OCS air basin with regard to onshore ozone status. The limitation is coupled with a provision to provide lessees with relief under the suspension provisions of the 30 CFR Part 250 regulations when drilling activities are prevented.

The proposed performance standard is based on the present and predicted capabilities of engine manufacturers to develop engines with lower emission levels. Presently, some Caterpillar diesel engines can attain the 8 grams per horsepower-hour standard. The engines of other manufacturers may be able to attain this standard in the near future and can attain the 11 grams per horsepower-hour standard at the present time. A limited number of exploration drilling vessels, under 20 percent of the total worldwide, are equipped with the Caterpillar engines that can attain the lower standard. A majority of the remaining exploration drilling vessels are equipped with engines that can be retrofitted to attain the higher standard or can attain the higher standard at the present time. The lower standard appears to be a widely attainable performance standard by most manufacturers in the near future.

The limitation of exempt exploration operations occurring simultaneously requires the full mitigation of emissions from operations in excess of the allowable number occurring in the same OCS air basin at the same time. If the allowable number of exploration operations is three, for example, emissions from a fourth and each additional exploration operation occurring at the same time would have to be fully mitigated using one of the options prescribed in § 250.47(a)(5) of the proposed rule.

The proposed rule allows either four, three, or two exempt exploration operations to occur simultaneously depending on the ability of the vessels to meet the performance standard proposed in this section. In a review of the historic records of exploration activities in the California OCS, the maximum number of separate operations that occurred in any *1 year* was 12 in 1983 and was split between the Santa Barbara and Santa Maria Basins. Since that time, there have been less than six operations in any year in the two basins.

Ozone Precursors—Construction

The proposed rule sets an emission allowance for construction activities based on a calendar quarter basis. The proposed allowances are one-fourth of the applicable annual emission allowances for development/production activities in the OCS air basins adjacent to the onshore areas designated as either attainment or nonattainment.

The rule also proposes to limit the mitigation requirements for the ozone precursors from construction activities to the mitigation requirement for the maximum annual emission level for each pollutant for the development/production phase of the OCS facility.

Ozone Precursors—Development/Production Activities

The rule proposes in § 250.47(b)(5)(iii) to govern both NO_x and VOC emissions as photochemical pollutants. Both pollutants participate in the formation of ozone in the atmosphere when other precursor compounds are available in the presence of sunlight. The onshore California agencies have developed their SIP's to include control of NO_x and VOC. The DOI requests commenters to provide information on the scientific basis for the control of both pollutants as photochemical precursors.

The proposed rule requires the lessee to comply with an emission-based review for a new facility. The proposed approach differs from the existing rules in several respects: First, the existing rules only govern VOC as a precursor for ozone; second, the allowance emission levels are based on the formula, E=33.3D (where E is the allowable emissions in tons per year and D is the distance of the facility from shore) and provide for higher allowable emission levels; and third, the existing rules require a 1:1 offset ratio, even in nonattainment areas.

The proposed rule proposes to regulate both VOC and NO_x emissions, to set emission allowance at least as stringent (but in most cases, more stringent) than those allowed by the exemption formula, and to set an offset ratio at least as stingent (but in some cases, more stringent) than those in the existing rules.

The proposed rule proposes an emission allowance of 100 tons per year for OCS facilities located adjacent to an onshore ozone attainment area and 46 tons per year for OCS facilities located adjacent to or within 25 miles of an onshore ozone nonattainment area. The emission allowance values proposed for development/production activities for the ozone precursors are based on the CAA definition of a major stationary source and the California model air quality rule and are supported by an analysis of various emission levels from OCS facilities on onshore ozone concentrations. The following topic, Modeling Analyses Pertinent to the Proposed Rule, outlines this and a prior modeling analysis.

Several commenters suggested that DOI investigate the development of an impact-based regulatory program for the ozone precursors. Under such a program, onshore impact levels are used as standards to determine the control/mitigation requirements for an OCS project.

The DOI has gathered a great deal of information on this subject and is proposing to require an emission-based approach for the ozone precursors, NO_x and VOC, maintaining the regulatory structure of the existing rules. This proposal uses an emission-based approach due to the unanswered questions related to impact-based regulation of NO_x and VOC emissions at the present time. The DOI will continue to gather information on this subject and participate in scientific investigations concerning the formation and transport of ozone and its precursors, and DOI encourages further work by the scientific community on this subject.

Modeling Analyses Pertinent to the Proposed Rule

Two studies that have been used in developing the proposed emission allowances for development and production activities and form the technical basis for their inclusion are the Joint Interagency Modeling Study (JIMS) Santa Barbara Ozone Modeling Analysis and the Ozone Analyses for the California Rulemaking. The former analysis was conducted in 1984 and 1985 by Systems Application, Inc. (SAI), San Rafael, California, under the direction of DOI, EPA, CARB, and the Counties of Santa Barbara and Ventura. The latter analysis was conducted in 1987 and 1988 by SAI under the direction of DOI.

Both analyses assessed the onshore ozone impact of various emission scenarios and source configurations for OCS development in the Santa Barbara and Santa Maria Basins. The JIMS analysis indicated that at the receptor sites exceeding the NAAQS for ozone (120 parts per billion, ppb) during the meteorological scenario analyzed, the predicted contribution from the OCS facilities incorporated into the analyses was less than 1 ppb. At receptor sites were the maximum impact from the OCS facilities was predicted (12 ppb), the predicted ozone concentrations were less than the NAAQS for ozone.

The 1987–1988 study assessed the onshore ozone impacts from various emission scenarios while maintaining the source configurations for the OCS facilities presently located in the Santa Barbara Channel. This analysis indicated that single OCS facilities emitting 100 or 50 tons of each ozone precursor were predicted to have onshore impacts of less than 1 ppb, and under most of the emission scenarios assessed, the cumulative impact from all the OCS facilities was predicted to be less than 5 ppb.

As indicated in the preceding discussion, the recent analysis used information developed during the former analysis and the report of its assessment is part of the administrative record for this rulemaking. The DOI has also considered modeling studies prepared for lease sales, exploration plans, and development and production plans in the Pacific OCS Region. These documents are publicly available, and commenters may contact the RD to review copies of these assessments.

Inert Pollutants—Exploration, Construction, Development and Production Activities

The proposed rule addresses inert pollutants in § 250.47(b)(5)(iv)(A). The proposed provisions provide for the use of a refined analysis (computer modeling and the comparison with the significance levels) to determine if mitigation of emissions is required. The significance levels (also referred to as de minimis levels) for attainment and nonattainment areas in §§ 250.45 and 250.46 are retained and the mitigation requirements of those sections are strengthened: mitigation to the significance levels for OCS facilities in OCS air basins adjacent to onshore attainment areas and mitigation to zero net emissions for OCS facilities in OCS air basins adjacent to onshore nonattainment areas.

The present onshore air quality programs require mitigation of residual emissions after the installation of emission control technology at levels ranging from 18 to 250 tons per year depending on the pollutant and the attainment status of the onshore area. Two examples of impact-based significance levels used in onshore regulatory programs are the Emission Offset Interpretive Ruling (40 CFR Part 51, Appendix S) developed by EPA (these are the basis for the significance levels incorporated into the existing DOI air quality rules) and the PSD program.

The DOI also proposes to include regulation of lead emissions as an inert pollutant. Several commenters have suggested that since the emissions of lead from OCS facilities are very small, DOI should make a generic finding of no significant potential impact on onshore concentrations for it and withdraw the requirement for an analysis of lead emissions on a project-by-project basis. Commenters are requested to provide information on the emission of lead and the identified toxic pollutants from OCS facilities.

The CAA established NAAQS and PSD increments for particulate matter using TSP as the indicator. This indicator includes both large and small particles. Recent scientific work indicates that those particles with an aerodynamic diameter equal to or less than a nominal 10 micrometers, classified as PM_{10}, are of greater concern to health because these particles can be readily inhaled into the respiratory system.

Based on extensive data, EPA published a final rule in the **Federal Register** on July 1, 1987 (52 FR 24633), changing the indicator for particulate matter from TSP to PM_{10} except in the PSD program, which retains TSP as the particulate matter indicator, pending further work by EPA. Following EPA guidance, DOI proposes to change the particulate matter indicator to PM_{10} for this rule except in the PSD provisions.

Modeling

Section 250.47(b)(5)(iv) of the proposed rule requires the use of an air quality computer model and modeling protocols approved by the Director, MMS, for projected emissions of inert pollutants for all OCS facilities. In a **Federal Register** Notice published on March 28, 1985 (50 FR 12248), DOI announced its approval of the Offshore and Coastal Dispersion (OCD) model for all analyses for inert pollutants required by the OCS air quality rules.

Inert Pollutants—Prevention of Significant Deterioration Provisions

The provisions of the proposed rule for PSD in attainment areas are addressed in § 250.47(b)(5)(iv)(B). The DOI received limited comments on the PSD provisions. A suggestion was made to expand the protection afforded Class 1 PSD areas to include protection of the Class 1 area air quality-related values.

The DOI believes that the inclusion of such a provision should be considered in a separate rulemaking which would cover all OCS areas, not just a rule to cover the California OCS areas. As DOI undergoes its review of the existing rules for the other OCS areas, this protection provision will be considered.

The DOI proposes only one change to the PSD provisions: A clarification is added to insure that the consumed portion of the available PSD increment is the total of the offshore and onshore sources. The provisions of the existing DOI rules may have implied that both the offshore and onshore sources were each entitled to consume a separate total PSD increment.

The EPA has also been required to establish PSD increments for the other air pollutants for which a primary or secondary NAAQS has been established. Once these additional PSD increments are established, DOI will incorporate the increments into the provisions of the rule through a rulemaking process.

Toxic Air Pollutants

The DOI proposes in § 250.47(b)(6) of the proposed rule to regulate five pollutants designated as toxic and require risk assessments for these pollutants if the RD determines that such an assessment is required. The existing rules do not address the emissions of toxic air pollutants from OCS sources. Though the emissions of these pollutants are small, these provisions will insure that the onshore impacts from these emissions are below levels at which health effect might occur.

Several commenters have suggested that since the emissions of the pollutants regulated by this provision are very small, DOI should make a generic finding of no significant potential impact on onshore concentrations of these pollutants and withdraw the requirement of an analysis on a project-by-project basis. Commenters are requested to provide information on the emission levels of the pollutants regulated under this paragraph and related information that will assist DOI in preparing the risk assessment for the generic finding.

Existing OCS Facilities

Section 250.47(c) of the proposed rule proposes to require the installation of emission control technology defined as OCS RACT within 3 years of the effective date of the rule on all OCS facilities defined as existing by the rule and located adjacent to or within 25 miles of an onshore nonattainment area, except existing OCS Offshore Storage and Treatment (OS&T) facilities. Existing OCS facilities located adjacent to an onshore attainment area would have to install OCS RACT only if required by the periodic cumulative assessment proposed in § 250.47(a)(3).

OCS RACT is a less stringent set of control equipment than OCS BACT in that OCS RACT considers economics to a greater extent in determining if a candidate emissions control technology is appropriate than does OCS BACT. A **Federal Register** Notice published elsewhere in this issue proposes emission control technologies or pieces of equipment that constitute OCS RACT.

Emission reductions realized by the installation of OCS RACT early in the 3-year period cannot be used for mitigation requirements. Commenters are requested to provide comments on the nature of those requirements for existing OCS facilities.

Modifications to Facilities

The DOI is proposing provisions to regulate modifications to existing OCS facilities in § 250.47(d) of the proposed rule. An emission allowance of 10 tons per year for all pollutants, except CO which is 250 tons per year, is proposed above which net emission increases from modifications shall be mitigated. The only exception to these provisions is an OCS facility whose initial emissions before the modifications was below the emission allowance established in the provisions for new OCS facilities.

Two aspects of this paragraph's provisions applicable to new OCS facilities with initial projected peak annual emissions below the levels in Table 2 in proposed rule B need to be amplified. If the applicable level in Table 2 is 46 tons per year, the modified OCS facility's initial peak emissions were 45 tons per year, and the modification will add 1.5 tons per year to the peak emission level. The mitigation requirement for the OCS facility is 46.5 tons per year for the future life of the OCS facility. Under this scenario, the OCS facility is: (a) Not given an allowance of 10 tons per year for a total of 56 tons per year before mitigation is required and (b) the mitigation applies prospectively, into the future, and not retrospectively, from the initial installation of the OCS facility.

The proposed emission allowance for modifications is based on the quantity of emissions that occur based upon certain changes to equipment that are typically made to OCS facilities. Emissions resulting from the routine maintenance, repair, or replacement of pollutant sources on an OCS facility are less than 5 tons. Emissions resulting from the installation of new, minor pieces of equipment, such as a standby diesel generator, are slightly more than 10 tons. Emissions resulting from the installation of new, major pieces of equipment, such as a generator set or a compressor, are slightly more than 25 tons.

Questions for Commenters

Though comments are requested on all aspects of the proposed rule, DOI requests that readers also address the following questions and provide specific recommendations, suggestions, or technical information to support their comments:

1. All California coastal counties are requested to submit their respective updated attainment status and the current technical justification for that status.

2. Should facilities affecting attainment areas be required to obtain emission offsets and mitigation emissions above an allowable level?

3. Definitions. Should other terms be included? Should alternate definitions be used for terms presently included?

4. Required information. What is the appropriate amount of information that should be collected?

5. Electrification cost analysis. Is the protocol document sufficiently clear and complete to guide the development and performance of the analysis?

6. OCS BACT and RACT. Should OCS BACT or OCS ACT be installed on applicable sources associated with new OCS facilities regardless of their distance from shore, their size, or their onshore impact?

7. Cumulative Assessments. Should the cumulative assessments performed based on the provisions of § 250.47(a)(3) be used instead of approaches described in § 250.47(b)(5) (i)–(iv) to insure compliance with the intent of the OCS Lands Act?

8. Banking rules. Comments are invited on provisions for the banking of emission offsets obtained in excess of those required by the provisions of the proposed rule.

9. What incentives can be incorporated to the proposed rule that will encourage the demonstration of advanced control technologies on OCS facilities?

10. Toxic Pollutants and Lead. The emissions of lead and the toxic air pollutants from OCS facilities are very low (see EIR for the ARCO Coal Oil Point Development Project). Should a separate assessment be required for each new OCS project, or should DOI make a generic finding of no impact and provide this finding along with the technical justification in the final rulemaking? What are the emissions of the identified toxic pollutants and lead from OCS sources?

11. What is the economic impact of the provisions of the proposed rule on present and future OCS activities?

12. Comments on the environmental and economic impact and desirability of exempting temporary emission sources, operating during periods of time when no historic exceedances of the NAAQS were recorded, from the control requirements of the proposed rule.

13. Please provide any other comments, suggestions, or recommendations you may have relative to emissions controls and requirements on OCS facilities off the coast of California without regard to whether the specific issues involved were mentioned in this Notice.

The results of a Determination of the Effect of the Rule (DOER) prepared by DOI for this Notice concluded that the rule as proposed will not result in increased costs sufficient to designate the rule as "major," according to OMB guidelines. Please provide information that will assist in the evaluation of this analysis.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

Executive Order 12291

The DOI has also determined that the proposed rule is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be approximately $10.5 million per year. Please provide information that will assist in the evaluation of this analysis.

Regulatory Flexibility Act

The DOI also certifies that the proposed rule will not have significant effects on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct OCS minerals related activities.

Paperwork Reduction Act

The information collection requirements contained in the proposed rules have been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by OMB. Public reporting burden of this collection of information is estimated to average 29.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 631; 12203 Sunrise Valley Drive; Reston, Virginia 22091 and to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503.

Authors

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List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public

lands/mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: December 22, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. A new § 250.47 is added to read as follows:

§ 250.47 Facilities on the OCS adjacent to California.

(a) *General.* No air pollutant emitted from an OCS facility shall cause or contribute to a concentration greater than is permitted under the national secondary ambient air quality standards, or the concentration permitted under the national primary ambient air quality standards, whichever concentration is lowest for the air pollutant for the period of exposure. The primary and secondary national ambient air quality standards (NAAQS) are described at 40 CFR Part 50. No emission from an OCS facility shall cause or contribute to an onshore concentration of an air pollutant in excess of any Federally established increment for the prevention of significant deterioration of air quality. Emissions which comply with sections (a) through (d) are deemed not to cause or contribute to a concentration greater than is permitted under a national primary or secondary standard or a PSD increment.

(1) Applicability. The provisions of this section are the exclusive requirements for emissions of air pollutants from OCS facilities off the coast of California.

(2) Definitions. For purposes of § 250.47 of this part:

"Actual emissions" means the actual annual rate of emissions of a pollutant based on the most recent 3-year period or a different period that is more representative of a normal source operation for an OCS facility.

"Adjacent onshore air basin" means an onshore air basin that directly borders a California OCS air basin.

"Adjacent to" means adjoining or next to.

"Advanced control technology" means emissions control technology which is not recognized as OCS Best Available Control Technology (BACT) or OCS Reasonably Available Control Technology (RACT) but which:

(i) Will likely result in lower emissions than with the use of current OCS BACT for the same offshore source,

(ii) Is unproven for offshore applications,

(iii) Can be used on OCS facilities, and

(iv) Will not cause or contribute to an unreasonable risk to the human, marine or coastal environments, or to the actual facility in its operation, function, or malfunction.

"Air pollutant" means any airborne agent or combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act (CAA), national primary and secondary ambient air quality standards.

"Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any NAAQS, established by EPA in 40 CFR Part 50, for such pollutant. The Regional Director (RD) shall follow the area designations contained in 40 CFR Part 81, Subpart C, pursuant to section 107(d)(1) of the CAA.

"California Air Quality Advisory Committee (CAQAC)" means the advisory committee established to provide advice and recommendations to the RD in the development of elements for and the implementation of this rule. The function of this committee is solely advisory. The CAQAC will make formal recommendations to the RD on the BACT/RACT protocols and lists, the criteria for risk assessment for toxic air pollutants and such other matters as the RD deems appropriate. Recommendations will not be provided on a project-specific basis. Participation on the CAQAC by designated representatives does not diminish the right of individual members to provide comments on project-specific aspects of these rules during public commenting periods.

"California OCS air basin" or "OCS air basin" means one of the seven OCS areas depicted in Appendix A of this Notice.

"Construction" means the process of installing an OCS facility, including its underwater support and above-water structures and equipment, and associated pipelines.

"Electrification" means the use of electric power generated onshore as the primary source of power for an OCS development and production facility.

"Emission offset" means an emission reduction obtained from facilities or emission sources, either onshore or offshore, other than the facility or facilities covered by the subject Exploration Plan or Development and Production Plan. Offsets shall only include emission reductions which:

(i) Are not required by applicable laws, rules, regulations, permits, or orders of any coastal air pollution control district (APCD) of the State of California, the California Air Resources Board (CARB), EPA, or the Department of the Interior (DOI) for the areas where each agency has jurisdiction;

(ii) Are in excess of reductions relied upon by EPA in approving a State Implementation Plan (SIP) to demonstrate or make progress toward attainment of an NAAQS or PSD increment or by the relevant permitting authority in issuing any construction or operating permit under a permitting program approved as part of the applicable SIP;

(iii) Will occur during the activity for which they are obtained;

(iv) Can be characterized and estimated; and

(v) Are real and enforceable by emission limitations or permit conditions.

For each calendar year, offsets provided for an OCS facility must match the emissions for the facility requiring mitigation based on the emissions profile for the facility. The provisions of regulations published at 40 CFR 51.165(a)(3)(i) (A) and (B) and (ii) (A), (C), (E), and (G) and 40 CFR 51, App. S (1987) and the Emissions Trading Policy Statement, Section II A and B (51 FR 43831–43834, December 4, 1986) shall apply to the acquisition of onshore emission offsets.

"Emissions profile" is the permitted profile of projected annual emissions for a facility over the lifetime of that facility. In the event that emissions from a facility are changed over time through the implementation of control technologies or changes in the anticipated operating characteristics for the facility, are approved by MMS, and are incorporated into a modified approved plan for the OCS facility, the emissions profile will be corrected for the subsequent years to account for these changes. Mitigation requirements based on the emissions profile will reflect similar corrections.

"Exceedance" means a monitored measurement or modeled prediction greater than the NAAQS or PSD increment for the particular pollutant.

"Existing facility" is a facility described in an Exploration Plan or a Development and Production Plan deemed submitted under § 250.33(b)(19) or 250.34(b)(12), as appropriate, before the effective date of this rule.

"Exploration drilling operation" means an activity associated with an approved Exploration Plan for the period of time between the movement of a mobile drilling vessel to one surface location (defined by a discrete latitude and longitude) on the OCS and the movement of the vessel away from the location.

"Facility" means any installation or device permanently or temporarily attached to the seabed in the OCS which is used for exploration, construction, development, production or processing activities and which emits or has the potential to emit any air pollutant from one or more sources. All offshore equipment directly associated with the installation or device shall be considered part of a single facility if the equipment is dependent on, or affects the processes of, the installation or device. Crew and supply boats used to supply or transport personnel and materials to an OCS facility shall be considered part of the facility while at the facility.

(i) For development, production, and processing activities, multiple installations or devices will be considered to be a single facility if the installations or devices are directly related to the production of oil or gas at a single site. Tankers used to transport production from an OCS facility shall be considered part of the facility while physically attached to the facility.

(ii) For exploration activities, each drilling vessel engaged in such activity is considered a single facility.

(iii) For construction activities, the aggregate of equipment or devices (including barges, cranes, and crew and supply boats) at the site of the new facility used to install or construct a development, production, or processing facility is a single facility.

"Group 1 PM_{10} Planning Area" means an area designated by the Administrator, EPA, using monitored data or determined by the Administrator, EPA, to have a probability greater than or equal to 95 percent of exceeding the PM_{10} NAAQS.

"Group 2 PM_{10} Planning Area" means an area designated by the Administrator, EPA, using monitored data or determined by the Administrator, EPA, to have a probability between 20 and 95 percent of exceeding the PM_{10} NAAQS.

"Group 3 PM_{10} Planning Area" means an area designated by the Administrator, EPA, using monitored data or determined by the Administrator, EPA, to have a probability less than 20 percent of exceeding the PM_{10} NAAQS.

"Inert pollutant" means any airborne agent which is directly emitted into the atmosphere for which the EPA has established, pursuant to section 109 of the CAA, national primary or secondary ambient air quality standards. For purposes of this rule, NO_x will be regulated both as an inert and as a reactive pollutant.

"Modified facility" means a development, production, or processing facility that will undergo any physical change, change of operation, or the addition of a new source which could cause a cumulative net increase in emissions of any air pollutant, beyond that specified in the approved Development and Production Plan. A physical change or change of operation does not include:

(i) Routine maintenance, repair, and replacement of a piece of equipment with similar equipment which does not result in an increase in emissions; or

(ii) An increase in the production rate unless such a change would be in excess of the production rate approved under the appropriate Federal plan or permit; or

(iii) Any change in ownership at an OCS source or facility; or

(iv) Actions included within the scope of operations of an approved plan or permit.

"National Ambient Air Quality Standard (NAAQS)" means the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary ambient air quality standard whichever concentration is lowest for the air pollutant for the period of exposure. The primary and secondary NAAQS are described at 40 CFR Part 50.

"Net increase" means an increase in emissions above the permitted emissions profile.

"New facility" is a facility described in an Exploration Plan or a Development and Production Plan deemed submitted under §§ 250.33 or 250.34 of this title, as appropriate, on or after the effective date of this rule.

"Nonattainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA, to be reliable) to exceed any NAAQS established by EPA in 40 CFR Part 50 for such air pollutant. Such term includes any area identified in 40 CFR Part 81, pursuant to section 107 of the CAA and any area for which EPA has issued a notice of SIP deficiency pursuant to section 110(a)(2)(H) of the CAA.

"OCS best available control technology (BACT)" means an emission control device, technique (such as the injection of water), or limitation (limitations on the sulfur content in fuels are included, but operational limitations, such as restricted throughputs and hours of operations are not included) for newly constructed OCS facilities based on the maximum degree of reduction for each air pollutant subject to regulation which the Director, MMS, determines is achievable for a particular application, taking into account its availability, safety, reliability, economic, and other environmental factors and effects, legality, and energy considerations. A technology shall be considered available if it can be successfully transferred to the OCS application, has been successfully used in its application for at least 1 year, and has been:

(i) Used in an OCS application for at least 1 year; or

(ii) Used in a similar nearshore or onshore application; or

(iii) Used in an application on a different source.

"OCS reasonably available control technology (RACT)" means an emission control device, system, process modification, strategy, or other apparatus or technique that can be reasonably required on an existing OCS source (such as a crew boat) or facility considering:

(i) The necessity of imposing such emission limitations in order to attain and maintain an NAAQS or PSD increment,

(ii) The social and economic impact of such emission limitations,

(iii) Alternative means of providing for attainment and maintenance of an NAAQS or PSD increment, and

(iv) The availability, safety, reliability, economic and other environmental factors and effects, legality, and energy considerations of the use of the technology taking into account the useful remaining life of the source or facility.

"Onshore area" means an area of California landward of the coastline.

"Periodic" means a period of time not less than 1 year and not more than 5 years.

"Permitted emissions" means the emissions in the approved Exploration Plan or Development and Production Plan.

"PM_{10}" means particulate matter that includes those particles which an aerodynamic diameter equal to or less

than a nominal 10 micrometers (40 CFR Part 50). For purposes of this rule, only primary PM_{10} emissions shall be used in complying with the applicable standards in this section, until such time that EPA promulgates a method for the quantification/prediction of secondary PM_{10} emissions.

"Prevention of significant deterioration (PSD) increment" means an allowable increase in ambient air pollutant concentrations as established by section 163 of the CAA or by EPA, pursuant to section 166 of the CAA.

"Projected emissions" means expected permitted emissions from an OCS source or sources taking into account Federally enforceable controls, measures, or devices which the applicant has proposed or installed.

"Reactive pollutant" means any airborne agent which is a precursor of a pollutant for which the EPA has established, pursuant to section 109 of the CAA, national primary and secondary ambient air quality standards. For purposes of this rule, NO_x and VOC will be treated as precursors to ozone.

"State implementation plan (SIP)" means the plan or the portion of the plan approved by the EPA, pursuant to the CAA.

"Source" means an individual emission point. Several sources may be included within a single facility.

"Toxic air pollutant" means an airborne agent regulated under this rule and includes benzene, formaldehyde, chromium, nickel, and polycyclic aromatic hydrocarbons (PAH).

"Unclassifiable area" means those air quality control regions, or portions thereof, established in 40 CFR Part 81, Subpart C, pursuant to section 107 of the CAA which cannot be classified under section 107 on the basis of available data.

"Volatile organic compound (VOC)" means, in general, any organic compound which participates in tropospheric reactions and contributes to the formation of ozone. For the purposes of this rule, the term includes any organic compound other than those which the Director, MMS, designates, consistent with EPA designations, as having negligible photochemical reactivity. The Director, MMS, has designated all of the pollutants listed on page 4 of the "Glossary for Air Pollution Control of Industrial Coating Operations" (EPA–450/3–83–013R) as negligibly reactive.

(3) Cumulative assessments. The RD will provide emission inventory information for existing, approved, proposed, and potential OCS sources to local onshore agencies conducting cumulative air quality analyses. The RD will participate with the local agencies in the planning and analysis process including the identification and evaluation of potential control measures to reduce onshore and offshore emissions. The onshore agencies may petition the RD to consider the adoption and implementation of identified OCS emission control measures. The RD will take appropriate steps, taking into consideration the advice of the CAQAC and which do not require rulemaking to implement (for example, the installation of RACT), the OCS emission control measures that are feasible and appropriate to improve onshore air quality. Emission control measures required through this process shall not include additional emission offsets.

(4) Facilities affecting more than one onshore area. (i) Reactive pollutants. A facility will be regulated according to the requirements governing emissions in the OCS air basin (Appendix A) in which it is located unless it is within 25 miles of an onshore nonattainment area, in which case the facility shall comply with the regulatory requirements for facilities located in an OCS air basin adjacent to an onshore nonattainment area.

(ii) Inert pollutants. If projected emissions from a facility affect the onshore air quality of both a nonattainment area and an attainment or unclassifiable area, with an impact above the de minimis levels (paragraph (b)(5)(iv)(A)) of this section, the regulatory requirements applicable to OCS facilities in an OCS air basin adjacent to an onshore nonattainment area shall apply.

(5) Mitigation. (i) If mitigation is required to comply with the provisions of this section, the lessee shall use a combination of the following options:

(A) Traditional, nontraditional, and interpollutant (when net equivalency is demonstrated to the RD and the appropriate onshore agencies) emission offsets.

(B) Application of advanced emission control technology with the approval of the RD. If the technology fails to achieve the required emission reductions within 4 years from start-up of production, the necessary emission reductions must be secured within 1 year thereafter by emission offsets option, and the lessee shall be given partial credit for the funds expended to install, operate, and maintain the advanced emission control technology.

(ii) When emission offsets are to be obtained, the lessee must demonstrate that:

(A) The offsets are equivalent in nature and quantity to the projected emissions that must be reduced;

(B) A binding commitment exists between the lessee and the owner of the source or sources; and

(C) The appropriate air quality control jurisdiction has been notified of the need to revise the SIP to include the information regarding the offsets.

(iii) When emission offsets are obtained, the mitigation requirement for a facility is defined by the emissions profile for that facility. If emissions from a facility are enforceably reduced over a period of time, the emissions profile and the mitigation requirements for the facility may be modified, in a manner approved by the RD.

(6) Emission monitoring requirements. The lessee shall monitor in a form and manner approved or prescribed by the Director, MMS, actual emissions from the facility. The lessee shall submit this information monthly in a manner approved or prescribed by the Director. All emission monitoring equipment shall comply with the performance specifications detailed in 40 CFR Part 60, Appendix B.

(7) Projected inventory. The lessee shall submit a projected inventory of emissions of all air pollutants for its facilities in a manner and form approved or prescribed by the RD. This inventory shall be updated annually on a time schedule established or approved by the RD, shall incorporate the results of the most recent source test results, and will be made available to the State and local air pollution control agencies.

(8) Collection to meteorological data. The Director, MMS, may require the lessee to collect, for a period of time, and to submit, in a form and manner approved or prescribed by the Director, meteorological data from a facility.

(9) Inspection of facilities and enforcement. (i) Source test program. Lessees shall be required to submit a source test program covering each facility emissions source including, but not limited to, turbines, heaters, pump engines, standby generators, and crane engines to verify actual emission levels. The plan shall include a detailed description of the source test program as well as follow-up tests to be performed no less frequently than once a year. The RD shall review the plan to determine whether it is appropriate for determining compliance with the applicable air quality requirements of this section for the facility. The lessee shall submit the results of the tests conducted in accordance with the approved plan on a periodic basis, as approved or prescribed by the RD, and appropriate to the source test program.

(ii) Inspection and maintenance plan. Lessees shall submit an inspection and maintenance plan to minimize emissions of fugitive hydrocarbons from a development and production facility's components. The RD shall review the plan to determine whether it is appropriate for determining compliance with the applicable emission control requirements of this section. The lessee shall submit the results of the maintenance inspections conducted in accordance with the approved plan on a periodic basis, as approved or prescribed by the RD.

(iii) Upset conditions. If any piece of equipment with the potential to emit air pollutants or any piece of air pollution control equipment required by this section fails to operate properly, the lessee shall notify the RD within 48 hours of the initial malfunction. The notification shall include the following elements: Time of initial equipment malfunction, equipment involved, location of equipment, cause or probable cause, time needed to correct the malfunction, assessment of risk to life, property, public health, or the environment from continued operations or shutdown of the equipment, and steps that are being taken to correct the malfunction and to preclude reoccurrence. Malfunctioning equipment does not include equipment such as valves and flanges from which fugitive emissions are emitted. Fugitive emissions are covered by (a)(9)(ii) of this section.

(A) If the piece of equipment is malfunctioning, it shall be shut down within 96 hours of the time that it first started to malfunction unless the malfunction is corrected within that period of time or unless the RD has authorized continued operation of the malfunctioning equipment.

(B) When an equipment malfunction requires more than 48 hours to correct, the RD may authorize continued operation of the equipment contigent upon the lessee attaining an approved or prescribed schedule of increments of progress towards the correction of the malfunction. The lessee shall comply with the schedule for making progress toward correction of the malfunction and shall use good engineering and management practices to reduce emissions as expeditiously as practicable during the period of continued operation. The conditions for authorizing continued operation of the malfunctioning equipment shall provide for final compliance with the governing emission limitations as expeditiously as practicable, taking into consideration the time needed to order, obtain, and install equipment and make repairs, the quantity and impact of the emissions resulting from the operation of the malfunctioning equipment, and the risk to life, property, the environment, and public health from continued operation or shutdown of the equipment.

(C) Any emissions occurring during upset conditions shall be included in any emissions inventory or reports for the facility but not be the basis for mitigation requirements.

(b) *Facilities described in a new Exploration Plan or Development and Production Plan.* (1) Applicability of requirements. The requirements of this section will be applicable to facilities described in a new Exploration Plan or a new Development and Production Plan for OCS oil and gas leases adjacent to California.

(2) Required information. All Exploration Plans and Development and Production Plans (including the construction of facilities) for an OCS oil and gas lease adjacent to California shall include the following information:

(i) For onshore activities directly associated with a proposed OCS facility, the lessee shall provide information on each source of air pollutant listing the chemical composition and quantity of any regulated air pollutant and the frequency and duration of emissions.

(ii) For each facility in the OCS, the lessee shall submit the information necessary to make the findings required under paragraphs (b) (3) through (6) of this section.

(A) (*1*) Projected emissions from each proposed or modified facility for each year of operation, and the bases for all calculations, to include:

(*i*) For each source: The source, the amount of the emission by air pollutant expressed in tons per year (and other relevant units), the frequency and duration of emission, and the stack parameters, including temperatures, flow rates and velocity, and stack dimensions;

(*ii*) For each facility: The facility designation, the total amount of emissions per year by air pollutant expressed in tons and, in addition, for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source or sources. If a mobile drilling vessel has been described in an earlier environmental report and the vessel has not been modified, the lessee may reference paragraphs (b)(2)(ii)(A)(*1*)(*iii*), (*iv*), and (*v*).

(*iii*) A detailed description of all processes, process equipment, and storage units including information on fuels to be burned;

(*iv*) A schematic drawing which identifies the location and elevation of each source; and

(*v*) If projected emissions are based on the use of emission control technology, a description of the controls providing the information required by paragraph (b)(2)(ii)(E) of this section.

(*2*) The distance of each proposed facility from the shoreline.

(B) For sources and facilities being reviewed for the PSD provisions of this rule:

(*1*) The model or models used to determine the effect of emissions from each facility, or from other facilities when required by the Director, MMS, on the onshore air quality and the results obtained through the use of the model or models.

(*2*) The best available meteorological information and data consistent with the model or models used stating the basis for the information and data selected.

(C) The air quality status of the onshore air basin which is adjacent to the OCS air basin in which the facility is located and the air quality status of any other onshore air basin, any portion of which is located within 25 miles of the facility. An onshore air basin should be described in terms of its EPA status i.e., nonattainment, attainment, or Unclassifiable, including the status of the onshore air basin by air pollutant; the existing or representative monitored air quality data as it exists; and the air pollution control agency whose jurisdiction covers the onshore air basin.

(D) The PSD classification of the onshore air basin which is adjacent to the OCS air basin in which the facility is located.

(E)(*1*) The emission reduction control technology available to reduce emissions to include: the source, the emission control technology, the reductions achieved, and the monitoring system the lessee proposes to use to measure emissions. If applicable, the lessee shall indicate which emission reduction control technology the lessee believes constitutes OCS BACT and the basis for that opinion.

(*2*) Prior to the approval of an Exploration Plan or a Development and Production Plan, the lessee must provide information on the ownership of any offshore and onshore source or sources to be used for offsets for the facility and the emission reduction obtainable from each source.

(3) Electrification Analysis. (i) An electrification analysis, with the cost component conforming with the requirements set out in Appendix B of this section, shall be prepared for each

new proposed development/production/processing facility.

(ii) The electrification analysis shall take into account the following factors: Net effect of electrification on air quality, energy considerations, costs, other environmental effects, and overall emissions. Other considerations will be: location, availability, and reliability of the source of electricity; technical feasibility; status of the onshore air basin which is adjacent to the OCS air basin in which the proposed OCS facility will be located; status of any other onshore air basin, any portion of which is located within 25 miles of the OCS facility; and the status of the onshore air basin where electric power will be produced, if known; population exposure levels with and without the use of onshore power; loss of recoverable resources; and safety. The electrification analysis shall not consider the costs of project design or construction incurred by the applicant prior to the analysis.

(iii) The RD shall discuss the analysis with the CAQAC, but the CAQAC shall not provide formal recommendations or advice to the RD on the analysis.

(iv) Based on the information from paragraph (b)(3)(i) through (iii) of this section, the RD will determine whether and to what extent a facility should be electrified.

(4) Initial emission control requirement. OCS BACT for new sources, as applicable and appropriate, shall be installed on OCS facilities described in a new Exploration Plan or Development and Production Plan, including crew and supply boats when considered part of the facility, and applicable sources during exploration and construction activities. The RD will maintain the current list of applicable control technologies deemed to be OCS BACT. The lessee may provide justification to the RD showing why an identified emission control technology or technologies included on the list as OCS BACT is not OCS BACT for a particular application. The RD shall determine if the control is OCS BACT for the particular application.

(5) Air quality review and control. (i) Exploration drilling operations. (A) OCS lessees using an exploration drilling vessel shall install OCS BACT for new sources and OCS RACT for existing sources, as appropriate, on the vessel. By [insert date 3 years from the effective date of this rule], the OCS RACT performance standard for the main power supply sources on existing exploration drilling vessels shall be 11 grams per horsepower-hour (g/hphr) for NO_x emissions.

(B) OCS operators that use an exploration drilling vessel with main power supply sources that emit more than 8 grams per horsepower-hour (g/hphr) for NO_x emissions after January 1, 1995, shall mitigate the net difference in emissions between the OCS RACT performance standard in effect on January 1, 1995, and 8 g/hphr (if the OCS RACT performance standard on January 1, 1995, is greater than 8 g/hphr). Once the RD determines that it is feasible to use only drilling vessels with main power supply sources which emit 8 g/hphr NO_x or less in an OCS air basin, only exploration drilling vessels with main power supply sources which emit 8 g/hphr NO_x or less shall be authorized for use in that OCS air basin. If the RD determines that OCS RACT is less than 8 g/hphr, lessees shall use exploration drilling vessels with main power supply sources which comply with the OCS RACT of less than 8 g/hphr NO_x.

(C) No more than 3 exploration operations shall be conducted simultaneously within an area defined by a circle with a radius of 15 miles, drawn with the initial exploration operation as the center. No two exploration operations shall be conducted simultaneously at locations which are separated by less than 5 miles. When the constraints specified in this paragraph prevent a lessee or operator from commencing drilling operations, and an applicable Exploration Plan has been submitted in accordance with the provisions of § 250.33(a) of this title, the lessee or operator may request a suspension of operations, and a suspension of operations shall be granted, pursuant to the provisions of § 250.10 of this title, for a period of time equal to the period of time that the lessee or operator is prevented from commencing exploration drilling operations.

(D) The total number of simultaneous exploration operations which may be authorized in the OCS air basins off the coast of California that are exempt from mitigation requirements are presented in Table 1. When the RD determines that it is feasible to use only exploration drilling vessels with the main power supply sources which emit 8 g/hphr NO_x or less, the number of exempt exploration operations listed in column a. may be conducted simultaneously. Until the RD makes such a determination for an OCS air basin, the number of exempt exploration operations listed in column b. may be conducted simultaneously.

(E) No more than 12 exempt exploration operations shall be conducted simultaneously in the OCS off California unless and until the RD determines that it is feasible to use only exploration drilling vessels with mai power supply sources which emit 8 . g/hphr NO_x or less. Once the RD has made such a determination and requires the exclusive use of vessels with main power supply sources which emit 8 g/hphr NO_x or less, 16 exempt exploration operations may be conducted simultaneously in the OCS off California.

(F) The emissions from all non-exempt exploration operations (exploration operations in excess of the number of exempt simultaneous operations listed in Table 1) shall be fully mitigated at a ratio of 1:1 using the mitigation options prescribed in paragraph (a)(5) of this section.

(G) The emissions of crew and supply boats while located at a facility conducting an exploration operation shall be included in the mitigation requirements, if any, for the exploration operation. The main power supply sources on the crew and supply boats associated with an exploration operation do not have to meet the 8 g/ hphr NO_x performance standard.

Table 1

EXEMPT SIMULTANEOUS EXPLORATION OPERATIONS FOR CALIFORNIA OCS AIR BASINS

Air basin category	a. When the main power supply sources emit less than 8 g/hphr NO_x	b. If the main power supply sources on any vessel emit more than 8 g/hphr NO_x
Attainment	4	3
Nonattainment	3	2
Maximum for all OCS basins	16	12

(ii) Ozone Precursors—Construction Activities. (A) The allowable NO_x and VOC emissions for construction activities associated with an OCS project shall be 25 tons per calendar quarter for OCS air basins adjacent to onshore attainment areas and 11.5 tons per calendar quarter for OCS air basins adjacent to onshore nonattainment areas. All NO_x and VOC emissions from construction activities in excess of the allowable levels shall be fully mitigated at a ratio of 1:1 using the mitigation options prescribed in § 250.47(a)(5), except as limited by § 250.47(b)(5)(ii)(B).

(B) The maximum annual mitigation requirement for NO_x and VOC emissions from construction activities associated with an OCS facility will be no greater than the mitigation requirement for the maximum annual emission level for each pollutant for the development/production phase of the OCS facility.

(iii) Ozone Precursors—Development/Production/Processing Activities. All facilities within an OCS air basin adjacent to an onshore area with the classification shown in column a. of Table 2 or within 25 miles of an onshore area with the classification shown in column a. of Table 2 with projected peak annual emissions for NO_x or VOC greater than those listed in column b. shall reduce emissions for that pollutant below the lowest level given in column c. using the corresponding offset ratios given in column d. These reductions shall be made by the mitigation options prescribed in paragraph (a)(5) of this section.

Table 2

a. Status of onshore area adjoining an OCS air basin	b. Allowable thresholds for facilities	c. Mitigation level for emissions	d. Offset ratio
Attainment	100 TPY	100 TPY	1:1
Nonattainment	46 TPY	0 TPY	1.2:1

(iv) Inerts—Exploration, Construction, and Development/Production Activities.

(A) De minimis onshore concentrations. For all facilities or operations with emissions of TSP, CO, NO_2, SO_2, Pb, or PM_{10}, the lessee shall use an air quality model and modeling protocols approved by the Director, MMS, and consistent with EPA guidelines to determine the facility's or operation's projected onshore ambient concentrations of each pollutant in the OCS air basin.

(*1*) Attainment/unclassifiable/PM_{10} Group 2 and 3 planning areas. The lessee shall mitigate OCS emissions of a pollutant if the projected incremental increase from the OCS facility in an onshore attainment or unclassifiable area for that pollutant exceeds a value in Table 3. The lessee shall use mitigation options in paragraph (a)(5) of this section to reduce the increase below the levels in Table 3.

(*2*) Nonattainment areas/PM_{10} Group 1 planning areas. The lessee shall mitigate OCS emissions of a pollutant from a facility if the predicted incremental increase in an onshore nonattainment area of that pollutant exceeds a value in Table 3. The lessee shall use the mitigation options in paragraph (a)(5) of this section to fully reduce to zero the net emissions from tne OCS facility.

TABLE 3.—DE MINIMIS AMBIENT ONSHORE THRESHOLDS ATTAINMENT OR UNCLASSIFIED AREA

[All units are micrograms per cubic meter]

Air pollutant	Annual	Calendar quarter	Number of hours			
			24	8	3	1
SO_2	1	—	5	—	25	—
TSP	1	—	5	—	—	—
PM_{10}	1	—	5	—	—	—
NO_2	1	—	—	—	—	—
CO	—	—	—	500	—	2,000
Pb	—	.05	—	—	—	—

(B) PSD provisions. For all facilities or operations potentially affecting the air quality in onshore attainment or unclassifiable areas in amounts in excess of those listed in Table 4, the lessee shall provide baseline information for the onshore area affected and shall assess the impact of the facility's or operation's primary TSP, NO_x, or SO_2 emissions on the available PSD increments for that area. The lessee shall use an air quality model and modeling protocols approved by the Director, MMS, consistent with EPA guidance, to determine whether the onshore concentrations of TSP, NO_x, or SO_2 from the facility or operation, in combination with the portion of the PSD increments already consumed, exceed the maximum allowable increases over the baseline concentrations established pursuant to sections 163 and 166 of the CAA in attainment or unclassifiable areas listed in Table 4.

TABLE 4.—PSD INCREMENTS

[All units are micrograms per cubic meter]

Air pollutant	Annual mean [1]	Maximum allowable increases (averaging times)	
		24-hour	3-hour
Class 1:			
TSP	5.0	10	—
SO_2	2.0	5	25
NO_2	2.5	—	—
Class 2:			
TSP	19.0	37	—
SO_2	20.0	91	512
NO_2	25.0	—	—
Class 3:			
TSP	37.0	75	—
SO_2	40.0	182	700
NO_2	50.0	—	—

[1] For TSP: geometric. For NO_x and SO_2: arithmetic.

(*1*) If the facility's or operation's emissions of primary TSP or SO_2 cause an exceedance of the available increments, the lessee shall reduce the emissions of primary TSP, NO_x, or SO_2 by the mitigation options prescribed in paragraph (a)(5) of this section such that the TSP, NO_x, or SO_2 concentrations in the onshore attainment or unclassifiable area do not exceed the available increments.

(*2*) If modeling using the projected emissions of primary TSP or SO_2 from a facility or operation indicates an exceedance of the available increments in more than one onshore attainment area, the lessee shall reduce projected primary TSP or SO_2 emissions to meet the available increments for each onshore area.

(*3*) The RD shall notify and consult appropriate Federal Land Managers of Class 1 areas on a proposed Exploration Plan or Development and Production Plan.

(6) Toxic air pollutants.

(i) The lessee shall calculate for each source and facility the projected emissions of air pollutants listed in Table 5.

(ii) The RD shall determine if a facility specific risk assessment for the pollutants listed in Table 5 is required.

(iii) If a facility specific risk assessment is required, the lessee shall conduct the risk assessment and the RD shall determine the need for further emissions controls or other measures and require further emissions controls or other measures which the RD concludes are necessary and feasible to reduce emissions based on the results of the risk assessment.

Table 5

Toxic Air Pollutants

Benzene

Formaldehyde

Chromium

Nickel

Polycyclic Aromatic Hydrocarbons (PAH)

(7) Modifications to the Protocol Documents and the OCS BACT/RACT lists. The RD shall be able to modify the provisions of the protocol documents and the OCS BACT/RACT lists, to the extent allowed in the documents, based on the advice of the CAQAC.

(c) *Existing facilities.* All existing facilities, with the exception of existing Offshore Storage and Treatment (OS&T) facilities, located adjacent to or within 25 miles of an onshore nonattainment areas shall be required to install OCS RACT before January 17, 1992. All existing facilities, with the exception of existing OS&T facilities, located adjacent to onshore attainment areas shall install OCS RACT only if required as a result of the periodical cumulative assessment conducted under

§ 250.47(a)(3). Emission reductions realized by the application of RACT on the existing facilities shall not be used as emission offsets by lessees with the exception of emission reductions realized on existing OS&T facilities which shall be fully available as emission offsets.

(d) *Modifications to a facility.* (1) Initial emission control requirements. OCS BACT for new sources and OCS RACT for existing sources, as applicable and appropriate, shall be installed on all modifications to OCS facilities or any added source on an OCS facility (excluding boats) which contributes to a net increase in the emissions of any pollutant. The lessee may provide justification to the RD showing why an identified emission control listed as OCS BACT or OCS RACT is not OCS BACT or OCS RACT for a particular application. The RD shall determine if the control is OCS BACT or OCS RACT for the particular application.

(2) Required information. The lessee shall provide the information required at paragraph (b)(2)(ii) of this section.

(3) Emissions level. The cumulative net increase in emissions resulting from modifications to a facility shall be calculated for PM_{10}, NO_x, SO_2, TSP, VOC, and CO. The cumulative net emission threshold shall be 10 tons per year for all pollutants, with the exception of CO, which shall be 250 tons per year.

(i) Existing facility. If the cumulative net increase in emissions is greater than 10 tons per year for any pollutant other than CO (250 tons per year for CO), the lessee shall mitigate the cumulative net increase in emissions for each such pollutant to zero by the mitigation options prescribed in paragraph (a)(5) of this section.

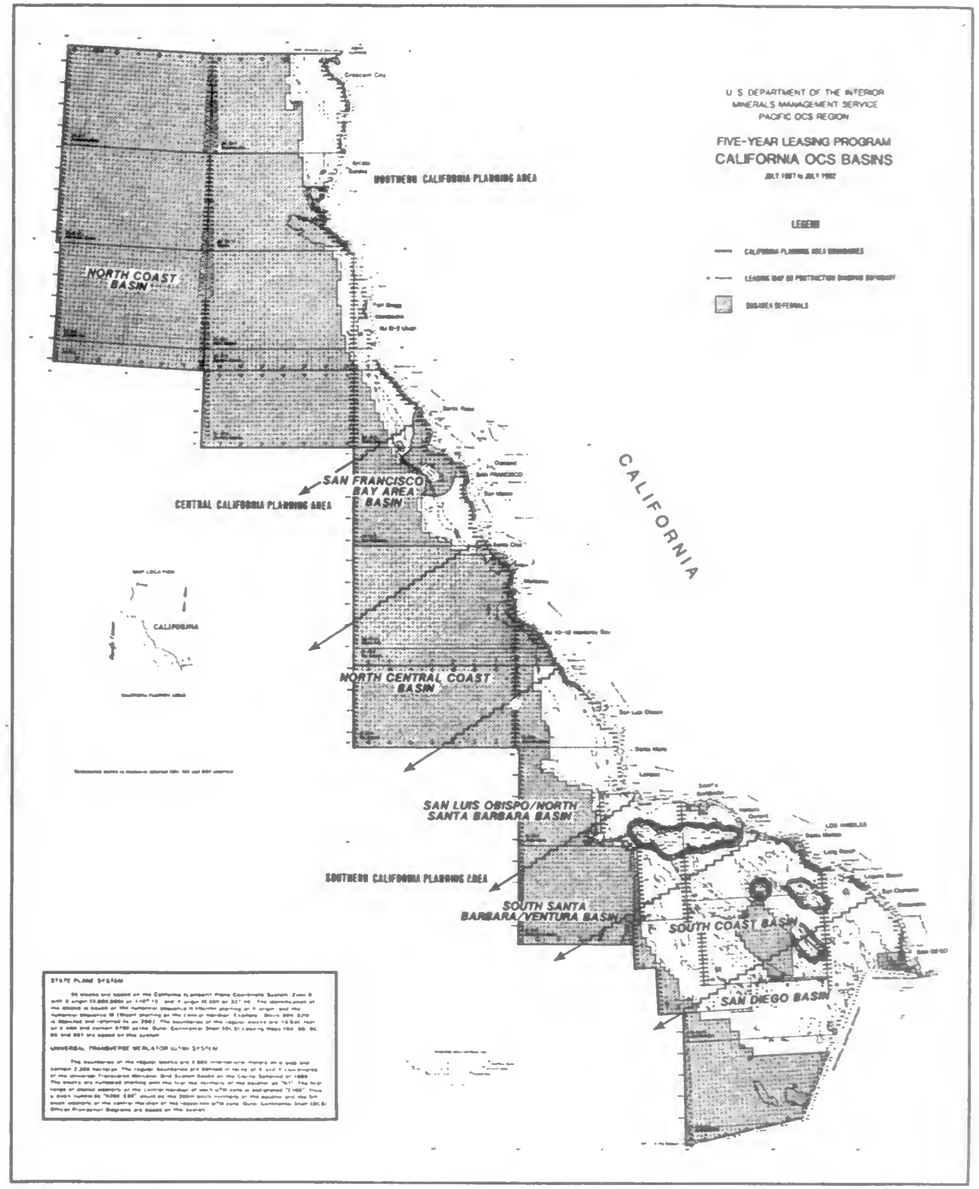
(ii) New facilities. (A) New facilities with initial projected peak annual emissions above the levels in Table 2. If the cumulative modifications for a new facility with an initial emission profile projecting a peak annual emission of any pollutant above the applicable level in Table 2 result in an emissions increase greater than 10 tons per year for that pollutant (250 tons per year for CO), the cumulative net increase in emissions for that pollutant shall be mitigated to zero by the mitigation options prescribed in paragraph (a)(5) of this section at the applicable offset ratios shown in column d. of Table 2.

(B) New facilities with initial projected peak annual emissions below the levels in Table 2. New facilities which have not exceeded the applicable level in Table 2 for the projected peak annual emission of any pollutant shall be allowed modifications which increase the projected peak annual emission of any pollutant to the applicable level in Table 2. When the cumulative modifications to a new facility increase the projected peak annual emission of any pollutant above the applicable level in Table 2, the total future emissions profile for that pollutant shall be mitigated to zero by the mitigation options prescribed in paragraph (a)(5) of this section at the applicable offset ratios shown in column d. of Table 2.

(iii) When the net cumulative increase in emissions that results from modifications to a facility have been mitigated to zero or, in the case of a facility meeting the requirements of paragraph (d)(3)(ii) of this section, when the total future emissions profile is mitigated to zero, the facility will be allowed a new cumulative net emission threshold for future modifications of not more than 10 tons per year for any pollutant (250 tons per year for CO).

BILLING CODE 4310-MR-M

Appendix A to Section 250.47 - OCS Air Basins Adjacent to the State of California



BILLING CODE 4310-MR-C

Appendix B to 30 CFR 250.47—Protocol for the Analysis of Electrification Configurations for OCS Projects

1.0 Purpose

The purpose of this Facility Electrification Protocol is to outline elements for an analysis by the lessee of various project configurations to supply electricity to the project and a procedure to be used by the MMS Pacific OCS Regional RD in determining to what extent, if any, electricity from onshore sources should be required for the project. The procedure specified herein, including standardized factors, must be followed to ensure that all OCS projects are regulated in a consistent manner. Exceptions may be approved by the RD, where specifically allowed in the protocol or to account for differences in project design or documented operating procedures.

2.0 General Analysis Procedure

The requirements for facility electrification are to be determined on an incremental basis compared to a defined base case for power production and heat supply. A range of scenarios for facility electrification shall be examined, including the six scenarios listed in Exhibit 1. All listed scenarios should be considered in an initial screening analysis. The "base case" represents facility power and heat supply equipment which is BACT for reducing emissions. Any modifications to the scope, nature, or number of scenarios analyzed must be approved by the RD.

The analysis, as outlined in this protocol, will result in the net present value (NPV) cost of electrification options on an incremental basis from the base case. The NPV is then normalized by the total lifetime emission reduction. The costs of the scenarios, per unit emission reduction, are then compared to threshold criteria. Any costs incurred by the applicant for design or fabrication prior to the completion of the electrification determination shall be disregarded in the NPV cost calculations.

The sample calculations presented in these guidelines show unit costs of electrification in terms of NO_x reduction only. Reactive hydrocarbons shall also be considered, as specified herein. Calculations will be prepared for NO_x, SO_2, and PM_{10}.

The major elements and assumptions required to determine the cost of each facility electrification scenario are:

• *Project design basis*—Engineering basis and assumptions for determining equipment sizes and operating requirements. This information is project-specific and must be supplied by the operator with agency verifiable documentation.

• *Capital cost estimating technique*—Guidelines and methods for estimating capital cost. This information is project-specific and must be supplied by the operator with agency verifiable documentation.

• *Operating requirements*—This element includes both the avoided and additional operating requirements of each electrification scenario. This data is project-specific and must be supplied by the operator with agency verifiable documentation.

• *Operating and maintenance cost factors*—This element includes the basis, sources, and current values for operating and maintenance unit costs. These cost factors are standardized.

• *Financial analysis parameters*—This element includes the sources and basis for the parameters to be used in the financial analysis. These factors are standardized.

• *Emission factors*—Includes sources and methods for determining emissions for the various emitting equipment items. The factors can be project-specific if actual equipment is known and verifiable vendor data is available.

2.1 Facility Electrification Analysis Input Values

Input paramaters have been divided into two major categories. The first are those parameters that are standardized. The second are project-specific inputs that must be supplied by an operator to conduct the electrification analysis. The various elements that comprise each of these categories are discussed below.

2.1.1 Standardized Input Values

The standardized input values are the operating and maintenance unit cost parameters and the financial analysis parameters. Exhibit 2 provides a list of the required operating and maintenance cost parameters needed to conduct the electrification analysis. The exhibit presents the typical range of values for each parameter as well as the recommended value that should be used for each analysis. Some of the operating and maintenance factors could vary by project due to each company's operating practices. If an operator wishes to use an operating and maintenance (O&M) value different than the recommended value, they must submit with their analysis the necessary back-up information to justify use of the different values. Where O&M values differ due to past operating practices, these practices must be identified in written procedures used previously by the company.

Exhibit 3 provides a list of the required financial analysis parameters. This list includes escalation factors for electricity and gas prices. Utilities usually forecast real and nominal price forecasts. The real forecast should be used to develop the price escalation above and beyond inflation, since the utilities general inflation forecast may be different from that which is recommended here. Use of these cost parameters will allow the determination of the cost effectiveness of various facility electrification scenarios on a consistent basis. Financial factors shall not be modified based on applicant specific data.

2.1.2 Project-Specific Input Values

The project-specific input values fall into three categories. These are:

• Project Design Basis Parameters.
• Equipment Capital Costs.
• Emission Factors.

These categories are considered project-specific since they may all vary depending on the facility's location, design, and quantity and quality of resources to be recovered.

Exhibit 4 presents the key elements that must be known about the design of the facility in order to properly evaluate facility electrification. An applicant must supply the data shown in Exhibit 4 as part of the analysis. This information shall then be independently verified by MMS. Using the design basis information provided and verified, the required incremental facility modifications can be determined for each scenario.

Exhibit 5 shows the major elements that are used to estimate the capital costs associated with each scenario. In costing the major equipment items, budget quotes should be supplied from vendors. Three quotes are desirable to establish accurate preliminary cost estimates. Other direct costs, such as installation engineering, shall be estimated using standard engineering cost factors. For some of the special offshore installation activities, the costs should be developed separately. As a part of any capital cost estimate, a project contingency factor of 20 percent shall be added to cover the uncertainty inherent in any preliminary cost estimate. This is considered standard engineering practice.

All of the assumptions and back-up data used to develop the capital cost estimates for each electrification scenario are to be submitted with the analysis. This back-up shall include:

• Equipment specifications;
• Vendor cost quotes for major equipment items;
• A list of all factors used to estimate other direct materials and installation costs and their sources; and
• Any other costing assumptions used in the analysis and the source for these assumptions.

Providing this level of back-up will allow regulators to verify the accuracy and completeness of each scenario's incremental capital cost.

The third major category of project-specific input parameters is the emission factors. Many of the factors will vary depending on design of the facility and the actual equipment to be used on the facility. Exhibit 6 provides a list of the sources and methodologies that shall be used to estimate emission factors. Data supplied by vendors should include back-up test data consistent with that required for enforceable permit conditions. When vendor data is not available, then EPA-approved factors shall be used. As part of each applicant's facility electrification analysis, the source of emission factors by equipment should be provided. If the source is vendor data, the actual data provided by the vendor should be provided as back-up.

The reduction in recoverable reserves may be considered in the calculation of facility electrification feasibility if the reduction in recoverable resources exceeds 5 percent.

2.2 Cost Calculations

To aid in the determination of the costs, a list of the various components which should be considered for each scenario is given in Exhibit 7. Costs for each of these items are to be estimated using the annual operating requirements and the appropriate unit costs adjusted for inflation and escalation. The annual operating requirements represent the difference between each scenario and the base case.

The overall sequence in the cost calculations is as follows:

(1) Establish annual operating requirements.
(2) Identify peak equipment duties and the design basis.
(3) Develop equipment specifications from the design basis.
(4) Estimate capital investment from equipment specifications.
(5) Escalate unit costs.
(6) Calculate annual costs from annual operating requirements and escalated unit costs.
(7) Discount the costs for each year.
(8) Sum the discounted annual costs.
(9) Calculate annual NO_x and ROC emissions.
(10) Identify the cost for reduction of NO_x in $/ton (Net Present Value).

In calculating the NPV cost for NO_x reduction, the portion of the costs attributable to RHC reduction shall be deducted from the NPV cost. The deducted amount shall be calculated by multiplying the NPV cost times the ratio of total tons RHC to total tons RHC + NO_x.

2.3 Method for Considering Onshore Cogeneration Costs and Emissions

If the onshore cogeneration scenario results in the purchase of offsets, not otherwise required under the base case, a cost and emission reduction factor shall be incorporated into the electrification analysis for this scenario. The cost factor shall be calculated as the dollars per ton times the additional tons of offsets purchased under the cogeneration scenario. An emission reduction factor shall be incorporated by subtracting the annual tons of offsets which must be purchased for the onshore cogeneration scenario from the annual tons of emissions computed for that scenario.

The net result of the cost calculation can be represented in a table showing the total incremental NO_x emission reduction for each scenario, its associated average cost ($ per ton removed), and total cost.

3.0 Identifying Feasible Scenarios

A three-step process will be used by the RD for the identification of feasible electrification scenarios:

(1) Rank order the scenarios in ascending cost per ton of pollutant removed.

(2) Discard any option which has a lower pollutant reduction than its adjacent higher ranked (lower cost) neighbor.

(3) An option is feasible if its cost per ton of pollutant removed is less than the threshold criteria on a total basis. The RD shall consider the costs of offshore BACT, onshore BACT, and onshore offsets in setting the threshold criteria. The CAQAC will recommend an appropriate level for this criteria for each air basin.

EXHIBIT 1.—SCENARIOS TO BE ANALYZED

Scenario	Design and operation objectives	Equipment configuration
1. "Base Case" On-facility Turbines with Water Injection (as example).	Project is completely self-sufficient for its thermal and electrical energy requirements. An energy efficient system, gas turbine generator with waste heat recovery, is combined with NO_x control, water injection. Electric motor drives for all major equipment including the drilling rig and all but one crane. Gas compressors will be powered by the GTG.	Project Gas Turbines. Waste Heat Recovery Units. Diesel Generators Emergency Drilling Standby. Diesel-Firing of Gas Turbines when gas production is insufficient. Gas Processing. Dehydration-Glycol. Sweetening-Amine. Desalinization Unit for Water Injection. Gas Compressors.
2. Partial Utility Grid Connection	Operate GTG and HRU at maximum efficiency, matching output to the lower of the thermal or electrical demand at peak production and using grid power or supplemental firing to meet the balance of the platform's energy demand. Operation of GTG normally at full load.	Same as for base case, except some equipment items may be smaller due to lower loads. Onshore Utility Substation. 34.5 KV Subsea Transmission Line. Electrical Tie-in on platform (transformer, switch gear, etc.). Supplemental Firing for HRU.
3. Full Utility Grid Connection with Gas-Fired Process Heaters.	Utility to provide all electrical power requirements; thermal demand satisfied by gas-fired heaters. Project generation capacity is only for emergency—complete standby not available.	Base case equipment not required: Project Gas Turbines. Waste Heat Recovery Unit. Desalinization Unit. Auxiliary Equipment. Some base case equipment is downsized: Glycol Contractor. Amine Scrubber. Additional Equipment: 34.5 KV Subsea Transmission Line. Gas-Fired Process Heater with low NO_x burners.
4. Full Utility Grid Connection with Electrical Process Heaters.	Same as for Scenario 3, except process thermal demand to be satisfied by electrical instead of gas-fired process heaters.	Base case equipment not required: Project Gas Turbines. Waste Heat Recovery Units. Desalinization Units. Gas Processing: Glycol Contractor. Amine Scrubber. Additional equipment required: Onshore Utility Substation. 34.5 KV Subsea Transmission Line. Electrical Process Heater.
5. Onshore Cogeneration with Gas-Fired Process Heaters.	Same as for Scenario 3, except power is provided by an onshore cogeneration facility.	Base case equipment not required: Project Gas Turbines. Waste Heat Recovery Unit. Desalinization Unit. Auxiliary Equipment. Some base case equipment is downsized: Glycol Contractors Amine Scrubber. Additional Equipment: 34.5 KV Subsea Transmission Line. Electrical Tie-in on facility. Gas-Fired Process Heater with low NO_x burners. Electrical Substation.

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EXHIBIT 1.—SCENARIOS TO BE ANALYZED—Continued

Scenario	Design and operation objectives	Equipment configuration
6. Onshore Cogeneration with Electrical Process Heaters.	Same as for Scenario 5, except process thermal demand to be satisfied by electrical instead of gas-fired process heaters.	Base case equipment not required: Project Gas Turbines. Waste Heat Recovery Units. Desalinization Units. Gas Processing: Glycol Contractor. Amine Scrubber. Additional equipment required: 34.5 KV Subsea Transmission Line. Electric Process Heater. Electrical Substation.

EXHIBIT 2.—OPERATING AND MAINTENANCE UNIT COST PARAMETERS

Cost item	Value range	Recommended value	Units	Basis
Project Fuel Gas	NA	NA		NGPA Section 109 less royalty.
Utility Power	NA	NA		Lower of actual published rate schedule for uninterruptible industrial power or rate commitment by serving utilities.
Diesel Fuel	NA	NA	$/gal	West Coast price as published in Oil Buyers Guide.
Turbine O&M	6 to 10	8	mils/kwh	For onshore applications.
Water Injection	0.5 to 3	1	mils/kwh	
SCR O&M	1 to 4	2	mils/kwh	Excluding catalyst changeout.
Catalyst Changeout	NA	NA		Assumed to occur at least every 2 years. Price of changeout to be obtained from vendor.
Gas-Fired Heater Maintenance	3 to 5 percent	4 percent	of equipment cost	Annually.
Electrical Equipment Maintenance	0.5 to 3 percent	1.5 percent	of equipment cost	Annually.
Ammonia and Feed System	NA	NA		To be determined—factored based on ammonia price plus transportation and handling.
Gas Processing and Compression O&M	NA	NA		To be determined.
Onshore Cogeneration Fuel Gas	NA	NA		NGPA Section 109 less royalty.[1]
Onshore Cogeneration O&M	2 to 6	4	mils/kwh	For onshore application.

[1] Royalty costs shall not be included in onshore cogeneration fuel gas costs to the extent generated power is used by project (onshore or offshore) and cogeneration unit is under same ownership, if approved by the MMS. Where cogeneration unit is proposed to be under other ownership, applicants shall request royalty waiver, and MMS shall act on waiver request, prior to determining an applicant's electrification requirements.

EXHIBIT 3.—FINANCIAL ANALYSIS PARAMETERS

Parameter	Values as of September 1987 (percent)	Basis
Long-term inflation	4–5	The DOC published forecast for CPIU (Consumer Price Index, Urban).
Electricity price escalation	NA	Real price increase forecasted by actual utility.
Gas price escalation	NA	Real price increase forecasted by utility providing standby service or GNP de-escalator per Section 109.
Discount rate		As required by SEC for valuation of reserves (code reference to be included).
Project financing technique	NA	Assumed to be 100 percent operator's equity.

EXHIBIT 4.—KEY ELEMENTS FOR THE DESIGN BASIS FOR DETERMINING PROJECT ELECTRIFICATION FEASIBILITY

Item	Issues
Project Electrical Demand	Both peak demand (kw) and annual consumption (KWH) need to be determined. For verification, the annual consumption can be compared to gas compression power requirements, independently estimated from the gas production curves and compression calculations. Typically, gas compression accounts for approximately 70 to 80 percent of facility power requirements for production. The balance of the power demand can be verified by engineering assessment of loads based upon the one-line diagram and equipment operating schedules and loads.
Project Thermal Demand	Both peak demand (106 Btu/hr) and annual consumption (106 Btu) need to be determined. For verification, the annual consumption can be compared to the oil heating requirements, independently estimated from the oil production curves and the oil pumping temperatures. Typically, oil heating accounts for approximately 60 percent of the project thermal requirements. The balance of the thermal demand can be verified by engineering assessment of the energy balances and process flow diagrams.
Offshore Utility Grid Network	An offshore utility grid network, which could serve several OCS facilities at a lower capital cost than an individual connection, might be available for some projects.
Gas Lift vs Downhole Submersible Pumps	An operators choice of production enhancement technique can significantly affect a project's electrical demand. Submersible pumps are more energy efficient; a selection of gas lift can be justified based upon technical and financial feasibility as well as safety and operability considerations.

EXHIBIT 4.—KEY ELEMENTS FOR THE DESIGN BASIS FOR DETERMINING PROJECT ELECTRIFICATION FEASIBILITY—Continued

Item	Issues
Non-Electric Equipment Drives	The base case assumes electric motor drives for all major equipment where prudent, including gas compressors and drilling rigs. It is assumed that diesel engines are used for emergency items, such as emergency generators or a firewater pump and one crane.
Engineering Assumptions	A variety of engineering assumptions need to be specified in conducting the feasibility assessment. These assumptions can include turbine heat rate, process heater efficiency, fuel heating value, gas compression power, subsea power losses, etc. These values are site-specific, and data should be provided for each project evaluated.

EXHIBIT 5.—CAPITAL COST ESTIMATING TECHNIQUES

Item	Estimating techniques
Major Equipment Items	Major equipment items should be specified to a degree which allows for budget quotes from vendors. While three vendor quotes are desirable on all major items, it is recognized that this is not always possible due to product differences or vendor capabilities.
Other Direct Materials	Can be estimated using published factors based upon major equipment costs.
Installation Costs	Can be estimated using published offshore factors. Special equipment, e.g., cable lay vessel, should be costed separately.
Deck Space Allocation at Facility	If site-specific data are not available, they can be estimated at $1,000/square foot.
Project Indirect Costs	Can be estimated using published engineering cost factors.
Contingency	A contingency of 20 percent is consistent with the outlined approach to capital cost estimation.

EXHIBIT 6.—EMISSION FACTOR SOURCES

Gas Turbine—Fuel Gas	Vendor data or certified tests on same model with same amount of water injection, site rated.
Gas Turbine—Diesel Firing	Vendor data or certified tests on same model, site rated.
Gas-Fired Process Heater	Vendor data, or AP-42 values.
Utility Emissions	ARB approved cogeneration Utility Displacement Credit Methodology
SCR Performance (if onshore (cogeneration facility))	Vendor data.
Cogeneration Unit	Vendor data or certified tests on same model, site rated.
Other Equipment	Vendor data or AP-42 values.

EXHIBIT 7.—OPERATING AND MAINTENANCE REQUIREMENTS FOR VARIOUS ELECTRIFICATION SCENARIOS

Scenario	Base Case Requirements which are Avoided or Reduced	Additional Operating Requirements
2. Partial Utility Grid Connection	Gas Turbine Fuel Gas Gas Turbine O&M Injection Water Gas Processing	Utility Power Electrical O&M Gas Compression O&M
3. Full Utility Grid Connection with Gas-Fired Process Heaters	Gas Turbine Fuel Gas Gas Turbine Diesel Fuel Gas Turbine O&M Injection Water Gas Processing Deck Space and Structural Requirements	Utility Power Heater Fuel Gas Heater O&M Electrical O&M Gas Compression O&M
4. Full Utility Grid Connection with Electric Process Heaters	Gas Turbine Fuel Gas Gas Turbine Diesel Fuel Gas Turbine O&M Injection Water Gas Processing Deck Space and Structural Requirements	Utility Power Heater O&M Electrical O&M Gas Compression O&M
5. Onshore Cogeneration with Gas-Fired Process Heaters	Gas Turbine Fuel Gas Gas Turbine Diesel Fuel Gas Turbine O&M Injection Water Gas Processing Deck Space and Structural Requirements	Cogeneration Fuel Gas Cogeneration O&M Heater Fuel Gas Heater O&M Electrical O&M Gas Compression O&M
6. Onshore Cogeneration with Electric Process Heaters	Gas Turbine Fuel Gas Gas Turbine Diesel Fuel Gas Turbine O&M Injection Water Gas Processing Deck Space and Structural Requirements	Cogeneration Fuel Use Cogeneration O&M Heater O&M Electrical O&M Gas Compression O&M

[FR Doc. 89-773 Filed 1-13-89; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Proposed Technical Determinations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Proposed Technical Determinations.

SUMMARY: A proposed rule to establish a separate regulatory program under the provisions of section 5(a)(8) of the Outer Continental Shelf (OCS) Lands Act, as amended, for OCS facilities adjacent to California (proposed § 250.47 of 30 CFR) is published elsewhere in this issue of the **Federal Register**. The proposed rule references lists of control technology that constitute OCS Best Available Control Technology (BACT) and OCS Reasonably Available Control Technology (RACT). This Notice presents the initial BACT and RACT determinations called for in proposed 30 CFR 250.47, outlines the process by which the initial list was developed, and the manner revisions will be made to the list.

DATE: Comments must be hand delivered or postmarked no later than February 16, 1989.

ADDRESS: Responses should be directed to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 644, Room 6A210; Reston, Virginia 22091; Attention: Jeffrey Zippin.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648–7816 or FTS 959–7816.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the Department of the Interior (DOI) published an Advanced Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (50 FR 838) outlining a possible framework for a new rule to govern the control of air emissions from oil and gas facilities on the OCS adjacent to California. After the comment period for the ANPR closed, DOI initiated a negotiated rulemaking process as part of the settlement discussions in the litigation challenging DOI's regulations and to further develop a proposed rule and supporting documents for the rule. During the negotiations, information was gathered on the status of emission control technology that could be installed on OCS sources. This Notice presents the initial BACT and RACT lists for the propsoed rule, outlines the process used to develop them, and describes the process to be used to revise the lists. Comments are requested on the content of this Notice.

AUTHOR: Mitchell Baer, Branch of Environmental Operations, Offshore Environmental Assessment Division, Minerals Management Service.

OCS Best Available Control Technology (BACT) and OCS Reasonably Available Control Technology (RACT)

1. Criteria to Designate Candidate Technologies for OCS BACT. Information was initially gathered concerning emission control technologies that could be applied to sources similar to those used on OCS facilities, regardless of the appropriateness of the technology for application to a specific OCS project. Criteria were then established to designate the technologies as either: (1) Available, applicable, and appropriate at the present time for installation on OCS sources (the YES list), (2) available but not appropriate at the present time for installation on OCS sources due to technical questions needing resolution (the MAYBE list), and (3) unavailable and not appropriate at the present time for installation on OCS sources due to substantial technical problems (the NO list). Formal definitions for each category were:

YES means the candidate control technology is currently an appropriate control technology for OCS sources. An applicant is required by the proposed rule to either apply this technology or indicate that another more effective control will be installed instead of the technology, or demonstrate to the satisfaction of the Regional Director (RD) why the control technology is inappropriate for the specific OCS application.

MAYBE means the candidate control technology is presently available or may be available for OCS sources but technical and other questions need to be resolved before the technology is presumptively assumed to be an appropriate technology for all OCS applications. The candidate control technologies in this category are appropriate candidates for demonstration projects and advanced control technologies. These control technologies may be reclassified into the "YES" category after these successful projects or applications.

NO means the candidate control technology is not considered available or appropriate for OCS sources, and there are substantial technical and other questions concerning their consideration for OCS sources. Although these control technologies are candidates for demonstration project and advanced control technology applications, it appears that substantial research work is still needed to allow the technology to be considered for OCS applications.

2. Initial OCS BACT Determinations. Based on the criteria discussed in 1, the candidate emission control technologies were evalauted. Table 1 presents the initial proposed determinations and the candidate control technologies evaluated.

3. Amending the OCS BACT list (Table 1). Periodically, the RD will review the list of OCS BACT and, based on the recommendations of the California Air Quality Advisory Committee (CAQAC) and on technical developments, the results of research, and offshore and onshore applications, the RD will revise the list. The revisions to the list will be proposed in a **Federal Register** Notice and comments and recommendations will be requested. After consideration of the comments received and other available information, a formal Notice describing the revisions to the list will be published in the **Federal Register**.

The RD will consider the following criteria when evaluating candidate emission control technologies for inclusion to the three categories on the list. The RD shall also consider other relevant information:

a. The impacts on the environment from and the benefits of the application of the emission control technology.

b. The risk of a significant safety hazard. The absence of a safety hazard will be confirmed by the U.S. Coast Guard and the American Bureau of Shipping in writing. Industry-recognized, Occupational Safety and Health Administration, and other relevant safety standards will be considered.

c. Application of the emission control technology would result in a significant increase in energy consumption together with a concurrent increase in emissions.

d. The emission control technology is developed but unavailable.

e. There are regulations prohibiting the application of the emission control technology.

f. Use of the emission control technology is economically not feasible.

4. Criteria for Determining Economic Feasibility for OCS BACT Candidate Measures. A candidate emission control measure shall be considered economically feasible to be placed on the "YES" list if the cost, in dollars per ton for a specific pollutant, is equal to or less than the cost for comparable BACT being used in the adjacent onshore air basin.

5. Initial OCS RACT Determinations. A similar process was followed to develop the initial OCS RACT list—candidate emission control technologies were identified, and a determination of the appropriateness and availability of each was made. Economic considerations were given greater importance in developing the OCS RACT list and only one list, emission controls considered appropriate and available (the "YES" list), was prepared. Table 2 presents the initial OCS RACT list.

6. Application of the OCS RACT list to specific OCS projects. The RD will determine the appropriate application of a specific emission control technology from the OCS RACT list for a specific OCS project based on the definition of OCS RACT in the proposed rule published elsewhere in this issue of the **Federal Register** and any other relevant information.

Date: December 12, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

TABLE 1.—LIST OF BEST AVAILABLE EMISSION CONTROL TECHNOLOGIES FOR OCS SOURCES

Emission control technology	Source applicability	Pollutant applicability—						Appropriateness of controls—		
		NO_x	H_2S	CO	PM	SO_2	HC	Yes	Maybe	No
Use of natural gas (includes sweetened gas) to replace diesel.	Reciprocating engines	X	X		X	X	X	X		
	Gas turbines	X	X		X	X		X		
	Heaters and boilers	X	X		X	X		X		
Use of gas turbines	Reciprocating engines	X		X			X	X		
Use of alternative fuels	Reciprocating engines	X			X	X	X		X	
	Gas turbines	X			X	X			X	
	Heaters and boilers	X			X	X			X	
	Crew/supply boats	X			X	X			X	
	Tankers	X	X		X	X			X	
	Helicopters	X			X	X			X	
Use of low sulfur fuel (0.05% w sulfur for diesel, 0.5% w or less for residual oil).	Reciprocating engines (diesel)	X	X		X	X		X		
	Crew/supply boats (includes tug boats)	X	X		X	X		X		
	Heaters and boilers	X	X		X	X		X		
	Tankers	X	X		X	X		X		
Turbocharging and aftercooling.	Reciprocating engines (diesel)	X			X			X		
	Crew and supply boats	X			X			X		
Injection timing retard (diesel engines only).	Reciprocating engines	X						X		
	Crew/supply boats	X						X		
Precombustion chamber design (stratified charged engines).	Reciprocating engines	X						X		
	Tankers	X								X
	Crew/supply boats	X							X	
Exhaust gas recirculation for gaseous engines.	Reciprocating engines	X						X		
Selective catalytic reduction	Reciprocating engines (gaseous fuel)	X							X	
	Crew/supply boats	X								X
	Heaters and boilers	X							X	
	Gas turbines	X							X	
Non-selective catalyic reduction (three-way catalyst).	Reciprocating engines (gaseous fuel)	X		X			X	X		
Use of California certified engines (diesels).	Reciprocating engines	X						X		
	Crew/supply boats	X						X		
Low NO_x equipment selection	Reciprocating engines	X						X		
	Tankers	X						X		
	Crew/supply boats	X						X		
	Helicopters	X						X		
	Gas turbines	X						X		
	Flares	X						X		
Cold ironing (shut off of onboard electrical generating equipment while docked).	Tankers	X		X	X	X	X			X
Low NO_x burners	Heaters and boilers	X						X		
Flue gas recirculation	Heaters and boilers	X						X		
Low excess air	Heaters and boilers	X						X		
Maintain proper air/fuel ratio	Heaters and boilers	X		X	X		X	X		
	Reciprocating engines			X	X		X	X		
	Tankers	X		X	X		X	X		
	Crew/supply boats			X	X		X	X		
	Gas turbines			X	X		X	X		
Ammonia injection	Heaters and boilers	X							X	
Chemical $DeNO_x$	Heaters and boilers	X								X
Use of waste heat recovery	Heaters and boilers	X		X	X	X	X	X		
Water/steam injection	Gas turbines	X						X		
Low NO_x combustion design	Gas turbines	X						X		

TABLE 1.—LIST OF BEST AVAILABLE EMISSION CONTROL TECHNOLOGIES FOR OCS SOURCES—Continued

Emission control technology	Source applicability	Pollutant applicability—						Appropriateness of controls—		
		NO_x	H_2S	CO	PM	SO_2	HC	Yes	Maybe	No
	Crew/supply boats			X	X		X	X		
	Gas turbines			X	X		X	X		
Ammonia injection	Heaters and boilers	X							X	
Chemical DeNOK	Heaters and boilers	X								X
Use of waste heat recovery	Heaters and boilers	X		X	X	X	X	X		
Water/steam injection	Gas turbines	X						X		
Low NO_x combustion design	Gas turbines	X						X		
Alternative pilot system (spark ignition).	Flares	X		X	X	X	X		X	
Use of multiple seals, venting to vapor recovery or flares, and use of low leaking seals, packing materials, and valves.	Fugitive emissions		X				X	X		
I&M program on components containing H_2S/VOC.	Fugitive emissions		X				X	X		
H_2S scrubbers for flared gas (exploratory continuous well testing).	Flares		X		X	X		X		
Use of flares to incinerate H_2S containing gases.	Flares		X				X	X		
Vapor recovery on storage tanks, storage vessels, and other fugitive hydrocarbon emissions equipment.	Miscellaneous						X	X		
Oxidation catalyst	Reciprocating engines (gaseous fuel)			X			X	X		
	Gas turbines			X			X	X		
Low CO equipment selection	Reciprocating engines			X				X		
	Tankers			X				X		
	Crew/supply boats			X				X		
Proper maintenance of excess air	Tankers	X		X	X	X	X	X		
	Crew/supply boats			X	X		X	X		
	Heaters and boilers			X	X		X	X		
Use of "smokeless" flares	Flares			X	X		X	X		
Use of low aromatic diesel fuels.	Reciprocating engines				X					X
	Tankers				X					X
	Crew/supply boats				X					X
Use of modified fuel injectors (diesel engines only).	Reciprocating engines				X		X	X		
	Tankers				X		X	X		
	Crew/supply boats				X		X	X		
Use of motor vessels rather than steamships.	Tankers					X		X		
Use of steamships rather than motor vessels.	Tankers	X		X	X		X	X		
Particulate traps	Reciprocating engines (diesel)				X					X
	Crew/supply boats				X					X
Low PM equipment selection	Reciprocating engines (diesel)				X			X		
	Tankers				X			X		
	Crew/supply boats				X			X		
Use of diesel rather than residual oil.	Tankers				X			X		
	Crew/supply boats				X			X		
Low hydrocarbon selection equipment.	Reciprocating engines						X	X		
	Tankers						X	X		
	Crew/supply boats						X	X		
Vapor balance/vapor incineration/vapor recovery for loading.	Tankers						X	X		
Shrouded flare designs	Flares	X		X	X		X		X	
Alternative flare gas recovery	Flares	X		X	X	X	X		X	

TABLE 2.—LIST OF REASONABLY AVAILABLE EMISSION CONTROL TECHNOLOGY FOR OCS SOURCES

Emission control technology	Pollutant controlled
Inspection and maintenance.	Hydrocarbons and hydrogen sulfide
Water injection	Nitrogen oxides
Injection timing retard	Nitrogen oxides
Fuel changes:	
Fuel content	Sulfur dioxide

TABLE 2.—LIST OF REASONABLY AVAILABLE EMISSION CONTROL TECHNOLOGY FOR OCS SOURCES—Continued

Emission control technology	Pollutant controlled
Fuel type (including alternative fuels).	Nitrogen oxides
Pre-combustion chamber design or pre-stratified charging.	Hydrocarbons and nitrogen oxides

TABLE 2.—LIST OF REASONABLY AVAILABLE EMISSION CONTROL TECHNOLOGY FOR OCS SOURCES—Continued

Emission control technology	Pollutant controlled
Aftercooling and pre-cooling.	Nitrogen oxides

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federal register

Tuesday
January 17, 1989

Part III

Department of Commerce

Economic Development Administration

Economic Development Assistance Programs as Described in Public Law 100-459, Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations, 1989; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 81250-8250]

Economic Development Assistance Programs as Described in Public Law 100-459, Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations, 1989; Availability of Funds

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces its policies and application procedures for funds available in FY 1989 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions of the Nation and to address economic dislocations resulting from sudden, major job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during FY 1989.

I. General Policies

Because of the existing statutory criteria and a Congressional prohibition against terminating eligibility, areas containing approximately 90 percent of the U.S. population are eligible for EDA assistance, which in FY 1988 totaled less than $200 million. Priority consideration for funding will be given only to those projects having exceptional potential to benefit areas experiencing or threatened with the most severe economic distress. EDA is particularly interested in projects located in (enterprise zones, especially projects in) Federally authorized and designated enterprise zones. Distress may exist in a variety of forms, including exceptionally high unemployment rates, extremely low income levels, abnormally large concentrations of low income families, particularly low labor force participation rates, unusually large numbers (or high rates) of business failures or farm loan foreclosures, high farm credit delinquencies, sudden major layoffs and/or plant closures, and drastically reduced tax bases. Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of exceptionally high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed areas, EDA will give special consideration to those that address the needs of rural communities, particularly aid directed toward the economic diversification of such areas.

EDA expects substantial state and local support for proposed projects. Proposals that do not provide evidence of strong state and local leadership and financing are unlikely to receive EDA aid.

In the case of projects involving construction, EDA expects construction to be initiated and completed in a timely manner. Applicants are expected to anticipate predictable delays such as those caused by normal weather conditions, legal complications, community disputes, land acquisition, etc., and account for them in developing project schedules. Projects which are likely to encounter significant delays will normally not be given favorable consideration. Projects that experience unreasonable delays following EDA approval may be terminated and the funds deobligated. These policies are consistent with EDA's objective of supporting activities that can begin to benefit local economies as soon as possible, thereby meeting the urgent development needs identified by project applicants. EDA expects those responsible for developing and managing projects to maximize the impact of the public funds by preparing and implementing projects as thoroughly and expeditiously as possible.

EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one area to another. EDA nonrelocation requirements (13 CFR 309.3) apply to grants involving construction, rehabilitation or repair, and other financial assistance under Titles I, II, IV, IX, and section 301(f) of the Public Works and Economic Development Act of 1965, as amended, PWEDA (Pub. L. 89-136; 42 U.S.C. 3121-3246h). Applicants who have delinquent accounts receivable with the Federal Government may not be considered for future awards until these debts have been paid or arrangements to pay them have been approved by the agency to whom the debt is owed.

Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General, and fund recipients may be subject to audits or other inspections by the same office.

Applicants eligible for assistance because of membership in an economic development district must be members in good standing and active participants in the district economic development planning process.

EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Applications proposed for funding under these programs are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

An invitation to submit a formal application does not assure EDA funding. Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for the program to which they have applied have been awarded.

EDA will avoid projects that involve actual or potential conflict-of-interest situations as covered by the following definition:

Any official, employee, architect, attorney, engineer or inspector of or for the Applicant/Grantee or any Federal, state, or local official or representative, becoming directly or indirectly interested financially in the acquisition of any materials or equipment, or in any construction for the project, or in the furnishing of any service to or in connection with the project, or any benefit arising therefrom will constitute a conflict of interest which may jeopardize an application or result in forfeiture of any grant funds resulting therefrom.

If EDA identifies or suspects a possible conflict-of interest situation, application processing and/or grant award will be suspended and the burden will be on the applicant/grantee to take appropriate steps to eliminate the perception of a conflict of interest before application processing and/or the grant is resumed.

The following material describes other policies and procedures associated with each of EDA's programs.

II. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

Summary

Funds under the District, Indian and Area Planning Program are awarded to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes. This program is authorized under section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

Eligibility

Eligible applicants are Economic Development Districts, Redevelopment Areas, organizations representing Redevelopment Areas (or parts of such Areas), Indian Tribes, organizations representing multiple Indian Tribes, commonwealths and territories under the U. S. flag, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Program Objective

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported with this aid must be part of a continuous process involving significant leadership by public officials and private citizens.

Funding Availability

Funds in the amount of $18.205 million are available in two categories: Districts/Areas (Category A)—$15.33 million; and Indian Tribes (Category B)—$2.875 million.

Funding Instrument

Grant assistance can be provided for up to 75 percent of project costs for Category A grants. Under Category A, the applicant will be required to provide the remaining share. Category B grant assistance may be provided for up to 100 percent of project costs.

Project Duration

Both Category A and Category B assistance will normally be for a period of twelve months.

Selection Criteria

Priority consideration will be given to currently funded District and Indian grantees for proposals which are eligible under section 301(b), 42 U.S.C. 3151(b). It is not expected that funds will be available for other purposes. If, however, funds become available, they will be used for new proposals from other eligible applicants under both Categories A and B and/or for special economic development activities that benefit one or more 301(b) grantees and cannot be financed with other resources. Information on application procedures for any funds available for special activity grants will be provided by EDA's Regional Offices. EDA will consider the following factors in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;
2. The economic distress of the area served by the applicant;
3. The currently funded grantees' past performance (including information in scheduled progress reports); and
4. The local leaders' involvement in applicants' economic development activities.

Proposal Submission Procedures

Currently funded grantees and other eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the District, Area or Indian Tribe stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.
2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.
3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents. New applicants should submit proposals to the appropriate EDA Regional Office.

Formal Application Procedures

EDA Regional Offices will contact currently funded grantees to inform them of the procedures for submitting applications for continuation funding. Except in cases where previous performance has been marginal or unacceptable, work program changes or other factors dictate a different approach, EDA expects to offer continuation grants to currently funded grantees selected for additional assistance.

Following review of the proposals submitted by other entities, EDA will invite those selected for funding consideration to submit formal applications, which will include an SF-424 or similar form as currently approved by the Office of Management and Budget and other required application materials.

Further Information

For further information contact the appropriate EDA Regional Office (see section X of this Notice) or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7023, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2873.

III. Program: Planning Assistance for States and Urban Areas

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

Summary

The Economic Development Administration announces its policies and application procedures for funds available for the State and Urban Planning Program operated under the authority of section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

Eligibility

Eligible applicants under this program are states, territories, cities and urban counties.

Program Objective

The primary objective of planning assistance under section 302(a) is to strengthen the economic development planning and policy-making capabilities of states, territories, cities and urban counties to ensure a more effective use of available resources in addressing economic problems, particularly those resulting in high unemployment and low incomes. Planning activities conducted under this assistance must be part of a continuous process involving significant local leadership from public officials and private citizens.

Funding Availability

Funds in the amount of $4.790 million are available for providing grant assistance under this program.

Funding Instrument

Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share. Grant amounts under this program have not exceeded $200,000 in the past three years. EDA will consider proposals for smaller grants to support appropriate activities.

Project Duration

Assistance under this program will normally not exceed a period of twelve months.

Selection Criteria

The content of the proposal and the economic distress of the area will be the principal factors considered in

evaluating proposals from eligible entities. In assessing the distress factor, priority consideration will be given to proposals from urban areas and states experiencing substantial economic distress. In the case of urban areas, high priority will be given to those with unemployment rates two or more percentage points higher than the U.S. average and per capita income levels 80 percent or less of the U.S. average. For states, high priority will be given to those that meet both of the above criteria, as well as those that meet one of the above criteria and have distress equal to or greater than the national average with regard to the other criterion. The most recent per capita and 12-month unemployment data available will be used to measure economic distress. Proposals from states or urban areas which do not exhibit significant distress on the basis of unemployment or income data will not be considered unless other acceptable evidence of substantial distress is provided by the applicant (e.g., large numbers of agricultural and business failures, large numbers of low income families, drastically reduced tax bases, etc.). Proposals from states or urban areas which are both below the U.S. average in unemployment and above the U.S. average per capita income level are unlikely to be funded.

Proposals will be judged on the basis of:

1. Appropriateness of the work program to the section 302(a) program objectives;
2. The economic distress of the area served by the applicant;
3. Extent to which the proposed planning activities are expected to impact upon the service area's economic development needs, and the extent to which the proposal addresses the problems of the unemployed and underemployed of the area, including the farm families, minorities, workers displaced by plant closings, etc.;
4. Past performance of currently or formerly funded grantees, if applicable.

Proposal Submission Procedures

Potential applicants should submit proposals that include:

1. A letter signed by the head of the applicant organization indicating a desire to receive funds to carry out the planning activities outline in the proposal; where the funded planning program will be placed in the organization, to include the name and title of the person to be responsible for program implementation; the amount and for what period funding is being requested; and the anticipated funding arrangement if the planning activity is to continue beyond the period of EDA support.
2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.
3. Information indicating the commitment of high level government officials to the proposed work program as demonstrated by amount of local funding, degree of interest displayed by the chief executive, etc.
4. A work program of no more than 10 pages which outlines the specific planning activities that will be carried out under the grant and specifies whether it will be handled by in-house staff, consultants, etc. The work program should also explain the need for the proposed activities, expected impacts and their timing, target population(s), and involvement of the private sector in the proposed activities.

An original and one copy of the proposal are to be submitted to the appropriate EDA Regional Office. One copy of the proposal is to be sent to the appropriate Economic Development Representative. The EDA Regional Office will provide the name, address and telephone number of the Economic Development Representative for the applicant's area (see section X of this Notice). Proposals postmarked after March 15, 1989, may not be considered.

Formal Application Procedures

EDA will evaluate proposals using the selection criteria cited above. Following the review of proposals, EDA will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF-424 or similar form as currently approved by the Office of Management and Budget and other application materials.

Further Information

For futher information contact the appropriate Economic Development Representative, EDA Regional Office (see section X of this Notice), or Luis F. Bueso, Director, Planning Division, Economic Development Administration, Room 7023, U.S. Department of Commerce, Washington, DC 20230; telephone 202-377-2873.

IV. Program: Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds under the Technical Assistance Program are awarded to eligible applicants to provide a wide range of assistance. The assistance is intended to assure the successful initiation and implementation of area, state, regional, and national development efforts designed to alleviate economic distress. This program is authorized under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for technical assistance grants or cooperative agreements include public or private nonprofit national, state, area, district, or local organizations; public and private colleges and universities; Indian tribes, local governments, and state agencies. Other eligible applicants are private individuals, partnerships, firms, and corporations.

Program Objective

The Technical Assistance Program is designed to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment and problems of economically distressed populations in rural and urban areas.

Funding Availability

Funds in the amount of $1.916 million are available for the Technical Assistance Program. Congress has directed that $.4 million of this total will be awarded to specific organizations without the benefit of competitive evaluation. Approval of these projects will reduce the discretionary amount of funds allocated for the regions in which they are located. It is expected that the majority of the remaining funds will be made available for projects serving specific local or substate areas and the balance for projects whose impacts will cross EDA regional office boundaries.

Funding Instrument

EDA will provide grants and cooperative agreements not to exceed 75 percent of proposed project costs. Applicants are expected to provide the remaining share. In cases when EDA issues a Solicitation of Applications, an applicant's share may not be required.

Project Duration

Assistance will be for the period of time required to complete the scope of the work. Generally, this will not exceed twelve months.

Selection Criteria

Preference will be given to those technical assistance proposals which:

1. Produce strong evidence that the proposed project will lead to the near-term (between one and five years) generation and/or retention of private sector jobs.
2. Do not depend upon further EDA or other Federal funding assistance to achieve results.
3. Strengthen the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas in distress.
4. Stimulate significant private and nonfederal public investment for economic development purposes, including funds from commercial lenders, public and private pension funds and other nontraditional sources.
5. Benefit severely distressed areas, particularly rural counties and communities.
6. Diversify distressed rural economies by means of enterprise zones and other strategies.
7. Demonstrate innovative approaches to stimulating economic development in depressed areas.
8. Establish links between the unemployed and underemployed and economic opportunities offered by new and expanding businesses, facilities and services.
9. Promote technology transfer and increased productivity to improve the competitiveness of firms/industries located in distressed areas.
10. Further the role of educational and training institutions in promoting economic development.
11. Are consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the projects are located and have been recommended by the OEDP Committee (if appropriate to the nature of the project).
12. Present an appropriate and clear project design.
13. Are proposed by organizations or individuals with the capacity, qualifications and staff necessary to undertake the intended activities.
14. Present a reasonable, itemized budget for the proposed activities.
15. Involve a significant (preferably cash) contribution in excess of minimum required from applicant or other nonfederal sources.

Pre-Application Procedures

Parties seeking support for local technical assistance projects—those that will primarily benefit a substate or intra-regional area—must contact the Economic Development Representative (EDR) for the area for a proposal package. This package may contain additional information on procedures and selection criteria. The EDA Regional Office will provide the name, address and telephone number of the EDR for the applicant's area (see section X of this notice). EDA will evaluate all proposals and invite applications for those which best satisfy the selection criteria.

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages. Vita and capability information may be appended. Each proposal should include (1) a cover page giving a short descriptive project title, the name and address of the performing organization, the name and telephone number of the project director, the project duration, the amount of EDA funds requested, and the program (Technical Assistance) that would provide the funds; (2) a brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project; (3) a more detailed description of the project and its methodology; (4) a work plan showing different phases of the project and their timing; (5) a detailed budget showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page; (6) résumés for the project director and principal staff; and (7) a corporate or institutional capability statement, where appropriate.

Parties seeking support for local technical assistance should submit proposals to the EDR who supplied the proposal package.

Parties seeking support for projects whose impacts will cross EDA regional boundaries should submit proposals to David H. Geddes, Director, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230. Individuals or organizations located outside the Washington, DC metropolitan area should submit a copy of the letter transmitting their proposal to Washington to the EDR for the area in which they are located.

Formal Application Procedures

The appropriate EDA Office will invite entities whose proposals for technical assistance projects are selected for further consideration to complete formal application packages.

Eligibility for Specific Solicitations

EDA may during the course of the year identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to David H. Geddes, Director, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230.

Further Information

For further information about local technical assistance projects—those that will benefit substate or intra-regional areas—contact the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office) or the appropriate EDA Regional Office (see section X of this notice). For further information about submitting projects whose impact will cross EDA Regional Office boundaries, contact Richard E. Hage, telephone (202) 377-2127.

V. Program: University Center Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

Summary

Funds for basic university center projects are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The efforts of university centers should focus on helping public bodies, nonprofit organizations and businesses plan and implement activities designed to generate jobs and income. In addition, funds may be used for projects which promote the goals of the University Center Program in other ways. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

Eligibility

Eligible applicants for university center grants and cooperative agreements are public and private colleges and universities, associations representing such institutions, and other organizations with expertise in University Center Program issues.

Program Objective

The objective of these projects is to enable colleges and universities to contribute to overall economic development by using their resources to provide technical assistance that will

alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or substate areas.

Funding Availability

Funds in the amount of $4.79 million are available for university center projects. Congress has directed that a total of $.375 million will be awarded to specific universities without the benefit of competitive evaluation. Approval of these projects will reduce the discretionary amount of funds allocated for the regions in which they are located. Most FY 1989 funds will be used for continuation grants to existing centers.

Funding Instrument

University center project funds will be awarded through grants and cooperative agreements to cover a portion of project costs. The amount covered will not exceed 75 percent of proposed project costs. In the case of university center basic grants, the following policies regarding local share apply:

1. As announced in November 1985, university centers initially funded prior to FY 1986 (October 1, 1985) which continue to receive EDA support must gradually increase their share to match the EDA grant dollar-for-dollar by FY 1990. At least half of the local share must be in cash. For FY 1989 the minimum share for these centers is $50,000. Centers which do not demonstrate progress in this regard may not continue to receive EDA funding.

2. University centers initially funded in or after FY 1986 which continue to receive EDA support must provide a minimum of $33,334 in the first year, $45,000 in the second year, $60,000 in the third year, $80,000 in the fourth year, $100,000 in the fifth year, $125,000 in the sixth year and $140,000 in the seventh and final year. At least half of the local share must be in cash.

Project Duration

Grants and cooperative agreements will be for the period of time required to complete the scope of work. Generally this will not exceed twelve months.

Selection Criteria

In judging proposals from existing and potential university centers for basic grants, EDA will consider whether the proposed center programs:

1. Serve areas of significant economic distress;

2. Address the development needs of the service area;

3. Complement the activities of other organizations in the proposed service area that are engaged in economic and business development. Where applicable, the proposal must identify how it differs from the services provided by a local Small Business Development Center (SBDC), Trade Adjustment Assistance Center (TAAC) or a Minority Business Development Center (MBDC);

4. Possess the commitment, as evidenced by financial support and other resources, of the university leadership at the highest levels to the mission and purpose of the university center;

5. Possess the capacity to provide the proposed technical and other types of assistance to jurisdictions and organizations within the service area; and

6. Complement and support the local, regional or state economic development strategies in the service area. EDA will also consider the following factors in evaluating proposals for basic grants from potential centers:

a. The extent to which the center proposes to serve the economic development needs of economically distressed jurisdictions and community-based organizations.

b. The presence of another EDA-funded center in the state.

c. The presence of an SBDC, MBDC or a TAAC in the service area.

Proposals will also be judged on the quality of the proposed work program and the qualifications of the applicant to carry out that work program.

Proposals for other projects that meet the goals of the University Center Program will be judged on similar factors. These include the potential impact of the project on distressed areas, the quality of the proposed work program, and the qualifications of the applicant to carry it out.

Depending on the availability of funds, EDA may hold a periodic competition for short-term (one to three year) incentive grants. This competition will be open to all currently and previously funded centers, except those which received initial funding in the previous year and those whose funding was discontinued because of poor performance.

Funding Policy

For centers judged to be performing satisfactorily and if funds are made available by Congress, EDA's policy as announced in the **Federal Register** on February 11, 1987, is to provide basic support of $100,000, annually, for five years and $50,000, annually, for the sixth and seventh years. No basic funds are provided after the seventh year of EDA support. The above policy applies to all centers which were initially funded in or after FY 1986. Centers funded prior to FY 1986 (October 1, 1985) will be eligible for FY's 1989, 1990 and 1991 funding as specified in their FY 1988 grant amendment. Centers initially funded in FY's 1982, 1983, 1984 or 1985 will be eligible for maximum grants of $75,000 in their sixth year and a final $50,000 in their seventh year.

EDA will continue to exempt, at least for FY 1989, the centers at Historically Black Colleges and Universities from the seven-year time limit on participation in the University Center Program. Other exceptions to these policies may be made in unusual circumstances, such as when no other qualified institution exists to provide services to an area with extreme economic distress.

Proposal Submission Procedures

A. Basic Grants for Existing University Centers

Existing centers that have been selected to receive consideration for continued basic funding will be notified of all application procedures by the EDA Regional Offices. Any existing centers not selected to receive consideration for continued support will be so notified.

B. Basic Grants for New Centers

1. *Letters of Interest.* Colleges and universities interested in participating in the University Center Program should submit letters of interest, signed by the president to the appropriate EDA Regional Office with a copy to the EDA Economic Development Representative (EDR). The letter must describe the center's proposed service area; the economic distress of that area; the relationship of the center's program to state, regional and local economic development strategies, as appropriate; and the activities to be undertaken with the EDA assistance. In addition, the letter must indicate that the college or university leadership understands that EDA's policy is to (a) provide funds for the basic university center operations for a maximum of seven years, if funds continue to be available to EDA for the University Center Program; and (b) require increasing financial support by the college or university over the seven years as described in item 2 under *Funding Instrument.*

2. *Deadlines.* Letters postmarked after March 15, 1989 may not be considered.

3. *Proposals.* Colleges and universities selected by EDA for consideration as new centers will be invited to submit detailed proposals. The appropriate Regional Office will provide instructions for preparing such a proposal. EDA will use the previously described selection criteria to evaluate these proposals. Those submitting unsuccessful proposals will be notified as soon as possible.

Formal Application Procedures

The appropriate EDA Regional Office will ask entities whose proposals for new basic university center grants are selected for further consideration to complete formal application packages.

Further Information

For further information, contact the appropriate EDA Regional Office (see section X of this Notice), the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office), or Tony Meyer, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2127.

VI. Program: Research and Evaluation Projects

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

Summary

Research and evaluation funds are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

Eligible Applicants

Private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations.

Program Objective

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress; and (b) promote economic development.

Funding Availability

Funds in the amount of $1.210 million are available for this program. Funds will be used for projects selected through the application procedures described below and for EDA-initiated solicitations.

Funding Instrument

EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

Project Duration

Assistance under this program will normally be for a period of up to 15 months.

Selection Criteria

EDA will use the following criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.

2. Potential usefulness of the research to state and local economic development specialists.

3. General quality and clarity of the proposal.

4. Soundness and completeness of the research methodology.

5. Qualifications of principal investigator(s) and, where appropriate, performing organization(s).

6. Previous performance of principal investigator and/or performing organization on EDA-funded projects.

7. Cost and value of product in relation to cost. EDA is interested in receiving proposals dealing with—

1. Employment and unemployment;

2. Income and poverty;

3. Rural and other nonmetropolitan economic development;

4. Regional and local growth;

5. Industrial location;

6. Job creation methods;

7. State and local economic development efforts;

8. Private sector economic development efforts;

9. Developmental effects of public works and other infrastructure;

10. Capital markets and development finance, particularly nonfederal sources of economic development financing;

11. Industrial competitiveness;

12. Minority business and minority jobs;

13. Productivity and technology; and

14. Nonfederally funded financing proposals for economic development.

Requested grants and awards should be for specific, well-defined, onetime research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.) or for non-research activities. Some research proposals deal with or involve samples drawn from only one part of the United States. EDA normally prefers research of broad geographic scope, that at least covers a large multistate region, as opposed to research covering (in declining order of preference) a small region, a state, a multicounty area, or a single city or county. EDA strongly prefers cause-and-effect research and descriptive analyses, and funding for such will receive much higher priority and likelihood of approval as compared to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning and technical assistance for specific places will not be funded under the Research and Evaluation Program; the Planning and Technical Assistance Programs are for those purposes.

Proposal Submission Procedures

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages. Vita and capability information may be appended. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining methodology. Each proposal should include (1) a cover page giving a short descriptive project title, the name and address of the performing organization, the names and telephone numbers of the project director and principal investigators, the project duration, the amount of EDA funds requested, and the program (Research and Evaluation) that would provide the funds; (2) a brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project; (3) a more detailed description of the project and its methodology; (4) a work plan showing different phases of the project and their timing; (5) a detailed budget showing cost breakdowns, with EDA-funded and any non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page; (6) resumes for the project director and principal investigators; and (7) a corporate or institutional capability statement, where appropriate.

The cover letter accompanying the proposal should inform EDA of whether any other organization(s) or Federal agency(ies) is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be identified.

Proposals should be submitted to David H. Geddes, Director, Technical Assistance and Research Division, Economic Development Administration, Room 7319, U.S. Department of Commerce, Washington, DC 20230. Proposals postmarked after February 28, 1989, may not be considered.

Formal Application Procedures

EDA will evaluate the proposals using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit additional materials required for formal application.

Eligibility for Specific Solicitations

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, for funding consideration. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above. This information will be used to determine eligibility to compete for projects under specific SOAs.

Further Information

For further information, contact David H. Geddes, at the above address; telephone, 202–377–4085.

VII. Program: Economic Adjustment Assistance (Title IX)

(Catalog of Federal Domestic Assistance No: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED))

Summary

Funds under the Economic Adjustment Program are used to assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED). This program is authorized under Title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241–3245.

Program Objective

The LTED Program assists eligible applicants to develop and/or implement strategies designed to halt and reverse the long-term decline of their economies. The most common type of activity funded under the LTED Program are Revolving Loan Funds (RLFs), although other types of eligible Title IX activities may be funded.

The SSED Program assists eligible applicants to respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to help communities prevent a sudden, major job loss; to reestablish employment opportunities as quickly as possible after one occurs; or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to permanent rather than temporary job losses. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas, EDA is particularly interested in Title IX projects designed to mitigate serious rural economic adjustment problems. EDA is also interested in proposals to help severely distressed areas with large minority populations.

Funding Availability

Funds in the amount of $24.657 million are available for the Economic Adjustment Program in FY 1989. Of the amount, $12.454 million will be available for the SSED Program and $12.203 million will be available for the LTED Program. Congress has directed that $1.7 million of these funds will be awarded to specific grantees, without the benefit of competitive evaluation. Approval of these projects will reduce the discretionary amount of funds allocated for the regions in which these projects are located.

Funding Instrument

Title IX funds are awarded through grants not to exceed 75 percent of the project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; and other public and private donations. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share and any loan repayments must not be encumbered in any way that would preclude their use as required by the grant agreement. The local share for the RLF Program must be in cash. The local share for the SSED Program may be cash and/or in-kind. Priority consideration will be given to proposals with a cash matching share.

Eligible Applicants

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under Title IV of this Act, 42 U.S.C. 3161; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; a nonprofit organization determined by EDA to be the representative of a redevelopment area; the Federated States of Micronesia; and the Republic of the Marshall Islands.

Eligible Areas

A. LTED

In order to receive priority consideration for funding under the LTED/RLF Program, an area must be experiencing at least one of three economic problems: very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Eligibility is determined statistically. Further information is available from EDA's Regional Offices.

B. SSED

In order to receive priority consideration for funding under the SSED Program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss threshold must result from the action of a single employer, or eighty (80) percent of the job loss threshold must occur in a single industry classification (i.e., two digit SIC code). In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

Selection Criteria

Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicant's ability to manage the grant effectively.

A. LTED/RLF Selection Criteria

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. *Economic and Financial Needs of the Project Area.* a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants, deteriorating infrastructure, and declining farm economy, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the local capital market and the applicant's analysis of it, and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Applicant's need for grant funds to carry out the project will be based on an assessment of its financial resources.

2. *Objectives and Benefits of Proposed Projects.* Priority will be given to projects which can: a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole.

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area, particularly those identified in the OEDP, Title IX strategy, or other plans developed to deal with specific economic adjustment problems affecting the area. This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area.

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar. (Note: the local share or other funds provided by the RLF to finance loans cannot be counted as leveraged dollars.)

d. Direct new job opportunities to the long-term unemployed and underemployed.

e. Assist minorities, women and members of other economically disadvantaged groups in obtaining RLF loans.

f. Provide technical and management assistance for RLF borrowers, in addition to loan funds.

g. Use creative financing techniques to overcome specific gaps in the local capital market.

h. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within three years of grant approval with no less than 50 percent disbursed within eighteen months and 80 percent within two years.

i. Include a larger matching share than the required 25 percent or secure commitments for future funding from other private or non-Federal public sources.

j. Coordinate activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

3. *Effective Management of the RLF.* EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administrative Board with broad community representation, including appropriate public, private sector, minority and women representation.

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing.

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices.

d. A strategy for relending loan repayments which will ensure that the RLF revolves continuously and thus fulfills its purpose of creating jobs and stimulating economic activity on an ongoing basis.

e. Adequate resources to cover administrative costs of the RLF.

f. The potential applicant's experience and capacity for administering economic and business loan programs. If the potential applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that organization, rather than the potential applicant.

Nongovernmental (excluding Economic Development Districts) organizations seeking funds must be sponsored by the local or state government having jurisdiction over the project area, and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernmental entity no longer be able to administer the project.

B. SSED Evaluation Criteria

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limited to, the following factors:

a. The degree to which the number of dislocated workers exceeds the eligibility threshold.

b. The proportion of the total job loss represented by a single employer.

c. The proportion of employment in a single industry classification represented by the firm(s) closing.

d. The applicant's need for grant funds to carry out the project based on an assessment of its financial resources.

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. *For Implementation Grants.* (1) Job creation or retention in the near term is emphasized versus more long-term, general economic development. Projects likely to encounter delays, particularly in initiating or completing construction, will normally not be given favorable consideration.

(2) The jobs to be created and/or retained are permanent, will directly benefit the dislocated workers, and are new employment opportunities and not transferred from one area of the United States to another.

(3) The response to the problem is timely.

(4) EDA assistance will be complemented by, or will complement, appropriate state and local efforts; for example, training and job placement services, other Federal investments, and private sector support.

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation.

(6) The cost per job created or retained is minimized.

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefits.

(8) The local share exceeds the required 25 percent.

b. *For Strategy Grants.* (1) The applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities.

(2) The proposed scope of work is responsive to the problem.

(3) The focus of the planning effort is on the generation of practical and implementable solutions.

(4) The local share exceeds the required 25 percent.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The grantee must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA approval of changes in the schedule prior to proceeding with project implementation.

EDA expects grantees to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, acquisition of state permits and approvals, normal weather conditions in area, and public objections to the project), and take them into account in preparing the project schedule. Grantees who fail to comply with project schedules may be subject to grant suspension and/or termination.

EDA will not provide additional funds to finance overruns that occur during project implementation.

Proposal Submission Procedures

Interested parties should contact the Economic Development Representative for the area or the appropriate EDA Regional Office (see section X of this Notice) for a proposal package. Project proposals, submitted by eligible entities, will be evaluated by EDA staff on the basis of:

1. Conformance with the evaluation criteria mentioned above and statutory, regulatory and policy requirements.
2. The availability of funds.

Formal Application Procedures

Following a review of project proposals, EDA will invite those projects selected for funding consideration to submit formal applications.

Further Information

For further information about this program, contact the appropriate EDA Regional Office or Paul J. Dempsey, Director, Economic Adjustment Division, Economic Development Administration, Room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–2659.

VIII. Program: Public Works and Development Facilities Assistance

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP))

Summary

Funds available under the Public Works Program are used to finance public works and development facilities that contribute to the economic development of depressed areas. EDA's public works expenditures are authorized by Titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

Eligibility

Eligible applicants under this program include any state, or political subdivision thereof, Indian tribe, the Federated States of Micronesia, the Republic of the Marshall Islands, and commonwealths and territories of the U.S. Flag, or private or public nonprofit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Redevelopment areas, other than those designated under the Public Works Impact Program, must have a current EDA-approved Overall Economic Development Program (OEDP).

Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization. Further information on areas eligible for this program is available from EDA's Regional Offices. Nonprofit applicants are urged to seek the cooperation and support of units of local government and, when deemed appropriate by EDA to have the local government serve as co-applicant for EDA assistance. This serves the purpose of ensuring the financial stability and continuity of the project after its construction and during its useful life, in the event the nonprofit entity finds itself in a position of not having the financial resources to properly and efficiently administer, operate and maintain the EDA-assisted facility consistent with the provisions of 13 CFR 314—Property Management Standards.

Program Objective

The purpose of the Public Works Grant Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies, and improving local living conditions and the economic environment of the area. EDA emphasizes the alleviation of unemployment and underemployment among residents of the project area as a primary focus of this program. In view of the current rural distress, applications from rural communities will be reviewed with particular interest.

Funding Availability

Funds in the amount of $126.462 million are available for this program. Congress has directed that $13.75 million of this total will be awarded to specific grantees without the benefit of competitive evaluation. Approval of these projects will reduce the discretionary amount of funds allocated for the regions in which they are located.

Funding Instrument

EDA may provide grants with maximum EDA participation of 80 percent of project costs. On an average, EDA grants cover 50 percent of project costs. Applicants will be required to provide the local share from acceptable sources including, but not limited to, local government general revenue funds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; Farmers Home Administration loans; and other public and private donations.

The local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified sources, and the funds must be readily available.

The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant agreement. Priority will be given to applications which maximize the local share's percentage of the project cost. Supplementary grant assistance to finance more than 50 percent of project costs will only be approved by EDA for projects in areas of high distress.

Decisions on such assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate and the relative needs of the project (see 13 CFR 305.5).

Selection Criteria

For both regular Public Works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project selection criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of severe economic distress.

A. Public Works Projects

Factors that will be taken into account in considering projects eligible under section 101(a)(1) (A)–(C) of PWEDA, 42 U.S.C. 3131(a)(1) (A)–(C), include whether and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the area where such project will be located;
2. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost per job in relation to total EDA cost;
3. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project;
4. Fulfills a pressing need of the area, or part thereof, in which it will be located;
5. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support;
6. Is supported by significant private sector investment;
7. Has adequate local share of funds with evidence of firm commitment and availability;
8. Supports developments taking place in designated enterprise zones, particularly in rural areas;
9. Demonstrates that necessary permits, land acquisitions, or options on land and rights-of-way have been obtained and that all other legal requirements of the application process have been satisfied;
10. Includes a larger local share than the minimum required; and .
11. Gives evidence of the ability to begin and complete construction in a timely manner in accordance with a schedule to be agreed upon by EDA and the applicant and included in the grant award. EDA discourages the start of construction prior to grant award and cautions that financial hardship may be experienced by applicants whose projects are not ultimately approved because of compliance deficiencies or lack of competitiveness with other proposals. EDA will require all applicants that request approval to proceed with construction prior to grant award to acknowledge that they are proceeding at their own risk without recourse to EDA should the grant not be awarded and/or EDA requirements not be complied with. Furthermore, EDA may view the start of construction prior to grant award as an indication that the grant funds are not essential for the successful development of the project.

B. Public Works Impact Program

Factors that will be taken into account in considering projects under the Public Works Impact Program (PWIP) authorized by section 101(a)(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include whether and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;
2. Improves the economic or community environment in areas of severe economic distress;
3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons in the project area to work on the construction of the project; EDA will evaluate all plans to ensure that they contain a logical explanation of how the employment objectives will be met;
4. Assists in creating long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;
5. Primarily benefits low-income families by providing essential services, or satisfying a pressing public need;
6. In addition to the requirement for regular public works projects, as contained in paragraph A.11, can begin construction quickly (normally within 120 days after acceptance of the grant by the applicant); and
7. Has substantial labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization: occupancy rates for existing developed industrial acres currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the Economic Development Representative for the area or the appropriate EDA Regional Office for guidance.
2. Commitments in writing from identified tenants to locate in the industrial park or site. Commitments must include description of the industry, the number of jobs created or saved, and an implementation schedule.
3. The existence of a concrete marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this requirement.

D. Favorable Consideration Is Not Likely for Projects Which

1. Are in areas with unemployment rates below the national average, unless it can be demonstrated to EDA's satisfaction by other more appropriate measures that the area is suffering substantial distress and economic hardship;
2. Are in pockets of poverty surrounded by economically affluent areas, unless the pocket of poverty meets EDA's PWIP or SIA designation criteria;
3. Are in Economic Development Centers that have stable economies with little distress, unless the application includes an Employment Strategy that contains a logical explanation of how new job opportunities will be created for and filled by residents of nearby highly distressed redevelopment areas;
4. Do not benefit the long-term unemployed or members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;
5. Cannot be implemented within a reasonable period of time;
6. Involve substantial land purchase, or land purchases involving exorbitant costs; EDA prefers not being involved with land purchases;
7. Do not have the applicant's share of project funding readily available;
8. Support tourism or recreational activities, unless it can be demonstrated to EDA's satisfaction that tourism is the major industry in the area or that the project will assist in creating a

significant number of jobs, in which case, the project must directly assist in providing job opportunities for unemployed and underemployed persons of the area and otherwise support the long-term growth of the area;

9. Involve industrial parks where there is evidence of excessive vacancies in existing developed industrial parks or sites in close proximity to the proposed project, unless there is evidence the proposed project is targeted to types of firms not readily accommodated or served by the existing industrial parks and firm commitments to locate in the industrial park exist;

10. Involve vocational-technical schools unless a direct link has been established between the training curriculum and the needs of existing local employers or those committed to locate in the labor market area;

11. Require a mortgage to be placed on the real property or the facility to be constructed/improved with EDA funds;

12. Request additional financial assistance from EDA to finance cost overruns.

E. Prohibited Projects

No support will be provided for proposals such as:

1. Nonindustrial street/road construction or repair that is normally the responsibility of local government, county, or Federal highway programs;

2. Public buildings including, but not limited to judicial buildings, courthouses, jails, fire stations, hospitals, medical clinics, social service buildings, civic auditoriums, convention centers, museums, and theaters;

3. Parking garages and pedestrian walkways (elevated or ground level malls);

4. Land reclamation including subsurface demolition and site cleanup activities; or

5. Beautification projects.

Construction Project Implementation

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The recipient must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA's approval of changes in the schedule prior to proceeding with project implementation. EDA expects recipients to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, normal weather conditions in the area, acquisition of state permits and approvals, and public objections to the project), and to take them into account in preparing the project schedule. Recipients who fail to comply with project schedules may be subject to grant suspension and/or termination.

Under most circumstances, EDA will not provide additional funds to finance overruns that occur during project implementation.

Proposal Submission Procedures

To establish the merits of project proposals, interested parties should first contact the Economic Development Representative for the area. The EDA Regional Office can provide the name, address and telephone number of the Economic Development Representative for the area who will provide a preapplication form and arrange for conferences to discuss the proposal. EDA will screen proposals before inviting the submission of a formal application. Proposals will be evaluated based upon:

1. Conformance with statutory and other legal requirements and with the selection criteria mentioned above;

2. The merits of the proposal in addressing the relative economic development needs of the eligible area; and

3. The availability of funds as allocated to the Regional Offices.

Processing time for project proposals will depend on the completeness of information provided in the preapplication form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

Formal Application Procedures

Following a review of project proposals, EDA will invite entities whose projects are selected for consideration to submit formal applications.

Previous Applications

Project applications invited, but not funded in FY 1988, remain eligible for funding consideration. Those applications which were received by September 30, 1988, will be processed and evaluated in accordance with the project selection criteria published for FY 1988 and current legal requirements. Those applications not received by EDA by September 30, 1988, must be consistent with the project selection criteria and requirements published in this Notice. Applicants whose projects were invited but not submitted to EDA in FY 1988 should contact the appropriate EDA Regional Office regarding forms to be used for FY 1989.

Further Information

For further information contact the appropriate EDA Regional Office (see section X of this Notice).

IX. Program: Guaranteed Loans

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance)

Summary

Pursuant to Pub. L. 89–136 (42 U.S.C. 3142–3246(h)) (Act), EDA is prepared to guarantee up to eighty percent (80%) of the principal and interest of loans to be made to private borrowers for the purchase of fixed assets and/or for working capital purposes for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses expand, establish, or maintain operations in both urban and rural eligible areas throughout the Nation. Guarantees offered under this program are made at the discretion of the Assistant Secretary for Economic Development based upon data from the borrower and lender current at the time the guarantee is offered.

Preapplication Procedures

Applicants should contact the appropriate EDA Regional Office Business Loans Division to discuss their proposals. EDA staff will screen proposals before inviting a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in the Act;

2. Regulatory requirements contained in 13 CFR Part 306 and 309; and restated in this Notice; and

3. Provisions of Office of Management and Budget (OMB) Revised Circular A–70, dated August 24, 1984 (A–70).

OMB Circular A–70 (Revised) Requirements

All loan guarantees must conform to the requirements of A–70, without exception. The most significant requirements of A–70 are as follows:

1. Loans must be secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan.

2. A guarantee fee will be charged.

3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.

4. The lender must bear a significant portion of the risk of loss on the loan. No other security, guarantees, or any other arrangement that would not inure ratably to EDA for that portion of the loan not guaranteed by EDA will be permitted.

5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

Supplementary Information

A. Amount of Funding Available

EDA is authorized to commit up to $150 million to guarantee contingent liability for loan principal in FY 1989, which ends September 30, 1989.

B. Type of Financial Assistance

EDA staff will consider proposals for the guarantee of loans made by private lending institutions to private borrowers to finance the costs of fixed assets or for working capital purposes. EDA staff will not accept applications for projects which involve real estate development for either investment or speculation, or for the refinancing of current debt.

C. Who May Apply

Formal applications will be invited by EDA staff only after review and acceptance of satisfactory project proposals. Applications will be accepted only from private lending institutions (the applicant) for the guarantee of loans to private business enterprises. EDA's relationship is essentially with the lender applicant, not the borrower.

D. Long-Term Employment

EDA staff will seek to assist in the creation or retention of permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

E. Repayment Ability

The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. EDA Guarantee Required

No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which, in the opinion of EDA, will permit accomplishing the project. In the event the borrower is a large corporation which would normally have funds available to finance the project, such corporation must certify that it would not locate the proposed project within the EDA-designated area without the benefits of EDA's financial assistance.

G. Relocation

Nonrelocation requirements apply to guaranteed loans under Section 202, Title II of PWEDA. EDA's regulations at 13 CFR 309.3 prohibit transferring jobs from one commuting area to another. Certificates of nonrelocation will be required.

General Conditions of Assistance

A. Term of Loan

The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) years, and the loan should be fully amortized during its term. EDA will not ordinarily guarantee revolving-type or open-end working capital loans.

B. Guarantee Percentage and Interest Rate

Pursuant to A–70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantee a loan in excess of the following percentages and interest rates:

1. 80% guarantee—Lender prime rate plus 1.50%;

2. 75% guarantee—Lender prime rate plus 1.75%;

3. 70% guarantee—Lender prime rate plus 2.0%;

4. 65% guarantee—Lender prime rate plus 2.5%.

C. Guarantee Fee

Pursuant to A–70, EDA will charge the lender a guarantee fee.

D. Application Fee

EDA may charge an application processing fee to cover the costs of application processing and review.

E. Lender's Risk

That portion of the loan not guaranteed by EDA must be at risk to the recipient throughout the term of the loan. This precludes the recipient from obtaining any additional security, guarantee, or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA staff will be obligated to deal only with the recipient, and all participants must be eligible as recipients.

F. Other Lender-Borrower Relationships

When recipient has other creditor/debtor relationships with the prospective borrower, EDA staff will seek assurances that these relationships will not create conflicts with EDA's interest in the recipient's servicing of the loan for which a guarantee is sought. Ordinarily, EDA staff will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

G. EDA Investment Per Job

EDA staff will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

H. Repayment Ability

Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

1. Applicant's normal detailed credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);

2. Three (3) years' financial statements, audited and certified by a public accountant, if available, or certified by a responsible officer of the prospective borrower; if in operation less than three years, financial statements since inception;

3. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application;

4. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-

month basis for the first year after the loan is made and on a quarterly basis for the next two (2) years; and

5. One copy of the proposed note and loan agreement between the applicant and the prospective borrower with attachments.

I. Adequate Collateral

The lender must maintain perfected liens against and security interests in collateral adequate to permit full recovery of the loan in the case of default by the borrower. Collateral must be of such nature that repayment of the loan is reasonably assured when considered along with the integrity and ability of project management, soundness of the project and borrower's prospective earnings. The applicant must document why it is reasonably certain that adequate collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by an unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement. Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA.

J. Guarantees

Unconditional personal/corporate guarantees (of full and timely payment and performance by the borrower) will be required from all persons or entities which hold or control ten percent or more of the ownership interests in a borrower unless:

1. The borrower has a profitable historical performance of no less than three out of the most recent five years, abundant collateral, adequate cash flow, and meets key industry standards (i.e., Robert Morris Associates);

2. Borrower's stock is so widely held that no one individual/family/entity can exercise control;

3. Borrower's parent, subsidiary, or affiliate that is required to guarantee is legally restricted from guaranteeing, or such guarantee would conflict with other existing contractual obligations of the prospective guarantor.

Cross guarantees may also be required from related corporate entities.

EDA staff will require current (not over ninety days old at the time the application is filed) personal or corporate financial statements signed by the prospective guarantor, and, where appropriate and necessary to support the guarantee, by the guarantor's spouse, and disclosing community and individual assets and indebtedness when applicable.

K. Equity Requirements

All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. The following minimum equity will be required:

1. For guaranteed working capital loans, the prospective borrower must have existing, or must provide, net working capital equal to not less than fifteen percent (15%) of its total working capital needs.

2. For guaranteed fixed asset loans, the prospective borrower must provide an equity investment in the loan project of at least fifteen percent (15%) of the aggregate loan project cost.

3. The prospective borrower must provide twenty-five percent (25%) of the aggregate loan project cost for:

a. New businesses with no operating history;

b. Loans without full personal and/or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to have above-average risk.

L. Feasibility Report

An independent technical, financial, and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

M. Tax-Exempt Obligations

The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds.

N. Other Requirements

1. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required in an amount at least equal to the lesser of the depreciated replacement value of the property being insured or the amount of the loan.

2. Keyman life insurance, which may be decreasing term insurance, normally will be required for principals and key employees of the borrower, pledged or assigned to the lender.

Applicant Servicing Responsibilities

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to, executing such care and diligence in the disbursement, servicing, collection, and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the liquidation less reasonable expenses directly attributable to the liquidation. Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA staff will examine the applicant's records before honoring any guarantee.

Application Requirements

A. The application shall include the following:

1. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one area to another or to close facilities involved in the EDA-guaranteed project;

2. Approval of the application by the appropriate agency or instrumentality of the state or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

3. Full disclosure of the amount and nature of all fees charged to the borrower by the lender, attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and lobbying expenses are not allowable project costs and no proceeds of the loan may be used directly or indirectly for attorneys' or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval;

4. An agreement that neither the borrower nor the applicant will employ or retain for professional services of any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of the assistance under the Act. This agreement shall remain in effect for two years after EDA grants assistance to the applicant;

5. An application for character/integrity investigation (Name Check Form CD–346) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower;

6. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of Section 702 of the Act. Section 702 unfair competition results if the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite processing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to formal offering of a loan guarantee are made solely at the applicant's or borrower's expense.

7. A description of state or local government assistance to the project; and

8. *A signed statement by the borrower assuring that (a) real estate provided as collateral is not under notice of environmental violations from local, state or Federal agencies, (b) the real property is not the subject of an environmental impact study, and (c) there are no known violations of Federal, state or local environmental laws or requirements, including, but not limited to, 42 U.S.C. 9601–9657.*

B. Loan guarantees are also subject to the following statutes:

1. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251–1376;

2. Davis-Bacon Act, as amended, 40 U.S.C. 276a–276a–5; 13 CFR 309.6;

3. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151–4157; 13 CFR 309.14;

4. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4370; CFR 309.18;

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470W–6;

6. The Wild and Scenic River Act, as amended, 16 U.S.C. 1271–1287;

7. The Clean Air Act, as amended, 42 U.S.C. 7401–7626;

8. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001–4128; and

9. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9001–9687.

Application Submission

Proposals should be submitted to the appropriate EDA Regional Office at the earliest possible date, but in no event later than May 30, 1989. Proposals received after this date may not be considered during FY 1989. Completed applications for authorized projects should be submitted no later than June 30, 1989. Incomplete applications or applications that do not conform to program requirements will be rejected by EDA.

The EDA Headquarters will review all loans recommended for approval by a Regional Office. Headquarters review will encompass credit as well as program objectives, priorities and interest. All guarantees require approval by the Assistant Secretary of Commerce for Economic Development.

For Further Information Contact

Three of the EDA Regional Offices have been designated to administer the Loan Guaranty Program and accept Loan Guaranty applications. For further information on that program, contact the Chief of the Business Loan Division at either the Austin, Philadelphia or Seattle Regional Offices (see section X of this Notice).

X. EDA Regional Offices

The EDA Regional Offices and the States they cover are: Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, First Floor, Philadelphia, Pennsylvania 19106, telephone: (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.

Atlanta Regional Office, Suite 750, 1365 Peachtree Street, NE, Atlanta, Georgia 30309, telephone: (404) 347–7401; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, telephone: (303) 844–4714; serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Chicago Regional Office, Suite A–1630, 175 West Jackson Boulevard, Chicago, Illinois 60604, telephone: (312) 353–7706; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Seattle Regional. Office, Suite 1856, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, telephone: (206) 442–0596; serving Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Austin Regional Office, Suite 201, Grant Building, 611 East Sixth Street, Austin, Texas 78701, telephone: (512) 482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Date: January 10, 1989.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 89–862 Filed 1–13–89; 8:45 am]

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federal register

Tuesday
January 17, 1989

Part IV

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Standards for Water Heaters; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS–RM–79–105]

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Water Heaters

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987 and the National Appliance Energy Conservation Amendments of 1988, prescribes energy conservation standards for certain types of consumer products, including water heaters. Among other program elements, the legislation requires the Department to establish standard methods of testing covered products. In the case of any amended test procedure, the Department is required to determine to what extent the proposed test procedure would alter the measured efficiency.

On March 13, 1987, the Department proposed to amend the test procedures for water heaters. The Department of Energy (DOE) today is proposing to amend the energy conservation standards for water heaters prescribed by EPCA, as amended, in order to account for changes in water heater measured efficiency resulting from amended water heater test procedures. Today's proposal also includes the amended test procedure used to determine the proposed standard.

The purpose of today's notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule, and to invite interested persons to participate in the rulemaking process.

DATES: Written comments (10 copies) in response to this notice of proposed rulemaking must be received by the Department of Energy by March 20, 1989.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on March 9, 1989, at 9:30 a.m. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., March 7, 1989.

Ten copies of the oral statement of each speaker must be submitted at the hearing registration desk the day of the hearing.

ADDRESSES: Written comments (10 copies) are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, CE–43.1 Hearing and Dockets, Water Heater Test Procedure, Docket No. CAS-RM-79–105, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9320.

FOR FURTHER INFORMATION CONTACT:

Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE–43.1, Forrestal Building, Room 6B–025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9320.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Background

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act (NAECA) of 1987, (Pub. L. 100–12) and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) created the Energy Conservation Program for Consumer Products other than Automobiles.[1] Thirteen consumer products subject to this program (often referred to hereafter as "covered products") include water heaters, the subject of today's proposed rulemaking.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Institute of Standards and Technology (NIST), (formerly National Bureau of Standards), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in tests conducted according to the DOE procedure. Section 323(c)(2). Test procedures appear at 10 CFR Part 430, Subpart B.

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the proposed standard, DOE is required to amend the standard accordingly. In determining the amended standard, DOE is required to measure the energy efficiency or energy use of representative samples of covered products which minimally comply with the existing standard. The average efficiency of these representative samples tested using the amended test procedures shall constitute the amended standard.

a. Test Procedures

The water heater test procedure was prescribed by notice issued September 27, 1977. (42 FR 54110, October 4, 1977). These original procedures coupled laboratory tests and calculations to obtain estimates of energy efficiency and annual energy consumption for storage type electric, gas and oil water heaters. The laboratory tests consisted of a "cold start recovery efficiency test," which measured the ability of a water heater to heat cold water, and a "standby loss test," which measured the energy loss of a water heater when not providing heated water. Recovery efficiency and percent standby loss are then mathematically combined in the calculations to obtain an energy factor, DOE's overall measure of water heater efficiency. Also, the original procedures included calculations for determining the annual consumption and annual operating costs. DOE amended the water heater test procedures by notice issued August 30, 1979, in order to prescribe a "measure of a water heater's useful capacity called first hour rating," where useful capacity is the maximum hourly demand which can be met by the water heater. (44 FR 52632, September 7, 1979).

By notice published in the **Federal Register** on February 8, 1984 (referred to hereafter as the "1984 proposal"), DOE proposed to amend its test procedure for water heaters. (49 FR 4870). The purpose of the 1984 proposal was threefold: First, to extend coverage of the test procedure to heat pump water heaters, a relatively new water heater design not previously covered by the test procedure; second, to add a method of testing to determine the first hour rating of water heaters equipped with thermal compensating dip tubes; and third, to make modifications to the test procedures that would yield more accurate determinations of energy efficiency and cost of operation for gas, oil and electric storage water heaters.

By notice published March 16, 1984, DOE, on request of the water heater industry, extended the comment period 42 days and rescheduled the March 15, 1984, public hearing to April 26, 1984. (49 FR 10071.)

In comments received in 1984 and throughout 1985 numerous parties requested that DOE withdraw the 1984 proposal and wait until a more comprehensive proposal could be developed. Most notably, on October 2–3, 1985, DOE and NIST hosted a forum on testing and rating procedures for consumer products which was attended by manufacturers, utilities, States, and public interest groups. At the forum, there was unanimous agreement that DOE should withdraw the 1984 proposal and initiate the development of a single test procedure method which would be applicable to all types of residential type water heaters, including the instantaneous type of water heaters.

By notice published March 13, 1987 (referred to hereafter as the "March 1987 proposal"), DOE proposed a single test procedure for all types of water heaters, including instantaneous type water heaters. The March 1987 proposal also addressed the matter of four test procedure waivers where four manufacturers of water heaters had received allowance to test certain water heaters under modified test procedures. Since publication of the March 1987 proposal, a fifth manufacturer has received a test procedure waiver. The March 1987 proposal would extend these modifications to all manufacturers of similar designs and thereby would terminate the five individual waivers. The five waivers are: A.O. Smith Corporation for its gas water heaters equipped with thermal compensating dip tubes (47 FR 53942, November 30, 1982), and four manufacturers of water heaters with large thermal mass designs: Bock Water Heaters Inc. (50 FR 47106, November 14, 1985, modified 51 FR 21975, June 17, 1986), Ford Products Inc. (50 FR 50678, December 11, 1985, modified 51 FR 18659, May 21, 1986), Lochinvar Water Heaters, Inc. (51 FR 22966, June 24, 1986), and Aero Environmental Limited (53 FR 9687, March 24, 1988).

The major issues covered in the March 1987 proposal included:

(1) Extending the test procedure to cover heat pump water heaters and instantaneous type water heaters;

(2) Revising the method of test for all water heaters from a no draw test to 24 hour simulated use test which includes a six-hour draw test; and

(3) Revising the first hour rating test from a calculated estimate to a direct measure for determining a water heater's ability to supply hot water.

b. Energy Conservation Standards

The National Appliance Energy Conservation Act of 1987 prescribed energy conservation standards for 11 types of appliances including electric, gas, and oil-fired water heaters. The effective date for water heater standards is January 1, 1990.

NAECA also added a definition for water heaters, as follows: "The term 'water heater' means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function."

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured efficiency or measured energy use of any covered product as determined under the existing test procedure. Today's proposal satisfies this requirement with respect to the March 1987 proposal. Furthermore, section 323(e) requires DOE to test a representative sample using the proposed test procedure; today's proposal is based on testing a sample of units in accordance with the March 1987 proposal which has been revised based upon the comments received. The revised test procedure used to test a sample of water heaters is included in Section II, Discussion, below.

Section 323(e) of the Act also provides that models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

II. Discussion

a. Standards

1. Efficiency Standards Prescribed by NAECA

The NAECA standards, which are based on existing test procedures, are in terms of energy factor. These are:

	Energy factor
(A) Gas water heater	.62 – (.0019 × Rated storage volume in gallons).
(B) Oil water heater	.59 – (.0019 × Rated storage volume in gallons).
(C) Electric water heater	.95 – (.00132 × Rated storage volume in gallons).

The second term in these equations, i.e., .0019V and .00132V, accounts for the effect of tank volume on energy factor. This relationship of energy factor to tank volume is due to the fact that with a given construction (same insulation, etc.), the energy required to maintain stored water temperature increases with increased storage volume.

The coefficient for volume used in this relationship, i.e., 0.0019 for gas and oil-fueled water heaters and 0.00132 for electric water heaters, is the slope of the line which relates energy factor to tank volume. The test methods in today's

[1] Part B of Title III of EPCA, as amended, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 Et seq.

notice are not considered to alter the measure of efficiency of water heaters from the existing test procedures. Therefore, DOE proposes to retain the volume relationships in the NAECA standards.

Since the data base of test units used in developing these proposed water heater standards is a total of 14 units, i.e., 7 electric, 5 gas, and 2 oil water heaters. DOE requests any additional test data manufacturers may have and any information manufacturers may have on the effects of tank capacity on energy factor.

2. Effects of Proposed Test Procedures on Energy Factors

In accordance with the requirements of section 323(e) of the Act, the Department has reviewed the impact amended test procedures will have on the measure of water heater energy efficiency. The following changes to the test procedures have been reviewed:

- Simulated use vs. cold start test.
- Water temperature rise.
- Stored water temperature (thermostat setting).
- Room temperature.
- Water usage.
- Uninsulated pipe fittings.

Some of the above changes to the test procedures increase energy factor while other changes reduce energy factor. The overall effect is to reduce the energy factor for electric storage water heaters, while the energy factor for gas and oil fueled storage water heaters is not expected to be affected by the changes.

The test procedure, specified in today's notice—simulated use test—adjusts upward the energy factor for high mass water heaters (such as oil fueled water heaters) compared to the cold start recovery test. Under cold start conditions of the existing test procedure, some of the energy input is used to heat up the tank (metal and insulation) to the operating temperature and is therefore not available for heating water. The procedures specified in today's notice do not include that condition.

Energy factors calculated using the test procedures in today's notice would also be expected to increase due to a reduced assigned temperature difference between stored water and room temperature, i.e., reduced from 90 °F in the existing procedures to 67.5 °F. With reduced temperature, lower standby loss results.

However, the overall effect on energy factor due to reduced stored water temperature would be neutral due to the reduction in energy output. The reduced temperature rise of heated water, i.e., from 90 °F to 77 °F, results in less energy output per day, and since energy factor drops as the energy output drops, this lower temperature rise tends to reduce energy factor (approximately two percent for an electric water heater).

Another change which is applicable to all water heaters is the use of uninsulated pipe fittings in these new procedures. This change would increase standby loss and reduce energy factor. Electric water heaters without heat traps would be particularly affected since all their energy loss is due to standby loss.

Since no specific energy factors were prescribed spearately for instantaneous water heaters, DOE believes the standards prescribed in NAECA for water heaters are also applicable to instantaneous type water heaters. However, the definitions used in today's notice for instantaneous type water heaters include only residential types intended to supply the total residential hot water requirements and exclude commercial types.

The only known residential types of instantaneous water heaters are gas fueled, either natural gas or Liquified Petroleum (propane) gas. The energy factor proposed in today's notice for gas fueled instantaneous water heaters is based on an assigned nominal storage volume of two gallons for all instantaneous water heaters. Therefore, the second term in the NAECA equations for gas water heaters, i.e., 0.0019V, is not relevant for instantaneous type water heaters of two gallons or less. Since the maximum volume of the instantaneous water heater has been defined here to be no more than two gallons, this term has little effect on the energy factor. At the extreme with two gallons of storage, the calculated result using this second term would be 0.616 which the test procedure rounds to 0.62.

Electric instantaneous water heaters are considered by DOE to be excluded from the program because they are primarily used in industrial and commercial applications to produce tempered, rather than hot, water and are not considered to be residential.

Oil fueled instantaneous water heaters are not included in the proposed standards. NAECA's definition of instantaneous type units is for units that contain less than one gallon per 4,000 Btu per hour of input. However, an oil fueled storage water heater of between 80,000 and 105,000 Btu per hour input with a tank capacity of 20 to 28 gallons would fall into this definition of instantaneous water heater. This configuration is more properly covered as a storage type water heater.

Also, there are no specific energy factors for heat pump water heaters specified in NAECA. Therefore, heat pump water heaters are not included in these proposed standards. Since heat pump water heaters have an energy factor greater than 1.0 and energy factors prescribed in NAECA are all less than 1.0, the NAECA standard is considered to apply to conventional electric water heaters only. When reviewing the standards for water heaters in 1992, DOE will consider if standards for heat pump water heaters should be proposed.

3. Test Results

Water heaters were selected for test in order to determine to what extent, if any, the test procedures in today's notice would alter the measured efficiency of water heaters. The approach used to accomplish this was as follows:

Models of the most common water heater sizes in terms of storage capacity for gas, oil, and electric water heaters were selected. Electric water heaters with a capacity range of 30 to 82 gallons, and gas water heaters from 30 to 50 gallons are estimated to represent approximately 95 percent of all electric and gas water heaters sold. Units selected for test fall within this range. Oil fueled water heater selection is limited in terms of storage capacity. DOE believes the most common size oil fueled water heater has a 32 gallon storage capacity; therefore, this size was chosen for these tests.

The NAECA prescribed minimum conservation standards for selected storage capacities was calculated. For example, for 40 gallon electric water heaters the NAECA standard would require an energy factor of 0.90, i.e., EF = 0.95-.00132V; substituting V = 40, EF = 90. Candidate water heaters were identified by manufacturer and model number using the listings from the January 1987 Consumers Directory of Certified Water Heater Efficiency Ratings, which are certified and published by the Gas Appliance Manufacturers Association (GAMA). Test units selected for purchase were those listed in this directory whose rated energy factor minimally complied with the standard.

Five gas, six electric and two oil water heaters were purchased for testing. The gas and electric water heaters were tested at the National Institute of Standards and Technology (NIST), and the oil fueled water heaters were tested at the Electrical Testing Laboratory (ETL) in Cortland, New York. The oil fueled water heaters were not tested at NIST, because NIST did not have the facilities to test these units. ETL was selected by NIST to test the oil fueled water heaters because of its experience testing these units for the GAMA water heater certification program.

Tables 1, 2 and 3 show results obtained for electric, gas and oil fueled storage-type water heaters, and the make and model number of the test units. The column labeled "Current Procedure" is the test procedure upon which NAECA standards were based.

Table 1 for electric water heaters shows that test procedures used in today's notice result in energy factors which are consistently lower than that obtained with the current test procedure. The average difference is .023. Therefore, the first term of the proposed energy factor equation used in today's notice has been adjusted downward by .02 in order to account for this difference. No effect of tank capacity is discernible in the limited amount of test data shown here. Comments in the form of measured test data including energy factor for various tank capacities is requested.

Table 2 for gas water heaters shows there is essentially little or no difference on average between the current test procedure and the procedure used in today's notice. Therefore, DOE is not proposing amendments to the energy factor for gas water heaters as prescribed in NAECA.

Table 3 for oil water heaters also shows essentially the same results for the test procedure used in today's notice versus the current test procedure. Although the simulated use test granted by waivers used three draw cycles versus six draw cycles in the procedures used in today's notice, the results show no difference when rounded to the second decimal place as shown in Table 3. DOE is proposing not to amend the NAECA standard for oil fueled water heaters.

TABLE 1.—TEST RESULTS—ENERGY FACTORS FOR ELECTRIC WATER HEATERS

Test unit [1]	Tank capacity gallons		Energy Factor [2]		
	Rated	Measured	Test procedure in today's notice	Current test procedure [3]	GAMA directory rating [3]
A-1	30	27.3	0.84	0.86	0.91
A-2	52	49.0	.88	.89	.89
A-3	82	77.3	.77	.80	.84
A-4	40	36.3	.84	.85	.90
A-5	40	36.6	.86	.88	.90
A-6	40	35.8	.82	.85	.90

[1] Test units by make and model were as follows:

Test unit	Manufacturer	Model No.
A-1	State Industries Inc	Censible PV30 1LS1.
A-2	Sears Roebuck & Company	Survivor Kenmore 625-320520
A-3	State Industries Inc	Censible PX82 1RT1.
A-4	Sears Roebuck & Company	Economizer (5) 153.313470.
A-5	A.O. Smith Water Products Company	ELJF-40-912.
A-6	Rheem Manufacturing Company	Rheemglass Standard 81VR40D

[2] The difference between the "GAMA Directory Rating" and the NIST test results (current test procedure) can be attributed to several factors including manufacturing tolerance and product variability. For example, one unit was found to have a considerable amount of voids in its foamed-in insulation. Since losses for electric water heaters are controlled by the quantity and quality of insulation, voids result in increased standby losses, thereby, reducing the unit's energy factor. While the units all measured lower in energy factor under the current test procedure than the GAMA Directory Rating, DOE does not believe that the results for units that minimally comply with the standard, based on test, will differ from those DOE found. DOE believes that the differences in test methods will result in a two point (0.2) difference (on average) for electric storage water heaters.

[3] Current test procedure for electric and gas water heaters is the test procedure in 10 CFR Part 430 Subpart B, Appendix E. The GAMA Directory Rating is also based on this test procedure.

TABLE 2.—TEST RESULTS—ENERGY FACTORS FOR GAS WATER HEATERS

Test unit [1]	Tank capacity gallons		Energy Factor		
	Rated	Measured	Test procedure in today's notice	Current test procedure	GAMA directory rating
B-1	40	38.5	0.55	0.55	0.55
B-2	30	28.3	.56	.56	.57
B-3	30	28.6	.57	.56	.57
B-4	50	47.9	.53	.53	.54
B-5	40	38.0	.53	.54	.55

[1] Test units by make and model were as follows:

Test unit	Manufacturer	Model No.
B-1	Rheem Manufacturing Co	Rheem Energy Miser 21V40-7
B-2	A.O. Smith	Energy Saver FSG30-202.
B-3	Mor-Flo	Energy Saver Plus GVF8333T
B-4	Sears Roebuck & Company	Kenmore Power Miser 5 153.334520.
B-5	A.O. Smith	Energy Saver PGX40-202.

TABLE 3.—TEST RESULTS—ENERGY FACTORS FOR OIL WATER HEATERS

Test unit [1]	Tank capacity gallons		Energy factor		
	Rated	Measured	Test procedure in today's notice	Current test procedure [2]	GAMA directory rating
C-1	32	29.5	0.52	0.52	0.53
C-2	32	29.4	.49	.49	.51

[1] Test units by make and model were as follows:

Test unit	Manufacturer	Model No.
C-1	Ford Products Corp	320 CF.
C-2	Lochinvar Water Heater Corp	BRE032.

[2] Current test procedure for oil fueled water heaters is a three draw similated use text granted in test procedure waivers to all manufacturers of oil fueled water heaters (51 FR 18659). The GAMA Directory Rating is also based on these test procedure waivers.

b. Test Procedures

DOE is setting forth herein the amended test procedure which incorporates changes made to the March 1987 proposal and which was used to determine the proposed standards in today's notice.

These amended water heater test procedures will be made final at the same time the standard levels are made final for water heaters. These amended test procedures are not proposed here for comment except in regard to the manufacturers' ability to replicate the DOE methodology in complying with the new efficiency standards.

1. Discussion of Comments

Definition of Instantaneous Water Heaters. Two manufacturers of instantaneous water heaters, Robert Bosch Corporation (Bosch) and International Technology Sales Corporation (ITS), commented that the March 1987 proposal is confusing in that less than 20 gallon tank capacity would be included in the proposed definition of instantaneous water heaters. (Bosch, No. 69, at 3, and ITS, No. 65, at 2).[3]

These commenters suggested a definition of instantaneous water heaters that is based on demand and the heating operation is activated by a flow of water. ITS commented that three National Codes classify an instantaneous water heater as having one gallon of storage or less. ITS also commented that electric instantaneous water heaters differ from gas water heaters of the same type due to the fact that the "electrics" are primarily used to produce tempered water, rather than hot water, for industrial and commercial applications and should not be included within the scope of this proposed rule. ITS also commented that small point of use electric storage systems along with small single task gas instantaneous water heaters should be exempt from DOE regulations. ITS commented that 99 percent of its mini-storage type water heaters (1.33 gallon) are used in wet bars and in offices, while 99 percent of the electric instantaneous are used in industrial/commercial applications.

The definition of gas fueled instantaneous water heaters in the test procedures included in today's notice includes only water heaters intended to supply the residential hot water requirements and excludes small special purpose commercial type water heaters. With these exclusions, the typical water usage rate proposed for storage type household water heaters will also be applicable to instantaneous gas type household water heaters.

Hot Woter Usage. The hot water usage proposed in the March 1987 proposal included four assigned hot water usage rates. The majority of water heaters would have been assigned 60 gallons per day under that proposed procedure.

Thermar Corporation (Thermar) stated that 60 gallons per day should be the only usage against which all residential heaters be measured. (Thermar, No. 50, at 3).

The Natural Resources Defense Council (NRDC) commented that 60 gallons per day is excessive for an average family size and suggested that 30 to 40 gallons per day is more appropriate. (NRDC, No. 51, at 2–5). In addition, NRDC suggests an alternative table of daily hot water use. The NRDC proposal would place almost all residential water heaters into either 30 or 45 gallon per day usage categories, and the oil-fired water heaters would all be assigned 45 gallons per day instead of 60 gallons per day as proposed.

Bock and GAMA commented that the assigned value for annual usage for oil fueled water heaters should be the first hour rating. (Bock, No. 28, at 1, and GAMA, No. 59, at 18).

[3] Comments on the rulemaking were given docket numbers. For comments submitted in writing, citations provide the name of the organization, firm or person who made the comment, the docket number assigned to the comment, and the page on which the comment is found in the commenter's submittal. For comments made in oral presentations at public hearings citations provide the name of the organization, the date of the public hearing, and the page number of the official transcript of the public hearing where the comment is found.

The purpose of the first hour rating was introduced primarily to select a water heater that would satisfy consumer needs, and secondly as a way for comparing water heaters having similar capacity in terms of their ability to deliver hot water. The selection process of determining a water heater size that would be needed to supply the peak amount of hot water needed in one hour involves adding up all the hot water uses expected in one hour, or highest expected use, and to purchase water heater having a first hour rating equal to or close to this estimated maximum demand. DOE does not consider the total amount of hot water that would be used in a day to be equivalent to this maximum one hour demand period, i.e., first hour rating, as proposing by Bock and GAMA.

The March 1987 proposal included broad groupings of first hour ratings (in 20 gallon increments) for an assigned value of daily hot water usage. The proposal grouped most of the typical residential water heaters within the 60 gallon per day usage group. If the GAMA and Bock recommendations were to be adopted, i.e., one gallon increments, every water heater with a different first hour rating would be rated on a different hot water usage basis and labeled annual cost for water heaters would differ due to different water usage rates. To assign the total amount of hot water that would be used in a day to be equal to the maximum one hour demand period, i.e., first hour rating, has no basis. No field test data has been supplied by commenters to substantiate their proposal. Any relationship between peak hourly use and average daily use is unknown.

DOE considers that Bock and GAMA's proposed assigned values of daily hot water use based on the water heaters first hour rating is also inappropriate for these additional reasons:

(i) The instantaneous water heater is capable of supplying typically two gallons per minute of hot water or 120 gallons per hour. It would be misleading to assign this number of gallons per day to a typical instantaneous water heater since daily water usage cannot be directly related to a water heater's ability to supply short term hot water.

(ii) Large electric storage tank water heaters may be used as offpeak power controlled type, and would typically be an 80 gallon tank with a 100 gallon first hour rating. These water heaters would not typically use 100 gallons per day, and their first hour rating would be misleading as a measure of daily usage since a water heater capacity is sized to meet peak needs and not according to daily usage.

The national average use of hot water in 1975 was determined to be 450 gallons per week as a result of metered field test data and is the basis of the current test procedure assignment of 64.3 gallons per day for a typical family of four. A more recent reanalysis by NIST of the daily hot water use has confirmed this amount (NBSIR 853220 "A Review of Energy Use Factors for Selected Household Appliances"), and recommended 60 gallons per day as a national average daily usage rate. Furthermore, a NIST/DOE Appliance Forum held at NIST in 1985 concluded that various utility studies tend to confirm a figure in the range of the presently set value of 64 gallons per day. The forum also concluded that any minor adjustment, i.e., 60 gallons per day, would have little merit. Therefore, DOE has concluded that one typical average value of hot water use, the currently assigned value of 64.3 gallons per day, remains appropriate for labeling the average annual cost for all household water heaters. Also, the calculation of energy factor is based on this assigned average usage value of 64.3 gallons per day.

First Hour Rating. Maus Technologies (Maus) commented that there has been a strong emphasis in the water heater industry on designing electric water heaters by maximizing the capabilities of available heat as hot water delivered. (Maus, No. 60, at 2.) DOE understands this comment to mean that for a given amount of energy input more hot water would be available for use. Maus contends that the increased capability of the double element water heater does not show up in a comparison with a single element electric water heater under the proposed procedure. By assigning all electric water heaters with their rated recovery rate, the March 1987 proposal assumed all input energy to be available as hot water during the balance of the hour after the initial draw was completed. Maus contends that only a portion of the power input to the tank during the heating of water will be available as usable hot water during the one hour test period unless the water heater is of a special design. Maus commented that Mor Flow Industries, a manufacturer of water heaters, is about to introduce a special design of storage type water heater which will actually deliver the performance that would be attributed by the proposed first hour rating test to all water heaters. Maus contends that its improved water heater design will not be properly recognized since the March 1987 proposed procedure would allow a conventional water heater to be biased with a high rating. Maus recommends modificaiton of the test procedure to maintain power to the heater throughout the test period. Furthermore, Maus recommends that instead of calculating the amount of additional hot water produced, water heaters be tested to measure the amount of hot water delivered. Maus also contends its recommendations will allow consumers to properly "size" in selecting a smaller water heater tank volume, which because of the special design would make available as much hot water as a larger tank. This would allow for an energy savings due to the inherently lower standby energy with a smaller tank.

The March 1987 proposal terminated the draw when the outlet water temperature drops 20 °F below the initial temperature. Thermorise Company (Thermorise), a developer of a new electric water heater design, commented that the first hour rating test should be terminated when the outlet temperature reaches 105 °F independent of the starting temperature. (Thermorise, No. 55, at 1 and 2). Thermorise proposes that the heating element or the burner be energized during the first hour test since this will be the case under operating conditions in the field. Thermorise also proposed a specific adjustment to the flow rate and draw schedule for electric water heaters. Thermorise contends that the gas and oil-fired water heaters are practically immune to flow rate while the electrics are affected due to their lower recovery rate, with power input limitation, due to house wiring at about 5000 watts. The draw schedule Thermorise proposes varies from 1.5 gallons per minute (gpm) for the smallest electric water heaters (20 gallons) to 3 gpm with larger tanks (about 80 gallons).

GAMA suggested an alternative draw test that would be an hour long which would determine the amount of hot water provided in that period. (GAMA, No. 59, at 7).

NIST concurs with GAMA. Thermorise and Maus in their recommendations that a full one hour draw test be performed. In response to these comments, NIST recommended a revised test procedure for first hour rating. That revised procedure, included in today's notice, consists of allowing the power to the water heater to remain on during the complete test and applying additional draws following the initial draw whenever the thermostat cuts out during the one hour test. At the end of one hour, any water remaining in the tank which is above a threshold floor temperature is drawn from the tank and credited for the first hour rating. The

floor temperature for terminating the draw is assigned a value for testing purposes of 25 degrees below the maximum temperature of water drawn. An adjustment of the number of gallons of the water drawn to account for the average temperature of water drawn is calculated in order to express the results as an equivalent volume at the maximum temperature (nominally 135 °F).

Thermorise stated that a uniform draw rate of 5 gallons per minute for all water heaters does not seem appropriate and the rate should be 2.5 gallons per minute for heaters rated 50 gallons or less. NIST recommended that test procedures be kept as similar as possible for all water heaters. The separate draw schedule proposed by Thermorise has not been accepted. DOE has concluded that a draw rate of three gallons per minute is appropriate, and the draw rate is being revised to three gallons per minute for storage type water heaters.

Thermorise recommended a calculation procedure to adjust the amount of water drawn to an equivalent number of gallons at a temperature of 135 °F. (Thermorise, No. 28, at 1–7, No. 70, at 1–3, and No. 73, at 1–4). The adjustment factor proposed by Thermorise is (Tom–(To–Td)/Td), where To is the maximum temperature of the drawn water and Tom is the mean temperature of the drawn water, and Td is the temperature drop from the maximum to the floor temperature. Thermorise proposed that no credit would be given for the water drawn until it is heated above the floor temperature (nominally 110 °F or 25 °F below the maximum 135 °F). The March 1987 proposal for correcting the water volume used the inlet temperature of 58 °F as the reference point for correction, for a drop of 77 °F. In other words, credit was given for heating the water from 58 °F. Thermorise subsequently withdrew its recommended 25 °F drop, in favor of the 77 °F drop. (Thermorise, No. 73, at 1).

NIST has determined that the form of the proposed adjustment equation recommended by Thermorise offers an improvement over the March 1987 proposal. Because the allowed variation of thermostat setting for maximum temperature is 135° ± 5°, there could be a slight variation in first hour ratings due to the differences in thermostat setting from one unit to the next. The Thermorise proposed adjustment factor eliminates such differences since the correction factor results in exactly the same value irrespective of fluctuations in the thermostat setting. This is due to the use of an assigned temperature drop in both the numerator and denominator of the equation. The temperature drop is being assigned in these procedures as 77 °F (maximum of 135 °F less the inlet of 58 °F equals 77 °F). The adjustment factor prescribed here is (Tom–(To–77)/77).

Several manufacturers and representatives of instantaneous water heater manufactures commented concerning the proposed normalizing of first hour rating using a five gallons per minute adjustment factor in the calculation. The March 1987 proposal included adjustment of the first hour rating by a factor proportional to what would be supplied if the tested draw were the same as used for storage type water heaters (five gallons per minute). That adjustment would reduce the first hour rating by 50 percent for the typical instantaneous water heaters.

The Controlled Energy Corporation (CE), The Carson Agency (CA), Thermar, ITS, GAMA and Bosch state that the 5 gallons per minute flow rate specified is excessive and should be reduced to 3 gallons per minute. (ITS, No. 65, at 1–2, CA, No. 56, at 1; CE, No. 62, at 1; Thermar, No. 5, at 3 and Bosch No. 69, at 5 and 6). The commenters believe that the first hour recovery factor should be equal to the number of gallons of water delivered in an hour with temperature raised 77 °F without adjustment to a 5 gpm rate as proposed by DOE. CE states that the first hour recovery should be based on the amount of hot water provided at a given temperature. Bosch and ITs also noted that 64.3 gallons per day, the assumed daily usage of hot water in the current test procedure, is in contradiction with the adjustment factor used in the March 1987 proposal. Bosch also states that its customers are satisfied with a lower flow rate and will accept reduced flow for larger periods. Bosch also states its customers tend to be customers who have large hot water demands, such as large families who might require 4, 5, or 6 consecutive showers in the morning or evening.

DOE agrees that the first hour rating as a measure of utility may be better based upon a method and procedures which are consistent with usage of the product. DOE agrees with commenters that the first hour rating be the amount of hot water the water heater is able to deliver in one hour of continuous draw at a 77 °F temperature rise. Test procedures that are included in today's notice are based on the measured amount of drawn hot water provided, without adjustment for flow rate.

Draw Schedule. Thermorise comments that the six draw schedule be revised to two draws for electric water heaters, one to represent the total morning use and one to represent the total evening use. (Thermorise, No. 55, at 2). Thermorise comments this would reduce testing time, and although it may not be representative of the actual use, would be warranted given the fact that heat transfer in an electric water heater is about 100 percent and recovery efficiency (which is being determined by draw schedule test) would not be any more accurate with a more detailed draw schedule. Thermar proposed that draw be terminated when the outlet water temperature reaches 105 °F. Thermar commented that the draw schedule for average residential use is not 6 equal 10-gallon draws, but is one major draw consuming perhaps 66 percent of the proposed 60 gallons and as many as 5 smaller draws consuming the balance. (Thermar, No. 50, at 3).

The draw schedules proposed by Thermar and Thermorise would result in a reduced storage tank temperature after the initial large draw. Consequently, the tank being practically filled with cold water would have a considerably lower standby loss.

This initial large draw would result in a reduced standby energy use inconsistent with typical use in the home, and is estimated (by calculation using an assigned typical water heater design for standby loss) to result in increase of the energy factor by approximately 2 percent. Thermar's contention that two-thirds of all water drawn is drawn during one major draw is not consistent with field test data published by NIST, and the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE) in conjunction with field testing by Ontario Hydro. The ASHRAE-Ontario Hydro Report shows, at the 95 percent confidence level, that the maximum hourly use was approximately 12 gallons, or 20 percent of the daily hot water use. In results reported for "selected high morning users," the maximum use over one hour was 25 percent of the total daily use.

DOE rejects the suggestion that the draw schedule be reduced, based on a review of the comments. The six equal draws are being retained for all water heaters.

Simulated Use Test. In the March 1987 proposal, recovery efficiency was included for two purposes: (1) To adjust the daily water heater energy consumed in order to account for differences in the water temperature, i.e., energy content of a storage tank at the end of test as compared with the starting condition; and (2) to calculate the first hour rating. The proposed method of test for recovery efficiency was the ratio of output energy to input energy over a six hour test, which included six intermittent draws spaced one hour apart.

GAMA commented that all six of the draws should be conducted with each successive draw beginning as soon as thermal equilibrium has been attained as a result of recovery from the previous draw. (GAMA, No. 59, at 6). GAMA contends that the computation of recovery efficiency from the proposed test procedure is not consistent with the current recovery efficiency since the energy measured during the first six hours of the test includes several minutes of standby energy lost between each draw. For water heaters with significant standby losses and low recovery efficiencies, use of the current procedure will result in a significant error, according to GAMA.

Comments also were received suggesting that recovery efficiency be retained in its current form. The California Energy Commission (CEC) requests that recovery efficiency and standby loss be maintained as clear components of the test method since these values are both used in a proposed ASHRAE Standard test method (SPC–124P) for combined space/water heating appliances and CEC documents. (CEC, No. 57, at 1).

Book commented that separate thermal efficiencies and standby loss calculations be retained, since they may be useful in predicting performance of a water heater in applications different from the test conditions used in the March 1987 proposal and in today's notice. (Bock, No. 28, at 2).

NIST investigated the GAMA proposal as well as other approaches to adjusting recovery efficiency so that standby energy would not be included in the six hour draw test period. As a result of these tests, NIST recommended that recovery efficiency for gas, oil and heat pump water heaters be measured during the first draw of the six draw test. In this test, any difference in the tank energy content between the start and end of the first draw is accounted for. DOE has concluded that since the recovery efficiency of electric water heaters with immersed heating elements is near 100 percent (less jacket and pipe fitting losses), electric water heaters should be assigned a recovery efficiency of 98 percent. This is consistent with the assignment of 98 percent in the current test procedures.

The procedures included in today's notice require a test for recovery efficiency be run at both maximum and reduced fuel input rates if the water heater is equipped with a control device which provides for burner input modulation. These procedures specify that the six water draws be run with the burner operating at maximum input. Since the March 1987 proposal, NIST has reported test results for several makes of instantaneous water heaters (NBSIR 87–3537, May 1987). The NIST tests show recovery efficiency to be dependent upon flow rate of water drawn. Flow rate affects burner input rate which affects the steady-state combustion efficiency because, with atmospheric type burners operating at a reduced burner firing rate, an increase of excess combustion air results. Combustion efficiency is at its maximum at the maximum input rate and falls off at reduced burner firing rates.

In tests results reported by NIST, recovery efficiency fell by up to six percentage points with reduced fuel input rates when water flow rates were reduced.

There can be any number of water flow rates from the minimum (½ gpm approximately) which initiates burner operation to four gpm. The maximum is determined by ability of the water heater to produce usable hot water.

In order to prescribe a test which will reflect all potential burner input rates, the test procedures in today's notice, for units which modulate gas flow, prescribe that three of the six water draws be run with the burner operating at maximum input and three draws (four, five and six) be at the minimum input. The water flow rate specified for the maximum input is whatever is needed to achieve a temperature rise of 77 °F. Water flow rate for the reduced firing rate is specified as that flow that maintains burner operation at the minimum fuel input. Total time of operation at reduced input rate is adjusted in order that one half of the daily output energy is produced with the burner operating at reduced (minimum) input rate.

Average recovery efficiency for modulating type burners is calculated as the average energy output to input energy for draws No. 1, run at maximum fuel input, and No. 4, run at minimum fuel input.

Both Thermar and ITS commented that instantaneous water heaters do not result in standby loss since there is no storage; therefore, the test procedure proposed for recovery efficiency and the need to monitor room temperature is not needed. (ITS, No. 65, at 3, Thermar, No. 50, at 4).

NIST has recommended in its analysis of comments that the six draw test procedure and the 16 hour standby period should be retained for instantaneous water heaters so that testing of all water heaters is performed under the same set of conditions.

Both ITS and Thermar contend that for testing water heaters all that is really necessary to determine efficiency is a thermocouple to record incoming and discharge water temperatures along with meters to measure energy consumed. This would mean only recovery efficiency would be used as a measure of energy efficiency ratio.

DOE rejects the simplified single draw test or steady-state test. With a single draw the energy stored in the heat exchanger is lost during burner off periods. In a single draw or steady-state test, these cyclic losses are not accounted for. Also, the intermittent draw is more representative of how the water heater is actually used.

The difference between energy factor for 24-hour simulated use test and recovery efficiency for a single draw is considerable. NIST reported, NBSIR 87–3537 "Performance of Instantaneous Water Heaters," May 1987, energy factors of between 10 and 24 percentage points lower than recovery efficiency at 64.3 gallons per day. The greatest difference between the four water heaters tested was for one having the highest pilot input rate, i.e., 896 Btu/hr. In other words, pilot input rate is expected to be an important factor in meeting the energy factor specified in NAECA and proposed today for gas fueled instantaneous water heaters.

A standby test of 18 hours prescribed in these procedures will reflect only the pilot loss, since there is practically no stored water by definition for this type heater. Although instantaneous water heaters may be equipped with a valve to shut-off the pilot and a manual start-up ignition source (such as a piezoelectric spark ignitor), procedures in today's notice are based upon full use of the pilot energy in the simulated use test and require the pilot to remain in operation. Standby loss could be measured in a shorter period of time for instantaneous type water heaters. GAMA, in its comments, suggests that the standby test may be terminated after one hour and calculated for the daily energy use by multiplying the total hours for the daily standby period by that hourly loss.

GAMA also comments that the standby loss as a measure of water heater performance should be deleted from the test procedure since the term is not used or determined. (GAMA, No. 54, at 19 and 28). CEC asks that the standby loss description be expanded to

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describe how to calculate standby loss, and "that it be retained as a clear component of the test method so that it may be used for other applications such as ASHRAE standards." (CEC, No. 57, at 1).

The test procedure included in today's notice provides details on how to calculate standby loss. The current DOE test procedures define standby loss as a percent per hour term from which the actual loss as Btu per hour could be calculated. Test procedures in today's notice express standby loss directly as the "Hourly Standby Loss" in Btus per hour. See Section 6.2.4 of today's notice under the "Amended Test Procedure" (section 2 below). In order to maintain a consistent procedure for all types of water heaters, the entire 24-hour simulated use test is being retained.

Correction of Measured Energy to Reference Temperature Conditions. The March 1987 proposal allowed temperature ranges for room air temperature of 65–70 °F, thermostat setting (average tank temperature at thermostat cut out) of 135±5 °F and inlet water of 58 °F ±2 °F. At the extremes of these conditions, with the most favorable being the lowest temperature differences between stored water and room temperature, i.e., 60 °F, (130 °F less 70 °F), and the least favorable, 75 °F, (140 °F less 65 °F), the standby energy effects alone would mean typical energy use variation of from 68,133 to 79,585 Btus per day, respectively. Energy factor would also be affected at these extremes. These conditions assume the inlet water termperature is held at 58 °F. The added tolerance of ±2 °F on inlet water would extend maximum energy use to 80,868 Btus per day with inlet water of 56 °F.

Procedures prescribed here now include an adjustment of the measured recovery energy use to the required conditions of a 77 °F temperature rise of the heated water (135 °F± 58 °F). Also, the standby energy use is adjusted from average measured temperature drop between the stored water and test room to a required difference of 67.5 °F (135 °F ± °F67.5 °F). The mid point of the allowable room temperature range of 65 to 70 is 67.5 °F. These changes for correcting to reference conditions are expected to correct in part problems of repeatability of test results raised by Ecodyne in its comment, as detailed below.

Repeatability of Test Results. Ecodyne commented that the wide variability of the tolerances for thermostat settings, room temperature and inlet water temperature will not allow for repeatability in testing. (Ecodyne, No. 63. at 4.) Ecodyne claims its test results with the same unit in six tests varied from an energy factor of 0.83 to 0.92. Ecodyne believes that the existing test procedures give more repeatable results and should be retained.

Ecodyne commented that its plastic electric storage water heaters, with built-in thermal mass, has more material to store heat than a conventional metal tank. Ecodyne claims that it can take 24 hours or more to balance heat flows and suggested that an option be provided to cycle a unit for a period for stabilization before the test is run.

NIST tested an Ecodyne manufactured plastic electric storage water heater and found no significant difference in energy factor between a test run without pre-conditioning, with the tank filled and with power on the thermostat adjusted. Although pre-conditioning of the tank was intended for high mass oil fueled water heaters, it has been included for any water heater if that will improve repeatablity of test results.

Ecodyne also commented that repeatability can be affected by air movement in the laboratory particularly with the exposed piping specified in the March 1987 proposed procedure. (Ecodyne, No. 63, at 2).

NBS has checked repeatability of test results by these prescribed procedures and has determined that results are repeatable. However, a caution statement has been added to the procedures in today's notice concerning protecting against drafts in the test area.

Ratings for Untested Models. Rheem Manufacturing Company (Rheem) proposed a calculation method to avoid the cost of testing each electric water heater having identical construction and tank capacity with the only difference being electric wattage of the immersed heating element. (Rheem, No. 71, at 1). Rheem proposes the value for first hour rating and energy factor be determined for one particular input rating (wattage) as the standard input, and these test results be assigned for all available inputs of that same tank design. As an example of the additional testing required, Rheem claims that a single series in its double element product includes 40 combinations of elements and that the most popular combination, 4.5 Kw elements, accounted for 85.62% of these sales. Since there are eleven different tank sizes in this series varying from 30 to 120 gallons, Rheem claims 440 tests would be required for rating just this one series.

In response to this comment, the test procedure included in today's notice specifies that, in lieu of testing, those water heaters having power input less than the manufacturer's designated standard input, may be assigned, as the first hour rating, the number of gallons removed from the tank in the first draw of the first hour rating test. Also, in lieu of testing, water heaters with power inputs greater than the standard input rating, the first hour rating determined for the standard input may be used.

Similarly, energy factor for the identical electric storage type water heater with the exception of heating element wattage may be assigned results for the standard water heater, i.e., standard input rating. Since insulation of a specific electric water heater design is all that determines the energy loss, the assignment of the energy factor to an identically constructed water heater would be technically correct.

Piping Inlet and Outlet Configuration. Ecodyne states that the heat loss from pipes should not be included when a water heater is tested. (Ecodyne, No. 63, at 2). Ecodyne claims that the issue of piping should not be reflected in the performance of a water heater.

GAMA recommended that the instructions on piping connections be revised to specify an arrangement of galvanized piping connections which includes two vertical runs of at least 12 inches, a lateral run and several elbows. (GAMA, No. 59, at 11). GAMA recommends the use of galvanized pipe rather than copper tubing since galvanized pipe can be screwed directly on to and off of the water heater's water connections since all water heaters have threated water connections. The configuration suggested by GAMA runs the water through two 90 °F turns before a temperature measurement is taken. The additional bends serve to mix the water and provide a more accurate temperature measurement.

The NRDC states that the testing of water heaters with DOE proposed piping configuration represents a more accurate procedure for crediting heat traps than the system provided in the current regulations. (NRDC, No. 51, at 8).

The piping configuration advocated by GAMA essentially forms an external heat trap on both the inlet and outlet of the water heater which would tend to reduce thermal losses. Also, the use of galvanized piping is not typical in actual hot water installations and could affect test procedure results. NIST, however, advocates the use of unions which will facilitate the installation and removal of the copper water heater piping and proposes an arrangement which would insure adequate mixing of the fluid streams. DOE has determined that test procedures concerning piping configuration and test set up as provided in the March 1987 proposal are appropriate.

Temperature Measurement of Stored Water. Ecodyne comments that its company experiences difficulty installing the thermocouple probe for measuring the water temperature within the storage tank. One tank which Ecodyne produces is all plastic and does not have an anode rod and related opening. The temperature and pressure relief valve opening is located above the heating element which prevents insertion of the probe at this location. The cold water inlet cannot be utilized because of the dip tube. Thus, Ecodyne contends, only the hot water outlet may be used and in so doing an extra T-fitting and elbow are required which adds extra mass and heat transfer surface area. Ecodyne further states that on units supplied with heat traps, the heat trap must be moved, necessitating additional fittings which result in unrealistic test results. (Ecodyne, No. 65, at 2). Ford Products Corporation (Ford) also expressed concerns regarding the use of the thermocouple probe at the public hearing on the proposed test procedures for water heaters. (Ford, April 23, 1987, at 90). GAMA recommended that the installation procedure for the thermocouple probe be modified to recognize that some storage tanks may not accommodate six thermocouples or have an accessible protective anode in which the probe may be inserted. (GAMA, No. 59, at 4). DOE agrees with these comments and has changed the test procedures to reflect them.

Ambient Air Temperature Measurements. ITS, CE and Thermar state that ambient air temperature is not relevant in the testing of instantaneous water heaters and should not be required. (ITS, No. 65, at 4, Thermar, No. 50, at 3, CE, No. 62, at 2). CE and ITS commented that requiring the measurement of ambient temperature would cause undue hardship and may force several small companies to abandon their efforts.

DOE believes the ambient air temperature surrounding an instantaneous water heater will affect the performance of the water heater based upon the design of the water heater. For example, an instantaneous water heater with a large heat transfer surface area, tested with a surrounding ambient temperature of 100 °F, would be given an advantage over a unit of similar design tested with an ambient temperature of 65 °F. DOE acknowledges that for units currently on the market the effect of ambient temperature would be minimal, but believes that a uniform ambient temperature should be imposed for the testing of all water heaters and this temperature should be recorded and reported. DOE does not concur with the commenters that measurement of ambient temperature forces an undue hardship on the manufacturers of instantaneous water heaters, since the measurement of ambient air temperature can be easily performed with a relatively inexpensive thermometer having an accuracy of ±1 °F.

Flue and Vent Pipe Installation. GAMA recommended changes concerning the flue requirements for gas- and oil-fired water heaters. (GAMA, No. 55, at 9, 10 and 12). Specifically, GAMA suggested the following installation requirements:

For gas-fired water heaters having a vertically discharging draft hood outlet, a five foot vertical vent pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet.

For gas-fired water heaters having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A five foot length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward. Perform all tests with the natural draft established by this length of vent pipe.

A water heater equipped with a mechanical draft system shall be installed with the mechanical draft system in accordance with the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

For an oil-fired water heater, establish a draft at the flue collar as recommended in the manufacturer's installation instructions. Establish the draft for oil-fired water heaters with a vertically discharging draft outlet by using a sufficient length of vent pipe connected to the water heater flue outlet and directed vertically upward.

For an oil-fired water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions.

DOE has adopted GAMA's recommendations in their entirety for oil and gas water heater vent requirements specified in today's notice.

Water Supply Pressure. GAMA recommended that the specification dealing with supply water pressure be modified such that the water pressure need not be maintained between 40 psig and the maximum pressure specified by the manufacturer when water is being removed from the storage tank. (GAMA, No. 59, at 4).

DOE agrees with this GAMA recommendation. The following water pressure requirement is contained within these prescribed test procedures: During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig and the maximum allowable pressure specified by the water heater manufacturer.

Implementation and Timing. Thermar and CE request that at least two years elapse between the formulation of a final test procedure and implementation of the procedure. (Thermar, No. 50, at 4, and CE, No. 62, at 2). GAMA states that additional time is needed to evaluate the proposed revised test procedure, determine the transition of the Federal minimum efficiency requirements to reflect the revised test procedure, and to conduct tests to determine the new ratings of existing water heater models. (GAMA, No. 59, at 2). GAMA requests an interim rule, which in GAMA's opinion, would allow for a proper determination of the amendment to the Federal minimum standards and allow some relief from the burden imposed by the combination of new test procedures and Federal minimum conservation requirements.

DOE believes this proposed rule, which includes the revised test procedure, should satisfy these comments.

Off-Peak Water Heaters. A number of

comments [3] were received by DOE concerning "off-peak" water heaters. Ohio Power Company states that the inclusion of off-peak storage water heaters in the DOE testing procedures would be most welcomed. This utility believes that the widespread use of off-peak storage water heating is an efficient and cost-effective means of reducing growth in coincident peak demand, thereby delaying the need to construct new generating capacity.

Municipal Lighting Plant of Chicopee, Massachusetts commented that off-peak water heating is a necessary part of its energy management program. It urges DOE to find a way to test and rate this special design in a manner that gives the customer a fair comparison of its advantages.

New England Power Service comments that off-peak water heating is an integral part of the Load Management and Energy Conservation Program. Thus, it urges DOE to develop and implement tests designed to illustrate the energy conservation advantages of "off-peak" storage-type electric water heaters.

Bozrah Light and Power Company also contends that off-peak water heating is a necessary part of its energy management program. It urges DOE to find a way to test and rate this special design in a manner that gives the customer a fair comparison of its advantages.

[3] The following companies submitted comments supporting the development of specific test procedures for off-peak water heaters:

Commenter	Number
Robert E. Cook	27.
Northeast Utilities	68.
Kingsport Power Company	48.
Public Service Electric and Gas Company.	49.
Clinton Electric Cooperative Inc.	43 and 44.
Lower Yellowstone Rival Electric Association Inc.	34.
Brown County Rural Electrical Association.	35.
New York State Electric and Gas Corporation.	36.
The Frontier Power Company	37.
McClean Electric Cooperative	38.
City of Chicopee, Municipal Lighting Plant.	45.
New England Power Service	46 and 58.
Bozrah Light and Power Company	47.
American Electric Power Service Corporation.	39.
Illinois Electric Cooperative	40.
Thumb Electric Cooperative	41.
Joyland Power Cooperative, Inc.	42.
Difuesne Light	30.
Corn Belt Electric Cooperative Inc	31.
Eastern Illinois Power	32.
Federated Rural Electric Association	33.
Ohio Power Company	64.
Vaughn Corporation	66.
Columbus Southern Power Company	53.
Indiana and Michigan Electric Company.	54.

Kingsport Power Company comments that due to the benefits to both the customer and utility, it has implemented a rate incentive which provides a lower energy cost where an "off-peak" water heater is installed and operated during off-peak periods. Kingsport Power Company contends that "off-peak" storage water heaters require specific testing methods. Once the appropriate test methods are developed, Kingsport Power Company believe they will verify the benefits of "off-peak" water heating.

Public Service Electric and Gas Company recommends that strong consideration be given to determining a method to rate "off-peak" water heaters in order to afford customers the opportunity to obtain a fair comparison of the advantages of off-peak water heating.

Columbus Southern feels that specific testing of "off-peak" storage type electric water heaters is both warranted and desired. Columbus Southern cites ETL test results for "off-peak storage type electric water heaters," which exhibited a marked improvement in energy factor over the same water heaters tested using the current DOE test procedures. Columbus Southern believes that efficiency test procedures should exist for significant energy use concepts such as off-peak storage water heating.

Kentucky Power Company believes that DOE's consideration of specific testing for "off-peak" storage type water heaters is a definite step in the right direction. Kentucky Power, like Kingsport Power Company, has implemented a rate incentive which provides a lower energy cost to the customer for hot water heating. The company believes that "off-peak" water heaters require specific testing methods, and once the appropriate methods are developed, they will verify the benefits of this unique method of water heating.

The Indiana and Michigan Electric Company (Indiana and Michigan) believes that the implementation of test procedures for "off-peak" storage type electric water heaters would prove quite beneficial. This utility believes that the present DOE test procedure does not compensate for the reduction in standby losses due to night time deactivation and temperature setback. Indiana and Michigan contends that off-peak electric water heating plays a vital role in its commitment towards time of day rates. It believes that measures of energy consumption for these controlled water heaters would help improve and standardize the design of large capacity and time differentiated storage type electric water heaters.

Edison Electric Institute agrees with DOE that the test methods developed for "off-peak" water heaters should be restricted to electric water heaters. Edison points out that more than 100 electric utilities have programs for electric water heater control, and many others are investigating the institution of similar programs. Edison concludes by stating that there is a desire for better information on technological aspects of water heaters, and DOE test procedures for "off-peak" water heaters would be a welcome addition to these efforts.

Vaughn Corporation notes that there are two test procedure areas which will have to be considered, standby loss and first hour rating, in order for controlled water heaters to be integrated into the DOE water heater test procedure.

Vaughn states in its Hearing Testimony attachments that controlled water heating has been in use for more than sixty years, (Vaughn, Apr 23, 108). Vaughn believes there are three areas that benefit from controlled water heating:

(1) Public policy is served because less energy is consumed to provide a service that is essential in every home.

(2) Electric utility energy management is served by reducing peak requirements and also by transferring that requirement to the period of least demand where resources may be under utilized.

(3) The consumer is served through having a high quality service at a lower price.

Due to the numerous comments on this topic, NIST and DOE plan to explore various concepts for testing "off-peak" electric storage type water heaters. DOE expects to propose a rulemaking for controlled water heaters upon completion of the NIST study.

2. Amended Test Procedure

DOE is setting forth an amended test procedure which incorporates changes made to the March 1987 proposal and which was used to determine the proposed standards in today's notice.

The water heater test procedures in today's notice will be made final at the same time the standard levels are made final for water heaters. Test procedures are not proposed here for comment except in regard to the manufacturers' ability to replicate the DOE methodology in complying with the new efficiency standards.

Uniform Test Method for Measuring the Energy Consumption of Water Heaters (as Found in Appendix E to Subpart B of Part 430)

1. Definitions

1.1. "Cut-in" means the time or water temperature when a water heater thermostat has acted to increase the energy or fuel input to the heating elements, compressor, or burner.

1.2. "Cut-out" means the time or water temperature when a water heater thermostat has acted to reduce to a minimum the energy or fuel input to the heating elements, compressor, or burners to a minimum.

1.3. "Design Power Rating" means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater, expressed in kilowatts or Btu per hour as appropriate.

1.4. "Energy Factor" means a measure of water heater overall efficiency in terms of energy output compared to energy consumption over a 24 hour usage cycle.

1.5. "First Hour Rating" means the amount of hot water the water heater can supply in one hour of operation.

1.6. "Heat Trap" means a device which can be integrally connected, or independently attached, to the hot and/or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to thermal convection between the water heater tank and its connecting pipes.

1.7. "Recovery Efficiency" means the ratio to energy delivered to the water to the energy content of the fuel supplied to the water heater.

1.8. "Standby" means the time during which water is not being withdrawn from the water heater. There are two standby time intervals used within this test procedure: $T_{stby.\,1}$ represents the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test; $T_{stby.\,2}$ represents the total time during which the water heater was in the standby mode during the entire 24 hour test.

1.9. "Gas fueled storage water heater" means a water heater which utilizes gas as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180°F with an input of 75,000 Btu per hour or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 100 gallons.

1.10. "Electric storage water heater" means a water heater which utilizes electricity as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180°F with an input of 12 kilowatts or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 120 gallons.

1.11. "Oil storage water heater" means a water heater which utilizes oil as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180°F with an energy input of 105,000 Btu per hour or less, and which has a manufacturers specified storage capacity of 50 gallons or less.

1.12. "Gas fueled instantaneous water heater" means a water heater which utilizes gas as the energy source controlled manually or automatically by a water flow activated control or a combination of water flow and thermostatic control, and which has an input greater than 50,000 Btu per hour and less than 200,000 Btu per hour, and a manufacturers specified storage capacity of less than 2 gallons.

1.13. "Heat pump water heater" means a water heater which utilizes electricity as the energy source with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, and which is designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all auxiliary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

1.14. " ASHRAE Standard 41.1–74" means the standard published in 1974 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. and titled Standard Measurement Guide: Section on Temperature Measurements.

1.15. "ASTM–D–2156–80" means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

2. Test Conditions

2.1 *Installation Requirements.* Tests shall be performed with the water heater and instrumentation installed in accordance with section 4.

2.2 *Ambient Air Temperature.* The ambient air temperature, shall be controlled to a value between 65.0 °F and 70.0 °F on a continuous basis. For heat pump water heaters maintain the dry bulb temperature at 67.5±1 °F. Additionally, for heat pump water heaters the relative humidity shall be maintained between 49 and 51 percent.

2.3. *Supply Water Temperature.* The temperature of the water being supplied to the water heater shall be maintained at 58±2 °F throughout the test.

2.4 *Storage Tank Temperature.* The average temperature of the water within the storage tank shall be set to 135±5 °F.

2.5 *Supply Water Pressure.* During the test when water is not being withdrawn, the supply pressure shall be maintained between 40 psig and the maximum allowable pressure specified by the water heater manufacturer.

2.6. *Electrical and/or Fossil Fuel Supply.*

2.6.1. *Electrical.* Maintain the electrical supply voltage to within ±1 percent of the center of the voltage range specified by the water heater and/or heat pump manufacturer.

2.6.2. *Natural Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 7 to 10 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ±10% of the manufacturer's specified manifold pressure. Use natural gas with a higher heating value of approximately 1,025 Btu per standard cubic foot.

2.6.3. *Propane Gas.* Maintain the supply pressure in accordance with the manufacturer's specifications. If the supply pressure is not specified, maintain a supply pressure of 11 to 13 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be within ±10% of the manufacturer's specified manifold pressure. Use propane gas with a higher heating value of approximately 2,500 Btu per standard cubic foot.

2.6.4. *Fuel Oil Supply.* Maintain an uninterrupted supply of fuel oil. Use fuel oil with a heating value of approximately 138,700 Btu per gallon.

3. Instrumentation

3.1. *Pressure Measurements.* Pressure measuring instruments shall have an error no greater than the following values:

Item measured	Instrument accuracy	Instrument precision
Gas pressure	± 0.1 inch of water column.	± 0.05 inch of water column.
Atmospheric pressure.	± 0.1 inch of mercury column.	± 0.05 inch of mercury column.
Water pressure	± 1.0 pounds per square inch.	± 0.50 pounds per square inch.

3.2. *Temperature Measurement.*

3.2.1. *Measurement.* Temperature measurements shall be made in accordance with the Standard Measurement Guide: Section on Temperature Measurements, ASHRAE Standard 41.1–74.

3.2.2. *Accuracy and Precision.* The accuracy and precision of the instruments, including their associated readout devices, shall be within the limits as follows:

Item measured	Instrument accuracy	Instrument precision
Air dry bulb temperature	±0.2 °F	±0.1 °F.
Air wet bulb temperature	±0.2 °F	±0.1 °F.
Inlet and outlet water temperatures	±0.2 °F	±0.1 °F.
Storage tank temperatures	±0.5 °F	±0.25 °F.

3.2.3. *Scale Division.* In no case shall the smallest scale division of the instrument or instrument system exceed 2 times the specified precision.

3.2.4. *Temperature Difference.* Temperature difference between the entering and leaving water may be measured with any of the following:

a. A thermopile
b. Calibrated resistance thermometers
c. Precision thermometers
d. Calibrated thermistors
e. Calibrated thermocouples
f. Quartz thermometers

3.2.5. *Thermopile Construction.* If a thermopile is used, it shall be made from calibrated thermocouple wire taken from a single spool. Extension wires to the recording device shall also be made from that same spool.

3.2.6. *Time Constant.* The time constant of the instruments used to measure the inlet and outlet water temperatures shall be no greater than 5 seconds.

3.3. *Liquid Flow Measurements.* The accuracy of the liquid flow rate measurement, using the calibration if furnished, shall be equal to or less than ±1% of the measured value in mass units per unit time.

3.4. *Electric Energy.* The electrical energy used shall be measured with an instrument and associated readout device that are accurate within ±% of the reading or 15 Wh, whichever is greater.

3.5. *Fossil Fuels.* The quantity of fuel used by the water heater shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading.

3.6. *Mass Measurements.* Mass measurements shall be made measured with instruments that are accurate within ±0.10% of the reading of 0.1 lbm, whichever is greater.

3.7. *Heating Value.* The higher heating value of the natural gas, propane, or fuel oil shall be measured with an instrument and associated readout device that is accurate within ±1% of the reading. The heating value of natural gas and propane must be corrected for local temperature and pressure conditions.

3.8. *Time.* The elapsed time measurements shall be measured with an instrument that is accurate within ±0.5 seconds per hour.

4. Installation

4.1. *Water Heating Mounting.* A water heater designed to be free standing shall be installed according to the manufacturer's directions on a ¾ inch thick plywood platform supported by three 2 x 4 inch runners. If the water heater is not approved for installation on combustible flooring, suitable non-combustible material shall be placed between it and the platform. For heat pump water heaters without a storage tank supplied by the manufacturer, connections shall be made with a storage tank as described in section 4.9.3 and in accordance with manufacturer-published installation instructions. The storage tank and heat pump section shall be placed on platform(s) constructed as previously described. If installation materials are not provided by the heat pump manufacturer, use uninsulated 8 foot long connecting hoses, having an inside diameter of ⅝ inch. Wall mounted water heaters shall be installed in accordance with manufacturer-published installation instructions on a simulated wall section made from ¾ inch plywood and 2 x 4 inch studs. Placement in the test room shall be in an area protected from drafts.

4.2. *Water Supply.* The water supply shall be capable of delivering water at conditions as specified in section 2.

4.3. *Water Inlet and Outlet Configuration.* Inlet and outlet piping connections shall be configured as illustrated in Figure 1, 2, or 3. Copper tubing, the same size as the connections on the water heater shall be connected to the tank and extend 24 inches in length. Unions may be utilized to facilitate installation and removal of the piping arrangements. A pressure gauge and diaphragm expansion tank shall be installed in the supply water piping at a location upstream of the 24 inch cold water inlet pipe. An appropriately rated pressure and temperature relief value shall be installed on all water heaters at the port specified by the manufacturer. Discharge piping for the relief valve shall be nonmetallic. If heat traps and/or piping insulation and/or pressure relief valve insulation are supplied with the water heater, then they shall be installed for testing. Clearance shall be provided such that none of the piping contacts other surfaces in the test room.

4.4. *Fuel and/or Electrical Power and Energy Consumption.* Install one or more instruments which measure, as appropriate, the quantity and rate of electrical energy and/or fossil fuel consumption in accordance with section 3.

4.5. *Internal Storage Tank Temperature Measurements.* Install six temperature measurement sensors inside the water heater tank with a vertical distance of at least four inches between successive sensors. A temperature sensor shall be positioned at the vertical midpoint of each of the six equal volume nodes with the tank. Nodes designate the equal volumes used to evenly partition the total volume of the tank. As much as is possible, the temperature sensor should be positioned away from any heating elements, anodic protective devices, tank walls, and flue pipe walls. If the tank cannot accommodate six temperature sensors and meet the installation requirements specified above, install the maximum number of sensors which comply with the installation requirements. The temperature sensors shall be installed either through the anodic device or relief valve opening. If installed through the relief valve opening, a tee fitting shall be installed such that the relief valve fitting is installed as close as possible to its original location. Added fittings shall be covered with thermal insulation having and R value of 4 hr•ft²•°F/Btu.

4.6. *Ambient Temperature.* The ambient air temperature shall be measured approximately at the vertical mid-point of the heater and approximately 2 feet from the surface of the water heater. The sensor shall be shielded against radiation.

4.7. *Inlet and Outlet Water Temperature Measurements.* Install temperature sensors in the cold-water inlet pipe and hot-water outlet pipe as shown in Figure 1, 2, or 3, as applicable.

4.8. *Flow Control.* A flow control valve shall be installed to provide flow as specified in within section 5.

4.9. *Flue Requirements.*

4.9.1. *Oil-Fired Water Heaters.* Establish a draft at the flue collar as specified in the manufacturer's literature. Establish the draft by using a sufficient length of vent pipe connected to the water heater flue outlet and directed vertically upward. For an oil-fired water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of vent pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions, using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.2. *Gas-Fired Water Heaters.* Establish a natural draft in the following manner. For gas-fired water heaters having a vertically discharging draft hood outlet, a 5 foot vertical vent pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For gas-fired water heaters having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5 foot length of vent pipe shall be connected to the elbow and oriented to discharge vertically upward.

Direct vent gas-fired water heaters shall be installed with venting equipment specified in the manufacturer's instructions using the minimum vertical and horizontal lengths of vent pipe recommended by the manufacturer.

4.9.3. *Heat Pump Water Heater Storage Tank.* The tank to be used for testing a heat pump water heater without a tank supplied by the manufacturer shall be an electric storage type water heater having a volume of 47.0 gallons ± 1 gallon with an Energy Factor of 0.87±.01 as determined in accordance with section 6.1.7 with two 4.5 kW heating elements controlled in such a manner as to prevent both elements from operating simultaneously.

5. Test Procedures

5.1. *Storage Tank and Heat Pump Water Heaters.*

5.1.1. *Determination of Storage Tank Volume.* Determine the storage capacity, V_{st}, of the water heater under test, in gallons, by subtracting the tare weight—measured while the tank is empty—from the gross weight of a full tank of water at 58 °F with all air eliminated and line pressure applied as described in section 2.5 and dividing the resulting net weight by the density of water at 58 °F, 8.214 lbm/gal.

5.1.2. *Setting the Thermostat for a Thermostatically Operated Water Heater.* Starting with a tank of supply water, initiate normal operation of the water heater. After cutout, observe the mean tank temperature (based on the six temperature sensors) every minute until the maximum value is observed. Determine whether this maximum value of the mean tank temperature is within the range of 135 °F±5 °F. If not, turn off the water heater, adjust the thermostat, and refill the tank with supply water. Then, initiate normal operation of the water heater, and once again determine the maximum mean tank temperature after cut-off. Repeat this sequence until the maximum mean tank temperature after cut-out is within the range of 135 °F±5 °F. If a water heater has two thermostats, the thermostat which controls the upper heating element shalll be set first to yield a maximum water temperature of 135 °F±5 °F as measured by the temperature tank sensors above the upper heating element. The thermostat which controls the lower heating element shall then be set to yield a maximum mean tank temperature of 135 °F ± 5°F. For heat pump water heaters, which control an auxiliary resistance element, the thermostat shall be set in accordance with the manufacturer's installation instructions.

5.1.3. *Power Input Determination.* For all water heaters except electric types having immersed heating elements and initiate normal operation and determine the power input, P, to the main burners (including pilot light power, if any) after 15 minutes of operation. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure shall be set within ±10% of that recommended by the manufacturer. For oil fired water heaters the fuel pump pressure shall be within ±10% of the manufacturer's specified pump pressure. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2% of the value specified by the manufacturer. For an oil-fired water heater, adjusted the burner to give a CO_2 reading recommended by the manufacturer and an hourly Btu rating that is within ±2% of that specified by the manufacturer. Smoke in the flue may not exceed No. 1 smoke as measured by the procedure in ASTM–D–2156–80. Gas- and oil-fired water instantaneous water heaters shall have the burners adjusted to the manufacturer's maximum firing rate value.

5.1.4. *First Hour Rating Test.* Establish normal water heater operation with the maximum mean tank temperature within the range specified in section 2.1.4. Withdraw water until the electrical heater(s) and heat pump, if present, or burner(s) are activated. Cease drawing water and wait until the thermostat has acted to reduce the electrical power or fuel input to the water heater. If the water heater incorporates a heat pump, wait until both the heat pump and electrical heating element(s) have ceased to supply energy to the storage tank. Continue to wait until the maximum storage tank temperature has been achieved. Record the time, oil, gas and/or electrical meter readings as appropriate. Do not interrupt electrical power and/or fuel to the water heater. The rate of water withdrawal shall be 3.00±0.25 gallons per minute. Draw and collect water withdrawn from the water heater in a suitable container for the purpose of determining its weight at the conclusion of the test. During the draw record the outlet fluid temperature beginning 15 seconds after the start and at every subsequent 5 second interval throughout the duration of each draw. Alternatively, a water meter may be used to directly measure the volume of water withdrawn. Record the maximum outlet temperature which occurs during the draw as T_{max}. The withdrawal of water shall continue until the outlet temperature drops to a value 25 °F below T_{max}, defined as T_{min}, at which time the draw shall be terminated. Record the average outlet temperature and mass removed as $\bar{T}_{del,1}$ and M_1, respectively. If the thermostat acts to reduce the supply of fuel to the main burner or electrical input to the upper heating element of a multiple element electric water heater, or electrical input to a water heater having a single element or multiple elements which operate simultaneously, before one hour has elapsed, initiate a second draw. During the draw record the outlet fluid temperatures beginning 15 seconds after initiating the draw and at every subsequent 5 second interval throughout the duration of each draw until the outlet temperature drops to T_{min}, at which time the draw is terminated. Record the average outlet temperatures as well as the mass removed. Continue this sequence of events until one hour has elapsed, at which time power and/or fuel supplied to the water heater is terminated. If a draw is currently taking place, continue the draw until the outlet temperature reaches T_{min}. If a draw is not taking place at the end of one hour, a final draw is conducted until the outlet temperature drops to a value of T_{min}. In either case, record the outlet temperatures and the mass removed during the final draw.

5.1.5. *24 Hour Simulated Use Test.* During the simulated use test, a total of 64.3 gallons are removed. With the water heater turned off, fill the water heater with supply water and apply pressure as described in section 2.1.5. Turn on the water heater and associated heat pump unit, if present. Wait until cutout occurs at 135 °F± 5°F, as specified in section 2.1.4. After the cutout occurs, measure the mean tank temperature using the temperature sensors described in section 4.5 every minute until the maximum mean storage tank temperature is achieved. The water heater may be operated through up to three successive cycles of drawing 10 gallons per draw, permitting recovery between each draw, prior to the start of the test. Record at this time (designated as $\tau=0$), the mean tank temperature ($\bar{T}_o$), and the oil, gas, and electrical energy measurements as appropriate. Begin the 24 hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage, 64.3 gallons. Record the average storage tank and ambient temperature every 15 minutes throughout the 24 hour simulated use test unless recovery or a draw is occurring. At elapsed time intervals of one, two, three, four and five hours from $\tau=0$, initiate additional draws removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any single draw being ±0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to 64.3±1. gallons.

All draws during the simulated 3.0±0.25 gallons per minute. Measurements of the inlet and outlet temperatures shall be made beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of each draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the maximum mean tank temperature observed after cut-out, $T_{max,1}$, and the energy consumed, Q_r for oil, gas, and heat pump water heaters including auxiliary energy such as pilot lights, pumps, fans, etc. For heat pump water heaters Q_r, is the sum of the energy consumed by the heat pump and the electrical heating element(s).

At the end of the recovery period following the sixth draw, record the total electric and/or fuel energy consumption, Q_{su}, and the scale reading or the meter reading, as appropriate. If a water scale is used, determine the net weight of the water withdrawn, M_{FHR} in pounds. Record the maximum value of the mean tank temperature after cutout as $\bar{T}_{su}$. Except as noted below, allow the water heater to remain in the standby mode until 24 hours have elapsed from the start of the test, $\tau=0$. Prevent the water heater from beginning a recovery cycle during the last hour of the test by turning off the electric power to the electrical heating elements and heat pump, if present, or by turning down the fuel supply to the main burner at an elapsed time of 23 hours. If a recovery is taking place at an elapsed time of 23 hours, wait until the recovery is complete before reducing the electrical and/or fuel supply to the water heater. At 24 hours, record the mean temperature, $\bar{T}_{24}$, and the electric and/or fuel instrument readings. Determine the total energy consumption during the entire 24 hour simulated use test, Q. Record the time interval between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test as $\tau_{stby,1}$. Record the time during which water was not being withdrawn from the water heater during the entire 24 hour period as $\tau_{stby,2}$.

5.2. *Instantaneous Water Heaters*

5.2.1. *Setting the Outlet Discharge Temperature.* Initiate normal operation of the water heater at the full input rating. Monitor the discharge water temperature and set to a value of 135 °F ±5 °F in accordance with the manufacturer's instructions. If the water heater is not capable of providing 3.00 ± 0.25 gallons per minute then adjust the flow rate as necessary to achieve the specified discharge water temperature. Record the corresponding flow rate as V_{max}.

If the instantaneous water heater incorporates a controller which permits continuous burner operation at a reduced input rate, adjust the flow rate as necessary to achieve a discharge water temperature of 135 °F±5 °F while maintaining the minimum input rate. Record the corresponding flow rate, V_{min}. If an outlet temperature of 135 °F±5 °F cannot be achieved at the minimum allowable flow rate permitted by the instantaneous water heater, record the flow rate as V_{min} and the outlet temperature as T_{min}.

5.2.2. *Power Input Determination.* For oil and gas flow actuated water heaters, adjust the burners to the maximum firing rate value specified by the manufacturer.

5.2.3. *First Hour Rating Test for Instantaneous Water Heaters.* Establish normal heater operation at the maximum input rate with the discharge water temperature set in accordance with section 5.2.1. Record the time, oil, and/or gas meters as appropriate. Do not interrupt electrical or fuel to the water heater. Draw and collect water withdrawn from the water heater, while recording the inlet and outlet fluid temperatures beginning 15 seconds after the draw is initiated and at every subsequent 5 second interval throughout the duration of the draw in a suitable container for the purpose of determining its weight at the conclusion of the test. Alternatively, a water meter may be used to directly measure the value of water withdrawn. At the end of one hour terminate the draw. Determine the mass of water withdrawn, M_{FHR}, in pounds, or the volume of water withdrawn, V_{FHR}, in gallons with an error no greater than 2 percent.

5.2.4. *24 Hour Simulated Use Test*

5.2.4.1. *Fixed Input Instantaneous Water Heaters.* Establish normal operation with the discharge water temperature and flow rate set to values of 135 °F ± 5 °F and V_{max}, respectively. Record the oil, gas, and

electrical energy measurements, as appropriate. Begin the 24 hour simulated use test by drawing an amount of water out of the water heater equivalent to one-sixth of the daily hot water usage, 64.3 gallons. At elapsed time intervals of one, two, three, four, and five hours from $\tau=0$, initiate additional draws removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any single draw being ± 0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to 64.3±1.0 gallons.

Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after the draw is initiated and at every 5 second interval throughout the duration of the draw. The arithmetic mean of the hot water discharge temperature and the cold water inlet temperature shall be determined for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the energy consumed, Q_r. Allow the water heater to remain in the standby mode until exactly 24 hours have elapsed from the start of the test, $\tau=0$. At 24 hours, record the electric and/or fuel instrument readings. Determine the energy consumption during the entire 24 hours simulated use test, Q.

5.2.4.2. *Variable Input Instantaneous Water Heaters.* If the instantaneous water heater incorporates a controller which permits continuous burner operation at a reduced input rate, the first three draws shall be conducted using the maximum flow rate, V_{max}, while removing an amount of water equivalent to one-sixth of 64.3 gallons, with the maximum allowable deviation for any one of the three draws being ±0.5 gallons. The second three draws shall be conducted at V_{min}. If an outlet temperature of 135 °F ± 5 °F could not be achieved at the minimum flow rate permitted by the instantaneous water heater, the last three draws should be lengthened such that the volume removed is equivalent to

$$V_{4,5,6} = \frac{(64.3)}{6} \cdot \left[\frac{77\ ^\circ F}{T_{min} - 58\ ^\circ F} \right]$$

with the maximum allowable definition for any one of the three draws being ±0.5 gallons. The quantity of water drawn during the sixth draw shall be increased or decreased as necessary such that the total volume of water withdrawn shall be equal to $32.15+3^*V_{4,5,6}\pm1.0$ gallons. Measurements of the inlet and outlet water temperatures shall be made beginning 15 seconds after the draw is initiated and at every 5 second interval throughout the duration of the draw. Determine the arithmetic mean of the hot water discharge temperature and the cold water inlet temperature for each draw. Record the scale or meter reading, as appropriate, after each draw. At the end of the recovery period following the first draw, record the energy consumption, $Q_{r,max}$. Record the energy consumed prior to the fourth draw and at the end of the recovery period following the fourth draw, $Q_{r,min}$.

Allow the water heater to remain in the standby mode until exactly 24 hours have elapsed from the start of the test, $\tau=0$. At 24 hours, record the electric and/or fuel instrument readings. Determine the energy consumption during the entire 24 hour simulated use test, Q.

6. Computations

6.1 *Storage Tank Water Heaters.*

6.1.1. *Storage Tank Capacity.* The storage tank capacity is computed using the following:

$V_{st} = (W_f - W_t)/\rho$

where V_{st} is the storage capacity of the water heater, gallons

W_f is the weight of the storage tank completely filled with water, lbm

W_t is the tare weight of the empty storage tank, lbm

ρ is the density of water at the appropriate temperature, lbm/gal.

6.1.2. *First Hour Rating Computation.* Compute the first hour rating as

$$F_{hr} = \sum_{i=1}^{n} \frac{M_i(\bar{T}_{del,i} - (T_{max} - 77\ ^\circ F))}{\rho(T_{max} - (T_{max} - 77\ ^\circ F))}$$

Which may be expressed as

$$F_{hr} = \sum_{i=1}^{n} \frac{M_i(\bar{T}_{del,i} - (T_{max} - 77\ ^\circ F))}{\rho(77\ ^\circ F))}$$

where M_i represents the mass removed during the ith draw of the first hour rating test, lbm

$\bar{T}_{del,i}$ is the average delivery temperature for the ith draw which occurred during the first hour rating test, °F

T_{max} is the maximum outlet temperature recorded during the first draw of the first hour rating test, °F

ρ represents the density of water at the average delivery temperature, lbm/gal

and n represents the number of draws which occur during the one hour period

if a water meter is used in lieu of a scale, the first hour rating is

$$F_{hr} = \sum_{i=1}^{n} \frac{V_i(\bar{T}_{del,i} - (T_{max} - 77\ ^\circ F))}{77\ ^\circ F}$$

where V_i represents the volume removed during the ith draw of the first hour rating test, gal

6.1.3. *Recovery Efficiency.* The recovery efficiency for gas, oil, and heat pump storage type water heaters is computed as

$$\eta_r = \frac{M_1\, C_{p1}\, (\bar{T}_{del,1} - \bar{T}_{in,1}) + V_{st}\rho C_{p2}\, (T_{max,1} - \bar{T}_o)}{Q_r}$$

where M_1 is the mass withdrawn during the first draw, lbm

C_{p1} is the specific heat of water at the average temperature $(\bar{T}_{del,1}\ T_{in,1})/2$, Btu/lbm °F

$\bar{T}_{del,1}$ is the average delivery temperature for the first draw, °F

$\bar{T}_{in,1}$ is the average inlet temperature for the first draw, °F

V_{st} is the storage tank capacity, gal

ρ is the density of water at the average temperature $(T_{max,1} + \bar{T}_o)/2$, lbm/gal

C_{p2} is the specific heat of water at the average temperature $(T_{max,1} + \bar{T}_o)/2$, Btu/lbm °F

$T_{max,1}$ is the maximum mean tank temperature recorded after cutout following the first draw, °F

$\bar{T}_o$ is the maximum mean tank temperature recorded prior to the first draw, °F

and Q_r is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu. (Electrical auxiliary energy shall be converted to thermal energy using the following conversion −1kWh=3412.76 Btu.)

The recovery efficiency for electric water heaters with immersed heating elements is assumed to be 98 percent.

6.1.4. *Hourly Standby Losses.* The hourly standby losses are computed as

$$Q_{hr} = \left[Q_{stby} - \frac{MC_p(\bar{T}_{24} - \bar{T}_{ss})}{\eta_r} \right] / \tau_{stby,1}$$

where Q_{hr} is the hourly standby energy losses of the water heater, But/hr

Q_{stby} is the total energy consumed by the water heater between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, Btu

M is the mass of the water within the storage tank, lbm

C_p is the specific heat of water at the average temperature $(\bar{T}_{24} + \bar{T}_{ss})/2$, Btu/lbm °F

$\bar{T}_{24}$ is the mean tank temperature at the end of the 24 hour test period, °F

$\bar{T}_{ss}$ is the maximum mean tank temperature observed after the sixth draw, °F

and $\tau_{stby,1}$ is the elapsed time between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, hours

The standby heat loss coefficient for the tank is computed as

$$UA = \frac{Q_{hr}}{\bar{T}_{t-stby} - \bar{T}_{a-stby}}$$

where $\bar{T}_{t-stby}$ is the average storage tank temperature between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, Btu

$\bar{T}_{a-stby}$ is the average ambient temperature between the time at which the maximum mean tank temperature is observed after the sixth draw and the end of the 24 hour test period, Btu

and UA is the standby heat loss coefficient of the storage tank, BTU/hr °F

6.1.5. *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d is computed as

$$Q_d = Q - \frac{C_p M(\bar{T}_{24} - \bar{T}_o)}{\eta_r}$$

where Q is the total energy used by the water heater during the 24 hours simulated use test including auxiliary energy such as pilot lights, pumps, fans, etc., Btu

C_p is the specific heat of water, Btu/lbm °F

M is the mass of water within the storage tank, lbm

$\bar{T}_{24}$ is the average tank temperature at the conclusion of the 24 hours simulated use test, °F

$\bar{T}_o$ is the average tank temperature at the beginning of the 24 hours simulated use test, recorded one minute before the first draw is initiated °F

and η_r is the recovery efficiency of the hot water heater, dimensionless.

6.1.6. *Adjusted Daily Water Heating Energy Consumption.* The adjusted daily water heating energy consumption, Q_{da} takes into account that the temperature difference between the storage tank and surrounding ambient temperature may not be the nominal value of 67.5 °F (135°F − 67.5 °F) due to the 10 °F allowable variation in storage tank temperature, 135 ± 5 °F, and the 5 °F allowable variation in surrounding ambient temperature 65 °F to 70 °F. The adjusted daily water heating energy consumption is computed as

$$Q_{da} = Q_d - [(\bar{T}_{stby} - \bar{T}_{a-stby}) - (135\ ^\circ F - 67.5\ ^\circ F)]UA\tau_{stby,2}$$

where Q_{da} is the adjusted daily water heating consumption, Btu

$\bar{T}_{stby}$ is the mean tank temperature during the total standby portion of the 24 hour test, °F

$\bar{T}_{a-stby}$ is the average ambient temperature during the total standby portion of the 24 hour test, °F

UA is the standby heat loss coefficient for the storage tank, Btu/hr°F

and $\tau_{stby,2}$ is the number of hours during which the water beater was in the standby mode, during the entire 24 hour test, hours

A modification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77 °F (135 °F − 58 °F). The following equations adjust the experimental data to a nominal 77 °F temperature rise.

The energy used to heat water, Btu per day, may be computed as

$$Q_{hrw} = \sum_{i=1}^{6} \frac{M_i C_{pi}(\bar{T}_{del,i} - T_{in,i})}{\eta K_r}$$

The energy required to heat the same quantity of water over a 77 °F temperature rise, Btu per day, is

$$Q_{hrw,77} = \sum_{i=1}^{6} \frac{M_i C_{pi}(135\ ^\circ F - 58\ ^\circ F)}{\eta_r}$$

The difference between these two values is $Q_{hrwD} = Q_{hrw,77} - Q_{hrw}$ which must be added to the adjusted daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature difference between the storage tank and ambient temperature may not be 67.5 °F and the temperature rise across the storage tank may not be 77 °F is $Q_{dm} = Q_{da} + Q_{hrwD}$

6.1.7. *Energy Factor.* The energy factor, E_f, is computed as

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi}\ (135\ ^\circ F - 58\ ^\circ F)}{Q_{dm}}$$

where Q_{dm} is the modified daily water heating energy consumption as computed in accordance with Section 6.1.6, Btu where M_i is the mass withdrawn for ith draw (i = 1 to 6), 1bm C_{pi} is the specific heat of water, Btu/1bm °F.

6.1.8. *Annual Energy Consumption*

The annual energy consumption for storage type and heat pump water heaters is computed as $E_{annual} = Q_{dm} * 365$ where Q_{dm} is the modified daily energy consumption value, Btu per day and 365 is the number of days within a year, days.

6.2. *Instantaneous Hot Water Heoters.*

6.2.1. *First Hour Rating Computation.* Compute the first hour rating as

$$F_{hr} = \frac{M(\bar{T}_{del} - (T_{max} - 77\ ^\circ F))}{\rho(T_{max} - (T_{max} - 77\ ^\circ F))}$$

which may be expressed as

$$F_{hr} = \sum_{i=1}^{n} \frac{M(\bar{T}_{del} - (T_{max} - 77\ ^\circ F))}{\rho(77\ ^\circ F)}$$

where M represents the mass removed during the one hour continuous draw, 1bm

$\bar{T}_{del}$ is the average delivery temperature, °F; T_{max} is the maximum outlet temperature recorded during the draw, °F and ρ represents the density of water at the average delivery temperature, 1bm/gal.

If a water meter is used in lieu of a scale the first hour rating is computed as

$$F_{hr} = \frac{V(\bar{T}_{del} - T_{mm} - 77\ ^\circ F))}{77\ ^\circ F}$$

where V represents the volume of water removed during one hour continuous draw, gal

6.2.2. *Recovery Efficiency*

6.2.2.1. *Fixed Input Instantaneous Water Heaters.* The recovery efficiency is computed as

$$\eta_r = \frac{M_1 C_{p1}\ (\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_r}$$

where M_1 is the mass withdrawn during the first draw, 1bm

C_{p1} is the specific heat of water at the average temperature $(\bar{T}_{del,1} + T_{in,1})/2$, Btu/lbm °F

$\bar{T}_{del,1}$ is the average delivery temperature for the first draw, °F

$T_{in,1}$ is the average inlet temperature for the first draw, °F and Q_r is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, pumps, fans, etc., Btu.

6.2.2.2. *Variable Input Instantaneous Water Heaters.* For instantaneous water heaters which have a variable firing rate two

recovery efficiency are computed, one at the maximum input rate and one at the minimum input rate. The recovery efficiency used in subsequent computations is taken as the average of these two values. The maximum recovery efficiency is computed as

$$\eta_{r,max} = \frac{M_1 C_{p1} (\bar{T}_{del,1} - \bar{T}_{in,1})}{Q_{r,max}}$$

where M_1 is the mass withdrawn during the first draw, lbm.
C_{p1} is the specific heat of water at the average temperature $(\bar{T}_{del,1} + \bar{T}_{in,1})/2$, Btu/lbm °F
$\bar{T}_{del,1}$ is the average delivery temperature for the first draw, °F
$\bar{T}_{in,1}$ is the average inlet temperature for the first draw, °F, and $Q_{r,max}$ is the total energy used by the water heater between cutout prior to the first draw and cutout following the first draw, including auxiliary energy such as pilot lights, Btu

The minimum recovery efficiency is computed as

$$\eta_{r,min} = \frac{M_4 C_{p4} (\bar{T}_{del,4} - \bar{T}_{in,4})}{Q_{r,min}}$$

where M_4 is the mass withdrawn during the fourth draw, lbm
C_{p4} is the specific heat of water, Btu/lbm°F
$\bar{T}_{del,4}$ is the average delivery temperature for the fourth draw, °F.
$\bar{T}_{in,4}$ is the average inlet temperature for the first draw, °F, and $Q_{r,min}$ is the total energy consumed immediately prior to the fourth draw and cutout following the fourth draw, including auxiliary energy such as pilot lights, Btu.

The recovery efficiency is computed as

$$Q_{HW} = \sum_{i=1}^{6} \frac{M_i C_{pi} (\bar{T}_{del,i} - T_{in,i})}{\eta_r}$$

C_{pi} is the specific heat of water computed at a temperature of (58 °F + 135 °F)/2, Btu/lbm °F
$\bar{T}_{del,i}$ is the average delivery temperature for the ith draw, °F and $\bar{T}_{in,i}$ is the average inlet temperature for the ith draw, °F.

6.2.5. *Annual Energy Consumption.* The annual energy consumption for instantaneous type water heaters is computed as

$E_{annual} = Q_{dm} * 365$

where Q_{dm} is the modified daily energy consumption, Btu per day
and 365 is the number of days within a year, days.

7. Ratings for Untested Models

In order to relieve the test burden to manufacturers who offer water heaters which differ only in fuel type or power input, ratings for untested models may be established in accordance with the following procedures. In lieu of the following procedures a manufacturer may elect to test the unit for which a rating is sought.

7.1 *Gas Water Heaters.* Ratings obtained for gas water heaters using natural gas can be used for an identical water heater which utilizes propane gas if the input ratings are within 10 percent.

The energy required to heat the same quantity of water over a 77 °F temperature rise is

$$Q_{HW,77} = \sum_{i=1}^{6} \frac{M_i C_{pi} (135\ °F - 58\ °F)}{\eta_r}$$

The difference between these two values is $Q_{HWD} = Q_{HW,77} - Q_{hw}$ which must be added to the daily water heating energy consumption value. Thus, the daily energy consumption value which takes into account that the temperature rise across the storage tank may not be 77 °F is $Q_{dm} = Q_d + Q_{HWD}$.

6.2.4. *Energy Factor.* The energy factor, E_f, is computed as

$$E_f = \sum_{i=1}^{6} \frac{M_i C_{pi} (135\ °F - 58\ °F)}{Q_{dm}}$$

where Q_{dm} is the daily water heating energy consumption as computed in accordance with section 6.2.3, Btu.
M_i is the mass associated with the ith draw, lbm.

$$\eta_r = \frac{\eta_{r,max} + \eta_{r,min}}{2}$$

6.2.3. *Daily Water Heating Energy Consumption.* The daily water heating energy consumption, Q_d is computed as $Q_d = Q$ where Q is the energy used by the flow actuated water heater during the 24 hour simulated use test.

A motification is also needed to take into account that the temperature difference between the outlet water temperature and supply water temperature may not be equivalent to the nominal value of 77 °F (135 °F − 58 °F). The following equations adjust the experimental data to a nominal 77 °F temperature rise.

The energy used to heat water may be computed as

7.2 Electric Water Heaters

7.2.1 *First Hour Rating.* If an electric storage type water heater is available with more than one input rating, the manufacturer shall designate the standard input rating and the water heater need only be tested with heating elements at the designated standard input ratings. The first hour ratings for units having power input rating less than the designated standard input rating shall be assigned a first hour rating equivalent to the first draw of the first hour rating for the electric water heater with the standard input rating. For units having power inputs greater than the designated standard input rating, the first hour rating shall be equivalent to that measured for the water heater with the standard input rating.

7.2.2. *Energy Factor.* The energy factor for identical electric storage type water heaters, with the exception of heating element wattage, may use the energy factor obtained during testing of the water heater with the designated standard input rating.

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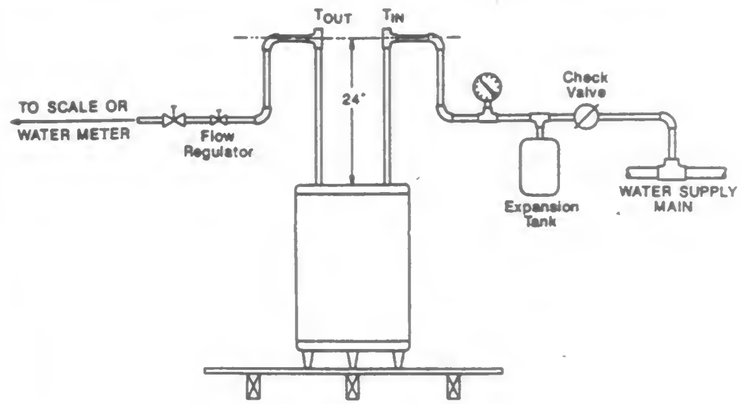


Figure 1

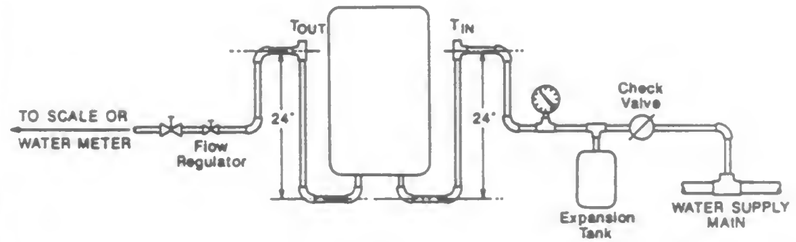


Figure 2

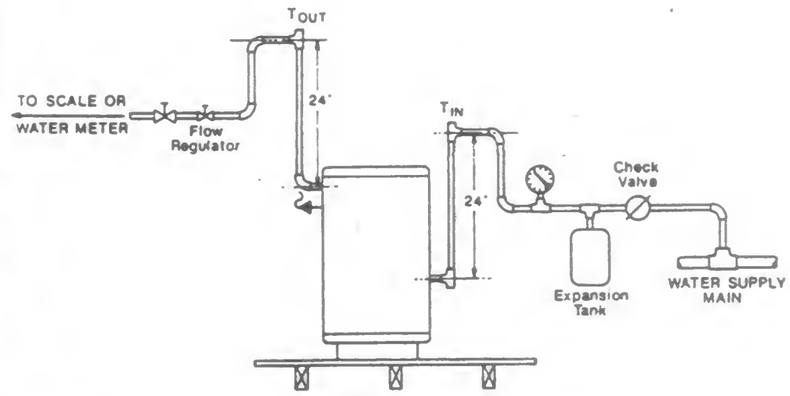


Figure 3

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III. Environmental Impact, Regulatory Impact, Regulatory Flexibility, Federalism and Takings Assessment Reviews

a. Environmental Review

Pursuant to Section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

The Department is proposing to amend energy conservation standards for water heaters in accordance with amendments to test procedures for water heaters.

The Department believes the proposed revision would not be environmentally significant since it will not result in any environmental impacts.

For applications seeking a temporary small business exemption as well as for all petitions seeking exemption from Federal standards or supersession of State standards, DOE will conduct an appropriate National Environmental Policy Act (NEPA) review on a case-by-case basis.

The Department believes that the proposed action would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, and that neither an Environmental Impact Statement nor an Environmental Assessment is required for the propose rule.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purpose of Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on two factors. First, this proposed standard is only transposing the existing NAECA standard levels due to test procedure modifcations. Second, the costs of complying with the testing requirements on which the proposed rule is based are not significant. For example, there would be no additional testing costs dealing with water heaters. Instead, testing cost may decrease since the new test procedures reduce the test time from a 48-hour test to a 24-hour test.

c. Regulatory Flexibility Review

The Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of water heaters. Since the proposed rule does not affect the stringency of the water heater standards prescribed by NAECA, DOE believes that this rule would not have an affect on water heater manufacturers, including small manufacturers. Therefore, DOE certifies that the proposed rules, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that today's regulation, when finalized, would have on State governments. It would initially preempt inconsistent State regulations. However, DOE has concluded that the initially preemptive effect is not sufficient to warrant preparation of a federalism assessment for two reasons. First, DOE does not have discretion under the Act to avoid promulgating a preemptive regulation because of a policy preference for State regulation as a general matter. Second, the Act provides for subsequent State petitions for exemption, which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

e. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that could conceivably be viewed as having "takings implications." These are testing (certification) requirements, the impacts of standard levels, and possible DOE testing of products for validation.

This proposed rulemaking is concerned with the second part, namely the impacts of standard levels.

The impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that the fact that an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce does not have "significant taking implications" in the sense described in the Order. This notice does not change the impact of the NAECA standard. This proposal transforms an existing standard level as set by Congress in NAECA for water heaters to an equivalent level that would result only due to new testing methods being used to determine water heaters' energy factor.

IV. Public Comment Procedure

a. Participation in Rulemaking.

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., as provided at the beginning of this notice.

The DOE has established a comment period of 60 days following publication of this notice, for persons to comment on this proposal. All comments and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures.

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Water Heater Standards (Docket No. CAS–RM–79–105)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the DOE Freedom of Information Reading Room.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing.

1. *Procedures for Submitting Requests to Speak.* The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is representative of a group or class of persons having an interest, to make a written or telephone request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Water Heater Standards (Docket No. CAS–RM–79–105) and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the time they are requested to speak.

Each person selected to be heard is requested to submit 10 copies of the oral statement to the registration desk prior to the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and 556, and Section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who have made oral presentations, as well as Federal employees who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday. For information concerning the availability of records at the Freedom of Information Reading Room, call (202) 586–6020. In addition, any person may purchase a copy of the transcript from the reporter.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, December 30, 1988.

Dr. John R. Berg,

Assistant Secretary Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309,

2. Section 430.32, as proposed on December 2, 1988 (53 FR 48825), is amended by adding paragraph (d) to read as follows:

§ 430.32 Federal energy conservation standards.

* * * * *

(d) *Water heaters.*

Product class	Energy factor January 1, 1990
1. Gas Water Heater	0.62—(.0019 × Rated Storage Volume [1] in Gallons)..
2. Instantaneous Gas Water Heaters.	0,62
3. Oil Water Heater	0.59—(.0019 × Rated Storage Volume in Gallons)..
4. Electric Water Heater	0.93—(0.00132 × Rated Storage Volume in Gallons)..

[1] Storage tank capacity as defined in Appendix E to Subpart B of 10 CFR Part 430.

* * * * *

[FR Doc. 89–907 Filed 1–13–89; 8:45 am]

BILLING CODE 6450–01–M

federal register

Tuesday
Januarv 17, 1989

Part V

The President

Proclamation 5932—National Challenger Center Day, 1989

Proclamation 5933—America Loves Its Kids Month, 1989

Proclamation 5934—National Visiting Nurse Associations Week, 1989

Executive Order 12665—Amending Executive Order No. 12658, President's Commission on Catastrophic Nuclear Accidents

Executive Order 12666—Exclusions From the Federal Labor-Management Relations Program

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Presidential Documents

Title 3—

The President

Proclamation 5932 of January 12, 1989

National Challenger Center Day, 1989

By the President of the United States of America

A Proclamation

Marble statuary and granite monuments, imposing as they may be, can never speak with the eloquence reserved only for a living memorial. The Challenger Center is a living tribute to the brave and courageous crew of the Space Shuttle Challenger who made the supreme sacrifice 3 years ago. The mission and work of this crew will continue with their same sense of dedication and vision at the Challenger Center.

The Center has already made significant strides in establishing a Washington headquarters as well as regional mission sites and affiliated museums across our country. At these facilities children and their teachers will carry on the mission of the Challenger crew to push out ever further the frontiers of our knowledge and to expand the very realm of mankind's dreams and aspirations. It is fitting to recall the words of the poet Mary Lee Hill as she exhorts us to turn again to life:

"If I should die and leave you here a while,
Be not like others, sore undone, who keep
Long vigil by the silent dust and weep.
For my sake turn again to life and smile;
Complete these dear unfinished tasks of mine,
And I, perchance, may therein comfort you."

To recognize the importance of the Challenger Center and its charter to expand educational opportunities in science and to thereby carry on the mission of the Challenger astronauts and the space program, the Congress, by Public Law 100–684, has designated January 28, 1989, as "National Challenger Center Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 28, 1989, as National Challenger Center Day. I call upon the people of the United States to observe this day by remembering the Challenger astronauts who died while serving their country and by reflecting upon the important role the Challenger Center will play in honoring their accomplishments and in furthering their goal of strengthening space and science education.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89–1189
Filed 1–13–89; 11:18 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5933 of January 12, 1989

America Loves Its Kids Month, 1989

By the President of the United States of America

A Proclamation

Children are gifts from God, the Bible tells us, and that is what America's parents through the centuries have known their youngsters to be. We have sought to give our children—our kids—love and well-being in the present and hope and opportunity for the future. We have also sought to give them a realization of their God-given individual worth and dignity, the liberty that is their due as Americans and human beings, and the reverence, thanks, and obedience we owe the Almighty for making us His children.

The Scriptures also tell us that we are made in God's image and likeness. More than 2 centuries ago, our Founders echoed that truth when they declared that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." If these fundamental and indispensable elements of our national life and heritage always inform our efforts as parents, families, communities, and a country, in regard to the children entrusted to us, we will surely remember our duty to cherish and protect them and to respect their innate dignity and rights.

Not all children are blessed with loving, affirming, and understanding parents. Many youngsters suffer the effects of permissiveness, lack of guidance, drug and alcohol abuse, and absence of religious faith. Fortunately, remedies for these ills do exist, and families and concerned citizens are doing all they can to guarantee a future of promise and fulfillment for their own children and for all our kids. We owe our gratitude and cooperation to those who encourage us to give our children the spiritual as well as material sustenance we all need.

We must also continue to strive for public policies, educational reforms, and conditions of economic growth and opportunity that help meet every child's material needs—that break the cycle of poverty and foster health, prosperity, and progress for our kids, families, communities, and Nation. We must continue to aid school dropouts; youngsters who run away or are forced to leave home; and victims of child abuse, pornography, and prostitution. We must recognize our duty to report suspected child abuse and neglect, and to do the same in cases of selling liquor and illegal drugs to minors. And we must teach youngsters the beauty of the loving, lifelong relationship between husband and wife that is marriage.

As we celebrate this special month, let us be mindful of the worth of every child, recognize our youngsters' accomplishments, and rededicate ourselves to providing help and support for all who need them. And let us be sure to do these things with a prayer in our hearts as we prove that, truly, America Loves Its Kids.

The Congress, by Public Law 100–602, has designated February 1989 as "America Loves Its Kids Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 1989 as America Loves Its Kids Month, and I call upon all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89-1190
Filed 1-13-89; 11:19 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5934 of January 12, 1989

National Visiting Nurse Associations Week, 1989

By the President of the United States of America

A Proclamation

The Visiting Nurse Associations of America have served homebound Americans since 1885 by offering excellent personalized home health care and support services in urban and rural communities.

These voluntary, independently operated Associations supply a wide range of services, including nursing care by registered nurses; homemaking, therapy, and social services by qualified specialists; friendly visiting services; and many other forms of assistance provided by volunteers in each community served by an Association.

The care provided by the Associations enables hundreds of thousands of Americans to recover from illnesses and injury in the comfort and security of their homes, regardless of their ability to pay. Thousands of patients with mental or physical handicaps or with chronically disabling illnesses would be unable to remain at home without the therapeutic benefits of the Associations' care and support services.

The Congress, by Public Law 100-493, has designated the week of February 19 through February 25, 1989, as "National Visiting Nurse Associations Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of February 19 through February 25, 1989, as National Visiting Nurse Associations Week. I call upon all Americans to observe this week with appropriate ceremonies and activities in appreciation of the important contributions of Visiting Nurse Associations to American life.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of January, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89-1191
Filed 1-13-89; 11:20 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12665 of January 12, 1989

Amending Executive Order No. 12658, President's Commission on Catastrophic Nuclear Accidents

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Public Law 100-408, and in order to increase the membership of the President's Commission on Catastrophic Nuclear Accidents to eleven members, it is hereby ordered that the number "nine," which is found in the second sentence of section 1 of Executive Order No. 12658, is deleted, and the number "eleven" is substituted in lieu thereof.

Ronald Reagan

THE WHITE HOUSE,
January 12, 1989.

[FR Doc. 89-1192
Filed 1-13-89; 11:21 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12666 of January 12, 1989

Exclusions From the Federal Labor-Management Relations Program

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Chapter 71 of title 5 of the United States Code, and having determined, under section 7103(b)(1) of said Chapter, that the subdivisions of the Federal Aviation Administration, Department of Transportation, listed below have as a primary function intelligence, counterintelligence, investigative, or national security work, and having determined that the provisions of Chapter 71 of title 5 of the United States Code cannot be applied to the subdivisions listed below in a manner consistent with national security requirements and considerations, it is hereby ordered that Executive Order No. 12171, as amended, is further amended to add the following subsection:

"1–213. The subdivisions of the Federal Aviation Administration, Department of Transportation:

(a) Federal Air Marshal Branch, International Civil Aviation Security Division, Office of Civil Aviation Security.

(b) Units composed of Civil Aviation Security Inspectors in Civil Aviation Security divisions whose responsibilities require Federal air marshal functions."

Ronald Reagan

THE WHITE HOUSE,
January 12, 1989.

[FR Doc. 89–1193
Filed 1–13–89; 11:22 am]
Billing code 3195–01–M

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Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

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The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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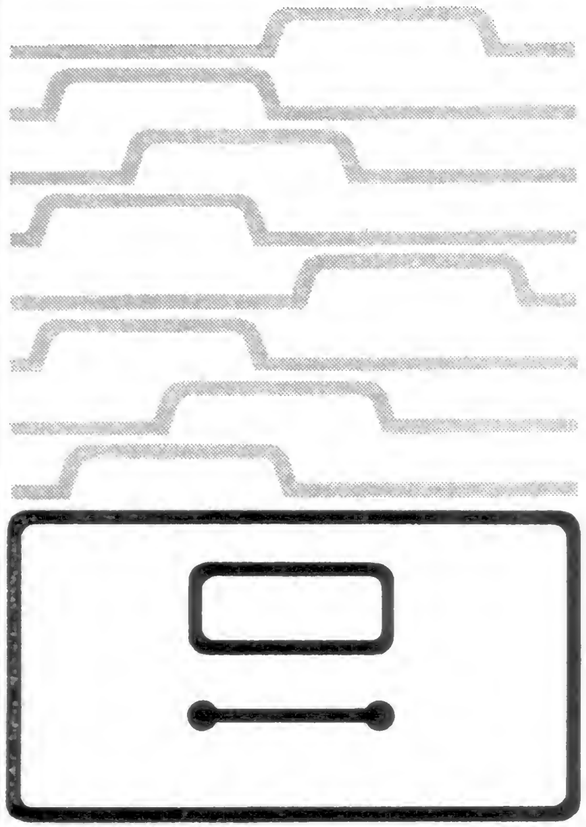
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-171]

Brucellosis in Cattle; Interstate Movement of Cattle from Class B and Class C States or Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by imposing additional restrictions on the interstate movement of certain cattle from Class B states or areas and from Class C states or areas. This rule will help reduce the risk of the interstate spread of brucellosis and will further our goal of eradicating the disease.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Veterinary Medical Officer, Animal Health and Depredation Management Systems, Program and Policy Development, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis, a serious infectious and contagious disease of animals and man. The regulations are part of a cooperative federal and state program to eradicate the disease and to protect states and areas where eradication efforts have been successful.

On September 28, 1988, we published in the **Federal Register** (53 FR 37774-37778, Docket Number 88-121), a document proposing to amend §§ 78.8 through 78.10 by imposing additional restrictions on the interstate movement of certain cattle from Class B and Class C States or areas. Under the proposed rule, brucellosis exposed female cattle from Class B States or areas would be allowed to move interstate to recognized slaughtering establishments and quarantined feedlots only. Male cattle under 6 months of age from herds known to be affected would continue to move interstate in accordance with the current regulations. Under the proposal, female cattle and test-eligible male cattle originating in Class C States or areas which are not brucellosis exposed and are from herds not known to be affected would be allowed to move interstate to recognized slaughtering establishments and quarantined feedlots only. All other interstate movement of these cattle from Class C States or areas would be allowed only if they originate in certified brucellosis-free herds.

We are adopting the provisions of the proposed rule based on the reasons set forth in the proposal and in this supplementary information section.

Comments

Our proposal invited the submission of written comments postmarked or received on or before October 13, 1988.

We received 15 comments addressing the proposed rule. Nearly all of the comments we received were submitted by state agencies and associations representing the cattle industry. Five of the commenters supported the proposed rule as published, without additional comment. Ten expressed general support for the proposed rule but noted additional concerns beyond the scope of the proposal, as discussed below. Two of these commenters objected to the form of § 78.9, asserting that it should be revised for purposes of clarity.

Five comments addressed regulatory restrictions that we did not propose to revise. One commenter suggested that bull calves up to one year of age originating from herds not known to be affected in Class B and Class C States or areas be allowed to move without restriction. The commenter stated that at that age, there is no risk of disease transmission from an infected, sexually intact male, and that the age at which restrictions are imposed should be changed from 6 months to 12 months.

Apparently, this commenter has confused the regulations contained in § 78.8 concerning exposed cattle, with those of § 78.9, applicable to cattle originating in herds not known to be affected. Paragraphs (b) and (c) of § 78.9 impose restrictions on test-eligible cattle which originate in Class B and Class C States or areas, respectively, that are not brucellosis exposed, and are from a herd not known to be affected. Bull calves become test-eligible when they reach 18 months of age. This is generally considered to be when they reach sexual maturity. The commenter is therefore needlessly concerned, since the regulations do not impose restrictions on the interstate movement of bull calves from Class B and C States or areas from herds not known to be affected until they are test-eligible.

We received two comments urging us to remove restrictions on the movement of bull calves under 18 months of age from infected herds. In support of this position, one commenter cited the resolution adopted by the National Cattlemen's Association and the recommendation of the Epidemiologist Group of the Southern Animal Health Association. Both groups favor removing restrictions on interstate movement of bull calves less than 12 months of age from affected herds. A third commenter was in favor of the proposed rule regarding cattle from herds not known to be affected in Class C States or areas, and also endorsed the associations' recommendations.

The existing regulations allow brucellosis exposed bull calves under 6 months of age from herds known to be affected to move interstate without additional restrictions if they are: (1) Weaned from brucellosis reactors or exposed cows at least 30 days before interstate movement; or (2) nursing brucellosis exposed cows and moved within 10 days of a herd blood test. We believe there is insufficient scientific evidence to support the commenters' position that bull calves greater than 6 months of age from affected herds do not pose any disease risk and, therefore, continued restriction on interstate movement of exposed animals from high risk areas is warranted. Accordingly, we have not made any changes to those

provisions in the final rule on the basis of comments.

Three commenters stated that the regulations should allow movement of female cattle from Class C States or areas if the cattle are spayed upon arrival at their final destination. One of the commenters limited its suggestion to heifer calves from herds not known to be affected in Class C States or areas, and asked that we consider allowing these cattle to be shipped interstate to quarantined feedlots or pastures, and in sealed trucks with permit and I.D. tags, to be "S" branded or spayed upon arrival at their final destination. Another commenter suggested that the regulations be revised to allow calves with "S brand or red paint" to be shipped to assembly points, "S" branded there, and held pending full loads; to allow red painted calves to be "F" branded and grazed; and to allow heifers to be spayed at their final destination.

Current § 78.9(d)(2)(i)(A) provides that test-eligible cattle that are not brucellosis exposed from herds not known to be affected in Class C States or areas may be "S" branded upon arrival at a quarantined feedlot if moved there directly from a farm of origin. Current § 78.9(d)(2)(i)(B) provides that they may also move directly from a farm of origin to a specifically approved stockyard and then directly to a quarantined feedlot, if "S" branded upon arrival at the stockyard and then accompanied by an "S" brand permit to the quarantined feedlot. The regulations in current § 78.9(d)(1)(iv) allow these cattle to be moved to a specifically approved stockyard, "S" branded there, and then moved to a recognized slaughtering establishment, if moved directly from a farm of origin or nonquarantined feedlot. The regulations in § 78.9 do not prohibit spaying cattle upon arrival at a quarantined feedlot or specifically approved stockyard if moved directly from a farm of origin. We do not believe it is necessary or desirable to provide similar provisions for movement of cattle from stockyards to their final destination due to the foreseeable risk that they may be improperly commingled or misplaced during movement. It is important that cattle be properly identified when they commence movement through the marketplace in order to maintain their identity and contain the spread of brucellosis. We cannot ensure that identification of these animals will be maintained if they are not properly identified at the first instance they might come in contact with cattle from other herds. At present, APHIS lacks the manpower and resources to carry out additional requirements for sealing and unsealing trucks, as suggested by one commenter, and we do not consider this to be a practical alternative. Specifically approved stockyards maintain facilities for handling these animals and, as a practical matter, we believe they should be required to continue to do so.

We are not proposing to include a provision for "F" branding cattle, as a commenter suggested, since this is a regulatory program employed by some states to allow cattle from herds not known to be affected in Class B and Class C States or areas to graze without going directly to a quarantined feedlot. The final rule allows female cattle and test-eligible male cattle to move from Class C States or areas to recognized slaughtering establishments and quarantined feedlots only, under the provisions of § 78.9, in order to further reduce any risk of spreading the disease. It would be contrary to our purposes, as stated in the proposal, to allow this additional movement.

We received two comments criticizing APHIS for not proposing, in toto, the recommendations of the Brucellosis Committee arising from the 1985 meeting of the United States Animal Health Association (USAHA). At that meeting, the Brucellosis Committee recommended that after October 1, 1988, only steers, spayed heifers, "S" branded cattle, and cattle from certified free herds be allowed to move interstate from Class C States or areas. One commenter stated that the Brucellosis Committee's recommendation applied to all cattle in Class C States or areas, "particularly females," without regard to age or premises of origin. The other stated that the recommendation was applicable to all cattle in Class C States or areas, without regard to status of herds of origin.

Our rule carries out the intent of the USAHA recommendation by restricting the movement of all female and test eligible male cattle from Class C States or areas, that are not brucellosis exposed, and are from a herd not known to be affected. We do not believe that the USAHA's underlying intent was to prevent movement of all cattle from Class C States or areas without regard to disease risk. This is evident from the USAHA's exclusion of steers, spayed heifers, "S" branded cattle, and cattle from certified free herds from its recommendation.

The restrictions imposed by the final rule do not apply to cattle originating in a certified free herd, because they do not present any risk of spreading the disease. The restrictions also do not apply to male cattle that are not test eligible from herds not known to be affected, because there is no scientific justification for imposing additional restrictions on male cattle that have not reached sexual maturity from these herds. We did propose to restrict interstate movement of exposed female cattle from herds known to be affected in Class B and Class C States or areas because of the attendant disease risk. The proposed restrictions do not apply to brucellosis exposed bull calves under 6 months of age that meet the criteria set forth in § 78.8(c)(1), however, because there is no scientific evidence that they present a significant risk of spreading the disease. We are not making any changes in the final rule on the basis of these comments.

Two commenters expressed concern that additional restrictions, beyond those of the proposed rule, are necessary to protect cattle and enhance eradication efforts. One commenter was concerned that unrestricted movement, as allowed under the existing regulation, of sexually intact bull calves of up to 18 months of age from herds not known to be affected in Class C States or areas could pose a disease risk. We are not aware of any scientific evidence that would justify restricting the movement of bull calves from these herds before the calves become test eligible.

The second commenter endorsed the proposed rule and suggested that we revise the regulations in the final rule to eliminate movement to quarantined feedlots. According to the commenter, this measure is necessary because movement of cattle from quarantined feedlots to breeding farms cannot be prevented, despite federal and state efforts. We believe that some movement of cattle from Class B and Class C States or areas should remain permissible under the regulations, as long as disease risk is minimized and safeguards against spread of the disease are provided. Quarantined feedlots and recognized slaughtering establishments are subject to the regulations of Part 78 and must satisfy certain minimum criteria to achieve and maintain their status. In this manner, we can ensure that safeguards are employed to protect against further spread of the disease. We are continuing our cooperative effort with the states to enforce the regulations and hope to eliminate the reason for the commenter's concern.

We are not making any changes in the final rule as a result of the comments received. We are correcting a typographical error that appeared in the text of proposed rule. The word "herd" is added following the words, "originate in a certified brucellosis-free," in paragraph (d)(3) of § 78.9. It was inadvertently omitted from the published proposal.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less that $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not expect the additional restrictions imposed by this rule on interstate movement of certain cattle from Class B and Class C States or areas to have a significant economic impact on the small entities owning herds affected by this action.

Since publication of the proposed rule on September 28, 1988, the State of Louisiana has been determined to meet the criteria for a Class B State or area. An interim rule changing the classification of Louisiana from a Class C State or area to a Class B State or area was published September 29, 1988 (53 FR 37988–37989), leaving only one area in the United States classified as Class C.

We estimate that fewer than one percent of all herds in Class B States and areas are affected by the rule. We consider that most of these are owned by small entities for purposes of our analysis. We also consider that 97 percent of all herd owners in the remaining Class C area affected by our rule are small entities, and that approximately 80 percent of all herds in the affected area are not known to be affected.

We estimate that approximately 90 percent of the cattle moved from Class B and Class C States or areas are moved interstate to quarantined and nonquarantined feedlots. As a result of this rule, cattle from herds known to be affected in Class B States or areas may continue to move interstate to quarantined feedlots. Cattle from herds not known to be affected in the Class C States or areas may also continue to move to quarantined feedlots. Cattle from certified brucellosis-free herds, steers, spayed heifers, and males that are not test-eligible, originating in Class C States or areas, may continue to move to both quarantined and nonquarantined feedlots. All female cattle from a farm of origin and from herds other than those certified brucellosis-free in Class C States or areas must be "S" branded at the farm of origin or upon arrival at a quarantined feedlot or specifically approved stockyard, and may be required to be accompanied by an "S" brand permit for interstate movement to quarantined feedlots.

We expect that some owners of cattle restricted in interstate movement by this rule will spay their cattle at a cost of $5 to $10 per head so that they may move without restrictions. This cost can be recovered when the cattle are sold at prices competitive with those for cattle from Class Free and Class A States or areas. (By spaying heifers, cattle owners also avoid the cost of vaccinating them for brucellosis.)

We also expect that some cattle feeders that receive cattle from Class B and Class C States or areas may qualify their nonquarantined feedlots as quarantined feedlots to maintain their market share of business. We do not believe that the number of cattle moved interstate to slaughter from the Class B and Class C States or areas affected by this rule will change. Most of the cattle moved interstate exclusively for breeding purposes from the one Class C area affected by this action currently originate from certified brucellosis-free herds.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0047.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR Part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.8 [Amended]

2. In the introductory text of § 78.8(c)(1), the phrase ", other than female cattle which originate in Class B States or areas or Class C States or areas," is added immediately before the word "may."

3. In § 78.8(c)(2), "78.9(d)(3)(iv), or 78.9(d)(3)(v)" is removed and "or 78.9(d)(3) of this part" is added in their place.

4. In § 78.9, the first sentence of the introductory paragraph is removed, and the following two sentences are added in its place to read as follows:

§ 78.9 Cattle from herds not known to be affected.

Male cattle which are not test eligible and are from herds not known to be affected may be moved interstate without further restriction. Female cattle which are not test eligible and are from herds not known to be affected may be moved interstate only in accordance with § 78.10 of this part and this section.

* * *

* * * * * *

5. In § 78.9(d), the introductory text of paragraph (d) and paragraph (d)(3) are revised to read as follows:

* * * * * *

(d) *Class C States/areas.* All female cattle and test-eligible male cattle which originate in Class C States or areas, are not brucellosis exposed, and are from a herd not known to be affected may be moved interstate from Class C States or areas only under the conditions specified below:

* * * * * *

(3) *Movement other than in accordance with paragraphs (d)(1) or (2) of this section.* Such cattle may be moved interstate other than in accordance with paragraphs (d)(1) or (2) of this section only if such cattle originate in a certified brucellosis-free herd and are accompanied interstate by a certificate which states, in addition to the items specified in § 78.1 of this part, that the cattle originated in a certified brucellosis-free herd.

6. In § 78.10, the heading and paragraph (b) are revised and a new paragraph (c) is added to read as follows:

§ 78.10 Official vaccination of cattle moving into and out of Class B and Class C states or areas.

* * * * *

(b) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move into a Class C State or area [4] unless they are moved interstate directly to a recognized slaughtering establishment or quarantined feedlot or directly to an approved intermediate handling facility and then directly to a recognized slaughtering establishment. Female cattle eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

(c) Female cattle born after January 1, 1984, which are 4 months of age or over must be official vaccinates to move interstate out of a Class C State or area [4] under § 78.9(d)(3) of this part. Female cattle from a certified brucellosis-free herd that are eligible for official calfhood vaccination and required by this paragraph to be officially vaccinated may be moved interstate from a farm of origin directly to a specifically approved stockyard and be officially vaccinated upon arrival at the specifically approved stockyard.

Done in Washington, DC, this 11th day of January 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-1016 Filed 1-17-89; 8:45 am]

BILLING CODE 3410-34-M

[4] Female cattle imported into the United States may be exempted from the vaccination requirements of this paragraph with the concurrence of the State animal health official of the State of destination. This concurrence is required prior to importation of the cattle into the United States.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 91, 121, 125, 129, and 135

Traffic Alert and Collision Avoidance System; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, Correction; Amendment number.

SUMMARY: FAA is correcting an error in the Amendment number. In FR Doc. 89-451, published Tuesday, January 10, 1989, on page 940, please change Amendment number 135-29 to read 135-30.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division; AIR-120, (202) 267-9567, 867-6941.

Michael D. Triplett,

Legal Technician, Program Management Staff, AGC-10.

[FR Doc. 89-1068 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-1-AD; Amdt. 39-6117]

Airworthiness Directives; Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", P 68TC "Observer" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Partenavia Costruzione Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", and P 68TC "Observer" airplanes, which requires removal of the eight (4 per engine) engine mount to wing attachment bolts and inspection for damage, installation of washers under the bolt heads, replacement with serviceable bolts, and torquing each bolt to the specified limits. Investigation of an accident involving a P 68C airplane and the results of a subsequent operator survey have disclosed cases of engine mounting bolts not having the required washers, plus damaged and undertorqued mounting bolts. The actions specified in this AD will ensure the structural integrity of the engine mounting system.

DATE: *Effective Date:* February 16, 1989.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished after the last engine removal.

ADDRESSES: Partenavia Service Bulletin (SB) No. 76, dated December 23, 1988, applicable to this AD, may be obtained from Partenavia Costruzione Aeronautiche S.p.A., Via Cava 80026 (Casoria (Naples) Italy. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA c/o American Embassy, B-1000, Brussels, Belgium; telephone 513-38.30; or John P. Dow, FAA, ACE-109, 601 E 12th St., Kansas City, Missouri 64106; telephone 816-426-6932.

SUPPLEMENTARY INFORMATION: Investigation of a fatal accident involving a Partenavia Model P 68C airplane and a subsequent survey of several operators revealed that some airplanes had washers missing from the engine mounts, undertorque of the bolts and damaged bolts that could result in looseness of the engine mounts. As a result of these reports, the manufacturer issued SB No. 76, dated December 23, 1988, specifying removal and visual inspection of the eight (4 per engine) engine mount to wing attachment bolts on all Partenavia Costruzione Aeronautiche S.p.A. Models P 68 series airplanes.

The Registra Aeronautico Italiano (RAI), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, has classified this SB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of SB No. 76, dated December 23, 1988, and the mandatory classification of this SB by the RAI. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued requiring removal and inspection of the eight (4 per engine) engine mount to wing attachment bolts on all Partenavia P 68 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Partenavia Costruzione Aeronautiche, SPA: Applies to Models P 68, P 68B, P 68C, P 68TC, P 68 "Observer", and P 68TC "Observer" (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished after the last engine removal.

To prevent loss of structural integrity of the engine mounts, accomplish the following as referenced in Partenavia Service Bulletin (SB) No. 76 dated December 23, 1988:

(a) Inspect the engine mounting system as follows for both engines:

(1) Prepare the airplane as necessary as described for "Engine Removal" in the Partenavia Maintenance Manual and support the engine with a hoist.

(2) Remove the mount bolts (P/N MS 20006-12) from the airframe one-by-one starting with the lower bolts.

(3) With a 10x magnifier, visually inspect the bolts for cracks, circumferential scoring, corrosion, or absence of protective coating on the shank of the bolt. Prior to further flight discard all damaged bolts, and replace with serviceable bolts.

(4) Insure that washers (P/N MS 20002-C6) are properly installed on all the engine mount attachment bolts with the chamfer in the hole mating with the head of the bolt.

(5) Reinstall undamaged bolts or replacement bolts and washers. Starting with the upper bolts, torque each 335 to 375 inch-pounds.

(6) Prepare the airplane for flight as described in "Installation of Engine" in the Partenavia Maintenance Manual.

(b) Repeat the requirements of paragraph (a) of this AD at any subsequent engine removal.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Division, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Partenavia Costruzione Aeronautiche, S.p.A., Via Cava 80026 Casoria-Naples, Italy; telephone 81 759-0946; or may examine this document at the FAA, Office of Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 16, 1989.

Issued in Kansas City, Missouri, on January 6, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1090 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Narasin And Nicarbazin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. The NADA provides for using a combination Type A medicated article containing narasin and nicarbazin to manufacture a Type C medicated feed for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed NADA 138-952 which provides for the use of a combination Type A medicated article containing narasin and nicarbazin, each at a concentration of 36 grams per pound, to manufacture a Type C medicated feed for the prevention in broiler chickens of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* Narasin and nicarbazin are currently approved for separate use in broiler feeds for the prevention of coccidiosis (narasin at 54 to 72 grams per ton, nicarbazin at 113.5 grams per ton). The combination has now been shown to be safe and effective at lower concentrations for both drugs (27 to 45 grams of each drug per ton) for the prevention of coccidiosis.

The application is approved and the regulations in 21 CFR 558.4(d), 558.366(a) and (c), and 558.366(c) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by alphabetically adding new entries for "Narasin" and "Nicarbazin (granular)", and by revising the current entry for "Nicarbazin", to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits percent [1] type A	Type B maximum (100x)	Assay limits percent [1] type B/C [2]
*	*	*	*
Narasin.....	90–110	5.675 g/lb (1.25%).	85–115/75–125
*	*	*	*
Nicarbazin (granular).	90–110	5.675 g/lb (1.25%).	85–115/75–125
Nicarbazin (powder).	98–106	5.675 g/lb (1.25%).	85–115/80–120
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

3. Section 558.363 is amended by revising paragraph (a) and by adding new paragraph (c)(1)(iii) to read as follows:

§ 558.363 Narasin.

(a) *Approvals.* Type A medicated articles containing the specified levels of narasin granted to firms identified by sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (c) of this section are as follows:

(1) To 000986: 36, 45, 54, 72, and 90 grams per pound, paragraph (c)(1)(i).

(2) To 000986: 36, 45, 54, 72, and 90 grams per pound with 10, 20, 50, and 80 percent of roxarsone, paragraph (c)(1)(ii).

(3) To 000986: 36 grams per pound with 36 grams per pound of nicarbazin, paragraph (c)(1)(iii).

* * * * *

(c) * * *

(1) * * *

(iii) *Amount per ton.* Narasin, 27 to 45 grams, plus nicarbazin, 27 to 45 grams.

(A) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(B) *Limitations.* For broiler chickens only. Feed continuously as the sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these animals has been fatal. Withdraw 5 days before slaughter. The 2 drugs can be combined only at a 1:1 ratio for the 27 to 45 grams per ton range.

* * * * *

4. Section 558.366 is amended in the table of paragraph (c) by adding a new first entry to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27 to 45.....	Narasin 27 to 45.....	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*	Sec. 558.363 (c)(1)(iii).....	000986
*	*	*	*	*

Dated: January 10, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1110 Filed 1–17–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

(FHWA Docket No. 88–6)

RIN: 2125–AC10

Truck Size and Weight; National Network—Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Appendix A of 23 CFR Part 658 to permit the State of Kentucky to temporarily restrict the use of the northbound lanes of Interstate Route I–75/71 from I–275 in Kentucky to the Ohio State line by certain motor vehicles in the Cincinnati area. This rule is in response to an application by the Kentucky Transportation Cabinet under the provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Director, Office of Planning (202) 366–2951 or Mr. David Oliver, Office of the Chief Counsel, (202) 366–1356, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Applicable Law

The statutory basis for prohibiting State restrictions on truck use of Interstate highways and designated non-Interstate Federal-aid Primary System highways is found in sections 411 and 416 of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. No. 97–424, 96 Stat. 2097 (1983), as amended by the Tandem Truck Safety Act of 1984 (TTSA), Pub. L. No. 98–554, 98 Stat. 2829 (1984), 42 U.S.C. 2311 and 2316. The STAA provides "exemption" procedures whereby FHWA (by delegation from the Secretary of Transportation) may permit States to restrict truck use of Interstate highways.

The FHWA has concluded, after careful consideration of the law and recent court decisions, that the STAA prohibition on restrictions applies to all State bans which would directly impact STAA-authorized vehicles.

Background

In July 1986, the Secretary of the Kentucky Transportation Cabinet, in his capacity as Commissioner of Highways, ordered the prohibition of certain truck operations on the northbound lanes of I–75/71 and I–471 for safety purposes; this was later confirmed by Kentucky administrative regulation. The prohibition applied from I–275 northerly to the Ohio State line at the Ohio River on the south side of the city of Cincinnati. Specifically, the prohibition applied to northbound trucks with semitrailers which do not have destinations within the perimeter of I–275 or within a two-mile arc along the north side of I–275 in Ohio between U.S. 27 and U.S. 22.

On July 17, 1987, the FHWA notified the Governor of Kentucky that the STAA preempts truck restrictions of the type imposed, without Federal approval by the Secretary of Transportation. The State submitted an application for approval to continue the ban on both routes on September 9, 1987, additional information regarding prior consultations with the States of Ohio and Indiana on October 19, 1987, and additional accident data on December 14, 1987.

The FHWA may not approve the State's application unless FHWA determines that the segments of Interstate highways involved are not capable of safely accommodating the motor vehicles (trucks) described in the STAA.

The State of Kentucky has completed major operational improvements for I–75/71 and has programmed a major reconstruction project for a portion of the route. The State estimates that the improvements to reduce the vertical grades and horizontal curvature in the so-called "cut-in-the-hill" section of I–75/71 should be completed sometime in 1992.

On May 25, 1988, the Federal Highway Administration (FHWA) issued a Notice of Proposed Rulemaking (NPRM) (53 FR 18858) that described FHWA's preliminary evaluation of the Kentucky request, noted FHWA's denial of restrictions on I–471, discussed FHWA's proposed approval of temporary restrictions on I–75/71, and requested public comment. Pursuant to FHWA's direction, Kentucky has removed the truck restrictions on I–471.

The FHWA received twenty-six (26) comments, primarily from Northern Kentucky citizens, local governments and local officials, in response to the NPRM. Of the twenty-six (26) comments received, twenty-one (21) supported the restrictions, one (1) did not oppose the restrictions, two (2) opposed the restrictions and two (2) requested continuation of restrictions of I–471.

The two comments that opposed the restrictions were from private citizens. One opposition commenter suggested the main problem on I–75/71 had been the merging of traffic from three northbound lanes tc two lanes at the Ohio River crossing. The commenter noted that this problem had been corrected by a recently completed construction project which provided three northbound lanes across the river. He stated that the I–471 left lane exit from eastbound I–275 could be a much greater hazard than allowing through trucks on I–75/71. The other opposition commenter offered no specific reason for opposition.

The American Trucking Associations, Inc., commented that it is generally opposed to operating restrictions on trucks, but is not opposed in this case because of the unique circumstances pertaining to I–75/71 in Kentucky.

None of the comments received in response to the NPRM offered any safety data or analysis nor raised any issues that had not already been considered in developing the NPRM. Therefore a detailed discussion of comments in response to the NPRM would not add to the discussion in the NPRM.

In addition to the comments received in direct response to the NPRM, the docket also contained 26 comments relating to the Kentucky petition received prior to the publication of the NPRM. Of these earlier comments, 4 opposed both I–75/71 and I–471 restrictions, 21 requested continuation of the I–471 restrictions, and 1 pressed for immediate removal of I–471 restrictions. All comments received prior to the publication were evaluated in developing the proposal published in the NPRM.

Safety Determination

The FHWA has evaluated the accident data, highway geometrics, and traffic data supplied by the State, as well as the March 7, 1967, "Interstate Truck Diversion Study" conducted by the Ohio-Kentucky-Indiana Regional Council of Governments, the metropolitan planning organization for the Cincinnati area.

Based on a careful review of the data and consideration of the comments received from interested parties, the FHWA concludes again that Kentucky's original restrictions have contributed to the significant accident reductions on Kentucky I–75/71, have had minimal effect on Kentucky I–471, and have not significantly affected alternate routes. The FHWA also concludes that I–75/71 will be fully capable of safely accommodating STAA vehicles upon completion of the programmed reconstruction described above.

The FHWA therefore reaffirms its denial of Kentucky's request for restrictions on I–471 and approves through the year 1992 the State's request for restrictions on I–75/71 to enable completion of the major regarding and realignment project programmed for the section.

Regulatory Impact

The FHWA has considered the impacts of this rulemaking and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule by allowing restrictions on the use of certain highway segments in accordance with statutory provisions. The impacts of the change addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. The segment affected represents a very small portion of the National Network and has a negligible impact of the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action does not have a significant economic impact on a substantial number of small entities.

Federalism

The FHWA has considered the "federalism" implications involved and has governed its actions and this final rule in accordance with the principles and policymaking criteria of E.O. 12612. Federalism, of October 26, 1987. The Final rule is in response to an

application by the State. Final determination to grant the application under the relief provisions established by the TTSA amendments diminishes the impact of previous preemptive actions mandated by the STAA.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: January 11, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Chapter I, Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Kentucky to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—[Amended]

2. Appendix A to Part 658 is amended for the State of Kentucky by designating the existing note at the end of the route listing as "NOTE 1" and adding "NOTE 2" to read as follows:

Note 2: Restrictions may be applied to through traffic with semitrailers and/or trailers on northbound I-75/71 from I-275 to the Ohio State line. Through traffic is defined as trucks which do not have destinations within I-275 (Circle Freeway) nor within a two (2) mile arc paralleling I-275 on the northern side of I-275 in Ohio between U.S. 22 and U.S. 27. This note is valid through the year 1992.

[FR Doc. 89-1176 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-22-M

23 CFR Part 658

[FHWA Docket No. 83-14]

RIN: 2125-AC10

Truck Size And Weight; National Network—Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document modifies the National Network for commercial motor vehicles, in response to a request by the State of Iowa, by deleting two route segments in Iowa that have narrow pavements and are not necessary for route continuity. The National Network was established by the final rule on truck size and weight published at 49 FR 23302 on June 5, 1984. It is maintained under 23 CFR 658, Appendix A, as amended.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366-0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97-424, 96 Stat. 2097 may operate, was first established by the final rule (23 CFR Part 658) published in the **Federal Register** at 49 FR 23302, June 5, 1984 and is located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also identified at State request.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking. A number of revisions to the National Network have been completed or initiated by the FHWA in separate rulemaking actions. This type of rulemaking action is considered routine and intended to periodically address network changes initiated by the States, or by others through the States, as well as by the FHWA. Certain types of technical amendments to Appendix A, such as clarifications of route descriptions, adjustments in format, descriptions of available routes not on the network, etc., are not subject to notice and comment requirements. The FHWA will make such technical amendments from time to time, in the interest of maintaining accuracy for Appendix users, and publish them in a final rule in the **Federal Register**.

Route Deletions Proposed

The Iowa Transportation Commission, as the Governor's designee, had requested the deletion of three route segments on the National Network until they are widened or reconstructed. The Commission reviewed the segments as to physical and operating characteristics and found that each had a narrow pavement and was not necessary for motor carrier route continuity. The FHWA concurred that there were potential safety problems and proposed deletion of the three segments in a notice of proposed rulemaking (NPRM) published on May 25, 1988 (53 FR 18859).

The three segments are (1) the 4-mile stub route IA 40 from Allerton northerly to IA 2 with a pavement width of 20 feet, (2) the 6-mile portion of stub route IA 415 from IA 160 northwesterly to the north city limits of Polk City with a pavement width of 20 feet and severe operating problems due to the route's substandard geometrics, and (3) a 2-mile portion of IA 175 from the east junction with US 169 easterly to the east city limits of Dayton with a pavement width of 18 feet which has since been widened to 24 feet.

No comments were received in response to the NPRM, other than a request from the State that its requested deletion of a portion of IA 175 be withdrawn in view of the pavement widening. The FHWA concurs and, therefore, is deleting only IA 40 and IA 415 as proposed.

Route Information

The State of Iowa has made available a considerable number of additional route segments for STAA vehicles under State legislation passed in June 1987. Further information on available routes may be obtained from its Office of Motor Carrier Services, Iowa Department of Transportation, Des Moines, Iowa at (515) 281-5664.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the June 5, 1984, final rule by deleting certain highway segments in accordance with statutory provisions. The impacts of the changes addressed in this rulemaking do not significantly alter the impacts fully considered in the original impact statement accompanying the June 5 rule. These segments represent a very small portion of the National Network and have a negligible impact on the prior system. Thus, no revised regulatory evaluation is needed. For the same reasons, and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: January 11, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Chapter I of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Iowa to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658—[Amended]

2. Appendix A to Part 658 is amended for the State of Iowa by removing the Posted Route Number entries:

Posted Route No.	From	To
IA 40	Begin Route	IA2
IA 415	US 6	NCL Polk City

and inserting in place of IA 415 the following:

Posted Route No.	From	To
IA 415	US6	IA 160

[FR Doc. 89-1177 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3496-1; NC-037]

Approval and Promulgation of Implementation Plans; North Carolina; Visibility Impairment Prevention for Federal Class I Areas, Part 2

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the North Carolina State Implementation Plan (SIP) which was submitted on December 15, 1987. This submittal, a revision to North Carolina's plan for visibility impairment prevention for Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 FR 20647 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's, henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (52 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The State of North Carolina did not submit a plan by August 31, 1987, and as a result EPA promulgated Part 2 provisions for North Carolina to satisfy the Settlement Agreement on November 24, 1987. The December 15, 1987, State submittal replaces the EPA-promulgated provisions, which are removed. The principal effect of the North Carolina visibility plan revision is to assure that the State is making and will continue to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATES: This action will become effective on March 20, 1989, unless notice is received by February 17, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management, Air Quality Section, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch, at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 15, 1987, the North Carolina Division of Environmental Management (NCDEM) submitted to EPA for approval a revision to the North Carolina SIP, and EPA is today approving the revision. This submittal contained certification

that the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Background

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and are considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment of "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (*EDF* vs *Gorsuch*, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the Settlement Agreement at 49 FR 20647 (May 16, 1984).

The Settlement Agreement required to EPA to promulgate federal visibility SIP's henceforth called Federal Implementation Plans (FIP's), on a specified schedule for those states that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the Agreement required EPA to propose and promulgate FIP's covering the monitoring and new source review (NSR) provisions in 40 CFR 51.305 and 51.307 provided the states did not submit SIP's by certain dates specified in the Agreement.

On April 15, 1985, North Carolina submitted visibility new source review regulations (revisions to Rule 15 NCAC 2D.0530 (Prevention of Significant Deterioration) (PSD)) and visibility nonattainment NSR regulations (revisions to Rule 15 NCAC 2D.0531 (Sources in Nonattainment Areas)) to EPA for approval. These revisions met the requirments of 40 CFR 51.307(a) and 40 CFR 51.307(b), and EPA subsequently approved them on January 21, 1986 (51 FR 2695). North Carolina also submitted a visibility monitoring plan to meet the 40 CFR 51.305 requirments. The North Carolina monitoring plan was also approved in the January 21, 1986, notice (51 FR 2695).

The second part of the Settlement Agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions, including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306). The Settlement Agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. However, the original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if they submitted SIP's to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987. The State of North Carolina did not submit a plan by August 31, 1987, and as a result EPA promulgated Part 2 provisions for North Carolina to satisfy the settlement agreement on November 24, 1987 (52 FR 45132). The December 15, 1987, State submittal replaces the EPA-promulgated provisions, which are removed.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal,
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources,
3. Provisions to protect integral vistas identified pursuant to § 51.304,
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10-15 year) strategy for making progress toward the national goal pursuant to § 51.306.

On January 23, 1986, at 51 FR 3046, EPA preliminary determined that the SIP's of 32 states (including North Carolina) were deficient with respect to the remaining visibility provisions. In that same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. North Carolina was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in North Carolina. Since North Carolina's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply. The North Carolina plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10 to 15 year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinatd with existing plans and goals for a Class I area, including those of the FLM's. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and
6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;
2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;
3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;
5. The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;
6. The impact of any exemption granted under § 51.303; and
7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

North Carolina's Plan for Visibility Impairment Prevention Program for Federal Class I Areas Part 2

The North Carolina plan is divided into two parts. Part 1 was submitted with the April 15, 1985, submittal of North Carolina's visibility PSD and nonattainment NSR regulations and was approved on January 21, 1986 (51 FR 2695). Part 2 (submittal date December 15, 1987) was developed in order to satisfy the remaining visibility provisions identified in 40 CFR 51.302(c) (General Plan Requirements).

Part 2 addresses each of the general plan requirements in 40 CFR 51.302(c) as follows:

1. Assessment of visibility impairment—North Carolina states that "As of yet, no individual sources have been shown to be impairing the visibility of a Class I area in North Carolina." They further state that "the impairment to visibility of the Class I areas in North Carolina appears to be the result of widespread, regional haze from a multitude of sources that impair visibility in every direction over a large area."

In Part 1, the State identified the five mandatory class I area located in the State as follows:

1. Great Smoky Mountains National Park
2. Joyce Kilmer Slickrock National Wilderness Area
3. Linville Gorge National Wilderness Area
4. Shining Rock National Wilderness Area
5. Swanquarter National Wilderness Area

The listing was not repeated in Part 2. The State provided in Part 1 that the FLM may, at any time, certify to the director that visibility impairment exists. In Part 1, they also listed the pollutants involved in visibility impairment and distinguished between reasonably attributable impairment and regional haze.

2. BART—Since no source or small group of sources in North Carolina have been identified as causing impairment of visibility in any designated, mandatory Class I area, North Carolina states that "Best Available Retrofit Technology (BART) as required by 40 CFR 51.302 does not apply to any source in North Carolina at this time." They also provide that "if a source in North Carolina is identified as impacting a Class I area in North Carolina or in another State, then BART will be required."

3. Integral Vistas—The State specifies that "although no integral vistas have been declared in North Carolina there are four scenic views associated with the Great Smoky Mountains National Park." These views are identified in the State plan. Since no integral vistas have been identified at this time by the FLM pursuant to 40 CFR 51.304 for the State of North Carolina Class I areas, this requirement does not apply to the State of North Carolina.

4. Provisions to Address Existing Visibility Impairment—This item need not be addressed since neither the Division nor the FLM's have identified any such impairment that can be reasonably attributed to a specific source or small group of sources in North Carolina. However, the NPS has identified that scenic views are affected by uniform haze in all North Carolina Class I areas. But, North Carolina notes that "EPA has deferred action on the regulation of uniform haze due to technical limitations; and therefore, it is not being considered in this plan at this time."

5. Long-term (10-15 year) Strategy—The State of North Carolina provides a discussion on each of the six elements required in 40 CFR 51.306(e). These are as follows:

a. Emission Reductions Due to Ongoing Programs—The State provides a discussion on the State regulations for the control of existing sources and for the control of new sources. The State provides that its goal is to "ensure 100 percent compliance of sources through its ongoing inspection program," and that these programs are adequate to meet the national goal.

b. Additional Emission Limitations—The State provides a discussion on the potential effects that an acid rain precursor reduction program (reduction of the quantities of sulfates in the atmosphere) would have on visibility. They feel visibility should improve if some program is enacted.

c. Construction Activity—The State provides a discussion of the regulations which govern open burning of debris from land clearing and right-of-way maintenance (Regulation 15 NCAC 2D.0520) and which govern hauling of materials in vehicles (General Statute 20-116(g)). These regulations provide for the minimizing of emissions from such operations. The State further provides that little or no construction activity is occurring around the Class I areas. Also, they state that "with the possible exception of burning debris from land clearing, construction activity appears to contribute little to visibility impairment in Class I areas."

d. Source Retirement and Replacement—The State provides that "no sources near a Class I area are on approved schedules for retirement or replacement. However, as old sources are replaced or modernized, the quantity of emissions for a given unit of production should decline."

e. Smoke Management—The State provides that "open burning of land for agricultural, wildlife, and forest management practices are to follow management practices acceptable to the Environmental Management Commission and, for forest lands, the North Carolina (NC) Division of Forest Resources." They also state that when forest land is burned, procedures prescribed for smoke management and burning techniques are followed by the U.S. Department of Agriculture Forest Service and the North Carolina Division of Forest Services. Also, private owners are encouraged to use the North Carolina Division of Forest Resources' procedures. They state that "these requirements are adequate to protect visibility in Class I areas."

f. Enforceability—The State provides that "all current regulations and laws are adequately enforced."

The final portion of North Carolina's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) not less frequent then every three years the long-term strategy, and to prepare a report to the Administrator and to the public. The State of North Carolina has fully met this requirement and will submit the required report to the Administrator and to the public.

The State of North Carolina has met all of the Federal Land Manager coordination requirements as required in § 51.302. The State of North Carolina notified the FLM's for each of the affected Class I areas via correspondence dated March 24, 1986 (draft of plan prior to hearing) and July 2, 1987 (copy of plan which was taken to the August 17, 1987, public hearing) (copies included in the appendix to the Part 2 plan).

Final Action

After reviewing North Carolina's plan for visibility impairment prevention for federal Class I areas, Part 2, EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the settlement agreement. EPA is therefore approving the visibility plan submitted by the State of North Carolina on December 15, 1987, and removing the visibility provisions promulgated by EPA at 40 CFR 52.1782 on November 24, 1987 (52 FR 45132).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 20, 1989, unless, within 30 days of the date of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 20, 1989.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Date: December 15, 1988.

Lee M. Thomas

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1770 Identification of plan.

(c) • • •

(58) North Carolina plan for visibility impairment prevention for federal Class I areas, Part 2, submitted to EPA on December 15, 1987, by the North Carolina Division of Environmental Management (NCDEM) to satisfy the Part 2 visibility requirements including the State's long-term strategy and provisions to satisfy the periodic review requirements.

(i) Incorporation by reference.

(A) December 15, 1987, letter from the North Carolina Division of Environmental Management.

(B) That portion of page II–7 of the North Carolina plan for visibility impairment prevention for federal Class I areas Part 2 containing the periodic review requirements satisfying 40 CFR 51.306(c), adopted by the North Carolina Division of Environmental Management on December 10, 1987.

(ii) Additional material.

(A) Narrative SIP titled "The North Carolina Plan for Visibility Impairment Prevention for Federal Class I Areas Part 2."

§ 52.1782 [Removed and Reserved]

3. Section 52.1782, Visibility protection, is removed and reserved.

[FR Doc. 89–1181 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3506–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a March 6, 1985, **Federal Register** notice (50 FR 9052), USEPA proposed approval of certain portions and proposed disapproval of other portions of a March 28, 1983, submittal regarding specific portions of revisions to Ohio's Reasonably Available Control Technology (RACT I and II) Volatile Organic Compound (VOC) requirements in the Ohio Administrative Code, Chapter 3745–21. Chapter 3745–21 consists of emissions limitations and control requirements for sources of VOC. The revisions to Chapter 3745–21 involve certain compliance deadlines, source specific exemptions from otherwise applicable emission limitations, and alternative test procedures. USEPA's final rulemaking, today, is based upon the March 28, 1983, submittal from the State. USEPA is taking final action as proposed.

EFFECTIVE DATE: This final rulemaking becomes effective on February 17, 1989.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: This notice presents a discussion of USEPA's review of Ohio's RACT I and II VOC requirements contained in the Ohio Administrative Code, Chapter 3745–21. The seven parts of this notice are: I. Background Information; II. Definitions, Rule 3745–21–01; III. Attainment Dates and Compliance Time Schedules, Rule 3745–21–04; IV. Control of Emissions of Organic Compounds From Stationary Sources, Rule 3745–21–09; V. Compliance Test Methods and Procedures, Rule 3745–21–01; VI. Discussion of Public Comment; VII. Final Action.

I. Background Information

On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to Ohio Administrative Code (OAC) Chapter 3745–21 and supporting data, to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these amended rules in final form in two separate rulemaking actions on June 21, 1982, and January 24, 1983. OAC Chapter 3745–21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", contains Ohio's VOC RACT I and II regulations. The regulations are embodied in the OAC as follows: Definitions, Rule 3745–21–01; Attainment dates and compliance time schedules, Rule 3745–21–04; Control of emissions of organic compounds from stationary sources, Rule 3745–21–09; and Compliance test methods and procedures, Rule 3745–21–10. USEPA initially approved these regulations as part of Ohio's SIP for ozone in separate rulemaking actions on October 31, 1980, and June 29, 1982 (45 FR 72122 and 47 FR 28097).

The following discussion presents a summary of the proposed changes to the existing rules. Where appropriate, the discussion presents the results of USEPA's analysis and USEPA's conclusion as to whether or not the change is approvable. USEPA's complete analysis is contained in a document entitled "Technical Support Document for Ohio RACT I and II Rule Revisions", dated July 18, 1983. This document is available for review at the Region V office listed above. For further details, the reader is referred to this document and the State submittal of March 28, 1983, which includes the adopted version of Rules 3742–21–01, 04, 09. 10, and supporting documentation.

II. Definitions, Rule 3745–21–01

In today's rulemaking action, USEPA is approving all new terms and definitions which Ohio has added and revised pertaining to the source categories of paper and vinyl coating, and to the use of cutback and emulsified asphalts in road construction and maintenance. The following portions of Rule 3745–21–01 have been revised.

a. Section (D)(16), (36), (50)

The definition of paper coating has been revised to include coatings applied by an extrusion coater and a definition of an extrusion coater has been added. The definition of vinyl coating has been revised to include application of coating by means of a knife or roll coater.

b. Section (F)(1–8)

Ohio has clarified the existing definitions and added new terms related to amendments to Rule 3745–21–09(N) on the use of asphalts in road construction and maintenance.

c. Sections (E)(8) and (J)(5)

Typographical errors in Sections (E)(8) and (J)(5) have been corrected.

III. Attainment Dates and Compliance Time Schedules, Rule 3745–21–04

a. Sections (C)(2) and (C)(35), Extended Compliance Schedule

USEPA is taking no action on the compliance date extension contained in Rule 3745–21–04, Sections (C)(2) and (C)(35), granted by Ohio to the Honda of America Manufacturing, Inc. auto assembly plant in Marysville. An extension for the same period of time was granted through a permit issued under Ohio's federally approved new source review program, it is currently federally enforceable, and any further federal action here is unnecessary.

USEPA is approving the State's revisions to the compliance time schedules contained in Rule 3745–21–04, as described in III b, c, d, and e below.

b. Section (C)(3) Can Coating Lines

Section (C)(3) has been revised to include an alternative compliance schedule for can coating lines subject to applicable control requirements. The alternative schedule may allow extension of the compliance deadline to December 31, 1985, if the owner or operator of the line demonstrates the necessity of the compliance date extension to the satisfaction of the Director of OEPA by supplying the documentation required in subparts (i) through (iv). A can coating compliance date extension, through the end of 1985, is consistent with USEPA's policy on compliance date extensions regarding the ultimate attainment date of December 31, 1987.

However, there is no replicable procedure specified for the Director to determine if the extension granted under this procedure will ensure reasonable further progress toward attainment. Therefore, USEPA will consider approval of compliance date extensions if each request is submitted to the Agency as an individual SIP revision. USEPA approves this section on the understanding that the State will submit each extension request to USEPA for approval through the SIP process.

c. Section (C)(15) Cutback and Emulsified Asphalts

A compliance date of April 15, 1982, has been added to OAC Rule 3745–21–04 for the use of emulsified asphalt in road construction and maintenance. This is not a compliance date extension as it refers to a new requirement.

d. Section (C)(29) Gasoline Tank Trucks

Ohio has revised the compliance date by which gasoline tank trucks are required to comply with leak testing, record-keeping, and reporting requirements. This revision requires compliance by March 31, 1983.

This extension is consistent with USEPA's August 7, 1986, compliance date extension policy regarding the ultimate attainment date of December 31, 1987. This extension can be considered expeditious because it is less than 3 years from the time the rule was adopted (February 12, 1981).

However, there is no replicable procedure specified for the Director to determine if the extension granted under this procedure will ensure reasonable further progress toward attainment. Therefore, USEPA will consider approval of compliance date extensions if each request is submitted to the Agency as an individual SIP revision. USEPA approves this section on the understanding that the State will submit each extension request to USEPA for approval through the SIP process.

e. Section (C)(33) External Floating Roof Tanks

The compliance time schedules for awarding contracts, initiating construction, and completing construction to retrofit tanks to comply with the SIP, have been revised to March 1, October 1, and November 1, 1982, respectively. The deadlines for submitting a control plan to OEPA and for final compliance with Rule 3745–21–09(Z) are unchanged.

These schedules can be considered expeditious according to USEPA's August 7, 1986, policy and compliance date extension, because they are within 3 years of adoption of the rule (February 12, 1981). These revisions do not interfere with RFP because (1) they do not change the date by which final compliance with the external floating roof tank rule is to be achieved, and (2) they do not interfere with the final attainment date of December 31, 1987. Therefore, this compliance date extension is considered to be reasonable.

IV. Control of Emission of Organic Compounds From Stationary Sources, Rule 3745–21–09

In general, USEPA finds this rule to be acceptable, based on USEPA's policies and Control Technique Guidelines (CTG), and is approving the following amendments. A discussion of actions other than approvals are contained in Part IV.b of this notice.

a. Final Approval

Sections:

- (B); Emission limitations.
- (C) (1) and (3); Surface coating of automobiles and light duty trucks.
- (I) (1) and (2); Surface coating of metal furniture.
- (K) (1) and (3) and (K)(4) (a), (b) and (c); Surface coating of large appliances.
- (N) (1), (2), and (3) (b) and (c); Use of cutback and emulsified asphalts. NOTE: USEPA is not approving (N)(3) (a) and (e).
- (O)(2); Solvent metal cleaning.
- (P) (1), (4), and (5); Bulk gasoline plants.
- (Q)(3); Bulk gasoline terminals.
- (R)(3); Gasoline dispensing facilities.
- (U)(1) and the exemptions contained in (2)(h); Surface coating miscellaneous metal parts and products.
- (X)(1) (a)(i), (b)(i), and the exemption contained in (2)(d); Rubber tire manufacturing.
- (Z) (1) (b) through (h), (2), and (3); Storage of petroleum liquids in external floating roof tanks. NOTE: USEPA is not approving (Z)(1)(a).
- (AA) (1) and (2) (b) and (c); Dry cleaning facility. NOTE: USEPA is not approving (AA)(2)(a).

b. Discussion of Actions Other than Approvals

- Section (A), Applicability

The applicability of this section was revised to include new, as well as existing, sources of VOC. USEPA is taking no action on this section as it applies to new sources of VOC. New sources are regulated by Ohio's new source review (NSR) program and USEPA's Prevention of Significant Deterioration (PSD) program. NSR and PSD may require more stringent emission limitations than those contained in this rule.

- Section (K)(4), Surface Coating of Large Appliances

Section (4) exempts three Whirlpool Corporation plants from the control requirements contained in Paragraph (K)(1). The plants are located in Sandusky, Hancock, and Marion Counties. Marion, Sandusky, and Hancock were designated attainment areas of the NAAQS for ozone on June 12, 1984 (49 FR 24124). The State implemented an accommodative ozone SIP for these Counties (i.e., a SIP that is designed to require emission reductions beyond those that are minimally necessary to maintain the ozone standards, in order to provide a margin for future source growth) and they were provided a waiver with respect to the one year of preconstruction ozone monitoring normally required by USEPA's PSD program.

Because USEPA is now approving the exemption from RACT for the Whirlpool Corporation sources located in Sandusky, Hancock, and Marion Counties (and the Cooper Tire and Rubber Company in Hancock County discussed elsewhere herein), the State no longer has an accommodative ozone SIP for these Counties. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring is terminated for the counties in which these sources are located.

Thus, in today's rulemaking action, USEPA is approving the State's exemption contained in (K)(4) (a), (b), and (c) for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties, and future sources in these counties shall comply with the PSD regulations requiring one year of preconstruction ozone monitoring.

- Section (N)(3) (a) and (e), Use of Cutback and Emulsified Asphalts

USEPA is disapproving two amendments to the requirements of Section (N) on the use of cutback and emulsified asphalt in road construction and maintenance. The first amendment extends the exemption period for use of cutback asphalts in the existing rule by two months, from October 15 through April 15 to September 15 through May 15 of each year, due to problems encountered in using emulsified asphalt during colder weather. USEPA acknowledges that emulsified asphalt does not set up properly at temperatures below 50 °F. However, OEPA has not yet provided the documentation that USEPA requested in a letter to OEPA, dated November 17, 1982, on the temperature ranges during those additional two months that the State permits the use of cutback asphalts.

The second amendment exempts a maximum daily use of 1000 gallons of cutback emulsified asphalt when applied by hand for patching or sealing cracks. OEPA states that this exemption is necessary due to a lack of personnel trained to use low-volume emulsified asphalt for road patching. USEPA's review of this rule shows that the basis on which the 1000 gallon exemption is determined is not stated, i.e., per person, crew, district, or County. Furthermore, a lack of training is not sufficient reason for an exemption.

- Section (R)(4), Gasoline Dispensing Facilities

USEPA previously conditionally approved this rule on October 31, 1980 (45 FR 72122–72143). On June 1, 1984 (49 FR 22814), USEPA removed the conditions on USEPA's approval of this rule for most of Ohio except for the Akron, Cincinnati and Cleveland attainment demonstration areas. This condition of approval remains outstanding for the Akron, Cincinnati, and Cleveland areas and will be addressed in future rulemaking action.

- Section (U)(2)(f), Surface Coating of Miscellaneous Metal Parts and Products

OEPA has amended the exemption for this rule by adding (f) (i) and (ii) which apply to new sources. Since USEPA is taking no action on section (A) as it applies to new sources of VOC, USEPA is also taking no action on these exemptions.

- Section (U)(2)(i), Surface Coating of Miscellaneous Metal Parts and Products

USEPA is taking no action on the exemption contained in section (U)(2)(i) granted by Ohio for the Honda of America Manufacturing, Inc. motorcycle assembly plant in Marysville. The exemption was granted under Ohio's new source review program and any further Federal action here is unnecessary.

- Section (V) Gasoline Tank Trucks

OEPA has amended the emission control requirements of section (V) to include a reference to the State's standards leak testing procedures, Method G [Rule 3745–21–10(G)], and a new alternative leak test procedure, Method H [Rule 3745–21–10(H)]. USEPA is disapproving this section and Rules 3745–21–10 (G) and (H), as adopted by the State on January 24, 1983. A discussion of Method H, and USEPA's rationale for disapproving Rule 3745–21–09(V), –10(G) and –10(H) as alternative leak testing procedures, are set forth in Part V.b of this notice. The effect of a final disapproval of these rules is that all owners and operators of such trucks will be subject to the control requirements in Rule 3745–21–09(V) of the existing SIP. When conducting leak tests all owners and operators of such trucks must use only the standard procedure in Rule 3745–21–10(G), as adopted by the State on March 27, 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

- Section(X)(2)(d), Rubber Tire Manufacturing Facility

OEPA added section (2)(d) which contains an exemption for the Cooper Tire and Rubber Company facility located in Findlay, Ohio (Hancock County). As stated previously, Hancock County was designated attainment of the NAAQS for ozone on June 12, 1984 (49 FR 24124), an accommodative ozone SIP was implemented in the county, and the county was provided a waiver of the one year preconstruction ozone monitoring requirement in USEPA's PSD program.

Because USEPA is now approving the exemption from RACT for the Cooper Tire and Rubber Company (and the Whirlpool Corporation plant discussed above) located in Hancock County, the State no longer has an accommodative ozone SIP for this county. As a result, the waiver from the requirement of one year of preconstruction ozone monitoring required by the PSD regulations is terminated for Hancock County.

- Section (Z)(1)(a), Storage of Petroleum in External Floating Roof Tanks

This rule, as approved by USEPA for floating roof storage tanks (47 FR 28097; June 29, 1982), required the use of secondary seals for all tanks storing petroleum liquids. Ohio has amended this section to require only one seal, either a mechanical shoe primary seal, a liquid-mounted primary seal, or the equivalent, on the external floating roof tank if the petroleum liquid being stored is crude oil.

OEPA justified this amendment with data showing that retrofitting secondary seals on storage tanks with liquid mounted primary seals is substantially more expensive, per ton of VOC controlled, than retrofitting secondary seals on other tank types, or retrofitting tanks storing more volatile organic liquids. USEPA agrees that cost effectiveness may be considered in modifications to RACT. However, Ohio has not demonstrated that this relaxation would not interfere with the timely attainment and maintenance of the NAAQS for ozone. Without such a demonstration, USEPA cannot approve the amendment. Therefore, USEPA is disapproving this amendment. USEPA will reconsider this amendment if the State submits the necessary demonstration.

c. Other Actions

- Section (AA)(2)(c), Dry Cleaning Facility

This rule as approved by USEPA for perchloroethylene dry cleaning operations (47 FR 28097; June 29,1982) exempted only those operations which were coin-operated or, due to insufficient steam or space, could not install a control device. OEPA has added section (2)(c) which exempts any facility in which less than 60,000 pounds of fabrics are cleaned per year.

On October 24, 1983 (48 FR 49007), USEPA proposed to add perchloroethylene to the list of organic compounds which have negligible photochemical reactivity and, thus, should be exempt from regulation under the ozone SIP. Therefore, USEPA is not taking action on Ohio's amendment regarding perchloroethylene at this time. However, after USEPA issues its final policy on perchloroethylene, USEPA will take action either approving or disapproving this rule revision.

- Section (D)(3), Alternative Daily Emission Limitation for Can Coating

USEPA approved OAC Rule 3745–21–09(D)(3), an alternative daily emission limitation for can coating facilities, on June 29, 1982 (47 FR 28097). However, during USPEA's review of the State's revision to the ozone SIP, USEPA identified the following deficiencies within this rule.

This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that they are based on volume of coating used (in gallons, excluding water), which in many cases can lead to erroneous results. Equivalency calculations for coatings should be performed on a basis of volume of coating solids used rather than volume of coating used. (45 FR 80824 gives an example calculation for can coating done on a volume solids basis.)

However, on April 9, 1986, OEPA submitted amendments to its RACT I and RACT II VOC Regulations. One of these revisions corrects the equation so that it is now on a constant volume solids basis. This revision will be discussed in a subsequent Federal Register notice.

V. Compliance Test Methods and Procedures, Rule 3745–21–10

OEPA has amended this Rule to include a number of minor revisions, corrections or calssifications; a rule reorganization; and, an alternative method for determining the leak tightness of gasoline tank trucks. USEPA is approving all changes made to Rule 3745–21–10 (B) through (F) and (I) through (K). USEPA is disapproving sections (G) and (H). The following sections of Rule 3745–21–10 have been significantly revised.

a. Final Approval

Sections:

- (A) (3) and (4); General Provisions.
- (B) (3), (4) and (5); Methods for detemining VOC content of surface coating and inks.
- (E) (4) and (7); Method for determining VOC emissions from bulk gasoline terminals.
- (K) Methods for detecting leaks of gasoline vapors.

b. Final Disapproval

- Section (G), Standard Method for the Determination of the Leak Tightness of Gasoline Tank Trucks (Method G)

As noted in Part IV.b. of this notice, USEPA is disapproving amended section (G) consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable. USEPA believes that the approved SIP currently contains the control requirements and leak test procedures that are consistent with Agency guidance, and other States' tank certification regulations.

The effect of a final disapproval of this rule is that all owners and operators of gasoline tank trucks would be subject to Rule 3745–21–09(V) and 10(G), as adopted by the State in March 1981, and approved by USEPA as a SIP revision on June 29, 1982 (47 FR 28097).

- Section (H), Alternate Method for Determining Leak Tightness of Gasoline Tank Trucks (Method H)

In today's rulemaking action, USEPA is disapproving the State's alternative test method, Method H, contained in amended Rule 3745–21–10(H), because this method involves a pressure test of only the vapor recovery lines and associated equipment. To summarize the rule, gasoline tank trucks which were manufactured prior to January 1, 1975, must be pressurized to 15 inches of water and may not sustain a pressure

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decrease greater than 3.0 inches of water over 3 consecutive minutes. Gasoline tank trucks which were manufactured on or after January 1, 1975, must be pressurized to 18 inches of water and may not sustain a pressure decrease greater than 3.0 inches of water over 3 consecutive minutes.

The pressure test does not involve pressurization of any compartment of the gasoline tank truck. In addition to the pressure test, the following items are to be inspected and repaired or replaced if found to be defective:

(1) Dome cover lids (gaskets, latch tension and pressure/vacuum vents),

(2) Fusible plugs,

(3) Vapor vent hoods and sealing bands,

(4) Vapor return hoses and any associated fittings and adaptors, and

(5) Any pressure and vacuum relief vents on the vapor recovery lines.

Also, the pressure/vacuum vents in the dome assembly covers must comply with certain minimum specifications.

This method is not consistent with USEPA's control technique guidance, nor with the tank truck certification regulations that are in effect in 19 other States. In addidion, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

VI. Public Comment Discussion

During the public comment period, a total of two comments were received on Ohio's RACT I and II VOC regulations. These comments and USEPA responses are discussed in the record of this rulemaking.

A brief summary of the comments is discussed below.

1. Marathon Pipe Line Company's April 1, 1985, Comment

(a) Portion of Notice of Proposed Rulemaking Which Was Commented Upon Section (Z)(1)(a), Storage of Petroleum in External Floating Roof Tanks

As discussed above in Section IV.b., Ohio has amended this rule to require only one primary seal, or the equivalent, on an external floating roof tank if the petroleum liquid being stored is crude oil. OEPA justified the omission of the secondary seal requirement with cost-effectiveness data. USEPA agrees that cost-effectiveness may be considered in modifications to RACT. However, USEPA is disapproving this amendment, because Ohio has not submitted a demonstration that shows that this relaxation would not interfere with timely attainment and maintenance of the NAAQS for ozone.

(b) Summary of Marathon's Comment

Marathon states that it was not aware of the requirement that there be an explicit demonstration that the recision (or relaxation of the rule) would not interfere with the timely attainment and maintenance of the NAAQS for ozone. Marathon feels that the demonstration it presented the OEPA, at the time it requested the revision to the regulations, showed that for crude oil a primary seal is the equivalent of RACT. Since the States are free to choose the mix of controls necessary to achieve attainment and maintenance of the standards, including emission limitations that represent RACT, a demonstration of attainment and maintenance is implied by the State's evaluation of the request and subsequent adoption of the exemption. Marathon is prepared to make and, if necessary, amplify the demonstration made to OEPA at the time it requested the revision.

Marathon is, therefore, requesting that the decision with regard to the disapproval of this SIP revision be delayed, and that Marathon be given adequate time to make a presentation similar to that made to the OEPA at the time of the SIP revison request.

(c) USEPA Response

This proposed SIP revision constitutes a relaxation of Ohio's federally approved ozone SIP. For any relaxation to be approvable, a determination would have to be made that the relaxation will not interfere with timely attainment or maintenance of the ozone NAAQS. No such air quality assessment was performed by OEPA.

The demonstration discussed by Marathon deals with the issue of whether Ohio's proposed revision constitutes RACT for crude oil storage in external floating roof tanks. While the RACT requirement must also be satisfied for these revisons to be approvable, the point of USEPA's finding deals with the lack of an *oir quolity demonstration,* as discussed in the preceding paragraph.

USEPA is, therefore, unable to approve this relaxation without a demonstration that the relaxation will not interfere with attainment or maintenance of the ozone NAAQS. USEPA is unable to delay the processing of this SIP revision, unless OEPA requests that it be withdrawn.

USEPA will reconsider this request if the State resubmits it when it submits an approvable attainment demonstration for the area.

2. Comment from John McCarthy

(a) Portion of Notice of Proposed Rulemaking Which Was Commented Upon

Section (AA)(2)(c) Dry Cleaning Facility. As discussed above in Section IV.c., OEPA has added Section (2)(c) which exempts any perchloroethylene dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year. USEPA is taking no action on Ohio's amendment regarding perchloroethylene dry cleaning facilities until USEPA issues its final decisions on the reactivity and carcinogenicity of perchloroethylene.

(b) Mr. McCarthy's Comment

Mr. McCarthy stated that it might be prudent for a State not to make regulations less stringent for perchloroethylene because his understanding is that it is listed as a carcinogen.

(c) USEPA Response

Perchloroethylene is not formally listed as a carcinogen. However, it has been studied by the National Toxicology Program for carcinogenic properties, and is currently being considered for listing under section 112 of the Clean Air Act as a pollutant which is hazardous to human health. If perchloroethylene is listed under section 112, certain perchloroethylene source categories may be subject to additional emission limitations.

USEPA has not, as yet, published the final notice which will specify whether or not perchloroethylene is to be added to the list of organic compounds which have negligible photochemical reactivity, and, thus, should be exempt from regulation under the SIP. USEPA has no basis for requiring more stringent controls on perchloroethylene sources at this time.

VII. Summary of USEPA's Final Action

USEPA is approving all of the June 21, 1982, and January 24, 1983, revisions to Chapter 3745–21–01, 04, 09, and 10 as submitted by the Director of OEPA to USEPA on March 28, 1983, with the following exceptions:

a. USEPA is disapproving new exemptions for the use of cutback asphalt [OAC Rule 3745–21–09(N)(3) (a) and (e)], and for external floating roof (crude oil) storage tanks from the secondary seal requirement [OAC Rule 3745–21–09(Z)(1)(a)]. USEPA is also disapproving compliance test methods [OAC Rule 3745–21–09(V) and Sections G and H; OAC Rule 3745–21–10] as alternative leak testing procedures for gasoline tank trucks.

b. USEPA is not taking action of the applicability of OAC Rule 3745–21–09(A) to new sources of VOC, the gasoline through-put exemption level for gasoline dispensing facilities [OAC Rule 3745–21–09(R)(4)], and the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville [OAC Rule 3745–21–09(U)(2)(i)].

c. USEPA is not taking action on OAC Rule 3745–21–09(AA)(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year.

d. USEPA is not taking action on OAC Ruel 3745–21–09(U)(2)(f) (i) and (ii), which apply to new sources (surface coating lines).

No matter what rules the State now enforces, the existing federally approved SIP regulations for any source will apply, and will be fully enforceable, until the source complies with the new regulations which USEPA approves as a result of today's final rulemaking on the Chapter 3745–21 revision. Furthermore, the existing SIP regulations will continue in force where USEPA disapproves certain new regulations.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Petitions for judicial review of this action under section 307(b)(1) of the Act must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Dated: December 12, 1988.

Lee M. Thomas,

Administrator.

Ohio—Subpart KK

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. This notice is issued under authority of the Clean Air Act, as amended (42 U.S.C. 7401–7642).

2. Section 52.1870 is amended by adding new paragraph (c)(73) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(73) On March 28, 1983, the State of Ohio Environmental Protection Agency (OEPA) submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OAC Chapter 3745–21, entitled "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Material Standards", contains Ohio's VOC RACT I and II regulations. The amendments to these regulations are embodied in the OAC as follows: Definitions, Rule 3745–21–01; Attainment dates and compliance time schedules, Rule 3745–21–04; Control of emissions of organic compounds from stationary sources, Rule 3745–21–09; and Compliance test methods and procedures, Rule 3745–21–10. See (c)(15). USEPA is not taking action on the applicability of Rule 3745–21–09 to new sources of VOC, to the gasoline throughout exemption level for gasoline dispensing facilities, and to the compliance date extension for Honda of America Manufacturing, Inc. auto and motorcycle assembly plant in Marysville. USEPA is not taking action on OAC Rule 3745–21–09(AA))(2)(a) which exempts any dry cleaning facility in which less than 60,000 pounds of fabrics are cleaned per year. USEPA is not taking action on OAC Rule 3745–21–09(U)(2)(f) (i) and (ii) which apply to new sources (surface coating lines). USEPA is identifying deficiencies in the existing Rule 3745–21–09(D)(3) which contains an alternative daily emission limitation for can coating facilities. USEPA identified the following deficiencies within this rule: This rule presents equations for determining an alternative daily emission limitation. USEPA finds that the equations are incorrect in that they are based on volume of coating used (in gallons, excluding water), which in many cases can lead to erroneous results. Equivalency calculations for coatings should be performed on a basis of volume of coating solids used rather than volume of coating used. (45 FR 80824 gives an example calculation for can coating done on a volume solids basis.)

(i) Incorporation by reference.

(A) Amendments to OAC Chapter 3745–21, dated June 21, 1982 and January 24, 1983.

(1) Rule 3745–21–01; Definitions.

(i) Section (D)(16), (36), and (50), paper and vinyl coating.

(ii) Section (F)(1–8), asphalts in road construction and maintenance.

(iii) Sections (E)(8), and (J)(5), corrections to Sections (E)(8) and (J)(5).

(2) Rule 3745–21–04; Attainment dates and compliance time schedules.

(i) Section (C)(3), can coating lines.

(ii) Section (C)(15), cutback and emulsified asphalts.

(iii) Section (C)(29), gasoline tank trucks.

(iv) Section (C)(33), External floating roof tanks.

(3) Rule 3745–21–09; Control of emission of organic compounds from stationary sources.

(i) Section (B), Emission limitations.

(ii) Section (C) (1) and (3), Surface coating of automobiles and light duty trucks.

(iii) Sections (I) (1) and (2), Surface coating of metal furniture.

(iv) Sections (K) (1) and (3) and (K)(4) (a), (b) and (c), Surface coating of large appliances.

(v) Sections (N) (1), (2), and (3)(b) and (c), Use of cutback and emulsified asphalts. NOTE: USEPA is not approving (N)(3) (a) and (e).

(vi) Section (O)(2), Solvent metal cleaning.

(vii) Sections (P) (1), (4), and (5), Bulk gasoline plants.

(viii) Section (Q)(3), Bulk gasoline terminals.

(ix) Section (R)(3), Gasoline dispensing facilities.

(x) Sections (U)(1) and the exemptions contained in (2)(h), Surface coating miscellaneous metal parts and products.

(ix) Sections (X)(1)(a)(i), (b)(i), and the exemption contained in (2)(d), Rubber tire manufacturing.

(x) Sections (Z)(1) (b) through (h), (2), and (3), Storage of petroleum liquids in external floating roof tanks. NOTE: USEPA is not approving (Z)(1)(a).

(xii) Sections (AA)(1) and (2)(b) and (c), Dry cleaning facility. NOTE: USEPA is not proposing to approve (AA)(2)(a).

(xiii) Section (K)(4) (a), (b), and (c), for the Whirlpool Corporation plants located in Marion, Sandusky, and Hancock Counties.

(xiv) Section (X)(2)(d), Cooper Tire and Rubber tire manufacturing facility located in Hancock County.

(4) Rule 3745–21–10; Compliance test methods and procedures.

(i) Sections (A) (3) and (4), General provisions.

(ii) Section (B) (3), (4) and (5), Methods for determining VOC content of surface coating and inks.

(iii) Section (E) (4) and (7), Method for determining VOC emissions from bulk gasoline terminals.

(iv) Section (K), Methods for detecting leaks of gasoline vapors.

3. Section 52.1877 is amended by adding new paragraph (b) to read as follows:

§ 52.1877 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(b) The requirements of § 52.14 are not met by Rule 3745–21–09(N)(3) (a) and (e); Rule 3745–21–09(Z)(1)(a); Rule 3745–21–10, Section G; and Rule 3745–21–10, Section H, because these Ohio Rules do not provide for attainment and maintenance of the photochemical oxidant (hydrocarbon) standards throughout Ohio.

(1) USEPA is disapproving new exemptions for the use of cutback asphalt [(Rule 3745–21–09(N)(3) (a) and (e)], because Ohio did not provide documentation regarding the temperature ranges in the additional two months that the State permits the use of cutback asphalts, and a lack of training is not sufficient reason for the 1000 gallons exemptions.

(2) USEPA is disapproving Section V [Rule 3745–21–09(V)], because it contains an alternative leak testing procedure for gasoline tank trucks which USEPA finds to be unapprovable.

(3) USEPA is disapproving exclusion of the external floating roof (crude oil) storage tanks from the secondary seal requirement [Rule 3745–21–09(Z)(1)(a)], because Ohio has not demonstrated that the relaxation would not interfere with the timely attainment and maintenance of the NAAQS for ozone.

(4) USEPA is disapproving compliance test method Section G, [Rule 3745–21–10] as an alternative leak testing procedure for gasoline tank trucks, because such action on Section G, is consistent with USEPA's action on Rule 3745–21–09(V), which USEPA finds to be unapprovable.

(5) USEPA is disapproving compliance test method Section H, [Rule 3745–21–10], which involves a pressure test of only the vapor recovery lines and associated equipment. Compliance test method Section H is inconsistent with USEPA's control technique guidances and with tank truck certification regulations that are in effect in 19 other States. In addition, OEPA has presented no acceptable evidence demonstrating why this rule constitutes RACT.

[FR Doc. 89–1133 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3505–7]

Kentucky; Final Authorization of State Hazardous Waste Management Program for non-HSWA Cluster II

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (hereinafter "RCRA" or the "Act") as amended by the Hazardous and Solid Waste Amendments (hereinafter HSWA). EPA has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revision for non-HSWA Cluster II satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revision for non-HSWA Cluster II. Kentucky's application for program revision is available for public review and comment.

DATES: Final authorization for Kentucky shall be effective March 20, 1989, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business, February 17, 1989.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours Monday through Friday, at the following addresses for inspection and copying: Division of Waste Management, Kentucky Department for Environmental Protection, Fort Boone Plaza, Building #2, 18 Reilly Road, Frankfort, Kentucky 40601, Phone 502/564–6716; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC, 20460, Phone: 202/382–5926; U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone: 404/347–4216.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, 404/347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Part 260–268 and 124 and 270.

B. Kentucky

Kentucky initially received final authorization on January 31, 1985 (50 FR 2550). On February 24, 1988, Kentucky submitted a draft program revision application for additional program approval for federal regulations promulgated between July 1, 1985 and June 30, 1986, known as non-HSWA Cluster II. On November 7, 1988, Kentucky submitted a final program revision application for the aforementioned authority. Today, Kentucky is seeking approval of its program revisions for the following authorities in accordance with 40 CFR 271.21(b)(3).

Federal requirement	State authority
Closure, Post-Closure and Financial Responsibility Requirements: Settlement Agreement, 51 FR 16443–16459, May 2, 1986.	KRS 13A.210 KRS 224.017 KRS 224.033 KRS 224.862 KRS 224.866 KRS 224.867 401 KAR 30:010 401 KAR 34:070 401 KAR 34:080 401 KAR 34:100 401 KAR 35:070 401 KAR 35:080 401 KAR 35:090 401 KAR 35:100 401 KAR 35:120 401 KAR 36:020 401 KAR 38:040 401 KAR 38:090
Listing of Spent Pickle Liquor (K062), 51 FR 19320 as amended at 51 FR 33612, May 28, 1986 and September 22, 1986.	KRS 13A KRS 224.033 KRS 224.864(3) KRS 224.867 401 KAR 31:040

EPA has reviewed Kentucky's application, and has made an immediate final decision that Kentucky's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision until close of business February 17, 1989. Copies of Kentucky's application for program revision are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Kentucky's program revision for non-HSWA Cluster II shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Kentucky's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised. Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 15, 1988.

Joseph R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89–857 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 94

[CC Docket No. 87–47; FCC 88–390]

Amendment To Provide for a Minimum Antenna Gain of 34.0 dBi for the 10550 MHz–10565MHz and 10615 MHz–10630 MHz Segments of the 10550 MHz–10680 MHz Band and To Provide for New Sidelobe Suppression Standards for Antenna with Minimum Gain of 34.0 dBi

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This rulemaking order revises the Antenna Standards tables specified at 47 CFR 21.108(c) and 94.75(b). Antenna sidelobe suppression standards are also changed slightly. These rule revisions enable point-to-point microwave radio licensees of the 10550 MHz–10680 MHZ band to use smaller, less expensive antennas of 2.00 feet diameters instead of the 3.25 feet diameter antennas previously required.

EFFECTIVE DATE: February 7, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Frank Peace, Tele: 202–634–1779.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket 87–47, FCC 88–390, Adopted November 29, 1988, and Released December 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 202–857–3800, Suite 246, 1919 M Street NW., Washington, DC 20037.

Summary of Report and Order

1. This rulemaking order reduces the minimum antenna gain from 38 dBi to 34 dBi for point-to-point microwave radio services between 10550 MHz and 10680 MHz, and relaxes the relevant antenna sidelobe suppression standards. These revisions should not result in increased interference levels to co-channel and adjacent channel users in this 10 GHz band.

Ordering Clauses

2. Authority for this rulemaking is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

3. Accordingly, it is ordered that §§ 21.108(c)(3) and 94.75(b) of the Commission's Rules and Regulations is amended, effective February 7, 1989, as shown below. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Parts 21 and 94

Radio.

Rule Changes

Part 21 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES (OTHER THAN MARITIME MOBILE)

The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

Section 21.108(c) is amended by revising the table of Antenna Standards to read as follows:

§ 21.108 Directional antennas.

* * * * *

(c) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
2,500 to 5,000	A	NA	36.0	23	29	33	36	42	55	55
	B	NA	36.0	20	24	28	32	32	32	32
5,000 to 10,550	A	NA	36.0	25	29	33	36	42	55	55
	B	NA	36.0	20	24	28	32	35	36	36
10,550 to 10,565 [4]	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,565 to 10,615	NA	360	NA	NA	NA	NA	NA	NA	NA	NA
10,615 to 10,630	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,630 to 10,680	NA	NA	34.0	20	24	28	32	35	36	36
17,700 to 18,820	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
18,920 to 19,700 [1]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
21,200 to 23,600	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
31,000 to 31,300 [2] [3]	NA	4.0	38.0	NA	NA	NA	NA	NA	NA	NA
Above 31,300	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36

[1] Digital Termination User Station antennas and point-to-point microwave radio station antennas in this band shall meet performance Standard B and have a minimum antenna gain of 34 dBi.
[2] The minimum front-to-back ratio shall be 38 dBi.
[3] Mobile, except aeronautical mobile, stations need not comply with these standards.
[4] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989, for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibles.

Note: Stations must employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

Section 94.75(b) is amended by revising the table of Antenna Standards to read as follows:

§ 94.75 Antenna limitations.

* * * * *

(b) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
952 to 960 [1] [4]	A	14.0	NA	.....	6	11	14	17	20	24
	B	20.0	NA	.....	.....	6	10	13	15	20
1,850 to 2,690 [2]	A	5.0	NA	12	16	22	25	29	33	39
	B	8.0	NA	5	16	20	20	25	28	36
6,525 to 6,875	A	1.5	NA	26	29	32	34	38	41	49
	B	2.0	NA	21	25	29	32	35	39	45
10,550 to 10,565 [6]	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,565 to 10,615 [3]	NA	360	NA	NA	NA	NA	NA	NA	NA	NA
10,615 to 10,630	A	3.4	34.0	20	24	28	32	35	55	55
	B	3.4	34.0	20	24	28	32	35	35	39
10,630 to 10,680 [3]	NA	NA	34.0	20	24	28	32	35	36	36
12,200 to 13,250 [6]	A	1.0	NA	23	28	35	39	41	42	50
	B	2.0	NA	20	25	28	30	32	37	47
17,700 to 19,700 [3]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
21,200 to 23,600 [5]	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36
31,000 to 31,300 [7] [8]	NA	4.0	38.0	NA	NA	NA	NA	NA	NA	NA

ANTENNA STANDARDS—Continued

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
27,500 to 29,500	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	36.0	20	24	28	32	35	36	36
38,600 to 40,000	A	NA	38.0	25	29	33	36	42	55	55
	B	NA	38.0	20	24	28	32	35	36	36

[1] Except for frequencies listed in § 94.65(a)(1), where omnidirectional antennas may be used.
[2] Except for 2150 MHz–2160 MHz, where the maximum beamwidth is 360 degrees and except for frequencies in the 2500 MHz–2690 MHz band, where standards contained in § 94.95 apply.
[3] Except as provided in § 94.199 for Digital Termination System antennas.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in § 94.91.
[6] Except for temporary-fixed operations in the band 13200 MHz–13250 MHz with output powers less than 250 mW and as provided in § 94.90.
[7] The minimum front-to-back ratio shall be 38 dBi.
[8] Mobile, except aeronautical mobile, stations need not comply with these standards.
[9] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989 for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibels.

Note: Stations in this service must employ an antenna that meets the performance standards for Category A, except that, in areas not subject to frequency congestion antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

Donna R. Searcy,
Secretary.
[FR Doc. 89-989 Filed 1-17-89; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-199-AD]

Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF340A series airplanes, which would require inspection of the insulation in the Environmental Control System (ECS) compartment and securing of the Gamah Couplings with a locking wire. If inspection reveals leakage of hot air into the fuselage, an additional inspection would be required for delamination of the stringer-to-skin bonding, and repair, if necessary. This proposal is prompted by a report of hot air leakage into the ECS compartment due to Gamah Coupling separation, which resulted in delamination of the stringer-to-skin bonding due to overheated adhesive. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

DATE: Comments must be received no later than March 14, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania AB, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on SAAB-Scania Model SF-340A series airplanes. There has been one report of hot air leakage from the Air Cycle Machine (ACM) ducting due to Gamah Coupling separation. This resulted in bonding separation between the stringers and skin panel due to overheated adhesive. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

SAAB-Scania has issued Service Bulletin SF340-21-022, dated October 31, 1988, which describes procedures for inspection of insulation in the Environmental Control System (ECS) compartment and securing of Gamah Couplings with a locking wire. If this inspection shows leakage of hot air, an additional inspection is required for possible delamination of stringer to skin bonding, and repair, if necessary, in accordance with SAAB Service Bulletin SF340-53-025, dated October 31, 1988. The LFV has classified both service bulletins as mandatory, and has issued Swedish Airworthiness Directive (SAD) No. 1-029 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the insulation in the ECS compartment and securing of the Gamah Couplings with a locking wire. If this inspection reveals hot air leakage, an additional inspection is required for delamination of the stringer to skin bonding and repair, if necessary.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,080.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, serial numbers -003 through -138, inclusive, certificated in any category. Compliance in required as indicated below, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Within 30 days after the effective date of this AD, perform an inspection of the insulation in the Environmental Control System (ECS) compartment and secure the Gamah Couplings with a locking wire, in accordance with SAAB-Scania Service Bulletin SF340-21-022, dated October 31, 1988.

B. If the inspection required by paragraph A., above, reveals leakage of hot air, prior to further flight, inspect for delamination of the stringer to skin bondings, and repair, if necessary, in accordance with SAAB-Scania Service Bulletin SF340-53-025, dated October 31, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, S-581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 5, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1091 Filed 1-17-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 81135-8235]

Licensing of Private Remote Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) plans to reopen the regulations at 15 CFR Part 960 in response to a petition received on April 5, 1988. A consortium of news media organizations petitioned NOAA to amend its regulations for licensing private remote sensing space systems. The Petition alleges that the regulations are so vague in stating when national security restrictions might be imposed in a license that they chill commercial interest in remote sensing particularly in its use for news gathering purposes. The Petition requests review of the regulations for consistency with the President's January 5, 1988 National Security Decision Directive which encourages the commercial development of space including remote sensing.

FOR FURTHER INFORMATION CONTACT: John A. Milholland, Senior Counsellor, National Oceanic and Atmospheric Administration, Department of Commerce, 1825 Connecticut Avenue, NW., Room 603, Washington, DC 20235, (202) 673-5200.

SUPPLEMENTARY INFORMATION: On May 10, NOAA published a notice of receipt in the **Federal Register** inviting comment for 60 days on whether to reopen the regulations. One comment was received supporting the press' position that the regulations are unconstitutionally vague. On July 7, the Petitioners filed a supplemental letter citing the recent Supreme Court decision, *City of Lakewood* v. *Plain Dealer Publishing Co.*, 108 S. Ct. 2138 (1988) to support this position.

Decision

NOAA believes that the existing regulations, applied in accordance with the principles set forth in this Notice, respond to the concerns of the Petition and establish an encouraging climate for the growth of commercial remote sensing. However, NOAA will reopen the regulations to consider whether including these principles or other clarifications would be useful. As discussed below, NOAA continues to reject the contention that it must adopt additional review standards to satisfy constitutional requirements and to reject specifically the standard of review reintroduced by the Petitioners.

Discussion

A. Promoting A Business Climate

The Petitioners do not explain how any uncertainty over possible national security restrictions in a license would inhibit business interest. NOAA believes that any identified problem areas could be negotiated in the early planning stages of a project, as soon as sensor and other relevant parameters are identified, before any substantial investment is required. Therefore, this uncertainty could be resolved in the course of normal business planning.

However, NOAA acknowledges that the process is relatively untested and that some potential operators or investors might be deterred by a misperception that national security interests present significant barriers to private remote sensing ventures. Therefore, to reassure potential applicants, NOAA and the relevant agencies have reviewed their policies in light of the President's Directive and have agreed to consider amending the regulations to incorporate the following principles:

1. There is no *a priori* limit on the resolution of a civilian remote sensing space system.

2. Any conditions imposed in a license will be the least burdensome possible.

NOAA also will consider any other clarifications that would promote commercial confidence.

B. The Effect on the Press

NOAA continues to believe that the only proper time to challenge the regulations is when they are applied to a specific licensing decision if a requirement for some actual restriction is identified. Examining the regulations as applied in a specific context will focus attention on real, concrete issues should such exist while still providing adequate opportunity for judicial review before any restriction on operations might be imposed.

The Petitioners challenge the regulations without applying for a license citing *City of Lakewood* v. *Plain Dealer Publishing Co.*, supra. This case did sustain a constitutional challenge to a licensing ordinance on its face but the situations hardly are analogous.

The *City of Lakewood* ordinance authorized the city mayor to license the placement of newsstands on city property. It granted almost unlimited discretion to grant or deny these licenses which had to be renewed annually. The Court found that this ordinance presented "identifiable risks to free expression" whether or not the mayor actually abused his discretion because the very existence of this licensing requirement obviously had the potential to induce newspaper publishers needing these distribution outlets to engage in self censorship in anticipation of the license proceeding or renewal. Also, the total lack of standards could make it difficult to determine whether a license denial was legitimate or really an exercise in censorship. These risks could only be removed by modifying the basic ordinance.

In contrast, there is no risk posed to free expression by the existence of a requirement that operators of remote sensing systems obtain a license; potential applicants are not likely to curb their expression in anticipation of NOAA's license review and there is no renewal requirement, a major factor in the *Lakewood* case. The only way in which any censorship could occur is through a specific restriction placed on a particular license and any such restriction can be reviewed at the time of the licensing action to determine if it constitutes an abuse of discretion. Furthermore, any restriction must be rationally related to national security or foreign policy concerns to sustain legal challenge.

NOAA will not reconsider amending the regulations to incorporate the standard of review proposed by the Petitioners. This is the same standard proposed during the original rulemaking and is rejected for the same reason: NOAA does not accept Petitioners' view that any restriction on a press operator constitutes a prior restraint on publication. NOAA believes that a different standard applies to restricting access to information in the newsgathering process.

C. Clarification of Enforcement Procedures

The Petition raises a concern over the possibility of disruption during operations by termination of a license or possible search and seizure. This possibility could occur only if the licensee violated a specific condition in the license protecting national security or foreign policy concerns. Such a condition would be negotiated during the licensing process and would be subject to judicial review at that time as discussed earlier. Nevertheless, the inhibitory effect on investors and possibly the media suggests a need for further clarification of enforcement procedures. This will be undertaken.

Again, NOAA believes that it is more appropriate to have each license establish the detailed procedures applicable to the specific operating parameters, basing arrangements, and other characteristics of the system being licensed. It may also be appropriate to include dispute resolution mechanisms in the license to add to the certainty desired by the individual operator or investor. NOAA is willing to consider language in the regulations to provide greater assurance to potential applicants that their concerns can be addressed at the licensing stage.

Date: January 10, 1989.

Thomas N. Pyke, Jr.,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 89-894 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-08-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 872 3075]

Associated Mills, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Chicago, Ill. corporation to have a reasonable basis for any claims of performance characteristics of the Bottled Water Maker or any other water treatment appliance or product. Respondent would also be required to have a reasonable basis for claims of the expected life over which any environmental treatment product can treat or remove any contaminant or reduce any health-related risks.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and PA Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Grady, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Water treatment products, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Associated Mills, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Associated Mills, Inc., a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Associated Mills, Inc., is a corporation organized existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 165 N. Canal Street, Chicago, Illinois 60606.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agree-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions apply:

"Environment" shall mean the matter and conditions physically surrounding a person or object, and shall include water, air, soil, light, sound, atmospheric pressure, temperature, and humidity.

"Water treatment appliance or equipment" shall mean a product designed to treat or remove any contaminant in water.

"Environmental treatment appliance or equipment" shall mean a product designed to treat or remove any contaminant in the environment.

"Air cleaning appliance or equipment" shall mean portable household electric cord connected room air cleaners (excluding ashtrays), defined more specifically as machines that (a) operate with an electrical source of power and contain a motor and fan for drawing air through a filter(s); (b) incorporate electrically charged plates in addition to a fan with a filter(s); (c) incorporate a negative ion generator in addition to a fan with a filter(s); or (d) incorporate a negative ion generator only.

I

It is ordered that respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Pollenex Model WP120 Reverse Osmosis System or any other water treatment appliance or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication the performance characteristics of such water treatment appliance or equipment, including that any such appliance or equipment can or will treat or remove any contaminant or reduce any health-related risk associated with any contaminant in water, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for each such representation.

II

It is further ordered that respondent Associated Mills, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any environmental treatment appliance or equipment, except air cleaning appliances or equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication the expected life over which any such appliance or equipment can or will (i) treat or remove any contaminant in the environment, or (ii) reduce any health-related risks associated with any contaminant in the environment, unless at the time of making the representation respondent possesses and relies upon a reasonable basis for each such representation

III

For purposes of this Order a "reasonable basis" shall consist of competent and reliable evidence which substantiates the representation. To the extent that the evidence of a reasonable basis consists of scientific or professional tests, experiments, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualfied to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

IV

It is further ordered that respondent, its successors and assigns, and its officers, representatives, agents and

employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product covered by this Order, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall maintain written records:

1. Of all materials relied upon in making any claim or representation covered by this Order;

2. Of all test reports, studies, surveys or demonstrations in its possession that materially contradict, qualify, or call into question the basis upon which respondent relied at the time of the initial dissemination and each continuing or successive dissemination of any claim or representation covered by this Order.

Such records shall be retained by respondent for a period of three years from the date respondent's advertisements, sales materials, promotional materials or post purchase materials making such claim or representation were last disseminated. Such records shall be made available to the Commission staff for inspection upon reasonable notice.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution or subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Associated Mills, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising for a home water treatment appliance, the Pollenex Model WP120 Bottled Water Maker Reverse Osmosis System ("the Bottled Water Maker"). Associated Mills is an Illinois corporation that manufactures, distributes, and sells various small consumer appliances.

The Commission's complaint in this matter charges Associated Mills with disseminating advertisements containing a false and misleading representation concerning the Bottled Water Maker. The complaint alleges that Associated Mills' advertising represented that the Bottled Water Maker will remove nearly all or most of the trihalomethanes contained in normal municipal tap water for a year of typical use. Trihalomethanes, a class of organic chemicals which includes chloroform, are suspected carcinogens commonly found in municipal tap water. The complaint alleges that Associated Mills' advertising represented that Associated Mills possessed and relied upon a reasonable basis for making the trihalomethane reduction claim for the Bottled Water Maker. In truth and in fact, the complaint alleges, Associated Mills did not have a reasonable basis for claiming that the Bottled Water Maker will remove nearly all or most of the trihalomethanes contained in normal municipal tap water for a year of typical use. This is alleged to be a false and misleading representation and an unfair or deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act.

The consent order contains provisions designed to remedy the advertising violation charged by preventing Associated Mills from engaging in similar acts and practices in the future. Part I of the order prohibits Associated Mills from representing any performance characteristic of the Bottled Water Maker or any other water treatment appliance or equipment unless at the time of making the representation it possesses and relies upon a reasonable basis for the representation.

Part II of the order prohibits Associated Mills from representing, for any "environmental treatment appliance or equipment," except for air cleaning appliances or equipment, the expected life over which any such device or equipment can or will (i) treat or remove any contaminant in the environment, or (ii) reduce any health-related risks associated with any contaminant in the environment, unless at the time of making the representation it possesses and relies upon a reasonable basis for the representation. The term "environmental treatment product" is defined as a product designed to treat or remove any contaminant in the environment. Air cleaning devices and equipment are excluded from this provision because similar claims for these products are covered by an earlier order issued against Associated Mills. *See* 106 F.T.C. 5 (1985).

Part III of the order defines the term "reasonable basis" for purposes of the order as competent and reliable evidence which substantiates the representation. Any scientific or professional test, experiment, analysis, research, study, or other evidence based on the expertise of professionals that is relied upon by the respondent to substantiate any claim shall be considered "competent and reliable" only if it is conducted and evaluated in an objective manner by persons qualified to do so, using only procedures that are generally accepted in the profession as yielding accurate and reliable results.

Parts IV, V, and VI of the order are standard order provisions requiring Associated Mills to retain records demonstrating its compliance with this order, to notify the Commission of any changes in its corporate structure, and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89–1071 Filed 1–17–89; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[File No. 882 3009]

Coleco Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a West Hartford, CT, corporation from claiming that any computer-related product is or will be available for sale, or has or will have any capability, unless the product actually is available or has that capability, or the company has a reasonable basis for saying it will be available or will have that capability.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520–A, Cleveland, OH 44114. (216) 522–4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Computer toys, Modules, Trade practices.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Coleco Industries, Inc. ("proposed respondent"), a corporation, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 999 Quaker Lane South, West Hartford, Connecticut 06110.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be place on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commissions's Rules, the Commission may, without further notice of proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issue, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent Coleco Industries, Inc., a corporation, its successors and assigns, and its officers, agents, respresentatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of My Talking Computer, or any other computer or computer-related product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(a) That any such product is available for sale to the public or has any capability, unless, at the time such representation is made, such product is then available for sale to the public in reasonable quantities or has said capability.

(b) That any such product will be available for sale to the public or will have any capability, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for said representation.

II

It further ordered that respondent, its successors and assigns shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying accurate records of all materials relied upon by respondent in disseminating any representation covered by this Order.

III

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to

each officer and other personnel responsible for the preparation or review of advertising material. In addition, respondent shall distribute to each distributor, retail outlet and wholesale outlet to which it has sold or delivered My Talking Computer, and to each consumer about whom Coleco has records who has inquired about the availability of Modules 3 and 4 for My Talking Computer, a copy of Attachment A to this Order, a letter outlining the availability of said modules.

V

It is furthr ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Attachment A—Notice To Wholesalers, Distributors, Retailers, and Purchasers of My Talking Computer

Dear Wholesaler, Distributor, Retailer, or Consumer:

Coleco Industries, Inc., ("Coleco") is the manufacturer of an electronic learning product known as MY TALKING COMPUTER (Item No. 8200).

As the result of an agreement between Coleco and the Federal Trade Commission, arising out of consumer inquiries relating to certain accessories for MY TALKING COMPUTER know as Module 3 (Sesame Street Talking Cents with My TALKING CASH REGISTER) and Module 4 (Sesame Street Spells FUN!), Coleco hereby provides you with the following information:

—Module 3 will not be available for purchase.

—Module 4 is available in limited quantities for purchase by consumers by directly contacting Coleco for price and other information at the following location: Coleco Industries, Inc., Consumer Services, P.O. Box 500, Mayfield, NY 12117.

Coleco Industries, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Coleco Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for Coleco Industries' My Talking Computer, an electronic learning device, and add-on modules purported to be available to expand the capability of the computer.

The Complaint alleges that Coleco engaged in deceptive advertising in violation of section 5 of the FTC Act by falsely claiming that two of four advertised modules, Modules 3 and 4, were available for purchase at the time the claims were published or displayed. According to the complaint, the add-on modules were advertised on product brochures, product packages, and other sales literature as being available for purchase. Modules 3 and 4 were in fact, not available at the time the statements of availability were published or displayed. Module 3 has never been made available and Module 4 was not produced until over a year and a half after My Talking Computer was offered for public sale.

The consent order contains provisions designed to prevent future misrepresentations concerning the availability of products manufactured by Coleco Industries. It also contains provisions requiring notification of wholesalers, distributors, and retailers of My Talking Computer about the lack of availability of Module 3 and the method for obtaining Module 4.

Paragraph I of the consent order prohibits Coleco from representing that My Talking Computer or any other computer or learning enhancement product is available or has any capability unless at the time the claim is made the product has such a capability or is available for sale in reasonable quantities. Paragraph I also applies to claims of future availability or capacity by providing that Coleco must have a reasonable basis for any claim that a product will be available or will have a specified capability.

Paragraph IV of the Order requires Coleco to send a letter to each distributor, retail outlet, and wholesale outlet to which it sold or delivered My Talking Computer, explaining that Module 3 will not be made available and outlining the procedures necessary to obtain Module 4.

The remainder of the Order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-1070 Filed 1-17-89; 8:45 am]

BILLING CODE 6750-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Health Professional Scholarship Program

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) is proposing to amend its medical regulations on the Health Professional Scholarship Program (38 CFR Part 17) to identify generic requirements for awarding scholarships, to identify a revised method for determining length of service obligation for scholarship participants provided awards to attend school full-time, and to indicate that when selecting scholarship participants, priority will be given to students entering their final year of education or training, and to delete the provision for scholarship participants to serve periods of obligated service in another Federal agency or the Armed Forces, if the Administrator of Veterans Affairs, the head of another Federal department and the participant consent to such service.

DATES: Comments must be received on or before February 17, 1989. Comments will be available for public inspection until February 27, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Charlotte Beason, Director, Health Professional Scholarship Program (14N), Office of Academic Affairs, Department of Medicine and Surgery, Veterans Administration (202) 233-3588.

SUPPLEMENTARY INFORMATION: The Veterans Administration Health Care Amendments of 1980 (Pub. L. 96-330) established the Veterans Administration Health Professional Scholarship Program to assist in providing an adequate supply of trained physicians and nurses for the VA and for the Nation and, if needed by the VA, other specified health-care professionals. The Veterans Benefits and Services Act of 1988 (Pub. L. 100-322) amended the Scholarship Program by permitting scholarship awards to students in additional health disciplines, by changing length of service obligation incurred by scholarship participants, and by changing priority for selecting participants. The proposed regulations implement provisions of Pub. L. 100-322.

The proposed regulations for the Veterans Administration Health Professional Scholarship Program have been designated as nonmajor under the criteria of Executive Order 12291, Federal Regulation. The regulations will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator hereby certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. These proposed regulations will be directed to individuals who apply and are selected for VA Health Professional Scholarship Program awards. They will, therefore, have no significant direct impact on small entities.

The Catalog of Federal Domestic Assistance Number for this program is 64.023.

List of Subjects in 38 CFR Part 17

Health professions, Scholarships and fellowships.

Approved: December 19, 1988.

Thomas K. Turnage,

Administrator.

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

PART 17—[AMENDED]

1. Section 17.600 is revised to read as follows:

§ 17.600 Purpose.

The purpose of §§ 17.600 through 17.612 is to set forth the requirement for the award of scholarships under the Veterans Administration Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for the VA and for the Nation. Disciplines include medicine, nursing, physical therapy, and other specified direct or indirect health-care service disciplines if needed by the Veterans Administration.

(Authority: Pub. L. 96-330; 38 U.S.C. 4141-4146, as amended by Pub. L. 97-251 and Pub. L. 100-322)

* * * * * *

2. a. In § 17.601, paragraph (a) is amended by removing the words "full-time."

b. In § 17.601, paragraphs (b), (e), (f), (h), (i), (m), (o), (r), and the authority citation in paragraph (u), are revised to read as follows:

§ 17.601 Definitions.

* * * * *

(b) "Act" means the Veterans Administration Health-Care Amendments of 1980, Pub. L. 96-330, (38 U.S.C. 4141-4146), as amended by Pub. L. 97-251, the Veterans Administration Health-Care Programs Improvement and Extension Act of 1982, Pub. L. 99-576, Veterans Benefits Improvement and Health Care Authorization Act of 1986, and Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988.

(Authority: Pub. L. 96-330; 38 U.S.C. 4141-4146, as amended by Pub. L. 97-251, Pub. L. 99-576 and Pub. L. 100-322)

* * * * *

(e) "Administrator" means the Administrator of Veterans Affairs or designee.

(f) "Chief Medical Director" means the Chief Medical Director of the Department of Medicine and Surgery (DM&S), Veterans Administration, or designee.

* * * * *

(h) "Degree" means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, or a baccalaureate or master's degree in other direct or indirect health-care service disciplines needed by the VA.

(Authority: 38 U.S.C. 4302(a)(1))

(i) "Full-time student" means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

* * * * *

(m) "Scholarship Program" or "Scholarship" means the Veterans Administration Health Professional Scholarship Program authorized by section 216 of the Act.

* * * * *

(o) "School" means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Veterans Administration, and (2) which is accredited by a body or bodies recognized for accreditation by the Administrator.

(Authority: 38 U.S.C. 4302(a)(1)(2))

* * * * *

(r) "Part-time student" means an individual who is a Veterans Administration employee permanently assigned to a Veterans Administration health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

* * * * *

(u) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

3. In § 17.602, paragraph (a)(2) is revised, and the authority citations following paragraphs (a)(5), (b)(2) and (c) are revised, to read as follows:

§ 17.602 Eligibility.

(a)* * *

(2) Be pursuing a degree annually designated by the Administrator for participation in the Scholarship Program;

(Authority: 38 U.S.C. 4302(a)(1), 4312(b)(1))

* * * * * *

(5) * * *

(Authority: 38 U.S.C. 4302(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4312(c)(3)(B))

(c) * * *

(Authority: 38 U.S.C. 4302(b))

* * * * *

4. Section 17.603 is revised to read as follows:

§ 17.603 Availability of scholarships.

Scholarships will be awarded only when necessary to assit the Veterans Administration in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Chief Medical Director. The Administrator has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(Authority: 38 U.S.C. 4312(b)(4) and 4303(b)(1))

* * * * *

5. In § 17.604, the authority citation is revised to read as follows:

§ 17.604 Application for the scholarship program.

* * * * *

(Authority: 38 U.S.C. 4312(c)(1)(B))

6. In § 17.605, paragraph (a), the authority citation in paragraph (a)(2), paragraph (b)(1), the authority citation in paragraph (b)(4), and the authority citations in paragraph (d), and (e)(2), are revised to read as follows:

§ 17.605 Selection of participants.

(a) *General.* In deciding which Scholarship Program applications will be approved by the Administrator, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d) of this section, applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Administrator may, at the Administrator's discretion—

(Authority: 38 U.S.C. 4312(b)(5))

* * * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

(b) * * *

(1) Work/volunteer experience, including prior health care employment and Veterans Administration employment;

* * * * *

(4) * * *

(Authority: 38 U.S.C. 4333)

* * * * *

(d) * * *

(Authority: 38 U.S.C. 4312(c)(1)(A) and 4314(3))

(e) * * *

(2) * * *

(Authority: 38 U.S.C. 4303(d))

* * * * *

7. a. In § 17.606, paragraph (b) is amended by removing the word "will" in the first sentence, and replacing it with the word "may".

b. In § 17.606, the authority citation in paragraph (a)(1), paragraph (a)(3), and the authority citations in paragraphs (a)(5), (a)(6), and (b) are revised to read as follows:

§ 17.606 Award procedures.

(a) * * *

(1) * * *

(Authority: 38 U.S.C. 4336)

* * * * *

(3) The Administrator may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 4313(b).

* * * * *

(5) * * *

(Authority: 38 U.S.C. 4314(2))

(6) * * *

(Authority: 38 U.S.C. 4313(c))

(b) * * *

(Authority: 38 U.S.C. 4333)

8. a. In § 17.607, paragraphs (e), (e)(1), and (e)(2) are removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.607 paragraphs (a), (b)(1), the authority citation in paragraph (b)(2), paragraphs (c) and (d), and the authority citation following newly designated paragraph (e), are revised to read as follows:

§ 17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Veterans Administration employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Administrator.

(Authority: 38 U.S.C. 4316(a))

(b) * * *

(1) Except as provided in paragraph (b)(2) of this section, a participant's obligated service shall begin on the date the Administrator appoints the participant as a full-time VA employee in the Veterans Administration's Department of Medicine and Surgery in a position for which the degree program prepared the participant. The Administrator shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Administrator shall notify the participant of the work assignment, its location, and the date work must begin.

(2) * * *

(Authority: 38 U.S.C. 4316 (b) and (c))

(c) *Duration of service.* The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 4312(c) (1)(B) and (3)(A))

(d) *Location for service.* The Administrator reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 4316(a))

(e) * * *

(Authority: 38 U.S.C. 4316(b)(3)(A)(ii))

9. a. In § 17.608, paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e).

b. In § 17.608, paragraphs (a), (b), (c)(1), the authority citation in paragraph (c)(2), paragraph (d), and the authority citation in newly-designated paragraph (e), are revised to read as follows:

§ 17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Administrator may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 4316(a)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Veterans Administration health care facility, and such training will be undertaken in a Veterans Administration health-care facility.

(Authority: 38 U.S.C. 4316(b)(u))

(c) * * *

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or proportionate ratio thereof) if the training is in a specially determined to be necessary to meet health care requirements of the Department of Medicine and Surgery, Veterans Administration; or

(2) * * *

(Authority: 38 U.S.C. 4316(b)(u)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Administrator's written approval of the alteration.

(Authority: 38 U.S.C. 4333)

(e) * * *

(Authority: 38 U.S.C. 4316(b)(2))

* * * * *

§ 17.609 [Amended]

10. In § 17.609, in the last sentence, remove the words "He or she" and insert in their place, the words "A physician".

11. In § 17.610, the authority citation in paragraph (a), paragraph (b)(4), the first sentence in paragraph (c), and the authority citation in paragraph (c), are revised to read as follows:

§ 17.610 Failure to comply with terms and conditions of participation.

(a) * * *

(Authority: 38 U.S.C. 4317(a))

(b) * * *

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(Authority: 38 U.S.C. 4317(b)(4))

(5) * * *

(Authority: 38 U.S.C. 4317(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$A' = \left(\frac{t-s}{t}\right) \text{ in which:}$$

(Authority: 38 U.S.C. 4317(c)(1)(2))

* * * * *

12. In § 17.611, the authority citation is revised to read as follows:

§ 17.611 Bankruptcy.

* * * * *

(Authority: 38 U.S.C. 4334(c))

13. In § 17.612, the authority citations in paragraphs (a), (b)(2), (c), and (d), are revised to read as follows:

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) * * *

(Authority: 38 U.S.C. 4334(a))

(b) * * *

(2) * * *

(Authority: 38 U.S.C. 4334(b))

(c) * * *

(Authority: 38 U.S.C. 4334(b))

(d) * * *

(Authority: 38 U.S.C. 4334(b))

[FR Doc. 89-1073 Filed 1-17-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3506-1; SC-017]

Approval and Promulgation of Implementation Plans; State of South Carolina Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by South Carolina that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that South Carolina has satisfied their obligations under section 406 of the Clean Air Act Amendments of 1977 to review their SIP with respect to EPA's revised stack height regulations.

DATES: Comments must be received on or before February 17, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations.

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court.

On July 2, 1984, the Supreme Court denied the petition (104 U.S. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height

credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

South Carolina has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. EPA is acting on South Carolina's submittal to comply with these requirements in a separate **Federal Register** notice. The State also found that no existing emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. South Carolina has indicated that the documentation is available for review at the State office (listed above). A summary of the State's findings is provided below.

A total of one hundred and nine (109) stacks were examined in the stack height review analysis. All one hundred and nine(109) stacks were reviewed for GEP formula height. No stacks were found to have stack heights greater than the calculated GEP height. All one hundred and nine (109) stacks were also reviewed for other prohibited dispersion techniques. No stacks were found that used a prohibited dispersion technique.

EPA is not acting on four sources (identified in table form or by asterisk because they currently receive credit under one of the provisions remanded to the EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir 1988). EPA will review these sources for compliance with any revised requirements when the EPA completes rulemaking to respond to the *NRDC remand*.

In conclusion, South Carolina has determined all remaining stacks to be in compliance with the stack height regulations. Therefore, no stacks were modelled as a result of South Carolina's review.

EPA Review

EPA has reviewed South Carolina's submittal and concurs with the conclusion that no revisions to South Carolina's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. South Carolina has therefore met its obligations under section 406 of Pub. L. 95–95 for existing source emission limitations. All potentially affected sources having stacks greater than 65 meters and total SO_2 allowable emissions greater than 5000 tons per year were inventoried and summarized in the Technical Support Document, which is available for public inspection at the EPA Region IV office in Atlanta, Georgia.

Today's action does not certify that South Carolina has adopted State rules to comply with the regulations contained in 40 CFR 51.164 and 51.118. Those federal provisions contain the stack height requirements for all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA will act on South Carolina's submittal of the State rules in a separate **Federal Register** notice.

The technical support submitted by the State is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this notice. By publishing this proposed approval of the submittal and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA is proposing to approve declarations by South Carolina that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this state.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7842

Dated: December 9, 1988.

Jack E. Ravan,

Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register January 12, 1989.

[FR Doc. 89–1134 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

Approval and Promulgation of State Implementation Plans; PSD Redesignation of the Spokane Indian Reservation, State of Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this notice is to propose approval and seek public comment on the April 27, 1988, request by the Spokane Tribal Business Council to redesignate the Spokane Reservation in the state of Washington to Class I under EPA's regulations for prevention of significant deterioration (PSD) of air quality. The Class I designation will allow only small increases in ambient levels of particulates and sulfur dioxide.

DATES: Comments must be postmarked on or before February 17, 1989.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington, 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–88–1), Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Washington Department of Ecology, 4224 6th Avenue, SE., Rowe Six, Building No. 4, Lacey, Washington, 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION: Part C of the Clean Air Act provides for the prevention of significant deterioration of air quality (PSD). The intent of this part is to prevent deterioration of existing air quality, particularly in areas currently considered to be pristine. The Act provides for three basic classifications applicable to all lands of the United States. Associated with each classification are increments which represent the increase in air pollutant concentrations that would be considered significant. Class I applies to areas in which practically any change in air quality would be considered significant; Class II applies to areas in which deterioration normally accompanying moderate well-controlled growth would be considered insignificant; and Class III applies to those areas in which considerably more deterioration would be considered insignificant. Under the 1977 Amendments to the Clean Air Act, all areas of the country that met the national ambient air quality standards were initially designated Class II, except for certain international parks, wilderness areas, national memorial parks and national parks, and any other areas previously designated Class I. The Act allows states and Indian governing bodies to reclassify areas under their jurisdiction to accommodate the social, economic, and environmental needs and desires of the local population.

On April 27, 1988, the Spokane Tribal Council (herein referred to as the Tribal Council) submitted to EPA an official proposal to redesignate the Spokane Reservation from Class II to Class I. The Spokane Reservation is located entirely within the state of Washington. With their request, the Tribal Council submitted an analysis of the impacts of redesignation within and outside of the proposed Class I area, documentation of the delivery and publication of appropriate notices, a record of the public hearings held on September 10, 1986, and comments received by the Tribal Council on the proposed designation.

The following is a discussion of the requirements for redesignation and how the Tribal Council complied with those requirements.

Statutory and Regulatory Requirements for Redesignation

Section 164 of the Clean Air Act and 40 CFR 52.21(g) outline the requirements for redesignation of areas under the PSD program. Section 164(c) provides that lands within the exterior boundaries of reservations of Federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Under section 164(b)(2), EPA may disapprove a redesignation only if it finds, after notice and opportunity for hearing, that the redesignation does not meet the procedural requirements of section 164 or it is inconsistent with section 162(a) or 164(a). Section 162(a) establishes mandatory Class I areas and section 164(a) identifies areas that may not be redesignated to Class III. Because of the nature of the area proposed for redesignation to Class I, neither of these sections prohibit the proposed redesignation.

The statutory and regulatory procedural requirements for a Class I redesignation by an Indian governing body are as follows: (1) Notice must be afforded and a public hearing conducted relating to the area proposed to be redesignated and to areas which may be affected; (a) at least 30 days prior to the public hearing, a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public hearing notice; (3) prior to any redesignation, the document identified above must be reviewed and examined by the redesignating authorities; (4) if any federal lands are included in the redesignation, the redesignating authorities must provide written notice to the appropriate federal land managers and an opportunity to confer and submit written comments and recommendations with respect to the intended notice of redesignation prior to issuance of such notice. A list shall be published of any inconsistency between the redesignation and such written comments and recommendations from any federal land managers (together with the reasons for making the redesignation against the recommendation of the federal land manager).

Tribal Council Submittal

The April 27, 1988, request for redesignation includes evidence that all of the statutory and regulatory requirements for redesignation of an Indian Reservation from Class II to Class I have been met by the Tribal Council of Spokane Reservation. The Tribal Council is the Indian governing body for the Spokane Reservation and only lands within the exterior boundaries of the Reservation are proposed for redesignation.

The Tribal Council conducted two public hearings on September 10, 1986, one in Chewelah, Washington, and one in Wellpinit, Washington. Notice of the hearings appeared in area newspapers at least 30 days prior to the hearings. A description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation entitled, "Spokane Tribe of Indians Air Quality Redesignation Report," was completed in December 1985 and its availability was announced in the public hearing notices. In addition, the submittal included evidence that copies of the analysis document were sent to appropriate state, local and federal officials at least 30 days prior to the hearing. Evidence that the Tribal Council consulted with the state and local government officials prior to proposing the redesignation is also included in the submittal. Furthermore, the submittal shows that notice of the Tribal Council's intention to redesignate was sent to appropriate federal, state and local officials as well as relevant organizations, etc., during the spring of 1986. Therefore, the documentation submitted by the Tribal Council shows that all statutory and regulatory procedural requirements for redesignation have been met.

I. Summary of Action

Since EPA's review has not revealed any procedural deficiencies, the redesignation is hereby proposed for approval. The public is invited to comment on whether the Tribal Council has met all of the procedural requirements of section 164.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by February 17, 1989, will be considered in the final rulemaking action taken by EPA.

II. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Date: September 12, 1988.

Robert S. Burd,

Acting Regional Administrator.

Editorial note.—This document was received at the Office of the Federal Register January 12, 1989.

[FR Doc. 89–1135 Filed 1–17–89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 424, 462, 466, 473, 476, and 489

[HSQ-132-P]

Medicare and Medicaid Programs; Denial of Payment for Substandard Quality Care and Review of Beneficiary Complaints

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to the regulations to set forth the rules by which Utilization and Quality Control Peer Review Organizations would deny payment for substandard quality care. These changes are required as a result of the passage of the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted on April 7, 1986, and the passage of the Omnibus Budget Reconciliation Act of 1987, enacted on December 22, 1987. In addition, we are proposing to set forth changes in regulations to govern Peer Review Organization review of beneficiary complaints about quality of care, in accordance with the Omnibus Budget Reconciliation Act of 1986, enacted on October 21, 1986.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 20, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-132-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-132-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Patricia Booth, (301) 966-6860.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (the Act)) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. The 1982 legislation provided that PROs assume the responsibilities that previously had been assigned to Professional Standards Review Organizations and fiscal intermediaries. Those responsibilities generally have included the review of health care services funded under Medicare (Title XVIII of the Act) to determine whether those services are reasonable and medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs monitor and validate a sample of diagnostic and procedural information supplied by hospitals to fiscal intermediaries to establish the prospective payment amounts for hospitals.

To carry out their responsibilities, PROs acquire information from the medical records of patients and from other records maintained by health institutions, practitioners and claims payment agencies. In addition, they generate information regarding the quality, utilization, and appropriateness of health care services. PROs use this information to develop and review profiles (for example, practice patterns) in order to focus on practitioners, hospitals, and the assignment of discharges to diagnosis related groups in order to assess the quality of care being furnished and to undertake necessary corrective action. PROs transmit their determinations to intermediaries and carriers responsible for making payments under the Act.

Regulations governing PRO activities are located in various parts of Title 42 of the CFR (that is, Parts 405, 462, 466, 473, 476, 489, and 1004).

Prior to the enactment of section 9403 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), Peer Review Organizations (PROs) have been authorized, under section 1154(a)(2) of the Act, to deny Medicare payment on the following bases:

- Reasonableness of services.
- Medical necessity of services.
- Appropriateness of the inpatient setting in which services were furnished or are proposed to be furnished.

PROs, however, were also required to assure that care provided to beneficiaries met professionally recognized standards of health care. If the care provided to a beneficiary did not meet such standards, the PROs were required to take corrective action through—

- Education and advice to the physician or provider;
- Intensified review if a pattern of quality problems was identified; or
- Imposition of sanctions such as exclusion of a provider of health care services from the Medicare program or recovery of inappropriate payments.

However, they were not authorized to issue a Medicare denial of payment for substandard quality care.

Under the PRO current contract and scope of work (that is, the scope of PRO review), PROs are required to perform reviews for quality of care. They use several vehicles for conducting these reviews, such as generic quality screens or discharge review criteria. On the basis of their review, the PROs determine whether the quality of the services furnished to beneficiaries meets professionally recognized standards of health care, and whether the quality of care is complete and adequate. When a quality concern is identified by a physician reviewer, the PROs impose quality interventions (other than denial of payment) including education, intensified review, or, if appropriate, sanctions.

Section 9403 of Pub. L. 99-272, however, amended section 1154(a)(2) of the Act ot give PROs the authority, effective April 7, 1986, to deny Medicare payment to a physician or hospital for services furnished that are of substandard quality. Under the law, the PRO determinations to deny Medicare payment for these services are to be made on the basis of criteria that are consistent with guidelines established by the Secretary. Under its provider agreement, a provider may not charge for services for which payment is denied because the services are of substandard quality.

In addition, under section 4096(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), which amended section 1842(b), 1842(1) and 1870(f) of the Act, a physician who submits a claim or bill that is subsequently denied for substandard quality care must not charge a beneficiary any amount and must refund promptly any amount already collected from the beneficiary.

Section 9352(b) of Pub. L. 99-509 requires by statute (for contracts

entered into or renewed on or after January 1, 1987) that a PRO review the reasons for readmission of a patient to a hospital if the readmission occurs less than 31 days after the previous discharge. Prior to enactment of Pub. L. 99-509, PROs reviewed readmissions that occurred within 15 days of a discharge. Section 1154(a)(13) of the Act provides that a readmission review must be conducted for at least a sample of patients who are readmitted within 31 days after a discharge. That section further requires review of post-hospital care (that is, care furnished in a skilled nursing facility (SNF), home health agency (HHA), or hospital outpatient area) that occurs between two such hospital admissions.

In addition, section 9353(a)(2) of Pub. L. 99-509 amended section 1154(a)(4) of the Act to require a review of the quality of care provided by health maintenance organizations (HMOs) and competitive medical plans (CMPs). This review may be conducted by PROs or by other organizations that are awarded competitive contracts. We are not proposing to deny Medicare payment for substandard quality care in these cases because there is no "per service" payment to deny. Different interventions for quality issues are provided for in these settings (for example, education, intensified review, and sanctions), in accordance with contracts with HCFA, to resolve quality of care problems in HMOs/CMPs.

Moreover, the amendment to section 1866(a) of the Act made by section 9353(e) of Pub. L. 99-509 expands the PRO authority by requiring hospitals, SNFs and HHAs to modify their agreements with the PRO to perform quality of care reviews as a condition of receiving Medicare payment. Section 9353(d) of Pub. L. 99-509 also provides a basis for funding PROs for this type of review.

We are developing guidelines for PROs to use in setting up criteria for denials of substandard quality care provided by SNFs, HHAs, and outpatient area, and intend to issue a separate proposed rule concerning such denials.

Section 9353(c) of Pub. L. 99-509 amended section 1154(a) of the Act (adding a new paragraph (a)(14)) to require PROs, effective August 1, 1987, to conduct an appropriate review of all written complaints from beneficiaries or their representatives about the quality of services (for which payment may otherwise be made under Medicare) not meeting professionally recognized standards of health care. The PRO is to inform the beneficiaries or their representatives of the final disposition of the complaint including whether services meet professionally recognized standards of health care. Before the PRO determines that the quality of services does not meet professionally recognized standards of health care, the PRO must give the provider and physician reasonable notice and an opportunity for discussion. We recognize that implementation of this provision may result in the identification of a practitioner or other individual concerned. This identification would be unavoidable if the area of care is so unique or so specific that the notification would implicitly identify the individual concerned. We are proposing to revise the current PRO disclosure regulations (§ 476.133) to provide for this possibility.

Section 9353(e) of Pub. L. 99-509 amended sections 1866(a) and 1876(i) of the Act to require hospitals, SNFs, HHAs, risk-sharing HMOs (42 CFR Part 417, Subpart C), and CMPs to modify their agreements with PROs to have the PROs perform additional functions as a condition of receiving Medicare payment. These modified agreements would require the PRO to perform certain functions under section 1154(a)(4) of the Act (such as quality of care reviews under section 1154(a)(4)(A), and review of beneficiary complaints about quality of care under section 1154(a)(14)). However, under section 1876(i) of the Act, risk-sharing HMOs and CMPs are exempt from maintaining such an agreement if they are located in areas in which HCFA has a contract with a non-PRO organization under section 1154(a)(4)(C) of the Act. Therefore, PROs are required to review beneficiary complaints about the quality of services furnished in a hospital, SNF, HHA, HMO or CMP (except for an HMO or CMP in a non-PRO contract area). Complaints about the quality of HMO/CMP services would be reviewed by either the PRO (as we are proposing in this rule) or by a non-PRO organization under the terms of its contract with HCFA.

II. Proposed Changes to the Regulations

We are proposing to revise the following regulations to implement parts of section 1154(a) of the Act as amended by section 9403 of Pub. L. 99-272 and section 9353(c) of Pub. L. 99-509 and parts of section 1842(b)(3) and 1842(1)(1) as amended by section 4096(a) of Pub. L. 100-203:

- Section 405.337 (new), 424.55, and 424.64 to add that a physician who submits a claim or bill for service that is subsequently denied for substandard quality care would not charge a beneficiary any amount for those services and would refund promptly any amount already collected from the beneficiary. (Sections 424.55 and 424.64 were formerly §§ 405.1675(a)(1) and 405.1684, respectively, before a reorganization of regulations concerning conditions for Medicare payment published on March 2, 1988 (53 FR 6629).
- Sections 466.70, 466.83, 466.86, and 466.100 to add substandard quality care to the list of conditions under which PROs are authorized to issue denial determinations.
- Section 466.88 to provide that a physician, as well as a health care facility, must permit the PRO to examine their operations and records.
- Section 466.93 to allow the provider or physician an opportunity to discuss the proposed initial denial determination that the quality of care does not meet professionally recognized standards of health care.
- Section 466.98 to provide that for substandard quality care cases the initial denial determination is to be made by a physician who specializes in the same field as the physician whose services are under review, or a specialist or a panel of specialists, one of whom must be in the same field if the initial review is conducted by a nonspecialist physician or a specialist in a different field than the physician whose services are under review.
- Section 466.100 to require PROs to establish and apply written criteria (in accordance with guidelines established by HCFA) for determining whether the quality of care is substandard, and to require PRO physician specialist reviewers to use that criteria in making an initial denial determination of substantard quality care.
- Sections 462.105, 466.74, and 466.88 to prohibit PROs from subcontracting to health care facilities quality of care reviews that affect payment.
- Sections 473.12, 473.14 and 473.40 to add denial of payment for substandard quality care to the list of causes for which a beneficiary has a right to a reconsideration or a hearing.
- Sections 466.70, 466.106, and 476.133 to require PROs to conduct an appropriate review of all written complaints from beneficiaries about the quality of services. We would describe in these sections the process that PROs would be required to follow for investigating beneficiary complaints and responding to beneficiaries.

BEST COPY AVAILABLE

- Section 489.21 to require a provider not to charge a beneficiary for services for which payment is denied by a PRO because the quality of care is substandard.

III. Discussion of Proposed Changes

A. Quality of Care Review

1. Denial of Medicare Payment Because of Substandard Care

a. *HCFA Guidelines.* As discussed above, section 1154(a)(2) of the Act requires PROs to determine, on the basis of their review of the quality of care furnished by a provider or physician, whether Medicare payments are to be made. The PROs are to determine if the quality of services furnished to beneficiaries meets professionally recognized standards of health care that are consistent with guidelines established by the Secretary.

In order to establish guidelines for inpatient hospital services, we convened a panel of 14 physicians on June 24–25, 1986. The members of the panel represented a broad range of health care interests. The consensus of that panel was that HCFA should develop general guidelines to be used by the PROs as opposed to specific or narrow guidelines. We subsequently met with representatives of the health care industry and consumer interest groups in developing the guidelines.

In the addendum to this rule, we are setting forth the proposed guidelines for public comment. We will issue future rulemakings, as necessary, to set forth proposed changes to the guidelines. We will carefully review the comments and may incorporate suggested changes in the guidelines prior to their publication as an addendum in the final rulemaking. The proposed guidelines are broad and represent a general framework. They identify the major classes of admissions and the critical diagnostic and therapeutic principles within which each PRO is to develop more specific criteria reflecting local medical practice that PRO physician reviewers would use to determine whether the quality of care was substandard.

b. *Level of Severity.* Not every quality problem warrants a denial of payment. Some quality problems have no potential for a significant, adverse effect on a patient or do not present an imminent danger to the patient. Other instances result in an actual, adverse effect on a patient or present an imminent danger to the patient. We believe that Medicare payment should be denied for substandard quality care that results in either of the following:

- It results in an actual, significant, adverse effect on the beneficiary, that is, patient management that results in—
  - —Unnecessarily prolonged treatment of the patient;
  - —Complications in medical conditions;
  - —Readmission to the hospital;
  - —Physiological or anatomical impairment;
  - —Disability; or
  - —Death.
- It presents an imminent danger to the health, safety, or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, as as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with 42 CFR 1004.50.

Under this proposed rule, the PRO would be responsible for determining whether a quality problem results in an actual, significant, adverse effect to the beneficiary or presents an imminent danger to the beneficiary and if so, if deny Medicare payment on the basis that the care was of substandard quality. For those instances that reflect quality problems, but which do not result in an actual, significant, adverse effect or present an imminent danger to the beneficiary, we propose that Medicare payment be made and that PROs conduct an appropriate followup through their quality intervention processes already in place. As noted above, these intervention processes include, but are not limited to, education, intensified review, and, if appropriate, sanctions against the provider or physician. We note that these intervention processes (in addition to denial of payment) would be appropriate as well for instances of substandard quality care that result in an actual, significant, adverse effect or present an imminent danger to the beneficiary.

c. *Use of Health Care Professionals to Screen Cases.* Before a PRO physician conducts a review, health care professionals other than physicians typically screen cases for approval of Medicare payment based on necessity or appropriateness of care. A nurse reviewer performs an initial screen using existing PRO criteria to review cases for reasonableness, medical necessity, and appropriationss of setting, and also for the quality of care. The nurser reviewer may approve nonquestionable cases (that is, cases in which all the screen criteria are met) but must refer any questionable cases to a physician for review. For determinations about reasonableness, medical necessity, and appropriateness of setting, the physician reviewer makes a determination based on his or her knowledge, expertise, and experience rather than on set criteria.

The concept of peer review requires that, whenever possible, PROs use physician reviewers who practice in a setting similar to that in which the physician whose services are under review practices. This is the policy under which PROs currently conduct their reviews, and we believe this practice becomes even more significant in terms of quality of care cases. Under the current scope of work, for initial denial cases, the physician reviewer need not be a specialist in the field represented by the affected attending physician. However, a number of attending physicians have informed us that they believe it is inappropriate for the physician reviewer to conduct reviews other than in his or her specialty. In particular, it has been suggested that the quality of care reviews be conducted by physician reviewers with the same specialty as the affected attending or consulting physician responsible for delivery of the care in question. Therefore, we are proposing for initial denial determinations of substandard quality care that the physician reviewers be a specialist in the field represented by the affected attending or consulting physician responsible for delivery of the care in question, except when meeting this requirement would compromise the effectiveness or efficiency of PRO review. For example, if the PRO staff did not include a certain specialty physician-type, such as a cardiac surgeon, the effectiveness PRO review would be compromised in such a case.We are proposing that a PRO would have several options, however, as to how it meets this requirement. The PRO may use a specialist in the field represented by the affected attending or consulting physician responsible for the delivery of the care in question to perform the initial screening and make the initial denial determination. As an alternative, the PRO may use a nonspecialist or a specialist physician in a different field than that of the affected attending or consulting physician responsible for the delivery of the care in question to perform the initial screening. In this case, potential quality denial cases identified as a result of this screening process would then be subject to a second level review by either—

- A specialist physician in the field represented by the affected attending or consulting physician responsible for the delivery of the care in question; or
- A committee of specialists, at least one of which must be in the same field as that represented by the affected attending or consulting physician responsible for the delivery of the care in question.

The review method (and the number of physicians to make up the panel for those PROs opting for committee review) must be specified in the PRO's plan, and subject to HCFA approval, to implement the denial authority. The physician specialist reviewer would make a determination about the quality of care based on criteria developed by the PRO in accordance with the HCFA guidelines described in the addendum to this proposed rule.

2. Provider and Physician Responsibility

The PRO determines whether the provider or the physician is responsible for furnishing substandard quality care. The physician is considered to be providing substandard care if, for example, he or she—

- Omits standard quality care;
- Furnishes substandard quality care; or
- Orders substandard quality care.

The hospital is considered to be responsible for the conduct of all services, (i.e., care or lack of care), in the hospital and, therefore, is responsible for all substandard quality care that is provided to a Medicare beneficiary. Medicare payment to the hospital would be denied for such services regardless of whether the hospital or physician provided the substandard quality care.

Prior to making an initial denial determination, the PRO affords the provider or supplier, or the beneficiary's attending or consulting physician responsible for delivery of the care in question, an opportunity to discuss the matter with a PRO physician (§ 466.93). The PRO physician considers the additional documentation or discussion in making an initial determination. If this information satisfies the PRO that quality care was furnished, the PRO would approve Medicare payment. If, however, the PRO physician specialist reviewer still believes, based on the quality of care criteria, his or her knowledge, medical expertise and judgment that a quality problem exists, the PRO would determine the level of severity for that problem. The beneficiary and the physician or the provider (or both, as appropriate) would be notified by the PRO of this determination and that payment is to be denied (as appropriate).

If a pattern of substandard quality care cases occurs, the PRO would apply interventions already in place to prevent further substandard quality care.

3. Financial Liability

Section 9403(b) of Pub. L. 99–272 amended section 1866(a)(1) of the Act by adding a new paragraph (I) (subsequently redesignated as paragraph (K)) that requires Medicare providers to agree—

> Not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B).

Accordingly, beneficiaries are not to be charged by providers for any of the costs of substandard care. That is, beneficiaries would not be liable for any charges by providers for care for which payment is denied because the care was of substandard quality. We are proposing to amend § 489.21 to implement this provision. (Existing regulations at §§ 489.40 and 489.41 require refunds of amounts that constitute incorrect collections under § 489.21.) Deductibles and coinsurance are not applicable and may not be collected or retained by providers with respect to this care. The providers may charge beneficiaries, however, for convenience items and other services not usually covered by Medicare.

For those cases in which the PRO physician specialist reviewer or panel, specializing in the same field as the physician whose services are being reviewed, determines that the services were of substandard quality and that the services resulted in an actual, significant, adverse effect on the beneficiary, or presented an imminent danger to the health, safety or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, so as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with § 1004.50, we would not pay either the hospital or, if appropriate, the physician who is responsible for providing the services.

In addition, under section 1842(b)(3)(B)(ii) of the Act as amended by section 4096 of Pub. L. 100–203, a physician who accepts assignment agrees not to charge a beneficiary for services denied because of substandard quality care and to refund any amount already collected for those services. Deductible and coinsurance are not applicable and may not be collected or retained. A physician who violates the terms of an assignment is subject to all of the following:

- Civil sanctions under section 1128A of the Act and 42 CFR Part 1003.
- Criminal penalties under section 1877 of the Act.
- Revocation of his or her assignment privilege under § 405.1681.

Under section 1870(f)(1) of the Act, as amended by section 4096(a) of Pub. L. 100–203, a physician who claims direct payment after the death of the beneficiary is subject to the same obligations that apply to assigned claims.

Under section 1842(l) of the Act as amended by section 4096(a) of Pub. L. 100–203, if a claim for physician services submitted on other than an assignment-related basis is denied because the services are of substandard quality, the physician must refund timely to the beneficiary any amounts he or she has collected for the services. Deductible and coinsurance are not applicable to these services and, if collected, may not be retained. A physician who knowingly and willfully fails to make timely refunds may be subject to sanctions under 42 CFR Parts 1001 and 1003.

A refund would be considered to be made timely if—

- The refund is made within 30 days after the date the physician receives the notice of denial unless the physician requests review of the denial within that 30-day period; or
- In the case of a physician who requested review of the denial within 30 days, the refund is made within 15 days after the date the physician receives notice of an adverse determination on his or her request for review of the denial.

We would add a new § 405.337 to the regulations and revise §§ 424.55 and 424.64 to implement the provisions concerning liability for physician services for which payment is denied because the services are of substandard quality.

In addition, under section 1842(b)(3)(B)(ii) of the Act as amended by section 4096(a) of Pub. L. 100–203, we would make a technical correction by revising § 424.55(b) to provide that a physician who accepts assignment must refund any amounts already collected from the beneficiary (or from someone on behalf of the beneficiary) if—

- Medicare payment has been made to the physician for services that have been determined to be not reasonable and necessary under the provisions of § 405.310(k);

- The beneficiary was found to be without fault in incurring the charges; and
- The determination that Medicare payment was incorrect was made subsequent to the third year following the year in which the payment notice was sent to the beneficiary.

4. Notification and Appeal

We would require that the PRO notify the beneficiary and the provider or the responsible physician (or both, as appropriate), and the fiscal intermediary or carrier (or both, as appropriate) that it has determined that a Medicare denial of payment was justified based on a determination that substandard quality care was furnished. In addition, the beneficiary would be notified of his or her liability for other charges, as appropriate. In section II of the addendum to this proposed rule, we are providing samples of the denial notice language that the beneficiary would receive.

We have met with industry representatives, physicians, and associations regarding the content of the beneficiary notification. We believe, based on the advice of these interest groups, that it would be inappropriate to include detailed information regarding the substandard quality care in the notification letters. Other notification issues that we considered include whether—

- The beneficiary should be informed specifically as to how the care was substandard;
- We should summarize the details of the findings; and
- We should advise the beneficiary to go to a physician of choice for further consultation.

We specifically request public comment on these issues.

Under section 1155 of the Act, a beneficiary, provider, or physician who is dissatisfied with a PRO initial denial of Medicare payment because of substandard quality care, may request a reconsideration by the PRO that made the initial denial determination. In addition, a beneficiary has the right to a hearing and judicial review on a determination regarding substandard quality care as specified in 42 CFR 473.

5. Subcontracting to Facilities

Prior to the enactment of Pub. L. 99–272, PROs were allowed to subcontract with a facility to conduct quality of care activities (that is, activities relating to quality of care reviews and studies). Because section 9403 of that statute will result in denial of Medicare payment for substandard quality care, we believe that it would be inappropriate (that is, a conflict of interest) for a facility to conduct such reviews of its own activities. Thus, we would require that the PRO be prohibited from subcontracting with a facility to conduct quality of care reviews that may affect Medicare payment.

B. PRO Review of Beneficiary Complaints

Section 1154(a)(14) of the Act, as added by section 9353(c) of Pub. L. 99–509, requires PROs to conduct an appropriate review of all written complaints from beneficiaries or their representatives about the quality of services (for which payment may otherwise be made under Medicare) furnished by hospitals, SNFs, HHAs, risk-sharing HMOs and CMPs (except for HMOs and CMPs in which a non-PRO is performing the review) not meeting professionally recognized standards of health care. Non-PRO organizations would conduct a review of beneficiary complaints about the quality of HMO/CMP services in accordance with their contracts with HCFA. We would require that, in conducting an appropriate review of a beneficiary's complaint, the PRO—

- Inform the beneficiary or the beneficiary's representatives whether or not the quality of care meets professionally recognized standards of health care, and the corrective action to be taken if necessary (that is denial of payment, education, intensified review, or sanctions);
- At least 30 days prior to disclosure, provide the physician or provider concerned with notice of disclosure an opportunity for discussion on whether the quality of services does not meet professionally recognized standards of health care;
- Disclose beneficiary-specific confidential information to the beneficiary or the beneficiary's representative, as provided under § 476.132.

We note that the nature of the complaint may be so unique or the service in question so specific that implicit identification of an individual physician concerned could be an unavoidable consequence of compliance with section 1154(a)(14) of the Act.

We considered precluding PROs from providing any information to the beneficiary that might identify the concerned physician or practitioner. However, we believe that section 1154(a)(14) of the Act requires that the information discussed above be provided to the beneficiary, which, in some cases, may have that unintended effect. We are proposing to amend §§ 466.70 and 466.106 and the PRO confidentiality regulations at § 476.133 to set forth these requirements.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not small entities, but we treat all hospitals and physicians as small entities. Athough PROs are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply, because they are funded by us, and are our contractors, we customarily treat them as small entities.

We do not consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least three percent. We anticipate that PROs would deny claims on the basis of substandard care for no more than one per cent of the cases they review. Since they review about a quarter of all Medicare hospital discharges, we expect those denials would represent no more than one-fourth of one percent of all Medicare discharges, and since Medicare hospital inpatient discharges account for less than one-half of all hospital discharges, an even smaller portion of total discharges. Therefore, we do not anticipate an increase or decrease of three percent.

We have determined that the changes in this regulation do not meet any of the criteria for a major rule under Executive Order 12291. In addition, for the above reasons, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We have, therefore, not prepared a regulatory flexibilty analysis.

In addition, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must also conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Paperwork Reduction Act

The payment denial and compliant letters, as well as § § 466.94(a)(1)(ii) and 466.100(c) of this proposed rule contain information collection requirements subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980. However, § 466.94(a)(1)(ii) is currently approved under OMB control number 0938–0445. Notices will be published in the **Federal Register** when approval is obtained for the information requirements contained in the letters and in § 466.100(c). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HCFA.

B. Public Comment

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 462

Grant programs-health, Health care, Health professions, Peer Review Organizations.

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer Review Organizations.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations.

42 CFR Part 476

Health care, Health professions, Health records, Peer Review Organizations, Penalties, Privacy.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

A. Part 405, Subpart C is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

2. The table of contents for Part 405, Subpart C is amended by adding the title of new § 405.337 to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

* * * * *

§ 405.337 Liability for substandard quality care.

* * * * *

3. Section 405.337 is added to read as follows:

§ 405.337 Liability for substandard quality care.

(a) *Basic rule.* If payment is denied by a PRO under § 466.70 of this chapter because the services were determined to be of substandard quality, the provider or physician who furnished the services may not charge the beneficiary.

(b) *Services furnished by a provider.* Additional rules that are applicable to a provider that furnishes services that are of substandard quality are located in Subpart B of Part 489 of this chapter.

(c) *Services furnished by a physician who accepts assignment.* Additional rules that are applicable to a physician who furnishes services that are of substandard quality and accepts assignment, or claims payment after the death of the beneficiary, are located in Subpart P of this part.

(d) *Services furnished by a physician on other than an assignment-related basis.*— (1) *General.* A physician who furnishes services to an individual on other than an assignment-related basis must refund to the individual any amounts (including amounts for deductible and coinsurance) the physician has collected for services furnished for which Medicare payment is denied under § 466.70 of this chapter because the services were determined to be of substandard quality.

(2) *Time limits for making refunds.* A timely refund of any incorrectly collected amounts of money must be made to the beneficiary for whom the services were furnished. A refund is considered to be made timely if—

(i) The refund is made within 30 days after the date the physician receives the notice of denial unless the physician requests review of the denial within 30 days; or

(ii) In the case of a physician who requested review of the denial within 30 days, the refund is made within 15 days after the date the physician receives notice of an adverse determination on his or her request for review of the denial.

(3) *Applicability of sanctions to physicians who fail to make refunds.* A physician who knowingly and willfully fails to make refunds as required by paragraphs (d)(1) and (d)(2) of this section may be subject to sanctions as provided for in Parts 1001 and 1003 of this title.

B. Part 424 is amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for Part 424 continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395n, 1395u, 1395x, 1395cc, 1395gg, 1395hh and 1395ii).

Subpart D—To Whom Payment is Ordinarily Made

2. In § 424.55, the introductory text of paragraph (b) is republished, paragraph (b)(3) is revised, and a new paragraph (b)(4) is added to read as follows:

§ 424.55 Payment to the supplier.

* * * * *

(b) In accepting assignment, the supplier agrees to the following: * * *

(3) Not to charge the beneficiary or any other source (and to refund amounts already collected) when Medicare paid for services later determined to be "not reasonable or necessary" if—

(i) The beneficiary was without fault in the overpayment; and

(ii) The determination that the payment was incorrect was made by the carrier after the third year following the year in which the carrier sent notice to the beneficiary that it approved the payment.

(4) Not to charge the beneficiary or any other source (and to refund amounts already collected) when Medicare paid for services later determined to be of substandard quality under § 466.70 of this chapter if the determination that the services were of substandard quality was made by the PRO after the third year following the year in which the carrier sent notice to the supplier that it approved the payment.

Subpart E—To Whom Payment is Made in Special Situations

3. In § 424.64, the introductory texts of paragraphs (c) and (c)(1) are republished, and paragraph (c)(1)(iii) is revised to read as follows:

§ 424.64 Payment after beneficiary's death: Bill has not been paid.

* * * * *

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if he or she— * * *

(iii) Agrees to the conditions of payment set forth in § 424.55(b).

B. Part 462, Subpart C is amended as follows:

PART 462—PEER REVIEW ORGANIZATIONS

Subpart C—Utilization and Quality Control Peer Review Organizations

1. The authority citation for Part 462 continues to read as follows:

Authority: Secs. 1102, 1152, and 1153 of the Social Security Act (42 U.S.C. 1302, 1320c-1, and 1320c-2).

2. In § 462.105, paragraph (c) is revised to read as follows:

§ 462.105 Prohibition against contracting with health care facilities.

* * * * *

(c) *Subcontracting.* A PRO may not subcontract with a health care facility to conduct any review activities for which the PRO is responsible that may affect payment.

C. Part 466, Subpart C is amended as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

1. The authority citation for Part 466 continues to read as follows:

Authority: Secs. 1102, 1154, and 1871 of the Social Security Act (42 U.S.C. 1302, 1320c–3, and 1395hh).

2. The table of contents of Part 466 is amended by adding the title of new § 466.106 to Subpart C to read as follows:

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

Sec.

* * * * * *

466.106 Review of beneficiary complaints.

3. In § 466.70, in paragraph (a), the text of the paragraph following the paragraph heading is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added; in paragraph (c), the introductory text of paragraph (c) is republished, paragraphs (c)(1) and (c)(2) are revised, paragraph (c)(5) is removed, and paragraphs (c)(6), (c)(7), and (c)(8) are redesignated as paragraphs (c)(5), (c)(6), and (c)(7), respectively; and paragraph (d) is revised to read as follows:

§ 466.70 Statutory bases, applicability and provisions.

(a) *Statutory basis.* * * *

(2) Section 1154(a)(14) of the Act requires PROs to conduct an appropriate review of any written complaint from a beneficiary or the beneficiary's representative about the quality of services (for which payment may otherwise be made under Medicare) not meeting professionally recognized standards of health care. The PROs must inform the beneficiary or the representative of the final disposition of the complaint as provided in § 466.106(d).

* * * * *

(c) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services or procedures proposed to be furnished or those furnished are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether, under § 466.100(b)(4), the quality of the services meets professionally recognized standards of health care for the completeness, adequacy, and quality of the care provided;

* * * * *

(d) *Payment determinants.* On the basis of the review specified under paragraphs (c) (1), (2), (3), (5), (6), and (7) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

* * * * *

4. In § 466.74, paragraph (d) is revised to read as follows:

§ 466.74 General requirements for the assumption of review.

* * * * *

(d) A PRO may not subcontract with a facility to conduct any review activities that affect payments. The PRO may subcontract with a nonfacility organization to conduct review in a facility.

* * * * *

5. Section 466.83 is revised to read as follows:

§ 466.83 Initial denial determinations.

A determination by a PRO that the health care services furnished or proposed to be furnished to a patient are not medically necessary, are not reasonable, are not at the appropriate level of care, or are of substandard quality, is an initial denial determination and is appealable under Part 473 of this chapter.

6. In § 466.86, the introductory texts of paragraphs (a)(1) and (b) are revised to read as follows:

§ 466.86 Correlation of Title XI functions with Title XVIII functions.

(a) *Payment determinations.*

(1) PRO initial denial determinations under this part with regard to the reasonableness, medical necessity, appropriateness of the setting, and quality of care, are also conclusive for payment purposes with regard to the following medical issues:

* * * * *

(b) *Review activities.* PRO review activities to determine whether inpatient hospital or SNF care services are reasonable and medically necessary, are furnished at the appropriate level of care, and are of an acceptable quality of care fulfill the utilization review requirements set forth in §§ 405.1137 and 482.30 of this chapter.

* * * * *

7. In § 466.88, paragraph (a) is revised to read as follows:

§ 466.88 Examination of the operation and records of health care facilities and practitioners.

(a) *Authorization to examine records.* A facility or physician claiming Medicare payment must permit a PRO or its subcontractor to examine its operation and records (including information on charges) that are pertinent to health care services furnished to Medicare beneficiaries and are necessary for the PRO or its subcontractor to—

(1) Perform review functions including, but not limited to—

(i) DRG validation;

(ii) Outlier review in facilities under a prospective payment system;

(iii) Implementation of corrective action and fraud and abuse prevention activities; and

(iv) Identification of cases that are of substandard quality;

(2) Evaluate cases that have been identified as deviating from the PRO norms and criteria, or standards; and

(3) Evaluate the capability of the facility to perform quality review studies under a subcontract with the PRO.

* * * * *

8. In § 466.93, the introductory text is redesignated as paragraph (a); paragraph (a) is redesignated as paragraph (a)(1); paragraph (b) is redesignated as paragraph (a)(2); and a new paragraph (b) is added to read as follows:

§ 466.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.

* * * * *

(b) Before a PRO reaches a determination that the quality of care does not meet professionally recognized standards of quality it must—

(1) Determine whether the substandard care is attributable to the provider, supplier, patient's attending or consulting physician, or other physician, or a combination thereof;

(2) Promptly notify the party or parties identified in paragraph (b)(1) of this section;

(3) Afford an opportunity for a party or parties identified in paragraph (b)(1) of this section to discuss the matter with a PRO physician in order to explain the nature of the treatment furnished or to provide rationale for the failure to provide adequate treatment; and

(4) In the case of a provider being identified as the party responsible for the furnishing of substandard care, allow other hospital staff to comment on potential quality of care problems. Nonphysician PRO staff may assist in receiving and considering provider comments.

9. In § 466.94, the introductory text of paragraph (a)(1) is republished, and paragraph (a)(1)(ii) is revised to read as follows:

§ 466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.

(a) *Notice of initial denial determination.*—(1) *Parties to be notified.* A PRO must provide written notice of an initial denial determination to— * * *

(ii) The responsible attending physician, or other responsible attending health care practitioner;

* * * * *

10. Section 466.98 is amended by adding paragraph (a)(4) to read as follows:

§ 466.98 Reviewer qualifications and participation.

(a) *Peer review by physician.* * * *

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, before an initial denial determination is made in a case of substandard quality care, a physician review must be conducted by a specialist in the same field as the physician whose services are under review, or by a panel of specialists, one of whom must be in the same field as the physician whose services are under review.

(ii) If the physician providing patient care is a general practitioner, the physician review may be conducted by a nonspecialist physician.

* * * * *

11. In § 466.100, the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2) are revised and new paragraph (b)(4) is added; the introductory text of paragraph (c) is republished, paragraphs (c)(1), and (c)(2) are revised, and a new paragraphs (c)(3) and (e) are added to read as follows:

§ 466.100 Use of norms and criteria.

* * * * *

(b) *Use of criteria.* In assessing the need for and appropriateness and quality of care of an inpatient health care facility stay, a PRO must apply criteria to determine the following:

(1) The necessity for facility admission and continued stay (in cases of day outliers in hospitals under prospective payment).

(2) The necessity for surgery and other invasive diagnostic and therapeutic procedures.

* * * * *

(4) Whether the quality of care fails to meet professionally recognized standards of care and results in either of the following:

(i) An actual, significant, adverse effect on the beneficiary, that is, patient management results in—

(A) Unnecessarily prolonged treatment;

(B) Medical complications;

(C) Readmission;

(D) Physiological or anatomical impairment;

(E) Disability; or

(F) Death.

(ii) An imminent danger to the health, safety, or well-being of the beneficiary, or places the beneficiary unnecessarily in a high-risk situation, so as to constitute a gross and flagrant violation of the obligations set forth in section 1156 of the Act, on which the PRO may proceed in accordance with § 1004.50 of this chapter.

(c) *Establishment of criteria and standards.* For the conduct of review a PRO must—

(1) Establish written criteria based upon typical patterns of practice in the PRO area, or use national criteria where appropriate;

(2) Establish written criteria and standards to be used in conducting quality review studies; and

(3) Establish written criteria, that comply with guidelines established by HCFA, to be used by the physician reviewer specialist in conducting quality of care reviews.

* * * * *

(e) A PRO must use norms and criteria in a manner that is consistent with the requirements of section 1154(a)(6) of the Act.

12. A new § 466.106 is added to read as follows:

§ 466.106 Review of beneficiary complaints.

In accordance with section 1154(a)(14) of the Act, for beneficiary complaints about the quality of services, the PRO must conduct a review of the complaint as required under § 466.70(a)(2) and—

(a) At least 30 days prior to notification of the beneficiary concerning disposition of the complaint, provide the practitioner or individual concerned with the complaint an opportunity for discussion before making a determination that the quality of services does not meet professionally recognized standards of health care; and

(b) In accordance with § 476.132(a) and (c) of this chapter, inform the beneficiary or the beneficiary's representative whether the quality of care meets professionally recognized standards of health care, and, if not, the corrective action to be taken.

D. Part 473, Subpart B is amended as follows:

PART 473—RECONSIDERATIONS AND APPEALS

Subpart B—Utilization and quality control peer review organization (PRO) reconsiderations and appeals

1. The authority citation for Part 473 continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1866, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–3, 1320c–4, 1395cc, 1395hh, and 1395pp).

2. In § 473.12, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 473.12 Statutory basis.

(a) Under section 1155 of the Act—

(1) A Medicare beneficiary, a provider, or an attending practitioner who is dissatisfied with a PRO initial denial determination made under the provisions of section 1154 of the Act, that services furnished or proposed to be furnished are not reasonable or necessary, are not delivered in the most appropriate setting, or are of substandard quality, is entitled to a reconsideration by the PRO that made the initial denial determination;

* * * * *

3. In § 473.14, the introductory text of paragraph (a) is republished and a new paragraph (a)(4) is added to read as follows:

§ 473.14 Applicability.

(a) *Basic provision.* This subpart applies to reconsiderations and hearings of a PRO initial denial determination involving the following issues:

* * *

(4) Quality of services.

* * * * *

4. In § 473.40, the introductory text of paragraph (b) is republished, and a new paragraph (b)(4) is added to read as follows:

§ 473.40 Beneficiary's right to a hearing.

* * * * *

(b) *Subject matter.* A beneficiary has a right to a hearing on the following issues:

* * *

(4) Quality of the services.

* * * * *

E. Part 476, Subpart B is amended as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

1. The authority citation for Part 476 continues to read as follows:

Authority: Secs. 1102, 1154(a), 1156(a), and 1160 of the Social Security Act (42 U.S.C. 1302, 1320c–3(a), 1320c–5(a), and 1320c–9).

2. In § 476.133, a new paragraph (b)(4) is added to read as follows:

§ 476.133 Disclosure of information about practitioners, reviewers, and institutions.

* * * * *

(b) *Exceptions.*

* * *

(4) The PRO, in response to a beneficiary complaint (as described in § 466.106 of this chapter) that is so unique or the service in question so specific, may identify the individual practitioner or other practitioner, without their consent, as an unavoidable consequence of responding to the complaint.

3. In § 476.138, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 476.138 Disclosure for other specified purposes.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

(1) *Disclosure to licensing and certification bodies.* (i) A PRO must disclose confidential information upon request, to State or Federal licensing bodies responsible for the professional licensure of a practitioner or a particular institution. Confidential information, including PRO medical necessity and quality of care determinations that display the practice or performance patterns of that practitioner, must be disclosed by the PRO but only to the extent that it is required by the agency to carry out a function within the jurisdiction of the agency under Federal or State law.

* * * * *

F. Part 489, Subpart B is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

Subpart B—Essentials of Provider Agreements

1. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc and 1395hh).

2. In § 489.21, the introductory text is republished and a new paragraph (h) is added to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in Subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

* * * * *

(h) Services for which payment is denied by a PRO under section 1154(a)(2) of the Act because the services were determined by the PRO to be of substandard quality.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 22, 1988.

Otis R. Bowen,

Secretary.

Note: This document was transmitted to the Office of the Federal Register on January 12, 1989, for publication.

Addendum—Guidelines to be Used by PROs for Developing Criteria for Physician Specialist Reviewers to Deny Payment Because of Substandard Care; and Notices to Beneficiaries

I. Guidelines

The purpose of these guidelines is to provide a framework to the PROs for their formulation of criteria to be used in determining whether inpatient hospital care furnished to a beneficiary was of substandard quality. For those services in which substandard care is provided, the PROs would determine whether the care furnished results in an actual, significant, adverse effect or present an imminent danger to the health, safety, or well-being to the beneficiary, as discussed in the preamble to this rule.

In developing the guidelines, our medical staff identified major classes of admissions, significant milestones in the course of hospitalization, and salient diagnostic and therapeutic principles that should be considered and acted upon by the physician in the management of a patient's course of treatment. The course of treatment should be documented as a part of the beneficiary's medical record. The PROs would review the medical records for the appropriateness of actions taken using critria developed by the PROs, to provide specificity and local relevance, in conjunction with the guidelines.

A. Admissions for Acute Medical Conditions

(1) Initial Assessment—adequacy of initial assessment of:
(a) Respiratory function
(b) Cardiac function
(c) Neurologic function
(d) Biochemical/metabolic status
(e) Gastrointeatinal (GI) status
(2) Stabilization—restoration of:
(a) Respiratory function
(b) Cardiac function
(c) Fluid volume and chemical balance
(3) Definitive Diagnosis—identification of:
(a) The immediate cause of hospitalization:
(i) Failure of organ system
(ii) Infectious process
(b) Significant comorbidities
(c) Other major reversible problems
(d) Adequate diagnostic work up
(e) Documentation
(f) Comments
(g) Complications
(4) Definitive Therapy—
(a) Physiologic support
(b) Pharmacologic intervention
(i) Selection of agents
(ii) Determination of proper doses
(iii) Consideration of toxicity/drug interactions
(iv) Consideration of interactions with comorbidities
(c) Surgical evaluation—Specialty consultation
(d) Provision of device
(i) Selection and fitting
(ii) Training
(e) Referral/transfer
(5) Recovery—
(a) Titration of therapeutic agents and supports
(b) Management of intercurrent infections
(c) Management of complications related to comorbidities
(6) Discharge—
(a) Physiologic stability sufficient for ambulatory care
(b) Plan for followup and aftercare/sociologic setting
(c) Rehabilitation

B. Chronic Medical Conditions

(1) Adequacy of Assessment of Deterioration of Function—
(a) Measures of deficit and residual function/reserve
(i) Vital organs
(ii) Biochemical/metabolic status
(iii) Motor capability
(iv) Sensory limitation/pain
(v) Psychologic
(vi) Social situation
(b) Comorbidities
(2) Management—
(a) Pharmacologic
(i) Agent selection
(ii) Dose titration
(iii) Drug interactions
(iv) Interactions with comorbidities
(b) Device
(i) Selection and fitting
(ii) Training
(c) Surgical evaluation/referral
(3) Discharge—
(a) Assessment of restoration of function/physicologic stability
(b) Plan for followup and aftercare/sociologic setting

C. Elective Surgical Admissions

(1) Adequacy of Assessment of Physiologic/Functional Impairment—
(a) Underlying disorder and stage of progression
(b) Comorbidities
(c) Evaluation of medical/interventional radiologic management alternatives
(d) Need for procedure
(e) Documentation
(2) Preoperative Evaluation—
(a) Cardiac
(b) Pulmonary
(c) Neurologic
(d) Renal
(e) Endocrine/metabolic
(f) Hydration and electrolytes (anesthetic staging)
(g) Radiologic assessment
(3) Operative Protocol—
(a) Preparation
(i) Gastrointestinal (GI)
(ii) Antibiotic prophylaxis
(iii) Sedation
(b) Anesthesia
(i) Agent/route
(ii) Ventilation
(iii) Hemodynamic monitoring
(iv) Intravenous (IV) fluids (volume; electrolytes)
(c) Surgical procedure
(i) Appropriateness; adequacy
(ii) Support staff
(iii) Operative complications
(4) Post-Operative Management—
(a) Vital signs
(b) Stabilization
(i) Ventilation
(ii) Hemodynamics
(c) Neurologic status/sensorium
(5) Recovery—
(a) Physiologic support
(b) Wound management
(c) Management of current infections
(d) Management of comorbidities
(e) Other postoperative complications
(6) Discharge—
(a) Physiologic stability
(b) Wound stability
(c) Management of temporary functional deficit
(d) Plan for followup and aftercare/sociologic setting

D. Acute Surgical Admissions

(1) Initial Assessment—adequacy of initial assessment of:
(a) Cardiac output/blood volume
(b) Ventilation
(c) Biochemical/metabolic balance
(d) Neurologic status/sensorium
(2) Stabilization—
(a) Respiration
(b) Cardiac output/blood volume
(c) Biochemical/metabolic balance
(3) Identification of Affected Organ/Lesion—
(a) History/physical
(b) Radiology (imaging)
(c) Laboratory
(d) Other diagnostic procedures
(e) Documentation
(4) Preoperative Evaluation/Management—
(a) Cardiac
(b) Pulmonary
(c) Neurologic
(d) Electrolytes/hematology
(e) Renal function
(f) Assessment of medical or interventional radiologic alternatives
(5) Operative Protocol—
(a) Preparation
(i) Gastrointestinal (GI)
(ii) Antibiotic prophylaxis
(iii) Sedation
(b) Anesthesia
(i) Agent/route
(ii) Ventilation
(iii) Hemodynamic/cardiovascular
(iv) Intravenous (IV) fluids (volume, electrolytes)
(c) Surgical procedure
(i) Appropriateness, adequacy
(ii) Support staff
(iii) Operative complications
(6) Post-Operative Management—
(a) Vital signs
(b) Stabilization
(i) Ventilation
(ii) Hemodynamics
(c) Neurologic status/sensorium
(7) Recovery—
(a) Physiologic support
(b) Wound management
(c) Management of intercurrent infections
(d) Management of comorbidities
(e) Other postoperative complications
(8) Discharge—
(a) Physiologic stability
(b) Would stability
(c) Management of temporary functional deficit
(d) Plan for followup and aftercare/sociologic setting

E. Admissions for Trauma

(1) Initial Assessment—adequacy of initial assessment of:
(a) Anatomic damage
(b) Respiratory function
(c) Cardiac function/blood volume
(d) Neurologic status
(e) Biochemical/metabolic
(2) Stabilization—

(a) Correction or stabilization of anatomic injury
(b) Respiratory function
(c) Cardiac function/blood volume
(3) Evaluation/Diagnosis—
(a) Collateral injuries
(i) Radiology
(ii) Invasive procedures
(b) Comorbidities
(4) Corrective Treatment—
(a) Surgical (see Acute Surgical Admissions)
(b) Physiologic support
(c) Physical therapy/rehabilitation
(5) Discharge—
(a) Stability of injury
(b) Physiologic stability
(c) Functional capacity
(d) Followup and aftercare
(e) Rehabilitation
(f) Sociologic evaluation/support

F. Acute Psychiatric Admissions

(1) Assessment—adequacy of initial assessment of:
(a) Degree of functional impairment
(b) Underlying physiologic disorder
(c) Comorbidities
(d) History
(e) Medical status
(f) Documentation
(g) Mental status
(h) Assessment for potential for harm to self or others
(2) Management—
(a) Underlying physiologic disorder
(b) Pharmacologic
(i) Agent
(ii) Titration of dosage
(iii) Drug interactions
(iv) Interactions with comorbidities
(c) Surgical
(d) Other therapy: Electric shock therapy (ECT), analysis, psychotherapy, rehabilitation, etc.
(3) Disposition—
(a) Functional capacity
(b) Follow-up monitoring
(c) Aftercare/sociologic support

II. Notices to Beneficiories

- In Quality Denial Model Letter—Hospital Services, the beneficiary would be notified of a PRO determination that Medicare payment was denied to a hospital because of substandard quality care.
- In Quality Denial Model Letter—Hospital and Physician Services, the beneficiary would be notified of a PRO determination that Medicare payment was denied to a hospital and a physician because of substandard quality care.
- In Review of Beneficiary Complaint Model Letter—Quality Meets Professionally Recognized Standards of Health Care, the beneficiary would be notified of a PRO determination that the quality of services meets professionally recognized standards of health care.
- In Review of Beneficiary Complaint Model Letter—Quality Does Not Meet Professionally Recognized Standards of Health Care, the beneficiary would be notified of a PRO determination that the quality of services does not meet professionally recognized standards of health care.

Quality Denial Model Letter—Hospital Services

Letterhead of the PRO

_____
(Date of Notice)

_____
(Name of Patient)

_____
(Address)

_____
(City, State and Zip Code)

_____
(Health Insurance Number)

_____
(Attending Physician)

_____
(Admission Date)

_____
(Medicare Provider Number)

Dear _____: The *(name of PRO)* is the Peer Review Organization (PRO) authorized by the Medicare program to review inpatient hospital services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

Our physician reviewers denied Medicare payment for your admission of (date of admission) to (name of hospital) for (condition or services received).

Our determination is based on a review of your medical records, which indicates that the quality of services you received does not meet professionally recognized standards of health care.

Denial decisions are made by the PRO physician. Your attending physician and hospital were given an opportunity to discuss your case with the PRO before the denial decision was made.

You are not responsible for payment of the cost of the hospital services provided to you except for the costs of any convenience services and items normally not covered by Medicare. If you have paid the hospital for any services (or deductibles and coinsurance) other than those mentioned above, arrangements can be made to pay you back. Please contact:

_____
(Name of FI)

_____
(Complete address)

If you disagree with our determination, you may request a reconsideration. You must submit your request in writing within 60 days from the receipt of this notice to the following address:

_____
PRO Name

_____
Address

_____
or,

You may make your request to—
(1) Any Social Security Office; or
(2) Any Railroad Retirement Office, if you are eligible for railroad retirement benefits.
Your request will be forwarded to us.

Quality Denial Model Letter—Hospital and Physician Services

Letterhead of the PRO

_____
(Date of Notice)

_____
(Name of Patient)

_____
(Address)

_____
(City, State & Zip Code)

_____
(Health Insurance Number)

_____
(Attending Physician)

_____
(Admission Date)

_____
(Medicare Provider Number)

Dear _____ The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review inpatient hospital services provided to Medicare patients in the state of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

Our physician reviewers denied Medicare payment for your admission of (date of admission) to (name of hospital) for (condition or services received) _____.

Our physician reviewers have also denied Medicare payment for physician services provided in connection with your admission to (name of hospital) by (name of physician).

Our determination is based on a review of your medical records, which indicates that the quality of services you received does not meet professionally recognized standards of health care.

Denial decisions are made by the PRO physician. Your attending physician and hospital were given an opportunity to discuss your case with the PRO before the denial decision was made.

You are not responsible for payment of the cost of the hospital and physician services provided to you except for the costs of any convenience services and items normally not covered by Medicare. If you have paid the hospital or physician for any of the services (including deductibles and coinsurance) other than those mentioned above, arrangements can be made to pay you back.

For hospital claims, please contact: (name of fiscal intermediary), (complete address of fiscal intermediary).

For physician charges, please contact: (name of carrier), (complete address of carrier).

If you disagree with our determination, you may request a reconsideration. You must submit your request in writing within 60 days from the receipt of this notice to the following address:

_____
PRO Name

_____
Address

_____
or,

You may make your request to—
(1) Any Social Security Office; or
(2) Any Railroad Retirement Office, if you are eligible for railroad retirement benefits.
Your request will be forwarded to us.

Review of Beneficiary Complaint Model Letter—Quality Meets Professionally Recognized Standards of Health Care

Dear _____: This is in response to your letter of (date of letter) concerning the care you received during your admission of (date of admission) to (name of hospital).

The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (For example, a hospital or a skilled nursing facility).

We have reviewed your case and have found that the quality of services you received meets professionally recognized standards of health care. We will continue to monitor health care providers to assure that Medicare beneficiaries receive quality health care.

Please let me know if you have any further concerns or questions.

Sincerely yours,

Executive Director

Review of Beneficiary Complaint Model Letter—Quality Does Not Meet Professionally Recognized Standards of Health Care

Dear _____: This is in response to your letter of (date of letter) concerning the care you received during your admission of (date of admission) to (name of hospital).

The (name of PRO) is the Peer Review Organization (PRO) authorized by the Medicare program to review services provided to Medicare patients in the State of _____.

The purpose of the PRO program is to assure that health care furnished to Medicare beneficiaries meets professionally recognized standards of health care, is medically necessary, and is provided in the appropriate setting (for example, a hospital or a skilled nursing facility).

We have reviewed your case and have found that the quality of services you received does not meet professionally recognized standards of health care.

We have taken the following steps to correct this situation: (list *specific* corrective actions taken—education, intensified review, sanctions)

We will continue to monitor health care providers to assure that Medicare beneficiaries receive quality health care. Please let me know if you have any further concerns or questions.

Sincerely yours,

Executive Director

[FR Doc. 89-1148 Filed 1-13-89; 10:05 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87-213, FCC 88-404]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making that proposes to expand the use of trunking technology in the private land mobile services on frequencies above 800 MHz. Trunking is a highly efficient mode of operation. The demand for frequencies for trunked operations has been so great that in many urban areas no frequencies exist for establishing new systems or to expand existing congested systems. The Commission adopted this Notice of Proposed Rule Making to provide a measure of spectrum relief to those users requiring trunked systems. To accomplish this goal, the Commission has proposed to allow, under certain conditions, trunking on 150 channel pairs at 800 MHz that are currently reserved for conventional operations. The Commission has also proposed several changes to the intercategory sharing rules to help licensees of trunked systems gain access to needed frequencies.

DATES: Comments must be submitted on or before March 10, 1989, and replies to comments on or before April 7, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in PR Docket No. 87-213, adopted December 12, 1988, and released January 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC, 20037, telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. This *Notice of Proposed Rule Making* proposes to expand the use of trunking technology in the private land mobile radio services on frequencies above 800 MHz. The demand for private land mobile trunked frequencies in the 800 MHz band has increased dramaticly over the last ten years. The Commission has attempted to satisfy these continuing demands for trunked operations by allocating additional spectrum. In addition, the Commission has instituted a channel recovery program, allowed limited intercategory sharing, and permitted the partial assignment of trunked Specialized Mobile Radio systems (SMRs) authorizations. While these steps have provided some relief, the general lack of available 800 MHz spectrum for trunked operations is still a problem, particularly for SMRs.

2. The purpose of this proceeding is to provide additional spectrum relief to those users needing trunking frequencies. Specifically, the Commission proposes to allow trunking on 150 channels pairs at 800 MHz that currently are reserved for conventional operations only; trunked operations are not permitted on these channels. The Commission reasoned that allowing both trunking and conventional operations on these frequencies would serve the public interest by allowing demand to dictate how these frequencies are used. These 150 channel pairs would form a new category of frequencies, the General Category. For the first six months, the Commission proposed that only existing fully loaded trunked systems would be allowed to trunk these channels. After that time, new systems would be allowed to trunk these channels. The Commission also proposed to allow existing conventional licensees on these frequencies to combine their operations and form a single new trunked system.

3. The Commission also proposed to expand the intercategory sharing rules by allowing the assignment of a conventional authorization in the General Category to a licensee of a trunked system licensed in one of the other service pools, i.e., the Business Pool, the SMR Pool, the Public Safety

Pool, or the Industrial/Land Transportation Pool. Further, the conventional system need not be constructed if the assignment were to a licensee of a fully loaded trunked system. The Commission reasoned this would be in the public interest because it would foster a more spectrum efficient technology. Finally, the Commission proposed to allow licensees in the SMR pool to participate in the intercategory sharing program at 900 MHz.

Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public. Rather, if adopted as proposed the licensing burden on the public could be reduced.

Ordering Clauses

6. Authority for issuance of this *Notice of Proposed Rule Making* is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before March 10, 1989, and reply comments on or before April 7, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio services.

Amendatory Text

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—[AMENDED]

7. The authority citation for Part 90 is revised to read as follows:

Authority: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332 unless otherwise noted.

8. The table of contents to Part 90 is amended by revising the heading in § 90.615 to read as "Frequencies available in the General Category".

9. Section 90.609 is amended by revising the title, by adding a new paragraph (b)(3), and by revising paragraph (c) to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.

* * * * *

(b)(3) The authorization is for a conventional system assigned on a General Category frequency and the assignee, or transferee, is either an existing trunked licensee or an applicant proposing to use the frequency as part of a new trunked facility. The application must be accompanied with a demonstration that the assignor or transferor has not acquired the authorization for the principal purpose of profitable sale rather than constructing and operating a radio system and that its decision to assign the authorization was prompted by changing business circumstances.

(c) Licensees of constructed systems are permitted to make assignments, including partial assignments, of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has loaded its system to 70 mobiles per channel and is expanding that system. Frequencies need not be available on an exclusive basis to be assigned. In cases where other licensees may be affected the applicant must submit a signed statement listing all affected co-channel licensees (including call signs) and verifying that they all have agreed to the proposed assignment. An applicant authorized to expand an existing system or to create a new system with frequencies it obtains through assignment will receive the assignor's existing license expiration date and loading deadline. A licensee that makes an assignment, full or partial, will not be authorized to obtain additional frequencies for that same system for a period of one year from the date of assignment.

10. Section 90.611 is amended by revising paragraph (c) to read as follows:

§ 90.611 Processing of applications.

* * * * *

(c) Each application will be reviewed to determine whether it can be granted. Applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories must specify the intended frequency (or frequencies) of operation. Applicants for frequencies in the SMRS Category may either specify the intended frequency (or frequencies) of operation in accordance with the provisions of § 90.621 or request the Commission to perform the selection.

* * * * *

11. Section 90.615 is revised to read as follows:

§ 90.615 Frequencies available in the General Category.

(a) Frequencies in the 806–809.750/851–854.750 MHz bands (Channels 1–150) are allocated to the General Category for conventional operations. The frequencies are available to all eligibles under this subpart (see § 90.603) for conventional operations in areas farther than 110 km (68.4 miles) from the US/Mexico border and farther than 140 km (87 miles) from the US/Canaeda border.

(b) Frequencies in this category may also be used for trunked operations in these same areas in accordance with the following:

(1) Entities may employ unlicensed General Category frequencies to establish new trunked systems provided there are no 800 MHz and 900 MHz frequencies available in their service category.

(2) Conventional licensees may combine channels to form a trunked system provided each of the licensed systems being combined is constructed and operating. All frequencies being trunked together must be located at a primary site.

(3) General Category frequencies may be used for trunked system expansion in accordance with § 90.621(g).

12. Section 90.621 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1) (i) and (iii), (c), (d), (e) and (h); revising the introductory text in paragraph (g); redesignating existing paragraphs (g) (3), (4), and (5) to (g) (4), (5), and (6), respectively; and adding a new paragraph (g)(3) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMRS Category may either request specific frequencies by including in their applications justification for the frequencies requested or may request the Commission to select frequencies for the system from the SMRS Category.

(1) * * *

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617 or 90.619.

(ii) * * *

(iii) There are no limitations on the number of frequencies that may be trunked. Except as indicated in paragraph (a)(1)(iv) of this section, authorizations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour at 20 miles and to limit co-channel interference levels at this distance to 30 dBu. This would result in a mileage separation of 70 miles for typical system parameters. Separations may be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account.

(d) Conventional systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories that have met the loading level necessary for channel exclusivity will be protected in the same fashion as described in paragraph (c) of this section.

(e) Conventional systems authorized on frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories which have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

(f) * * *

(g) Frequencies in the 806–821/851–866 MHz bands listed as available for eligibles in the Public Safety, Industrial/Land Transportation, Business, General, and SMRS Categories are available for inter-category sharing under the following conditions:

(1) * * *

(2) * * *

(3) Channels in the General Category will be available to fully-loaded trunked Public Safety, Industrial/Land Transportation, Business, and SMR Categories systems for expansion if there are no in-category 800 MHz frequencies available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. A licensee will be authorized no more than one channel more than its current loading warrants. Unused (unlicensed) channels in the General Category are also available to establish new trunked systems provided there are not sufficient in-category 800 MHz and 900 MHz frequencies available. The maximum number of frequency pairs that will be assigned at one time for new systems is five.

* * * * *

(h) Frequencies in the 896–901/935–940 MHz bands listed as available for eligibles in the Industrial/Land Transportation, Business, and SMRS Categories will be available for inter-category sharing to all persons eligible in those categories starting May 6, 1990, under the following conditions:

(1) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(2) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

(3) For SMRs, the licensee willl be authorized no more than one channel more than its current loading warrants.

13. Section 90.629 is amended by revising the introductory text to read as follows:

§ 90.629 Extended implementation schedules.

Applicants requesting frequencies in the Public Safety Industrial/Land Transportation, Business, and General, Categories for either trunked or conventional operations may be authorized a period of up to three (3) years for placing a station in operation in accordance with the following:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–642 Filed 1–17–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 11
Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Projects; New Jersey, New York, Puerto Rico, Pennsylvania, Indiana, and California; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA Projects in New Jersey, New York, Puerto Rico, Pennsylvania, Indiana, and California.

ACTION Regions 2, 3, 5 & 9 announce the availability of funds for fiscal year 1989 for new VISTA program grants authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the States of New Jersey, New York, Pennsylvania, Indiana, California, and the Commonwealth of Puerto Rico. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: New Jersey and New York—Joseph Gallick, ACTION Region 2, 6 World Trade Center, Rm. 758, New York, NY 10048–0206, (212) 466–3481; Puerto Rico—Ruben Nazario, ACTION State Office, Frederico De Getau Federal Office Bldg., Carlos Chardon Ave., Suite G49, Hato Rey, Puerto Rico 00917–2241, (809) 766–5314; Pennsylvania—Helen Griffin, ACTION Region 3, U.S. Customs House, 2d & Chestnut St., Rm. 108, Philadelphia, PA 19106–2912, (215) 597–0740; Indiana—Thomas Haskett, ACTION State Office, 46 East Ohio St., Rm. 457, Indianapolis, IN 46204–1922, (317) 269–6724; California—Ricardo Gerakos, ACTION State Office, Federal Bldg., Rm. 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, (213) 209–7421.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under Title I, Part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Regions 2, 3, 5, and 9 will be awarding grants for the placement of VISTA Volunteers in New Jersey, New York, Pennsylvania, Indiana, California, and the Commonwealth of Puerto Rico in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

2. *Homelessness*—development and/or expansion of short/long term shelters or housing for low-income single adults and families and runaway youth. VISTA activities might include information referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counselling programs for at risk youth; and job-training services for shelter residents.

3. *Drug & Alcohol Abuse*—prevention and education programs directed primarily at low-income youth; and development of low-income parent support groups.

4. *Economic Development*—appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; planning and organization of self-help strategies for low-income residents of "enterprise/job zones"; and entrepreneurial development and management training for low-income individuals attempting to enter the business sector.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of the grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total numer of VISTA Volunteers, cannot exceed $8,000.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, at least a 50% non-Federal match of the supervisor's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award a grant or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria For Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of a new VISTA program grant. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Regions 2, 3, 5, and 9 will review and evaluate all eligible applications prior to submission to the Acting Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5:00 p.m., local time, April 14, 1989. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current résumé of potential VISTA Supervisor, if available, or the current

résumé of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC, this 10th day of January 1989.

Donna M. Alvarado,

Director.

[FR Doc. 89-942 Filed 1-17-89; 8:45 am]

BILLING CODE 8050-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 86-034N]

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act systems of records and deleting two of its systems of records maintained by the Food Safety and Inspection Service (FSIS).

EFFECTIVE DATE: This action will become effective without further publication in the **Federal Register** on March 20, 1989, unless notified by a subsequent notice to incorporate public comments. Comments must be received in duplicate by the contact person listed below on or before February 17, 1989.

ADDRESS: Written comments may be submitted to the United States Department of Agriculture, Food Safety and Inspection Service, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Catherine DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447-9150.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, USDA proposes to take the following action:

I. USDA/FSIS—1, "Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS," is being revised (1) to identify changes in record system location due to an internal reorganization of the Food Safety and Inspection Service in 1981, (2) to indicate that data will be stored electronically on various computer media, (3) to indicate changes in procedures for safeguarding the records in the system, and (4) to indicate a change of address of the Privacy Act Coordinator.

II. Two systems of records maintained by FSIS are being deleted. USDA/FSQS—2, "Employment History Records for Licensed Non-Federal Employees" is hereby deleted because these records are no longer maintained by FSIS. The records have been transferred to the Agricultural Marketing Service due to reorganization in USDA in 1981 and are designated as USDA/AMS-1. USDA/FSQS—3, "Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act" is hereby deleted because these records are no longer maintained by FSIS. The records were transferred to the Agricultural Marketing Service due to reorganization in USDA in 1981 and are designated as USDA/AMS-5.

USDA/FSIS—1 is being amended to change the record system, location, to indicate that data will be stored electronically on various computer media, to change the procedure for safeguarding records in the system, and to indicate a change of address of the Privacy Act Coordinator.

Accordingly, notice is hereby given that USDA amends its Systems of Records as follows:

USDA/FSIS—1

System name:

Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS.

System location:

Food Safety and Inspection Service, USDA, 14th and Independence Avenue, SW., Washington, DC 20250. Categories of individuals covered by the system:

* * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders, cards, microfilm, computer printouts; and electronically on various computer media.

* * * * *

Safeguards:

Records are maintained in locked offices.

* * * * *

System manager(s) and address:

Privacy Act Coordinator, USDA/FSIS, 14th and Independence Avenue, SW., Washington, DC 20250.

Systems exempted from certain provisions of the act:

This system has been exempted pursuant to 5 U.S.C. 552(k)(2) from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: Privacy Act Coordinator, USDA/FSIS, 14th and Independence Avenue, SW., Washington, DC 20250.

USDA/FSQS—2

System Name:

Employment History Records for Licensed Non-Federal Employees.

This system is hereby deleted.

USDA FSQS—3

System Name:

Court cases brought by the Government pursuant to the following Acts: Agricultural Marketing Act of 1946, Egg Products Inspection Act.

This system is hereby deleted.

Done at Washington, DC, on January 9, 1989.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 89-842 Filed 1-17-89; 8:45 am]

BILLING CODE 3410-37-M

Forest Service

Scientific Advisory Board, Mount St. Helens National Volcanic Monument; Gifford Pinochot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9:00 a.m., February 21, 1989, at the Gifford Pinochot National Forest Supervisor's Office, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, to receive information on and discuss the following:

1. National Volcanic Monument Wildlife Plan.
2. NVM 1990 Research Plan.
3. Update on NVM Capital Investment program.
4. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinochot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Date: January 6, 1989.

John E. Lowe,

Acting Regional Forester.

[FR Doc. 89-1106 Filed 1-17-89; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

North Carolina Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Forum Subcommittee of the North Carolina Advisory Committee to the Commission which was to have been convened at 2:30 p.m. and adjourn at 6:30 p.m. on Friday, January 20, 1989, in the Sheraton Hotel, 301 North Elm Street, Greensboro, NC, is postponed until January 23, 1989.

The original notice for the January 20, 1989 meeting was published at 53 FR 53039 (December 30, 1988). The new date for the meeting is January 23, 1989, and the location will be Carver Hall, Room 165, North Carolina Agricultural and Technical (A&T) State University, 1601 East Market Street, Greensboro, NC 27411. The subcommittee will develop a proposal for a community forum on racial isolation and tracking in public schools in the State.

Persons desiring additional information, or planning a presentation to the Subcommittee, should contact Subcommittee Chairperson Dr. Richard Robbins or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1989.

Melvin L. Jenkins,

Acting Staff Director

[FR Doc. 89-1159 Filed 1-17-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The information collection requirements are contained in an interim rule entitled "Taking and Importing of Marine Mammals." It was published in the **Federal Register** on January 6, 1989 and is found on pages 411-416. The data collections contained in the rulemaking are found at 50 CFR 216.24(d)(2)(vii)(C)(1)(5) and (viii). They will not become effective until OMB approval is received.

Agency: National Oceanic and Atmospheric Administration
Title: Marine Mammal Waivers for Sundown Sets and Experimental Fishing
Form Number: None
Type of Request: New Collection—Expedited Review Requested
Burden: 37 respondents; 58 reporting hours. Average hours per response is 1.58 hours
Needs and Uses: Vessel operators of purse seine vessels are being prohibited from continuing sets involving marine mammals more than 30 minutes after sunset unless the operator has obtained a waiver. If an operator is notified that his waiver will not be renewed, he can petition the Department to provide pertinent information on why the waiver should be continued. Tuna vessels may also request a waiver to certain regulations to permit the experimental use of equipment or procedures that may reduce marine mammal mortality. See **Federal Register** referenced above to review specific data requirements.
Affected Public: Businesses or other for-profit, small businesses or organizations
Frequency: On ocaasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. The specific data requirements as noted above can be found in the January 6, 1989 **Federal Register**.

Written comments and recommendations for the proposed information collection requirements should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Monagement and Organization.

[FR Doc. 89-1062 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-22-M

Bureau of Export Administration

Kenneth K. Gimm et al.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants, and Charles Wilson Scientific (hereinafter collectively referred to as Gimm), 190 Route 73, Maple Shade, New Jersey 08052, pursuant to section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act), and Part 788 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (the Regulations).[1]

The Department being prepared to allege that Gimm violated §§ 787.4 and 787.6 of the Regulations in that, on eight separate occasions between July 25, 1983 and November 3, 1987, Gimm exported U.S.-origin computers and other electronic components from the United States to South Korea without obtaining from the Department the validated export licenses which Gimm knew or had reason to know were required by § 772.1(b) of the Regulations;

The Department and Gimm having entered into a Consent Agreement whereby the parties have agreed to

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR Parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations may be found in 15 CFR Parts 368-399 (1988).

settle this matter by Gimm's paying to the Department a civil penalty of $50,000 and by the Department's denying Gimm's export privileges for a two-year period, and;

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Gimm shall pay to the Department a civil penalty in the amount of $50,000, as follows: Gimm will make five equal annual installment payments to the Department of $5,000 each, for a total of $25,000. The first annual installment of $5,000 shall be paid on or before September 1, 1989. The four remaining installments shall be paid one, two, three and four years, respectively, from the date of the first payment. The remainder of the civil penalty, $25,000, shall be suspended, as authorized by § 788.16(c) of the Regulations, for a period of six years from the date of entry of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, Kenneth K. Gimm, individually and doing business as Gimm Young Co., Gimm Computer Co., Gimm Consultants, and Charles Wilson Scientific (hereinafter collectively referred to as Gimm), 190 Route 73, Maple Shade, New Jersey 08052, shall be denied, for a period of two years following the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Gimm appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Gimm's privileges of participating, in any manner or capacity, in any special licensing procedure, including but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Gimm is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Gimm or any related party, or whereby Gimm or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Gimm or any ralated party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

E. As authorized by § 788.16(c) of the Regulations, the last 18 months of the denial period shall be suspended for a period of six years from the date of this Order, and shall thereafter be waived provided that, during the period of suspension, Gimm has committed no violation of the Act or any regulation, order or license issued under the Act.

Third, that the proposed Charging Letter and the Consent Agreement shall be made available to the public, and this Order shall be published in the **Federal Register**.

This Order is effective immediately.

Entered this 10th day of January, 1989.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

[FR Doc. 89-1101 Filed 1-17-89; 8:45 am]

BILLING CODE 3510-DT-M

Presidential Decision; Anti-Friction Bearing Section 232 National Security Import Investigation

AGENCY: Department of Commerce, Bureau of Export Administration, Export Administration, Office of Industrial Resource Administration.

ACTION: Announcement of Presidential Decision.

SUMMARY: The President has determined that no action is necessary to adjust imports of anti-friction bearings under authority of section 232 of the Trade Expansion Act of 1962, as amended. Included herein are the Executive Summary of the Department of Commerce's July 1988 section 232 report to the President, and the text of the Commerce/Defense November 1988 supplemental report to the President on the impact of other Administration initiatives on the industry's ability to meet national security requirements.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4506.

SUPPLEMENTARY INFORMATION: On July 17, 1987, the Anti-Friction Bearing Manufacturers Association (AFBMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of ball and roller bearings on the national security. The DOC announced its initiation of an investigation, and solicited public comments in the **Federal Register** on August 4, 1987.

On July 15, 1988, Secretary Verity submitted his investigation report to the President. The investigation found that, at the present time, the domestic bearing industry would be able to meet most but not all national security requirements in the event of a major conventional war. The Secretary recommended that the President defer making a finding pending a supplemental Commerce/Defense Department analysis of the impact of various ongoing Administration initiatives on the industry's ability to meet national security requirements. On August 5, 1988, the President accepted Secretary Verity's recommendation and directed Commerce and Defense to prepare the supplemental analysis.

On November 16, 1988, Secretary Verity submitted this supplemental analysis which concluded that improvements in economic conditions for the industry, in conjunction with the likely impact of other Administration initiatives, should be sufficient to bring the industry into an acceptable posture for national security purposes. Based on this analysis, the Secretary recommended that the President determine that imports of anti-friction bearings do not threaten to impair the national security.

On November 28, 1988, the White House announced that the President had determined that no action is necessary to adjust imports of anti-friction bearings under authority of section 232 of the Trade Expansion Act of 1962, as amended.

Both the Executive Summary of Commerce's July 15, 1988, section 232 report and the complete text of the November 16, 1988, supplemental Commerce/Defense report are reproduced below. A declassified version of the July 15 report will be available for public review and duplication in the Bureau of Export Administration's Office of Security and Management Support, Room 4886, U.S. Department of Commerce, Washington, DC 20230, (202) 377-2593.

Paul Freedenberg,

Under Secretary for Export Administration.

Executive Summary

Background

On July 17, 1987, the Anti-Friction Bearing Manufacturers Association (AFBMA) petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of ball and roller bearings on the national security.

Under this statute, the President has authority to adjust imports based on recommendations from the Secretary of Commerce. DOC has one year in which to complete its investigation and forward its report to the President.

In its petition, the AFBMA asserted that "the domestic bearings industry is in a state of serious decline * * * (and unless action is taken) the domestic industry's ability to supply military and related commercial needs is seriously endangered."

The petitioner requested that quotas be established ranging from 0 percent to 34 percent of the U.S. market for the various bearing product categories. By statute, DOC must report findings and recommendations to the President by July 17, 1988.

The Significance of Bearings to Defense Manufacturing

Antifriction bearings are essential in any metal product with moving parts, and therefore are necessary for manufacturing defense products as mundane as motor vehicles and as sophisticated as high accuracy gyroscopes for missile guidance systems. Direct and indirect military consumption of bearings account for about one-fifth of U.S. apparent consumption. For example, the KC-10 refueling aircraft uses an estimated 6000 bearings; the C-17 transport plane uses about 10,000 bearings and the average helicopter uses about 2500 bearings in its transmissions, gear boxes and rotor linkages. Accordingly, the Department considers a viable domestic bearings industry as a key element of the defense manufacturing base.

Methodology for the Investigation

The methodology for this investigation is based on a two-step process.

Step I

Compare total available supply of each product with anticipated demand during a specified national security emergency—a one year mobilization period followed by one year of a major conventional conflict.

Supply is the sum of the following elements:

—Domestic mobilization capacity (developed from responses to our industry survey);

—Importer and domestic inventories (also from industry survey); and

—Reliable imports (embodied in the model of the 1984 NSC Stockpile Study).

Demand for each product is determined through an input/output analysis of end-use product requirements in the 1984 NSC Stockpile Study. (This approach was approved by the NSC, DOD and FEMA.)

Step II

In categories where a supply shortfall is found, determine whether imports have been a significant cause of the industry's inability to meet national security requirements.

In addition to this snapshot supply/demand review, the Department also analyzed current and prospective market trends to evaluate the industry's ability to meet national security requirements in the future.

Significant Industry Trends

Domestic shipments (in constant 1987 dollars) have declined from a high of $4.6 billion in 1979 to $3 billion in 1987.

Employment has declined from a high of 58,300 workers in 1979 to 43,000 workers in 1987.

Profitability (net before taxes) has declined from a high of 9.3 percent in 1980 to 3.8 percent in 1986 (last year for which data is available).

Since the late 1970s about 30 plants accounting for over $1 billion in production capacity have closed.

About half of the 31 domestic producers surveyed by DOC for this investigation depend on imported steel to varying degrees to manufacture finished bearings. Nine companies who import bearings quality steel do so because of a lack of domestic availability. Further, many domestic bearing manufacturers depend on imports of bearing components for their finished products. Therefore, the U.S. is more dependent on foreign sources to manufacture bearings than trade data indicate.

Import penetration varies significantly depending on the bearing category. In some product categories, U.S. manufacturers still control the domestic market. However, in other product lines foreign manufacturers dominate the market while import penetration is increasing and domestic shipments and production capabilities are declining.

DOD industry experts project that imports are likely to gain increased shares of the U.S. market—the large European and Japanese international bearing corporations have consolidated their hold on home markets, and have increasingly turned their attention to the United States.

Supply Shortfall Analysis

BEARINGS-SURPLUSES/SHORTFALLS AND 1987 IMPORT PENETRATION

[millions of 1982$]

	Mobilization year	Year 1	Import pen. (unit/value)
Regular Precision Bearings:			
Ball under 30mm	−72	−41	(78%/58%)
Ball 30–100mm	−175	−130	(61%/43%)
Ball over 100mm	−6	−43	(49%/25%)
Integral Shaft	−70	36	(33%/6%)
Thrust	16	41	(8%/4%)

BEARINGS-SURPLUSES/SHORTFALLS AND 1987 IMPORT PENETRATION—Continued

[millions of 1982$]

	Mobilization year	Year 1	Import pen. (unit/value)
Other Ball	110	60	(26%/10%)
Tapererd Roller	372	905	(38%/20%)
Spherical Roller	77	147	(75%/18%)
Cylindrical Roller	22	−23	(27%/21%)
Needle Roller	−21	−150	(7%/9%)
Other Roller	−33	−221	(49%/24%)
Superprecision Bearings:			
Ball under 30mm	7	18	(71%/33%)
Ball 30–100mm	64	38	(13%/11%)
Ball over 100mm	87	83	(6%/10%)
Cylindrical Roller	132	190	(36%/11%)

Projected supply can meet national security requirements in the following eight categories. Therefore, it was determined that imports do not threaten to impair the national security in these product lines at the present time.

—Thrust bearings
—Other ball bearings
—Tapered roller bearings
—Spherical roller bearings
—Superprecision ball bearings under 30mm
—Superprecision ball bearings 30–100mm
—Superprecision ball bearings over 100mm
—Superprecision cylindrical roller bearings

Supply shortfalls exist in seven of the fifteen categories under investigation:

—Integral shaft bearings
—Regular cylindrical roller bearings
—Needle roller bearings
—Other roller bearings
—Regular ball bearings under 30mm
—Regular ball bearings 30–100mm
—Regular ball bearings over 100mm

A further review of supply availability and market trends in these categories was conducted. In five of the seven categories, it was determined that imports do not threaten to impair the national security at the present time:

Integral shaft bearings: In 1987, imports accounted for about 33 percent of the units but only 6 percent of the value of U.S. consumption. It was therefore determined that imports are not a significant factor relating to the industry's inability to meet national security requirements.

Regular cylindrical roller bearings: The Department's survey of bearing manufacturers identified adequate surplus production capacity of superprecision cylindrical roller bearings to cover projected shortfalls in the regular precision category.

Needle roller bearings: In 1987, imports accounted for less than 10 percent of the units and value of U.S. consumption. It was therefore determined that imports do not have a significant impact on the industry's inability to meet national security requirements.

Other roller bearings: Imports accounted for about half of U.S. consumption in the 'catch all' basket for roller bearings that are not classified under one of the other categories. However, mounted roller bearings account for nearly 70 percent of this category and many of these are tapered roller and spherical bearings with cast or forged mountings attached. There is excess production capacity to manufacture tapered roller and spherical bearings that could be used to eliminate the projected shortfall in this category.

Regular ball bearings over 100mm: The Department's survey of bearing manufacturers identified adequate surplus production capacity of superprecision ball bearings over 100mm to cover the projected shortfall in the regular precision category.

The Department's analysis indicates that shortfalls which can be attributed to high levels of import penetration exist in two of the fifteen bearing categories under review.

Regular Precision Ball Bearings Under 30mm

A shortfall of $71 million (1982 dollars) is projected for the mobilization year and a $40 million shortfall during the war year. Surplus superprecision production capacity would reduce but not eliminate these shortfalls. This category accounted for 12 percent of the volume and 3 percent of the value of U.S. consumption in 1987.

In 1987, imports accounted for 58 percent of the value and 78 percent of the volume of domestic consumption. From 1982–87, U.S. shipments fell 22 percent by value and 17 percent by volume. During the same period, imports rose 41 percent by value and 79 percent by volume. Major import sources are Japan, Thailand and Singapore (imports from the latter two countries entirely reflect activity by Japan's Minebea). From 1984–87, half of the U.S. firms producing these bearings discontinued production leaving five remaining companies (three of which are foreign-owned).

Regular Precision Bearings 30–100mm

A shortfall of $174 million is projected for the mobilization year followed by a shortfall of $129 million in the war year. Surplus superprecision production capacity would reduce but not eliminate these shortfalls. This category accounted for 13 percent of the volume and 9 percent of the value of U.S. consumption in 1987.

In 1987, imports accounted for 43 percent of the value and 61 percent of the volume of domestic consumption. From 1982–87, U.S. shipments fell 8 percent by value and rose 1 percent by volume. During this period, imports rose 38 percent by value and 50 percent by volume. Major import sources are Japan, Canada, Italy and West Germany. Defense uses are pervasive and range from ground transportation to ordnance equipment.

Key USG Actions Affecting Bearings

Before reaching a decision regarding a national security threat posed by imports, it is important to consider what steps the Government has and is taking to address the industry's problems.

DOD currently has in place a Federal Acquisition Regulation (FAR) requiring domestic procurement of ball bearings under 30mm used in military products. DOD has published draft regulations to expand the existing FAR to cover all bearings used military products. DOD is also undertaking a number of other initiatives to help improve the industry's production base and ability to meet national security requirements.

Findings

The Department's investigation finds that, at the present time, the domestic bearings industry would be able to meet most but not all national security requirements in the event of a major conventional war. Further, imports continue to pose significant challenges to domestic manufacturers in a number of product lines which could lead to the further erosion of domestic production capabilities. The Administration is currently taking a number of steps to improve the bearing industry's production capabilities including the DOD draft Federal Acquisition Regulation (FAR) that will require domestic procurement of all defense related bearings.

Recommendations

The Secretary of Commerce recommends that the President defer making a finding in this investigation or taking any action under section 232 until the effect of these initiatives on the bearing industry's ability to meet national security requirements has been evaluated by the Departments of Commerce and Defense.

The President.
The White House, Woshington, DC 20520.

Dear Mr. President: On July 15, 1988, I forwarded to you the Department of Commerce's study on the Effect of Anti-friction Bearing Imports on the National Security conducted under Section 232 of the Trade Expansion Act of 1962, as amended. Our investigation determined that the domestic bearing industry would be able to meet most but not all national security requirements in the event of a major conventional war. Further, we concluded that imports continued to pose significant challenges to domestic manufacturers in a number of product lines which could lead to the further erosion of domestic production capabilities.

Notwithstanding these concerns, I recommend that you defer a final decision in this case because the Administration is currently undertaking a number of initiatives designed to improve the bearing industry's ability to meet national security requirements.

Specifically, the Department of Defense (DOD) has developed a Bearings Action Plan that requires domestic procurement of certain defense-related bearings (via a DOD Federal Acquisition Regulation Supplement) and includes a number of other actions designed to improve the bearing industry's competitiveness and ability to meet defense requirements.

After considering our report and recommendations, you decided to defer a final decision in the Section 232 investigation pending receipt of a Department of Commerce/DOD evaluation of the effects of the Administration's efforts in support of the bearing industry. The main points of my analysis are as follows:

- In the event of a global conventional war, the domestic industry would be able to meet most national security requirements. Domestic bearing manufacturers would be unable to meet national security needs only in two regular precision product lines.
- Even in the event of such a major military conflict, the domestic industry would be able to meet all superprecision bearing requirements, which are the most critical elements for the production of advanced weapon systems.
- The DOD Federal Acquisition Regulation Supplement should provide the domestic industry with an assured market for defense related products. Furthermore, the other elements in the Bearings Action Plan (for example, the planned research center for bearing manufacturing technology, and the bearing refurbishment program to transfer refurbishment work from DOD facilities to domestic bearing companies) should provide the U.S. bearing industry with additional market opportunities.
- Finally, since our initial Section 232 analysis, the U.S. industry has benefitted from an increase in demand for bearings and is now operating at very high capacity utilization rates. Further, there has been an increase in new and expanded plant investment by domestic- and foreign-owned companies in the United States, which should result in an increase in U.S. capability to produce bearings.

Although the issue of antidumping/countervailing duty investigations cannot be regarded as a factor for consideration in the Section 232 investigation, it is useful to discuss the investigations in light of current bearing industry issues.

On October 28, 1988, the Department of Commerce issued its preliminary antidumping investigation's determinations on bearing imports from nine countries, with dumping margins generally in the range of 20–80 percent. The final antidumping determinations will be issued no earlier than January 1989.

I have enclosed a short paper which describes the industry's status, Administration programs and preliminary antidumping determinations in more detail. I have also enclosed a letter from the DOD outlining the status of Bearings Action Plan programs. Based on our analysis, I recommend that you determine that imports of antifriction bearings do not threaten to impair the national security.

Sincerely,

Bill Verity,
Secretary of Commerce.

FACTORS FOR CONSIDERATION—BEARINGS SECTION 232 SUPPLEMENTARY PAPER

Industry Status

The current demand for bearings in the United States is at its highest point in many years as major bearing-consuming industries, such as automobiles, aerospace and off-road equipment are experiencing significant sales increases.

The U.S. bearing industry has benefitted from the substantial increase in domestic demand and has been operating at close to 100 percent of its capacity for the last six months in almost every bearing category examined under the Section 232 investigation. In fact, for some bearing categories, the U.S. industry has been operating at full capacity for over a year.

As a result of the high capacity utilization rates, lead times for new orders are longer than last year in nearly every category. This has contributed to price increases, which reportedly have reached as much as 30 percent in some categories. Moreover, further price increases can be expected as the pressure on plant capacity continues.

These indicators of the health of the U.S. bearings industry all point to a general upturn in business opportunities. It is likely that these opportunities will result in a more competitive U.S. bearings industry, which will enhance its capability to produce bearings to meet national security requirements in an emergency.

Investment

The United States has recently attracted significant investment in the bearing industry. The underlying reasons for this new investment leave us optimistic about the industry's future competitiveness. Not only have some production costs (labor and material) in the United States fallen below our European and Japanese competitors, but major bearing consuming-industries appear to be making a comeback, after years of poor performance. Large cost savings and improved quality in bearing production can now be achieved by investing in the latest process technologies.

Currently, more investment is taking place in the U.S. bearing sector than in any other world bearing sector. Much of this investment has come from several of the large foreign bearing multinationals. Several of these firms have announced that they intend to invest large sums of money for expansion of existing U.S. facilities and for the construction of new plants.

Some examples of this investment include the following: Koyo Seiko of Japan has allocated $60–70 million for the next three years to expand its South Carolina plant to produce tapered roller bearings and to increase ball bearing capacity. NSK of Japan plans to spend $50 million to expand its Michigan and Iowa ball bearing facilities over the next two years. SKF of Sweden has announced a $35 million expansion of its Georgia plant to produce standard ball bearings, and is spending additional millions upgrading its bearing plants in Pennsylvania, Kentucky and New York. FAG of Germany is dramatically expanding its Missouri factory, and NTN of Japan has nearly completed the expansion of one of its Illinois plants. Further, two new foreign entries to the American market, Georg Muller of Germany, and Nachi-Fujikoshi of Japan, have each announced new ball bearing plant constructions in Illinois and Michigan.

Many domestic firms are also investing heavily and some companies are increasing their investment plans. MPB, one of the country's finest producers of superprecision bearings, has announced a five-year $40 million investment plan. Timken is expanding its North Carolina tapered roller bearings facility and is planning other expansions. Federal-Mongul is nearing completion of its new $65 million ball bearing plant in Pennsylvania.

The new investment and plant expansion examples mentioned above are a healthy indication of the improving strength of the U.S. market for bearings. Such an expansion of capacity in the United States to produce bearings should clearly boost our domestic

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capability to produce bearings for national security needs during a mobilization.

Bearings Action Plan Programs

The Federal DOD Aquisition Regulation Supplement (DFARS) on all Defense Department procurements of antifriction bearings was established in August 1988 for a three to five year period. The DFARS could provide an estimated $40–50 million in additional revenue opportunities to domestic suppliers of defense-related bearings. It should also reverse the increase in defense-related bearings imports which would otherwise have occurred. The DFARS covers all ball bearings 30mm and above and all roller bearings. This new DFARS complements the 1971 DFARS on miniature and instrument bearings (30mm and below).

In addition to the DFARS, the Bearings Action Plan contains other programs which should have an impact on the competitiveness of the U.S. bearings industry. For example, the Department of Defense has a project underway to establish a Research Center on Bearings Manufacturing Process Technology. The Center will be operated by a coalition of universities and private organizations, with significant DOD funding requested. The objective of the center will be to focus on production technology for ball and roller bearings, with a goal of decreased reliance on foreign sources for defense-related bearings.

The Defense Department is also involved in transferring some of the bearing refurbishment work it now performs in-house to private industry, especially where the refurbishment involves complicated processing. This should provide industry with additional defense-related business to maintain and expand capacity.

The Defense Industrial Supply Center recently held a special conference in Philadelphia on aircraft engine bearings, which brought together customers and suppliers to discuss mutual concerns. The approach was beneficial for both parties, and DOD intends to continue this dialogue in future conferences with the bearings industry.

The last area of interest with DOD programs is the enhanced effort to identify and prosecute manufacturers or suppliers involved in potential fraudulent activities with the Defense Department. Currently, the Defense Criminal Investigative Service is investigating alleged wrongdoing by two suppliers of bearings. Through this kind of effort, the sales of legitimate bearing suppliers will be enhanced if the accused parties are found guilty and debarred from further DOD procurement.

The DOD bearings initiatives should help U.S. bearing producers to boost their competitive position with respect to the defense-related bearings business. Clearly, these programs are focused on the defense-critical area of bearings production, which has been the focus of our 232 investigation. We anticipate an overall increase in U.S. capabilities in this area.

Antidumping/Countervailing Duty Investigations

Although this issue cannot be regarded as a factor for consideration in the section 232 investigation, it is useful to discuss the antidumping/countervailing duty investigations in light of current bearing industry issues.

On August 30, 1988, the Commerce Department issued its preliminary determinations of subsidies in the countervailing duty investigations on bearing imports from Thailand and Singapore. The preliminary net subsidy rates were 17.83 percent for Thailand and 4.95 percent for Singapore.

On October 28, 1988, Commerce issued its preliminary determinations that imports of antifriction bearings from West Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom are being sold in the United States at less than fair value. The estimated dumping margins range from .48 percent to 225.88 percent, with most of the margins falling in the 20 percent to 80 percent range.

The Department will make its final antidumping and countervailing duty determinations no earlier than January 10, 1989. To the extent that it finds that bearings are not being fairly-traded in the United States and the International Trade Commission finds that bearings imports are causing injury to the domestic industry, the Department will impose antidumping/countervailing duties based upon the final dumping margins/net subsidy rates.

Conclusion

Since our initial section 232 analysis was completed, the U.S. industry has benefitted from an increase in demand for bearings and is now operating at very high capacity utilization rates. Further, there has been an increase in new and expanded plant investment by U.S. and foreign companies, resulting in an increase in U.S. capability to produce bearings.

The recent implementation of a DFARS on bearings should provide the domestic industry with an assured market for defense-related products. Furthermore, the other elements in the DOD Bearings Action Plan should help the U.S. bearing industry improve its competitiveness.

We therefore conclude that the competitiveness of the U.S. bearing industry has improved since the DOC's July 1988 report. We further conclude that the trends and programs cited above should lead to further improvements in the industry's competitiveness and in its ability to meet national security requirements.

Mr. John A. Richards,
Deputy Assistant Secretary for Industrial Resources Administration, Department of Commerce, Bureau of Export Administration, Washington, DC 20230.

October 28, 1988.

Dear John, Per your letter of October 7 we have attempted to evaluate our initiatives to assist the domestic bearing industry. As you know, none of our initiatives have been in place sufficient time to make definite statements as to their impact on the industry. Based on the large volume of correspondence we have received in the past few weeks from bearing users expressing concern over price increases and nonavailability of bearings, it appears as if our efforts are bringing about increased sales of domestic bearings.

The Department received almost 30 public comments responding to the publication of our interim procurement restriction. We will reconcile those comments and hopefully publish a final rule within 60 days. The comments were generally confined to further fine-tuning the restriction with expected expressions of concern from foreign manufacturers and governments. Directing an increased portion of the $500 to $600 million annual defense bearing procurement to domestic sources will improve their profitability, which they will hopefully use to make themselves more competitive.

We are actively working with the Anti-Friction Bearing Manufacturers Association to ascertain the manufacturing and product technology needs of the industry. The Defense Logistics Agency has a study contract underway that will yield definitive information on these issues in the coming months. We are also pursuing an independent assessment of the industry's needs through a parallel and informal process and will develop a firm course of action by early 1989. Throughout the course of these efforts, the Services will continue to pursue specific Manufacturing Technology and Industrial Modernization Incentives Programs as required to assist the industry.

The Defense Industrial Supply Center held a special conference this spring in Philadelphia on aircraft engine bearings, which brought together the customers and suppliers to discuss mutual problems. We believe this approach is beneficial, and we will continue our efforts to promote constructive dialogue between the customer and supplier in the future with similar conferences.

The last area of interest is the effort to identify and prosecute manufacturers or suppliers involved in potential fraudulent activities. Currently, the Defense Criminal Investigative Service of the DoDIG is investigating alleged wrong doing by two suppliers of bearings. Through this kind of effort the sales of legitimate bearing suppliers will be enhanced if the accused parties are found guilty and debarred from further DoD procurement.

In reviewing the specific bearing shorfalls identified in your investigation of the Section 232 petition, we believe that the actions of our Bearing Action Plan should be adequate to bring the domestic industrial base into an acceptable posture for national security purposes. Our respective Departments must continue to be vigilant, however, for foreign business practices that may violate United States laws on DoD procurement regulations and take appropriate actions where necessary.

We look forward to working with your office in the future as we monitor the progress of this vital defense industry.

Sincerely,

Robert C. McCormack,
Deputy Under Secretary (Industrial and International Programs).

[FR Doc. 89–1127 Filed 1–17–89; 8:45 am]
BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification of Permit; San Antonio Zoological Gardens and Aquarium (P350); Modification No. 1 to Permit No. 497

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 497 issued to the San Antonio Zoological Gardens and Aquarium, 3903 North St. Mary's Street, San Antonio, Texas 78212, on April 16, 1985 (50 FR 18283) is modified in the following manner:

Section B.4 is replaced by:

4. This Permit is valid with respect to the taking authorized herein until December 31, 1989. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on December 31, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: January 10, 1989.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–1145 Filed 1–17–89; 8:45 am]
BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Southwest Fisheries Center, National Marine Fisheries Service (P77#31)

On August 5, 1988, notice was published in the Federal Register (53 FR 28902) that an application had been filed by Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, to conduct scientific research on Hawaiian monk seals (*Monachus schauinslandi*).

Notice is hereby given that on January 12, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. The proposed research is consistent with the purposes and policies of the Marine Mammal Protection Act. The applicant has demonstrated that a non-lethal method of carrying out the research is not feasible in those instances where lethal take may occur. The Service is satisfied that dying seals will be sacrificed only if sufficiently fresh seals are unavailable for autopsy; and that healthy seals will be sacrificed only if the veterinary pathologist determines that thorough examinations of these control seals are critical to making a diagnosis. We are satisfied that the results of this research will directly benefit the Hawaiian monk seal and that such research fulfills a critically important research need.

The Permit is available for review by interested persons in the following office(s):

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 8268, Silver Spring, Maryland; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: January 12, 1989.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–1146 Filed 1–17–89; 8:45 am]
BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Codon

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Codon, having a place of business in South San Francisco, CA 94080, an exclusive license in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–148,749, "Vaccines for the Protection of Animals Against Hypodermosis." Codon is the joint owner of this invention. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce, and to Codon.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,
Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–1113 Filed 1–17–89; 8:45 am]
BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Salsbury Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of

Commerce, intends to grant to Salsbury Laboratories, Inc. having a place of business in Charles City, IA 50616, an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7–128,386, "Avian Herpesvirus Amplicon as a Eucaryotic Expression Vector". Prior to any license granted by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–1114 Filed 1–17–89; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Systems Management College Board of Visitors Meeting

AGENCY: Defense Systems Management College, DOD.

ACTION: Board of visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 226, Fort Belvoir, Virginia, on Tuesday, January 31, 1989, from 0830 until 1530. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere on (703) 664–4235.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 12, 1989.

[FR Doc. 89–1174 Filed 1–17–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Development of the Armed Forces Recreation Center-Fort DeRussy, Fort DeRussy, Oahu, HI

AGENCY: U.S. Army Corps of Engineers, DOD, Honolulu Engineer District.

For: U.S. Army Western Command/U.S. Army Support Command, Hawaii and the U.S. Army Community and Family Support Center.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement.

SUMMARY: .

1. The U.S. Army Western Command (WESTCOM)/U.S. Army Support Command, Hawaii (USASCH) and U.S. Army Community and Family Support Center (CFSC) are in the conceptual stage of planning the development of the Armed Forces Recreation Center at Fort DeRussy, Waikiki, Hawaii. The development as funded, would occur in several phases over about seven years. Nearly all structures now used by the U.S. Army Reserve would be razed on an incremental basis, except for Maluhia Hall in the northern corner of Fort DeRussy. In place of these facilities, Kalia Road would be rerouted and widened; two multi-level parking structures consisting of one parking structure in the vicinity of the existing Post Office and Saratoga Road and one DOD parking facility with dedicated hotel parking would be constructed; a new 400-room hotel tower similar in appearance and in the vicinity of the existing Hale Koa Hotel would be built; new arrival/entrance areas for the Hale Koa Hotal complex and Hawaii Army Museum (Battery Randolph) would be constructed; and amenities such as landscaping, outdoor recreational and entertainment facilities (tennis courts, putting courses, open fields, jogging paths, multipurpose pavilions, etc.) would be provided. The relocation of the U.S. Army Reserve activities to designated sites elsewhere and the construction of new facilities for them will be addressed in this Environmental Assessment. In a future increment, Maluhia Hall will be renovated for post support activities. Open space will be expanded with a generally landscaped central land to sea corridor.

2. Alternatives to be considered include no action, various alignments of Kalia Road, alternate sitings of recreation/entertainment facilities, various designs and configurations of the proposed hotel, and phased relocation of the U.S. Army Reserve activities (only if existing buildings are used or affect any new construction sites).

3. Potentially significant environmental concerns include possible impact on archaeological/historic resources; alteration of existing vehicluar traffic patterns associated with the realignment of Kalia Road; potential increase in vehicular air emissions associated with traffic flow, and parking structures; a shift from a predominantly military character (U.S. Army Reserve) to a recreation/hotel character; effect on new view planes; increase in defacto visitor population; economic stimulation from construction and visitor expenditures; and perceived public concerns on the alternative uses of Fort DeRussy.

4. Public involvement and project scoping will consist of processing a notice of the project through the Areawide Clearinghouse; advertising the Notice of Intent in the State of Hawaii Office of Environmental Quality Control Bulletin, and through contacting local Neighborhood Boards and other community groups, affected government agencies, private organizations, and individuals. Public workshops to scope the EIS will be held but are not yet scheduled. Public meeting will be held after distribution of the DEIS. All interested government agencies, planning advisory committees, and private organizations and individuals are encouraged to provide input into the study process, identifying potential environmental and social concerns and effects, and developing measures to avoid, ameliorate, or mitigate adverse environmental social impacts.

5. Coordination will be undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies, State of Hawaii agencies such as the Department of Health, Department of Land and Natural Resources, Department of Business and Economic Development, Department of Transportation, Office of State Planning, and Office of Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supp'y, Police Department, Fire Department, Department of Housing and Community Development, Department of Land Utilization, Department of General Planning, Department of Parks and Recreation, Department of Public Works, and Department of Transportation Services; and organizations such as the Hawaii Visitors Bureau and the Waikiki Neighborhood Board.

6. The Draft EIS is currently scheduled to be available for public review in January 1990. Questions about the proposed action and the DEIS can be addressed to: David G. Sox, U.S. Army Engineer District, Honolulu, Military Branch, Installation Support Section, Building 230, Fort Shafter, Hawaii 96858–5440, Telephone: (808) 438–5030/1489.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

January 11, 1989.

[FR Doc. 89–1074 Filed 1–17–89; 8:45 am]

BILLING CODE 3710-08-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 25, 1989 beginning at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Pennsylvania Fish Commission D–80–32 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 12.1 million gallons (mg)/30 days of water to the applicant's Pleasant Mount Fish Cultural Station from Well Nos. 2 and 3. Commission approval on March 28, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 20.7 mg/30 days. The project is located in Mount Pleasant Township, Wayne County, Pennsylvania.

2. *Occidental Chemical Corporation D–84–46 (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 91.6 mg/30 days of water to the applicant's industrial facility from Well Nos. 7, 8 and 9. Commission approval on January 30, 1985 was limited to four years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 114 mg/30 days. The project is located in Burlington Township, Burlington County, New Jersey.

3. *Department of the Army—Tobyhanna Army Depot D–87–57 CP.* An application for approval of a ground water withdrawal project to supply up to 4.75 and 3.11 mg/30 days of water to the applicant's distribution system from new Well No. 6 and existing Well No. 1, respectively, and to limit the withdrawal from all wells to 20.0 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

4. *Walnut Bank Water Company D–88–69 CP.* An application for approval of a ground water withdrawal project to supply up to 5.16 mg/30 days of water from new Well No. 2. The project is in Richland Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area. Well No. 2 is located 3600 feet southeast of the intersection of East Pumping Station and Heller Roads.

5. *ICI Americas, Inc. D–88–74.* An application for approval of a ground water withdrawal project to supply up to 43.452 mg/30 days of water to the applicant's industrial facility from existing Well Nos. 8, 9, 10 and 11, and to limit the withdrawal from all wells to 60.04 mg/30 days. The project is located in New Castle County, Delaware.

6. *Atlas Powder Company D–88–83.* An application to modify an industrial wastewater treatment plant that serves the Reynolds facility of the Atlas Powder Company, located in Walker Township, Schuylkill County, Pennsylvania. The applicant proposes to construct additional treatment units and reroute wastewater flows in order to improve effluent quality and bring the discharge into compliance with NPDES permit limitations. The applicant will continue to discharge treated sewage and industrial process wastewater to the Little Schuylkill River, but outfall 002 to Brushy Run will be eliminated. A combined design average flow of 0.2 million gallons per day will be discharged from existing outfalls 008 and 011 to the Little Schuylkill River adjacent to the Reynolds Plant.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

January 10, 1989.

[FR Doc. 89–1160 Filed 1–17–89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.190]

Invitation of Applications for New Awards Under the Christa McAuliffe Fellowship Program for Fiscal Year 1989

Purpose: To provide fellowships to outstanding teachers to enable and encourage them to continue their education or to develop educational projects and programs.

Deadline for Transmittal of Recommendations: March 10, 1989.

Available Funds: $1,892,000.

Estimated Range of Awards: $14,787 to $29,573.

Estimated Number of Awards: 100.

Project Period: Up to 12 months.

Applicable Regulations: The Christa McAuliffe Fellowship Program regulations, 34 CFR Part 237, as proposed to be amended (53 FR 46072–46073).

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case it is essential to solicit applications on the basis of the notice of proposed rulemaking (NPRM) for this program, as published in the **Federal Register** on Tuesday, November 15, 1988 because of the need to make awards before the academic school year ends. Fellows must have time to make arrangements with their school systems for sabbaticals to cover their grant period during the 1989–90 school year. Further, the Secretary has not received any comments on the NPRM and does not anticipate making any changes in the final regulations. However, if any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.

For applications, call or write the State Contact Person:

Alabama

Mr. Bill Ward, 111 Coliseum Boulevard, Montgomery, Alabama 36193, (205) 261–2749

Alaska

Ms. Terri Campbell, Alaska Department of Education, P.O. Box F, Juneau, Alaska 99811–0500, (907) 465–2884

American Samoa

Mr. Ralph Farrow, Department of Education, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633–5237

Arizona

Mr. Bill Hunter, Arizona Department of Education, 1535 West Jefferson Street, Phoenix, Arizona 85007, (602) 255–2147

Arkansas

Ms. Brenda Matthews, Arkansas Department of Education, #4 Capitol Mall, Little Rock, Arkansas 72201, (501) 682–4251

California

Mr. Peter Blackshaw, Governor's Office, State Capitol, Sacramento, California 95814, (916) 323–0611

Colorado

Dr. Ray E. Kilmer, Colorado Department of Education, 201 East Colfax Avenue, Denver, Colorado 80203, (303) 866–6806

Connecticut

Mr. Thomas Lovia Brown, Connecticut State Department of Education, 165 Capitol Avenue, Hartford, Connecticut 06106, (203) 566–4122

Delaware

Dr. Bill Barkley, Department of Public Instruction, Townsend Building, Dover, Delaware 19903, (302) 736–2770

District of Columbia

Ms. Jean Green, Office of Postsecondary Education, Research and Assistance, 1331 H Street, NW., Suite 600, Washington, DC 20005, (202) 727–3685

Florida

Ms. Sherry Thomas or Ms. Mary Lou Carothers, Florida State Department of Education, G20–Collins, Tallahassee, Florida 32099, (904) 488–6503

Georgia

Ms. Gale Samuels, Georgia Department of Education, Twin Towers East, Atlanta, Georgia 30334, (404) 656–2476

Guam

Ms. Lillian Wyatt, Administrator of Federal Programs, P.O. Box DE, Agana, Guam 96910, (671) 472–8524

Hawaii

Ms. Mary Tanouye, Hawaii Department of Education, P.O. Box 2360, Room 301, Honolulu, Hawaii 96804, (808) 548–5215

Idaho

Mr. Gene Peterson, Executive Office of the Governor, State House, Boise, Idaho 83720, (208) 334–3309

Illinois

Ms. Gail Lieberman, State Capitol, Room 2½, Springfield, Illinois 62706, (217) 782–4921

Indiana

Ms. Betty Johnson, Indiana Department of Education, 251 E. Ohio, Indianapolis, Indiana 46204, (317) 232–9141

Iowa

Dr. Joseph Wolvek, Iowa Department of Education, Grimes State Building, Des Moines, Iowa 50319, (515) 281–3294

Kansas

Mr. Warren Bell, Kansas State Department of Education, 120 East 10th Street, Topeka, Kansas 66612, (913) 296–2306

Kentucky

Ms. Sandy Gubser, Office of the Governor, State Capitol Building, Room 105, Frankfort, Kentucky 40601, (502) 564–2611

Louisiana

Dr. James Barr, Department of Education, P.O. Box 94064, Baton Rouge, Louisiana 70804–9064, (504) 342–1136

Maine

Ms. Polly Ward, Maine Department of Education, State House Station 23, Augusta, Maine 04333, (207) 289–5113

Maryland

Dr. Douglas S. MacDonald, Maryland State Scholarship Administration, 2100 Guilford Avenue, Baltimore, Maryland 21218, (301) 333–6420

Massachusetts

Ms. Mary Lou Anderson, State Department of Education, 1385 Hancock Street, Quincy, Massachusetts 02169, (617) 770–7596

Michigan

Ms. Debra Clemmons, Michigan Department of Education, P.O. Box 30008, Lansing, Michigan 48909, (517) 373–3808

Minnesota

Dr. Susan K. Vaughan, Minnesota Department of Education, 645 Capitol Square Building, St. Paul, Minnesota 55101, (612) 296–4075

Mississippi

Mr. Jack Lynch, Mississippi Department of Education, P.O. Box 771, Jackson, Mississippi 39205, (601) 359–3519

Missouri

Ms. Georganna Beachboard, Missouri Department of Education, P.O. Box 480, Jefferson City, Missouri 65102, (314) 751–2661

Montana

Mr. J. Michael Pichette, Governor's Office, State Capitol, Helena, Montana 59620, (406) 444–3111

Nebraska

Mr. Jim Woodland, Policy Research Office, Box 94601, Lincoln, Nebraska 68509, (402) 471–4329

Nevada

Ms. Mary Peterson, Nevada Department of Education, 400 West King Street, Carson City, Nevada 89710, (702) 885–3136

New Hampshire

Mr. Charles Marston, Office of the Governor, State House, Concord, New Hampshire 03301, (603) 271–3145

New Jersey

Mr. Anthony Villane, New Jersey Department of Education, CN 500, Trenton, New Jersey 08625, (609) 984–8281

New Mexico

Mr. Charles B. Stockton, Governor's Office, State Capitol, Santa Fe, New Mexico 87503, (505) 437–4010

New York

Dr. Charles Mackey, State Education Department, Albany, New York 12230, (518) 474–6440

North Carolina

Ms. Grace Drain, North Carolina Department of Public Instruction, 116 West Edenton Street, Raleigh, North Carolina 27603, (919) 733–4736

North Dakota

Ms. Pat Laubach, Department of Public Instruction, State Capitol, Bismarck, North Dakota 58505, (701) 224–4525

Northern Marianas

Mr. Robert Coldeen, Department of Education, Saipan, CM 96950, (670) 322–3194

Ohio

Ms. Donna Boylan, Ohio Department of Education, 65 S. Front Street, Columbus, Ohio 43266, (614) 466–2407

Oklahoma

Ms. Sharon A. Lease, State Department of Education, 2500 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, (405) 521–4311

Oregon

Mr. Jim Sanner, Oregon Department of Education, 700 Pringle Parkway, SE., Salem, Oregon 97310, (503) 378–6405

Palau

Mr. Masaaki Emesiochl, Palau Department of Education, P.O. Box 189, Koror, Palau 96940, Intl. Op. 160+680 Palau #570

Pennsylvania

Mr. Ron Hall, Pennsylvania Department of Education, 333 Market Street, Harrisburg, Pennsylvania 17126, (717) 783–2862

Puerto Rico

Ms. Carmen Morales, G.P.O. Box 759, Lieutenant Cesar Gonzalez & Calas Street, Hato Rey, Puerto Rico 00919, (809) 756–5820

Rhode Island

Ms. Lorraine Webber, Rhode Island Department of Education, 22 Hayes Street, Providence, Rhode Island 02908, (401) 277–2030

South Carolina

Ms. Betty Davidson, Governor's Office, P.O. Box 11369, Columbia, South Carolina 29211, (803) 734-0448

South Dakota

Ms. Roxie Thielen, South Dakota Department of Education, 700 Governor's Drive, Pierre, South Dakota 57501, (605) 773–3134

Tennessee

Mr. John Gaines or Mr. James Swain, Tennessee Department of Education, Cordell Hull Building, Room C1–103, Nashville, Tennessee 37219, (615) 741–0874

Texas

Dr. Marianne Vaughan, Texas Education Agency, 1701 N. Congress, Austin, Texas 78701, (512) 463–9327

Utah

Mr. Scott Cameron, Utah State Office of Education, 250 East Fifth South, Salt Lake City, Utah 84111, (801) 533–4095

Vermont

Mr. George Tanner, Chief, Curriculum and Instruction Unit, Department of Education, Montpelier, Vermont 05602, (802) 828–3111

Virgin Islands

Dr. Rosemarie Larreur, Department of Education, P.O. Box 6640, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–4679

Virginia

Ms. Diane Jay, Virginia Department of Education, P.O. Box 6Q, Richmond, Virginia 23216, (804) 225–2013

Washington

Mr. Ronn Robinson or Ms. Pauline Carlton, Office of the Governor, 320 Insurance Building, Mail Stop AQ–44, Olympia, Washington 98504, (206) 753–5460

West Virginia

Mr. Tony Smedley, 1900 E. Washington Street, Capitol Complex—Building 6, Room B337, Charleston, West Virginia 25305, (304) 348–2703

Wisconsin

Ms. Harlene Ames, Department of Public Instruction, P.O. Box 7841, Madison, Wisconsin 53707, (608) 266–9849

Wyoming

Dr. Audrey M. Cotherman, State Department of Education, Hathaway Building, Cheyenne, Wyoming 82002, (307) 777–6202

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Acting Division Director, Division of Discretionary Grants, Office of Elementary and Secondary Education, 400 Maryland Avenue W., Washington, DC 20202, Telephone (202) 732–4059.

Program Authority: 20 U.S.C. 1113–1113e.

Dated: January 10, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–1129 Filed 1–17–89, 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.162]

Invitation of Applications for New Awards Under the Emergency Immigrant Education Program for Fiscal Year 1989

Purpose: This program provides financial assistance to State educational agencies (SEAs) for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools.

Deadline for Transmittal of Applications: April 21, 1989.

Deadline for Intergovernmental Review Comments: June 20, 1989.

Applications Available: Application packages may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Available Funds: $29,640,000.

Project Period: 12 Months.

Programmatic Information: An SEA may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2. To be eligible for a grant, an SEA must submit a count of eligible immigrant children conducted during the month of March, 1989.

Applicable Regulations: (a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581, and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, and 85.

For Applications or Information: For further information contact Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5086, Mary E. Switzer Building), Washington, DC 20202–6641. Telephone: (202) 732–5708.

Program Authority: 20 U.S.C. 4101–4106.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: January 11, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89–1126 Filed 1–17–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Broad Agency Research Announcement, 1989; Coal Research and Technology Development

I. Introduction

The Morgantown Energy Technology Center (METC), Department of Energy (DOE), invites any university or other institution of higher education, not-for-profit or for-profit organization, non-Federal agency, or other entity to submit competitive proposals for a contract for the conduct of research in any of the areas set forth in Appendix A. An unaffiliated individual also is eligible for

a competitive award. The project period for which DOE expects to provide funding for a selected proposal shall generally not exceed 3 years and may exceed 5 years only if DOE makes a renewal award or otherwise extends the contract. This announcement is being issued pursuant to section 309(b)(2) of the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 98-369; the Competition in Contracting Act of 1984; the Federal Acquisition Regulations (FAR) 6.102(d)(2); and FAR 35.016.

II. Definitions

Research means basic and applied research and that part of development not related to the development of a specific system or hardware procurement. The primary aim of research is scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or hardware. See also the definition for basic and applied research at FAR 35.001.

III. Proposals

An original and seven copies of an initial proposal submitted in response to this Broad Agency Announcement (BAA) must be submitted to: Acquisition and Assistance Division, U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road (Mail Stop I07), Morgantown, West Virginia, 26505. Proposals may be submitted to DOE at any time after public release of this BAA, but in all cases must be received by DOE within 12 months after the date of publication in the **Federal Register**.

IV. Information to be Provided in Proposals

A. Each Proposal Should Include the Following Information

1. A face page that contains basic information on the organization, principal investigator, and the proposed project. The face page should also reference this Announcement.

2. A detailed description of the proposed project, including the objectives of the project, its relationship to the program description(s) set forth in Appendix A, and the proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.A. below.

3. Detailed information about the background and experience of the principal investigator(s) (including references to publications), the research facilities and experience of the proposer, and the proposed cost-sharing arrangement, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)

4. A budget with supporting justification sufficient to evaluate the costs of the proposed project (Standard Form 1411 and appropriate attachments should be used).

5. A description of the proposer's management capability (including cost management techniques) and experience, and subcontracting practices.

6. The proposal face page must be signed by the individual who is applying and by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

B. Renewal Proposals

Proposals for a renewal award must be submitted in an original and seven copies to the DOE contracting officer for the current contract.

C. Other Information for Proposers

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

V. Proposal Evaluation and Selection

A. Proposals shall be evaluated for funding generally within 6 months but, in any event, no later than 12 months from the date of receipt by DOE. After DOE has held a proposal for 6 months, the proposer may, in response to DOE's request, be required to revalidate the terms of the original proposal. DOE staff shall perform an initial evaluation of all proposals to ensure that the information required by this Announcement is provided, that the proposed effort is technically sound and feasible, and that the effort is consistent with program funding priorities.

For proposals which pass the initial evaluation, DOE shall objectively evaluate each proposal received using scientific or peer review against the criteria set forth below. METC may supplement internal DOE review resources with peer review, in addition to Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available.

DOE shall select evaluators on the basis of their professional qualifications and expertise in the field of research. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

DOE shall evaluate new and renewal proposals based on the following criteria, which are listed in descending order of importance:

1. The scientific and technical merit of the proposed research;

2. The appropriateness of the proposed method or approach;

3. Competency of proposed research personnel and adequacy of proposed research facilities/resources;

4. Adequacy and relevance of the proposer's management capability and experience as it relates to the proposed research; and

5. Reasonableness and appropriateness of the proposed budget.

B. In addition to the evaluation criteria set forth in Paragraph A, DOE shall consider the proposer's technical performance under the existing contract during the evaluation of a renewal proposal.

C. Proposals will be selected for award based upon the results of the evaluations performed in accordance with A and B above. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a proposer prior to the award of a contract. Such negotiations are not a commitment that DOE will make an award. Resultant contracts will be subject to the applicable portions of the Federal Acquisition and Department of Energy Acquisition Regulations.

Appendix A

The Morgantown Energy Technology Center (METC) program has established two complementary overall goals supporting increased utilization of domestic fossil fuel resources. These program goals are: (1) Increase the contribution of coal by improving environmental, technical, and economic performance and by increasing the areas of application and flexibility of coal-based systems; and (2) increase the effective resource base for premium gas and liquid fuels through enhanced resource recovery and/or production of liquid and gaseous fuel analogs from coal, shale, and tar sands. The METC program intends to pursue research opportunities in the utilization and extraction of domestic fossil fuel resources that are of high-risk and long-term characteristics. The METC program incorporates basic and applied research that is coupled to advance research activities needed to improve the understanding of scientific fundamentals and engineering process applications. These activities include cross-cutting research on physical, chemical, and thermodynamic characteristics of fossil fuels and their derivation, fluid phenomena, material transport, mathematical modeling, and environmental sciences. The major program areas are identified below.

1. Coal Research and Technology Development

This program supports basic and applied research efforts in a variety of technologies to enhance the efficient and environmentally compatible utilization of coal. The major technologies and their objectives are as follows:

(i) Advanced Control Technology

The goal of this technology area is primarily directed toward the development of advanced processes that reduce the release of coal-derived contaminants. Research activities include gas stream cleanup, and waste management. Gas stream cleanup activities address the removal of fuel gas contaminants, alkali and trace chemicals from gasifier and combustion process streams for hardware protection prior to utilization in advanced power conversion systems such as gas turbines and fuel cells, and to meet environmental emission requirements. Waste management efforts focus primarily on waste sampling and characterization from emerging technologies.

(ii) Technology Component and Instrumentation Development

The goal of this technology area is to provide process durable components and on-line control and monitoring instrumentation for existing and advanced processes. The program includes generic studies of components and investigation of instrumentation control and diagnostic concepts in environments associated with advanced fossil fuel technologies.

(iii) Combustion Systems

The overall goal of this technology area is to provide new combustion technology for coal-based fuels to reduce environmental emissions and to extend coal-based systems to industrial, commercial, and residential applications. Research activities include atmospheric and pressurized fluidized-bed combustion concepts. Atmospheric fluidized-bed combustion activities are directed at supporting development of second-generation systems suitable for small industrial, commercial, and residential application. Pressurized fluidized-bed combustion activities are directed at supporting development of utility systems.

(iv) Fuel Cells

The overall goal of this technology area is to support high-risk technology base development leading to efficient, economic, and environmentally acceptable use of conventional and alternative hydrocarbon fuels. The program is focused on developing basic and applied data on advanced concepts, such as the solid oxide or solid polymer, that have technical and economic advantages compared to existing systems, and potential applications using coal-derived fuels.

(v) Heat Engines (Turbines, Diesels)

The overall goal of this technology area is to develop the basic and applied data base required to develop direct coal-fire gas turbine and diesel systems. Research activities are directed toward key technical problems associated with substituting coal or coal-derived gaseous fuels for distillate fuels or natural gas.

(vi) Underground Gasification

The overall objective of this technology is to substantially expand domestic coal reserves by utilizing coal that is presently not economically or technically feasible to mine. Research efforts are directed toward the definition of fundamental and applied technical, operational, and environmental parameters affecting underground gasification.

(vii) Surface Gasification

The overall goal of this technology area is to provide a cost effective and environmentally compatible energy system to meet the future needs of the utility, industrial, commercial, residential, and transportation sectors. Research activities are directed toward the development of advanced gasification systems for the production of electric power, synthesis gas, industrial fuel gas, and co-products (solids, liquids, and gases).

2. Natural Gas Supply and Utilization

This program supports development of advanced technologies for the extraction of natural gas from unconventional gas resources and the increased use of gas in new applications either directly or by conversion to a liquid product.

(i) Natural Gas Supply

The goals of the supply program are to identify potential reserves and their production potential, to reduce the uncertainty of the magnitude of unconventional gas resources and the conditions under which they will be produced, and to improve extraction technologies to the point of technical readiness.

(ii) Natural Gas Utilization

Increased utilization of natural gas in all applications is the goal of this effort. New uses for natural gas supplies and economic utilization of marginal supplies are being developed. Methods for converting gas to high value liquid products to enhance ease of transportation and expanded markets are being pursued.

3. Petroleum Research and Technology Development

This program supports basic and applied research in a variety of technologies to enhance the efficient recovery of oil. The major technologies and their objectives are as follows:

(i) Advanced Process Technologies

The overall goal of this technology area is to conduct fundamental research and pursue application of scientific discoveries relevant to recovery of oil, gas, and shale oil, and to develop a fossil energy-related knowledge base that will enable the production of fossil fuels in the Alaskan Arctic.

(ii) Tar Sands

The overall goal of this technology area is to develop new methods of increasing oil recovery after conventional methods have been applied. The program is directed toward changing the physical or chemical properties of an exhausted reservoir to facilitate further oil recovery and includes developing fundamental and applied data that can lead to improved or new process concepts for tar sand resources.

(iii) Oil Shale Technology

The overall goal of this technology area is to develop economically competitive and environmentally compatible extraction and conversion processes to convert oil shale to liquid fuels and other high value products. The program is directed toward characterizing the chemistry, kinetics and emissions related to eastern and western oil shale processing.

FOR FURTHER INFORMATION CONTACT: Jerome S. Hensley, U.S. Department of Energy, Morgantown Energy Technology

Center, P.O. Box 880, Morgantown, WV 26507–0880.

Louie L. Calaway, Director,

Acquisition and Assistance Division, Morgantown Energy Technology Center.

Date: January 9, 1989.

[FR Doc. 89–1167 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award a Grant to the Geological Survey of Alabama

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for a grant under procurement request number 19–89BC14425.000 to the State of Alabama, Geological Survey of Alabama, for the "Establishment of an Oil and Gas Data Base for Increased Recovery and Characterization of Oil and Gas Carbonate Reservoir Heterogeneity".

SCOPE: The objective of this grant project is to stimulate increased hydrocarbon production in Alabama through resource characterization. The establishment of a resource assessment database will also allow the state, operators, and the DOE to better evaluate the state reservoirs and the remaining hydrocarbon resources. The intended research will (1) develop an Alabama oil and gas database for evaluating resources available from infill drilling and/or enhanced recovery, (2) characterize carbonate reservoir heterogeneity and fluid properties important to defining potential additional reserves, (3) apply the criteria for recognizing carbonate reservoir heterogeneities to the Smackover formation, and, (4) transfer the technologies to oil operators through publication's and workshops. The Geological Survey of Alabama (GSA) will make available to this research project the state well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), the GSA has been selected as the grant recipient. This activity would be conducted by the GSA using their own resources; however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough coverage of the state's reservoirs. Additionally, GSA has exclusive domestic capability to perform this activity. By conducting similar multidisciplinary reservoir studies of Alabama reservoirs, the GSA has become a unique repository of well record and sample information for the state of Alabama.

The term of the grant is for a three-year period at an estimated value of $1,310,000.00. This funding level will be equally shared between DOE and the State of Alabama.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: David N. Barnett, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236. Telephone: (412) 892–5912.

Date: January 4, 1989.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 89–1165 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Awards; Intent To Award a Grant to the Illinois State Geological Survey

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19–89BC14250.000 to the Illinois State Geological Survey (ISGS) for "Research on Improved and Enhanced Oil Recovery in Illinois through Reservoir Characterization."

SCOPE: The objective of this grant project is to increase knowledge of Illinois reservoir characteristics and trends and to encourage development of new production from known reservoirs. The intended research will: (1) Develop a public Illinois oil and gas database for evaluating resources available for infill drilling and/or enhanced recovery, (2) characterize reservoir heterogeneity and fluid properties important to defining potential additional reserves, (3) demonstrate the applicability of seismic and acoustic logging techniques to increasing hydrocarbon production, and (4) transfer the technologies to oil operates through publications and workshops. The ISGS will make available to this project the state well records, geological data archives, well samples, petrographic equipment, and computer resources.

In accordance with 10 CFR 600.7(b)(2)(i)(B) the ISGS has been selected as the grant recipient. This activity would be conducted by ISGS using their own resources as promulgated in their annual report; however, DOE support of the activity would further enhance the public benefits to be derived by increasing the number of reservoirs that can be studied. Because of the present rate of well abandonments, rapid dissemination of information is significant to maintaining domestic oil production.

The term of the grant is for a five year period at an estimated value of $6,827,000.00. The DOE share is anticipated at $2,429,000.00, the remainder to be nonfederal monies provided by ISGS.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: David N. Barnett, Telephone: AC 412–892–5912.

Date: January 4, 1989.

Gregory J. Kawalkin,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 89–1166 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), the DOE, Morgantown Energy Center, gives notice of its plans to award a 24-month cost-shared Grant to the State of Wyoming, Department of Environmental Quality, Herschler Building, Cheyenne, Wyoming 82002, in the amount of $5,500,000. The DOE will fund 50 percent of the allowable costs up to a maximum of $2,750,000. The pending award is based on an unsolicited application for a research project entitled, "Characterization Minimization, Treatment, and Disposal of Waste Streams Generated in Converting Western Coals to Solid Fuel," which was submitted pursuant to Annex I of the Memorandum of Understanding between the United States Department of Energy, Office of Fossil Energy and the State of Wyoming. The application proposes to address a specific set of problems which limits the ability of the United States to utilize the vast reserves of low ranked coals found in Wyoming to meet the national objective of developing domestic sources of energy in an economically sound and environmentally prudent manner. The goal of these studies is to facilitate the successful development of advanced coal processing/conversion technologies which have the potential to enhance the commercial attractiveness and marketability of Wyoming coals. The research efforts will involve the characterization of waste streams, the study of ways to minimize the waste streams produced, and the identification of suitable waste water treatment and disposal methods applicable to the processing of Wyoming coals in these advanced coal processing/conversion technologies.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505, Telephone: (304) 291–4241, Grant No. DE–FG21–89MC26287.

Date: January 9, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–1168 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–69–NG]

Seagull Marketing Services, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting Seagull Marketing Services, Inc. (Seagull), blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA docket No. 88–69–NG authorizes Seagull to import up to 150 Bcf of natural gas from Canada and to export up to 150 Bcf of domestic natural gas to Canada over a two-year term beginning on the date of first import or export.

A copy of this order is available in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on December 31, 1988

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89–1169 Filed 1–17–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP88–263–004 and RP88–92–008]

United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 12, 1989.

Take notice that United Gas Pipe Line Company (United) on January 6, 1989, tendered for filing the following tariff sheets as part of its FERC Gas Tariff, First Revised Volume No. 1:

To Be Effective October 1, 1988

Substitute Eighth Revised Sheet No. 7
Substitute Sixth Revised Sheet No. 11
Substitute Nineteenth Revised Sheet No. 23
Eleventh Revised Sheet No. 72–A
Fifth Revised Sheet No. 72–B
Original Sheet No. 72–B1
Third Substitute Original Sheet No. 74–X1
Original Sheet No. 74–X2
Original Sheet No. 74–X3
Original Sheet No. 74–X4

United states that this filing is made pursuant to the Director's Office of Pipeline and Producer Regulation Letter Order dated December 15, 1988 (Letter Order) which rejected United's November 14, 1988 filing to comply with the Commission's October 28, 1988 order in this docket.

United states that the Letter Order directed United to refile tariff sheets to specify how the overrun charges would be applied, referencing Commission Order issued November 21, 1988 in RP88–92–003, and to state the conditions under which authorized and unauthorized overrun charges would apply.

United states that these tariff sheets set forth the terms and conditions of authorized and unauthorized takes above the customer's Monthly D2 nomination, including nomination and scheduling procedures, as well as applicable rates and penalties consistent with the December 15, 1988 Letter Order. United states that all sales service between the customer's Monthly D2 and its Monthly MDQ (MDQ times the number of days in the month) shall be firm service. The rate applicable monthly to authorized takes in excess of a customer's monthly D2 nomination (Monthly D2) is the 100% load factor rate for Rate Schedules DG, G, and PL.

United also states that the 100% load factor rate will be charged monthly for unauthorized firm sales service between the customer's Monthly D2 and its Monthly MDQ. An annual penalty of $5.00 per Mcf is applied to unauthorized takes in excess of 102% of a customer's Annual D2 (sum of monthly nominated D2s) up to 104% of its Annual D2. A $10.00 per Mcf annual penalty applies to unauthorized takes in excess of 104% of the Annual D2 in an Operating Year (November-October). United further states that the annual $5.00 and $10.00 penalties would not apply if the excess takes are less than the customer's Annual CEQ. United states these annual penalties are to be offset with any applicable CEQ penalties assessed on a daily and monthly basis pursuant to Section 12.7 of the General Terms & Conditions of United's tariff.

United states that copies of this filing were served on United's Docket Nos. RP88–263 and RP88–92 service lists with which Docket No. RP88–263 was consolidated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before January 20, 1989, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person desiring to become a party must motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–1085 Filed 1–17–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3506–3]

Air Quality; Revision To EPA Policy Concerning Ozone Control Strategies and Volatile Organic Compound Reactivity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revision of EPA policy.

SUMMARY: This notice announces the revision of EPA's policy announced in "Recommended Policy on the Control of Volatile Organic Compounds," published on July 8, 1977 (42 FR 35314) and amended on June 4, 1979 (44 FR 32042), May 16, 1980 (45 FR 32424), and July 22, 1980 (45 FR 48941). Specifically, this notice adds 4 halocarbon compounds to the list of organic compounds which are negligibly reactive and thus may be exempt from regulation under State implementation plans (SIP's) to attain the national ambient air quality standards (NAAQS) for ozone. States may not take credit for controlling these compounds in their ozone SIP control strategies. The 4 compounds are:

1. Dichlorotrifluoroethane (HCFC–123)
2. Tetrafluoroethane (HFC–134a)
3. Dichlorofluoroethane (HCFC–141b)
4. Chlorodifluoroethane (HCFC–142b)

DATES: This policy revision is effective January 18, 1989.

ADDRESS: The public docket for this action, A–88–33, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Office of Air Quality Planning and Standards, Air Quality Management Division, (MD–15), Research Triangle Park, NC 27711, phone (FTS) 629–5505, (919) 541–5505.

SUPPLEMENTARY INFORMATION: In previous policy statements concerning the control of volatile organic compounds (VOC), the EPA established a list of compounds, consisting of methane, ethane, methylene chloride (dichloromethane), methyl chloroform (1,1,1–trichloroethane) and eight additional chlorofluorocarbons (CFC's) which have negligible photochemical reactivity and thus should be exempt from regulation under SIP's to attain the NAAQS for ozone.

The Agency has received a request from the Alliance for Responsible CFC Policy (the "Alliance"), a coalition of CFC producers and users, asking that a number of substitutes for fully halogenated CFC's (Table 1) be added to EPA's list of negligibly reactive VOC's. The Alliance cited two primary reasons for their request:

(1) The CFC substitutes covered by the request are less photochemically reactive than others currently on the "exempt" list and therefore should also be considered negligibly reactive; and,

(2) If the U.S. is to meet its commitments embodied in the Montreal Protocol on Substances That Deplete the Ozone Layer, substitutes for the regulated CFC's must be developed and unnecessary barriers to their commercialization and use should be removed.

These issues and EPA's response to the request are discussed in further detail below.

TABLE 1.—COMPOUNDS COVERED BY ALLIANCE PETITION

Compund	Chemical name	CAS No.
HCFC 123	Ethane,2,2–dichloro–1,1,1–trifluoro–.	306–83–2
HCFC 124	Ethane,2–chloro–1,1,1,2–tetrafluoro–.	2837–89–0
HFC 125	Ethane,pentafluoro–	354–33–6
HFC 134a	Ethane,1,1,2–tetrafluoro–.	811–97–2
HCFC 141b	Ethane,1,1–dichloro–1–fluoro–.	1717–00–6
HCFC 142b	Ethane,1–chloro–1,1–difluoro–.	75–68–3
HFC 143a	Ethane,1,1,1–trifluoro–	420–46–2
HFC 152a	Ethane,1,1–difluoro	75–37–6

Four classes of perfluorocarbons:

1. Cyclic, branched, or linear, completely fluorinated alkanes. Example: Perfluorohexane, 355–42–0.

2. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations. Example: Cyclic $C_8F_{16}O$, 355–36–4.

3. Cyclic, branched, or linear, completely fluorinated teriary amines with no unsaturations. Example: Perfluorotributylamine, 311–89–7.

4. Sulphur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. Example: Trifluoromethane sulfurpentafluoride, 373–80–8.

Reactivity And Tropospheric Ozone Forming Potential

Since the reactivities of the compounds in Table 1 are so low that they cannot be measured experimentally, the Alliance petition is based on theoretical predictions of their ozone-forming potential. By well established theory, the first step in the process by which VOC's produce ozone is the reaction of VOC with hydroxyl (OH) radicals. VOC's that react quickly with OH may or may not produce ozone—it depends on how the VOC would behave subsequent to the OH attack. VOC's, however, that react very slowly with OH are certain not to produce significant ozone buildup. Thus, the Alliance request presents data on the OH reaction rate constants (kOH), for the Table 1 compounds relative to the rate constants for several of the compounds currently listed as negligibly reactive. Ethane is the most reactive of the compounds currently listed. The kOH data presented in the request indicate that the reactivity of the Table 1 compounds is at least an order magnitude less than that of ethane. The EPA agrees that based on this information, these compounds can be considered for addition to the current list of negligibly reactive VOC's.

Need To Encourage Substitutes for Ozone Depleters

On August 12, 1988 (53 FR 30566), EPA published domestic regulations implementing the Montreal Protocol on Substances that Deplete the Ozone Layer. The EPA's regulation and the Protocol require a fifty percent reduction in the production and consumption (defined as production plus imports minus exports) of specified chlorofluorocarbons phased in over the next 10 years.

As part of the Regulatory Impact Analysis[1] supporting the regulation, EPA analyzed a range of potential methods of reducing the use of the regulated chemicals including increased recycling, shifts to product substitutes, and the introduction and use of chemical substitutes. This analysis underscored the key role of chemical substitutes in attaining the reductions in CFC use called for by the regulation and in minimizing the costs of achieving those reductions.

The Alliance request claims that industry will incur substantial costs and regulatory uncertainty in meeting State and local ambient ozone requirements and therefore will be hampered in its transition to these chemical substitutes unless they are exempt from VOC regulations. Since the current fully halogenated CFC's are exempt, the Alliance argues that firms using these chemicals are not going to switch from a chemical "that is exempt from regulation under a federally-enforceable SIP to one which faces immediate regulatory hurdles, future regulatory uncertainty, substantial regulatory expenses, and inconsistent State air permitting regulations."

The Allaince request includes information indicating that the Table 1 substitutes have a negligible stratospheric ozone depletion potential. As stated in the request, the ozone depletion potential of the Table 1 compounds, relative to several of the currently used CFC's covered by the Montreal Protocol (CFC–11 and CFC–12), ranges from zero to 0.1.

[1] Regulatory Impact Analysis: Protection of Stratospheric Ozone. Office of Air and Radiation. August 1988.

The EPA agrees with the Alliance concerning the relative impact of the substitutes on stratospheric ozone depletion and with their contention that there is a strong need to facilitate the use of environmentally acceptable substitutes that have little or no impact on stratospheric ozone. Today's decision to add certain chemicals to the list of negligibly reactive compounds is being taken in the context of EPA's implementation of the Montreal Protocol, and is not intended to reopen, at this time, broader issues of exempting other chemicals that may be negligibly reactive. In this context, EPA focused its attention on four specific chemicals covered by the request that are being actively considered by a wide range of industries as the primary substitutes for the regulated chlorofluorocarbons (HCFC–123, HCFC–141b, HCFC–142b, and HFC–134a).

HCFC–123 and HCFC–141b have physical and chemical properties similar to CFC–11 and therefore are being examined for use in the foam-blowing and certain refrigeration applications. HFC–134a has physical and chemical properties similar to CFC–12 and is being considered by firms involved with refrigeration, air conditioning and certain foam uses. HCFC–142b is a chemical already used in commerce with the potential for expanded use alone or as a blend primarily in refrigeration and foam applications.

Comments by the Alliance[2] submitted on the August 12, 1988 advance notice of proposed rulemaking (53 FR 30604) which accompanied EPA's final rule implementing the Montreal Protocol, also demonstrated that industry-wide efforts have focused on the four potential chemical substitutes that EPA is adding to the list as exempt under VOC controls. These comments present a detailed description of activities to construct plants to produce various quantities of HCFC–141b/142b, HCFC–123, and HFC–134a, and to continue and expand tests of products using these chemicals.

Based on the foregoing discussion, EPA is today adding HCFC–123, HFC–134a, HCFC–141b, and HCFC–142b to the list of negligibly reactive VOC's which may be exempt from ozone SIP controls. The effect of this action will be to facilitate the transition away from stratospheric ozone-depleting chemicals without adversely affecting efforts to control ground-level ozone concentrations. This action does not affect ongoing or future toxicity reviews of these or other proposed CFC substitutes.

The EPA is not acting on the other candidate chemicals submitted by the Alliance because currently available information suggests that these chemicals either are not likely to become substitutes for significant uses of CFC's or because they are at an earlier stage in their research and development process. A convincing case cannot now be made that they are likely to significantly contribute to industry's efforts to shift away from fully-halogenated CFC's thereby reducing the risks of ozone depletion. Should this situation change in the future, EPA would reconsider whether to add other CFC substitutes to the list of negligibly reactive compounds.

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*).

Date: January 5, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–1136 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

[2] Alliance for responsible CFC Policy, RE: Comments of the Alliance for Responsible CFC Policy on Advance Notice of Proposed Rulemaking, Protection of Stratospheric Ozone (53 FR 30604, August 12, 1988). November 1, 1988. Docket No. A–88–27, Central Central Docket Section, U.S. EPA.

[FRL–3505–9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Martell Cogeneration Limited Partnership (formerly American Forest Product Company), EPA Project Number SJ 83–04–A

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on November 30, 1988, the Environmental Protection Agency issued a modified PSD permit (originally issued on April 2, 1985, and amended on December 20, 1985) under EPA's federal regulations 40 CFR Part 52.21 to the applicant named above. The original PSD permit grants approval to construct and operate a 10-megawatt wood-fired cogeneration facility located at the applicant's existing sawmill in Martell, Amador County, California. This major modification allows increases in the allowable carbon monoxide (CO) and hydrocarbon (HC) emission rates since these emissions have proven to be higher in actual operations than the levels requested in the original permit application. The permit modification is subject to certain conditions, including an allowable emission rate as follows:

Pollutant	Averaging period	Emission limits (the more stringent of)
CO	3–hour	930 lbs/hr or 3500 ppmv 12% CO_2
	8–hour	590 lbs/hr or 2200 ppmv 12% CO_2
HC	2–hour	35 lbs/hr

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Linda Barajas (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8221, FTS 454–8221.

DATE: The PSD permit modification is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within 60 days of the date of this notice.

Date: January 5, 1989.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 89–1137 Filed 1–17–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44523; FRL–3506–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on anthraquinone (CAS No. 84–65–1), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St. SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a

notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for anthraquinone was submitted by Mobay Corporation pursuant to a test rule at 40 CFR 799.500. It was received by EPA on December 28, 1988. The submission describes acute toxicity testing to Eastern Oysters (Crassostrea virginica), Daphnids (Daphnia magna) and Bluegill Sunfish (Lepomis macrochirus) under flow-through conditions. Acute toxicity testing is required by this test rule. This chemical is used in the production of anthraquinone dyes and as a catalyst in the paper pulping industry.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-[illegible]). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.
Dated: January 10, 1989.

Gary E. Timm,
Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-1130 Filed 1-17-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51721A; FRL-3506-7]

Certain Chemical Premanufacture Notice; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This notice announces receipt of one premanufacture notice(s) that were inadvertantly misstated in publication in the **Federal Register** on December 9, 1988 (53 FR 49786).

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M. Street, SW, Washington, DC 20460 (202) 382-3725.

DATES: Close of Review Period: P 89-113 February 15, 1989.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-28327 in the **Federal Register** of December 9, 1988 (53 FR 49786) the following information for P-89-113 was inadvertantly misstated in OPTS-51721 and is corrected to read as follows:

P 89-113

Importer. Pennwalt Corporation.
Chemical. (S) 3-Ethylthiobutanal.
Use/Import. (G) Destructive use.
Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 3,677 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: Strong species (Rabbit). Mutagenicity: Negative.

Date: January 3, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-1131 Filed 1-17-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-21]

Advisory Committee on Advanced Television Service, Implementation Subcommittee; Meeting

January 11, 1989.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on February 7, 1989, 1:00 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Party 1, Policy and Regulation
4. Report of Working Party 2, Transitioin Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 89-1120 Filed 1-17-89; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Stephen W. Staples, Jr. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I

Applicant/City/State	File No.	MM Docket No.
A. Stephen W. Staples, Jr., Monticello, KY	BPH-880107MR	88-555
B. Ricky Allen Burke, Monticello, KY	BPH-880112MD	
C. Monticello-Wayne County, Media, Inc., Monticello, KY	BPH-880112ME	

Issue Heading and Applicant(s) 2. Ultimate—A,B,C II

1. Comparative—A,B,C

Applicant/City/State	File No.	MM Docket No.
A. Mexican-American Communications Entertainment Broadcasting Group, Bryan, TX	BPH-880113MA	88-565
B. Divcon Associates, Inc., Bryan, TX	BPH-880114MR	
C. Diversified Communications, Bryan, TX	BPH-880114MI	

Issue Heading and Applicant(s) 2. Ultimate—All III

1. Comparative—All

Applicant/City/State	File No.	MM Docket No.
A. Mt. Washington Valley Broadcasting, Limited Partners, Conway, NH	BPH-870909ME	88-556
B. Jeffrey M. Messerman and Cathy R. Messerman d/b/a Carroll County Broadcasting, Conway, NH	BPH-870909MI	

Issue Heading and Applicants 2. Ultimate—A,B IV

1. Comparative—A,B

Applicant/City/State	File No.	MM Docket No.
A. American Indian Broadcast Group, Inc., San Angelo, TX	BPH-870921MB	88-552
B. Southwest Texas FM Limited Partnership, San Angelo, TX	BPH-870922MC	

Issue Heading and Applicants

1. Air Hazard—A,B
2. Comparative—A,B
3. Ultimate—A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copy during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief,
Audio Services Division, Mass Media Bureau.

[FR Doc. 89-1124 Filed 1-17-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Baker, Robert S., et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert S. Baker,* to acquire 4.8 percent of the voting shares of Minneahaha Banshares, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire The First National Bank in Sioux Falls, Sioux Falls, South Dakota, and Farmers State Bank of Flandreau, Flandreau, South Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joe M. Bennatte,* Hempstead, Texas, and *Edmund R. Covel,* Houston, Texas; to each acquire 50 percent of the voting shares of Community Bank, Katy, Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California, 94105:

1. *Dr. John H. Doede,* San Diego, California; to acquire 61.42 percent of the voting shares of Crown Bancorp, Coronado, California, and thereby indirectly acquire Bank of Coronado, Coronado, California.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-1075 Filed 1-17-89; 8:45 am]
BILLING CODE 6210-01-M

Eastchester Financial Corp. et al.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 88-30150) published at page 66 of the issue for Tuesday, January 3, 1989.

Under the Federal Reserve Bank of New York, the entry for Eastchester

Financial Corporation, is amended to read as follows:

1. *Eastchester Financial Corporation*, White Plains, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Eastchester Savings Bank, White Plains, New York, which currently engages in Savings Bank Life Insurance, and offers life insurance and annuity products through its subsidiary ESB Agency, Inc. Applicant has committed to terminate ESB Agency's activities within two years of consummation, and to limit its activities during the two year period to renewing existing policies, and will continue Bank's SBLI activities following consummation.

Comments on this application must be received by February 1, 1989.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1079 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Equimark Corp. and Equimanagement, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 2, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation and Equimanagement, Inc.*, Pittsburgh, Pennsylvania; to acquire 90 percent of the voting shares of Treasure Valley Bancorp, Inc., Fruitland, Idaho, and thereby indirectly acquire Treasure Valley Bank, Fruitland, Idaho. In connection with this application, BHC Acquisition Corp., Fruitland, Idaho, has applied to acquire 99.30 percent of the successor by merger to TVB Acquisition Bank, Fruitland, Idaho. Comments on this application must be received by January 27, 1989.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Four County Bancshares, Inc.*, Allentown, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Four County Bank, Allentown, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reliable Community Bancshares, Inc.*, Perryville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Perryville, Perryville, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texop Bancshares, Inc.*, Dallas, Texas, and Texop Bancshares, II, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of North Texas Bank, Lewisville, Texas, and thereby indirectly acquire American National Bank of Plano, Plano, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission-Valley Bancorp*, Pleasanton, California; to acquire 100 percent of the voting shares of The Bank of Milpitas, N.A., Milpitas, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1076 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Wood Lake Bancorp., Inc., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wood Lake Bancorporation, Inc.*, Wood Lake, Minnesota; to acquire Simonson Insurance Agency, Hanley Falls, Minnesota, and thereby engage in general insurance activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(C)(iii) of the Board's Regulation Y. These activities will be conducted in Hanley Falls, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1077 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

Union Planters Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to engage *de novo* in purchasing short-term, high quality loans and loan participations from major money center banks and to make loans to institutions which are to be merged with or acquired by Applicant pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Sanwa Bank, Ltd.*, Osaka, Japan; to engage *de novo* through its subsidiary, Sanwa Bank Trust Company of New York, New York, New York, certain trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1078 Filed 1-17-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/27/88 AND 12/31/88

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
William Street Acquisition Corporation; British & Commonwealth Holdings PLC; William Street Holdings, Inc	89-0522	12/28/88
Jeffrey A. Marcus; Tele-Communications, Inc.; WestMarc Communications, Inc	89-0523	12/28/88
General Electric Company; Tele-Communications, Inc; Tempo Television, Inc	89-0568	12/28/88
Chargeurs S.A.; Irene Hart Srodek; Hart Incorporated	89-0594	12/28/88
Century City Holdings, Limited; Aircoa Associates; Aircoa Companies, Inc	89-0634	12/28/88
The 1964 Simmons Trust; Lockheed Corporation; Lockheed Corporation	89-0647	12/28/88
Criticorp; Inspiration Resources Corporation; Inspiration Leasing Inc	89-0666	12/28/88
Golder, Thoma, Cressey Fund II; Nortek, Inc.; Montrose Products Company Division	89-0672	12/28/88
Framatome S.A.; Burndy Corporation; Burndy Corporation	89-0706	12/28/88
Blue Cross and Blue Shield of Maryland, Inc.; Plan Investment Fund, Inc.; Plan Investment Fund, Inc	89-0707	12/28/88
Abdullah Taha Bakhsh; Textron Inc.; Gorham Division	89-0699	12/29/88
Giant Group, Ltd.; Pomona Acquisition Corp.; Pomona Acquisition Corp	89-0770	12/29/88
Barris Industries, Inc.; Pomona Acquisition Corp.; Pomona Acquisition Corp	89-0771	12/29/88
Barris Industries, Inc.; Media General, Inc.; Garden State Paper Company, Inc., and GSP Recycling Corp	89-0772	12/29/88
Group Financial Partners, Inc.; Honeywell, Inc.; HI's Defense Communications & Production Div	89-0570	12/30/88
ConAgra, Inc.; The Pillsbury Company; Port Corporation and TPC Transportation Company	89-0646	12/30/88
Thomson S.A.; General Electric Company; General Electric Company	89-0716	12/30/88
Ford Motor Company; Douglas Wolf; IPG Financial Services, Inc	89-0782	12/30/88
Andromede S.A.; McKesson Corporation; "21 Brands, Inc., Distillerie Riunite di Liquori, S.p.A	89-0635	1/03/89
H.J. Heinz Company; Portion Pac, Inc.; Portion Pac, Inc	89-0670	1/03/89
Delta Woodside Industries, Inc.; TCW Special Placements Fund I; O'Bryan Bros., Inc	89-0701	1/03/89
Stiftung Hasler Werke; Rockaway Corporation; Rockaway Corporation	89-0702	1/03/89
Exxon Corporation; Compagnie Financiere de Paribas; Martinez Terminals Limited	89-0720	1/03/89
Ekco Group, Inc.; Woodstream Corporation; Woodstream Corporation	89-0722	1/03/89
Healthtrust, Inc.—The Hospital Company; Healthtrust, Inc.—The Hospital Company; Eastern Idaho Regional Medical Center-Partnership	89-0730	1/03/89
Union National Corporation; Pennbancorp; Pennbancorp Investment Company	89-0731	1/03/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/27/88 AND 12/31/88—Continued

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Japan Air Lines Company, Ltd.; John H. Magoon, Jr.; HAL, Inc	89-0739	1/03/89
Asahi Glass Company, Ltd.; Komag, Incorporated; Komag, Incorporated	89-0742	1/03/89
Varlen Corporation; Consolidated Metco, Inc.; Consolidated Metco, Inc	89-0743	1/03/89
John Hancock Mutual Life Insurance Company; Chicago Milwaukee Corporation; Milwaukee Land Company	89-0757	1/03/89
Huhtamaki Oy; L.S. Heath & Sons, Inc.; L.S. Heath & Sons, Inc	89-0761	1/03/89
Nippondenso Co. Ltd.; Michigan Automotive Compressor, Inc. (Joint Venture); Michigan Automotive Compressor, Inc. (Joint Venture)	89-0765	1/03/89
Toyoda Automatic Loom Works, Ltd.; Michigan Automotive Compressor, Inc. (Joint Venture); Michigan Automotive Compressor Inc. (Joint Venture)	89-0766	1/03/89
Richard E. Jacobs; Carlson Real Estate Corporation; Carlson Real Estate Corporation	89-0781	1/03/89
James H. Posseht; Gibralter Financial Corporation; GFC Leasing Corporation	89-0789	1/03/89
Abbott Laboratories; Takeda Chemical Industries, Ltd.; Takeda (TAP), Inc. and TAP Pharmaceuticals partnership	89-0796	1/04/89
Takeda Chemical Industries, Ltd.; Abbott Laboratories; Abbott (TAP), Inc. and TAP Pharmaceuticals partnership	89-0797	1/04/89
Value Equity Associates I, L.P.; Big Bear, Inc.; Big Bear, Inc	89-0467	1/05/89
American Family Corporation; Christopher J. Brennan; Pegasus Broadcasting of Columbus, Georgia, Inc	89-0738	1/05/89
Dawson International PLC; James W. Hart; Reeves Brothers, Inc	89-0667	1/06/89
Westinghouse Electric Corporation; Perceptics Corporation; Perceptics Corporation	89-0668	1/06/89
MTH Holdings, Inc.; Big Bear, Inc.; Big Bear, Inc	89-0690	1/06/89
Charles E. Bradley; Maxxam Inc.; Kaiser Aluminum & Chemical Corporation	89-0711	1/06/89
M.A. Hanna Company; Jon M. Huntsman; Polycom Huntsman, Inc	89-0763	1/06/89
Pegasus Aircraft Partners, L.P.; Irving Bank Corporation; New DC-9T-I, Inc	89-0784	1/06/89

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-1072 Filed 1-17-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published monthly, updated to include laboratories which successfully complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is recertified as meeting the Guidelines' requirements.

FOR FURTHER INFORMATION CONTACT:
Office of Workplace Initiatives, National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION:
Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," set strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

Maryland Medical Laboratories, 1901 Sulpher Spring Road, Baltimore, MD 21227, 301-247-9100
International Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301
American Medical Laboratories, 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100
ChemWest Analytical Laboratories, Inc., 600 West North Market Blvd., Sacramento, CA 95834, 916-923-0840
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263 919-248-6494
Medtox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612-636-7466
Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619-278-5900
Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405-636-7041
South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601, 219-234-4176
International Toxicology Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312-633-3360

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

FR Doc. 89-1208 Filed 1-17-89; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committees Meetings; February

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's initial review committee in the month of February 1989. This committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Research Scientist Development Review Committee, NIMH.

Date and Time: February 16-18: 9:00 a.m.

Place: Holiday Inn Crowne Plaza, Rockville, MD 20852.

Status of Meeting: Open—February 16: 9:00-10:00 a.m.; Closed—Otherwise.

Contact: Sandra Buckhalter, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

. . . . .

Substantive information, summary of meeting, and roster of committee members may be obtained as follows: Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4333.

Date: January 12, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-1109 Filed 1-17-89; 8:45 am]

BILLING CODE 4160-20-M

Family Support Administration

Office of Refugee Resettlement

Refugee Resettlement Program; Proposed Allocations to States of FY 1989 Funds for Refugee[1] Social Services

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Notice of proposed allocations to States of FY 1989 funds for refugee social services.

ADDRESS: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW. Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT:
Toyo Biddle, (202) 252-4563.

SUMMARY: This notice proposes the allocations to States of FY 1989 funds for social services under the Refugee Resettlement Program (RRP).

DATE: Comments on the allocations provided for in this notice will be considered if received by February 17, 1989.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available $64,906,000 in FY 1989 refugee social service funds as part of the FY 1989 appropriations for the Department of Health and Human Services (Pub. L. 100-436).

Of the total of $64,906,000, the Director of ORR proposes to make available to States during FY 1989 approximately $55,000,000 (84.7%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees. The final allocation amounts would be adjusted to total 85% of the available funds after taking into consideration any population adjustments (see Section VI, below).

The population figures include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $55,000,000 covered by this notice, the Director proposes to allocate funds directly to States in the following manner:

- $52,500,000 would be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1988 (including a floor amount of $75,000 for States which have small refugee populations).
- $2,500,000 would be allocated to each State on the basis of its proportion of the 3-year refugee population (including a floor amount of $5,000 to States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts (for social services) * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The approximately $9,700,000 in remaining social service funds (after the final allocation to States of 85% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds will support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued: Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984, and Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985. ORR expects to continue emphasis on discretionary grants for Community/Family Stability Projects for Refugees and to continue the Key States Initiative to address problems of persistent welfare dependency. Announcements will be made when additional initiatives are decided on.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202); and (3) certain Amerasians from Vietnam, includng U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100-461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Appropriations Act (Pub. L. 100-461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985-1988 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three cirumstances exist: (a) The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; (b) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or (c) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(C) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98-473) amended section 412(e)(7)(A) of the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a duplicate copy to the appropriate Family Support Administration (FSA) Regional Administrator. States must respond by March 31, 1989, in order to avail themselves of this special allocation.

II. [Reserved for discussion of comments in final notice.]

III. Proposed Allocation Formula

Of the funds available for FY 1989 for social services, $52,500,000 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1988 adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1989 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1988, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam as well as Cuban and Haitian entrants resettled after September 30, 1985. Figures on the numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1989, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1986, 1987, and 1988. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1985, and September 30, 1988, who are thought to be living in each State as of October 1, 1988. The population estimates for the FY 1989 allocations cover refugees of all nationalities, Cuban/Haitian entrants, and Amerasians from Vietnam. Refugees admitted under the Federal Government's private-sector initiative are not included since their assistance and services are to be provided by the private sponsoring organization under an agreement with the Department of State.

Preliminary arrival figures for FY 1988 were used in the calculations. They will be replaced by final arrival figures in the final notice of FY 1989 allocations, but the effect on the award amounts is expected to be small.

All participating States submitted data on their secondary in-migration on Form ORR-11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. This estimate was converted into a percentage of the total 3-year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in March 1988. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 13 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.77% to constrain the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1988, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

The following amounts are proposed for allocation for refugee social services in FY 1989:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1989

State	Refugees (1)	Cuban/Haitian entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Alabama	493	0	493	$126,042	$126,042	$5,963
Arizona	2,225	1	2,226	569,108	569,108	26,926
Arkansas	398	0	398	101,754	101,754	5,000
California	80,909	62	80,971	20,701,382	20,701,382	979,429
Colorado	1,896	0	1,896	484,739	484,739	22,934
Connecticut	2,189	1	2,190	559,904	559,904	26,490
Delaware	58	0	58	14,829	75,000	5,000
District of Columbia	561	1	562	143,683	143,683	6,798
Florida	5,320	261	5,581	1,426,862	1,426,862	67,506
Georgia	2,604	45	2,649	677,254	677,254	32,042
Hawaii	785	0	785	200,696	200,696	9,495
Idaho	508	0	508	129,877	129,877	6,145
Illinois	7,622	2	7,624	1,949,183	1,949,183	92,220
Indiana	497	1	498	127,321	127,321	6,024
Iowa	1,656	1	1,657	423,635	423,635	20,043
Kansas	1,553	0	1,553	397,046	397,046	18,785
Kentucky	759	0	759	194,049	194,049	9,181
Louisiana	1,869	2	1,871	478,348	478,348	22,632
Maine	550	0	550	140,615	140,615	6,653
Maryland	3,209	0	3,209	820,426	820,426	38,816
Massachusetts	9,204	7	9,211	2,354,923	2,354,923	111,417
Michigan	3,613	4	3,617	924,737	924,737	43,751
Minnesota	6,926	2	6,928	1,771,241	1,771,241	83,801
Mississippi	243	0	243	62,126	75,000	5,000
Missouri	1,875	3	1,878	480,137	480,137	22,716
Montana	141	0	141	36,049	75,000	5,000
Nebraska	497	0	497	127,065	127,065	6,012
Nevada	763	69	832	212,713	212,713	10,064
New Hampshire	250	0	250	63,916	75,000	5,000
New Jersey	3,201	88	3,289	840,879	840,879	39,784
New Mexico	297	0	297	75,932	75,932	5,000
New York	16,850	39	16,889	4,317,912	4,317,912	204,290
North Carolina	1,391	0	1,391	355,629	355,629	16,826
North Dakota	200	0	200	51,133	75,000	5,000
Ohio	2,145	0	2,145	548,400	548,400	25,946
Oklahoma	932	0	932	238,279	238,279	11,274
Oregon	2,368	0	2,368	605,413	605,413	28,643

BEST COPY AVAILABLE

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1989—Continued

State	Refugees (1)	Cuban/Haitian entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Pennsylvania	5,370	0	5,370	1,372,916	1,372,916	64,956
Rhode Island	1,225	5	1,230	314,467	314,467	14,878
South Carolina	188	0	188	48,065	75,000	5,000
South Dakota	215	0	215	54,968	75,000	5,000
Tennessee	1,996	0	1,996	510,306	510,306	24,144
Texas	9,798	2	9,800	2,505,509	2,505,509	118,541
Utah	1,304	1	1,305	333,642	333,642	15,785
Vermont	283	0	283	72,353	75,000	5,000
Virginia	4,977	3	4,980	1,273,207	1,273,207	60,238
Washington	7,205	0	7,205	1,842,060	1,842,060	87,152
West Virginia	20	0	20	5,113	75,000	5,000
Wisconsin	4,274	0	4,274	1,092,709	1,092,709	51,696
Wyoming	11	0	11	2,812	75,000	5,000
Total	203,423	600	204,023	52,161,364	52,500,000	2,500,00

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence through its ORR Regional Director. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering the United States during fiscal years 1986, 1987, and 1988, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. *Listings of refugees who are not identified by their alien numbers will not be considered.*

Any state evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 252–4568.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: January 10, 1989.

Bill F. Gee,

Director, Office of Refugee Resettlement.

[FR Doc. 89–1086 Filed 1–17–89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[FDA 225–86–2002]

Memorandum of Understanding with the Food and Drug Administration and the National Food Authority of the Republic of the Philippines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, U.S. Department of Health and Human Services, and the National Food Authority of the Republic of the Philippines. This MOU describes the mutual goals of FDA and the National Food Authority of the Republic of the Philippines to ensure, by a system of inspection and export certification, the safety and quality of food products exported from the Philippines to the United States of America. FDA is also announcing the availability of an attachment to the MOU that lists the food products that are covered and other related information.

DATE: The agreement became effective September 18, 1986.

ADDRESS: Submit written requests for single copies of the MOU and its attachment to Frank M. MacKeith, Food and Drug Administration (HFF–3), 200 C St. SW., Washington, DC 20204, 202–485–0042.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: January 10, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between The Food and Drug Administration, Department of Health and Human Services of the United States of America And The National Food Authority of the Republic of the Philippines Concerning Various Food Products Exported to the United States of America

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) of the United States of America and the National Food Authority (NFA) of the Republic of the Philippines in entering into this agreement are to:

1. Set forth the requirements, which are described on a product-by-product basis in the attachments to this memorandum, that products that are to be exported from the Philippines and offered for import to the United States must meet to be certified under this memorandum. FDA has established these requirements under the laws and regulations that it administers.

2. Minimize the need for these products to be subject to extensive FDA sampling that would be necessary without certification under this memorandum.

3. Provide for the cooperative exchange of technical assistance, information, personnel, and research to help ensure the safety and quality of food products from the Philippines that are certified under this memorandum.

II. Definitions

For the purpose of this memorandum, both parties agree to the following definition:

Lot: A lot is the quantity of a product produced by one manufacturer during a discrete period of time not exceeding one (1) day. It is produced in one continuous process using a single processing line and packaged in identical containers identified by a unique code traceable to the manufacturer.

Other definitions may be found in the attachments to this memorandum. These additional definitions apply only to the specific food product that is the subject of the particular attachment in which the definition appears.

III. Substance of Agreement

The National Food Authority of the Republic of the Philippines

NFA is a government agency of the Republic of the Philippines, responsible for conducting the voluntary inspection of food products that have been imported or that are intended for export. To fulfull its responsibilities under this memorandum, NFA will direct its activities to ensuring that the food products described in the attachments to this memorandum will meet the safety and quality requirements of the United States. NFA will inspect products and collect and examine samples to ensure compliance with those requirements.

To fulfill its commitments and responsibilities under this memorandum, NFA will:

1. Inspect each lot of food product offered to it by a manufacturer for export to the United States. In this inspection, NFA will attempt to determine whether the lot of food meets FDA's requirements as set forth in the attachment for that food product. NFA's laboratory will ensure by appropriate procedures that these analyses are completed as described in Section V., Analytical Methodology.

2. Issue an export certificate only for those lots that meet the requirements stipulated for the particular food in the appropriate attachment.

3. Require that all containers of lots of food products for which an export certificate is issued be identified and marked with a unique lot number, and that all labeling information required by the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act be included on the label of each product that is included in a certified lot.

4. Include the following information on the certificate for each lot of food products that is to be exported to the United States:

a. Lot identification, including name and address of manufacturer;

b. Number and size of containers in the lot;

c. Analytical results of the tests conducted as specified in the attachments to this memorandum;

d. Date of the certificate; and,

e. Name and stamp or seal of authorizing official.

5. Affix its validated certificate to the shipping manifest and the packing list that are supplied by the manufacturer. The manifest and list will indicate those lots of food that are physically present in each containerized cargo unit.

6. Furnish FDA with a copy of the current Philippine regulations and the procedures used to ensure that each product exported to the United States under certification meets the safety and quality requirements of the United States.

7. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls procedures that are used to ensure that food products that are described in the attachments to this memorandum are sanitary food products that are fit for human consumption. These processes and quality control procedures will be included as part of each attachment.

8. Share expertise with and provide assistance to FDA when necessary. Such mutual cooperation will include, but will not be limited to, the exchange of information about current, new, and improved methods of sampling and testing of the food products described in the attachments to this memorandum; the exchange of technical information; the exchange of administrative, regulatory and scientific personnel; the exchange of information about quality control operations and procedures; and, the exchange of data and research related to major food-caused health concerns. This sharing will help ensure the quality and safety of food products described in the attachments to this memorandum that are offered for import into the United States.

The Food and Drug Administration of the United States of America

FDA is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes. FDA directs its activities toward the protection of the public health of the United States by ensuring that food products are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure that there is compliance with the statutes that it enforces. FDA makes a concerted effort to ensure that foods that are imported into the United States meet the same standards as domestic products. To discharge these responsibilities regarding the food products listed in the attachments to this memorandum and to fulfill its commitments under this memorandum, FDA will:

1. Audit sample those products certified under this memorandum to determine whether they comply with the requirements set forth in the attachments that are applicable to the particular food products. FDA may, for any reason, examine lots that have been certified to ensure that they comply in all respects with the requirements that FDA has established under the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes.

2. Share with NFA any information obtained through its audit sampling.

3. Promptly notify NFA of any detention of a food product described in the attachments to this memorandum and of any modification of the statutes or the regulations that pertain to such a food product.

4. Share expertise with, and provide assistance to, NFA when necessary. Such mutual cooperation will include, but will not be limited to, the exchange of information about current, new, and improved methods of sampling and testing of the food products described in the attachments to this memorandum; the exchange of technical information; the exchange of administrative, regulatory, and scientific personnel; the exchange of information about quality control operations and procedures; and, the exchange of data and research related to major food-caused health concerns. This sharing will help ensure the quality and safety of the food products described in the attachments to

this memorandum that are offered for import into the United States.

IV. Sample Collection

Whenever possible, the same subsample will be used by FDA to determine the level, if any, of *Salmonella* and to determine compliance with the requirements set forth in the attachments to this memorandum and with any other specified FDA requirements. Samples of the food products described in the attachments to this memorandum will be collected in accordance with the applicable portions of the latest edition of (1) "Bacteriological Analytical Manual", Chapter I—"Food Sampling Plans and Initial Sampling Handling, for *Salmonella*"; (2) FDA's "Inspection Operations Manual", Chapter 4; or (3) the appropriate Compliance Program. For other attributes samples will be collected in accordance with the applicable attachment to this memorandum.

V. Analytical Methodology

Compliance with the requirements set forth in the attachment to this memorandum for each food product will be determined in accordance with the methods contained in the latest edition of:

1. "Bacteriological Analytical Manual," (currently 6th Ed., 1984), The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.
2. "Official Methods of Analysis, Association of Official Analytical Chemists," (currently 14th Ed., 1984). The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.
3. "Macroanalytical Procedures Manual" (FDA Technical Bulletin Number 5), 1984. The Association of Official Analytical Chemists, 1111 No. 19th Street, Arlington, VA 22209.

VI. Participating Parties

A. The National Food Authority of the Republic of the Philippines, Matimyas Building, 101 East Rodrigues Street, Quezon City, Metro Manila, Philippines.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VII. Liaison Officers

A. For the National Food Authority, Republic of the Philippines: Director, Food Research Department, (Currently, Dr. Alicia O. Lustre), Food Terminal Inc., National Food Authority, Food Development Center, Taguig, Metro Manila, Philippines. Telephone: 845–1181 (U.S. Night time); 993–892 (U.S. Day time). Telex: ITT 045684 FTI PM.

B. For the Food and Drug Administration: Director, Division of Regulatory Guidance (HFF–310), (Currently, Mr. Howard N. Pippin), Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204, Telephone: 202–485–0187, Telex 197623 PHS PKLN.

VIII. Administrative Procedures

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this memorandum. All travel and per diem expenses incurred by FDA personnel for technical assistance or other activities in accordance with this memorandum will be borne by NFA.

Additional products may be added to the list of products subject to certification under this memorandum by agreement of the parties.

IX. Period of Agreement

This memorandum will become effective upon acceptance by both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

Approved and Accepted for the National Food Authority of the Republic of the Philippines.

By: Emil L. Ong,
Title: *NFA. Administrator.*
Date: September 18, 1986.

Approved and Accepted for the Food and Drug Administration of the United States of America.

By: Sanford A. Miller,
Title: *Director, CFSAN/FDA.*
Date: September 18, 1986.

[FR Doc. 89–1111 Filed 1–17–89; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill three vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by Title XXI of the Public Health Service Act, enacted by Pub. L. 99–660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA–1 *et seq.*).

DATE: Nominations are to be submitted by February 15, 1989.

ADDRESS: All nominations for membership should be sent to Dr. Alan R. Hinman (address below).

FOR FURTHER INFORMATION CONTACT: Alan R. Hinman, M.D., Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, Room 1–24, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, (301) 443–0715.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for three vacancies on the National Vaccine Advisory Committee. Nominated invdividuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, on public health organizations. Members will be invited to serve four year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

DHHS has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Nomination Procedures: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nomineee should be aware of the nomination, willing to serve as a member of the committee and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae should be submitted with the nomination.

Dated: January 4, 1989.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 89–1147 Filed 1–17–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–09–4351–02]

Call for San Pedro Riparian Advisory Committee Nominations

AGENCY: Safford District, Bureau of Land Management, Interior.

ACTION: Call for Nominations for San Pedro Riparian Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill positions on the newly established San Pedro Riparian National Conservation Area Advisory Committee, pursuant to section 104(b) of the Arizona-Idaho Conservation Act of 1988. The Advisory Committee comprises seven members, with one member to be appointed from nominations provided by the Governor of the State of Arizona and one member to be appointed from nominations provided by the Supervisors of Cochise County, Arizona.

Initially, members of the Advisory Committee will be appointed under staggered term arrangement; with 2 members appointed for a term of 3 years, 3 members appointed for a term of 2 years, and 2 members appointed for term of 1 year. All subsequent appointments of the Advisory Committee will be for terms of 3 years. Terms of these initial appointments will expire on December 31, 1989, December 31, 1990, and December 31, 1991 as appropriate.

To ensure membership on the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the San Pedro Riparian National Conservation Area was created. These categories of interest include wildlife conservation, riparian ecology, archaeology, paleontology, recreation, environmental education, or other related disciplines.

The purpose of the Advisory Committee is to provide informed advice to the Safford District Manager on management of public lands in the San Pedro Riparian National Conservation Area. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Advisory Committee will normally meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on the Advisory Committee should provide the Safford District Manager at the address below with names, addresses, professions, biographical data, and category of interest for qualified nominees.

DATE: All nominations should be received by January 30, 1989.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

For Further Information Contact: Jerry Coolidge, Planning and Environmental Coordinator, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428–4040.

Date: December 20, 1988.

Ray A. Brady,

District Manager.

[FR Doc. 89–1162 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–32–M

[INT FES–89–1; (AZ–020–4410–08)]

Proposed Phoenix Resource Management Plan/Final Environmental Impact Statement; Phoenix District, AZ; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the proposed Phoenix Resource Management Plan/Final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the availability of the proposed Phoenix Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS). The RMP/FEIS addresses land use on 911,000 acres of public land in eight Arizona counties. These Arizona counties include Apache, Navajo, Yavapai, Maricopa, Pima, Pinal, Gila and Santa Cruz.

SUPPLEMENTARY INFORMATION: The issues addressed in the RMP/FEIS are: Land tenure adjustment, utility corridors and communication sites, areas of critical environmental concern (ACECs) and other special management areas, off-road vehicle designations, recreation management and land classifications.

The RMP/FEIS identifies and analyzes the BLM's proposed action alternative for management of the planning area's 911,000 acres of public land and 2.1 million acres of federal subsurface estate.

Under the proposed RMP, the BLM would establish seven resource conservation areas (RCAs) where 440,000 acres of public land would be retained and intensively managed and 450,000 acres of state and private land would be considered for acquisition. A total of 390,000 acres also would be made available for disposal through exchange and 45,000 acres for disposal through exchange or sale.

The RMP identifies seven utility corridors and five communication sites. The corridors represent the BLM's preferred utility corridor routings across the planning area's public land.

The RMP proposes designation of six areas of critical environmental concern (ACECs) encompassing 10,120 acres. An additional ACEC encompassing 9,400 acres is proposed for designation upon the BLM's acquisition of state land within the ACEC boundaries.

The proposed ACECs and resource use limitations are:

(1) Baboquivari Peak, 2,070 federal acres—close to motorized vehicles, initiate a mineral withdrawal, prohibit land use authorizations and surface occupancy for oil and gas lease development.

(2) Waterman Mountains, 1,960 federal acres—limit motorized vehicles to designated roads and trails, limit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(3) White Canyon, 1,920 federal acres—close White Canyon to motorized vehicles, limit motorized travel elsewhere to designated roads and trails, prohibit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(4) Larry Canyon, 80 federal acres—close to motorozed vehicles, prohibit land use authorizations, initiate a mineral withdrawal, prohibit domestic livestock grazing, prohibit surface occupancy for oil and gas lease development.

(5) Tanner Wash, 950 federal acres—close 30 acres to motorized vehicles, limit motorized travel elsewhere to designated roads and trails, prohibit land use authorizations, initiate a mineral withdrawal, prohibit surface occupancy for oil and gas lease development.

(6) Appleton-Whittell, 3,141 federal acres—limit motorized vehicles to designated roads and trails, limit land use authorizations, prohibit surface occupancy for oil and gas lease development.

(7) Perry Mesa, 960 federal acres—designate as an ACEC upon the acquisition of 8,480 state acres, limit motorized vehicle to designated roads and trails.

The RMP proposes the closure of 11,760 acres to vehicular travel. On the planning area's remaining public land, vehicular travel would be limited to existing roads and trails or to designated roads and trails.

The RMP proposes a framework for managing the area's recreation resources through the designation of two special recreation management areas, five cooperative recreation management areas and five recreation and public purpose areas. In addition, establishing seven resource conservation areas would provide extensive open space recreation opportunities throughout the planning area.

The planning area is currently encumbered by five multiple use classifications. Under the proposed RMP, these classifications would be terminated.

The RMP/FEIS document also contains the transcripts of public hearings and copies of the written comments received concerning the draft RMP/EIS. The BLM's Phoenix District responses to many of the public comments are included.

The document contains procedures for protesting the plan or any part of it. These procedures also can be found in the Code of Federal Regulations (43 CFR 1610.5–2).

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after 30 days from the date of this notice.

Reading copies of the Proposed Phoenix RMP/FEIS are available at the following locations:

Office of Public Affairs, Interior Building, Bureau of Land Management, 18th and C Streets, NW., Washington, DC.

Bureau of Land Management, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona.

Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona.

For further information, contact:

Don Ducote, Bureau of Land Management, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Telephone (602) 863–4464, FTS 764–0501.

Charles Frost,

Acting District Manager.

[FR Doc. 89–927 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–32–M

[AZ–020–09–4212–13; AZA–23085–B]

Amended Realty Action; Exchange of Public Land; Maricopa and Yavapai Counties, AZ

SUMMARY: The Notice of Realty Action published on November 4, 1988, Volume 53, Number 214, pages 44674 and 44675, is herein amended to include the following statement:

Certain federal lands included in the original Notice of Realty Action are currently leased to Phoenix Four-Wheelers, Inc., under the Act of June 14, 1926, as amended. At close of escrow, Phoenix Four-Wheelers, Inc., will relinquish their R&PP lease, the R&PP classification will be terminated and the lands opened for exchange only.

The affected lands are as follows:

T. 6 N., R. 2 W., Gila and Salt River Meridian, Arizona,
Sec. 18, E½SW¼, W½SE¼; comprising 160.00 acres.

Dated: January 11, 1989.

Robert D. Mitchell

Acting District Manager.

[FR Doc. 89–1096 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–32–M

[ID–943–09–4214–11; I–14894, I–14939]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a withdrawal for the Boise Reclamation Project be continued for an additional 100 years, which is the estimated remaining life of the improvements with which it is associated. Under the proposal, 123.42 acres of public land would remain closed to surface entry and the mining laws but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before April 18, 1989.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of April 21, 1922, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T. 2 N., R. 3 E.,
Sec. 10, lot 1, NW¼NE¼;
Sec. 11, lots 5 and 9.
The area described aggregates 123.42 acres in Ada County.

The lands are located along the Boise River below the Lucky Peak Dam and Reservoir Facility.

The purpose of the withdrawal is to protect the lands for the continued operation and maintenance of the dam and reservoir.

No change in the purpose or segregative effect of the withdrawal is proposed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 6, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89–1161 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–09–4214–11; I–14869 et al.]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes the withdrawals made for protection of its Island Park Dam and Reservoir Facility be continued for a period of 50 years, which is the estimated remaining life of the associated improvements. Under the proposal, 5,296.91 acres of public land would remain closed to surface entry and the mining laws, but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before April 18, 1989.

ADDRESS: Comments should be sent to Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes the land withdrawals made by the Secretarial Orders of March 6, 1933; March 23, 1934; September 13, 1934, and February 21, 1945, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located along the shores of the Island Park Reservoir and along Henrys Fork of the Snake River within the following-described townships:

Boise Meridian

T. 13 N., R. 42 E.
T. 12 N., R. 42 E.
T. 13 N., R. 43 E.
The total area involved aggregates 5,296.91 acres in Fremont County.

The purpose of the withdrawals is to protect the lands for the operation and maintenance of the Island Park Dam and Reservoir Facility. No change in the purpose or segregative effect of the withdrawal is proposed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 6, 1989.

William E. Ireland,

Chief, Realty Operations Section.

FR Doc. 89–1162 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–CG–M

Minerals Management Service

Development Operations Coordination Document; Cliffs Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cliffs Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7709, Block 94, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 5, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 9, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–1107 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 7, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 2, 1989.

Carol D. Shull,

Chief of Registration, National Register.

PENNSYLVANIA

Lancaster County

Totten House, *1046 E. King St., Lancaster, 89000003*

SOUTH CAROLINA

Cherokee County

Hick, Zeno, House, *US 221 and Mill Gap Rd., Chesnee vicinity, 89000002*

Darlington County

Memorial Hall, *2nd St, between Home Ave. and Carolina Ave., Hartsville, 89000001*

[FR Doc. 89–1173 Filed 1–17–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Renewal of Advisory Committees; Research Advisory Committee et al.

Pursuant to the Federal Advisory Committee Act, the Administrator of the Agency for International Development has determined that the renewal of the following advisory committees for an additional two years is in the public interest:

1. A.I.D. Research Advisory Committee.

2. The Advisory Committee on Voluntary Foreign Aid.

3. Board for International Food and Agricultural Development.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, Room 6892, Agency for International Development, Washington, DC 20523, (202) 647–8218.

Dated: January 3, 1989.

Jan Miller,

Assistant General Counsel.

[FR Doc. 89–1100 Filed 1–17–89; 8:45 am]

BILLING CODE 6116–01–M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on January 26–27, 1989 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street, NW., Washington, DC. The research priorities recommended by the Committee in recent years will be reviewed and summarized. In addition, reports from prior discussions on Urban Development, Fisheries and Education will be made.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:00 p.m. on January 26 and 12:00 noon on January 27. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau of Science and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875–4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Date: January 5, 1989.

[FR Doc. 89–1108 Filed 1–17–89; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 220]

CSX Transportation, Inc.; Abandonment Between Midland and Clare in Midland, Isabella, and Clare Counties, MI; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. to abandon its line of railroad between milepost 22.65 at or near Midland, MI, and a point approximately 2.5 miles east of milepost 52.00 at or near Clare, MI, the cutpoint of a segment of line recently sold to Tuscola and Saginaw Bay Railway Company.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Rail Section, AB–OFA."** Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: January 9, 1989.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1118 Filed 1–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub–No. 21X)]

Southern Railway Co.; Abandonment Exemption Between Trenton and North Aiken, SC

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 9.3-mile line of railroad between milepost AB–8.0 at Trenton, SC, and milepost AB–17.3 at North Aikens, SC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cassation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 7, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 23, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423), or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1119 Filed 1–17–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

January 13, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Import/Export One-Time Reporting Requirement; Identification of Regular Customer and Regular Supplier.

(2) No form number. Drug Enforcement Administration.

(3) One-time.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires regulated persons to provide the Attorney General with the identity of any regular customer or regular supplier not later than 30 days after the promulgation of the regulations in order to establish regular customer/supplier considerations. Information will be used by the DEA to determine which transactions are ineligible for waiver of the 15-day advance notice.

(5) 2,000 respondents at 4. hours per response.

(6) 8,000 estimated annual burden hours.

(7) Not applicable under section 3504(h).

(1) Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(2) No form number. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires regulated persons to report suspicious orders or theft/loss of listed chemicals/tableting and encapsulating machines to the DEA in order to prevent clandestine manufacture of a controlled substance.

(5) 300 respondents at .17 hours per response.

(6) 51 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

(1) Import/Export Declaration: Precursor and Essential Chemicals, Tableting and Encapsulating Machines.

(2) DEA 486. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals/machines to notify the DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(5) 2,000 respondents at .25 hours each.

(6) 500 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 89–1180 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Consent Decree Pursuant to Safe Drinking Water Act; Centaur Petroleum Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on December 15, 1988, a proposed Consent Decree in *United States* v. *Centaur Petroleum Corporation and Centaur Industries Inc.* was lodged with the United States District Court for the Southern District of Indiana, Evansville Division. This agreement resolves a judicial enforcement action brought by the United States against defendant Centaur for violations of the Safe Drinking Water Act, underground injection control program. Centaur owned and operated nine secondary oil recovery wells in Plainville County, Indiana in violation of the Act and the EPA underground injection control regulations.

The consent decree provides for the payment of a civil penalty of $55,000 for these violations of the Safe Drinking Water Act and requires Centaur to continue to comply with the terms of its underground injection control permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land

and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *Centaur Petroleum Corporation and Centaur Industries Inc.*, D.J. Ref. 90–5–1–1–2667.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, Fifth Floor, United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204, or at the Region 5 office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–1097 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; Siloam Springs, AR et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 4, 1989 a proposed consent decree in *United States* v. *City of Siloam Springs, Arkansas, The State of Arkansas, and Allen Canning Co., Inc.*, Civil Action No. 88–5062, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at the City of Siloam Spring's (the "City") wastewater treatment plant. The complaint alleged that the City discharged pollutants into navigable waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Arkansas was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). Allen Canning Co. Inc., ("Allen Canning") is alleged to have violated section 307 of the Act, 33 U.S.C. 1317, by introducing pollutants into the City's wastewater treatment plant in violation of the general pretreatment regulations, 40 CFR 403.5. The complaint sought injunctive relief to require the Allen Canning to comply with the National Pretreatment Standards at 40 CFR 403.5, its Industrial User permit, and civil penalties for past violations. Among other things, the consent decree requires Allen Canning to conduct monitoring and sampling of the effluent it discharges into the City's wastewater treatment plant and to submit quarterly reports to EPA summarizing the results of the monitoring and sampling. Allen Canning is also required to take appropriate and timely correct any effluent violations. Allen Canning is also required to pay a civil penalty of $35,000 in settlement of the government's civil penalty claims. This consent decree only resolves the liability of Allen Canning and does not address the portions of the complaint against the City or the State of Arkansas. The United States has entered into a separate consent decree which settled its claims for civil penalties for past violations and injunctive relief against the City and the State of Arkansas.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *City of Siloam Springs, Arkansas et al.*, D.J. Ref. 90–5–1–1–2792.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payble to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Lond and Natural Resources Division.

[FR Doc. 89–1098 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") filed a written notification with the Attorney General and the Federal Trade Commission on December 8, 1988 concerning the identities of additional members of the NCMS. The written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of the NCMS:

Adept Technologies, Inc., Advanced Technology Materials, Inc., Oracle, Inc., Weyburn-Bartel, Inc.

No other changes have been made in either the membership or planned activity of the NCMS.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375. On April 15 and May 5, 1988, the NCMS filed additional notices identifying its initial membership and the Department of Justice published notice of those filings in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1988, 53 FR 20194. The NCMS filed other additional notifications of changes in membership on July 11, 1988 and September 13, 1988, notice of which appeared in the **Federal Register** on August 19, 1988, 53 FR 31771, and November 4, 1988, 53 FR 44680, respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–1099 Filed 1–17–89; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–03)]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATE AND TIME: February 9, 1989, 8:15 a.m. to 3 p.m.

ADDRESS: American Institute of Aeronautics and Astronautics, 10th Floor, Conference Room A, 901 D Street Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8720.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee is concerned with the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. Edward Donley and is currently composed of 17 members.

The meeting will be closed to the public from 1:45 p.m. to 3 p.m. for a discussion of matters which may involve trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session, the meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including the Committee members and other participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

February 9, 1989

8:15 a.m.—Welcome.
8:45 a.m.—Commercial Programs Update.
9:15 a.m.—Strategic Plan Factors Update.
10 a.m.—Subcommittee Reports.
1:45 p.m.—Closed Session.
3 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–1128 Filed 1–17–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before February 17, 1989.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington DC 20506 (202–786–0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786–0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions.
Title: Application Instructions and Forms for the Editions Category.
Form Number: Not applicable.
Frequency of Collection: Annual.
Respondents: Humanities researchers and institutions.
Use: Application for funding.
Estimated Number of Respondents: 58 per year.
Frequency of Response: Once.
Estimated Hours for Respondents To Provide Information: 52 per respondent.
Estimated Total Annual Reporting and Recording Burden: 12,016.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 89–1112 Filed 1–17–89; 8:45 am]

BILLING CODE 7536–01–M

National Arts Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 3, 1989 from 9:00 a.m. to 6:30 p.m., and on February 4, 1989 from 9:00 a.m. to 6:15 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, February 3, 1989 from 9:00 a.m. to 5:30 p.m., and on Saturday, February 4, 1989, from 9:00 a.m. to 1:30 p.m. The topics for discussion will include Program Review and Guidelines for Opera-Musical Theater, Advancement, Arts Administration Fellows, Arts in Education and Music Ensembles, which will feature an Overview of the Orchestral World. In addition there will be discussions on the Five Year Planning Document, Open Architecture TV, Reauthorization of the Agency and International Activities.

The remaining sessions on Friday, February 3 from 5:30 to 6:30 p.m. and on February 4, 1989 from 1:30 to 6:15 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the

Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 10, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations. National Endowment for the Arts.

[FR Doc. 89–1102 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Sub-Committee to the National Council on the Arts will be held on February 2, 1989 from 3:00 p.m. to 5:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include a report on a retreat on Federal, state and local roles in support of arts institutions and planning for a review of Federal, state and local roles in support of individual artists.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5469, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

January 10, 1989.

[FR Doc. 89–1103 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Pannel (Special Exhibitions Section) to the National Council on the Arts will be held on February 6–10, 1989 from 9:00 a.m.– 5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be completely closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 10, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1104 Filed 1–17–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on January 23–24, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). The following topics will be discussed:

Monday and Tuesday, January 23–24, 1989—8:30 a.m. until the conclusion of business

A. Discussion by the Director of the Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards of 1989 Program Plans (Open)

B. Administrative Session, inlcuding future agenda, new members, and staffing (Open/Closed)

C. Discussion of West Valley Vitrification process (Open)

D. Presentations by the Department of Energy on Performance Allocation and Assessment (Open)

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: January 11, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–1143 Filed 1–17–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on January 23, 1989, Room 2F17 and 21, One White Flint North, 11555 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, January 23, 1989—12:00 Noon until 6:00 p.m.

The Subcommittee will review the NRC Staff policy statement on additional applications of leak-before-break technology.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 10, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89–1142 Filed 1–17–89; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission issued for public comment on November 14, 1988, a proposed revision 3 to Regulatory Guide 1.9, "Selection, Design, Qualification, Testing and Reliability of Diesel Generator Units Used as Onsite Electric Power System at Nuclear Power Plants." The time limit on written comments is hereby extended to March 13, 1989.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to NRC at the Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. Written comments are requested by March 13, 1989.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services.

Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 10th day of January 1989.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89–1139 Filed 1–17–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–443–OL and 50–444–OL; ASLBP No. 82–471–02 OL]

Public Service Co. of New Hampshire et al., Seabrook Station, Units 1 and 2, (Offsite Emergency Planning); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2) (Offsite Emergency Planning), Docket Nos. 50–443–OL and 50–444–OL, is hereby reconstituted by appointing Administrative Judge Richard F. Cole in place of Administrative Judge Gustave A. Linenberger, Jr.; and Administrative Judge Jerry R. Kline in place of Administrative Judge Jerry Harbour. Because of the press of other Licensing Panel obligations, Judges Linenberger and Harbour are no longer able to serve on this Licensing Board.

Administrative Judge James H. Carpenter will continue to serve as a designated Alternate Member of the Licensing Board. Because of a schedule conflict, Administrative Judge John H. Frye III, is no longer available to serve as an Alternate Member of the Licensing Board.

As reconstituted, the Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman
Richard F. Cole, Member
Jerry R. Kline, Member
James H. Carpenter, Alternate Member

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Administrative Judge Richard F. Cole, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Administrative Judge Jerry R. Kline, Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Administrative Judge James H. Carpenter, Alternate Member, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

At present, a separate Licensing Board of limited jurisdiction (sometimes referred to for convenience as the "onsite" Board), exists to hear and resolve issues related to "safety and onsite emergency planning issues." Notice of Reconstitution of Board (September 9, 1985). *See* Unpublished Order (Instructions Re Submissions), dated October 7, 1985. In view of the existence of two Licensing Boards in this proceeding, the jurisdiction of each Board should be stated clearly.

The instant Board (sometimes referred to for convenience as the "offsite Board"), as reconstituted herein, stands in the shoes of the original Licensing Board constituted November 30, 1981, in response to the October 19, 1981, notice of hearing. *See* 46 FR 51330 (1981). Thus, the Licensing Board reconstituted herewith has general jurisdiction over all matters pertaining now or in the future to the application for a license to operate Units 1 and 2 of the Seabrook Station not otherwise expressly assigned to the onsite Board.

Dated at Bethesda, Maryland, this 10th day of January 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-1144 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-113]

University of Arizona; Consideration of Application for Renewal of Facility License

The United States Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-52, issued to the University of Arizona for operation of the Arizona TRIGA research reactor located on the University's campus in the city of Tucson, Pima County, Arizona.

The renewal would extend the expiration date of Facility License No. R-50 for thirty years from date of issuance, in accordance with the licensee's timely application for renewal dated October 17, 1988.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 17, 1989 the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles L. Miller: Petitioner's name and telephone number; date petition was mailed; University of Arizona; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Andrew Ives, University Attorney, University of Arizona, Administration Building 103, Tucson, Arizona 85721, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the appplication for renewal dated October 17, 1989, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of January 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-1138 Filed 1-17-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26450; File No. 600-24]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Granting Temporary Registration as a Clearing Agency

On July 29, 1988, Delta Government Options Corp. ("Delta") filed an application under section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] for registration as a clearing agency [2] under section 17A of the Act.[3] In that filing, Delta requested, pursuant to section 17A(b)(1) of the Act,[4] several

[1] 15 U.S.C. 78s(a) (1988).

[2] Delta also filed with the Commission, on April 25, 1988, a registration statement on Form S-1 under the Securities Act of 1933 (File No. 33-21409) ("Registration Statement"), effectiveness of which would permit Delta to issue 250,000 option contracts. On June 14, 1988, Delta filed an amendment to that Registration Statement.

[3] 15 U.S.C. 78q-1 (1988).

[4] Section 17A(b)(1) of the Act permits the Commission to grant exemptions from the requirements of section 17A if it finds that such

Continued

exemptions from the requirements of section 17A.[5] On August 5, 1988, the Commission published in the **Federal Register** notice of Delta's filing and invited commentators to submit, on or before August 26, 1988, comments concerning the application and exemption requests.[6] On August 24, 1988, the Commission extended the period for public comment to September 9, 1988.[7] Four comments were received all opposing the granting of Delta's application and exemption requests.[8]

On October 7, 1988, Delta filed an amendment to its clearing agency registration application.[9] That amendment contained, among other things, revisions to the Procedures of the Over-The-Counter Options Trading System ("System Procedures"). As a result of these revisions, Delta withdrew many of its requests for exemption from the requirements of section 17A and modified other exemption requests.[10] Notice of the amendment was published in the **Federal Register** on October 18, 1988, giving commentators 21 days from the publication date to respond to the amendment.[11] Four comments were received.[12]

Although Delta originally requested full clearing agency registration, the Commission believes temporary registration for a period of 36 months is appropriate. Accordingly, based on its exemptive authority under section 17A(b), this Order grants Delta temporary registration for 36 months and partially exempts Delta from section 17A(b)(3)(C) of the Act.[13]

I. Overview

This Order concerns Delta's request for registration as a clearing agency.[14] Delta,[15] together with RMJ Options Trading Corporation ("RMJ") [16] and SPNTCO,[17] would operate the Over-The-Counter Options Trading System ("System"). The System would be designed to provide brokerage services and a central clearing facility for the over-the-counter ("OTC") trading of options on United States Treasury securities ("Treasury options").[18]

Delta would the the issuer of all options traded through the System. With respect to option trades accepted for clearance in the System, Delta would issue in book-entry form a put or call option to the purchasing participant [19] and simultaneously purchase a matching put or call option from the selling participant, thereby ensuring that Delta's short positions would at all times be offset by corresponding long positions.[20] Delta would guarantee the

exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A.

[5] *See* Letter from Gaston & Snow to the Commission, dated July 29, 1988, in which Delta requested partial or full exemptions from sections 17A(b)(3)(A), 17A(b)(3)(B), 17A(b)(3)(C), 17A(b)(3)(F), 17A(b)(3)(G), 17A(b)(3)(H), and 17A(b)(5) of the Act, as well as the Division of Market Regulation ("Division") standard requiring an independent annual review of a clearing agency's system of internal accounting controls. Many of those exemption requests have been withdrawn. *See* note 10 *infra*.

[6] *See* Securities Exchange Act Releases No. 25956 (August 1, 1988), 53 FR 29536.

[7] *See* Securities Exchange Act Release No. 26024 (August 24, 1988), 53 FR 33209.

[8] *See* Letters from Thomas R. Donovan, President and Chief Executive Officer, Chicago Board of Trade ("CBT"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Wayne P. Luthringshausen, Chairman of the Board, Options Clearing Corporation ("OCC"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Carl A. Royal, General Counsel, Chicago Mercantile Exchange ("CME"), to Jonathan Katz, Secretary, Commission, dated September 12, 1988; Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Jonathan Katz, Secretary, Commission, dated September 20, 1988.

[9] On October 7, 1988, Delta also filed a second amendment to its Registration Statement, which is incorporated by reference in Delta's amended clearing agency registration application. Delta attached as an exhibit to that amendment the Amended And Restated Operating And Brokerage Services Agreement Relating to The Over-The-Counter Options Trading System ("Operating Agreement"). This agreement describes in detail the operation of the System and the specific functions performed by Delta, RMJ Options Trading Corporation ("RMJ"), and Security Pacific National Trust Company ("SPNTCO").

[10] Delta has withdrawn its request for exemptions from sections 17A(b)(3)(B), 17A(b)(3)(F), 17A(b)(3)(G), 17A(b)(3)(H), 17A(b)(5), and the Division standard requiring an independent annual review of internal accounting controls. Delta requests a partial exemption from section 17A(b)(3)(C) of the Act. Delta also requests an interpretation of the term "rules of the clearing agency," (as defined in section 3(a)(27) of the Act) as it applies to Delta, to include all System Procedures and those provisions in Delta's corporate governance documents that set forth rights, duties, or obligations of participants or deal with the safeguarding of participant funds or securities.

[11] *See* Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40618.

[12] *See* Letters from Wayne P. Luthringshausen, Chairman of the Board, OCC, to Jonathan Katz, Secretary, Commission, dated November 2, 1988; Thomas R. Donovan, President and Chief Executive Officer, CBT, to Jonathan Katz, Secretary, Commission, dated November 8, 1988; Carl A. Royal, General Counsel, CME, to Jonathan Katz, Secretary, Commission, dated October 28, 1988; Roger D. Rutz, President and Chief Executive Officer, Board of Trade Clearing Corporation, to Jonathan Katz, Secretary, Commission, dated November 18, 1988.

[13] Several commentators argue that the Commission is reviewing Delta's clearing agency registration application in a "hurried" fashion. *See* OCC and CME letters. The Commission does not believe it has rushed its review of Delta's application. Commentators were given an extended 35-day comment period to respond to Delta's initial application and an additional 21-day comment period to respond to Delta's amended application. Indeed, the Commission's action today occurs nearly two months beyond the 90-day period recommended in section 19(a)(1) of the Act for clearing agency registration review.

Commentators further argue that the Commission has not reviewed all aspects of the System and has failed to present the entire System to the public. *See* OCC letter. The Commission has analyzed the issuance, clearance, and settlement aspects of the System in this Order and, as noted *infra*, the Commission staff has analyzed the System's brokerage function in a no-action letter issued simultaneous to this Order. Furthermore, the Commission has presented the entire System to the public in the form of Delta's clearing agency registration application, Delta's Registration Statements, and the Operating Agreement. The Commission notes that commentators appear to have addressed in considerable detail all aspects of the System, including the System's brokerage function. *See* letters from CBT, OCC, Amex, and CME.

[14] The Division today separately issued a letter to RMJ concerning the registration requirements of sections 5 and 6 of the Act. *See* discussion *infra* and letter from Richard Ketchum, Director, Division, to Robert A. McTamaney, Counsel for RMJ, Carter, Ledyard, & Milburn, dated January 12, 1989.

[15] Delta was incorporated in January 1988 in the State of Delaware. Delta has a $8 million initial capital base and is owned by: (1) Dots, Inc. (72%), a wholly-owned subsidiary of Cawal Corp; and (2) SMG Options Corp. (28%), a New York Stock Exchange member and SEC-registered broker-dealer and investment adviser.

[16] RMJ is a registered government securities broker and a wholly-owned subsidiary of RMJ Securities, Inc., an inter-dealer broker of U.S. government and agency securities with offices in New York, London, and Tokyo ("RMJ Securities"), which in turn is a wholly-owned subsidiary of RMJ Holdings, Inc.

[17] SPNTCO is a national bank regulated by the Comptroller of the Currency ("Comptroller"). SPNTO is owned by Security Pacific Corporation, a bank holding company regulated by the Board of Governors of the Federal Reserve System ("FRB").

[18] Options traded in the System would be on underlying Treasury bills, bonds, and notes with an aggregate principal amount of $1 million. Terms of these options that would be uniform include the expiration date (*i.e.*, the Saturday following the third Friday of the expiration month), the maximum duration of the contract (*i.e.*, for Treasury bonds and notes, the earlier of two years from the date of issuance of the option or one month prior to the maturity or redemption date of the bond or note, and for Treasury bills, 13 calendar days prior to the maturity date of the bill), and the unit of trading (*i.e.*, underlying Treasury securities in the principal amount of $1 million). Terms such as the premium, exercise price, expiration month, and the yield and maturity of the underlying securities would be subject to negotiation between System participants.

[19] Each put and call would be an uncertificated security under Article 8 of the Uniform Commercial Code as in effect in the State of New York, and, as discussed in detail below, ownership thereof would be evidenced by a daily position report sent to the purchasing participant.

[20] For example, assume *A* (purchaser) and *B* (seller) effect a transaction in which *A* agrees to buy a call in two-year 7.5% Treasury notes in an aggregate principal amount of $1 million, on ding *A* to acquire those notes at part at any time within a six-month period. *B* agrees to write a six-month matching call against that position for a premium of $30,000. If the transaction is accepted for clearance, Delta would interpose itself in the trade by simultaneously (1) selling to *A* a six-month call on the notes for a premium of $30,000 and (2) buying a matching call from *B* with identical terms and premium.

performance of all obligations arising under these issued contracts (*e.g.*, Delta would guarantee the settlement of premium obligations and would assume the obligation to sell underlying Treasury securities at the strike price to the buyer of a call option upon the exercise of that option and to purchase underlying Treasury securities at the strike price from the buyer of a put option upon the exercise of that option).

In addition to issuing options and guaranteeing the performance of option holders and writers, Delta would perform the following functions. First, Delta would be responsible for admitting participants to the System. This responsibility would entail setting participant admission criteria and determining whether applicants meet these criteria. Second, as discussed below in detail, Delta would enforce its rules and procedures. Third, Delta would set participant margin requirements, trading limits, and position limits. Fourth, Delta would make determinations concerning the suspension of participants and direct the liquidation of a suspended participant's positions in accordance with System Procedures. Finally, as described below, Delta would obtain and maintain a $200 million credit enhancement facility.

A Delta participant trading through the System could proceed in one of two ways. The participant could instruct RMJ [21] to effect the trade with the *contra* party on an anonymous or "blind" basis [22] at the price quoted by the *contra* party through the communications network. RMJ would match [23] each brokered executed trade and report matched trades to Delta and SPNTCO.

Alternatively, the participant could communicate with a *contra* party based on quotes in the System or otherwise, and proceed to negotiate the trade either through RMJ or without using the RMJ brokerage service as an intermediary. Trades effected through RMJ or between participants without RMJ involvement would be reported by each participant to SPNTCO, which would match those trades and report them to Delta for clearance and settlement.

Under a contract with Delta, SPNTCO would act as clearing bank for the System. All trades effected between participants would be submitted to SPNTCO for acceptance.[24] Under the contract and System Procedures, SPNTCO would accept a trade [25] if both sides of the trade match, the trade does not result in a participant exceeding its trading or position limits, and neither participant has been suspended from the System.[26] Upon acceptance of a transaction for clearance by SPNTCO under Delta's procedures, Delta would issue the option underlying the transaction and guarantee the performance of obligations arising under that option.

With respect to issued options, SPNTCO would perform recordkeeping and safeguarding functions. SPNTCO would maintain on its books and records accounts for Delta necessary to receive premium and margin payments from participants, transmit payments to participants, and facilitate the settlement of exercised options.[27] SPNTCO would safekeep all property and funds delivered to it for the account of Delta, as well as provide for the overnight investment of margin payments. SPNTCO would accept and assign exercise notices and receive and deliver funds and securities necessary for exercise settlements.[28] SPNTCO would prepare and distribute to participants daily margin, position, and exercise reports.[29]

II. Statutory Standards

Section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act and subject to certain exceptions, to register with the Commission.[30] Delta, as issuer and guarantor of options traded through the System, falls within the section 3(a)(23) definition of a clearing agency and therefore is required to register with the Commission.

Subparagraphs (A) through (I) of section 17A(b)(3) of the Act set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division's interpretation of subparagraphs (A) through (I).[31] The Commission also notes that in adopting the Government Securities Act of 1986 ("GSA"),[32] Congress stated that,

> In providing for the applicability of the registration and other requirements of Section 17A of the Securities Exchange Act to clearing agencies for government securities, the Commission has broad authority under Section 17A—as well as under Section 23—to take into account the distinctions between membership clearing agencies and proprietary clearing agencies.[33]

Congress further noted that:

> The Commission, under the expanded scope of Section 17A, should recognize distinctions between proprietary and membership clearing agencies, and exercise its discretionary authority to interpret and adapt the requirements of Section 17A, where appropriate, to proprietary clearing agencies for government securities.[34]

III. Discussion

A. Scope of the Order

This Order concerns the registration of Delta as a clearing agency under section 17A of the Act for a period of 36 months. The determinations made in this order reflect a review of: (1) System Procedures; (2) the Operating Agreement; (3) agreements between System operators and System participants; (4) Delta's certificate of incorporation and by-laws; and (5) all other aspects of Delta's operations contained in its application. The Commission expects to review its determinations within 36 months to consider whether to grant Delta permanent registration as a clearing agency. During that time, the Commission will monitor and oversee Delta's operations through review of proposed rule changes,[35] notices to members,[36] and disciplinary actions.[37] The Commission staff has interviewed Delta staff prior to this Order and plans to inspect Delta facilities during the registration period. The Commission also will oversee RMJ as a registered government securities broker under Section 15C of the Act and intends to consult with the FRB and Comptroller who, as noted *infra*, regulate and examine SPNTCO.

B. Capacity to Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. As discussed below, the Commission believes Delta is organized and System Procedures are designed to promote the prompt and accurate clearance and settlement of System transactions.[38] With Delta's registration, OTC Treasury options, for the first time, will be issued, cleared, and settled within a centralized, automated facility subject to Commission oversight.

Market participants trade Treasury options to hedge against or speculate on changes in Treasury security[39] interest rates.[40] Market participants use Treasury options, for example, to hedge long Treasury security portfolios and in effect, to lock in a specific interest rate in anticipation of future borrowing or lending activity. Although Treasury options are listed and traded on registered securities exchanges,[41] many Treasury options are bought and sold on an OTC basis and significant risk transfer activity involving Treasury securities occurs on futures exchanges.[42] The Commission

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[21] RMJ would provide brokerage services for System participants and would disseminate option bid and ask quotations to participants through an automated communications network. RMJ would own and maintain all computer software supporting the System, and RMJ Securities would own and maintain the computer hardware, data transmission network, and communication interfaces upon which that software was designed to operate. In establishing this automated communications network, RMJ would: (1) Install video monitors, controller, keypads, and attendant equipment at a participant's trading locations; (2) install dedicated data communication lines between the RMJ brokering location and a participant's trading location; (3) install dedicated voice communication lines between the RMJ brokering location and a participant's trading location; and (4) provide field engineering support services to maintain all equipment at a participant's location.

[22] Transactions in Treasury securities effected through a U.S. government securities broker typically are effected on a blind basis. Screens viewed by customers show securities' maturity dates, coupon rates, issuing agency, the best bid and ask prices quoted by customers for each issue, and the quantities of securities each customer who provides a quote is committed to sell or buy at the quoted price. The screens neither identify the customers whose quotations are displayed nor reveal the depth of the market (*i.e.*, the number and size of other orders waiting to be executed at the displayed price). *See* U.S. General Accounting Office, U.S. Government Securities: An Examination of Views Expressed About Access to Broker's Services, GAO/GGD–88–8 (1987) ("GAO Report").

[23] A trade matches if the writing or selling participant and the purchasing participant agree as to: (1) The identity of the other party to the transaction; (2) the type of option; (3) the variable terms of the option; (4) the amount of the premium; (5) the number of options purchased; and (6) the description of each party as either the purchasing, selling, or writing participant.

[24] Trades effected between 9:00 a.m. (all times refer to Eastern Standard Time) and 12:00 noon on a particular day must be submitted to SPNTCO for acceptance prior to 12:30 p.m. that day. Trades effected between 12:00 noon and 5:00 p.m. must be submitted by 5:30 p.m. *See* section 401 of the System Procedures.

[25] Delta would not require participants to pay premiums owed on an option as a condition to trade acceptance. As discussed below, a participant would make premium payment on the day after the option has been accepted for clearance.

[26] As described below in detail, to estimate the maximum amount of liability to which the System could be exposed, Delta would calculate the System's maximum potential exposure (MPSE). To the extent necessary to ensure that MPSE does not exceed its prescribed limit, a participant may be restricted from engaging in opening purchase or opening writing transactions, required to reduce or eliminate existing long or short positions through closing transactions, and required to pay additional margin.

[27] Each business day, a participant's premium and margin settlement obligations would be netted to produce a single amount owed to or by the participant. By 11:00 a.m. each business day, a participant would be required to wire to SPNTCO in same-day funds any amount owed by that participant, as reflected in daily reports distributed to participants by SPNTCO. By 5:00 p.m. each day, SPNTCO would wire to a participant in same-day funds any such amount owed to the participant by the System. Thus, Delta could delay, until 5:00 p.m., the payment of premiums of excess margin to participants who may be experiencing financial or operational difficulties in connection with exercise settlements.

[28] SPNTCO would accept exercise notices from holders between 9:00 a.m. and 5:00 p.m. daily. These notices would be assigned by SPNTCO by 8:00 a.m. the following day to a writer or seller of the option. As decribed in section 1002 of the System Procedures, these notices would be allocated randomly. System rules require a participant delivering Treasury securities to SPNTCO pursuant to exercise settlement to do so by 12:00 noon on exercise settlement date, against payment by SPNTCO on Delta's behalf. Similarly, a participant receiving Treasury securities pursuant to an exercised or assigned option would be required to do so by a 1:00 p.m. on exercise settlement date, against payment to SPNTCO on behalf of Delta. For Treasury bond and Treasury note options exercised prior to expiration date, the exercise settlement date would be the second business day after an exercise notice was assigned. For Treasury bond and Treasury note options exercised on expiration date, the exercise settlement date would be the third business day following the expiration date. For Treasury bill options, the exercise settlement date would be the Thursday of the week following the week in which the exercise notice was tendered. In order to provide the necessary funds to meet payment obligations to participants delivering securities to Delta, Delta will maintain credit facilities with SPNTCO

[29] The daily position report would detain all option contracts of participant and would show the net daily premium due to or from the participant as a result of those transactions. The daily margin report would detail the amount of margin required on a participant's short positions, while the daily exercise report would reflect exercise notices filed by or assigned to a participant. Those reports would be placed in participants lock boxes maintained on SPNTCO premises by 8:00 a.m. each business day.

[30] The term "clearing agency" is defined, in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or

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both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." *See* 15 U.S.C. 78c(a)(23) (1988).

[31] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as OTC options on Treasury securities. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis.

[32] *See* 132 Cong. Rec. S15780 (October 9, 1986). Prior to the enactment of GSA, government securities were treated as exempted securities for purposes of section 17A, and clearing agencies providing services exclusively for government securities transactions were not required to register with the Commission. Enactment of GSA removed the government securities exception from section 17A, requiring clearing agencies providing services for government securities, such as the Government Securities Clearing Corporation ("GSCC"), to register with the Commission.

[33] *See* 132 Cong. Rec. S15786 (October 9, 1986).

[34] *Id.* Commentators argue that Congress, in adopting GSA, intended to subject Delta to all of the requirements of the Act applicable to registered clearing agencies and for the Commission to grant Delta exemptions from those requirements would contravene Congressional intent. *See* CBT and CME letters. The Commission believes that granting Delta's two exemption requests would not contravene Congressional intent. As noted above, Congress has directed the Commission to recognize the difference between proprietary and membership clearing agencies in applying the requirements of the Act. As noted *infra*, Delta would be subject to all requirements of the Act applicable to registered clearing agencies except in two limited areas (*i.e.*, fair representation in the selection of directors and the filing of certain corporate governance documents pursuant to Section 19(b)) in which the Commission believes Delta's proprietary nature justifies exemption.

[35] Section 19(b) of the Act and Rule 19b–4 thereunder (17 CFR 240.19b–4 (1988) require a registered clearing agency to file with the Commission for review all proposed rule changes, including changes in its by-laws, rules, and procedures.

[36] Rule 17a–22 (17 CFR 240.17a–22 (1988) under section 17(a) of the Act requires a registered clearing agency to file with the Commission, within ten days of release, three copies of any material, including manuals, notices, circulars, bulletins, lists, or periodicals issued or made generally available to its participants or to other entities with whom it has a significant relationship.

[37] Section 19(d) of the Act and Rule 19d–1 thereunder (17 CFR 240.19d–1 (1988) require self-regulatory organizations to file with the Commission notice of: (1) final disciplinary actions; (2) denials; (3) bars; (4) limitations respecting membership, association, participation or access to services; and (5) summary suspensions.

[38] Several commentators suggested that Delta has not demonstrated the operational capacity of SPNTCO, and RMJ. As noted *infra*, the Commission is satisfied that SPNTCO and RMJ can provide the necessary equipment, expertise, and other resources.

[39] The United States Treasury issues book-entry securities in the form of bills, notes, and bonds. Treasury bills are issued in minimum denominations of $10,000 and have original maturities of 3, 6, or 12 months. Treasury notes are issued in denominations of $1,000 or more and have initial maturities from 1 to 10 years. Treasury bonds are issued in denominations of $1,000 or more and have initial maturities of more than 10 years.

[40] Prices of Treasury securities move inversely with changes in interest rates. For example, a 30-year Treasury bond may be issued with an interest rate of 12% of its base price of 100. Investors generally will continue to pay approximately 100 for the bond as long as the interest rate is exactly 12%. However, if Treasury bond interest rates rise to 14%, the price of the bond may decline to 87 to yield 14%. Conversely, if Treasury bond interest rates decline to 10%, the price of the bond may rise to 120 to yield 10%. Given this inverse relationship between prices and interest rates, generally the holder of a call option on a Treasury bond will profit from falling interest rates, while the holder of a put option on a Treasury bond will profit from rising interest rates.

[41] Options on Treasury securities are traded on Amex and the Chicago Board Options Exchange ("CBOE"). *See* Securities Exchange Act Release No. 18371 (December 23, 1981), 46 FR 64323. Futures products on Treasury securities are traded on the CBT, CME, and the Financial Instrument Exchange.

[42] *See* Goodman, *Hedging with Debt Options*, in Handbook of Financial Markets: Securities, Options and Futures, 573 (1986). During 1987, options exchanges traded approximately 233,000 contracts on underlying Treasury securities accounting for an average daily volume of nearly 1,000 contracts representing underlying Treasury security values of

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understands that OTC Treasury options serve a unique role by enabling market participants to tailor option terms (*e.g.*, coupon rate, expiration date, and strike price) to their individual needs.

Treasury securities are auctioned to the public by the Federal Reserve System and are purchased in the primary market by banks and securities firms operating as government securities dealers.[43] Secondary trading in Treasury securities occurs in a decentralized OTC market in which government securities brokers[44] continually disseminate bid and ask quotations through automated communications networks to dealers who trade between themselves on a fully disclosed basis or through brokers on a blind basis. Because government securities dealers have access to current quotes and last sale information for Treasury securities, they stand ready to do a large volume of both puts and calls on those securities.

The current system for the clearance and settlement of OTC Treasury options is decentralized and inefficient in several respects.[45] OTC Treasury options are confirmed via a labor-intensive process in which brokers and dealers exchange confirmation slips, stamp slips containing agreed upon terms, and return stamped slips to each other. This process often results in misplaced confirmation slips and uncompared trades. Premium, margin, and exercise settlement obligations for OTC Treasury options generally are not netted but are deposited piecemeal through clearing agent banks over the automated payment and book-entry custody system ("FedWire") operated by Federal Reserve banks. This process can contribute to demands on liquidity from the banking system, increased FedWire traffic,[46] and increased transaction costs. Those demands and costs might be avoided if a netting process were employed. The OTC Treasury options market currently also lacks sophisticated mechanisms designed to ensure that parties meet their obligations. There is no third-party intermediary such as OCC or a futures clearinghouse guaranteeing the performance of obligations arising under OTC Treasury option contracts[47] and, although these contracts typically provide for the deposit of margin by option sellers, such obligations often are difficult to enforce.

Delta, in conjunction with its facilities manager SPNTCO, would provide a clearance and settlement facility that may alleviate these inefficiencies and that may add greater discipline to transaction processing in this market. System trades would be submitted to SPNTCO for automated confirmation, thereby eliminating transfers of confirmation slips and reducing the likelihood of uncompared trades. Payment obligations for System trades would be netted daily, thereby reducing participant transaction costs and FedWire transfers. The performance of obligations arising under options issued by Delta would be guaranteed by Delta. System participants would be subject to formal margin obligations set by Delta and could be fined, censured, or suspended from the System for a failure to meet those obligations. Furthermore, Delta would have the ability to collect intra-day variation margin from participants and would have access to a $200 million credit enhancement facility designed to help Delta meet its obligations in the event of participant default. Finally, Delta would assess the financial condition of System participants prior to and throughout their participation in the System.

C. Capacity to Safeguard Securities and Funds

As discussed in detail below, the Commission believes Delta has the capacity to safeguard securities and funds, as required by the Act.[48] The Commission bases that determination on: (1) A review of System Procedures and Delta's facilities management arrangements with RMJ, RMJ Securities, and SPNTCO; and (2) representations by Delta's facilities managers regarding their capacity to safeguard securities and funds in the midst of extreme market volume and volatility.

1. Facilities Management, Recordkeeping, and Data Processing

Delta has a facilities management agreement with SPNTCO under which SPNTCO would provide certain clearance and settlement services pursuant to Delta's instructions and in accordance with System Procedures. As noted, those services include: (1) Trade matching and acceptance; (2) participant account maintenance; (3) the collection, transmission, and safeguarding of securities and funds; (4) the preparation and distribution of daily reports; and (5) the collection, assignment, and distribution of exercise notices.

Commentators question SPNTCO's operational capacity to perform the services noted above.[49] SPNTCO represents that its facilities and personnel are adequate to perform those services in accordance with System Procedures, even during periods of extreme market volume and volatility.[50] Based on this representation and SPNTCO's operating history, the Commission believes that SPNTCO has the operational capacity to perform the above services in a manner consistent with System Procedures.

Delta also has a facilities management agreement with RMJ and RMJ Securities. Under that agreement, RMJ would provide the computer software supporting the System, while RMJ Securities would provide the computer hardware, data transmission network, and communication interfaces upon which that software was designed to operate.[51] RMJ represents that the System's computer software and hardware facilities and personnel are adequate to support the System in accordance with System Procedures.[52]

Delta, SPNTCO, RMJ, and RMJ Securities would be subject to substantial review regarding their ability to perform their respective System functions. First the internal accounting departments of each entity review the adequacy of their respective systems and controls and report the results of their review to their respective Board of Directors. Second, as noted *infra*, internal accounting controls related to Delta and the issuance, clearance, and settlement of System transactions would be reviewed annually by an independent public accountant in accordance with Division Standards. RMJ and RMJ Securities also would have independent auditors review their systems of internal accounting controls.[53] Third, each entity would be subject to substantial federal regulation. Delta, as a registered clearing agency, would be subject to Commission oversight as described in Section 17A of the Act and rules thereunder. RMJ and RMJ Securities, as registered government securities brokers under the Act,[54] would be required to file annually with the Commission audited financial statements prepared by an independent public accountant and would be subject to periodic Commission examinations.[55] SPNTCO, as a National Bank and member of the Federal Reserve System, is regulated and examined by the Comptroller and FRB.

Commentators argue that SPNTCO also should be subject to clearing agency registration requirements.[56] Specifically, they believe that services provided by SPNTCO to Delta constitute clearing agency activities as defined in section 3(A)(23) of the Act and, therefore, trigger registration under section 17A. Commentators argue that excluding SPNTCO from clearing agency registration would preclude Commission oversight of SPNTCO's System activities and encourage other clearing agencies to use facilities management arrangements to avoid Commission regulation.

As noted above, SPNTCO would perform a variety of System functions for Delta under a facilities management contract. The Commission recognizes that SPNTCO would perform a broad range of significant functions including receipt, delivery, and safekeeping of securities and funds; [57] trade matching; monitoring of trading and position limits; acceptance of options; exercise processing; and report preparation and distribution.

The Commission does not believe at this time that the requirements and purposes of section 17A of the Act require SPNTCO to register with the Commission as a clearing agency. Clearing agencies registered with the Commission [58] historically have contracted with third parties in order to provide a variety of clearing agency services.[59] The Commission's experience with those arrangements is that the Commission can carry out its clearing agency oversight responsibilities through its jurisdiction over the registered clearing agency. Facilities managers cannot, for example, unilaterally make system changes that would alter the rules of the clearing agency (or the rights and obligations of clearing agency participants)[60] without

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approximately $100 million. Futures products overlying Treasury Securities are traded on future exchanges, cleared through clearinghouses associated with those exchanges, and are subject to the jurisdiction of the Commodity Futures Trading Commission. On the Chicago Board of Trade, for example, in 1987 a daily average of over 800,000 futures contracts or futures options on Treasury securities were traded representing underlying Treasury security values of over $80 billion. According to the Federal Reserve Bank of New York ("FRBNY") staff, the average daily value of secondary market trading in Treasury securities is $110 billion. *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639, in which the Commission granted GSCC temporary registration as a clearing agency ("GSCC Registration Order").

[43] There are three types of government securities dealers: Primary, aspiring primary, and non-primary. Primary dealers voluntarily report their positions to the FRBNY and to buy from or sell securities to the FRBNY, among other things, in connection with FRBNY's (as U.S. fiscal agent) open market transactions. Primary dealers are designated by FRBNY based on financial, trading and other criteria. Aspiring primary dealers are firms attempting to demonstrate their capital resources, trading activities, operational experience, and other qualifications to FRBNY to become a primary dealer. Any government securities dealer that is neither a primary or aspiring primary dealer is considered a non-primary dealer. *See, e.g.*, GAO report, *supra*, note 22; GSCC Registration Order, *supra*, note 22.

[44] There are two types of government securities brokers: inter-dealer and retail. Inter-dealer brokers arrange trades only among primary and some aspiring primary dealers, while retail brokers arrange trades among all market participants meeting the brokers credit criteria.

[45] The exchange-listed Treasury securities options market has a centralized, Commission-regulated facility for the issuance, clearance, and settlement of Treasury options. This facility, the Options Clearing Corporation ("OCC"), receives trade data from options exchanges and settles premium payments in same-day funds between writing and purchasing clearing members on the business day after trade date. Upon payment of the premium by the OCC clearing member, OCC "accepts" the trade and becomes guarantor on the transaction, crediting clearing member buyers with long positions and debiting clearing member sellers with short positions on OCC's books and records. OCC collects margin from clearing members with short positions as part of its safeguarding systems to secure its obligations to option holders and can call for the deposit of intra-day variation margin in certain circumstances. OCC randomly assigns to clearing members with short positions exercise notices OCC receives from option holders. OCC nets member payment obligations, which are collected or paid in same-day funds each morning between 10:00 a.m. and 11:00 a.m. (Eastern Standard Time).

[46] Heavy FedWire traffic contributed to delays on the FedWire during October 1987, contributing to the liquidity problems experienced by many firms during that time. *See Report of the Presidential Task Force on Market Mechanisms;* submitted to the President of the United States, the Secretary of the Treasury, and the Chairman of the Federal Reserve Board on January 8, 1988.

[47] Some retail government securities brokers represent that they guarantee the government securities transactions they broker. Nevertheless, the issue of who bears the risk in the event of default in a blind brokered government securities transaction is the subject of some controversy. *See* GAO Report, *supra* note 22.

[48] Sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency be organized and that its rules be designed to promote prompt and accurate clearance and settlement of securities for which it is responsible and to safeguard funds and securities in its custody or control or for which it is responsible. The Standards require clearing agencies, such as Delta, that hire facilities managers to perform data or other processing functions to maintain appropriate safeguards to insure the prompt and accurate clearance and settlement of securities transactions. The Standards also require such clearing agencies to assure that their facilities managers will cooperate fully with clearing agency auditors, Commission examiners, independent public accountants, and any other appropriate regulatory agency, to the same extent as a clearing agency which conducts its own processing functions. *See* Standards Release, *supra* note 31.

[49] *See* OCC letters.

[50] *See* letter from Tom Ford, SPNTCO, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988.

[51] RMJ Securities maintains in New York City a primary data center as well as a back-up data center that provides short and long-term disaster recovery capabilities. Both facilities utilize 24-hour guard service, continuous videotape surveillance, and alarm service at all points of entry. Both facilities also employ uninterruptible power supplies and extensive fire prevention measures.

[52] *See* letter from Steven Lynner, Managing Director, RMJ, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988.

[53] *See* 52 FR 27910 (July 24, 1987) and Rule 17a–5 under the Act.

[54] Under section 15c of the Act (15 U.S.C. 78o–5(1988)], government securities brokers and dealers are required to register with the Commission and meet other requirements applicable to Commission-registered brokers and dealers.

[55] *See* section 15C(d)(1) of the Act.

[56] *See* CBT, OCC letters.

[57] Commentators do not appear to suggest that these specific functions should require SPNTCO to register as a clearing agency. All registered clearing agencies use arrangements with banks, among other things, to effect money settlement, to deliver and receive securities over Fedwire, or for custody services. To the extent those bank services fall within the section 3(a)(23)(A) definition of clearing agency, the Commission believes that those activities generally are excluded from the definition of clearing agency under section 3(a)(23)(B) as customary banking activities.

[58] Delta's application raises the question of SPNTCO's registration as a clearing agency by virtue of its relationship with Delta and, thus, this Order does not address whether SPNTCO's System activities in the absence of a contractual relationship with a registered clearing agency would require clearing agency registration under section 17A of the Act.

[59] The Midwest Securities Trust Company ("MSTC"), for example, operates a Depository Satellite System under which MSTC contracts with third parties to act as subcustodians for bearer-form municipal bonds, including Security Pacific Clearing Services Corporation and Security Pacific National Bank as sub-custodians. *See, e.g.*, Securities Exchange Act Release No. 12077 (February 6, 1976). The Intermarket Clearing Corporation ("ICC") has a facilities management contract with OCC under which OCC performs the bulk of ICC's clearing services. *See* Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556. A similar arrangement exists between the Government Securities Clearing Corporation and the National Securities Clearing Corporation ("NSCC"). *See* Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639. NSCC uses the Securities Industry Automation Corporation ("SIAC") as a facilities manager to perform certain comprehensive processing functions. *See, e.g.*, Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916. The MBS Clearing Corporation ("MBSCC") began operations with facilities management arrangements with Midwest Clearing Corporation and Chemical Bank, which included comprehensive computer hardware and software services, operating premises, and personnel. *See* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218. *See also* File No. 600–24, under which the Clearing Corporation for Options and Securities ("CCOS"), a subsidiary of the Chicago Board of Trade Clearing Corporation ("CBTCC"), seeks registration as a clearing agency including a facilities management arrangement whereby CBTCC would perform the bulk of CCOS's processing functions.

[60] *See* section 19(b) and Rule 19b–4. Those provisions define "rules of a clearing agency" broadly to include virtually all material aspects of clearing agency operations, including by-laws, procedures, services, actions that affect the rights and obligations of the clearing agency or its members, and actions that affect a clearing agency's safeguarding of securities and funds. Indeed, section 19(b) of the Act provides that rules of a self-regulatory organization cannot be effective unless filed in accordance with the Act. *See* Securities Exchange Act Release No. 24429 (May 6, 1987), in which the Commission rendered a decision that a New York Stock Exchange unwritten policy prohibiting members from installing phone links to communicate with customers located off the floor had to be filed with the Commission under Section 19(b) to be effective.

having those changes filed by the clearing agency with the Commission under section 19 of the Act.[61] The Commission also can access any documentation or information held by facilities managers through its jurisdiction over the registered clearing agency.[62] To the extent that the Commission needs access to a facilities manager's premises or personnel, the Commission expects, and has found, clearing agencies and facilities managers to be cooperative with Commission staff.[63]

The Commission intends to monitor closely the arrangements among Delta, SPNTCO, and RMJ and Delta's compliance with the requirements of the Act. To the extent any actions by entities involved in the System create non-compliance with the Act or impair the Commission's oversight responsibilities, the Commission believes that the Act authorizes, and the Commission would promptly take, appropriate action.

The Commission emphasizes the unique and critical role that certain facilities managers provide to self-regulatory organizations ("SROs"). Facilities managers, for example, may provide the core personnel and equipment necessary for SRO operations. Under those circumstances, the facilities manager is, in effect, through its relationship with the SRO, also responsible for the SRO's satisfaction of its responsibilities under the Act. Moreover, the Commission relies on the SRO and the facilities manager in carrying out its responsibilities under the Act. For those reasons, the Commission reiterates its willingness to take any appropriate action under the Act in response to activities of facilities managers.[64]

2. Internal Accounting Controls

The Standards require a clearing agency to furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting controls for the period since the last such report.[65] The scope of the study and evaluation would include all clearing agency activities performed for participants, particularly trade recording, transaction processing, and depository activities.[66]

To opine with respect to a clearing agency's system of internal accounting control, the independent accountant would be required to comply with general standards established by the American Institute of Certified Public Accountants ("AICPA").[67] Under AICPA Statement on Auditing Standards ("SAS") No. 30, the independent accountant's report must, among other things, describe any material weaknesses [68] in the clearing agency's system of internal accounting controls and any corrective action taken or proposed to be taken. SAS No. 30 also advises the independent accountant to consider issuing a qualified opinion if the entity being reviewed has placed any significant limitations on the scope of the accountant's review.[69]

One commenter expressed concern that internal accounting controls applicable to functions performed by Delta through SPNTCO would not be subject to an independent public accountant review consistent with Division Standards.[70] The Commission disagrees and believes that an independent accountant review of Delta's internal accounting controls would include a review of internal accounting controls applicable to services provided to Delta by its facilities managers, including SPNTCO. First, standards exist to guide accountants who undertake to review Delta's system of internal accounting control.[71] Second, Delta's independent auditor would consult with SPNTCO's auditors (independent or otherwise) in reviewing internal accounting controls applicable to services provided by SPNTCO.[72] Finally, as described above, SAS No. 30 dictates that an accountant can express an unqualified opinion on an entity's system of internal accounting control only if the accountant has been able to apply all the procedures he considers necessary in the circumstances.[73]

3. Financial Risk Management

The Commission believes System Procedures are designed appropriately to protect System participants and Delta against financial loss associated with System services. The principal source of financial risk to Delta and System participants is that participants may default on their obligations to Delta, for example, because of financial insolvency. Delta safeguards against these risks include participation standards, monitoring member financial condition, trading and position limits, MPSE limits, daily margin requirements, a credit enhancement facility, and specific procedures for handling the obligations of a defaulting member.[74]

An Executive Committee of Delta's Board of Directors would determine whether or not an entity should be admitted as a System participant based on the following criteria.[75] Entities designated by FRBNY as primary dealers would be eligible for participation. Entities not designated as such would be eligible if: (1) They are registered with the Commission as brokers or dealers and have a minimum net capital of $25 million, as calculated in accordance with the Commission's net capital rule;[76] or (2) they are registered with the Commission as government securities brokers or dealers and have a minimum net capital of $25 million, as calculated in accordance with net capital rules promulgated by the Department of the Treasury;[77] or (3) they are commercial banks or insurance companies having a total equity capitalization of at least $500 million; or (4) they do not fall within the categories described above but meet minimum net capital requirements determined by Delta on an individual basis.[78] To be eligible for participation, entities also must intend to engage in significant trading of Treasury options and must maintain facilities and personnel adequate for the expeditious and orderly transaction of business within the System.[79]

Once admitted, participants must continue to meet the requirements described above and must submit to Delta annual audited financial statements and quarterly unaudited financial statements.[80] If a participant fails to meet these requirements, Delta may censure, suspend, or expel the participant, as well as limit the activities, functions, or operations of the participant.

Delta would impose a limit on the aggregate margin obligations of each participant (*i.e.*, a trading limit) upon admission to the System. This limit would be based upon the financial capacity of the participant as determined by Delta credit analysts.[81] Delta also would impose limits on a participant's aggregate long or short positions (*i.e.*, position limits) if the condition of the market or the financial or operational condition of a participant made such necessary or advisable for the protection of Delta or System participants. In imposing position limits, Delta could restrict a participant from buying any opening purchase transaction and/or writing any opening writing transaction or require a participant to reduce or eliminate existing long or short positions through closing transactions. As noted, neither Delta nor SPNTCO would accept a trade exceeding a participant's trading or position limits.

System participants would be required to deposit margin daily to secure obligations arising under Treasury options written by them.[82] The amount of margin required would be derived from two calculations: "mark-to-market" margin and "performance" margin.[83] Mark-to-market margin represents an estimate of current options prices, based upon current implied volatilities of options traded within the System,[84] and the resulting current estimated cost to liquidate a participant's options portfolio, *i.e.*, short positions offset by the estimated proceeds from liquidation of its long positions.[85] Performance margin represents the difference between today's mark-to-market values and the estimated liquidation value of the participant's positions the next business day [86] using predicted market movement for the next business day based on historical volatilities.[87] In estimating the next-day liquidation value of a participant's positions, Delta would assume a three standard deviation overnight move up and down in the value of the Treasury securities underlying those positions.[88] Delta would reprice options based upon the mark-to-market values and the three standard deviation move in the market. The worst case change in the value of a participant's positions resulting from these calculations would be the performance margin requirement. Delta will monitor intra-day exposure and, under its rules, could require

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[61] The Commission is not aware of any such action that was not filed as a rule change under section 19(b). If the Commission were faced with those circumstances, the Commission, or other appropriate regulatory agency, would have authority under section 19(h) of the Act to take action against the registered clearing agency.

[62] Specified information and documentation must be maintained by a registered clearing agency and made available to Commission staff. *See, e.g.*, Rule 17a–1 under the Act. *See* the Operating Agreement, Sections 2.7, 4.2, and 4.7 for provisions dealing with report and recordkeeping responsibilities of Delta, SPNTCO, and RMJ. Nevertheless, RMJ, RMJ Securities, and SPNTCO have agreed to provide access to all records and staff as the Commission deems necessary to oversee Delta's financial and operational condition.

[63] Because of that favorable experience and the Commission's authority under section 19(h) of the Act, the Commission generally has not required that facilities management contracts specifically grant the Commission unlimited access to a facilities manager's premises. If the Commission perceived a need for express authority for such access, it could formulate an appropriate rule under section 17A (b) and (d) of the Act.

[64] Depending on the circumstances and if necessary, the Commission would consider, among other things, suspending or revoking the SRO's registration, imposing limitations on the SRO's activity, and censuring or removing from office officers or directors of the SRO. *See, e.g.*, section 19(h) of the Act.

[65] The Standards propose the annual "for-the-period" requirement to provide a very high degree of assurance to participants and the Commission concerning the safety of overall clearing agency operations. *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 5187 ["Full Registration Order"].

[66] *Id.*

[67] *Id.*

[68] According to the Standards Release, a material weakness in internal accounting control in a clearing agency includes, among other things, any conditions individually, or taken as a whole, which could reasonably be expected to: (1) Inhibit a clearing agency from promptly and accurately completing securities transactions or promptly discharging its responsibilities to its participants, other clearing agencies, debtors or creditors; (2) result in material financial loss to the clearing agency or other clearing agencies; (3) result in a material charge to the clearing agency participants' fund resulting from other than the default of a participant; (4) result in material misstatements in the clearing agency's financial statements; or (5) result in inaccurate books and records maintained by the clearing agency to an extent that could reasonably be expected to result in the conditions described in (1)–(4) above. *See*, Standards Release, *supra*, note 31, at note 50.

[69] *See* SAS No. 30 at paragraph 44.

[70] *See* OCC letters.

[71] *See* SAS No. 30, 44 and Standards Release, *supra*, note 31.

[72] *See, generally*, SAS No. 44.

[73] *See*, SAS No. 30, at paragraph 44.

[74] Delta's safeguards do not include a clearing or participants fund. *See* discussion *infra*.

[75] One commentator [*see* CBT letters] is concerned that Delta may admit participants that would have an unfair advantage in their use of the System because of their relationship to Delta or its facilities managers. The Commission believes, however, that specific provisions concerning confidentiality of System information contained in the Operating Agreement and Delta's procedures address those concerns. *See, e.g.*, section 306 of Delta's procedures. Commentators also argue that concerns over potential antitrust liability may induce Delta to admit questionable applicants or refuse to discipline participants violating System Procedures [*see* CBT letters]. The Commission believes that this argument is based on speculation as to future Delta activities and whether or not those activities would result in antitrust liability. *See, generally, Gordon* v. *New York Stock Exchange*, 422 U.S. 659 (1975). Moreover, the Commission will continue to oversee Delta activities and respond appropriately to any Delta actions that appear to be inconsistent with the Act.

[76] *See* 17 CFR 240.15c3–1.

[77] The Department of the Treasury has issued financial responsibility rules, including minimum net capital requirements, for government securities brokers and dealers that are not subject to the Commission's net capital rule. *See* 52 FR 27910 (July 24, 1987).

[78] One commentator suggested that provisions in Delta's procedures authorizing Delta to waive participation criteria are inappropriate. The Commission, however, believes that flexibility provided by such provisions enable a clearing agency to respond to unusual or unanticipated circumstances while maintaining prudent standards. The Commission will oversee Delta and respond appropriately in the event Delta administers such waiver provisions in a manner inconsistent with the Act.

[79] Several commentators [*see, e.g.*, CBT letters, CME letter] suggest that Delta's role in approving applications for Delta membership inappropriately determines whether an applicant can access RMJ's brokerage services for Treasury options. Those commentators cite section 17A(b)(2)(F), which generally provides that the rules of a clearing agency not be designed "to regulate by virtue of any authority conferred by this title matters not related to the purposes of [Section 17A] or the administration of the clearing agency." The Commission believes, however, that Delta's admission standards and decisions would be fundamental credit decisions that necessarily must be made by all clearing agencies as part of the safeguarding of securities and funds and administration of the affairs of the clearing agency. Accordingly, the Commission does not believe that those aspects of Delta's operations are designed to regulate matters unrelated to the purposes of section 17A or the administration of Delta.

[80] System participants also have a continuing obligation to: (1) Maintain books and records in accordance with System procedures and, if applicable, Commission rules; (2) employ personnel and utilize procedures sufficient to discharge their responsibilities in accordance with System procedures; (3) not be subject to or be associated with persons subject to a statutory disqualification as defined in section 3(a)(39) of the Act; (4) not engage in or be associated with anyone engaged in acts inconsistent with just and equitable principles of trade; and (5) have substantial experience training Treasury options or employ personnel with such experience.

[81] Specifically, Delta credit analysts would look at a participant's balance sheet strengths and weaknesses, amount and trend of earnings, ownership, availability and structure of capital, vulnerability to changes in interest rates, and liquidity of assets.

[82] Margin would be deposited only in the form of Federal Reserve funds. In accordance with Delta's instructions, SPNTCO or its affiliate would invest margin payments in overnight repurchase agreements requiring as collateral the delivery of Treasury bills with maturities not to exceed 180 days from the date of such repurchase agreements.

[83] Delta would calculate mark-to-the market and performance margin on each option position. In calculating performance margin, Delta will group options into five sectors based on the length to maturity of the underlying securities. Delta then oets performance margin (debits or zero) for all sectors; and combines performance margin with the total mark-to market margin to generate the participant's margin obligation.

[84] Delta would use implied volatilities generated by The Option Group ("TOG") pricing model, which the Commission understands is utilized by a significant number of primary government securities deelers. Delta would use implied volatilities to price options because individual OTC Treasury options would not necessarily trade regularly and last-sale prices would not be available.

[85] For margin calculation purposes, Delta would obtain information on the prices of underlying Treasury securities by 3:00 p.m. daily from its price vendor, Interactive Data Services incorporated ("IDSI"). If, after 3:00 p.m., the market moves significantly, Delta would substitute for those prices 5:00 p.m. prices obtained from two participant dealers selected at random.

[86] Performance margin also would be calculated using the TOG pricing model. RMJ would provide the software and data processing for the model. Margin parameters for options priced by the model would be established by Delta.

[87] Delta would use a 100-day moving average based upon price observations of underlying Treasury securities during the immediately prior 100 days.

[88] Delta states in its application that a three standard deviation confidence interval provides a 99.1% level of confidence (*i.e.*, 99.1% of all price changes should fall within that interval).

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participants to deposit additional margin at any time during the business day if it deems such action necessary or advisable for the protection of Delta or System participants.

Delta would obtain and maintain a $200 million credit enhancement facility designed to ensure that Delta would be able to satisfy its obligations if margin deposits were insufficient to cover a default. Security Pacific National Bank ("SPNB") has agreed to issue, for the benefit of Delta, a letter of credit in the amount of $100 million.[89] If a participant defaults, and Delta's default procedures do not produce funds sufficient to cover that participant's obligations, Delta would draw on the letter of credit to cover those obligations.[90] Should the letter of credit amount be insufficient to cover a participant default, Delta could draw on a $100 milion surety bond [91] issued by Capital Markets Assurance Corporation ("CapMAC").[92]

Each participant must be accepted by SPNB as an account party on the letter of credit and must be accepted by CapMAC as an insured party under the surety bond.[93] Furthermore, each participant must reimburse SPNB and CapMAC for any draws made on the letter of credit or surety bond because of that participant's default. SPNB would bear the risk of loss for all reimbursed draws under the letter of credit up to $50 million. Loss from unreimbursed draws under the letter of credit in excess of $50 million would be borne by both SPNB and Delta, and all unreimbursed draws under the surety bond would be borne by both CapMAC and Delta.[94]

The amount available to be paid to Delta pursuant to the credit enhancement facility would at all times equal at least three times MPSE. MPSE would equal (1) the exposure of all participant short positions adjusted to reflect a six standard deviation [95] move in the price of Treasury securities underlying those positions, less the sum of (2) the value of all participant long positions adjusted to reflect the same movement, the amount of margin on deposit from all participants, and the amount of margin due from all participants at or before the immediately succeeding settlement time. At the close of each business day, MPSE would be calculated for the entire System and for each participant. To ensure that the credit enhancement facility exceeds at least three times MPSE, Delta would be permitted to impose position limits on participants.

Accordingly to one commentator,[96] CapMAC and SPNB perform functions that should require them to register as clearing agencies. Specifically, the commentator believes that SPNB and CapMAC would have the authority to (1) make admission or suspension decisions, (2) approve or disapprove Delta's proposed rule changes, (3) monitor participant compliance with System Procedures, and (4) require participants to post additional margin.

The Commission believes that for the following reasons the above characterizations are inaccurate. First, although participant admission and continued participation in the System are contingent upon being an account party on SPNB's letter of credit and an insured party under CapMAC's surety bond, any denial of admission or suspension for a failure to meet that criteria would be made by Delta, not CapMAC or SPNB. Second, although Delta has agreed not to amend System Procedures in a manner adversely affecting the credit enhancement facility without the facility's consent,[97] SPNB and CapMAC would not have the authority, generally, to approve or disapprove Delta's proposed rule changes. Third, although SPNB and CapMAC may monitor the financial condition of a participant to determine whether or not it should remain an account party on the letter of credit or an insured party under the surety bond, they would not monitor participant compliance with System Procedures. Also, it is legitimate to look to credit evaluations by third parties in making credit decisions, without thereby rendering those parties "clearing agencies" who must also register under section 17A of the Act. Finally, although CapMAC and SPNB may request that Delta impose intra-day variation margin requirements upon participants, they have no right to require participants to post margin.

The Commission does not believe that the rights of CapMAC and SPNB described above trigger the section 17A clearing agency registration requirement.[98] The Commission, however, intends to monitor closely arrangements among Delta, SPNB, and CapMAC, and Delta's compliance with the requirements of the Act. To the extent any actions by those entities create noncompliance with the Act or impair the Commission's oversight responsibilities, the Commission believes that the Act authorizes, and the Commission promptly would take, appropriate action.[99]

[89] SPNB, a subsidiary of Security Pacific Corporation, is the eighth largest commercial bank in the United States with reported assets of approximately $47.2 billion.

[90] To make a draw on the letter of credit, Delta would present to SPNB a sight draft and a certificate for payment. If these documents are presented in conformity with the letter of credit prior to 2:00 p.m. (all times refer to Eastern Standard Time) on a particular business day, SPNB would honor the demand in accordance with Delta's payment instructions by 3:00 p.m. on the same business day. If a demand is made after 2:00 p.m., SPNB would honor the demand by 2:00 p.m. the following business day.

[91] The maximum coverage for any participant under the surety bond would be $20 million.

[92] CapMAC is a wholly-owned subsidiary of Citibank (New York State) engaged in the business of financial guarantee and surety insurance. If CapMAC receives Delta's demand for payment in conformity with the terms of the surety bond, at or prior to 2:00 p.m. (all times refer to Eastern Time) on a particular business day, CapMAC would make funds available to Delta in accordance with its payment instructions by 3:00 p.m. that same business day. If a demand is made after 2:00 p.m., CapMAC would make funds available to Delta by 2:00 p.m. the next business day.

[93] If a participant is terminated as an account party on the letter of credit or as an insured party under the surety bond, it would be suspended from the System.

[94] Delta's proportionate share of the unreimbursed draws shall be determined by multiplying the amount of the unreimbursed draws under the letter of credit in excess of $50 million or the amount of the unreimbursed payments under the surety bond, as the case may be, by a fraction, the numerator of which equals $5 million and the denominator of which equals the aggregate face amount of the credit enhancement facility minus $45 million. Accordingly, assuming the amount of unreimbursed draws under the letter of credit is $75 million, Delta's proportionate share of the loss in excess of the $50 million limit would be 81%: $25 million (amount of unreimbursed draws in excess of $50 million) × $5 million/$155 million

[95] The standard deviation would be derived from the greater of (1) the average market price, based on trading prices during a period of 100 consecutive trading days ending on February 19, 1980, (the period of highest volatility in Treasury securities prices in recent history) of Treasury securities which are equivalent to Treasury securities underlying such short positions or (2) the average market price of similar Treasury securities during any subsequent period of 100 consecutive trading days (a period of even higher volatility).

[96] *See* CBT letters.

[97] This condition is similar to that contained in Section 4.5 of the Credit and Security Agreement between OCC and Citibank N.A., in which Citibank N.A. has the right to review proposed rule changes filed by OCC with the Commission. *See* File No. SR–OCC–86–25 (Exhibit 1).

[98] SPNB and CapMAC's role in the Delta System may be analogous, in some respects, to the role of settlement banks in The Depository Trust Company's ("DTC") same-day funds settlement system. DTC's rules for the same-day funds settlement system require banks acting as settlement agents for DTC participants using that system to establish a maximum credit limit for their client DTC participants. *See* Securities Exchange Act Release No. 26051 (August 31, 1988), 53 FR 34853.

[99] As previously noted, depending on the circumstances, and if necessary, the Commission would consider, among other things, suspending or revoking Delta's registration, imposing limitations on Delta's activity, and censuring or removing from office officers and directors of Delta. *See, e.g.*, section 19(h) of the Act.

Delta may suspend summarily any participant that defaults on its System obligations.[100] Upon suspension, a participant would no longer be permitted to trade through the System, and Delta would place all margin and other property deposited by such participant in a liquidating settlement account ("LSA"). Pending transactions of a suspended participant (*i.e.*, transactions where acceptance by SPNTCO is pending at the time of suspension) would be rejected by SPNTCO, and Delta would close out that participant's long positions, short positions, and exercised options.[101] Proceeds from the closing of all long positions and exercised options would be credited to LSA, while expenses incurred in closing short positions and exercised options would be charged to LSA.[102] If the cost of liquidating a suspended participant's positions exceeds the amount available in LSA, Delta would make a draw on the credit enhancement facility in the manner previously described.[103]

The Commission notes that Delta's clearing system does not include a clearing fund as contemplated by the Standards Release.[104] The Commission also notes that Delta's system represents the first Commission-approved clearing system that does not mutualize risk among clearing agency participants.[105] Although other clearing agencies registered with the Commission employ some form of risk mutualization, the Commission does not believe that risk mutualization is mandated by the provisions of the Act. Risk mutualization has certain benefits, including the provision of liquidity from within the clearing agency environment that otherwise must be provided by outside sources. The Commission will examine each clearing agency applicant on a case-by-case basis to determine whether its risk management procedures are appropriately tailored to the markets served by the clearing agency and otherwise satisfy the requirements of the Act.

The Commission believes at this time that Delta's credit analysis, participant monitoring, margin requirements, credit enhancement facilities, and system debit caps [106] implemented through MPSE limits [107] provide sufficient safeguards and liquidity for the Commission to conclude that Delta's system should be permitted to begin operations. In the event of an unanticipated default, Delta will reply initially on the defaulting participant's margin deposits and then access Delta's credit enhancement facilities for up to $200 million. The Commission believes that margin requirements for derivative product clearing systems function in a manner similar to clearing fund contributions for stock clearing systems.[108]

The commentator [109] expressed concern about Delta's plan to admit federally-insured commercial banks as participants in Delta's options system. This commentator noted that a commercial bank insolvency would be governed by federal or state banking laws, rather than the Bankruptcy Reform Act of 1978 ("Code") as amended. Thus, according to this commentator, Delta may not have certain protections against bank member insolvency because it cannot benefit from recent amendments to the Code clarifying the right of clearing agencies to close out open obligations of insolvent clearing members and to apply margin payments consistent with statutory provisions concerning automatic stays, voidable preferences and fraudulent transfers.[110]

The Commission believes that Delta has taken appropriate precautions to protect against losses resulting from a participating bank's insolvency. First, Delta will maintain a lien over all options in participant accounts, as well as assets participants deposit to meet Delta's margin requirements, and expects to meet all state commercial law requirements necessary for a perfected security interest in those assets.[111]

[100] Under System procedures, summary suspension is mandatory if a participant has committed a premium, margin, payment, or delivery default, provided that such suspension may be deferred (1) not more than two hours in the event of a premium or margin default, and (2) not more than 24 hours in the event of a delivery or payment default. Delta, in its discretion, may suspend a participant that: (1) Is in financial or operating difficulty; (2) is insolvent; (3) has been suspended by a self-regulatory organization; or (4) is the subject of an order withdrawing, suspending, or revoking any license, membership, or other qualification necessary to do business.

[101] Under System procedures, Delta may liquidate a defaulting participant's positions selectively or may offer the whole position, inclusive of all outstanding option series, to a limited number of participants for competitive bidding. The participant offering the lowest net liquidation cost to Delta would assume the entire position.

[102] If a suspended participant has failed to deliver securities pursuant to its exercise settlement obligations, Delta would buy-in Treasury securities for the account and liability of the defaulting participant, using LSA funds for such buy-in. If a suspended participant has failed to receive and pay for securities pursuant to its exercise settlement obligations, Delta would sell the securities tendered by the delivering participant and pay the delivering participant with the proceeds from that sale and any additional amount that must be withdrawn from LSA to meet the defaulting participant's obligations.

[103] Within one hour of being notified of suspension, a participant would be required to pay the debt balance in LSA resulting from the liquidation of the participant's positions and exercised option contracts.

[104] The Standards state that "[t]he Divison believes that it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject." *See* Standards Release, 20 SEC Docket at 432. Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants.

[105] *But see* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218, concerning temporary registration of the MBS Clearing Corporation ("MBSCC") as a clearing agency. MBSCC's risk management system employs a limited mutualization of risk among participants by limiting its ultimate capability to assess participants to those participants that had MBSCC transactions with a defaulting participant.

[106] Delta's MPSE caps distinguish its system from stock and option clearing systems operated by NSCC and OCC where the clearing agencies must guarantee the settlement of virtually unlimited trading activity.

[107] Delta also would apply a limit on the amount of risk each participant could pose to the System by limiting the amount of margin each participant posts with the System. Delta would not accept transactions that would exceed that limit and, to the extent market movements create exposure from a participant that exceeds its limit, Delta would require the participant to enter closing transactions that would reduce margin to below the participant's limit.

[108] OCC, for example, relies heavily on its margin system as a primary risk management procedure, supplemented by a clearing fund. OCC, however, does not maintain credit enhancement facilities such as those employed by Delta. Moreover, Delta does not mutualize default risk among all participants through participant assessment capability as do OCC and National Securities Clearing Corporation. In the Delta system, like OCC's system, margin deposits on an individual participant are available only in the event that participant defaults.

[109] *See* OCC letters.

[110] In support of these concerns, the commentator cited *Brill v. Citizens Trust Co.*, 492 A.2d 1215 (R.I. 1985), which apparently precluded a post-petition bank acceleration of an unmatured, unsecured obligation involving a non-bank debtor. Although not dispositive of these concerns, the Commission notes that *Brill* may be distinguishable from the kind of case that might result from Delta's decision to admit commercial banks as participants. Among other things, the bank in *Brill* was an unsecured creditor. As discussed below, Delta will maintain appropriate liens, and will perfect its security interest in margin, long options issued to its members, and other assets held on behalf of its members.

[111] Delta expects its options will be treated as uncertificated securities under the New York Uniform Commercial Code. *See* N.Y. U.C.C. 8–102 (McKinney 1986). Under New York law, acceptable methods of perfecting a security interest in uncertificated securities include making appropriate entries on the books of a clearing corporation or registering the security interest on the books of the issuer. *See id.*, UCC 8–320, 8–313. These methods may not be sufficient to obtain a perfected security interest in all states, however, because some state commercial laws treat uncertificated securities as "general intangibles," and require creditors to file financing statements at central offices to "perfect" security interests against the claims of other creditors. Delta has represented that it will take all reasonable steps necessary to assure it maintains a perfected security interest in assets securing participant payment obligations.

Second, Delta's rules concerning the close-out of open positions in the event of participant default appear to satisfy commercial law standards for reasonable disposition of assets. Third, the close-out of a defaulting participant's open options position would appear to satisfy the requirements for debtor set-off under federal banking law applicable to national bank insolvencies.[113] Finally, Delta expects to monitor participant financial condition closely, with the expectation that any action necessary to address member financial or operational difficulties could be taken in advance of formal insolvency or receivership proceedings.

4. Standard of Care

The Commission believes that clearing agencies should perform their functions under a high standard of care, and at a minimum perform custody functions under an ordinary negligence standard of care.[114] Delta and its facilities managers would perform their System functions under an ordinary negligence standard of care, with Delta assuming liability for a breach of that standard by any of those entities.[115] Delta would be able to seek indemnification or contribution from its facilities managers for their role in a standard-of-care breach.[116]

The Standards Release provides that the rules of a clearing agency, subject to several exceptions, must require the clearing agency to promptly deliver securities in its custody or control to, or as directed by, the Participant for whom they are held.[117] The Standards except from that requirement securities delivered against payment (for which the Participant has not made payment) and securities pledged by the Participant through the clearing agency. The Standards Release also requires that a clearing agency's rules and agreements enable broker-dealers to comply with applicable provisions of the Act and related Commission rules concerning protection of customer assets, such as sections 8 and 15 of the Act and Rules 8c-1, 15c2-1, and 15c3-3 under the Act.

In this regard, the Commission notes that the System was designed for proprietary activity and that Delta would maintain liens over all Delta-issued options. Thus, Delta's procedures do not provide for lien-free accounts to enable participants to comply with the Commission's customer protection rules. Delta's rules accordingly specifically prohibit its participants from using the System to establish or maintain customer positions in Delta-issued options.

The Commission believes that the proprietary nature of the System and Delta's rules that prohibit customer-related activity indicate that those provisions of the Standard Release concerning customer protection procedures should not be applied to Delta. The Commission, however, emphasizes that Delta is obligated by the Act to enforce all of its rules, including the rule requiring System users to limit their activity to proprietary trading.

D. Other Determinations

1. Capacity to Comply With the Act and Enforce Compliance by Members and Participants

Section 17A(b)(3)(A) of the Act requires that Delta have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require Delta to keep and preserve certain records,[117] obtain and retain fingerprints from personnel,[118] and register and participate in the Commission's Lost and Stolen Securities Program.[119] Based upon a review of System Procedures and Delta's facilities management arrangements, the Commission believes Delta has the capacity to comply with the Act and rules thereunder.

Commentators argue that Delta's registration would contravene that portion of section 17A(B)(3)(A) requiring a registered clearing agency to be organized and have the capacity to comply with the Act.[120] Specifically, they argue that the System would operate as an unregistered exchange in violation of sections 5 and 6 of the Act, and that Delta would be an aider and abettor to those violations. As noted above, the Division believes that, at this time, the System is not required to register as an exchange.[121] Based upon that determination, the Commission believes Delta's role in the formation and administration of the System will not impair Delta's capacity to comply with the Act.

[113] National bank insolvencies are governed by federal banking law. *See* 12 U.S.C. 91, 94. The allowance of claims against the assets of an insolvent national bank is a matter of federal law. *See, e.g., FDIC v. Modernoiselle of California*, 379 F.2d 660, 662 (9th Cir. 1967). The validity of setoff claims must comport with federal law, although courts have at times looked to state law for guiding principles. *See Interfirst Bank Abilene v. Federal Deposit Insurance Corporation*, 777 F.2d 1092, 1094 (5th Cir. 1985). Courts have looked to "general equitable doctrines," and state law for principles underlying the right of setoff. *See FDIC v. Liberty Nat. Bank & Trust Co.*, 806 F.2d 961 (10th Cir. 1986). Among the states recognizing set-off rights are California, New York, Oklahoma and Pennsylvania. *See, e.g., Yordley v. Philler*, 167 U.S. 344 (1896) (PA); 806 F.2d 961 (OK); 379 F.2d 660 (CA); *Savings Bank of Rockland Conty v. FDIC*, 668 F.Supp. 799 (S.D.N.Y. 1987) (NY).

Although the ability to setoff claims against an insolvent participant likely will depend on the particular circumstances surrounding that insolvency, Delta appears justified in its reliance on an ability to setoff its claims against a participant as one of many protections against financial loss associated with accepting national banks as participants. Courts generally have held that if a setoff is otherwise valid, it is not a preference in violation of the National Bank Act. *See, e.g., Scott v. Armstrong*, 146 U.S. 499 (1892); 777 F.2d 1092, 1094. Courts have allowed clearing houses to setoff claims against insolvent member banks, and have allowed banks to collect on, and otherwise setoff deposits against, letters of credit issued by national banks later determined to be insolvent. *See e.g., Yordley v. Philler*, 167 U.S. 344 "1896); *FDIC v. Liberty Nat'l Bank & Trust Co.*, 806 F.2d 961.

[114] *See* Standards Release, Full Registration Order; Securities Exchange Act Release Nos. 24046 (February 5, 1987), 52 FR 4218; 25740 (May 24, 1988), 53 FR 19639; and 26154 (October 3, 1988), 53 FR 39556. The Commission also believes that a lower standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, a clearing agency, its Board of Directors, and its members determine to allocate to individual service users. *See* Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; and 26154 (October 3, 1988), 53 FR 39556.

[115] *See* Section 1501(b) of the System Procedures.

[116] *See* Section 6 of the Operating Agreement.

[117] *See* Standards Release, *supra*, note 31.

[117] Rule 17a-1 (17 CFR 240.17a-1 (1988)) requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records, as are made or received by it in the course of its business. As registered government securities brokers, RMJ and RMJ Securities would be subject to similar recordkeeping requirements under Rule 17a-3 (17 CFR 240.17a-3 (1988) and Rule 17a-4 (17 CFR 240.17a-4 (1988)). SPNTCO is subject to similar requirements under federal banking regulations. *See* 12 CFR 205 (1988).

[118] Rule 17f-2 (17 CFR 240.17f-2 (1988)) requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officers, and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints also must be sent to the Federal Bureau of Investigation. As registered government securities brokers, RMJ and RMJ Securities would be subject to this Rule 17f-2 requirement. SPNTCO is subject to a similar requirement under federal banking laws.

[119] Rule 17f-1 (17 CFR 240.17f-1 (1988)) requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security and to inquire with respect to certain securities which come into its possession whether the security has been reported lost, missing, or stolen. As registered government securities brokers, RMJ and RMJ Securities would be required to register in the Program. As a member of the Federal Reserve System SPNTCO is registered in the Program.

[120] *See* CBT and CME letters.

[121] *See* Letter from Richard Ketchum, Director, Division of Market Regulation, to Robert A. McTamaney, Esq., Carter, Ledyard & Milburn, dated January 12, 1989.

Section 17A(b)(3)(A) of the Act also requires Delta to have the capacity to enforce participant compliance with System Procedures.[122] System Procedures must provide Delta with the authority and ability to discipline participants via appropriate sanctions [123] and must provide fair procedures for the imposition of such sanctions.[124] as discussed below, System Procedures contain appropriate sanctions and provide Delta the authority to impose such sanctions in an equitable manner.

Delta may fine, suspend, or limit the activities of any participant for violations of System Procedures. Prior to the imposition of such sanctions, Delta would furnish the affected participant with written notice of charges and would give that participant an opportunity to have its claim heard before an Executive Committee of Delta's Board of Directors.[125] All Executive Committee decisions would be in writing and would be appealable to Delta's Board of Directors, who could affirm, reverse, or modify the decision.[126] Under section 19(d)(2) of the Act, a disciplined participant could appeal a final decision of the Executive Committee or Delta's Board of Directors to the Commission, which could affirm or reverse that decision pursuant to section 19(f) of the Act.[127]

One commentator believes that System Procedures do not provide procedural due process for disciplined participants in a manner consistent with sections 17A(b)(3)(G) and 17A(b)(3)(H) of the Act, because, according to that commentator, SPNB and CapMAC would be able to suspend participants or deny admission without being required to afford them procedural due process.[128] The Commission disagrees for several reasons. First, although a participants' admission and continued participation in the System are contingent upon it being an account party on SPNB's letter of credit and an insured party under CapMAC's surety bond, Delta would make any admission or suspension decision for a failure to meet that criteria, and due process procedures described in the System Procedures would apply. Second, in the event an applicant presents a letter of credit or surety bond from an unaffiliated entity other than SPNB or CapMAC, and if such letter of credit or surety bond is (i) in an amount equal to Delta's existing credit enhancement facility;[129] and (ii) otherwise comparable (including the credit rating of the issuer) to Delta's existing credit enhancement facility, Delta has represented to the Commission that it will consider promptly the acceptance of such letter of credit or surety and, if it decides to accept such letter of credit or surety, promptly will take all necessary steps to implement that decision.

2. Fair Representation

Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Act does not define the term fair representation or establish particular standards of representation. Instead, it provides that the Commission must determine on a case-by-case basis whether the rules of the clearing agency regarding the manner in which decisions are made provide fair representation to participants and shareholders.[130]

The Commission believes Delta's governance procedures provide fair representation to participants in the administration of Delta's affairs. According to the Standards Release, one aspect of the fair representation requirement can be satisfied when a clearing agency has a participant advisory committee that has a meaningful opportunity to influence decisions made by the clearing agency's Board of Directors.[131] Under System Procedures, a committee of 5 to 15 participants ("Participants' Committee") will advise Delta's Board of Directors on matters pertaining to the operation of the System.[132]

Although Delta governance procedures provide for the Participants' Committee, commentators [133] argue that those procedures do not provide participants fair representation in the selection of Delta's Board because Delta's Board would be selected solely by Delta shareholders with no input from System participants.[134] In contrast, Delta argues that its Board selection process is appropriate, because Delta shareholders rather than System participants assume the full business risks of owning and operating the company.

Because Delta governance procedures are not consistent with that portion of section 17A(b)(3)(C) requiring fair representation to participants in the selection of a clearing agency's directors, Delta has requested an exemption from that requirement. In adopting GSA, Congress cited section 17A(b)(3)(C) as a requirement in which the Commission should recognize distinctions between proprietary and membership clearing agencies and should exercise its discretionary authority to interpret and adapt that requirement, where appropriate, to proprietary clearing agencies.[135]

The Commission believes that it is appropriate to grant Delta an exemption from section 17A(b)(3)(C). Unlike other registered clearing agencies, Delta likely will not serve as the sole or central clearing facility for any particular market or identifiable group of market participants. Similarly, Delta will not

[122] Several commentators state that the Delta application fails to demonstrate that Delta is so organized and has the capacity to be able to enforce its rules as required by section 17A(b)(3)(A). *See, e.g.*, OCC and CBT letters. The Commission believes Delta's organization satisfies that requirement. Delta's procedures, for example, require all Delta participants to comply with Delta's rules as a condition to continued participation in Delta. Furthermore, Delta has instructed SPNTCO to advise Delta of all participant delivery or payment delays, both of which constitute violations of Delta's rules. Moreover, Delta's rules provide specific sanctions and disciplinary procedures for violations of Delta's rules. Although Delta does not have an operating history, the Commission will oversee Delta's operations and take appropriate action in the event any evidence emerges that Delta is unable or unwilling to enforce its rules.

[123] *See* section 17A(b)(3)(G) of the Act.

[124] *See* section 17A(b)(3)(H) of the Act.

[125] Participants subject to summary suspension would receive notice of that suspension after it has been imposed but would be able to appeal that suspension to the Executive Committee.

[126] Any decision by the Executive Committee to affirm a summary suspension would be appealable to the Board of Directors as of right, but any Executive Committee decision not involving summary suspension would be appealable only at the discretion of the Board of Directors.

[127] Under section 19(f), the Commission could affirm a sanction imposed by Delta if: (1) The grounds on which the sanction is based exist in fact; (2) the sanction is in accordance with System Procedures; and (3) those procedures are and were applied in a manner consistent with the Act. The Commission could reverse any sanctions not meeting the conditions described above or any sanction imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Persons adversely affected by Commission decisions under section 19 of the Act also can obtain review of those decisions in a U.S. Court of Appeals under section 25(b)(1) of the Act.

[128] *See* CBT letters.

[129] The Commission notes that this credit enhancement facility would provide as much as $200 million to cover losses arising from defaults by one or more participants.

[130] *See* Standards Release and Full Registration Order.

[131] *See* Standards Release.

[132] The Participants' Committee will be selected by Delta's Board of Directors and will act in an advisory capacity only (i.e., Delta will not bound by any advice or recommendation of the Participants' Committee).

[133] See OCC, Amex, and CBT letters.

[134] The number of directors would be fixed from time to time by the Board at no less than one nor more than thirteen. Directors would be elected by Delta shareholders at their annual meeting to serve one-year terms.

[135] *See* 132 Cong. Rec. S15798 (October 9, 1987).

mutualize among participants, through a clearing fund or through direct assessments, risks of loss associated with participant defaults or system losses. In the market for OTC Treasury options, Delta, RMJ, and SPNTCO will represent one of numerous trading and clearing system alternatives. Moreover, securities options and futures exchanges and clearinghouses also will be available to market participants that trade in derivative products overlying Treasury securities. The Commission also notes that the Delta System does not have an operating history and that the composition of Delta's participants and System trading volume are unknown at this time. For those reasons, the Commission believes that an exemption from section 17A(b)(3)(C) is appropriate at this time. Before granting Delta full registration as a clearing agency, however, the Commission plans to re-evaluate Delta's governance structure in light of the System's operating history. If at the end of the temporary registration period the Commission believes changed circumstances indicate that Delta should no longer receive a partial exemption from section 17A(b)(3)(C), the Commission will modify or terminate that exemption.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3)(I) provides that a clearing agency's rules may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed below, the Commission believes the System Procedures and Delta's registration as a clearing agency would not impose any inappropriate burdens on competition and indeed should promote increased competition.

The Commission believes that Delta's registration will promote increased competition in the Treasury options market. Specifically, the Commission believes that Delta, in conjunction with its facilities managers, can make efficient, automated processing available to a wider universe of institutions by decreasing the need for each institution to develop its own in-house processing systems, hire personnel, and incur other expenses associated with transaction processing. With these efficiencies, dealers and other investors may be more inclined to trade OTC Treasury options as an alternative method to hedge portfolio risk or discover price movements in the market. Moreover, the assurance of Delta's guarantee of performance regarding all System options may permit fuller participation of some relatively smaller dealers in the OTC government securities options market. Consistent with section 17A(b)(3)(B), System Procedures provide that a wide variety of financial institutions may apply for System participation provided that they satisfy applicable financial responsibility standards as contemplated by section 17A(b)(4)(B).

The Commission believes that Delta's registration will not result in any inappropriate burden on competition among banks or other entities providing clearing services. Banks and other entities providing clearing services can participate in the System and likely will continue to perform settlement services outside the System for government securities brokers and dealers. To the contrary, the Commission believes that approval of this application will, in accordance with Congressional intent, promote additional competition among organizations providing clearing services, all to the benefit of investors and the marketplace.

4. Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That section also provides that clearing agency rules not impose any schedule of prices or fix rates for services rendered by participants. As described below, the Commission believes the System Procedures and fees are consistent with these provisions.

System participants will be charged transaction-based fees for both the use of the brokerage service provided by RMJ and the use of the clearing service arranged by Delta through SPNTCO. Each party to a transaction brokered by RMJ on a blind basis will be charged both a brokerage commission and a clearing fee. Each party to a transaction effected on a fully disclosed basis without the use of RMJ brokerage services will be charged by Delta a clearing fee only. Brokerage commissions and clearing fees assessed against participants would be collected by Delta.

The Commission has reviewed Delta's proposed fees and found them to apply equally to all participants. Furthermore, the Commission believes System Procedures do not in any manner impose prices or fix rates for services provided by participants. Therefore, the Commission believes that Delta's fees are consistent with section 17A(b)(3) of the Act. Delta will be required to file changes to its fees with the Commission pursuant to section 19(b) and Rule 19b–4 under the Act.

5. Delta's "Rules of the Clearing Agency" Interpretation Request

Delta has requested an interpretation from the Commission concerning the phrase "rules of the clearing agency" and associated filing requirements under section 19(b) of the Act and Rule 19b–4 thereunder.[136] Several commentators [137] oppose the request and argue that such an interpretation will place significant aspects of the System outside Commission oversight and will disadvantage other self-regulatory organizations subject to a more expansive interpretation of the phrase. Nevertheless, Delta believes that its requested interpretation is appropriate in the context of a proprietary clearing agency that is not owned or controlled by its participants. Delta also believes that the interpretation will apply only to very limited subject matters and potential changes in Delta's governance structure, and will not affect System operations or Delta participants. In that context, the Commission notes that the Division has issued a no-action letter related to Delta's request subject to modification or revocation at any time as necessary to further the purposes of the Act.[138]

IV. Conclusions and Determinations

The Commission has reviewed Delta's application for registration as a clearing agency pursuant to sections 17A(b) and 19(a)(1) of the Act. The Commission also has reviewed Delta's request for an exemption from section 17A(b)(3)(C) of the Act.

After reviewing Delta's application for registration, the Commission has determined that Delta is organized and has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions; safeguard securities and funds in its custody or control or for which it is responsible; comply with the provisions of the Act and the rules and regulations thereunder; enforce compliance by its participants with System Procedures; and carry out the purposes of section 17A of the Act. The Commission also has determined that System Procedures are designed to promote prompt and accurate clearance and settlement of securities transactions; assure the safeguarding of securities and funds that are in the custody or control of Delta or for which it is responsible; foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; prevent unfair discrimination in the admission of participants or among participants in the use of Delta; and, in general, protect investors and the public interest. In addition, the Commission has determined that System Procedures provide for the equitable allocation of reasonable dues, fees, and other charges among participants; do not impose any schedule of prices, or fix rates or other fees for services rendered by participants; provide for appropriate discipline of participants for a violation of any provision of System Procedures by expulsion, suspension, limitation of activities, fines, censure, or any other fitting sanction. They also provide a fair procedure with respect to the disciplining of participants, the denial of participation to applicants, and the prohibition or limitation by Delta of any person with respect to access to System services; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has granted Delta a partial exemption from section 17A(b)(3)(C) of the Act. The Commission finds that granting the above exemption request is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds.

It is therefore ordered, pursuant to sections 17A(b)(2) and 19(a) of the Act, that Delta's registration be and it hereby is granted for a period of 36 months from the date of this Order, and that Delta be granted the exemptions described above subject to the terms, exemption, and other qualifications contained in this Order.

By the Commission.

Dated: January 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1158 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[136] Specifically, Delta requests an interpretation that would exclude from the filing requirements of section 19(b) changes to Delta's corporate governance documents (*e.g.*, Delta's articles of incorporation, and corporate by-laws that do not affect Delta's participants or the safeguarding of securities and funds.

[137] *See, e.g.*, OCC and CBT letters.

[138] *See* letter from Jonathan Kallman, Assistant Director, Division, to William Lynch, Gaston & Snow, counsel for Delta, dated January 12, 1989.

[Release No. 34-26447; File No. SR-PSE-87-20]

Filing of Proposed Rule Change; The Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S..C 78s(b)(1), notice is hereby given that on June 22, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), proposes the following changes to certain Sections of its Constitution regarding the termination of certain services currently provided by the Pacific Clearing Corporation (the "PCC") and the Pacific Securities Depository Trust Company (the "PSDTC"). The applicable sections of the Constitution are as follows: Article III, Section 2(b) (Eligibility of Governors), Article IV, section 4 (Clearing Committee), Article VII, section 4 (Payment Purchase Price), and Article XV, section 1 (Clearing). (Italics indicates new language; brackets indicate language to be deleted.)

Article III—Elections, Meetings, Terms of Office, Proxies

Sec. 1. through Sec. 2(a). No change.

Eligibility of Governors

Sec. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm [of the Pacific Clearing Corporation] or of a participant firm of [the Pacific Securities Depository Trust Company Incorporated] *any subsidiary of the Exchange performing depository or clearing functions,* or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors. Of the Governors in each of the classes specified in section 2(a), above, at least one shall be a member of the Exchange, at least two shall be office members or office allied members of the Exchange, and one shall be a representative of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the Board at all times.

Article IV—Standing Committees of the Exchange

Sec. 1. through Sec. 3. No change.

Clearing Committee

Sec. 4. It shall be the duty of this committee [, which shall consist of the Board of Directors of the Pacific Clearing Corporation] to promulgate and recommend to the Board of Governors, *as appropriate,* rules pertaining to the settlement of Exchange contracts and to prescribe practices and procedures relating thereto.

Article VII—Transfer of Membership

Payment Purchase Price

Sec. 1. through Sec. 3. No change.

Sec. 4. At least four days prior to the effective date of admission to membership of the transferee, any purchase price being paid for such transfer shall be paid to the Exchange. The only claim of the transferor to such purchase price shall be to any surplus remaining after the application of such purchase price to the following purposes and in the following order or priority:

(a) The full payment of all dues, fees, charges, fines and contributions assessable against said membership or payable by the transferor or his member firm to the Exchange and [to the Pacific Clearing Corporation], *if applicable, to any entity of the Exchange performing clearing or depository functions.*

(b) The payment to members or member firms of all filed claims arising from member contracts if and to the extent that the same shall be determined by the Board of Governors to have arisen out of contracts had between the parties thereto in the ordinary course of business and shall not have been disallowed by the Board of Governors.

(c) The payment of all member contracts that are made subject to the rules of another exchange, provided that such claim shall have been allowed by the Board of Governors.

Article XV—Clearing Transactions

Clearing

Sec. 1. The [Pacific Clearing Corporation, a wholly owned subsidiary of the Exchange, (] *Exchange, or any entity designated by the Board of Governors (in either case,* hereinafter referred to as the "Clearing

Corporation") [shall] *may* provide facilities for (1) the clearing of Exchange and other transactions of members; (2) the borrowing and transfer of securities for members; (3) the rendering of such accounting or other service for members [as it deems] *deemed* appropriate *by the Board of Governors.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change is a result of a determination made by the Board of Governors, that it is in the best interests of the Exchange to terminate certain services currently provided by the PCC and the PSDTC. In terminating these services, the Exchange must also revise those provisions of the PSE Constitution that are set forth below, with a summary of the reasons why the Articles require amending.

Article III, Section 2(b)—Eligibility of Governors

Article III, section 2(b), currently provides, among other things, that any officer or director of a member firm of the PCC or of a participant firm of the PSDTC or an officer, director or general partner of the parent or subsidiary corporation of the PCC or the PSDTC is eligible to be elected as a member of the Board of Governors of the Exchange. The proposed amendment removes the specific references to the PCC and the PSDTC and provides that any officer or director of a member firm or any subsidiary of the Exchange performing depository or clearing functions or an officer, director or general partner of the parent or a subsidiary corporation of such member firm or participant firm is eligible to be elected as a member of the Board of Governors. The purpose of the amendment is to conform Article III, section 2(b) with the anticipated termination of certain services provided by the PCC and the PSDTC. The amendment would not affect the eligibility of any Governor serving on the Board of Governors who is an officer or director of a member firm of the PCC or of a participant firm of the PSDTC and would continue to permit such individuals affiliated with any subsidiary of the Exchange performing depository of clearing functions to be eligible to serve on the Board of Governors.

Article IV, Section 4—Clearing Committee

Article IV, section 4 currently specifies that the membership of the Clearing Committee, a standing committee of the Exchange (the "Clearing Committee" or the "Committee"), shall consist of the Board of Directors of the PCC and that the Committee's duties are to recommend to the Board of Governors rules and procedures pertaining to the settlement of Exchange contracts. The proposed amendment eliminates the reference to the specific composition of the Committee, thereby delegating to the Board of Governors the appointment of Committee members, and prescribes that the Committee shall perform its duties relating to the settlement of Exchange contracts as appropriate. The purpose of the proposed amendment is to make the composition of the membership of the Clearing Committee flexible and its duties consistent with whatever clearing and settlement functions may be performed.

Article VII, Section 4—Payment Purchase Price

Section 4(a) of Article VII provides, in connection with the transfer of memberships, that prior to the effective date of admission to membership of the transferee, the purchase price paid for such transfer shall be paid to the Exchange. The transferor is entitled to the surplus of the purchase price paid after deducting, among other things, the amounts payable in connection with dues and assessments of the transferor payable to the Exchange and the PCC. The proposed amendment to Article VII, section 4(a) deletes the specific reference to the PCC and provides that the amount of the purchase price to which the transferor is entitled shall not include amounts payable in connection with dues and assessments of the transferor payable to the Exchange and if applicable, to any entity of the Exchange performing clearing or depository functions.

Article XV, Section 1—Clearing

Article XV, section 1 specifically provides that the PCC *shall* provide facilities for the clearing of transactions of members and certain other services. The proposed amendment to Article XV, section 1 eliminates the reference to the PCC and substitutes language providing that the Exchange or any entity designated by the Board of Governors *may* provide the same list of services. As with the other amendments, the purpose of this amendment is to conform Article XV, section 1 with the anticipated termination of certain services provided by the PCC.

This proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it will protect investors and the public interest by conforming the rules of the Exchange to the termination decision.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Request for Comments

To assist the Commission in determining whether to approve the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Office of the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR–PSE–87–20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing (SR–PSE–87–20) and of any subsequent amendments also will be available for inspection and copying at the principal office of PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1156 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16751; 811–5261]

American Capital World Investment Series, Inc.; Application

January 11, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Capital World Investment Series, Inc.

Relevant 1940 Act Sections: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 17, 1988 and amended on December 12, 1988. Supplemental letters to the application were filed on December 23, 1988 and on January 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 2800 Post Oak Boulevard, P.O. Box 3121, Houston, Texas 77253–3121.

For Further Information Contact: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022 or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Maryland corporation and open-end diversified management company, filed a Registration Statement on Form N–8A on August 3, 1987.

2. Applicant has never made a public offering of its securities and does not propose to make a public offering or to engage in business of any kind. Applicant did make an initial sale of 848,026 shares of its common stock to its investment adviser, American Capital Asset Management, Inc., at a net asset value per share of $11.91. On October 7, 1988, Applicant sold its portfolio securities and made a cash distribution in complete liquidation to its sole shareholder. As of October 7, 1988, Applicant's total net asset value was $9,403,886.00, with a net asset value per share of $11.09.

3. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

4. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which are securityholders of Applicant.

5. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1152 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16752; 812–6900]

Banque Nationale de Paris; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Banque Nationale de Paris.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the issuance and sale of any type of its equity securities in the United States.

Filing Date: The application was filed on October 13, 1987, and an amended application was filed on October 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o George M. Cohen, Esq., Cleary, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is the largest commercial bank in France and, together with its subsidiaries, one of the ten largest commercial banks in the world. The Applicant has numerous subsidiaries and affiliates within and outside of France which engage in a full range of general commercial banking activities as well as in other financially oriented activities. As of December 31, 1987, the Applicant and its subsidiaries

and affiliates had consolidated assets of $182.7 billion. Consolidated customer deposits and consolidated consumer loans amounted to $72.5 billion and $87.9 billion, respectively. (French francs (FF) have been converted at the rate of exchange of U.S. $1.00=5.34FF, a median rate on the Paris Stock Exchange on December 31, 1987.) The Republic of France (or its designees) owns 100% of the voting capital stock of the Applicant. Applicant has also issued to the public in France two types of non-voting equity securities.

2. The Applicant and its subsidiaries and affiliates are subject to comprehensive banking regulations in each major jurisdiction in which they operate. In particular, the Applicant is subject to extensive government regulation as a banking organization in France under a structure that is generally comparable to regulations applicable to banks in the United States and in other European countries. No country other than France accounts for more than 10% of total consolidated assets or revenues. Rules and regulations governing the operations of French banks range from licensing requirements and restrictions on the scope of non-banking activities to detailed balance sheet ratios and regular reporting and reserve requirements.

3. In the United States the Applicant has state-licensed banking branches in New York, Chicago, San Francisco and Los Angeles and offices and agencies in other states. At December 31, 1987, assets of Applicant's United States branches, agencies and subsidiaries amounted to approximately $12.6 billion, or 6.9% of the total consolidated assets of the Applicant.

4. The Applicant is subject to federal reporting requirements under the Bank Holding Company Act of 1956, and its U.S. branches, offices and agencies are subject to examination requirements under the International Banking Act of 1978. Applicant's New York branch is subject to extensive state regulation, and the other branches and agencies of the Applicant are subject to extensive regulations comparable to those of New York.

5. The Applicant and/or the Republic of France may at some time wish to establish a market in the United States for Applicant's equity securities through private placement or public offerings, either directly or in the form of American depositary shares represented by American depositary receipts. The term equity securities as used in connection with the future offerings described herein and more fully set forth in the application shall include any class or type of equity security which the Applicant may at the time be authorized to issue under French law or which the Applicant may make available to its shareholders through a rights offering.

6. Should the Applicant make a public offering of its equity securities in the United States, such offering would be registered under the Securities Act of 1933 (the "1933 Act"). In connection with any such offering, the Applicant would file a registration statement with the SEC and would not sell such securities until the registration statement had been declared effective by the SEC. In addition, the Applicant would become subject to and would comply with the reporting requirements applicable to foreign issuers under the Securities Exchange Act of 1934. In connection with the offering, the Applicant would comply with the prospectus disclosure and delivery requirements of the 1933 Act. The Applicant would ensure that any placement of its equity securities in the United States under circumstances not requiring registration under the 1933 Act would meet the prevailing standards for an exemption from registration under the 1933 Act.

7. The requested order will supplement a prior order (Investment Company Act Release No. 10813, August 7, 1979) under which the Applicant was exempted from all provisions of the 1940 Act in connection with the issuance and sale of its commercial paper and other debt securities in the United States.

Applicant's Undertakings

1. The Applicant undertakes that any prospectus relating to an offering of the type described above and in the application would contain a description of the business of the Applicant. It would also contain the Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing, and such prospectus would disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks. Such prospectus would be updated promptly to reflect material changes in the financial condition of the Applicant. Any private placement memorandum delivered in any such placement would contain disclosure at least as comprehensive as that customarily made by foreign issuers making private placements in the United States.

2. The Applicant undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon any order granted pursuant to its application or in connection with the equity securities distributed thereby. The Applicant further undertakes that in connection with any such offering it would appoint an agent in the City of New York to accept service of process. Such submission to jurisdiction and appointment of an agent for service of process would be irrevocable for so long as any of the Applicant's equity securities issued in reliance upon any order granted pursuant to its application remained outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process would not affect the right of any holder of such equity securities to bring suit in any court having jurisdiction over the Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of the securities or have any responsibilities or duties to act for such holders.

3. The Applicant undertakes with regard to public offerings of equity securities that are not issued in the United States or sold to U.S. persons in primary offerings (but where because of factors such as the development of a secondary market in the securities, there is a reasonable possibility that such equity securities could be offered in the United States or to U.S. persons), that the Applicant will adopt agreements and procedures reasonably designed to prevent such securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

4. The Applicant has a substantial banking presence in the United States through its branches, offices and agencies in New York and in other states. The Applicant represents that it has no present intention to curtail its banking operations in the United States so as to cease to be subject to regulation under applicable United States federal or state banking legislation. If, however, such operations are curtailed in the future with the result that the Applicant is no longer subject to such regulation in the United States, the Applicant agrees that it will continue to comply with the undertakings concerning the Applicant's submission to jurisdiction and appointment of an agent for service of process, as set forth in paragraph 2 above, until such time as there shall be no holders in the United States of the Applicant's equity securities issued in reliance upon any order made pursuant to the application. The Applicant would issue equity securities in the United States only so long as the Applicant is supervised and examined by French governmental authorities having the power of supervision over banks in France and, in respect of its U.S. banking operations, by State or federal authorities in the United States having the power of supervision over banks in the United States. The Applicant represents that it has no present intention to curtail its banking operations in France so as to cease to be subject to banking regulations in France.

5. The Applicant consents to any SEC order granting the application being expressly conditioned upon its compliance with the undertakings and representations summarized above and more fully set forth in its application.

Applicant's Legal Analysis

The requested order is both necessary and appropriate in the public interest. By providing the Applicant with the opportunity to have greater access to the U.S. capital markets, approval of the application would advance the policies underlying the International Banking Act of 1978, which includes placing United States banks and foreign banks on a basis of competitive equality in their U.S. transactions. Approval would also make a major foreign issuer's equity securities available to the general investing public, as well as to institutional and sophisticated investors, subject to the protections of the U.S. securities laws. The requested order is consistent with the protection of investors. The Applicant is subject to a comprehensive scheme of regulation both in France and in the United States. The requested order is consistent with the purposes of the 1940 Act because regulation of commercial banks was not within the intent of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

January 11, 1989.

[FR Doc. 89-1153 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16745, 812-7192]

Bear, Stearns & Co. Inc.; Application

January 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bear, Stearns & Co. Inc. (the "Applicant"), on behalf of Municipal Securities Trust, High Income Series.

Relevant Sections of the 1940 Act: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of the Application: The Applicant seeks an order permitting it as sponsor of Municipal Securities Trust, High Income Series (any particular series of such entity hereinafter referred to as a "Trust") to purchase certain specified securities (the "Bonds") from the Trusts and for an order granting confidential treatment for certain information regarding the Bonds.

Filing Date: The application was filed on December 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10117.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Trusts are sponsored by the Applicant and its units ("Units") are registered under the Securities Act of 1933, as amended. The Trusts were formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trusts which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal (credit risk) than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trusts are not rated by any national rating organization and the market for such bonds may not be as broad as the market for rated bonds.

3. The Trusts have invested in bonds which were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trusts in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds and are infrequently traded because there are fewer bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if a Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

The Applicant is concerned that if a portfolio security is being disposed of one of the Trusts for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude the Applicant from bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the bond. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The bids for the Bonds in question as of the date of the filing of the application are all substantially below the current value of the Bonds as determined by the independent evaluator of the Trusts. The

inability of the Trusts to sell the Bonds to the Applicant in these circumstances at a price at least equal to the Bonds' current value would be detrimental to Unit holders and not in furtherance of the Act or consistent with the Act's enunciated goal of protecting investors. The application seeks an exemption from Section 17(a) which would permit the Applicant, the sponsor of the Trusts, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. It is submitted that disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trusts will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust's indenture.

2. While it is important for the SEC to review the information regarding the Bonds, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of the Applicant and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to the Applicant.

3. The Bonds are being sold by the Trusts because their credit quality is no longer consistent with the Trusts' credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated bonds, is concerned that public disclosure of this information may have an adverse effect on the value of both the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. Best Price

Before executing any sale of the privately negotiated Bonds to the Applicant, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and in doing so, the Trustee will be required to advertise the bond on national municipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum price increment (i.e., at least ⅛th of 1% of principal amount or $1.25 per $1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to the transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. Fair Price

Before effecting a sale to the Applicant where it is the only bidder and there are no other bids available, the Trustee will be required to determine whether such price is a "fair price." Determining whether a price is a "fair price," the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (i.e., appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with the Applicant, where the Applicant quotes the only price, and "fair price," to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. Previous Institutional Repurchases

Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time a Trust makes its sale of the Bond, the price at which the Trust sells the Bond to the Applicant will not be less than the highest price paid to any such institutional holder. This procedure offers further indication that the price at which the Applicant would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.

4. Remittance of Future Profit

The Applicant undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bond would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by the Applicant less (i) the price previously paid to the Trust (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization), thus eliminating the profit possibility from any self-dealing. If a Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from that Trust.

5. Departmental Independence

While the determination that the Bonds should be sold from the Trusts was made by the Applicant as sponsor, the personnel of the Applicant making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at the Applicant is involved in the selection and purchase of securities on the part of each Trust and has direct involvement in the administration and monitoring of the Trusts. The public finance department and the municipal bond department of the Applicant perform the underwriting and market making activities for municipal bonds. The decision to sell a portfolio security by the Trusts originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trusts for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trustes with the Applicant.

6. Segregated Records

The Applicant undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1067 Filed 1-17-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16750; (812-6936)]

Elan Funds, Inc.; Application

January 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Elan Funds, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 18(g).

Summary of Application: Applicant seeks an order to permit the implementation of a proposed dividend policy involving the issuance and sale of two separate classes of shares in each of three investment portfolios in the manner described below.

Filing Dates: The application was filed on December 15, 1987, and an amendment to the application was filed on January 9, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 600 Seventeenth Street, Suite 1605 South, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney (202) 272-3045, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On November 2, 1987, Applicant's predecessor filed a Registration Statement under both the 1940 Act and the Securities Act of 1933 on Form N-1A which was subsequently declared effective by the SEC. On February 23, 1988, Applicant filed a Post-Effective Amendment to adopt this Registration Statement as its own. Applicant offers three separate money market portfolios (the Money Market Fund, U.S. Government Money Market Fund and Tax-Exempt Money Market Fund) that are designed to meet the short-term cash management needs of institutional customers and other investors. The three portfolios are referred to individually as "Fund" and collectively as "Funds".

2. Applicant uses its best efforts to maintain the net asset value of each Fund at $1.00 per share. The net asset value per share of each Fund is computed using the amortized cost method in accordance with the requirements of Rule 2a-7 under the 1940 Act.

3. Shares of the Funds are offered to the public without a sales load. Shares may be purchased by individuals, corporations and other types of investors. Payment for share purchases must be by check or money order, or by federal funds wire.

4. Applicant executes all purchase orders for shares of each Fund on the same day an order and payment are received in proper form, regardless of the form by which payment is made. As a result, an investor becomes a shareholder on the date of such receipt.

5. Each Fund declares its net investment income as a dividend on a daily basis and pays dividends monthly. Currently, shares of each Fund begin earning dividends on the day a purchase order is executed, and continue to earn dividends through and including the day before the shares are redeemed.

6. Applicant believes that its current dividend policy serves the legitimate needs of institutional investors such as bank trust departments that purchase shares by federal funds wire and require that payment for redeemed shares also be made by federal funds wire on the redemption date. Applicant is concerned, however, that its current dividend policy may not be optimal for investors who purchase shares by check or money order because of the delay in converting such payment into good funds for investment.

7. Applicant believes that certain other money market funds address this issue by delaying the execution of share purchase orders until check or money order payments are converted into federal funds. Applicant's custodial and transfer agency systems, however, are programmed to process all purchase orders on the day the orders are received, and Applicant believes that the required programming changes will not be cost-effective, may increase costs to shareholders and may create other operational problems.

8. As a result, Applicant wishes to implement the proposed dividend policy described below whereby investors who purchase Fund shares by federal funds wire will earn dividends beginning on the day their shares are purchased through and including the day before the investors are entitled to receive redemption proceeds by federal funds wire (which will be either the redemption date or the next business day, depending upon the time of a day a redemption request is received by Applicant's transfer agent). Other investors, who make purchase payment by check or money order, will earn dividends beginning the next business day after their shares are purchased through and including the day on which the shares are redeemed.

9. Applicant will implement the proposed dividend policy through the issuance of two separate classes of shares, referred to as "Class 1 Shares" and "Class 2 Shares", in each Fund. The creation of two classes of shares will avoid concerns arising under state law if different dividend record dates were used in the manner described below for different shares within the same class. In addition, Applicant will compute the net asset value of each Fund twice each business day in accordance with Rule 22c-1 under the 1940 Act. The first daily pricing, referred to as the "First Pricing", is currently scheduled to occur as of 10:30 a.m. Central Time. The second daily pricing, referred to as the "Second Pricing", is currently scheduled to occur as of the closing of trading on the New York Stock Exchange (the "NYSE").

10. Investors who purchase shares by check or money order will be permitted to buy only Class 1 Shares of a Fund. Investors who purchase shares through the transfer of federal funds will be permitted to buy only Class 2 Shares of a Fund. Each Fund's Class 1 Shares and

Class 2 Shares will have identical voting, dividend and liquidation rights. The only difference between the classes (other than their class designations) will relate to the timing of dividends earned.

11. Each Fund will declare one dividend each day from the day's net income shortly before the First Pricing (or the comparable time on non-business days). All shareholders of each Fund will participate in the particular Fund's dividned on a *pro rata* basis. Neither class of shares in a Fund will therefore have any priority over the other class of shares in the same Fund as to the distribution of assets (in liquidation or otherwise) or as to payment of dividends. However, in declaring the daily dividend, each Fund will utilize two record dates. More particularly, dividends will be declared daily in per share amounts determined by dividing a Fund's net income by the sum of: (i) The number of Class 1 Shares that were outstanding at the opening of business on the day the dividend is declared (or if such day is a non-business day that were outstanding at the opening of business on the last business day immediately preceding the day the dividend is declared), and (ii) the number of Class 2 Shares that were outstanding immediately after the First Pricing on the day the dividend is declared (or if such day is a non-business day that were outstanding immediately after the First Pricing on the last business day immediately preceding the day the dividend is declared).

2. The effect of the proposed dividend policy will be as follows. An investor who places a purchase order that is received by Applicant on a business day by the First Pricing may acquire Class 2 Shares of a Fund at the First Pricing and begin earning dividends on the day of purchase if payment for the shares is made in federal funds. In the case of non-institutional investors, payment in federal funds must be guaranteed by a creditworthy institution. Purchase orders for Class 2 Shares that are received after the First Pricing will not be accepted. Redemption orders for Class 2 Shares will be redeemed on the day of receipt by Applicant at either the First Pricing or Second Pricing, depending upon the time of day the redemption order is received. If a redemption order is received by the First Pricing, Applicant expects that, absent unusual circumstances, the redemption proceeds will be wired to the investor involved on the redemption date. Class 2 Shares that are redeemed at the First Pricing will not earn a dividend on the redemption date. If a redemption order is received after the First Pricing, Applicant expects that the redemption proceeds will be wired to the investor on the next business day. Class 2 Shares that are redeemed at the Second Pricing will earn a dividend on the redemption date, which is the day prior to the day redemption proceeds are to be paid by Applicant. In contrast, although purchase orders for Class 1 Shares will be executed on the day an order is received in proper form, Class 1 Shares will not be credited with their first dividend until the day after purchase, but will, in all cases, be credited with their last dividend on the day they are redeemed. Redemption proceeds for Class 1 Shares will be paid by Applicant to investors after the day of redemption in accordance with Rule 22c–1 under the 1940 Act.

13. Finally, an investor who purchases Class 2 Shares on a Friday or a day preceding a holiday will receive the dividend declared on the day of purchase and also the dividends that are declared on the Saturday, Sunday or holiday that immediately follows such purchase; but an investor who redeems Class 2 Shares on such a day will not receive the dividends declared on the redemption date or any day thereafter (unless the redemption order is received after the First Pricing and the investor, therefore, is not entitled to receive the redemption proceeds until the following business day). An investor who purchases Class 1 Shares on a Friday or a day preceding a holiday will not receive the dividend declared on the day of purchase or the dividends that are declared on the Saturday, Sunday or holiday that immediately follows such purchase, but an investor who redeems Class 1 Shares on a Friday or a day preceding a holiday will, in all cases, receive the dividends declared on the days metioned. These differences in dividend payments track the earnings that will be received by the Funds on each investor's investment in the Funds.

Applicant's Legal Analysis

1. Applicant requests an exemptive order pursuant to section 6(c) to the extent that the proposed dividend policy, including the issuance and sale of two separate classes of shares in each Fund as described above, might be deemed to constitute a "senior security" within the meaning of section 18(g) and therefore be prohibited by section 18(f)(1) of the 1940 Act.

2. Applicant submits that the relief requested is grounded on the legitimate business and accounting needs of the investors for which the Funds' policies are designed, will more fairly reflect the timing of actual earnings on the investments made by particular investors and will not adversely affect the interests of any shareholders.

3. Applicant also maintains that the proposed policy does not violate Rule 22c–1 under the 1940 Act. The participation of the Class 2 Shareholders in the dividends declared on the day their shares are purchased will not affect the amount per share paid to the Applicant's Class 1 Shareholders because federal funds received from the sale of Class 2 Shares will be available for investment on the date of receipt, and the earnings thereon for the day will be included in a Fund's dividend net income for that day. Conversely, because Applicant will normally be unable to invest funds received from investors purchasing Class 1 Shares by check or money order on the purchase day, the proposed dividend policy avoids the possible yield dilution that could occur if dividends were paid on Class 1 Shares on the purchase date. It also properly credits Class 1 Shareholders with their last dividend on the day their shares are redeemed since Applicant will have use of their investment monies on that date.

4. Applicant maintains that its proposed policy will further the interests of shareholders by permitting (i) the wire payment of redemption proceeds on the same day a share redemption order is executed, (ii) the coordination of a Fund's dividend policy with the accounting systems of institutional shareholders and (iii) the matching of dividend payments on Fund shares with the receipt of interest payments on portfolio investments.

Applicant's Conditions

If the requested order is granted, Applicant agrees that:

1. It will not reduce the amount of any dividend declared to shareholders with respect to any Fund in order to maintain a Fund's net asset value per share at $1.00 when calculated to the nearest 1%.

2. It will adhere to any rule, regulation or pronouncement of the SEC in the future that affects Applicant's proposed dividend policy described in the application, including those aspects of the policy relating to the daily declaration of dividends and the twice-daily pricing of Fund shares.

3. It acknowledges that the requested exemptive order is limited to section 18 of the 1940 Act, and that the issuance of such exemptive order shall not imply any SEC approval, authorization or acquiescence regarding any issue arising under section 22 of the 1940 Act or Rule 22c–1.

4. Applicant's transfer agent will make federal funds available with respect to checks and money orders for the purchase of Class 1 Shares on the morning of the first business day after receipt, before the First Pricing of Applicant's shares.

5. Applicant's will, directly or through its agents, maintain all records, accounts, journals and other documents that are either explicity or implicitly required by the Application or are necessary in order to satisfy the representations and conditions set forth or referred to herein.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1154 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9624]

McClatchy Newspaper Inc.; Application

January 11, 1989.

McClatchy Newspapers, Inc. ("Company") (class A common stock, $.01 par value, American Stock Exchange), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's common stock recently was registered and commenced trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 2, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commissior for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1157 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16753; (812–7052)]

Pacific American Fund et al.; Application

January 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval of Certain Offers of Exchange under the Investment Company Act of 1940 ("1940 Act").

Applicants: Pacific American Fund ("Pacific"), Westcore Trust ("Westcore"), ALPS Securities, Inc. ("ALPS") and Fidelity Distributors Corp. ("Fidelity") (collectively, "Applicants").

Relevant 1940 Act Section: Approval requested under section 11(a).

Summary of Application: Applicants seek an order approving certain proposed offers of exchange of shares among the existing investment portfolios offered by Pacific, Westcore and any other future investment companies for which First Interstate Investment Services, Inc. ("FIIS"), First Interstate Bank of Denver, N.A. ("FIBD"), First Interstate Bank of Oregon, N.A. ("FIOR"), or their subsidiaries or affiliates serves as investment adviser or sub-adviser ("Fund" or "Funds") on a basis other than their respective net asset value per share at the time of exchange and permitting the imposition of a nominal administrative fee of $7.50 on such exchanges.

Filing Dates: The application was filed on June 22, 1988, and amended on December 8 and December 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Drinker Biddle & Reath, 1100 Philadelphia National Bank Building, Broad & Chestnut Streets, Philadelphia, PA 19107, Attention: Joseph P. Galda, Esq.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland at (301) 258–4300).

Applicant's Representations

1. Pacific and Westcore are open-end, management investment companies registered under the 1940 Act. Pacific is a series company that currently offers investors a selection of two Funds: the Money Market Portfolio and the Short-term Government Portfolio (each of which is a No-Load Fund). Westcore is a series company that currently offers a selection of twelve Funds: the Money Market Fund, which is a No-Load Fund and eleven Load Funds: the MIDCO Growth Fund, the Oregon Tax-Exempt Fund, the GNMA Fund, the Basic Value Fund, the Bonds Plus Fund, the Long-Term Bond Fund, the Intermediate-Term Bond Fund, the Modern Value Equity Fund, the Equity Income Fund, the Short-Term Bond Fund, and the Short-Term Government Fund. Shares of the No Load Funds are offered at net asset value without a sales load. Shares of the Load Funds are offered at net asset value, plus a maximum front-end sales load of 4.50% of the public offering price per share. None of the Funds currently charges a contingent deferred sales load or a redemption fee.

2. FIIS serves as investment adviser and FIBD and Denver Investment Advisors, Inc. ("DIA"), a wholly owned subsidiary of FIBD, serve as sub-investment advisers to Pacific. FIBD and FIOR serve as the investment advisers to Westcore and DIA serves as sub-investment adviser to certain of the Westcore Funds. Fidelity serves as distributor of the shares of Pacific and ALPS serves as distributor of the shares

of Westcore. FIIS, FIBD and FIOR are affiliates of First Interstate Bancorp, but neither Fidelity nor ALPS are so affiliated.

3. As distributors of the shares of Pacific and Westcore, Fidelity and ALPS will maintain a continuous public offering of shares of the No-Load Funds at their respective net asset values without a sales charge, and a continuous public offering of the shares of the Load Funds at their respective current net asset values plus the applicable sales load.

4. Applicants seek the ability to permit the following exchange offers between Funds: (i) Shares of a Load Fund may be exchanged for shares of another Load Fund on the basis of relative net asset value without the payment of a sales load; (ii) shares of a No-Load Fund may be exchanged for shares of another No-Load Fund on the basis of relative net asset value without the payment of a sales load; (iii) shares of a Load Fund may be exchanged for shares of a No-Load Fund on the basis of relative net asset value without the payment of a sales load; and (iv) shares of a No-Load Fund may be exchanged for shares of any Load Fund subject to the sales load normally charged by the Load Fund (unless the investment in those shares was previously subject to a sales load by one of the Funds). Any sales load charged with respect to the acquired security will be a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales loads previously paid on the exchanged security. In the event that a sales charge is imposed on an exchange, any right of accumulation or letter of intent as described in the Funds' prospectuses would be considered in determining the sales charge applicable to the exchange. Also, each exchange will be subject to the minimum investment requirements of the Fund's shares that are to be acquired in the exchange.

5. Exchanges will be subject to the imposition of a nominal administrative fee of $7.50 per transaction. For a complete description of the administrative fee, *see* a copy of services agreement between Westcore and Fund/Plan which is attached as an exhibit to the application.

6. In each of the exchanges described above, shares acquired through reinvestment and dividends and capital gain distributions will be deemed to be sold with a sales load, if any, equal to the sales load, if any, previously paid on the shares on which the dividend was paid or distribution made. Moreover, when a shareholder exchanges less than all of this shares of a particular Fund, the shares upon which the highest sales load was previously paid will be deemed to be exchanged first.

7. Applicants are aware that some exchanges might provide an opportunity for brokers, acting ostensibly on behalf of their clients, to initiate exchanges for the broker's own benefit. However, Applicants represent that ALPS and Fidelity have established sufficient internal review procedures to ensure that exchanges are made at the request of investors and not for the brokers' personal gain and that they are actively monitoring customer complaints and will continue to be alert to the possible abuses that might occur regarding the exchange privileges.

Applicants' Legal Conclusions

1. The proposed exchange privilege described above is designed to expedite voluntary redemption and purchase transactions initiated solely at a shareholder's request.

2. The proposed exhange privilege is consistent with revised proposed Rule 11a–3 under the 1940 Act.

3. Since the exchange privilege adds desirable flexibility for shareholders of Pacific and Westcore, giving credit for sales loads previously paid while ensuring that improper use of the exhange privilege will not disrupt distribution of the Load Funds, the Applicants submit that approving the exchange privilege is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicants agree to the following conditions:

(1) Applicants will comply with the provisions of revised proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

(2) Applicants will limit any future offers of exchnge involving any future Funds to the terms and conditions described in the application.

(3) Shareholders of Applicants will be notified by means of the Funds' prospectuses of the fact that Applicants reserve the right to modify or terminate the exhange privileges.

(4) In connection with the sales literature and advertising that refer to the Funds' exhange privileges, the Funds will consider the desirability of disclosing that the Funds reserve the right to modify or terminate the exchange privilege.

(5) Shareholders will be notified in writing at least 60 days prior to any modification or termination of the Funds' exhange privilege, except in the case of a reduction of any administrative fee, in which case prior notice shall not be required; provided, however, that the temporary cessation of the sale of the Funds' shares under extraordinary circumstances such as when the Funds are unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of the Funds' shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the Funds' exhange privilege.

(6) The Applicants undertake to obtain an amended order from the SEC prior to any modification (i.e., manner, frequency, or basis) of the Funds' exchange privilege in a manner not described in the application, as amended; provided, however, that an amended order need not be obtained to terminate the Funds' exchange privilege.

(7) Applicants will limit the administrative fee imposed upon an exhange to an amount not exceeding $7.50.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1155 Filed 1–17–89; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62]

Amendent of Effective Date of Increased Duties on Certain Products of the European Community

SUMMARY: The United States Trade Representative hereby amends the effective date of the increased duties on imports of certain articles the product of the European Community imposed in his notice of December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, (202) 395–3074, or Les Glad (202) 395–3077, for technical and policy information, or Richard Parker (202) 395–6800, for legal issues.

SUPPLEMENTARY INFORMATION: On December 29, 1988, pursuant to authority delegated by the President to the United States Trade Representative in Proclamation No. 5759 of December 24, 1987, the United States Trade Representative partially terminated the suspension of the application of increased duties on imports of certain products of the European Community proclaimed in Proclamation No. 5759 and modified the list of affected products. That notice (53 FR 53115) set 12:02 a.m., January 1, 1989, as an effective date for the imposition of the increased duties.

In order to exclude goods that received a veterinary certificate for export before January 1, 1989 or that were shipped before January 1, 1989, from the application of increased duties, this notice amends the previously announced effective date by stipulating that: The increased duties being applied pursuant to Proclmation 5759 as provided in, and the modifications to the Harmonized Tariff Schedule of the United States made by, the notice of December 29, 1988, shall not apply to articles entered, or withdrawn from warehouse for consumption, before February 1, 1989, which were either exported prior to January 1, 1989, or received a veterinary certificate for export prior to January 1, 1989.

This amendment shall be published in the **Federal Register.**

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 89–1202 Filed 1–17–89; 8:45 am]

BILLING CODE 3190–01–M

Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on policies and practices that should be considered with respect to designation of countries under section 182 the Omnibus Trade and Competitiveness Act of 1988 (Act).

SUMMARY: Section 182 of the Act requires USTR to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection. (19 U.S.C. 2242.) In addition, USTR is required to determine which of those countries could be subject to self-initiation of a section 301 investigation. USTR is requesting written submissions from the public concerning foreign countries' policies and practices that should be considered under section 182.

Submissions should consist of a description of the problems experienced and their effect on U.S. industry. Initial analysis of issues will begin in February and initial submissions should be sufficiently detailed to assist in this analysis, although parties can supplement these submissions with additional information or make additional submissions at a later date.

Initial submissions should be received by February 6, 1989. Parties must provide twenty copies of the submission to Dorthy Balaban, Section 301 Committee, Room 222, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: C. Michael Hathaway, Senior Deputy General Counsel, Office of the U.S. Trade Representative, or Catherin R. Field, Associate General Counsel, Office of the U.S. Trade Representative (202) 395–3432.

C. Michael Hathaway,

Senior Deputy General Counsel.

[FR Doc. 89–1068 Filed 1–17–89; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–69]

Unfair Trade Practices; Notice of Public Hearing; Japanese Barriers to the Provision of Architectural, Engineering, and Construction Services, and Related Consulting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing.

SUMMARY: On November 21, 1988, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974 with respect to Japanese barriers to the provision of architectural, engineering, and construction services, and related consulting services (53 FR 47897). The USTR has received written comments on the issues raised in this investigation, and will conduct a public hearing on this matter on February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Richardson, Special Assistant for Services, (202) 395–7271, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The International Engineering and Construction Industries Council has requested a public hearing on this matter, and the USTR believes such a hearing is an appropriate means of obtaining information to prepare for future consultations with the Government of Japan regarding this investigation.

The section 301 Committee will hold a public hearing at 10 a.m. on February 14, 1989. The hearing will be conducted in Court Room B (Room 111) at the International Trade Commission, 500 E Street SW., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on February 3, 1989, to Dorothy Balaban, Staff Assistant to the Section 310 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to 15 CFR 2006.8.

Persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on February 6, 1989, to Ms. Balaban at the address listed above.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–1140 Filed 1–17–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars; Small Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of Advisory Circulars; Part 23 Airplanes.

SUMMARY: The purpose of this notice is to advise the public of advisory circulars (AC's) issued and cancelled by the Small Airplane Directorate since January 1988. These AC's, listed below, relate to Part 23 of the Federal Aviation Regulations (FAR) and/or Part 3 of the Civil Air Regulations (CAR). They were issued to inform the aviation public of acceptable means of showing compliance with the Airworthiness Standards in the FAR and/or CAR, but the material is neither mandatory nor regulatory in nature.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Foland, Manager, Policy & Guidance Section, ACE–111, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street.

Kansas City, Missouri 64106; commercial telephone (816) 426–6941, or FTS 867–6941.

SUPPLEMENTARY INFORMATION:

Background

These AC's were developed in response to the needs identified by industry during the FAA Airframe Policy and Program Review Public Meeting held in Wichita, Kansas, on June 8–9, 1983; and to update existing policy information for Small Airplane Certification programs.

Comments

Interested parties were given the opportunity to review and comment on each AC during the development phase. At that time, notices were published in the **Federal Register** to announce the availability of, and request written comments to, each proposed AC. Each comment was reviewed and resolved. Appropriate comments were incorporated in the AC.

Cancelled

AC 23.807–1A, dated October 29, 1987, Subject: Emergency Exist Size and Shape, was cancelled December 2, 1988. It was determined that this AC had served its purpose and is no longer needed.

Distribution

The published AC's are available upon request through the U.S. Department of Transportation, Subsequent Distribution Unit, M–443.2, Washington, DC 20596.

ADVISORY CIRCULARS PUBLISHED

AC Number	Subject	Date signed
23–9	Evaluation of Flight Loads on Small Airplanes with T, V, +, or Y Empennage Configurations	1/27/88

ADVISORY CIRCULARS CANCELLED

AC number	Subject	Date signed	Date cancelled
23.807–1A	Emergency Exit Size and Shape	10/29/87	12/2/88

Barry D. Clements,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1089 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–13–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement/Environmental Impact Report on the Peninsula Commute Service (PCS), San Francisco Downtown Station Relocation Project, CA

AGENCIES: Urban Mass Transportation Administration, DOT (NEPA), Peninsula Commute Service Joint Powers Board (CEQA).

ACTION: Notice to prepare an Environmental Impact Statement/ Environmental Impact Report.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Peninsula Corridor Study Joint Powers Board (JPB) are undertaking the preparation of an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the PCS Relocation of the San Francisco Downtown Terminal Station project. The NEPA Lead Agency will be UMTA. The CEQA Lead Agency will be the JPB.

The PCS is the commuter rail system that currently serves the San Francisco Peninsula between San Jose and the existing terminal station in San Francisco located at Fourth and Townsend Streets.

The present location of the terminal at its Fourth and Townsend Street site (at grade) is not considered desirable either from transportation or land use/public planning perspectives and is not consistent with the proposed Mission Bay Plan in San Francisco. The study has the overall objective of identifying a cost effective and desirable location for the PCS's downtown terminal station so that it best serves the transit patrons, most of whom are destined to the downtown financial district, and meets the needs of increasing travel into downtown San Francisco.

The EIS/EIR is being prepared in conformance with the requirements of the California Environmental Quality Act and 40 CFR Part 1500, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Clark, UMTA Region IX, 211 Main Street, Suite 1160, San Francisco, CA 94105, (415) 974–7317.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Public scoping meetings will be held on February 15, 1989 at 3:00 p.m. and 7:00 p.m. at the State Office Building at 350 McAllister, San Francisco, Room 1158. The purpose of the scoping meetings is to establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, staff will present a description of the proposed scope of the study using maps and visual aids, as well as a plan for action citizen involvement program and a projected work schedule. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be either orally at the meeting or in writing by February 21, 1989.

Description of Study Area

The San Francisco Downtown Station Relocation Study area is located in the vicinity of the existing Terminal Station and the Transbay Transit Terminal east of the San Francisco Financial District. In general terms, the study area is bounded by Market Street, the Embarcadero, China Basin Channel, Sixteenth Street and Seventh Streets. The primary evaluation corridors are along Seventh, Second, Main, King, Embarcadero and Howard Streets. Market Street, the Transbay Transit Terminal, and Mission Bay sites are the locations under consideration for the relocated terminus.

Alternatives

Transit alternatives proposed for consideration in the study area include the "No-Build" or "Do-Nothing" Alternative and several build alternatives including lower cost capital improvements that would relocate the existing terminal station. They alternatives proposed for consideration are the following:

Number and Description

1. Do Nothing, under which the terminal station would remain at Fourth and Townsend with existing feeder bus service.
2. Low Cost Capital Improvements under which the present terminal station would be relocated to the east side of Seventh Street opposite Hooper on the South side of the China Basin Channel with enhanced bus feeder service to and from the relocated station.

3. Low Cost Capital Improvements identical to Alternative 2 with a connection on the east side of the terminal to an extension of Muni Metro beyond its presently proposed terminal at Fifth and King Streets.

4A. Routing PCS in subway along King Street and Second Street with a station on King Street at Fifth Street and a terminal station on Second Street at Market Street.

4B. Routing PCS in subway along Seventh Street with a station on Seventh Street at Townsend Street and terminal station on Seventh Street at Market Street.

5A. Routing PCS in subway along King Street, the Embarcadero, Main Street, and Howard Street with a station on King Street at Fifth Street and a terminal station at the existing Transbay Transit Terminal. This alternative may include an undergound yard on Main Street between Folsom and Byrant Streets.

5B. Routing PCS in subway along King Street, Second Street, and Howard Street with a station on King Street at Fifth Street and a terminal station at the existing Transbay Transit Terminal. This alternative may include an underground yard on Main Street between Folsom and Bryant Streets.

5C. Routing PCS in subway along King Street, Colin P. Kelly Street, and under the Interstate 80 approach to the Bay Bridge. It would then rise from subway onto aerial structure to meet the existing elevated approach to the Transbay Transit Terminal. Stations would be located on King Street at Fifth Street and a terminal station on the upper level of the existing Transbay Transit Terminal.

Comments at the scoping meeting should focus on the appropriateness of these and other alternatives for consideration in the study, not on individual preferences for a particular alternative as being the most desirable for implementation.

Probable Effects

Impacts proposed for analysis include changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, business disruptions, neighborhoods), impacts on parklanda and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating and maintenance costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal (NEPA) and State (CEQA) environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Comments at the scoping meeting should focus on the completeness of the proposed sets of impacts and evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified.

Issued on: January 12, 1989.

Brigid Hynes-Cherin,

Regional Manager, UMTA.

[FR Doc. 89–1172 Filed 1–17–89; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements submitted to OMB for Review

Date: January 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 202220.

Internal Revenue Service

OMB Number: New.
Form Number: 8812.
Type of Review: New Collection.
Title: Application for Exemption From Social Security Taxes and Waiver of Benefits.
Description: The new Internal Revenue Code section 3127 extends the current law of exemption from social security taxes and benefits from self-employed taxpayers to their employees when both employee and employer are members of a qualifying religious sect or division and both apply for exemption.
Respondents: Individuals or households.
Estimated Number of Respondents: 24,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—7 minutes
Learning about the law or the form—8 minutes
Preparing the form—10 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Estimated Total Recordkeeping/ Reporting Burden: 18,000 hours.

OMB Number: 1545–0736.
Form Number: None.
Type of Review: Extension.
Title: Accounting for Long-term Contracts.
Description: These recordkeeping requirements are necessary to determine whether the taxpayer properly allocates indirect contract costs to extended period long-term contracts in accordance with the proposed regulations. The recordkeeping requirement is effective for taxable years beginning after 1982. The information will be used to verify the taxpayer's allocations of certain indirect costs.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 1,000.
Estimated Burden Hours Per Recordkeeper: 110 hours.
Estimated Total Recordkeeping Burden: 110,000 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–1150 Filed 1–17–89; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Loan Guaranty; Percentage To Determine Net Value

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Veterans Administration (VA) loan guaranty program concerning the percentage to be used in determining the net value of a property to the Administrator under the provisions of 38 CFR 36.4301. The percentage applicable for Fiscal Year 1989 is 10.63 percent.

EFFECTIVE DATE: January 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of

Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. (202) 233-6378.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* The formulas for determining whether VA will offer the lender an election to convey the property to the VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Administrator estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale. Under the definition, VA will review each year the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. This section provides that VA will annually update the percentage and publish a notice of the new percentage in the **Federal Register**. For Fiscal Year 1988, the percentage was 10.75 percent. For Fiscal Year 1989, the percentage will be 10.63 percent, based upon the operating expenses incurred for Fiscal Years 1986, 1987 and 1988. Accordingly, VA will subtract 10.63 percent from the fair market value of the property to be liquidated in order to arrive at the "net value" of the property to VA. The new percentage will be used in "net value" calculations made by VA on or after January 18, 1989.

Dated: January 5, 1989.

Thomas K. Turnage,

Administrator.

[FR Doc. 89-1063 Filed 1-17-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 11

Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 9, 1989, 54 FR 730.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 11, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG-22 for the agenda January 11, 1989:

Item No., Docket No., and Company

CAG-22—RP86-165-002, RP88-165-003, RP86-165-004, RP86-166-001, RP86-166-002 and RP86-166-003, Kentucky West Virginia Gas Company.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1221 Filed 1-13-89 1:36 pm]

BILLING CODE 6717-02-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 23, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: January 13, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-1246 Filed 1-13-89, 3:45 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 16, 23, 30, and February 6, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 16

Thursday, January 19

10:00 a.m.
Briefing on Medical Use of By-Product Materials (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 23—Tentative

Monday, January 23

2:00 p.m.
Briefing on Accident Management Program (Public Meeting)

Tuesday, January 24

2:30 p.m.
Briefing on the Progress of GE Advanced BWR Standard Plant Review (Public Meeting)

Wednesday, January 25

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, January 26

10:00 a.m.
Briefing on Final Report on BWR MARK I Containment Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Thursday, February 2

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)

2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 6—Tentative

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Thursday, February 9

10:00 a.m.
Briefing on Final Rule on Early Site Permits, Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production on Utilization Facilites" scheduled for January 13, *cancelled.*

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

January 13, 1989.

[FR Doc. 89-1233 Filed 1-13-89; 2:38 pm]

BILLING CODE 7590-01-M

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Tuesday, February 7, 1989 9:00 a.m. to 2:00 p.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 13 cases decided by the National Commissioners pursuant to a reference

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under 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board United States Parole Commission, (301) 492–5987.

Date: January 12, 1989.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89–1201 Filed 1–13–89; 1:36 pm]

BILLING CODE 4410–01–M

Corrections

Federal Register

Vol. 54, No. 11

Wednesday, January 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery; Foreign Fisheries

Correction

In rule document 88-30215 beginning on page 32 in the issue of Tuesday, January 3, 1989, make the following correction:

On page 34, in "Table 1", in the first table-column, under "Species", the seventh line should read, "Other Fish:•".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0165]

Orally Administered Menstrual Drug Products for Over-the Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-26155 beginning on page 46194 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46194, in the first column, the document headings are incomplete and should read as set forth above.

2. On page 46200, in the third column, in the first complete paragraph, in the second line, "November 16, 1989" should read "March 16, 1989".

3. On the same page, in the same column, in the second complete paragraph, in the second line, "March 16, 1989" should read "November 16, 1989".

BILLING CODE 1505-01-D

federal register

Wednesday
January 18, 1989

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management; General Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256 and 281

Outer Continental Shelf Minerals and Rights-of-Way Management; General Leasing of Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The final rule establishes regulations for the leasing of minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule specifies leasing procedures and basic lease conditions and is intended to ensure that adjacent States and the public have an early opportunity for effective participation in the leasing process. The rule is the second in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur. The series of rules recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, permitting balanced orderly leasing of minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other uses and users of the OCS pursuant to the Department of the Interior's (DOI) authority under the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334).

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816 or (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and postlease activities associated with the discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and similar activities associated with OCS minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through the States local governments, that are directly affected by OCS mineral mining activities are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral mining activities and other ocean users and uses;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for OCS mineral resource development which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for wise and efficient management of the natural resources of the OCS.

This rule establishes practices and procedures specific to the activities associated with the leasing of OCS minerals other than oil, gas, and sulphur. A final rule is also being established to govern postlease operations.

On April 19, 1985, MMS published an Advance Notice of Proposed Rulemaking (ANPR) for regulations to govern the leasing of OCS minerals other than oil, gas, or sulphur. Comments and recommendations received in response to that ANPR were summarized in the Public Comments and Agency Responses portion of the Notice of Proposed Rulemaking (NPR) that was published on August 18, 1988 (53 FR 31424), to propose rules to govern leasing of minerals other than oil, gas, and sulphur in the OCS.

On October 3, 1988, a Notice was published in the **Federal Register** (53 FR 38739) which extended the comment period on the proposed rule from October 3, 1988, to November 2, 1988. A total of 23 comments and recommendations were received. Five of those requested that the comment period be extended beyond October 3, 1988. The 18 remaining responses to the August 18, 1988, NPR were comprised of 7 comments and recommendations from State agencies; 1 comment from industry; 4 comments from environmental organizations; 2 comments from individuals; 2 comments from other Federal Agencies; 1 comment from a U.S. Senator; and 1 comment from a group comprised of representatives of State governments, environmental organizations, and industry. A review and discussion of those comments will be found in the section entitled Public Comments and Agency Responses.

The first part of the regulatory regime to govern OCS mineral mining activities (30 CFR Part 280) was published in the **Federal Register** on July 5, 1988 (53 FR 25242), effective August 4, 1988. It established practices and procedures specific to prospecting activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. The provisions of 30 CFR Part 280 are also applicable to G&G exploration and scientific research activities conducted by a lessee on unleased lands and those conducted on leased OCS lands by a person who is not the operator or lessee. A final rule designed to govern operations under leases for such OCS minerals appears in another part of this **Federal Register.**

The DOI's Responsibilities

This rule is an action within the statutory authority of the Secretary of the Interior (Secretary) and is intended to promote and encourage private enterprise in the development of an economically sound and stable domestic materials industry in the United States while providing an appropriate level of protection for the human, marine, and coastal environments.

Section 8(k) of the OCSLA provides specific legal authority and responsibility for the leasing of minerals other than oil, gas, and sulphur in the OCS. This authority and responsibility exercised in conjunction with the 20 other sections of the OCSLA which are applicable in whole or in part, and other laws provide the Secretary with adequate flexibility and guidelines to establish and administer an OCS minerals leasing and mining program for minerals other than oil, gas, and sulphur.

The DOI and MMS recognize the potential for adverse environmental impacts as a result of OCS mineral development activities. These potential impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Under DOI's case-by-case approach, issues common to all forms of OCS mining activities associated with OCS minerals other than oil, gas, and sulphur will be covered by regulations governing G&G prospecting and scientific research (30 CFR Part 280), leasing (30 CFR Part 281), and postlease operations (30 CFR Part 282).

The planned lease sale for Norton Sound is an example of the way DOI carries out its National Environmental Policy Act (NEPA) responsibilities. On March 11, 1988, MMS published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** (53 FR 8134) in association with a Request for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as the one being prepared for Norton Sound will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are defined. Commodity-specific issues will be covered by specially designed lease stipulations identified at the time the targeted OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval of Delineation, Testing, or Mining Plans for the conduct of postlease operations. Based on this approach and information obtained from lessees in support of proposed operations and as a result of MMS's Environmental Studies Program, MMS believes that protection of the environment is compatible with the recovery of minerals other than oil, gas, and sulphur from the OCS.

Background

During the period of 1954 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated at 30 CFR Part 256 under the OCSLA. These lease offerings resulted in the receipt of high cash bonus bids totaling more than $54 million. (See Table 1.)

TABLE 1—MINERALS MANAGEMENT SERVICE

Lease offering; date of offering; and location	Number of tracts offered	Acres offered	Number of tracts bid on	Total bonus high bid	Number of tracts leased	Number of bids rejected	Number of bids received
Gulf of Mexico salt and sulphur lease offerings:[1] [2]							
1—10/23/54—Sul-LA	108	523,630	5	$1,233,500	5		5
8—05/19/60—Sa-LA	10	22,085	1	75,250	1		1
13—12/14/65—Sul-TX	658	957,520	50	33,740,309	50		113
17—09/05/67—Sa-LA	8	16,995	1	30,564	1		1
20—05/13/69—Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S—02/24/88—Sul-CGOM	51	593,971	14	15,149,327	14		20
Totals	955	2,279,806	109	53,906,995	75	34	183
Pacific phosphate lease offering:[3] [4]							
PH—12/15/61—So-CA	16	80,640	6	122,000	6		6

[1] Total amount of all bids received for all lease offerings—$82,527,068.
[2] Total amount of all rentals for all lease offerings—$297,860.
[3] Total amount of all bids received—$122,000.
[4] Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

The MMS is working closely with nine coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with the mining of OCS minerals other than oil, gas, and sulphur. These arrangements include a special working group with Alaska and five task forces involving eight other coastal States: Hawaii; Oregon; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Minerals other than oil, gas, and sulphur which may be discovered and produced from the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS mineral resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially exercise leverage over commodity prices.

The OCS mineral deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

The rule establishes a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease operations will facilitate the consultation and coordination processes authorized under Federal law.

Regulation Organization

This rule governs the leasing of minerals other than oil, gas, and sulphur in the OCS. The rule is divided into five subparts. Subpart A, General, contains requirements of a general nature such as qualifications of a lessee and disclosure of information. Definitions applicable to the entire rule are also contained in

Subpart A. Subpart B, Leasing Procedures, establishes the procedures which will be followed in preparing for and conducting lease sales. This subpart establishes many of the provisions which assure input from States, industry, interest groups, and the public. Subpart C, Financial Considerations, establishes provisions for the determination and payment of rent and royalty and the submission of bonds. Subpart D, Assignments and Lease Extensions, establishes provisions for the transfer of leases and for the extension of leases in the event of a suspension of production or other operations. Subpart E, Termination of Leases, establishes provisions for the relinquishment and termination of leases.

Public Comments and Agency Responses

Provisions of the final rule are discussed below in a section-by-section discussion of the comments and recommendations received in response to the August 18, 1988, NPR (53 FR 31424).

General Comments

Comment: Some commenters stated that the rule was premature due to the depressed conditions of the minerals markets and apparent lack of industry interest. One of the commenters suggested that any lease sales that are to be held in the near future, such as the proposed sale off Alaska, could be accomplished through State/Federal agreements without regulations in place.

Response: The MMS does not agree that the rules are premature. Not all minerals markets are depressed and some minerals industry interest in leasing OCS minerals exists. Forty-five G&G exploration (prospecting) permits have been issued since the 1960's, with over 80 percent of those issued having been issued since 1982. The MMS agrees that lease sales could be held in the absence of these regulations. However, mining company representatives have stated that without regulations, they cannot accurately predict the economics of the operation nor can they raise necessary venture capital without regulatory certainty.

Comment: Several commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining and recommended that DOI seek new legislation. The reasons given for the recommendation include: (1) That the OCSLA was written for oil and gas and never intended for marine mining; (2) the OCSLA does not adequately balance national and State interests and provides for little State involvement in the decisionmaking process; (3) the OCSLA does not provide for revenue sharing; (4) the OCSLA gives the Secretary too much discretion in formulating a program to govern OCS mining; and (5) the requirement for a competitive upfront cash bonus bid is a disincentive. These commenters suggested that DOI desist from further promulgation of rules under the OCSLA and seek new stand-alone legislation.

Response: The suggestion to defer promulgation of rules in favor of new stand-alone legislation was not adopted. The OCSLA expressly extends the DOI's jurisdiction and responsibility to OCS minerals other than oil, gas, and sulphur. The responsible course of action is to tailor implementing regulations in the best fashion available under law to meet the requirements of OCS mining. The OCSLA provides a clear legal basis for the promulgation of regulations to govern OCS mining. Sections 5 and 8(k) of the OCSLA, in combination with 19 other sections of the OCSLA which are applicable in whole or in part to minerals other than oil, gas, and sulphur, clearly and specifically grant authority and responsibility to the Secretary to prescribe terms and conditions appropriate to the regulation of OCS mining, including prelease prospecting, leasing, and postlease operations. Used in conjunction with other applicable OCSLA provisions and other laws, there is substantial and sufficient authority for ensuring appropriate balance of national and State interests. It is true that there is no provision for revenue sharing with adjacent coastal States but such a provision, with a limited recent exception, is also not available for oil, gas, and sulphur. Proposals for revenue sharing have been opposed by the last several administrations. Recognizing that there are differences between oil and gas and other minerals, the OCSLA provides the Secretary with the necessary flexibility for administration of a responsible OCS mining program.

There is clear value in the establishment of a separate regulatory regime for OCS minerals other than oil, gas, and sulphur. While lease sales could be held and, in fact, have been held under existing regulations, mining company representatives have expressed a desire for regulations which would permit them to more accurately predict the economics of projected operations. Greater regulatory certainty will facilitate the raising of necessary venture capital.

Comment: Several commenters recommended that DOI prepare a programmatic EIS citing the need to deal with large areas and the cumulative effects of mining. Commenters stated that the MMS Report No. 87-0035 "Marine Mining on the OCS" did not adequately address environmental effects. Commenters also recommended that DOI commit to the preparation of an EIS prior to each lease sale. Reasons cited included air quality concerns and the need to conduct an EIS when different technology is involved in a subsequent lease sale.

Response: The MMS does not agree that preparation of a programmatic EIS is necessary, desirable, or practical. The provisions of NEPA and the implementing regulations, together with DOI's interpretation of the situation and need will determine when an EIS is prepared. The MMS anticipates that an EIS will be prepared prior to the first lease sale in an area, and that the observed effects of mining activities in specific areas and the cumulative effects of actual mining operations will be addressed in subsequent NEPA documents prepared in anticipation of further lease sales. Those NEPA documents would also consider the potential impacts of mining methods and other information developed subsequent to the most recent EIS. Thus, compliance with NEPA would be accomplished on a case-by-case basis for subsequent lease sales. For lease sales subsequent to the first sale in an area, an EIS would be prepared when technology, mining methods, other conditions, or impacts are sufficiently different than the conditions or impacts considered for an earlier lease sale for which an EIS was prepared, or when otherwise required by NEPA.

Comment: A commenter recommended shared State/Federal management of the program as a means of dealing with resolution of State/Federal disputes which may be jurisdictional issues or matters arising from the implementation of cooperative agreements.

Response: The MMS anticipates that adjacent States will play an active role in the leasing program for OCS minerals other than oil, gas, and sulphur. States are encouraged to join in, or to initiate requests for, the establishment of joint State/Federal coordination arrangements. Joint State/Federal task forces or other working arrangements can serve as vehicle for coordinating efforts to enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a) and 1345(e)), or for addressing issues and concerns of the adjacent States early in the leasing process. The participants in these task forces and other working arrangements can work toward resolution of issues of mutual concern. It is MMS's responsibility to implement the authorities delegated to it under applicable Federal laws and regulations. The DOI is committed to working with the adjacent States to resolve issues of mutual concern.

Comment: Commenters recommended that MMS find a means of providing financial assistance for affected States so they can function as full partners in the process.

Response: The commenter was referring to the lack of provisions in the regulations (and in the OCSLA) for revenue sharing. The MMS recognizes the concerns of adjacent States. The MMS has attempted, through mechanisms such as joint State/Federal task forces and information exchanges, to provide adjacent States an opportunity to cooperatively participate in planning and review of offshore mining activities. This joint approach can minimize the cost to adjacent States associated with their review and assessment of OCS minerals activities.

Subpart A—General

Section 281.2 Authority.

Comment: Several commenters noted with regard to § 281.2, that the OCSLA does not grant to DOI jurisdiction over those offshore areas that are adjacent to U.S. territories and possessions.

Response: The DOI agrees with the commenters that the OCSLA does not provide jurisdiction over those offshore areas adjacent to lands over which the United States exercises jurisdiction and control but which are not States (e.g., Johnston Island). Jurisdiction over these areas is not essential to the establishment of a leasing or regulatory program and is not relevant to the promulgation of this rule.

Section 281.3 Definitions.

Comment: One commenter recommended that in § 281.3 the definition for lease be mineral and site specific.

Response: The limitation on the rights granted by a lease with regard to the mineral covered and the location of the leasehold will be specified in each OCS mineral lease. It is neither necessary nor appropriate to limit those rights through the definition of the term "lease" in the regulations. The merits of restricting the mineral rights granted by a lease to a lessee are discussed further in response to comments concerning § 281.9.

In § 281.3, the definition of "production" was deleted as unnecessary. Also, the definition of "Governor" was modified to conform to the OCSLA and the definition of "person" was modified to conform to the rules to govern operations associated with OCS minerals other than oil, gas and sulphur. No substantive change from the proposed rule is intended by these changes.

There was no § 281.4 in the proposed rule. To adjust for that omission, §§ 281.5, 281.6, 281.7, 281.8, 281.9, and 281.10 in the proposed rule have been renumbered §§ 281.4, 281.5, 281.6, 281.7, 281.8, and 281.9 respectively.

Section 281.4 (Proposed § 281.5) Qualification of lessees.

Comment: One commenter expressed doubts that award of a lease on the basis of the highest cash bonus bid, as provided for in § 281.5 (now § 281.4), was the best alternative for the minerals industry and should not be required. The commenter also noted the fact that that basis is the only authorized mechanism under the OCSLA and is further evidence of the need for new legislation.

Response: As discussed earlier, the DOI does not feel that new legislation is essential for the establishment of a regulatory regime to govern mining on the OCS for minerals other than oil, gas, and sulphur. Several industry representatives have expressed their willingness to participate in a competitive system.

Section 281.8 (Proposed § 281.9) Rights to minerals.

Comment: It was recommended that rights specified under a lease (§ 281.9, now § 281.8) should include the right to only specific minerals and that any associated minerals should be specified.

Response: This comment has not been adopted. Unless otherwise specified in the Leasing Notice, a lease issued under Part 281 will include all OCS minerals except oil, gas, sulphur, and pursuant to section 12(e) of the Act source materials essential to production of fissionable materials (§ 281.8(a)). This was done in order to minimize environmental damage and for the sake of efficiency. While a mining operation probably would be designed initially to recover certain OCS minerals, the lessee should have the right to all minerals recovered during the mining process. After investing the effort and expense required to recover OCS minerals, the lessee should not be required to return valuable materials to the seafloor as tailings simply because the right to produce those materials is not conveyed by its lease.

Several different mining operations should not be required when a single mining operation could be undertaken which would result in the area being disrupted only once. One mine-through operation rather than several mine-through operations would minimize the potential for environmental damage. When one mining operation does not produce all valuable minerals, a second mining operation or technique may be needed to recover the other minerals that are present within the lease area.

In order to be able to balance protection of the environment and mineral development, the Secretary retains the discretion to issue mineral specific leases or leases covering all minerals.

Section 281.9 (Proposed § 281.10) Jurisdictional controversies.

Comment: One commenter recommended that dispute resolution options involving jurisdictional controversies under § 281.10 (now § 281.9) should be extended to include cooperative agreements.

Another commenter noted that neither the leasing nor operating rules addressed jurisdictional questions involving a mineral resource deposit that lies in an area involving both State and Federal jurisdiction.

Response: Under § 281.9 (proposed § 281.10), the DOI construes the term "controversy" to mean litigation where the "jurisdictional controversy" relates to a dispute regarding the location of the common boundary between the OCS and State submerged lands. The Secretary may enter into agreements with the State to resolve litigated boundary disputes. The situation where an OCS resource extends under adjacent State lands is best addressed by the unitization of the common orebody as provided for in § 281.11(d)(1) of this part. The fact that an orebody extends under both State and Federal lands does not in and of itself constitute a controversy.

To address management of OCS mineral deposits which straddle State/Federal jurisdiction, DOI hopes to be able to develop an agreement with the adjacent State for joint management to the degree joint management is needed for the enforcement of safety, environmental, and conversation laws and regulations (43 U.S.C. 1334(a)) and the protection of correlative rights. The agreement would involve both the State and Federal lessees and assure coordination and cooperation to the extent necessary to maximize efficiency, reduce the regulatory burden, and obtain an equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees typically will negotiate an appropriate agreement to cover mining operations on the leases and the allocation of costs and benefits to the owners of divided interests in the area embraced by the Federal and State leases that are made subject to the unit agreement.

Subpart B—Leasing Procedures

Section 281.11 Unsolicited request for a lease sale. (Formerly Request for a lease sale and submission of information.)

Comment: A commenter recommended that MMS require submittal of environmental information under § 281.11 when a person requests a lease sale.

Response: The title of § 281.11 has been modified to better reflect the purpose of the section. The provisions of § 281.11 are voluntary, allowing those individuals with an interest in obtaining leases for OCS minerals to request that DOI initiate steps leading to a lease sale. However, the person requesting a lease sale may not be in a position to provide environmental information, and such a requirement should not bar the person from requesting that the DOI initiate steps leading to a lease sale. It would be in the interest of the person requesting the initiation of steps leading to a lease sale to provide as much information as possible. The more information that the DOI has to consider at the time it considers a request for a lease sale, the less time will be required to obtain additional information that may be needed.

Comment: A comment was made that the Governors of adjacent States should be notified when there is a request under § 281.11 for a lease sale.

Response: The Secretary intends to notify Governors of adjacent States when followup action is being taken with respect to a request for a lease sale submitted under § 281.11. Such notification would typically occur as an early step in the decision process as to whether to proceed with an OCS mineral lease sale. At that time, the Secretary may invite the Governor of an adjacent State to join in, or the Governor of the adjacent State may request initiation of, a joint State/Federal coordination arrangement. Should the Secretary decide from the offset not to initiate the steps leading to a lease sale, then there would be little need to advise the Governor of the adjoining State.

Section 281.12 Request for OCS mineral information and interest.

Comment: Commenters recommended that the Director's first step in initiating a lease sale should be the publication of a request for information and interest under § 281.12. A commenter also recommended that information should be requested on specific minerals in specific tracts.

Response: It is anticipated that in most instances the Secretary will request interest in and information on the offering of all available OCS minerals for lease. The responses to the request should include information relating to the need to limit leasehold rights to specific mineral and tract. Under these regulations, the Secretary retains the discretion to publish a proposed Leasing Notice as a first step in the leasing process when it is determined that sufficient interest and information exist to proceed with the offering of OCS minerals for lease. An example may be the offering of a tract adjacent to an existing lease where an orebody extends onto unleased land or the reoffering of tracts in an area where no new impacts need to be considered. Information concerning specific OCS minerals in a specific tract should be submitted in response to a request for information and interest. That information may also be submitted in response to a proposed Leasing Notice.

Section 281.13 Joint State/Federal coordination.

Comment: Several commenters expressed the view that § 281.13 should require establishment of joint State/Federal task forces or other arrangements rather than leaving that to the Secretary's discretion. These commenters also felt that the role of any such task force should be clarified to ensure effective participation in the decisionmaking process. One of these commenters recommended that the rules provide that any recommendations by a task force would be heeded by the Secretary, except when contrary to an overriding national interest.

Response: The Governors of adjoining States are encouraged to participate fully in joint State/Federal task forces and other arrangements. The MMS, however, has no authority to require the Governor of a State to enter into one of these arrangements. Joint State/Federal task forces and similar working arrangements have an important role in the program. They are intended to provide early and continuous State involvement in the steps in the leasing process; facilitate resolution of issues of mutual interest; provide a mechanism for planning, coordination, and consultation; and make recommendations to the Secretary for his consideration in planning for and holding lease sales. These arrangements are expected to vary from State to State based on the number of concerns and needs of the adjacent States involved. Thus, the precise nature and role of a given working arrangement should not be specified in the rule. It is anticipated that the Director will give great weight to the recommendation of a joint State/Federal task force.

Comment: Several commenters noted that the joint State/Federal coordination arrangements in § 281.13 excluded members of the public.

Response: Members of the public, including representatives of the environmental community, are not precluded from participation in the joint State/Federal coordination arrangements. In addition, meetings of joint State/Federal task forces are normally open to the public.

Comment: Several commenters recommended that § 281.13 of the rules be changed to require coastal zone consistency determination for lease sales under the provisions of the Coastal Zone Management Act (CZMA). Some commenters suggested that the case of *Secretary of the Interior vs. California*, 464 U.S. 312, applied only to oil and gas. Another commenter recommended that MMS voluntarily require CZMA review and concurrence even if such review is not required by law.

Response: The DOI believes that the CZMA does not apply to activities on the OCS other than those originally covered by the CZMA or specifically added by amendment to the CZMA such as certain oil and gas related activities and that coastal zone consistency concurrence is not required prior to a lease sale of OCS minerals regardless of the commodity involved. This view is consistent with the views expressed in the October 4, 1988, memorandum opinion of the Office of Legal Counsel of the Department of Justice to Abraham D. Sofaer, Legal Adviser, Department of State. That position is consistent with the findings in *Secretary of the Interior vs. California* and the position previously taken by DOI on this matter.

Section 281.14 OCS mining area identification.

Comment: A commenter recommended that environmental standards to be used in identifying areas for leasing be added to § 281.14.

Response: The decision to identify areas to be considered for leasing is a preliminary one which precedes environmental analysis. It would be inappropriate to apply standards at this step. To clarify the process which will be followed for a lease sale, § 281.14 was revised to state that tracts which are to be considered in an environmental analysis will be identified at the time of area identification.

Section 281.15 Tract size.

Comment: Some commenters opposed specifying in § 281.15 that "substantially larger" tract sizes may be offered when the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals. Commenters recommended that leases should not be offered until sufficient prospecting had occurred to identify the presence of desired minerals and to provide sufficient environmental information to make informed decisions. One commenter stated that fair market value requirements could not be met if a lease is offered without information about what minerals are present.

Response: The MMS does not agree with these comments. Where sufficient information is available to generate interest in participating in a lease sale, MMS need not require that potential lessees make additional investment prior to offering the area for lease. Such a requirement could serve to reduce the interest in leasing, since it would increase the financial risk to potential lessees by forcing them to make unnecessary investments in prospecting activities prior to obtaining a lease. Since information developed prior to leasing would not carry a right to lease, the requirement would be a strong disincentive to potential lessee participation in the program. With respect to the concerns regarding the availability of environmental information, it should be noted that there should be sufficient environmental information at the time that the lease sale notice is published to make informed decisions. The fact that additional exploration is needed to identify a minable orebody does not mean that there is insufficient information available to assure that exploration is carried out in an environmentally responsible manner. There will also be additional opportunities for the Secretary to review and assess potential environmental inpacts. For example, available information on environmental impacts will be assessed during the review of Delineation, Testing, and Mining Plans. Finally, the comment on meeting fair market value requirements fails to recognize that the requirement on the Government is to obtain a fair return on the rights conveyed. The information available at the time a lease is offered for sale will permit obtaining a fair return on the right conveyed since the value of the rights conveyed is dependent on the conditions and information available at the time of the sale.

Editorial changes have also been made in the text of § 281.15 to clarify the intent of the rule.

Section 281.16 Proposed leasing notice.

Comment: Several commenters were concerned that under § 281.16 the Secretary only needs to consider Governors' comments. They recommended that a provision be added to give those comments greater weight. It was suggested that OCSLA section 19 type requirements be applied. One commenter also proposed that the joint State/Federal task force plays an active role in developing the proposed leasing notice. Several commenters thought that more than 60 days are needed for Governors to submit comments.

Several commenters stated that there should be an opportunity for public comment on the proposed leasing notice.

One commenter stated that the leasing notice should specify the minerals to be offered for lease and should include environmental stipulations. The same commenter said the rule should list criteria to be considered in making a determination to hold the lease sale.

Response: The MMS believes that joint State/Federal task forces and other arrangements offer a substantial role for State participation in the leasing process. The joint arrangements used to date provide a means for early and continued State/Federal coordination and discussion of issues of mutual interest as well as issues of special interest to adjacent States. Early establishment of these arrangements and the opportunities provided for the Governor of an adjacent State to fully participate in the early steps in the leasing process should assure that few if any new issues will be raised by the Governor of an adjacent State in response to a proposed leasing notice. The 60-day time period for response tracks the time allowed in section 19 of the OCSLA for the Governor of an adjacent State to comment on a proposed leasing notice. To clarify the role of State/Federal task forces, § 281.16(a) has been revised to explicitly state that the Director shall consider the recommendations of any task force established pursuant to § 281.13 to determine lease sale procedures to be prescribed and to develop a proposed leasing notice.

The MMS believes that the proposed rule provides adquate opportunity for the public to comment on the proposed leasing notice. No change in the rule is needed. Prior to making a decision on the leasing notice, the Director will consider all available information, including comments which have been received from the public.

The right to minerals conveyed by the lease are discussed in response to comments of § 281.8. A discussion of the environmental criteria to use for decisions appears in response to comments on § 281.14. The leasing notice will contain specific lease stipulations, including measures designed to mitigate potentially adverse impacts on the environment, and § 281.16(a) has been rewritten to clarify this point.

Section 281.17 Leasing notice.

Comment: One commenter recommended that § 281.17 should provide at least a 90-day review period so that States will have the opportunity to review and respond to the leasing notice prior to the lease sale.

Response: The MMS did not adopt these comments. By the time the leasing notice is published, the States will have had a number of opportunities to comment, including joint State/Federal coordination and consultation arrangements, responding to requests for information, and the 60-day comment period following publication of the proposed leasing notice. The MMS expects that major issues of concern to an adjoining State will have already been addressed by the time the leasing notice is published.

The rights to minerals conveyed in the lease are discussed in response to comments on § 281.8. The environmental criteria to use in decisionmaking are discussed in response to comments on § 281.14. Section 281.17 already requires that the leasing notice shall specify any applicable lease stipulations. Lease stipulations would include measures required to mitigate potentially adverse impacts on the environment.

Section 281.18 Bidding system.

Comment: Many commenters recommended that cash bonus bidding under § 281.18 should not be mandated. One commenter proposed that the minimum bid for a tract be specified in the regulations.

Response: The use of competitive, cash bonus bidding is a statutory requirement of OCSLA. Minimum bids may be specified in the proposed leasing notice and the leasing notice. When minimum bids are specified, they will be based on the specific commodities offered for lease in the sale area and the conditions at the time of the sale. Since no single minimum bid would be appropriate for all cases, the minimum bid for a tract cannot be specified in the rule.

The final rule gives the Secretary the option to use deferred cash bonus

bidding when specified in the leasing notice. When the deferred bonus option is specified, the high bidder will be determined based upon the net present value of each total bid. An appropriate discount rate will be specified in the leasing notice. High bidderes who use the deferred bonus option must pay at lease 20 percent of the cash bonus prior to lease issuance. At least a total of 60 percent must be paid on or before the 5th anniversary of the lease, and payment of the remaining cash bonus must be paid on or before the 10th anniversary of the lease. The lessee may pay the bonus installments earlier than specified in the leasing notice. When a portion of the cash bonus bid is deferred, a separate bond that guarantees payment of the deferred portion of the bonus must be submitted prior to issuance of the lease. Upon payment of the full amount of the cash bonus bid, the bond guaranteeing payment will be released. This approach to the deferral of the payment of a portion of the high cash bonus bid results in all bidders being on an equal footing. Each bidder will have determined that amount of its bid, recognizing that other bids on the tract will be adjusted to recognize the time value of the portion of the bid which can be deferred.

For lease sales using oral bids, the Secretary reserves the right to reject all bids received, but it is anticipated that the high bid will normally be accepted subject only to antitrust review by the Attorney General. In frontier areas, where little is known about the resources, MMS believes that factors such as unproven technology, uncertain commercial value, high risk, and high cost to evaluate the lease will all affect the bids received. The bids of willing persons in those situations is a better indication of value of the resources than an independent, and very speculative, assessment of the value of the minerals on the lease. In other cases, where the value of minerals can be estimated with greater confidence, MMS may wish to determine whether the high bid represents a fair return for the rights conveyed. In addition, should for example, a single potential bidder attend a sale, the Secretary might wish to review the high bid to assure a fair return to the public.

Section 281.20 Submission of bids.

A new § 281.20, Submission of bids, was added to provide interested parties with necessary information concerning the submission of bids (oral and sealed). Proposed §§281.20, 281.21, and 281.22 were renumbered as §§ 281.21, 281.22, and 281.23 respectively.

Subpart C—Financial Considerations

Section 281.26 Payments.

Section 281.26(e) was revised by substituting "person" for "party" and § 281.26(f) (now § 281.28(i)) was revised to reflect revisions in the MMS's Royalty Management Program's regulations governing royalty payments. Section 281.26(f) of the proposed rule referenced certain provisions in the regulations governing product value and royalty computation. The substance of three of these provisions has been incorporated in the final rule as §§ 281.26 (f), (g), and (h). Section 281.26(i) (proposed § 281.26(f)) continues to reference appropriate provisions of the Royalty Management regulations. No substantive change was intended by these changes.

Section 281.28 Royalty.

It is anticipated that the royalty prescribed in leasing notices announcing tracts to be offered for lease will be comparable to the royalty prescribed in onshore leases which convey rights to similar mineral deposits. Where the royalty is based upon a percentage of the value or amount of the produced mineral, it will likely fall within the range of 2 to 5 percent.

Section 281.28(b) provides for a royalty free period as did the proposed rule. It was revised to specify that, when prescribed in the leasing notice and subsequently issued lease, the royalty will be reduced on OCS minerals produced from a leasehold for up to 5 consecutive years, as specified by the lessee, during the first 15 years in the life of the lease. No royalty will be due on production during any year of the specified 5-year period that occurs in the first 10 years of the lease, and one-half of the royalty otherwise due will be due on production during any year of the 5-year period that occurs in the 11th through the 15th year in the life of the lease. For example, consider a lease with a royalty rate of 4 percent specified in the lease. If the lessee chooses to initiate the 5-year period of royalty reduction starting with the 6th lease year, there would be no royalty due on production during years 8, 9, and 10; and a royalty of 2 percent would be due on production during years 11 and 12. If the lessee chooses to initiate the period of royalty reduction at the beginning of the 13th lease year for this example, a royalty of 2 percent would be due on production during years 13, 14, and 15; and the full royalty of 4 percent would be due on production thereafter. This provision is designed to encourage early development of production on a lease.

Section 281.30 Minimum royalty.

Section 281.30 was modified to clarify when minimum royalty will apply and when it is to be paid.

Section 281.33 Bonds and bonding requirements.

This section was revised to include a provision governing the submission of bonds in cases where payment of part of the cash bonus bid is deferred and to provide additional information concerning the submission of bonds.

Subpart D—Assignments and Lease Extensions

Section 281.41 Requirements for filing for transfers was revised to add provisions concerning transfer of leases.

Subpart E—Termination of Leases

Section 281.47 Cancellation of Leases.

Comment: A comment was made that § 281.47 of the regulations allows too long a time period under suspension (5 years) before cancellation.

Response: The length of time for holding a lease under suspension before cancellation is a statutory provision of section 5(a)(2)(B) of the OCSLA (43 U.S.C. 1334(a)(2)(B)) which is applicable under the circumstances specified in the OCSLA. A lessee may request lease cancellation before 5 years have elapsed.

Comment: A commenter was concerned about how long a lease would remain in effect under § 281.43 while it remained under suspension. Concern was expressed that there is no provision for compensation for minerals left in place in order to protect sensitive environmental or archeological values absent cancellation of the Lease.

Response: It is conceivable that a lease could remain under a suspension for longer than 5 years where circumstances warrant the continuance of an approved suspension beyond the original period of time specified in the approval of a lessee's request for a suspension of operations or production. The procedures for leases compensation for lost access to OCS minerals due to development and production restriction on a lease track the procedures contained in the OCSLA. Since leases issued under the regulations in this Part are subject to the OCSLA and the regulations in Part 282, they are subject to compensation limits contained in the OCSLA.

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The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be approximately $2.2 million per year. The cost estimate is based on an expectation of two sales per year.

The DOI certifies that the final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in OCS minerals related activities are not considered small due to the technical complexity and financial resources needed to conduct those OCS activities.

The information collection requirements contained in 30 CFR Part 281 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1010–0082.

Public reporting burden for this collection of information is estimated to average 23.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 632; 12203 Sunrise Valley Drive; Reston, Virginia 22091; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: December 20, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 256 is amended and a new Part 281 is added to Title 30 of the CFR as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 256.4 [Amended]

2. Section 256.4 is amended by adding the word "and" before the word "sulphur" and by removing the words "geopressured-geothermal and associated resources, and other minerals" from the first sentence.

3. Section 256.5 is amended by revising paragraphs (d) and (k) to read as follows:

§ 256.5 Definitions.

* * * * *

(d) "Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

* * * * *

(k) Mineral means oil, gas, and sulphur; it includes sand and gravel and salt used to facilitate the development and production of oil, gas, or sulphur.

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§ 256.37 [Amended]

4. Section 256.37 is amended by removing paragraph (d).

§ 256.58 [Amended]

5. Section 256.58 is amended by removing paragraph (d) and redesignating paragraphs (e) through (g) as paragraphs (d) through (f) respectively.

6. A new Part 281 is added to read as follows:

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

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Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

Subpart A—General

§ 281.0 Authority for information collection.

The information collection requirements contained in Part 281 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0082. The information is being

collected to determine if the applicant for a lease on the Outer Continental Shelf (OCS) is qualified to hold such a lease or to determine if a requested action is warranted. The information will be used to make those determinations. The obligation to respond is mandatory.

§ 281.1 Purpose and applicability.

The purpose of these regulations is to establish procedures under which the Secretary of the Interior (Secretary) will exercise the authority granted to administer a leasing program for minerals other than oil, gas, and sulphur in the OCS. The rules in this part apply exclusively to leasing activities for minerals other than oil, gas, and sulphur in the OCS pursuant to the Act.

§ 281.2 Authority.

The Act authorizes the Secretary to grant leases for any mineral other than oil, gas, and sulphur in any area of the OCS to the qualified persons offering the highest cash bonuses on the basis of competitive bidding upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease (43 U.S.C. 1337(k)). The Secretary is to administer the leasing provisions of the Act and prescribe the rules and regulations necessary to carry out those provisions (43 U.S.C. 1334(a)).

§ 281.3 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipping OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, and mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Director" means the Director of the Minerals Management Service (MMS) of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Governor" means the Governor of a State or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to the Act.

"Lease" means any form of authorization which is issued under section 8 of the Act and which authorizes exploration for, and development and production of, minerals, or the area covered by that authorization, whichever is required by the context.

"Lessee" means the person authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all persons holding that authority by or through the lessee.

"OCS mineral" means a mineral deposit or accretion found on or below the surface of the seabed but does not include oil, gas, sulphur; salt or sand and gravel intended for use in association with the development of oil, gas, or sulphur; or source materials essential to production of fissionable materials which are reserved to the United States pursuant to section 12(e) of the Act.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Overriding royalty" means a royalty created out of the lessee's interest which is over and above the royalty reserved to the lessor in the original lease.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 281.4 Qualifications of lessees.

(a) In accordance with section 8(k) of the Act, leases shall be awarded only to qualified persons offering the highest cash bonus bid.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by:

(1) Citizens and nationals of the United States;

(2) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) Private, public, or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof; or

(4) Associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 281.5 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by up to 5 years imprisonment or a fine of $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any Agency of the United States any false or fraudulent statement(s) to any matters within the Agency's jurisdiction.

§ 281.6 Appeals.

Any party adversely affected by a decision of an MMS official made pursuant to the provisions of this part shall have the right of appeal pursuant to Part 290 of this title, except as provided otherwise in § 281.21 of this part.

§ 281.7 Disclosure of information to the public.

The Secretary shall make data and information available to the public in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations (30 CFR Parts 280 and 282 and 43 CFR Part 2).

§ 281.8 Rights to minerals.

(a) Unless otherwise specified in the leasing notice, a lease for OCS minerals shall include rights to all minerals within the leased area except the following:

(1) Minerals subject to rights granted by existing leases;

(2) Oil;

(3) Gas;

(4) Sulphur;

(5) Minerals produced in direct association with oil, gas, or sulphur;

(6) Salt deposits which are identified in the leasing notice as being reserved;

(7) Sand and gravel deposits which are identified in the leasing notice as being reserved; and

(8) Source materials essential to production of fissionable materials which are reserved pursuant to section 12(a) of the Act.

(b) When an OCS mineral lease issued uner this part limits the minerals to which rights are granted, such lease shall include rights to minerals produced in direct association with the OCS mineral specified in the lease but not the rights to minerals specifically reserved.

(c) The existence of an OCS mineral, oil and gas, or sulphur lease shall not preclude the issuance of a lease(s) for other OCS minerals in the same area. However, no OCS mineral lease shall authorize or permit the lessee thereunder to unreasonably interfere with or endanger operations under an existing OCS mineral, oil and gas, or sulphur lease.

§ 281.9 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction (43 U.S.C. 1336), either the Governor or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities under the Act or under State authority and to payment and impounding of rents, royalties, and other sums and with respect to the offering of lands for lease pending settlement of the controversy.

Subpart B—Leasing Procedures

§ 281.11 Unsolicited request for a lease sale.

(a) Any person may at any time request that OCS minerals be offered for lease. A request that OCS minerals be offered for lease shall be submitted to the Director and shall contain the following information:

(1) The area to be offered for lease.

(2) The OCS minerals of primary interest.

(3) The available OCS mineral resource and environmental information pertaining to the area of interest to be offered for lease which supports the request.

(b) Within 45 days after receipt of a request submitted under paragraph (a) of this section, the Director shall either initiate steps leading to the offer of OCS minerals for lease and notify the applicant of the action taken or inform the applicant of the reasons for not initiating steps leading to the offer of OCS minerals for lease.

(c) Any interested party may at any time submit information to the Director concerning the scheduling of proposed lease sales of OCS minerals in any area of the OCS. Such information may include but not be limited to any of the following:

(1) Benefits of conducting a lease sale in an area.

(2) Costs of conducting a lease sale in an area.

(3) Geohazards which could be encountered in an area.

(4) Geological information about an area and mineral resource potential.

(5) Environmental information about an area.

(6) Information about known archaeological resources in an area.

§ 281.12 Request for OCS mineral information and interest.

(a) When considering whether to offer OCS minerals for lease, the Secretary, upon the Department of the Interior's own initiative or as a result of a submission under § 281.11, may request indications of interest in the leasing of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in the area being considered for lease. Requests for information and interest shall be published in the **Federal Register** and may be published elsewhere.

(b) States and local governments, industry, other Federal Agencies, and all interested parties (including the public) may respond to a request for information and interest. All information provided to the Secretary will be considered in the decision whether to proceed with additional steps leading to the offering of OCS minerals for lease.

(c) The Secretary may request specific information concerning the offering of a specific OCS mineral, a group of OCS minerals, or all OCS minerals in a broad area for lease or the offering of one or more discrete tracts which represent a minable orebody. The Secretary's request may ask for comments on OCS areas which have been determined to warrant special consideration and analysis. Requests may be for comments concerning geological conditions or archeological resources on the seabed; multiple uses of the area proposed for leasing, including navigation, recreation and fisheries; and other socioeconomic, biological, and environmental information relating to the area proposed for leasing.

§ 281.13 Joint State/Federal coordination.

(a) The Secretary may invite the adjacent State Governor(s) to join in, or the adjacent State Governor(s) may request that the Secretary join in, the establishment of a State/Federal task force or some other joint planning or coordination arrangement when industry interest exists for OCS mineral leasing or geological information appears to support the leasing of OCS minerals in specific areas. Participation in joint State/Federal task forces or other arrangements will afford the adjacent State Governor(s) opportunity for access to available data and information about the area; knowledge of progress made in the leasing process and of the results of subsequent exploration and development activities; facilitate the resolution of issues of mutual interest; and provide a mechanism for planning, coordination, consultation, and other activities which the Secretary and the Governor(s) may identify as contributing to the leasing process.

(b) State/Federal task forces or other such arrangement are to be constituted pursuant to such terms and conditions (consistent with Federal law and these regulations) as the Secretary and the adjacent State Governor(s) may agree.

(c) State/Federal task forces or other such arrangements will provide a forum which the Secretary and adjacent State Governor(s) may use for planning, consultation, and coordination on concerns associated with the offering of OCS minerals other than oil, gas, or sulphur for lease.

(d) With respect to the activities authorized under these regulations each State/Federal task force may make recommendations to the Secretary and adjacent State Governor(s) concerning:

(1) The identification of areas in which OCS minerals might be offered for lease;

(2) The potential for conflicts between the exploration and development of OCS mineral resources, other users and uses of the area, and means for resolution or mitigation of these conflicts;

(3) The economic feasibility of developing OCS mineral resources in the area proposed for leasing;

(4) Potential environmental problems and measures that might be taken to mitigate these problems;

(5) Development of guidelines and procedures for safe, environmentally responsible exploration and development practices; and

(6) Other issues of concern to the Secretary and adjacent State Governor(s).

(e) State/Federal task forces or other such arrangements might also be used to conduct or oversee research, studies, or reports (e.g., Environmental Impact Statements).

§ 281.14 OCS mining area identification.

The Secretary, after considering the available OCS mineral resources and environmental data and information, the recommendation of any joint State/Federal task force established pursuant to § 281.13 of this part, and the

comments received from interested parties, shall select the tracts to be considered for offering for lease. The selected tracts will be considered in the environmental analysis conducted for the proposed lease offering.

§ 281.15 Tract size.

The size of the tracts to be offered for lease shall be as determined by the Secretary and specified in the leasing notice. It is intended that tracts offered for lease be sufficiently large to include potentially minable OCS mineral orebodies. When the presence of any minable orebody is unknown and additional prospecting is needed to discover and delineate OCS minerals, the size of tracts specified in the leasing notice may be relatively large.

§ 281.16 Proposed leasing notice.

(a) Prior to offering OCS minerals in an area for lease, the Director shall assess the available information including recommendations of any joint State/Federal task force established pursuant to § 281.13 of this part to determine lease sale procedures to be prescribed and to develop a proposed leasing notice which sets out the proposed primary term of the OCS mineral leases to be offered; lease stipulations including measures to mitigate potentially adverse impacts on the environment; and such rental, royalty, and other terms and conditions as the Secretary may prescribe in the leasing notice.

(b) The proposed leasing notice shall be sent to the Governor(s) of any adjacent State(s), and a Notice of its availability shall be published in the **Federal Register** at least 60 days prior to the publication of the leasing notice.

(c) Written comments of the adjacent State Governor(s) submitted within 60 days after publication of the Notice of Availability of the proposed leasing notice shall be considered by the Secretary.

(d) Prior to publication of the leasing notice, the Secretary shall respond in writing to the comments of the adjacent State Governor(s) stating the reasons for accepting or rejecting the Governor's recommendations, or for implementing any alternative mutually acceptable approach identified in consultation with the Governor(s) as a means to provide a reasonable balance between the national interest and the well being of the citizens of the adjacent State.

§ 281.17 Leasing notice.

(a) The Director shall publish the leasing notice in the **Federal Register** at least 30 days prior to the date that OCS minerals will be offered for lease. The leasing notice shall state whether oral or sealed bids or a combination thereof will be used; the place, date, and time at which sealed bids shall be filed; and the place, date, and time at which sealed bids shall be opened and/or oral bids received. The leasing notice shall contain or reference a description of the tract(s) to be offered for lease; specify the mineral(s) to be offered for lease (if less than all OCS minerals are being offered); specify the period of time the primary term of the lease shall cover; and any stipulation(s), term(s), and condition(s) of the offer to lease (43 U.S.C. 1337(k)).

(b) The leasing notice shall contain a reference to the OCS minerals lease form which shall be issued to successful bidders.

(c) The leasing notice shall specify the terms and conditions governing the payment of the winning bid.

§ 281.18 Bidding system.

(a) The OCS minerals shall be offered by competitive, cash bonus bidding under terms and conditions specified in the leasing notice and in accordance with all applicable laws and regulations.

(b)(1) When the leasing notice specifies the use of sealed bids, such bids received in response to the leasing notice shall be opened at the place, date, and time specified in the leasing notice. The sole purpose of opening bids is to publicly announce and record the bids received, and no bids shall be accepted or rejected at that time.

(2) The Secretary reserves the right to reject any and all sealed bids received for any tract, regardless of the amount offered.

(3) In the event the highest bids are tie bids when using sealed bidding procedures, the tied bidders may be permitted to submit oral bids to determine the highest cash bonus bidder.

(c)(1) When the leasing notice specifies the use of oral bids, oral bids shall be received at the place, time, and date and in accordance with the procedures specified in the leasing notice.

(2) The Secretary reserves the right to reject all oral bids received for any tract, regardless of the amount offered.

(d) When the leasing notice specifies the use of deferred cash bonus bidding, bids shall be received in accordance with paragraph (b) or (c) of this section, as appropriate. The high bid will be determined based upon the net present value of each total bid. The appropriate discount rate will be specified in the leasing notice. High bidders using the deferred bonus option shall pay a minimum of 20 percent of the cash bonus bid prior to lease issuance. At least a total of 60 percent of the cash bonus bid shall be due on or before the 5th anniversary of the lease, and payment of the remainder of the cash bonus bid shall be due on the 10th anniversary of the lease. The lessee shall submit a bond guaranteeing payment of the deferred portion of the bonus, in accordance with § 281.33.

§ 281.19 Lease term.

An OCS mineral lease for OCS minerals other than sand and gravel shall be for a primary term of not less than 20 years as stipulated in the leasing notice. The primary lease term for each OCS mineral shall be determined based on exploration and development requirements for the OCS minerals being offered by the Secretary. An OCS mineral lease for sand and gravel shall be for a primary term of 10 years unless otherwise stipulated in the leasing notice. A lease will continue beyond the specified primary term for so long thereafter as leased OCS minerals are being produced in accordance with an approved mining operation or the lessee is otherwise in compliance with provisions of the lease and the regulations in this chapter under which a lessee can earn continuance of the OCS mineral lease in effect.

§ 281.20 Submission of bids.

(a) If the bidder is an individual, a statement of citizenship shall accompany the bid.

(b) If the bidder is an association (including a partnership), the bid shall be accompanied by a certified statement indicating the State in which it is registered and that the association is authorized to hold mineral leases on the OCS, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(c) If the bidder is a corporation, the bid shall be accompanied by the following information:

(1) Either a statement certified by the corporate Secretary or Assistant Secretary over the corporate seal showing the State in which it was incorporated and that it is authorized to hold mineral leases on the OCS or appropriate reference to statements or record previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations).

(2) Evidence of authority of persons signing to bind the corporation. Such evidence may be in the form of a certified copy of either the minutes of the board of directors or of the bylaws indicating that the person signing has authority to do so, or a certificate to that effect signed by the Secretary or Assistant Secretary of the corporation over the corporate seal, or appropriate reference to statements or records previously submitted to an MMS OCS office (including material submitted in compliance with prior regulations). Bidders are advised to keep their filings current.

(3) The bid shall be executed in conformance with corporate requirements.

(d) Bidders should be aware of the provisions of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(e) When sealed bidding is specified in the leasing notice, a separate sealed bid shall be submitted for each bid unit that is bid upon as described in the leasing notice. A bid may not be submitted for less than a bidding unit identified in the leasing notice.

(f) When oral bidding is specified in the leasing notice, information which must accompany a bid pursuant to paragraph (a), (b), or (c) of this section, shall be presented to MMS at the lease sale prior to the offering of an oral bid.

§ 281.21 Award of leases.

(a)(1) The decision of the Director on bids shall be the final action of the Department, subject only to reconsideration by the Secretary, pursuant to a written request in accordance with paragraph (a)(2) of this section. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases in the OCS.

(2) Any bidder whose bid is rejected by the Director may file a written request for reconsideration with the Secretary within 15 days of notice of rejection, accompanied by a statement of reasons with a copy to the Director. The Secretary shall respond in writing either affirming or reversing the decision.

(b) Written notice of the Director's action in accepting or rejecting bids shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit three copies of the lease form to the successful bidder. As provided in § 281.26 of this part, the bidder shall, not later than the 10th business day after receipt of the lease, execute the lease, pay the first year's rental, and unless payment of a portion of the bid is deferred, pay the balance of the bonus bid. When payment of a portion of the bid is deferred, the successful bidder shall also file a bond to guarantee payment of the deferred portion as required in § 281.33. Deposits shall be refunded on high bids subsequently rejected. When three copies of the lease have been executed by the successful bidder and returned to the Director, the lease shall be executed on behalf of the United States; and one fully executed copy shall be transmitted to the successful bidder.

(c) If the successful bidder fails to execute the lease within the prescribed time or to otherwise comply with the applicable regulations, the successful bidder's deposit shall be forfeited and disposed of in the same manner as other receipts under the Act.

(d) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, the deposit shall be refunded.

(e) If the awarded lease is executed by an agent acting on behalf of the bidder, the bidder shall submit with the executed lease, evidence that the agent is authorized to act on behalf of the bidder.

§ 281.22 Lease form.

The OCS mineral leases shall be issued on the lease form prescribed by the Secretary in the leasing notice.

§ 281.23 Effective date of leases.

Leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor except that, upon written request, a lease may be dated and become effective as of the first day of the month within which it is signed on behalf of the lessor.

Subpart C—Financial Considerations

§ 281.26 Payments.

(a) For sealed bids, a bonus bid deposit of a specified percentage of the total amount bid is required to be submitted with the bid. The percentage of bonus bid required to be deposited will be specified in the leasing notice. The remittance may be made in cash or by Federal Reserve check, commerical check, bank draft, money order, certified check, or cashier's check made payable to "Department of the Interior—MMS." Payment of this portion of the bonus bid may not be made by Electronic Funds Transfer.

(b) For oral bids, a bonus bid deposit of a specified percentage of the total amount bid must be submitted to the official designated in the leasing notice following the completion of the oral bidding. The percentage of bonus bid required to be deposited will be specified in the leasing notice. Payment of this portion of the bonus bid shall be made by Electronic Fund Transfer within the timeframe specified in the leasing notice.

(c) The deposit received from high bidders will be placed in a Treasury account pending acceptance or rejection of the bid. Other bids submitted under paragraph (a) of this section will be returned to the bidders. If the high bid is subsequently rejected, an amount equal to that deposited with the high bid will be returned according to applicable regulations.

(d) The balance of the winning bonus bid and all rentals and royalties must be paid in accordance with the terms and conditions of this part, the Leasing Notice, and Subchapter A of this chapter.

(e) For each lease issued pursuant to this subpart, there shall be one person identified who shall be solely responsible for all payments due and payable under the provisions of the lease. The single responsible person shall be designated as the payor for the lease and shall be so identified on the Solid Minerals Payor Information Form (MMS–4030) in accordance with § 210.201 of this title. The designated person shall be responsible for all bonus, rental, and royalty payments.

(f) Royalty shall be computed at the rate specified in the leasing notice, and paid in value unless the Secretary elects to have the royalty delivered in kind.

(g) For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the lease year in which production royalty is paid (whether the full amount specified in the lease or ½ the amount specified in the lease pursuant to § 281.28(b) on this part) of OCS minerals produced (sold, transferred, used, or otherwise disposed of) from the leasehold.

(h) Unless stated otherwise in the lease, product valuation will be in accordance with the regulations of this chapter. The value used in the computation of royalty shall be determined by the Director. The value, for royalty purposes, shall be the gross proceeds received by the lessee for produced substances at the point the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry. In establishing the value, the Director shall consider, in this order: (1) The price received by the lessee; (2) commodity and spot market transactions; (3) any other valuation

method proposed by the lessee and approved by the Director; and (4) value or cost netback. For non-arm's length transactions, the first benchmark will only be accepted if it is not less than the second benchmark.

(i) All payors must submit payments and payment information forms and maintain auditable records in accordance with the following Royalty Management regulations of this title:

Section 210.200—Required recordkeeping.
Section 210.201—Solid minerals payor information form.
Section 210.202—Report of sales and royalty remittance—solid minerals.
Section 210.203—Special forms and reports.
Section 212.200—Maintenance of and access to records.
Section 217.250—Audits.
Section 218.40—Assessments for incorrect or late reports and failure to report.
Section 218.50—Timing of payment.
Section 218.51—Method of payment.
Section 218.52—Designated payor.
Section 218.56—Definitions.
Section 218.150—Royalties, net profit shares, and rental payments.
Section 218.151—Rentals.
Section 218.155—Method of payment.
Section 218.202—Late payment or underpayment charges.
Section 241.20—Civil penalties authorized by statutes other than the Federal Oil and Gas Royalty Management Act of 1982.

§ 281.27 Annual rental.

(a) The annual lease rental shall be due and payable in accordance with the provisions of this section. No rental shall be due or payable under a lease commencing with the first lease anniversary date following the commencement of royalty payments on leasehold production computed on the basis of the royalty rate specified in the lease except that annual rental shall be due for any year in which production from the leasehold is not subject to royalty pursuant to § 281.28.

(b) Unless otherwise specified in the leasing notice and subsequently issued lease, no annual rental payment shall be due during the first 5 years in the life of a lease.

(c) The leasee shall pay an annual rental in the amount specified in the leasing notice and subsequently issued lease not later than the last day prior to the commencement of the rental year.

(d) A rental adjustment schedule and amount may be specified in a leasing notice and subsequently issued lease when a variance is warranted by geologic, geographic, technical, or economic conditions.

§ 281.28 Royalty.

(a) The royalty due the lessor on OCS minerals produced (i.e., sold, transferred, used, or otherwise disposed of) from a lease shall be set out in a separate schedule attached to and made a part of each lease and shall be as specified in the leasing notice. The royalty due on production shall be based on a percentage of the value or amount of the OCS mineral(s) produced, a sum assessed per unit of product, or other such method as the Secretary may prescribe in the leasing notice. When the royalty specified is a sum assessed per unit of product, the amount of the royalty shall be subject to an annual adjustment based on changes in the appropriate price index, when specified in the leasing notice. When the royalty is specified as a percentage of the value or amount of the OCS minerals produced, the Secretary will notify the lessee when and where royalty is to be delivered in kind.

(b) When prescribed in the leasing notice and subsequently issued lease, royalty due on OCS minerals produced from a leasehold will be reduced for up to any 5 consecutive years, as specified by the lessee prior to the commencement of production, during the 1st through 15th year in the life of the lease. No royalty shall be due in any year of the specified 5-year period that occurs during the 1st through 10th years in the life of the lease, and a royalty of one-half the amount specified in the lease shall be due in any year of the specified 5-year period that occurs in the 11th through 15th year in the life of the lease. The lessee shall pay the amount specified in the lease rental for any royalty free year. The minimum royalty specified in the lease shall apply during any year of reduced royalty.

§ 281.29 Royalty valuation.

The method of valuing the product from a leasehold shall be in accordance with regulations of this chapter and procedures prescribed in the leasing notice and subsequently issued lease.

§ 281.30 Minimum royalty.

Unless otherwise specified in the leasing notice, each lease issued pursuant to the regulations in this part shall require the payment of a specified minimum annual royalty beginning with the year in which OCS minerals are produced (sold, transferred, used, or otherwise disposed of) from the leasehold except that the annual rentals shall apply during any year that royalty free production is in effect pursuant to § 281.28(b). Minimum royalty payments shall be offset by royalty paid on production during the lease year. Minimum royalty payments are due at the beginning of the lease year and payable by the end of the month following the end of the lease year for which they are due.

§ 281.31 Overriding royalties.

(a) Subject to the approval of the Secretary, an overriding royalty interest may be created by an assignment pursuant to section 8(e) of the Act. The Secretary may deny approval of an assignment which creates an overriding royalty on a lease whenever that denial is determined to be in the interest of conservation, necessary to prevent premature abandonment of a producing mine, or to make possible the mining of economically marginal or low-grade ore deposits. In any case, the total of applicable overriding royalties may not exceed 2.5 percent or one-half the base royalty due the Federal Government, whichever is less.

(b) No transfer or agreement may be made which creates an overriding royalty interest unless the owner of that interest files an agreement in writing that such interest is subject to the limitations provided in § 281.30 of this part, paragraph (a) of this section, and § 281.32 of this part.

§ 281.32 Waiver, suspension, or reduction of rental, minimum royalty or production royalty.

(a) The Secretary may waive, suspend, or reduce the rental, minimum royalty, and/or production royalty prescribed in a lease for a specified time period when the Secretary determines that it is in the national interest, it will result in the conservation of natural resources of the OCS, it will promote development, or the mine cannot be successfully operated under existing conditions.

(b) An application for waiver, suspension, or reduction of rental, minimum royalty, or production royalty under paragraph (a) of this section shall be filed in duplicate with the Director. The application shall contain the serial number(s) of the lease(s), the name of the lessee(s) of record, and the operator(s) if applicable. The application shall either:

(1)(i) Show the location and extent of all mining operations and a tabulated statement of the minerals mined and subject to royalty for each of the last 12 months immediately prior to filing the application:

(ii) Contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any lease products, and the amount of all overriding royalties and payments out of production paid to others than the United States; and

(iii) All facts showing whether or not the mine(s) can be successfully operated under the royalty fixed in the lease; or

(2) If no production has occurred from the lease, show that the lease cannot be successfully operated under the rental, royalty, and other conditions specified in the lease.

(c) The applicant for a waiver, suspension, or reduction under this section shall file documentation that the lessee and the royalty holders agree to a reduction of all other royalties from the lease so that the aggregate of all other royalties does not exceed one-half the amount of the reduced royalties that would be paid to the United States.

§ 281.33 Bonds and bonding requirements.

(a) When the leasing notice specifies that payment of a portion of the bonus bid can be deferred, the lessee shall be required to submit a surety or personal bond to guarantee payment of a deferred portion of the bid. Upon the payment of the full amount of the cash bonus bid, the lessee's bond will be released.

(b) All bonds to guarantee payment of the deferred portion of the high cash bonus bid furnished by a lessee shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(1) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of the Treasury Circular No. 570 and any supplemental or replacement circulars.)

(2) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(c) Prior to the commencement of any activity on a lease(s), the lessee shall submit a surety or personal bond as described in § 282.40 of this title. Prior to the approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

Subpart D—Assignments and Lease Extensions

§ 281.40 Assignment of leases or interests therein.

(a) Subject to the approval of the Secretary, a lease may be assigned, in whole or in part, pursuant to section 8(e) of the Act to anyone qualified to hold a lease.

(b) Any approved assignment shall be deemed to be effective on the first day of the lease month following the date that it is submitted to the Director for approval unless by written request the parties request that the effective date be the first of the month in which the Director approves the assignment.

(c) The assignor shall be liable for all obligations under the lease occurring prior to the effective date of an assignment.

(d) The assignee shall be liable for all obligations under the lease occurring on or after the effective date of an assignment and shall comply with all terms and conditions of the lease and applicable regulations issued under the Act.

§ 281.41 Requirements for filing for transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein including subleases and assignments of record interest shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $50. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $50 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact signing on behalf of the holder of a lease or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 281.20 of this part.

(c) Where an assignment creates separate leases, a bond shall be furnished for each of the resulting leases in the amount prescribed in § 282.40 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease or any interest therein shall be recognized as the lawful successor to such lease or interest if evidence of status as an heir or devisee is furnished in the form of:

(1) A certified copy of an appropriate order or decree of the court having jurisdiction over the distribution of the estate, or

(2) If no court action is necessary, the statement of two disinterested persons having knowledge of the fact or a certified copy of the will.

(e) The heirs or devisee shall file statements that they are the persons named as successors to the estate with evidence of their qualifications to hold such lease or interest therein.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lease.

§ 281.42 Effect of assignment on particular lease.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions of the lease area become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of the assignment and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty, and annual rental provisions of the lease shall apply separately to each segregated portion.

(b) Each lease of an OCS mineral created by the segregation of a lease under paragraph (a) of this section shall continue in full force and effect for the remainder of the primary term of the original lease and so long thereafter as minerals are produced from the portion of the lease created by segregation in accordance with operations approved by the Director or the lessee is otherwise in compliance with provisions of the lease or regulations for earning the continuation of the lease in effect.

§ 281.43 Effect of suspensions on lease term.

(a) If the Director orders the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease shall be extended by a period of time equivalent to the period of the directed suspension.

(b) If the Director orders or approves the suspension of either operations or production, or both, with respect to any lease that is in force beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

Subpart E—Termination of Leases

§ 281.46 Relinquishment of leases or parts of leases.

(a) A lease or any part thereof may be surrendered by the record title holder by filing a written relinquishment with the Director. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to:

(1) Make all payments due, including any accrued rentals and royalties; and

(2) Abandon all operations, remove all facilities, and clear the land to be relinquished to the satisfaction of the Director.

(b) Upon relinquishment of a lease, the data and information submitted under the lease will no longer be held confidential and will be available to the public.

§ 281.47 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that:

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force;

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years, or for a lesser period upon request of the lessee; and

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of:

(i) The fair value of the canceled rights as of the date of cancellation, taking into account both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

(iii) The lessee shall not be entitled to compensation where one of the following circumstances exists when a lease is canceled:

(A) A producing lease is forfeited or is canceled pursuant to section (5)(d) of the Act;

(B) A Testing Plan or Mining Plan is disapproved because of the lessee's failure to demonstrate compliance with the requirements of applicable Federal Law; or

(C) The lessee(s) of a nonproducing lease fails to comply with a provision of the Act, the lease, or regulations issued under the Act, and the noncompliance continues for a period of 30 days or more after the mailing of a notice of noncompliance by registered or certified letter to the lessee(s).

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Wednesday
January 18, 1989

Part III

Department of the Interior

Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Postlease Discovery, Delineation, Development and Production; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 282

Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur; Postlease Discovery, Delineation, Development and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes a separate set of general regulations designed to govern postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulpur in the Outer Continental Shelf (OCS) of the United States. The rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced orderly postlease discovery, delineation, development, and production of minerals other than oil, gas, and sulphur, while protecting the human, marine, and coastal environments; preserving and maintaining free enterprise competition; and minimizing or eliminating conflicts between OCS mineral activities and other users and uses of the oceans. Specific requirements applicable to the specific mineral resources that are offered for lease will be included in the leasing notice and subequently issued leases. The rule is the third and final rule in a series of rules designed to implement a comprehensive prelease prospecting, leasing, and postlease operations regulatory program for OCS minerals other than oil, gas, and sulphur pursuant to the Department of the Interior's (DOI) authority as expressed in the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334).

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with prelease prospecting, leasing, and postlease activities associated with prospecting for and discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur. The new regulations are designed to recognize the differences between the OCS activities associated with the discovery, development, and production of oil, gas, and sulphur and similar activities associated with OCS minerals other than oil, gas, and sulphur. These regulations address issues identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the new regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with the discovery, delineation, development, and production of OCS minerals other than oil, gas, and sulphur;

(2) Assure that States, and through States local governments, which are directly affected by OCS mineral exploration and mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS mineral exploration and mining activities and other users and uses of OCS resources;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the OCS resources;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for postlease mineral activities and wise management of the natural resources of the OCS.

This rule is designed to govern postlease activities to discover, delineate, develop, produce, and process OCS minerals other than oil, gas, and sulphur.

On April 9, 1986, MMS published an Advance Notice of Proposed Rulemaking (ANPR) for regulations to govern postlease operations (51 FR 12163) associated with OCS mineral leases for minerals other than oil, gas, or sulphur. Comments and recommendations received in response to the ANPR for postlease operations were summarized in the Public Comments and Agency Responses portion of the Notice of Proposed Rulemaking (NPR) that was published on August 18, 1988 (53 FR 31442), to propose rules to govern Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulphur.

On October 3, 1988, a Notice was published in the **Federal Register** (53 FR 38739) which extended the comment period on the proposed rule from October 3, to November 2, 1988. A total of 23 comments and recommendations were received. Five of those requested that the comment period be extended beyond October 3, 1988. The 18 remaining responses to the August 18, 1988, NPR were comprised of 7 comments and recommendations from State agencies, 1 comment from industry, 4 comments from environmental organizations, 2 comments from individuals, 2 comments from other Federal Agencies, 1 comment from a U.S. Senator, and 1 comment from a group comprised of representatives of State governments, environmental organizations, and industry. A review and discussion of those comments will be found in the section entitled Public Comments and Agency Responses.

The first part of the regulatory regime to govern OCS mineral mining activities was published July 5, 1988 (53 FR 25242), effective August 4, 1988. It established practices and procedures specific to prospecting activities associated with geological and geophysical (G&G) exploration and scientific research for OCS minerals other than oil, gas, and sulphur. The provisions of 30 CFR Part 280 are also applicable to G&G exploration and scientific research conducted by a lessee on unleased lands and those conducted on leased OCS lands by a person who is not the operator or lessee. A final rule designed to govern the leasing of such OCS minerals appears in another part of this **Federal Register**.

The DOI's Responsibilities

This rule is an action within the statutory authority of the Secretary of the Interior (Secretary) and is intended to promote and encourage private enterprise in the development of an economically sound and stable domestic materials industry in the United States which provides the appropriate level of protection for the human, marine, and coastal environments.

Section 8(k) of the OCSLA provides specific legal authority and responsibility for the leasing of minerals other than oil, gas, and sulphur in the OCS. This authority and responsibility exercised in conjunction with 20 other sections of the OCSLA, which are applicable in whole or in part, and other laws provide the Secretary with adequate flexibility and guidelines to establish and administer an OCS minerals leasing and mining program for minerals other than oil, gas, and sulphur.

The DOI and MMS recognize the potential for adverse environmental impacts as a result of OCS mineral development activities. These potential impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Under DOI's case-by-case approach, issues common to all forms of OCS mining activities associated with OCS minerals other than oil, gas, and sulphur will be covered by regulations governing G&G prospecting and scientific research (30 CFR Part 280), leasing (30 CFR Part 281), and postlease operations (30 CFR Part 282).

The lease sale planned for Norton Sound is an example of the way DOI carries out its National Environmental Policy Act (NEPA) responsibilities. On March 11, 1988, MMS published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** (53 FR 8134) in association with a Request for Comments and Nominations for a Lease Sale in Norton Sound. Lease sale EIS's such as the one being prepared for Norton Sound will be augmented by additional environmental documentation prior to the approval of postlease development and production operations.

Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are defined. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the targeted OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval of Delineation, Testing, or Mining Plans for the conduct of postlease operations. Based on this approach and information obtained from lessees in support of proposed operations and as a result of MMS's Environmental Studies Program, MMS believes that protection of the environment is compatible with the recovery of minerals other than oil, gas, and sulphur from the OCS.

Background

During the period of 1954 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations promulgated under the OCSLA (30 CFR Part 256). These lease offerings resulted in the receipt of high-cash bonus bids totaling more than $54 million. (See Table 1.)

TABLE 1—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	Number of tracts offered	Acres offered	Number of tracts bid on	Total bonus high bid	Number of tracts leased	Number of bids rejected	Number of bids received
Gulf of Mexico salt and sulphur lease offerings:[1]									
1	10/23/54	Sul-LA	108	523,630	5	$1,233,500	5	0	5
8	05/19/60	Sa-LA	10	22,085	1	75,250	1	0	1
13	12/14/65	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	09/05/67	Sa-LA	8	16,995	1	30,564	1	0	1
20	05/13/69	Sul-LA	120	165,605	38	3,678,045	4	34	43
S/S	02/24/88	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Totals			955	2,279,806	109	53,906,995	75	34	183
Pacific phosphate lease offering:[2]									
PH	12/15/61	So-CA	16	80,640	6	122,000	6	0	6

[1] Total Amount of All Bids Received for All Lease Offerings—$82,527,068. Total Amount of All Rentals for All Lease Offerings—$297,860.
[2] Total Amount of All Bids Received—$122,000. [Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.]

Gold is being recovered from placer deposits in Alaska's State waters near Nome. Sand and gravel are being produced from Lake Erie and in Long Island Sound and New York Harbor in New York's and New Jersey's State waters. Interest has been expressed in acquiring prospecting permits for sand and gravel in Federal offshore waters.

The MMS is working closely with nine coastal States through joint State/Federal task forces and other arrangements to study the engineering, economic, and environmental aspects associated with the mining of OCS minerals other than oil, gas, and sulphur. These arrangements include a special working group with Alaska and five task forces involving eight other coastal States: Hawaii; Oregon; Georgia; North Carolina; and Alabama, Louisiana, Mississippi, and Texas.

Minerals other than oil, gas, and sulphur which may be discovered and produced from the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS minerals resource data are limited, estimated quantities of mineral associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Existing world ore reserves of these minerals are adequate for the foreseeable future, but they are controlled by relatively few producer countries that could potentially exercise leverage over commodity prices.

The OCS mineral deposits that have nearer term economic potential include heavy mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral export and an essential mineral import to many world agricultural regions.

This rule establishes a broad regulatory framework; lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and proposed postlease operations will facilitate the consultation and coordination processes authorized under Federal law.

Regulation Organization

This rule governs lessee conducted activities on a lease for minerals other than oil, gas, and sulphur in the OCS. The rule is subdivided into five subparts. A majority of the provisions fall under two subparts: Subpart B, Jurisdiction and Responsibilities of Director; and Subpart C, Obligations and Responsibilities of Lessees. The remaining subparts are Subpart A, General; Subpart D, Payments; and Subpart E, Appeals. While many activities are governed by the provisions of a particular subpart, some activities are subject to provisions contained in more than one subpart. For example, suspensions of production or other operations are addressed in both Subparts B and C, because they can either be directed by MMS or requested by a lessee.

The provisions which govern lessee obligations and responsibilities for activities to be carried out on a lease are contained in Subpart C. Lessee conducted activities normally fall into one or more of three basis categories: exploration, testing, or mining and processing. These lessee conducted activities must be conducted in accordance with an approved plan. No activity may be conducted that is not included in the activities described and approved as part of an approved plan. An exception is made for preliminary activities, i.e., those activities which have no significant environmental impact and which are necessary to prepare a reasonable Delineation, Testing, or Mining Plan. Requirements for the safe conduct of mining activities and environmental protection and monitoring are also in Subpart C. To aid the lessee, reporting and recordkeeping requirements other than those associated with Delineation, Testing, and Mining Plans are given in § 282.29.

Public Comments and Agency Responses

Comments and recommendations received in response to the August 18, 1988, NPR (53 FR 31442) are discussed below in relation to the provisions of the final rule.

Subpart A—General

Section 282.1 Purpose and authority.

Comment: Ten commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining and recommended that DOI request new stand-alone legislation. Various concerns were expressed including: (1) The OCSLA was written for oil and gas and never intended to govern marine mining, (2) the OCSLA does not adequately balance national and State interests and provides for little State involvement both in the decisionmaking process and revenue sharing, (3) the OCSLA gives the Secretary too much discretion in formulating a program to govern OCS mining, and (4) the requirement for a competitive cash bonus bid is a disincentive. The majority of these commenters suggested that DOI desist from further promulgation of rules under the OCSLA and pursue new legislation.

Response: The suggestion to defer promulgation of rules in favor of new stand alone legislation was not adopted. The OCSLA expressly entends DOI's jurisdiction and responsibility to OCS minerals other than oil, gas, and sulphur. The responsible course of action for DOI is to tailor implementing regulations in the best fashion available under the law to meet the requirements of marine mining. The OCSLA provides a clear legal basis for the promulgation of regulations to govern marine mining. Sections 5 and 8(k) of the OCSLA in combination with the 19 other sections of the OCSLA, which are applicable in whole or in part to minerals other than oil, gas, and sulphur, clearly and specifically grant authority to the Secretary to prescribe terms and conditions appropriate to the regulation of marine mining, including prelease prospecting, leasing, and postlease operations. Used in conjunction with other applicable OCSLA provisions and other laws, there is substantial and sufficient authority for ensuring adequate balance of national and State interests. It is true that there is no provision for revenue sharing with adjacent coastal States, but such a provision, with a limited recent exception, is also not available for oil, gas, and sulphur. Proposals for revenue sharing have been opposed by the last several administrations. Recognizing that there are differences btween oil and gas and other minerals, the OCSLA provides the Secretary with the necessary flexibility for the administration of a responsible OCS mining program. There is clear value in the establishment of a separate regulatory regime for OCS minerals other than oil, gas, and sulphur. While lease sales could be held and, in fact, have been held under existing regulations, mining company representatives have expressed a desire for regulations which would permit them to more accurately predict the economics of projected operations. Greater regulatory certainty will facilitate the raising of necessary venture capital

Comment: Seven commenters pointed out that the OCSLA does not grant jurisdiction to DOI over offshore areas which are adjacent to the U.S. territories and possessions.

Response: The DOI recognizes that the OCSLA does not provide jurisdiction over offshore areas adjacent to lands over which the United States exercises jurisdiction and control but which are not States (e.g., Johnston Island). Jurisdiction over those areas is not essential to the establishment of a leasing or regulatory program and is not relevant to the promulgation of this rule.

Section 282.3 Definitions.

Comment: One commenter noted that there were inconsistencies between the definitions of "Adjacent States", "Minerals," and "Person" as proposed in §§ 282.3 and 281.3.

Response: The definitions of two of these terms have been modified in the final rule to address this concern. The definition of "Adjacent State" has been modified by the addition of the word "proposed," between "activity" and "conducted." The definition of "Minerals" was revised to track the language of section 2(q) of the OCSLA. The definition of OCS minerals has been expanded to cite the reservation of source materials essential to production of fissionable materials pursuant to section 12(e) of the Act. The definition of "Person" is unchanged from the definition contained in the proposed rule.

Comment: One commenter recommended that the definition of "development" be reworded by replacing the word "operation" with "construction" and that the word "and" between "facilitates" and "which" be deleted.

Response: The definition of development has been modified in the final rule by the addition of the phrase "construction of offshore facilities" between "drilling," and "and operations" and by deletion of the word "and" from between "facilities" and "which."

Comment: One commenter suggested that the definition for "Governor" be replaced with the statutory definition in both the leasing and operating regulations.

Response: The statutory definition of "Governor" has been adopted for this rule.

Some additional changes were made to the text of § 282.3 to clarify the meaning of certain terms. The last phrase in the definition of "Exploration" was modified to read "proceed with development and production." The word "person" was substituted for the word "party" in the first line of the definition of "Lessee." The phrase "(when obtained for geochemical analysis)" was inserted in the definition of "Geological sample" between the words "waters" and "acquired." The definition of "Production" was deleted as redundant.

Sections 282.5, 282.6, 282.7, and 282.8 of the proposed rule have been renumbered §§ 282.4, 282.5, 282.6, and 282.7, respectively. This change corrects the inadvertent omission of a § 282.4 in the proposed rule.

Section 282.4 (proposed § 282.5) Opportunities for review and comment.

Comment: Several commenters noted that there is only general mention of joint State/Federal task force involvement in the review and evaluation of postlease activities and the environmental protection measures that will be required of lessees. It was recommended that the final rule describe the composition, responsibilities, and duties of joint State/Federal task forces. The commenters wanted to strengthen the role of task forces in the MMS decisionmaking process and in postlease monitoring of impacts and environmental protection.

Response: The provisions in the final rule relating to task forces and other such joint State/Federal coordination arrangements are purposefully general in order that those arrangements can better serve as a vehicle for the cooperative enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a) and 1345(e)). Provisions in the regulations should not be overly restrictive or prescriptive. They should provide sufficient flexibility to permit structuring of the working arrangements to best suit the specific situation, authority, and jurisdiction involved. The MMS intends to continue to work very closely with adjacent States and other Federal Agencies to determine composition and scope of individual task forces on a case-by-case basis. Representatives, including those from other Federal Agencies, will be invited to participate as their interests and capabilities dictate. The MMS anticipates establishing State/Federal working arrangements early in the process prior to initiation of environmental reviews leading to publication of a lease sale notice. It anticipates that those State/Federal working arrangements will be designed to continue to function through postlease activity. The membership and role of a task force may change as circumstances change and development activities proceed.

While there is no requirement that State/Federal task forces or other working arrangements discharge monitoring or inspection functions for MMS, MMS is open to considering this role on a case-by-case basis. Although it is anticipated that MMS decisions will give great weight to task force recommendations, the rule does not require decisions to "conform" to those recommendations. The MMS does not believe that the Secretary—or the Governor of an adjoining State for that matter—should, or can, relinquish basic authorities and responsibilities vested by law. On the other hand, State/Federal task forces are excellent forums for reaching timely consensus on issues, facilitating communications, and coordinating Federal and State regulatory activities.

Comment: Several commenters requested that Governors be provided at least 90 days to review and to provide comments and recommendations to the Director on proposed Delineation, Testing, and Mining Plans. Some also requested that the Secretary's criteria for balancing various factors be defined. Two commenters asked that the regulations be revised to include specific requirements to provide for public review and comment on proposed activities (e.g., a Notice of Availability of Proposed Delineation, Testing, or Mining Plans should be published in the Federal Register).

Response: The timeframes for reviewing, commenting on, and providing recommendations concerning lessee submitted Delineation, Testing, and Mining Plans have not been changed. The specified comment periods track the timeframes mandated by the OCSLA in section 11 for Exploration Plans and sections 19 and 25 for Development and Production Plans. Although Exploration Plans and Development and Production Plans apply to activities associated with OCS oil and gas operations, the review process involved is similar to the review process being established for OCS minerals other than oil, gas, and sulphur. In the event the activities described in a proposed Delineation, Testing, or Mining Plan are of a nature which requires the development of an EIS, the final rule authorizes the Director to allow the Governor additional time for the submission of comments and recommendations.

A set of "defined" criteria has not been included in the final rule. The example of criteria cited by commenters (i.e., criteria established by the Environmental Protection Agency (EPA) under the NEPA and by the National Oceanic and Atmospheric Administration (NOAA) under the Deep Seabed Hard Minerals Resource Act) was reviewed and found to be too narrow in scope to properly reflect the "balancing" which the Secretary is required to perform in arriving at a given decision in a specific case. Any list of criteria which might be appropriate for a given case at a specific time may not be appropriate for use in reaching a balanced decision in that case at another time or in another case at any time. It is sufficient that the Secretary provides an explanation regarding a decision not to adopt a written recommendation submitted by the Governor of an adjacent State. Preparation of environmental assessments for activities governed by plans will also provide public notice and involvement. There will be several opportunities for the interested public to participate in the review of, and comment on, proposed mining activities. Insofar as NEPA analysis is required for proposed activities covered in Delineation, Testing, or Mining Plans, Notices of Intent to prepare EIS's and Notices of Availability of EIS's will be published in the Federal Register. The scoping process allows, too, for public involvement. Members of the public may also arrange with the Director (appropriate MMS Regional Director) to be notified of the receipt of lessee submitted proposals and to be provided access to the nonproprietary portions of those proposals. All comments that are received in a timely manner will be taken into consideration during the decisionmaking process.

Comment: A number of commenters recommended that the role of the State/Federal "task forces" should be more specifically defined in the regulations and that the "task forces" should review proposed activity plans, contingency plans, and changes to approved plans.

Response: The recommendation that the role and responsibilities of task forces be specified by regulation has not been adopted. However, to the extent that involved States are interested, it is anticipated that joint State/Federal task forces or other working arrangements will be developed at any point in the process prior to leasing or afterwards. It is also expected that those working arrangements would continue to function as a coordinating mechanism during the review and approval of the postlease plans and activities governed by the regulations in Part 282. There is considerable advantage to allowing flexibility in the nature of those arrangements so that they can be structured to facilitate cooperation and

contribute most effectively to the unique set of conditions, concerns, and needs associated with a given mining operation and its environment.

Section 282.5 (proposed § 282.6) Disclosure of data and information to the public.

Comment: One commenter expressed the view that all information (including proprietary data and information) relied upon to meet the minimum requirements of applications for plan approval should be made available to the public. Another commenter expressed the view that detailed provisions for the protection of proprietary data from disclosure are needed in order not to discourage industry investment.

Response: The availability of G&G data to the public is governed by the Freedom of Information Act, the OCSLA, and implementing regulations including those contained in § 282.5. Section 282.5(b) has been expanded to more explicitly state the persons to whom the Director may make early release of data and information for effective and efficient development of a deposit. Section 282.5(c) continues to permit the Director to make geophysical data and information collected in compliance with a lease stipulation or order concerning the protection of the environment of the lease available to the public, unless the lessee shows to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

Section 282.6 (proposed § 282.7) Disclosure of information to on adjacent State.

Comment: One commenter expressed the view that representatives of adjacent States should be provided access to all lessee submitted plans, data, information and samples.

Response: This rule provides the representatives of adjacent States with the maximum access permitted under the OCSLA. Certain proprietary data and information can be accessed by State officials when the necessary agreements to protect the data and information from unauthorized disclosure have been signed.

Section 282.7 (proposed § 282.8) Jurisdictional controversies.

Comment: One commenter expressed concern that the provisions of § 282.7 simply reiterate the provisions of section 7 of the OCSLA which governs the handling of jurisdictional controversies and that neither § 281.10 nor § 282.8 anticipates or addresses a situation when the affected OCS mineral resource extends onto adjacent State lands.

Response: The provisions of § 282.7 concerning jurisdiction controversy remain unchanged. While the language of § 282.7 tracks the language of section 7 of the OCSLA, the provisions of that section should not be interpreted as a means for initiating negotiations where jurisdictional controversies are involved, i.e., litigation over the location of the common boundary between Federal OCS lands and State submerged lands is concerned. The situation where an affected OCS mineral resource extends onto adjacent State lands is best addressed by unitization of operations pursuant to § 282.11(d). The fact that an orebody extends under State and Federal OCS lands does not in and of itself constitute a controversy.

To address management of OCS mineral deposits which straddle State/Federal jurisdiction, DOI hopes to be able to develop an agreement with the adjacent State for joint management to the degree joint management is needed for the enforcement of safety, environmental, and conservation laws and regulations (43 U.S.C. 1334(a)) and the protection of correlative rights. The agreement would involve both the State and Federal lessees and assure coordination and cooperation to the extent necessary to maximize efficiency, reduce the regulatory burden, and obtain an equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees typically will negotiate an appropriate agreement to cover mining operations on the leases and the allocation of costs and benefits to the owners of divided interests in the area embraced by the Federal and State leases that are made subject to the unit agreement.

Subpart B—Jurisdiction and Responsibilities of Director

Section 282.10 Jurisdiction and responsibilities of Director.

Comment: One commenter expressed the view that environmental protection measures should be included in the list set forth in § 282.10.

Response: This suggestion has been adopted.

Section 282.11 Director's authority.

Comment: A commenter stated that the Director's authority and responsibility under NEPA and OCSLA are to provide information needed for the assessment and management of environmental impacts on the human, marine, and coastal environments. The commenter felt that the production of this information base must be something on which industry and the States can rely and the result of a process in which they play an effective role.

Response: The marine mining program and regulations provide significant opportunity for adjacent States, industry, and others to work directly with MMS through joint State/Federal task forces and other arrangements. These arrangements play an important role in assuring an adequate information base for decisions. The MMS also generates a wealth of environmental data and information through the environmental studies program. This data and information are applicable in large part to the marine mining program. It provides MMS with some of the best available scientific information on which to base its decisions. The DOI has established the OCS Advisory Board comprised of the OCS Policy Committee, OCS Scientific Committee, and Regional Technical Working Groups as an effective means for industry, States, and others to participate and influence the base of information upon which decisions are made.

Comment: One commenter expressed the view that the applicant of a project should be required under the provisions of these regulations to pay for the environmental analysis of the project.

Response: This suggestion has not been adopted. The lessee is required to submit environmental information regarding impacts of the activities proposed in a Delineation Plan, Testing Plan, or Mining Plan. When additional information is needed, a lessee may be required to provide that information in support of its proposal.

Section 282.11(d)(1) has been modified by adding the phrase "or the prevention of waste" to the end of the first sentence. Prevention of waste is one of the traditional bases for unitizing operations on two or more leases.

Section 282.12 Director's responsibilities.

Comments: Several commenters expressed the view that the criteria on which the Director will disapprove a Testing Plan or Mining Plan should be specified in the rule. The view was that the criteria contained in the proposed rule are too vague and ill defined, and the environmental protection provisions are inadequate. It was felt that the final rule should include a list of very specific criteria to be considered during the review process for approval or disapproval of a Testing Plan or Mining Plan.

Response: Additional specific criteria have not been incorporated in the final rule. The criteria to be used by the Director in the review and approval/disapproval for a Testing Plan or Mining Plan remain unchanged from those cited in § 282.12 of the proposed rule. The Director's review and assessment of the technical and environmental aspects of a Testing Plan or Mining Plan will take a balanced approach using recognized guidelines for protecting the environment. These guidelines come from a wide variety of laws besides the OCSLA and NEPA. These laws include the Endangered Species Act, Marine Mammals Protection Act, National Historic Preservation Act, and Clean Water Act. Although some sections of the OCSLA are oil and gas specific, other sections are applicable to all minerals in the OCS. These provisions require that activities be conducted in a safe manner and in a manner which is likely to prevent or minimize the likelihood of occurrences which may cause damage to the environment. They permit lease cancellation or suspension of production or other operations if there is a threat of serious, irreparable, or immediate harm to the marine, coastal, or human environments. The absence of specific guidelines in the final rule provides the flexibility needed for the development of environmental protection measures tailored to the technologies, commodities, and OCS locations where the mining operation is to take place.

Comment: One commenter expressed the view that the provisions in the operating regulations, giving the Director discretionary powers to disapprove a Testing Plan or Mining Plan, are poorly defined and not practical.

Response: We do not share this view. The regulations covering the Director's responsibilities and authority regarding review of Testing Plans and Mining Plans are logical, thorough, and practical. Sections on plan review and approval appropriately include consideration of environmental criteria and technical factors during the review of Testing Plans and Mining Plans. They provide ample opportunity for Governors of adjacent States to participate in the process and influence regulatory decisions. When recommendations of the Governor of an adjacent State are not accepted, the Governor is provided a written explanation.

Comment: A number of commenters expressed the view that the timelines specified in § 282.12 preclude full State agency and public participation.

Response: This comment parallels one addressed in the discussion under § 282.4. Joint State/Federal task forces and other arrangements provide substantial opportunity for active participation in the review and assessment process. The timeframes prescribed in the final rule track the timeframes mandated in the OCSLA for similar activities associated with oil and gas leases. Timeframes for comments may be extended when necessary to assure sufficient response time for input by States and the public into the NEPA process. Section 282.12(b)(2) had been modified by the addition of the phrase "or other NEPA document" following "environmental assessment." This modification recognizes that NEPA documentation of the environmental impacts of the activities described in a Delineation Plan may be in a form other than an environmental assessment.

Section 282.13 Suspension of production or other operations.

Comment: A commenter stated that the provisions for the suspension of operations should be revised to require the Director to suspend operations upon request by any State which has participated in joint coordination efforts for reasons stated in § 282.13(b) (1) through (9)

Response: This recommendation has not been adopted. It would be inappropriate for a State to exercise such ultimate authority over Federal lease activity. However, in those cases where a Governor of an adjacent State or appropriate State agency requests a suspension of operations, the Director would review the factors related to the request and suspend operations when circumstances and conditions justify that action. It is anticipated that great weight will be given to requests made by officials of adjacent States.

Comment: Several commenters commented on suspensions. Some expressed the view that the final rule should provide more precise criteria and procedures for the Director to use in making decisions regarding the suspension of production and other operations. Concern was expressed that the rule failed to provide for the compensation of lessees for areas which may be eliminated from development on the basis of information developed during the exploration of the lease. The concern was expressed that there is no provision for compensation for minerals left in place in order to protect sensitive environmental or archaeological value absent cancellation of the lease.

Response: Sufficient criteria are included to assure that a suspension of production and other operations can be directed or approved by the Director whenever such action is necessary. The procedures for compensating lessees for lost access to OCS minerals due to development and production restrictions on a lease are based on the procedures contained in the OCSLA. Since leases issued under the regulations in 30 CFR Part 281 are subject to the OCSLA, the regulations in Part 281 and this Part 282 are subject to compensation limits contained in the OCSLA.

Section 282.13(b)(8) has been modified to read:

"(8) The Director determines that continued operation of a producing mine would result in waste; or" This change is intended to clarify the fact that there must be a producing mine on the lease and the Director must determine that continued operation of the mine would result in waste.

Section 282.13(f)(2) has been modified by changing the period at the end of the proposed provision to a comma and adding the following language: "• • • unless the Director's approval of the lessee's request for suspension authorizes the payment of a lesser amount during the period of approved suspension."

Section 282.15 Cancellation of leases.

Section 282.15(d)(3) has been clarified by the addition of a new paragraph (iii). The new language points up those instances where a lessee will not be entitled to compensaiton when a lease is canceled.

Subpart C—Obligations and Responsibilities of Lessees

Section 282.20 Obligations and responsibilities of lessees.

Comment: One commenter expressed the view that the evaluation of potential environmental impacts of activities proposed by a lessee should include an evaluation of the potential air emissions associated with the activity and the onshore consequences of the expected OCS activities.

Response: Section 282.20 has been modified by revising the ending of the second sentence in § 282.20(a) to read "• • • human environment (including onshore air quality)." This change is consistent with the provisions of the OCSLA. Section 282.22(f) of the proposed and final rule specifies that "a description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution" will be submitted in support of a Delineation Plan. To correct an oversight in the drafting of the proposed rule regarding Testing Plans and Mining Plans, new §§ 282.23(j) and 282.24(o) have been added to the final rule to specify the submission of "a description of measures to be taken to avoid, minimize, or otherwise mitigate air,

land, and water pollution." Sections 282.23(j), (k), (l), (m), and (n) and §§ 282.24(o), (p), (q), and (r) have been renumbered § 282.23 (k), (l), (m), (n), (o) and § 282.24 (p), (q), (r), and (s), respectively. It is anticipated that the Director's review of the air quality consequences of proposed OCS activities will follow the practices and procedures specified in 30 CFR 250.33(b)(19), 250.34(b)(12), 250.45 and 250.46.

Section 282.21 Plans, general.

Comment: One commenter expressed the view that "Preliminary activities" as defined in § 282.21(d) may cause significant adverse impact on OCS resources. One example was based on the view that seismic testing might adversely affect marine mammals and fish with air bladders.

Response: No change has been made in the final rule. As a part of the promulgation of this final rule, MMS conducted an environmental assessment of the preliminary activities that could be conducted before Delineation, Testing, or Mining Plans were developed. The assessment resulted in a finding of no significant impacts for those activities. The lessee is required to provide notice to the Director regarding proposed preliminary activities. When the activities described in a notice go beyond activities which should have no significant adverse impact on the environment, the Director will advise the proponent which activities are not viewed as preliminary activities and the steps to be taken before conducting those activities (e.g., submission of a Delineation Plan together with supporting documents).

Section 282.22 Delineation plan.

Comment: Several commenters stated that the regulations or preamble of the **Federal Register** Notice should make it clear that a consistency determination under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) is applicable to the Director's approval of Delineation, Testing, and Mining Plans. The commenters recommended that the phrase "where applicable" should be deleted from §§ 282.22(m)(4), 282.23(m)(4), and 282.24(q)(4).

Response: This recommendation has not been adopted. The activities described in Delineation, Testing, and Mining Plans are, for the most part, located outside the coastal zone of adjacent States and not subject to a State implementation plan approved under CZMA. In these circumstances, the Director's approval of a Delineation, Testing, or Mining Plan is not subject to CZMA review and consistency concurrence. This position is based upon the memorandum opinion dated October 4, 1988, prepared by the Office of Legal Counsel of the Department of Justice for Abraham D. Sofaer, Legal Adviser, Department of State. The positions expressed in that opinion are consistent with the position previously taken by DOI in this matter.

Comment: One commenter expressed the view that Delineation, Testing, and Mining Plans should be subject to State approval, similar to the approval by the Director as provided in § 282.12.

Response: This recommendation has not been adopted. The rule provides substantial opportunity for State participation in the form of informal coordination of the identification and resolution of issues as well as the usual formal provisions for review and submission of comments and recommendations. In the final analysis, the decisions on the approval or disapproval of these activities are the responsibility of the Secretary of the Interior. Such decisions, by law, are to balance national objectives with State and local concerns.

Comment: One commenter suggested that given the requirements for environmental monitoring, the lessee must be required to submit, as part of the Delineation Plan, a plan for gathering baseline data that characterizes the marine environmental conditions and biological diversity of the lease area prior to any exploration.

Response: No exploration, testing, or mining activities may commence by a lessee before the Director approves the appropriate plan. This approval will be contingent upon a determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. This determination will be based on environmental information prepared in association with the lease offering, as well as the site-specific information developed in conjunction with the preparation of the Delineation, Testing, and Mining Plans. It is not expected that, apart from the above site-specific requirements, each lessee will necessarily be required to develop environmental baseline information. Information gathered as a result of MMS's environmental studies program and information available from other sources can be utilized to ascertain the site-specific environmental conditions prior to the commencement of the environmental monitoring program conducted in association with specific mining activities.

Section 282.28(b) provides adequate authority for the Director to require the lessee to collect additional environmental baseline data when data are needed to support environmental evaluation of activities proposed under a Delineation, Testing, or Mining Plan.

Comment: One commenter expressed the view that the rule should clearly state that waste disposal or discharges will be subject to a National Pollutant Discharge Elimination System (NPDES) permit, an Ocean Dumping permit, or other applicable permit.

Response: It is the lessee's responsibility to be aware of and to obtain all necessary permits and approvals for the conduct of OCS mining activities. This rule does not attempt to address all the requirements imposed upon lessees by laws and regulations administered by other Federal Agencies. Thus, the fact that waste disposal or discharges from leasehold activities may be subject to NPDES permits or other permitting requirements subject to the jurisdiction of a Federal Agency other than MMS has not been included in this rule.

Section 282.23 Testing Plan.

Comment: One commenter expressed the view that the final rule should specifically require the submission of a Testing Plan to determine the environmental effects of mining. Under the proposed rule, the submission of a Testing Plan is at the option of the lessee.

Response: This recommendation was not adopted. When the lessee is able to submit a comprehensive Mining Plan complete with a description of the potential environmental effects of the mining activities and necessary mitigating measures, there is no need to submit a Testing Plan.

Section 282.24 Mining Plan.

Comment: One commenter suggested that a Mining Plan be required to include the description of a stable reference area (also called a preservational reference area). The area would serve as a reference area against which the impact of mining on the lease could be compared. No mining could occur in the reference area.

Response: The MMS will not require a lessee's Mining Plan to designate or describe a stable (preservational) reference area where no mining can occur. However, to properly address environmental concerns, a monitoring plan could include one or more control sites in which no mining would be conducted until late in the life of a lease. Nothing in these rules would preclude a lessee from voluntarily designating a control site on its lease as a stable reference area, available for study by any interested party.

Comment: A commenter stated that site-specific assessments of Delineation, Testing, and Mining Plans cannot address cumulative impacts and that cumulative impacts of mining activities should be made available to the public prior to a lease sale.

Response: The MMS anticipates that an EIS will be prepared prior to the first lease sale in an area. The NEPA documentation conducted prior to a subsequent lease sale will analyze the cumulative impacts of mining activities conducted on previously issued leases together with the anticipated impacts of the mining activities that are expected to occur as a result of the proposed sales of additional OCS mineral leases in the area.

Comment: One commenter said the lessee should be required to mitigate any potential adverse environmental impact and that the Mining Plan should stipulate measures the lessee will be required to implement to accomplish this. Another expressed doubts that mitigation measures exist to reduce significant adverse environmental impacts associated with the mining of construction materials, placers, and phosphorite.

Response: No change has been made in the rule based on this comment. Mining Plans are required to describe mitigation measures to protect the environment. The MMS will carefully balance development and environmental protection objectives in its review of Mining Plans to determine appropriate measures for avoiding and minimizing the potentially adverse environmental effects of marine mining. Decades of commercial mining of marine sand and gravel in Europe and the Far East have demonstrated that the impacts of these activities can be mitigated. The International Council for the Exploration of the Seas has done considerable research with regard to mitigation of potential impact on fishery resources during marine mining activities. Placer mining also has occurred for many years but on a smaller scale, primarily in Indonesia. Geologically, the two types of deposits are similar so there is no reason to assume that significant impacts could not be addressed through mitigation measures. Commercial offshore mining for phosphorite has not yet occurred anywhere in the world, but again, MMS does not assume that significant impacts could not be satisfactorily mitigated. If significant impacts cannot be mitigated in an acceptable manner, there will be no phosphorite mining on the OCS.

Section 282.25 Plan modification.

Comment: One commenter stated that adjacent States should be notified and allowed to cooperate with the Director in the review and approval of new technology, techniques, procedures, equipment, or activities during the conduct of operations.

Response: Section 282.25 Plan modification (formerly Modified Plan) has been revised and now explicitly provides the same opportunity for adjacent State Governors to comment on significant modifications to plans as is provided for during the review of the initial Delineation, Testing, and Mining Plans. The Governors or other appropriate officials of adjacent States also have an opportunity to review and comment on alternative technologies during the review of a proposed plan. The proposed plan must identify alternatives to technologies considered during the preparation of the plan. The comments of State officials on the proposed plan, if applicable, would be considered in the Director's review and approval of new or alternative technologies, techniques, procedures, equipment, or activities. If the Director determines that the proposed new or alternative technology requires plan modification, then approval of the modification would be subject to § 282.25.

Section 282.27 Conduct of operations.

Comment: One commenter expressed the view that the requirement that lessees provide food and lodging for MMS inspectors should be extended to include State inspectors.

Response: Section 282.27(d)(2) makes provision for lessees to furnish food, quarters, and transportation for MMS representatives performing facilities inspections. In situations where State employees, as contract employees of MMS, conduct the inspections, they would be afforded the same lessee provided food and lodging opportunities as any other MMS inspector. There is no provision in the law or these regulations authorizing inspections by persons other than representatives of the Federal Government, in this instance, the Secretary.

Section 282.28 Environmental protection measures.

Comment: One commenter expressed concern that reliance on the NPDES system will fail to evaluate all but lethal impacts. It was asserted that bioaccumulation, sublethal effects, and cumulative effects will not be addressed by reliance on the NPDES permitting system administered by EPA.

Response: The MMS does not mean to suggest that it will rely exclusively on theNPDES permitting system to protect the environment. The MMS will maintain an active awareness of the results of ongoing research, as well as monitoring results and will use those findings to require refinements to an approved monitoring plan necessary to assure protection of the environment.

The MMS intends to cooperate with EPA in the analysis of the environmental aspects of proposed activities involving waste disposal and/or discharge into the waters above the OCS. This approach will avoid duplication of effort and lead to a monitoring plan and, where applicable, an NPDES permit designed to address the concerns expressed by the commenter.

The potential that subtle effects will occur and go undetected by monitoring is fully recognized. One role of research is to identify and describe subtle phenomena. Considerable research is being funded which involves identification of chronic and sublethal effects of impacts. The MMS intends to factor appropriate research findings into the mitigation of impacts as well as the plans for monitoring impacts.

Comment: Several commenters requested that the rule be expanded to include specific details designed to protect the environment and to mitigate impacts that might result from the conduct of mining activities. Those commenters were especially concerned about the citation of procedures to protect sensitive areas discovered after a lease is issued. They desired assurances that such areas would be deleted from the areas subject to continued mining activities. To this end, they requested that the rule provide a list of criteria to be used to determine that a threshold has been reached which requires the initiation of mitigating measures.

Response: These recommendations have not been adopted. The MMS recognizes its responsibility to evaluate the environmental impacts as well as the technical sufficiency of each activity described in a proposed Delineation, Testing, or Mining Plan. The MMS's administration of its responsibilities under the OCSLA must be carried out in accordance with other governing laws such as NEPA, the Endangered Species Act, the Marine Mammals Protection Act, the Clean Air Act, and the Clean Water Act. The approach of balancing national interests and other objectives mandated by the OCSLA together with compliance with governing provisions of the aforementioned laws make it

impractical to include in the rule lists of prescriptive or detailed criteria that will be used by the Director to assure that leasehold activities are conducted in a safe and environmentally responsible manner. The case-by-case approach envisioned by this rule permits comprehensive environmental review of each of the different environmental setting. The range of potential technologies and techniques that may be used in those settings can best be assessed as they relate to specific proposed activities associated with target OCS minerals. This rule provides general guidance for the protection of the environment which will be supplemented by stipulations included in individual leases based upon the environmental impact reviews and evaluations conducted in association with the leasing process. These guidelines will be further supplemented by conditions and mitigation measures defined in connection with the environmental impact reviews and evaluations conducted in association with the approval of Delineation, Testing, and Mining Plans.

Comment: One commenter recommended that the final rule include criteria to be used to determine when an expected impact has been avoided, minimized, or otherwise mitigated.

Response: This recommendation was not adopted. A properly designed and executed monitoring plan will provide the basis for determining the success of mitigation measures. It is not practical, nor necessarily desirable, to establish by rulemaking, specific criteria for evaluating the effectiveness of mitigation measures that will be applied on a site-specific basis, tailored to specific circumstances. A variety of mitigation techniques may be available to achieve similar results, and sufficient flexibility should be retained through plan approval and monitoring requirements to choose the most effective for a given set of circumstances, with regard to the particular setting, species of concern, seasons of the year, etc.

Comments: One commenter recommended that monitoring be conducted at least monthly, to be responsive to seasonal changes, and that the monitoring of impacts be required during exploration, testing, and mining activities. Other commenters recommended that lessees be required, in every instance, to collect environmental baseline data prior to the submission of a Delineation Plan, Testing, plan, or Mining Plan.

Response: These two recommendations were not adopted. Monitoring plans will be designed to consider factors such as seasonal changes and practicular mining phases for the site and commodity being mined. For some commodities this could mean almost continuous monitoring in the early stages; for others, a monthly requirement may be unnecessarily burdensome or costly.

Although the regulations do not require lessees to collect baseline data, per se, prior to plan submissions, they do grant the Director authority to require any environmental data necessary to assure adequate environmental protection (§ 282.11(b)(1)). A lessee's plan(s) must contain information sufficient to permit "comprehensive" environmental evaluations (§ 282.21(a)). Information will likely include baseline data for many areas, such as frontier areas. There are sufficient requirements in the plan obligations of lessees (§ 282.21) and the authority of the Director (§ 282.10) to assure that decisions of the Director are supported by sufficient biological and ecological data to ensure environmentally sound operations. Additionally, in § 282.28(b), the environmental protection measures infer that baseline data, whether provided by the lessees or available elsewhere (e.g., through the Environmental Studies Program (ESP)), will be considered in the Director's decisions. Furthermore, it allows the Director to "require the lessee to collect additional baseline data prior to the approval of the activities proposed."

Section 282.29 Reports and records.

Comment: One commenter recommended that copies of the report associated with revenue sharing and environmental compliance be provided to adjacent States.

Response: There are no provisions in this rule concerning revenue sharing since there are no provisions in the OCSLA for revenue sharing where those revenues are related to minerals other than oil and gas. Section 282.29(c), regarding reports and records, requires within 3 months after completion of operations a report to the Director which will contain environmental information. Section 282.29(d) requires reports on the results of environmental monitoring. These reports will be available on a periodic basis. Interested individuals can contact the appropriate Regional Director for notice of their availability. Specific provisions for disclosure of data and information to the public are included in § 282.5. The provisions governing the disclosure of data and information to an adjacent State are contained in § 282.6 of this rule.

Section 282.29(h) has been modified by revising the phrase "sold, and to whom sold": to read "* * * sold, transferred, used, or otherwise disposed of, and to whom sold or transferred";. This change was made to better define the actions which might represent a "sale" of OCS minerals.

Section 282.31 Suspension of production and other operations.

Comment: One commenter expressed the view that the Governors of adjacent States should receive notice of lessee submitted requests for the suspension of production or other operations.

Response: The final rule does not adopt this view. A lessee's request for suspension of production or other operations may relate to a need for additional time to complete an activity that is necessary to commence or restore production. In those instances where there is an active joint State/Federal working arrangement, State participants would be fully apprised of the situation.

Section 282.40 Bonds.

Section 282.40(e) has been clarified to indicate that the holder of a bond submitted pursuant to § 256.58(a) of this chapter may amend that bond to include the conditions for compliance specified in § 282.40(e).

Section 282.40(g) has been revised to clarify the provisions of the rule governing submission of an operator's bond in substitution for a lessee's bond.

Authors

LeRon E. Bielak, Merlin I. Carter, Walter D. Cruickshank, Barry S. Drucker, William Hauser, Charles R. Ham, John V. Mirabella, Patricia H. Pecora, Sharon E. Rathbun, Gerald D. Rhodes, Jane A. Roberts, Mark H. White, and James W. Workman of the MMS; Ransom Read of the Bureau of Mines; Ronald Smith and Donal F. Ziehl of the Bureau of Land Management; and John Padan of NOAA.

An environmental assesament was prepared to evaluate this rulemaking and the preliminary activities that could occur under these rules. The assessment concluded in a finding of no significant impact for those activities. The DOI has determined that promulgation of this final rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The overall effect is expected to be less than $1 million per year. The costs are based on an expected two sales per year with three new leases per sale for a total of six new leases per year. When the program is mature, it is anticipated that there will be 10 preproduction leases and 10 leases in production.

The DOI certifies that the final rule dos not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

The DOI certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as the entities that normally engage in OCS mineral related activities are not considered small due to the technical complexity and financial resources needed to successfully conduct OCS mineral related activities.

The information collection requirements contained in 30 CFR Part 282 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0081.

Public reporting burden for this collection of information is estimated to average 13.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer; Minerals Management Service; Mail Stop 632, 12203 Sunrise Valley Drive; Reston, Virginia 22091 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 30 CFR Part 282

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mineral royalties, MMS, Mines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Date: December 20, 1988.

Robert E. Kallman,

Director, Minerals Management Service.

For the reasons set out in the preamble, a new Part 282 is being added to Subchapter B of Title 30 of the Code of Federal Regulations to read as follows:

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

Subpart A—General

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Subpart D—Payments

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282.42 Payments.

Subpart E—Appeals

282.50 Appeals.

Authority: Section 204, Pub. L. 95–372, 92 Stat 629, (43 U.S.C. 1334).

Subpart A—General

§ 282.0 Authority for information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1010–0081. The information is being collected to inform the Minerals Management Service (MMS) of general mining operations in the Outer Continental Shalf (OCS). The information will be used to ensure that operations are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The requirement to respond is mandatory.

§ 282.1 Purpose and authority.

(a) The Act authorizes the Secretary to prescribe such rules and regulations as may be necessary to carry out the provisions of the Act (43 U.S.C. 1334). The Secretary is authorized to prescribe and amend regulations that the Secretary determines to be necessary and proper in order to provide for the prevention of waste, conservation of the natural resources of the OCS, and the protection of correlative rights therein. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary is authorized to cooperate with adjacent States and other Departments and Agencies of the Federal Government.

(b) Subject to the supervisory authority of the Secretary, and unless otherwise specified, the regulations in this part shall be administered by the Director of the MMS.

§ 282.2 Scope.

The rules and regulations in this part apply as of their effective date to all operations conducted under a mineral lease for OCS minerals other than oil, gas, or sulphur issued under the provisions of section 8(k) of the Act.

§ 282.3 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*).

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State—

(1) That is, or is proposed to be, receiving for processing, refining, or transshipment OCS mineral resources commercially recovered from the seabed;

(2) That is used, or is scheduled to be used, as a support base for prospecting, exploration, testing, or mining activities; or

(3) In which there is a reasonable probability of significant effect on land or water uses from such activity.

"Contingency Plan" means a plan for action to be taken in emergency situations.

"Data" means geological and geophysical (G&G) facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Development" means those activities which take place following the discovery of minerals in paying quantities including geophysical activities, drilling, construction of offshore facilities, and operation of all onshore support facilities, which are for the purpose of ultimately producing the minerals discovered.

"Director" means the Director of MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Exploration" means the process of searching for minerals on a lease including:

(1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals;

(2) Any drilling including the drilling of a borehole in which the discovery of a mineral other than oil, gas, or sulphur is made and the drilling of any additional boreholes needed to delineate any n..neral deposits; and

(3) The taking of sample portions of a mineral deposit to enable the lessee to determine whether to proceed with development and production.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters (when obtained for geochemical analysis) acquired while conducting postlease mining activities.

"Governor" means the Governor of a State or the person or entity designated by, or pursuant to, State law to exercise the power granted to a Governor.

"Information" means G&G data that have been analyzed, processed, or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Acts and which authorizes exploration for, and development and production of, specific minerals; or the area covered by that authorization.

"Lessee" means the person authorized by a lease, or an approved assignment thereof, to explore for and develop and produce the leased deposits in accordance with the regulations in this chapter. The term includes all parties holding that authority by or through the lessee.

"Major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA) (i.e., an action which will have a significant impact on the quality of the human environment requiring preparation of an Environmental Impact Statement (EIS) pursuant to section 102(2)(C) of NEPA).

"Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

"Minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976.

"OCS mineral" means any mineral deposit or accretion found on or below the surface of the seabed but does not include oil, gas, or sulphur; salt or sand and gravel intended for use in association with the development of oil, gas, or sulphur; or source materials essential to production of fissionable materials which are reserved to the United States pursuant to section 12(e) of the Act.

"Operator" means the individual, partnership, firm, or corporation having control or management of operations on the lease or a portion thereof. The operator may be a lessee, designated agent of the lessee, or holder of rights under an approved operating agreement.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; an association of such citizens, nationals, resident aliens or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

"Testing" means removing bulk samples for processing tests and feasibility studies and/or the testing of mining equipment to obtain information needed to develop a detailed Mining Plan.

§ 282.4 Opportunities for review and comment.

(a) In carrying out MMS's responsibilities under the Act and regulations in this part, the Director shall provide opportunities for Governors of adjacent States, State/Federal task forces, lessees and operators, other Federal Agencies, and other interested parties to review proposed activities described in a Delineation, Testing, or Mining Plan together with an analysis of potential impacts on the environment and to provide comments and recommendations for the disposition of the proposed plan.

(b)(1) For Delineation Plans, the adjacent State Governor(s) shall be notified by the Director within 15 days following the submission of a request for approval of a Delineation Plan. Notification shall include a copy of the proposed Delineation Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Delineation Plan may do so within 30 days of the receipt of the proposed plan and the accompanying information.

(2) In cases where an Environmental Assessment is to be prepared, the Director's invitation to provide comments may allow the adjacent State Governor(s) more than 30 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Delineation Plan and the accompanying environmental information within 15 days following the submission of the request. Agencies that wish to comment on a proposed Delineation Plan shall do so within 30 days following receipt of the plan and the accompanying information.

(c)(1) For Testing Plans, the adjacent State Governor(s) shall be notified by the Director within 20 days following submission of a request for approval of a proposed Testing Plan. Notification shall include a copy of the proposed Testing Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Testing Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the adjacent State Governor(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Testing Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Testing Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(d)(1) For Mining Plans, the adjacent State Governor(s) shall be notified by the Director within 20 days following the submission of a request for approval of a proposed Mining Plan. Notification shall include a copy of the proposed Mining Plan and the accompanying environmental information. The adjacent State Governor(s) who wishes to comment on a proposed Mining Plan may do so within 60 days of the receipt of a plan and the accompanying information.

(2) In cases where an EIS is to be prepared, the Director's invitation to provide comments may allow the adjacent State Governor(s) more than 60 days following receipt of the proposed plan to provide comments.

(3) The Director shall notify Federal Agencies, as appropriate, with a copy of the proposed Mining Plan and the accompanying environmental information within 20 days following the submission of the request. Agencies that wish to comment on a proposed Mining Plan shall do so within 60 days following receipt of the plan and the accompanying information.

(e) When an adjacent State Governor(s) has provided comments pursuant to paragraphs (b), (c), and (d) of this section, the Governor(s) shall be given, in writing, a list of recommendations which are adopted and the reasons for rejecting any of the recommendations of the Governor(s) or for implementing any alternative means identified during consultations with the Governor(s).

§ 282.5 Disclosure of data and information to the public.

(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations (43 CFR Part 2).

(b) Geophysical data, processed G&G information, interpreted G&G information, and other data and information submitted pursuant to the requirements of this part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect, unless the Director determines that earlier limited release of such information is necessary for the unitization of operations on two or more leases, to ensure proper Mining Plans for a common orebody, or to promote operational safety. When the Director determines that early limited release of data and information is necessary, the data and information shall be shown only to persons with a direct interest in the affected lease(s), unitization agreement, or joint Mining Plan.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler, and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position.

§ 282.6 Disclosure of data and information to an adjacent State.

(a) Proprietary data, information, and samples submitted to MMS pursuant to the requirements of this part shall be made available for inspection by representatives of adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that:

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data, information, and samples; and

(c) The data, information, and samples available for inspection by representatives of adjacent State(s) pursuant to an agreement shall be related to leased lands.

§ 282.7 Jurisdictional controversies.

In the event of a controversy between the United States and a State as to whether certain lands are subject to Federal or State jurisdiction, either the Governor of the State or the Secretary may initiate negotiations in an attempt to settle the jurisdictional controversy. With the concurrence of the Attorney General, the Secretary may enter into an agreement with a State with respect to OCS mineral activities and to payment and impounding of rents, royalties, and other sums and with respect to the issuance or nonissuance of new leases pending settlement of the controversy.

Subpart B—Jurisdiction and Responsibilities of Director

§ 282.10 Jurisdiction and responsibilities of Director.

Subject to the authority of the Secretary, the following activities are subject to the regulations in this part and are under the jurisdiction of the Director: Exploration, testing, and mining operations together with the associated environmental protection measures needed to permit those activities to be conducted in an environmentally responsible manner; handling, measurement, and transportation of OCS minerals; and other operations and activities conducted pursuant to a lease issued under Part 281 of this chapter, or pursuant to a right of use and easement granted under this part, by or on behalf of a lessee or the holder of a right of use and easement.

§ 282.11 Director's authority.

(a) In the exercise of jurisdiction under § 282.10, the Director is authorized and directed to act upon the requests, applications, and notices submitted under the regulations in this part; to issue either written or oral orders to govern lease operations; and to require compliance with applicable laws, regulations, and lease terms so that all operations conform to sound conservation practices and are conducted in a manner which is consistent with the following:

(1) Make such OCS minerals available to meet the nation's needs in a timely manner;

(2) Balance OCS mineral resource development with protection of the human, marine, and coastal environments;

(3) Ensure the public a fair and equitable return on OCS minerals leased on the OCS; and

(4) Foster and encourage private enterprise.

(b)(1) The Director is to be provided ready access to all OCS mineral resource data and all environmental data acquired by the lessee or holder of a right of use and easement in the course of operations on a lease or right of use and easement and may require a lessee or holder to obtain additional environmental data when deemed necessary to assure adequate protection of the human, marine, and coastal environments.

(2) The Director is to be provided an opportunity to inspect, cut, and remove representative portions of all samples acquired by a lessee in the course of operations on the lease.

(c) In addition to the rights and privileges granted to a lessee under any lease issued or maintained under the Act, on request, the Director may grant a lessee, subject to such conditions as the Director may prescribe, a right of use and easement to construct and maintain platforms, artificial islands, and/or other installations and devices which are permanently or temporarily attached to the seabed and which are needed for the conduct of leasehold exploration, testing, development, production, and processing activities or other leasehold related operations whether on or off the lease.

(d)(1) The Director may approve the consolidation of two or more OCS mineral leases or portions of two or more OCS mineral leases into a single mining unit requested by lessees, or the Director may require such consolidation when the operation of those leases or portions of leases as a single mining unit is in the interest of conservation of the natural resources of the OCS or the prevention of waste. A mining unit may also include all or portions of one or more OCS mineral leases with all or portions of one or more adjacent State leases for minerals in a common orebody. A single unit operator shall be responsible for submission of required Delineation, Testing, and Mining Plans covering OCS mineral operations for an approved mining unit.

(2) Operations such as exploration, testing, and mining activities conducted in accordance with an approved plan on any lease or portion of a lease which is subject to an approved mining unit shall be considered operations on each of the leases that is made subject to the approved mining unit.

(3) Minimum royalty paid pursuant to a Federal lease, which is subject to an approved mining unit, is creditable against the production royalties allocated to that Federal lease during the lease year for which the minimum royalty is paid.

(4) Any OCS minerals produced from State and Federal leases which are subject to an approved mining unit shall be accounted for separately unless a method of allocating production between State and Federal leases has been approved by the Director and the appropriate State official.

§ 282.12 Director's responsibilities.

(a) The Director is responsible for the regulation of activities to assure that all operations conducted under a lease or right of use and easement are conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources. Those activities are to be designed to prevent serious harm or damage to, or waste of, any natural resource (including OCS mineral deposits and oil, gas, and sulphur resources in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

(b)(1) In the evaluation of a Delineation Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law; and

(v) Requirements for the protection of the environment, health, and safety.

(2) Within 30 days following the completion of an environmental assessment or other NEPA document prepared pursuant to the regulations implementing NEPA or within 30 days following the comment period provided in § 282.4(b) of this part, the Director shall:

(i) Approve any Delineation Plan which is consistent with the criteria in paragraph (b)(1) of this section;

(ii) Require the lessee to modify any Delineation Plan that is inconsistent with the criteria in paragraph (b)(1) of this section; or

(iii) Disapprove a Delineation Plan when it is determined that an activity proposed in the plan would probably cause serious harm or damage to life (including fish and other aquatic life); to property; to natural resources of the OCS including mineral deposits (in areas leased or not leased); or to the marine, coastal, or human environment, and the proposed activity cannot be modified to avoid the conditions.

(3) The Director shall notify the lessee in writing of the reasons for disapproving a Delineation Plan or for requiring modification of a plan and the conditions that must be met for plan approval.

(c)(1) In the evaluation of a Testing Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirement to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.4(c) of this part, the Director shall:

(i) Approve any Testing Plan which is consistent with the criteria in paragraph (c)(1) of this section;

(ii) Require the lessee to modify any Testing Plan which is inconsistent with the criteria in paragraph (c)(1) of this section; or

(iii) Disapprove any Testing Plan when the Director determines the existence of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances and that (A) implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments; (B) that the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (C) the advantages of disapproving the Testing Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Testing Plan or for requiring modification of a Testing Plan and the conditions that must be met for approval of the plan.

(d)(1) In the evaluation of a Mining Plan, the Director shall consider whether the plan is consistent with:

(i) The provisions of the lease;

(ii) The provisions of the Act;

(iii) The provisions of the regulations prescribed under the Act;

(iv) Other applicable Federal law;

(v) Environmental, safety, and health requirements; and

(vi) The statutory requirements to protect property, natural resources of the OCS, including mineral deposits (in areas leased or not leased), and the national security or defense.

(2) Within 60 days following the release of a final EIS prepared pursuant to NEPA or within 60 days following the comment period provided in § 282.4(d) of this part, the Director shall:

(i) Approve any Mining Plan which is consistent with the criteria in paragraph (d)(1) of this section;

(ii) Require the lessee to modify any Mining Plan which is inconsistent with the criteria in paragraph (d)(1) of this section; or

(iii) Disapprove any Mining Plan when the Director determines the existence of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, and that—

(A) Implementation of the activities described in the plan would probably cause serious harm and damage to life (including fish and other aquatic life), to property, to any mineral deposit (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environments;

(B) That the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(C) The advantages of disapproving the Mining Plan outweigh the advantages of development and production of the OCS mineral resources.

(3) The Director shall notify the lessee in writing of the reason(s) for disapproving a Mining Plan or for requiring modification of a Mining Plan and the conditions that must be met for approval of the plan.

(e) The Director shall assure that a scheduled onsite compliance inspection of each facility which is subject to regulations in this part is conducted at least once a year. The inspection shall be to determine that the lessee is in compliance with the requirements of the law; provisions of the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part. Additional unscheduled onsite inspections shall be conducted without advance notice to the lessee to assure compliance with the provisions of applicable law; the lease; the approved Delineation, Testing, or Mining Plan; and the regulations in this part.

(f)(1) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification of the lessee's requests, applications, plans, and notices submitted pursuant to the provisions of this part; issue orders to govern lease operations; and require compliance with applicable provisions of the law, the regulations, the lease, and the approved Delineation, Testing, or Mining Plans. The Director may give oral orders or approvals whenever prior approval is required before the commencement of an operation or activity. Oral orders or approvals given in response to a written request shall be confirmed in writing within 3 working days after issuance of the order or granting of the oral approval.

(2) The Director shall, after completion of the technical and environmental evaluations, approve, disapprove, or require modification, as appropriate, of the design plan, fabrication plan, and installation plan for platforms, artificial islands, and other installations and devices permanently or temporarily attached to the seabed. The approval, disapproval, or requirement to modify such plans may take the form of a condition of granting a right of use and easement under paragraph (a) of this section or as authorized under any lease issued or maintained under the Act.

(g) The Director shall establish practices and procedures to govern the collection of all rents, royalties, and other payments due the Federal Government in accordance with terms of the leasing notice, the lease, and the applicable Royalty Management regulations listed in § 281.26(i) of this chapter.

(h) The Director may prescribe or approve, in writing or orally, departures from the operating requirements of the regulations of this part when such departures are necessary to facilitate the proper development of a lease; to conserve natural resources; or to protect life (including fish and other aquatic life), property, or the marine, coastal, or human environment.

§ 282.13 Suspension of production or other operations.

(a) The Director may direct the suspension or temporary prohibition of production or any other operation or activity on all or any part of a lease when it has been determined that such suspension or temporary prohibition is in the national interest to:

(1) Facilitate proper development of a lease including a reasonable time to develop a mine and construct necessary support facilities, or

(2) Allow for the construction or negotiation for use of transportation facilities.

(b) The Director may also direct or, at the request of the lessee, approve a suspension or temporary prohibition of production or any other operation or activity, if:

(1) The lessee failed to comply with a provision of applicable law, regulation, order, or the lease;

(2) There is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment;

(3) The suspension or temporary prohibition is in the interest of national security or defense;

(4) The suspension or temporary prohibition is necessary for the initiation and conduct of an environmental evaluation to define mitigation measures to avoid or minimize adverse environmental impacts.

(5) The suspension or temporary prohibition is necessary to facilitate the installation of equipment necessary for safety of operations and protection of the environment;

(6) The suspension or temporary prohibition is necessary to allow for undue delays encountered by the lessee in obtaining required permits or consents, including administrative or judicial challenges or appeals;

(7) The Director determines that continued operations would result in premature abandonment of a producing mine, resulting in the loss of otherwise recoverable OCS minerals;

(8) The Director determines that the lessee cannot successfully operate a producing mine due to market conditions that are either temporary in nature or require temporary shutdown and reinvestment in order for the lessee to adapt to the conditions; or

(9) The suspension or temporary prohibition is necessary to comply with judicial decrees prohibiting production or any other operation or activity, or the permitting of those activities, effective the date set by the court for that prohibition.

(c) When the Director orders or approves a suspension or a temporary prohibition of operation or activity including production on all of a lease pursuant to paragraph (a) or (b) of this section, the term of the lease shall be extended for a period of time equal to the period of time that the suspension or temporary prohibition is in effect, except that no lease shall be so extended when the suspension or temporary prohibition is the result of the lessee's gross negligence or willful violation of a provision of the lease or governing regulations.

(d) The Director may, at any time within the period prescribed for a suspension or temporary prohibition issued pursuant to paragraph (b)(2) of this section, require the lessee to submit a Delineation, Testing, or Mining Plan for approval in accordance with the requirements for the approval of such plans in this part.

(e)(1) When the Director orders or issues a suspension or a temporary prohibition pursuant to paragraph (b)(2) of this section, the Director may require the lessee to conduct site-specific studies to identify and evaluate the cause(s) of the hazard(s) generating the suspension or temporary prohibition, the potential for damage from the hazard(s), and the measures available for mitigating the hazard(s). The nature, scope, and content of any study shall be subject to approval by the Director. The lessee shall furnish copies and all results of any such study to the Director. The cost of the study shall be borne by the lessee unless the Director arranges for the cost of the study to be borne by a party other than the lessee. The Director shall make results of any such study available to interested parties and to the public as soon as practicable after the completion of the study and submission of the results thereof.

(2) When the Director determines that measures are necessary, on the basis of the results of the studies conducted in accordance with paragraph (e)(1) of this section and other information available to and identified by the Director, the lessee shall be required to take appropriate measures to mitigate, avoid, or minimize the damage or potential damage on which the suspension or temporary prohibition is based. When deemed appropriate by the Director, the lessee shall submit a revised Delineation, Testing, or Mining Plan to incorporate the mitigation measures required by the Director. In choosing between alternative mitigation measures, the Director shall balance the cost of the required measures against the reduction or potential reduction in damage or threat of damage or harm to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment.

(f)(1) If under the provisions of paragraphs (b) (2), (3), and (4) of this section, the Director, with respect to any lease, directs the suspension of production or other operations on the entire leasehold, no payment of rental or minimum royalty shall be due for or during the period of the directed suspension and the time for the lessee specify royalty free period of a period of reduced royalty pursuant to § 281.28(b) of this subchapter will be extended for the period of directed suspension. If under the provisions of paragraphs (b) (2), (3), and (4) of this section the Director, with respect to a lease on which there has been no production, directs the suspension of operations on the entire leasehold, no payment of rental shall be due during the period of the directed suspension.

(2) If under the provisions of this section, the Director grants the request of a lessee for a suspension of production or other operations, the lessee's obligations to pay rental, minimum royalty, or royalty shall continue to apply during the period of the approved suspension, unless the Director's approval of the lessee's request for suspension authorizes the payment of a lesser amount during the period of approved suspension. If under the provision of this section, the Director grants a lessee's request for a suspension of production or other operations for a lease which includes provisions for a time period which the lessee may specify during which production from the leasehold would be royalty free or subject to a reduced royalty obligation pursuant to § 281.28(b) of this subchapter, the time during which production from a leasehold may be royalty free or subject to a reduced royalty obligation shall not be extended unless the Director's approval of the suspension specifies otherwise.

(3) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

§ 282.14 Noncompliance, remedies, and penalties.

(a)(1) If the Director determines that a lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and the Director determines that such noncompliance poses a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall order the lessee to take immediate and appropriate remedial action to alleviate the threat. Any oral orders shall be followed up by service of a notice of noncompliance upon the lessee by delivery in person to the lessee or agent, or by certified or registered mail addressed to the lessee at the last known address.

(2) If the Director determines that the lessee has failed to comply with applicable provisions of law; the regulations in this part; other applicable regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and such noncompliance does not pose a threat of immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Director shall serve a notice of noncompliance upon the lessee by delivery in person to the lessee or agent or by certified or registered mail addressed to the lessee at the last known address.

(b) A notice of noncompliance shall specify in what respect(s) the lessee has failed to comply with the provisions of applicable law; regulations; the lease; the requirements of an approved Delineation, Testing, or Mining Plan; or the Director's orders or instructions, and shall specify the action(s) which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(c) Failure of a lessee to take the actions specified in the notice of noncompliance within the time limit specified shall be grounds for a suspension of operations and other appropriate actions, including but not limited to the assessment of a civil penalty of up to $10,000 per day for each violation that is not corrected within the time period specified (43 U.S.C. 1350(b)).

(d) Whenever the Director determines that a violation of or failure to comply with any provision of the Act; or any provision of a lease, license, or permit issued pursuant to the Act; or any provision of any regulation promulgated under the Act probably occurred and that such apparent violation continued beyond notice of the violation and the expiration of the reasonable time period allowed for corrective action, the Director shall follow the procedures concerning remedies and penalties in Subpart N, Remedies and Penalties, of Part 250 of this title to determine and assess an appropriate penalty.

(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the other. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation (43 U.S.C. 1350(e)).

§ 282.15 Cancellation of leases.

(a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, and the default continues for a period of 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address, the Secretary may cancel the lease pursuant to section 5(c) of the Act, and the lessee shall not be entitled to compensation. Any such cancellation is subject to judicial review as provided by section 23(b) of the Act.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of the Act, the lease, or the regulations issued under the Act, the Secretary may cancel the lease only after judicial proceedings pursuant to section 5(d) of the Act, and the lessee shall not be entitled to compensation.

(c) Any lease issued under the Act, whether producing or not, may be canceled by the Secretary upon proof that it was obtained by fraud or misrepresentation and after notice and opportunity to be heard has been afforded to the lessee.

(d) The Secretary may cancel a lease in accordance with the following:

(1) Cancellation may occur at any time if the Secretary determines after a hearing that—

(i) Continued activity pursuant to such lease would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of cancellation outweigh the advantages of continuing such lease in force.

(2) Cancellation shall not occur unless and until operations under such lease shall have been under suspension or temporary prohibition by the Secretary, with due extension of any lease term continuously for a period of 5 years or for a lesser period upon request of the lessee;

(3) Cancellation shall entitle the lessee to receive such compensation as is shown to the Secretary as being equal to the lesser of—

(i) The fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, and all other costs reasonably anticipated on the lease, or

(ii) The excess, if any, over the lessee's revenue from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question.

(iii) The lessee shall not be entitled to compensation where one of the following circumstances exists when a lease is canceled:

(A) A producing lease is forfeited or is canceled pursuant to section (5)(d) of the Act;

(B) A Testing Plan or Mining Plan is disapproved because the lessee's failure to demonstrate compliance with the requirements of applicable Federal law; or

(C) The lessee of a nonproducing lease fails to comply with a provision of the Act, the lease, or regulations issued under the Act, and the noncompliance continues for a period of 30 days or more after the mailing of a notice of noncompliance by registered or certified letter to the lessee.

Subpart C—Obligations and Responsibilities of Lessees

§ 282.20 Obligations and responsibilities of lessees.

(a) The lessee shall comply with the provisions of applicable laws; regulations; the lease; the requirements of the approved Delineation, Testing, or Mining Plans; and other written or oral orders or instructions issued by the Director when performing exploration, testing, development, and production activities pursuant to a lease issued under Part 281 of this title. The lessee shall take all necessary precautions to prevent waste and damage to oil, gas, sulphur, and other OCS mineral-bearing formations and shall conduct operations in such manner that does not cause or threaten to cause harm or damage to life (including fish and other aquatic life); to property; to the national security or defense; or to the marine, coastal, or human environment (including onshore air quality). The lessee shall make all mineral resource data and information and all environmental data and information acquired by the lessee in the course of exploration, testing, development, and production operations on the lease available to the Director for examination and copying at the lease site or an onshore location convenient to the Director.

(b) In all cases where there is more than one lease owner of record, one person shall be designated payor for the lease. The payor shall be responsible for making all rental, minimum royalty, and royalty payments.

(c) In all cases where lease operations are not conducted by the sole lessee, a "designation of operator" shall be submitted to and accepted by the Director prior to the commencement of leasehold operations. This designation when accepted will be recognized as authority for the designee to act on behalf of the lessees and to fulfill the lessees' obligations under the Act, the lease, and the regulations of this part. All changes of address and any termination of a designation of operator shall be reported immediately, in writing, to the Director. In the case of a termination of a designation of operator or in the event of a controversy between the lessee and the designated operator, both the lessee and the designated operator will be responsible for the protection of the interests of the lessor.

(d) When required by the Director or at the option of the lessee, the lessee shall submit to the Director the designation of a local representative empowered to receive notices, provide access to OCS mineral and environmental data and information, and comply with orders issued pursuant to the regulations of this part. If there is a change in the designated representative, the Director shall be notified immediately.

(e) Before beginning operations, the lessee shall inform the Director in writing of any designation of a local representative under paragraph (d) of this section and the address of the mine office responsible for the exploration, testing, development, or production activities; the lessee's temporary and

permanent addresses; or the name and address of the designated operator who will be responsible for the operations, and who will act as the local representative of the lessee. The Director shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

(f) The holder of a right of use and easement shall exercise its rights under the right of use and easement in accordance with the regulations of this part.

(g) A lessee shall submit reports and maintain records in accordance with § 282.29 of this part.

(h) When an oral approval is given by MMS in response to an oral request under these regulations, the oral request shall be confirmed in writing by the lessee or holder of a right of use and easement within 72 hours.

(i) The lessee is responsible for obtaining all permits and approvals from MMS or other Agencies needed to carry out exploration, testing, development, and production activities under a lease issued under Part 281 of this title.

§ 282.21 Plans, general.

(a) No exploration, testing, development, or production activities, except preliminary activities, shall be commenced or conducted on any lease except in accordance with a plan submitted by the lessee and approved by the Director. Plans will not be approved before completion of comprehensive technical and environmental evaluations to assure that the activities described will be carried out in a safe and environmentally responsible manner. Prior to the approval of a plan, the Director will assure that the lessee is prepared to take adequate measures to prevent waste; conserve natural resources of the OCS; and protect the environment, human life, and correlative rights. The lessee shall demonstrate to the satisfaction of the Director that the lease is in good standing, the lessee is authorized and capable of conducting the activities described in the plan, and that an acceptable bond has been provided.

(b) Plans shall be submitted to the Director for approval. The lessee shall submit the number of copies prescribed by the Director. Such plans shall describe in detail the activities that are to be conducted and shall demonstrate that the proposed exploration, testing, development, and production activities will be conducted in an operationally safe and environmentally responsible manner that is consistent with the provisions of the lease, applicable laws, and regulations. The Governor of an affected State and other Federal Agencies shall be provided an opportunity to review and provide comments on proposed Delineation, Testing, and Mining Plans and any proposal for a significant modification to an approved plan. Following review, including the technical and environmental evaluations, the Director shall either approve, disapprove, or require the lessee to modify its proposed plan.

(c) Lessees are not required to submit a Delineation or Testing Plan prior to submittal of a proposed Testing or Mining Plan if the lessee has sufficient data and information on which to base a Testing or Mining Plan without carrying out postlease exploration and/or testing activities. A Mining Plan may include proposed exploration or testing activities where those activities are needed to obtain additional data and information on which to base plans for future mining activities. A Testing Plan may include exploration activities when those activities are needed to obtain additional data or information on which to base plans for future testing or mining activities.

(d) Preliminary activities are bathymetric, geological, geophysical, mapping, and other surveys necessary to develop a comprehensive Delineation, Testing, or Mining Plan. Such activities are those which have no significant adverse impact on the natural resources of the OCS. The lessee shall give notice to the Director at least 30 days prior to initiating the proposed preliminary activities on the lease. The notice shall describe in detail those activities that are to be conducted and the time schedule for conducting those activities.

(e) Leasehold activities shall be carried out with due regard to conservation of resources, paying particular attention to the wise management of OCS mineral resources, minimizing waste of the leased resource(s) in mining and processing, and preventing damage to unmined parts of the mineral deposit and other resources of the OCS.

§ 282.22 Delineation Plan.

All exploration activities shall be conducted in accordance with a Delineation Plan submitted by the lessee and approved by the Director. The Delineation Plan shall describe the proposed activities necessary to locate leased OCS minerals, characterize the quantity and quality of the minerals, and generate other information needed for the development of a comprehensive Testing or Mining Plan. A Delineation Plan at a minimum shall include the following:

(a) The OCS mineral(s) or primary interest.

(b) A brief narrative description of the activities to be conducted and how the activities will lead to the discovery and evaluation of a commercially minable deposit on the lease.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) Maps showing the proposed locations of test drill holes, the anticipated depth of penetration of test drill holes, the locations where surficial sample were taken, and the location of proposed geophysical survey lines for each surveying method being employed.

(f) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area; aquifers; other natural resources of the OCS; and hazards to public health, safety, and navigation.

(g) A schedule indicating the starting and completion dates for each proposed exploration activity.

(h) A list of any known archaeological resources on the lease and measures to assure that the proposed exploration activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of measures to be taken to monitor the effects of the proposed exploration activities on the environment in accordance with § 282.28(c) of this part.

(k) A detailed description of practices and procedures to effect the abandonment of exploration activities, e.g., plugging of test drill holes. The proposed procedures shall indicate the steps to be taken to assure that test drill holes and other testing procedures which penetrate the seafloor to a significant depth are properly sealed and that the seafloor is left free of obstructions or structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(l) A detailed description of the cycle of all materials, the method for discharge and disposal of waste and refuse, and the chemical and physical characteristics of waste and refuse.

(m) A description of the potential environmental impacts of the proposed exploration activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of environmental impacts and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(n) Any other information needed for technical evaluation of the planned activity, such as sample analyses to be conducted at sea, and the evaluation of potential environmental impacts.

§ 282.23 Testing Plan.

All testing activities shall be conducted in accordance with a Testing Plan submitted by the lessee and approved by the Director. Where a lessee needs more information to develop a detailed Mining Plan than is obtainable under an approved Delineation Plan, to prepare feasibility studies, to carry out a pilot program to evaluate processing techniques or technology or mining equipment, or to determine environmental effects by a pilot test mining operation, the lessee shall submit a comprehensive Testing Plan for the Director's approval. Any OCS minerals acquired during activities conducted under an approved Testing Plan will be subject to the payment of royalty pursuant to the governing lease terms. A Testing Plan at a minimum shall include the following:

(a) The nature and purpose of the proposed testing program.

(b) A comprehensive description of the activities to be performed including descriptions of the proposed methods for analysis of samples taken.

(c) A narrative description and maps showing water depths and the locations of the proposed pilot mining or other testing activities.

(d) A comprehensive description of the method and manner in which testing activities will be conducted and the results the lessee expects to obtain as a result of those activities.

(e) The name, registration, and type of equipment to be used, including vessel types together with their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(f) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(g) A schedule specifying the starting and completion dates for each of the testing activities.

(h) A list of known archaeological resources on the lease and measures to be used to assure that the proposed testing activities do not damage those resources.

(i) A description of any potential conflicts with other uses and users of the area.

(j) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitat; any unique or special features in the lease area, other natural resources of the OCS; and hazards to public health, safety, and navigation.

(k) A description of the measures to be taken to monitor the impacts of the proposed testing activities in accordance with § 282.28(c) of this part.

(l) A detailed description of the cycle of all materials including samples and wastes, the method for discharge and disposal of waste and refuse, and the chemical and physical characteristics of such waste and refuse.

(m) A detailed description of practices and procedures to effect the abandonment of testing activities, e.g., abandonment of a pilot mining facility. The proposed procedures shall indicate the steps to be taken to assure that mined areas do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that may present a hazard to other uses or users of the OCS such as navigation or commercial fishing.

(n) A description of potential environmental impacts of testing activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed testing activities and the domestic socioeconomic effects of construction and operation of the proposed testing facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and.

(5) Alternate sites and technologies considered by the lessee and the reasons why they were not selected.

(o) Any other information needed for technical evaluation of the planned activities and for evaluation of the impact of those activities on the human, marine, and coastal environments.

§ 282.24 Mining Plan.

All OCS mineral development and production activities shall be conducted in accordance with a Mining Plan submitted by the lessee and approved by the Director. A Mining Plan shall include comprehensive detailed descriptions, illustrations, and explanations of the proposed OCS mineral development, production, and processing activities and accurately present the lessee's proposed plan of operation. A Mining Plan at a minimum shall include the following:

(a) A narrative description of the mining activities including:

(1) The OCS mineral(s) or material(s) to be recovered;

(2) Estimates of the number of tons and grade(s) of ore to be recovered;

(3) Anticipated annual production;

(4) Volume of ocean bottom expected to be disturbed (area and depth of disruption) each year; and

(5) All activities of the mining cycle from extraction through processing and waste disposal.

(b) Maps of the lease showing water depths, the outline of the mineral deposit(s) to be mined with cross sections showing thickness, and the area(s) anticipated to be mined each year.

(c) The name, registration, and type of equipment to be used, including vessel types as well as their navigation and mobile communication systems, and transportation corridors to be used between the lease and shore.

(d) Information showing that the equipment to be used (including the vessel) is capable of performing the intended operation in the environment which will be encountered.

(e) A description of equipment to be used in mining, processing, and transporting of the ore.

(f) A schedule indicating the anticipated starting and completion

dates for each activity described in the plan.

(g) For onshore processing, a description of how OCS minerals are to be processed and how the produced OCS minerals will be weighed, assayed, and royalty determinations made.

(h) For at-sea processing, additional information including type and size of installation or structures and the method of tailings disposal.

(i) A list of known archaeological resources on the lease and the measures to be taken to assure that the proposed mining activities do not damage those resources.

(j) Description of any potential conflicts with other uses and users of the area.

(k) A detailed description of the nature and occurrence of the OCS mineral deposit(s) in the leased area with adequate maps and sections.

(l) A detailed description of development and mining methods to be used, the proposed sequence of mining or development, the expected production rate, the method and location of the proposed processing operation, and the method of measuring production.

(m) A detailed description of the method of transporting the produced OCS minerals from the lease to shore and adequate maps showing the locations of pipelines, conveyors, and other transportation facilities and corridors.

(n) A detailed description of the cycle of all materials including samples and wastes, the method of discharge and disposal of waste and refuse, and the chemical and physical characteristics of the waste and refuse.

(o) A description of measures to be taken to avoid, minimize, or otherwise mitigate air, land, and water pollution and damage to aquatic and wildlife species and their habitats; any unique or special features in the lease area, aquifers, or other natural resources of the OCS; and hazards to public health, safety, and navigation.

(p) A detailed description of measures to be taken to monitor the impacts of the proposed mining and processing activities on the environment in accordance with § 282.28(c) of this part.

(q) A detailed description of practices and procedures to effect the abandonment of mining and processing activities. The proposed procedures shall indicate the steps to be taken to assure that mined areas on tailing deposits do not pose a threat to the environment and that the seafloor is left free of obstructions and structures that present a hazard to other users or uses of the OCS such as navigation or commercial fishing.

(r) A description of potential environmental impacts of mining activities including the following:

(1) The location of associated port, transport, processing, and waste disposal facilities and the affected environment (e.g., maps, land use, and layout);

(2) A description of the nature and degree of potential environmental impacts of the proposed mining activities and the domestic socioeconomic effects of construction and operation of the associated facilities, including waste characteristics and toxicity;

(3) Any proposed mitigation measures to avoid or minimize adverse impacts on the environment;

(4) A certificate of consistency with the federally approved State coastal zone management program, where applicable; and

(5) Alternative sites and technologies considered by the lessee and the reasons why they were not chosen.

(s) Any other information needed for technical evaluation of the proposed activities and for the evaluation of potential impacts on the environment.

§ 282.25 Plan modification.

Approved Delineation, Testing, and Mining Plans may be modified upon the Director's approval of the changes proposed. When circumstances warrant, the Director may direct the lessee to modify an approved plan to adjust to changed conditions. If the lessee requests the change, the lessee shall submit a detailed, written statement of the proposed modifications, potential, impacts, and the justification for the proposed changes. Revision of an approved plan whether initiated by the lessee or ordered by the Director shall be submitted to the Director for approval. When the Director determines that a proposed revision could result in significant change in the impacts previously identified and evaluated or requires additional permits, the proposed plan revision shall be subject to the applicable review and approval procedures of §§ 282.21, 282.22, 282.23, and 282.24 of this part.

§ 282.26 Contingency Plan.

(a) When required by the Director, a lessee shall include a Contingency Plan as part of its request for approval of a Delineation, Testing, or Mining Plan. The Contingency Plan shall comply with the requirements of § 282.28(e) of this part.

(b) The Director may order or the lessee may request the Director's approval of a modification of the Contingency Plan when such a change is necessary to reflect any new information concerning the nature, magnitude, and significance of potential equipment or procedural failures or the effectiveness of the corrective actions described in the Contingency Plan.

§ 282.27 Conduct of operations.

(a) The lessee shall conduct all exploration, testing, development, and production activities and other operations in a safe and workmanlike manner and shall maintain equipment in a manner which assures the protection of the lease and its improvements, the health and safety of all persons, and the conservation of property, and the environment.

(b) Nothing in this part shall preclude the use of new or alternative technologies, techniques, procedures, equipment, or activities, other than those prescribed in the regulations of this part, if such other technologies, techniques, procedures, equipment, or activities afford a degree of protection, safety, and performance equal to or better than that intended to be achieved by the regulations of this part, provided the lessee obtains the written approval of the Director prior to the use of such new or alternative technologies, techniques, procedures, equipment, or activities.

(c) The lessee shall immediately notify the Director when there is a death or serious injury; fire, explosion, or other hazardous event which threatens damage to life, a mineral deposit, or equipment; spills of oil, chemical reagents, or other liquid pollutants which could cause pollution; or damage to aquatic life or the environment associated with operations on the lease. As soon as practical, the lessee shall file a detailed report on the event and action(s) taken to control the situation and to mitigate any further damage.

(d)(1) Lessees shall provide means, at all reasonable hours either day or night, for the Director to inspect or investigate the conditions of the operation and to determine whether applicable regulations; terms and conditions of the lease; and the requirements of the approved Delineation, Testing, or Mining Plan are being met.

(2) A lessee shall, on request by the Director, furnish food, quarters, and transportation for MMS representatives to inspect its facilities. Upon request, the lessee will be reimbursed by the United States for the actual costs which it incurs as a result of its providing food, quarters, and transportation for an MMS representative's stay of more than 10 hours. Request for reimbursement must be submitted within 60 days following the cost being incurred.

(e) Mining and processing vessels, platforms, structures, artificial islands, and mobile drilling units which have helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 12 inches in height. Signs for structures without helicopter landing facilities shall be identified with at least one sign using letters and figures not less than 3 inches in height. Signs shall be affixed at a location that is visible to approaching traffic and shall contain the following information which may be abbreviated:

(1) Name of the lease operator;

(2) The area designation based on Official OCS Protraction Diagrams;

(3) The block number in which the facility is located; and

(4) Vessel, platform, structure, or rig name.

(f)(1) Drilling.

(i) When drilling on lands valuable or potentially valuable for oil and gas or geopressured or geothermal resources, drilling equipment shall be equipped with blowout prevention and control devices acceptable to the Director before penetrating more than 500 feet unless a different depth is specified in advance by the Director.

(ii) In cases where the Director determines that there is sufficient liklihood of encountering pressurized hydrocarbons, the Director may require that the lessee comply with all or portions of the requirements in Part 250, Subpart D, of this title.

(iii) Before drilling any hole which may penetrate an aquifer, the lessee shall follow the procedures included in the approved plan for the penetration and isolation of the aquifer during the drilling operation, during use of the hole, and for subsequent abandonment of the hole.

(iv) Cuttings from holes drilled on the lease shall be disposed of and monitored in accordance with the approved plan.

(v) The use of muds in drilling holes on the lease and their subsequent disposition shall be according to the approved plan.

(2) All drill holes which are susceptible to logging shall be logged, and the lessee shall prepare a detailed lithologic log of each drill hole. Drill holes which are drilled deeper than 500 feet shall be drilled in a manner which permits logging. Copies of logs of cores and cuttings and all in-hole surveys such as electronic logs, gamma ray logs, neutron density logs, and sonic logs shall be provided to the Director.

(3) Drill holes for exploration, testing, development, or production shall be properly plugged and abandoned to the satisfaction of the Director in accordance with the approved plan and in such a manner as to protect the surface and not endanger any operation; any freshwater aquifer; or deposit of oil, gas, or other mineral substance.

(g) The use of explosives on the lease shall be in accordance with the approved plan.

(h)(1) Any equipment placed on the seabed shall be designed to allow its recovery and removal upon abandonment of leasehold activities.

(2) Disposal of equipment, cables, chains, containers, or other materials into the ocean is prohibited.

(3) Materials, equipment, tools, containers, and other items used on the OCS which are of such shape or configuration that they are likely to snag or damage fishing devices shall be handled and marked as follows:

(i) All loose materials, small tools, and other small objects shall be kept in a suitable storage area or a marked container when not in use or in a marked container before transport over OCS waters;

(ii) All cable, chain, or wire segments shall be recovered after use and securely stored;

(iii) Skid-mounted equipment, portable containers, spools or reels, and drums shall be marked with the owner's name prior to use or transport over OCS waters; and

(iv) All markings must clearly identify the owner and must be durable enough to resist the effects of the environmental conditions to which they are exposed.

(4) Any equipment or material described in paragraphs (h)(2), (h)(3)(ii), and (h)(3)(iii) of this section that is lost overboard shall be recorded on the daily operations report of the facility and reported to the Director and to the U.S. Coast Guard.

(i) Any bulk sampling or testing that is necessary to be conducted prior to submission of a Mining Plan shall be in accordance with an approved Testing Plan. The sale of any OCS minerals acquired under an approved Testing Plan shall be subject to the payment of the royalty specified in the lease to the United States.

(j) Installations and structures.

(1) The lessee shall design, fabricate, install, use, inspect, and maintain all installations and structures, including platforms on the OCS, to assure the structural integrity of all installations and structures for the safe conduct of exploration, testing, mining, and processing activities considering the specific environmental conditions at the location of the installation or structure.

(2) All fixed or bottom-founded platforms or other structures, e.g., artificial islands shall be designed, fabricated, installed, inspected, and maintained in accordance with the provisions of Part 250, Subpart I, of this title.

(k) The lessee shall not produce any OCS mineral until the method of measurement and the procedures for product valuation have been instituted in accordance with the approved Testing or Mining Plan. The lessee shall enter the weight or quantity and quality of each mineral produced in accordance with § 282.29 of this title.

(l) The lessee shall conduct OCS mineral processing operations in accordance with the approved Testing or Mining Plan and use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical processes, by evaporation, or other means, so that the percentage of concentrates or other mineral substances are recovered in accordance with the practices approved in the Testing or Mining Plan.

(m) No material shall be discharged or disposed of except in accordance with the approved disposal practice and procedures contained in the approved Delineation, Testing, or Mining Plan.

§ 282.28 Environmental protection measures.

(a) Exploration, testing, development, production, and processing activities proposed to be conducted under a lease will only be approved by the Director upon the determination that the adverse impacts of the proposed activities can be avoided, minimized, or otherwise mitigated. The Director shall take into account the information contained in the sale-specific environmental evaluation prepared in association with the lease offering as well as the site- and operational-specific environmental evaluations prepared in association with the review and evaluation of the approved Delineation, Testing, or Mining Plan. The Director's review of the air quality consequences of proposed OCS activities will follow the practices and procedures specified in §§ 250.26, 250.33(b)(19), 250.34(b)(12), and 250.45 of this title.

(b) If the baseline data available are judged by the Director to be inadequate to support an environmental evaluation of a proposed Delineation, Testing, or Mining Plan, the Director may require the lessee to collect additional environmental baseline data prior to the approval of the activities proposed.

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(c)(1) The lessee shall monitor activities in a manner that develops the data and information necessary to enable the Director to assess the impacts of exploration, testing, mining, and processing activities on the environment on and off the lease; develop and evaluate methods for mitigating adverse environmental effects; validate assessments made in previous environmental evaluations; and ensure compliance with lease and other requirements for the protection of the environment.

(2) Monitoring of environmental effects shall include determination of the spatial and temporal environmental changes induced by the exploration, testing, development, production, and processing activities on the flora and fauna of the sea surface, the water column, and/or the seafloor.

(3) The Director may place observers onboard exploration, testing, mining, and processing vessels; installations; or structures to ensure that the provisions of the lease, the approved plan, and these regulations are followed and to evaluate the effectiveness of the approved monitoring and mitigation practices and procedures in protecting the environment.

(4) The Director may order or the lessee may request a modification of the approved monitoring program prior to the startup of testing activities or commercial-scale recovery, and at other appropriate times as necessary, to reflect accurately the proposed operations or to incorporate the results of recent research or improved monitoring techniques.

(5) When prototype test mining is proposed, the lessee shall include a monitoring strategy for assessing the impacts of the testing activities and for developing a strategy for monitoring commercial-scale recovery and mitigating the impacts of commercial-scale recovery more effectively. At a minimum, the proposed monitoring activities shall address specific concerns expressed in the lease-sale environmental analysis.

(6) When required, the monitoring plan shall specify:

(i) The sampling techniques and procedures to be used to acquire the needed data and information;

(ii) The format to be used in analysis and presentation of the data and information;

(iii) The equipment, techniques, and procedures to be used in carrying out the monitoring program; and

(iv) The name and qualifications of person(s) designated to be responsible for carrying out the environmental monitoring.

(d) Lessees shall develop and conduct their operations in a manner designed to avoid, minimize, or otherwise mitigate environmental impacts and to demonstrate the effectiveness of efforts to that end. Based upon results of the monitoring program, the Director may specify particular procedures for mitigating environmental impacts.

(e) In the event that equipment or procedural failure might result in significant additional damage to the environment, the lessee shall submit a Contingency Plan which specifies the procedures to be followed to institute corrective actions in response to such a failure and to minimize adverse impacts on the environment. Such procedures shall be designed for the site and mining activities described in the approved Delineation, Testing, or Mining Plan.

§ 282.29 Reports and records.

(a) A report of the amount and value of each OCS mineral produced from each lease shall be made by the payor for the lease for each calendar month, beginning with the month in which approved testing, development, or production activities are initiated and shall be filed in duplicate with the Director on or before the 20th day of the succeeding month, unless an extension of time for the filing of such report is granted by the Director. The report shall disclose accurately and in detail all operations conducted during each month and present a general summary of the status of leasehold activities. The report shall be submitted each month until the lease is terminated or relinquished unless the Director authorizes omission of the report during an approved suspension of production. The report shall show for each calendar month the location of each mining and processing activity; the number of days operations were conducted; the identity, quantity, quality, and value of each OCS mineral produced, sold, transferred, used or otherwise disposed of; identity, quantity, and quality of an inventory maintained prior to the point of royalty determination; and other information as may be required by the Director.

(b) The lessee shall submit a status report on exploration and/or testing activities under an approved Delineation or Testing Plan to the Director within 30 days of the close of each calendar quarter which shall include:

(1) A summary of activities conducted;

(2) A listing of all geophysical and geochemical data acquired and developed such as acoustic or seismic profiling records;

(3) A map showing location of holes drilled and where bottom samples were taken; and

(4) Identification of samples analyzed.

(c) Each lessee shall submit to the Director a report of exploration and/or testing activities within 3 months after the completion of operations. The final report of exploration and/or testing activities conducted on the lease shall include:

(1) A description of work performed;

(2) Charts, maps, or plats depicting the area and leases in which activities were conducted specifically identifying the lines of geophysical traverses and/or the locations where geological activity was conducted and/or the locations of other exploration and testing activities;

(3) The dates on which the actual operations were performed;

(4) A narrative summary of any mineral occurrences; environmental hazards; and effects of the activities on the environment, aquatic life, archaeological resources, or other uses and users of the area in which the activities were conducted;

(5) Such other descriptions of the activities conducted as may be specified by the Director; and

(6) Records of all samples from core drilling or other tests made on the lease. The records shall be in such form that the location and direction of the samples can be accurately located on a map. The records shall include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analyses of all samples analyzed.

(d) The lessee shall report the results of environmental monitoring activities required in § 282.28 of this part and shall submit such other environmental data as the Director may require to conform with the requirements of these regulations.

(e)(1) All maps shall be appropriately marked with reference to official lease boundaries and elevations marked with reference to sea level. When required by the Director, vertical projections and cross sections shall accompany plan views. The maps shall be kept current and submitted to the Director annually, or more often when required by the Director. The accuracy of maps furnished shall be certified by a professional engineer or land surveyor.

(2) The lessee shall prepare such maps of the leased lands as are necessary to show the geological conditions as determined from G&G surveys, bottom sampling, drill holes, trenching, dredging, or mining. All excavations shall be shown in such manner that the volume of OCS minerals produced during a royalty period can be accurately ascertained.

(f) Any lessee who acquires rock, mineral, and core samples under a lease shall keep a representative split of each geological sample and a quarter longitudinal segment of each core for 5 years during which time the samples shall be available for inspection at the convenience of the Director who may take cuts of such cores, cuttings, and samples.

(g)(1) The lessee shall keep all original data and information available for inspection or duplication, by the Director at the expense of the lessor, as long as the lease continues in force. Should the lessee choose to dispose of original data and information once the lease has expired, said data and information shall be offered to the lessor free of costs and shall, if accepted, become the property of the lessor.

(2) Navigation tapes showing the location(s) where samples were taken and test drilling conducted shall be retained for as long as the lease continues in force.

(h) Lessees shall maintain records in which will be kept an accurate account of all ore and rock mined; all ore put through a mill; all mineral products produced; all ore and mineral products sold, transferred, used, or otherwise disposed of and to whom sold or transferred, and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received. The percentage of each of the mineral products recovered and the percentages lost shall be shown. The records associated with activities on a lease shall be available to the Director for auditing.

(i) When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the Director.

§ 282.30 Right of use and easement.

(a) A right of use and easement that includes any area subject to a lease issued or maintained under the Act shall be granted only after the lessee has been notified by the requestor and afforded the opportunity to comment on the request. A holder of a right under a right of use and easement shall exercise that right in accordance with the requirements of the regulations in this part. A right of use and easement shall be exercised only in a manner which does not interfere unreasonably with operations of any lessee on its lease.

(b) Once a right of use and easement has been exercised, the right shall continue, beyond the termination of any lease on which it may be situated, as long as it is demonstrated to the Director that the right of use and easement is being exercised by the holder of the right and that the right of use and easement continues to serve the purpose specified in the grant. If the right of use and easement extends beyond the termination of any lease on which the right may be situated or if it is situated on an unleased portion of the OCS, the rights of all subsequent lessees shall be subject to such right. Upon termination of a right of use and easement, the holder of the right shall abandon the premises in the same manner that a lessee abandons activities on a lease to the satisfaction of the Director.

§ 282.31 Suspension of production or other operations.

A lessee may submit a request for a suspension of production or other operations. The request shall include justification for granting the requested suspension, a schedule of work leading to the initiation or restoration of production or other operations, and any other information the Director may require.

Subpart D—Payments

§ 282.40 Bonds.

(a) Pursuant to the requirements for a bond in § 281.33 of this title, prior to the commencement of any activity on a lease, the lessee shall submit a surety or personal bond to cover the lessee's royalty and other obligations under the lease as specified in this section.

(b) All bonds furnished by a lessee or operator shall be in a form or on a form approved by the Director. A single copy of the required form is to be executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety.

(c) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of Treasury Circular No. 570 and any supplemental or replacement circulars.)

(d) Personal bonds shall be accompanied by a cashier's check, certified check, or negotiable U.S. Treasury bonds of an equal value to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance of full authority to the Director to sell such securities in case of default in the performance of the terms and conditions of the lease.

(e) A bond in the minimum amount of $50,000 to cover the lessee's obligations under the lease shall be submitted prior to the commencement of any activity on a leasehold. A $50,000 bond shall not be required on a lease if the lessee already maintains or furnishes a $300,000 bond conditioned on compliance with the terms of leases for OCS minerals other than oil, gas, and sulphur held by the lessee on the OCS for the area in which the lease is located. A bond submitted pursuant to § 256.58(a) of this chapter may be amended to include the aforementioned condition for compliance. Prior to approval of a Delineation, Testing, or Mining Plan, the bond amount shall be adjusted, if appropriate, to cover the operations and activities described in the proposed plan.

(f) For the purposes of this section there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the coast of Alaska; and

(4) The area offshore the Atlantic coast.

(g) A separate bond shall be required for each area. An operator's bond may be submitted for a specific lease(s) in the same amount as the lessee's bond(s) applicable to the lease(s) involved.

(h) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(i) After default, the principal shall, within 6 months after notice or within such shorter period as may be fixed by the Director, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principal may, within that time, file separate or substitute bonds for each lease. Failure to meet these requirements may result in a suspension of operations including production on leases covered by such bonds.

(j) The Director shall not consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease covered by the bond have been met.

§ 282.41 Method of royalty calculation.

In the event that the provisions of royalty management regulations do not apply to the specific commodities produced under regulations in this part, the lessee shall comply with procedures specified in the leasing notice.

§ 282.42 Payments.

Rentals, royalties, and other payments due the Federal Government on leases

for OCS minerals shall be paid and reports submitted by the payor for a lease in accordance with § 281.26 of this title.

Subpart E—Appeals

§ 282.50 Appeals.

Orders or decisions issued under the regulations in this part may be appealed in accordance with the provisions of Part 290 of this title. The filing of an appeal with the Director shall not suspend the requirement for compliance with an order or decision other than the payment of a civil penalty.

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